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**ACCOUNTABILITY IN THE PUBLIC SECTOR
OF MONGOLIA**

A THESIS SUBMITTED FOR THE DEGREE OF DOCTOR OF PHILOSOPHY

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Abstract

This study provides an exploratory analysis of the current system of public sector accountability in Mongolia. Mongolia adopted a new democratic Constitution in 1992 with a special chapter devoted to the protection of human rights. Regular elections have been held and key democratic institutions have been established. However, there is a growing dissatisfaction in Mongolia due to the inability of the government to tackle core issues of development, including poverty, inequality, corruption and environmental degradation.

Accountability of power holders to public is a defining feature of democracy. This study finds that the notion of accountability as understood in democratic societies is relatively new in Mongolia. Despite tremendous progress in all areas of development over the past two decades, the creation of accountability mechanisms which assist accountability of power holders to the public has been slow. A framework of three types of accountability was used in this study: political accountability, policy accountability, and procedural accountability.

This study finds that i) more accountability mechanisms need to be created in order to constrain the power of parliamentary majority and the executive, ii) policy process need to take policy outcomes into account to ensure policy accountability, and iii) adoption of international and commonly recognised procedural rules and regulations needs to be completed to enhance procedural accountability. In addition, an accountability framework would enable ensuring complementary nature of different types of accountability. There needs to be an institutionalised system that reviews and ensures existence of accountability mechanisms.

General Declaration

I hereby declare that this thesis contains no material which has been accepted for the award of any other degree or diploma at any university or equivalent institution and that, to the best of my knowledge and belief, this thesis contains no material previously published or written by another person, except where due reference is made in the text of the thesis.

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Abbreviations

AoM	Academy of Management (Mongolia)
ADB	Asian Development Bank
CSC	Civil Service Council
CSD	Centre for Social Development
DGIs	Democratic Governance Indicators
ESWSA	Employment and Social Welfare Service Agency (ESWSA)
EU	European Union
GDP	Gross Domestic Product
GoM	Government of Mongolia
IAAC	Independent Authority against Corruption
ICNRD5	International Conference of New and Restored Democracies 5
IDEA	International Institute for Democracy and Electoral Assistance
IFRS	International Financial Reporting Standards
ILO	International Labour Organization
IMF	International Monetary Fund
MDG9	Millennium Development Goal 9
MDG-based NDP	Millennium Development Goals-based National Development Policy
MMD	Multi-Member District
MOF	Ministry of Finance
MOJHA	Ministry of Justice and Home Affairs
MONE	Ministry of Nature and Environment
MSWL	Ministry of Social Welfare and Labour
MPRP	Mongolian People's Revolutionary Party
NAO	National Audit Office
NAC	National Agency for Children
NCGE	National Committee for Gender Equality
NDI	National Democracy Institute
NDIC	National Development and Innovation Committee
NGO	Non-Government Organisations
NHRCM	National Human Rights Commission of Mongolia
NPM	New Public Management
NSC	National Statistical Committee
OECD	Organization of Economic Cooperation and Development
PPP	Public-Private Partnerships
PSMFL	Public Sector Management and Finance Law
SCERH	Standing Committee on Ethics in Research Involving Humans

SMD	Single-Member District
SIDA	Swedish Agency for International Development
SSIA	State Specialised Inspection Agency
SSSP	Social Sector Strategy Paper
TAF	The Asia Foundation
TI	Transparency International
TPA	Traditional Public Administration
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
WB	World Bank

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Addendum and Errata

1. Add the following to the section References pp.261-277

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2. Corrections

- 1.4.5 add "UNDP" after GoM, 2007
- 15.2.7 read "authorities (A) are accountability holdees and the public (B) are accountability holders".
- 21.1.1 delete "2007"; 21.2.2 delete "Koppell, 2007"
- 27.2.6. "Governance" (not Government)
- 28.3.8 delete "b" after 2009
- 44.3.11 delete "1997"
- 63.3.5 add "(Blagescu and Lloyd, 2006)".
- 68.4.7 "2000" (not 2001)
- 73.5.4 delete "The MSWL has 54 employees (MSWL, 2009)".
- 90.1.9 delete "and"
- 127.2.3 "Bank" (not Banks)
- 128.1.3. delete "b" after 2000
- 139.1 delete "Source: Cabinet Secretariat, 2009"; delete superscript ¹ in Table 5.2.
- 156.4.5 add "a" after '2008'
- 159.4.2. "holder" (not holdee)
- 167.3.7 "2008" (not 2000)
- 168.5.4 delete "b" after 2007
- 169.3.6 add "a" after 2009
- 170.5.4 "GoM and UNDP" (not UNDP and GoM)
- 176.2.5 add "a" after 2008
- 193.2.5 "2006" (not 2008)
- 203.3.1 "contracted" (not contacted)
- 226.3.1 "2007" (not 2008)
- 230.2.4 "Romzek, 2000" (not Romzek, 1998)
- 237.2.1 "CSC, 2004" (not CSC, 2007)
- 237.4.13 "CSC, 2004" (not CSC, 2007)
- 249.3.3 "and Bouckaert" after Pollitt
- 263.15 delete "Civil Service Council of Mongolia (2008a)"
- 263.16 delete "b" after 2008
- 263.17 "Civil" (not Civil)

- 264.16 “2007” (not 2003)
- 268.7 add “and J.Pierre” after G.Peters
- 169.2 replace with Helms, L., Ed. (2009). Parliamentary Opposition in Old and New Democracies, Routledge.
- 277.5 delete the reference
- 277.11 delete the reference
- 277.15 delete the reference

CHAPTER 1. Introduction

This thesis aims to explore the problem of accountability in the public sector of a former socialist state making the transition to democracy and a market economy, in this case Mongolia. Chapter 1 introduces the research problem, explains reasons for choosing the topic of public sector accountability in Mongolia (Section 1.1), briefly mentions the research methodology used (Section 1.2) and presents the overall structure of the thesis (Section 1.3).

1.1. The research problem

Accountability is one of the most challenging issues for the public sector in Mongolia. In the two decades since embracing democratic governance, Mongolia has undergone substantial economic, political, and social changes and has made considerable achievements. As a result, Mongolia has successfully laid down the foundation of a democratic society. With a democratic Constitution, the establishment of basic democratic institutions and a successive change of governments as a result of popular and regular elections, Mongolia qualifies itself as a democratic country.

By both narrow and quite broad criteria ranging from regular elections to popular attitudes towards democracy, Mongolia appears to have consolidated democracy and it is unlikely that democratic governance itself is under serious threat ... (Landman, Larizza and McEvoy, 2005:3).

Yet Mongolia faces numerous difficulties in maintaining its democratic achievements, translating them into public well-being, and mitigating the adverse impact on human development during transition period measures. Despite some economic growth, more than one third of the population lives below the poverty line. Inequalities in living standards are growing (GoM, 2007). Corruption hampers both economic development and sound governance of the society. The public is increasingly dissatisfied with the state institutions. According to a survey, 10.1 and 15.9 percent of respondents expressed that the performance of the Parliament was *very poor* and *poor*, respectively (GoM, 2009c). Such dissatisfaction raises various questions. Are we still heading towards a

democracy? If so, what went wrong with the implementation? Is it possible to reverse this deterioration? How can we get out of this situation and what do we need to do? These questions can be discussed from many different perspectives, including political science, neo-liberal economics or human resource management. The perspective that was taken in this thesis is public sector accountability.

The research reported in this thesis was conducted during a period in which the word ‘accountability’ had been more frequently used in Mongolia than before. This was also a period where more accountability related incidents took place in Mongolia. It is not unusual that the state of accountability, or lack of accountability, is revealed more clearly when incidents involving public organisations and officials occur. From an accountability perspective, the *Challenger* space shuttle disaster in USA was attributed to reliance of hierarchical and political accountability over professional accountability¹ (Romzek and Dubnick, 1987). The collapse of a viewing platform built by a government department in New Zealand (Gregory, 1998) is another well-publicised case, which raised issues of accountability for services contracted by the government to private providers. Several similar incidents that took place in Mongolia in 2007 and 2008, discussed below, added to the increasing concern about accountability of public sector organisations. Accountability issues were frequently intertwined with other critical issues such as rule of law or weak policy-making.

At the end of 2007 during the New Year celebrations, 15 persons died from food poisoning due to a company’s illegal use of non-food methyl spirits in producing alcohol beverages. The incident revealed that it was not the result of a single case of breaching the production standards, but rather it involved systemic issues of accountability of several organisations, including the customs offices, licensing organisation, and food security inspection organisation (Zuunii medee, 4 Jan 2008).

¹ Political accountability refers here to responsiveness to constituencies – for a public agency, constituency would be the general public, elected officials, agency clientele or other interest groups. Professional accountability occurs when control over organizational activities is placed in the hands of skilled and expert employee (Romzek and Dubnick, 1987).

In 2006-2007, many savings and credit cooperatives went bankrupt, leaving hundreds of people claiming their lost money from the government, pointing to the lack of regulatory control of non-bank financial institutions. On one hand, this case can be seen as personal irresponsibility as people naïvely believed in an unrealistically high interest rate on their savings. However, there were not enough regulation and control mechanisms to prevent these cooperatives from engaging in illegal activities, such as buying assets for private consumption (*Zuunii medee*, 16 August 2006).

In 2007, a fire emergency helicopter crashed in a mountainous area and 15 emergency workers lost their lives. It was reported that several people were alive when the helicopter crashed, but it took several days just to establish the site of the crash, thereby failing to provide emergency assistance. In addition, the fire-fighters were not properly equipped and procedures to follow in such situations were not clear. It later turned out that the 'black box' of the helicopter had not had any recordings registered since 2004. Accidents can happen in any country, but again, the issue of accountability was raised in connection with the emergency preparedness (*Zuunii medee*, 18 June 2007).

In 2008, a Member of Parliament was involved in a helicopter accident, as he chased a wolf during a chartered trip. Pilots were blamed as they were not supposed to listen to the orders of the MP, who was a passenger, and should not have changed the course of the flight. On the other hand, the MP who gave orders to the pilots was not held accountable for the consequences of his behaviour (*Udriin sonin*, 9 March 2007).

This small selection of cases illustrates incidents seemingly unrelated. However, behind every case was a problem which involved accountability of public sector organisations. While these incidents demonstrate extreme cases, people frequently encounter problems of accountability with the public sector as in many other areas of interactions with the government. Lack of accountability to the public can be seen in all sectors. In construction and road building, it is demonstrated by poor urban planning, luxury buildings which replaced children's playground sites, or potholed roads. In nature and the environment, it is demonstrated by recent environmental degradation, water scarcity, increased air pollution, and the excessive number of mining exploration sites across the country's territory (GoM, 2009c). While infrastructure, energy, mining

and land organisations are usually labelled as ‘high risk’ or ‘corrupt’ and lacking accountability by different public opinion surveys (TAF, 2009), the phenomenon of the lack of accountability is equally present in other sectors, including social welfare and education. In social welfare and employment, the number of people living below the poverty line has remained high for many years, despite various measures by consecutive governments. In the education sector, an imbalance between higher education and vocational education institutions adds to chronic unemployment. Such neglect of public interest led to a new expression, namely, ‘headless state’, frequently mentioned by the mass media. Another term, ‘billionaires born from the public sector’, confirms and mirrors it.

The accountability situation of the public sector as depicted by international organisations is also a matter of concern. A recent study funded by a donor agency, the United States Agency for International Development (USAID), underlined that the basic elements of democratic accountability, including transparency of government activities, participation of the public in substantive policy discussions and oversight of government, were substantially absent in Mongolia (USAID, 2005). Another study conducted by national researchers highlighted that:

The ability of the government of Mongolia to develop and maintain an effective system of government responsibility and accountability is a major, possibly the greatest challenge it faces (GoM and UNDP, 2006).

Carothers (2002), noted that a group of countries, including Mongolia, belonged to a ‘grey zone’, where these countries were formally in transition to democracy, but were characterized by political elites cut off from the citizenry.

Despite some efforts to respond to the public’s dissatisfaction with the lack of accountability of the public sector, including calls to improve accountability among high level politicians, it is still unclear how accountability works in the Mongolian public sector, what the dominant type of accountability is, why it fails, and what improvements are needed.

Most public administration reform studies on developing and transition countries, identify accountability as an important issue to address, but studies that focus specifically on this issue are limited. Mongolia is not the only country which encounters serious accountability challenges. The literature agrees that accountability is a considerable challenge for many developing and transition countries. Therefore, the nature of accountability issues in those countries and the efforts to improve accountability may be similar to those in Mongolia, and contribute to better understanding of accountability issues and associated solutions.

Indeed, general public administration reform studies do take accountability as an important issue to be addressed and are a valuable source for a comparison of country context, reform components and trajectories with the Mongolian situation. These studies can be divided into two groups.

The first group of studies treat public sector accountability as a function of public administration reform, to identify and analyse reform measures, to describe implementation strategies and to assess the extent to which these reform efforts were able to transform the public sector at local, sectoral or national levels. Factors such as reform context, level of development at the start of reform, scope and speed of reforms come into play, and these studies conclude with identification of success (or failure) of factors for public administration reforms. Thus, for South and Southeast Asia, political history, the pattern of economic development, the nature of political leadership, the capability of administrative system, the capacity of existing institutions and the state of civil society were identified as the most significant contextual factors for accountability practices in the region (Samaratunge, Alam and Teicher, 2008). Kim (2009) found authoritarianism, lack of public official responsibility, evaluation and participation, and low economic well-being as major constraints in promoting accountability in developing countries. For civil service reforms, Polidano (2001) highlighted three factors, namely, narrowing scope of change, limiting the role of aid donors, and firm leadership with line management discretion. All these findings provide a useful mix of lessons learned for Mongolia.

Another recent variant of studies on public administration reforms is reform sequence. A World Bank study (2003) on three countries of the former Soviet Union concluded that it was risky to transit to performance management reforms before putting down a sound basis of public administration. The study found a positive correlation between performance management and corruption in public organisations, suggesting performance management may have increased opportunity for corruption. The Eastern and Central European countries were advised to establish a Weberian public service first, before experimenting with more advanced managerial reforms of the New Public Management (NPM) style. However, the actual implementation path did not follow such strict sequence and demonstrated elements of both Weberian bureaucracy and NPM, and it was difficult to attribute the reform features to either of them (OECD, 2009a).

The second group of studies implicitly links the lack of public sector accountability in relation to economic features of developing countries. Thus, informality in the economy needs to be first tackled, and property rights and contract enforcement mechanisms need to be established in developing countries before they adopt advanced managerial reforms (Schick, 1998). Moore (2001) suggested that international aid and revenue from the export of oil and other mineral resources as ‘unearned income’, contribute to distancing the State from its citizens. On the contrary, where tax income of a State is ‘earned income’ and where there is ‘more state dependence on internal tax payers should gradually improve the quality of governance in many poor countries’, as it will increase the likelihood that citizens will be motivated to engage in politics to influence the use of ‘their’ own money. Rossabi (2005) traced the root cause of the economic and social deterioration, including the lack of accountability in Mongolia, to pure market approach implemented during its early years of transition. Such policy measures weakened the State’s capacity to tax and fulfil its social role.

These studies provide important determinants for public sector accountability, and they each seem to be relevant to the Mongolian context. However, in order to contribute to local solutions of accountability challenges, studies are required that are more focused on this topic and which are situated in the country context.

There are many lessons to learn from public sector accountability research in developed countries. Another set of literature on accountability deals mainly with accountability issues in the context of developed countries. In fact, accountability is also one of the buzzwords in public sector of those countries. In addition to the public sector, not-for-profit sector accountability and corporate social responsibility have become an area of increasing interest. Accountability at the international arena in the globalised world is another direction where new challenges and solutions are being presented. Although researchers consider that the concept of accountability is under-researched or under-explored (Schedler, 1999), the volume and scope of accountability studies in developed countries is relatively rich and growing as compared with those in developing and transition countries in general, or Mongolia in particular.

The existing literature on accountability in developed countries traces the evolution of the notion of accountability through historical stages of public administration development. It points out that accountability is a multi-dimensional, contextual, and changing notion. Traditional understanding of accountability under Weberian bureaucracy was administrative, and emphasised input control and procedural correctness. The New Public Management (NPM) changed many aspects of traditional accountability, shifting the focus from input and process, to results. As part of post-NPM reforms, accountability again shifts its focus, presents new challenges to its conceptual understanding, and urges the development of new mechanisms and arrangements. Accountability in network governance requires a different role from government and other participants of society, and new means of protecting the public interest.

In addition to the conceptual development of accountability, the existing literature also provides methodological guidance. It gives an opportunity to transform ‘the unfamiliar into familiar situations’, as referred to by Rein (1976:75):

This means that we must rely upon actions or events that appear to be analogous to situations we already know and that permit us to reason from the familiar to the unfamiliar. Familiar concepts are brought into unfamiliar situations, and in

the process they transform the unfamiliar. The metaphor enables us to describe patterns and tease out lessons (cited in Miller, 2008:17).

Thus, the main research problem to be addressed in this thesis is the weakness of the accountability system in the public sector of Mongolia. Most public administration reform studies on developing and transition countries identify accountability as an important issue to address, but studies that focus specifically on this issue are limited. On the other hand, public sector accountability in developed countries is well-researched and there are many lessons to learn from these studies, despite the contextual differences.

1.2. Research question and thesis structure

Research aims and research question

This research aimed (i) to understand and analyse the accountability system of the public sector of Mongolia through developing an accountability framework suitable to the Mongolian context, (ii) to inform practical efforts to improve accountability through research findings, and (iii) to contribute to a knowledge base that focuses on governance issues in Mongolia. The specific research question posed was “why is the public sector accountability system weak in Mongolia?”.

Any research study is concerned with theory and practice. As Miller (2008:20), succinctly put it, practice can be thought of as ‘theory-in-place’ and theory can be considered as ‘practice-to-be’, and ‘theory-practice gap can be resolved by thinking of theory and practice as two iterations of the same essential phenomenon’. In line with this approach, this research study aimed to reveal the ‘theory-in-place’ of accountability in the Mongolian public sector.

The research process was composed of two main stages. The purpose of the first stage was to find a framework which could be used in exploring and analysing accountability issues of the public sector of Mongolia. This stage was mainly based on literature and document reviews. The purpose of the second stage was to explore each area of the accountability framework in an attempt to find explanations for the current state of accountability in the Mongolian public sector.

Selecting public sector accountability in Mongolia as a case, was influenced by four factors: (i) the severity of the problem and an urgent need for its solution, (ii) the lack of relevant research studies, (iii) the availability of studies conducted in western democracies which can be of assistance in conceptualising, framing, and addressing the problem situation in Mongolia; and (iv) the researcher is a native-born Mongolian with extensive background knowledge of the nation and its public sector.

Given the exploratory nature of the research question, qualitative design, or more specifically, a case study was more suitable for this study. The Ministry of Social Welfare and Labour (MSWL) with its implementing agency Employment and Social Welfare Service Agency (ESWSA) were selected as case study organisations. The MSWL is a central government ministry responsible for social welfare, social insurance, employment, and labour relations. The ESWSA is the implementing agency which reports to the MSWL.

1.3. The presentation of the thesis

Chapter 1. Introduction

- Provides rationale for the topic;
- Introduces the thesis structure;

Chapter 2. Literature review

- Discusses definitions and conceptualisations of accountability;
- Outlines the evolution of the concept of accountability in public administration;
- Explores current accountability challenges in the context of developed and developing countries;
- Provides a summary of existing literature and identifies the limitations in relation to the research topic;
- Outlines the research problem, research aims and questions;

Chapter 3. Methodology

- Explains broader philosophical foundations of the research thesis;

- Distinguishes between the phenomenon under study and the case selected;
- Explains the exploratory and explanatory nature of the case study;
- Discusses quality criteria used in the research process;
- Describes data collection and data analysis techniques;
- Discloses procedures undertaken to ensure the research is conducted in an ethical way;
- Provides brief introductory information about the public sector of Mongolia as a case, covering its historical, political-legal, economic and administrative contexts;
- Provides introductory information on MSLW and EWSA as case organisations;

Chapter 4. Political accountability

- Focuses on constitutional, political, and legal mechanisms for holding the parliamentary majority and the Executive accountable;
- Attempts to reveal the reasons for the ineffectiveness of some mechanisms and describes consequences for political checks and balances;

Chapter 5. Policy accountability

- Links accountability with policy process, in particular with the nature of policy objectives and the format of policy and planning documents;
- Distinguishes accountability for policy outputs and outcomes;
- Reviews procedures used in enforcing policy accountability;
- Discusses factors contributing to the neglect of accountability for policy outcomes;
- Provides features of the current policy accountability system;
- Undertakes a comparison between New Zealand and Mongolian experience for improving policy accountability;
- Places the current policy accountability system in Mongolia in an international typology of performance management;
- Concludes with a summary of the chapter;

Chapter 6. Procedural accountability

- Discusses issues of compliance with rules and regulations in finance, human resource, procurement and contracting out;
- Describes internal policies and practices of organisational governance, transparency and access to information;
- Reveals the distinct role of public servants as administrators versus managers;

Chapter 7. Discussion and implications

- Provides a summary of general findings;
- Discusses the dominant type of accountability in the public service of Mongolia;
- Underlines inevitable tensions between different types of accountability;
- Highlights the need for another stage of administrative reforms and provides factors which differentiates this new stage from previous stages;
- Postulates potential directions of administrative reforms and their implications for accountability;
- Summarises theoretical contributions;
- Provides a few suggestions for future research;

Chapter 8. Conclusion

- Provides the main conclusions of the research.

Summary of the Chapter

The socialist past of Mongolia has left its mark on every area of social, economic and political life of the country. Developments in the past two decades of transition to democracy and a market economy have also raised challenges, which require closer and more urgent examination if Mongolia is to stay on the path to democracy. One of such challenges is the accountability of the public sector.

The existing literature on accountability will assist in conceptualising and framing the accountability problems in the Mongolian context, while case study methodology will allow fuller appreciation of local factors involved in accountability problems.

The next chapter is a literature review. It will provide further background to the research thesis by analysing the concept of accountability, as it is discussed in the existing literature.

CHAPTER 2. Literature review

The purpose of this chapter is to review the existing literature on public sector accountability to reveal, firstly, how accountability is conceptualised; secondly, how its meaning and emphasis has changed; thirdly, what similar challenges western democracies and developing and transition countries face in safeguarding accountability in their countries, and finally, what the limitations of previous studies are in relation to the research topic. Then, based on the analyses of existing literature and the research problem, the research question will be formulated and a conceptual framework developed.

2.1. Definitions and conceptualisations of accountability

2.1.1. Definitions

There is no definition of accountability which is universally recognized or agreed upon. The literature, both academic and practitioner orientated, uses different definitions of accountability. Most authors point out the lack of generic and an agreed definition of accountability, and some even say that there is no need for such a definition. Others find it possible to define accountability in a generic sense, however, ‘important dimensions of meaning are sacrificed’ (Sinclair, 1995:221) in such definitions. Given these different uses of the term, accountability is characterized as an ‘elusive’ (Sklar, 1999, Sinclair, 1995) or ‘evasive’ (Schedler, 1999); ‘fundamental but underdeveloped’ (Romzek and Dubnick, 1987); or ‘underexplored’ (Schedler, 1999); and ‘complex and dynamic’ (Ebrahim, 2003) concept.

Referring to the changing nature of the term, accountability is also regarded as a ‘moving target’ (Kearns, 1996) or ‘chameleon’ (Sinclair, 1995), partly because it is ‘socially constructed’ (Jordan and van Tuijl, 2006), and its ‘standards are defined by implicit expectations’ (Kearns, 1996). Such an unclear situation also attests to methodological limitations (Dubnick, 2003).

In general terms, accountability refers to the obligation to be called to ‘account’ (Mulgan, 2003:1) or ‘the satisfaction of legitimate expectations about the use of

administrative discretion' (Stone, 1995:509). From the accountability holdees' perspectives, accountability may be seen as punishment (Behn, 2001).

Seen from a broader perspective, accountability is a

relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences (Bovens, 2007:450).

A similar definition is

A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct (Schedler, 1999:17).

Hence, accountability involves a relationship, which contain three elements: (i) providing information, (ii) providing explanations or justification, and (iii) facing consequences or enforcement. Such a relationship also presupposes delegation of authority, a partial control, and imperfect information, since if there is no delegation or if there is full control or full transparency, there would be no need for holding anyone accountable (Schedler, 1999).

These two definitions define accountability in a general sense, and as a value neutral definition can be applied to any society, including democratic or autocratic societies. Under socialism, Mongolia also had a well developed notion of accountability in the sense there were clear lines of authority and a high sense of responsibility, as well as three elements of accountability relationships mentioned above, i.e. provision of information; explanation and justification; and consequences and enforcement. All stable political regimes, including autocracies, military dictatorships or absolute monarchs, have accountability relationships and a form of accountability to some type of constituency.

The difference between these societies and democracy are *citizens* (Schmitter, 2004), i.e. accountability to citizens. In fact, ‘what makes parliamentary and other regimes democratic is precisely the mechanisms by which citizens, the ultimate principals, can select and control their representatives’ (Strøm, Müller, and Bergman, 2003:55). Accountability gives a government its democratic character and ‘(t)he less accountability a public institution has, the more autocratic it is likely to be (Sherman, 1998:38).

Thus, it is not accountability as such in general, rather the principle of power-holders to be accountable to people that matters. Accountability constitutes mechanisms by which those in power reflect public interest and prevent abuse and misuse of public powers (Aucoin and Heintzman, 2000; Philp, 2009; Plattner, 1999; Bovens, 2007). Hence, in the above definitions, the direction of accountability (i.e. to whom it is directed) can be included into democratic accountability relationships. Therefore, governmental authorities (A) are accountability holders and the public (B) are accountability holdees.

As accountability problems of the Mongolian public sector have emerged and been discussed in the context of the country’s transition to democracy, the notion of accountability as understood and accepted in democratic societies is more relevant. Therefore, the term ‘democratic accountability’ is more meaningful. However, in most parts of the thesis a single word ‘accountability’ is used, as there are different forms and types of accountability which refer to specific parts of accountability relationships, though ultimately all still fall within the framework of broader ‘democratic accountability’.

The next important distinction to be clarified is that between ‘responsibility’ and ‘accountability’. The meanings of ‘responsibility’ are numerous. The most common use of ‘responsibility’ is responsibility as an obligation to act, functions, and duties (Cédon, 2000). However, when compared with ‘accountability’, ‘responsibility’ is understood as ‘a psychologically-oriented idea, focusing on moral conflict and choice among the subjectively felt duties and obligations’ (Gregory, 2007:342). In this line approach, accountability is associated more with compliance with authority and minimising misgovernment, while responsibility is understood in a more positive sense,

which supports empowerment and independence, and maximising good governance (Uhr, 1993). There is a tendency to use ‘accountability’ when expressing the meaning of external control or a mechanistic approach, and to use ‘responsibility’ when expressing the soft side or capacity to work by one’s judgement or internal commitment. In brief, accountability can be seen as the explanation of responsibility (Stone, 1995) and Gregory (2007:346) suggested to take ‘accountability and responsibility as two sides of the same coin, one fettering performance and the other enhancing it’. Responsibility *for*, and accountability *to*, is another way of expressing the difference between responsibility and accountability, meaning responsibility as being the discharge of assigned authority and accountability as providing an account to somebody for the exercise of assigned authority.

The distinction between ‘responsibility’ and ‘accountability’ has important implications for the discussion of public sector accountability in Mongolia. As a notion with control connotations, accountability forces power to enter into a dialogue, whereas the notion of responsibility permits it to remain silent, arguing that they know what they are doing (Schedler, 1999). There can be responsibility without accountability and accountability without responsibility. One is not sufficient without considering the other. The meaning of responsibility as an internal, soft side of accountability is further discussed in the next section which focuses on conceptualisations and frameworks of accountability, and linked to informal, soft or subjective mechanisms of accountability.

Given these different connotations of terms, an additional explanation is required when using the notion of accountability in languages other than English. Many other languages do not have equivalent to the English word *accountability* and translated it as *responsibility*. The Mongolian language also uses one word - ‘*hariutslaga*’ (or ‘*hariutslagatai baidal, hariutslaga tailagnal*’) to refer to both meanings. Bovens (2007:450) mentioned that French, Portuguese, Spanish, German and Japanese languages use one word to refer both to *responsibility* and *accountability*. The word which expresses a more direct and exact meaning of accountability in the Czech language is not a usual and widespread term while a more frequently used term is the equivalent of *responsibility* (Konopásek *et al*, 2002).

This thesis is more concerned with the public sector accountability. The literature increasingly recognises that accountability of the private sector and the not-for-profit sector as active societal players who affect people's lives is also critical. There is a growing literature on corporate social responsibility and accountability of the not-for-profit sector. However, as Bendell (2006) suggested, the relative power of different actors need to be taken into account in understanding accountability challenges and such a perspective puts more responsibility on government and corporations. In the case of Mongolia, the relative role of the public sector is even more crucial, given the historical dependence on the State and the transition period, which require greater involvement of the State in society.

The next section describes conceptualisations and frameworks commonly used in accountability studies.

2.1.2. Conceptualisations and frameworks of accountability

Again, there is no single overarching conceptualisation or framework of accountability for all contexts. Implicit conceptual assumptions influence how one studies accountability (McGarvey, 2001). Therefore, a central difficulty in researching accountability is to decide which of the competing models and perspectives is more relevant to the given study (Hodge, 2009). Policy recommendations and suggested innovations depend on which accountability perspective was taken in a given study (Day and Klein, 1987).

Since accountability is a 'relationship' and more concretely, a 'state of affairs', which results from this relationship, it is natural that most conceptualisations deal with different means on how to achieve this ideal or desired 'state of affairs'. Two conceptualisations are discussed below. The first conceptualisation relies on formal and informal means or mechanisms of ensuring accountability. The second conceptualisation uses different typologies of accountability as applied at organisational level.

2.1.3. Formal and informal mechanisms and means of ensuring accountability

One of the fundamental perspectives of conceptualizing accountability is the assumption that accountability is ensured through formal (hard, objective, mechanistic) and informal (informal, soft, subjective, non-mechanistic) mechanisms and arrangements. Objective (formal) accountability is described as ‘a formal requirement to an account imposed by one party on another as the counterpart to assigned responsibility’ (Cutt and Murray, 2000:9) with the implication of coercion, control or sanction for ensuring accountability. Writers on public sector accountability mostly use the definition of objective or hard accountability (Mulgan, 2003) and apply it in contexts of principal-agent relationships.

If accountability is ensured through formal mechanisms, means and arrangements, then the problem of accountability can mean that those mechanisms are ‘blocked or fail to function’, and a logical response to such a problem would be changing or improving the given mechanism or introducing new ones (Day and Klein, 1987:33). Thus, in the United Kingdom when parliamentary accountability was found not to be adequate during the 1960s and 1970s, two kinds of changes were introduced, firstly, parliamentary procedures were amended to allow members of parliament to make ministers more accountable and, secondly, new mechanisms were introduced in audit to improve parliamentary accountability (Day and Klein, 1987). The logic to respond to perceived ‘problems of accountability’ leads to attempts to cater for more contingencies and results in the further ‘tightening up’ of bureaucratic control mechanisms (Gregory, 2007:345).

As opposed to formal mechanisms of ensuring accountability, informal means emphasise ‘the moral character, and associated personal standards of administrators, and operates voluntarily and thus in a more positive context with respect to their own sense of responsibility’ (Cutt and Murray, 2000:9). This approach would underline features such as values, dialogue, pro-active anticipation of issues, self-regulation, and trust (Cribb, 2005).

The relationship between formal and informal mechanisms of ensuring accountability is delicate. Day and Klein (1987) challenged that accountability cannot be reduced to a

technical exercise and argued that historical, cultural, and organisational characteristics may be at least as important as formal political institutions and managerial structures. Cutt and Murray (2000:9) conceded that subjective (soft, informal) accountability is the ultimate safeguard in any accountability relationships, but admitted that the line between the two is a fine one. They are complementary, when they explain that,

accountability, as a personal trait and as a logical response to expectations and pressures, will not naturally lead to the institutionalization of formal accountability regimes. ... Good faith and a noble disposition are not sufficient (LeClerc cited by Cutt and Murray, 2000:9).

Gregory and Hicks (1999) proposed a concept of 'responsible accountability', to explain the link between responsibility and accountability, which are associated with organic and mechanistic approaches, respectively. They caution that enhancing accountability does not necessarily increase responsibility; rather the opposite is more likely. Similarly, Philp (2009) argued that accountability can be placed anywhere along the line from an integrity based system to a compliance based system. He made it clear that in compliance based systems, accountability is considered as the result of functioning mechanisms, while in integrity based systems, accountability is not the result of such mechanisms.

In fact, the issue of interrelationships between compliance and control on one hand, and personal belief and judgement on the other, is one of the classic accountability debates, which was started by Friedrich and Finer in 1940s. Friedrich maintained that with the increasing professionalism and growth of administrative complexity and discretion, traditional mechanisms of ensuring accountability were becoming inadequate, though necessary, and he argued that public servants should be trusted for their capacity to make judgements and demonstrate professionalism to carry out policies in the public interest. Finer responded that according to the principle of democracy, officers should remain under formal external control (as explained in Gregory, 2007; Dubnick, 2003; Roberts, 2002). This tension remains an important accountability issue even in the present day (Halligan, 2007; Jos and Tompkins, 2004; Meier and O'Toole, 2006).

An example of conceptualisation of accountability through a range of formal mechanisms includes five types of administrative accountability suggested by Stone (1995). Firstly, looking from the agency perspective rather than from the superior, secondly, accountability to be understood as exercised through parliamentary control, thirdly, a managerialist conception, fourthly, judicial and quasi/judicial review including constituency relations, and finally, through the operation of the market.

2.1.4. Organisational level frameworks of accountability

Once accountability is situated in concrete cases or organisations, various frameworks and approaches can be used to conceptualise accountability. Organisational level accountability research is in its infancy (Frink and Klimoski, 2008). Given the multiplication of frameworks, attempts were made to classify them in order to clarify the content attached to the particular use and facilitate the comparison. The development of an actual framework depends on the nature of the accountability problem under investigation.

One such typology is based on the question to whom one is held accountable (political, legal, administrative, professional, social accountability), or who is accountable (corporate, hierarchical, collective, individual accountability), the area of application (financial, procedural, product accountability), and the direction of accountability relationships (vertical, diagonal, horizontal accountability) (Bovens, 2007).

However, not all frameworks fit neatly into the above typology. Day and Klein (1987) used political, managerial and moral accountability framework. Romzek and Ingraham (2000) used a framework which differentiates between hierarchical, legal, professional, and political forms of accountability. Sinclair (1995) found that public organisation executives hold five types of accountability, including political, managerial, public, professional and personal. For Kearn (1996), framing the issue as accountability to an internal/external authority for explicit/implicit standards and tactical/strategic responses, reflects a more realistic picture. For Behn (2001), accountability for what is more important, and accountability issues can be distinguished, depending on whether the focus is accountability for finance and fairness, or accountability for performance.

Koppell (2005, 2007) used yet another framework, drawing on features which accountability aims to achieve. He looked at accountability as transparency, as liability, as controllability, as responsibility, and as responsiveness, linking these five dimensions with corresponding specific questions, which ask if the organisation reveals the facts of its performance, if it faces consequences related to performance, if the organisation did what its principal commanded, if it followed the rules, and lastly, if the organisation fulfilled its substantive expectation.

Some of these frameworks were based on the researchers own classifications (Behn, 2001; Koppell, 2007), while some were developed by researchers using responses from participants (Sinclair, 1995). There is no single better way to approach all instances when investigating questions of organisational practice and accountability (Brodkin, 2008). However, given the complexity and diversity of the source and nature of demands for accountability, any such investigation requires a systematic approach (Jos and Tompkins, 2004).

2.1.5. Theories of public administration and accountability

Theories of public administration imply certain perspectives on the nature of accountability problems and a means for ensuring accountability. Due to the applied, broad, disjointed and multidisciplinary nature of public administration, theories of public administration have inherent limitations, yet their assumptions provide an impact on how accountability is posited in the public sector. According to a compilation by Frederickson and Smith (2003), theories of public administration include that of political control of bureaucracy, bureaucratic control, public institutions, public management, and theories of governance. The following summary is based on the analysis by Frederickson and Smith (2003).

Theories of political control of bureaucracy. These theories assume the separation of politics and administration, and assume that elected officials should control the decisions and actions of appointed officials. Therefore, these theories are concerned with different means and mechanisms for ensuring administration's accountability to political institutions. Theories included in this category are capture theory (bureaucrats become captured by those to whom they are supposed to regulate), theory of client

responsiveness (street-level bureaucracy – bureaucrats work with limited resources and goal ambiguity and are forced to make policy decisions), and agency theory or principal-agent theory (bureaucrats respond to directives of political actors). Under these theories the accountability holder is a political institution and the accountability holdee is an administration or bureaucracy.

Theories of bureaucratic politics. These theories discard the politics-administration dichotomy, and treat bureaucracy as a political actor in its own right. The theory of representative bureaucracy is an example. It posits that bureaucracy which consists of representatives of broad demographic groups of society who can ensure that the interests of societal groups are taken into account in bureaucratic decision-making. However, if bureaucracy is part of political decision making, it not clear how bureaucracy is to be held accountable for it and by whom.

Theories of public institutions. Institutional theory suggests that institutions matter. It highlights the relationship between organisational structure, rules, organisational behaviour, outcomes and accountability of public organisations.

Theories of public management. These theories rely on universal management principles and the New Public Management is one of the variants of public management theories. Both principal-agent theory and public choice theory can also be categorised under theories of public management. While they are criticised of being more a guide to action than in the development of theories, they have been in effect for long periods and have been found to be useful.

Theories of governance. Governance theories have emerged as reflecting the current changes in public administration. Although still evolving, governance is expected to be a new intellectual framework for public service. As discussed in the next section, governance theories contain assumptions which would significantly change the way traditional accountability operates.

Since no single theory can provide full guidance to public administration practitioners, the above theories need to be used selectively in explaining individual circumstances

across time, location, level, and area. As described below, theories of political control of bureaucracy, theories of public management and governance have influenced the underlying assumptions of public administration throughout its history.

2.2. Evolution of accountability through history of public administration

Evolution of the concept of accountability reflects the history of public administration itself, (Hodge, 2009). The concept of accountability and the content it carries, as well as who is accountable to whom for what is not fixed, and what has changed over time needs to be considered. Administrative and financial forms of accountability existed as early as 8,000 years ago (Hodge, 2009 citing Farazmand, 1998). The notion of parliamentary accountability emerged in the 16th century, and was later enriched by writings of Locke and John Mill (Day and Klein, 1987).

However, three paradigms are more relevant to current discussion of public sector accountability. These are the Traditional Public Administration (TPA) paradigm which has been dominant since the late 19th century to first half of 20th century; the New Public Management (NPM) paradigm, which brought sweeping changes to traditional public administration from the late 1970s to early 21st century, and the Governance paradigm, which constitutes an attempt to conceptualise the current thinking of public administration and provides an explanatory framework.

2.2.1. Traditional public administration

Traditional Public Administration (TPA) was influenced by the intellectual heritage of Max Weber, Woodrow Wilson and Frederick Taylor. It is characterised by

the dominance of the ‘rule of law’; a focus on administering set rules and guidelines; a central role for the *bureaucracy* in policy making and implementation; the ‘politics-administration’ split *within* public organizations; a commitment to incremental budgeting; and the hegemony of the professional in the service delivery system (Osborne, 2006:378).

The TPA relied on the assumption that there was only one way of doing things and this assumption was materialised through comprehensive manuals for administrators to follow. Government was the direct provider of public goods and services. Public servants were supposed to work selflessly in return to lifelong employment and public administration was considered as a special area of activity (Hughes, 2003).

The most important implication of the TPA assumptions for public sector accountability is the separation of politics and administration. Public service was on the administration side, and was accountable for 'implementation' only, had minimal discretion, and was considered as 'purely instrumental' (Hughes, 2003). The tasks involved in public service were indeed administrative with the main means of accountability being hierarchical control and compliance with rules and guidelines. As such, the TPA did not require responsibility in the provision of results from the bureaucracy (Hughes, 2003; March and Olsen, 1995). The focus of accountability was finance and fairness (Behn, 2001). On the political side of public administration, politicians are considered as being held accountable by the public through elections. In parliamentary systems, Ministers are accountable to the Cabinet, then to the Parliament, and the public, for the actions of their departments (Hughes, 2003).

The relationship between politics and administration, or between elected officials and administrators is complex, and has been the source of the debates in the history of public administration theory (Gregory, 2007, deLeon, 2007). The weakness of the TPA was its requirement to separate politics and administration, with administration having no responsibility for results. Thus, while the TPA contributed greatly to an era of industrial economic development and modern state building (Bresser-Pereira in Bourgon, 2007), it became increasingly inadequate by 1970s. When accountability is more concerned with compliance with rules and regulations, it hampers innovative policy solutions and the *status quo* tends to stay (March and Olsen, 1995).

2.2.2. New Public Management

Drawing on the weaknesses of the TPA and aiming to reform the way the public sector operated, the New Public Management (NPM) emphasised the following key elements:

- ‘an attention to lessons from private-sector management;
- the growth of both of hands-on ‘management – in its own right and not as offshoot of professionalism – and of ‘arm’s length’ organizations where policy implementation is organizationally distanced from the policy makers;
- a focus upon entrepreneurial leadership within public service organizations;
- an emphasis on inputs and output control and evaluation, and upon performance management and audit;
- the disaggregation of public services to their most basic units and a focus on their cost management; and
- the growth of markets, competition and contracts for resource allocation and service delivery within public services’ (Osborne, 2006:379).

The NPM theory takes its intellectual foundations from public choice theory. The NPM focuses on intra-organizational processes and management, and emphasises the economy and efficiency of these service units. Administration under the TPA is replaced by management under the NPM, but policy and management is still assumed to be separate, as under the TPA.

Many of the NPM changes were undertaken in a general purpose to improve the accountability of the public sector. Under the NPM, accountability has become an ‘ever expanding concept’ (Mulgan, 2000b:555), and a buzzword. One reason for accountability becoming an expanded notion is that the NPM activated management or managerial accountability, opening what was treated under the separation of politics and administration as a ‘black box’ of implementation (Osborne, 2006). By transforming public administrators into managers, and holding managers accountable for performance, the NPM brought ‘performance accountability’ into the equation in addition to administrative and political accountability. With performance accountability, ‘right results’ came forward while ‘right rules and regulations’ went to the background (Poulsen, 2009:120). Hierarchical control and compliance with rules and guidelines were no longer sufficient for demonstrating accountability.

However, the NPM also had its weaknesses. The NPM raised several issues in relation to public sector accountability. The most frequently mentioned issue is its over-reliance

on market, as citizens cannot be equated to only customers, and customer satisfaction cannot always be taken as public interest (Dubnick, 2006; Radin, 2006; Peters and Pierre, 2007). Efficiency is not the only goal of the government and modern government, and it 'is also about the relationship of accountability between the state and its people' (Minogue, Polidano and Hume, 1998:5). While recognising that efficiency, economy and competition are important as criteria of accountability, Haque (2000:610) clarified that:

what makes public governance truly public and distinguishes it from private-sector management is its accountability for a unique set of public missions and norms such as representation, equality, impartiality, integrity, justice, and citizenship.

Thus, with the NPM reforms, tensions between political and administrative (managerial) accountability continued. In fact, the NPM reforms did not aim to improve political accountability. The NPM aimed to improve accountability for the performance of the administrative part of public administration through transforming administration into management. It replaced one form of bureaucratic control with another (Gregory, 2007). Thus, when the NPM highlighted performance, it narrowed down accountability for governing in the public interest, to an accountability for an improvement in administration. Administrative accountability was given higher importance, but public values suffered.

2.2.3. Governance

While there are convincing arguments on a paradigm shift from the TPA to the NPM (Hughes, 2003), the paradigm shift from the NPM to governance is still disputed. The governance perspective has various definitions (Rhodes, 1997; Peters, 1996; Peters and Pierre, 1998; Pierre and Peters, 2000) and is still in development. The UNDP (2004) defined governance as 'the system of values, policies and institutions by which a society manages its economic, political and social affairs through interactions within and among the state, civil society and private sector'. Hughes (2009:88) argued that the use of the term 'governance' should be limited to its ordinary meaning, which is about '...

running organizations, about steering ... how to organize, and how to set procedures for an organization to be run’.

With the implementation of the NPM reforms, the nature of public service had become significantly different from how it was under the TPA. In the past 30 years, traditional public administration was partly replaced by the NPM, which in turn has been partly replaced by reform elements which can be attributed to a Governance perspective. However, most countries still have elements of all three approaches (Bovaird and Löffler, 2009; Stoker, 2006). Some common elements which differentiate Government perspective include the following, as it,

- ‘assumes a multiple stakeholder scenario where collective problems can no longer be solved by public authorities but require the cooperation of other players (citizens, business, voluntary sector, media, etc) – and in which practices such as mediation, arbitration and self-regulation may often be even more effective than public action;
- recognizes the importance of both formal rules (constitutions, laws, regulations) and informal rules (codes of ethics, customs, traditions) but assumes that negotiation between stakeholders seeking to use their power can alter the importance of these rules in specific situations;
- no longer focuses only on market structures as steering mechanisms, as in conventional ‘New Public Management’ approaches, but also considers hierarchies (such as bureaucracies) and cooperative networks as potential facilitating structures in appropriate circumstances;
- does not reason only in terms of the logic of ends and means, inputs and outputs, for recognizes that the characteristics of the key processes in social interaction (transparency, integrity, inclusion, etc) are likely to be valuable in themselves;
- is inherently political, concerned as it is with the interplay of stakeholders seeking to exercise power over each other in order to further their own interests – and therefore cannot be left to managerialist or professional decision-making elites’ (Bovaird and Löffler, 2009:217-218).

These basic approaches and assumptions of a governance perspective are considered as more closely reflecting current public sector workings and environment than the NPM, which draws mostly on economics and private sector management principles.

The emergence of the governance perspective is also linked with the changing nature of problems to which societies need to respond and the failure of traditional means to resolve these problems. These problems are ‘difficult to identify and solve as they have multiple causes interacting in complex ways that are not well understood’ (Australian Government, 2009b). Such societal problems are sometimes referred to as ‘wicked problems’ and are characterised as cutting across service lines, and sectoral or organisational boundaries (Bovaird and Löffler, 2009:20). Therefore, quality of service improvements across one service line does not easily translate into a quality of life improvement, which in turn requires the cooperation of different agencies and multi-stakeholder networks. Such a networked environment of agencies working together, changes the way traditional government organisations operate and emphasises the need for agreed ‘rules of the game’, and trust and joint approaches to problem solving. Principles of transparency, integrity, honesty, fairness and respect for diversity acquire renewed importance in the interactions of various stakeholders of networks (Bovaird and Löffler, 2009:20).

An example of such changes is clearly reflected in recent government publications. The Australian government, for example, recognises that accountability arrangements are based on ‘hierarchical modes of decision-making and sequential approaches to problem solving, and they require single points of accountability’, and were not effective in addressing problems, such as climate change, water scarcity, the welfare of indigenous people, and lifestyle related diseases. It recognises, however, that accountability gaps may arise from the mismatch between the current framework of accountability and new modes of policy implementation (Australian Government, 2009b:1).

Thus, from an accountability perspective, it is no longer enough to follow rules and regulations and to increase efficiency in order to demonstrate accountability, though these are still required. The governance perspective recognises that if policy solutions are not adequate, following rules would not be sufficient in itself to achieve results and

to make an impact on the lives of its citizens. Public servants are required to explicitly participate in developing innovative policy ideas and their implementation. Work methods developed under the dominance of a hierarchy need to be replaced by those which fit the operation of networks (Poulsen, 2009). Terms, such as *building trust*, *trust based* and *mutual trust* have become key words (Behn, 2001; Radin, 2006; Meier and O'Toole, 2006; Osborne, 2006).

In summary, it can be concluded that throughout the history of public administration, the notion of public sector accountability has been changing its emphasis by reflecting the dominant assumptions which underlie the role of the public sector. The emphasis of accountability has changed, from inputs and process to a management environment of outputs and results, and then, to a market environment of competitive elements, including contestability, choice, outsourcing and contracts. The nature of accountability mechanisms has also shifted from the ministerial responsibility and bureaucratic hierarchy to new modes of external scrutiny, such as the introduction of administrative law, accountability management, market accountability, performance accountability, and shared accountability within governance and collaborative contexts (Bouckaert and Halligan, 2008).

2.2.4. Two models of administrative tradition

While public administration paradigms or perspectives mentioned in the preceding three sections show general trends, the experience of individual countries differ. One of the distinctions which affect reform paths is the type of administrative cultures and traditions.

Administrative traditions can be divided into two types, essentially Weberian and public management, each with its own dynamics of development (Bouckaert and Halligan, 2008). The Weberian model is also referred to as *Rechtsstaat* model and the public management model is described as Anglo-Saxon or a 'public interest' model of public administration (Pierre, 1995).

In the *Rechtsstaat* model, the State plays an important role in society, and its main concern is preparation, promulgation and enforcement of laws. The system has a

separate administrative law. Under this model, bureaucracy gives importance to rule-following, precedent, and correctness in legal terms. Public service is a special type of service, and legal education is a pre-requisite and a core competence for public servants. In continental Europe, especially in Germany, due to the importance attached to the legal framework, a senior official normally cannot be appointed without a formal law degree (Shafritz and Russell, 1997).

For ‘public interest’ model countries, the word ‘State’ is rarely used. The government should not have more power than it necessarily needs and should be kept under constant control. Law is not as important as it is in *Rechtsstaat* model countries. Public service is no different from any other employment (Pollitt and Bouckaert, 2004).

Despite some commonalities with Anglo-Saxon managerial reforms, administrative reforms of France, Germany and Italy, for example, were undertaken within their legalistic framework of administration (Kickert, 2005). Overall, management reform in *Rechtsstaat* model countries has been slower than reforms in ‘public interest’ model countries. This slowness is attributed to the need to change the law first in order to make any management change and to the legal rather than managerial background of most public servants in these countries (Pollitt and Bouckaert, 2004). Administrative law principles are considered, as opposed to managerial principles of effectiveness and efficiency, constituting tension between the legalistic and managerial approaches.

The difference between the two traditions is not just about a set of rules of law in regard to contracts, corporations, and crimes, rather there is

a set of deeply rooted, historically conditioned attitudes about the nature of law, about the role of law in the society and the polity, about the proper organization and operation of a legal system, and about the way law is or should be made, applied, studied, perfected, and taught (Merryman and Pérez-Perdomon, 2007:2).

Thus, it is not so much the difference in legal systems which matters; rather it is the underlying legal traditions affecting the way the public sector works. The difference in

legal traditions creates an important contextual difference, which need to be taken into account in designing and implementing administrative reforms. Hence, it is noted that public sector reforms in *Rechtsstaat* countries would take a slightly different path than ‘public interest’ model countries (Pollitt and Bouckaert, 2004). Yet, there is limited information on how they differ and any implications thereof for public sector accountability. The exception is the, New-Weberian model, which is depicted as having the following characteristics:

- ‘New-Weberian state remains essentially a State of Law (*Rechtsstaat*), though civil servants are no longer just bureaucrats and experts in law but have become managers;
- Citizens still have defined rights and duties, but the customer role becomes part of the citizen role;
- Public law, which includes administrative law, is still the main instrument for the functioning of the *Rechtsstaat* and citizen-state relations. But private law becomes more and more a complementary instrument for public matters;
- Public organisations are still guided by internal focus, equality before law, and due process and procedure, but they also undertake more customer-tailored measures and focus on results;
- A major *ex ante* concern with process and procedure to guarantee the legality of decisions is amended with an *ex post* concern with results, becomes also part of the procedure to guarantee economy, efficiency and effectiveness. Therefore, legitimacy is not just based on legality but also on the economy, efficiency and effectiveness of the state and its policies’ (Bouckaert and Halligan, 2008:42).

With its civil law system, the tradition to respect the State and its recent socialist past which also had emphasised the role of the State, Mongolia belongs more in the group of countries with *Rechtsstaat* model. This may affect the way core management reform concepts and strategies are interpreted and translated into national administrative system. This is an area where further research is required, given the majority of public sector reforms focus on English speaking countries, such as the United States of America, the United Kingdom, Canada, Australia and New Zealand, the relatively recent development of comparative evaluation of public sector managerial reforms and

accountability implications (Yesilkagit and deVries, 2004), and methodological difficulties of comparative public administration (Kravchuk, 2008).

2.3. Current public sector accountability challenges

The objective of this section is to review the accountability challenges that the developed and developing countries are now facing, in order to reveal similarities, differences, and implications for a study of public sector accountability in Mongolia.

2.3.1. Developed countries

The public sector in western democracies faces four main accountability challenges. *Firstly*, as a reaction to far-reaching changes in the public sector, accountability is being re-defined or re-conceptualised (Barberis, 1998; Mulgan, 2000b; MacGarvey, 2001; Behn, 2001; Dubnick, 2006; Moore, 2006; Bovens, 2005, 2008; Philp, 2008; Hanberger, 2009). As Barberis indicated, disparities between the doctrine and the reality of accountability have become ‘greater in magnitude and more brutally exposed than in the past’ (1998:453).

Secondly, the interaction of political and managerial forms of accountability (Meier and O’Toole, 2006; Mattei, 2007:371) remain at the centre of attention, especially in the Westminster parliamentary systems where the concept of ministerial responsibility is well developed. Ministers are presumed to be accountable to the parliament for the acts of their departments, and when managers become more responsible for results, the question arises whether this reduces the political accountability of ministers. It is possible that any diminutions in political accountability might be made up by greater managerial accountability (Hughes, 2003).

Thirdly, new mechanisms and arrangements of accountability need to be introduced reflecting the dynamic changes and rising public expectations, and their effectiveness, adequacy, interaction with other forms. Positive contributions or negative consequences to the overall status of accountability present a challenge and require deeper understanding and evaluation. This group of accountability challenges is reflected in various empirical studies. Specific mechanisms and arrangements of accountability in question include constraints of commercial-in-confidence provisions in contracting-out

(Barton, 2006; Cameron, 2004; Mulgan, 2006), effectiveness of performance reporting (Cunningham and Harris, 2005; Christensen and Skærbæk, 2007; Ryan and Walsh, 2004), public disclosure and comments mechanisms (West, 2004), and tensions between new forms of accountability with more traditional forms (Poulsen, 2009).

Fourthly, there is an increasing concern over excessive accountability requirements rather than a deficit of accountability (Mulgan, 2006; Bovens, 2007; Radin, 2006; Dubnick, 2007). Because some neglect in government can rapidly spread and have a corrosive effect, a government has to be ‘bureaucratic’ with its attendant costs (Shafritz and Russell, 1997). However, as new types or mechanisms of accountability are continually introduced, whilst old ones are still kept (Halligan, 2007), accountability requirements may become excessive. One area where the impact of government accountability requirements can be seen and evaluated is in not-for-profit organisations who deliver a service to the public under a contract with the government.

2.3.2. Developing and transition countries

While the mainstream concepts of accountability are generally applicable to the public sector in all democratic countries, the context of implementing these concepts is significantly different between established democracies and developing countries with recent democratic experience, including Mongolia. Due to contextual differences, developing and transition countries encounter experience more barriers to building and maintaining their accountability systems.

In Huntington’s term (1991), former socialist countries including Mongolia, belong to ‘third wave’ of democratisation, and are undertaking ‘a triple transformation of their party systems, constitutional structures, and economic systems’ (LeDuc, Niemi and Norris, 1996:1). Moreover, they are attempting to do in a few decades what took hundreds of years in the now developed world (Schmitter, 2004). Unlike the reforms in western nations which are based on their own societal conditions, the formations of administrative systems in developing countries have often been imitated or borrowed. Hence, the reform concepts and theories were often used as formal, official goals while actual practices deviated due to socio-political contexts and local vested interests, leading to a formal-actual or theory-practice gaps (Haque, 2007).

The public sector in developing countries can be characterised as following the traditional, bureaucratic model of public administration (Hughes, 2003). Western models of bureaucracy and administration often have assumptions that do not fit with developing nations and their peculiarities (Farazmand, 2001). Thus, the Weberian bureaucracy that was effective for industrializing countries a hundred years ago is not effective for modern developing countries. Political institutions are underdeveloped and the separation of politics and administration is no longer adequate for them. As the rule of law is itself weak, it is difficult to implement Weber's model of rational-legal authority (Hughes, 2003).

Given the ineffectiveness of the traditional Weberian bureaucratic system, many developing countries adopted some form of the NPM and implemented it to varying degrees, despite cautions from academics. Unfortunately, the NPM reforms did not bring the expected results and were even found to be counter-productive for some areas. The NPM reforms were unable to address issues such as corruption and the lack of checks and balances (Drüke, 2007). Some attempts by international financial institutions such as the International Monetary Fund (IMF) to attach policy conditions to the disbursement of loans to developing countries compromised democratic practices (Brown, 2009) and left accountability gaps.

Hence, accountability challenges that developing and transition countries face are both administrative and political. Kamal (2000:6) pointed out that a major problem with the public sector in Bangladesh was not only lack of accountability, but also the nature of accountability. The chain of accountability is weak. Government agencies are subject to weak accountability controls from either the legislature, legal institutions or the market, and neither are they subject to any performance standards. For the Czech Republic, the accountability issues are numerous and include issues such as the uncontrolled links between politics and business, the tensions between politics and the media, the power monopoly of the two most influential political parties, the non-transparency of privatisation, the lagging public administration reforms, the corruption in public administration and the inefficient enactment of law (Konopásek, 2002).

Despite the similarity in the nature of accountability challenges, developing and transition countries are struggling to develop accountability systems that fit their local contexts and which respond to the specific accountability issues they face.

2.4. Summary and limitations of previous studies

The review of literature on accountability revealed much which needs to be taken into account in developing research questions as well as designing and conducting a study of public sector accountability in Mongolia.

Accountability is a multi-dimensional, contextual and changing concept, and the framework within which to study it needs to correspond to the nature of accountability problems. It may be insufficient to focus on only one dimension of accountability. Because of this contextual nature, accountability is conceptualised through a diverse range of frameworks, each of which may be equally valid. Different forms of accountability may be conflicting or complementary. Accountability of public organisations to the public is the ultimate criterion, however, different means can be used to achieve it. Accountability as a state of affairs can be enhanced through formal and informal mechanisms and arrangements, which are complementary and equally important. Accountability can be discussed at various levels, including global, national, sectoral, organisational and individual levels, so the most relevant level for the research problem needs to be selected.

While accountability is not a new notion for Mongolia, accountability, as understood and exercised in democratic countries, is new. Party-state under the socialist regime may have been highly responsible but insufficiently accountable to its people. The accountability of the public sector in Mongolia needs to take into account the international experience and the current governance perspective, though its historical-institutional context including its Rechtsstaat tradition should not be ignored.

The literature review also found limitations in the current literature with regard to the accountability problems in Mongolia.

Accountability studies concerning the public sector come from at least two sources: those conducted under a political science discipline and those that are more relevant to public administration and management. Unlike stable democracies, both of these areas need to be considered for Mongolia, as the impact of its political and legal systems is high for public sector accountability. Although the context of developing and transition countries is closer to Mongolia and may provide useful comparisons with Mongolia, such studies are few.

International benchmarking studies and indicators, including those on accountability, by definition, do not explain causes of weak accountability in the country.

This study of public sector accountability of Mongolia is not a comparative research project as such. However, it is through comparison that one gains understanding (Riggs, 2001).

2.5. Research problem, aim, question, hypothesis, and conceptual framework

This thesis attempts to address a research problem as to why weak accountability prevails in the Mongolian public sector despite the fact that Mongolia has earned a reputation over the past two decades of making a successful transition to democracy (Landman *et al*, 2005). It is argued that accountability is one of the most challenging issues important to the further consolidation of democracy.

This research aims, (i) to understand and analyse the existing accountability system of the public sector of Mongolia through developing an accountability framework, (ii) to inform some practical efforts to improve accountability, and (iii) to contribute to a knowledge base which focuses on accountability and more generally, public sector governance issues of Mongolia.

Taking into account the research problem and aims, a specific research question of ‘Why is the public sector accountability system weak in Mongolia?’ was developed in order to keep the research process focused. Given the relative scarcity of literature

concerning the Mongolian context, it is necessary to understand the factors affecting the problem. The sub-questions are:

What is the appropriate analytical framework for addressing public sector accountability in Mongolia? In other words, what types of accountability need to be considered as a framework of analysis?

What are the purpose and emphasis of types of accountability within this framework and how effective are mechanisms for ensuring accountability?

What is the dominant form of accountability in the public sector of Mongolia?

As seen from the literature review, the main research question can be answered from various perspectives. Hence, a research hypothesis or proposition was developed to narrow down the research question and to clarify the perspective taken. Stating a research proposition provides direction and guidance on where to look for evidence (Yin, 2009). It is assumed in this thesis that, (i) public sector accountability is a state of affairs or a function of formal and informal accountability mechanisms, arrangements and means, and (ii) absent and ineffective formal mechanisms of accountability are major causes of weak public sector accountability in Mongolia. The thesis is limited to identifying and discussing formal mechanisms of accountability only.

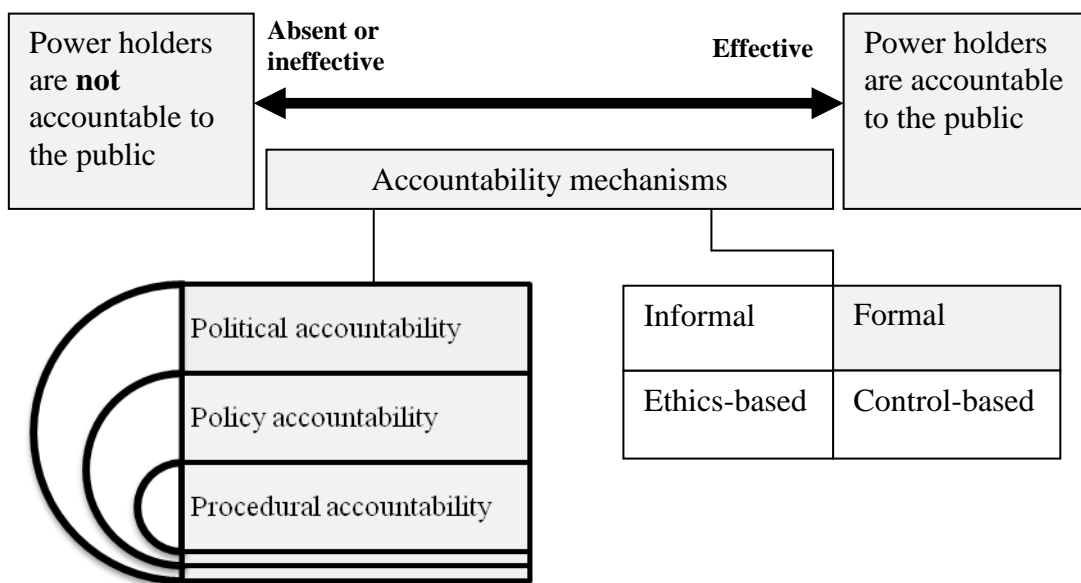
However, formal mechanisms of accountability are of different kinds and operate in different areas. Although accountability is a matter of great concern in Mongolia, many ambiguities surround this concept. Unless these ambiguities are recognized, potential perspectives or frameworks are devised and unless accountability issues are identified and discussed under such perspectives, it is difficult to come up with any findings which may assist in improving public sector accountability in Mongolia.

Hence, two broad tasks were completed during the research process. The first task aimed at constructing a conceptual framework which could accommodate the main sources of accountability mechanisms. This task was mainly based on literature and document review, but also drew on primary data collected and analysed during the research process. The second task aimed at exploring each area of the conceptual framework in an attempt to find explanations for the nature of accountability. The two

tasks were undertaken simultaneously in the research process, without a clear cut sequence. Building a conceptual framework continued throughout the research process.

The definition of accountability used in this thesis and the focus on formal accountability mechanisms are based on the understanding of accountability as principal-agent relationships.

Figure 2.1. Conceptual Framework



Summary of the Chapter

Defining accountability is not straightforward. The definitions most relevant to the objective of this thesis are the ones of public accountability which emphasise accountability of powerholders to people. In addition, the definitions selected assume a relationship of two parties: accountability holder and holdee, and contain three elements: information sharing, explanations or justification, and consequences of enforcement.

Definitions however, do not say much about how to achieve accountability. Hence, accountability is operationalised as a result of various mechanisms which assist relationships between two parties.

There are two main approaches to conceptualising accountability. One is based on the nature of accountability mechanisms and distinguishes between formal and informal mechanisms. The other conceptualisation relies on the nature of various areas where the concept of accountability is applied. While acknowledging the continuum of formal and informal mechanisms of accountability, the thesis focuses on formal mechanisms only.

The changing emphasis of public sector accountability throughout the history of public sector development, contextual difference of administrative tradition between civil law and common law countries as well as different accountability challenges faced by developed and developing countries, provide a background which will assist analysis and discussion of the research findings. The next chapter will describe the research methodology.

CHAPTER 3. Methodology

The previous chapter concluded with a statement of the research problem, aims, and the research questions. Chapter 3 describes the methodological approach of the thesis, including justification of a qualitative case study method with a means of ensuring quality, including a data collection process and ethical considerations. This chapter also presents a background to two case organisations.

3.1. Philosophical foundations

Any research is based on a particular worldview, implicitly or explicitly. This basic belief system or worldview guiding the investigation is called a paradigm (Guba and Lincoln, 1994). There are several paradigms with which researchers associate themselves, including positivism, post-positivism, critical theories, constructivism and participatory paradigms. Paradigms differ on ontological, epistemological and methodological grounds.

Ontology asks what reality is, and what existence is, while epistemology is concerned with what we can know and how we know what we know. Methodology deals with questions of means of knowing (Riccucci, 2008). Thus, positivists assume “real” reality, which is apprehensible, and postpositivists consent to “real” reality, but treat it as imperfectly apprehensible. For critical theorists, reality is shaped by social, political, cultural, economic, ethnic, and gender values, while for constructivists, local and specific realities are co-constructed. A participatory paradigm recognises co-created subjective and objective realities (Guba and Lincoln, 2005). Epistemological and methodological questions are closely linked to ontological considerations, the means of knowing what we know follows what we think what reality is (Riccucci, 2008).

These differences of paradigms are also reflected in the differentiation of quantitative and qualitative research. Positivism and post-positivism are associated more with quantitative studies while critical theories, constructivism and participatory paradigms are associated more with qualitative research. Qualitative methodology is of specific relevance to the study of social relations and was developed as a response to the

limitations of the quantitative methodology, being more suited to the natural than to the social sciences (Flick, 2006).

Table 3.1. Five Ways Qualitative Research Differs from Quantitative Research

Philosophical Foundations	Qualitative research designs	Quantitative research designs
ONTOLOGY (Perceptions of reality)	Researchers assume that multiple, subjectively derived realities can coexist.	Researchers assume that a single, objective world exists.
EPISTEMOLOGY (Roles for the Researchers)	Researchers commonly assume that they must interact with their studied phenomena.	Researchers assume that they are independent from the variables under study.
AXIOLOGY (Researcher's values)	Researchers overtly act in a value-laden and biased fashion.	Researchers overtly act in a value-free and unbiased manner.
RHETORIC (Language Styles)	Researchers often use personalized, informal, and context-laden language	Researchers most often use impersonal, formal, and rule-based text.
METHODOLOGY (Approaches to Research)	Researchers tend to apply induction, multivariate, and multi process interactions, following context-laden methods.	Researchers tend to apply deduction, limited cause-and-effect relationships, with context-free methods.

Source: Creswell, 1994

The phenomenon under examination for this thesis is accountability of the public sector. As with many studies of social relations, the qualitative methodology will be used for this research. Ontologically, the issue of public sector accountability cannot be assumed as existing objectively. Accountability itself is a socially constructed notion (Jordan and van Tuijl, 2006). The multiple, contextual, and changing nature of accountability, and the lack of 'one size fits all' standards and mechanisms do not allow any perception of single, objective, and true reality.

Epistemologically, the lack of pre-defined constructs makes it impossible to use numerical measurements and statistical analysis. The acknowledgment of multiple realities makes it difficult for this researcher to distance herself from participants, as the researcher is dependent on the interaction with them to understand accountability relations and their context. Given these conditions, this research is closer to a

constructivist paradigm, which is characterised by relativist ontology (there are multiple realities), a subjective epistemology (knower and respondent co-create understandings), and a naturalistic (in the naturalist world) set of methodological procedures (Denzin and Lincoln, 2008).

While the process of clarifying the basic belief system or paradigm informs research design and strategies, Guba and Lincoln (2005:192) pointed out that “various paradigms are beginning to ‘interbreed’ and conflicts thought to be irreconcilable may now appear to be ‘informing one another’s arguments’”. Bryman (1988), noted that there was greater compatibility between the approaches in practice than it would appear in theoretical underpinnings. In addition, research strategies are multi-faceted and can be applied in many different ways (Cavaye, 1996).

3.2. Research methodology

Flyvbjerg (2006) underlined that the choice of method should depend on the nature of the research problem and its circumstances. He also stated that from both an understanding-oriented and an action-oriented perspective, clarifying the deeper causes behind a given problem was more important than describing symptoms or counting the frequency.

The same logic was applied when deciding which methodology to use in investigating public sector accountability in Mongolia. Understanding and clarifying potential causes of weak accountability in Mongolia was considered more important than degree, prevalence, or ranking. Hence, the first decision in the process of developing the research design was to use a qualitative method. As little is known of this weak accountability phenomenon in the Mongolian context, quantitative methods would have been difficult to use.

Of the various qualitative methods, case study was selected as a more suitable way in answering the research question. As compared with natural sciences, such as astronomy or biology, social science research settings are more complicated in that ‘the social group or human being, may react to inquiries in unpredictable ways’ (Miller, 2008:16). Given this limitation, concrete and context dependent knowledge may be more valuable

than the search for universal predictive theories (Flyvbjerg, 2006). Case study is well suited for producing such concrete and context-dependent knowledge (Flyvbjerg, 2006) which is more relevant to the objectives of this research.

Details of the case study method used are described in the next section.

3.2.1. Phenomenon and case

Case study design is one of the most common forms of research design in management research (Tharenou, Donohue and Cooper, 2007), comparative public administration (Kravchuk, 2008), and political science (McNabb, 2004).

Yin (2009:18) defined case study as ‘an empiric inquiry that investigates a contemporary phenomenon in depth and within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident’. Stake (1995) defined case study as the study of a ‘bounded system’, with the focus of being either the case or an issue that is illustrated by the case. The ‘case’ is the ‘object’ of study, and might be an event, a process, a program or several people. This ‘case’ is often bounded by time and place. It has interrelated parts that form a whole.

These two definitions are ambiguous regarding the question of whether the phenomenon under investigation and the case (or cases) selected for investigating this phenomenon are the same, though Stake (1995) made it clear that the focus can be either the case or an issue that is illustrated by the case. When the issue or phenomenon is the focus of the study, the case study is called *instrumental*, because the case is instrumental in understanding something else. In such studies, the case provides an insight into an issue but the case itself is not of a special interest. An instrumental case is often used in exploratory research designs. On the contrary, when the case itself is the focus of the study, *intrinsic* case study design is used. The case is studied not because it can illustrate some specific problem, rather because the case itself is of particular interest (Stake, 1995).

The importance of making such distinction is that it influences the selection of methods, as

the more the intrinsic interest in the case, the more we will restrain our curiosities and special interests, and the more we will try to discern and pursue issues critical to [the case] (Stake, 1995:4).

Public sector accountability in Mongolia is the focus of the interest for this research. As shown below in **Figure 3.1**, the thesis has two case studies: one at the national level and the other at the organisational level. The case study of Mongolia or the one at the national level is an intrinsic case whereas the organisational level case study is an instrumental case study.

Gerring (2004:342) explained the differentiation between phenomenon and case, in slightly different ways. He used a term ‘unit’ to refer to phenomenon, and defined case study as an ‘intensive study of a single unit for the purpose of understanding a larger class of (similar units)’. For him, ‘unit’ refers to a spatially and temporally bounded phenomenon, such as revolution, political party or election, whereas ‘case’ refers to the unit observed by a particular dimension or at a particular point in time. Understanding phenomena requires looking at the context widely, including their temporal, spatial, historical, political, economic, cultural, social, and personal, since the phenomena are intricately related through many coincidental actions (Stake, 1995). Studies of the public sector have been particularly conscious of context related constraints in attaining organisational goals (Jreisat, 1997, 2001). The system of accountability in Mongolia is the phenomenon under investigation and it is the unit in the terms proposed by Gerring (2004).

The main unit of analysis (‘unit’ is used here in the more common usage) corresponds to the same level as the main research questions (Yin, 2009). Public sector accountability in Mongolia is also the main unit of analysis. Hence, this is a single case study, treating the current situation of public sector accountability as unique. In qualitative studies, as Stake (1995) put it, uniqueness is not necessarily established through the comparison of variables, but also when people relevant to the case see it as unprecedented, important, and unique.

However, there may be different units of analysis within a single case study (Gray, 2009). The primary unit can be broken down into sub-units. These sub-units or sub-phenomena are political accountability (accountability of the legislature and the executive to public), policy accountability, and procedural accountability. Accountability of the legislature and the executive operate inherently at the national (macro) level; hence it is both sub-phenomenon (subunit) and the case at the same time under this research, and no selection of cases is needed. In contrast, policy accountability and procedural accountability are discussed at the sectoral and the organisational levels. There are several sectors and many public organisations which may constitute potential cases of these sub-phenomena. Hence, it is possible to select single or multiple cases, depending on the purpose of analysis and research questions.

Thus, unlike the macro level case which was considered as unique case, sectoral and organisational level cases were selected on different grounds. Yin (2009:47-8) provided potential rationales for using single and multiple cases and according to him, single case study is justified when a case: ‘represents a critical case in testing previously developed theory; represents an extreme or unique case; is a typical or representative case among many other cases; is revelatory or when a situation provides the investigator an opportunity to study previously inaccessible case; and is longitudinal, and studied at two or more different points in time’.

Public sector organisations in Mongolia can be divided into (i) ministries, (ii) agencies (implementing and regulating), (iii) service delivery organisations, owned and funded by the government, such as hospitals, schools and kindergartens, and (iv) State-owned enterprises. There are other organisations such as the National Human Rights Commission of Mongolia (NHRCM) and the National Audit Office (NAO) which report to the Parliament of Mongolia, and are outside the mandate of the executive government.

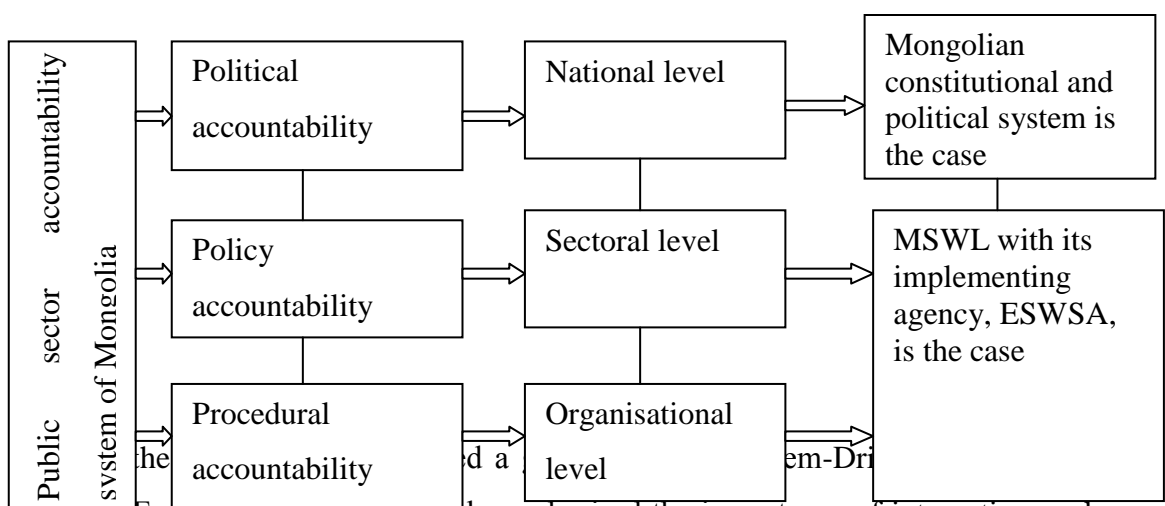
A ministry was chosen as the case under the sub-unit of accountability for policy and organisational governance. Ministry is the highest level public organisation which coordinates all the other organisations located within the hierarchy of organisations. The Government of Mongolia currently has 11 ministries. While ministries work in different

policy areas, being central government organisations, they possess the same legal status (Law on the Legal Status of Ministry) and are subject to the same regulations, including those concerning their organisational structures and powers. Therefore, selecting one Ministry was considered as sufficient, as any particular Ministry can be seen as representative or typical. Such a choice also took into account that case studies are always a trade off between the number of cases and thick description (Yin, 2009).

Since the assumption is that all ministries are equal candidates for studying accountability of the public sector, random selection would have been sufficient. However, since all ministries are assumed to be equal candidates, the following practical considerations were taken into account in making a selection from amongst the Ministries: a sectoral ministry which has a service delivery mandate, such as health, education, police or social welfare rather than those with central coordinating mandate, such as Ministry of Finance; a ministry which has agency(ies) reporting to it; and degree of perceived ease of access to the organisation.

Upon consideration of the above factors, the Ministry of Social Welfare and Labour (MSWL) was selected with its implementing agency – Employment and Social Welfare Service Agency (ESWSA) as an embedded case.

Figure 3.1. Phenomenon and Case



Political Economy Analysis, which emphasised the importance of integrating analyses at three levels; being country, sectoral, and project levels. The guideline urges that

analysis at any level should incorporate comparative thinking, even if the main interest is in one country or sector at a time (World Bank, 2009a).

3.2.2. Exploratory and explanatory case study

According to the purpose, research studies can be descriptive, exploratory, explanatory (Robson, 2003), or interpretive (Maxwell, 1996). Depending on the extent to which the phenomenon under investigation has been researched, one or more of these approaches can be used. When a research area is relatively new or unexplored, descriptive studies may be adequate (Punch, 2000 in Gray, 2009). Descriptive studies provide a picture of a situation, event, or phenomenon, and describe how things occur but do not explain why they occur. When there is sufficient descriptive information, a more exploratory approach is advised. Exploratory studies explore what is happening and seek to ask questions about phenomenon.

Literature reviews, talking to experts, and focus group interviews, are used in exploratory studies and assist in establishing main constructs and focus of a study. Once main constructs are established, it is possible to use explanatory or interpretive approaches. Explanatory studies seek to provide answers to descriptive information available, asking ‘why’ and ‘how’ questions. An interpretive approach relies on people’s experiences and their views about these experiences (Gray, 2009).

Given the availability of research studies and information on public sector accountability internationally, accountability cannot be considered as a ‘new’ or ‘unexplored’ phenomenon. However, the same cannot be said about public sector accountability in the Mongolian context. Main constructs developed internationally may not be well suited for Mongolian conditions. Hence, a combination of exploratory and explanatory approaches was applied.

3.2.3. Meeting quality criteria in case study research

Demonstrating quality in qualitative studies is not straightforward. There are no universally agreed criteria for assessing goodness of qualitative research (Gabrielian, Yang and Spice, 2008; Creswell, 2007:203; Yin, 2009; Flick, 2006). Perspectives proposed for quality assurance of qualitative studies are summarised in Table 3.2. Some

suggest developing guidelines for using existing quality criteria of quantitative studies, such as internal and external validity, reliability, and objectivity. Others propose amending and modifying existing criteria for qualitative research purposes or developing completely new criteria (Gabrielian *et al.* 2008). Creswell (2007) pointed out a range and diversity of perspectives and terms used in ensuring quality of qualitative studies.

Given the lack of standard practice of using quality indicators and the extent to which different terms refer to quality features which are similar in essence (Flick, 2006; Robson, 2003; Miles and Huberman, 1994; Maxwell, 2006; Gray, 2009), Yin's (2009) approach was used to guide the quality assurance process. It uses four traditional concepts, namely, *construct validity*, *internal validity*, *external validity* and *reliability* as quality criteria.

Construct validity. Meeting *construct validity* means identifying the correct operational measures for the concepts being studied, and it is not easy to do so (Yin, 2009). Satisfying the construct validity requires two steps such as defining the phenomenon under investigation using specific concepts and linking them to the original purpose of the study; and then, developing operational measures that match these concepts (Yin, 2009).

Table 3.2 Various Perspectives Proposed for Quality Assurance of Qualitative Studies

Study	Perspective	Terms
LeCompte & Goetz (1982)	Use of parallel, qualitative equivalents to their quantitative counterparts in experimental and survey research	Internal validity External validity Reliability Objectivity
Lincoln & Guba (1985)	Use of alternative terms that apply more to naturalistic axioms	Credibility Transferability Dependability Confirmability
Eisner (1991)	Use of alternative terms that provide reasonable standards for judging the credibility of qualitative research	Structural corroboration Consensual validation Referential adequacy Ironic validity
Lather (1993)	Use of reconceptualised validity in four types	Paralogic validity Thizomatic validity Situated/embedded validity Voluptuous validity
Wolcott (1994b)	Use of terms other than 'validity', because it neither guides nor informs qualitative research	Understanding better than validity
Angen (2000)	Use of validation within the context of interpretive inquiry	Two types - ethical and substantive
Whittemore, Chase & Mandle (2001)	Use of synthesized perspectives of validity, organized into primary criteria and secondary criteria	Primary criteria: Credibility, authenticity, criticality, and integrity Secondary criteria: Explicitness, vividness, creativity, thoroughness, congruence, and sensitivity
Richardson & St. Pierre (2005)	Use of a metaphorical, reconceptualised form of validity as a crystal	Crystals: grow, change, alter, reflect externalities, refract within themselves
Source: Creswell, 2007:203		

The current literature uses various definitions and measures when investigating accountability. World Bank Governance Matters Indicators uses six indicators for assessing governance of countries, one of which is *voice and accountability*. ‘Voice and accountability’ under this indicator measures

perceptions of the extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, freedom of association, and a free media (Kaufmann, Kraay and Mastruzzi, (2010:4).

The Global Accountability Report, prepared by One World Trust, measures the degree of accountability of various organisations, including global private companies and not-for-profit organisations. The report uses four indicators: transparency, participation, evaluation, and complaint and response capabilities. Each report measures accountability through quantification of selected indicators.

Accountability in this research is treated as a qualitative state of affairs or status, resulting from various arrangements and mechanisms in three areas, as explained in the last section of the Literature Review Chapter: (i) political accountability or accountability of the legislature and the executive, (ii) accountability for policy, and (iii) procedural accountability. Mechanisms for enhancing accountability in each of these three areas are identified and analysed.

As suggested by Yin (2009), three tactics were used throughout the research process to improve construct validity. These include *use of multiple sources of evidence, establishing chain of evidence, and having key informants review draft case study report*.

Use of multiple sources of evidence and the triangulation of them, is an advantage offered by the case study method. On the other hand, case study method needs multiple sources of evidence more so than other methods, such as experiments and surveys. Chapter 4 deals with the accountability of the legislature and the executive. For this Chapter, a list of mechanisms commonly used in Western parliamentary democracies

for holding the legislature and the executive accountable was devised from published sources and used for assessing the current mechanisms in Mongolia. Mechanisms being used in some Eastern European transition countries were reviewed as a comparison. Chapters 5 and 6 relied mainly on document reviews and interview data.

Establishing a chain of evidence allows the reader to track the derivation of evidence from research questions to arrive at the final conclusions. During the writing process, a chain of evidence has been made as explicit as possible through logical flow, and with linkages between sections.

During the final stages of the research, the final draft report was reviewed by a participant. The comments received were used in refining the concluding points of the chapters.

Internal validity. Internal validity refers to establishing a correct causal relationship, where the researcher attempts to show whether event x led to outcome y (Yin, 2009). There are two threats to internal validity, firstly, incorrect establishment of causal relationships; secondly, an incorrect inference. These threats can be addressed during the data analysis phase through four tactics, including *pattern matching*, *addressing rival explanations*, *explanation building*, and *using logic models* (Yin, 2009:41).

Pattern matching involves comparing predicted patterns with actual patterns. Addressing rival explanations requires the

development of rival theoretical propositions, articulated in operational terms. The desired characteristic of these rival explanations is that each involves a pattern of independent variables that is mutually exclusive: If one explanation is to be valid, the others cannot be (Yin, 2009:140).

Explanation building involves making an initial proposition, comparing it against the findings and revising the proposition, and then again comparing it against the other details, repeating the process as needed. Logic model technique involves ‘matching

empirically observed events to theoretically predicted events' (Yin, 2009:149) through development of a chain of events showing cause-effect-cause-effect patterns.

Given that this is a single case study, it was not possible to make a direct contrast and comparison between cases to reveal patterns and address rival explanations. Explanation building and a logic model were more feasible. However, during the inductive and deductive process of data analysis, elements of the above techniques were used to refine the proposition. For example, for some countries, the Upper House of Parliament is an important body which holds the Lower House of Parliament accountable. However, there are many democratic countries which do not have an Upper House. Hence, the absence of an Upper House cannot be an adequate explanation for weak accountability of the parliament in Mongolia. Likewise, a presidential system with its separation of powers cannot be proposed as a satisfactory solution for improving accountability of the legislature to public. In terms of accountability for policy, adoption of a policy framework in New Zealand and its transfer to Mongolia led to similar consequences, yet from the perspective of organisational governance, including transparency and compliance, the two countries show a totally different picture.

Flyvbjerg indicates that

(t)he value of the case study will depend on the validity claims that researchers can place on their study and the status these claims obtain in dialogue with other validity claims in the discourse to which the study is a contribution (2006:233).

Internal validity is also called interpretive validity. Means to overcome include 'tracing the route by which you came to your interpretation', 'never taking it as self-evident', 'continually and assiduously charting and justifying the steps' through which interpretations are made (Robson, 2003:171). While the researcher was conscious of these means, it was difficult to make all relevant instances explicit.

External validity. External validity involves defining the domain to which the findings of a study can be generalised. This criterion is also called transferability, as mentioned

above. Case study research relies on an analytic generalisation to broader theory, as opposed to a statistical generalisation to original population. Generalisations in social studies are moderate in two senses, firstly, the scope of the claim is moderate and limited by time or place, and secondly, they are moderately held in the sense of a political or aesthetic view that is open to change. Therefore, generalisations are testable propositions that might be confirmed or refuted later, not axiomatic generalisations (Payne and Williams, 2005).

One approach to generalisation is to provide a good, thick description so that similar situations in which to generalize can be identified (Lincoln and Guba, 1985). Classic case studies have been powerful because of the good description of general phenomena which allowed others to easily see the same phenomena in their own experience and research (Dyer and Wilkins, 1991). The other is to discuss generalization explicitly, not as a natural outcome of the research process (Payne and Williams, 2005).

Being a single case study, the findings of this research can be generalized through adding a Mongolian case to the broader theories of accountability. While the Mongolian case can be more relevant to other developing and transition countries, the extent of contextual differences needs to be taken into account.

Reliability. Reliability testing shows whether the operations of the study, including data collection procedures were followed consistently without errors and biases. Thus, documentation of the procedures is the key. The list of persons met is shown in **Table 3.3**.

Reliability is also called as descriptive validity (Maxwell, 1996). Means to achieve this include audio taping and good quality notes (Robson, 2003). All interviews except four were audio taped and transcribed.

Relevance. Sometimes there is an assumption that quality research means relevant research, but as an applied field, public administration requires explicit attention to relevance (Dodge, Ospina and Foldy, 2005). While discussing the concept of the New Public Management, Hughes (2008) cautioned that public management academics may

alienate themselves from the practical public management community resulting in the biggest problem, which is one of irrelevance.

Relevance links a research and practitioners and refers to the ‘extent to which research addresses the challenges that practitioners face in their work and whether the questions and findings resonate with practitioners’ experience’ (Dodge *et al*, 2005:288).

In order to make the research more relevant, the accountability framework commonly used in developed democratic countries was revised to accommodate local contexts and take into account the nature of accountability challenges which are specific to the Mongolian public sector. A description of accountability challenges in developed and developing countries, as well as in Mongolia was used in developing the framework.

3.2.4. Data collection techniques

Data collection methods affect the research results. The following research techniques or methods of data collection were used in this study:

- Document review (legal acts, government policy and planning documents, organisational internal policies, annual reports, contracts, other relevant documents); and
- Interviews with government officials as well as relevant stakeholders, including the National Audit Office, the State Specialised Inspection Agency, representatives of academia and the civil society (**Table 3.3**).

Document review

Document review was one of the main data collection tools in this study. As the documents were not produced for the purpose of this research study, it is unobtrusive and as such, it is also non-reactive (Robson, 2003; Flick, 2006). The purpose of document review was to detect evidence which would assist in responding to the research questions.

Chapter 4 was based completely on document and literature reviews. For Chapter 5, the Government Action Plan and organisational strategic plans were a key source of information, while for Chapter 6 interview data were the key source.

Access to documents can be closed, restricted, open archival and open published (Scott, 1990 cited in Flick, 2006). Most documents used in this research were open published, as they were public documents produced by government agencies. They were also open in the sense they were not classified as 'confidential'. Most documents were obtained from the websites of the Government agencies. However, it was still difficult to access some documents, due to the lack of record-keeping, unwillingness of some public servants to share, internal organisational nature of documents, and absence of a website. For example, the list of Presidential vetos on legislative acts was not available, as the incumbent Presidential office does not keep a record of activities of the previous President. The only way to retrieve this information was to work in the archive, which requires an official letter of request from the relevant organisations. Budget related documents were generally not available, though still not considered as confidential. The implementing agency of the MSWL did not have its own website.

Interviews

Three basic approaches can be used in conducting an interview: (i) informal conversational interview, (ii) interview under a general guide, and (iii) standardized open-ended interview. Each has strengths and weaknesses, and each can be used for different purposes (Patton, 2002).

Informal conversation interview, also called an unstructured interview occurs in the natural flow of interaction, without fixed questions prepared in advance. The content of the interview will be different for each interview, and the same person may be interviewed on a number of different occasions. Although there are no fixed questions, the overall purpose of the research guides the flow of interviews and keeps them focused. Its strengths are flexibility, spontaneity and responsiveness to individual and situational differences, but it requires more time and opportunity for continued interaction. The *general interview guide* approach uses an outline of a set of issues to be explored with each respondent before interviewing. Such an approach does not require

strict ordering and actual wording. *Standardized open-ended interview* asks essentially the same question from each person. Such an approach increases comparability of responses, reduces interviewee effects and bias but, however, provides little flexibility with particular individuals and circumstances, and may limit ‘naturalness and relevance of questions and answers’ (Patton, 2002:345).

The approach used in this study is the interview guide approach with elements of the informal conversation approach. To some extent it is possible to combine the conversational approach with the interview guide approach, and the interview guide approach with the standardised open-ended approach (Patton, 2002). There were two main reasons for choosing the interview guide approach, firstly, given that the focus of the research is accountability mechanisms, a set of questions had to be prepared in advance, rather than allowing questions to emerge spontaneously. However, asking standardised questions was not feasible, since each interviewee held a different position and in charge of different area; and secondly, from a purely logistics point of view, access to interviewees was limited, as public servants were all very busy and could not spend more than one hour with the researcher.

The general list of guide questions is attached in Annex A.

Interviews were conducted in the Mongolian language and translated into the English language. The researcher is a native Mongolian speaker, which enabled a more natural interview setting. All interviews were conducted individually. A total of 31 persons were interviewed. Each interview lasted from 30 minutes to 90 minutes. All interviews were audio-recorded, except for four in accordance with the wishes of the interviewees. A profile of persons interviewed is shown in Table 3.3.

Table 3.3. Number of Interview Participants by Organisation

	Organisations	Number of participants
Social welfare and labour sectoral organisations		
1	MSWL	9
2	ESWSA	4
3	District ESWSO	1
4	Horoo social worker	2
Oversight organisations		
5	National Audit Office (NAO)	1
6	State Specialized Inspection Agency (SSIA)	1
7	Parliamentary Standing Committee	1
8	IAAC	1
Third parties		
8	NGO	3
9	University	4
10	Independent researchers	4

3.2.5. Data analysis

For qualitative studies, there is no particular moment when data analysis begins (Stake, 1995), although the period after data collection is formally devoted to data analysis. All interviews were first transcribed and themes were marked. Then similar themes were clustered together in an attempt to devise patterns and discover factors explaining the phenomena.

In the data analysis process, the list of data analysis techniques described by Miles and Huberman (1994) was used as general guideline. The techniques found to be more relevant to this research include noting patterns, themes and trends; seeing plausibility; clustering; building a logical chain of evidence; and making conceptual/theoretical coherence.

Data analysis process did not use any software for qualitative data processing, as the amount of texts analysed was considered manageable in *Word* files.

3.3. Ethical considerations

Conducting research ethically is the responsibility of any researcher. In accordance with the procedure adopted by the Monash University in accordance with Australian law, a formal approval was obtained from the Standing Committee on Ethics in Research Involving Humans (SCERH) on 6 October 2008 (project number- CF08/2578 - 2008001312). Mongolia does not have equivalent legislative requirements for research studies of overseas universities.

As part of the SCERH requirements, letters of permission from two Mongolian government organisations were obtained prior to starting the data collection process in Mongolia.

Also as part of the SCERH requirements, a lecturer from the Mongolian National University was approached for support during the data collection period in Mongolia, in order to ensure any immediate ethics related concerns could be handled. The lecturer was available for assistance during the data collection period. This arrangement took into account the fact that data collection was taking place in a cultural context which is different from Australia. Such an arrangement also assisted in making the data collection process consistent with local ethics requirements.

The Explanatory Statement was developed and translated into the Mongolian language. A copy of the Explanatory Statement was given to all respondents. The Participant Consent Form was also translated into Mongolian, handed to respondents for their consent and signature and collected by the researcher. As indicated in the Explanatory Statement, efforts were made to ensure confidentiality of respondents as much as possible, by using codes and not explicitly stating parts of information which might reveal the identity of the respondents.

Voice recording of interviews raised some caution with almost all interviewees and required an explanation of what had been stated in the Explanatory Statement. During four of the interviews a voice recorder was not used as requested by the participants.

Due caution was taken to keep the original voice recordings and transcripts safe and confidential by deleting them from the voice recorder after saving them onto a PC which requires password.

Organisational confidential information was not sought and secondary data relied mainly on publicly available, non-confidential information.

3.4. Background to cases

3.4.1. Background to case 1. Overview of Mongolia

Mongolia is situated in Northern Asia, bordering the Russian Federation to the north and the People's Republic of China to the south. The population of Mongolia is 2.7 million (NSC, 2009). Almost half of the population live in urban areas as a result of recent urbanisation (NSC, 2009). Mongolia is one of the most sparsely populated countries with approximately 1.7 persons per sq.km.

Historical context

While ancestors of modern Mongolians are traced back to 200BCE, Mongolia is known more by Chingis khan, who united the small Mongolian tribes into an empire in 13th century. The Mongolian empire became weakened and fragmented by the 17th century, making it easier for the Manchu to occupy and rule for 200 years. In 1911, Mongolia gained its independence from the Manchu. In 1915, under the pressure of Russia and China, Mongolia was forced to accept a status of autonomy within China. However, in 1919 the Chinese military invaded Mongolia but was defeated in 1921 by Mongolian troops and Russian Red Army.

Mongolia's socialist history began in 1921. This period was characterised by a formal independence with a strong political and economic influence by the Soviet Union. After the Second World War, Mongolia was officially recognised by the international community and as a result of persistent efforts, became a member of the United Nations in 1961.

Mongolian People's Revolutionary Party (MPRP) which adopted communist ideology was the only political party. The public service was what Fainsod (quoted in Heady, 1996:312) classified as 'party-state bureaucracy'². The main feature of 'party-state bureaucracy' is a fusion of state and the party, in all spheres of political, economic and social life of the country.

By definition, there was no private property under socialism. Social and economic development was planned on a five-yearly basis, with corresponding targets, including number of livestock to be grown, number of industrial outputs, number of teachers and doctors to train, and number of schools and hospitals to be built. Employment was also centrally planned and regulated. University graduates did not have to choose or look for a job; they were allocated to organisations according to their profession.

Leadership of public organisations, agricultural cooperatives, state enterprises, educational, science and cultural organisations were selected from among party members, based on criteria which combined the party's ideological commitment, leadership capability, and professional performance. Accordingly, promotion at work was possible only with party membership. Women were encouraged to work, including a leadership position. However, they rarely had the choice to look after children, who were cared for at State child care facilities from as early as a few months of age.

The legal system in the socialist period included the Constitution and four main codes of law, the Civil Code, the Civil Procedure Code, the Criminal Code and the Criminal Procedure Code, which were generally based on Roman or continental law system. The socialist legal developments in Mongolia were closely influenced by the Soviet Union, and law was regarded as a means to an end to build socialism (World Bank, 2000a:13).

² The other types of bureaucracies include (i) representative bureaucracies, (ii) military-dominated bureaucracies, (iii) ruler-dominated bureaucracies, and (iv) ruling bureaucracies.

[illegible]

In 1990, after almost seven decades of development under socialist ideology, with its undeniable progress in areas such as education and health, but, however, with more controversial implications on economic and political independence, Mongolia chose a democratic path of development. Under the influence of democratic movements in Eastern Europe and the Soviet Union, democratic meetings and demonstrations took place in Mongolia in 1989-1990. In December 1989 pro-democracy movements united and established the Mongolian Democratic Union in December 1989. Several political parties were also established, including the Democratic Party.

After numerous demonstrations and hunger strikes, MPRP political leaders decided not to confront democratic forces and therefore stepped down in March 1990. The first election with multiple political parties took place in 1990. The current democratic Constitution was approved in 1992. Thus, Mongolia made a peaceful transition from socialism to democracy and unlike some post-socialist countries there was no single leader to assume power (Fritz, 2008:778).

Political and legal context

The new democratic Constitution 1992 instituted a parliamentary system. The unicameral parliament of Mongolia consists of 76 members, elected through a majority electoral system. Parliamentary elections were held five times (1992, 1996, 2000, 2004 and 2008), resulting in a peaceful succession of governments, except for the parliamentary elections in 2008, where a state of emergency was announced owing to post-election instability. Presidential elections were held also five times (1993, 1997, 2001, 2005, and 2009). The first and the last Presidents were elected from the Democratic Party, the others being MPRP members.

The MPRP was in power in most of the time, and the Democratic coalition was in power by itself only once, from 2000 to 2004. The last two elections resulted in coalition governments. In 2004-2008, no political party received sufficient majority of votes. In 2008, although the MPRP was able to form its own government, a coalition government was formed, due to the 'important stage in the country's development'.

Mongolia is a unitary country. Administratively, it is divided into aimags (provinces)/cities, soums/districts, and bags/horoos. The Aimag Governors are appointed by the Prime Minister, upon the proposal of the Citizens Representatives Hurals (meetings). While all aimags and soums (districts and khorooos in cities) form their own local self-governing body – Citizens’ Representatives Hurals, through local elections, the power of these Hurals vis-a-vis, central government is limited. As a new political institution, local Hurals are in need of substantial institutional strengthening.

By 1992, Mongolia had approximately 60 laws, while by January 2009 there were 460 laws (*Unen*, 3 Jan 2009). In addition to the adoption of laws, the legal system has also undergone major institutional and capacity building changes. Chief Justice and Justices of the Supreme Court and court judges are appointed by the President. A wide range of capacity building activities took place to train judges and lawyers to introduce efficient case management, and to develop the legal profession.

One of the political achievements of Mongolia during this period is the development of a civil society and an independent media. In the early 1990s, civil society was a new concept for Mongolia and was limited to party affiliated mass membership organisations, but over the last two decades, it has become diverse and vibrant, with a growing number of non-government organisations (NGOs), grassroots groups and social movements. The Law on Non-Government Organisations was approved in 1997. While not without its own problems, the media has become an important driver of public sector transparency and accountability. According to Ministry of Justice and Home Affairs, there were 151 media organisations, including 10 TV stations and 69 newspapers in 2008 (MDG9 project, 2009:211).

Economic context

The economy of Mongolia collapsed in the early 1990s as a result of the discontinuation of Soviet aid. The economy has gone through dramatic changes over the past 20 years. Early measures aimed to transform the centrally planned economy into a market economy and consisted of measures such as price liberalisation, privatisation of state owned enterprises, privatisation of livestock and the sale of formerly state owned apartments. Liberalisation of the economy continued with opening up

telecommunications, energy and urban services to private providers including foreign operators, land privatisation and the development of a stock market.

The almost immediate shift toward a market economy, with scant concern for proper training in the rule of law, a solid banking system, appreciation of contracts, government officials' understanding of the need for a strict division between their public responsibilities and their private commercial gains, and strict rules in opposition to nepotism and favoritism, generated considerable profiteering and corruption. A few would profit, but the vast majority of the population would be excluded, for example, from the division of State assets and would lose many State benefits and many of their social welfare guarantees (Rossabi, 2009:237-8).

Currently, the economy of Mongolia remains highly dependent on few export commodities, such as copper, gold, and cashmere, and relies heavily on imports for most manufactured goods. Mongolia is 37th least diversified economy among the 100 developing countries, (World Bank, 2007:48). Since 2003 due to mining sector development, the GDP has grown by 6-10 percent per annum and in 2005 mining accounted for 25 percent of GDP, 71 percent of exports and 13 percent of government revenue (World Bank, 2007:5). The contribution of manufacturing to growth has declined in recent years, though the service sector has grown slightly. An agreement on Oyutolgoi mining, which is considered one of the richest copper and gold resources in the world, was signed in 2009. The Government of Mongolia will acquire 34 percent interest in the project and Ivanhoe Mines will retain 66% interest in Oyu tolgoi. The agreement is expected to substantially improve the economic situation of the country, but there are equally strong views, especially from civil society representatives, of potential 'resource curse', 'rentier state' and negative implications of mining-led economic growth on the nature and environment and the future livelihood of local population. Certain provisions of the contract made between the Government of Mongolia and the Oyutolgoi company, including the percentage of shares to be owned by Mongolian people and the duration of the contract (30 years initially), raised a prolonged debate among public, civil society representatives and MPs.

Because of the dependence on mining exports, the economy is vulnerable to external shocks. The economy suffered a sharp decline from 1999 to 2001 due to the Asian financial crisis and a series of natural disasters. In 2008-2009, the economy also faced another cycle of decline, owing to the global financial crisis. Harsh winter conditions of 2009-2010 resulted in the loss of millions of livestock and increased poverty among herders.

The introduction of a market economy was costly for Mongolians. Approximately one-third of the population has lived in poverty for almost two decades. The economy is unable to create enough jobs for the population which has a high proportion of people under the age of 35 years. In addition to the unemployment, increases in prices and the banking crisis contributed to a further drop in the standards of living.

Since the beginning of the transition, Mongolia has become a recipient of international development assistance, which now totals approximately \$2.5 billion. The US, Japan, Germany, the Asian Development Bank (ADB), the World Bank, and the United Nations system are the largest funding agencies, in addition to a number of bilateral and international non-government organisations.

The following description by Grindle (2000, 180-1) reflects the situation of Mongolia:

In most countries, introducing a market economy also required major institutional innovations, such as the development of an independent central bank and tax agencies, stock markets, and regulatory bodies for privatized industries and financial institutions. In addition, many countries undertook institutional changes to improve legal guarantees for contracts and property rights which are essential underpinnings of capitalist economies. In comparison with policy changes, most of which could be introduced and take effect in the short term, institutional changes required time and ongoing effort to train staff and later the behaviour of economic agents to reflect new rules for economic transactions.

Public sector administrative reforms

Since the 1990s, along with major economic and political reforms, the public sector has also undergone a period of three ongoing administrative reforms. The immediate objectives of administrative reforms were firstly, to replace the party-based public service system with a professional public service, secondly, to create administrative structures in the public sector which reflect market economy conditions and democratic values and dismantle those which served party purposes, and thirdly, to reform administrative processes and procedures according to democratic principles.

Until the early 1990s, most public sector employees were members of the dominant political party being the Mongolian People's Revolutionary Party (MPRP). The Constitution (1992) and the Law on Civil Service (1996) proclaimed the principle of professional, non-partisan civil service. The Law also made a distinction between political, administrative, and service categories of public servants. The amended Law on Civil Service (2002) declared the merit principle and laid down the legal foundation of the merit-based recruitment and promotion procedures. While these legal changes set forth the principles of a professional civil service it proved difficult to implement these laws in practice, and therefore reduce party influence within the public service through party affiliation. Because of politicisation, the reduction in numbers of public servants affiliated with one political party/coalition has been compensated by an increased number of those affiliated with the other party or coalition. Such politicisation was more evident in the aftermath of change in government in 1996 and 2000.

The recent change in the Law on Civil Service (2008) prohibited civil servants from participating in political party and movement activities in any form, and to refrain from political party membership, if already political party members. As a result, many public servants were put into a situation where they had to choose either civil service or party membership. According to the media, 99.8 percent of civil servants chose to stay in the civil service, while 17 persons decided to keep party membership and resign from the civil service, (*Ardchilal*, 14 Jan 2009). Currently, the public service has around 145,000 civil servants, (Civil Service Council, 2009). According to the Law on Civil Service, all civil servants are divided into four categories; political, administrative, service (doctors, nurses, teachers, and welfare workers), and special (defence).

Dismantling the party-based structure also involved separation and de-politicisation of the formerly party-affiliated trade union system and party-based mass organisations, such as associations for women, youth, and elderly people. It took time for the newly re-organised trade unions to adopt policies and approaches which genuinely protect employees' interests. There are still many gaps in legislation which prevents effective trade union movements, (NHRCM, 2006).

Under the objective of creating an administrative structure which reflects a market economy the environment and democratic values, several changes were undertaken. First of all, many new institutions were created. Most notable examples include the establishment of the Civil Service Council (CSC), the National Human Rights Commission of Mongolia (NHRCM), and the General Electoral Commission (GEC). In response to the liberalisation of markets, specialised regulatory and registration bodies were created, such as Telecommunications Regulatory Authority, Energy Regulatory Authority, State General Registration Office (formerly State Immovable Property Registration Office), Unfair Competition and Customer Protection Agency, and Agency for Land Relations, Geodesy and Cartography. Creating regulatory functions within the public sector structure has been a continual process, the latest being the Financial Regulatory Committee (FRC) established in 2006.

In addition to creating new organisations and agencies, the existing institutions and agencies took over new functions or substantially re-oriented their roles. The National Audit Office (NAO) was re-established as an independent audit institution reporting to the Parliament and became a body completely different from the previous party's financial and procedural inspection organisation. The NAO adopted international and regional auditing standards in its operation. Similarly, the National Statistical Committee, the National Customs Office and the General Department of Taxation adopted international standards and accepted practices in their operation in order to adapt to the country's emerging market economy.

The creation of new institutions and the restructuring of existing institutions were accompanied by corresponding changes in administrative processes and procedures.

The creation of strategic planning, monitoring and evaluation functions was part of an attempt to rationalise the internal functioning of ministries and agencies. Enactment of many procedural laws, including those on the development and submission of draft legal acts, accounting, resolution of complaints from citizens, public procurement, and competitive tendering, have gradually attempted to bring administrative processes which respond to a variety of emerging issues, in relations between the State and individuals.

The Public Sector Management and Finance Law (PSMFL), approved by the Parliament of Mongolia in 2002, marked a distinct stage of administrative reform in Mongolia. With the updated Law on Civil Service (2002), the PSMFL provided a legal framework for administrative changes that have taken place since 2003. The PSMFL introduced the notion of performance, a new concept at the time, into the public service. The Civil Service Reform Medium-term Strategy (2004) continued the performance focus of the PSMFL, and defined the objective of the current stage of the reform as

to build and foster a small, capable, and results-oriented civil service that is close to citizens, strives to meet their needs, able to flexibly adapt to changing environment, and with pro-active, leading managers (CSC, 2004:7).

The main reform measures under the PSMFL included the use of an output-based performance agreement, the development of an organisational strategic plan, output delivery reports, the use of accounting practices that meet international accounting principles, and a clear definition of organizational accountability (ministry, agency, aimag, capital city, soum, and district) (CSC, 2004). These reform measures were influenced by the global reform movement, which has spread around the world and reshaped the role of the State and its relationships with citizens (Kettl, 2001).

Since the beginning of the transition, public administrative reform process has involved an enormous amount of re-training and capacity building of public servants. The former Party Institute was transformed into the Academy of Management (AoM), which now trains public servants in public sector management and policy-making. As public

service training previously focused mainly on the study of public law, substantial revision of the curricula was required.

Meantime, despite these administrative reform measures, the reputation of public sector organisations has deteriorated. The public is increasingly dissatisfied with the growing level of corruption, lack of accountability and transparency by government organisations. UNODC has reported:

Corruption, patronage and the inter-mixing of public office and private benefit are becoming embedded at a faster rate than the processes of democratisation, rule of law and the principles of public service (UNODC, 2010:4).

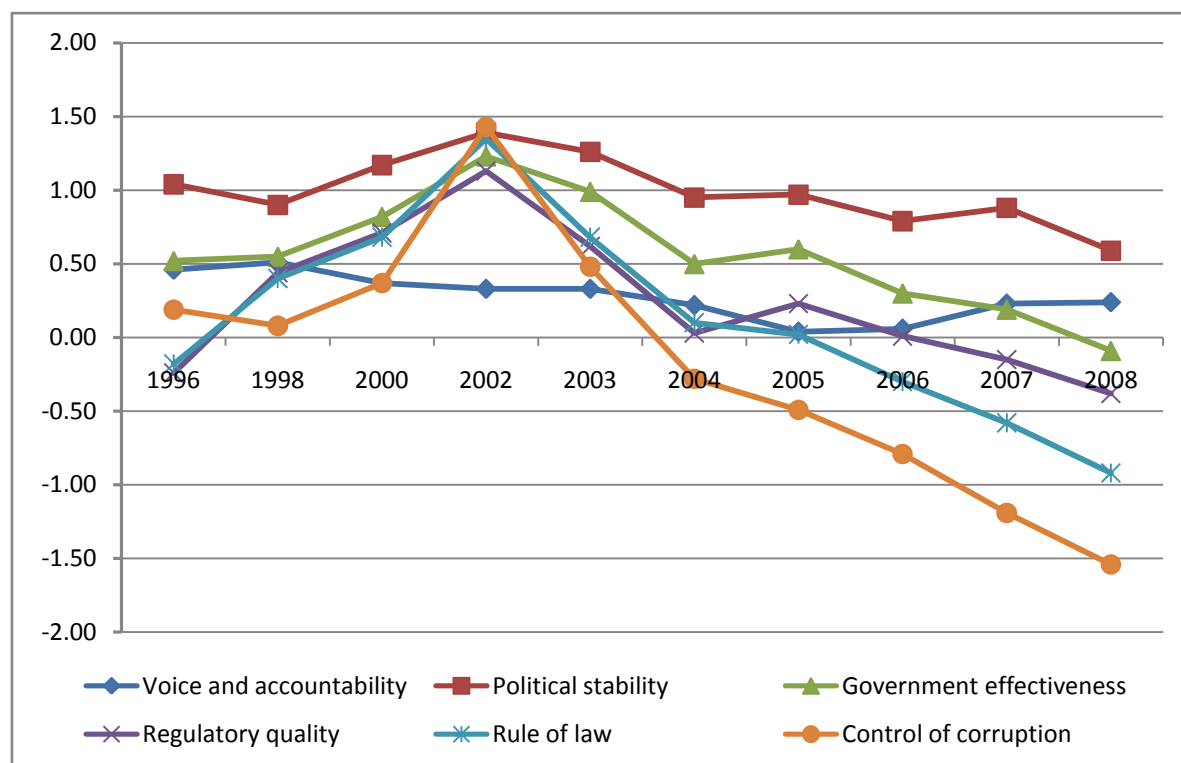
Mongolia's rating on international governance related indexes has shown a declining trend. According to the Transparency International's (TI) Corruption Perception Index, with a score of 3.0 Mongolia ranked 99th out of 179 countries in 2007, together with Algeria, Armenia, Belize, Dominican Republic and Lebanon. Mongolia was ranked 102nd in 2008, 120th in 2009, and 116th in 2010 with a score of 2.7 (TI, 2008; 2009; 2010).

As shown in **Figure 3.2** below, Mongolia also shows a declining trend in the World Bank Governance Index. Of the six indicators used in the World Bank index, the voice and accountability indicator show only a slight improvement for 2008, whereas the remaining indicators still demonstrate further decline.

Public opinion and perception surveys conducted by international and national non-government organisations, such as the USA Asia Foundation (TAF) and the Mongolian Chamber of Trade and Industry, also reveal increasing distrust in government. The Asia Foundation conducts a Corruption Benchmarking Study every half year, and names sectors which are perceived as most corrupt. Thus, between the first survey in 2006 and the last survey conducted in 2009, land agencies consistently led the list as the most corrupt sector. The other sectors frequently included in the list of those most corrupt included customs, mining, license agencies, court and the prosecutor's offices.

Interestingly, in 2009, customs was excluded from the list of the top five most corrupt sectors for the first time (TAF, 2009).

Figure 3.2. Dynamics of Selected Governance Indicators for Mongolia (1996-2008)



Source: adapted from World Bank, 2009c, Governance Matters VIII (1996-2008)

The Government of Mongolia also initiated a corruption perception study. Pursuant to the Anti-Corruption Law, the Independent Authority against Corruption (IAAC) publishes a bi-annual Corruption Index, and based on its results undertakes further in-depth studies in selected sectors.

Another Government initiated development of governance indicators is the Democratic Governance Indicators (DGIs) of Mongolia and MDG 9 indicators. Mongolian DGIs (2006) consist of 117 core and 14 satellite indicators and is based on four main themes of the Institute for Democracy and Electoral Assistance (IDEA) methodology. While the national DGIs constitute comprehensive assessment of democracy in Mongolia, the MDG 9 indicators aim to measure the progress made towards achieving three objectives under the MDG9, namely, (i) fully respect and uphold the Universal Declaration of Human Rights, ensure the freedom of media and provide the public with free access to

information; (ii) mainstream democratic principles and practices into life; and (iii) develop a zero-tolerance environment to corruption in all spheres of society. Twelve indicators were developed for measuring the progress of each of the three objectives of MDG9, as shown in **Table 3.4** below.

Table 3.4. MDG9 Indicators and Data Collection Methods

No	Objectives	Indicators	Data collection method
1	Fully respect and uphold the Universal Declaration of Human Rights, ensure the freedom of media and provide the public with free access to information	Human Development Index	Statistical data
2		Expert evaluation of conformity of Mongolian laws and regulations with international human rights treaties and conventions (percentage)	Expert evaluation
3		Percentage of implementation/enforcement of judicial decisions	Statistical data (agency level)
4		Number of Attorneys who provide services to poor citizens	Statistical data
5		Public perception of political, economic, and financial independence of the mass media	Household socio-economic survey data
6		Number of State organisations that regularly place reports of their budgets and expenditures on their websites	Statistical data
7	Mainstream democratic principles and practices into life	Public perception of activities of State organisations	Household socio-economic survey data
8		Number of civil society organisations that have officially participated and expressed their views in the process of developing and approving the State budget	Statistical data
9		Percentage of voters who have participated in nominating Governors of soums and bags	Statistical data
10	Develop a zero-tolerance environment to corruption in all spheres of society	Index of corruption	Public survey
11		Perception of corruption in political organisations, judicial and law enforcement institutions	Expert survey
12		Public perception of corruption in public administration and public services	Household socio-economic survey data

Source: extracted from Table 2, p.29, Millennium Development Goal – 9 Indicators and the State of Democracy in Mongolia.

These indicators serve different purposes and require caution in the interpretation. International indicators provide a standardised assessment of governance in various countries and allow a particular country see where its state of governance stands relative

to other countries in the world. However, these indices are less helpful in uncovering the underlying causes and reasons of governance problems and in finding appropriate solutions in that country. There are also methodological issues in this type of indices (World Bank, 2009a). Similarly, inter-sectoral comparison within a country discloses a prevalence of perceived corruption by sectors, however, again, is less helpful in explaining the factors which contribute to such a high prevalence and in devising potential strategies to avoid such situation³. The IAAC Corruption Index is an exception in that it is followed by a qualitative study which aims to find out the root causes of corruption in a particular institution or sector. For example, an energy and minerals sector was ranked first in the IAAC Corruption Index in 2009, and a further qualitative study was conducted which resulted in a series of specific recommendations (IAAC, 2009).

In response to public disapproval and distrust, political platforms and Action Plans of all successive governments have emphasised administrative reforms in the public sector. One of the main objectives of the current Government's Action Plan (2008-2012) is to 'ensure transparency, openness, speedy and fair treatment in service delivery and accountability in public administration and strengthen mutual trust between the state and citizens' (GoM, 2008b). Under this objective the Government plans to undertake comprehensive measures which include: the revision of the legal environment for the participation of civil society; the development of a competent and responsible civil service free of corruption and red tape; building the capacity of the civil service through improvement of ethics and accountability of civil servants, setting the sense and culture of respect for the rule of law and not tolerating corruption; upgrading the legal environment for state policy and action monitoring and increasing analytic capability and effectiveness; and making the state organizational structure compact and reducing the number of civil servants (GoM, 2008b).

The Government objectives also include specific measures aimed at improving budgetary management and discipline including delegation of some state

³ Jabes (2002) argued that transition countries may not need to develop complex governance indicators. As governance problems in those countries is evident to a governance specialist, a description of public administration systems and subsystems would suffice.

responsibilities to NGOs, delegation of powers to local self-governing institutions, and civil society oversight over the state activities, budget expenditures and revenue collection planning (GoM, 2008b)

In 2006, the Anti-Corruption Agency was created with relatively broad powers. In 2009, another new organisation, the National Development and Innovation Committee (NDIC), was created to oversee the implementation of the National Development Goals and the Millennium Development Goals (MDGs), Government Action Plans, and the Main Directions of Annual Socio-Economic Development as well as to develop reform policies, technology and innovation concepts, long-term and medium-term strategies. It is too early to make any observation on the extent to which the NDIC will become a champion of public service-wide administrative reform.

Thus, the public sector reform process in Mongolia is experiencing successes and limitations, and it is evident that administrative reform will be a normal and ongoing feature of public administration rather than one-off, post-transition initiative. As Goetz (2001:1035) noted,

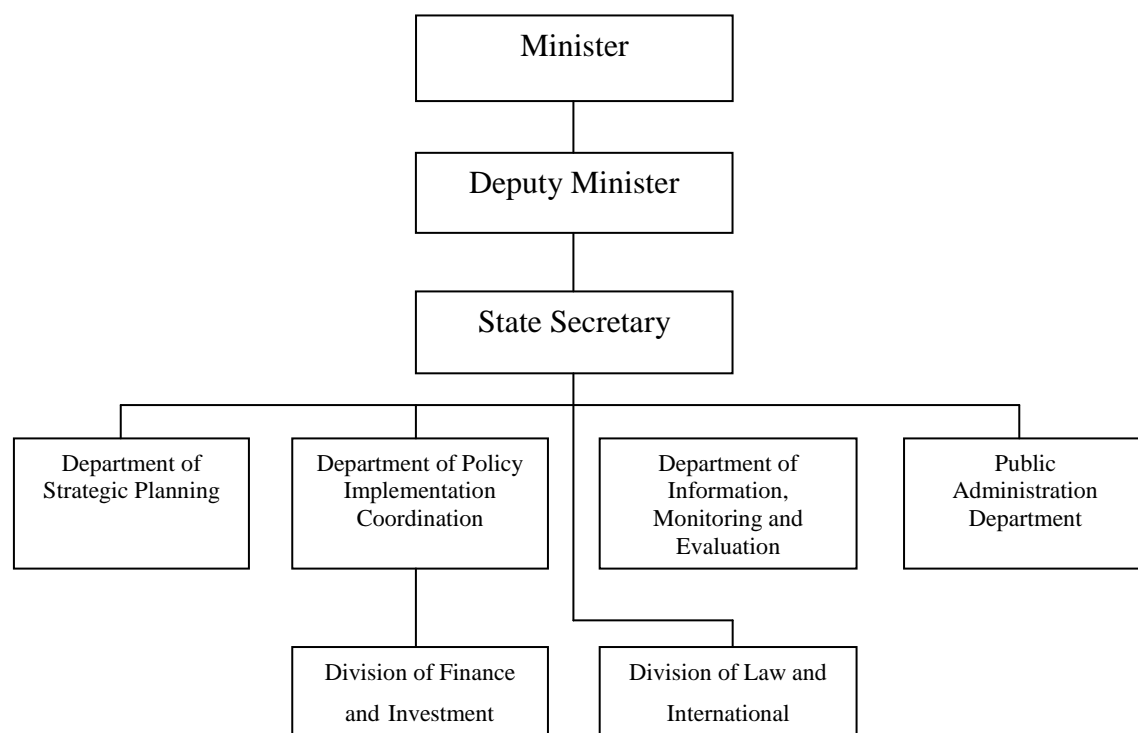
the expectations for a radical and fast break with the institutional legacies of communism, which had informed Western analyses of state administration during the early years of transition ... have given way to more pessimistic assessments that highlight reform delays and evidence of systematic gaps between reform legislation and administrative practice.

3.4.2. Background to case 2. Ministry of Social Welfare and Labour (MSWL) and the Employment and Social Welfare Service Agency (ESWSA)

Ministry of Social Welfare and Labour (MSWL)

The Cabinet approves the structure of ministries. The MSWL has four Departments and two divisions. As with other ministries, the MSWL is headed by Minister and Deputy Minister, who are political appointees, and the State Secretary who is a public servant. The MSWL has 54 employees (MSWL, 2009).

Figure 3.3. Organisational Chart of the MSWL



In accordance with the relevant laws of Mongolia, the MSWL has the mandate to develop policies and oversee the implementation of them in three main areas being employment; population development; and social welfare. Each of these three areas covers a number of issues, as shown below:

Employment: Labour relations, wages, productivity, vocations training, occupational health and safety, labour organization, labour norms and standards, informal employment, employment of population groups, employment of vulnerable groups, labour market demand and supply issues, overseas employment and export and import of workforce.

Population development: Demography, family, women and gender, youth, children, elderly, people with disabilities and social issues

Social welfare: Poverty reduction and social welfare policy, pension; health, industrial accident, occupational disease, unemployment and allowance insurance, social welfare

pensions, allowances, discounts, assistance issues, care services, and the social work system

The legal environment of the MSWL consists of general and sectoral laws and legal acts. The general laws and legal acts including the Constitution of Mongolia (1992), Law on Government of Mongolia (1993), Law on Legal Status of Ministry (2004), Public Sector Management and Finance Law (2002) define common duties and obligations of ministries while sectoral laws and legal acts specify type, scope and amount of services to be provided by the MSWL and the role of the MSWL in relation to the delivery of those services. These laws and legal acts include Law on Social Welfare (2008), Law on Social Protection of the Elderly (2005), Law on Social Protection of People with Disabilities (2005), Law on Monetary Assistance to Mothers and Children (2006), Law on Family (1999), Law on Domestic Violence (2004), and Law on Protection of Child Rights (1996).

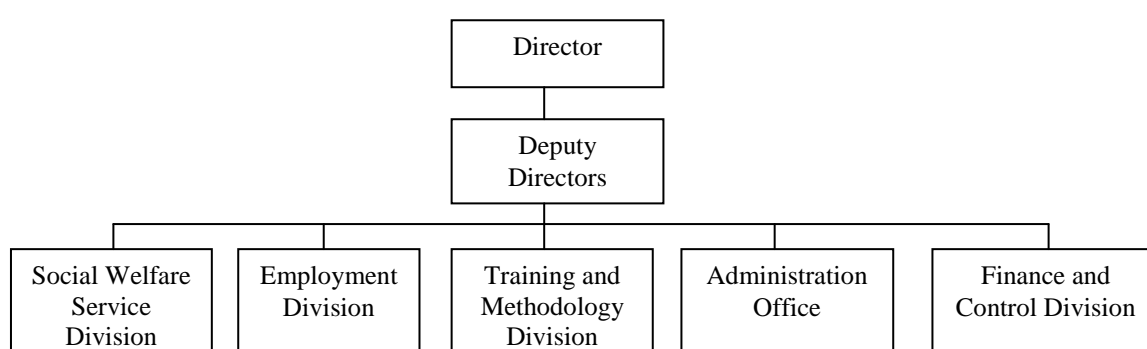
In addition to the laws, the MSWL is also responsible for several National Programs, approved by the Government or the Parliament, including those on gender equality, health and welfare of the elderly, supporting people with disabilities, promoting participation of children with disabilities, and supporting development of adolescents and youth. The labour sector has two programs, firstly, on improving labour safety and health environment, and secondly, on employment promotion.

In accordance with the Law on the Legal Status of Ministries, the general tasks that the MSWL undertakes include drafting legal acts, organising the implementation of legal acts, developing policies, plans and budgets, managing performance agreements, conducting advocacy of legal acts, providing guidance to local government units, coordinating cooperation between agencies, as well as developing human resources, information technology, and protecting human rights.

The Employment and Social Welfare Services Agency (ESWSA)

The ESWSA was established in 2004, within the portfolio of the Minister for Social Welfare and Labour. Its main role is to organize the implementation of the laws and regulations in employment and welfare sector, including Employment Promotion Law, Social Welfare Law, Export and Import of Workforce and Experts, Law on Labour, and Law on Vocational Education and Training.

Figure 3.4. Organisational Chart of the ESWSA



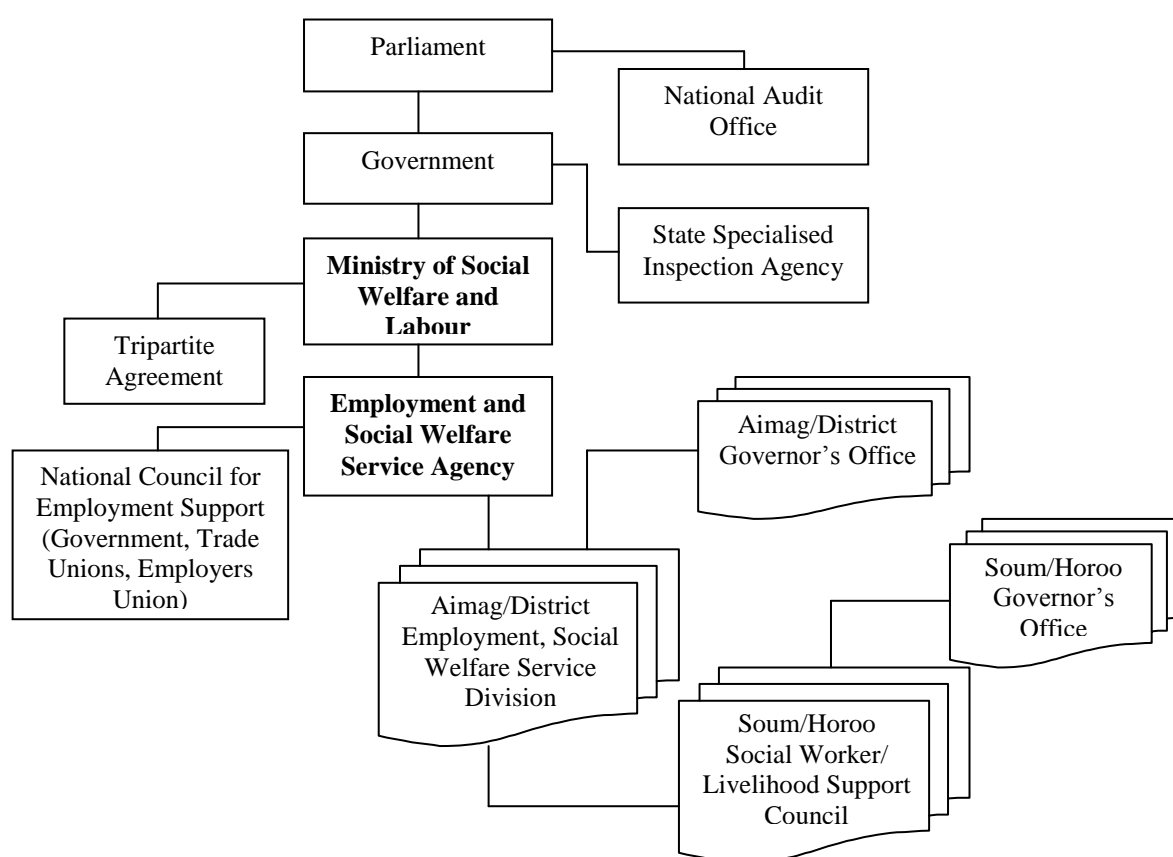
The ESWSA defined its mission as ‘to provide quality and prompt employment, welfare and care services to vulnerable groups and the unemployed in society and community based manner’ (ESWSA, 2008). According to the Law on Legal Status of Agency (2004), government agency should adhere to the principle of equal, quality and accessible service delivery, transparency, professionalism, rule of law, and accountability, in addition to the basic principles stated in the Constitution (1992).

General administrative tasks of the ESWSA include organising the implementation of relevant legal acts, promoting relevant legal acts, developing strategic plans and budgetary proposals, providing professional and methodological assistance to local offices, undertaking human resource development activities, taking measures to protect human rights, and developing draft laws, as permitted by laws.

As a social welfare and employment service delivery agency, the ESWSA has the following obligations: (i) organise and monitor the implementation of the laws and legal acts on social welfare; (ii) maintain the Social Welfare Fund and ensure its revenue and expenditure performance; (iii) organize payment of pensions and monetary assistance

from the Social Welfare Fund, organize delivery of community based welfare and residential care services; (iv) conduct research studies on improving the performance of the social welfare organisation, develop proposals and submit to relevant authorities; (v) include government and non-government organisations delivering welfare services in integrated information network and provide them professional support and coordination; (vi) provide professional advice and methodological assistance to lower level organisations; (vii) train and re-train social workers (Law on Social Welfare, 2008).

Figure 3.5. Main players of the social welfare and labour sector



Aimag and district Employment and Social Welfare Service Divisions (ESWSDs)

The ESWSA delivers its services through the Employment and Social Welfare Service Divisions (ESWSDs) in 21 aimags and 9 districts of Ulaanbaatar. These ESWSDs were part of the ESWSA before, but since 2008 were transferred to local Governor's Offices, thus shifting from a vertical to a horizontal structure.

Social welfare and labour sector's reform process

As the country moves to a market economy, the social welfare and labour sector is undergoing significant changes.

Social welfare services. During the socialist period, social protection services consisted mainly of cash payments and various discounts, including fuel discount and electricity discount. As well as those who were poor, people from certain employment categories and those who had State awards were entitled to receive welfare payments. This tradition still continues in some way in the social welfare sector nowadays. As underlined in the Social Security Sector Strategy Paper (SSSP), welfare services were unable to provide meaningful support to households owing to the wide scope of recipients and the small amount of assistance being made available to any given beneficiary (GoM, 2003).

In responding to the market economy development in the country, objectives were set forth for improve social welfare services, including the following: reforming social welfare benefit; establishing a new system to define the scope for welfare services; decentralising and strengthening the local institutions; restructuring residential care services; and developing social work (GoM, 2003).

Employment services. As with welfare services, employment services have undergone a complete overhaul since the start of the transition. The country has seen a shift from a centrally planned full employment, to massive unemployment due to economic crisis, privatization and structural adjustments. Thus, employment services are relatively new in Mongolia.

According to the 2002 employment statistics, 44.6 percent of the labour force was in the formal sector, 12.6 percent in the informal sector, 39.4 percent in livestock husbandry and hunting and 3.4 percent were unemployed (GoM, 2003). There was a high underemployment and hidden employment in the informal sector and livestock husbandry. Over 60 percent of the unemployed seeking a job were unskilled young people (GoM, 2003). The problems in the employment sector include the unavailability of jobs, low productivity of jobs, and being forced to seek employment in jobs without any social security. On the other hand, as the economy changes, there will be a shortage of skilled workers (World Bank, 2007). Informal employment, especially paid informal employment in urban centre is increasing (World Bank, 2007).

The employment services are criticised on various fronts including limited access, the poor not being targeted, unsuitability for those employed in the informal sector, exclusion of people working overseas, limited types of services, lack of outreach to the countryside, underdevelopment of employment services for population groups (such as people with disabilities, the elderly, the youth) and the low capacity of those working in employment services. Occupational health and safety incidents are on a rising trend (CoM, 2003).

The following objectives were put forward in the SSSP for employment services:

- Refining the employment promotion programme;
- improving the quality and enhancing the accessibility for the employment services;
- facilitating an effective cooperation between employees and employers;
- increasing employment opportunities for the vulnerable groups; and
- supporting employees and employers in developing occupational safety and health.

Summary of the Chapter

The phenomenon under examination for this thesis is accountability of the public sector. Qualitative research methodology was chosen for this research. Understanding and clarifying potential causes for the lack of accountability in Mongolia was considered more important than degree, prevalence or ranking.

Of the various qualitative methods, case study was selected as a more suitable method in answering the research question. Political accountability (Chapter 4) is discussed at the national level, and the political and constitutional system of Mongolia is the first case of this thesis. Policy and procedural accountability (Chapter 5 and 6) are concerned with issues of sectoral and organisational levels, and MSWL with its implementing agency was selected as the second case.

More traditional concepts of quality assurance, namely, *construct validity*, *internal validity*, *external validity* and *reliability* were used as quality criteria. Document review and interviews with stakeholders are the two main techniques of data collection.

CHAPTER 4. Political accountability

Having provided the background to the topic in the previous three chapters, this is the first of the three main chapters which present the main findings. Chapter 4 addresses the research question by approaching it from a political accountability perspective. The Chapter reviews types of accountability mechanisms at the political level including elections, mechanisms specific to the parliamentary system, and the Constitutional Court, as well as the administrative law system.

4.1. Political system and types of accountability mechanisms

Political accountability is one of the main forms of accountability. It refers both to the accountability of the legislature and the executive, and accountability of public servants to elected politicians (Cendón, 2000). This chapter focuses only on accountability of the legislature and the executive, and not the second part, which includes accountability of public servants to elected politicians.

Political systems rely on different mechanisms for holding those exercising power accountable. The broadest distinction to be made in political systems is between executive presidential and parliamentary systems. Since countries of both political systems can be found among established democracies comparison between these two systems in terms of performance in accountability is outside the scope of the thesis. Rather, it is more important to define the specifics of one's own political system before discussing the existing mechanisms for holding the legislature and the executive accountable. According to the different criteria used by political scientists in classifying political regimes, Mongolia is usually classified as 'parliamentary', but it is sometimes referred to as 'semi-presidential' (Fish, 2006:6; Landman *et al*, 2005:4). The Constitutional amendments of 1999-2001 and the consequent change in the balance of power of political institutions had an impact on some classifications.

Lijphart⁴ (1984:68) defined parliamentary government as a ‘form of constitutional democracy in which executive authority emerges from, and is responsible to, legislative authority’. According to this definition, the political system of Mongolia, before the Constitutional changes in 1999-2001, would not be considered to be a parliamentary system, since the executive was not formed by members of the legislature, though it was the legislative majority who appointed the head and members of the government, with the government still responsible to the legislature.

Sartori (1997:101) stated that ‘parliament is sovereign’ under parliamentarism and that this regime type requires ‘government to be appointed, supported and, as the case may be, dismissed by parliamentary vote’. This definition does not take into account the source of the composition of the executive, and according to this definition, Mongolia fully qualifies as a parliamentary system. Constitutional changes of 1999-2001 do not have an impact in this classification.

Stepan and Skach (1993:3) defined parliamentary regime as a system of mutual dependence: ‘(1) The chief executive power must be supported by a majority in the legislature and can fall if it receives a vote of no confidence. (2) The executive power (normally in conjunction with the head of state) has the capacity to dissolve the legislature and call for elections’. This definition relies on interdependence between the legislature and the executive. Mongolia conforms to the first part of the definition but not to the last part, as the executive does not have power to dissolve parliament.

Shugart and Mainwaring (1997:11-5) defined parliamentary system in contrast to executive presidential democracy, underlining that in presidential systems the head of government is popularly elected which is not the case with the Prime Minister in most parliamentary systems. In addition, electoral terms of the government and the legislature are fixed in presidential systems but not in parliamentary systems. The head of the executive is not elected in Mongolia hence qualifying Mongolia for a

⁴ The definitions provided by Lijphart, Sartori, Stepan and Skach, Shugart and Mainwaring used in this section were taken from the review of definitions of parliamentary government by Müller *et al* (2003:10-11).

parliamentary system, though electoral terms of both the executive and the legislature are fixed.

Müller *et al* (2003), defined parliamentary government, as ‘a system of government in which the Prime Minister and his or her cabinet are accountable to any majority of the members of parliament and can be voted out of office by the latter, through an ordinary or constructive vote of no confidence’. According to this definition, Mongolia fully qualifies for a parliamentary system, since independent of the Constitutional changes of 1999-2000 the executive depends on a parliamentary majority and exists as long as it retains its confidence. This definition is based on accountability relationship between the executive and the legislature, and is closer to Sartori’s (1997) definition.

Siaroff (2003:308) looks at political regimes ‘through the prism of the president rather than that of the government’ and classifies Mongolia as a parliamentary system where the President plays ‘a modest corrective role’.

Thus, a legislature-executive relationship is the basis of most definitions mentioned above, though a country’s political system can be analysed from different angles, depending on the specific purpose of the analysis. Mongolia meets the core criterion of a parliamentary system, that is, dependence of the government on the legislature, and the requirement of corresponding accountability mechanisms.

Accountability mechanisms of parliamentary systems are also diverse. Strøm *et al* (2003) asserted that the primary mechanism of accountability in the classical Westminster parliamentary model is competition of political parties. However, they found that modern parliamentary democracies resemble the classical model less, and in addition to competition of political parties, contemporary parliamentary democracies rely on many other mechanisms of accountability.

In general, according to the definition of accountability, accountability mechanisms should include only those which are used to hold the power accountable to public, that is, mechanisms which are directly related to the parliament performance. Strøm *et al* (2003) described these mechanisms as internal to parliament; they include the electoral

system, campaign rules, legislative cameral structure, quorum rules, constitutional amendment procedure, parliamentary dissolution, use of referendum, committee hearings, and vote of no-confidence (**Table 4.1**). However, there are also mechanisms which limit the scope of policy making power by introducing additional actors with exclusive mandate, and thereby, further increasing the capacity of the public to hold power holders accountable. In the context of 17 Western Europe democracies studied by Strøm *et al* (2003) the potential external mechanisms which belong to this second type of mechanisms include restrictions on voting power in European Union (EU) Council, sub-national government consumption, corporatism, presidential powers, central bank independence, strength of judicial review, and strength of a referendum institution.

The judicial system plays a special role in the accountability system; and although it is external to parliament it does not have independent policy making power, as the other actors in the list below. Rather, the judicial system maintains rule of law with respect to all the actors and contributes to the legal form of accountability. A list of potential accountability mechanisms external and internal to parliamentary system is shown in **Table 4.1**.

Table 4.1. Accountability Mechanisms in Parliamentary System

Competition of political parties	External mechanisms	Internal mechanisms
1. prior screening of candidates 2. aggregation of voter preference	1. restrictions on voting power in EU Council, 2. sub-national government consumption, 3. corporatism, 4. presidential powers, 5. central bank independence, 6. strength of judicial review, and 7. strength of referendum institution	1. electoral system 2. campaign rules 3. legislative cameral structure 4. quorum rules 5. constitutional amendment procedure 6. parliamentary dissolution 7. use of referendum 8. committee hearings 9. vote of no-confidence

Source: adapted from Strøm *et al*, 2003.

Strøm *et al* (2003) observed an overall trend of the increased role of external constraints. There have been variations and trade-offs among the 17 parliamentary systems studied but several specific trends were noted:

- Institutional mechanisms of citizen control do have meaningful and often predictable consequences...
- ...Parliamentary systems with cohesive, competitive parties and/or effective external constraints generally perform better than those without these features...
- ...together with external constraints on national governments, partisan cohesion and competition can also contain rent extraction and enhance democratic satisfaction...
- ...partisan conflict in the executive ... is not an inherent problem in parliamentary democracy ... instead the agency loss experienced in a particular country is a result of its mix of particular constitutional chain, party system, and external constraints...
- ...pivotal multiparty systems without effective external constraints would seem to be the least desirable form of parliamentary government... (2003:735).

The study also found that countries manifest different choices on each indicator; some promote delegation while others emphasise accountability to elected officials or support stability through counterbalancing powers. Competition of political parties plays a significant role in the United Kingdom, the home of the Westminster system. Upper houses of bicameral parliaments do play some accountability role, but there are many countries with unicameral legislative structures. Likewise, the power of Head of State or President in relation to the legislature varies from country to country.

While Strøm *et al*'s study was based on the countries of Western Europe, the experience of some emerging democracies points out to the successful use of particular accountability mechanisms that meet the specific needs of a given country. In Costa Rica, which has a presidential system, incumbent MPs cannot be immediately re-elected. This provision helped in the country's transition from an authoritarian regime to a democracy, preventing one party from dominating the legislature (NDI, 1996:9). The Hungarian Constitution is known for its detailed and specific definition of minority rights.

Thus, this chapter acknowledges the importance of external mechanisms on the overall situation of accountability of the legislature and the executive. Nonetheless, these mechanisms are not the focus of the thesis. Therefore, the discussion of the role of external mechanisms will be limited to the sub-section below, to provide a background to the discussion of accountability mechanisms which are internal to parliamentary processes.

Presidential system. The option of adopting a presidential system as a way to improve democratic accountability has been part of the discussion between political scientists, politicians and the public at times, but is, however, outside the scope of this thesis.

Central-local government relations. Unitary state structures and the corresponding concentration of power at the national level is another factor, which was not considered in this chapter, though it cannot be considered as inherently irrelevant to Mongolia. In fact, the powers of local self-governing institutions are limited at present and most aimags (provinces) depend on centrally allocated subsidies. Further decentralisation measures will change the scope of accountability relationships not only between central and local governments but also between the executive and the legislature.

Consociational arrangements. Likewise, consociational arrangements and corporatism are not part of traditional ways of policy making in Mongolia, but may play an important role in the future as these elements develop.

Lack of binding international requirements. Unlike Mongolia and former Soviet Union republics, Eastern and Central Europe countries had to meet specific conditions before they can become the European Union members. While Mongolia also had to meet conditions of international financial institutions such as International Monetary Fund (IMF), World Bank, and ADB, these conditions were not as institutionalised, standardised, and binding conditions as Eastern and Central European countries had to meet through their accession to the EU process. Nor were the incentives to meet the conditions as high. The EU accession conditions which included the creation of several mechanisms for improving accountability, rule of law, and alignment of national

legislative acts with laws of the European Union, among others, put extra pressure on the governments of Eastern and Central European countries. The EU accession process was a significant external factor for Eastern and Central European countries which otherwise shared some common characteristics of transition with Mongolia (Fritz, 2008:785).

Absence of upper house of the legislature. Cameral structure of the legislature is part of accountability mechanisms internal to parliament however, due to reasons explained below, is outside the scope of this thesis.

Historically, upper houses represent sub-national units in federal countries or groups defined by their social or economic status (Bergman *et al*, 2003) and provide more balanced representation than the lower house. While absence of territories or state sub-national units diminishes the need for a second house due the fewer competing political interests, the actual choice to establish a unicameral or bicameral system is influenced by demographic, historical, and political factors (NDI, 1996).

The Mongolian parliament is unicameral. There have been proposals in Mongolia to adopt bicameral structure of legislature so that the upper chamber could provide checks and balances. However, Mongolia is not a federal state and its small population is largely homogenous, which makes bicameralism as something not inherently needed. New Zealand (1950), Denmark (1953), and Sweden (1971) which shifted from bicameral to unicameral legislative structure are countries with small and relatively homogenous populations. Most Eastern and Central European countries chose unicameral parliamentary structures when adopting new Constitutions after the collapse of communism. A bicameral parliament is not an indispensable precondition for holding the executive accountable. While a second house of the legislature does play a role of checks and balances, it can also be compromised when one party dominates in both houses (Tsebelis, 2002).

In addition to belonging to a broader classification of presidential or parliamentary systems, individual political systems are characterised by unique features and require corresponding accountability mechanisms. The following sections will focus on the

individual mechanisms of accountability with respect to the legislature and the executive as they are exercised in Mongolia.

4.2. Elections

Elections are the first stage in a democratic delegation chain, involving delegation from voters to legislatures and provide voters with the means to change their agents. Since 1992, Mongolia held five parliamentary elections. All five elections used majority/plurality system. The electoral system has been an issue of political debate since the first elections (Fritz, 2008), and has changed from multi-member district (MMD) to single-member district (SMD), and back to MMD.

Table 4.2. Electoral Systems Used in Parliamentary Elections of Mongolia

Parliamentary elections	Electoral system used
1992	Multi-member district (26 districts, including six for the capital city and 20 for aimags), Majority/plurality system/block vote
1996	Single member district (76 districts) Majority/plurality system/first past the post
2000	Single member district (76 districts) Majority/plurality system/first past the post
2004	Single member district (76 districts) Majority/plurality system/first past the post
2008	Multi-member district (26 districts, including six for the capital city and 20 for aimags) Majority/plurality system/block vote

Source: based on the data of the General Electoral Commission of Mongolia (undated).

In line with the tendency of majority/plurality systems to support a two party system (IDEA, 2005:36), two main parties, MPRP and Democratic Coalition, alternated in power, albeit the Democratic Coalition was able to form its government on their own only once, from 1996 to 2000. Third parties have always had fewer seats.

Table 4.3. Parliamentary Seats by Parties/Coalitions (1992-2009) and Governments Formed

Elections	Parties/coalitions	Number of seats obtained	% of seats obtained	Government formed
1992	MPRP	70	92.1%	MPRP
	Democratic coalition	4	5.3%	
	Mongolian Social-Democratic party	1	1.3%	
	Independent (other?)	1	1.3%	
1996	MPRP	26	34%	Democratic Coalition
	Democratic coalition	50	66%	
2000	MPRP	72	95%	MPRP
	‘Civic will- NN’ coalition	1	1.3%	
	Democratic coalition	1	1.3%	
	Motherland-MDNS party	1	1.3%	
	Independent	1	1.3%	
2004	MPRP	37	49%	Coalition of MPRP and Motherland-Democratic coalition
	Motherland-Democratic Coalition	35	46%	
	Republican Party	1	1.3%	
	Independent	3	3.9%	
2008	MPRP	45	59%	Coalition of MPRP and Democratic Party
	Democratic Party Coalition	28	37%	
	Civil Will Party	1	1.3%	
	Citizens’ Movement Party	1	1.3%	
	Independent	1	1.3%	

Source: based on the data of the General Electoral Commission of Mongolia (undated).

Thus, five parliamentary elections held since 1992 provided Mongolian voters with the opportunity to elect their representatives for the following four years, while re-electing some incumbent politicians, not electing others whilst adding some new agents whom they expected to be better performers. In aggregate terms, the past elections *did* play an accountability role. However, this does not mean that the election of every Member of Parliament (MP) and political party in every election, was an act of accountability between voters and MPs or political parties.

Generally, elections as accountability mechanisms are not perfect and the role of elections as accountability mechanisms remains to be a disputed issue. There is an

argument that elections are not primarily a mechanism of retrospective accountability and voters select those in whom they believe will perform well in the future (Fearon, 1999), although that belief in future performance already takes into account the past performance of candidates or parties. Elections are also constrained by such inherent factors as multiple issue cleavages or information asymmetry which are present in any given country context (Jenkins, 2007). In addition, the role of elections as accountability mechanisms needs to be considered in combination with accountability mechanisms available between the elections. If elected governments are not constrained to act within the law (Mulgan, 2006) and the elections alone cannot fix the problem. The role elections can play in the accountability system is very important, but it has its limitations.

However, more relevant to this section is not the general shortcomings of elections as an accountability mechanism, but factors which are not inherent to characteristics of elections which affect their credibility in Mongolia, and, furthermore, affect their capacity as an accountability mechanism. The credibility of elections in Mongolia is diminished by two factors; *electoral misconduct* and *clientelism*.

4.2.1. Electoral misconduct

Electoral disputes and allegations of electoral fraud have accompanied every parliamentary election held in Mongolia. Such allegations have increased from one election to the next. The 2004 parliamentary elections resulted in disputes in two electoral districts which left the start of the Parliamentary session with two vacant seats with the dispute lasting as long as a year. The 2008 parliamentary elections led to a mass protest demonstration. The demonstration turned violent resulting in the declaration of four-day state of emergency, during which five lives were lost. This violent act was something that Mongolians have never seen even during the democratic protest demonstrations of 1990s. After the 2008 elections, again two seats were disputed with the last seat being filled a year after the election was held.

According to a survey on electoral fraud conducted amongst election experts prior to the 2004 parliamentary elections (Tamir, 2004), 38.3 percent of respondents agreed that electoral fraud does occur in parliamentary elections. The results of the survey revealed

several types of electoral fraud, including various manipulations to the lists of voters, fake ballot papers, ballot papers without stamps and a signature, mobile ballot boxes, and the transfer of voters from one district to another. These types of manipulations are similar to what United States election observers noted in their report (IRI, 2000) on the parliamentary elections in Mongolia in 2000, namely, issues with mobile ballot boxes, voters' lists, and pre-stamped and signed ballot papers.

The percentage of votes lost in electoral fraud, as perceived by the respondents of the above mentioned survey, varied between four to fifteen percent. This was considered high given the fact that the elections in 2004 showed the difference between the winner and the runner-up to be six percent in 25 districts and six to twelve percent in 15 districts. The survey also found that more votes were manipulated in rural areas than in urban areas (Tamir, 2004).

Electoral misconduct in Mongolia is associated with several factors which tend to increase its likelihood of occurrence. *Firstly*, the size of the constituencies is small. The median size of a constituency is established in a different way for aimags (provinces) and the capital city (Law on Parliamentary Elections, Article 12.4), and the number of voters per electoral district is smaller in some rural areas. The number of voters for some rural constituencies was less than 12,000 in three parliamentary elections (1996-2004), and the actual number of votes was as low as 7,957 in one district (**Table 4.4**).

Table 4.4. Number of Voters of Selected Electoral Districts

Aimag	District number	1996 elections		2000 elections		2004 elections	
		Registered	Actual	Registered	Actual	Registered	Actual
Dornod	16	11,219	9,993	10,042	8,248	9,766	8,142
Umnugobi	29	11,082	11,534	n.a	n.a	n.a	n.a
Umnugobi	28	11,957	10,840	n.a	n.a	n.a	n.a
Tuv	36	11,417	10,251	11,042	9,229	10,599	7,957
Khentii	51	11,179	10,823	11,776	10,345	11,105	9,504

Source: Based on the data of the General Electoral Commission of Mongolia (undated)

Secondly, Mongolia used single member districts (SMD) in three elections 1996-2004. SMD rules are associated with increased electoral misconduct. A study on elections of

24 post-communist countries held from 1995 to 2004 found a positive correlation between single mandate district system and electoral misconduct. The study explained such a correlation by identifying two conditions: (i) candidates in SMD systems gain more from manipulation relative to their expected loss than candidates in PR systems, and (ii) the number of votes to be altered to change the outcome of the election is smaller under SMD than under PR, and suggested that SMD systems make electoral misconduct ‘more attractive both to individual candidates and to central incumbent leaderships’ (Birch, 2007:1540). Mongolia was not amongst the 24 countries studied under this research, but the explanation seems to be pertinent to the situation in Mongolia.

Thirdly, the majority voting system is associated with more accountability due to its clear and undivided distribution of responsibility. Since the legislature is made up of representatives of geographical areas, this ‘geographical accountability’ is argued to be important in agrarian societies and in developing countries (IDEA, 2005:36). This strong link with constituency is an advantage of the majoritarian system (IDEA, 2005; Bergman *et al*, 2003). However, combined with the small size of the population and electoral districts, the negative effect of the strong link with the constituency outweighs its advantage and increases dependency from constituency. While SMD and majority electoral rules are not by themselves the primary causes of electoral misconduct, they increase the likelihood, or to use Birch’s word above, the ‘attractiveness’ of electoral misconduct.

Whilst the small size of the population cannot be changed, the other elements, including size of constituency, number of members to be elected from one district, or electoral rules could each be adjusted.

As mentioned earlier, in accordance with the amended Law on Parliamentary Elections 2007, SMD was replaced by MMD. This resulted in an increased number of votes required for a candidate to be elected. Hence, the number of votes to be altered to change the outcome of the election is at least higher than it was under SMD, though still may not be comparable to a PR system. The 2008 parliamentary elections may have slightly reduced ‘the attractiveness of electoral misconduct’, however, more detailed

analysis of particular types of misconduct needs to be carried out, as although some types of misconduct may have become harder to realize in practice, some other types of misconduct, including manipulation of vote counting may be insensitive to the number of voters per electoral district.

In addition to the above factors, independent of the electoral system adopted, electoral misconduct occurs due to the weak management of elections, including ambiguity of legislative acts, omissions in procedures, lack of enforcement mechanisms, and lack of monitoring mechanisms over election campaigns and political party financing.

While electoral misconduct diminished the credibility of elections, clientelism affects the capacity of elections to play a role of accountability mechanisms for policy performance.

4.2.2. Clientelism and weak development of political parties

Clientelism refers to ‘transactions between politicians and citizens whereby material favours are offered in return for political support at the poll’ (Wantchekon, 2003:400). Clientelistic politics is common among developing countries, characterised by a high rate of poverty (Manzetti and Wilson, 2007). When voters do not believe that government will be sufficiently responsive to their needs, they vote for the party which will give them most benefit in the short run, rather than long term systemic change, thus creating a ‘vicious cycle’ (Jenkins, 2007).

As compared to the first three parliamentary elections held in 1992, 1996 and 2000, the last two elections held in 2004 and 2008 were characterised by explicit clientelist campaign promises by major political parties. The promises of new and increased allowances diverted attention of the voters from programmatic platforms. The rise of promises of various cash and in-kind allowances in 2004 parliamentary elections was not an accident. The first parliamentary elections in 1992 did not have much of an *ex post* accountability role, since for many political parties it was the first time they were running at elections. Both the second and third parliamentary elections in 1996 and 2000 resulted in the change of government and may be linked to policy performance of respective governments. As seen from **Table 4.3.** above, the majority of the Democratic

Coalition obtained in 1996 was replaced by an absolute majority of MPRP in 2000. Hence, the 2004 elections were crucial for both major political parties.

By the fourth parliamentary elections in 2004, policy performance was still not satisfactory with a high rate of poverty and widespread unemployment. Income inequality was also rising. Under such conditions, first clientelistic promises appeared in the electoral platforms of political parties. Both major parties promised cash allowances, though the incumbent MPRP made promises of substantially more scope and amount. Firstly, MPRP promised a 500,000 tugrug grant to new families (equivalent to approximately one sixth of the average annual GDP per capita of three million tugrugs); 100,000 tugrug grant to each newly born baby; and an annual 100,000 tugrug allowance to each family with three and more children; and secondly, the Motherland/Democratic Party Coalition promised a monthly payment of 10,000 tugrugs to each child under 18 years. Hence, promises of cash allowances to mothers, children and young families, can be seen as an attempt to avoid accountability for past policy performance and appeal to voters with the promise of tangible benefits rather than broad policy reforms.

The first three elections were not free of clientelistic promises. However, election promises were more of a local nature, and material benefits targeting the given constituency, such as access to the central electricity grid or road improvements. The focus of election promises of 2004 and 2008 complemented them with promises of universal cash allowances and in-kind assistance, such as free housing to some social groups. The election promises for 2008 elections repeated the clientelistic focus of the 2004 elections, but were of increased scope and amount. A global price increase of main mineral export products from Mongolia and negotiations over the exploration of new mining sites were high on the political agenda by 2008. This time, promises of an equal distribution of mining income to all citizens were added to targeted universal allowances.

As a result, clientelism has become a more entrenched practice. It prevents support for policy appeals and shifts the scope of accountability of the legislature and the executive

from policy performance to implementation of clientelistic promises. Clientelism reduces the role of elections as a mechanism of accountability for policy performance.

However, the question is why political parties resort to clientelistic promises to win elections. Several contextual factors need to be described in this respect.

First of all, political parties are still young. Until late 1980s, Mongolia had only one political party, the Mongolian People's Revolutionary Party (MPRP). The Law on Political Parties was first passed in 1990 and amended in 2005. The formation of a multi-party system is recent and the newly established political parties are still in the early stage of their development. A clear indication is the number of political parties. In the past two decades, the number of political parties has been fluctuating. Thirteen political parties participated in 1992 and 2000 elections and currently, 17 political parties are registered with the Supreme Court of Mongolia⁵. Such phenomenon does not seem to be unique to Mongolia; Eastern European countries also show a similar trend, with new parties forming, existing parties disappearing, splitting or merging (Slomczynski *et al*, 2008).

There are other areas which point to a weak development of political parties, including internal democracy and decision making practice (Gerelt-od, 2006), divided loyalty of members between party ideology and strong leadership (UNDP, 2006). The legal environment of political parties is still very broad and does not provide opportunities for the public to exert scrutiny over party activities (GoM and UNDP, 2006). The Law on Political Parties has insufficient focus on internal democracy, openness to their members and the public, ideological competition in the society and formulation of democratic value, and concentrates more on structure and the internal organisation of parties (Gerelt-od, 2008). The role of party members tends to be reduced to only endorsing decisions already made by some influential leaders or politicians (Gerelt-od, 2008). Political parties do not have clear concepts for the advancement of society, and the party is based more around a leader and certain vested interests rather than solid political concepts (USAID, 2005).

⁵ Supreme Court of Mongolia, <http://www.pmis.gov.mn/> retrieved in October 2010

Partisan appointments go beyond political and senior positions, to the middle level of civil service. Weak membership participation, charismatic leaders, and lack of transparency of activities are characteristic to Mongolian political parties.

Secondly, even though most political parties in Mongolia have only a recent history and their development is weak, as Maravall pointed out, parties ultimately are ‘interested in their own political survival’ (Maravall, 1999:164). In competing for power, political parties respond to incentives and disincentives created by electoral rules, voter characteristics and other contextual factors. Concerning the party strategies in emerging democracies, Hagopian observed that they respond to structural and regime change, as well as institutional incentives, take into account the context of strategic, inter-party competition and mix strategies at the national, regional, or even individual level (Hagopian, 2007).

There are contextual factors which differentiate emerging democracies from established democracies, most notably rule of law (Andrews and Montinola, 2004), but also poverty, inequality, weak associational life, international economic constraints on domestic policy, effect of global communication, different starting points in terms of emergence of social class voting bases, and professional bureaucracies (Hagopian, 2007). Formation of a professional bureaucracy or civil service is an important constraint on political power, as indicated by Ionescu:

in a democracy, the institutions of political decision are supposed to be strong enough to contain bureaucracy in its instrumental role, while the civil service is presumed to be solid enough to resist the clientelistic attempts of party politics (Ionescu, 2004:16)

Given these differences, valid theories and assumptions for established democracies do not always hold for emerging democracies. Yet, there is no general theory on party systems and accountability developed for the context of emerging democracies either, and ‘students of democracy in developing countries are preoccupied with the reverse

question of whether accountability relations and ‘institutionalized’ party systems will ever emerge in the first place’ (Kitschelt, 2007:544).

One explanation of political parties resorting to clientelism, especially in developing countries, is the need to combine clientelistic and programmatic approaches (Kitschelt, 2000). If politicians are not responsive to the demands of the constituents for selective incentives, they will be held accountable and will not get votes, and once constituencies are bought off with selective incentives, politicians are free to pursue policy programs as they see fit. However, these two approaches are compatible only at low dosages, and are not sustainable beyond a certain point (Kitschelt, 2000). Here clientelism can be seen as a response to poverty.

Thirdly, again, a single member majority electoral system increases the dependence on a given constituency, where clientelistic promises have more appeal than policy promises. The success of individual candidates at elections will depend less on party policy platform and more on support at the constituency level, unless party platform is also clientelistic. This situation creates an advantage to wealthy candidates, especially when the parliament possesses enormous power, as will be described in the sections to follow.

Therefore, representatives of different political parties and academics tend to see the proportional electoral system as the way to get out of this ‘vicious cycle’. Baabar found:

[with proportional systems] Once representatives will start to represent the whole country not the specific corner, they will be subordinated to national interest. They would not need to make electoral promises to fill up holes in the roads, or to construct something in the constituencies. Once these meaningless welfare measures are reduced, public interest will be back on the agenda and parties will present their integrated platforms on how they will develop the country in four, eight or ten years time (*Olloo*, 27 Nov 2007).

Lundendorj argued that:

In parliamentary systems, the proportional system is usually adopted in order to maintain social consensus in the context of a society divided into various

political parties and groups. If a country in such conditions chooses a majoritarian system, one party dominates and furthermore, the tyranny of oligarchy will take place; elections will become a means for the oligarchy to obtain its legitimacy rather than the means for the people to indirectly exercise democracy... This process is being observed in the political life of our country (*Zuunii medee*, 15 Jan 2009).

The choice of an electoral system in a country depends on various factors. For Mongolia, an assessment of various options should include, amongst others, the degree to which they resolve the above discussed two issues.

Summary of the Section 4.2

Elections are an important step in holding the legislature and the executive accountable to public. Elections are the only mechanism which involves direct participation of citizens as the ultimate principals.

Elections as an accountability mechanism play two roles. *Firstly*, through elections, citizens identify the individuals to whom they delegate their power and ongoing accountability, and also who will no longer be their representatives. To accomplish this role and to provide legitimacy to the incoming legislature and the executive, elections need to be credible. *Secondly*, through political parties, elections also assist in aggregating the voters' preferred policies (Strøm *et al*, 2003), by identifying policy issues for which voters will hold their representatives accountable.

These two roles of elections as an accountability mechanism are undermined in Mongolia by electoral misconduct and clientelism. Decreasing electoral misconduct depends on an improved design of the electoral system, which takes into account local factors such as the small dispersed population. Introducing a multi-member district may be a step forward in this respect. Reducing clientelism is more difficult and depends on political parties. However, since multi-member districts are associated with party affiliation and policy appeals more than single member districts (Carey and Shugart, 1995) and to the extent political parties respond to the incentives created by electoral

design, multi-member district rules may also contribute to political parties attaching more importance to policy appeals.

Constitutional and electoral reforms are the ultimate measures to create more constraints on power. There are limits to what the other measures can do to improve political accountability, and substantial alteration of legal and constitutional frameworks is needed to make politicians more accountable to their citizens (Jenkins, 2007).

While of fundamental importance, elections are only a starting point in the chain of accountability. Electoral democracy cannot be equated with the consolidation of democratic rule (Carothers, 2002). The role of elections in holding those in power accountable needs to be complemented by post-election accountability mechanisms. Once elections are over, a number of other mechanisms of accountability are required. As Fritz observed:

Despite considerable civil and political liberties, effective accountability remains weak, and democratic accountability may be hollowing out as a consequence of an emerging resource boom. External democracy promoters generally focus on the presence of an electoral democracy, but have been slower and less able to support a widening and deepening of other accountability mechanisms (Fritz, 2008:785).

Regular elections and change of governments did not result in effectively holding the government accountable in Mongolia (Roberts and Reed, 2005; Fritz, 2008). The next section continues to explore reasons for weak political accountability in Mongolia and deals with accountability mechanisms internal to parliamentary system.

4.3. Accountability mechanisms internal to the parliamentary system

Since *ex-ante* mechanisms of accountability of the legislature and the executive are weakened by electoral misconduct, clientelism and fluidity of the political party system in Mongolia, it is appropriate to examine whether more weight may have fallen on *ex-post* mechanisms, including parliamentary internal accountability mechanisms. These mechanisms themselves are new and still evolving.

These mechanisms operate between elections on an on-going basis, thus indirectly assisting the public to hold both the parliamentary majority and the executive accountable. Although both are accountable for policy decisions and implementation of the rule of law, parliamentary majority and the executive are discussed separately in the following two sub-sections.

4.3.1. Holding the parliamentary majority accountable

Several mechanisms assist citizens to indirectly hold the parliamentary majority accountable between elections. These include *minority or opposition rights, presidential power, dissolution of parliament and recall of MPs, and referenda*. Minority or opposition rights and presidential power are different from other mechanisms in that there is no direct principal-agent relationship between the two parties. In other words, both opposition politicians and the President act on behalf of the public, provide checks on majority power, and provide policy alternatives, rather than acting directly and taking enforcement measures. In this respect, they belong to the system of checks and balances, as commonly referred to in political science literature. However, they are also part of broader system of accountability.

Referenda provide opportunities for voters to directly participate in policy decisions. Dissolution of Parliament also provides the voters with an opportunity to change their representatives before the election time.

Minority rights

In parliamentary systems where the executive is created out of the legislature, the Opposition plays a distinctive role to assist the public in holding the parliamentary majority accountable. Since the parliamentary majority and the executive form one functional unit, the role of the parliamentary opposition is often more tangible than that of the majority parliamentary party groups (Helms, 2009).

There are different types of ‘oppositions’ and what is understood as opposition changed in Mongolia after the 2004 and 2008 parliamentary elections. This change has an implication on its role as an accountability mechanism. As a result of both the 2004 and 2008 elections, a coalition government was formed. In 2004 the winning MPRP did not

obtain sufficient seats to form its own government and as the party winning the largest number of seats, the MPRP invited the other parties to join the government. In 2008, the MPRP did win enough seats to secure its own government, but opted to form a coalition government instead.

Opposition can be of five different types (King cited in Norton, 2008): *the Opposition*, *inter-party mode*, *intra-party mode*, *non-party mode*, and *cross-party mode*. From 1992 to 2004, the *Opposition mode* was the main form in the Mongolian parliament. Once a party loses, it stays outside of government for four years until the next election, fulfilling the classical roles of opposition by holding the government accountable and providing policy alternatives. In 2004, with the creation of the coalition government, the *inter-party mode* became the dominant form of opposition. Although the *inter-party mode* is the dominant form, *non-party* and *cross-party* modes also co-exist. The *inter-party mode* exists when the opposition comes from within the coalition and ‘though coalitions may face the legislature as a body united on measures laid for approval, the period leading up to presentation may be marked by conflict between the coalition partners’ (Norton, 2008:239).

Yet, some types of opposition are more effective for some functions than for others. The *Opposition mode* is more significant in the oversight of government, but least effective in influencing the public policy while the *inter-party mode* is more effective in achieving desired public policy (Norton, 2008). Hence, with the shift from *the Opposition* to *inter-party mode* as the dominant form of opposition, the function to oversee the executive becomes weaker.

The rights provided to parliamentary opposition or minorities vary among parliaments. For the Danish parliament, the opposition has the right to propose a referendum (Qvortrup, 2000). The Hungarian parliamentary opposition possesses more extensive rights than most European parliaments extend to their oppositions, including a two-third requirement for a decision on more than thirty legislative fields, right of committee minority to report to plenary session, one-third voting rule in permanent committees, and the interpellation rule where issues with an unsatisfactory answer are passed on to parliamentary committees for further investigation (Körösényi, 1999).

According to current legislations, the opposition in Mongolian parliament does not have any significant right and opportunity to influence the majority. The provisions which are more relevant to the rights of the Mongolian parliamentary opposition are those on *quorum rules* and role of the opposition with respect to *referendum*.

Quorum rules. The Constitution of Mongolia 1992 and the Law on Parliament (2006) provide some rules which affect the role of the opposition. After elections, the first session of the parliament can start if three-fourths of its members have received their legal mandate (57 MPs) (Law on Parliament, Article 5.2). Majority quorum rules or attendance of more than half of MPs is required for ordinary plenary sessions, committees, and party caucus meetings. A majority of those present is required for making decisions. One-third of MPs can initiate a session outside a regular schedule. The majority quorum rules are common among parliamentary systems.

Before the 1999-2000 amendments to the Constitution, the quorum rules were higher - two-thirds or the presence of 51 MPs was required for a parliamentary session to be valid. This quorum rule was invoked a number of times between 1996 and 2000, by the opposition party to block parliamentary sessions. Baabar recalled that

(a)t that time, quorum rule for parliamentary session was 66 percent of seats. This provided an extra advantage to the MPRP which was in a minority, and served as the main instrument to block the State machine [legislative process]. In those years, [MPRP] walked out of the parliamentary session over 120 times (www.sonin.mn, 30 Jul 2008).

This higher quorum requirement which had provided an unusually strong power of veto to the minority was replaced. However, no provision was added which would increase minority rights. There is no special list of laws which require higher quorum or decision rules, as is the case in Hungary.

A higher quorum or three-fourth of MPs is required for constitutional amendments. However, in the Mongolian context, it is possible that even a three-fourth rule does not

guarantee the participation of minority groups or opposition. The strong majority of the 1992-1996 and 2000-2004 parliaments were able to easily reach three-fourth. The parliamentary majority of 2000-2004 used this advantage and introduced constitutional amendments, without the involvement of the opposition and without having a say from the people.

Referendum. The Art 25.16 of the Constitution provides for referendum. Referendum is valid if a majority of voters participate and the issue for a referendum is deemed as resolved if the majority of voters support it. However, the actual decision to conduct a referendum is to be made upon the agreement of two thirds of the Members of Parliament (Art 27.2, Law on Parliamentary Session Procedures, 2007), which is a high quorum for the opposition if it wants to put any issue to a referendum.

Presidential power

The President of Mongolia is directly elected by the people for four years. The role of the President was substantial before the Constitutional amendments of 1999-2000, leading comparative political scientists to note ‘many elements of a semi-presidentialism’ (Landman, 2006:6).

The Presidential rights before the Constitutional amendments included the right to propose the candidate for Prime Minister in consultation with the majority party (or parties in the Parliament if none of them has a majority of seats), and to propose to the Parliament the dissolution of the Cabinet. The President was also to be consulted by the Prime Minister on the structure and composition of the Cabinet before the proposal was to be submitted to the Parliament. This strong veto power of the President created inter-institutional conflicts and the tension between the President and the executive. Successive Presidents used the veto power numerous times (Ginsburg, 2003).

A former politician linked such a situation to ambiguity of the laws and claimed it was a logical mistake:

According to the Constitutional principle, we are a parliamentary system, but because the provisions on the President’s rights were not clear, the President

was provided with the rights which logically should not have extended to him (www.sonin.mn, 30 Jul 2008).

In order to be freed from the deadlock created by the conflict and competing power between the parliament and the presidential institutions, political parties on both sides agreed to amend the Constitution. The Constitutional amendments of 1999-2000 significantly reduced the power of the President while increasing the power of the parliamentary majority. Unlike countries with an executive presidential system, the role of the President in Mongolia is to provide checks and balances, therefore, the constitutional amendments which restricted the power of the President were considered by researchers as being in line with the common practice of countries with parliamentary systems (Byambajav and Munthtsetseg, 2005).

The President now has no role in the appointment of the Prime Minister. The President has three main rights which can be used in constraining the power of the majority. *Firstly*, the President has a right to veto laws in full, or on certain parts, after they were passed by the parliament. However, this is not a strong mechanism which can be easily overridden by two-thirds of MPs. Even when the President does not succeed in changing the law in question, presidential veto and its subsequent discussion at the plenary session raises public awareness and discussion. *Secondly*, the President still retains his/her rights to legislative initiation. *Thirdly*, the President retains the right to refer laws to the Constitutional Court for determination of their conformity with the Constitution. This is the most significant right that the President has in restraining the power of the parliamentary majority. However, one of the factors which affect the actual use of this important power is whether the President and the parliamentary majority are from the same party or coalition.

The last two parliaments formed coalition governments composed of mainly two dominant parties. In such situations, incentives for referring the laws to the Constitutional Court seem to have been less, as compared to a situation where the President would be from the opposition. As a result of the 2008 Presidential elections, the candidate from the Democratic Coalition won (which is in a minority, though

became part of the government), creating at least slightly more probability that the President would use his power to invoke the Constitutional Court.

The President does not have the right to call a referendum. The President does not have a right to countersign the laws approved by the Parliament or send a law to the Constitutional Court before it comes into force. The President does not have any power to dissolve the Parliament.

Dissolution of parliament and recall of MPs

The Prime Minister does not have the power to dissolve the Parliament, either. The Parliament may decide on its dissolution if no less than two thirds of its members consider that it is unable to carry out its mandate, or if the President, in consultation with the Speaker of the Parliament, proposes to do so for the same reason. Since the adoption of the new Constitution in 1992 no dissolution of the Parliament has occurred.

There are no term limits for MPs and no popular recall procedures. The Parliament may remove an MP's immunity if he/she is under criminal investigation, and may have them expelled from the Parliament if the court determines he/she committed a criminal act. There was only one case where three MPs were recalled due to their involvement in casino legislation and associated corruption allegations. Since then, there have been several attempts to remove some MPs' immunities in order to conduct a criminal investigation, but none was successful.

Since according to the current Constitution, the Parliament itself decides on its own dissolution, and there is no specific circumstance for automatic dissolution, the Parliament of Mongolia has almost total immunity from dissolution.

Referenda

A referendum provides an opportunity to voters to express their own policy preference as principal. Unlike some countries where a constitutional amendment or some specific issues are decided by referendum, there is no such legal requirement to hold a referendum in Mongolia. Since the adoption of the Constitution 1992, there has not been a referendum.

4.3.2. Holding the executive accountable

In the Foreword to the Mongolian translation of his book on *Patterns of Democracy*, Lijphart (2007) pointed out that the executive was influential over the legislature in Mongolia. One of those who drafted the Constitution 1992 and a prominent lawyer named Chimid, called the current state of the parliamentary oversight of the executive a 'mirage', referring to the fact that the legislature was not initiating any follow-up on various media allegations about Cabinet members (*Olloo*, 6 Sep 2007). Such a situation is a result of the combination of the *fusion of the legislature and the executive*, *quorum rules* and the *relatively small number of parliamentary seats*.

The fusion of the legislature and the executive is common in other parliamentary systems and does not seem to cause problems for accountability. Majority quorum rules for parliamentary sessions and decision making is also common in parliamentary systems. However, the Mongolian Parliament has 76 seats and in accordance with the quorum rules, the presence of 39 members qualifies a parliamentary session as valid, and an agreement of 20 members attending a session can be sufficient for a valid decision.

Ministers are not required to be Members of Parliament. There is no rule as to how many MPs may hold Cabinet positions at the same time. Therefore, the weight of the Cabinet members in legislature can be high, with potential consequences for accountability. The percentage of Ministers who are also MPs has varied from government to government. As of December 2009, the Batbold Cabinet consisted predominantly of MPs - 12 Ministers out of 15 were simultaneously MP's. This argument with the issue of MPs simultaneously being appointed as Ministers was raised by several academics and politicians in Mongolia (Udval, 2006; Byambasuren, 2007; GoM and UNDP, 2006).

Before the 1999-2000 constitutional amendments when the legislature and the executive was separate and no MP was allowed to undertake Cabinet positions, the legislature was also regarded as having a weak oversight over the executive. Ginsburg argued that:

The insulation of the government from parliament certainly weakened democratic accountability. Neither the chief executive nor any member of his cabinet had won an election... The usual principal-agent problems that exist between parliament and government in a parliamentary system were exacerbated by the lack of mechanisms for the parliament to discipline the government and by the social and institutional distance created when cabinet members are not legislators. There was no opportunity for day-to-day policy debate, with the prime minister defending his policies before the public. Rather, government members had to be summoned to the parliament and appear there as outsiders on an infrequent and extraordinary basis (Ginsburg, 2003:194).

The constitutional amendment which allowed simultaneous legislative and cabinet positions and their implications for accountability was assessed differently by researchers. For Munkherdene (2005), these changes established real parliamentary governance with all its strengths and weaknesses, and the current governance problems are to be solved in accordance with the rules of the game of the parliamentary system, being competition between politicians. Byambasuren (2007) argued that these changes have altered the State structure and provided political parties with almost unrestricted power. Landman *et al* (2005) noted that they have undermined horizontal accountability.

While the above argument about the executive becoming influential over the legislature due to the provision allowing MPs to simultaneously hold Ministerial positions is valid and may become critical in some situations, it does not explain the whole picture in holding the executive accountable. There are a number of mechanisms which the Parliament *may* use in its oversight of the executive.

Vote of no-confidence. In the parliamentary system, the government exists on the confidence of the majority. According to the current laws, one-fourth of MPs can initiate a vote of no-confidence (Article 43, Constitution 1992), however, again, a parliamentary majority is required for a final decision.

If the Prime Minister or half of the Cabinet members resign, then the Cabinet should resign in full. There were a number of Cabinet resignations for various reasons; for example, in 2006 and the Elbegdorj coalition government resigned, as more than half of his cabinet members have resigned. In 2007, Enkhbold offered his resignation from his Prime Minister's post, after he was removed from the party leadership, following the recently introduced convention that the party leader will become Prime Minister. However, the actual use of the mechanisms remains an unlikely option. A constructive vote of no confidence, that is a simultaneous vote for the succeeding government, is not required.

The legislation does not refer to the dismissal of individual members of the Cabinet; rather it upholds the principle of collective ministerial responsibility.

In Hungary the opposition is given more rights with requiring only one-fifth of the MPs to initiate a vote against the current Prime Minister. Although such a vote must have agreement on an alternative candidate and this constructive vote of confidence has never been used, the threat of using it has been real at least on one occasion (Körösényi, 1999).

Standing committees and investigative commissions. The Standing Committees have a mandate to oversee the implementation of laws and other parliamentary decisions (Article 19.2.5. Law on Parliament) and to create working groups to conduct its oversight functions (Article 19.2.8. Law on Parliament). Various working groups are created for oversight purposes on specific issues or fields. For example, according to the Office of Standing Committees, 13 working groups operated during the 2009 Spring session, which included six newly created groups and the rest continued their work from the previous session. These working groups covered the oversight of the implementation of 17 legal acts and involved 57 MPs.

Working groups created for oversight purposes have significant potential as a mechanism to hold the executive accountable. However, this importance is underestimated and undermined by several factors. Procedures for creating oversight working groups are not regulated in detail by the Law on Procedures of Parliamentary

Session. The Law has only one provision which permit working groups to be mixed i.e. they may involve representatives of organisations other than MPs. But many other details on mandate and working procedures are unclear, including participation of opposition members, means to obtain public feedback, or authority to call relevant persons to account or to provide information. Reports of these working groups are not made available to the public in full and in a consistent way. In such a context, it is difficult to track any measures which follow from the findings of oversight working groups. Working groups can propose to issue a parliamentary resolution, and implementation of that resolution can be tracked. However, such an internal procedure does not assist much in creating media and public attention.

Investigative Committees. *Ad hoc* investigative committees are a common mechanism of executive scrutiny in Western European parliamentary systems. They have extensive rights of investigation, including the right to call witnesses. Investigative committees had some valuable political impact, however, when its initiation is decided by a majority, it is less likely to be actively used by a majority parliaments (Bergman *et al*, 2003). In Germany, one fourth of the MPs can launch an investigative committee. In Hungary, an investigative commission can be set on the suggestion of one-fifth of the MPs and constitute one of the most important instruments of parliamentary oversight over the government (Körösényi, 1999).

Currently the Mongolian Parliament does not have any investigative committees. The Draft Law on Parliament which was submitted to the Parliament in 2009 has a section on establishment of an investigative committee. It was debated in early 2010 and rejected.

Another area which allows the involvement of the opposition or minority MPs in government oversight is the appointment of Chairpersons of Sub-Committees on Budgetary Expenditure Control and Ethics from among minority MPs (Article 14.9 Law on Parliament). Sub-Committees have extensive rights, which include conducting research, inspection, obtaining relevant information, creating working groups for oversight, and issuing a resolution. However, since Sub-Committees use majority

decision rules, as is the case with Standing Committees, the ability of the opposition MPs to have impact on sub-committee decision making is still constrained.

Oral and written questions. Parliamentary questions are important in that they provide an ongoing parliamentary oversight of the executive (Bergman *et al*, 2003:167). Both written and oral questions can be asked by MPs. As a relatively new practice introduced in Mongolia since 1992, and as a means of control which does not involve immediate sanction (Bergman *et al*, 2003:167), asking questions requires experience and preparation on the part of minority MPs in order to be effective.

As reported by the Parliament Office, the number of oral and written questions has been on an increase and most questions are asked by the opposition members. Regular transmission of parliamentary question times on TV adds public awareness and scrutiny of the executive.

Between 2007-2009 oral and written questions asked by MPs in the area of social welfare and labour included issues such as poverty, minimum wage, wage of public servants, Mongolian workers in South Korea, and cancellation of fees of foreign workers. Answers provided by Cabinet members to Parliament are not readily available to the public from the websites of either Parliament or the MSWL. Two working groups were created to review the issue of importing foreign workforce and the implementation of the Law on Employment Promotion during the 2007 spring session. Reports of these working groups were not available to public.

Thus, although the use of oral and written questions and oversight working groups has been increasing, the effectiveness of these tools is undermined by limited dissemination of information and reports of working groups.

Summary of the Section 4.3

Overall, the current Constitutional mechanisms and electoral system supports the formation of a parliamentary majority, but do not provide sufficient mechanisms for holding it accountable. The use of referenda and Presidential powers are limited, as the

majority decision is required for conducting a referendum and accepting Presidential veto. The majority Parliament combined with the principle of collective ministerial responsibility provides extra immunity for individual ministers.

There are no special rights accorded to the opposition or minority, except the appointment of Chairpersons of some Sub-Committees. While the division of powers between majority and opposition may not be simultaneous but occurs over time with the change of government, and there may be no division of power within a given parliamentary cycle (Körösenyi, 1999), limiting the rights of the opposition or minority in checking the executive is unnecessary and increases the already substantial power of the majority.

Two mechanisms for executive oversight are already being used i.e., the Standing Committee's oversight working groups, and question time. In particular, working groups for oversight purposes has tremendous potential. However, this potential is not fully utilised due to procedural vagueness.

The procedure to discuss the progress of implementation of the Government Action Plan is stipulated in the Law on Parliament Procedures. According to the Article 46 of this Law, Government submits the progress report of the implementation of the Government Action Plan to the Parliament in the first quarter of each year. Parliamentary Standing Committees discuss it and issue suggestions and conclusions.

4.4. The Constitutional Court

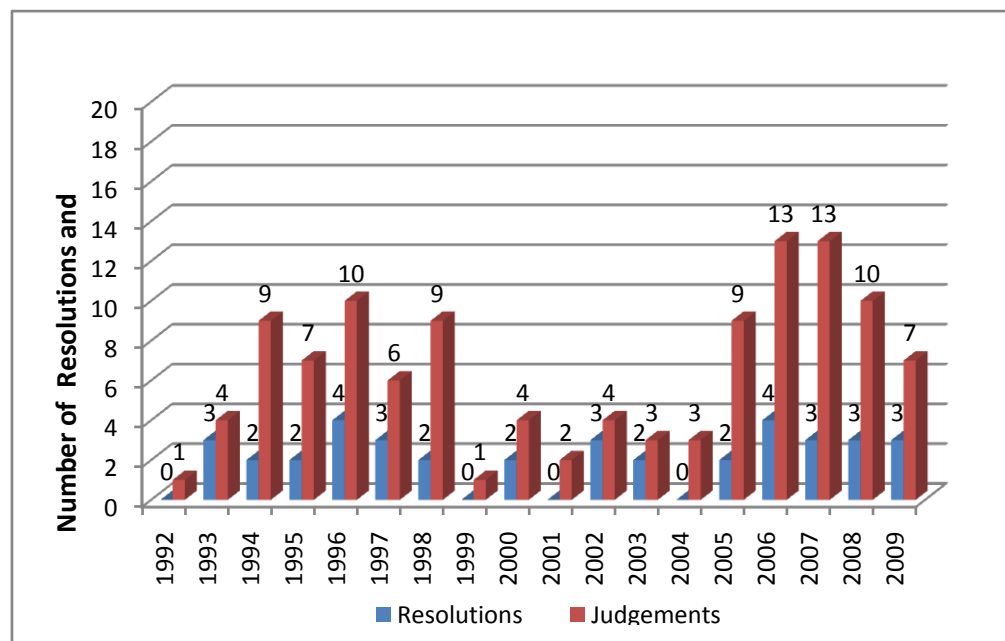
When parliamentary majority has almost unrestrained power and constitutional mechanisms such as presidential veto rights and opposition rights are weak, the Constitutional Court as a judicial review mechanism has an important role in holding the parliamentary majority accountable. While previous mechanisms focused more on accountability for policy decisions, the Constitutional Court focuses on rule of law and is part of the legal accountability mechanisms.

It is the only instance which has the right to overturn the Parliament's decisions in fulfilling its role to protect the Constitution. The establishment of a Constitutional Court

was common among new democracies, and linked with the ‘deep mistrust for the majoritarian institutions’ (Sólyom, 2003:135). It was ‘of fundamental importance to an effective rule of law system, and critical to distinguishing modern Mongolia from a socialist legal state’ (Fenwick, 2001:228).

Once a Constitutional Court is established, the activeness or the number of cases that a Constitutional Court decides on becomes an indication of its effectiveness in constraining parliamentary power, especially in transition countries. The number of judgments and resolutions that the Constitutional Court of Mongolia makes annually is relatively small (**Figure 4.1**).

Figure 4.1. Number of Resolutions and Judgements Issued by the Constitutional Court (1992-2009)



Source: Constitutional Court of Mongolia (2010)

This section draws frequently on the experience of the Constitutional Court of Hungary and the Constitutional Tribunal of Poland, as they have a reputation of being the most active courts among post-communist countries (Schwartz, 1998; Rose-Ackerman, 2005). The Constitutional Court of Hungary receives around one thousand motions annually and the vast majority of these motions are submitted by private persons. The Constitutional Tribunal of Poland issued 1,326 judgments between 1990 and 1995 and

of some 60 statutes that it reviewed from 1989 to 1994, it found 40 of them unconstitutional (Rose-Ackerman, 2005:67).

The activeness of the Constitutional Court of Mongolia is constrained by its *limited legal mandate, access rights* which are broad but exclude main actors, and the overall *lack of explicitness and details* of the laws regulating the Constitutional Court.

4.4.1. Limited scope of legal mandate

In accordance with the Constitution 1992, the Constitutional Court of Mongolia reviews, (i) the constitutionality of laws, decisions of the Parliament, President, and the Cabinet as well as international treaties, (ii) decisions of General Electoral Committee regarding parliamentary and presidential elections, (iii) if the President, Speaker of the Parliament, Prime Minister, Chief Judge or General Prosecutor have breached the Constitution, and (iv) if there are grounds to dismiss the President, Speaker of the Parliament or Prime Minister or to expel MPs. The most important and common of these functions is the review of constitutionality of normative acts.

As compared with the Constitutional Court of Hungary, as well as the Constitutional Tribunal of Poland, which is also considered as an active court, the mandate of the Mongolian Constitutional Court is limited in several respects, including the lack of the explicit right to interpret the Constitution, the establishment of unconstitutionality by omission, ex-officio review on certain matters, and the protection of individual constitutional rights.

Firstly, unlike the situation in Hungary, the right to interpret the Constitution was not explicitly stated. This led to instances where the Parliament wanted to play this role. The attempts by politicians to interpret the Constitution show that the mandate to interpret the Constitution is still an unresolved issue in Mongolia, though it is already an accepted practice internationally for the judiciary to interpret the Constitution. This is in contrast to the Australian situation, where

(i)n 1908, the Speaker ruled: ‘. . . the obligation does not rest upon me to interpret the Constitution . . . the only body fully entitled to interpret the

Constitution is the High Court . . . Not even this House has the power finally to interpret the terms of the Constitution' (135). This ruling has been generally followed by all subsequent Speakers (Commonwealth of Australia, 2005:25).

Secondly, the Constitutional Court of Mongolia does not have an explicit mandate to eliminate unconstitutionality by omission. Given the transitional nature of law-making and rapidly changing social life, there are immense areas which require detailed regulation. Given Mongolia is a *Rechtsstaat* or a legal state tradition, laws, statutes and regulations are most important sources of public administration. With the transition to democracy, a new legal system was required. The Parliament had to work hard to build the legal basis of many new societal relationships. The Parliament had approved numerous laws, but still, there are many more areas which require regulation. In addition, procedural laws tend to be insufficiently detailed, leaving uncertainty and discretion to administrative decision makers. This reinforces the gap left by the absence of a role for the Constitutional Court in determining unconstitutionality by omission.

In contrast, the Hungarian Constitutional Court has the mandate to establish unconstitutionality by omission to legislate, which include cases (i) where the given Act of Parliament has not been drawn up despite the authorisation, and (ii) in the absence of such authorisation, where 'the guarantees necessary for the assertion of fundamental rights are missing or where incomplete regulation jeopardises the constitutional assertion of rights' (Constitutional Court of Hungary, 1992; 1995). If the Constitutional Court finds that a legislative organ failed to fulfil its legislative tasks deriving from its lawful authority thus creating unconstitutionality by omission, it instructs the legislative organ to fulfil its task within a specified deadline. However, the Constitutional Court of Hungary does not review all legal gaps, acting only if the insufficiency of the legal regulation results in unconstitutionality (Constitutional Court of Hungary, 2000a; 2000b).

Thirdly, unlike Hungary where the Constitutional Court is permitted to initiate proceeding on some matters (for example, establishing unconstitutionality by omitting to legislate, as mentioned above) the Constitutional Court of Mongolia does not have the right to proceed *ex officio* on any matter. Hence, the Constitutional Court has to wait

until somebody invokes it. This is one of the reasons for the relative inactivity of the Mongolian Constitutional Court.

Fourthly, in Mongolia, only Parliament and Cabinet decisions are under the jurisdiction of the Constitutional Court, which is different to Hungary, where all administrative decisions are subject to review, but similar to Poland, where a hierarchy of normative acts is followed.

4.4.2. Access which is broad but excludes main actors

Access to the Constitutional Court is broad. It reviews ‘the allegations of constitutional breach by its own initiatives based on citizens’ complaints and notices, or by request of the Parliament, President, Prime Minister, Supreme Court, and General Prosecutor’ (Article 66.1 Constitution, 1992). Any private person, independent of whether he/she is personally affected or not, can submit a motion regarding the constitutionality of normative acts and decisions of certain authorities.

However, again as compared with Hungary and Poland, the Constitutional Court has several limitations in terms of access. *Firstly*, the President is one of the few political institutions which have the right to request the Constitutional Court to review legal acts for conformity with the Constitution. As mentioned in the previous section, the President of Mongolia does not have the right to countersign laws before promulgation nor refer laws to the Constitutional Court before they take effect. However, the weakness of the President as an institution to invoke the Constitutional Court is that it depends on the willingness on the part of the President. When the President is elected from the same party as the parliamentary majority there is less incentive for the President to refer laws to the Constitutional Court.

After the presidential elections in 2009, the opposition party candidate became the President. Therefore, theoretically speaking, the current President is expected to use his right to invoke the Constitutional Court more often. However, because the minority Democratic Party has joined the majority and created a coalition government, such expectation may not be justified.

Secondly, while the Parliament is one of the institutions having access to the Constitutional Court on violations of the Constitution, it is understood that the Parliament is to be treated as an institution. It is not clear if any number of MPs can submit requests to the Constitutional Court. Until now the practice has been that only the Parliament as a whole can submit a request to the Constitutional Court, thereby limiting the opportunity for individual MPs, including those of the opposition to turn to the Court. Sarantuya (2005) noted that in Germany's case the parliamentary minority has an explicit right to submit requests to the Constitutional Court, which is important, as it is only the minority who will challenge the constitutionality of the laws approved by the majority. In 1975, the Austrian reform of parliamentary procedure made it possible for one-third of the MPs to appeal to the Constitutional Court to exercise abstract norm control (Strøm *et al*, 2003). In Bulgaria and the Czech Republic, one-fifth of MPs can invoke the Constitutional Court to consider the constitutionality of a law or other act. In both cases, opposition MPs used this mechanism frequently. In Hungary, any MP can do so (Kopecký and Spirova, 2008).

Coupled with the absence of an Ombudsman in Mongolia, who might have the right to bring cases to the Constitutional Court, the lack of a clear right of individual MP or a certain number of MPs to invoke the Constitutional Court contributes to the limitations in access to the Constitutional Court.

Thirdly, the Supreme Court Chief Judge and General Prosecutor are the next institutions which have the right to submit a request to the Constitutional Court. As Sarantuya (2005) wrote, there has been no need to go to the Court for those organisations, as long as their own power was not breached by others. However, while these two authorities have the right to invoke the Constitutional Court, there is no detailed and explicit procedure on how they should do so. The lack of procedural details and resulting ambiguity may be another reason for the inactive use of this mechanism. Overall, judges use the Constitutional Court less frequently than others (Sarantuya, 2005). For Hungary's Constitutional Court, such requests constitute only two percent of all requests.

4.4.3. Lack of explicitness and details of the laws regulating the Constitutional Court

One explanation for the relative inactivity or low caseload of the Mongolian Constitutional Court is the absence of the provision which allows individuals to turn to the Constitutional Court on issues concerning breach of their basic constitutional rights (Sarantuya, 2005). However, neither the Constitutional Court in Hungary nor the Constitutional Tribunal of Poland has provisions which allow individuals to turn to the Constitutional Court directly concerning breaches of basic rights. Instead, individuals affected by a decision are permitted to submit a complaint to the Constitutional Court/Tribunal to check the constitutionality of legislation. In Mongolia, individuals have the right to turn to the Constitutional Court for checking the constitutionality of any legislative act, independently of the fact whether they have personally been affected or not. Thus the inability of individuals to turn to the Constitutional court regarding violations of their basic rights does not seem to be the cause of the low caseload for the Mongolian Constitutional Court. However, as shown in **Table 4.5**, Hungary and Poland's respective acts are more explicit in this regard, explaining in detail how individuals can make a complaint to the Constitutional Court.

4.4.4. Independence

A precondition for the effectiveness of the Constitutional Court is its independence, especially from a parliamentary majority. The most important provision which guarantees the independence of a Constitutional Court is that its decision is final and mandatory, to all its addressees.

Decisions of the Mongolian Constitutional Court do not become binding in the first instance. It is only after its decision has been discussed by the Parliament and only if the Parliament refuses to accept a decision of the Constitutional Court that a final, binding decision is made by the full bench session of the Court.

Another instance where the Parliament discusses the Constitutional Court decision is on cases of breach of the Constitution by MPs. When the Constitutional Court finds that a given official did breach the Constitution, the Parliament will decide the case with simple majority voting (Article 32.2, Law on Parliamentary Procedures). Sarantuya

(2005) argued that Parliament should not discuss the judgements of the Constitutional Court in such cases, but rather, should take measures to eliminate the breaches. These would include expelling or dismissing guilty officials, or transferring allegations to legal authorities and informing the Constitutional Court.

In Mongolia where parliaments are usually dominated by a majority, voting on such cases allows MPs to still keep their seats despite a breach of the Constitution. This circumstance also makes the public believe that MPs assume that they have immunity from legal charges and misuse this immunity to avoid any charges. In one recent case, where the Speaker of the Parliament was found to have breached the Constitution by revising the text of the law after it was approved, he resigned from the Speaker's position, but was not expelled.

The following two cases illustrate the outcome of two decisions of the Parliament which were largely unpopular with the public and required the intervention of mechanisms of accountability. In the first case, Tax Amnesty Law, presidential veto was not successful and the matter was not taken to the Constitutional Court. A similar law in Poland brought to the Constitutional Tribunal by the President, was found unconstitutional.

The second case outlines a parliamentary decision which is probably one of the most widely condemned decisions and that is the allocation of budgetary funding to electoral districts. Two Presidents vetoed legal provisions concerning this issue, but both were unsuccessful. The Constitutional Court had already made a decision in 2007, invalidating the relevant provisions. However, in 2009 the Parliament again approved this allocation under a different name.

Case 1. Tax Amnesty Law in Mongolia and Poland

Mongolia	Poland
<p>Tax Amnesty Law approved in December 2007 by the Parliament of Mongolia provided amnesty to persons who breached Article 166, 167 of Criminal Code and Article 44 of Law on Administrative Penalty before 31 December 2007, from those charges, cancelled the tax debt, interest and fines, and cancelled social insurance debt.</p> <p>The President put a partial veto on Article 1.1. and Article 6 of the Law on Tax Amnesty, on the ground that the Law should provide amnesty from charges for violation of laws, but the above law provides amnesty from the duty to pay tax. Also cancelling social insurance debt is beyond the law's scope of regulation.</p> <p>The presidential veto was overridden by the Parliament and the full law went into effect in January 2008.</p> <p>This issue was not brought to the Constitutional Court.</p>	<p>In a 2002 case brought by the President, the tribunal held that the details of a law designed to manage a tax amnesty program were unconstitutional. The tribunal held that the imprecision and ambiguity of one part of the Statute conflicted with Article 2 of the Constitution, which states that Poland is a democratic state ruled by law.</p> <p>The amnesty provisions violated sections requiring equality before the law and establishing a common duty to pay taxes (Article 32 and 84). Furthermore, the required property declarations impinge on the right of privacy (Article 47) and do not satisfy the principle of proportionality.</p> <p>Source: Rose-Ackerman, 2005</p>

Case 2. Allocation of budgetary funding to electoral districts

In 2009, as part of the approval of the national budget, the Parliament of Mongolia allocated 1 billion tugrugs to each electoral district, totalling 76 billion tugrugs for 76 districts.

This practice was initiated by Prime Minister Enhbayar, after 2000 parliamentary elections when the MPRP had an overwhelming majority in the parliament. At that time, each electoral district was allocated 10 million tugrugs and MP elected from that district was the main person who coordinated the expenditure. After 2004 elections, in 2005 the amount of budgetary funding allocated to electoral districts was increased by 25 times, to 250 million tugrugs. Enhbayar who then had become President put a veto on this decision, but the Presidential veto was overturned by the Parliament.

In 2007, the Constitutional Court reviewed the parts of the Budget Law for 2007 upon the petition of a

citizen, and invalidated the provisions on investments which were based on electoral districts.

After 2008 parliamentary elections, ‘the district money’ increased even further to 500 million tugrug to each district. A year later, in 2009, the Parliament approved 1 billion tugrugs, doubling the last year’s allocation. This time, conscious of procedural incorrectness for MPs to be in charge of budgetary expenditure, MPs concealed it and spread it out under different budgetary headings. However, it is still MPs who developed expenditure proposals for this allocation. The President put a veto on the Budget Law for 2009, but was again overturned by the Parliament.

Opposition MPs opposed this allocation, however, they had to spend it once it was approved by the Parliament.

A citizen brought the Budget Law for 2010 to the Constitutional Court, and the decision has not been made yet by January 2010.

Summary of the Section 4.4

In the current constitutional and political contexts in Mongolia, more weight falls on the Mongolian Constitutional Court in holding the Parliament and the executive accountable. However, it has less institutional powers than its counterpart courts in a number of Eastern and Central European countries, as shown in Table 4.5. The activeness and effectiveness of the Mongolian Constitutional Court is constrained by limitations in its mandate, access, and independence.

Based on the case studies of Hungary, Bulgaria and Czech Republic, Kopecký and Spirova suggested challenging bills before the constitutional courts may in fact be considered as one of the most powerful and effective weapons of the parliamentary opposition, especially during periods marked by a solid and stable governing majority (2008:153).

Referring to Hungary’s Constitutional Court, Galligan and Smilov noted that ‘it has proven to be a major check on the administration and the governing majority in Parliament’ (1999:115). While the same cannot be said confidently about the Mongolian Constitutional Court, as a judicial review, it remains the most important mechanism to restrain the power of the parliament and the executive.

Table 4.5. Mandate and Access to Constitutional Court/Tribunal in Mongolia, Hungary, and Poland

Constitutional Court of Mongolia	Constitutional Court of Hungary	Constitutional Tribunal of Poland
Mandate		
<p>Review and make judgement on the disputes at the request of the State Ih Hural, the President, the Prime Minister, the Supreme Court and the Prosecutor General and/or on its own initiative on the basis of petitions and information received citizens.</p> <p>The Constitutional Court shall make and submit judgment to the State Ih Hural on:</p> <ol style="list-style-type: none"> 1) the conformity of laws, decrees and other decisions by the State Ih Hural and the President, as well as Government decisions and international treaties signed by Mongolia with the Constitution; 2) the conformity of national referendums and decisions of the Central electoral authority on the elections of the State Ih Hural and its members as well as on Presidential elections with the Constitution; 3) the breach of law by the President, Chairman and members of the State Ih Hural, the Prime Minister, members of the Government, the Chief Justice and the Prosecutor General; 4) the well-foundedness of the grounds for the removal of the President, Chairman of the State Ih Hural and the Prime Minister and for the recall of members of the State Ih Hural. 	<ol style="list-style-type: none"> a) the ex ante examination for unconstitutionality of Statutes adopted but not yet promulgated, and of provisions of the rules of procedure of Parliament and of international treaties; b) the ex post examination for unconstitutionality of rules of law, as well as other legal means of state administration; c) the examination of conflicts between international treaties and rules of law, as well as other legal means of State administration; d) judgment on constitutional appeals lodged for the violation of rights guaranteed by the Constitution; e) the elimination of unconstitutionality by omission; f) the elimination of conflicts of competence between State organs, local governments and other state organs, or between local governments; g) the interpretation of provisions of the Constitution; h) proceeding in all cases referred by statute to its competence. <p>(Article 1, Act XXXII of 1989 on the Constitutional Court).</p>	<p>The Constitutional Tribunal shall adjudicate regarding the following matters:</p> <ol style="list-style-type: none"> 1) the conformity of Statutes and international agreements to the Constitution; 2) the conformity of a Statute to ratified international agreements whose ratification required prior consent granted by Statute; 3) the conformity of legal provisions issued by central State organs to the Constitution, ratified international agreements and statutes; 4) the conformity to the Constitution of the purposes or activities of political parties; 5) complaints concerning constitutional infringements, as specified in Article 79, para. 1. <p>(Article 188, The Constitution of the Republic of Poland)</p> <p>1. In accordance with principles specified by Statute, everyone whose constitutional freedoms or rights have been infringed, shall have the right to appeal to the Constitutional Tribunal for its judgment on the conformity to the Constitution of a Statute or another normative act upon which basis a court or organ of public administration has made a final decision on his freedoms or rights or on his obligations specified in the Constitution.</p>

Constitutional Court of Mongolia (Article 66. The Constitution of Mongolia)	Constitutional Court of Hungary	Constitutional Tribunal of Poland (Article 79, The Constitution of the Republic of Poland)
Access		
<p>Citizens shall submit their request and motion in writing, clearly indicating the name and address, providing details on the Article of the Constitution which was breached, and indicating who, how and when breached the Constitution. The Constitutional Court shall not receive anonym submission (Law on Constitutional Court, 1992).</p> <p>The Parliament, the President, the Prime Minister, the High Court, the General Procurator shall submit their request for a review of Constitutional breach in writing to the Constitutional Court. It shall contain the following:</p> <ol style="list-style-type: none"> 1. the address and position of the person making the request; 2. the address and position of official who breaches the Constitution or made a decision which do not conform to the Constitution; 3. the Article of the Constitution which was breached by the legal act and decision of relevant organisation and official; 4. the content of the request, evidence and other circumstance which are important for resolving the dispute (Article10). 	<p>(1) The proceedings according to point a) of Article 1 may, according to the distinction set forth in Articles 33-36, be proposed by: the President of the Republic, the Government.</p> <p>(2) The proceedings according to point b) of Article 1 may be proposed by anyone.</p> <p>(3) The proceedings according to point c) of Article 1 may be proposed by: Parliament, its standing committees or any Member of Parliament, the President of the Republic, the Government or its members, the Chairperson of the State Audit Office, the Chairperson of the Supreme Court, the Prosecutor General.</p> <p>(4) The proceedings according to points d)-e) of Article 1 may be proposed by anyone.</p> <p>(5) The proceedings according to point f) of Article 1 may be proposed by the organs between which a conflict of competence occurred.</p> <p>(6) The proceedings according to point g) of Article 1 may be proposed by: Parliament or its standing committees, the President of the Republic, the Government or its members,</p>	<p>1.The following may make application to the Constitutional Tribunal regarding matters specified in Article 188:</p> <ol style="list-style-type: none"> 1) the President of the Republic, the Marshal of the Sejm, the Marshal of the Senate, the Prime Minister, 50 Deputies, 30 Senators, the First President of the Supreme Court, the President of the Chief Administrative Court, the Public Prosecutor-General, the President of the Supreme Chamber of Control and the Commissioner for Citizens' Rights; 2) the National Council of the Judiciary, to the extent specified in Article 186, para. 2; 3) the constitutive organs of units of local self-government; 4) the national organs of trade unions as well as the national authorities of employers' organizations and occupational organizations; 5) churches and religious organizations; 6) the subjects referred to in Article 79 to the extent specified therein. <p>1. The subjects referred to in para. 1 subparas. 3- 5, above, may make such application if the normative act relates to matters relevant to the scope of their activity. (Article 191, The Constitution of the Republic of Poland)</p>

Constitutional Court of Mongolia	Constitutional Court of Hungary	Constitutional Tribunal of Poland
(Article 22, Law on Constitutional Court).	<p>the Chairperson of the State Audit Office, the Chairperson of the Supreme Court, the Prosecutor General.</p> <p>(7) The proceedings according to points c) and e) of Article 1 may also be started ex officio.</p> <p>(8) The Statute may also authorize others than those specified in Paragraphs (1)-(6) to propose the proceedings of the Constitutional Court.</p>	<p>Any court may refer a question of law to the Constitutional Tribunal as to the conformity of a normative act to the Constitution, ratified international agreements or Statute, if the answer to such a question of law will determine an issue currently before such court.</p> <p>(Article 193, The Constitution of the Republic of Poland)</p>

Source: The Constitution of Mongolia of 1992; Act XXXII of 1989 on the Constitutional Court of Hungary, the Constitution of the Republic of Poland

4.5. Administrative law system

Administrative law system is the next element of legal accountability system. As with the Constitutional Court, its focus is more on rule of law rather than policy decisions. Normative acts and decisions of administrative organisations which are outside the mandate of the Constitutional Court are reviewed by the Administrative Court in Mongolia.

Administrative procedures law provides the legal foundation for sound government decisions by providing rules for the way government bodies behave. These procedures protect the rights of citizens by guaranteeing participation in government decision by interested parties, openness and transparency of decisions, adequate response to public inquiries, and the availability of recourse (World Bank, 2000a:43).

After several decades of socialism under which the State and the Government were unchallenged, the administrative law system opened the opportunity for citizens to bring government organisations to the court and challenge their decisions. The administrative authority being a defendant, and an individual person being a plaintiff, was a new phenomenon which reversed the old practice, as indicated by an interviewee:

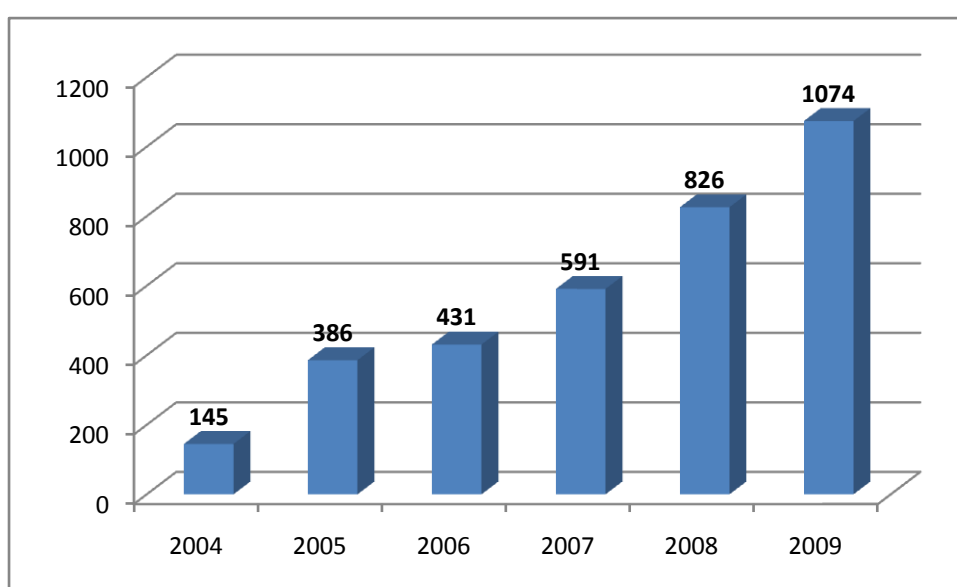
In administrative justice where illegal action of civil servants is involved, the defendant is the state. The State being a defendant is something that we did not have before (Expert interviewee 1).

The administrative law system follows the German model, where the administrative courts review only public law disputes and the legality of administrative the main rationale for the Administrative Courts. In line with the Article 70 of the Law on Administrative Case Review 2002, the Administrative Court invalidates a disputed administrative decision if it was found illegal, recognises existence of legal relationships, recognises the given administrative act was not valid, and orders the administrative organisation or official to issue an administrative act if its non-issuance

was found illegal. As is the case with other public law countries, the Administrative Court does not resolve substantive issues.

The establishment of a separate system of Administrative Courts in 2004 was an important step in strengthening the administrative law system in Mongolia. The system of Administrative Courts has an important role to play to ‘uphold access to justice principles and accountability of government decisions by public decision-makers’ (Astrada, 2009:57). Since its establishment, the number of cases decided at the Administrative Courts has increased each year which indicates its rising activity as a mechanism of judicial review of government administrative decisions, shown in **Figure 4.2**.

Figure 4.2. Number of Cases Decided at Administrative Courts, 2004-2009



Source: Supreme Court, www.supremecourt.mn, accessed in March 2010

The most common types of disputes settled at the Administrative Courts were those related to land ownership and possession (21.7 percent in 2007), unfair dismissal, and license of mineral resources followed by those related to immovable properties and their registration, tax disputes and tender disputes (Administrative Court, 2009).

Although the Administrative Courts resolve ever more cases each year, individuals and businesses are still very vulnerable to arbitrary government actions, as demonstrated by various corruption perception studies. The administrative law system is in its infancy in

Mongolia (Odgerel, 2008). Therefore, there are many problems in the current administrative law system which can be discussed from various perspectives, including re-training of lawyers and judges, transparency of court proceedings, caseload, or general law enforcement related problems. This section will attempt to focus on the role of the administrative law system as a mechanism to hold government organisations accountable. In this respect, the system faces several challenges.

Firstly, there is no single administrative procedure act in Mongolia. The main institutions and principles of general administrative law have not been integrated into a law and this presents the most difficult challenge in administrative law (Odgerel, 2008). The current Law on Administrative Case Review provides procedures for reviewing administrative cases at the court, but there is no material law on administrative decisions.

One implication of not having a separate, detailed Administrative Procedure Act is that administrative principles and procedures are mentioned in various laws only in general terms. For example, if there is no detailed legal requirement on access to information, it is up to the organisation to decide to what extent to make its information available to public. Given the importance of making quality administrative decisions at first instance for securing administrative justice (Galligan, 1997), the absence of Administrative Procedure Act is a significant gap.

Most post-communist countries have adopted a law on administrative procedures, as shown in the **Table 4.6** below, including countries with more recent transition to democracy than Mongolia, including Kosovo. Mongolia and Romania are among the few countries which do not have general administrative procedure law.

Difference in administrative procedures was one of the crucial differences between Central and Eastern European countries and the former Soviet republics. Prior to transition, most countries in Eastern Europe had at least basic guidelines for administrative decision making and dispute resolution (World Bank, 2000a:43).

Table 4.6. Post-Communist Countries which Adopted Laws on Administrative Procedures

	Country	Legal act	Year adopted
1	Poland	Code of Administrative Proceedings Law on Administrative Court Proceedings	1998 2002
2	Hungary	Law on Administrative Procedure	1957
3	Czech Republic	Code of Administrative Procedure	2004
4	Bulgaria	Administrative Procedure Code	2006
5	Bosnia and Herzegovina	Law on Administrative Procedure	1998/99
6	Croatia	General Administrative Procedures Act	2009
7	Romania	---	---
8	Slovenia	Law on General Administrative Procedures	1956, amended in 1999 and 2002
9	Estonia	Administrative Procedure Act Code of Administrative Court Procedures	2001 1999
10	Albania	Code of Administrative Procedures	1999
11	Kosovo	Law on Administrative Procedures	2006
12	Lithuania	Law on Public Administration	1999
13	Latvia	Law on Administrative Procedures	2002
14	Serbia	Law on General Administrative Procedures	1986, amended in 1997 and 2001
15	FYR Macedonia	Law on General Administrative Procedures	Amended in 2008
16	Slovak Republic	---	---

Source: based on OECD data

Adaptation of national administrative systems to EU standards was part of the preconditions for accession of Central and Eastern European countries to the EU. Although there are some problems relating to implementation, the approval of substantive administrative procedures was an important step forward in strengthening rule of law and improving accountability of public organisations in those countries.

Secondly, given the transitional nature of the administrative law system in Mongolia, there are many issues and areas which are not regulated by laws (Expert interviewee 1). The World Banks has commented critically:

Laws passed during the years of reform are criticized for broadness, i.e., failing to address specific aspects of real-life problems, and for being so vague that they are susceptible to contradictory interpretations (World Bank, 2000b:14).

In such cases, administrative authorities and officials use their discretion and it is hard for affected people to challenge the legality of administrative acts. This is also a consequence of the absence of a general administrative procedure law, which would contain general principles and procedural rules to be applied to the general functioning of the public administration.

Thirdly, while any individual and private entity can challenge the legality of a government decision, there is no one to make such an initiative when collective or public interest is breached. For example, ‘when a license was provided in violation of law and relevant information is not publicly available’ there is usually no plaintiff (Odgerel, 2008:62). This is supported by an interviewee’s comment:

There should be some mechanisms which protect the public interest. Not the interests of individuals, but the public interest specifically. Whether it should be Ombudsman, Prosecutor or other institution, I don’t know. Court decision would just say the decision was wrong. There is no mechanism to follow it up after the decision is made invalid. This is the gap (Expert interviewee 2).

Government decisions, especially those made by local level administrative organisations, are not transparent and not easily accessible, thereby hindering any interested parties, including civil society organisations from obtaining information and initiating actions.

There is no Ombudsman in Mongolia. Ombudsman’s systems provide an important extension of administrative law system. The Draft Law on Parliament was submitted to the Parliament for discussion provided for the creation of Ombudsman’s institution, but no decision has been made yet as of September 2010.

In both Poland and Hungary, the Ombudsman's offices can initiate inquiries on issues of public interest. In Poland the Ombudsman can bring cases to the Constitutional Tribunal. This right to initiate inquiries and submit requests to the Constitutional Court substantially expands access to the Constitutional Tribunal. Such access is especially important 'in societies where people are not used to lodging complaints against authorities' (Rose-Ackerman, 2005:75). Ombudsman's offices also assist in resolving individual complaints against the government through voluntary resolution (Rose-Ackerman, 2005:83).

Fourthly, the internal system of registering and checking the consistency and legality of normative acts is weak. Ministries issue normative acts, but do not register with the Ministry of Justice and Home Affairs as they are obliged to by the law. An interviewee clarified the situation:

We made a list of all authorities who have the legal mandate to approve normative acts. There are so many of them. But there are only a few who have the mandate to monitor these acts. The fact that these normative acts are largely outside of monitoring is one of the problems of the current Mongolian legal system (Expert interviewee 3).

The weak internal system of registration and monitoring of normative acts also contributes to the difficulty in enforcement of legal acts. The ambiguity was confirmed by an interviewee:

Since there is no system of monitoring, registered and unregistered normative acts may overlap. An inspector has two acts regulating the same issue. One is more favourable to citizens and the other is more favourable to the State. So the inspector has a choice of which one to use, depending on if you are a friend or not (Expert interviewee 3).

Fifthly, paying for damages caused by unlawful actions of administrative organisations and taking remedial measures in accordance with the court decision is only at an initial stage, discouraging potential applicants. Ganzorig (2007) found three reasons for weak

remedial actions: (i) the legal sanction for officials who did not implement a court decision is 500-10,000 tugrugs (less than US\$10), which allows them to disregard court decision; (ii) according to the Law on Civil Service, the State is to pay for damages caused by civil servants while they were on duty. This leaves many issues vague and unregulated, including the nature and causes of damage, the specific body to represent the State, and the budget from which damages should be settled; and (iii) even payments are made for damages by the government, respective officials are not held accountable for their actions which had led to such damages, allowing them to repeat the same action. Interviewee 2 provided a supporting evidence:

Let me cite a common case. A Governor provides a License to possess land to a company. The company digs the land and the natural environment is damaged. Citizens complain and they meet at the Court. The Court decides that the Governor's decision was wrong. However, citizens will be left with damaged land. The Governor does not take any responsibility for his wrong decision. In this case, the lack of accountability refers to this Governor not facing any consequences for his wrong decision ...

In the above case, citizens and the Company confront each other. The main person who made the mistake would already have left the job (Expert interviewee 2).

According to the Law on State Administration of Serbia passed in 2005, the damage caused by unlawful or improper operations of State administrative authorities is compensated by the State or local government whose official is deemed to be responsible for the damage. When the damage is caused by a civil servant intentionally or as the result of gross negligence, the State or local government compensates for the damages caused, then, within six months of the date of payment, reclaims compensation from the civil servant. This kind of impunity of public officials is one of the more common reasons which alert the public and raise calls for increased public sector accountability.

Finally, and the sixth point, Mongolia does not have a Law on Freedom of Information, though the draft law was developed and submitted to the Parliament several years ago.

Summary of the Section 4.5

The creation of an administrative law system with a specialised Administrative Court was an important development in both legal and public administration fields. However, the role of the administrative law system, as a mechanism for holding government organisations accountable is hampered by the lack of general administrative procedural law and related gaps in the law, including the lack of an institution to bring cases of collective interest to court, weak oversight over the registration and monitoring of normative acts, compensation for damages caused by government organisations and freedom of information act. As indicated by the OECD and EU,

(w)e use the notion of general administrative law to denote those parts of administrative law that are applicable – fully or partially, primarily or supplementarily – to all administrative settings, public bodies, administrative activities and administrative relationships. In other words, general administrative law would be the part of administrative law that is not only applicable across the whole administration, but also contains principles and norms that give rise to special regulations or specific organisational functioning (OECD and EU, 2008).

Summary of the Chapter

Unlike established democracies, in Mongolia holding the parliamentary majority accountable is as important if not more so, than holding the executive accountable. The Constitutional Court is the most important mechanism to constrain the parliamentary majority. While the establishment of the Constitutional Court was one of the great achievements of the Constitution 1992, there are several limitations in terms of mandate and access. The most important limitations particularly relevant to constraining the power of the majority are the lack of the mandate to deal with ‘omissions’ in legal frameworks and lack of explicit rights of the opposition to invoke the Constitutional Court.

In the current constitutional and political environment, more weight on holding the executive accountable falls to the Parliamentary opposition. However, accountability mechanisms available to the opposition are limited and those which are available are underutilised. The role of parliamentary opposition differs depending on the particular

set of political and constitutional arrangements of a given country. It is generally understood that the Opposition scrutinises and checks governmental actions and policies and represents a credible 'alternative government' (Helms, 2009).

Mongolia does not have a second legislative chamber and does not have a federal structure, which allows the division of power. Under the current coalition government, Mongolia does not have a 'proper' Opposition. In addition, the mechanisms that the Parliament (including the Opposition) uses for overseeing the executive, including question time and committee inquiries, are also weak, and there is no investigative committee. Mongolia seems to be unparalleled in terms of scarcity of institutional mechanisms for holding the majority and the executive accountable to public.

Although most institutional frameworks exist in Mongolia, due to a combination of various factors, their effectiveness is undermined. The absence of specific institutional mechanisms or the ineffectiveness of individual mechanisms makes holding the Parliament and the executive accountable difficult. However, more importantly, interaction and a combination of various accountability mechanisms needs to be considered as a whole in order to have an impact on the accountability of the Parliament and the executive in Mongolia. Having analysed the question of unicameralism versus bicameralism, which was treated in this chapter as one of the accountability mechanisms, Cotta (1974:222) wrote that

characteristics of a political system results from delicate equilibra of the different functions, which combine at different levels in different proportions

and underlined the importance of comparing these single functions,

with the equilibrium levels of different functions corresponding to the global characteristics of a political system. By definition, such an approach rejects solutions which are rigidly abstract, and requires close attention to the requirements of the given political system (Cotta, 1974: 222).

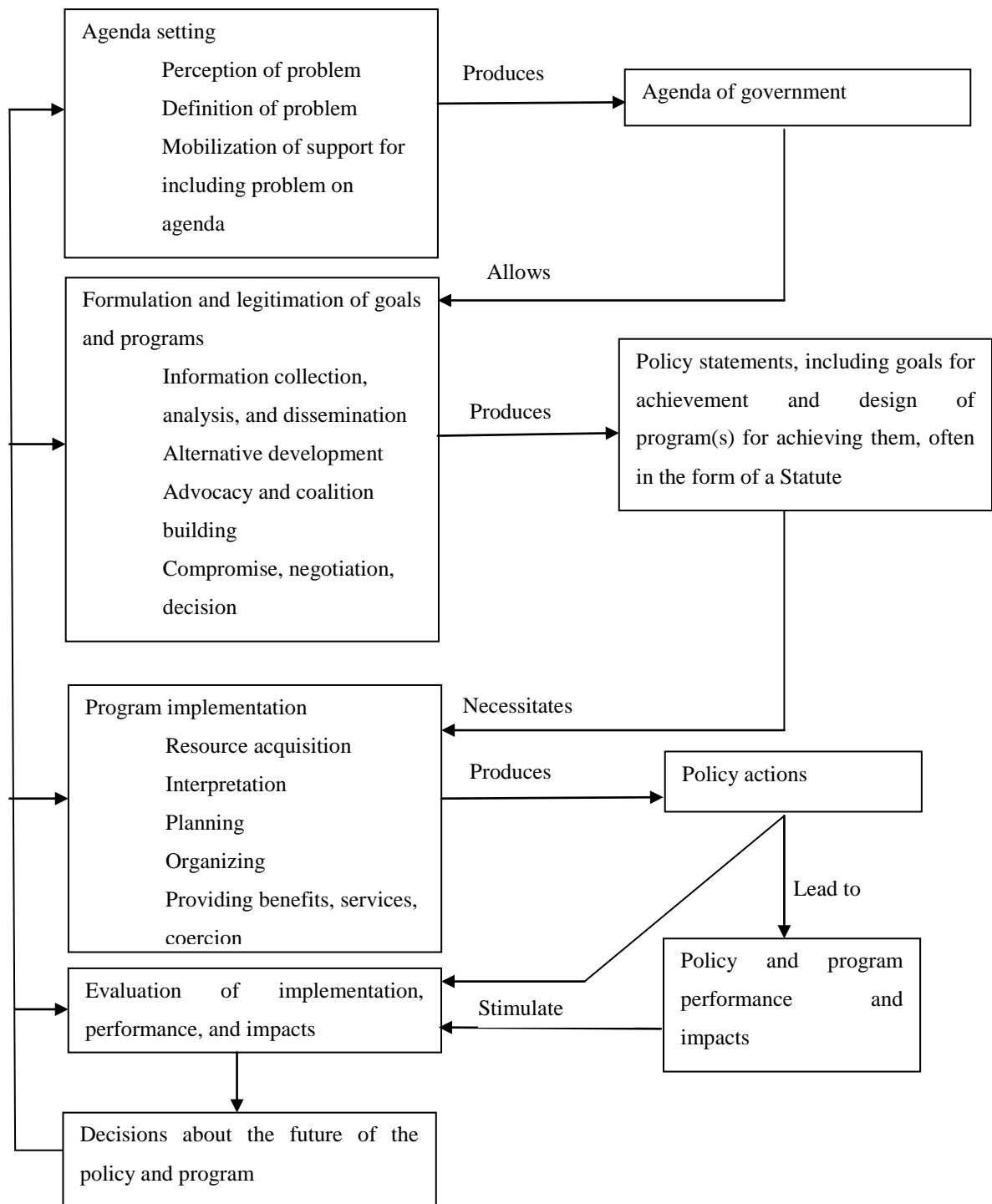
CHAPTER 5. Policy accountability

This is the second of three Chapters outlining findings. The previous Chapter found that most mechanisms of political accountability, including regular elections, competition of political parties, Constitutional Court and administrative courts, exist in Mongolia, but due to a combination of various factors, their effectiveness is undermined. The mandate of the Constitutional Court and the parliamentary opposition - the two more important mechanisms for holding the parliamentary majority and the executive accountable - is limited under the current legislations.

Having explained political accountability at the national level in the previous Chapter, this Chapter focuses on policy accountability at the sectoral level and uses the MSWL as a case study. Policy accountability is accountability for ensuring that policies are ‘a reflection of the interests and needs of the population’ (Rose-Ackerman, 2005:5, 7) and is assessed by the extent to which different stages of policy-making are inputs, outputs or outcomes-based, and reflect interests and needs of the population (Generic stages of policy making process is depicted in Figure 5.1). In particular, the Chapter analyses: the practice of formulating policy objectives; institutional arrangements for policy implementation; monitoring, reporting and evaluation mechanisms; and factors that constrain policy accountability in the public sector of Mongolia. The New Zealand experience of improving policy accountability is also briefly discussed given its influence on public sector reforms in Mongolia.

This Chapter relies extensively on Government documents and interviews with Government officials as well as relevant stakeholders

Figure 5.1. Flow of policy stages



Source: Cox, Buck and Morgan (1994:242)

5.1. Statement of policy objectives

In Mongolia, government policy objectives are formulated in planning documents as well as policy/programme documents. Policy objectives can also be extracted from various legislative acts.

5.1.1. Policy objectives in planning documents

Policy objectives are stated in three main documents at the national level: (i) the Millennium Development Goals-based National Development Policy (MDG-based NDP), (ii) Government Action Plan, and (iii) Main Directions of Annual Economic and Social Development. The most overarching and long-term development policy objectives are formulated in MDG-based NDP, which was approved by the Parliament in 2007. The policy objectives reflected in the MDG-based NDP are to be achieved by 2021, and therefore, its implementation is the responsibility of several successive governments.

The Government Action Plan is a four-year plan and policy document which contains mid-term policy objectives. It is developed by the Government within 60 days of its formation following each general election (Law on Government, 1993). Government is expected to draw on the MDG-based NDP when developing its Action Plan. In addition, the Government of the day takes into account its election manifesto, proposals from the civil society organizations and agreements made with international organizations. Most of the MPRP's 2004 election platform promises in social welfare and labour, such as the creation of 145,000 jobs or provision of monetary assistance to new born babies, later became part of the Government Action Plan for 2004-2008. As the 2008 Bayar Government was a two-party coalition government, it also took into account an election platform of the party in minority, some objectives reflected in election platforms of other political parties, and the collaboration agreement between the parties in government. The government of the day is held accountable for the implementation of a Government Action Plan, which constitutes the basis for many other ministerial level policy decisions.

The Main Directions of Annual Economic and Social Development ('Main Directions') is the third most important planning document and contains development objectives for the given year. In addition to objectives specified in the Government Action Plan, Main Directions should also include target, indicators and major actions.

Table 5.1 shows policy objectives in the area of employment promotion, as they are reflected in the hierarchy of planning documents; MDG-based NDP, the Government Action Plan for 2008-2012 (CoM, 2008b), and the Main Directions of Annual Economic and Social Development (GoM, 2009d).

As seen from the examples demonstrated in **Table 5.1**, policy objectives reflected in the main planning documents have four characteristics and which have implications for policy accountability.

Firstly, policy objectives are formulated as a list of objectives, which neither include a narrative policy analyses nor spell out why particular policy objectives were chosen, and why particular measures were included. Planning documents themselves can be a list of objectives, but there is no reference to other documents which might contain rationales for promoting particular policy objectives.

There is no specific guideline on the actual content and process of developing planning documents. The format of the Government Action Plan and Main Directions was developed in the early years of the transition and relied heavily on socialist system planning practices; and it has not changed substantially since then. It was acknowledged by the Parliament that the current format of Main Directions does not meet the needs and requirements of the Parliament. One Member of Parliament called the document a 'dream list' (*Niislel Times*, 23 Oct 2009).

Table 5.1. Policy Objectives Stated in the Hierarchy of Planning Documents

(in relation to employment promotion)

	Policy objectives in planning documents
1.	<p>MDG-based NDP (2008-2020)</p> <p>Broaden supply and demand research of the labour market and improve coordination of employers, employment seekers and professional training organizations.</p> <ul style="list-style-type: none"> • Formulate and implement a policy of overseas employment by adjusting between overseas and domestic labour market supply and demand. • Within the policy and actions of implementing the Law on small and medium enterprises, increase employment by creating and maintaining specialized business incubators and broadening small-scale loan, on-the-job and student-centred training. • Formulate a State policy of vocational education and training, and enhance the capacity of personnel trained with the support of the private sector adjusting to meet the needs and demands of the labour market.
2.	<p>Government Action Plan (2008-2012)</p> <p>1.3.2. Develop a comprehensive labour market system, train officials and workers in line with market demand, and improve their practical skills;</p> <p>1.3.7. Increase the number of students in vocational training centres, encourage on-site intensive vocational training programs at economic entities and industrial plants and reduce the causes of being unemployed due to lack of professional skills;</p> <p>1.3.8. Enable skills to meet requirements of labour market through vocational training programs and increase the number of trainees three-fold through integrated policy to conduct vocational training and promote employment and small and medium enterprises;</p> <p>1.3.12. Upgrade the quality of labour market service and related information dissemination and set up a labour exchange.</p>
3.	<p>Main Directions of Annual Economic and Social Development (2009)</p> <p>13.5. Increase employment level through creation of new jobs</p> <p>13.5.1. Expand the scope of employment services and number of citizens eligible for employment services through amendments to the Employment Promotion Law;</p> <p>13.5.2. Develop and implement industry-based vocational training program in order to reduce the foreign workforce, prepare national skilled workers in road, construction and mining sectors;</p> <p>13.5.3. Implement 'Green jobs' program so that employment promotion and job creation measures are linked with environmental protection and restoration measures;</p> <p>13.5.4. Support household livelihood by implementing 'One household – one job' program;</p> <p>13.5.5. Take special measures targeting the employment of herders and crop/vegetable producers and increase their income.</p>

targeted population or potential implications. The MDG-based NDP adopted the MDG poverty target to halve poverty as a national development goal, but the Government Action Plan for 2008-2012 does not include any target for poverty reduction, although it contains a target for unemployment and new jobs. As explained later in the Chapter, the creation of new jobs does not necessarily reduce poverty in Mongolia given the high number of employed among the poor.

Thirdly, the linkages between policy objectives with each other and between policy objectives and planned measures are not explicit. It is not clear how each of these measures contributes to common objectives.

Fourthly, implementation reports of the Government Action Plan describe the actual measures undertaken to achieve particular stated policy objectives and do not provide analysis on appropriateness of policy design or effectiveness of policy implementation.

As compared with planning documents, policy documents and national programmes are devoted to a particular policy area, hence they can be expected to contain more justification of policy objectives, and thereby facilitate monitoring and evaluation.

5.1.2. Policy objectives in policy documents/national programmes

In addition to planning documents, policy objectives are also stated in policy documents, called ‘state policies’ and ‘national programmes’. There are several policies and programmes in the area of social welfare and labour, as shown below in **Table 5.2**.

It is understood that policies are general statements of objectives and directions to be followed in a particular policy area, such as labour safety or domestic violence while national programmes are a more detailed articulation of implementation arrangements for fulfilling given policy objectives.

Table 5.2. Policy Documents and National Programmes in Social Welfare and Labour

Policy documents	National Programmes
1. State Policy on Population Development (2004)	1. National Programme on Supporting Livelihood of Households ¹ (2000, 2001)
2. State Policy on Family (2003)	2. National Programme on Employment Promotion ¹ (2002)
3. State Policy on Informal Employment (2006)	3. National Programme on Gender Equality ¹ (2002)
	4. National Programme of Occupational Safety and Health ¹ (2005)
	5. National Programme on Supporting People with Disabilities ¹ (2006)
	6. National Programme on Enhancement of Children's Development and Protection ¹ (2006)
	6. National Programme on Supporting the Participation of Children with Disabilities
	7. National Programme on Human Trafficking and Sexual Exploitation of Children and Women ¹ (2005)
	8. National Programme on Adolescents and Youth ¹ (2006)
	9. National Programme against Domestic Violence ¹ (2007)

Source: Cabinet Secretariat, 2009b

However, in practice, the distinction between policies and national programmes is not clear cut. There is no guideline or procedure which details the distinction between the two and spells out specifics of each of them. In terms of sequence, there is no established practice to develop first policies and then national programmes. Likewise, there is no requirement to develop both.

As with planning documents, most of the above mentioned policy and programme documents are broad policy directions and intentions. For example, the State Policy on Informal Employment contains 23 objectives or measures under five main directions, to be implemented in three stages until 2015. The policy document is invaluable as an explicit expression of the government policy intent to protect those working in the informal sector who had been largely neglected before, and to encourage them to transfer from the informal to formal sector. However, it provides little guidance in terms of policy implementation and to ensure its accountability. Like planning documents, this policy document does not provide information on the scale of informal employment,

any analysis on potential causes and dynamics, and does not mention any target numbers and implementation arrangements, e.g. the size and sources of funding required.

It may be possible to develop policies as broad directions, intentions and statement of objectives, if there are other supporting documents which indicate more details of implementation arrangements. In this respect, various national programmes approved by both the Government and the Parliament could play an important role. However, in some cases there is no national programme (e.g., informal employment). When national programmes exist, they vary in terms of the details they provide on implementation arrangements.

The National Programme on Employment Promotion (2002) provides much more detail on implementation, including a description of current status, rationale, implementation arrangements, responsibilities of participating parties, as well as the total amount and sources of funding required for the programme implementation. In addition, the programme incorporates several performance indicators, and defined its expected outcomes as 500 thousand new jobs, vocational training of 400 thousand persons and a reduction of unemployment rate to 4.5 percent by 2010.

The National Programme on Employment Promotion (2002) contains 52 measures under 10 directions of actions. Employment promotion measures in regional and local areas through small, medium and micro enterprises envisaged in the national programme is wide ranging and include creating wholesale centres in local areas for market competitive products and raw materials, supporting production of livestock based products, vegetable and fruit processing, supporting the provision of basic necessity services, such as shower points, hairdressers, shoe mending or clothing alteration services. However, there is no description on how each of these measures will be implemented, how each will contribute to employment promotion, and whether these are appropriate to local context.

There is an implicit assumption that all measures are able to be implemented. While the National Programme on Employment Promotion defined implementation arrangements,

and its implementation is monitored through receiving reports from participating organisations, the substantive content of the programme is still very broad and general.

Most national programmes do not have sufficient financial, human and other resources that allow adequate implementation. Only some small residual lump-sum amount is allocated for these programmes and public servants are required to work on their implementation as part of their normal duties. In cases where the total funding required has been estimated, there is a mismatch between the estimated cost and the actual amount allocated. A government official interviewed indicated that

(w)hen National Programmes are developed there is always an ambiguous provision in it that the programme will be funded from the sectoral budget and the rest of the funding will be sought from donor organisations and other sources. There is never a clear indication on how much would be spent on which activities. So, in terms of funding, there is low chance for programmes to be implemented. People criticise a lot that programmes get approved but never implemented (Interviewee 1.5).

All measures are listed in equal terms, and it is unclear if any of these measures are of priority, in terms of timing, significance, or funding. In other words, it appears that there is a substantial discretion for implementers to establish priorities among the list of measures.

The MSWL, as all the other ministries, is required to report to the Cabinet on the implementation status of national programmes. Responsibilities for monitoring the implementation of the Programme are assigned to the Monitoring and Evaluation Department of the MSWL. All central and local level government agencies report the implementation of national programmes to the MSWL. The MSWL sends the integrated report on the implementation of national programmes to the Cabinet Secretariat annually. In turn, the Cabinet Secretariat provides an assessment on the implementation status of each national programme and reports to the Cabinet Meeting. The Cabinet Meeting discusses and makes recommendations to the Ministry if considered as needed.

The National Programme on Employment Promotion (2002) is due to be completed in 2010. Although the final evaluation has not been conducted yet, the annual monitoring and evaluation report pointed out that reduced unemployment was the result of increased funding under this programme:

Since the implementation of the National Programme on Employment Promotion has started, the number of persons unemployed has consistently reduced each year, the number of persons receiving the employment services has increased, and the unemployment level has reduced. These are the results of this Programme and the Law on Employment Promotion (Cabinet Secretariat, 2008a:5).

As Mongolia has introduced the foundations of market-based employment services and employment promotion measures during this period, the results of the programme may be considered as satisfactory. However, a more qualitative assessment of the contribution of different employment promotion measures to poverty reduction is also needed to ensure policy accountability.

The current practice of developing, implementing and evaluating state policies and national programmes has implications for policy accountability.

As it was the case with planning documents, policy and programme documents consist of broad goals and objectives, and do not provide enough explanation about the rationale which supports the formulation of given policy objectives. Policy and programme documents contain a list of measures to be taken with only implicit linkages between different objectives and measures and do not contain sufficient implementation arrangements, such as specific funding sources and targets.

It is practice that public sector organisations report back only on what was planned. The content of reports of the Ministries and the Government follow the structure of planning documents. If some issues were not included in the plans, it is likely that the report would not include those issues.

The evaluation of national programmes tends to reflect the accepted and entrenched practice of planning, policy development and implementation process. Section 5.3 provides more details on evaluation.

There are other policy documents, including concept papers, main directions, strategy papers, master plans, and sub-programmes (e.g, Sub-Programme on Employment Promotion for Herders). However, policies and national programmes are two more common forms of policy documents used by the Government.

5.1.3. Policy objectives in laws and other legislative acts

Laws are another source of policy objectives. In fact, in many cases laws are adopted first, and then policy documents are developed as part of implementation of laws. When draft laws are submitted to the Parliament, they have to be accompanied with a Concept Note that provides justification and the approach taken. Concept Notes are usually brief consisting of two to four pages, and contain a general policy approach.

The Law on Social Welfare has been amended several times. Law on Social Welfare of 1995 laid down the legal basis for establishing a social welfare system and assigned social insurance offices to deliver welfare pensions, benefits and services. Law on Social Welfare passed in 1997 and amendments to the Law in 1998 introduced an independent social welfare system and defined its management structure. Similarly, the Law on Employment Promotion was adopted in 2001, laying down the legal framework for employment services.

It is a common practice in Mongolia to draft laws and amendments to change policies. Assessment of policy options and rationales for given policy are discussed as part of the legal drafting process. In most cases, a working group is established to draft a law, with specific formulation of all articles. In order to submit the draft law to the Cabinet and then to the Parliament for discussion, a draft law should be accompanied with a brief background paper outlining the need for adopting such law, together with objectives and issues to be resolved by that law. However, this background paper does not articulate other policy options and provides justification only for the option incorporated in the

draft law. As laws state their purpose as to the regulation of specific relations between the parties involved (rather than to achieve certain substantive objectives), policy objectives in laws are usually implicit. This is an important drawback of combining policy development and legal drafting which affects policy accountability.

Such a process appears to also be common to Central and East European transition countries. A report on policy making processes in those countries (OECD, 2007:22) observed that there was rarely a separation between the policy development and the legal drafting phases. Since this has to do with tradition but also with limited resources and time constraints, it recommended combining policy development and legal drafting stages in more effective ways.

5.2. Accountability for policy outputs and outcomes

The previous section discussed the nature of planning, policy and programme documents, the way policy objectives are expressed in them, the role legislative drafting plays in policy development, as well as their implications for policy accountability. Since policy accountability involves accountability for the whole cycle of policy process from identifying policy objectives to achieving certain outcomes or impact on people's lives, the next step aims to review the manner and extent to which the MSWL and its implementing agency ESWSA, are held accountable for policy outputs and outcomes.

Accountability for policy outputs

The Strategic Plan and Annual Report of the MSWL are two main documents which can demonstrate the focus of policy accountability. Since the approval of the Public Sector Management and Finance Law (PSMFL) in 2002, both the MSWL and its implementing agency, ESWSA, have been using strategic plans. The Strategic Plan is developed for three years and adjusted annually. A review of Strategic Plans of both organisations as well as aimag/district ESWSDs reveals that these organisations focus on policy and service delivery outputs as the main emphasis.

The strategic objectives set forth in the Strategic Plans of the MSWL for 2008 and 2009 were to: (i) provide employment sector with strategic planning, policy guidance

and coordinate policy implementation; (ii) provide population and social welfare sector with strategic planning, policy guidance and coordination policy implementation; (iii) provide public administration leadership; (iv) conduct population, social welfare and employment sector research studies, (v) provide monitoring in policy implementation and evaluate results; (vi) plan the Portfolio Manager's budget and investment, expend according to approved purposes and provide reporting; and (vii) provide support in developing international cooperation and in cooperating with foreign countries and international organisations.

The implementing agency ESWSA also develops its own Strategic Plan, which provides the basis of its budget. The ESWSA Strategic Plan (2007) identified the following strategic objectives: (i) increase employment, decrease unemployment, (ii) prepare workforce that is competitive on the labour market; (iii) improve the quality and access of employment services, (iv) develop social work to the level of profession; (v) develop community based welfare services, (vi) decentralise social welfare service; (vii) fulfil revenue and expenditure performance of the ESWSA, ESWSDs, and Employment Fund and Social Welfare Fund: and finally, (viii) enhance administrative and human resource leadership.

Under each of these strategic objectives, MSWL and the ESWSA developed a list of outputs to be achieved. In the case of the MSWL, the State Secretary as General Manager signs a Performance Contract with the Minister for the delivery of listed outputs. In the case of the ESWSA, the Director signs an Output Delivery Contract with the Minister for Social Welfare and Labour. The Contract provides for specific measures to be taken, such as conducting job demand studies, establishing an integrated information network, and forecasting market supply and demand. The Contract also specifies quantitative targets such as the number of persons placed into jobs, the amount of loans provided, the number of persons participating in public works and provided with temporary work, or the number of new jobs created.

Likewise, aimag and district level Employment, Social Welfare Service Divisions (ESWSDs) are also required under the PSMFL, to develop their own Strategic Plans. Each District ESWSD plan includes even more quantifiable targets than the ESWSA, its

central coordinating agency. Specific targets under the employment promotion section include: the creation of 7,000 new jobs; conducting a district level labour market study; training of 1,145 persons with at least an aim of 70 percent employment; training at least 45 percent of people with disabilities who can work; training over 160 persons in business skills training, or the involvement of 350 persons from vulnerable groups in public works.

The emphasis on policy and service delivery outputs can be seen even more clearly from the Annual Reports of the MSWL, ESWSA, and ESWSDs.

The 2007 and 2008 Annual Reports of the MSWL consisted of two parts, namely, results of *policy guidance* activities and results of *policy implementation* activities. The policy guidance section of the Annual Reports deals with works accomplished by the Ministerial Headquarter staff, e.g., Headquarter outputs. Thus, the results of policy guidance activities are mostly related with the approval of legal acts, policies, and procedures, such as the approval of the Law on Occupational Safety and Health and approval of the Government Resolution 194 of 2007 on the Establishment of the Central Employment Exchange. The following excerpt from an Annual Report illustrates this:

Comments and suggestions were given to 133 draft laws developed by the Parliament Cabinet Secretariat, other Ministries and agencies, 21 draft resolutions of the Parliament, 290 draft resolutions of the Government, 27 notes of the Cabinet meeting, 1 decree of the Prime Minister, 19 resolutions of other Ministers (MSWL, Annual Report, 2008).

The second part of the Annual Reports deals with the results of policy implementation activities and includes measures taken in the course of implementing policies. Most of these measures are again the measures taken by the MSWL Headquarters, including the development of rules and regulations, approval of standards, promotion campaigns and training activities. Examples of the results of policy implementation activities mentioned in the Annual Report 2007 and 2008 include ‘New Jobs-2007’ exhibition, the ‘Development of Household Manufacturing’ Conference, launching of the website

www.ejob.mn, launching of the promotion billboard, and renewal of contracts with NGOs providing employment voucher training.

Splitting *policy guidance* measures from *policy implementation* related measures is a product of the efforts to make the reporting more meaningful. Policy guidance measures of the MSWL are clear and understandable. They are policy development outputs.

However, policy implementation measures and results deal only with those parts of the policy implementation which were carried out by the MSWL Headquarter. These policy implementation measures do not deal with the actual service delivery to people. The actual implementation or service delivery outputs are not mentioned in the MSWL documents but are found in the ESWSA Annual Report.

The ESWSA Annual Report informs the number of people assisted into jobs, the number of people: who obtained small loans to create job places; those involved in public works; and those who obtained unemployment insurance payments. The employment offices at aimag and district level also provide similar reports for their respective areas. These offices in turn aggregate data they have collected from soum/khoroo social workers.

The use of output is more practical and feasible for the performance evaluation in the MSWL. Since outputs are more tangible and easy to measure they serve the staff evaluation purpose better than the outcome measures As explained by an interviewee who is a government employee:

When we evaluate our work, our departments' work, we use number of persons served, number of persons who received social welfare allowance, number of persons whom we helped find job, number of newly created jobs, increase in welfare allowances etc. When we link directly with poverty, it is impossible and unrealistic to make evaluation. So we use number of persons whom we delivered services (Interviewee 1.2).

Thus, Annual Reports of the MSWL, the ESWSA and the aimag/district offices are based on policy outputs. Most reports show that outputs planned were achieved successfully. However, the Annual Reports do not explain to what extent the fulfilment of these outputs contributed to the achievement of intended outcomes.

It is understandable that there are areas where output measures are more relevant and cannot be substituted by other measures. Whether the emphasis should be on outputs and/or outcomes depends on the specific purpose. Policy accountability of an organisation often requires consideration of both policy outputs and outcomes. However, as seen from official documents, policy outcomes seem to have been neglected at the MSWL and ESWSA.

Accountability for policy outcomes

Every agency is accountable for achieving a list of outputs, but it is unclear who should take responsibility and be held accountable for the overall state of social welfare and employment in the country. This situation is evident in the example of the National Programme on Poverty Reduction and its successor, the National Programmes on Household Livelihood:

The National Programme on Poverty Reduction first started in 1994. At that time, the poverty rate was around 30 percent, and the Programme had aimed to reduce it by half. After six years of implementation, the Programme was extended in 2000. By the time of this extension, the poverty rate had not declined but increased to around 36 percent. Then, a new Programme on Household Livelihood started again with an objective to halve poverty. Here I want to raise an accountability issue. This is not a political mistake of one person or mistake of one civil servant. This should be an issue of accountability of the Ministry as a whole (Interviewee 3.3).

Results of poverty reduction policy are not visible. Lots of resources have been spent (Interviewee 1.8).

The MSWL does not have an explicit policy or guidelines on the definition of outcome and the linking of organisational policy outputs to outcomes. There are different opinions on whether and how the MSWL should be held accountable for policy outcomes. Some argued that given social welfare and employment policies are complicated and depend on factors which are beyond the control of the MSWL, the MSWL should not be held accountable for policy outcomes as shown by the following comments:

Our Ministry cannot resolve poverty issue alone. The main pre-condition for the whole population to get rid of poverty is to be employed. Economic development plus employment [is important]. ... Therefore, it is wrong to talk accountability only with us. ... The issue of accountability should be raised differently in this case (Interviewee 1.4).

Cabinet Secretariat uses certain indicators to evaluate Ministries. These indicators are not achievable in our case. Reducing the poverty level, increasing the minimum living standards and employment rate etc., these are social phenomena, which actually tend to worsen, rather than improve. ... Since the country situation is not improving, our ministry's performance will never be good enough (Interviewee 1.1).

In contrast, there were opinions that the MSWL should be held directly accountable for policy outcomes:

There should be a direct connection. The mission of our Ministry is to reduce poverty and to promote employment. Poverty reduction gets measured by poverty level. It gets measured by unemployment and poverty rates (Interviewee 1.2).

There was also a view that the organisation to be held accountable for policy outcome is the Cabinet or Ministry of Finance, not the MSWL:

The accountability bearer is the Cabinet. If the poverty rate is not declining, first of all the Cabinet should be held accountable. Then, it is the Minister. ... Since D was doing her job and poverty worsened despite D's work, it is the Minister and the Cabinet who should be held accountable (Interviewee 1.4).

Poverty reduction unit is located at the Ministry of Finance (Interviewee 1.8).

The above discussions attempt to explain the complexity of the problem of poverty and the difficulty of pointing to any single organisation for the high level of poverty in the country. However, there is also a view which already accepts the complexity of the problem, but still demands accountability from the government in the sense of providing information and justification of what was done to assure that the best possible policy options and efforts were put in place to reduce poverty:

When we look back, I wonder why the reasons behind the failure of these National Programmes were not evaluated and why people's lives were not improving. Not so much to punish somebody (Interviewee 3.3).

The focus on output is reinforced by the organisational internal management system. In order to ensure achievement of objectives and outputs planned, organisational level objectives are linked to department and unit objectives, which are then linked to individual public servants' performance agreements. Throughout this chain, the nature and statement of organisational outputs do not change; outputs cascade down to the individual public servant's level. Such a hierarchy of chains ensures all organisational outputs are acted on, and nothing is left without a responsible person. Individual public servants are held accountable for policy outputs for which they are responsible: i.e.:

Ministry staff report based on their performance agreement. The performance agreement reflects what they have to do. So they do not report on things that are not included in the performance agreement, even if they have worked on them. They chase the number of outputs that were planned (Interviewee 3.6).

According to the current practice and focus on outputs, the MSWL is accountable for the sum of outputs produced by individual public servants and departments i.e.:

In terms of accountability of an officer to his/her director, accountability exists. But it is not clear at the ministry's level. What should be understood under accountability and at what level is not clear (Interviewee 1.2).

Despite the statements in the Annual Reports that output-based objectives are achieved and fulfilled, there is dissatisfaction with the lack of impact of these outputs on people's lives, as the problem is still there. As interviewees explained:

The Ministry assesses its work by indicators such as the creation of 80,000 jobs, approval of this and that law. It is actually difficult to call them results, as unemployment is still there (Interviewee 1.6).

No one works on identifying causes of the problem and how to eliminate these causes. Not even the government ... With that money how many people have got out of poverty, how many people have improved their living standards, or how many people would have been in risky situation, but saved. There is no reporting on such things (Interviewee 3.7).

Given such a focus on outputs, these outputs have become the ends themselves. Policy outcomes and the impact on people's lives were left out, and are treated as if they are achieved automatically as a natural by-product of outputs. This increases the divide of accountability for policy and service delivery. If an organisation is responsible for policy-making, it is not held accountable for service delivery and vice versa, as illustrated by the following comments:

They are not accountable at all for whether the services provided actually reach the citizens or not (Interviewee 3.2).

When we ask Ministry's civil servants 'why people are still poor even though they get the welfare payment that you provide', they should be able to reply.

They say ‘this is not our problem, because we just make policies’. Then, it is very interesting, what kind of policies they make, which do not resolve people’s problem (Interviewee 3.7).

The divide between policy and service delivery is more visible at the ESWSA. As the ESWSA’s mandate is to implement policies and its legal status is a ‘government **implementing** agency’, it is considered as not responsible, hence not accountable, for policy making, reflected in the following statements:

They are implementers. Hence, they do whatever the Ministry tells them to do. They do not participate in policy process or policy analysis (Interviewee 1.7).

The Ministry will determine policy and direction. Our responsibility is to implement them and organise implementation (Interviewee 2.1).

Due to this ‘implementing’ agency status, the ESWSA is concerned with the mechanistic efficiency rather than the effectiveness of employment and welfare service delivery. The ESWSA is preoccupied with the actual fulfilment of activities and expenditure levels (ILO, 2008), and its Annual Report ‘relies almost totally on statistical data’ (ADB, 2004). However, the statistical data are not related to the outcome of services delivered, and not analysed in terms of outcomes. There is a lack of consistent institutional mechanism to trace the outcome of services provided.

The lack of focus on outcomes negatively affects the design of current services and allows some types of services which have a limited effect on increasing the recipients’ livelihood, e.g.

(w)e cannot train a few hairdressers and tell that we have created new jobs. These are low quality [paid] jobs [which do not help much improvement in livelihood] (Interviewee 1.6).

Another consequence of focusing on outputs is that the number of new jobs created increases, but the number of permanent or full-time jobs does not increase. There were

clients who continually received employment and welfare services since 2001, who come from vulnerable groups. Each year, they participate in public works organised by the ESWSA and remain dependent on such services (CSD, 2006). According to the ESWSA data, half of recipients of employment services were still not able to find permanent jobs and increase their income. Even when the funding for employment training was substantially increased, there was no change in the employment rate of trainees who completed training (Alimaa, 2008). Similarly, despite the creation of thousands of new jobs as reported by the ESWSA, the National Audit Office (NAO) (2007) found no realistic data to confirm that stable jobs were created or the number of unemployed reduced.

Welfare and employment services were introduced in Mongolia only recently and they cannot fix the problem of poverty overnight. This section has examined the extent to which institutional processes and mechanisms incorporate policy outcomes. At present, delivery service output receives priority and overshadows their link with ultimate policy objectives and outcomes. However, these processes and mechanisms are evolving rapidly. For example, in accordance with the amendments made to the Law on Social Welfare (2008), the ESWSA will have a monitoring and evaluation unit, which would be involved in providing professional advice, monitoring the expenditure of funds, revealing breaches of law, and proposing relevant measures to relevant authorities. It is not clear at this stage whether this unit will be involved in addressing the issue of neglected outcomes.

5.3. Institutions of oversight in policy accountability

Apart from MSWL and ESWSA, there are four other institutions which are involved in overseeing and ensuring policy accountability. These are Cabinet Secretariat, Parliament, National Audit Office, and the State Specialised Inspection Agency. The extent of policy accountability of the MSWL and the ESWSA also depends on how effectively these institutions exercise their oversight roles.

According to some classifications, the Cabinet Secretariat and Parliament are called institutions of vertical accountability whereas National Audit Office and the State Specialised Inspection Agency are institutions of horizontal accountability (Jenkins,

2007; Schmitter, 2004). Cabinet Secretariat and the Parliament are on one hand participants of policy process, hence, are held accountable for policies, but on the other hand, they demand policy accountability from the MSWL and the ESWSA. Mechanisms of Parliamentary oversight were discussed in Chapter 4.

The accountability relationship between MSWL and ESWSA is explored at the end of the Section 5.3.

Cabinet Secretariat

In accordance with the Parliament Resolution 38 of 1996, the Cabinet Secretariat has the duty ‘to provide strategic planning and policy guidance, programme development and coordination, monitoring and evaluation’ (Parliament of Mongolia, 1996). In line with this mandate, the Monitoring and Evaluation Department of the Cabinet Secretariat undertakes monitoring and evaluation which covers the implementation of the following: Laws and legal Acts pertaining to the Government; Government decrees and resolutions; Government Action Plan, Main Directions of Annual Economic and Social Development; National Programmes; Projects funded by national budget, and foreign loans and grants; Results of actions of Ministries and Agencies; and Results of actions of Aimag and Capital City Governors.

The indicators that the Cabinet Secretariat applied in the monitoring and evaluation of actions of Ministries are shown below in the **Table 5.3**.

The above resolution was updated in 2010 by Government Resolution No.11, which incorporated one more indicator – assessment of organisational transparency as measured by transparency of human resource policy, budget and finance, and procurement activities (GoM, 2010).

Table 5.3. Indicators for Assessing Performance of Ministries

№	Indicators	Areas of performance
1.	Implementation status and results of policy objectives	Government Action Plan
		Laws and legal acts
		National programmes approved by the Government
2.	Assessment of the coordination of implementation of policy objectives	Main Directions of Annual Economic and Social Development
		Projects funded by the State budget or foreign loans and grants
		Government decrees and resolutions
3.	Assessment of results of actions of the organisations	Performance contracts between Minister and General Manager
		Congruence of organisational objectives with Strategic Plans
4.	Assessment of outcomes of actions	Economic and social development indicators
		Citizens' evaluation

Source: Government of Mongolia (2006) Cabinet Resolution No.51

Economic and social development indicators used for the assessment of performance of Ministries are different, depending on the mandate of individual ministries. The MSWL is assessed by nine indicators of economic and social development: unemployment rate; poverty index; average income/poverty line ratio in percentage; percentage of unemployed of working age; number of persons assisted into jobs as a percentage of the total registered unemployed; number of people registered with pension insurance; percentage of persons covered by voluntary insurance; number of persons receiving social welfare services; and growth in the number of total employed.

The Cabinet Secretariat developed a thorough procedure on how to determine the percentage of implementation. If the objective is achieved, relevant decisions are made, and results are sustainable, then the implementation is assessed as 100 percent. If the objective is not achieved, but organisational measures were taken and there are initial results, then, the implementation is assessed between 80-100 percent, and so on. Sectoral basic development indicators and results of citizens' evaluation were added in the 2006 revision of the procedure.

Monitoring and evaluation in the public administration of our country used to pay attention to planned objectives and whether or not these objectives were

achieved or not, e.g., to outputs. Evaluation of changes as a result of these activities on people's lives was not satisfactory. So the approach is being changed from focusing on activities to results of policies and programmes ... this can be seen as a step forward (CSC, 2006:3).

This change was indeed a step forward towards highlighting results of Ministerial activities. However, the updated procedure is still not sufficient for overseeing policy accountability. The Cabinet Secretariat tracks the progress of implementation, thus serving the objective of pushing ministries and agencies for timely implementation of activities envisaged in the relevant plans. This is why the report of the evaluation is expressed in percentage terms, which does not say much about effectiveness of particular measures e.g.:

The implementation rate of the Governance and Legal Reform section of the Main Directions of Annual Economic and Social Development is the highest with 81.2 percent, followed by the Foreign Policy and Defence section with 71 percent, and are above the average implementation rate. On the other hand, the implementation rate of Real Sector Policy, Regional and Rural Development, Environmental Policy sections are lower, averaging around 60 percent (GoM, 2009b).

The evaluation of National Programmes also tracks the progress of implementation as measured by the number of activities completed or underway. The cycle of receiving reports from ministries on the implementation of National Programmes is calendar month based, rather than important milestones or stages in implementation. When the progress of implementation is the focus, the questions of effectiveness, quality of services provided, cost, innovation, and other factors, are left unaccounted. Therefore, even though sectoral basic development indicators are included as part of the assessment, there are no narrative explanations which link these indicators to the effectiveness of particular policy measures. Such evaluation practice further encourages the MSWL and the ESWSA to report on outputs and the number of activities completed.

The Government recognised that monitoring and evaluation procedures do not meet modern trends of theory, methodology, and techniques, and highlighted the need to update the procedure of monitoring and evaluation (GoM, 2008c). However, such an update would need to take into account not just the monitoring and evaluation stage, but the policy process as a whole. At present, there is no specific legal provision or other mechanisms which require Ministries to produce reports on the state of development of respective sectors.

National Audit Office (NAO) of Mongolia

Since 2005, the NAO has expanded its scope of activities from traditional financial and compliance audit to performance audit. At the moment, the NAO is the only organisation which has incorporated the focus on policy and service delivery results in its practices.

The NAO (2007) audit conducted at the ESWSA resulted in a number of critical comments on the ESWSA, including the lack of substantial evidence of impact of employment services, despite the amount of training provided and the number of people who attended the training. However, the government agencies are slow to comply with the recommendations of the NAO. It is not clear from the Annual Reports whether specific measures were taken in response to the NAO recommendations.

The NAO reports to the Parliament and to which it submits its audit reports. The Parliament does not have specific procedures for discussing audit reports (See Chapter 4).

State Specialised Inspection Agency (SSIA)

The accountability relationship between the MSWL and the SSIA is more complicated. The SSIA is the main inspection body for occupational health and safety, labour rights, and service standards in social welfare and labour. In this respect, the SSIA's role is to support the implementation of MSWL policies by inspecting and enforcing labour related standards. As part of its inspection, the SSIA makes suggestions for the development of new regulations and the changes in the current procedures, if required. The SSIA itself reports to Cabinet.

However, the SSIA also has a mandate to inspect the implementation of social welfare services, employment promotion laws, poverty reduction programmes, as well as to inspect the activities of public organisations in charge of social welfare and employment services. This is an area where both the MSWL and the SSIA have mandates.

Given the above description of roles, there is a degree of uncertainty about who is accountable to whom, and for what, between the SSIA and the MSWL, as indicated by interviewees' comments:

According to our mandate, we do not have the right to carry out inspections and impose fines. So if the implementation of laws and procedures is not good, we are not accountable. The inspection part has been transferred to the SSIA (Interviewee 1.2).

The inspection agency does not cooperate with the Ministry. They do not report to the Ministry ... The Ministry itself does not have an inspection function (Interviewee 1.8).

We do not receive reports from the SSIA (Interviewee 1.5).

A consequence of this uncertainty surrounding accountability arrangements is the argument on whether the particular issue was due to a policy fault, or weak enforcement coming from both sides, as illustrated by interviewees' observations:

The current system is vague, it is not clear who will have which responsibility with respect to the other. It is unclear, for example, if the Ministry has issued a procedure which is not enforceable in practice, should the Ministry be accountable for it to the SSIA (Interviewee 1.2).

Even where bars and entertainment places are involved in organised selling of young girls, they [SSIA] do not take measures to inspect them and close them down. They have the power to do so (Interviewee 1.5).

Since SSIA conducts inspection of both standards and substantive policy implementation, there is some overlap between the SSIA policy implementation and the NAO performance audit. It is not clear-cut how NAO and SSIA liaise with each other when auditing or inspecting the performance of other government agencies, such as the ESWSA. The SSIA inspection conducted at the ESWSA in 2007 made similar conclusions to the NAO audit, including the reference to the weak internal control system.

The ESWSA

The accountability relationship between the MSWL and the ESWSA is hierarchical and mainly administrative. The MSWL plays a role of accountability holdee for the ESWSA and two formal mechanisms are used in this relationship. Firstly, in accordance with the PSMFL (2002), the Minister for Social Welfare and Labour signs a contract with the Director of the ESWSA each year. At the year end, the contract fulfilment is assessed.

Secondly, the Department of Information, Monitoring and Evaluation of the MSWL conducts an evaluation of the ESWSA, in accordance with the procedure approved by a Ministerial decree. At present, there is not much overlap between an evaluation conducted by the Department of Information, Monitoring and Evaluation of the MSWL and the NAO, as the MSWL focuses more on the fulfilment of planned activities. However, as the MSWL shifts to a performance evaluation in future, there would be some overlap with the NAO.

The content of the contract and the way evaluation is conducted show that the MSWL hold the ESWSA responsible for the delivery of specified outputs. For 2008, the ESWSA was evaluated on six criteria, which were developed following the same logic used by the Cabinet Secretariat in evaluating Ministries.

Table 5.4. Indicators for Assessing Performance of Agencies by the MSWL

№	Indicators		Assessment	
			Percentage	Scores
1	Implementation status and results of policy objectives	Implementation of Government Action Plan	98.8	4.9
		National Programme on Employment Promotion	90	4.5
2	Coordination of implementation of policy objectives	Implementation of Main Directions of Economic and Social Development	93	4.6
		Implementation of projects funded by the State budget and foreign loan and grants	-	-
3	Results of activities of the organisation	Fulfilment of the Performance Agreement with Minister	92.8	4.6
		Congruence of organisational objectives with the Strategic Plan	85	4.2
4	Outcome of activities	Basic indicators of economic and social development	83.1	4.15
		Assessments from citizens	-	-

Source: MSWL, 2009, Minister's Decree No.75

The ESWSA in turn, receives from the ESWSDs reports on activities conducted, as well as various statistical data on service delivery. Thus, an ESWSD prepares and submits reports on the implementation of the following: District Governor's Plan of Actions (quarterly, to District Governor); National Employment Promotion Programme (to the Districts and the Capital City); Capital City Socio-Economic Directives; Capital City Governor's Plan of Actions; Government Decrees, Prime Minister's Decrees, Capital City Citizens' Representatives Meetings Resolution, District and Capital City's Governors' Decrees; and Half yearly and Annual Report of the ESWSD Performance Agreements (half yearly, to ESWSA).

Horoo and soum social workers submit to their respective district/aimag ESWSDs quarterly, half-yearly and annual reports, in addition to various statistics on new jobs

created, number of persons in need of social welfare assistance. Horoo social worker reports are mainly statistical.

At present institutionalised accountability mechanisms of horoo social workers to the local community is at the formation stage. A horoo social worker interview mentioned her responsibility of knowing all people in the area, and her cooperation with the local police branch:

It seems that I need to know all these 5,000 persons in detail to become a social workertogether with the police branch, we prepare a joint report on domestic violence. Families which are affected by domestic violence or number of children affected (Interviewee 2.6).

Thus, the MSWL focus on outputs and its accountability for outputs continues throughout the social welfare and employment sector down to the smallest administrative units. With the introduction of the social workers' positions and recent reforms taking place in the sector, this hierarchal accountability is set to be complemented with increased accountability to local residents.

5.4. Constraints contributing to the neglect of outcomes

Due to the transitional nature of the public administration and the inception stage of social welfare and employment services in Mongolia, there are tremendous challenges and constraints in both policy development and implementation for all the parties involved, including the MSWL and the EWSA. Of these, three factors can be specified as having had more influence on the current practice of policy accountability and the neglect of outcomes.

These are (a) the concept of the Public Sector Management and Finance Law (PSMFL) and its implementation process, (b) inexperience with definition and measurement of outputs and outcomes, and (c) weak data collection system and policy analysis, outlined as follows.

(a) PSMFL and its implementation process

The PSMFL made an important step forward in the direction of enhancing policy accountability by introducing the concepts of performance management and measurement, and initiating ambitious managerial reforms in Mongolia. The introduction of the PSMFL formally introduced the notions of outputs and outcomes into the public sector of Mongolia. However, the PSMFL also contained some conceptual provisions which did not fit the Mongolian conditions, and delays in correcting them in the subsequent years of implementation, hampered the achievement of the intended results.

At the same time, some important and useful provisions of the PSMFL were not implemented in the spirit of the law. Therefore, as with many administrative reform attempts, there were both design and implementation issues, and the distinction between design and implementation can be blurred (Heinrich, 2002:714).

Five factors related to PSMFL can be identified which have affected the overall situation of policy accountability in Mongolia. Of these, the first three are more design related whereas the final two can generally be attributed to implementation.

Firstly, when the PSMFL was developed it was based on the New Zealand public management reform experience. Among the countries which have undertaken the NPM reforms, New Zealand reforms are known as having relied on detailed specifications of outputs. Therefore, the focus on outputs was an ‘in-built’ feature of the PSMFL, and it attached more importance to the definition of outputs and the accountability for outputs. It introduced the notion of ‘output delivery’.

The PSMFL also mandated the definition of strategic objectives. However, they were overshadowed by the persistence of traditional output-oriented policy making practices. The difference between the strategic objectives as required by the PSMFL, and the traditional long-term policy objectives entrenched in Mongolian traditional policy-making, was not made clear in the implementation guidelines and other relevant documents. Where some explanations were made, they were not followed in practice.

Secondly, the PSMFL reconfirmed the role of Ministers and re-emphasised the accountability of public servants to the Minister. Traditionally, Ministers played an important role in the public sector of Mongolia and their leadership role was not questioned, but there has not been any explicit statement in the law which said that public servants should serve Ministers and deliver outputs to Ministers. The traditional concept of ministerial accountability found in the Westminster system was not well developed in Mongolia, and it was difficult to digest it at the beginning of the reforms. Eventually, public servants accepted this increased and explicitly stated power of Ministers along with the other reform measures.

Tay (2003:2-1), noted this change and wrote

(m)inistry officials see themselves as producing policy advice to their respective ministers and not ensuring the delivery of quality services by the agencies and departments under them. They see their ministers as their client and not the public.

In New Zealand and other parliamentary democracies based on the Westminster system, the principle of ministerial responsibility (and accountability) is a well developed concept. In those countries, the Parliament has effective mechanisms to hold Ministers accountable for their respective portfolio, including strong parliamentary oversight. Ministerial resignation, for example, is part of the accepted political culture and a matter of public expectation, rather than a strict legal obligation. Misleading the Parliament is unacceptable and results in the Minister being asked to resign. As discussed in Chapter 4, a Minister in the Mongolian legal, political, administrative or cultural environment does not have effective restraints on his/her power.

Therefore, improving accountability of the bureaucracy to Ministers would have had different implications in Mongolia than in advanced parliamentary democracies. Notwithstanding criticisms of ministerial accountability in established parliamentary democracies such as Australia (Accountability Round Table, 2010), a Minister in the Mongolian legal, political, administrative or cultural environment has much less

effective restraints on his/her power. This aspect was not well considered in the design of the PSMFL.

Thirdly, PSMFL positioned the general manager of public sector organisations at the core of civil service and financial management reform initiatives. However, there was a shortage of managers trained in modern management concepts, practices and techniques. Chapter 6 explores further this aspect.

Fourthly, due to top-down central planning in the previous political regime, there have been many areas where the civil servants did not have prior experience, including strategic planning, defining outputs and outcomes, identifying relevant quantitative and qualitative indicators, and using the performance information in evaluation. The overall implementation strategy did not take this into account and proceeded with vigorous implementation, rather than a phased, evolutionary approach.

Despite the lack of previous experience in performance management, capacity building in this area was limited, leaving public servants to make their own interpretations and proceed with rather mechanistic implementation. Tay (2003:2-1) noted that:

Everyone is trying to follow the letter of the law and ignoring the real spirit of the law, i.e. to better manage the civil service ... It is this mechanistic implementation that has resulted in many ministries and ministers complaining that the PSMFL is too cumbersome and time-consuming.

A study conducted by the Academy of Management of Mongolia found that although government organisations were learning how to define outputs, performance contract was still perceived as ‘time consuming paper work’ (AoM, 2005). Although several studies were conducted on the process of the PSMFL implementation and recommendations were provided, no substantial actions followed. Since coming into force in 2002, the PSMFL has not been substantively amended.

Finally, and the fifth point to note was that leadership over the implementation of the PSMFL was lacking. There was no institutional host which would monitor the

implementation process holistically and provide recommendations and guidelines as needed. While the Ministry of Finance was involved in the initial development of implementation guidelines, it did not take up the leadership role. The Civil Service Council (CSC) was assigned some oversight function over the performance management and appraisal areas, but due to the lack of enforcement mechanisms and back up from the Government central coordinating organisations, its efforts were less effective.

The National Audit Office was newly established at that time and fully occupied with the adoption of international auditing standards and principles. The lack of leadership is also one of the reasons why the PSMFL and its implementation guidelines, which were adopted in 2003, stayed almost unchanged until now. Despite tremendous reform actions at the sectoral level, including restructuring and re-orientation of policies and strategies, there has been limited central coordination and lack of a comprehensive explicit policy or strategy of administrative reform.

In an internal evaluation study conducted in 2008 by the ADB, admitted that the PSMFL was not well suited to the public administration context of Mongolia, stating

(f)or nearly a decade ADB has been at the forefront of assistance to fundamentally transform governance of the public sector by helping the Government apply the New Zealand model of public sector management. While this, and consolidation of spending authority into a single treasury account had considerable success in restoring fiscal stability, it has inadvertently contributed to excessive centralization of public sector management and budgetary authority and has not brought the anticipated improvements in public sector planning, accounting, budgeting, staffing, performance reporting, results orientation, and accountability (ADB, 2008b:33).

The report concluded that public sector management tools advocated by the PSMFL were ‘sophisticated’ and ‘premature’ for the Government of Mongolia. While it was acknowledged that the reform measures were ‘premature’, it remains unclear what

strategies need to be applied for the public sector reform in Mongolia to remedy consequences of performance management concepts, reflected in the PSMFL.

(b) Inexperience with definition, measurement and use of outputs and outcomes

The Mongolian public service did not have any prior experience with notions such as strategic planning, policy output and outcome. It was difficult for them to comprehend defining administrative actions as ‘outputs’ or as it translates into Mongolian language ‘products’. Therefore, when the PSMFL implementation started, public sector organisations, including the MSWL and the ESWSA, encountered several problems with defining and measuring outputs and outcomes. These include problems with firstly, defining outcomes; secondly, identifying indicators for outputs and outcomes; thirdly, the sequence in defining outputs and outcomes; and finally, evaluating outputs and outcomes.

Firstly, there is a difficulty with defining outcomes. Outcome is ‘results, impacts or consequences of actions of the public sector **on society**’ (Bouckaert and Halligan, 2008:240). However, one of the strategic objectives/outcomes of the MSWL (2007) was ‘to provide the employment sector with strategic planning and coordination of policy implementation’. This statement of outcomes is not defined in a way which shows ‘results on society’. Once outcome is not defined in terms of ‘results on society’, it is difficult to devise meaningful outputs to achieve this outcome, and later to assess whether the outcome was achieved. It makes it impossible to track general trends in societal outcome. In this understanding of ‘outcomes’, the MSWL Strategic Plan did not include sectoral outcomes. The lack of overall sectoral outcomes made it difficult to distinguish between immediate, intermediate or final outcomes.

There is no explicit and clear guidance or internal policy on how to define outcomes. It is also not clear how the outcomes of the MSWL and the ESWSA were to be made consistent. Given the lack of a generally agreed definition of outcome to draw on in the international literature (Schick, 2003:83), specific guidance on how to define outcome is needed.

Gill (2008:7) provided an interesting explanation as to why defining outcomes is fundamentally more difficult than that of outputs. Outputs are familiar concepts in accounting standards and easily understood whereas there is no equivalent for outcomes in accounting standards. Defining outcomes is not just a technical exercise but also a political process and requires making policy choices.

At present, it is not a practice in Mongolia to define a common outcome that is relevant to more than one agency. When different agencies contribute to the achievement of a single outcome, it is appropriate for those agencies to agree to a single outcome statement, (Australian Government, 2000:13).

Secondly, since outcomes are not properly defined, it is difficult to come up with relevant and meaningful indicators for outcomes. The practice of other governments in the use of outcome indicators shows that two types of outcome indicators are recommended to be distinguished: (i) indicators which look at general policy effects and (ii) indicators of contribution of outputs to outcomes, which look at the specific role and contribution of an agency in reaching these policy effects (Bouckaert and Halligan, 2000). These two indicators serve two different purposes. Indicators which track the achievement of a given outcome are used in describing the broad environment in which the agency is operating and in developing and communicating policy options. The contribution of the agency to the outcome is measured by an effectiveness measure (Australian Government, 2000). Outcomes cannot always be attributed to government actions and processes, therefore, differentiating between these two types of indicators is important in relation to accountability. As OECD report put it:

Commonly one cannot hold particular organisations – or even governments – fully responsible for outcomes in the same way that one can hold them responsible for outputs. On the other hand, they are not entirely without responsibility either: very frequently they make a contribution to the final outcome but cannot wholly determine it (OECD, 2009b:63).

Effectiveness is not used as a measure, at least formally, in the MSWL. The contribution of the MSWL to societal outcome is not formally measured, though

research studies on various topics relating to social welfare and employment link the work of the MSWL (and the ESWSA) with societal outcomes.

The problem of designing adequate indicators is not limited to Mongolian public sector organisations. The countries which introduced performance concepts earlier, also report problems with indicators and undertake constant review and improvement. The challenge remains as to

how to determine whether, and in what proportion programme activities and public sector processes contribute to outputs, and similarly which outputs contribute significantly to which outcomes (OECD, 2009b:23).

Unlike OECD countries, the process of reviewing and improving indicators has not taken place in a systematic and organized manner in Mongolia.

Measurement of outputs and outcomes has many inherent problems, such as gaming i.e. strategic reaction of individuals, organisations or countries to the use of measures (OECD, 2009b), indicatorism, creaming, short-termism, and managerialism (Peters, 2007b). Measurement of outputs and outcomes of services is different from that of tangible production process (Cortis, 2006). Service outputs are processes that cannot be separated from providers and consumers which have an interactive dimension (McGuire, 2004).

Measurement may limit the overall performance to a few indicators and ‘actually obscure a full understanding of how agencies work and the real content of what they are producing’ (Brodkin, 2008:332). An indicator may be used for assessing narrow or short term goals at the expense of longer-term, balanced and effective performance (MacDermott, 2008). In the New Zealand public sector the things that tended to be reported formally were those that can more easily be measured and reported to an auditor, which may not be the important softer indicators that show how well the organisation is doing (Norman and Gregory, 2003). Because of accountability requirements, measurable information about assets that are relatively trivial in the

production of outputs tended to be reported whereas information about human capital issues, crucial for ensuring success was scarce (Norman and Gregory, 2003).

However, there are also risks when performance measures are not used at all or when performance data is absent or weak.

Thirdly, the sequence of developing outcomes and outputs is reversed in some cases. Given the difficulty of defining the outcomes, some organisations develop outputs first, and then group them together under an output class. Then, the result of implementing this output class is defined as an outcome. Thus, one of the MSWL outcomes is the creation of a ‘database of poor and extremely poor citizens, and the implementation of national programmes on development of population groups improved’ (MSWL, 2009). Database is a typical output and if measured by the number of actions completed, implementation of national programmes can also be output. This is partly the result of the ambiguity of the PSMFL and its emphasis on output class. Such technical confusions contribute to definition of ‘outcomes’ which do not reflect impact on societal life.

Fourthly, evaluations are a powerful tool for understanding the effects of government interventions and can be applied to both outputs and outcomes (Australian Government, 2009b:46-8). However, it is considered as short-sighted to evaluate performance against performance measures or standards when these measures do not fully reflect the actual situation, and cannot substitute for expert knowledge (Heinrich, 2002). Good indicators alone cannot improve performance (Schick, 2003) as they need to be interpreted and understood by users and the public. Performance measurement has inherent limitations which have to be remembered. As Radin (2006:240) put it, there is a

belief that information is already available to measure performance, that the information is neutral, that we know what we are measuring, that it is possible to define cause and effect relationships in programs.

Radin (2006:230) also pointed out that performance measurement tends to see the components of systems as individual and discrete activities, overlooking the whole picture.

With such seemingly technical confusion, the MSWL was distracted from its sectoral focus. When the MSWL focuses only on its outputs, it excludes sectoral performance, and is 'concerned more with the state pension being paid correctly and on time, rather than whether the pensioner can live a normal life on the state pension' (OECD, 2009b:63). Policy implementation is not a simple referral or orders given to sub-units, rather it requires from the central agency a deep understanding of how implementing agencies work (Brodkin, 2008).

The requirement to focus on outputs confused the natural tendency of the public servants to relate with the sectoral performance. There is a mismatch between a legally mandated focus on outputs and the practical need to use more outcome measures as expected by both public servants and stakeholders.

(c) Weak data collection system and policy analysis

The third factor which constrains consideration of policy outcomes is a weak system of data collection and policy analysis. There are three specific impediments being (i) weak system of data collection; (ii) lack of established practice in the public administration to conduct policy analysis; and (iii) funding problems.

Firstly, policy outcomes cannot be discussed without outcome data. The statistics currently collected by various government entities are too general and too broad. Data unavailable or outdated or not consistent with international standards, was one of the challenges for policy reports (UNDP and GoM, 2007). The need for the systematic collection of policy relevant data, analysis and reporting is well recognised by the MSWL and some initial measures were undertaken, including the revision of the forms for the collection of data. The National Statistical Committee (NSC) is the key source of social welfare, poverty and employment data, however, despite substantial improvements in the last few years, there are many areas where data has not been collected.

Since the necessary data are unavailable or insufficient, public servants working on policy development need to spend more time on collecting data e.g.

when we need to make a comparison, there is not enough data and I need to collect quantitative data myself. It would have been more productive if I focus on making analysis and conclusions. However, since there is no data available, I have to collect it first (Interviewee 1.3).

For some areas, there is no established procedure for collecting and updating relevant data e.g.

the numbers get outdated very quickly. There is no established data collection system. Therefore, it is hard to determine if the numbers are declining (Interviewee 1.5).

In other areas, data collected is paper-based. Therefore, although data is available it is time consuming to process, update, and share it. A police officer in charge of children's matters noted that he has a safe full of paper files and when something happens he would search through those paper files. He pointed out to the need of an integrated information network for the more effective collaboration with the MSWL (*Ardchilal*, 2009). The lack of electronic databases is not limited to the MSWL; it is a common feature in the Mongolian public sector organisations.

Secondly, data relevant to policy is necessary but not sufficient. Policy outcomes cannot be separated from policy analysis. However, when practice policy decisions are made without relying on the policy analysis itself, there is less demand for analysis and even less demand for the data. It is only with the increased need to focus on policy outcomes that the demand for both data and analysis has increased. In one of the newspaper interviews, the Director of the National Children's Agency mentioned that

(w)e all feel now how important information is. We are learning to make use of information. In the past, even when statistics were available, we used to overlook them. Now we have to use them (*Olloo*, 8 May 2009).

It is a common practice in Mongolia to assess or evaluate the implementation status of laws rather than conducting policy analysis. Such evaluation of the implementation of laws may find that everything was in accordance with the law and that no violation of the law had occurred. However, policy analysis is different from the analysis of the implementation of legislation, as there are situations where policy objectives were not achieved, even though laws were strictly followed. The lack of institutionalisation of policy evaluation studies, therefore, prevents the differentiation of policy design issues from implementation issues. This leaves policy decision makers free from questioning the effectiveness of the policies they approved thus undermining policy accountability e.g.

(l)ast year the objective was to create 80 thousand jobs. Our organisation worked very hard and did everything to achieve this objective. But no analysis was done on this, and we received an unrealistic target to create the same number of jobs this year (Interviewee 2.1).

Similarly, there is a lack of culture and practice to back up policy decisions with explicit policy analysis or relevant statistics. For example, the MSWL in cooperation with the Ministry of Transport, Urban Development and the Ministry of Minerals and Energy, launched an on-the-job vocational training programme for young unemployed persons. The programme involved three months of training on industrial sites where there is a shortage of skills in host companies. Such training at industrial sites is considered novel in Mongolia. However, there is scarce information as to what extent such a measure would contribute to reducing unemployment, to what extent the lack of such arrangements contributed to unemployment or whether it would resolve the skills shortage in the industry. While decision makers may have relied on relevant information and thorough data for making this decision, this information is not available to the public. Feedback from the public and affected parties is not sought in a consistent

manner. Such practice discourages capacity development in policy analysis. Interviewees supported this view by stating that:

A Ministry should be defining its policies and strategies based on the analysis of data received from below. This feature is lost at different levels. Nice policy decisions are produced, but there is no capacity to analyse how the given decision was implemented. This affects accountability. ... Policy making capacity through analysing reports and data that we provide is very weak at our policy level leaders. This is an accountability issue. There is a lack of experts, and if there are, they do not listen to the experts. Or I have to conclude that they just do not know. This is a wrong policy decision, and at the Ministry, no one is held accountable for consequences of such situation (Interviewee 2.1).

Thirdly, both data collection and policy analysis require a certain amount of funding in order to be able to support consideration of policy outcomes and subsequently, policy accountability. Within the MSWL's overall budget, there is no special amount allocated for data collection and policy analysis. It is assumed that data collection and policy analysis are part of the routine job of the MSWL staff to be carried out during their work hours. However, there is normally only one public servant within the MSWL in charge of a particular issue; for example, one public servant for occupational health and safety and one for employment promotion. Interviewees indicated:

Budget and funding is a difficult issue. ... We are unable to make allocations that this is for policy research and this is for other tasks (Interviewee 1.4).

In general, there is no special budget for policy related studies. We need to do it within the annual budget approved (Interviewee 2.3).

Our sector does not have an institutional unit that studies policy outcomes. We do policy analysis ourselves (Interviewee 1.2).

Given this lack of funding, the MSWL relies on international organisations, NGOs and other parties for data collection, policy analysis, and research studies to fill the gap.

Numerous studies were conducted on various issues of social welfare and labour, including those on the state of women, state of children in general and children living in difficult conditions, reproductive health, migration, and living standards measurement. For example, the NSC developed a poverty map by local administrative units in 2009 with the assistance of UNDP (GoM and UNDP, 2008). The map allows disaggregation of poverty data by local administrative units and can be used in adjusting and the better targeting of poverty reduction policies to local needs.

There was a case in which the MSWL initiated policy research on the outcome of the Law on Employment Promotion and allocated a certain amount of funding for research to be conducted by a NGO (Interviewee 1.2). While it was a commendable measure and proved that the MSWL can allocate funding for policy studies, this practice did not continue.

While the studies in cooperation with international organisations, NGOs and other parties contribute enormously to meeting policy analysis and research needs of the MSWL, they contribute less to the institutionalisation of data collection and policy analysis/research practice within the MSWL.

The need to improve policy analysis and to tackle the constraints of data collection, capacity, and budget is being increasingly recognised both at the ministry and government levels. In March 2009, the MSWL held a meeting with research institutions specialising in employment and labour related issues and discussed emerging trends in the employment sector, including technological innovation, knowledge-based economy, expansion of employment in the service sector, expansion of informal sector, employment migration, short life span of skills, and casual work (MSWL, 2009b). While this meeting signalled the acknowledgement by the MSWL of the importance of policy analysis and research, there is still no explicit policy on promoting data collection, policy analysis, and integration of research results in policy decision-making.

Similarly, in May 2010 the National Development and Innovation Committee (NDIC) initiated a review of existing policy documents, an exercise which is taking place for the first time in the last two decades (NDIC, 2010).

Weak policy analysis capacity is partly a result of a centralized decision-making system under the past socialist period. Hence, weak policy analysis capacity is also common to former communist countries. OECD (2007) noted that the capacity of line ministries in Western Balkan countries and in some new Member States, to develop policy options, carry out policy analysis, monitor policy implementation and evaluate policies was often weak. It was advised that one strategy to improve policy analysis could be to specify in a procedure the type of analysis that should be performed (e.g. impact assessment, cost/benefit analysis, comparative analysis) and the type of information that is required (e.g. impact on industry, distribution of benefits and costs across the country, advantages and disadvantages of options, views of NGOs and civil society organisations, and substantive views of other ministries (OECD, 2007). Looking at public administration reform attempts in CEE countries, Randma-Liiv (2008) observed weak or non-existent policy coordination and lack of strong strategic underpinning in those countries.

Development of any policy involves at least some informal policy analysis. In this sense, certainly policy makers do conduct policy analyses. However, written and explicit and institutionalised policy analysis is required for ensuring policy continuity and policy accountability. In this sense, the OECD recommendation mentioned above is one possible measure to introduce in policy process in Mongolian public sector.

5.5. Consequences of focusing on activities and outputs for policy accountability

Based on the findings of the previous sections, the main features of the current system of policy accountability in Mongolia can be identified. Overall, the current system of accountability can be characterised as: (i) *fragmented and mechanistic*; (ii) *short-term*; (iii) *reactive*; and (iv) *partial*.

Fragmented and mechanistic

Several institutions and organisations participate in policy development and delivery of social welfare and employment services, including the Parliamentary Standing

Committee on Social Policy, Education and Health, the MSWL, the ESWSA, the aimag/district Governors' Offices and aimag/district ESWSs, Horoo Governors and Horoo Social Workers. In addition, private sector contractors, NGOs, and community based organisations participate in service delivery. However, accountability is fragmented not because of the participation of these organisations, but due to the lack of overall outcome framework which links these organisations under common objectives. Each organisation is accountable for its own share, for the achievement of its organisational outputs. However, no one seems to be accountable for the overall policy and service delivery to the public.

Because of this fragmentation, coordination of the public sector organisations has become an important issue. The delivery of public policy and service requires the coordination between organisations working in one sector as well as the coordination among different government ministries and agencies. For the last three years, in its evaluation of national programmes, the Cabinet Secretariat (2007; 2008; 2009a) identified inadequate coordination between ministries as an impediment for successful implementation of national programmes. The Cabinet Secretariat urged Ministries to cooperate with each other; however, it is difficult to change the current practice when the underlying accountability system remains vertical.

The current system of accountability is also mechanistic, because it relies mostly on quantitative measures. A clear example of the mechanistic nature of accountability is the use of the percentage of completed activities in the total number of planned activities as the indicator for the achievement of objectives.

A recent report on Mongolian civil service profile made the following observation:

Ministries and other agencies do not have a good record of coordinating action, and some reforms over the last decade have focused on clarifying roles, responsibilities and accountability in a way that has exacerbated the boundaries between agencies. Mongolia is the most individualistic Civil Service we have worked with (CSC, 2008:69).

The report recommended a ‘whole-of-government’ approach as a means to overcome agency fragmentation, to look beyond the strategies, business plans and performance of individual ministries and agencies, and work at a systems level.

Short-term

The current accountability system is short-term. The Government approved the MDG-based NDP, which sets long-term policy directions. The Government Action Plan is intended to draw on the MDG-based NDP. In developing sectoral policies, the Government also provides long-term timeframes up to 2020 or 2030. The main precondition for these long term policies to be implemented is reflected in policy choices and decision-making. However, in practice, again due to the lack of data relevant to policy and analysis, policy decisions are made based on short-term considerations. The Government of the day is more concerned with achieving its electoral promises and showing some results before the next election is due. This diverts the attention of policy makers and politicians from long-term fundamental issues, to the ones which can show immediate improvements.

Increasing the number of the employed is a clear example of the negative implication of the accountability system that is short-term. The objective was first spelled out in the election platform then it became part of the Government Action Plan and the Main Directions of Annual Economic and Social Development. The objective cascaded down to the aimags and districts, each of whom would undertake to create a certain number of new jobs. Then, aimags and districts regularly report the number of the employed upward. Placing the unemployed into jobs boosted the number of people employed and met the government target. The objective was achieved but employment policy outcomes can still be unsatisfactory. Due to the lack of strategic approach and more sustainable measures, the number of people assisted by employment services was high, but the number of people who dropped out of employment was also high. In the end, the number of people in longer term employment may be the same.

In many cases solving public policy problems is a long-term task which spans across several governments. As Glynn and Murphy (1996:128) argued

the problem with measuring outcome, and ensuring accountability for it, is that many benefits inevitably fall outside an individual contractual period ... and are assessable only over a longer rather than shorter time frame.

Reactive

The current accountability system has a limited preventive focus. The occupational health and safety standards were not adequate for many years and the observance of standards by organisations and companies have been low since at least the 1990s. However, there has not been any decisive measure by any public sector organisation including the MSWL and the SSIA. The number of reported workplace accidents rose to 343 in 2007, and then again to 491 in 2008 (SSIA, 2009). It was only after this alarming rate of accidents that the MSWL initiated an amendment to the Law on Occupational Safety and Health and took some follow-up measures. The Tripartite National Committee on Occupational Safety and Health was created in 2009 (MSWL, 2009).

Since organisations are preoccupied with the implementation and completion of short-term activities and outputs, only those pressing issues and scandals which capture the attention of the media are followed-up. Because of this pattern of action, the way the public sector organisations operate has been labelled ‘fire-fighting’ by Kh.Temuujin, MP (2008).

Another example of public sector organisations being reactive is the issue of overseas employment. A few years ago, Mongolian workers were encouraged to go overseas for work and the MSWL had an explicit policy to with which to assist them. The policy was soon reversed after the public expressed concerns on the far-reaching social consequences of sending mainly young male workers overseas, including the disruption of families, health problems and the increasing share of foreign workers in the internal labour market.

At present, contracting-out and public-private partnerships (PPP) are promoted as a more efficient and effective way to deliver welfare and employment services. The experience of other countries shows that there are potential risks which need to be

identified to avoid negative consequences. Yet in Mongolia, there seems to be a lack of a balanced approach which weighs up not only advantages but also the disadvantages. A former Chairperson of the Cabinet Secretariat admitted that ‘we need to be proactive and get rid of the mentality of putting on a raincoat after the rain has stopped’ (Cabinet Secretariat, 2008b).

Partial

There are another two areas where the MSWL seemingly assumes partial accountability due to the shared responsibility with other government agencies: gender and children. A government implementing agency National Agency for Children (NAC) was newly established in 2004 under the Deputy Prime Minister’s Office. The National Committee for Gender Equality (NCGE) was established under the Prime Minister’s Office. The establishment of these new organisations is considered as a step towards improving intersectoral coordination, given the crosscutting nature of these two issues. Yet, the organisational accountability arrangements were not changed to accommodate the shared nature and the involvement of different stakeholders. This left the MSWL’s accountability for issues of children and gender blurred. An interviewee explained:

It is hard to hold the Ministry accountable for children and gender issues, because these issues are divided [among agencies]. Children’s issues are within the Deputy Prime-Minister’s budget portfolio, and gender issues are within the Prime Minister’s budget portfolio. For example, the National Agency for Children has over 40 staff, and has a representative in all aimags. The National Gender committee has six full time staff, and ex-officio representatives in all aimags. In comparison, the MSWL has only one person responsible for it ... Then, the MSWL writes Country report to CEDAW, even though it is not responsible for [this issue]. In the principle, the body which is responsible for policy should write the report. So in general, there is a mess, and no one wants to disentangle it (Interviewee 3.6).

In terms of formal reporting lines, the National Agency for Children reports directly to the Deputy Prime Minister, and the National Committee for Gender Equality reports to

the Prime Minister's Office. However, the MSWL does not report to either of those agencies or receive reports from either of these two organisations.

One mechanism commonly used in enhancing inter-sectoral coordination is the creation of working groups. In 2009, the MSWL initiated a Working Group on adults and children living in the streets, which included representatives from the MSWL, NAC, General Police Department, Ministry of Health, the Centre for Citizens' Information and Registration, the Capital City Governor's Office and the Ministry of Justice. Creating a working group is a flexible mechanism of coordination however, because they are short term and *ad-hoc*, by definition, they can play only a complementary role.

There are several other areas where the MSWL seems to accept only partial accountability. These include social protection of homeless people, domestic violence, child safety, people with alcohol or drug addiction, and human trafficking. An officer from the MSWL expressed concerns over the issues of divorce, violence towards the elderly, and suicide, as emerging social issues (Interviewee 1.8). These are the areas which were not part of the traditional social service in pre-democratic Mongolia, where government agencies are slow to assume their responsibility and where non-government organisations play a limited but more active role.

5.6. Policy accountability in Mongolia and the New Zealand experience

Having described the focus of policy accountability on activities and outputs, the factors which contribute to the neglect of outcomes, as well as the consequences of focusing predominantly on activities and outputs, the question of the extent to which the Mongolian public sector experience is unique or common.

As the PSMFL was modelled on the New Zealand experience, it is the first country to be compared. New Zealand's public sector reforms started in the late 1980s and early 1990s, approximately a decade earlier than in Mongolia. The principles adopted at the beginning of the reforms were 'clarity of objectives, freedom to manage, accountability, adequate information flows and effective assessment of performance' and were based on the premise of control (Norman and Gregory, 2003:36). Apart from the more common NPM measures, such as managerialism, corporatisation, privatisation,

contracting out, devolution of human resources management to individual departments, and the transfer of service delivery functions to separate, non-Ministerial agencies, the New Zealand approach was distinctive in several respects: extensive use of contracts, specification of outputs to be purchased by the Minister from the department, and performance agreements between ministers and chief executives; greater emphasis on strategic objectives determined by ministers; emphasis on organisational specialisation through separation of advisory, delivery and regulatory functions and separation of commercial and non-commercial functions; and output-based system of appropriations and distinction of 'ownership' and 'purchase' interests (Boston and Eichbaum, 2005).

The New Zealand experience of public sector reforms received international attention and recognition, and Mongolia became one of the followers. The major achievements of the New Zealand reforms included improvements in efficiency, quality of certain services, better expenditure control, greater managerial accountability, and availability of quality information for policy makers. Contracts redefined the Ministers' relationship with departmental chief executives, associating outcomes with Ministers and outputs with chief executives (Halligan, 2007), a feature which Mongolia attempted to import.

By the time the Mongolian Parliament was discussing the draft PSMFL in 2002, the problems with the New Zealand approach had become increasingly evident. Since mid-2000, the pendulum has swung away from the control model of the late 1980s (Norman and Gregory, 2003). Numerous difficulties related to different aspects of the reforms were identified, some of which were pertinent to the Mongolian context. For example, it was not always possible in practice to separate policy advice from delivery. Separation of policy advice from policy delivery increased problems of policy coordination and control, especially in services which require inter-agency cooperation. The provision of social services by profit oriented private companies was not always satisfactory. Contracts between the Minister and the chief executive, although detailed and rigorous, proved to be 'rigid, time-consuming and burdensome'. Since accountability was based on contract specifications, *ex post* reviews of effectiveness were bypassed, and the absence of good policy evaluation acted as a constraint on evidence-based policy making (Boston and Eichbaum, 2005). These effects were similar to those encountered by the Mongolian public sector, and confirmed the view that PSMFL design did contribute to the neglect of policy outcomes and undermined policy accountability.

Upon identification of adverse consequences of the first stage of reform measures, New Zealand started the second stage of reforms around 1999-2000. While still retaining many features of previous reforms, New Zealand made substantive changes in several respects. Firstly, policy outcomes received an increased focus. Outcomes were defined *ex ante*, as the starting point for public management and accountability rather than ‘the aggregation of a set of outputs’ (Boston and Eichbaum, 2005:24), as it was during the initial years of reforms. Secondly, special attention was attached to addressing the problems created by fragmentation through emphasis on outcomes and on whole-of-government interests. Thirdly, building public sector capability and values became a central agenda. A range of legislative changes were also made in 2004 to improve the flexibility in managing public finances, while retaining accountability mechanisms to Parliament (Boston and Eichbaum, 2005). Thus, New Zealand public sector reforms shifted to a model “qualitatively different from the original design... with less reliance on governance by contract and more emphasis on what might be called ‘joined-up governance’” (Boston and Eichbaum, 2005:2).

Mongolia started the implementation of the PSMFL and its public sector management and finance reforms in 2003 at a time when New Zealand had already identified weaknesses in first stage reform efforts and developed a revised framework for the next round of measures. Mongolia did not go as far as New Zealand and the reform measures were not as rigorous as they were in New Zealand. However, as discussed above, the separation of policy development and implementation, focus on outputs and neglect of outcomes, still led to consequences similar to those faced by the New Zealand public sector at the end of the first stage of reforms.

The New Zealand reforms also demonstrated effects of the state structure, the electoral system and the nature of government in adopting and implementing such reforms. New Zealand went further than other countries because it had had fewer institutional constraints (Hughes, 2003). Before the introduction of a mixed member proportional system in 1996, New Zealand had the first-past-the-post voting system, a system which was also used in Mongolia at the time when the PSMFL was approved. In contrast, in Australia which has also actively embraced the NPM ‘the approach to reform has been evolutionary and driven by pragmatic practitioners rather than ideology’ (Wanna *et al*,

2000 cited in McGuire, 2004). This may be due to the demands of a mixed system of parliamentary government and a federal structure of the country (McGuire, 2004).

Although New Zealand witnessed some incidents where blurred accountability for performance contributed to drastic failures, such as the well publicised case of the Cave Creek, and despite some high-profile cases of alleged fraud and concerns over possible decline in ethical standards (Boston and Eichbaum, 2005), New Zealand maintained its reputation for transparency and low levels of corruption. This was not the case in Mongolia which, in addition to problems of policy accountability, also has problems with compliance accountability and contract enforcement. Chapter 6 will explore this issue further.

International typology of performance management

Apart from parallels with the New Zealand public sector reform process, the current policy accountability system can also be classified using an international typology of performance management – a typology developed by Bouckaert and Halligan (2008) and summarised in **Table 5.5**.

This typology divided the process of performance management development into four stages, each with specific features, (i) performance administration, where administration is given more emphasis; (ii) management of performances, where management has emerged but is uncoordinated; (iii) performance management, where internal consistency and consolidation is achieved; and finally, (iv) performance governance, where a performance system becomes externally consolidated and interactive.

The Bouckaert and Halligan typology (2008) contains three areas related with performance: *measurement characteristics*, *incorporation of measurement* and *use of measurement*. The ‘Performance Administration’ type has the following features: type of measurement is mechanistic and closed, designed by internals on an *ad hoc* basis, span of measurement is limited and selective, relies on input, activity and output, criteria of indicators is technical (valid and reliable), quality is considered as constant, and there is no awareness of pathologies; measurement is static, disconnected and isolated; and measurement is used for technical purposes, reported internally to the hierarchy, allows only single loop learning, demonstrates administrative type of

accountability, and as such performance measurement adds little value and keeps the organisations unaware of major dysfunctions.

The nature and characteristics of policy accountability illustrated in this Chapter shows that Mongolia fits all the descriptions under ‘Performance Administration’ type – the first of the four types of the performance management. While this typology confirms the administrative nature of policy accountability in Mongolia, including mechanistic, close, *ad hoc*, disconnected, and further development in this area may bring Mongolia to the next stage, that of Management of Performance, this typology should not be used as a fixed roadmap for the development of performance systems.

Table 5.5. International Classification of Performance Systems

Ideal type features	Performance Administration	Managements of Performances	Performance Management	Performance Governance
Measurement				
1. Type of measurement	Mechanistic and closed	Internally interactive and closed	Internally interactive and open	Internally and externally interactive
2. Design of measurement system	<i>Ad hoc</i> schemes by internals	Organised per management function: standard schemes by staff and consultants	Imported standard models (benchmarking) by staff and consultants	Designed standard models (benchmarking) by stakeholders, staff and consultants
3. Span of measurement	Limited and selective: efficiency and productivity: input, activity, output	Organisationally determined: economy, efficiency and effectiveness: input, activity, output, effect/outcome	Organisation and policy based: economy, efficiency and effectiveness: input, activity, output, effect/outcome	Full span: economy, efficiency, effectiveness and trust: input, activity, output, effect/outcome, trust
4. Depth of measurement	Micro	Micro and meso	Micro and meso	Full depth: micro, meso and macro
5. Criteria of indicators	Technical (valid and reliable)	Technical and functional	Technical, functional and internally legitimate	Technical, functional, internally and externally legitimate
6. Specific dimension of measurement	Quality is considered as constant	Quality requires separate focus	Quality gets and integrated focus	Quality is systemic
7. Dysfunctionalities of measuring	No pathologies awareness	Starting concern for pathologies	Systemic reactive focus on pathologies	Systemic pro-active focus on pathologies
Incorporation				
1. Level of incorporation	Static	Comparatively static	Dynamic	Hyper dynamic
1. Degree of incorporation	Disconnected, isolated	Connected per management function, not consolidated	Internally consolidated	Externally consolidated
Use				

Ideal type features	Performance Administration	Managements of Performances	Performance Management	Performance Governance
1. General use	Limited and technical	Disconnected policy and management cycles	Integrated policy and management cycles	Societal use
2. Main reporting focus	Internal hierarchy	Internal managerial functions	Internal management, external political	Management, political and societal
3. Learning by using (standards)	Single loop learning	Single and separate double loops	Single, and integrated double loops	Single, double and meta
4. Accountability for performance	Administrative	Managerial	Managerial and political	Managerial, political and societal
5. Potential value added of performance	Limited	Single improvement	Integrated improvement	Systemic
6. Potential dysfunctions of performance	Unawareness of major dysfunctions	Incoherent and suboptimal use of information	Negative cost-benefit	Uncontrollable and unmanageable system

Source: Bouckhaert and Halligan, 2008:221-222.

Summary of the Chapter

One of the basic approaches to investigating policy accountability is to see whether the policy development process and accountability system focus on policy outcome or changes in people's lives as the ultimate criteria, while also taking into consideration activities and outputs. Policy development and implementation processes as well as planning and reporting procedures currently used by the MSWL and the ESWSA show that policy accountability is limited. The current accountability system remains predominantly administrative and is based on activities/outputs. Policy outcomes are treated as something that is achieved automatically once activities and outputs are fulfilled. When outcomes are neglected there are distortions in policy accountability. Given the lack of information on policy performance it is difficult to hold government organisations accountable for the outcomes of policies they pursue.

Overall, the PSMFL made a step forward to performance management by introducing notions of outputs and outcomes, strategic planning and performance measurement. The PSMFL was designed to change the way public sector organisations are managed. However, the PSMFL did not change the way the Government reported to the Parliament. Nor did it change the practice of planning. The Government of the day is held accountable by the Parliament for the implementation of the Government Action Plan and Main Directions of Annual Economic and Social Development. Yet, these two documents consist of activities and output related measures and do not support a sectoral outcome focus by Ministries. Ministries develop their Strategic Plans and although the fulfilment of the Strategic Plans is monitored by the Cabinet Secretariat, it is the completion of activities and measures included in Government Action Plans which are given ultimate priority.

Furthermore, reports on the implementation of Government Action Plans constitute one of the main documents communicated to the public during the electoral campaigns.

Various mechanisms used in the enforcement of accountability include each organisation's own monitoring and evaluation system, assessment by supervising bodies, inspection, and performance contract signing and evaluation. These mechanisms

reinforce the focus on activities and outputs. Currently, the only oversight organisation which takes an outcome-focused approach is the NAO. Attempts to introduce more focus on outcomes face resistance due to the entrenched system of activities and outputs.

Overall, the findings of this Chapter suggest that the policy making process itself needs to be improved in order to improve policy accountability and make policies responsive to the public. The current practice of policy-making in Mongolia is still influenced by practices established under a communist regime. As such, the policy development process in Mongolia has some parallels with former communist countries. As Goetz (2001:1040) noted

ministerial administration under communism was unpolitical in the sense that it was not geared towards the preparation, assessment and authoritative resolution of policy alternatives, which were largely prerogatives of the party bureaucracy.

Given this circumstance, where officials were used to a passive role in policy making, policy development capacity was one of the most important but most overlooked areas of capacity building after the transition started.

Although formal accountability mechanisms stress performance contracts and delivery of outputs, it is unrealistic in not formally taking into account the impact of policy outcomes on people's lives. Although many policy makers do take into account previous policy outcomes or impact to some degree, this process is not formalised and not integrated into the formal system of policy development. Such informality in policy development has two main weaknesses, (i) this process is not transparent and participatory and the public does not get information on policy choices and justifications; and (ii) there is inadequate policy evaluation and learning available from previous cycles of policy development.

A democratic system of governance requires public sector organisations to adopt a policy making process that reflects the demands of policy accountability. Policy analysis is a key factor in such a system, as policies are not predetermined but rather

based ‘upon uncertainty’ with ‘hypotheses ... tested according to their practical appropriateness on the ground, conceived and implemented through negotiation with various social partners’ (Ionescu, 2004:2).

The New Zealand experience influenced the Mongolian public sector initiatives towards greater policy accountability. However the style and format of the Cabinet level policy and planning practices have not changed since 1992. This combined with three factors found to have contributed to the excessive reliance on activities and outputs, (i) PSMFL and its underlying focus on outputs; (ii) inexperience with definition, measurement and use of outputs and outcomes; and (iii) lack of data collection system and policy analysis.

As a result of these factors, the current policy accountability system can be characterised as fragmented and mechanistic, short-term, reactive and partial. As such, the system fits the ‘Performance Administration’ stage or the first stage of the international typology of performance management. Adjustments better orientated to local conditions would have been useful for the shift from policy activities and outputs to policy outcomes.

Government organisations differ in terms of the degree and focus of their accountability in various stages of policy process. Mongolia introduced notions of performance management at the organisational level but did not take into account different mandates of government organisations in the policy process, and thereby succeeded in integrating them into the overall accountability system of the public sector.

The examination of policy accountability reveals an interesting picture. Many parties participate in delivering services to the public. Hence, ensuring overall policy accountability requires disentangling responsibilities and the respective contribution of each of these parties to final outcomes, as well as accountability relationships among these players. The focus of policy accountability is a substantive part of government services, that is, issues about what services to deliver, how and to whom. Services also need to be delivered in a fair and just manner in accordance with established rules and regulations. This is what procedural accountability is concerned with and the next Chapter looks at the procedural dimension of public sector accountability.

CHAPTER 6. Procedural accountability

The third part of the accountability framework adopted for examining public sector accountability in Mongolia is procedural accountability. Procedural accountability is a more traditional form of accountability; it is also more prominent and visible in the public sector of Mongolia. In fact, most of the accountability related incidents mentioned in the introductory chapter were related to procedural accountability. Unlike policy accountability where ultimate policy effectiveness is measured by improvements in people's lives, procedural accountability usually involves compliance with established rules, regulations or standards.

Although procedural accountability is a more familiar type of accountability for the Mongolian public sector, the country's transition from socialism to democracy and a market economy required an almost complete change of most rules, regulations or standards to be followed in finance, procurement, human resource, and organisational governance policies and processes. Hence, procedural accountability depends on the extent of the adoption of necessary rules, regulations or standards to which compliance is required.

Overseeing compliance and ensuring procedural accountability is the mandate of specialized agencies. Since each area of procedural accountability is subject to more detailed scrutiny by respective specialized institutions, this chapter provides an examination of recent changes in procedural accountability at the MSWL and its implementing agency, the ESWSA, by relying on documents as secondary sources, including assessment or audit reports of specialized accountability institutions, and to some extent, also on interview data.

6.1. Financial accountability, budgetary and financial rules and regulations

Since the 1990s, Mongolia has undertaken continuous reforms to create an adequate system of financial accountability. This process consists of improving the legislative environment through adopting internationally recognized principles and standards of public sector accounting, budgeting and financial management, developing detailed procedures, creating necessary institutions including professional accounting institutions, and changing budgetary and financial management policies and practices at individual public sector organisations. The process has intensified in recent years owing to the additional income the country is earning from mining.

According to the Accounting Law first passed in 1993 and amended in 2002, 2003, and 2006, all entities are required to prepare financial statements in full compliance with International Financial Reporting Standards (IFRS). The PSMFL, while criticised for its focus on policy outputs in the previous chapter, has the reputation of having centralised financial management control through the Treasury Single Account system, thereby improving fiduciary control in budget execution (World Bank, 2009a). The introduction of the Government Financial Management Information System (GFMIS) has further improved government accounting and reporting.

In addition to the overall environment of procedural accountability, including adoption of international accounting and financial reporting standards, two issues related to compliance can be noted based on reports of audits and financial inspections, and interviews: *weak internal control* and *budgetary allocation practice*.

Weak internal control

At the MSWL, the Finance Department is responsible for the approval and reporting of the sectoral budget. It monitors the expenditure of the approved budget by implementing agencies, checks for breaches, conducts analysis on the findings of finance related issues and reports to the Minister and the Cabinet. The Finance Department also fulfils a role of internal control for the sector, including the MSWL, and its subordinate agencies.

Both the NAO and the SSIA revealed important issues of financial accountability, including weak internal control and inefficient use of resources. The NAO (2007) found that the internal control system of the ESWSA was not satisfactory in a range of areas including its budgetary planning and expenditure, accounting, management of social welfare and employment promotion funds, management of fees from foreign workers, aimag and district ESWSDs' budgeting and finance, the activities of social welfare and employment promotion sub-funds. In the same year, the SSIA also conducted an inspection in all district and aimag offices of the ESWSDs, and noted weak internal control of the ESWSA in a number of areas. It found:

that the rationale for planning of Special Purpose Funds is not adequate, that there were cases where fake documents were used in obtaining welfare payments, that the welfare card was used as a loan guarantee. The internal control of the ESWSA is weak (SSIA, 2007).

Despite the above findings of the audit and inspection agencies, breaches of financial rules and regulations re-occur, suggesting weak administrative and legal sanctions and an administrative culture which tolerates such breaches. An interviewee noted that:

(d)ue to the economic situation and people's morale, violations occur repeatedly. When somebody leaves the public service, he/she does not hand over the audit report to the succeeding person ... Organisational internal audit is not effective at all. Only one person is in charge of the internal audit. That person follows director's instructions, and if asked to check something, he/she does it. Some issues, such as workplace fees paid by foreign workers cannot be revealed by internal audit. Internal audit does not function independently (Interviewee 3.9).

The ESWSA acknowledged that internal control function needs improvement:

Our agency has an oversight function over ESWSDs. At present, we do an evaluation at the end of the year, but we are not able to take ongoing monitoring.

We visit and reveal mistakes after it [welfare payment] is disbursed (Interviewee 2.2).

While ESWSA is in charge of procedural accountability over all ESWSDs in all aimags and districts, a functional review found that the MSWL still needs a strong internal audit unit, as in addition to welfare, employment and social insurance services, around 30 percent of the expenditure in the sector is distributed mainly through NGOs and other agencies (CSD, 2008). The MSWL does not have mechanisms to monitor or audit how these organisations are spending their money.

In response to audit findings, some measures were taken, including the creation of an additional position of monitoring, and an Evaluation Officer at all ESWSDs:

We now have a new position for checking actual payments. The recent inspection pointed out to the fact that payments are not being double checked, raising issues of accountability. We do not have any time at all to check it ourselves. This was a response to audit findings (Interviewee 2.5).

However, strengthening an internal control system requires systemic improvements which go beyond adding a few new staff positions. In 2001, an IMF report noted the need to clarify the role of internal audit and develop technical capacity. It observed that financial inspection focused solely on non-compliance with financial regulations, and sanctions for non-compliance with the Budget Law was not vigorously applied. The report highlighted that establishing a stronger internal audit should be as important as external audit (2001:17). This need remains valid at the time of writing.

Budget allocation practice

The next issue related to financial accountability is budget allocation practice within the MSWL. Firstly, the MSWL HQ budget includes amounts budgeted for the implementation of national programmes. This amount is too small to undertake anything meaningful. Since the budget is not sufficient, it is almost certain that national programmes will not be implemented satisfactorily. As an interviewee recounted,

(t)here are many problems related with funding. When we need to do something, we are always told there is no budget. So what can we do? (Interviewee 1.7).

Secondly, not only is the amount of budget allocated to implementation of national programmes small, it does not get fully spent for those programmes. Because activities of national programmes are not costed, it is difficult to match funding with planned activities. An interviewee explained:

Well, officers do plan and work on how to spend [the budget]. But it happens quite often that the money is spent on something else. We had around 20 million tugrugs on occupational safety, and recently we wanted to organise something, and we were told that only over 1 million is left (Interviewee 1.7).

Such practice reveals the degree of discretion that the management has in relation to budgets allocated to programme implementation.

Thirdly, the departments of the MSWL do not have their own budget for activities. The MSWL budgets allocated to departments are limited to covering salary and other running costs, and are not sufficient for undertaking programme activities. Budget planning, disbursement and reporting do not seem to be transparent and budget related information is not readily available to the MSWL public servants. An interviewee suggested that his

Department should have its own budget. But our Finance Department does not show it to us. When I asked what I was supposed to do and what measures I was supposed to take without budget, they [the Finance Department officials] don't answer. I suspect that our department's budget is used for other purposes. And then, they say your budget has already been spent. I did not organise any activity and how come that the budget was spent already. ... We submit our plan. ... The Finance Department consolidates and the State Secretary approves the budget. So I suppose [our plan] will be reflected in contract with the State Secretary, since it is a signed document. But we are told that our budget was approved as before (Interviewee 1.6).

Another said

it is desirable that the MSWL budget is discussed, with feedback from others and resulting in collective decisions. Unfortunately, in practice this does not happen (Interviewee 3.7).

At times, constant underfunding of activities put the MSWL public servants in a situation where they have to use means which are not in line with the financial rules and regulations. One interviewee explained that

(s)ince we do not have budget, we put requests to our implementing agencies (Interviewee 1.1).

The current problem with budgetary allocation is a result of incomplete rules and regulations and lack of fiscal transparency, rather than lack of compliance.

Overall, the emphasis on ensuring that funds are not used for unauthorized purposes is still strong in Mongolia. A former Minister for Social Welfare and Labour resigned from his position for authorising the use of resources of one welfare fund to finance expenses of another fund. The actual resignation gave a signal to politicians and was a clear example demonstrating ministerial accountability to comply with financial rules. However, this incident also shows that Mongolia is no exception to the widespread reality that

public officials are less likely to be sanctioned for achieving what is often unachievable in the form of policy outcomes than they are to be punished for their failures to comply with procedural requirements or to meet specific production targets (Gregory, 2007:229).

On the other hand, the NAO reported in 2009 that 13 portfolio Ministers exceeded their budget expenditure for 2008 by from 0.3 to 10.8 percent (NAO, 2009). No one was held accountable for this excessive expenditure of the budget. So far the only reaction was a

suggestion by the Chairperson of the Budget Expenditure Sub-Committee of the Parliament to develop and submit a Draft Law on Accountability for Budget (*Unuudriin Mongol*, 8 June 2009):

Weak internal control systems and weak enforcement from the Ministry of Finance may be partly explained by the input-based budgeting practices, which despite the PSMFL, did not change until 2009 when programme-based budgeting was piloted at selected agencies.

As mentioned above, broader fiscal policies, rules and fiscal discipline are under significant review due to the mining boom and its effect on the economy of the country. The draft laws on Budget Stabilization and Integrated Budget, submitted to the Parliament in early 2010, are expected to provide a new framework of accountability for public sector financial management.

6.2. Human resource management rules and procedures

The main criteria of procedural accountability in the area of human resources management is procedural fairness and compliance with public service laws and regulations in recruitment and dismissal decisions.

Recruitment in the public service is regulated by the Law on Civil Service (2002), PSMFL (2002) and related procedures. The Law on Civil Service (2002) defined the principle of equal opportunity, and the requirements for persons to have relevant knowledge, experience, skills and specialization (Article 10.1). According to the PSMFL, public sector organisations should pursue

the principle of recruitment and performance evaluation that is based on knowledge, education, profession, experience, and professional skills, through open competition, only (Article 5.1.3).

As set forth in the Law on Civil Service, the recruitment process should go through the following steps, (i) recruiting from the same organisation or other public organisations; and (ii) if such step is not possible, recruit the person who has passed the Civil Service

Examination and who best meets the requirements. In addition, it is permissible to recruit from among persons who have already passed the Examination and are included in the civil service database (Article 17.1;3;4). Organisations are obliged to announce vacancies publicly (Article 17.5).

There is no comprehensive information available on the extent to which the above laws and procedures were followed in recruitment decisions at the MSWL. Beyond that, there is no special monitoring study on the implementation of the merit principle across the public sector in Mongolia. According to the interview data, the merit principle was not fully followed in recruitment and dismissal practices. Interview comments suggest that politicians were selecting and recruiting people for the MSWL, and the MSWL was just endorsing their decisions and completing the formalities:

These days, political influence comes directly. An MP, as soon as he/she gets elected, would instruct to do this and that things, recruit this and that person (Interviewee 1.7).

One issue that is left behind and we are unable to resolve, although we are very much aware is the issue of ‘fill-ins’. These people are just squeezed [into the Ministry] (Interviewee 1.4).

They don’t seem to announce open competition. In actual fact, I began to realise that public organisations recruit only somebody’s person (Interviewee 1.6).

Public service is not based on merit principle. With the change of Minister, subjective influence occurs (Interviewee 1.8).

The issue of politicised recruitment is also widespread at the ESWSA, if not more than at the MSWL. In 2004, employee turnover was very high at the Employment Agency (ADB, 2004). Four years later the situation did not get better and in 2008, high turnover of staff related to the election cycle (political patronage) was again identified as one of the three reasons of low level of knowledge in local employment offices (ILO, 2008):

As I observe, various people come to work in our organisation through political channels due to politicisation and partisanship. With every change in government, 50-60 percent of employees are replaced with people from the director's side or from the specific political force. I do not know when such practice will stop (Interviewee 2.1).

In announcing vacancies, individual organisations including the MSWL and the ESWSA change the requirements for positions to suit to the individuals who they intend to recruit (NAO, 2007).

In the principle, job description shows requirements for that particular job. One use of job description is announcing vacancy. But job descriptions are no longer developed by setting up a working group. These days, the officer concerned develops the job description him/herself. Since job description is not good, it is difficult to hold accountable somebody (Interviewee 1.1).

These days appointment and HR decisions are made fictitious or inappropriately. Job descriptions show requirements but someone lacking the requirements e.g. a lawyer or singer, is appointed to that job (Interviewee 2.3).

Lack of compliance with the relevant recruitment processes set by laws and regulations and recruitment of people who do not meet the actual job requirements led to capacity problems. Inevitably, such practices undermine performance and affect policy accountability, according to the interviewees' comments:

It seems in order to maintain accountability system, we need to create certain criteria and requirements for central public organisations. Otherwise, a bunch of somebody's persons (*sic*) is collected, no matter whether they can do the job or not, and then, the problem of delays and under-fulfilment of plan arises (Interviewee 1.7).

It is really widespread that people get jobs because of a political promise and elections promise. This is not secret. In such situations it is difficult to hold

employees accountable internally. It is difficult to hold accountable the person who was Director's own person. So, civil service is far from being mature (Interviewee 2.1).

They cannot produce a single page of paper, yet they get paid the same level of salary with other members of staff (Interviewee 1.4).

In our opinion, they should start from horoo social worker. Otherwise, somebody who was previously in military organisation gets into management position, and does not know his work, and knows only how to command and order. They do not even know the laws (Interviewee 2.5).

Recruitment of people without proper experience and qualification gives and spreads the perception that anyone can work in the public sector. To some, this is the most damaging consequence of breaching recruitment rules and regulations:

There is a widespread perception among people that the public sector will continue to exist [no matter what happens and no matter recruitment rules are breached]. This is very big issue of accountability (Interviewee 2.3).

Neglecting competency requirements are not limited to the central offices. The ADB (2004) consultant noted that despite job descriptions that reflect capacity, education and experience requirements for each position of Employment offices, the recruitment of new staff does not get sufficient attention, especially in aimag and soum offices.

The MSWL and the ESWSA are not the only public organisations where political influence over civil service appointments is prevalent. In addition to politicians, senior civil servants and civil servants occupying 'influential' positions also use their positions to 'squeeze' somebody into the civil service, e.g.

(j)ust take one public sector organisation. It is full of MPs' wives, brothers/sisters, relatives, or children of officials working in oversight,

inspection related organisations. It is very difficult to demand performance (Interviewee 1.8).

The Law on Civil Service and other laws and regulations contain various sanctions for poor performance as well as for breaching the legal provisions on recruitment, dismissal and performance evaluation. However, these mechanisms are made ineffective again due to political influence, illustrated by the following comments:

We do not make use of mechanisms that already exist. It is widely held now that there is no accountability system. But there is. Everything is there, if you breach this, you will face this measure etc. ... (w)hen we reveal irregularities or misuse of funds, and take corrective measures with the person in charge, somebody calls us and asks us to leave the case alone. This happens ... So when we tell them that they are unable to meet the work requirements and suggest resignation, somebody would give us a phone call. We get told that we ourselves would be in trouble, if we sack those people. We receive a direct pressure (Interviewee 1.4).

Some request 'please don't sack him/her'. ... 'Please keep him/her at director's position' ... or ask to appoint to any position as long as they stay with the Ministry. Officials call from organisations with which we deal, even Advisor to the Prime Minister gave us a call (Interviewee 1.8).

Such widespread recruitment into public service without merit-based competition was considered to be due to a legal loophole in the Law on Civil Service, which allowed temporary appointment by-passing Civil Service Examination and competitive recruitment process. Consequently, in 2008 the Law on Civil Service was amended and it invalidated this provision. There is an expectation that recruitment without competition will reduce in the future. As one official explained:

In the past, it was possible to enter public service without sitting civil service examination. That meant that management will directly recruit those whom they

know. The Law existed only for firing those civil servants who were not related to somebody [influential] (Interviewee 1.1).

Another legislative change aimed to reducing undue political influence in the public sector is the amendment to the Law on Civil Service, which obliged party members to abstain from participating in political activities in any manner and to freeze their party membership (Article 10.6). The amendment aims to tackle the problem of partisanship mentioned in Chapter 4, namely, party members get rewarded with public service jobs, in return to their participation and contribution made to the electoral campaign. Since this provision came into effect in January 2009, it is too early to assess its effects.

6.3. Procurement rules and procedures

Procedural accountability as it concerns procurement rules and procedures is a fairly recent development in Mongolia. The Law on procurement of goods and services by State and local funds was approved in 2000, and was amended in 2005.

As with the financial accountability, the NAO found several breaches of procurement rules and procedures by the MSWL, in its report entitled ‘Management and finance system of procurement is inadequate’ (2009). These included lack of mid-term investment policy and plan, funding of activities which were not reflected in the Budget Law, changing the source of funding, and transferring capital repair funding to investment. The other breaches included the selecting of contractors without open tendering and inadequate assessment of contractors’ capacity, inadequate reporting, and insufficient process monitoring for investment projects and activities.

One of the areas which took a substantial portion of the MSWL investment funding was the procurement of *ger* (traditional houses) for vulnerable groups. The NAO found that for 2008, this funding amounted to 44 percent of the total investment funding. However, of 2,042 gers, a random check revealed that the quality of some gers was poor. The MSWL was recommended to submit a report on sanctions imposed on relevant officials who used direct contracting in breach of procurement laws.

These findings of the NAO revealing various breaches contradicted the assessment made by the Ministry of Finance, according to which the MSWL performed ‘well’ in terms of management of procurement activities.

Contracting-out of service delivery functions

Contracting-out service delivery and other functions to NGOs has become a fashionable term in Mongolia. The Law on Government has a provision which permits NGOs to implement some tasks and services of the State. The Government Resolution 93 approved the Cooperation Agreement between the Government of Mongolia and the civil society council. The Government Action Plan (2008-2012) also has several measures increasing the participation of NGOs in State service delivery, including ‘improve the arrangement and management of welfare services and pursue a policy of engaging the private sector and civil society’ (Article 1.4.6) and ‘jointly with NGOs and private sector, bring the services provided to children and women living under hard conditions in line with the professional level and standard requirements’ (Article 1.4.16).

Specific principles and detailed policies and procedures on contracting out were not developed, but drawing on the above mentioned acts, both MSWL and the ESWSA started using contracts to deliver certain services. This left both organisations with considerable discretion on one hand, and uncertainty on the other as to how to contract out what to whom. Depending on the subject matter concerned, different officials at the MSWL were involved in drafting and signing contracts with NGOs as explained by interviewees, as follows:

The subject department is responsible together with the Finance Department. For example, in case of the youth exchange program, a contract is made with particular youth organisation and funding is provided. ... the number of NGOs contracted has substantially increased ... The evaluation of contract performance is conducted only ... at the end of the year. There is no ongoing evaluation, so this is a problem ... In some cases, even it is hard to find the actual text of contracts (Interviewee 1.1).

The officer who is involved in contracting out is accountable for it. There is no integrated management of contracts (Interviewee 2.2).

In 2009 the MSWL made progress in the area of contracting-out; the Procedure on contracting-out some functions of the state to NGOs was approved in April 2009, and the list of areas of partnership with NGOs was approved in May 2009. The Procedure provides requirements for NGOs and projects, selection, funding, and performance evaluation. The list of directions for co-operation with NGOs will take into account the Government Action Plan, the Main Directions of Annual Economic and Social Development, sectoral policies and programmes and the annual business plan of the MSWL.

It is not clear yet to what extent the services contracted to NGOs are delivered in better quality or more accessible than government agencies. The extent to which the delivery of these services results with better outcomes for beneficiaries, is still to be evaluated.

Contracting out also raises broader issues of accountability. While contracting out is a new area for the MSWL, it is an area where governments of western countries, especially departments of social welfare, have accumulated substantial experience and learned lessons. Contracting-out is used in different countries to varying degrees. Some countries traditionally involved more not-for-profit players (e.g. Germany) whereas in some countries direct provision of services was a custom (e.g. Sweden & UK) and opens up more opportunities for contracting out (Pollitt and Bouckaert, 2004). Contracting-out raises accountability issues for both parties of this relationship: government and not-for-profit organisations.

For not-for-profit organisations the ultimate accountability is to their mission, purpose and communities. However, it is common among not-for-profit organisations working with the government to gradually change their organizational priorities, management structures, and fundamental ethos (Goodin, 2003; Smith and Lipsky, 1993). Accountability requirements of the government may take resources from actual work to completion of paper work (Baulderstone, 2007). When competing for government

funding, not-for profit organisations may destroy their own distinctive accountability regimes (Goodin, 2003).

When non-profit organisations are required to report to their stakeholders, their annual reports reflect the accountability requirements of their influential stakeholders (Flack and Ryan, 2003) which in most cases are government, thus further distancing themselves from their constituencies. At times, contracting-out creates uncertainty about who will be held accountable for the services contracted.

Despite these lessons learned, the public sector of Mongolia promotes contracting-out more as an end by itself and less as a means to achieve more substantive policy objectives or improve service outcomes. The ‘contracting-out some state functions to NGOs’ is frequently mentioned in speeches of Ministers and at meetings with NGOs, but there is little explanation and justification. Mongolian NGOs interested in participating in social welfare service delivery have already expressed their concern about potential negative attitudes to competition among NGOs, and the need for improved mutual understanding with other NGOs (Kharkhuu, 2009). Contracting-out to NGOs and the private sector requires a new framework of accountability with new types of mechanisms to hold concerned parties accountable.

An important distinction is that when public services are contracted-out, private sector agencies are not subject to administrative law provisions that apply to public agencies (Mulgan, 2000a). McGuire (2004:251) notes that the effect is that

(c)ontracting increases rather than reduces the scope and complexity of systems for delivering professional public services. This has the effect of increasing rather than simplifying the complexity of accountability chains.

In addition to three traditional areas of compliance, finance, human resource management, and procurement and contracting, there are three areas which affect organisational level accountability. These are, (i) transparency, openness and disclosure of information; (ii) management practices; and (iii) organisational governance policies and practices, which are now discussed.

6.4. Transparency, openness, and disclosure of information

The MSWL has adopted the **principle** of openness and transparency in its plans. While there is no explicit policy with regard to transparency, openness and disclosure of information, the MSWL is putting efforts to define what it would mean for the MSWL to be transparent and open. Interviewees explained its significance:

Being open would mean the areas of responsibilities of officers must be open. Openness also means when people come in, officers need to listen to them, even if they are unable to provide money, understand the essence of what the people are after and guide them to relevant bodies ... In addition to web sites and notice boards, we intend to get public feedback on decisions of Minister's Council and normative acts (Interviewee 1.1).

Accountability is not always command and punishment, it is also transparency. Transparency is a very good pre-condition for being accountable. Mistakes of the director of a department can be caused by lack of transparency (Interviewee 3.4).

As part of the measures to improve transparency, several innovative measures are being taken by the MSWL and the EWSA. In accordance with the Presidential Decree No.97 of 2007 and Government Resolution No.190 of 2007, the MSWL organises an Open Day for the public, disseminates information to visitors and provides advice on various issues of employment, social welfare, and insurance. On that day, the EWSA registers the unemployed, offers vocational training courses and receives requests from employers. Copies of legal acts and leaflets are distributed. While the 'Open Day' does not necessarily make the MSWL and its organisations providing a service more open and transparent in continuous manner, it makes the services provided by them more accessible for that one day and constitutes a promotion campaign for various types of services.

However, the concepts of transparency, openness and disclosure of information are still vague and it is difficult to translate these general principles to every day work situations. Since there are no context specific, detailed guidelines, the degree of

transparency, openness and disclosure of information depends on the initiative of individual officers. There is a difference between making information available and accessible, and not hiding it. While most information is not classified as secret, the lack of active dissemination and disclosure strategies leads to the reputation of being non-transparent in a context of constant high demand for information from public organisations. This was highlighted in comments by interviewees:

I am not sure if there is a policy on information dissemination. Maybe there is. But there is not much information on the website. Little information is put on the website, not to leave it blank. If there was no information at all, that will cause problems (Interviewee 1.6).

The internal regulation says that information should be open. On the website, we put only laws, regulations, and resolutions etc, in other words, normative acts ... At present, there is no secret information. We do not have any instruction to keep certain information secret (Interviewee 1.5).

We follow the Law on Secrecy. Our organisation does not have information classified as secret. According to the law, everything should be open (Interviewee 2.2).

At the ESWSA, there is no formal policy or procedure on disseminating information to the public and the media. Employees think that they are required to follow the general principle of openness and provide information to interested parties, including the media. However, at some stage, such an initiative is discouraged by the senior management of the organisation, who fear that there will be different interpretations of organisational and service data by the media. Given the lack of formal policy, and approved or agreed strategies, information dissemination takes place on an *ad-hoc* basis. Active information dissemination is limited to promotional events, such as Open Days. The subtleties of policies and practices were revealed in interviewees' comments:

According to the State Archive and Documentation Procedure, we do not have documents of secret nature. So, we should respond to anybody, including NGOs,

business entities, and students who come and obtain information from us. But giving information to radio or TV or interviews to newspapers are discouraged. I think since our organisation is not an intelligence agency, there is nothing wrong with giving data on how many persons receive welfare payments or comparison with the last five years (Interviewee 2.3).

We actually do our job, but our director's approach is not like this [does not encourage information dissemination] (Interviewee 2.2).

We do not have such policy. But we should have it. We should be giving information to the media through public relations officer. We should not be giving unprocessed information to anyone who asked for it. Newspapers and journalists ask for information, but it is not appropriate to provide information without analysing it (Interviewee 2.1).

When Open Days are organised, we take them [information leaflets] in a rush. If there are no Open Days, information is just kept here in the office (Interviewee 2.2).

Within the ESWSA, access to information and flow of information is also limited. Public servants are occupied with the specific tasks assigned to them and there are few mechanisms which encourage exchange of information internally, as revealed by the following comments:

Since our organisation does not discuss matters openly internally, I do not know what my colleagues are doing ... The size of the budget, services planned and the actual performance etc., is not reported internally to employees (Interviewee 2.3).

Lack of transparency within the organisation is understood as linked with the political influence, as employees belonging to one political party would not disclose information to employees associated with other parties, which has the effect that:

Political battle and divide shuts up everything that is positive, including professionalism and openness (Interviewee 2.3).

There is even a belief that public service does not need to exchange and discuss information internally, shown by an interviewee's comment that:

Public service has a career system. This means an officer should implement what the director has instructed. Officers do not have duty to discuss, make choice or criticise it in any manner. So we just do our own job. There is no such thing as transparency of activities of other officers. I reckon it is not supposed to be like this (Interviewee 2.1).

Given scarcity of information internally, there were cases where information possessed by particular public servants is treated as if it was his or her source of power or almost personal possession, e.g,

(w)hen public servant is newly recruited, she does not receive previous records of welfare services. She starts a new list and opens a new excel sheet. When she resigns, she takes it with her, as she was not given any record when she started (Interviewee 3.7).

With the introduction of the new software of welfare service data, the above situation of information possession is expected to be resolved, however, keeping official information only to oneself without sharing it with others, is still a feature in the public sector which requires addressing.

There are practical constraints related with the lack of data collection and processing and management of information technology, e.g.

(n)ormally, we do not put statistical information [on the web site]. Even we try to put statistics on the website there is not enough of them (Interviewee 1.5).

... (m)any websites were created, yet they are not working. Labour.mn is better, but still very limited (Interviewee 2.2).

The internal access to information and communication is much more open within the MSWL, which shows that leadership can make substantial change. The experience of both organisations underlines the importance of developing and using specific policies on transparency, openness and information disclosure.

The Independent Authority against Corruption (IAAC) established in 2006 has a mandate to undertake preventive measures against corruption, including enhancement of organisational transparency. In accordance with its mandate, the IAAC developed Indicators of Transparency which were approved by Resolution 143 of the Cabinet Secretariat in May 2009. The Indicators of Transparency consist of four sections, including (i) operational transparency and openness, (ii) transparency of human resources policy, (iii) transparency of budget and finances, and (iv) transparency of procurement activities. The Decree also required Ministers to reflect the Indicators of Transparency in the Performance Agreement that are signed with heads of agencies and Governors, so that they become part of performance evaluation.

6.5. Management practices

Despite the PSMFL introducing the term ‘manager’ into the public sector, ‘manager’ is used mostly in a PSMFL related language and environment, rather than in the ordinary daily operations of public sector organisations. None of the official government positions are entitled ‘manager’. Titles, such as civil servant, director, general-secretary, chief or head, are more commonly used. Middle and senior level public servants see themselves more as ‘public servants’ and ‘administrators’ rather than managers, as revealed by daily work practices and styles of organisational management.

The role of directors and senior government officials had not been challenged during the early years of transition. However, expectations for directors and senior officials have changed now and there is a clear mismatch between the current expectations, and the actual practices and tools used by directors and senior officials of the MSWL. Directors

and senior officials are seen as engaged more in day-to-day work instead of providing broader visionary guidance. One interviewee highlighted this:

Manager should provide general direction, know the principal issues and be able to check if certain laws have been fully reviewed or not etc. Since they are given wider powers, I think they should have broader knowledge and be able to direct people. It is then difficult to say if our managers fit such description ... (m)anager's roles should be much more visionary and looking beyond ... (i)n general, it seems there are difficulties for this. Sometimes day-to-day work dominates. Day-to-day work means limiting work to providing replies to letters received (Interviewee 1.3).

Employees were resentful of 'old stereotype' directors, who just pass orders and instructions from senior management on to employees and then report what employees did back to senior management, i.e.

(o)ld style dominates, and it is top-down. It is understood that officers should do only what directors have directed. Then it is difficult to establish who will be held accountable for this directed job. It becomes fuzzy (Interviewee 1.3).

In particular, employees resent a 'command and control' style that the directors use for getting the work done. Threat to fire is one of the common tools used by directors. This style was illustrated by the following comments:

They do not understand what management is, and that they are dealing with people (Interviewee 1.6).

When it comes to organisational level accountability, it is mostly demonstrated by basically threatening people by the word 'accountability (Interviewee 2.1).

In recent times meetings tend to be more of a threatening atmosphere, threatening if you do not do good job, you will be fired etc ... They say that they

know how we are doing the job, and they will soon replace us with others. ... We go to meetings feeling nervous (Interviewee 2.3).

We are not thought of as humans. We are treated as if we were tools. We should be available whatever time they call us. This is the main management mistake. ... They take humans for machine (Interviewee 1.6).

Although employees resent such treatment, they do not submit any complaint through official channels. There is a procedure of handling complaints from employees which was developed in accordance with the provisions of the Law on Civil Service. However, the procedure was not used due to the lack of complaints received from employees.

Given the lack of an explicitly established policy on organisational governance, management practices are dependent on goodwill of directors and senior officials and prone to change with the change in senior leadership, as indicated by several interviewees:

In general, accountability in public sector organisations has become very weak. It depends on who the Prime Minister is, who the Minister is, and then, who the director of monitoring department is at the Ministry, and who holds the given position (Interviewee 2.2).

In the past, our meetings were different. The headquarters would appraise its work on a half-yearly basis, and report on what the budget was spent on, the situation of service delivery etc. Since 2005, we stopped discussing this way. Of course, we do hold meetings these days but the meeting agenda is about one-off measures, such as Open Days, who will do what, who will sit at the frontline desk, etc. We do not talk about issues related to our responsibilities (Interviewee 2.3).

At most two/three persons define organizational culture. Of course, the minister is influential. Then, director of public administration department is influential. This department influences on how people work and organisational culture.

Deputy Ministry and State Secretary are influential to some extent (Interviewee 1.6).

In addition to traditional areas of internal management mentioned above there is an awareness to use modern management techniques, such as risk management, e.g.

There is no risk management. This is a new trend so, in future, we need to use it. Risk management is also relevant to the public sector, in fact for any organisation. The fact that many civil servants take risky steps shows that they do not understand risk management issues (Interviewee 2.1)

The MSWL, the ESWSA and the actual service delivery organisations all seem to have an extremely high workload with the following effects:

What gets people irritated is actually workload. I do not know about our counterparts in foreign countries, but in our office, we receive hundreds of people every day. So we cannot afford to meet any one person longer. Because we are in a hurry, we quickly pick up documents of one person, complete the transaction and move to the next person. This may give an impression to people that we are not polite (Interviewee 2.5).

[work load] is beyond normal. On new jobs, I must visit the organisations and find out how many new persons get employed. ... Report has to be submitted to the district, then the Livelihood support meeting. At the same time, we still receive people who come to the office (Interviewee 2.6).

We work under pressure and without protection. Civil servants work a lot of overtime ... (Interviewee 2.1).

Such workloads may have been caused by many factors including the formation stage of welfare and employment services in the country, and the consequent need to deploy service provision throughout the country without a proper preparation stage. Some such issues were identified as follows:

(j)ust to take the case of our Ministry, we need to identify what social welfare will give to whom, who will be affected by those decisions on employment, work hours and wages. These issues lead back to the issue if the Ministry is appropriately organised to solve them, if managers are capable and clarifying who is doing what for whom (Interviewee 1.3).

They do not anticipate and plan in advance. They suddenly announce meetings or assign some tasks and put people in stressful situations. ... everything can be planned well. This is not a war time, but they are unable to plan (Interviewee 1.6)

In addition to legal, political, and administrative environment and contextual factors, internal organisational management plays a significant role in accomplishing accountability for performance (Arambula, 2008).

The notion of managerial accountability assumes the existence of managers and management processes and practices. For Western democratic countries, the existence of managers and management practices are not questioned. Rather, the focus is the extent to which this type of accountability interacts with other types and whether the managerial accountability undermines or complements the other types, in particular, accountability to the public. Glynn and Murphy (1996) found that the 1980s and 1990s reform process did lead to greater accountability, but that accountability was different from the traditional notion of accountability in the public sector, and was one which emphasized managerial accountability at the expense of political accountability.

The situation is different for Mongolia. Given the background of the former socialist system and top-down structure of public administration which consisted of directors fulfilling the role of administrators, the question is to what extent the public sector of Mongolia was able to cultivate managers and adopt management practices since the transition began. As mentioned in Chapter 5, the lesson learned from the PSMFL implementation is that it is impossible to undertake managerial reforms without first training managers. Efforts to develop management started in the early 1990s with the assistance from international organisations e.g., UNDP funded Management

Development Programme. The Civil Service Medium Term Reform Strategy approved in 2004 (Parliament Resolution No.24) emphasised the development of leadership skills of civil servants working in management positions. The Civil Service Council in cooperation with the Swedish Agency for International Development (SIDA) conducted training for hundreds of managers at various levels between 2006 and 2009.

The Academy of Management (AoM) is a designated organisation of training for public sector managers, which reports to the Cabinet Secretariat. The AoM itself had to re-structure from a party-based ideological institution into a modern public sector education provider. The AoM updated its curriculum and each year recruits hundreds of public sector employees for its short term courses as well as its degree courses.

Despite these management development efforts and initiatives, management is still an area where further substantial development is needed. One of the interviewees was of the opinion that ‘(m)anagement is in a deplorable status in our country’ (Interviewee 3.1).

Unlike traditional public administration, there is no ‘one best way’ to manage, and rather than following instructions, public sector managers are expected to decide a way of working (Hughes, 2003:34). This is not always understood by those working in management positions in Mongolia.

6.6. Organisational governance policies and practices

Organisational governance is a term which has not been clearly defined or explained in the Mongolian public sector. As noted at the Third Corporate Governance Forum in Mongolia (Corporate Governance Development Centre, 2010), it is also a new concept for the private sector.

While the term ‘organisational governance’ is itself not commonly used commonly, principles underpinning organisational governance are articulated in various legislative acts. First of all, the basic operating principles of the State proclaimed in the Constitution are democracy, justice, freedom, equity, national unity and rule of law. An

additional seven principles were stated in the Law on Civil Service (2002), (i) govern and be governed; (ii) openness; (iii) serve the people; (iv) have equal opportunity to work in the civil service; (v) be professional and stable; (vi) the state is be responsible for creating conditions for civil servants to implement their mandate; and (vii) the State is responsible for damages caused by civil servants while exercising their mandate as stated in legislative acts. While incorporating the above principles, the Law on Legal Status of Ministries (2004) added the further principles of: quality service; professionalism; transparency and openness; accountability for actions; non-interference in internal affairs of other ministries and mutual respect.

Despite these general principles, there is no requirement for public sector agencies to have internal policies for organizational governance. According to the Law on Legal Status of Ministries (2004), ministries should have internal procedures regulating workplace relations, including provisions on appointment, termination of employment, rights and responsibilities of the employing administration and employees, planning and reporting, performance evaluation procedure for organisational units and employees, work hours, internal control, awards and disciplinary actions. These areas cover some of the principles for organisational governance mentioned above, but not all of them.

The MSWL does not have separate documents called internal policies or policy on organisational governance. The Internal Procedures of the MSWL include some policies concerning certain areas of internal organisational governance, including procedures for communicating with other organisations and citizens, and handling complaints. The other parts of the Internal Procedures re-affirm relevant legal provisions, though these are not stated as the organisation's own expression of policies. The Internal Procedures of the MSWL do not provide further descriptions or practical explanations of principles that are stated in legislative acts.

Developing explicit policies on organisational governance is, thus, a new notion for Mongolian public sector organisations. Although not in policy format, organisational governance related activities and measures are reflected in various plans of the government and its organisations. The Government Action Plan (2008-2012) envisaged several measures, including the creation of an electronic system to track the process and

resolution of citizens' complaints (4.1.12), make the public service open, eliminate red tape and increase accountability (4.5.4), improve civil servants' ethics and accountability, maintain a culture of respecting rule of law and zero tolerance of corruption (4.5.5), and implement transparent and speedy mechanisms to hold to account portfolio ministers and civil servants who used budgetary resources inefficiently (4.5.11).

The measures reflected in the Government Action Plan aimed at improving public sector governance are implemented by ministries and agencies through their own plans. However, these measures are treated and remain as part of the implementation of the Government Action Plan rather than an internal aspiration for improved organisational governance.

The lack of explicit policies and guidelines affects the ability of government to effectively exercise accountability for organisational governance and makes the organisations vulnerable to undue political influence. One channel of such undue political influence is phone calls and requests for favour from politicians and high-ranking senior public servants. Their requests include adding somebody's name into the registration of candidates for overseas work by-passing existing procedures and queues, the issuing of work permits for foreign workers, cancellation of workplace fees for foreign workers, allocation of ger (traditional Mongolian houses), and numerous cases concerning eligibility of social welfare allowances.

Directors and senior officials of the MSWL and the ESWSA frequently receive requests from politicians in relation to various issues that the organisations are in charge of, including registration for overseas work, work permits for foreign workers, allocation of ger, and eligibility of welfare payments. Examples reported by interviewees include:

During the registration of workforce for export, many people come as MPs requests. I wonder if it should be like this. If there is social accountability, we have to be fair and treat all people equally ... Last time the registration took place in the stadium and put people in a very uncomfortable situation. They stayed overnight in that place without rest rooms. At the same time, the list of

persons with MPs names behind them would just automatically enter into the registration ... Gers [traditional dwelling] worth million tugrugs get sent to people with some politicians names attached to them, to provinces of their original residence. This is not social accountability. This is an example of external influence (Interviewee 1.7).

Once they become MPs, they criticize the Ministry. Over the phone, MPs say one thing and on TV they say a completely different thing. For example, they talk against the import of Chinese workers on TV, and afterwards give us a call requesting a permit for Chinese workers (Interviewee 1.8).

Citizens turn to MPs a lot. The MPs do not know the details of the laws and send us letters ordering to fulfil the given request of that person (Interviewee 2.2).

A senior employee of the ESWSA was charged with producing a fake work permit for Chinese workers and taking the money paid by these workers as workplace fee (*Zuunii medee*, 22 Oct 2009). Given that politicians themselves ask for favours to obtain work permits for foreign workers, it is not surprising that public servants would commit such an offence.

Summary of the Chapter

Procedural accountability is a more traditional type of accountability, however, its effectiveness is compromised by the degree to which rules, regulations or standards of procedural accountability that meet the requirements of democratic system of governance were put in place. The adoption of necessary rules and regulations is an ongoing process in Mongolia and has intensified in the last few years.

Conducting a full and systematic review of compliance with approved rules and regulations in budget and finance, human resources management and procurement, was beyond the objective of this Chapter. Rather, it illustrates the transitional nature of procedural accountability in the public sector of Mongolia by highlighting specific examples, including (i) weak internal organisational control system, (ii) inadequate budget allocation practices, (iii) introduction but subsequent compromise of a merit

principle in recruitment processes, and (iv) lack of detailed guidelines and procedures in the contracting-out to private sector or civil society organisations.

In addition, the Chapter points out to early stage of development of management practices as a field and of that of a manager as a profession distinct from that of an administrator. Principles of transparency, openness and disclosure of information are now recognized and more accepted as compared with the early years of transition, yet there are barriers in the actual realization of these principles in the daily business of government organisations.

Procedural accountability needs to be considered within a broader concept of organisational governance, a concept which is still very new in Mongolia.

CHAPTER 7. Discussion and implications

The three preceding Chapters have explored three types of accountability in the Mongolian public sector. The objectives of this Chapter are to address the research questions by using the findings in Chapters 2, 4, 5, and 6, while at the same time discussing the findings from the literature reviews and the implications that these findings may present for further public administration reforms in Mongolia will be discussed. This Chapter also explains the limitations and theoretical contribution of the research study.

As mentioned in Chapter 1, the overall research question was “Why public sector accountability is weak in Mongolia?” The research process of finding answers to the main research question started with an assumption that, (i) public sector accountability is a state of affairs or a function of formal and informal accountability mechanisms, arrangements and means, and (ii) weak and ineffective formal mechanisms of accountability causes weak public sector accountability in Mongolia. The research process was deliberately limited to formal mechanisms only, while still recognizing the important role that informal mechanisms and arrangements play in ensuring accountability.

The main research question was narrowed down into the following sub-questions:

1. What is the appropriate analytical framework for addressing public sector accountability in Mongolia? In other words, what types of accountability need to be considered as a framework of analysis?
2. What are the purpose and emphasis of types of accountability within this framework and how effective are these mechanisms in ensuring accountability?
3. What is the dominant form of accountability in the public sector of Mongolia?

7.1. Discussion

Before addressing the specific research questions, it is useful to bring up the difference in meanings between ‘responsibility’ and ‘accountability’ as observed during the interviews. Chapter 1 highlighted that there is no matching equivalent in the Mongolian language to the English word ‘accountability’. The Mongolian words more commonly used to refer to accountability translate as ‘responsibility’, ‘control’, ‘check’, ‘oversight’ or ‘sanction’. As seen from the interview excerpts below, although the same Mongolian word was mentioned to refer to both ‘responsibility’ and ‘accountability’, in most cases it was possible to make a distinction when translating interview transcripts into English:

Accountability arises depending on who is in charge of what duties and depending on which official is responsible for what according to laws and regulations. ... Hence, holding somebody accountable means to see the extent to which that person fulfilled his/her duties (Interviewee 1.4).

Accountability is not only about officials. Citizens and employees should also be accountable. Both sides need to be considered ... The principle to start accountability from the top is very important. The President may start accountability initiatives. I promised to do this and that last year, but did not implement, so I will not get my salary etc. ... This will have a cascade effect to ministers etc. Top three should initiate ... Accountability [responsibility] means not to throw one’s own duties to others. None of our politicians take responsibility personally, they always blame others. This is irresponsible (Interviewee 3.4).

In some other cases, the emphasis was given specifically to ‘accountability’ rather than ‘responsibility’:

Accountability is basically punishment. It means if you are not accountable, then you will be punished (Interviewee 2.5).

Everything that is not functioning or wrong in Mongolia is related to accountability. I can tell this directly (Interviewee 3.2).

I think few organisations are aware about what accountability is. There are big organisations with complex structures and they talk about accountability and holding accountable. But in fact, they do not understand well what accountability is (Interviewee 2.3).

Within the context of the definition of accountability used in this thesis, the English word ‘accountability’ was translated into Mongolian language through three words for clarity of meaning; ‘үүрэг хариуцлага’(responsibility), ‘хариуцлага хүлээх’ (assuming accountability and reporting), and ‘хариуцлага тооцох’ (enforcement of accountability).

As mentioned in Chapter 1, the word ‘accountability’ is indeed a buzzword in the Mongolian media and in public sector documents. As seen from media coverage and government documents, there are concerns about different types of accountability in various contexts but usually the difference is not made clear. This reinforces the need to develop an accountability framework or a typology suitable for given purpose.

The next section addresses the research questions asked.

7.1.1. Research question 1

What is the appropriate analytical framework for addressing public sector accountability in Mongolia? In other words, what types of accountability need to be considered as a framework of analysis?

As mentioned in Chapter 1, one of the rationales for conducting this research is that accountability has become one of the most challenging issues of the public sector in Mongolia. Accountability is a multi-faceted and complex notion and it has to be treated in its complexity. It is a system of relationships rather than isolated relationships or individual institutions (Jenkins, 2007). Accountability exists in many forms and is given extra dimensions of meaning by its context; accountability should be “enhanced by recognising the multiple ways in which accountability is experienced, rather than by attempting to override this chameleon quality” (Sinclair, 1995:219). In order to ensure

all pertinent considerations are taken into account and to employ adequate mechanism to correct the situation, issues and constraints that affect accountability need to be more accurately described (Mongrieffe, 1998).

In order to contribute to the improvement of public sector accountability in Mongolia, this thesis sought to find an appropriate framework to allow a description and an analysis of accountability issues facing Mongolia today.

Public sector accountability in this research is treated as a qualitative state of affairs or status, resulting from the existence, absence or weakness of various informal and formal arrangements and mechanisms. A divide between formal and informal mechanisms allows the thesis to focus only on formal mechanisms of accountability while recognising the important role of informal mechanisms or soft accountability.

If accountability is a

relationship between an actor and a forum, in which the actor has an obligation to explain and justify his or her conduct, the forum can pose questions and pass judgement, and the actor may face consequences (Bovens, 2007:450),

and if

A is accountable to B when A is obliged to inform B about A's (past or future) actions and decisions, to justify them, and to suffer punishment in the case of eventual misconduct (Schedler, 1999:17),

then there should be certain mechanisms or arrangements which allow the forum (or B) to hold the actor (A) accountable. Hence, the underlying hypothesis was that the current state of public sector accountability in Mongolia reflects the extent and effectiveness of accountability mechanisms.

Given the multidimensional nature of the concept, the first step in developing the analytical framework was to identify the types of accountability mechanisms and the role these mechanisms are playing in maintaining public sector accountability.

Three types or components of public sector accountability were studied: political; policy; and procedural. Three factors were taken into account in selecting these three types as the framework of the study: (i) given that the literature on accountability in Mongolia is scarce, there is no existing framework which can be used in accountability studies; (ii) frameworks used in established Western democracies cannot be used for the Mongolian case, as there are differences in the nature of accountability issues; and (iii) as types of accountability mechanisms are interrelated, a consideration of the main types of accountability mechanisms is preferred over any focus on a single type of accountability.

Having described the accountability framework used in this thesis, it should also be recognised that in different contexts of public sector accountability in Mongolia, different frameworks can be used. Different administrative tasks and forms of administrative agency require different accountability arrangements (Stone, 1995). Accountability mechanisms and arrangements are linked to the context in which organisations work, their scale, the area of activity and sector, and hence there cannot be a standard set of accountability arrangements (Blagescu and Lloyd, 2006)

At present, there is no explicit framework of accountability at the organisational level which describes what the organisation is accountable for, to whom and how, in the MSWL and the ESWSA. Adopting a formal framework of accountability adjusts the general principles of accountability to specific organisational contexts and accommodates the constant changes. In the absence of such framework, organisational level accountability is left subject to interpretation and discretion. The ultimate goals of the MSWL and the ESWSA are the same, but the nature of their mandates and functions are different. A well designed system of accountability would be explicit and reflect the existence of these common goals, and the different roles that two organisations play in achieving these goals.

As observed from websites of other ministries, it is typical for public sector organisations to state their legal mandate by referring to specific provisions of relevant laws. Public sector organisations do not have the experience of developing accountability frameworks. In the recent past, they started to identify their stakeholders.

In addition, a formal framework of accountability would allow the integration of different types of accountability and the balanced treatment of various aspects of accountability, without compromising one for the sake of another. In Mongolia, the main reporting system is based on the achievement of planned activities. It does not take into account the fulfilment of principles of transparency, integrity, and equity in implementing these activities which may have contributed to treating these values as something of secondary importance. Similarly, focusing on policy outputs rather than outcomes does not necessarily involve the violation of laws or abuse of power, and without a formal accountability framework, policy accountability issues may easily be left behind.

7.1.2. Research question 2

What are the purpose and emphasis of types of accountability within this framework and how effective are these mechanisms in ensuring accountability?

Each of the three types of accountability – political, policy and procedural - relied on their own framework of notions and mechanisms. Political accountability used a framework which combined specific mechanisms of parliamentary system as well as external constraints, whereas policy accountability was explored through a policy framework which distinguished between policy inputs, outputs and outcomes. Procedural accountability focused more on an organisational level governance and compliance mechanisms.

Each type of accountability plays a critical role in the overall state of accountability. The role of political accountability mechanisms is to constrain the power of the Executive supported by the Parliamentary majority and to make administrative decisions under its authority. The role of policy accountability is to make sure that policies are responsive to public needs, and contribute to positive changes in the lives of

people. Procedural accountability enhances compliance, procedural fairness, efficiency and integrity.

How effective are mechanisms for ensuring each of these types of accountability?

The findings revealed a lack of effective accountability mechanisms in all three types of accountability: political, policy, and procedural. Given the shortage of effectively functioning accountability mechanisms as revealed in the previous Chapters, it is not surprising that accountability is one of the most challenging issues in the public sector of Mongolia. There were a number of specific and indispensable mechanisms which are absent. In other words, mechanisms which B can use to hold A accountable were not provided when setting up a delegation between the two parties. In some other cases due to some underlying constraints, accountability mechanisms were created but are less effective than desirable.

Political accountability

Political accountability in this thesis dealt with accountability of the Parliament to people. Chapter 4 reviewed a range of mechanisms used for ensuring those elected remain accountable to people. Chapter 4 concluded that given the parliamentary system and the plurality/majority electoral system, holding the parliamentary majority accountable is more important than holding the executive accountable. There was a clear lack of mechanisms to enforce accountability of the parliamentary majority.

Lijphart (1991) wrote that when countries make the transition to democracy there are two fundamental choices to make: those between plurality elections and proportional representation (PR), and parliamentary and presidential forms of government. He highlighted the importance of considering these two choices in relation to each other. Based on the assessment of the impact of various choices, he advocated that the combination of a parliamentary system and proportional representation elections was a better choice for new democracies. In a similar direction, Gerring *et al* (2009) concluded that parliamentary systems offer a stronger relationship with good governance than presidential systems, at the same time conceding that within a parliamentary system those with PR and 'first-past-the-post' system might differ.

However, actual choices depend on the immediate context of a given country. Eastern European new democracies mostly chose forms of PR rather than majoritarian systems, so as to give political influence to minorities (Crawford and Lijphart, 1995). Mongolia chose a parliamentary form of government and majority/plurality elections, not a PR system of elections. The choice of a parliamentary system was explained by the consideration that a parliamentary system would be less prone to discretionary decision of one person, the political influence from two neighbouring countries, than a presidential system as well as lessons learned from Latin American countries with presidential regime (Mashbat, 2007). Absence of numerous religious and ethnic groups may have reduced the need to use PR to increase the political power of minorities.

What had been missed in choosing the combination of a parliamentary system with a majority electoral system were the mechanisms of checks and balances. By 1992, when the political system was being designed, the concept of separation of power was very strong amongst the constitutional lawyers in Mongolia. However, the separation of power was understood as separation between legislative, executive, and the judicial powers, and according to the 1992 Constitution, MPs could not be part of Cabinet. The later amendments to the Constitution allowed some Ministers to be appointed from amongst the MPs but again, mechanisms of checks and balances were not considered.

Referring to the current political regime of Mongolia, Lijphart (2008) advised that adopting a PR system may be the main means to make the regime more consensus-based, and added that given the small size and homogenous nature of the population, Mongolia would not need federalism and an upper house, but would still need to establish strong constitutional constraints on executive power. As shown in Chapter 4, the Constitutional Court is currently the most important mechanism of constraint of parliamentary power, but it has several limitations in terms of mandate and access. Other mechanisms of political accountability such as opposition power or committee inquiries were less effective.

Thus, public sector accountability is weak in Mongolia because the current constitutional provisions and majority/plurality electoral system create a strong parliamentary majority, without the corresponding mechanisms to hold it accountable to

the people. Omitting relevant mechanisms of constraints on the power of the majority was due more to inexperience and the shortage of knowledge of comparative political science in Mongolia, rather than any political force that intentionally opposed the introduction of such mechanisms. Even very experienced constitutional lawyers at that time did not speak English and had difficulty in directly accessing information available in English.

As commented by political scientists, Mongolia's democratization is known as 'deviant' (Doorenspleet and Mudde, 2008:821) or an 'anomaly' (Fish, 1998:131) to highlight its success, however, creating effective mechanisms of political accountability presents a real challenge to the consolidation of democracy in Mongolia. As Schedler wrote (1998:91) 'sustaining democracy is often a task as difficult as establishing it' and with new democracies, 'the problem is not overthrow but erosion: the intermittent or gradual weakening of democracy those elected to lead it' (Huntington, 1996:8, cited also in Schedler, 1998). Since the emergence of new democracies, constitutional conditions which constrain governments have multiplied and become more diverse, and 'modern democracies are complex constellations, integrating a mixture of institutional devices that can be used to control the executive' (Pennings, 2003:543).

Political accountability is the pre-condition for policy accountability. While procedural accountability can be relatively independent of political accountability, this was not the case in Mongolia.

Policy accountability

Policy accountability is a type of accountability more commonly discussed in the literature. Numerous sectoral policy studies deal with policy accountability. Unlike political accountability, policy and procedural accountability are concerned with sectoral and organisational level accountability, which are the subject of many accountability related theories. While this thesis chose to use the term 'policy accountability' to refer to accountability in ensuring that policies are 'a reflection of the interests and need of the population' (Rose-Ackerman, 2005:5) in previous Chapters, policy accountability is similar to what are referred to as 'performance accountability' or 'managerial accountability'.

The main research question of this thesis sought to find reasons for weak accountability in the public sector. In terms of policy accountability, the findings described in Chapter 5 showed that the focus of the mechanisms that public sector organisations use for ensuring accountability is not adequate.

Unlike mechanisms of political accountability (which required a new design completely different from the previous system), many administrative processes and tools of policy development and planning, relied on procedures established under the previous regime. The system of policy accountability is incomplete and still in transition. While public administration reform aimed at introducing performance management was assessed as ‘premature’ by the ADB which supported this reform, it may also be the case that support for the implementation of the reform was incomplete, with the reform design focused too much on an agency/ministry level of organisational performance, rather than a more general overall process of outcome-based policy development and monitoring. In terms of the need to introduce mechanisms of policy accountability, shifting the main focus from legality, to legality *and* results management or performance management and replacing input and activity-based planning, were not premature but lagging behind. Thus, reasons for weak policy accountability are closely related to the design and implementation of public administration reform in Mongolia.

Discussion of policy accountability is continued in the Section 7.1.3 below, which looks at policy and procedural accountability from the perspective of bureaucratic and managerial dichotomy.

Procedural accountability

Similar to mechanisms of policy accountability, procedural accountability is also an area where replacing mechanisms and processes of the previous regime took place in a more gradual manner. The process of developing and adopting new standards and operating procedures was slow, and public servants followed the Director’s orders even when the orders contradicted standards or procedures. Outdated procedures and the delay in adopting new procedures in one area prompted inefficiencies in other areas. For example, legal loopholes in merit-based recruitment processes contributed to an

increased politicisation of the public service and even more loyalty to immediate supervisors, than to an adherence to laws and regulations.

The establishment of a professional and de-politicised civil service had been on the reform agenda as soon as the new Constitution was adopted, and the first Law on Civil Service was approved in 1996. However, as described in Chapter 6, this Law and the revised Law on Civil Service in 2002, were not effective in reducing politicisation. In Eastern and Central European countries, politicisation also remained strong in the civil service despite reforms and relevant legislations (Meyer-Sahling, 2004). A professional and de-politicised civil service was considered by Strøm *et al* (2003) as one of the constraints on political power.

When looking at public sector accountability in Mongolia as a system, there are also three reasons behind weak accountability. *Firstly*, accountability mechanisms has not been sufficiently reflected in the design of all three areas, *secondly*, existing accountability mechanisms has been made less effective by various factors, including institutional capacity, and *thirdly* and more importantly, there is a lack of an institutionalised system of review to ensure the existence of accountability mechanisms.

7.1.3. Research question 3

What is the dominant form of accountability in the public sector of Mongolia?

The third research question was to identify the dominant form of accountability in the current public sector of Mongolia. Attempting to identify a dominant form of accountability is important; as mentioned in the Global Accountability Framework (Blagescu *et al*, 2005), in some instances, organisations are accountable to inappropriate stakeholders rather than not being accountable at all.

In the analytical framework of accountability used in this thesis, it is impossible to identify a dominant form, since each type reflects a different dimension of public sector accountability. The typology of political, policy and procedural accountability shows them to be mutually complementary rather than as competing forms of accountability.

However, as the literature suggests, there are different typologies of accountability which make distinctions between alternative forms of accountability, based on different criteria. One such distinction is bureaucratic versus managerial accountability (Hughes, 2003), a typology that highlights a distinction of accountability systems under a different stage of public administration, namely, a Weberian style public administration and the NPM.

Before proceeding into a discussion of the bureaucratic form of accountability in Mongolia, three terms used interchangeably in the literature need to be clarified. These are ‘bureaucratic’ (Hughes, 2003), ‘administrative’ (Stone, 1995; Bovens, 2007) and ‘hierarchical’ (Romzek, 1998; Romzek and Ingraham, 2000) accountabilities. All three refer to basically the same thing. Bureaucratic accountability is named so, drawing on the word ‘bureaucracy’, that is public service, as the subject of accountability. Administrative accountability relies on ‘administration’, which is the area of operation of the public sector. Hierarchical accountability is typical of relationships in traditional public administration – i.e. a hierarchical structure or direction of accountability relationships.

The public sector has undergone many transformations throughout its history, but its hierarchical structure has remained as a vital feature. As long as government organisations keep their hierarchical structure, there will be hierarchical accountability. As long as government organisations are involved in administrative functions, there will be administrative accountability. In this sense, administrative and hierarchical forms of accountability are value-neutral terms. Bureaucratic accountability, as it refers to the accountability of ‘bureaucracy’, is also a neutral term.

However, there is another meaning of bureaucratic accountability which refers to the characteristics of Weberian bureaucracy. Under Weberian bureaucracy, the main purpose of bureaucratic accountability is to maintain compliance with rules, regulations and orders through minimizing discretion. Bureaucratic accountability is characterised by supervisor and subordinate relationships, which rely on the requirement to follow ‘orders’ without questioning, and close supervision or a surrogate system of procedures or rules (Romzek and Dubnick, 1987). According to Gregory,

(i)n this conception, strongly influenced by Weberian bureaucratic and political theory, public servants are accountable for the degree of technical competence they employ in the efficient, economic and effective implementation of public policy purposes determined by elective political authorities whom they serve. Their accountability is ensured through their compliance with the institutionally, constitutionally and legally mandated rules and processes under and within which they carry out their functions (Gregory, 2007:344).

With the shift of public administration into public management, some differences have emerged. While the public service still retains its hierarchical structure and lines of reporting, and many areas of public sector operation can still be characterised as administrative, the Weberian description of bureaucracy no longer corresponds to current reality. The way public servants work has evolved from administration to management. To use Hughes' terminology (2003), bureaucratic or hierarchical accountability do not have to be administrative, as it can also be managerial. In other words, the subject of accountability being public servants remains the same but the way that public servants do their jobs does not have to be Weberian in its classical sense. It can be managerial in nature. Hierarchy provides infrastructure or a base for ensuring accountability, and this infrastructure can be used for transmitting any kind of content. Under traditional public administration, the content this infrastructure was carrying was compliance with rules and guidelines and supervisors' orders. In modern days the main content has shifted to policy, performance and results, but hierarchy still exists.

Yet, although bureaucracy refers to public servants, and administration refers to the area of public sector operation, the words 'bureaucracy' or 'bureaucratic' in the common usage of the words, essentially correspond to the Weberian description. Therefore, in this section, administrative accountability is used interchangeably with bureaucratic accountability.

Then, the question is – 'what is the dominant form of accountability in the public sector of Mongolia'? In other words, is the dominant form of accountability bureaucratic (Weberian) or managerial? While the MSWL and the ESWSA appear to be very similar

to a classic Weberian bureaucratic system, there are important differences in terms of substance, as described as follows: *Firstly*, in a Weberian bureaucracy, administrative procedures are given priority and they are followed strictly. In the case of Mongolia, administrative rules and procedures are followed unevenly, for various reasons including a lack of rules and procedures, which leaves public servants in a situation where they have to use their own judgement and discretion. *Secondly*, in a Weberian bureaucracy supervisors oversee the implementation of rules and procedures and enforce it through their orders and direction. In the case of Mongolia, there is a discrepancy between the supervisors' orders and the rules and regulations. Politicians are sometimes more influential and override procedures and regulations. *Thirdly*, in a Weberian bureaucracy, merit-principle is a special and defining feature. In both the MSWL and the ESWSA, a merit-principle was not consistently followed.

Thus, there is a mixed picture. Bureaucratic (Weberian) accountability exists to the extent that the implementation of supervisor's orders are taken into consideration, but are compromised when the supervisors' orders contradict the rules and regulations. Based on these characteristics, this state of relations in regard to accountability can be called a *distorted bureaucratic accountability*. Unlike classic bureaucracy, the MSWL supervisors themselves breach rules and regulations, and give orders which are in conflict with rules and regulations. Public servants obey and implement these orders, even though they are aware that these orders are in breach of rules and regulations. Hence, supervisor-subordinate relationships and obedience are serving an objective contrary to its original purpose. The bureaucratic accountability is not only distorted, it is used in reverse. The organisational infrastructure is being used for implementing negative objectives which is worse than an idle status of non-implementation. This is what Jenkins called 'capture':

Reporting and management systems in the civil service make subordinates accountable to their superiors. The result is often capture. Under pressure to please their bosses, lower-level officials – regardless of their inclinations – are often obliged to collude in the abuse of public office in order to retain their jobs, to avoid punishment transfers, or even to ensure that they are not themselves charged with corruption (Jenkins 2007:162).

As Azfar noted, not only public servants but also specific institutions of accountability, including Ombudsmen, Inspectors-General, and anti-corruption commissioners may become ‘captured’, ineffective or even counterproductive (Azfar, 2007). These kind of agencies, including the National Audit Office or the Independent Authority against Corruption, were newly created in Mongolia and at present do not have a reputation of being ‘captured’, despite occasional questioning of the media regarding their independence.

Therefore, the dominant form of accountability at the MSWL and the ESWSA can be characterised as the combination of a distorted bureaucratic accountability and limited policy accountability. In other words, the transition from bureaucratic to policy accountability is still underway in these two organisations. Despite the efforts of a public administration reform in the past decade, a qualitative shift towards policy accountability has not been made.

Chapter 5 found several reasons for policy accountability being introduced in a limited manner, and focussed more on policy outputs, rather than outcomes. The discussion below links the difficulty of the transition from bureaucratic to policy accountability, within the country’s legalistic tradition of public administration.

Being a *Rechtsstaat* country, legality is a traditional feature of public administration in Mongolia. With the introduction of new notions of output and an outcome-based policy accountability system, the public sector faces uncertainty on how to accommodate and reconcile its mainly legalistic background and tradition with the results-based management approach.

Given the entrenched hierarchical structure of public organisations and dominance of bureaucratic accountability, there is little space and procedure for exercising policy accountability, hence, accountability to the public. Public sector organisations were more concerned about implementing the Government Action Plan than with long-term solutions to fundamental problems under their mandate. Directors of public

organisations were satisfied with the fulfilment of legal provisions, decrees and resolutions, even where there was no substantial progress in the lives of people.

Given the strong bureaucratic model of accountability and weak managerial skills, elements of performance management were soon 'adjusted' to serve the purposes of existing accountability relationships. Performance agreements signed between ministers and senior managers, formalised and strengthened the upward accountability relationships in 'command and control' style. In other words, performance was turned into a focus on more compliance.

This does not seem to be characteristic only of Mongolia. Gregory (2007) noted that supplanting rule-driven bureaucratic organisations by one driven by legalistic contractual relationships represents a change more in bureaucratic form than in substance. He also highlighted that the NPM does not attenuate bureaucratic principles as much as it reinforces them, and actually renders governmental organisations more, rather than less, 'bureaucratic'.

In Westminster democracies, the most notable tension of accountability occurs between ministerial responsibility and other forms of accountability, because of the upward-looking character of ministerial responsibility and the non-hierarchical, 'downward' or 'outward' looking character of some of the other systems, resulting in trade-offs (Stone, 1995). In her study of public service accountability for quality of services, McGuire found that 'tension between professional autonomy and client responsiveness compounds the tension between managerial autonomy and political control for public services' (2004:260).

In *Rechtsstaat* countries, performance management creates resistance and rather than replacing the legalistic culture, performance management co-exists with it (Bouckaert and Halligan, 2008). In Denmark, a country which belongs to the *Rechtsstaat* tradition, performance management required revision of procedural accountability so that procedures reflect the right outcome, that is, long-term policy solutions and consensus (Poulsen, 2009). This kind of tension is a constant reality in the public sector and needs to be recognised and managed (MacDermott, 2008).

7.2. Implications for further public administration reforms

A good accountability system is the one that suits its context. As such, the design of an accountability system needs to take into account the nature and features of accountability relationships in their past, present and future dynamics. In this respect, the accountability system is closely linked to the trends of political, legal, and public administration development. Hence, implications of the research findings are discussed below through the consideration of a new stage of public sector administrative reforms in Mongolia.

A new stage of political reforms is a necessary pre-condition for improving public sector accountability. Almost two decades have passed since the approval of the Constitution of Mongolia in 1992. The Constitution provided a solid foundation for the transition to democracy. However, the findings of this research suggests that in the current constitutional and legislative environment in Mongolia, the parliamentary majority and the executive do not have sufficient checks and balances which prevent effective accountability of power holders to public. As mentioned in Chapter 4, developing more effective checks and balances to improve political accountability requires revising, or in some cases, establishing a range of accountability mechanisms, including electoral system, provisions on national referendum, opposition rights, decentralisation policy, review of the law on Constitutional Court, and adoption of a General Administrative Procedure Law. Development in each of these mechanisms needs to reflect the changes introduced as they interact with each other, and contribute to accountability of the Parliament and the executive to the public, in various combinations.

By 2010, political parties reached a mutual agreement necessary to discard the current majority/plurality electoral system, and to replace it by either a proportionate or a mixed electoral system. Both major political parties developed their versions of the draft Law on Parliamentary Elections. At the time of writing the thesis, the amendment to the Law on Parliamentary Elections was amongst the list of draft laws to be discussed by the autumn session of the Parliament of Mongolia, to commence on 1 October 2010. Decentralisation and delegation of budgetary power to local governments has also returned to the political agenda after almost a decade of a centralisation trend. The new

draft Budget Law envisages the substantial delegation of tax, procurement and management decision-making authority to local governments, allowing for increased income generation and local leadership.

However, the revision or establishment of other accountability mechanisms which would contribute to political checks and balances, such as national referendum, opposition rights, expanded mandate of the Constitutional Court and the adoption of a General Administrative Procedure Law, are not widely discussed and not seen as important potential mechanisms in improving political accountability.

At the same time, with the establishment of the National Development and Innovation Committee (NDIC) and its mandate to oversee the national long-term development plans and the budgetary reforms that are taking place at present, a new stage of public administration reforms has gained momentum. The next section discusses the findings of this research in the context of potential public administration reforms in Mongolia.

7.2.1. A new stage of public sector reforms

Without political reforms, public sector reforms alone are not sufficient to remedy the weaknesses found in the accountability of the public sector in Mongolia. However, in terms of sequencing, while desirable, public sector reforms do not need to follow political reforms. As Gregory states, ‘... state-sector reform is generally not an area of public policy-making that excites great political passions – even though its effects on citizens are profound and direct’ (2007:231). Successful public sector reforms contribute to accountability at the political level and can trigger political reforms. As mentioned in the earlier sections of this Chapter, the Mongolian public sector can be characterised as having a mixture of imperfect Weberian bureaucracy and the initial development of some elements of the NPM. A qualitative transition from public administration into public management has not yet taken place.

Nonetheless, the public sector reforms can be seen as a continual process (Hughes, 2008), and reforms are both ‘a product of cultural, structural and environmental features and a cause of change in those features’ (Christensen and Lagreid, 2007:7). In this

sense, the public sector in Mongolia is undergoing important changes as a result of previous reforms and as influenced by international trends.

According to the Civil Service Council (CSC) (2007), public sector and civil service reform in Mongolia has undergone three stages of development since 1990: (i) the development of new public sector structures and legal environment 1990-1993; (ii) the development of a capable and professional civil service 1993-2000; and (iii) the improvement of the efficiency and effectiveness of governance institutions from 2000 onwards. However, given the changes that have taken place in the public sector of Mongolia since 2000, such as the introduction of management and performance concepts as discussed in Chapter 5 and its mixed results (such as political capture and distorted policy accountability), there is a need to revisit the outcomes of the past stages and outline a new stage in public sector reforms. Given the transitional nature of the public sector, more frequent reviews of reform process are useful for timely modifications and adjustments.

There are five reasons why such a new stage is likely to have a number of differences and specifics, as compared with the previous stages.

Firstly, the public sector of Mongolia now demonstrates more ownership over the reform process. There is a difference between administrative reforms which take place within the stable institutional frameworks and those which aim at changing such frameworks (Olsen, 2005). Given the transition from one system to another, public sector reforms in Mongolia were more concerned with changing overall frameworks than solving practical problems within existing frameworks. In such a situation, with no previous experience of democracy and organising society through democratic processes, it was hard for the government to ‘own’ such reforms. The government had little choice other than to rely on external advice and recommendations. The government had a lack of capacity to make informed assessment and judgments about this advice and recommendations. The major reform related laws and strategies, including the PSMFL (2002) and the Mid-Term Civil Service Reform Strategy, were drafted with the assistance of international organisations (CSC, 2007). The reputation of international organisations also made it hard for the government to resist their recommendations,

even though the capacity of international organisations to understand the specifics of Mongolian condition was limited (Rossabi, 2005). Therefore, although a high level commitment is a basic prerequisite of public administration reforms (ADB, 2008a), during the earlier years of the transition, it was unrealistic to maintain sufficient ownership of public sector reforms.

As compared with the early years of transition where economic stabilisation was an immediate requirement and a top priority, there is now a higher possibility that the government and the legislature will pay more attention to public sector reforms. Although the actions and results of such attention are still not enough (and there is still no comprehensive strategy of administrative reform), successive governments have included objectives of improving public sector efficiency and effectiveness in their Action Plans. The recent establishment of the National Development and Innovation Committee (NDIC) and the Independent Authority against Corruption (IAAC) is another example (GoM, 2008d; Law against Corruption, 2006).

Secondly, international development organisations now have a better understanding of the public sector in former communist states and have reviewed their assistance strategies, as Jabes noted:

When transition occurred, the world was not ready because it had never had to deal with such a massive political and economic change happening in such a very short time. The first reaction was to treat central and eastern European countries as part of the developing world and take the approaches and toolkits used by the multilateral development banks (MDBs) and bilateral donors to that geography. It quickly became evident that the approach would not work. Central Europe was not Asia, Africa or Latin America. The cultures (popular culture as well as the administrative culture) of the countries in question were quite different. We were dealing with a well-educated class of civil servants who were knowledgeable if sometimes unable to decide on policy (because someone else had done it for them in the past) and then implement administrative actions (Jabes, 2002:3).

International organisations now pay more attention to ‘what works’ rather than relying on a ‘one-size-fits-all’ approach and they recognise that administrative reforms must be matched with the needs, traditions, and resources of each political system (Olsen, 2005). It is recognised that ‘where fiscal discipline is the most immediate problem that needs to be faced, there seems little purpose in asking questions about medium-term budgeting or the efficiency of spending’ (UNDP, 2009).

The theory of ‘path dependency’ is re-appreciated; history, tradition and administrative culture affect what reforms are feasible in particular countries (UNDP, 2009). A World Bank survey revealed that the lack of consideration of political realities and conducting business in a bureaucratic way not attuned to country conditions, were weaknesses of World Bank supported projects (Fritz *et al*, 2009). In addition, it was recognised that local situations and historical legacies should be considered when calibrating what actions to take. Governance weaknesses in a particular country need not only be identified but also analysed as to why they exist (Fritz *et al*, 2009). The World Bank has acknowledged that:

The massive drafting of laws in the 1990s frequently assisted by advisors from legal traditions of different countries has resulted in many laws are *inconsistent and in contradiction to* each other. These ‘suitcase’ laws have been imported without taking into account local tradition and existing legislation (World Bank, 2000:6).

Such change in strategy by international development organisations is a positive opportunity for Mongolian public sector reforms.

Thirdly, Mongolian public servants and academics have accumulated some experience in public sector reforms over the past two decades. Several research studies were conducted on the process of public sector reform implementation. Whereas by 2000 there were few handbooks or other reference materials in the Mongolian language, either written or translated, more materials have become available in Mongolian in the last decade. Sosormaa (2008) outlined in her book the need for a general public sector reform strategy and reminded readers that reforms should not be looked at through old

eyes. Rather ‘reformed eyes’ should look at the old ways, and five main levers for undertaking further reforms in the public sector were suggested (Sosormaa, 2008). These include (i) defining objectives, (ii) motivating by results, (iii) developing accountability and reporting systems, (iv) delegation of authority, and (v) changing bureaucratic strategy. While the levers proposed may not necessarily be followed, they certainly provide an alternative to be discussed.

In addition, a new field of literature on the transition process of former communist countries has emerged and is growing. For example, Randma-Liiv (2008) drew several conclusions about the public administration reform process in CEE countries, which show many parallels with the experience of Mongolian public sector mentioned above, including a lack of full understanding of underlying ideologies of reform, the secondary importance of public sector reforms to politicians, and a partial and fragmented approach. This body of literature looks at specific dynamics of public administration development of these countries, and attempts to develop theoretical frameworks that fit more closely to the situation in these countries.

Fourthly, the general development environment in which the public sector operates has changed. As a result of factors such as previous reform efforts and overall improved access to information, public servants have been gradually acquiring a mindset that ‘the government is here to serve the people’. Civil society is more confident in its role to check the government and it also conducts various policy advocacies. In turn, the role of civil society and the media is now recognised more by the government. Representatives of civil society are now frequent participants in various policy discussions on television.

Finally, as part of the evaluation and reflection of various reforms in different countries at different levels of development over the past two decades, research studies reiterated the importance of country specific approaches. What is a ‘good administration’ depends on the administrative history and culture of specific states and regions (Olsen, 2005), and ethical and normative underpinnings offered by given societies (Pierre and Rothstein, 2008). While improving performance was a common objective for all governments, different paths to this end have been chosen, depending where the country was located (Schick, 2003). Hence, the difference in reform practice is the rule rather

than the exception (Christensen and Lagreid, 2007). ‘Path dependent’ local political agendas to which public management changes respond, should not be ignored (Hood, 1995). One of the lessons to be learned from the experience of developed countries is to avoid the unquestioning belief in managerial concepts and a mechanistic approach to performance management.

Mongolia’s background as a *Rechtsstaat* country also needs to be taken into account. Implementation of the NPM was smooth in the public interest-based public administration systems of the Anglo-American systems but faced resistance in *Rechtsstaat* systems of Western Europe and Asia where the tradition of legality, equity and accountability prevails (Pierre and Rothstein, 2008). This challenge needs to be recognised among lawyers and policy makers in Mongolia before the strategies to address it are developed.

Thus, the Mongolian public sector is now at another crossroad. There may be three potential ‘trends’ which may take place simultaneously. Below is the discussion of the implications of the research findings with regard to each of the trends. In doing so, current accountability challenges in Mongolia and relevant international experience, were also taken into account.

7.2.2. Three potential directions in public sector reforms in Mongolia

‘Back to Basics’

The first potential trend is ‘back to basics’ (Olsen, 2005), or improving compliance accountability first, before doing anything more advanced. There may be a number of reasons for choosing this option. The lack of accountability in many areas of the public sector in Mongolia is explained by weak checks on political power coupled with the domination of upward-looking ‘distorted’ bureaucratic accountability, incomplete transition to policy accountability and weak compliance accountability. This requires a ‘back to basics’ approach, including the reduction of undue political influence in the public service. As mentioned in previous Chapters, recent measures to prohibit the political membership of civil servants and the prohibition of temporary appointment without competitive selection, are in line with this direction. The other measures required in this regard include approval of laws and detailed procedures to limit

excessive discretion available to decision makers. Non-specific and ambiguous laws, weak sanctions and enforcement, as well as areas lacking any regulation, all diminish accountability for inputs, fairness and processes.

Recently, the ADB, which supported public sector reform measures in Mongolia, including the performance management, concluded that performance management was premature for Mongolia. Mongolia introduced only certain elements of performance management and did not follow up this initiative. The difficulties in implementation and lack of political commitment to performance management may confirm that it was premature, but on the other hand, they may also be pointing to flaws in the design of reforms, including scope, duration and resources needed.

More studies point to the negative effects of the NPM for developing and transition countries (McCourt, 2007; Pierre and Rothstein, 2008) and advocate the Weberian model of public administration (Nunberg, 1995). Public administration reforms in Eastern European countries, Albania and Romania, were explained by New Weberianism rather than the Weberian model or the NPM (Cepiku and Mititelu, 2010). Developing countries are advised to fix their basic problems in public management first, and then sequentially apply the next level of policy goals (Kim, 2009). In his frequently cited article ‘Why developing countries should not follow New Zealand model?’ Schick (2003) clarified that performance orientation should be embraced cautiously, as the dismantling of established administrative controls before a performance mindset has been effectively introduced creates more misdeeds than results (Schick, 2003).

The ADB found that there were some preconditions for the introduction of results-based performance management, which are difficult for developing countries to meet and concluded that adopting results-based management will not address

the underlying causes of poor governance, corruption, and the ineffective and inefficient management of inputs (including staff along with physical and financial resources) (ADB, 2008a:17).

Rather, Weberian bureaucracy with its rigidity, legality and stability, is seen as capable of addressing these problems. Thus, the Weberian model, while less popular in developed countries, is found to be an important component that is required in developing and transition countries (Pierre and Rothstein, 2008). It is also argued that problems of ‘bad governance’ in developing countries cannot be solved through more assistance in democratic reform (Diamond, 2007).

Thus, ‘back to basics’ measures are most needed for Mongolia, and international evidence suggests an approach that would strengthen compliance with rules and regulations through increased financial discipline, upholding of merit principles in human resources management, and an improved reputation and legitimacy of the government in terms of integrity in procurement and contracting.

However, by definition, a ‘back to basics’ model would have less impact on policy effectiveness and outcomes. Discarding the focus on policy effectiveness and outcomes could confuse public servants who have begun to think in outcome-oriented terms. More importantly, such a move may restore old practices of efficiently producing things for which there was no demand.

Management capacity building and management reforms

Before discussing substantive management reforms, there is a need to focus on a building management capacity. As discussed in Chapter 6, Mongolia is struggling to build its management capacity. Unlike the public sector of developed countries, it did not have advanced private sector management from which to borrow. Hence, the NPM-style PSMFL was understood to be an opportunity to improve public sector management.

However, what Mongolia did not understand at that time was that undertaking NPM-style reforms required more professional managers and skilful politicians than the Weberian model of public administration (Pierre and Rothstein, 2008). The PSMFL provided a new model for the public sector of Mongolia but it could not assist it in a building management capacity; as addressing the shortage of basic managerial skills and techniques was not its purpose. Rather, it assumed the existence of managerial capacity.

Therefore, public sector reforms aiming at building managerial skills is a necessary part of management reforms. Any further management reforms without improving managerial skills would be likely to repeat the case of the PSMFL.

The public sector of Mongolia is experimenting diverse initiatives in different areas, in an attempt to improve public sector management. Some of these, including separation of policy and service organisations or the introduction of performance agreements, can be clearly associated with the NPM-style changes. Some others, such as contracting-out, appear to be part of NPM measures but they actually have different motivations.

Contracting-out some public service delivery to NGOs and the private sector plays a slightly different role in Mongolia than in 'mainstream' countries. In developed countries, the public sector aimed to gain from private sector contact, culture, efficiency and competitiveness. In Mongolia, the introduction of contracting-out to support and expand the private sector seems to be more pertinent than better delivery of service. In other words, the contractor is not necessarily a more experienced or better performer than a government provider. In the case of the MSWL, new private employment training and placement companies were established after the MSWL had decided to contract the particular service to private providers. Another form of participation of the private sector is welfare services which met the needs of vulnerable groups, such as dentistry, optometry, and provision of wheelchairs. These types of services drew on already existing private sector services.

Since there are different management reform initiatives with different underlying motivations, the NPM is one of a number of currents of reform in Mongolia (Polidano, 1999). So, despite the negative consequences of the NPM and the inappropriateness of the NPM for developing and transition countries much discussed in the literature, management reforms are likely to continue in Mongolia. However, the Mongolian public sector needs to review and reassess the assumptions which underlie the different components of these reform measures. Depending on the explicit rationale for each individual initiative, some may need to be discontinued and some may need to be further developed. For those continuing reform measures any accountability gaps need to be reviewed and an accountability framework needs to be developed.

Delivery of services contracted to NGOs and the private sector needs to be evaluated not only in terms of service features including quality, efficiency and accessibility of services, but also against the purpose for which contacting-out was used in the first place. Additional accountability requirements associated with individual management initiatives need to be reviewed in order to avoid accountability gaps that so many cases from developed countries have revealed. Public-private partnership is an area where accountability requirements need to be of a particular concern.

This thesis has drawn on the cases of the MSWL and the ESWSA, which are social welfare and employment sector organisations. The situation of other sectors and reform paths may be different, and hence, needs to be reviewed independently.

Adoption of Governance perspective and its relevance to Mongolia

Having discussed two options of public administration reform in Mongolia, namely ‘back to basics’ or reforms aimed at restoring certain features of Weberian bureaucracy, and management reforms which address issues of policy effectiveness and accountability, ‘Governance’ refers in this section to an alternative paradigm which explains the current public administration dynamics. Governance is treated in this section as a framework which posits ‘plural state, where multiple inter-dependent actors contribute to the delivery of public services and a pluralist state, where multiple processes inform the policy making system’ (Osborne, 2006), a framework which recognises different means of governing, including through hierarchy, market, network, and community (Pierre and Peters, 2000). Governance processes in public, corporate and civil society sectors are treated as inter-related in three ways: they are inter-connected, interdependent and interactive, and the governance of any one sector cannot be fully understood without its relationships with the other sectors (Coghill, 2003).

While reviewing various definitions of governance, Bovaird and Löffler (2009) revealed several characteristics of governance perspective; it assumes multiple stakeholders and cooperation of different players; recognizes the importance of both formal and informal rules; re-appreciates hierarchies and their appropriateness; recognises the value of

process related characteristics such as transparency, integrity, and inclusion as values in themselves; and recognises the inherently political nature of stakeholders' interactions.

Governance as a new and distinctive perspective has three important assumptions which are different from previous perspectives and which have implications for accountability mechanisms. Governance (i) *revisits the role of bureaucracy*; (ii) *recognises the limitations of rules, measurements and control*, and (iii) *recognises the role of new forms of accountability mechanisms that are based on market, network, and society*.

(i) *Role of the bureaucracy*. Governance perspective challenges the source of accountability problems being the bureaucracy rather than politicians. Bureaucracy can sometimes facilitate democracy while politicians can impede it, and even when bureaucracy is checked, it may be more effective for the bureaucracy to be checked by direct popular oversight and through incentives which make it responsive to popular preferences. In addition, there may be more goal consensus between politicians and the bureaucracy rather than goal conflict (Meier and O'Toole, 2006). Rather than self-serving utility maximisers, the bureaucracy is characterised and motivated by attributes such as complexity, ambiguity and intellectual challenge of public sector roles, (Norman and Gregory, 2003). Bureaucracy can be seen as 'an institution with a *raison d'être* and organizational and normative principles of its own' (Olsen, 2005:3). It has even been suggested that not following rules and disobeying orders by the bureaucracy may be due to administrative complexity rather than bureaucratic power (Olsen, 2005).

Such a revised role for bureaucracy is regarded as inevitable under a governance perspective, since bureaucracy is now required to

engage in the development of new political ideas, provide sustainable policy solutions, and facilitate and sustain network constellations, as well as themselves participate in networks (Poulsen, 2009:118).

ii) *Recognition of limitations of rules, measurements, and control*. A governance approach also recognises that the blessing of rules may be mixed and while under some conditions rules make policy-making, implementation and enforcement more effective,

under other conditions they also may hamper reason giving and discourse (Olsen, 2005). Strategies based on imposing rules and regulations may produce undesirable effects and drive discretion beneath the radar (Brodkin, 2008).

Once again it is seen that the effects of rules depend whether they are internalized or regarded as essentially external control and constraints (Olsen, 2005). While it is still unclear how exactly the tension is reconciled under a governance perspective, the main concepts which characterise governance do not necessarily posit control and trust as in tension. These concepts include learning and integrative approaches, recognition of different means of accountability mechanisms, trust, and leadership, although none of them are new in public sector and accountability vocabulary.

iii) New forms of accountability mechanisms that are based on market, network, and society.

From an accountability point of view, a governance approach does not reject traditional accountability for rules, nor market and societal mechanisms of ensuring accountability; rather it seeks and accepts various means of achieving accountability. Accountability is seen as ‘shared within partnerships’ which reinforces accountability of politicians as well as managerial accountability, rather than undermining one of them (Bovaird and Tizard, 2009:240).

The concept on societal accountability is defined as,

a nonelectoral, yet vertical mechanism of control that rests on the actions of a multiple array of citizens’ associations and movements and on the media, actions that aim at exposing governmental wrongdoing, bringing new issues onto the public agenda, or activating the operation of horizontal agencies (Smulovitz and Peruzzotti, 2000:150).

Societal accountability provides a different perspective on the system of public sector accountability and relies on an organised civil society and its ability to exert influence on political system and public agencies, rather than on individual voters or system of checks and balances (Smulovitz and Peruzzotti, 2000). Use of society-based

accountability mechanisms is on an increase, leading in some cases, to increased coordination of efforts between state and society based organisations for effective control on decision makers (Sarker, 2009).

Thus, the question is whether or not the governance approach can be adopted in investigating public sector accountability in Mongolia. It appears there is no 'precondition' as such for adopting a governance perspective in the public sector. Governance, as an alternative way to look at current problems, can be adopted in any country. However, while a governance approach can be used in research studies as a framework, it does not mean that the Government of Mongolia would pursue a policy that can be characterised as a governance approach.

Many of the characteristics of a 'governance' approach mentioned earlier, which may be found commonly in mostly developed countries, cannot easily be found in Mongolia. The accountability system of the public sector of Mongolia as seen from the case of the MSWL and the ESWSA was characterised in the earlier sections of this Chapter as demonstrating features of distorted Weberian bureaucratic accountability with elements of policy accountability. Adopting a 'governance' approach, as defined above, would require updating the public sector accountability framework to reflect new features, such as cooperation between state and non-state actors, the role of informal rules or a consideration of the political nature of stakeholders' interactions. At present, the relative contribution of the State as opposed to other actors in a society is still very high. While 'governance' is an analytic model or perspective, which can be used to guide further public sector reforms in Mongolia again and as discussed earlier, a greater contextual response based on assessment of existing situation would be more relevant, rather than following a specific pre-defined approach.

The last section of this Chapter clarifies theoretical contributions and limitations of this study as well as suggestions for future research in the area of public sector accountability.

7.3. Theoretical contribution, limitations of this study, and suggestions for future research

7.3.1. Theoretical contribution

Academic research in applied fields such as public administration operates at the intersection of basic and applied social science, and aims to develop knowledge to advance their field while addressing substantive problems of practice (Dodge *et al*, 2005). Therefore, a contribution to theory is one of the important objectives of this thesis.

What can be counted as a theoretical contribution was clarified first. There are different definitions of theory. This thesis adopted the definition of theory as an ‘account of a social process, with emphasis on empirical tests of the plausibility of the narrative as well as careful attention to the scope conditions of the account’ (DiMaggio, 1995:391). Theory in this sense is ‘evaluated primarily by the richness of its account, the degree to which it provides a close fit to empirical data and the degree to which it results in novel insights’ (Eisenhardt, 1989 cited in Colquitt and Zapata-Phelan, 2007:1281).

Theories in public administration have limitations. There is no single best theory that can explain reform processes and effects in all situations, at all times and everywhere (Pollitt, 2004). Writing in the context of post-NPM reforms, Christensen and Lægreid (2007) noted that there were various frameworks which can be used, but no overriding theory that captures all the key aspects. Similarly, Hughes (2003) argued that no theory can explain everything that falls within its domain.

Being an applied field, the predictive capacity of public administration theories should be ‘interpreted largely to account for patterns, probabilities, and likely outcomes, not specific results flowing inexorably from the application of a particular theory’ (Frederickson and Smith, 2002:6). Theories exist in competition with each other in how they fit the real world (Hughes, 2003).

Given the widespread concern about accountability, one of the main objectives of this research study was to contribute to improving accountability of the public sector in

Mongolia, through an analysis and explanation of the phenomenon. The study took an interdisciplinary approach.

Accountability studies are not so much to discover new things, but rather to disentangle multiple accountabilities and see whether accountability relationships impede or promote ultimate accountability to people.

Mongolia is in the process of building public sector accountability as it is exercised in a democratic society. However, there is no single theory or roadmap to ensuring accountability during the transition from socialism to democracy. Path dependency generally recognises steps taken during earlier stages and their impact on the current situation. The underlying approach taken by Mongolia (and many other transition countries) was to build and strengthen institutions and mechanisms which exist in established democracies, as soon as possible. While the ultimate goal was to create an accountable public sector and while features of public sector accountability are known from the experience of developed countries, getting there has been more problematic.

More specifically, democratic institutions have been established and new laws and procedures have been adopted, but understanding, identifying and applying the underlying principles of democracy and rule of law have not been easy and straightforward.

In this context, this study attempted to contribute to the process of ‘getting there’ through clarifying the concept of accountability, identifying a suitable framework to analyse the current situation and highlighting potential gaps of accountability mechanisms. The research study provided an explanation of weak accountability in the public sector of Mongolia using a framework of three types of accountability. This framework may be relevant to other developing or transition countries. Adopting a more comprehensive framework assists in mapping accountability relations at different levels and prevents a narrow focus on one specific type of accountability, without first seeing the context in which it functions. Therefore, despite the common advice to narrow down a research topic and focus on a particular aspect of the phenomenon under study, clarifying a broader picture and framework was considered more useful for the current

stage of public sector development in Mongolia and the need to strategise at the national level.

The following are some additional aspects of this study which contribute to the existing research and knowledge on public sector accountability in Mongolia.

As a case study focusing on Mongolian public sector accountability, this study provided an opportunity for further comparative studies. The study showed that in terms of sequence, the lack of effective mechanisms to hold the Parliament and the executive accountable to people, can be seen as the first instance which triggered the chain reaction and made accountability mechanisms in other areas less effective. Powerful, unconstrained parliamentary majorities had three important consequences: firstly, increased breaches of law by politicians undermining rule of law; secondly, distorted administrative accountability through forcing public servants to break laws; and thirdly, a contribution to failure of the parliament to fulfil its role to demand accountability from the executive whilst itself remaining accountable to people.

7.3.2. Limitations of this study

Given multiple dimensions of accountability, it was not possible to adequately address all potential mechanisms that contribute to better accountability in the public sector. In addressing the research question this study focused as a starting point, on what may be called traditional mechanisms of public sector accountability. Hence, society-based accountability and a means of ensuring participation in public decision-making as part of accountability were outside the scope of this study.

Likewise, since the study drew on formal mechanisms only, informal mechanisms, including ethics-based and community-based mechanisms, were not considered.

In addition, this study discussed the accountability of public sector agencies to the Courts as part of political accountability. However, more detailed scrutiny of legislative provisions in various legal acts and respective sanctions for public officials in criminal,

civil and administrative codes is required in drawing conclusions on the adequacy of legal accountability. In this sense, this is also an area suggested for future research.

7.3.2. Suggestions for future research

Based on the research findings and the ideas which emerged during the discussion section of this thesis, the following areas are suggested for future research especially with regard to public sector accountability in Mongolia.

Firstly, each sector or policy area has its own specific system, and each is affected differently by various administrative reforms. Hence, more empirical research studies are required for revealing accountability challenges and mechanisms in specific sectors, policy areas, or services in Mongolia. Such studies would generate more practical and tailored solutions to sectoral accountability efforts. For example, Mongolian environmental and gender related civil society organisations are considered to be more confident in their actions in making their voices heard (Beck *et al*, 2007). For example, in 2008, the Ministry of Nature, Environment, and Tourism (MNET) organised a National Conference of Environmental Civil Society Organisations. Hence, in identifying the effect of civil society participation as an accountability mechanism (and the difference it makes to environmental policy accountability as compared to other policy areas where civil society is not as strong), could be one such area for further research.

Secondly, the other area for future research is to investigate the role of learning, trust, leadership, and an integrated approach in improving overall accountability of the public sector. These are areas largely unexplored in Mongolia, not only with respect to their role in accountability, but also more generally.

Thirdly, in terms of research methods, wider use of action research is desirable. In the context of the Mongolian public sector, characterised by constant budgetary constraints and limited availability of research studies, action research offers several advantages. According to Greenwood and Levin (2007), action research has the following common characteristics: it is dependent on local context and addressed the real life problems in holistic way; action research participants and researchers create knowledge together

and the contribution of participants is acknowledged; differences in experience and capacity in participants are treated as an opportunity to make the research-action process richer; practical measures are taken based on the findings obtained during the research process, and reflection on the results of those practical measures leads to new meanings; reliability and validity of knowledge obtained during the action research process are measured by whether the measures taken have resolved the actual problem, and whether the participants' ability to manage their own conditions has improved.

Finally, the fourth point is that Mongolia revised its legislative framework discarding socialist concepts and adopting a new Criminal Code, Civil Code and Law on Judicial Review of Administrative Decisions. This study focused on the Constitutional Court and Administrative Court as part of its study of political accountability. However, detailed review of legal provisions, their effectiveness in practice, adequacy of legal sanctions to respective breaches, and their need for further improvement deserve a separate study.

Summary of the Chapter

There is a lack of an accountability framework in the public sector of Mongolia. Absence of a government accountability framework makes it difficult for public organisations as well as the general public to understand explicitly what the government is accountable for and how.

A framework used in this thesis looks at political, policy, and procedural accountability. Each of the three types of accountability relied on their own framework of notions and mechanisms. Each type of accountability plays a critical role in the overall state of accountability. The research study found specific instances where mechanisms of political, policy, and procedural accountability were either missing or were ineffective due to various reasons.

Despite public sector developments in the past two decades, the dominant type of accountability did not make a transition from bureaucratic to managerial. Coupled with a lack of sufficient mechanisms of political accountability, upward-looking distorted bureaucratic accountability creates 'capture' of the public service by politicians.

Development of an effective accountability system for Mongolian public sector needs to take into account its administrative tradition which relies on the principle of legality and legal framework.

Public administration reform developments in Mongolia could follow three basic directions: (i) improvement of procedural accountability (i.e. ‘back to basics’ measures); (ii) improvement of management capacity which would provide the background for improving policy accountability; and (iii) adoption of a governance perspective and implementation of some measures characteristic to this perspective, including improvement of inter-agency coordination. An accountability framework would help in ensuring the complementary nature of the different types of accountability which underline these directions.

The thesis contributes to theoretical knowledge on accountability by providing a broader picture of the accountability system of a former communist country, explaining the importance of putting in place relevant mechanisms of accountability especially those of political accountability, and the need to ensure the complementary nature between different types of accountability.

CHAPTER 8. Conclusion

This thesis explored the problem of accountability in public sector of Mongolia. Over the past two decades Mongolia has made a successful transition from socialist autocratic regime and central planning to democracy and a market economy. While transition to democracy in Mongolia becomes a subject of special interest among the international community, especially political scientists, Mongolia still faces a number of serious challenges to further consolidate democracy, in particular, to fill the gap between democratic achievements and persistent poverty in the country. One of such challenges is addressing the problem of the public sector accountability in Mongolia.

Rapid economic growth of recent years did not translate into a decreased rate of poverty, with the latest statistics showing even a slight increase reaching almost 39 percent (NSC, 2010). Governance problems, including accountability of the public sector, lie behind the inability to take effective measures to reduce poverty in the country. The recent boom in the mining sector puts the country at greater risk of social inequality and civil unrest if accountability issues are not adequately addressed.

Although accountability has become a buzzword in Mongolia in the past four to five years, research studies and policy documents that specifically address the question of public sector accountability are limited. This thesis sought to explore why public sector accountability was weak after two decades since the country has chosen a democratic political system. This broad question was addressed through finding an appropriate framework for exploring public sector accountability, identifying types of accountability relevant to Mongolian context and then exploring mechanisms for ensuring each type of accountability.

Given the multidimensional nature of accountability, the weakness of public sector accountability in Mongolia cannot be explained from a perspective of only type of accountability. Rather, it is the result of a lack of effectively functioning mechanisms in three types or layers of accountability, including political, policy, and procedural accountability.

For a new democracy like Mongolia, political accountability is the foundation and a necessary condition for ensuring policy and procedural accountability in the public sector. In parliamentary systems, political accountability exists when there are functioning mechanisms to hold the parliamentary majority and the executive accountable to the public. The range of mechanisms to be used for this purpose has evolved and multiplied from traditional concepts of competition between political parties and separation of powers to supranational institutions or institutional mechanisms of citizen control.

The 1992 Constitution, the subsequent changes to the Constitution in 2000-2001, and other legislative acts do not provide sufficient mechanisms to hold the legislative majority and the executive accountable to the public. The absence of an upper house, the unitary form of the State, the relatively homogenous population, a plurality/majority voting system coupled with low density of population, the limited mandate and under-usage of Presidential veto power, weak opposition rights, the limited mandate of, and access to the Constitutional Court, and the lack of a separate general administrative law, are features that need to be taken into account in designing more effective mechanisms of political accountability.

In terms of policy accountability in newer democracies, the literature has lagged behind the actual developments. The accountability system of the previous regime was based on subservience to the political party line and loyalty to communist ideology. In the early years of transition it had to be replaced with the principles of rule of law, transparency and information disclosure, participation and responsiveness. At that time, building institutions similar to those that exist in advanced democratic countries was a more obvious path to follow. In addition, international financial and development agencies played a key role in selecting the directions and strategies of public sector administrative reforms.

Under the influence of the NPM and with a strong advocacy by the ADB, Mongolia introduced the performance management concept in 2003. As a result of this performance management reform, accountability of public servants to public and clients as ultimate agents rather than to directors and ministers was articulated more explicitly

for the first time since the beginning of the transition. The notion of policy outcome was introduced for the first time in official government language, laws, and other documents. While innovative, this reform was not completed and various factors, including lack of leadership, undermined its successful implementation. Because the reform was incomplete, many parts of the policy process, including long-term development policies, planning, reporting and monitoring, remained activity and output-based without a clear link of their contribution to improvement of people's lives.

Due to its transitional nature, the dominant feature of the current system of accountability in the public sector of Mongolia can be characterized as distorted Weberian bureaucratic accountability with some elements of performance management. In terms of procedural accountability, especially with regard to the merit principle, financial discipline and fairness in procurement, laws and regulations have been approved, some with accompanying detailed procedures. However, there is a lack of effective internal control mechanisms to check the compliance and take corrective measures.

Organisational governance is a new concept and management is still a new field to understand and apply in Mongolia. In addition, given the recent introduction of these new elements of procedural accountability, there is still a large unmet demand in terms of overall training and capacity building on demonstrating integrity, following code of ethics, and exercising the principle of transparency.

The weakness of public sector accountability in Mongolia is the result of the combined effect of political capture caused by the absence of constraints on parliamentary majority, inadequate focus of policy accountability, and incomplete and insufficient procedural accountability mechanisms.

While these types of accountability are complementary and advancement in one type of accountability positively affects the other two, each one of them cannot be substituted by the other two. Given the above mentioned findings, some of the specific measures that can be taken to improve accountability in the public sector include review of the Law on Elections, Law on Constitutional Court, and development and approval of

Administrative Procedure Act. Through initiating a new stage of public administration reform, public sector planning, policy development and reporting can be reviewed. Improving procedural accountability would require a review of existing sanctions for procedural violations.

As mentioned above, by early 1990s, the literature on accountability in new democracies was scarce, but after more than two decades since the transition to a new political system has begun, the availability of literature on the topic improved. At the same time, Mongolia now has the possibility to reflect on its past experience and draw lessons.

In the meantime, developed countries have reviewed their public sector accountability systems and started to take new initiatives in an effort to change the singular, one way, external accountability and control mechanisms with ones that recognise mutual respect, importance of shared and equal participation and reporting. Referring to the New Zealand context, Cribb (2005:191) suggested that “hard accountability, with its focus on external controls, may have reached its optimal level of utility”. In contrast, the Mongolia case revealed that there are still many formal mechanisms to create and operationalise as a functioning system. As opposed to some instances where developed countries suffer from “excessive” accountability or onerous procedures to comply, Mongolia is yet to put in place a formal set of accountability mechanisms.

This thesis looked at the accountability of the public sector as a whole. It has demonstrated that accountability is contextual applies not only to individual countries, but also to specific sectors, services or organisations. Investigating sectoral, service or organisational level accountability can start with the same logic of constructing an accountability framework. An approach that can be used in constructing an accountability framework can involve asking a question of who is accountable to whom for what, analysing whether ‘who’, ‘to whom’ or ‘what’ is the root cause of the problem, and then, identifying any gaps in accountability mechanisms.

Annex A. Interview Guide Questions

1. General introduction

- What do you understand by accountability?
- What your organisation is accountable for?
- Who are you accountable to?
- What are the main forms of reporting?
- What is the mission of your organisation?
- What are the main accountability mechanisms used in your organisation?
- What is the role of these mechanisms? Which one is more important?
- What is main principle of accountability?

2. Structure, lines of accountability and decision-making

- How agenda is set at your organisation?
- Do you have access to information policy?
- What is the ultimate objective of your department? What is your department's ultimate responsibility? What your department is accountable for?
- Do you have specific organisational policies relating to finance, budgeting, human resources, and procurement processes?

3. Policy accountability

- Could you please describe a policy-making process using an example?
- What are the main stages and who is involved at each stage in policy-making process?
- Who provides feedback (other public organisations, NGOs, lawyers, client groups, business sector)?
- Does a policy include implementation details, including accountability requirements?
- Do you specify expected outputs and outcomes?
- Is funding attached to policies?

4. Assessment of evaluation of accountability

- How do you demonstrate this accountability? What mechanisms are used? How do you know that accountability is ensured in your work?
- How does complaints mechanism work, both externally and internally?
- What monitoring and evaluation activities/mechanisms are used?
- Who evaluates whether your organisation is accountable or not?
- What will happen if there was a lack of accountability?
- What are three actions/measures that demonstrate accountability of your organisation?
- What are three actions/measures that may be regarded as lack of accountability of your organisation?
- Do you conduct any self-evaluation, policy evaluation or outcome evaluation?

5. Accountability to other external bodies

- Who does your organisation cooperate with?
- Do you play a role of an accountability forum for other bodies? How do you hold your branch offices accountable?
- What were the results of the last year's audit?
- Was there any parliamentary inquiries?
- Was there any SSIA inspections?
- Any judicial cases?

6. Actions needed for improvement of accountability

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