

THE RIGHT TO ELECT, TO BE ELECTED, AND THE ELECTION SYSTEM OF MONGOLIA

ABSTRACT

Mongolia adopted a new, democratic Constitution in 1992, which legislated human rights and freedoms, the form of state organization, the separation of state power, and the authority of the highest executive organ exercising that power.

Moreover, Constitution defined democracy as or basic method of public governance and the right of citizens to elect, to be elected, which is a fundamental value of democracy and the fundamentals of Mongolian election law.

The Constitution of Mongolia states that “all governance power in Mongolia shall be vested in the People. The Mongolian people shall participate directly in the State affairs, as well as shall exercise such power through the representative organs of the State power elected by them.” Therefore, the election is the main way to exercise the right to State and local self-governance for the people of Mongolia.

Since ancient times in Mongolia elections or vote has been used to form organizations.

From the end of the 18th to the 19th century, the electoral system took its current form and was widely used in the world's countries.

Elections shall be universal and citizens entitled to vote shall have the right to participate without discrimination based on ethnicity, language, race, gender, social origin, status, wealth, occupation, position, religion, opinion, or education.¹

Each country has created its own state institutions by the law its own methods and forms of conducting elections and its Legalization is the basic basis for guaranteeing the citizen’s right to elect and to be elected, the principles of elections, and the electoral system.

Therefore, the purpose of this paper is to present the right to elect and to be elected and the parliamentary election system, its implementation, the current situation, and some of the decisions of the Constitutional Tsets (Court) of Mongolia that resolved disputes related to the election system.

¹ E.Gerelt-Od (PhD), Mongolian Law on election of Parliament: choice, experience, 2020, <https://academy.edu.mn/content/legislative-election-gereltod/>

THE RIGHT TO ELECT AND TO BE ELECTED AND THE SYSTEM OF PARLIAMENTARY ELECTION GUARANTEED BY THE CONSTITUTION OF MONGOLIA

The definition of basic human rights and freedoms in the valid international legal norms or the international treaties and conventions became also in the democratic Constitution of Mongolia of 1992 basis for the guarantee of the rights and freedoms particularly the right to elect and to be elected. For example, Article 21 paragraph 1 of the Universal Declaration of Human rights (1946) says “everyone has the right to take part in the government of his country, directly or through freely chosen representatives” and International Covenant on Civil and Political Rights (1966) article 25 says (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors; like this way guaranteed the right to elect and to be elected by international legal norms set in the Article 16 Paragraph 9 of the new Constitution of 1992, “the right to participate in public administration affairs directly or through the organs representation. The right to elect shall be exercised from the age of 18. Age qualification for being elected shall be determined by law, taking into consideration the requirements for the relevant State organs and official position concerned” For example, if a citizen at the age of 18 has a right to elect, and a citizen who has reached the age of 25, has the right of eligible voters be electevoter member of the State Great Hural (Parliament) of Mongolia. These criteria for being eligible to be elected have been legislated.

In the history of Mongolia, held current parliamentary elections 9 times, and the laws related to parliamentary elections in Mongolia were approved in 1992 as the Law on the State Great Hural election, in 2005 and in 2011 as the, Law on Mongolian State Great Hural Election Law, in 2015 as the Law on election and in 2019 as the Law on State Great Hural election of Mongolia.

“The beginning of the electoral system is the power of the State and the right of citizens to elect and to be elected and provide it, to protect, legal norms to adjust, understanding to follow, awareness, and application practices are defined as the electoral legal system”.²

² B.Chimed, Are the people and their Constitution to blame for the electoral system?!, Constitutional formation series IV, Ulaanbaatar, 2011, page 49

“Since the Constitution of Mongolia does not directly define election system, then State Great Hural has the full right to decide what kind of election system to have”.³ There is a prevailing tendency. On the one side, this is related to the question of how and in which method the State Great Hural can determine the electoral system in Mongolia and its content within the framework of the legislative powers stipulated in the Constitution.

In Mongolia, the system has gone through a number of changes since 1992. Until 2012, the plurality system was used, in which the largest vote-getter wins the seat. Within the category of plurality systems, Mongolia moved from a multi-member district system (block vote in 1992) to a single-member district system (First-past-the post in 1996, 2000, and 2004) and back to block voting in the 2008 elections.

All of the above points to the great instability of the election laws, changing after each election. Therefore according to the recommendation of international organizations,⁴ it is useful to reflect the chosen electoral system in the Constitution so that to prevent attempts by the majority in place to change the election laws. Otherwise, the majority party in the parliament will have permanent temptation to choose a system as they see fit and change the election law accordingly.

As mentioned above according to the Law on State Great Hural which was adopted in 2019, 76 members of State Great Hural which is a unicameral parliament shall be elected from a multi-mandate by the majoritarian system.

The advantages and disadvantages of this system are defined by academics as follows:

(Table-1).

ELECTORAL SYSTEM: MAJORITARIAN	
ADVANTAGES	CRITICISM
<ul style="list-style-type: none"> • Allows voters to make a clear choice between two major parties. • There is a possibility that one of the parties will win in the elections and the formation of the government will be Single, and a strong opposition will be formed. • It is quite possible to hold politicians and candidates accountable, or if 	<ul style="list-style-type: none"> • No benefit to third or minority parties. Excludes smaller parties • Women are less to be elected • A large number of votes cast for unsuccessful candidates are wasted. • Expensive

³ O.Munkhsaikhan, //The constitution of Mongolia does not prohibit mixed election system, Law review journal, Ulaanbaatar 2016 №2 /34/, page 23

⁴ Compilation of Venice Commission Opinions Concerning Constitutional and Legal Provisions for the Protection of Local Self-Government” /European Commission for Democracy Through Law /Venice Commission/, 2015, 13.

<p>they fail to fulfil their platform, they will be punished in the next election and power will be transferred to the opposition.</p> <ul style="list-style-type: none"> • Encourages links between constituents and members of Parliament • Gives voters a second chance 	<ul style="list-style-type: none"> • Candidate selection must produce a strategic number of candidates with broad appeal • Can fragment parties • Can lead to exclusion of ethnic minorities
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The Constitutional Tsets of Mongolia have made several decisions related to the right to elect, to be elected, and also the electoral system. A selection of these decisions will be presented under the sub-topic of the Electoral System and the Constitutional Tsets of Mongolia.

Implementation status of the right to elect and to be elected and voter Turnout

Voter turnout in elections was relatively high, but has declined over the period of the Constitution's regime (see Tables 2). For example, in the 2008 Parliamentary elections, 74 percent of voters turned out, around the same percentage as in the next year's presidential election. This suggests a good deal of legitimacy for the constitutional order. It is surely higher than many advanced industrial democracies. The decline in voter turnout might be seen as either a cause of concern; alternatively, it might suggest that voters perceive that the stakes of elections are declining as the institutional structure of the country becomes more developed and routinized. Either way, we find electoral participation in Mongolia to be basically healthy, especially in comparison with other countries in its income class.

Table 2: State Great Hural Election voter turnout		
Year	Percentage of registered voters	Percentage of the voting population
2016	73.6	67.9
2012	65.24%	56.24%
2008	74.31%	60.47%
2004	81.84%	64.91%
2000	82.42%	70.96%
1996	88.39%	73.64%
1992	95.60%	86.11%
1990	98%	87.23%

Source: International IDEA, available at <http://www.idea.int/vt/countryview.cfm?CountryCode=MN>

The Constitution refers to the ability of the SGH to call referenda. Article 25.1.16

provides that this is a general power within the discretion of the SGH. The Article provides that the SGH may consider the results valid if a majority of “eligible citizens” turn out, and a majority of those voters approve of the proposition. Article 68.2 allows 2/3 of the Members of the SGH to call for a referendum on constitutional amendment, though this is only optional and not a requirement. Article 66.2.2 allows the Tsets to make decisions on the validity of these referenda. To facilitate the implementation of these provisions, a Law on Public Referendum was approved in 1995.

Electoral System and the Constitutional court (Tsets) of Mongolia.

In 2011, a new election law introduced a combination of this majoritarian system and a proportional system based on the ratio of 48:28. In other words, 48 of 76 parliamentary seats are reserved for individual candidates nominated by their parties, while the remaining 28 seats are reserved for political parties. Small parties favored the proportional system because it would give them a better chance of gaining seats in Parliament. According to the new law, in order to gain a seat, a political party must get 5 percent of the total national vote. The 2016 parliamentary election was supposed to be conducted using the mixed system. However, it was ruled out by the decision of Constitutional Tsets 213 as violating the Constitution. Accordingly, changes were made to the Election Law, and the parliamentary election of 2016 was conducted based on a single-member district system. External observers noted this as a regressive step. It led to serious seat-vote bias in the results.

Here I would like to give an example of the case study.

Some disputes have been reviewed by the Constitutional Tsets of Mongolia related to the electoral system that includes:

There was 2 resolution which is from 2012 and from 2016. Since the decisions of 2012 and 2016 were valid at the same time, the Constitutional Court reviewed the above-mentioned decisions in its Full Bench Session on June 27, 2022, according to Resolution No. 01 of 2022 of the Constitutional Tsets of Mongolia. These decisions were annulled and it was finally decided that the determination of the electoral system is a matter of the mandate of the State Great Hural.

In addition to the decisions by the Constitutional Court regarding the violation of the Constitution, the decisions with the content that the Constitution has not been violated are also important because they set a precedent to be taken into account in the future.

The purpose of this regulation is not only to ensure the implementation of the election law but also to ensure the legality of the election activities and to obtain real information about it.

In order to ensure that the election expenses report is not submitted within the period stipulated by the law, a certain legal responsibility has been established to exclude the party coalition and candidate from participating in the next election.

In other words, the regulation establishes the principles of control, openness, and transparency of election expenses, requires the submission of election financing and expense reports, and makes the financial activities of political parties, which are the legal subjects of the Constitution, subject to external control and accountability, and ensures the equality and fairness of elections. The Constitutional Court considered that the legal guarantee for civil political rights was formed and found that it was in accordance with the Constitution.

Also, on 05.06.2020, the Constitutional Court reviewed the dispute regarding the regulation on the prohibition of candidacy under the Law on the Election of the Great Hural of Mongolia (25.12.2015) if it is determined by the court that the commission of corruption or official crime. It is considered that the regulation was approved within the framework of the provisions of the international agreement, the obligations assumed by Mongolia, the related legal regulations, and the policy of ensuring the rule of law without corruption, and issued conclusion No. 03 that the Constitution was not violated.

This is an important decision made in the direction of guaranteeing the right of citizens to vote, ensuring that the public government is free from corruption, and ensuring the implementation of international agreements that Mongolia has joined.

CONCLUSION

With the improvement and sophistication of legislation, democratic elections, their implementation, electoral system, principles, right to vote and be elected, and the guarantee of that right will also be able to evolve and develop.

Mongolia is a developing country, and democratic elections and the electoral system, which are the values of democracy, are also developing. The process of evolution and renewal of electoral law and its system in Mongolia is still ongoing, and the Constitutional Tsets of Mongolia is contributing to this process.