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## THREE RISKS LOOMING OVER OUR CIVIL SOCIETY

2019.07.20



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Preparations are underway to revise the Mongolian law on non-governmental organizations and pass with a new name 'The law on non-profit legal entities'. This topic was touched upon in my column 'We're going through democratic backsliding' two weeks ago. The Independent Research Institute of Mongolia (IRIM) recently completed their analysis on this draft legislation, which was prepared by the Ministry of Justice.

If passed, the proposed law will undoubtedly bring about positive and negative impacts on our civil society, one of the pillars of democracy. While it is challenging to predict all changes and impacts, it is highly likely that the following three risks will materialise.

### Risk of restricting NGO activities

The proposed law bans non-profit legal entities from making any kind of donations for religious activities and activities of political parties. The ban would encompass monetary and in-kind donations to candidates in all elections. Also, it includes specific clauses on terrorism financing and money laundering.

The proposed law aims at constraining political parties from having their own NGOs, many of which are led by senior government officials. Although the intention is to restrict over-politicization in the society, the NGO activities to be prohibited are not fully specified, thereby rendering the scope of implementation unclear.

This means NGOs that focus on democracy, good governance, and human rights will also face restrictions to a certain degree. According to a 2016 IRIM report, these NGOs comprise

20.3% of all NGOs. With such restrictions in place, the NGO oversight of the government will weaken and the capacity to deliver the voice of the people to the authorities can be expected to be compromised. More precisely, it will hamper their ability to provide oversight on the state and its use of power, their support of civic political participation, and their capacity to adequately supervise elections -ultimately, their efficiency to strengthen the values of democracy will be impeded.

In addition, the proposal has incorporated regulations on supporting activities for the public good and on the determination of what constitutes as support of the public good. Moreover, it entails an allowance for NGOs that support the public wellbeing to receive a range of benefits, including tax reductions and government support. This would steer NGOs into aligning their activities with the government requirements in order to receive those benefits. As it is the government which will be signing off on what constitutes 'support of the public good', this framework ultimately guarantees the government's direct involvement in determining and controlling the type, form and scope of activities for the public good.

### **Risk of squeezing NGO funding**

For NGOs, their most important and pressing issue is funding. The concept section of the proposed law on non-profit legal entities states that 3.9% of total funding of NGOs currently come from membership fees, 21.4% from donations, 67.7% from international funding, and 7% from other sources. The section also states that the NGO funding is prone to risks of terrorism financing and money laundering and mentions the minimal direct involvement from the government (2% of total funding).

According to a 2016 IRIM survey, 28.2% of all respondent NGOs indicated that their main source of funding stems from implementing projects and initiatives from the government. Only 12.1% stated that they generate funding from operational revenues. As a result, the government is pursuing a policy to provide NGOs with direct funding from the public budget.

Nonetheless, increased government funding will heighten the risk of bribery and corruption. The same survey in 2016 revealed that 18,4% of NGOs perceive the lack of openness and transparency of government tenders to be one of the biggest issues of fundraising. Mongolia's current corruption risk is still high, and we've recently seen the corruption cases connected to government funds. This suggests a high likelihood of that the government's fund to support civil society, and other governmental support, might not serve their intended recipients.

Another peril poses the government's attempt to limit international funding. NGOs will be obligated to verify the sources of funding received from other countries, while many international organizations will be required to curb their activities on the basis that they run religious or politically oriented operations. In my previous column I wrote about how the voices of NGOs are being silenced in a similar fashion in many other countries.

### **Risk of increasing government involvement**

The establishment of a council to support the development of civil society represents another big change introduced in the new law proposal. The concept of the proposed legislation says "With the objective of forming the foundations to promote the development of civil society, the state will set the legal framework to establish a 'Council to Support Development of Civil

Society’, which will have the directive to engage, consult, and liaise with the state or government on topics of civil society development.”

However, this council is not set to have a structure similar to those of civil society organizations. Four out of nine members of the council ought to be appointed on a proposal by the government minister, while the Cabinet Secretariat appoints or dismisses the council. In this way, the government will clearly have a strong hold over the proposed council. Moreover, given the council’s directive of managing the fund to help develop civil society and determining what constitutes as ‘support of the public good’, their members are likely to be replaced as per political cycles. Hence, there is a significant chance that the fund will not provide sustainability and continuity for their operations. The IRIM survey respondents also perceived growing attempts of the government to get more involved and exert stronger control on civil society organizations.

### **Price of liberty**

The whole world is going through democratic backsliding, which has led to civil society organizations being more controlled and restricted. In 2017 only, nearly 60 countries passed a law that imposed restrictions on civil society.

Clearly, an improvement of law is desirable. However, you need to base your improvement idea on comprehensive research. Otherwise, the law will need to be amended yet soon again. In Mongolia, the law-making process seeks feedback from people and civil organizations, but it remains very difficult to track whether the feedback has been reflected in the draft legislation. In fact, it is more likely that the feedback is omitted. In this aspect Mongolia is not an isolated case. For instance, when developing a law on establishing a national center to promote development of civil society, Poland did a fantastic job on collecting input but ended up passing the law discreetly without incorporating the feedback. In Mongolia today, the state is about to embark on a journey to ‘get NGOs organised’ and impose restrictions on people’s freedom association (in public organizations on the basis of social and personal interest) granted by the constitution.

Two hundred years ago, Thomas Jefferson said “Eternal vigilance is the price of liberty”. We should not forget its significance.