



Briefing Materials:  
First National Deliberative Polling on  
Mongolian Constitutional Amendments



Unofficial translation

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Ulaanbaatar

# Briefing Materials First National Deliberative Polling on Mongolian Constitutional Amendments

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*This version has been translated into English from the original Mongolian and edited for readability. For any differences in the texts, the Mongolian version is the official document used for this deliberative poll.*

## I. Preface

The Preamble of the Constitution of Mongolia sets forth the core national interest and the ultimate desire of the people of Mongolia as follows:

**“We, the people of Mongolia:**

- Strengthening the independence and sovereignty of the nation,
- Cherishing human rights and freedoms, justice, and national unity,
- Inheriting the traditions of national statehood, history, and culture,
- Respecting the accomplishments of human civilization, and
- Aspiring toward the supreme objective of building a humane, civil and democratic society in the country,

**hereby proclaim the Constitution of Mongolia.**

Therefore, it can be said that the Constitution of Mongolia serves as the **“property of the people and supreme agreement of broader societal consensus.”**

Twenty-five years have elapsed since Mongolia ratified and brought into force its new democratic Constitution. Every citizen of Mongolia must respect and protect the Constitution while also exercising their right to join consultations on the need for amendment, as well as expressing their opinions to decision makers, a right which is founded on Article 3.1 of the Constitution, “State power is vested in the people of Mongolia. The people exercise it through direct participation in state affairs and through representative bodies of state power elected by them.”

### 1a. What is Deliberative Polling?

Democracy refers to processes and systems of consultation that aim to reflect the opinions of citizens in government decisions. Deliberative democracy refers to a process of providing citizens with balanced information prior to making decisions on any issue, engaging with them equally, and trying to find the most optimal solutions.

For Mongolians, who have long believed the traditional wisdom contained in the saying, “There is no fault in discussing with all”, the entire process for discussing and ratifying the 1992 Constitution was identical to deliberative democracy in spirit and practice, and it served as a clear example for deliberative democracy today. This process in 1992 explains why the Constitution of Mongolia must be considered as the intellectual property of and a product jointly made by the people of Mongolia.

Deliberative polling is a suitable political consensus process that can support efforts to make sure that any decisions of the government, before and after, is subject to consultation with representatives of citizens and made fairly/honestly by genuine efforts to listen to the opinions of constituents.

Historically in the 19-20<sup>th</sup> century, the famous scientist and progressive national enlightener Dandaa Ch. Demchigdorj said that the midpoint for diversity of opinions must be sought through consensus building efforts, and formulated this process as “principle of variegation”.

Therefore, deliberative polling refers to a process for ensuring that decisions relating to pressing political, economic and social issues made through joint and shared wisdom by broadly consulting the public on their opinions and through wide engagement with stakeholders and deliberation between them.

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### *Goal for the deliberative polling event:*

A deliberative poll will be organized that complies with the respective laws and regulations in order to achieve the following objectives:

- Ensure the exercise of rights granted to citizens by Article 3.1 of the Constitution that provides citizens' participation and representation in the state power;
- Identify pressing social and economic issues through consultation with citizens;
- Deliberate with citizens on priority, ranking and solutions, and potential decisions on these issues;
- Provide information to citizens and the public on pressing issues.

### *Regulation for organizing deliberative polling:*

Deliberative polling takes place in two stages. The first stage is a poll of a random, representative sample using a questionnaire focused on the targeted issues for deliberation. This poll is administered without giving any prior information or building the knowledge of respondents.

During the second stage, members of the sample selected in the first stage are invited to participate in a deliberative meeting. At this meeting, they are divided into small groups of no more than 15 members for deliberation, again the groups are randomly selected. At the beginning of the deliberative consultation event briefing materials, which are prepared by professionals, experts and researchers, are given to the participants, to inform the group discussions.

Following group discussions, participants ask questions to experts and also listen to opinions of other participants. Information and briefing materials on the discussion topics must be sent to participants in advance.

After the deliberations, the sample is again asked to respond to the original questions posed to them during the first poll. This process enables the organizers to identify changes in the opinions of respondents- pre-and post-polling- and to find out what position they took in looking at certain issues. In other words, it facilitates the identification of difference of opinions between first and second stages, what was the opinion at the first stage, how it is changed after the second stage, once participants are more informed about the issue and have engaged in deliberation.

Afterwards, the National Statistics Office, responsible for collecting citizens' opinions on the deliberative polling, shall analyze the findings of both stages, and provide comparative results, disaggregated by various indicators, in the deliberative polling report and submit to an Advisory Committee.

This Advisory Committee will discuss findings of the polling and deliver its recommendations to the State Great Khural accordingly.

At that point the State Great Khural will publicize information recommended by the Committee to the public on how it has incorporated and responded to recommendations from the deliberative polling event in accordance with the law.

### *Importance and best experiences of deliberative polling:*

Successful deliberative polling facilitates decision makers to get the sense of and listen to public opinion; and subsequently increase citizens' participation in making decisions and reflecting their common interests in the decision.

Deliberative polling is widely used in many countries with different political systems and development levels, including the People's Republic of China, European Union member states, Japan and Uganda.

A first-of-its-kind deliberative polling was organized in Mongolia in December 2015, where extensive polling was conducted to prioritize infrastructure development projects planned in the City of Ulaanbaatar. Countries using deliberative polling are improving and upgrading the methodology as they use it broader scope.

In relation to the planned deliberative polling and based on these international best practices, The Asia Foundation and the Stanford University Center for Deliberative Democracy, have provided assistance to strengthen the capacity of organizers, while also providing technical advice and giving recommendations.

#### 1b. Rationale and reason for organizing deliberative polling on the Constitutional amendments

In 1992, Mongolia ratified its new Constitution and it came into effect nationally. This process was driven by the main goal to strengthen the independence and sovereignty of the country, and to build a humane and democratic society in Mongolia.

During the past 25 years, this democratic Constitution realized its key concepts in practice, guaranteed the independence and sovereignty of Mongolia and enabled citizens to exercise realistic rights for free speech, freedom of movement and travel, right to select their areas of residence and right to ownership of property; all witnesses that core concepts and principles of the Constitution were on the right track. Alongside these achievements, however, a wide variety of shortcomings and drawbacks also have been identified in social, economic and political spheres.

Many in public service have lacked responsibility and accountability, political influence penetrated extensively into public service, public servants were divided by political orientation, overly bureaucratic measures as well as corruption emerged, economic development deteriorated, the divide between rich and poor was enlarged, and rule of law undermined. Consequently, the public has become frustrated and demanded remedial actions.

In order to overcome and eliminate these challenges, not only politicians, lawyers, researchers and scientists, but also the broader public have frequently raised their voices and expressed positions that demonstrate the need to amend the Constitution.

Public opinion polls reveal that almost no Mongolians underestimate the importance of 1992 Constitution, but many people do agree that there are two main reasons that explain the need to re-visit the Constitution. They are:

- When the Constitution was adopted, the understanding and knowledge of people about democratic society was inadequate;
- There have been significant changes and evolutions in Mongolian society, politics and economy during the past two dozen years.

Since the 1992 Constitution was adopted, the State Great Khural amended it once in 2000; but many citizens criticized this amendment because it was made following discourse within a small political sphere, rather than through consultation with public. Many feel these amendments even exacerbated the country's governance crisis, such that people named these changes the "Seven deteriorating amendments."

Since these 2000 amendment, Members of the State Great Khural have continued to submit draft amendments in 2000, 2011, 2012 and 2015, respectively, without any leading to actual amendment. In 2012-2016, however, the State Great Khural held a much more extensive discussion on potential amendments to the Constitution. During this term, a Working Group, chaired by Member of State Great Khural L. Tsog, was formed and designated to study possibilities for Constitutional amendment. This working group, came to the conclusion that “some amendments must be made in the Constitution.”

Based on this conclusion, a second Working Group comprising representatives of political parties with seats in the State Great Khural was established and chaired by Member of State Great Khural N. Batbayar with a mandate to develop draft amendments to the Constitution. This Working Group submitted a draft of amendments, signed by 48 members, to the State Great Khural, but the draft was not discussed during the term of that State Great Khural.

Government of Mongolia Action Plan for 2016- 2020, which was adopted by State Great Khural resolution #45 (2016) sets forth “...*With a view to promoting checks and balances and creating a stable and responsible state, seek the public opinion and take a decision on amending the Constitution in line with the present demands and requirements.*”

Following the Government of Mongolia’s Action Plan, on December 21, 2016, Prime Minister J. Erdenebat made an order and established a new Working Group for the newly elected government, to study the need for Constitutional amendment and develop recommendations. This Working Group organized discussions with 3000 citizens from 21 aimags and 9 districts to investigate public opinion. Based on their research findings, this Working Group agreed on the need for Constitutional amendment and submitted a series of proposals and conclusions relating to possible amendments to the Cabinet.

An additional Working Group, chaired by Member of the State Great Khural D. Lundeejantsan, and consisting of Members of the State Great Khural, scientists, researchers and experts, was established and subsequently came to similar conclusions on the need to amend the Constitution.

Parallel to these efforts, the State Great Khural of Mongolia, in its autumn session of 2016, adopted the ‘Law on Deliberative Polling’, which sets forth that deliberative polling must be used to determine the rationale and need for amendment, and whether the process stated in Provision 5.3.3 of the Law on Regulations for Amendment to the Constitution should be activated.

Grounded on the provision, the rationale, relevant research findings and emerging needs resulting from these multiple working groups, the State Great Khural decided to organize deliberative polling on the following issues:

- Ensuring checks and balance between the powers of the State Great Khural and the Cabinet;
- Modifying the legal status of the President of Mongolia to conform with classical parliamentary systems, clarify the division of powers, and strengthen national solidarity;
- Strengthening public service so that it is independent from politics, merit based, skilled and prestigious;
- Strengthening the responsibility, accountability, and discipline of government, and improving rule of law;
- Enhancing the country’s administrative and territorial systems;

- Creating a new system of bi-cameral Parliament, which consists of the People’s Great Khural and State Minor Khural,

This decision was contained in a resolution “on organizing deliberative polling on the amendment to the Constitution of Mongolia” which was adopted on April 7, 2017.

### Ic. Participants of Deliberative Polling

The most important participants in a deliberative polling are the representatives of citizens who take part in deliberation. The National Statistics Office selected respondents for the initial survey through random sampling, a common scientific method, and respondents must represent all strata of the society.

The first round of deliberative polling consisted of polling 1750 respondents, which were selected randomly throughout Mongolia, starting from April 12, 2017. In the second round of the deliberative polling process 785, or 50% of respondents from the first round, were invited for the deliberative event and consultation, scheduled to be held in Great Hall of State House on April 29 – 30, 2017.

**Consultative Council:** The Law on Deliberative Polling requires those organizing the poll and authorized for decision making to establish a Consultative Council, responsible for preparation, overseeing the organization of the event, compiling findings and developing recommendations.

The State Great Khural of Mongolia established such a Consultative Council for this event by issuing resolution #4 (2017), designated to organize deliberative polling on Constitutional amendment. The Council consists of the following members:

- |                     |  |
|---------------------|--|
| 1. Ts. Gombosuren   | - Former Minister of Foreign Affairs   |
| 2. N. Jantsannorov  | - Professor of Mongolian National University of Culture and Arts                                 |
| 3. D. Lkhamjav      | - Constitutional Researcher, former Member of State Small Khural                                 |
| 4. B. Lkhagvajav    | - President of Mongolian National Chamber of Commerce and Industry                               |
| 5. Ts. Sarantuya    | - Professor of Law School, National University of Mongolia (Ph.D.)                               |
| 6. D. Sukhjargalmaa | - Consultant of Monfemnet National Network   |
| 7. D. Choijamts     | - Head and Khamba Lama of Gandantegchinlen Monastery, former Member of the People’s Great Khural |
| 8. G. Chuluunbaatar | - First Vice President of the Mongolian Academy of Sciences                                      |

## II. General Information

### IIa. Structure of Mongolian State System, and Separation of Power

Mongolia is a sovereign state and a parliamentary democracy. In Mongolia state powers are vested in the people and exercised by the State Great Khural, which is elected by them. Mongolia is a unitary state in which state power is equally divided into legislative, executive, and judicial branches. In any country if state powers are centralized so that one institution and/or person holds all power, liberty and human rights will be in danger. To prevent that, the 1992 Constitution of Mongolia stipulates that state power shall equally divided between the State Great Khural, the Government, and Judiciary, all of which shall execute checks and balances on each other. Roles and responsibilities between these three institutions are as follows:

**State Great Khural** – Enacts laws;

**Government** – Enforces laws;

**Judiciary** – Interprets the meaning of laws; including to decide if laws violate the Constitution.

**Legislative power:** In order to create public policies and coordinate social order, the legislative branch enacts legislation, and oversees and supports the executive branch's execution of the legislation. Wielding legislative power requires the state to go through a legislative process. The State Great Khural, a legislative body, has one chamber and 76 members. The members of the State Great Khural are elected to a term of four years in elections in which all citizens eligible to vote, can participate in universal, free, direct voting by secret ballot. The State Great Khural has the power and sole authority to enact and amend laws, develop domestic and foreign policy concepts, confirm the president's authority and to define the socio-economic principles of the entire nation and establish the national border.

**Executive power:** Executive power is one of the three branches of the state power, and the Government of Mongolia is the highest executive entity of the state. In order to fulfill its mandate to implement laws, the Government ensures nationwide implementation of the Constitution and other laws enacted by The State Great Khural, and report back on that implementation to the State Great Khural and the Mongolian people. If the implementation by the Government is not satisfactory, the legislative branch will hold the Government accountable. The Government consists of a Prime Minister, the cabinet members, and the ministries and agencies that they oversee. The Prime Minister and the members of cabinet are both appointed and dismissed by the State Great Khural.

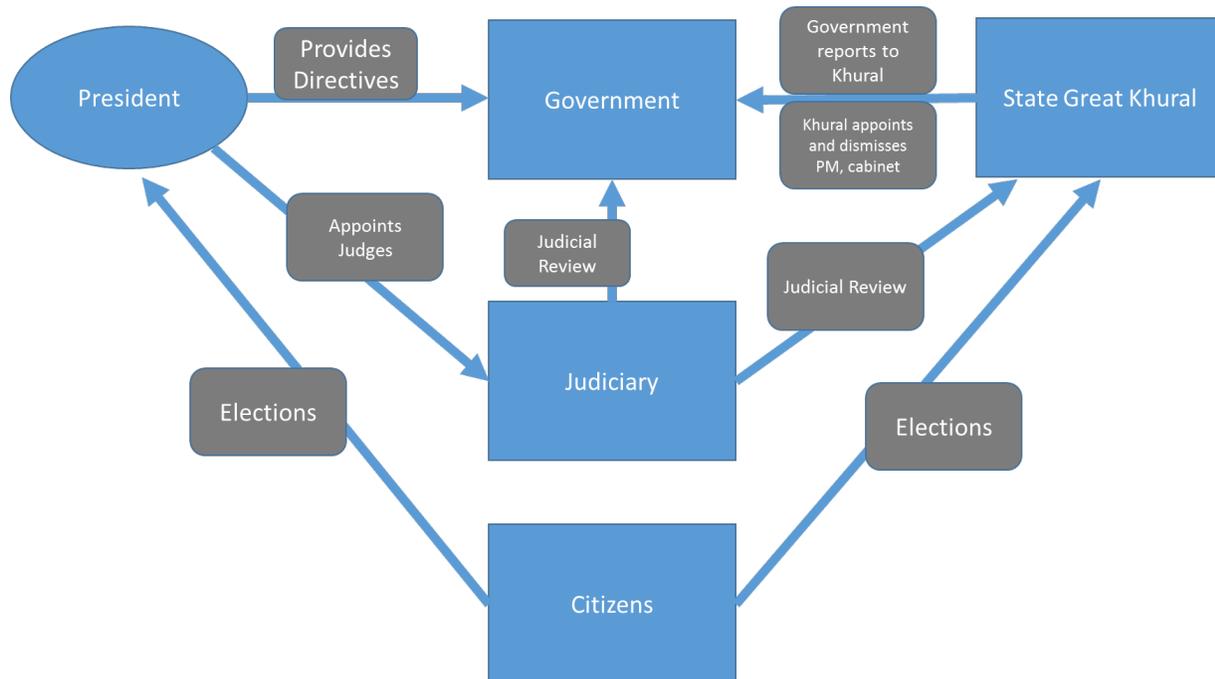
**Judicial power:** The main function of the judiciary is to interpret and apply laws through decisions rendered on and to resolve cases and disputes brought before them. Judicial power protects human rights, liberty, the interests of legal entities, and constitutional democracy. The judiciary should be completely independent of the President, the Government and the State Great Khural, and it is prohibited for any institution, official or citizen to interfere with the judiciary's exercise of its duties. The judicial system consists of the Supreme Court, aimag and capital city courts, soum, inter-soum and district courts. In addition, administrative courts (specialized court) have been formed.

There is also a Constitutional Court that is an entity to exercise supreme supervision over the implementation of the Constitution, passing judgments on any potential violations of its provisions and resolving constitutional disputes. It is prohibited for any organization, official or person to influence the Constitutional Court. The Constitutional Court consists of nine members. The State Great Khural, the President and the Supreme Court each nominate three members for appointment. Constitutional Court members serve six-year terms.

The Constitutional Court reviews disputes and makes judgements and decision on the constitutionality of actions relating to the following:		
<ul style="list-style-type: none"> <li>• Laws</li> <li>• Decrees</li> <li>• Resolutions by The State Great Khural and the President</li> <li>• Resolutions of the Government</li> <li>• International agreements</li> <li>• Decisions of the General Election Committee</li> </ul> <p>(These are all reviewed for conformity with the Constitution – not for policy effect)</p>	<ul style="list-style-type: none"> <li>• President</li> <li>• Speaker, and members of The State Great Khural</li> <li>• Chief Justice of the Supreme Court</li> <li>• Prosecutor General of the State</li> </ul>	<ul style="list-style-type: none"> <li>• Dismissal of the President, the Speaker, or the Prime Minister</li> <li>• Expulsion of a member of The State Great Khural</li> </ul> <p>(They decide if decisions by other branches of government to do the above violate the Constitution – they do not decide to take these actions themselves)</p>

**The President of Mongolia:** The President serves as the Head of State and embodiment of unity of the Mongolian people. Presidential elections are conducted in two stages. The President has powers and authority to propose the appointment of the Prime Minister or dismissal of Government to the State Great Khural, veto laws, give direction to the Government, appoint judges, and issue amnesty.

The following chart shows how power is equally divided among the mentioned branches above, and how checks and balances work.



## IIb. Amendments to the Constitution – Past and Current Discussions

During the 25 years since the Constitution was adopted in 1992, there have been amendments to seven articles. These amendments received widespread criticism and were popularly labeled as “seven deteriorating amendments.” The Constitutional Court later concluded that those amendments were not on the official agenda of parliamentary session, submitted to the parliament only one day before, violated regulations pertaining to drafting and submitting legislation, did not allow people to comment and make their suggestions and recommendations, and were not in line with principles of state activities stipulated in the Constitution. Many experts, researchers, and citizens criticized those seven amendments. However, in 2000, those seven amendments were made in the Constitution, and they included the following:

1. **A clause was added to Article 22.2 of the Constitution: the State Great Khural shall decide on its dissolution or the President shall issue a decree on the dissolution of the State Great Khural if the State Great Khural fails to appoint a Prime Minister within 45 days from the submission of the proposal of his/her appointment to the parliament.** This clause requiring the dissolution of the Parliament if it fails to appoint a PM within 45 days was viewed by some researchers as having the potential to make parliament unstable. However, the State Great Khural has never made a decision to dissolve over the last 17 years since the amendment.
2. **Changes were made to Article 24.1, whereby Speaker and Deputy Speaker are nominated from members of the parliament and elected by open ballot (previously it was secret ballot). Also, a clause on allowing each party and coalition group formed as a result of the election to elect a Deputy Speaker of the State Great Khural.** This change has been criticized for resulting in parliament having too many deputy speakers with overlapping functions, as well as resulting in members of the parliament being more controlled by their parties and are incentivized to put their party’s interest ahead of their duty to represent the people.
3. **A change was made to Article 27.2, whereby regular sessions of the State Great Khural shall be convened once every half year and last not less than 50 working days (previously it was not less than 75 working days).** This change was criticized as a sign that the State Great Khural was losing its core identity as the permanent institution of representation, and that this change was detrimental to the legislative process.
4. **A change was made into Article 27.6, whereby the presence of a majority of members shall be required to consider a session of the State Great Khural and Standing Committee valid (previously a supermajority was required to make sessions valid).**
5. **Changes were made to Article 29.1, whereby members of the State Great Khural shall not hold concurrently any posts and employment other than those assigned by law except for the post of Prime Minister and member of Government (previously members of the State Great Khural shall not hold concurrently any posts and employment other than those assigned by law).** This amendment was criticized as it allowed members of the State Great Khural to hold official positions in the Government concurrently, which could weaken parliamentary oversight of the Government and degrade the principle of checks and balances. Another core criticism is

that the Parliament does not have many members, so it is not appropriate for members of the Parliament to hold cabinet posts concurrently.

6. **Revisions were made in Paragraph 1 of Article 33, whereby the President is obliged to propose name of the Prime Minister designated to the State Great Khural within 5 days. Also, the President's power to propose the dismissal of the Government to the Parliament was repealed.** Some were critical of this change as it limits the President's power to provide oversight of the Government.
7. **A change was made to Article 39.2, whereby if the Prime Minister cannot reach consensus with the President on composition and structure of his/her cabinet within 7 days, he/she can submit it to the State Great Khural by himself/herself. (previously the Prime Minister had to reach consensus with the President before submitting it to the State Great Khural):** Again, this was viewed as limited the President's power to provide oversight of the State Great Khural.

Since the 2000 constitutional amendments, several parliaments formed working groups tasked to conduct research on constitutional changes. Moreover, several political parties and individuals have also proposed draft constitutional amendments. A common conclusion among these researchers and experts is that there should be some form of amendment to the Constitution. For instance, a majority of researchers have noted that if MPs hold cabinet positions concurrently, it may degrade State Great Khural's oversight of the government, therefore, there should be limits on this practice.

At forums and discussions held lately, constitutional law researchers have also pointed out that the Prime Minister should have power to form his/her own cabinet and be held accountable for that decision. If the Prime Minister forms his own government and the cabinet makes collective decision, it is possible that the Government will be a more responsible institution. Several research efforts concluded that this would lead the Government to become more stable.

At the same time, when this subject was raised in late 2015, researchers and experts were also quick to remind decision makers that this issue must be researched deeply, should not be taken lightly and must be the result of a step-by-step national discussion. The stability of the Constitution is the foundation of a functioning government and provides the conditions for people's well-being.

### III. Topics of Deliberative Polling

The following topics were confirmed for Deliberative Polling discussion by the resolution number 24 of The State Great Khural's session on April 7, 2017.

#### **1: Ensure effective checks and balances between the State Great Khural and the Government**

**1.1:** Grant the Prime Minister with authority to form his/her cabinet, appoint and dismiss members of the cabinet;

**1.2:** Limit number of ministers appointed from members of the State Great Khural to one third of the total members of the cabinet;

**1.3:** Include names of ministries and determine structure of the cabinet in the Constitution to ensure sustainability and stability of state policies in terms of cabinet structure specifically;

#### **2: Clearly identify rights and responsibilities of the President to eliminate duplication of functions pertinent to strengthening national unity**

**2.1:** Elect the President for a single term of six years through an extended plenary session of the State Great Khural of Mongolia (Membership of the expanded plenary session of the Parliament will consist of 76 members of the Parliament and all members of the Citizen's Representative Council of aimags, cities and the capital city);

**2.2:** Revoke constitutional rights of President to initiate legislation and to direct Presidential decrees to the Cabinet;

#### **3: Strengthen professional, skilled and reputable civil service free of politics**

**3.1:** Make the Civil Service Commission of Mongolia to be a Constitutional authority free of political influence;

**3.2:** Create a civil service system to ensure professional, stable, and promotion based on merit;

**3.3:** Civil service to be free from political interference. Add clauses in the Constitution that prohibits to discriminate against civil servants based on their political views, and dismiss civil servants because of election results or for any other unjustifiable reasons other than those stated in laws and legislative acts;

#### **4: Perfect the administrative and local governance systems**

**4.1:** Strengthen the changes in the Constitution setting forth that both administratively and territorially, Mongolia is divided into aimags, capital city and cities; aimags are then divided into soums and cities (town with local status), then lower level soums are divided into baghs and villages, and the capital city is divided into districts, which is then divided into khoroos and the city into khoroos;

**4.2:** Governors of soums, districts and cities (with national status) appoint the Governors of baghs, khoroos and villages directly;

#### **5: Improve the structure to carry out laws, and strengthen state responsibility, accountability, discipline and justice**

**5.1:** Establish an independent Constitutional organization to increase state responsibility and accountability of the state;

**5.2:** Ensure that the organization, which is responsible for increasing the state accountability, creating policies and implementing them to fight corruption and protecting social justice, be free of political influence and independent entity;

**5.3:** Expand the composition of Judicial General Council, which is responsible for ensuring independence of justices and courts and clarify the systems for appointing the Chief Justice

**6: Ensure necessary conditions to openly discuss a proposal to have two chambers of Parliament: Upper chamber - People's Great Khural and Legislative Body - State Baga Khural.**

## Topic 1: Ensure effective checks and balances between the State Great Khural and the Government

Democratic nations pay great attention to the proper allocation of state power, checks and balances, and by doing so strengthen accountability systems. The allocation of powers between the Executive branch of Government and Parliament is critical to achieving this goal.

The Constitution of Mongolia states that the Great State Khural is the highest organ of the state and that it has sole legislative power. Whereas, the government is responsible for enforcing the laws and regulations enacted by the Great State Khural, and governing the country's social, economic, and cultural institutions within the legal framework.

One of the underlying principles of the Constitution is to ensure that legislative and executive bodies are able to independently perform their functions and exercise their respective powers, while ensuring checks and balances. Certain amendments might be needed in order to affirm the need and ensure the implementation of this principle.

### Proposals:

**Proposal 1.1:** Grant the Prime Minister with authority to form his/her cabinet, appoint and dismiss members of the cabinet;

**Proposal 1.2:** Limit number of ministers appointed from members of the State Great Khural to one third of the total members of the cabinet;

**Proposal 1.3:** Include names of ministries and determine structure of the cabinet in the Constitution to ensure sustainability and stability of state policies in terms of cabinet structure specifically;

**Proposal 1.1:** Grant Prime Minister of Mongolia with authority to form his/her cabinet, appoint and dismiss members of the cabinet

### Current Situation

**Appointment of Ministers:** In accordance with Article 39.2 of the Constitution, the Prime Minister used to consult with the President on the composition of the Government. Amendments made in 2000 gave the Prime Minister authority to propose the structure and composition, including any changes, without the involvement of the President if the Prime Minister could not reach consensus with the President within seven days. As a result, the Prime Minister was able to nominate his/her cabinet members to the State Great Khural without the President's participation. However, the process of the State Great Khural considering proposed ministerial appointments one by one did not change.

In other words, the Prime Minister has the right to nominate his/her cabinet members, but does not have the power to appoint the members of his/her own cabinet. This has resulted in the Prime Minister not taking full responsibility for his/her cabinet members.

**Dismissal of the Ministers:** According to the current Constitution, Parliament can open a discussion on the dismissal of ministers whenever they feel it is appropriate. A certain number of parliament members can collectively bring a motion to dismiss the Prime Minister or any other minister to a parliamentary session. In the past, motions to dismiss the Prime Minister occurred 10 times (a few times, the Prime Minister voluntarily announced their resignation), and on six occasions the motions were supported in the parliament, and the entire cabinets were dismissed. However, motions to dismiss a specific minister in the cabinet have occurred 12 times, but they have been successful only 2 times. In addition, there have been instances of discussions taking place to dismiss cabinet members in the joint session of the parliament and standing committees, but no decisions were made. Overall discussions at the State Great Khural to dismiss cabinet members have occurred on average twice a year, and 11 cabinets were entirely dismissed from 1992 to 2016.

*(note) According to the Constitution Court's resolution #4 on November 25, 2015, a parliament member bringing a motion to dismiss ministers to the parliament for discussion disrupts the principles of the Constitution.*

Moreover, Article 23 of the Law on Mongolian Government, which was passed in 1993, legalized the power and authority of the Prime Minister. Section 1.1 of Article 23 states *"The Prime Minister shall bring the proposal on making changes to the cabinet structure and composition and appointing or removing a cabinet member to the parliament after consultation with the President."* Accordingly, it can be said that **the Prime Minister has a right to bring a proposal to dismiss a cabinet member to parliament, but no right to dismiss cabinet members without parliamentary consent.**

This limited power is made more important by Article 26 of the Constitution, which states that *"The President, members of the parliament and the government (the cabinet) have the right to initiate legislation."* Therefore, the Prime Minister does not have a right to initiate legislation by himself/herself, they need to cooperate with their cabinet to do so.

**Opinions of Citizens:** According to a survey conducted by a working group, which was tasked to conduct research on possible amendments of the Constitution of Mongolia, and prepare an assessment report on the findings, 57.3% of the citizens who participated in the survey

answered “yes” to a question “Do you think the Prime Minister should form his/her own cabinet?”

**Definition of The Proposed Amendment**

Grant the Prime Minister of Mongolia with authority to form his/her cabinet, appoint and dismiss members of the cabinet.

**Supporting and opposing arguments of proposed change**

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Increased independence of the executive branch of the government, and increased accountability to the parliament. This will eliminate the current ambiguous situation of who should be held accountable in the executive branch. This will lead to a structure, a common standard of countries with parliamentary system, where the Prime Minister is held accountable for their entire cabinet. In this way, parliamentary democracy will be strengthened.</li> <li>❖ Increased desire to appoint a skilled and well-qualified individual as the Prime Minister, who can raise the government reputation, due to their increased responsibility.</li> <li>❖ Increased discipline and accountability throughout the cabinet because the Prime Minister will have more control over his/her cabinet members.</li> <li>❖ Inability to dismiss a poorly performing member of the cabinet individually by the parliament causes a situation where the Prime Minister takes the full responsibility and added risk of entire cabinet dismissal. The proposed measure will pressure individual ministers to work ethically and responsibly. In addition, there will be hierarchical accountability structure where the Prime Minister carefully selects his/her cabinet members, and holds them accountable.</li> <li>❖ Political division and political influence in the government operation will decrease when the parliament no longer appoints and dismisses ministers. In addition, this will create a condition for the parliament to pass legislation and monitor the government independently instead of assigning government positions.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Prime Minister will have the ability and authority to nominate all the members of the cabinet at once without consulting with the parliament for confirmation. This might result in a Prime Minister removing cabinet members too frequently at his/her will.</li> <li>❖ Risk of increasing the Prime Minister’s power too much, and potential increasing the role of political parties, factions and the leaders of political parties.</li> <li>❖ Risk of establishing and strengthening party factions affiliated with the Prime Minister, which serve the interests of those groups and factions.</li> <li>❖ Potential risk of dictatorship by the Prime Minister and regression from democracy if the parliament’s real authority to audit and monitor is not increased.</li> <li>❖ Inability to dismiss a poorly performing member of the cabinet individually by the parliament causes a situation where the Prime Minister takes the full responsibility and added risk of entire cabinet dismissal.</li> </ul>

## Proposal 1.2: Limit number of ministers appointed from members of the Parliament to one third of the total members of the cabinet

### Current Situation

**Current Constitutional Provisions:** Section 1 of Article 29 of the Constitution states that “Members of the State Great Khural shall not hold concurrently any posts and employment other than those assigned by law.” The Constitutional amendment in 2000, changed the section to “Members of the State Great Khural shall not hold concurrently any posts and employment, except those of the Prime Minister and the cabinet member positions.” This change allowed parliament members to become cabinet members without any restrictions.

Citizens filed complaints with the Constitutional Court regarding the amendment. The Court decided that the amended article violated the Constitution. However, the parliament did not accept the decision of the Constitutional Court and the practice continued.

Initially, the Mongolian People’s Revolutionary Party (MPRP) parliaments appointed some of its MPs to government positions, but at first the public did not take notice or raise complaints. However in 1996, after a coalition government assumed power, the issue became more contentious. At the end of 1999, all major political parties agreed to amend the Constitution in a way that allows members of the parliament to join the government. However, the Constitutional Court ruled that the amendments were unconstitutional. In the parliamentary election held in July 2000, the MPRP won a landslide victory, winning 72 seats of the total 76. This first session of the parliament decided not to accept the ruling of the Constitutional Court, thus it became possible for a member of the parliament to join the government.

**Current Reality:** Since those amendments were made in the Constitution in 2000, several governments have been formed, and many members of the parliament have concurrently served as members of the government.

Table 1. Parliament Members’ concurrent positions in the cabinet (2000-2016)

#	Government	Term	Number of Cabinet Members	Number of Parliament Members
1.	N. Enkhbayar	2000.07.26-2004.08.20	13	4
2.	Ts. Elbegdorj	2004.08.20-2006.01.13	18	13
3.	M. Enkhbold	2006.01.25-2007.11.22	17	15
4.	S. Bayar	2007.11.22-2008.09.11	16	8
5.	S. Bayar	2008.09.11-2009.10.28	15	11
6.	S. Batbold	2009.10.29-2012.01.27	15	12
7.	S. Batbold	2012.01.20-2012.08.09	14	9
8.	N. Altankhuyag	2012.08.09-2014.11.05	19	17
9.	Ch. Saikhanbileg	2014.11.05-2015.09.08	19	10
10.	Ch. Saikhanbileg	2015.09.08-2016.07.21	19	14
11.	J. Erdenebat	2016.07.21-нээс хойш	16	8

**International Best Practices:** Having a higher number of cabinet members who concurrently are parliament members, is considered by many experts in international norms to have potentially negative consequences. This might be exacerbated in a country like Mongolia, which

has few seats in parliament. The most common criticisms of this system are about the duplication of duties between parliament and government, which can cause work negligence, a lack of accountability and failures of checks and balances in legislative power and executive power.

Concurrent positions in the parliament and the cabinet are common in the countries with parliamentary systems. However, those countries tend to have upper and lower chambers in the parliament, and generally have at least a few hundred members in the parliament. Only members in the lower chamber serve concurrently in the government. These conditions limit the influence of parliament members who also serve in the government and maintains healthy checks and balances, something that is more difficult in the Mongolian Parliament because of the small number of members.

**Opinions of Citizens:** During the meetings with the citizens by the working group, tasked to conduct research on possible amendments of the Constitution and to prepare an assessment report, citizens in aimags, soums and capital city found that many proposals were received to stop parliament members from serving in the cabinet partially or entirely. If ranked by the frequency, this comment was the second most frequently heard during consultations.

In addition, the same working group asked the question “Is it acceptable for the parliament member to serve in the cabinet concurrently?” as part of the survey, and the citizens gave the following answers:

- ❖ 1,817 citizens (51.7% of the participants) answered “completely wrong”;
- ❖ 683 citizens (20% of the participants) answered “only ministers of the policy defining ministries”;
- ❖ 589 citizens (16.8% of the participants) answered “only the Prime Minister”;
- ❖ Only 3.9% of the participants said that the current arrangement is acceptable.

**Definition of The Proposed Amendment**

Limit number of ministers appointed from members of the Parliament to one-third of the total members of the cabinet.

**Supporting and opposing arguments of proposed change**

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Overlapping of functions between the State Great Khural and the government shall be limited. Differences in duties of the State Great Khural and the government will be more clear.</li> <li>❖ Improvement in checks and balances between the State Great Khural and the government, and strengthening of democracy, good governance and rule of law.</li> <li>❖ Separation of powers will be implemented effectively, cabinet will have less political influence, and ensure that legislative and executive powers are more independent of each other.</li> <li>❖ Improvement in the State Great Khural’s actual monitoring of the</li> </ul>	<ul style="list-style-type: none"> <li>❖ The Constitutional amendment above introduces a move away from a more classic parliamentary model of forming the cabinet mostly from members of the parliament.</li> <li>❖ Having many people who work both for the parliament and the government will diminish an opportunity for single-faction control of the government.</li> <li>❖ So-called “double deal process” played important role in solving state crisis, and clarified institutional functions in the state structure of Mongolia</li> </ul>

government.	
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**Proposal 1.3: Include names of ministries and determine structure of the cabinet in the Constitution to ensure sustainability and stability of state policies in terms of cabinet structure specifically**

**Current Situation**

**Current Constitutional Provisions:** The Constitution (Section 1.4 of Article 25) states that the State Great Khural shall establish and change the government’s structure and composition. Parliament having the ability to establish the government structure seems to be an acceptable situation. However, the Constitution and other related laws lack detailed provisions and limitations on the powers included in the above statement, which creates loopholes in the laws.

**Current Reality:** It is important to establish and form government structures correctly from the beginning. However, in practice the law on government structure is amended every time there are parliamentary elections or cabinet dismissals leading to newly formed cabinets. In the last 25 years, every government has changed the names, functions and numbers of the ministries and agencies, often without evidence of research and fact based reasoning.

Table 1. Change in the government structure (by year)

Institution / Year	1992	1996	2000	2004	2008	2012	2016
Ministry	16	9	11	13	11	16	13
Government regulating agency	-	22	17	14	12	11	10
Government implementing agency	-	37	31	23	31	17	17
Consolidated number of agencies	-	59	48	37	43	28	27
Total number of Ministries and agencies	16	68	59	50	54	44	40

Common criticisms about this system include that these government structure changes occur due to the interests of ruling parties that secure a majority through elections and negotiations with, certain politicians rather than for concrete reasons. Moreover, constant chaos and disarray in the ministries, can lead to negative consequences by creating instability among skilled and experienced civil servants.

**Current Structure of the Government:** Government structure is established in accordance with the law on the government of Mongolia. Article 18 of the current law states that the government has:

General:

1. Ministry of Environment and Tourism
2. Ministry of Defense
3. Ministry of Foreign Affairs
4. Ministry of Finance
5. Ministry of Justice and Internal Affairs
6. Ministry of Labor and Social Protection

Specialized:

7. Ministry of Construction and Urban Development
8. Ministry of Education, Culture, Science and Sport
9. Ministry of Road and Transportation Development
10. Ministry of Mining and Heavy Industry
11. Ministry of Food, Agriculture and Light Industry
12. Ministry of Energy
13. Ministry of Health

Furthermore the composition of the government includes the Prime Minister, Deputy Prime Minister, Cabinet Secretariat of the Government of Mongolia and 13 ministers (total of 16 members). However, the Constitution does not state specific numbers and names of the ministries in the government structure.

**Opinions of the Citizens:** During the meetings with the citizens in the capital city and in the rural areas conducted by the working group tasked to conduct research on possible amendments of the Constitution and to prepare assessment report, many citizens proposed that names of the ministries should be stated in the Constitution to ensure stability of civil service.

**Historical Experience:** Ministries and other specific agencies were named in the Constitution in 1940, however this led to many amendments being made to that Constitution that changed the government structure.

#### Definition of The Proposed Amendment

Include names of ministries and determine structure of the cabinet in the Constitution to ensure sustainability and stability of state policies in terms of cabinet structure specifically.

#### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Structure and operation of civil service will be less influenced by politicians, and the legal conditions for a stable government will be formed. By including names of the ministries in the Constitution, the practice of dissolving, creating, merging and separating of new ministries will be abolished, and frequent dismissal/change of civil servants shall be limited.</li> <li>❖ Improvement towards an independent civil service free of political influence, and foundation to establish skilled and experienced civil servants. Civil servants will have stable and sustainable working conditions.</li> <li>❖ Improved continuity of government policies.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Possible increased interest in making amendments to the Constitution to change names and number of ministries.</li> <li>❖ Civil servants can be fired in large numbers in the name of not changing the names of ministries, but internal restructuring.</li> <li>❖ Stable work environment of the civil servants will not be regulated only by this. Other legal provisions are necessary to protect the stability.</li> </ul>

**Discussion questions for topic 1:**

**Question 1:** Do you think that there will be improvements by allowing the Prime Minister to form his/her own cabinet, appoint and dismiss the cabinet members? Will this enable the prime minister and the government to work more efficiently and responsibly? Could this change bring positive impacts to the citizens and their interests? What possible negative aspect does this change have?

**Question 2:** Do you support the provision to limit the number of ministers appointed from members of the parliament to one-third of the total members of the cabinet? What is your reasoning behind your answer?

**Question 3:** Is stating the name and number of ministries in the Constitution right or wrong? Why do you think this way? Do you agree that by making this amendment in the Constitution that the stability of skilled and experience civil servants will improve and continuity of government policies will improve?

## Topic 2: Clearly identify rights and responsibilities of the President to eliminate duplication of functions pertinent to strengthening national unity.

The head of state in countries with a presidential system serves as the head of the government, and forms and leads his/her own cabinet. The head of state in countries with parliamentary systems act as the embodiment of sovereignty and unity of the people and in most systems, do not get involved in the day-to-day activities of the Government.

Section 1 of Article 30 of the Constitution states that “The President of Mongolia is the Head of State, and embodiment of unity of the people.” According to the principles of the Constitution, the Mongolian government is a parliamentary system, which suggests that the President should serve as this embodiment of the unity of the people and hold a few symbolic powers and authorities stated in Article 33 of the Constitution.

However, in practice, the President is elected by popular vote of the citizens, heads the National Security Council, and has authority to do things such as initiating legislation, and issuing directives to the government. Other laws that have been added on top of the Constitution have increased the power and authority of the President. This has given the President real opportunities to be politically active and participate in the implementation of executive branch functions. Most other countries with parliamentary systems do not give these powers to the President.

To define divisions of government powers more precisely and to strengthen national unity, the legal situation of the President of Mongolia might be changed to bring Mongolia on-par with other countries that have a classic parliamentary system. These changes are needed to perfect the president’s position within the government structure.

### Proposals:

**Proposal 2.1:** In order to expand gaps between election years and make the term for six years.

**Proposal 2.2:** Elect the President for a single term of six years through an extended plenary session of the Parliament of Mongolia (Membership of the expanded plenary session of the Parliament will consist of 76 members of the Parliament and all members of the Citizen’s Representative Council of aimags, cities and the capital city);

**Proposal 2.3:** Revoke constitutional rights of President to initiate legislation;

**Proposal 2.4:** Revoke constitutional rights of President to direct Presidential decrees to the Cabinet;

Proposal 2.1: Set term of the presidency to six years, elect the President for a single term.

### Current Situation

**Current Constitutional Provisions:** According to the current Constitution, the President is elected for a 4-year term (Section 2 of Article 30). After service of one term the president can be reelected for one more term (Section 7 of Article 31).

**Current Reality:** In the current system, parliamentary and presidential terms are both four years. The presidential election is held a year after the parliamentary election. Because of the proximity of both elections, the number and frequency of the elections are high, government functions sometimes become negligent and dysfunctional, the national budget is burdened, and political competitions and divisions tend to deepen. These are the negative impacts.

There are no convincing grounds for holding parliamentary and presidential elections with a one-year gap between them.

Table 1. Parliamentary and Presidential Elections

	Parliamentary Election	Presidential Election
1	2016	2017
2	2012	2013
3	2008	2009
4	2004	2005
5	2000	2001
6	1996	1997
7	1992	1993

When the elected president's party is not the ruling or majority party in the parliament, there are times when it creates political conflict that can continue for three years.

### Definition of The Proposed Amendment

Set term of the presidency to six years, elect the President for a single term.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Budget and expense of the Head of State shall be decreased.</li> <li>❖ Prevention of too many elections and government dysfunction.</li> <li>❖ The President will be more free of political influences and can focus on implementing his/her election agenda.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Public support might not be strong due to historical experience of electing the Head of State every four years.</li> <li>❖ Since there is no re-election, the President might not be active and disengaged when implementing his/her powers.</li> <li>❖ The President might avoid resolving pressing political issues since reelection is not possible.</li> </ul>

Proposal 2.2: Elect the President for a single term of six years through an extended plenary session of the Parliament of Mongolia (Membership of the expanded plenary session of the Parliament will consist of 76 members of the Parliament and all members of the Citizen’s Representative Council of aimags, cities and the capital city)

### Current Situation

**Previous and Current Constitutional Provisions:** The President of Mongolia was elected by the parliament in accordance with the law on constitutional amendments in 1990, which was passed by the People’s Great Khural, and used until the new Constitution was ratified in 1992.

In 1992, The Constitution stated that the presidential election would occur in two phases. During the first phase, all the citizens of Mongolia, who had the right to vote, would vote. In the second phase, the parliament would confirm the person who received the most ballots as the president by passing a law to give him/her presidential authority. The president can be reelected one more term (Sections 1, 3, 4, 7 of Article 31).

**Current Reality:** Mongolia is governed with a parliamentary system, yet the President is elected by popular vote of the citizens. This gives the President more power to get involved in executive branch functions as the President can claim a mandate from their direct election to issue directives to the government to implement their presidential agenda, which was supported by the citizens by popular vote.

**International Best Practices:** In similar countries (parliamentary democracies) the President is usually elected by the parliament. Out of 30 countries with parliamentary democracies, Austria, Bulgaria, Ireland and Mongolia elect their president by universal vote.

**Opinions of the Citizens:** According to a social survey, a majority of the citizens supported a presidential system of governance. According to the same survey this viewpoint can be explained because they want a government structure with one clear leader, who could be held accountable, not necessarily because they want to strengthen the office of the President.

Citizens participating in a survey conducted by the working group, tasked to conduct research on possible amendments of the Constitution and to prepare assessment report, answered to a question “In your opinion, should the presidential authority be expanded or diminished?” in the following manner:

- ❖ Should be expanded – 24.1%
- ❖ Current level is appropriate – 37.8%
- ❖ Should be diminished – 26.5%

### Definition of The Proposed Amendment

Elect the President for a single term of six years through an extended plenary session of the Parliament of Mongolia (Membership of the expanded plenary session of the Parliament will consist of 76 members of the Parliament and all members of the Citizen’s Representative Council of aimags, cities and the capital city);

**Supporting and opposing arguments of proposed changes**

<b>Supporting</b>	<b>Opposing</b>
<ul style="list-style-type: none"><li>❖ Presidential elections will be conducted in a way more similar to many other parliamentary democracies.</li><li>❖ Expenses for presidential elections shall be minimized significantly.</li><li>❖ This will lead to less confrontation between the president and the parliament.</li></ul>	<ul style="list-style-type: none"><li>❖ A candidate from the party that won a majority of the seats in the Parliament and the Citizens Representative Khurals has largest chance to become president. Perhaps it will be obvious who will get elected president.</li><li>❖ The head of state will be elected by politicians, and not by the people. They might put forward their own narrow interest, and not citizens' interests in electing the president.</li><li>❖ A president who is elected by popular vote has strong mandate, thus has the ability to be independent, impartial and self-confident. The President who is elected by politicians cannot be like that.</li></ul>

## Proposal 2.3: Revoke constitutional rights of the President to initiate legislation

### Current Situation

**Current Constitutional Provisions:** The Constitution states that the President, Members of the Parliament and the government have the right to initiate legislation (Section 1 of Article 26).

**Current Reality:** This power gives the President the right to submit draft legislation and propose certain political programs to the parliament. Many would argue that the President's duties should be closer to the duties of the executive branch, but that the right to initiate legislation is considered the beginning stage of the legislative process. Therefore, the president becomes an actor in the legislative process by having a right to initiative legislations. Discussing and amending submitted draft legislations are the parliament's sole authority, yet the President has more influence and the ability to participate in the legislative process through this power.

Table 1. Number of legislation that the President Ts. Elbegdorj initiated

Submitted Legislation	2009	2010	2011	2012	2013	2014	2015	2016	Total
Passed	1	4	11	5	1	3	4	0	29
Withdrawn	0	1	1	0	1	2	1	0	6
Revoked	0	1	0	3	1	1	1	2	9
Supported for a hearing	0	0	0	0	0	0	5	9	14
Rejected for a hearing	0	0	0	1	0	1	2	1	5
Total	1	6	12	9	3	7	13	12	63

Researchers have indicated that the presidential authority to initiate legislations gives the President an opportunity to share power with the parliament and the government, and participate in the development of public policy.

**Presidential Authority:** Presidential power and authority was legalized by Article 2 of the law on the President of Mongolia in 1993. As stated in Article 2:

- ❖ 19 powers related to governance system and national administration and leadership;
- ❖ 12 powers related to ensure national security and national defense;
- ❖ 5 powers related to foreign relations
- ❖ 6 powers related to other matters.

In addition, the President has the opportunity to increase his/her powers and authorities through this right to initiate legislation.

**International Best Practices:** Presidents of countries with parliamentary systems usually do not have power to initiate legislation, according to international practices. Presidents of some countries such as Bulgaria and Estonia have a limited authority to initiate legislation, in those cases it is only pertaining to Constitutional amendments.

**Opinions of the Citizens:** Citizens participated in a survey conducted by the working group, tasked to conduct research on possible amendments of the Constitution and to prepare assessment report, answered to the following question "In terms of checks and balances, is it appropriate for the President to have authority to initiate legislation?" in the following manner:

- ❖ Appropriate – 47%
- ❖ Not appropriate – 32.9%
- ❖ Do not know – 20.1%

This shows that citizen opinions are divided on this matter according to this survey question.

### Definition of The Proposed Amendment

Revoke constitutional rights of the President to initiate legislation.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ The President already has power to veto legislation. Therefore, the lack of a veto possibility to legislation initiated by the President causes conflict of interest. If the right is revoked, this conflict of interest will no longer be an issue.</li> <li>❖ The current duplication of authority between the President and the Parliament, and the President and the government will disappear, and causes of conflict will be reduced.</li> <li>❖ It is rare to have a President who issues directive to the government and initiate legislations in countries with parliamentary system.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Since the President is the Head of National Security Council and Commander-in-chief, revoking rights to initiate legislation pertaining to security and national defense might be a drawback. This issue needs to be studied further.</li> <li>❖ In times of government crisis, the President will not have power to initiate legislations and interact with the Parliament through drafted legislation.</li> </ul>

## Proposal 2.4: Revoke constitutional rights of the President to direct Presidential decrees to the Cabinet

### Current Situation

**Current Constitutional Provisions:** The Constitution states that the President has the authority to issue decrees to direct the government on policy issues as long as the issue falls under the presidential authority. Signatures of three ministers are required for the decree to become valid (Section 1.3 of Article 33).

**Current Realities:** The Presidents in the past and present have exercised their authority to issue such decrees actively. For instance, President Ts. Elbegdorj issued 36 decree to give directives to the government from 2009 to 2016.

- ❖ Directives pertaining to national defense – 5;
- ❖ Directives pertaining to environment – 6;
- ❖ Directives pertaining to health and sport – 6;
- ❖ Directives pertaining to education – 4;
- ❖ Directives pertaining to national security and independence – 7
- ❖ Directives pertaining to anniversaries – 5;
- ❖ Directives pertaining to agriculture and manufacturing – 3.

However, the President does not have the authority to direct the government by him/her selves, and the signature of the Prime Minister is required for a decree to be implemented. In countries with a parliamentary system, the President is the closest entity to the executive branch, yet he/she does not belong to the executive branch. This authority held by the President gives opportunity for him/her to be involved in the executive power, and influence the Prime Minister. Sometimes this presidential power cause conflicts between the President and the Prime Minister, and the President and the government.

However, the President cannot implement the authority to direct the government alone, and the Prime Minister and other relevant cabinet members' confirmation and permission is required for implementation. Therefore, this presidential authority is not essential.

### Definition of The Proposed Amendment

Revoke constitutional rights of President to direct Presidential decrees to the Cabinet.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Increases the government's and the Prime Minister's abilities to function independently, and increases their responsibility and accountability.</li> <li>❖ Decreases possible situations of conflict of dividing executive power between the Prime Minister and the President.</li> </ul>	<ul style="list-style-type: none"> <li>❖ The President is dependent on the government, and also he/she is the head of state; therefore, the authority to issue directives on certain issues when deemed necessary is not wrong.</li> <li>❖ The President will have difficulty exercising his/her constitutional authorities and duties with reduced authority if he/she still functions as the Head of the National Security Council and Commander-in-chief.</li> </ul>

**Discussion questions for topic 2:**

**Question 1:** Do you support the presidential term to be six years without possibility of serving another term? Please explain your rationale.

**Question 2:** Do you support if Mongolia follows norms of countries with parliamentary system, and elects the President by an extended plenary session of the Parliament of Mongolia, which includes all members of the Parliament, the Citizen's Representative Council of aimags, cities and the capital city?

**Question 3:** Do you think that some of the President's power such as initiating legislation and issuing presidential decrees to direct the government should be removed from the Constitution? Please explain your rationale.

## Topic 3: Strengthen professional, skilled and reputable civil service free of politics

The Constitution deals very little with the civil service.

### Current Situation

National and rural public administration organizations, the Parliament, the President's office and judicial institutes comprise Mongolian civil service.

Since 2001, the number of civil servants have increased gradually to become 162,769 by January 1, 2012. Civil servants consist of the following categories:

- 2,798 political officials
- 16,179 public administration officials
- 28,773 special service employees of the state
- 115,019 public service employees.

As of January 1, 2016, 186,458 civil servants work in Mongolia. Out of these individuals, 3,092 are political officials, 19,687 are public administration officials, 35,736 are special service employees of the state, and the remaining 127,943 employees work in public service positions.

Based on the above statistics, the number of civil servants has increased by 23,689 in four years. Out of the total number, 294 are political officials, 3,508 are public administration officials, 6,963 are special service employees of the state, and the remaining and the largest number of employees are public service employees which increased by 12,924.

In order to maintain a stable civil service and ensure independent function from politics, amendments were made to the Law on Civil Service in 2008, which required all public officials, with the exception of politicians, to be non-partisan (not affiliated with any political party).

However, a large number of suits are filed to the administrative courts regarding appointments and dismissal in public office based on party-affiliations. Based on official data, high employee turnovers occur after elections. This shows that civil servants are still highly influenced by politics.

### Proposals:

**Proposal 3.1:** Only if the Civil Service Commission is a Constitutionally defined, impartial and an independent institution, can it fulfill its core duty of implementing civil service laws in Mongolia, and protecting and strengthening professional, stable, and merit-based civil service that is free of outside political influence.

**Proposal 3.2:** As the civil service becomes more professional and stable, civil servants become skilled and experienced, which translates into quality work in all levels.

**Proposal 3.3:** It is important to maintain civil service free of politics, and in order to achieve that goal, to make appointments based on merit and to abolish the widespread practice of dismissing high ranking civil servants after every election.

### Proposal 3.1: Make the Civil Service Commission of Mongolia to be Constitutional authority free from political influence.

**Current Constitutional Provisions:** Article 46 states that:

1. Mongolian ministries and other official institutions are established in accordance with the law.
2. Civil servants of Mongolia shall be Mongolian citizens, and he/she must respect and adhere to the Constitution and other laws. In addition, a civil servant serves to assist the public, and must comply to the public service.
3. Working conditions and guarantees of civil servants are defined by law.

#### Current Situation

In any country, the fate of the civil service will be largely dependent on impartiality and independence of the institution that manages it. The very first Law on Civil Service was passed in 1995 and the Civil Service Administration Council, or central authority for civil service, began managing civil administration services.

This institution used to function independently under the umbrella of executive branch.

In 2002, amendments were made to the Law on Civil Service and the Civil Service Commission began reporting to the State Great Khural, thus ensuring its impartiality and true independence from the executive branch.

As the law states, the Civil Service Commission is responsible to keep the civil service skilled, productive and stable, and prevent it from engaging in politics, corruption and fraudulent activities.

**Opinions of the Citizens:** Citizens participated in a survey conducted by the working group, tasked to conduct research on possible amendments of the Constitution and to prepare an assessment report, answered to the question “What is the main cause of lack of cooperation and collaboration between authorities in Mongolia?” in the following manner:

- ❖ 1,459 participants (49.4%) said that there was too much political party influence at all levels;
  - ❖ 72 participants (2.4%) said that large number of dismissals and replacements are due to political reasons;
  - ❖ 38 participants (1.3%) said that the civil servants are no longer professional, skilled and stable, and the most of them are not qualified;
- 53.1% of all the participants responded that the civil servants’ capacity is weak due to influence from politics.

In addition, 2,246 people answered the following question “To ensure the stability of the civil service, which of the following actions must be taken?” in the following manner:

- ❖ 1,213 people (54%) said that independence of the Civil Service Commission and legal protection of civil service should be reflected in the Constitution;
- ❖ 633 people (28.2%) said that political parties should be banned from participating in appointing civil service positions;
- ❖ Remaining 17.8% of the people gave their answers to different actions.

**International Best Practices:** Experiences from other countries indicate that organizations responsible for civil service standards are established by parliaments, but are independent organizations. Certain southeast Asian countries have organizations independent from any type of

authority. For instance, according to the Taiwanese Constitution, “Civil Servant Selection Authority”, is a government organization that selects civil servants. Appointing individuals for any public office is prohibited, if they have not been scored a high grade in the selection process by the above organization. Civil Servant Selection Authority manages all the issues related to the civil service.

If a central civil service organization in some country belongs to the executive branch of the government, it has an equal status as ministries.

There is a country where the Civil Service Commission is regulated by a ministry, which oversees other similar functions. This type of country allows civil servants to work and get promoted by merit, which in turn strengthen stability and immunity of public service.

**Definition of The Proposed Amendment**

Make the Civil Service Commission of Mongolia to be a Constitutional authority free of political influence

**Supporting and opposing arguments of proposed changes**

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Defining the legal status of the Civil Service Commission in the Constitution will be important in ensuring this institution’s impartiality and independence.</li> <li>❖ By operating independently, the Civil Service Commission can end current politically motivated wrong practices in civil service.</li> <li>❖ By operating independent and free of political influence, civil servants will bring increased skill, productivity and enhanced performance.</li> <li>❖ Civil servants’ protection will be guaranteed.</li> <li>❖ Citizens will suffer less due to lack of capacities of civil servants.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Including a Civil Service Commission section in the Constitution does not guarantee to bring positive results.</li> <li>❖ Including a Civil Service Commission section in the Constitution does not guarantee to keep the entity independent. Other laws will regulate it.</li> </ul>

**Proposal 3.2: Create civil service system to ensure professional, stable civil servants and promotions based on merit**

**Current Situation**

Stability of civil service is directly related with skilled and professional civil servants. Professional civil servants mean that they are trained for civil service from the beginning, and as they gain more experience they get promoted to positions with higher responsibilities. The main method to satisfy this process is to have clear goals, directions and detailed descriptions of qualifications for each position.

However, laws that currently exist in Mongolia are too general. Therefore, government organizations define qualifications for positions in a very general manner and create general indicators. It is a common practice that the same positions might have different job descriptions due to the employer wanting to hire a certain individual, thus adjusting the job description accordingly, and announce civil service tests in this manner.

These situations create opportunity for individuals who are not trained or skilled to become civil servants due to political reasons. Moreover, the process to promote experienced and skilled civil servants to higher positions is not implemented. In addition, civil servants are constantly dismissed outside of legal justifications. According to court reports, civil suits related to the civil servants have continually increased.

Table. Cases related to civil servants, processed by administrative courts (2013-2015)

	2012	2013	2014	2015	Number of cases	Percentage of all court cases
Civil disputes regarding civil servants	133	203	297	400	1,033	22.0%

Complaints received by the Civil Service Commission have increased continuously as well. Many comments are received from the citizens in regards to maintaining a stable civil service, and eliminate mass replacements in the civil service after each election.

**Definition of The Proposed Amendment**

Create a civil service system to ensure professional, stable civil servants and promotions based on merit;

**Supporting and opposing arguments of proposed changes**

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Strengthening civil service with skilled and qualified work force will increase productivity and quality of work, which elevate civil service performance and results.</li> <li>❖ More stable civil service and real implementation of a merit system</li> </ul>	<ul style="list-style-type: none"> <li>❖ No direct benefit of adding this issue in the Constitution as other laws can regulate this.</li> </ul>

Proposal 3.3. Civil service to be free from political interference. Add clauses in the Constitution of Mongolia that prohibits discriminating civil servants based on political views and dismissal of civil servants because of election results or for any other unjustifiable reasons other than those stated in laws and legislative acts

### Current Situation

There have been steps taken towards creating a professional and politics free civil service. For example, 2008 amendments to the Law on Civil Service prohibited civil servants from becoming members of political parties. However, management level positions are still being decided on political grounds.

UNDP’s “Millenium Development Challenge #9” project conducted a survey in 2010, and 76.1% of the participating experts stated that “Appointments to public positions are politically influenced and nepotism plays a factor, which hinders qualified individuals to work in public administration positions.”

Political parties should not interfere with civil service appointments, except for political appointments. Also appointments should not be influenced by political elections and their results, and normal civil functions. Political appointments are a different matter. Unfortunately, extensive civil servant replacements happen after election under the names of “structure change” and “team building”.

For instance, complaints of illegal dismissal from civil service increased by 3.4-4 times in the following year of elections, according to a table provided by the Civil Service Council.

Table 1. Complaints by civil servants

	Year	Total of received complaints	Complaints regarding dismissal from work without justifications	Percentage of all complaints
1	2003	42	13	30.9
2	2004	37	29	78.4
3	2005	137	113	82.5
4	2006	113	58	51.3
5	2007	100	60	60
6	2008	104	45	43.3
7	2009	187	154	82.4
8	2010	98	62	63.3
9	2011	69	34	49.3
10	2012	196	47	23.9
11	<b>Total</b>	<b>1083</b>	<b>615</b>	<b>56.8</b>

According to a survey named “Trends and problems of replacing and dismissing civil servants due to elections”, conducted by the Research department of the Administrative Office of the Parliament, 10 individuals worked as State Secretaries in 10 ministries for 1-2 years. Moreover, after the 2012 election results, most of the State Secretaries were replaced. This evidence indicates that only three agency heads stayed with their job, and rest of the high ranking officials

were dismissed and replaced. Agency and department heads in ministries and other civil servants are commonly dismissed.

Many complaints are received by the administrative courts and Civil Service Council in regards to unlawful dismissal from jobs due to political party affiliations.

According to brief reports of the capital city administrative court proceedings in 2012 and 2013, complaints on civil service cases, and the cases drastically increase after an election year.

Table 2. Resolved civil service cases in regards to civil servants from 2011 to 2013

Case types / year	2011	2012	2013
Total administrative cases	533	541	573
Cases related to civil service	39	47	81
Percent of civil service cases compared to all the cases	7.3%	8.6%	13.7%

These have negative impacts on the goal to make the civil service skilled, professional and stable. Many comments and complaints are received from the citizens to keep the civil service stable, free of politics, and stop the mass job replacements after every election.

### Definition of The Proposed Amendment

Civil service to be free from political interference. Add clauses in the Constitution of Mongolia that prohibits discriminating against civil servants based on political views and dismissing civil servants because of election results or for any other unjustifiable reason other than those stated in laws and legislative acts;

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Strengthening civil service with skilled and qualified work force will increase productivity and quality of work, which will elevate civil service performance and results.</li> <li>❖ More stable civil service and real implementation of merit system.</li> <li>❖ Unethical influences by political division to gain promotion within public offices will decrease.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Winning party in the election will try to implement the party agenda through party members.</li> <li>❖ Including this issue in the Constitution is not beneficial. Other laws can regulate this.</li> </ul>

**Discussion questions for topic 3:**

**Question 1:** Civil service will be out of politics. What is your opinion to include a clause in the Constitution to prohibit discrimination of civil servants due to political party affiliations, dismissal of employees due to elections results, without legal justification, and demote them? Why do you think this way?

**Question 2:** Do you support key selection criteria in the civil service to include knowledge, skills, professional development and education? If you support this, why? Do you think we should protect this rule by including this in the Constitution or other laws can do that?

**Question 3:** How do you evaluate the Civil Service Council's performance? Why do you think that? Do you think the Civil Service Council should remain the same or its organization and operational rules should be included in the Constitution?

## Topic 4: Perfecting the Administrative and Local Governance Systems

Mongolia is a unitary state, as such the territory is divided into administrative and territorial units called aimags and soums. Mongolia is also an independent and sovereign republic and has proclaimed its capital city to be “Ulaanbaatar”. The capital city and its districts are the administrative and territorial units of Ulaanbaatar, whereas baghs and khoroos are not territorial, but only administrative units as they do not have their own territory.

However, cities and towns have economic, social and cultural conditions and prevailing administrative and commercial needs which require more coordination and management. As such, the Constitution states that cities/towns should be considered separate administrative and territorial units on its own. Current laws and regulations state that there can be any number of cities and town within the existing administrative and territorial unit of the capital city (capital city and its territories), aimag, soums, and districts. Consequently, this enables the existence of multiple administrative units within the same territorial unit.

The Constitution of 1992 established administrative and territorial units based on the old units. Until now, no initiatives were undertaken to ensure economic independence of these units and consolidation of administrative units mainly due to lack of economic means. Many argue that soums need immediate reform. As of today, 60 percent of all 330 soums have populations of less than 2500, out of which 19 soums have populations of less than 1000. There are 43 soums located within 50 km of their aimag centers, but there are also many soums that are located 5-25 km from the aimag centers of neighboring soums.

Past failures to reform administrative and territorial units has been affected by many factors including the electoral system, developments of political parties, and the social welfare/resource allocation system. However, the Government has initiated and tried to implement several soum consolidation efforts in the past.

**Current Constitutional Provisions:** Revision of an administrative and territorial unit shall be considered and decided by the National Parliament based on a proposal by a respective local parliament and local population, and with account taken of the country's economic structure and the distribution of the population.

Initiatives to reform administrative and territorial units are much constrained by the Constitutional provision that says “based on proposals made by local citizens”. People recognize the need for reform, however, they fail to reach an agreement on which of the merging soums should be named the central one. Consequently, rural-to-urban migration is increasing as people seek bigger markets, and better and accessible social services. According to official statistics, between 1992 and 2006, 607,000 people have migrated from rural areas to Ulaanbaatar city.

In 2016, research department of the Parliament Secretariat conducted the: “Research on genetic safety of the population and practices in other countries”. Research findings has revealed the following:

- At the aimag level, local aimag residents marrying each other accounts for 86.1% of total marriages;
- At the soum level, local soum residents marrying each other accounts for 73.9% of total marriages;
- At the bagh level, local bagh residents marrying each other accounts for 85.4% of total marriages;

The findings conclude that there are direct and indirect threats of increasing incest among the population. (Source: J. Batsuuri, E. Enkhmaa)

Numerous proposals have also been made to include additional city classifications in the Constitution, taking into account the need for different administrative organization and management structure for coordinating urban planning, urban infrastructure and service delivery.

The current system/structure is also not enabling the government and the people to charge local government officials with accountability and it is largely criticized by the public for its inability to resolve local political agendas. As a result, there have been proposals to have soums and district governors directly elected or appointed by the people to help improve the situation.

## Proposals

**Proposal 4.1:** Strengthen the changes in the Constitution setting forth that both administratively and territorially, Mongolia is divided into aimags, capital city and cities; aimags are then divided into soums and cities (town with local status), then lower level soums are divided into baghs and villages, and the capital city is divided into districts, which is then divided into khoroots and the city into khoroots.

**Proposal 4.2:** Governors of soums, districts and cities (with national status) are to directly appoint the Governors of baghs, khoroots and villages.

Proposal 4.1: Strengthen the changes in the Constitution setting forth that both administratively and territorially, Mongolia is divided into aimags, capital city and cities; aimags are then divided into soums and cities (town with local status), then lower level soums are divided into baghs and villages, and the capital city is divided into districts, which is then divided into khoroos and the city into khoroos.

### Current Situation

**Previous and Current Constitutional Provisions:** Aimags, city, soums, collectives and cropping collectives, which were the former administrative and territorial units existed under the old Constitution (1960) were re-structured by the new Constitution of 1992 and the key concept for the new administrative and territorial division was as follows:

1. Aimag, soum, bagh
2. Capital city, districts, khoroo

**Current Reality:** Summary of the key changes and current situations related to the administrative and territorial units since the enactment of the Constitution.

1. 1992 Constitution used only a terminology “city” referring to the capital city (Ulaanbaatar);
2. Darkhan, Erdenet and Choir cities, which were developed as a result of industrialization and economic development of centrally planned economy were formally changed to “aimags” in 1994.
3. In making the above decision, Darkhan-Uul, Orkhon and Gobi-Sumber aimags were established with fewer soums by taking territories from Selenge, Bulgan and Dornogobi aimags, which was contradictory to the Constitutional principle of establishing the administrative units based on territorial principles;
4. In addition, formal local towns (with local “town” status) were liquidated and they were structured as the soums (aimag center soums), which established double or redundant administration with the aimag government; subsequently significantly reduced the roles and functions of the soum Khural and administration. On the other side, aimag centers (formally soums) also encounter the difficulties that many similar populated areas encounter, which is much different from those difficulties experienced by the rural soums, so there is a need to regulate and coordinate such issues differently.
5. The Constitution of Mongolia sets forth that the legal status of cities and villages shall be regulated by a standalone law; subsequently the State Great Khural adopted the Law on Legal Status of Cities and Villages in December 1993. The Law was not revisited at all except one small amendment in 2003.

According to a research study, city administration in countries like the United Kingdom and the United States does not have Constitutional status, whereas it does have Constitutional status in countries in Asia, Africa, Eastern Europe, South America, and mainland Europe.<sup>1</sup>

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<sup>1</sup> Asian Development Bank, Improving Public Administration in a Competitive World, Mongolian translation published by the Open Society Forum, 2011, page 155.

### Definition of The Proposed Amendment

To strengthen the administrative and territorial division of the territory of Mongolia in the Constitution as follows: Administratively, territory of Mongolia shall be divided into aimags, capital city and towns/cities; aimags are divided into soums and towns; soums are divided into baghs and villages; capital city into districts, districts into khoroos; and towns are divided into khoroos.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ This change will make Darkhan-Uul and Orkhon aimags to cities/towns (with national status) and give them the status of special administrative units.</li> <li>❖ It will provide an opportunity to clearly define the boundaries between public and private functions within relevant laws of each sector; it will also separate the roles, responsibilities and respective powers of governors and city mayors.</li> <li>❖ Clear assignment of responsibilities for city management and city services will resolve issues related to urbanization including air, water and soil pollution, and other social issues, and will enable the environment for modern city development.</li> <li>❖ Aimag level towns will be granted administration and territorial unit status and will be governed by a mayor. As the town develops and expands, the Constitution allows it to earn National City status.</li> </ul>	<ul style="list-style-type: none"> <li>❖ In the event, that the proposed change is made without in-depth studies and development of new laws and amendments to existing laws, it may create unclear and duplicative structures;</li> <li>❖ There is a risk of redundant allocation of rights and responsibilities, which may result in avoidance of responsibilities, land and pasture use disputes, and new segregation between rural and urban;</li> <li>❖ In the event, that the names of Darkhan and Erdenet are specifically mentioned in the Constitution, the Constitution will need to be re-visited every time a new city/town (with national status) is added, which has negative consequences.</li> <li>❖ If the Constitutional provision which states that “Revision of an administrative and territorial unit shall be considered and decided by the National Parliament on the basis of a proposal by a respective local parliament and local population, and with account taken of the country's economic structure and the distribution of the population” remains unaltered, there will be difficulties in establishing new units.</li> </ul>

Proposal 4.2: Governors of soums, districts and cities (with national status) are to directly appoint the Governors of baghs, khorooos and villages.

**Current Situation**

Baghs and khorooos are the primary administrative units responsible for providing effective public administration and efficient and accessible public services. As dictated by the Constitution, candidates for governors of baghs, khorooos and villages are nominated by Khurals of their respective baghs and khorooos and appointed by the Governor of their respective soums and districts for a four-year term.

In reality, nomination of candidates for bagh and khoroo governor’s position is highly politicized. In rural areas, a candidate who has the largest number of relatives often becomes a governor, while in the capital city political parties populate the community meeting with their party members.

Surveys and focus group discussions conducted by the working group (appointed by the government) on assessing the need for making amendments to the Constitution revealed that that the majority of people want to correct this practice.

In 2008, amendments were made to the Law on Civil Service which changed the categorization of bagh and khoroo governors to general administrative personnel in order to eliminate political influence and ensure their stability and professionalism.

However, a complaint has been filed that the above change violated paragraph two of Article 60 of the Constitution of Mongolia and the Constitutional Court reviewed the complaint and concluded that “Bagh and khoroo governors are political appointees” (2009).

**Definition of The Proposed Amendment**

Bagh and khoroo governors to be appointed by respective soum and district governors for a four-year term.

**Supporting and opposing arguments of proposed changes**

<i>Supporting</i>	<i>Opposing</i>
<p>❖ Strengthened public administration at the primary units. Realistic possibility to impose sanctions/responsibilities. Particularly, many issues such as illegal mining in rural soums, disputes over pasture (also reserve pasture and haymaking field), social welfare, school drop-out rate, and unemployment, which are common in rural areas, will have responsible body at respective levels:</p> <ul style="list-style-type: none"> <li>• <i>Local Khural, which is elected from the political party candidates,</i></li> <li>• <i>Soum Governor nominated and</i></li> </ul>	<p>❖ Dependence of bagh and khoroo citizens on the community meeting will become weak.</p> <p>❖ One rationale for opposing this change would be the concept that bagh and khoroo governors must be elected by citizens. They say citizens will be able to elect the Governor without any influence from political interests. Such an election will not create obligations for public administrations that fully represents the Cabinet/government, meaning that</p>

<b>Supporting</b>	<b>Opposing</b>
<p><i>appointed by the Citizens' Representative Khural</i></p> <ul style="list-style-type: none"> <li>• <i>Bagh governor, which was appointed by the Soum Governor</i></li> </ul> <ul style="list-style-type: none"> <li>❖ Bagh and khoroo people's meeting, which are the key element of representative democracy, will still exercise all their rights except for nominating a candidate for the governor.</li> <li>❖ High level politics at the local level, in particular deep rooted political party influence within the primary administrative unit will be limited somewhat.</li> <li>❖ Appointment of bagh and khoroo governors based on civil servant selection guidelines will allow assigning the position to a qualified and experienced person.</li> </ul>	<p>it might be difficult to hold governors accountable for weak performance.</p> <ul style="list-style-type: none"> <li>❖ Change may contain implicit meaning that limits the right of bagh and khoroo community meeting, and furthermore the rights of citizens to self-governance.</li> <li>❖ Appointed governor may have weaker responsibility to respond to citizens' needs/demands.</li> <li>❖ Removing bagh and khoroo's right to nominate candidates for governor's position may result in weaker institution.</li> <li>❖ Soum and district governors may misuse their power by appointing someone they are close with as bagh and khoroo governors.</li> </ul>

**Discussion questions for topic 4:**

**Question 1:** Administratively, the territory of Mongolia is divided into aimags, capital city and towns/cities; aimags are divided into soums and towns; soums are divided into baghs and villages; capital city into districts, districts into khoroots; and towns are divided into khoroots. What do you think about the effectiveness of such division?

**Question 2:** Revision of an administrative and territorial unit shall be considered and decided by the National Parliament on the basis of a proposal by a respective local parliament and local population, and with account taken of the country's economic structure and the distribution of the population. What do you think about the effectiveness of this practice?

**Question 3:** What do you think would be the consequences of the appointment of bagh and khoroo governors by respective soum and district governors for a four-year term?

## Topic 5: Improve legislative system to strengthen state responsibility, accountability, discipline and justice

Discussion topics on government accountability and discipline, and social justice have been derived from public opinion and research findings. According to the World Bank's Voice and Accountability Index measured based on six main criteria, the accountability rating of Mongolia in 2015 was 0.21 percent. This indicator is extremely inadequate and an average of 2.5 percent is considered as good.

The working group on studying the need for making amendments to the Constitution of Mongolia surveyed people in 9 districts and 21 aimags to assess citizen's perception of the performance of the Constitution. Findings of the study revealed that the population is increasingly dissatisfied with the accountability of high level officials. The survey results were negative, even though there are eight organizations operating in conjunction with the standing committee on state affairs including sub-committee on ethics, Independent authority against corruption, etc. This result suggests that it is important to include accountability of government institutions in discussions about Constitutional amendment.

### Proposals:

**Proposal 5.1:** To increase state accountability and strengthen justice, establish an independent Constitutional organization that is free from politics.

**Proposal 5.2:** To increase state accountability, ensure anti-corruption policy implementation and protect social justice, amend the Constitution whereby temporary Control Committee can be established in the parliament when needed.

**Proposal 5.3:** Expand the composition of Judicial General Council, which is responsible for ensuring independence of courts and impartiality of judges, and clarify the systems for appointing judges and the Chief Justice.

**Topic 5.1: To increase state accountability and strengthen justice, establish an independent Constitutional organization that is free from politics.**

### Current Situation

**Current clauses in the Constitution related to accountability:** The Constitution includes the following clauses relevant to this topic:

- The State Great Hural may decide on its dissolution (Article 22),
- Removing President from his/her office (Article 35.2),
- Dismissal of Prime Minister and dissolution of the Government (Article 43),
- Reasoning and basis for recalling members of the Constitutional Court (Article 65.4)
- Reasoning for governors to submit their own resignation.

Another relevant law to the accountability of high ranking officials is the Law on Constitutional Court Procedure, which was adopted in 1997. According to Article 13 of the law, the Constitutional Court will make judgment on dismissal and recall of the following officials:

- The President of Mongolia
- The Speaker of Parliament
- The Prime Minister
- Members of Parliament

Over the last 25 years, there have not been any cases of Presidents resigning or the dissolution of the Parliament. However, between 1996-2016, Parliament dismissed six Prime Ministers (with their cabinets).

**Opinion of citizens:** The Working Group to research possible amendments to the Constitution and prepare recommendations, created by the Government, found that during its survey of 3617 citizens of 21 Aimags and 9 Districts, when respondents were asked: “How do you evaluate implementation of the Constitution?” 1889 participants or 52,1% said “bad.” Then when asked “If you believe the Constitution is not being implemented well, what do you think are the main reasons for that?”:

- ❖ 1375 participants, or 42.8% answered politicians and high ranking officials do not implement the Constitution and even violate it sometimes;
- ❖ 672 participants, or 20.9% answered the President, the State Great Khural, and the Government do not implement the Constitution.

This implies that 2047 participants (or 63.7%) out of the total 3216 are concerned about accountability of state officials. The remaining 26.3% or 1169 participants have chosen other 10 possible answers such as political parties have too much power, other laws are not that good, and rule of law is weak.

When asked: “In your opinion, what measures should be taken to increase respectfulness of the State Great Khural and ensure conditions for a smooth working condition”?

- ❖ 2375 participants (74.1%) out of the total 4948 answered “to establish accountability system of members of the Parliament.”

**International experience:** As accountability and control are fast becoming a global issue, we need to study systems of accountability and control in other countries, and their advantages and disadvantages.

*International experiences on Constitutional institutions that are responsible for state accountability and control:* In many countries, independent Constitutional organizations control and investigate activities, accountability and ethics of state officials and institutions. Various models of this approach are being used in many Asian countries and researchers note that it has origins date back to the state system of Kublai Khan during the Yuan Dynasty. Many models for ensuring state effective accountability and control of the state have developed in different countries around the world. These include:

- ❖ Ombudsman – Independent Constitutional institution that resolves human rights complaints;
- ❖ Control Committee – a limited auditing institution that is not related to the Constitution;
- ❖ Special institution that has the mandate to investigate corruption offences;
- ❖ Also, there are different and unique state accountability and control mechanisms stated in specific constitutions.

In general, there are two different models of constitutional institutions responsible for state accountability and control:

- ❖ East Asian state systems with accountability and rule of law – based on traditional respect for state;
- ❖ Western system – based on respect for human rights and rule of law.

*Independent constitutional organization:* A model that is popular in East Asian constitutional law is the “monitoring and control power”. This is based on traditional laws that include respect for the state. It will control and monitor all state institutions on whether they are implementing laws.

The idea here is that to gain respect from citizens, the state itself must operate in a just and fair manner. In this system, the independent constitutional organization will be responsible for many functions including control on, the fair and effective spending of budget, financial audit, implementation of government programs and has the power to dismiss officials, gather income and asset declarations, etc. Senior officials of this organization should have a lot experience in state affairs and be non-partisan.

For example, Chapter 9 of the Constitution of Taiwan stipulates an institution that has the “Power of Control” called the supreme control power. This body has powers to impeach high ranking officials of the state, punishment power, as well as auditing power. The supreme control power institution in Taiwan is designed to be independent of politicians, and composed based on principles of territoriality instead of election.

*Audit organizations:* In some countries, constitutional organizations with comparatively minimal power (the state audit court and general audit department, amongst others) are the most significant for state accountability and responsibility. These organizations mostly monitor budget spending, government’s financial reports and other financial control instruments. Even if these organizations are not directly stipulated in the Constitution, they operate under other legislations in countries such as the US and Britain. For instance, in the United States the Government Accountability Office monitors government activities. The goal of this organization includes auditing, but the auditing power is much broader than the comparable office in Mongolia. Furthermore, this organization controls and investigates government activities and monitors them broadly. This institution is designed to be free from politics and maintains much respect in the society.

For instance, the US “Government Accountability Office” supports Congress’s oversight powers

by making recommendations. The head of the organization is nominated by Congress and appointed by the President for 15 years. This is the organization that investigates how the government is spending taxpayers' money. This office has five functions including auditing of effective spending of state treasury, investigate unlawful actions, and whether budget spending reflects Congress' policies.

*Ombudsman model:* Around 70 countries have an ombudsman model and 50 of them enshrine this office in their Constitution. An “ombudsman” is either an organization or an official that is elected to control and monitor whether administrative organizations are protecting human rights. The difference between prosecutors and ombudsman is that ombudsman monitors not only law enforcement, but effectiveness and fairness, and conducts investigations with that in mind.

This office is named differently in different countries and elected or appointed by president, parliament and/or the government. In Scandinavian countries, such as Sweden or Norway, an ombudsman checks whether government institutions are operating in line with laws and fairness.

The core function of an ombudsman is that it resolves complaints from citizens about government institutions. An ombudsman investigation is triggered if citizens file complaints about illegal and unfair behaviors of government institutions. In some countries, ombudsman have powers to conduct independent investigations. Some experts have stated that this model is rooted in Asian state traditions. In addition, in recent years, countries like Philippines, Thailand and South Korea have established an ombudsman.

The Constitution of South Africa has clauses on the “Defender of Public Interests,” an institution that has power to investigate any unlawful and unfair actions of government institutions. That organization is constitutionally mandated to make investigation results public. In only certain cases, this organizations' rights are limited. It also has power to correct illegal actions.

*Independent Authority Against Corruption:* Many constitutions ensure investigative and indictment rights of anti-corruption organization. For example, the South Korean Anti-corruption and Civil Rights Commission has a constitutional mandate to monitor administrative agencies and combat corruption. The recent case of the impeachment of the President of South Korea implies the independence of many of these institutions. The model of South Korea basically combines a version of the Ombudsman model with an anti-corruption commission.

**Characteristics of different accountability and responsibility models in different countries in the world**

	<i>Accountability and responsibility powers – Taiwan, Singapore and East Asia</i>	<i>General audit (inter-nationally)</i>	<i>Government Accountability United States and Britain</i>	<i>Ombudsman</i>	<i>Anti-corruption authority (inter-nationally)</i>
Control and Monitor activities of the Government	All	Only for finance	For finances and programs	For illegal activities and fairness	Corruption offences
Whether to receive complaints from citizens or not	Yes	No	Yes	Yes	Yes
Whether accountable for its own recommendations or not	Yes	Sometimes	Yes	Sometimes	Sometimes

	<i>Accountability and responsibility powers – Taiwan, Singapore and East Asia</i>	<i>General audit (inter-nationally)</i>	<i>Government Accountability United States and Britain</i>	<i>Ombudsman</i>	<i>Anti-corruption authority (inter-nationally)</i>
Makes reports and conclusions or not	Yes	Yes	Yes	Yes	Yes
Has law enforcement power or not	Yes	Sometimes	No	Sometimes	Sometimes

*Conclusion:* Due to special characteristics of customary laws, traditions and conditions of the given country, government accountability and monitoring agencies vary. In East Asia, “control and accountability governance” has broad powers, deeply rooted in their traditional legal and state culture, and fosters economic growth. Ombudsman models are simple and similar to anti-corruption authority models, and can be combined together. These two authorities often have right to dismiss irresponsible government officials.

Civil and public interest protection authorities are very efficient in countries that respect rule of law. In countries where rule of law is weak, researchers note that constitutionally mandated institutions can resolve these issues.

### Definition of The Proposed Amendment

To increase state accountability and strengthen justice, establish an independent Constitutional organization that is free from politics.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ With the establishment of an impartial and independent authority that can make decisions on impeachment of high ranking government officials, there will be an effective system of monitoring and accountability of government officials.</li> <li>❖ Current audit organizations, human rights institutions, and other authorities that oversee accountability of high ranking government officials can be strengthened so they are more efficient and productive. In doing so, special attention should be given on not losing “power of control,” stipulated in the Constitution.</li> <li>❖ With establishment of a constitutional authority that is free from politics, accountability of high ranking government officials will be increased and corruption and abuse of power will be diminished.</li> <li>❖ There will be a uniform government accountability system, cooperation of different government entities will be improved, and implementation of laws will be strengthened.</li> <li>❖ The system of constitutional accountability system is composed not by appointment of the parliament, the President or the government. Rather, it is made by the method of territoriality or deliberation. The importance of this is that it allows it to work</li> </ul>	<ul style="list-style-type: none"> <li>❖ It is uncertain whether this new constitutional authority will belong to one of the current three separate powers in the Constitution, or will be a fourth and different power.</li> <li>❖ There might be overlapping of functions with current accountability institutions. And this overlapping might lead to legal loopholes.</li> <li>❖ There is no guarantee that this constitutional amendment will fully achieve its goal.</li> <li>❖ It is uncertain what kind of structure and power this new institution would have.</li> <li>❖ It is still uncertain for Mongolia how it will create an effective system of accountability and monitoring. This makes everybody cautious.</li> <li>❖ Risk of constitutional authority is that if we want to make changes to the organization, we would</li> </ul>

Supporting	Opposing
<p>independently and impartially. Current constitutional clauses in Mongolia and some countries made accountability system that is dependent on politicians themselves, which in turn makes accountability weak and inefficient.</p> <ul style="list-style-type: none"> <li>❖ The condition for the stable operation of this constitutional authority is that it is made free from high ranking officials. This will result in improvement of discipline in public service, improvement of skills in public service employees, and strengthening of stable government policy.</li> <li>❖ With establishment of constitutional authority, there will be long-term and stable system of government accountability as well as mutual checks and balances.</li> </ul>	<p>have to change the Constitution, and the process is not easy.</p> <ul style="list-style-type: none"> <li>❖ If existing laws are implemented faithfully and existing organizations made more effective, it is possible to increase accountability of government officials without creating a constitutional institution.</li> </ul>

**Topic 5.2: To increase state accountability, ensure anti-corruption policy implementation and protect social justice, establish an independent and impartial organization that is free from politics.**

**Current Situation**

Currently, the judiciary, the Independent Authority Against Corruption and General Audit Office work to increase government accountability, ensure implementation of anti-corruption policies and protect justice. In addition, there is ethics committee in the State Great Khural.

*The Independent Authority Against Corruption (IAAC):* Established in 2007, the IAAC operates to prevent and deter corruption, educate public on anti-corruption and investigate corruption offence. It has powers to conduct:

- Special operations
- Case registrations
- Investigation
- Receive and check income and asset declaration from political and administrative office holders of the government.

However, there are legal limits on investigating corruption cases of high ranking government officials. In other words, the IAAC has limited power to investigate corruption related cases of MPs, the Prime Minister, Minister, and the President while they are in office.

*General Audit Office:* This office's main function is to support the State Great Khural to implement its budget control functions and ensure effective spending of the treasury fund. In other words, it audits all government institutions except the Parliament. The audit organization makes reports, recommendations, official demands, and acts as result of their control and monitoring work.

*Ethics Committee of the State Great Khural:* In accordance with the Law on State Great Khural, there is an Ethics Committee in the Parliament. The Committee was first established in 1997, but has not had stable operations. The Ethics Committee does not have a professional office or any staff employees. Since 2010, the Ethics Committee has held three sessions and made recommendations on topics related to ethics to the MPs.

In addition, Mongolia has other institutions that work to protect social justice in some way, these include:

*The National Human Rights Commission:* Established in 2001, the Commission makes decisions relating to cases where government institutions and officials allegedly endanger civil liberty. There is a separate law on this institution and it follows other legislation as well.

*Civil Service Commission:* In addition to its core functions, the Commission makes deliberations on disputes related to ethics of government employees. This institution operates under the Law on Civil Service as well as other regulations. The main goal of this organization is to hold public service exams and train public officials.

**Definition of The Proposed Amendment**

To increase state accountability, ensure anti-corruption policy implementation and protect social justice, amend the Constitution whereby temporary Control Committee can be established in the parliament when needed.

**Supporting and opposing arguments of proposed changes**

<b>Supporting</b>	<b>Opposing</b>
<ul style="list-style-type: none"><li>❖ Will allow the Parliament to investigate serious corruption and public interest offences, where the IAAC does not have full mandate.</li><li>❖ In cases where law enforcement agencies do not have full power to investigate, and conduct parliamentary investigations, it can open a path for the judiciary to step in and solve the issue.</li></ul>	<ul style="list-style-type: none"><li>❖ It is possible just to improve the current institutions and solve the problem.</li><li>❖ It is uncertain if this Control Committee will be efficient as its conclusions will not necessarily put an obligation on the judiciary to act.</li></ul>

**Topic 5.3: Expand the composition of Judicial General Council, which is responsible for ensuring independence of courts and impartiality of judges, and clarify the systems for appointing judges and the Chief Justice.**

### **Current Situation**

Chapter 4 of the Constitution deals with the judiciary and enshrines the principle of judicial independence and the impartiality of judges. Judges must abide only by law and no one, including government, political parties, the President, Prime Minister, MPs, Members of the Cabinet or citizens can interfere with the independence of the judicial branch. This is a legal guarantee for the judiciary.

The basis of a judge's impartiality is judicial independence. The judiciary is an equal branch of the government and has an independent system, so it has separate laws governing it. It also has guaranteed assets, technology, and budget to conduct activities normally.

As stipulated in the Constitution, the Judicial General Council ensures independence of the judiciary and impartiality of judges. This is an administrative organization that selects potential judges from lawyers, protects their interests after they become judges, and provide necessary conditions for the independence of the judiciary. The Constitution is silent on how to compose the Council but says "Structure and inner workings of the Council shall be regulated by law." The President of Mongolia initiated the "Law on Judicial Administration" which was enacted by the parliament on May 22, 2012. This law defines the structure and working methods of the Council. It includes the provisions that:

- Judicial General Council is composed of its head and four other members. They are nominated as follows:
  - 1 candidate from consultation of soums and intra-soum courts;
  - 1 candidate from consultation of Aimag courts and Capital City Court;
  - 1 candidate from the Supreme Court;
  - 1 candidate from the Mongolian Bar Association;
- One candidate from the Ministry of Justice – and they all will be appointed by the President.
- The head of the Judicial General Council is nominated by these five members and appointed by the President.

As stipulated in the Constitution, the Chief Justice is nominated by the Supreme Court from its member justices and appointed by the President for a term of six years. These measures show that the constitutional power to appoint judges as well as other legislative powers to compose the Judicial General Council are centered on the President. This leads to a situation in which the President is unofficially heading the judiciary, which deviates from the principles of the Constitution.

### **Definition of The Proposed Amendment**

Expand the composition of Judicial General Council, which is responsible for ensuring independence of courts and impartiality of judges, and clarify the systems for appointing judges and the Chief Justice.

**Supporting and opposing arguments of proposed changes**

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ It is in line with the concept of the Constitution – independence of judiciary and impartiality of judges.</li> <li>❖ Creates more clarity regarding the separation of powers.</li> <li>❖ Limits unconstitutional influence between separate powers of state.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Requires careful thinking on how to stipulate the inner workings of the Judicial General Council in the Constitution. Prevention of political party meddling and special interests is of paramount importance.</li> <li>❖ Need to make it clear that Judicial General Council exists to serve the judicial branch. It must be clear in the law. Otherwise it could become another institution that affects independence of the judiciary and impartiality of judges.</li> </ul>

**Discussion questions on topic 5:**

**Question 1:** Do you think the current system of accountability of high ranking government officials is sufficient enough? What are your thoughts on creating a constitutional institution in charge of government accountability?

**Question 2:** What are your thoughts on creating a temporary investigative control committee in Parliament (by vote of the MPs)? What do you think about the control committee becoming a defender of your rights?

**Question 3:** The Judicial General Council is an administrative organization that serves the judicial branch and do you think its composition should be expanded? Do you think the Judicial General Council is an institution worth stipulating in the Constitution? Please discuss about positive and negative sides of current system of appointing judges.

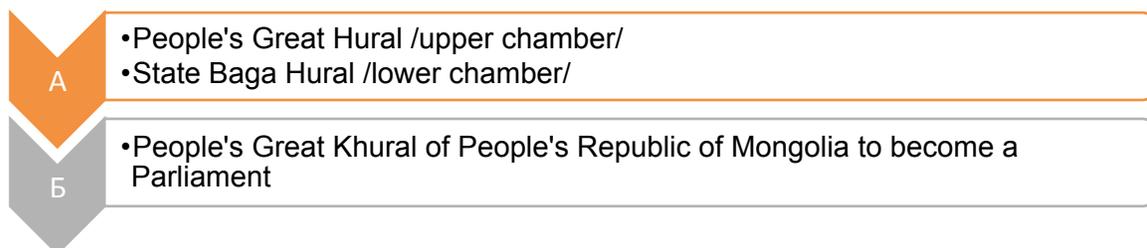
## Topic 6. Ensure necessary conditions to openly discuss a proposal to have two chambers of Parliament: Upper chamber - People's Great Khural and Legislative Body - State Baga Khural

The internal structure of the Parliament should ensure that the Parliament represents the common interests of the people, increases citizen engagement in the legislative affairs, resolves critical issues associated with power dilemmas in law enactment and law enforcement, and improves control over the Parliament. This proposal is to initiate a discussion on the most appropriate option between the following two: (1) Having two chambers (upper and lower); and (2) having two-tiered chambers.

The general public, civil society organizations and the “Ardiin Ikh Khural” movement are initiating discussions about potential changes to the Parliament structure. The proposal is to consider having “two chambers” or “two-tiered chambers”.

### **Historical records:**

The Constitutions of 1924 and 1940 stated that “Ardiin Ikh Khural is the highest organ of state power of People's Republic of Mongolia and in times of need the power shall be delegated to the Ulsiin Baga Khural”. The 1990 amendment to the Constitution stated that “Ardiin Ikh Khural is the highest state authority and Ulsiin Baga Khural is the highest legislative body of the state”. According to the draft concepts of the new democratic constitution of 1992, the following two options were proposed as changes to the Parliament structure:



During the discussion of the draft constitution of 1992, a vote was conducted to decide whether the Parliament of Mongolia should have two chambers, however the proposal did not receive majority support.

**Proposal:** Ensure necessary conditions to openly discuss a proposal to have two chambers of parliament: Upper chamber - People's Great Khural and Legislative Body - State Baga Khural

### **Current Situation**

*Current clauses in the Constitution:* The Constitution says that the State Great Khural is the supreme state organization and only the State Great Khural has the right to enact laws. It also says that the State Great Khural shall have one chamber and 76 members.

*International experience:* According to the research piece titled: “Separation of powers in parliamentary democracies,” completed by the Research Unit of the Office of the Parliament:

- There are 54 countries in the world that have parliamentary democracies similar to that in Mongolia:
  - **15 countries** have bicameral parliaments;
  - **36 countries** have unicameral parliaments;
  - **3 countries** have two-tiered parliaments..
- The research shows that in terms of state structure:
  - Unitary states mostly have unicameral parliament.
  - Federal states have bicameral parliaments.
  - In most cases, socialist countries have two-tiered system such as Laos, PRC and Vietnam.
- The common methods of composing two chambers of parliament:
  - For an Upper Chamber: appointment, election, combined
  - For a lower chamber: elected by popular and direct vote

In two-tiered systems in which the lower chamber is appointed by the upper chamber, this approach is in conflict with representative democracy.

### Definition of The Proposed Amendment

1. Amend the Constitution whereby the State Great Khural shall have two chambers: the People’s Great Khural and State Baga Khural
2. 51 members of the State Baga Khural is appointed by 501 representatives of People’s Great Khural.

### Supporting and opposing arguments of proposed changes

Supporting	Opposing
<ul style="list-style-type: none"> <li>❖ Prevent violating interests of certain administrative districts and social minorities.</li> <li>❖ Minimize impacts of political parties, stay away from special interests, and balance monopoly.</li> <li>❖ Improvement in legislative process.</li> <li>❖ Improvement in parliament’s control functions. Lower chamber becomes more professional.</li> </ul>	<ul style="list-style-type: none"> <li>❖ Diminish democratic principle of representation – a core of the Constitution.</li> <li>❖ This style of two-tiered parliamentary system usually exists in socialist countries.</li> <li>❖ Increase in the budget of the State Great Khural.</li> <li>❖ Legislative process becomes too slow and time consuming.</li> <li>❖ In case there aren’t clear regulations, there might be overlapping of responsibilities between the two chambers.</li> </ul>

### Discussion questions for topic 6:

**Question 1:** What are your thoughts on the current unicameral parliamentary system in Mongolia?

**Question 2:** Which parliamentary system is appropriate for Mongolia? Unicameral, bicameral or two-tiered?

**Question 3:** If you have chosen one of the above three, please tell us your reasons.