

PART III – Assessment of the Enabling Environment for Social Accountability

3.1 INTRODUCTION

Having established the sociopolitical and economic context in which social accountability mechanisms operate in Mongolia, the remainder of the ESW focuses on an assessment of the enabling environment for CSOs to exact accountability from their public officials. The three aspects of the environment the study evaluates—Voice, Information, and Negotiation—serve as an analytical framework to evaluate both the opportunities for and constraints on civic engagement and social accountability.

3.2 THE ROLE OF VOICE IN SOCIAL ACCOUNTABILITY

Social accountability initiatives empower citizens, particularly the poor and other disadvantaged groups, by reinforcing their rights to voice opinions and demand accountability from public officials and by providing them with the opportunities to do so. There are two sets of critical factors for Voice to function effectively as an enabling element for civic engagement/social accountability. The first is the need for Freedom of Expression without fear of political, economic, or social retribution. The second concerns the availability of Mechanisms for Voice that ensure that demands are heard by appropriate public officials (those with authority to respond), and are received in a manner that will result in accountability, either an explanation or a change in policies or performance of public officials.

3.2.1 *Freedom of Expression*

Article 16.16 of the Mongolian Constitution guarantees the rights to freedom of thought, opinion, expression, and the freedom of the press. The 1998 Law on Freedom of the Media expands on these constitutional guarantees, prohibiting censorship and enactment of laws that restrict media freedom (Articles 2 and 3). However, in court cases involving freedom of expression (cases involving obscenity, contempt of court, or defamation) defendants rarely employ these legal codes as part of their defense.

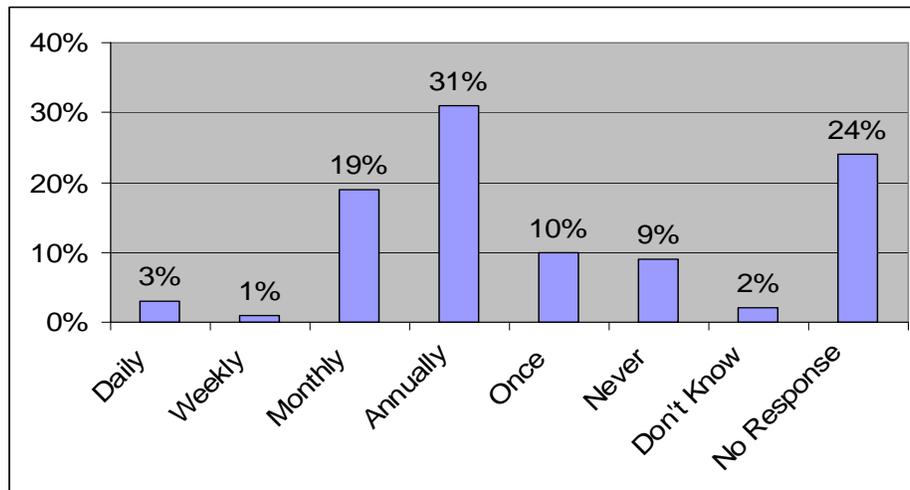
Nevertheless, stakeholders, as well as outside observers, generally agree that there is a relatively high level of freedom of expression in Mongolia (Freedom House 2005; CIDCM 2003; Press Institute 2004b).³⁴ There are several media outlets with editorial opinions that span the political spectrum. Moreover, the opinion poll conducted for this study indicates that respondents voiced their opinions and concerns in significant numbers. For example, 12 percent of the respondents reported that they had written to public officials, 37 percent had petitioned them, and 39 percent had participated in a demonstration or rally (see annex 7, Question M).³⁵

³⁴ According to two opinion polls conducted by the Mongolian NGO, Press Institute, public perception of freedom of the press has dramatically improved since 1998 when only 10 percent of the respondents believed that media freedom was fully guaranteed, to more than 42 percent in 2004, with another 46.5 percent believing that it is at least partially guaranteed. In 2004, less than 1 percent claimed that the media has no freedom compared to 15 percent in 1998 (Press Institute 2004b:24-25).

³⁵ Responses to this question also indicate a smaller percentage of participation in activities that involve interaction with officials, requiring Voice, but are also more clearly examples of Negotiation, such as meeting with an official (25 percent), participating in a call-in radio show with an official (15 percent), and legislative lobbying (5 percent). These activities will be discussed more fully in a subsequent section that focuses on Negotiation.

The CSO Survey indicates even higher rates of “speaking to power.” For example, when asked whether their organizations publicly commented on public policy or the conduct of public officials, 64 percent indicated they had at least once, while 23 percent of these respondents stated they had done so at least once a month (see figure 3.2.1).

Figure 3.2.1 Frequency of CSO Comment on Policy and Conduct of Officials (percent)



Source: CSO Survey (Annex 6, Question H).

There remain, nonetheless, certain constraints on the ability of Mongolian civil society to translate freedom of expression into voices that will compel public officials to be socially accountable. The qualitative research for this study revealed several sources of such constraints.

First, many Mongolian citizens are not aware of their civil rights (Finding 3.2.1). For example, the Governor of Uvorkhangai issued a resolution to remove vendors from the city of Arvaiheer. The vendors did not wish to relocate to a new market but were uncertain of their legal rights.³⁶ After a violent confrontation with the police, the vendors approached Women for Social Progress-Uvorkhangai (WSP-UV), which was able to counsel them on their legal right to demonstrate as well as assist them in voicing their concerns to the National Human Rights Commission (NHRC). During an interview in April 2005, the coordinator for the WSP-UV remarked that the order to vacate the market had provided an opportunity for the vendors to learn about their rights, something her organization had been unable to achieve despite years of disseminating information about human and civil rights (see annex 2, Finding WSP 5).

In other cases, sociocultural barriers appeared to prevent members of Mongolia’s civil society from speaking out. Research on community involvement in Mongolian schools suggested that one of the obstacles to effective participation in the oversight of school administrations and their budgets was a sociopolitical legacy from the socialist era. During this period, governmental institutions such as schools were very hierarchical, with top-down structures of authority that characterized them as state rather than public institutions. According to the NGO, Mongolian Education Alliance, parents continue to believe that principals, and those above them, are the sole authority in school management. As a result, they do not avail themselves of opportunities such as school councils to voice concerns about school management

³⁶ The vendors claimed that the new facilities did not provide sufficient storage for their perishables and that they were losing clientele because the new location was too far from the town’s center.

and operations, or demand elections for council members as mandated by the law (see annex 4, Finding EDU).

The National Center Against Violence also had to confront social norms and taboos to give voice to the victims of domestic violence. In 1994 when several leading women’s NGOs decided to join forces to address this issue, the term “domestic violence” did not exist in Mongolian society, let alone in its legal code. NCAV struggled to educate the public. Its efforts resulted in government funding for NCAV shelters for victims in 2001 and legislation against domestic violence in 2004. By giving voice to the victims of domestic violence, this NCAV played a crucial role in delivering a public service and generating legal reform (see annex 1, Finding NCAV 3).

The ability of Mongolians to exercise Voice and achieve accountability is restricted by the Mongolian legal code on defamation which exerts a chilling effect upon media (Finding 3.2.2). Mongolia has both civil and criminal defamation laws. The civil code stipulates payment of damages for defamation in several circumstances. This is problematic for a number of reasons, such as insufficient defenses against these charges and the high level of damages that may be awarded.³⁷ The criminal code, however, lends itself to more egregious problems (see annex 5, Finding MEDIA 7). It includes a provision for imprisonment for up to five years and special provisions for defamation against public officials (see box 3.2.1). The two main offences are deliberate propagation of false allegations and willful humiliation. The defendant has no basis for defense against these charges and in the latter case, the law does not require that the allegations be false,

Box 3.2.1 Imprisonment for Defamation

At least two journalists have been imprisoned in Mongolia for defamation in recent years. One of the cases concerned an allegation of serious wrongdoing by an MP who was accused of using his influence to secure a lighter sentence in a criminal case involving his illegitimate daughter. This second case was based on an article in the newspaper, *Mongoliin Neg Udur* (One Day in Mongolia) in 2004. After the allegations were found to be false and defamatory, the journalist was sentenced to three months’ imprisonment and forced to pay a fine. The penal sentence was lifted on appeal, but only after she had spent 23 days in prison.

Although the case involved serious and unwarranted mistakes by the journalist, proponents of media freedom both in Mongolia and internationally argue that it is inappropriate to address such mistakes through criminal law, and excessive to imprison journalists for defamation. The defense lawyer noted that the journalist wrote the article not to harm the MP but to expose public wrongdoing by a public official. Such cases are inevitably detrimental to the media’s freedom of expression. Journalists raised the issue of criminal defamation in numerous interviews and with CSOs, who identified legal threats such as defamation as the second most serious threat to media reporting, after political pressure (see annex 6, Question EE).

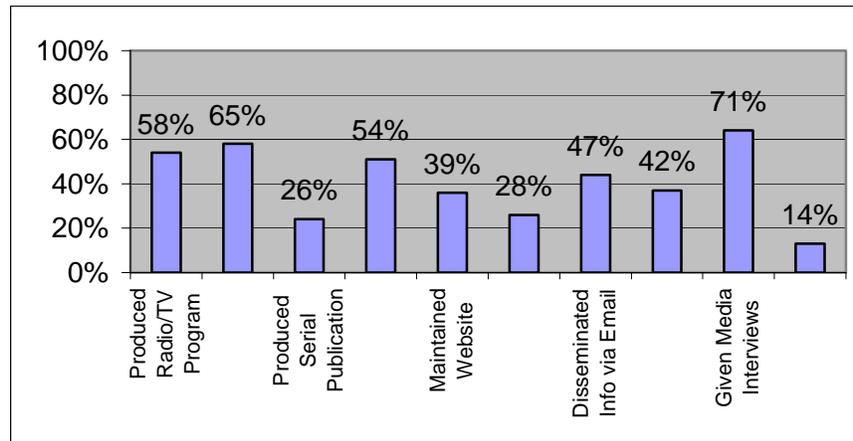
Consequently, the guarantee of freedom of expression in Mongolia remains constrained. Survey responses indicate the inability of CSOs to voice their views on areas related to their organization’s work, with only 27 percent indicating that they have sufficient opportunities to present their views (annex 6, Question MM). Nevertheless, CSOs and the media have developed an impressive array of mechanisms for Voice since the transition from authoritarian rule.

³⁷ Article 7 of the Civil Code provides for damages, for actual harm to name or dignity when the defendant cannot prove the truth of the allegations. Article 377 provides for damages for defamation for harm to name, dignity, or reputation when the defendant fails to prove he or she acted without fault. Article 392 provides for damages for defamation for nonmaterial harm to name, dignity, or reputation when the defendant cannot prove his or her allegations were true.

3.2.2 Mechanisms for Voice

As illustrated above, CSOs have been closely involved in providing mechanisms for Voice both for themselves and for ordinary citizens. Respondents to the CSO Survey indicated that their organizations have used an array of means to voice their opinions and to disseminate information (see figure 3.2.2).

Figure 3.2.2 CSO Methods of Disseminating Information (percent)



Source: CSO Survey (Annex 6, Question JJ).

Several CSO respondents disseminate information via e-mail or maintain a Web site. Their numbers indicate the growing importance of IT in Mongolia (InfoCo., Ltd. 2003:15). In the CSO Survey, more than 95 percent of respondents said that they have computers, most have more than one, with the overwhelming majority (80 percent) also having access to the Internet. It should be noted, however, that these results are skewed as the overwhelming majority of respondents were registered NGOs with greater access to IT-related resources (annex 6, Question R). In addition to the Gateway Web site that provides subportals for stakeholders to discuss pressing issues such as sustainable development and poverty reduction, several other CSOs maintain impressive Web sites that both voice their views and provide a forum for others to do so. The Open Society Forum in particular has an impressive Web site filled with contributions by various other organizations and individuals on a range of social, political, and economic issues.

Although the Internet is a critical tool for Voice as well as for Information and Negotiation, other more traditional mechanisms for Voice remain relevant to reaching the broader Mongolian public, which has limited access to computers and the Internet. Most CSOs rely on a combination of both methods to voice their opinions and disseminate information.

The social movement Healthy Society, for example, has used the Internet not only to mobilize support both within and outside of the country, but also to voice its critiques and demands of the government and specific officials. It has also staged mass demonstrations to call attention to political corruption among senior officials. Its efforts have met with various political and legal obstacles, including difficulties obtaining the required authorization from city officials to hold a demonstration. According to the leadership of the movement, when they decided to hold their first demonstration in February 2005 in front of the Government House in Sukhbaatar Square, the administration “trumped up” an agricultural trade fair as a pretext to disallow the rally. In the end both events took place in relative calm.

Both the NCAV and the Ongi River Movement (ORM) also employ remarkably diverse approaches to inform both officials and the general public. These range from more traditional forms, such as press

conferences and workshops, to more innovative methods such as the ecology protest march organized by the ORM in 2004 (see box 3.2.2).

Box 3.2.2 The Ecology Protest March for the Ongi River

Gold mining activities in the region have severely damaged the environment by the drying up of the Ongi River and the Ulaan Lake. For three years, the Ongi River Movement has demanded government action to reverse this trend. The movement has used different strategies to raise awareness and garner support for its cause among both public officials and citizens. One recent activity was an ecology protest march in May and June 2004, tracing the entire 478 kilometers of the Ongi River. More than 2,000 people participated in the march, which provided a rallying point for people to air their concerns about the plight of the Ongi River, while serving as an educational forum for citizens as well as for public officials. During the walk, Ongi leaders addressed 12 public rallies, including a protest rally at a gold mine. Buddhist priests also conducted religious ceremonies, offering prayers for the preservation and protection of the Ongi ecosystem. Extensive media coverage, both broadcast and print, ensured wide publicity for the event and greater dissemination of the movement's message.

In addition to mechanisms for Voice, social accountability requires a vibrant and autonomous media.³⁸ Since the end of socialist rule in Mongolia, media outlets have grown rapidly. The sector is now characterized by numerous competing media outlets in the different subsectors of radio, television, broadsheets, tabloids, and magazines. Ulaanbaatar has the largest concentration of the media outlets in the country although all provincial centers have some locally based media, typically newspapers, radio, and television, even some cable services (see annex 5).

The more repressive forms of control over the media that characterized the Socialist period no longer exist, but a range of what might be termed 'soft' limitations remain in place to control media content. In addition to restrictive defamation laws, many informal measures are employed to censor the media, such as threatening telephone calls from public officials and threats to investigate the tax or registration status of a media outlet in retaliation for unfavorable reporting.

The Mongolian media is also constrained by various systems of media regulation. For example, all media outlets in Mongolia are required to register with the Ministry of Justice and Home Affairs. Applications are reviewed by the Minister to make sure that the applicant does not pursue illegal objectives (see annex 5, Finding MEDIA 4).

In many democracies, registration systems for the media no longer exist since they serve no purpose that cannot otherwise be achieved with less risk to freedom of expression. At a minimum, registration systems should not obstruct those who wish to enter the market, and should never be used to delay or refuse registration or to resolve political disputes, as happened recently in Mongolia (see box 3.2.3). Consequently, the registration system threatens the independence of the Mongolian media (Finding 3.2.3). To avoid the risk of political abuse or financial exploitation, the submission of the requisite information should be sufficient to guarantee automatic registration or alternatively, responsibility should be transferred to a nongovernmental agency to avoid undue political influence in the registration process.

³⁸ Social accountability requires all stakeholders in social and economic development, whether NGOs, media, government, religious institutions, or professional associations, to embrace a culture of accountability, both to enhance their credibility and to improve governance and the effectiveness of development initiatives.

Box 3.2.3 Registration: The Mongol Times Case

The Mongol Times was founded as a weekly newspaper in the 1990s by Kulanda Chonoido, who registered the newspaper in her own name. A complicated series of events led to the closure of the newspaper in June 2004, and its takeover by Uyanga Gantumur in October 2004. Uyanga effectively ran The Mongol Times as a Democratic Party opposition paper, building subscriptions to 1,500 and overall circulation to 3,000 by the first quarter of 2005. The newspaper was noted for its harsh critiques of the MPRP presidential candidate during the 2005 electoral campaign.

According to Uyanga, subscribers started complaining about harassment at work, where they had their newspapers delivered, so she established a home delivery system. Based on a letter from the MoJHA in early March, the newspaper's printer, Free Press Foundation, refused to print it. The Press showed Uyanga a letter from the Ministry of Justice and Home Affairs indicating that the paper was registered in Kulanda's name and thus Uyanga was not authorized to publish it. Printing difficulties continued, but the newspaper continued to circulate.

At the same time, due to changes in the Law on State Registration of Legal Entities, all newspapers had to reregister with the MoJHA by the end of March 2005. The Ministry refused to reregister The Mongol Times to Uyanga. It also refused to register a new newspaper under the name The New Mongol Times as it was too similar to the original name. Uyanga reported that she agreed to register under another name but faced repeated delays. The registration certificate for the new Political Newspaper was finally received on 19 May, 2005; funding is currently being sought to launch it.

This case illustrates complications in the newspaper registration process. First, the registration system arbitrarily decided the question of ownership of the newspaper in favor of the original owner. Second, delays in registration led to the effective silencing of an important political newspaper for most of the crucial period of the presidential election campaign.

In terms of media licensing, the 2001 Law on Communications stipulates that for private broadcasting, a media license must be obtained from the Communications Regulatory Commission (CRC). As with Mongolian media registration, the CRC lacks the guarantees of independence that characterize international law and best practices in this area in that its oversight body is composed largely of government employees appointed by the Prime Minister (Finding 3.2.4). Moreover, applicants for a broadcasting license need a letter of support from the governor. The purpose of this is unclear, and it is not a practice that is followed in other countries, even relatively decentralized ones, given the obvious potential for politically or economically motivated interference. For example, many interviewees noted instances of refusals or delays if the applicant had a reputation of being staunchly independent or critical of the governor (see annex 5).

Furthermore, the present broadcast licensing system does not use opportunities present in existing regulation to promote public interest. For example, the system does not assess the type or quality of programming as part of the license tender process. Local licenses are offered regardless of the market so there is an oversupply of broadcasters who rely on the support of wealthy individuals, who in turn demand political support. On the other hand, the lucrative national market is dominated by one player, the public broadcaster. Nor does the licensing system specifically recognize community broadcasting, an effective vehicle for local voice, particularly in a poor, low-population-density country like Mongolia.

Some independent radio stations in rural areas are playing a vital role in promoting social accountability by giving Voice to citizens, access to Information, and occasionally a means to Negotiate with public officials through call-in radio programs.³⁹ While this sector is vulnerable and operating on limited funding, it has the potential to expand social accountability in the countryside. As is discussed more fully in the 2005 World Bank report, "Community Media Activity in Mongolia: Stocktaking and Design of a

³⁹ These local stations have produced programs that support several World Bank initiatives, including segments on herder diversification, starting a small business, street law, and local health concerns.

Capacity Building Program,” independent rural radio provides citizens with both “Voice and Access to Information in their communities...[and] serves as an open forum to hold public officials accountable” (Siemering and Rice 2005: 3).

Box 3.2.4 Mongolian Community Radio and Social Accountability

Community radio is an effective tool to monitor and negotiate with public bodies and officials. It permits citizens and their CSO forums to Voice their views and concerns, gain access to both government-controlled and alternative forms of Information, and provides opportunities to Negotiate with public officials who appear on call-in programs.

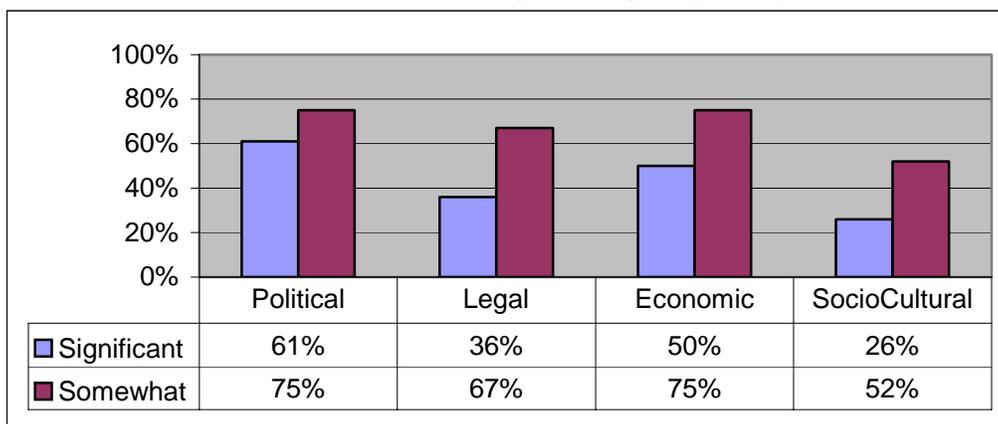
According to the 2005 study, “Community Media Activity in Mongolia: Stocktaking and Design of a Capacity Building Program,” conducted by Bill Siemering and Charles Rice, prominent members of the public radio community in the United States, “the four community radio stations currently on the air in Mongolia form the only independent radio sources in the country and are among only a few independent broadcast media stations in the nation.” These stations air programs to empower, educate, and inform Mongolian citizens, while facilitating a dual flow of information between local communities and public officials.

The study cited several examples of community radio programming that have promoted social accountability in Mongolia. The Selenge and Darkhan stations, for instance, were the only radio stations in the country to broadcast the 2004 parliamentary debates. In addition, Radio Orkhon 106 in Darkhan has produced a series of soap operas on “street law,” which have been distributed to other stations around the country. Several local World Bank projects have also supported the production of several series addressing issues related to HIV/AIDS, herding, and business in Mongolia. These series were produced by three community radio stations and aired by all four.

Although the existing community radio stations in Mongolia are self-sustaining, their ability to operate effectively is hindered by overextended management, limited financial resources, and a lack of basic infrastructure. Moreover, Mongolian law currently provides no special recognition to or consideration for community radio as providers of public interest broadcasting. These factors not only hinder the operation of the existing radio stations but hinder the creation of others as well. To ensure that community radio plays a critical role in social accountability and the effectiveness of local development strategies, in general, the 2005 report recommends that the local independent radio stations be transformed into a network of Community Information Resource Centers under a central agency that sets professional standards and raises funds for the sector (Siemering and Rice 2005).

The quality of media coverage is also a serious concern. The three most common complaints are political bias, a focus on “yellow” or sensational reporting, and inaccurate or misleading reporting (Finding 3.2.5). These problems are fueled by weak standards of professionalism, the absence of a central body to set standards, a lack of sufficient funding for investigative journalism, and widespread self-censorship (see annex 5, Findings MEDIA 8-10). Indeed, respondents to the CSO Survey found that media coverage was influenced especially by political and economic pressures (see figure 3.2.3).

Figure 3.2.3 CSO Views on Influences on Media Coverage in Mongolia (percent)



Source: CSO Survey (Annex 6, Question EE).

Although recent media monitoring exercises show improvements, the media's close links to political parties (through their owners) result in politically biased reporting (Globe International 2005a and 2005b). Ministries and other public bodies are informally required to subscribe to the pro-government tabloid, News of the Century, a significant economic advantage for that newspaper given the very low circulation numbers in the country.

Officials often deal with critical press by resorting to the Defamation Law, which, as noted above, can have a chilling effect on freedom of expression. An alternative is to establish a press or media council with the power to entertain and resolve complaints from the public (see box 3.2.5).

Box 3.2.5 The UK Press Complaints Commission

The Press Complaints Commission (PCC) is the leading body in the United Kingdom for dealing with complaints about the print media. Its members are appointed by an Appointments Committee, which is dominated by nonjournalists; and a majority of the PCC's members are also from outside the media. Press members are nominated by various media bodies, while lay members are selected on a competitive basis.

The PCC has adopted a Code of Practice for the print media, which deals with issues ranging from a right of reply and accuracy to payment for articles. Several of the PCC articles may be overridden if this serves the overall public interest; for example, if it prevents the public from being misled or exposes a serious crime.

Complaints are free and do not require a lawyer. The procedure for processing complaints is simple: in 2004, the average complaint was processed in 17 days. The vast majority of complaints are resolved through mediation. When the PCC adjudicates a complaint and finds in favor of the complainant, the newspaper concerned must print a copy of the adjudication, under a headline that refers to the PCC. At many newspapers, compliance with the Code of Practice is also part of the contractual obligations of editors, offering another means of enforcement. The more than 3,500 complaints lodged with the PCC in 2004 are evidence of its success in redressing unprofessional behavior in the print media sector.

Mongolian stakeholders expressed general support for the idea of a press council. Overall, the preference was for a nonstatutory, self-regulatory initiative led by the media sector, although the possibility of a mixed statutory but media-led council was also canvassed by some stakeholders. The need for better training for media workers, including editors and owners, was also often noted as a way of promoting a more professional media sector.

Efforts to transform the state broadcaster into a public service broadcaster are directed at increasing the political autonomy of the media (Finding 3.2.6). Although the 1998 Law on Freedom of the Media formally prohibited state control of the media, this change in public policy was never implemented; Mongolian Radio and Television (MRTV) thus remained a state-controlled media outlet. The Law on Public Radio and Television, which came into effect on July 1, 2005, however, transformed MRTV into Public Radio and Television (PRTV). It is now operating under an independent board, the National Council, with a mandate to provide a variety of high-quality programming to the public.

The new Public Service Broadcasting (PSB) Law, however, restricts PRTV's access to advertising, which was formally limited to 2 percent of airtime on July 1, 2005, and then eliminated altogether on January 1, 2006 (see annex 5, Finding MEDIA 3).⁴⁰ As a result, serious concerns have been raised about the ability of PRTV to survive let alone to continue its current levels of programming. On the other hand, interviewees pointed out that the old MTRV operated inefficiently, and that PRTV could realize significant savings by establishing more effective systems and by retrenching staff.

There have also been problems with the appointment and early operations of the National Council (see Finding MEDIA 2 in annex 5). The Mongolian Press Institute oversaw a wide-ranging and highly participatory process that led to the nomination by civil society of 37 candidates for the 15 positions on the National Council. When the president, government, and parliament made the final selection, however, only 8 of those appointed to the Council were from the list of nominees. The others were selected without any open discussion or democratic process. It was suggested that the Chair of the Council, an MPRP MP until 2004, lacked the requisite independence that his position demanded.⁴¹ Following their controversial appointment, there was also a serious rift in the Council over the designation of the new General Director of PRTV. This led some members to lodge a court case challenging the appointment, although the case was ultimately withdrawn and the appointments ratified.

Despite the politicization of the media, CSOs receive a high level of media coverage of their activities as indicated in interviews with CSO leaders and their responses to the CSO Survey. Sixty-five percent reported that they had been interviewed or their organization profiled in the media, and 61 percent said that an activity or event had been covered. Only 44 percent, however, indicated that they received media coverage upon their request, whereas many CSO leaders complained that they had to pay for media coverage, including advertisements for their events. Consequently, some stakeholders from both the media and CSO community described their relations as adversarial. Moreover, CSO leaders as well as various other stakeholders repeatedly stated that adequate coverage of an event was only possible if one were to read all Mongolian newspapers as each report with its own particular political slant.

Nevertheless, a number of CSOs indicated that they have worked closely with the media over a number of years to build stronger relationships and thus ensure better coverage (see recommendations in Finding 2.5). Globe International, for example, has cultivated a positive working relationship with the media, in part through its work to defend freedom of expression (see box 3.2.6).

⁴⁰ The complete elimination of all advertising was added to the PSB Law after a presidential veto of the law originally adopted by the State Great Khural.

⁴¹ The Public Service Broadcasting Law prohibits the appointment of elected officials and members of management of political parties to the National Council, but not former MRTV officials or former members of management.

Box 3.2.6 Promoting Freedom of Expression: Globe International

Globe International is a Mongolian NGO founded in 1999 with a mission to promote freedom of expression, information, and the media. It has been active in promoting an Access to Information Law, as well as the 2005 Law on Public Radio and Television. Globe has undertaken a range of activities aimed both at the media and policy makers. In 2002, Globe published Report on Media Law Reform in Mongolia, an in-depth analysis of legal and other constraints on media freedom, in collaboration with ARTICLE 19, an INGO that promotes freedom of expression (ARTICLE 19 and Globe International 2002). Globe is currently working with two local NGOs, the Press Institute and the Zorig Foundation, on a project to support the role of the media in promoting transparency. The project includes training for investigative journalism and bringing together editors from a range of media outlets to form an editors' task force, to enhance the role of the media in anticorruption activities. Globe also conducted a media monitoring exercise during the 2005 presidential elections, aimed at exposing political biases in six TV channels, the national radio, and four daily newspapers.

Other instances of CSO-media cooperation include the Ongi River Movement, which has cultivated a strong relationship with various media outlets to gain extensive coverage of its events and a greater voice in promoting awareness about environmental degradation (annex 3, Finding ONGI 5). In addition, the Gender Center for Sustainable Development has worked with certain journalists over time and built supportive relationships, while the National Human Rights Commission has awarded media workers for their role in giving Voice to human rights abuses and related issues.

3.2.3 Voice: Findings and Recommendations

As a critical enabling element of civic engagement/social accountability, the capacity of citizens and CSOs to Voice their concerns and opinions has dramatically increased since the transition to democracy in the early 1990s. Nevertheless, certain weaknesses remain in both the guarantee of freedom of expression and the various mechanisms for voice. As a remedy, the study suggests the following recommendations.

Finding 3.2.1. Mongolians lack awareness of their civil rights, including freedom of expression.

Recommendations: Citizens' understanding about their own democratic rights and obligations should be fostered. There are a wide range of options, including the following:

- 1) Public officials, CSOs, foreign donors, and the media should collaborate in civic education programs to inform citizens about their rights. Information may be disseminated through public service announcements; literature that uses accessible language and illustrations based on local experiences; and projects that directly involve citizens in exploring their rights and responsibilities, such as community theaters.
- 2) An innovative educational curriculum should target youth for special instruction on citizenship, including their democratic rights and responsibilities. In addition to current drama and art programs and essay contests, the GoM and education-focused NGOs should explore the experiences of other countries within the region to generate new programs.

Finding 3.2.2. The harsh punitive provisions of defamation laws constrict the media's freedom of expression.

Recommendations:

- 1) In collaboration with other stakeholders, public officials should comprehensively review and reform the criminal and civil defamation regimes in accordance with international standards. At a minimum, the provision of imprisonment for defamation should be removed. International donor agencies, INGOs, and CSOs with an expertise in defamation laws should advocate for these changes, for example, by providing comparative materials on defamation laws in other countries.

- 2) Given the culture and norms that have developed under the current defamation regime, stakeholders need to undertake explicit actions to implement reforms to the legal code. In addition to technical and financial support that need to be provided by the donor community, stakeholders should revise the legal text, and have media-related CSOs sponsor training on its implications for both journalists and the judiciary.

Finding 3.2.3. The registration system for the media poses a threat of politicization that can delay or obstruct the entry of various media outlets.

Recommendation: In consultation with the media and media-related CSOs, public officials should revise the media registration system to ensure it does not arbitrarily impede entry into the market. To curb political interference in the registration process, responsibility for media registration may be transferred to a nongovernmental agency. International donor agencies, INGOs, and interested CSOs should actively advocate for these changes, for example, by providing comparative studies on other country experiences.

Finding 3.2.4. The current licensing system for broadcasters is susceptible to political distortions, fails to promote public interest broadcasting, and constrains the capacity of broadcasters by saturating the market.

Recommendations:

- 1) The GoM should strengthen the autonomy and capacity of the Communications Regulatory Commission to promote public interest broadcasting by enabling it to take into account diversity of content and ownership, as well as market-carrying capacity when licensing broadcasters. The GoM should also establish a differential fee schedule that offers lower fees for nonprofit community broadcasters.
- 2) In consultation with independent and public broadcasters as well as media-related CSOs, the GoM should revise the laws governing broadcast licensing to eliminate the requirement of a letter of support from the governor and add a provision for the licensing of nonprofit and community broadcasters.

Finding 3.2.5. Inadequate funding and related problems of self-censorship have resulted in the poor quality of media output. This is a serious threat to both freedom of expression and the public's right to diverse sources of reliable information.

Recommendations:

- 1) Media-related CSOs, public officials, and media representatives should hold a broad social consultation to analyze the negative influences on media reporting, such as the politicization of the media, funding constraints, weak ethical and professional norms, and the narrow concentration of media ownership. They should also explore actions to improve quality and reliability. A media council should be established to address the problem of poor media reporting and make concrete, country-specific recommendations.
- 2) Additional training for media workers, including editors and owners, should be provided. The training should promote not only professional reporting but also financial viability of media outlets through efficiency and fundraising.
- 3) Seniors officials should address the widespread phenomenon of self-censorship by taking the following measures: prosecute threats and acts of violence against journalists to the fullest extent of the law and publicly expose the perpetrators; stop pressuring state employees to subscribe to particular media outlets; and instruct the intelligence services to restrict monitoring of media output to a limited set of legally defined issues related to state security.

Finding 3.2.6. The politicization of the National Council for the PRTV and dramatic reductions in its funding have resulted in inadequate public interest programming.

Recommendations:

- 1) In collaboration with the PRTV and media-related CSOs, the GoM should promote the capacity building of the PRTV to ensure better management and resource mobilization. International donors should provide initial support, including investigation of cost-saving measures within broadcasting operations and exchanges with other public broadcasters that have been forced to cut back on operations (for example, the Georgian Public Broadcaster).
- 2) PRTV should monitor the elimination of advertising resources, keeping the GoM and the public informed about the adverse consequences. If this critically undermines the ability of PRTV to provide public interest programming, public officials should not only amend this restriction but also establish a five-year budget to promote PRTV autonomy.
- 3) With initial technical and financial support from the international community, media-related CSOs should monitor the implementation of the Public Broadcasting Law. If complications arise, they should initiate inquiries with government agencies and the judiciary.
- 4) The international community should provide technical assistance to the National Council for capacity building, to enable this body to operate effectively and in accordance with best practices around the world.

3.3 PROMOTING SOCIAL ACCOUNTABILITY THROUGH INFORMED OPINIONS AND DECISIONS

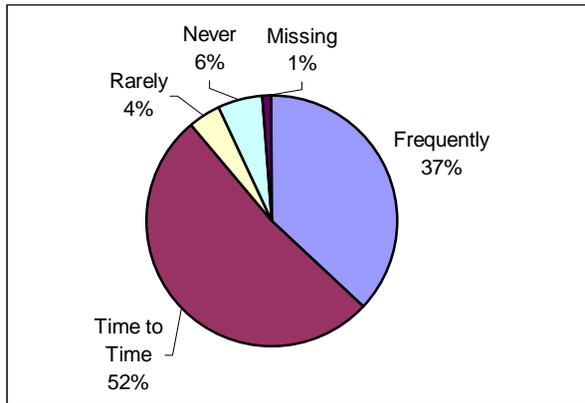
Information is a critical enabling element for civic engagement and social accountability. Civil society actors require sufficient information from multiple sources to formulate and voice their opinions, monitor governmental expenditures and service delivery, and effectively negotiate with public officials. Unfortunately, all categories of stakeholders repeatedly indicated during interviews, in focus groups, and in their survey responses that they are unable to access information, particularly information held by Mongolian public institutions. Additionally, a recent study by the Press Institute on freedom of information (2005b) indicates that the lack of access to information is one of most serious obstacles for both the media and civil society to fulfill their roles in Mongolia's democracy.

As in the case of Voice, there are two critical factors for Information to function effectively as an enabling element for civic engagement/social accountability. The first is the need to recognize and implement the right to access information, specifically information held by public officials. The second is the capacity of and opportunities for civil society actors, including the media, to generate and disseminate alternative sources of information that permit CSOs and ordinary citizens to evaluate the performance of public officials.

3.3.1 Access to Information

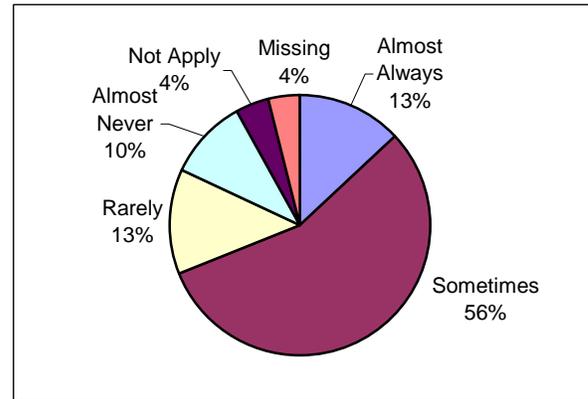
While the vast majority (93 percent) of respondents to the CSO survey indicated that they have requested documents or other information at least once, they have had variable success in obtaining them (annexes 3, 4, and 5: Findings ONGI 3, Finding EDU 5, and MEDIA 5, respectively). The majority of respondents (56 percent) indicated that officials only provided information sometimes, while 23 percent said that they rarely or never received the materials they requested (see figures 3.3.1 and 3.3.2).

Figure 3.3.1 Frequency of CSO Requests for Information from Officials



Source: CSO Survey (Annex 6, Question AA).

Figure 3.3.2 Frequency with which Officials Provided Information to CSOs



Source: CSO Survey (Annex 6, Question BB1)

Among the ministries, information is most difficult to access at the Ministry of Finance and Economics (MoFE). A staff member at one NGO stated that the MoFE considers all information on the GoM budget to be “top secret.” Various informants confirmed this perception, including a staff member of an MP who added that budget information in general is not published. Inability to access budget information has serious implications for CSOs and individuals for civic engagement/social accountability.

The 1995 Mongolian Law of State Secrets and its culture of secrecy were repeatedly cited as significant constraints on access to information (Finding 3.3.1) Article 16.17 of the Mongolian Constitution gives citizens “the right to seek and receive information except that which the state and its bodies are legally bound to protect as secret” (emphasis added). The justification for secrecy is based on the need “to protect human rights, dignity and reputation of persons and to ensure national defense, security and public order.” Under this Article, information that is not subject to disclosure is to be classified and protected by law. As the Constitution fails to define secrecy or to set limits on what may be considered secret, the government is able to classify documents without regard for international standards.

Under international law, restrictions on the right of access to information are legitimate only when they are proved to be necessary to protect a small number of legitimate aims listed in international treaties. The standard of necessity requires public officials to demonstrate that all restrictions are clearly and narrowly drawn and that disclosure is likely to damage a protected interest.

The Mongolian Law on State Secrets and its supplementary List of State Secrets (revised on January 2, 2004) provides the legal framework for secrecy.⁴² Article 3 of the law describes secrets as information that must not be disclosed in the interest of national security. Article 5, however, broadly characterizes the scope of state secrets, including in its definition, ambiguous concepts such as economic security (see annex 5, Finding MEDIA 6). Moreover, in a recent study conducted by the Press Institute (2005b), some officials claimed that by law, they could only disclose information through one central source, for example, the public relations department of a ministry. This regulation is problematic as it gives this

⁴² The law establishes a procedure for official bodies to propose items for the List of State Secrets, which is ultimately submitted to the State Great Khural. The current list includes 58 categories of secrets, along with lengthy periods of classification. There is no provision for overriding secrecy in the public interest.

department unchecked authority to provide or deny access to information and may, thus, arbitrarily obstruct access to information.⁴³

The wide range and ambiguous content of the legal code effectively allow individual bureaucracies to define their own rules, leading to an extensive classification of documents. During both interviews and focus groups, CSO leaders and journalists repeatedly complained that too many government documents are classified. In a welcome development, however, the government made a commitment in 2005 to revoke the Law on Secrets in its Ten Steps to Intensity the Implementation of the National Program to Combat Corruption. Unfortunately, during the study's dissemination in February 2006 opposition leaders called into question the government's commitment to reforming the secrecy laws. A prominent opposition MP indicated that "there is no talk yet of modifying [the laws on secrecy] either within the government or among the MPs." Another MP from a different opposition party indicated that "there might be some struggles for (retaining) the secrecy laws." When a representative of the Ministry of Justice and Home Affairs was asked to comment; he responded that this was not within their preview but the responsibility of the State Intelligence Agency.

Poor accessibility of information characterizes the Mongolian legislative process as well (Finding 3.3.2). During an interview in February 2005, an MP cited a proposal for mandatory publicizing of all bills to be considered in parliament at least 30 days before they are put to a vote. During this period, citizens have the right to evaluate the bill and voice concerns. However, the provision was revised to read that bills can be publicized; consequently very few are. The MP attributed the revision to the socialist legacy of state secrecy but asserted that "the soil is now ready" to change this practice and other legalities that hinder CSO civic engagement and social accountability.

Access to parliamentary deliberations is also limited, so that citizens rarely attend parliamentary sessions and standing committee meetings. Citizens are permitted no more than 15 minutes to observe sessions of the State Great Khural; and minutes from the sessions are not easily accessible to the public. It is therefore difficult, if not impossible, for citizens to evaluate the performance of their representatives or monitor the legislative process, including budget allocations.

To address this issue, The Asia Foundation (TAF) funded a project in the mid-1990s to publish multiple copies of parliamentary debates for the public record and to deliver them to various public access libraries. One of these depositories was the UB headquarters of Women for Social Progress, which also gained live television access to parliamentary debates (see box 3.3.1). After TAF funding ran out, the GoM continued to publish and distribute parliamentary deliberations, as had been previously agreed upon with TAF, but soon stopped, citing budgetary reasons. Currently, the only copy of the minutes from recent parliamentary debates is in the archives of the State Great Khural. The general public has a legal right to access these archives, but many people are unaware of this or are unable to travel to UB to consult the documents.⁴⁴

⁴³ A survey by Globe International (2003) reports that out of the 47 government agencies surveyed, only 32 had produced a list of secrets; and 33, a procedure for classifying documents as secret, indicating that many agencies have not fulfilled the legal requirements to establish their own secrecy regime. Of the agencies that are complying, 23 considered the lists and procedures, themselves, to be secret.

⁴⁴ The UNDP also allegedly attempted to undertake a project to promote public parliamentary hearings, but there was some political resistance, so it was never implemented.

Box 3.3.1 Women for Social Progress: Pursuit of Information for Voter Education

In 1994 the leader of the Women for Social Progress (WSP) proposed a project to The Asia Foundation to conduct a voters' education survey. To evaluate voter selection of officials, WSP conducted research on political campaign promises and the performance of politicians while in office. However, WSP could neither locate such information nor obtain MP voting records, as it could not gain access to the State Great Khural's archives. The leader of WSP presented her complaint to the Constitutional Court and received permission, a year later, to see the parliamentary protocols. These, however, were of little help as the MPs had used a secret voting system.

Since the TAF project could not be implemented as initially envisioned, the WSP approached "Vote Smart," an American nonprofit organization, for assistance with another project to enhance voter awareness of their legal rights. WSP published brochures and organized workshops for voters in the countryside; and in 1995, just prior to the 1996 parliamentary elections, WSP asked the State Great Khural to change its policy and deliver its transcripts to the public. There was no reply. The leader of the NGO then wrote to political parties asking them to include open voting and the right of access to parliament protocols in their campaign platform. Only the MDP agreed. After its coalition won a majority in parliament, access to parliamentary debate became easier, although it remained restricted to 15-minute intervals. With funding from TAF, parliament also provided the WSP and other public access libraries around the country with copies of parliamentary deliberations. WSP also gained live television access to the parliamentary debates, which was piped into their library.

Although this window into the legislative process ended shortly after the TAF funding ran out, WSP considers the opening of the parliamentary voting system one of its greatest successes. With Sansar Cable TV's resumption of live broadcasts of parliamentary debate in April 2004, under a UNDP parliament-strengthening project, WSP is considering lobbying once again for greater access to parliamentary records.

Stakeholders also consider the judicial system to be a particularly secretive branch of the government; its broad claims of legal confidentiality reinforce a legal regime on secrecy (Finding 3.3.1). Journalists who wish to attend a court session must receive prior permission from the presiding judge. Even members of the National Human Rights Commission, which as an official body has authorized access to confidential information, have experienced problems accessing information from the judicial system.

Other stakeholders have claimed that the worst offenders in Mongolia's "culture of secrecy" are the police, who have even refused to provide human rights NGOs with the regulations that guide police conduct.⁴⁵ Ironically, in this culture of secrecy, CSO leaders and journalists alike have reported that it is easier to get information from high ranking officials as lower-level officials are afraid of the consequences of providing information.

The absence of a general law on access to information exacerbates this culture of secrecy (Finding 3.3.3). Certain laws hold disclosure provisions, such as the 1993 Law on Government, Article 31 which provides for the publication of GoM Decrees and PM Ordinances, but only with consent of the chair of the Administration Department (administrative staff). The Political Parties Law, Article 18.4 also requires disclosure of information about donations to political parties, and the draft Anti-Corruption Law will require senior officials to disclose their income (see box 2.1.1).

⁴⁵ The leader of this NGO, which provides access to pro bono legal advice and monitors the judicial system, also mentioned that when trying to get a map of a *soum*, she was told that this was "secret information."

Box 3.3.2 Globe International: Promoting an Access to Information Law

Since 2002, Globe International has actively promoted the adoption of an Access to Information or Freedom of Information (FOI) Law, giving citizens the right to access information held by public bodies. They have adopted a multi-tiered strategy that focuses on drafting legislation and publishing research, lobbying MPs and other decision makers, and conducting public education campaigns.

Globe initially prepared a Draft Law of Mongolia on FOI. The draft was written by a team of eight leading Mongolian lawyers, in consultation with their international partner, ARTICLE 19. This allowed them to set the baseline standards against which a parliamentary legislative proposal would be judged. They also prepared a "Law Concept" (legal concept note) on FOI to explain the law's structure. Globe's Executive Director, Munkhburen Dash, is a member of the working group recently set up by the MoJHA to prepare access to information legislation.

To achieve its objective, Globe has primarily targeted legislators. It prepared a Handbook for Legislators on FOI, which was sent to all MPs. A series of roundtables and seminars for MPs have had remarkable success, with one roundtable on December 17, 2002, attracting 19 MPs. Globe also accompanied a group of MPs on a Study Trip to Bulgaria to expose them to mechanisms of FOI in other parts of the world.

Globe has undertaken a number of public awareness campaigns, using the media to transmit their message. In addition to a number of national and local programs on both radio and television, Globe prepared a 50-minute TV quiz show to engage the public more actively in the issue.

These disclosure provisions can play an important role in empowering civil society. Public disclosure of assets by senior officials can be an invaluable tool for CSOs and investigative journalists seeking to expose corruption. Similarly, rules on public disclosure of Environmental Impact Assessments (EIAs) allow civil society to monitor both the EIA itself and its implementation of recommendations.

These legal provisions, however, are not an effective substitute for a comprehensive Access to Information Law. The constraints on access to information have led various civil society actors, most notably Globe International (see box 3.3.2), to advocate for the adoption of an Access to Information Law, which would require public bodies to provide access to information. At present, a working group of CSO representatives set up by the MoJHA is developing a draft with comments from the other ministries. The draft may be ready for parliamentary review by April 2006.

The Access to Information Law must provide information seekers the opportunity to appeal refusals. Ideally, the law should establish an independent administrative mechanism for appeal, but in smaller countries like Mongolia, this may not be practical. Instead, this task may be allocated to an existing body such as the National Human Rights Commission.

A provision to appeal denied or delayed access would greatly assist CSOs frustrated by both refusals and "foot dragging" by public officials. It would also serve as an important mechanism for promoting accountability to the law, ensuring that decisions on access are not left exclusively to civil servants. The recent experience of the Ongi River Movement exemplifies such bureaucratic delays (see box 3.3.3)

Box 3.3.3 Ongi River Movement: Denial of Access to Information Law by "Passing the Buck"

In 2004, leaders of the Ongi River Movement approached the mining company Erel to request information on the volume of earth removed during its operations in order to know the level of water diverted and to monitor the company's rehabilitation activities of its sites in Uyanga. The company declined to release the information. The team proceeded to the local environment inspector, who said that he did not have the information. They then contacted the soum governor, who by law should have had this information. He informed them that he did not and directed them to the inspector at the aimag level. The inspector told them that he had the report, but that it was in the possession of someone else. The inspector then referred them to the Ministry of the Nature and Environment in Ulaanbaatar, to whom the ORM leaders submitted an official request letter. To date, they have not received a response (see annex 3).

These bureaucratic delays highlight the need of CSOs to draw from independent sources of information and for investigative journalists to uncover issues of public interest.

3.3.2 Generating and Disseminating Alternative Sources of Information

During interviews and in focus groups, various CSO leaders and journalists commented that one of the biggest problems is not only the selective provision of information by public bodies, but also the quality of the information obtained. These stakeholders felt that public officials typically offer information that shows the GoM in a favorable light while covering up more negative or potentially damaging information about government policy, budgets, or the performance of public officials. Hence, stakeholders frequently referred to the need for “truthful” or “objective” information.

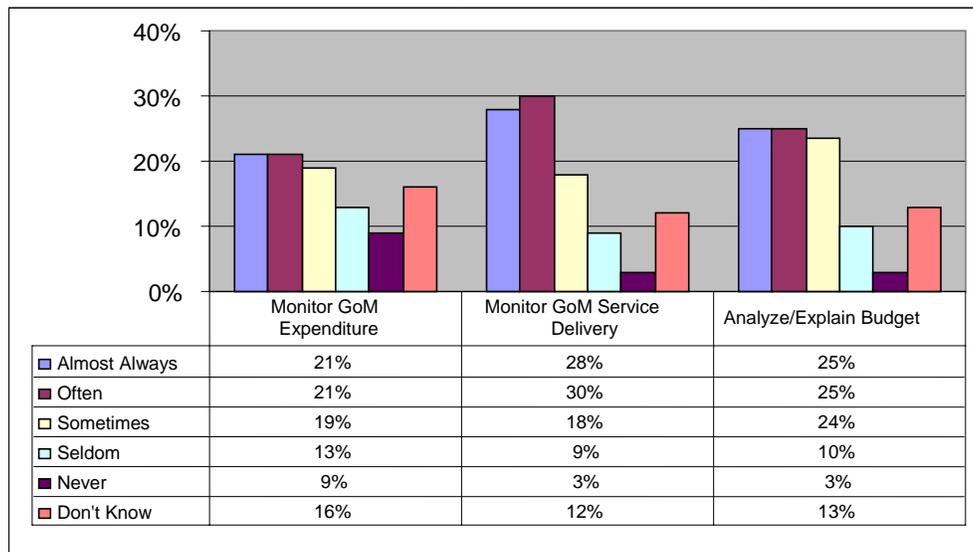
Ironically, stakeholders also contended that Mongolian society believes that “true” and “objective” information can only be obtained from the state. One informant quoted a journalist outside of Ulaanbaatar who asserted that “we want objective truth and the only truth comes from government, and the higher the position the greater the truth.”

This mentality, a by-product of the socialist era, is highly problematic for several reasons. First, it is an uncritical evaluation of the source (public officials), and hence, the information they provide. Second, it undermines the ability of the citizenry (including receptive public officials) to evaluate information that contradicts the official line or to challenge official positions. The ability to critically evaluate and challenge official information is a key aspect of civic engagement/social accountability.

Social accountability requires not only evaluating the limits and biases of governmental sources but also requires access to alternative sources of information. As discussed in the previous section on Voice, the media is an important source of information, although the degree to which media outlets and individual journalists critically evaluate the information provided by public officials and seek alternative sources of information can vary dramatically. CSOs also generate alternative sources of information through monitoring public service delivery and governmental expenditure and general analysis of the budgetary process (Finding 3.3.4).

Although the CSO Survey indicates that CSOs are more involved in monitoring of public service delivery (32 percent) than governmental expenditures (9 percent), they are actively involved in budgetary analysis (22 percent) for their own constituencies and for Mongolian citizens in general. Fifty-eight percent of respondents reported that the monitoring of services influences public policy, legislation, or the conduct of officials almost always or at least often, 50 percent in the case of budget analysis, and only 42 percent for the monitoring of expenditures (see figure 3.3.3).

Figure 3.3.3 Activities Likely to Result in Policy, Legislation, or Conduct Changes (percent)



Source: CSO Survey (Annex 6, Question I).

When respondents were asked if CSOs have sufficient opportunities to influence policy, legislation, or the conduct of officials in these areas, the statistics were more dramatic: 31 percent reported some opportunities to monitor services and only 15 percent to monitor expenditures (annex 2, Finding WSP 3)⁴⁶. This will be discussed further in the final section on Negotiation. The case study on the Uvorkhangai branch of Women for Social Progress (WSP-UV) offers a prime example of how alternative sources of information can play a critical role in social accountability (see box 3.3.4).

Box 3.3.4 Provision of Information by the Women for Social Progress-Uvorkhangai: Triangle News

In 2002, the WSP-UV began publishing the Triangle News “to deliver local information to the local citizens” for enhanced participation in local government (WSP-UV 2003).⁴⁷

The suspension of this publication in 2004 was particularly unfortunate as Triangle News had published information about governmental policies and actions, particularly budgetary issues, and thus played an important role in promoting civic engagement/social accountability. In each of its issues, an entire page presented information on local budget issues in simple, accessible language.

Articles in the newspaper also provided important information about governmental policies and public goods and services that were available to citizens. For example, in April 2002, the newspaper reported that the GoM was distributing free hay for livestock that were suffering from recurrent drought in the region. When their readers realized that they had been illegally charged for the hay by soum officials, they contacted the local agriculture office. Even though no action was taken against the responsible parties, by June, soum officials had stopped their illegal sales

⁴⁶ Respondents were not asked about opportunities for budget analysis, although the survey questions focused on CSO monitoring of GoM. In interviews and focus groups there were some references to the need to monitor CSO projects and for government and foreign funding, as the government’s internationally funded projects are insufficiently monitored.

⁴⁷ With funding from the Globalization Fund for the Future and subsequently the Mongolian Foundation for an Open Society (now the Mongolian Open Society Forum), WSP-UV published 18 issues with a circulation of 9,000 (one-third of the households in the *aimag*) before funding ran out, forcing them to stop publishing the newspaper in March 2004. After an interview with study team members in April 2005, the Bank’s Ulaanbaatar office provided WSP-UV additional funding to publish 12 monthly issues with a circulation of 6,000 copies through a grant under the regional BNPP for social accountability.

Other ways for CSOs to generate alternative sources of information are research and publication of nongovernmental documents about their activities. As previously mentioned, the Open Society Forum Web site presents documents on an array of issues related to its work, and lists a fellowship program that supports independent research on topics ranging from land privatization to participatory budget analysis.

Other examples of such documents from case studies include the environmental research conducted by ORM in collaboration with Professor Chandmani, an agronomist and lecturer at the Mongolian Agriculture University, who acted as advisor and researcher for ORM (see annex 3, Finding ONGI 4). The NCAV has also conducted extensive research and documentation of its efforts to convince both the public and GoM officials of the gravity and extent of domestic violence (see annex 1, Finding NCAV 3).

3.3.3 Findings and Recommendations Related to Information

Access by citizens, CSOs, and the media to state information has dramatically increased since the transition to democracy in the early 1990s. Similarly, the capacity of civil society to independently generate and disseminate information has also radically improved. Nevertheless, there exist several legal and cultural constraints on access to information and opportunities to generate and disseminate alternative information. These serve as the basis for the following recommendations.

Finding 3.3.1. The GoM culture of secrecy, reinforced by broad and ambiguous laws on the confidentiality of information, obstructs citizen access to information of public interest that is necessary to civic engagement.

Recommendations:

- 1) In consultation with the relevant CSOs, and in accordance with constitutional and international standards, the GoM should review the legal regime of secrecy to provide a balance between state interests and the need for openness (see Finding 3.3.3).
- 2) With initial support from the donor community, the GoM should address problems related to its culture of secrecy. It could initiate training programs for civil servants and politicians on the negative effects of secrecy and the importance and benefits of openness to good governance and socioeconomic development. Moreover, senior officials and political leaders should send clear signals that excessive secrecy will no longer be tolerated—for instance, by disciplining officials and civil servants who withhold information to which public access is guaranteed under law.

Finding 3.3.2. Mongolian citizens have insufficient information about the legislature and GoM decisions and proceedings.

Recommendations:

- 1) The GoM should explore ways to make proceedings and key decisions more accessible to citizens. For example, it should produce regular publications (an official journal) containing presidential decrees, parliamentary proceedings, and significant judicial rulings and local decrees. These publications should be available at public libraries and other depositories in every aimag, and should be sold at cost. While the international community may cover initial costs, the GoM must be prepared to assume the financial costs of distributing this information as a responsibility of a democratic state to its citizenry.
- 2) Parliamentarians should mandate that pending legislation be disseminated through public hearings or the media within a reasonable period (for example, 30 days) prior to their deliberation.

- 3) CSOs should be a primary means for disseminating information about pending bills and recent legislation to an informed public and should be encouraged to assist in disseminating this information to the broader public.
- 4) The media, in particular public broadcasters, should produce public interest programs about pending issues, proceedings, and key decisions by public bodies.

Finding 3.3.3. Public officials deny or delay access to information, whereas the absence of a comprehensive Access to Information Law undermines the ability of civil society to exercise its constitutional right to access information held by public bodies.

Recommendations:

- 1) Public officials should enact the comprehensive Access to Information Law, currently on the parliamentary agenda. To assist in that process, CSOs should continue their efforts to ensure that the Law meets constitutional and international standards. This includes a general presumption of openness, clear procedures for citizens to access information, and a narrow regime of exceptions to the right of access.
- 2) The Law should also provide for a right to appeal any refusals or undue delays to an administrative body. This body could be either an existing body, such as the National Human Rights Commission, or one specifically created for this purpose, such as an Information Commissioner. Once operational, a capacity-building program should be established so that this body is able to fulfill its responsibilities under the Law. Any further appeals should be assigned to the courts.
- 3) After the law is adopted, stakeholders should ensure that it is implemented effectively. CSOs should make active use of the law through comprehensive training and increased incentives for public officials to act efficiently in providing the public access to information, publicity to ensure the public is aware of its right to information, and training for judges to ensure effective implementation of the legislation.

Finding 3.3.4. CSOs are providing critical alternative information through the conduct of independent research or the creation of forums, including newspapers, that confirms, counters, or expands upon the information provided by the GOM.

Recommendations:

- 1) With initial technical and financial support from the international community, CSOs should expand their provision of alternative sources of information to fill in gaps and to confirm the accuracy of official information. Collaboration among CSOs working in similar or overlapping areas may promote efficiency and cost-effectiveness.
- 2) Given the costs of research, CSOs should collaborate with the GoM and other international actors who are analyzing related issues. Donors should provide start-up funding for data collection and analysis in policy areas critical to governance and development.

3.4 SOCIAL ACCOUNTABILITY THROUGH NEGOTIATION

Citizens' participation in governance beyond the electoral process enhances the effectiveness of government and its socioeconomic policies.⁴⁸ When civil society actors Negotiate with public officials,

⁴⁸ A great deal has been written about the role of citizens in governance. See, for example, the OCED publication, *Citizens as Partners* (2001).

development initiatives become more responsive to socioeconomic problems such as poverty reduction, while strengthening democratic institutions and political legitimacy.⁴⁹

International precedents and norms establish the right of citizens to participate in their own governance. The Universal Declaration of Human Rights refers specifically to the right of each citizen to “take part in the government of his country,” without delineating the form of participation beyond the electoral process. The United Nations Declaration on the Right to Development broadly recognizes the “inalienable human right” of each citizen “to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized” (UN General Assembly Res. 41/128, December 4, 1986). Once again, the precise mechanisms are to be worked out according to the customs and conditions of each individual country.

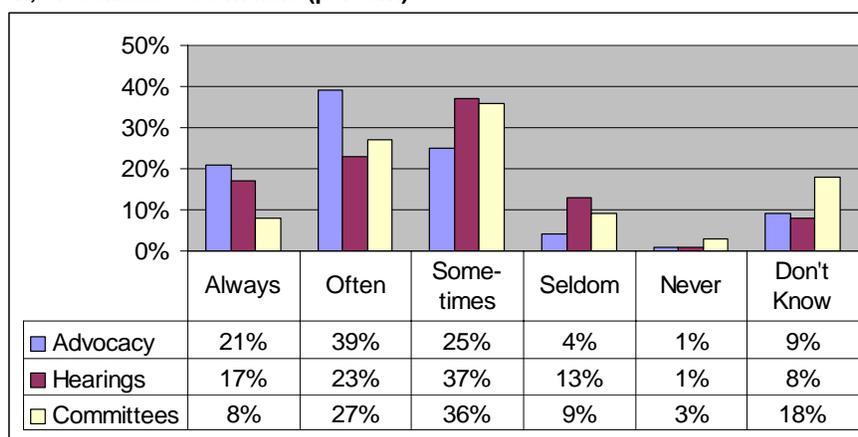
Mongolia’s legal code contains provisions for CSO and citizen participation in governance and development. However, CSOs generally consider these formal mechanisms for negotiation to be inadequate, relying on other informal opportunities to negotiate with public officials. Moreover, CSOs frequently collaborate with public officials and international donors or act on their own to initiate forums that encourage negotiation and promote social accountability.

3.4.1 Provisions and Opportunities for Negotiation

More than 65 percent of the respondents to the CSO Survey participated in a public hearing or meeting with public officials on a regular basis (at least one a month), while 34 percent participated in more selective state commissions and advisory committees. More than a third of CSO leaders also stated that they regularly engage in advocacy for changes in public policy or legislation (see annex 6, Question H).

Moreover, the vast majority of respondents believe that these activities influence the performance of public officials at least some of the time, with a significant percentage (35-60 percent) believing that they do so often, if not always (see figure 3.4.1).

Figure 3.4.1 Likelihood that Negotiation Activities Will Result in Changes in Policy, Legislation, or Conduct of Officials (percent)

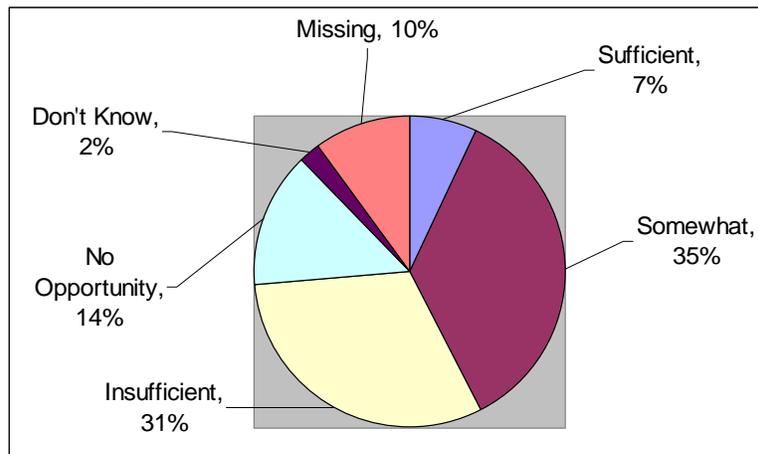


Source: CSO Survey (Annex 6, Question I).

⁴⁹ Mechanisms for negotiation also entail opportunities for civil society actors to Voice their opinions and concerns, and potentially to gain Information from public officials while providing it as well. The overlap is evident in references to Negotiation in the two previous sections.

Nevertheless, while more than 40 percent of the respondents indicated that opportunities to influence public policy and legislation by negotiating with public officials were at least somewhat sufficient, nearly a third stated that they are insufficient. Another 14 percent went so far as to declare that there were no opportunities for negotiation, undoubtedly reflecting their own inability to negotiate with public officials (see figure 3.4.2).

Figure 3.4.2 Ability of CSOs to Negotiate with Public Officials



Source: CSO Survey (Annex 6, Question N).

One might assume intuitively that negotiation between citizens and public officials at the local level would be greater, due to the greater accessibility of local officials and their more direct accountability to local constituents. Indeed, this is the underlying assumption of decentralization initiatives among international development agencies and donors. In fact, respondents to the CSO Survey found local officials to be only slightly more receptive to their social accountability-related activities than were national officials, with 48 percent of respondents indicating that local officials are at least somewhat receptive to social accountability initiatives by CSOs, as opposed to 45 percent for national officials (annex 6, Question K). There is, however, a great deal of potential for local-level social accountability initiatives, including the use of Community Scorecards (CSCs) in the World Bank-sponsored Sustainable Livelihoods Project (SLP) (Finding 3.4.1). Donors, governments, CSOs, and service delivery agencies all over the world are increasingly using community scorecards and citizen report cards for stakeholders to evaluate the quality of services and negotiate desired changes. In Mongolia, however, the CSCs will become an effective mechanism for negotiation only if there is greater GoM ownership and closer CSO involvement (see box 3.4.1).

Box 3.4.1 The Community Scorecard: Giving Stakeholders a Platform to Review Project Activity

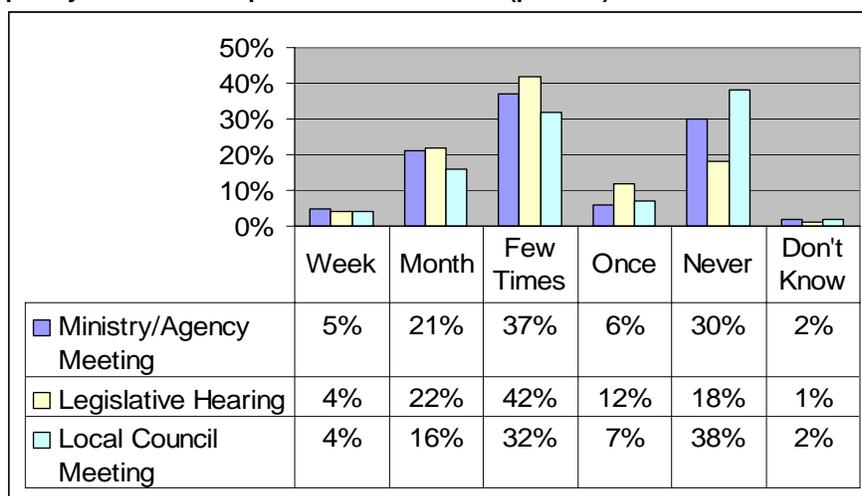
Following the failure of the National Poverty Alleviation Program to significantly reduce poverty, the GoM made poverty reduction one of the highest priorities. A key instrument to this end is the Mongolian Sustainable Livelihoods Project (MSLP) under the Household Livelihoods Capacity Support Council (HLCSC 2004). Stakeholder monitoring of the quality and effectiveness of social services under this program would help GoM to attain its goal “to reduce vulnerability and achieve a secure and sustainable livelihood by targeting poor and vulnerable near-poor households and individuals nationwide.”

In particular, the CSC mechanism of the Local Initiatives Fund (LIF) that facilitates community-based performance monitoring has the potential to become a model of social accountability in service delivery, which may be replicated on a larger scale. According to the Project Implementation manual, the process is to be facilitated by the bag governor, khural members, and trained community members, assisted by the soum HLCSC secretary. After the completion of a one-month subproject, the soum HLCSC secretary presides over an open community meeting to assess the subproject and its impact. At the same time, information is elicited from individual community members, and a CSC and Impact Record completed. In a process largely driven by the HLCSC secretariat as opposed to CSOs or user communities, the information from the CSC and Impact Record is combined with that from the community assessment and compiled into a report, which is sent to the aimag HLCSC secretary. The aimag HLCSC retains a record of the information on which the evaluation report is based and then submits a compiled report to HLCSC.

The current system of implementation, however, constrains social accountability in several ways. A report by the World Bank’s supervision mission in March-April 2005, notes that the HLCS secretaries regard community score cards and the Impact Record as cumbersome paperwork that they must complete to comply with World Bank requirements. Their attitude indicates a common problem of ownership and sustainability of donor-initiated social accountability mechanisms. The attitude could reduce the usefulness of such tools and must be addressed to promote institutionalization. Fortunately, the Bank’s task team intends to monitor whether community views are aired and heeded, and review how the score cards and other monitoring and evaluation tools are used. This will be done through direct observation by the project’s M&E Officer (MSLP 2005:49).

Moreover, when asked about their participation in forums organized by public officials, respondents said they were least likely to participate in a local council on a regular basis (see figure 3.4.3).⁵⁰

Figure 3.4.3 Frequency of CSO Participation in GoM Forums (percent)



Source: CSO Survey (Annex 6, Question KK).

⁵⁰ Even this low percentage seems a bit high. One CSO leader noted that local councils do not meet monthly, let alone weekly, as some CSOs indicated in their responses, and in any case, far fewer than the 20 percent indicated, participate in local councils on a regular basis.

Respondents were equally divided on whether participation in a local council meeting would be effective, somewhat effective, or slightly effective (annex 6, Question LL). The results of the survey are explained partly by the UB-bias of NGOs in Mongolia and the likelihood that national rather than local officials were targeted. Additionally, the centralization of public policy and the budget process have weakened incentives for citizens and CSOs to negotiate with relatively anemic local governmental institutions that are upwardly accountable (Finding 3.4.2).

A striking example is weak involvement in school councils or local communities in general (see annex 4, Finding EDU 6). When the Ongi River Movement tried to gain information that would make mining companies and public officials accountable, the lack of downward accountability thwarted its efforts for enforcement of laws on environmental protection (see annex 3, Finding ONGI 6).

Many stakeholders blame the Public Sector Management and Finance Law for the lack of downward accountability. The PSMFL has shown positive results in several areas, such as timely budget transfers, control of wage arrears, and overall fiscal discipline. However, the law has also removed most revenue-raising authority from local governments, and limited their role in service delivery. Nor have any compensating arrangements been made for citizen engagement in local budget processes and expenditure tracking (see box 3.4.2).

Box 3.4.2 Decentralization: Structural and Practical Impediments to Social Accountability

An important constraint on social accountability in Mongolia is the inconsistency between the centralized intergovernmental fiscal transfer system and the relatively decentralized political structures. The centralized fiscal management system has achieved macroeconomic stability, controlled wage arrears, and enabled timely budgetary transfers to local governments (Mongolia's Regional Development Note 2005).

The intergovernmental fiscal mechanism has its legal basis in the General Budget Law, which regulates revenue relations, and the 2002 Public Sector Management and Finance Law, which regulates expenditure responsibilities. The intention of the PSMFL is to increase the accountability and effectiveness of public sector institutions at all levels while respecting the need for fiscal restraint and sustainability. Unfortunately, by centralizing fiscal powers, the law effectively weakened local governments, severely limiting their tax-raising powers and responsibilities for service delivery. Indeed, the current governance system "fragments responsibilities of local governments and control over resources, resulting in weakening of accountability and service delivery for public resources" (Mongolia's Regional Development Note 2005:2).

The PSMFL does not make provision for the participation of soum khurals or ordinary citizens in budget processes. At present their roles are ad hoc and varied in practice (World Bank 2004d). During interviews and focus groups, many stakeholders concurred that the PSMFL had not enhanced downward accountability of public sector institutions, but rather limited the autonomy of local officials and thereby strengthened their upward accountability. These findings are supported by the work of Robin Mearns, Decentralization, Rural Livelihoods and Pasture-Land Management in Post-Socialist Mongolia. Mearns notes that while the PSMFL requires all public agencies to review and submit reports annually to the Ministry of Finance and Economics, there are no provisions holding these agencies accountable to local citizens. Consequently, under the current system, the governors "have little downward accountability to their local constituencies."

The PSMFL also centralized most taxes previously shared with local governments, and local governments have few powers to institute new taxes. Such restrictions in revenue-collection powers may diminish incentives for governors to be downwardly accountable, as well as for citizens, who do not pay taxes to local governments, to demand accountability from local officials.

Local governors have limited decision-making powers in each sector. Although aimag budgets reflect spending on education and health, the funds actually flow directly from the central government to respective schools and hospitals. Hence local governments do not have any control over these funds. As one soum governor noted, these "limitations on budget spending on the part of the governor also constrain citizen influence on the budget-allocation process," as line-item provisions leave little room for local decision making. Indeed, as Mearns argues, in this environment there is little incentive for local populations to use their elected representatives as channels for articulating concerns and making claims (Mearns 2002:138).

Negotiation also ensures that legislative processes are democratic and responsive to citizen needs. As figure 3.4.3 indicates, citizen participation in a public forum was highest for legislative hearings. Moreover, half of the respondents found these hearings to be at least somewhat effective, indicating the highest level of confidence in this form of negotiation to influence public policy (annex 6, Question LL).

Still, there are no formal mechanisms for CSO participation in the drafting of legislation (Finding 3.4.3). Various NGOs have been invited to participate in targeted working groups that provide citizen input into certain draft pieces of legislation. NGOs have also given critical testimony before parliament and, in some cases, independently prepared draft legislation, which has been picked up by officials.

Three recent examples on NGO involvement include the proposed Access to Information Law; the Public Service Broadcasting Law, which was passed in January 2005; and the Domestic Violence Law, which was passed in 1994, due largely to advocacy efforts by the National Center Against Violence (see annex 1, Finding NCAV 5). The Ongi River Movement also submitted detailed recommendations to inform proposed amendments to the 1996 Water Bill at both a National Workshop on the Management of River Basins organized by the government and a meeting of the cabinet in August 2002 (see annex 4). Although most of their inputs did not feature in the amended law, the ORM leadership claimed that the new law had in fact reflected a number of the positions they had promoted in their recommendations, including those related to the functions of the water management committees.

A representative of the Association of Mongolian Elders (AME) also claimed that his organization had made recommendations over the years on legislation related to welfare, medical insurance, family, retirement, and pension law, adding that AME cooperates closely with the Ministry of Labor and Welfare. The AME is a “legacy institution” as it was created and received state funding under the socialist regime. As such it continues to be one of the few CSOs to receive state funding in Mongolia. Undoubtedly, the informal and formal ties that AME enjoys with public officials have been key not only to its continued funding but also to its presumed influence in the legislative process.

Although there are relatively few CSOs that receive resources from the GoM, newer CSOs rely on informal networks with public officials for their advocacy work. In fact, most active CSOs reported having extensive networks and allies among public officials, often on a partisan basis (Finding 3.4.4). Both the WSP-UV and the NCAV, for example, reported that formal and informal networks with officials have been critical to their capacity to voice the distinct and varied opinions and concerns of Mongolian civil society (see annexes 1 and 2, Findings NCAV 4 and WSP 1, respectively).

Nevertheless, CSO ties to government officials and politicians may be a double-edged sword that undermines CSO political autonomy and capacity to promote social accountability.⁵¹ Politicians may create organizations to gain access to financial resources from foreign donors, or manipulate the agenda of existing CSOs as their board members or benefactors. In fact, a leading political party has been accused of instructing its members to gain control over the growing number of CSOs to gain access to their financial and social capital.

In contrast, however, the blurred line between state and societal actors involved in the Ongi River Movement is not the result of local politicians with nefarious intent but an indication of their commitment to the environmental mission and activities of ORM. When Ongi leaders decided to send a letter to the prime minister and members of parliament, however, the presence of local officials in the organization

⁵¹ In the extreme form of state corporatism, public officials control civil society, and thus, disallow pressure for social accountability. Although there is less concern about the inverse relationship under societal corporatism in which societal groups dominate policy areas (for example, health, labor, or the environment) through participation in state institutions or forums, state autonomy (that is, the capacity to avoid capture by domestic or foreign interests) is equally critical to social accountability.

nonetheless threatened its ability to voice its concerns. In the letters, ORM called on the GoM to protect the Ongi River system, which has been drying up over the last decade in large part because of mining practices in the region. One local official, who had been under pressure from senior officials not to sign the letter, resigned from ORM, while several local governors refused to sign and were ultimately replaced as members of the ORM board. The experience of ORM indicates one of the reasons why the promotion of social accountability requires autonomy from vested political interests to ensure the voice of civil society is not compromised or muted (see Finding ORM 2 in annex 3).

Based on interviews, focus groups, and the CSO poll, it was nevertheless clear that the overwhelming majority of Mongolians view CSO relations with public officials, especially the GoM, as characteristically adversarial. During a dissemination interview, a prominent CSO leader went so far as to describe CSOs and the GoM as seeing “each other as enemies.”

Although Mongolia does not have an ombudsman to mediate disputes between these stakeholders, the National Human Rights Commission has played an intermediary role in encouraging vertical as well as horizontal accountability. For example, the Women for Social Progress asked the NHRC to mediate a dispute in Uvorkhangai between local vendors and the aimag governor who had decreed that the vendors must relocate to a new market area. When the police attempted to enforce the resolution by harassing the vendors and confiscating their goods, the vendors turned to the local branch of the WSP. The WSP requested the NHRC to investigate possible human rights violations. The NHRC ruled that the vendors’ rights had indeed been violated, but the governor refused to rescind the resolution (which would have been a case of horizontal accountability). The ruling nevertheless became a “resource” for the vendors and their NGO allies to elicit a response from the governor (see annex 2).

In addition to “supply-side” forums for negotiation initiated by the GOM, some CSOs have created forums for stakeholders to meet and discuss various topics (Finding 3.4.4). The Open Society Forum takes the lead in organizing forums to promote negotiation and provide opportunities to voice societal concerns and disseminate information. The OSF organizes numerous seminars and workshops that are attended by government officials, politicians, CSO leaders, and members of the media. In January 2004, OSF organized a meeting for stakeholders involved in budget work to discuss participatory budgeting. As a follow-up, the Minister of Finance, who had attended the conference, contacted local public officials in Uvorkhangai, encouraging them to cooperate with the important work of the WSP-UV.

The WSP-UV has also organized tripartite or “triangle” discussions for community business leaders (see Finding WSP 4). In 2003, The Asia Foundation funded WSP-UV to conduct a series of individual meetings with representatives of CSOs, the business community, and local government officials along with a tripartite meeting to discuss a survey WSP-UV had conducted on the creation of small businesses and other business-related issues. WSP-UV held a follow-up consultation in December 2004, which resulted in a series of successes: the dismantling of a passport photo monopoly for the aimag’s citizen registration bureau and the dismissal of the Central Intelligence Agency official involved; expedited licensing by the land department; and improved conditions in the local market, including toilets and garbage disposal.⁵²

⁵² After the first BDC, the *aimag khural* created a Business and Economic Council that includes three representatives of the business community, three governmental officials, and three CSO leaders. Although this may be seen as a positive development as the BDC attempts to institutionalize dialogue among the three sets of stakeholders, the WSP-UV noted that there had not been a great deal of commitment to the council, which has only met a few times. From their perspective, one of the main problems is that the representatives are mostly “progovernment” (that is, pro-MPRP), including the two NGOs other than WSP-UV on the council (Chamber of Commerce and the Gobi Initiative). Therefore, they are not interested in confronting controversial issues.

Although the Environmental Impact Assessment Law exists, environmental NGOs stress that there is lack of both capacity and consistency in enforcing that law. Citizens therefore have few opportunities to give their views on natural resources projects prior to government approval. The Ongi River Movement case study (Annex 3) provides an illustration of mining operations that were begun without prior EIAs.

3.4.2 Findings and Recommendations Relating to Negotiation

As with the enabling elements of Voice and Information, formal mechanisms for Negotiation with public officials have dramatically increased since the transition to democracy in the early 1990s. Nevertheless, citizens and CSOs alike seek informal opportunities to negotiate with officials. However, informal setting such as this one results in highly ad hoc basis for negotiation that favors CSOs with extensive social capital (networks) and greater proximity to officials (UB-based). Although some of the obstacles to negotiation may be mitigated through GoM, CSO, and donor actions, as outlined in the following recommendations, the most critical challenge to Negotiation (as well as Voice and Information) is the lack of understanding about the CSO role in promoting civic engagement/social accountability among officials and the general public.

Finding 3.4.1. While the Community Scorecard, as part of the World Bank-supported Sustainable Livelihoods Project, allows beneficiaries to assess the quality and effectiveness of SLP subprojects, it could be enhanced to provide more opportunities for Voice, Information, and Negotiation.

Recommendation: Incorporate best practices from the portfolio of Bank-supported operations using CSCs into the Sustainable Livelihoods Project so that citizens can monitor the quality of services and negotiate the necessary changes to improve the program. This effort may be supported, for example, through “South-South” learning and in-country capacity-building activities. The SLP should create partnerships with CSOs and develop their capacity to use community score cards effectively.

Finding 3.4.2. Mongolia’s intergovernmental arrangements, particularly the PSMFL, limit local government accountability to local constituents and constrain citizen participation in local governance.

Recommendations:

- 1) In consultation with CSOs, public officials should address the lack of downward accountability. They should consider legal and regulatory reform and the creation of forums or other mechanisms, as well as the need for leadership from senior public officials to change the current political culture of upward accountability.
- 2) The Ministry of Finance and Economics, in particular, should collaborate with CSOs to enhance citizen engagement in the budget process. There should be greater budget disclosure to local citizens, more forums for civic involvement in setting local development and budget priorities, tracking expenditures, and in evaluating performance. There must also be mechanisms for transparency and direct accountability; governors, khurals, and citizens should also be responsible for the local components of line ministry budgets (for example, schools and hospitals).
- 3) Since local governors wield substantial power but lack downward accountability, the GoM, CSOs, and donors should evaluate the adverse economic and governance consequences of this structure of authority, and develop programs to increase awareness of the important role that citizens and CSOs play in improving local governance, and how local governments can facilitate such a role. Such a program, which could benefit from international best practices, may inform future proposals for improvement of political and fiscal decentralization in Mongolia.

Finding 3.4.3. There are no formal mechanisms through which CSOs can become involved in the legislative process or policy formulation.

Recommendations:

- 1) CSOs and public officials should consider formal mechanisms to encourage civil society and citizen input into the legislative process and policy formulation. This should be done in consultation with international donors, who may provide initial financial and technical support, including comparative studies of best practice. Civil society input could include expert testimony, preparation of draft legislation, participation in working groups, and in public hearings on pending legislation and public policies, which they could also help to disseminate.
- 2) Public officials should also work collaboratively with CSOs to encourage dialogue and networking through regular meetings (for example, town meetings and CSO councils to the prime minister, president, or local governments) to discuss common ground and specific areas for potential collaboration. Such forums may be organized by public officials, by CSOs, or jointly by both stakeholders.

Finding 3.4.4. CSO-organized forums have promoted networking and Negotiation with public officials and politicians, and provided opportunities to Voice societal concerns, and disseminate Information generated by CSOs, the GoM, and other stakeholders.

Recommendation: With initial support from the donor community, CSOs should establish individually and jointly organized forums among themselves and with other stakeholders. The CSO forums should meet regularly and include the participation of public officials. In the interim, they should communicate regularly through various mechanisms such as a common list serve or Web site.