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<https://doi.org/10.15017/8680>

出版情報 : 比較社会文化. 12, pp.89-104, 2006-03-20. 九州大学大学院比較社会文化学府
バージョン :
権利関係 :

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Ilcheong Yi

Abstract

Since 1990 Mongolian social dialogue system has successfully developed being internationally recognised as one of the most successful cases among the transition economies. This system faced a serious challenge in early 2005 when the National Tripartite Committee for Labour and Social Consensus was stalled due to the disagreement on the wages issue of the public sector employees. This article explains the inherent problems of the social dialogue system of Mongolia by finding the causes of this mal-function through the analysis of the historical development of the industrial relations system. It argues that the lack of commitment of the government which is a centre piece of the industrial relations is the main problem of the social dialogue system in Mongolia. It also argues that decreasing credibility of the social dialogue system as an institution for social consensus is due to the lack of will and capacity of employers' representatives and the CMTU resulted from the state-centred structure of industrial relations.

Introduction

The term "social dialogue" has recently attracted a considerable attention in both media and academic research since it is accepted worldwide, in particular, in Europe that social dialogue can help to resolve some of the pressing problems resulted from globalisation of capital and labour. Although for a long time social dialogue was perceived as a formal relationship, usually between labour market actors and the government authority responsible for labour policy¹, its meaning is getting broadened as various forms of dialogues are established in different societal contexts. Therefore nowadays it is defined broadly as all types of negotiations, consultations or simply exchange of information,

usually between the representatives of government, employers and workers on issues of common interest related to economic and social policy. This conception of social dialogue covers the traditional terrain of industrial relations and tripartite cooperation on labour market issues. The main difference between this broadened meaning and the conventional usage is that the broadly defined social dialogue includes consultation in enhanced tripartite institutions involving non-traditional actors, particularly at national level where issues of broad economic and social policy issues are addressed (ILO, 1999, 38)².

The International Labour Organization (hereafter ILO) has played a major role in promoting tripartism and social dialogue as the best approach to the resolution of conflicting interests in employment and other

1 Specifically when it comes to tripartite social dialogue, it refers to tripartism which is a form of corporatist interest intermediation, whereby the state cedes part of its authority to legally recognised representative organisations of employers and workers, the goal being to align these interest groups with the state policy-making framework (Fashoyin, 2004, 341).

2 Social dialogue is different from civil dialogue such as *Mati Tsukuri* in Japan in the sense that the latter is seeking for consultation between public authorities and community groups, non-governmental organisations or other interest groups whereas the former focuses on the labour market as shaped by economic and social policy, and has clearly recognised actors and an agenda (Fayoshin, 2004, 345).

labour market issues. For instance the ILO has made tripartism and social dialogue the very cornerstone of its activities since its inception of 1919 and actively promoted the principle of the social dialogue through various declarations and conventions it adopted. In particular the ILO Governing Body decided in 1993 that the Convention on Tripartite Consultation of 1976 (International Labour Standards No. 144) should be made one of the four Priority Conventions and reaffirmed its importance in the ILO Declaration on Fundamental Principles and Rights at Work in 1998. The role of tripartite social dialogue was particularly highlighted when the International Labour Conference adopted the resolution concerning tripartism and social dialogue during its 90th Session in 2002 (Pritzer, 2003, 4). EU included the programme of greater consultation with employers and trade unions at European level called the 'social partners' in the action programmes of the Social Charter adopted by the eleven countries in 1989. In 1992 this EU version of social dialogue was taken much further by the social protocol signed at Maastricht and it was introduced as mandatory consultation of the social partners at all stages of the legislative process including the stage of conception of laws and regulations.

Transitory economies in Eastern Europe and Asia, which have been influenced by the various international organisations due to the need for economic and technical assistance for every sector of the society, began to respond to this call for the social dialogue and many countries established institutions for the social dialogue in one form or another (Ghellab and Vaughan-Whitehead, 2003).

Mongolia is one of the best performers of the social dialogue among these transitional economies in many senses. First of all, Mongolia has established the social dialogue institution just after it started marketisation of the economy and the democratisation. Since 1991 the mechanisms of tripartite consultations and negotiations had been carried out between government, the Confederation of Mongolia Trade Unions (hereafter CMTU) representing trade unions, and employers' organisations such as the Mongolian Employers Federation (hereafter MONEF) and the Mongolian National Chamber of Commerce & Industry (hereafter MNCCI). The social dialogue has been consolidated as one of main institu-

tions through which various forms of formal and informal communications were channelled in Mongolia. Following the ratification of the Workers' Representatives Convention (International Labour Convention No. 135, 1971) in 1996, Mongolia again ratified the Convention on Tripartite Consultation (No. 144, 1976) in October 1998. Since it established the National Tripartite Committee for Labour and Social Consensus, as a national tripartite social dialogue mechanism, industrial and regional level social dialogue mechanisms began to be established. Given the fact that it has been just 15 years since Mongolia started economic transition to market economy from the centrally controlled economy where the trade unions were essentially an extension of the state and part of the centrally controlled economy and the employers' federation representing private businesses' interests was virtually non-existing, such a development of social dialogue in Mongolia can be said to be remarkable.

This internationally praised social dialogue mechanism, however, faced a great challenge in 2005 when the social dialogue process faced a crisis due to the stalemate of the national collective agreement process caused by the disagreement on the civil service pay increase. The government withdrew from the national tripartite collective bargaining process opposing the demand of the 25% pay increase of the employees in public sector by the CMTU while the CMTU organised a nation-wide protest against the withdrawal of the government from the national tripartite collective bargaining on the 30th of April 2005. The crisis seemed to have been overcome on the 31st of May when three parties signed the National Tripartite Agreement on Labour and Social Consensus for 2005 and 2006 where the wages and the pension benefits of public servants and employees of budget funded organisations were agreed to be increased by not less than 10 percent in 2005 and by not less than 15 percent in 2006. The problems continued, however, since the government did not show a willingness to increase the public servants' wages until October 2005 and the trade unions and employers themselves became suspicious about the validity of the agreement.

What is the main reason for this instability and the dwindling validity of the Mongolian social dialogue, one of the best performers of social dialogues among transi-

tory economies? Are these problems related to the social context where the Mongolian social dialogue mechanism located or the Mongolian social dialogue mechanism itself? What measures are needed to make it contribute to resolving the interest conflicts?

Would those issues be just common issues of conflicting interests between participants in the collective bargaining and would the Mongolian social dialogue system function properly when those issues are settled? Why was the Mongolian social dialogue which had been praised internationally shaken when the national collective bargaining stalled? What role do the national collective bargaining play in the broad framework of Mongolian social dialogue?

In order to answer these questions, in this paper, we will describe the trajectory of the Mongolian social dialogue development with a focus on the related institutions. We will argue the frequent instability and increased uncertainty of the Mongolian social dialogue system were caused by the unclear division of labour between the levels of the social dialogue and collective bargaining mechanism, the unbalanced power relationship between the social actors, and the existence of other formal and informal channels of consultation.

In conclusion, based on the facts we found we will make some suggestions which can be useful to improve the Mongolian social dialogue system.

1. Transition to Market Economy and the Emergence of Social Partners

After the 70 years of the socialist economy since

1921 when the Bolshevik-inspired revolution took place, Mongolia began the post-socialist economic and political transition in 1990. The transition to market economy of this sparsely populated country with 2.5 million population in the 1.5 million square kilometres' territory which is more than three times bigger than that of Japan began in a very bad shape. The large financial transfers from the former Soviet Union which had been amounted to approximately 30% of GDP was terminated (IMF, 1996) and the secured market by Council for Mutual Economic Assistance (hereafter CMEA) disappeared. The Mongolian economy suddenly had to adjust itself to the fierce world market environment. The early period of transition was particularly hard to Mongolia since the prices of its stable exports, especially copper, which had previously been sold at guaranteed prices within the CMEA, fell precipitously (Nixon and Walters, 2004, 13).

Despite the economic difficulties at the initial stage, Mongolia gradually increased its output and returned to growth in 1994 and accelerated the speed in 1995 although the economy itself was strongly dependent upon international factors such as the prices of copper, gold, cashmere and oil. However the economic growth stopped in 1996 and the turbulence in the world economy in 1997 and 1998 led to sharp falls in the rate of growth of Mongolia. The extreme weather conditions in 2000 and 2001 again put Mongolia to the hard test. In 2002 although Mongolia was slowly recovered to a more respectable 4 percent of GDP growth it meant that GDP only reached its 1989 pre-transition level.

Table 1. Real GDP and Growth Rate, 1989-2002

Year	1989	1990	1991	1992	1993	1994	1995
GDP	651.5	635.1	576.4	521.6	505.9	517.6	550.3
Growth	4.2	-2.5	-9.2	9.5	-3.0	2.3	6.3
Year	1996	1997	1998	1999	2000	2001	2002
GDP	563.2	585.7	606.4	625.9	632.7	638.9	664.3
Growth	2.3	4.0	3.5	3.2	1.1	1.0	4.0

Note : Real GDP in billions of tugriks at constant 1995 prices.

Sources : IMF, 2002, Table 1. 1. p. 7 and ADB, 2003.

In order to get over these economic difficulties a wide range of reform was implemented such as farm privatisation, price deregulation, financial sector liber-

alisation, privatisation of state-owned companies, and public sector reform. The establishment and the consolidation of the National Tripartite Committee for

Labour and Social Consensus (hereafter NTCLSC), the national framework of the social dialogue, was one of these reform measures.

In fact the idea of the tripartite committee for social dialogue itself was conceived during the rapid transition to the market economy in the early 1990s by the elite groups in the government and the trade unions without the substantial pressure from the employers' side. It was due to the leading role of the political sector, which can be witnessed in other transition economies, in transforming the whole society to market economy.

The leading role of the political sector in making relatively participatory framework can also be found in the transition to the political pluralism through the election process. The MPRP (Mongolian People's Revolutionary Party) which took the power through the election in 1990 voluntarily offered several cabinet posts to the opposition parties and formed a cabinet with ministers nominated by newly formed political parties such as the MNDP (the Mongolian National Democratic Party). This democratic and pluralistic principle initiated by the political elites of the former ruling party became the order of the day through the relatively competitive elections. Although the MPRP dominated the election campaign and got the 70 out of 76 parliamentary seats thanks to superior financial edge and organisational strength in 1992 general election, the opposition coalition called Democratic Coalition composed of MNDP (Mongolian National Democratic Party) and MSDP (Mongolian Social Democratic Party) stroke back and won landslide election victory with 50 out of 76 seats after a hard fought election in 1996. The four year reign of the Democratic Coalition was, however, very much volatile both politically and economically. For four years four Prime Ministers had to be off the office for various reasons and Mongolia suffered a severe economic damage caused by the Asian financial crisis. In 2000 people had to go to the polling booths three times for Presidential Election, Parliamentary Election and then the town council's. In the parliamentary election the MNRP came back to the power by taking all the seats but four which were won by Democratic Party, the Citizen's Will-Republican Party and the Mongolian Democratic New Socialist Party (known as EREL). Despite all the tumultuous situations the

2004 general election showed that Mongolia continued to make strides toward democracy. In June 2004 voters gave the 36 seats to the coalition of MDP (Mongolian Democratic Party), MDNSP (Mongolian Democratic New Socialist Party) and CWRP (Civil Will-Republican Party) called Motherland-Democracy Coalition and the MPRP respectively leaving the Mongolian Republican Party with one seat and the independents with three seats and resulted in the coalition government with the Prime Minister from the Mongolian Democratic Party (International Republican Institute, 2004).

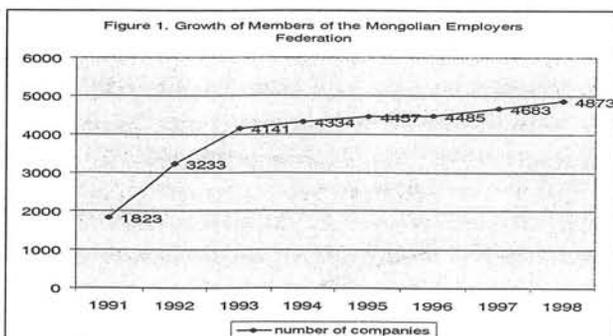
This series of competitive elections contributed to making the environment for participatory decision-making and the consultation with counterparts in both political and economic fields became one of the norms of the society.

The strength of trade unions, of course, was one of the most important factors making the government willing to make a consultation framework including the trade unions. The CCMTU's (Central Council of the Mongolian Trade Unions, hereafter CCMTU, later renamed as Confederation of Mongolian Trade Unions, CMTU) rapid adaptation to the new free market environment was one of the basic elements of the union strength. As Mongolia began the transition to market economy the trade unions themselves rapidly adjusted their legal and institutional structure to the new market environment. At the 14th extraordinary assembly of the Mongolian trade unions in March 1990 the CCMTU concluded the first agreement over the economic and social issues such as wages, working conditions and welfare benefits with the government. It was the first time that the trade unions independently raised many issues related to the livelihood of population, labour and social security matters of workers. Following this agreement the Labour Code was significantly revised and the Law on Trade Unions was revised corresponding to the revised Labour Code in April 1991.

The change in political system from the single party system to a multi-party system went hand in hand with the rapid transformation in the economic sphere and various types of property ownerships, in particular private property ownership, began to be established since the early 1990s. As the political system became much more pluralistic and the various types of entrepreneurs emerged claiming the right to association of

various interests became the order of the day and various associations of the Mongolian private employers started emerging through either the change in the institutional affiliation or the establishment of the new organisations in the early 1990s (See Figure 1). The biggest organisation was the Mongolian Private Enterprises Employers Federation (hereafter MPEEF) which became the MONEF later. The official recognition of the MPEEF as the social actor in the social dialogue process, however, needed a substantial support from others, in this case, the trade unions.

It was the CMTU which played a leading role in recognising the MPEEF which then had just 113 member companies as one of social actors in the social dialogue process³. The CMTU argued that the MPEEF should be in the social dialogue process and this argument was formed under the mainly two considerations. Firstly, the CMTU's leadership realized the importance of the collective bargaining for sound industrial relations in the market economy and in order to have the collective bargaining they needed to have the counterpart to play with. Unless they had the counterpart the role of the CMTU as the representative of the workers could not be played in the market economy. Secondly, the power and the influence of the employers' federation were not strong enough to threaten the interests of the CMTU.



Source : ILO and Ministry of Social Welfare and Labour of Mongolia (2003), *Study on Social Partnership and Development in Mongolia*, Ulaanbaatar, 12

The main bargaining partner of the CMTU was the government which was still the largest employer until the mid-1990s and the existence of the MPEEF was not taken seriously. The government having sought for the appropriate framework for the industrial relations also agreed to include the MPEEF as bargaining counterpart in national collective bargaining. The first national tripartite agreement between the government, the CMTU and the MPEEF called the State Tripartite Agreement on Labour and Social Consensus was signed in 1992 and the social actors began to develop the Mongolian style industrial relations systems.

2. Legal Frameworks of Social Dialogue and Collective Bargaining

In the Western European countries which have a well developed social dialogue system it was the negotiation over the issues of conventional industrial relations that preceded the consultation over the issues of much broader areas such as social and economic policy issues in its initial stage. The Mongolian case is unique in the sense that they started consultation on and negotiation over the issues of both those of conventional collective bargaining and social and economic policy issues almost at the same time in its initial stage. For instance in the national tripartite agreement of 1992 which was the year when there was a severe food shortage the social partners raised the issues such as "stabilization of a consumer price index through measures to promote growth of milk and dairy production, flour and bread production and to increase import of basic food products". This issue was well reflected in the government legislation and the new article to reduce an income tax on production of meat, milk, weed and flour by 50% was added to the General Tax Law (ILO and the Ministry of Social Welfare and Labour of Mongolia, 2003, 13). This modus operandi dealing with not only conventional "bread and butter" issues of the industrial relations but

³ Interview with the former Executive Director of CMTU, Mr Naramandar, Ulaanbaatar, May 12, 2005.

⁴ While the government, the CMTU and the employers' representative were dealing with various social and policy issues within the framework of the tripartite national committee, the government actively promoted the similar tripartite framework in other policy fields. In 1999 the Social Insurance National Council which comprised of non-staff members equally representing the government, the insured and the employers was established. The result of consultations over the issues related to social insurance would be reported to the Parliament. In the vocational training field the National Council of Vocational Education and Training which is the organisation without fulltime staffs was established and their members were from the government and its institutions, employers and workers' non governmental organisations, vocational education and training institutions and other entities. Regarding the employment policy the government established the National Council on Employment Promotion.

also the issues of much broader areas continued in 1993, 1994, 1996, 1998 and 1999⁴.

This framework of national tripartite committee took an additional lawful status when the revised Labour Code included corresponding legal provisions in 1999. The newly revised Labour Code included provisions on the National Tripartite Committee for Labour and Social Consensus (hereafter NTCLSC) and it stipulated that the NTCLSC composed of representatives of the government and national organisations representing the rights and legitimate interests of employees and employers should be established within the Government (Labour Code, Article 138.1). The NTCLSC would guide the development and implementation of the state policy concerning labour matters, develop the system of the tripartite social consensus (Labour Code, Article 138.5.1), settle collective disputes within the scope of protecting citizens' labour rights and associated legitimate economic and social interests (Labour Code, Article 138.5.2), monitor implementation of the national agreement of social consensus and consult relevant economic and social policy issues (Labour Code, Article 138.5.3) and other rights set forth in the law (Labour Code, Article 138.5.4). Therefore the NTCLSC is supposed to be the permanent legal body for the tripartite social dialogue which has the legal rights to deal with both conventional issues of industrial relations (or "labour matters") and the much broader issues of economic and social fields. In addition to a separate legal provision for national level social dialogue, the Labour Code allows the collective bargaining at national level to address similar issues dealt with by the NTCLSC by stipulating that "*general matters pertaining to labour relations policies, such as rights to social benefits, and a citizen's labour rights and related legitimate interests shall be determined by a national collective bargaining*" (Labour Code, Article 19.1.1). This clause was one of the vestiges of the previous period when social partners participating in the collective bargaining dealt with issues of a much broader range. Since the collective bargaining process does not have a constraint on the number of meetings the social partners who are accustomed to deal with issues of contention

with counterparts within the framework of the collective bargaining may prefer to have a consultation and a negotiation within the framework of the collective bargaining rather than the newly established NTCLSC.

Regarding the sectoral and regional level social dialogues although there is not a separate chapter for the sectoral and regional level social dialogue like the one for the NTCLSC the revised Labour Code added articles vaguely implying the possibility to establish these sectoral and regional level social dialogues to the legal provisions on the collective bargaining in sectoral and regional levels (ILO and the Ministry of Social Welfare and Labour, 2003, 17). Apart from the legal provisions on the way to deal with conventional issues of industrial relations defined as the "collective agreement" (Labour Code, Article 18), Article 19 stipulates that *general matters concerning wages, labour conditions, organisation of the employees' labour, and production quotas or norms for employees with special skills shall be determined by bargaining at the industrial sectoral level ; general matters concerning minimum wages, citizens' right to work, and related legitimate interests shall be determined by bargaining at the regional level ; and general matters concerning employment and labour relations of employees of administrative or territorial units shall be determined by bargaining at the Aimag, capital city, Soum or district level* (italics by author)⁵.

With this revision of the Labour Code, that is, the new establishment of Article 138 stipulating the rules and regulations on the NTCLSC and of Article 19 stipulating those on the sectoral and regional level social dialogue, the Mongolian social dialogue system had the legal organisational forms ; the NTCLSC for the national level social dialogue and the collective bargaining units for the sectoral and regional social dialogues. In these organisational frameworks the social partners exchange information with each other and consult and negotiate over a variety of issues ranging from public sector wages to the rate of social insurance contributions. Particularly at the Aimag or Soum level the social partners deal with social issues relevant to the regional situations such as the problems of school drop-

5 These legal provisions on the rights of sectoral and regional level bargaining to deal with social and economic issues are vague, which is common phenomenon found in transition economies. For this observation the author was benefited from the discussions with Dr Chang Hee Lee, ILO Specialist on Industrial Relations in Bangkok.

outs and local transportation.

The legal framework of Mongolian social dialogue system at various levels, therefore, allow both collective bargaining processes and social dialogue to deal with those issues in broader field and the agreements reached through these processes can be materialised in the tripartite (or bi-partite) agreements and implemented by the concerned parities.

In the following chapter we will review the roles of the social dialogue bodies at various levels and point out both strength and weakness to show the problems and their possible solutions.

3. An Analysis of the Social Dialogue Systems At Various Levels

3. 1. National Tripartite Committee on Labour and Social Consensus

In the Mongolian social dialogue system, the overall coordinating role for the whole social dialogue process is vested in the NTCLSC. The establishment of the Committee is set out in the Labour Code (Article 138). The Committee is mandated (Articles 138.5.1-138.5.4) : *to guide the development and implementation of the State policy concerning labour matters, and to develop the system of the tripartite consensus ; to settle collective disputes within the scope of protecting citizens' labour rights and associated legitimate economic and social interests ; and to monitor implementation of the national agreement of social consensus, and to consult on relevant economic and social policy issues ; and other issues set forth in the law.*

The Committee, composed of the representatives of the government, employers' organisations and workers' organisations, is envisaged as the most important location of consultation on policy direction of the country's labour related issues and the tripartite social dialogue process.

In reality, however, the Committee has not, so far, been an important element in the overall social dialogue system. This may reflect the situation of social dialogue process which was established as a part of the transition effort within the new environment that is only now beginning to take more concrete shape. At the same

time, it may reflect two important features of the social dialogue process. Firstly, the government has not fully recognised the potential value of the Committee as the centre-piece of the economic, social, and labour policy governance. Secondly, the three actors in the social dialogue process are not able to look beyond the periodic and compartmentalised negotiations in the social dialogue system.

The lack of investment from the government side can be shown in various facts. Firstly, although the Committee is supposed to be held four times a year, in fact it has not been held regularly. In 2004 the Committee was held for only twice a year and the meeting lasted only for 1.5 hours at the longest⁶. Secondly, the secretariat of the Committee is not well staffed. Since the Committee is supposed to be an agenda setting institution to screen and explore various policy issues with an aim to encourage active discussion and build a consensus on policy direction, the secretariat of the Committee needs a certain number of personnel for those functions. The secretariat of the Committee, however, does not have a permanent full-time staff and only one mid-ranked officer of the Ministry of Labour and Social Welfare is serving the Committee as a liaison officer from the government side. The cooperation between the government departments is not functioning well either and the meetings and discussions between the departments do not take place on a regular basis. Each department sends their own agenda to the liaison officer who only compiles all the agenda and sends them to social partners. The lack of attention from the government has discouraged the participation of the social partners also. The representatives of employers' side appointed by the Prime Minister such as the MNCCI neither participate in the discussions related to the NTCLSC nor play a role in the Committee. This unwillingness of some employers' associations may be related to the existence of the other channels through which they are able to communicate with the government over the relevant issues. For instance since the MNCCI is invited to various councils organised by the government it can discuss with the government officials who are directly in charge of the concerned matters. Since it is considered to be more efficient to them, the MNCCI prefers to

6 Interview with Mr Khadkhuu Damdinsuren, officer of Labour Market Policy and Coordination Department who is in charge of the liaison affair of the NTCLSC,

concentrate on the other channels for the communication with the government rather than the NTCLSC.

The causes of this underutilisation of the Committee have been also found in the self assessments on the NTCLSC by the participants of the Committee themselves as follows. First of all, the lack of government commitment. It has been found that the Committee meeting which was held twice a year ended within an hour in most cases. The main participants from the government are mostly mid-ranked officers with no real authority. Secondly, the lack of deliberation. Half a page document which summarised the meeting is somehow an indicator of the intensiveness of the deliberations taken place in the Committee. Important concerns of the Government or social partners in the realm of social, economic, and labour issues that affect the life, rights, and interests of people in the world of work have not been discussed intensively. When there were discussions about important issues between three parties, as in the case of Poverty Reduction Strategic Paper, they took place in other forums than the Committee. Thirdly, the lack of in-depth studies on the issues. Those important issues such as the reduction in the contribution to social insurance, the reduction in value-added tax, and job creation programme for the Agreement for 2005-2006 do not seem to have been extensively studied before the discussion. An in-depth review of the multifaceted implication and impact of the proposed measures in themselves and in relation to other issues and concerns would have paved the way for a more coordinated policy response, thus giving them a greater chance to realise the intended objectives. Such a preliminary consultation would have also provided an opportunity for the greater public to understand the implications of the changes, participate in the debate, eventually lead to public "ownership" of the changes when they are finalised through the negotiations. These problems caused the stalemate of the social dialogue process in April 2005⁷.

This lack of investment from the government and the less participation of some employers' organisations resulted in two critical weaknesses of the NTCLSC.

Firstly, the NTCLSC could not play a role in coordinating interests and priorities, which is vital to consensus building phase. Although each party in the Committee (the government, employers, workers) could have brought important issues to the Committee to draw the attention of others, to put to discussion, and to seek a consensus the reality is that the Committee began to be considered as one of occasions for information exchange. Consequently it could not play a role to enable the government to identify critical issues facing the society in general and the labour market in particular from the perspective of the national development.

3. 2. The National Tripartite Agreement 2005-2006

As we have mentioned above, the collective bargaining processes at various levels in Mongolia have played a certain role in social dialogue. The tripartite agreement as its product has been considered as something more than the conventional collective agreement dealing with the bread and butter issues of the labour relations. In particular the national tripartite agreement has dealt with much wider range of issues than the collective agreement and they have contributed to making social dialogue look successful. That is one of the reasons why all the social partners involved in the national collective bargaining were panicked when the national tripartite collective bargaining stalled in April. In this section we will explain the causes of the stalemate of the national collective bargaining for 2005 and 2006 by analysing the issues dealt with at the national collective bargaining.

The stalemate was ended shortly and the national tripartite agreement was settled on the 31st of May 2006 by the agreement of three actors. The issues which caused the stalemate were settled as we can see in the following details of the agreement (See Table 2). The problems found in the nature of the NTCLSC, however, was clearly reflected in the agreement.

The recent Agreement 2005-2006 contains 38 clauses, including 6 implementation clauses. The details of the agreements are as follows.

7 Interview with Mr Kh. Ganbaatar (Executive Director of MONEF), Mr Khadkhuu Damdinsuren (Officer of Labour Market Policy and Coordination Department, Ministry of Social Welfare and Labour), Mr Sukhbaatar Erdembileg (Head, Foreign Cooperation Division, Ministry of Social Welfare and Labour) and Ms. Lkhagvademberel Amgalan (Officer, Social Dialogue, CMTU).

Table 2. The Main Issues of the National Tripartite Agreement 2005-2006

No,	Items	Degree of Comprehensiveness and the Extent of Binding Force in Codification of Agreement	Demand From
1	Reduction of VAT	<i>shall be decreased to 10%.</i>	CMTU, MONEF
2	Corporate tax	shall be reduced.	MONEF
3	Income tax waive	shall be studied and decided.	CMTU
4	Reduction of interests to bank loans	Social partners shall develop proposals.	MONEF
5	Draft law on leasing	A draft law shall be submitted.	MONEF
6	Housing	Conditions shall be created.	CMTU
7	Establishment of funds for investment and exports	shall be studied.	MONEF
8	National Action Plan on Decent Work	shall be developed.	CMTU
9	Job creation	Jobs shall be created. Law shall be amended.	CMTU
10	Employment Promotion	Law on Employment Promotion shall be drafted.	CMTU, MONEF
11	Labour Protection	Plan Shall be adopted.	CMTU
12	Occupational Safety and Health	Social partners shall develop a draft law.	CMTU, MONEF
13	Job matching service using NGOs	shall be studied.	MONEF
14	Child Labour	Programmes shall be adopted.	CMTU
15	Entrepreneur Training Programme	shall be implemented.	MONEF
16	Protection of Textile industry	shall be speeded up.	CMTU, MONEF
17	Research on working conditions	shall be implemented.	MONEF
18	Collective Labour Dispute Settlement	Social partners shall organise a conference.	MONEF
19	Poverty reduction (Household income)	shall be reduced.	CMTU
20	Minimum wage	shall be renewed.	CMTU
21	Wages of public servants and social insurance benefits	<i>Shall be increased by not less than 10% in 2005 and 15% in 2006.</i>	CMTU
22	Compensation of retirement benefits	Measures shall be taken.	CMTU
23	Autonomy of social insurance funds	Measures shall be taken.	MONEF
24	Reduction of Social Insurance contribution	shall be reduced.	MONEF
25	Private Social Insurance schemes	shall be studied and proposals shall be developed.	MONEF
26	Promotion of NGOs	shall be executed.	CMTU
27	Additional support for PS in special conditions.	shall be studied and decided.	CMTU
28	Strengthening the Social Dialogue	shall be implemented.	MONEF
29	The regularity of the NTCLSC	<i>shall be convened at least twice a year.</i>	MONEF
30	Cooperation with Korea and Japan	shall be expanded.	MONEF
31	Unfair dismissal of public servants and managers of state owned companies	shall be supervised and monitored.	

32	ILO Conventions	shall be ratified and studied. The preparatory work shall be done.	MONEF
33 - 38	The issues of validity, amendment and monitoring of the agreeemnt	Three parties shall abide by the rules.	

Source : Internal Document of the CMTU (Memos from CMTU, July 2005).

As we can see in the analysis on the degree of comprehensiveness and the extent of binding force shown in the agreement, most agreements are indicating either the necessity for further studies or the promise for the government’s implementation except for only three agreements, No.1, 21 and 29. The parties did not put the best option which might have caused disagreement and were not ready for the other party’s challenge. When there was a disagreement they did not decide what would be the best interest to all parties by just handing over the final say to the government. When the CMTU and the MONEF put the best options for them, the increase of the wage of public sector workers and the reduction of VAT, they caused the disagreement with the government and the NTCLSC process ended up with stalemate. Through the several rounds of negotiation held after the national protest by the CMTU the three parties reached the consensus on the issues of the reduction in the VAT rate and the wage increase for public sector workers which have caused the deadlock of the national tripartite agreement process. The texts of the agreements on these issues clearly show the detailed percentage and schedule and consequently increase the accountability of the government to implement them. During several irregular rounds of the negotiation held after the deadlock of the formal negotiation process three parties finally had a comprehensive discussion on the issues in question and reached a consensus on the targets and schedules. It means that the reality of the seemingly smooth development of the Mongolian social dialogue was that the process has been a venue for the compilation of the agenda rather than for the adjustment of the interests of each party for the whole nation. When there was a real challenge by the CMTU, the NTCLSC became a real social dialogue mechanism.

It is related to the fact that the government has not valued the NTCLSC’s role in the governance. The lack of commitment by the government has made the NTCLSC not cohesive enough to generate shared attitudes to

and perceptions on the binding force of the agreements among all parties, led social partners to only agree on the further decision of the government and made both trade unions and employers consider the NTCLSC an occasion to give an input for government policy making rather than the venue for making consensus on the policy issues.

This tendency of both trade unions and employers can be clearly shown in the analysis of the issues dealt with from the perspective of their implementation process. The recent Agreement contains various types of actions such as concrete government actions, joint reconfirmation of principles, new discussions or consultations (See the table 2 above). While some clauses in the Agreement call for tripartite efforts, most clauses in the Agreement require policy commitments of the government to be implemented. 22 agreed items require Government actions such as drafting legislative bills to be presented to the Parliament, changing taxation policy (to reduce VAT rate or to reduce corporate tax burden) or undertaking construction and infrastructure projects for a housing programme. 9 agreed items call for tripartite effort for implementation, such as jointly developing proposals to reduce interest rates for business promotion or developing a programme for improving social dialogue. The one remaining issue, which calls for raising employment level to 70 per cent and an effective employment policy to create 40,000 jobs every year, could also be a responsibility of the government. Therefore the real decision-making point is not at the NTCLSC but at the government. The government used this process as the channel to hear the opinions rather than the venue in which they make a consensus on the important issues. Therefore if the government lacks the intention to develop or implement the agreement, it is very much certain that the national tripartite agreement would become nothing but a consultation paper and it would lose its credibility as the national collective bargaining which is supposed to produce concrete agree-

ments which should be implemented and monitored.

The damaging negative effects of the government on the whole process of social dialogues are also closely related to the structure of the industrial relations in Mongolia where the government is a major bargaining partner at every level. We will see it in the following dealing with various levels of collective bargaining.

3. 3. National Level Collective Bargaining

The Labour Code Article 3.1.5 stipulates that “a collective bargaining” means consent among an employer, the representatives of employer’s employees, and a relevant administrative organ, either at the national or regional level or within an administrative territorial unit, economic sector or occupation, aimed at protecting labour rights and related legitimate interests of employers and employees. It, therefore, allows the government to participate in both national and regional level bargaining as a counterpart. And Article 19.1.1 of the Labour Code stipulates that national collective bargaining determines general matters pertaining to labour relations policies, such as rights to social benefits, and citizen’s labour rights and related legitimate interests. According to it, the national level collective bargaining is supposed to conclude a framework agreement which will define the scope of and leave substantial room for manoeuvre to the second bargaining level.

However the current CMTU structure where the public servants and the employees of the state owned companies account for around 61% of total membership makes the CMTU, concentrate on the wages of the public servant and the employees of the state owned companies. Since to the CMTU the public servants’ wages issue is vital to the organisation they have consistently raised the issue in the collective bargaining process which is conducted in the framework of national collective bargaining. Since there is not a separate collective bargaining table to settle the issues of public servants’ wages with the government, the CMTU brought the issue to the national collective agreement which is supposed to deal with wage issues at the national level from a wider and longer term perspective rather than sectoral level and consequently stalled the national collective bargaining process.

Table 3. Composition of the CMTU Membership

	Number of Members	Percentage in Total Membership
State-owned enterprises	32,756	17.9
Public / budget funded organisations	78,940	43.1
Companies	60,225	32.9
Cooperatives	306	0.2
Self-employed	2,664	1.5

Source : CMTU internal document 2005.

The government’s strong position in the national collective agreement process affected the bargaining schedule also. It was found that the national level bargaining had been frequently delayed by the government’s absence. Given the role of the national level bargaining to provide guidelines for other levels of bargaining this frequent delay of the national collective agreement may result in negative chain effects on the sub-level bargaining. The bargaining of each level takes place by the Labour Code but the regulations on the timing on the bargaining seems not abided by the government well, in particular in the case of the national level bargaining.

3. 4. Industry Level Collective Bargaining

In Mongolia there are 36 trade associations of employers and one national level representational organization, the MONEF. In 2004, 8 out of 12 industries concluded collective agreements and as of May 2005, 6 sectoral agreements are valid. Both the Energy, Geology and Mining Workers’ Trade Unions’ Federation and the Transport, Communication and Oil Workers’ Trade Unions’ Federation had tripartite collective agreements while the Construction Workers’ Trade Unions’ Federation, the Railway Workers’ Trade Unions’ Federation, the Agricultural, Food and Environmental Workers’ Trade Unions’ Federation, the Industry Trade Unions’ Federation⁸ bipartite collective agreements. Although the sectoral level employers’ associations are not affiliated to the MONEF they have informal network with MONEF and the sectoral level employers’ associations interact with each other over the bargaining issues. The

8 The Industry TUF has two bipartite agreements such as the sectoral bipartite agreement for 2005-2006 with Ministry of Industry and Trade and the garment sector bipartite agreement-valid until 27 October 2005 with Garment Producers’ Association

MONEF provides those associations participating in sectoral agreement with guidelines established by the executive board of the MONEF. Sectoral level bargaining in Mongolia is multi-employer bargaining which is not industry wide. Collective agreement at the sectoral level is not legally binding one and the compliance of the employers is based on the good will and the commitment of the employers. The companies outside the bargaining unit are less likely to abide by the agreement. There is no penalty or disadvantage to the non-compliance.

The tendency of employers and workers to negotiate with the government rather than with each other, which is also found in the national level bargaining, is found in the sectoral level bargaining. It may be related to the following facts. Firstly, it is still state-owned companies or entities that account for the majority of the organized employers and unionized workers. The decision making point is still at the government rather than the management. Secondly, the issues dealt with at the industry level bargaining are still mainly those which the government has discretion to implement or not. Thirdly, the lack of experience and skills to build up consensus on and implement the issues encourages both employers and trade unions to focus on the ends rather than the procedure, which means focusing on the negotiations with the government.

The weakness of the industry level trade unions and employers' organizations can also be pointed out as one reason for the weakness of the collective bargaining between the employers and employees. First of all, some unions such as the Enlightenment Union do not address the issues raised by local unions other than Ulaanbaatar. Most industry level trade unions are those of state owned companies or entities except for those in the garment sector and the bargaining results do not cover most workers of the private sector. The problem of coverage of the sectoral union are resulted from the

lack of financial and human resource and these weaknesses can undermine the power and influence of the sectoral bargaining. Secondly, employers' organizations are underdeveloped and do not even have an organization of employers in some sectors such as wood processing and mining sectors.

These problems appear to make both employers and trade unions unsatisfactory with the result of the sectoral bargaining process and agreements, and encourage them to find out other formal and informal channel than sectoral bargaining in order to represent their own interests. The government centred industrial structure allowed many communication channels through which both employers and trade unions can communicate with the government and it consequently reduced the role of the sectoral collective bargaining.

The inappropriate schedule of the sectoral level bargaining has resulted in the weakness of sectoral level bargaining also. Regarding wages settlement although industry level bargaining precede the national level bargaining in most cases they have been greatly influenced by the national level bargaining process and its results. The case of 2005 national level bargaining showed that the industry level bargaining made the government's proposal of 7.5 percent the reference point which had been expected to be concluded at the national level bargaining. For instance, the MONEF made a guideline recommending the energy sector employers to use 7.5% as the maximum increase rate and the trade union used the 7.5% as the minimum increase rate. It means that the sectoral level bargaining is still strongly dependent upon the national level bargaining without proper specification process, which makes the participants more dependent upon the government who is the real decision maker of the national collective agreement.

Table 4. Details of the Sectoral Collective Agreement

	Name of TUFs	Sectoral Agreements
1	Energy, geology and mining workers' TUF	Fuel and energy sector tripartite agreement for 2005-2006 / with Ministry of Fuel and energy, employers' organisations in the sector /
2	Construction workers' TUF	Sectoral bipartite agreement for 2004-2005 / with Ministry of Infrastructure /

3	Railway workers' TUF	Sectoral bipartite agreement for 2004-2005 / with General department of Railway affairs /
4	Transport, communication and oil workers' TUF	Auto transportation sector tripartite agreement for 2005-2006 / with Ministry of Road, transportation and tourism ; and Association of Auto transport operators /
5	Agricultural, food and environmental workers' TUF	Sectoral bipartite agreement for 2005-2007 / with Ministry of Food and Agriculture /
6	Industry TUF	- Sectoral bipartite agreement for 2005-2006 / with Ministry of Industry and Trade / - Garment sector bipartite agreement- valid to 27 October 2005 / with Garment producers' association /

Source : Internal Document of CMTU, May 2005

3. 5. Regional Level Collective Bargaining (Aimag)

Although the Labour Code allows every regional level bargaining unit to have a collective bargaining the bargaining at the lower regional level than the Aimag is not common in Mongolia. As of May 2005 11 regional tripartite agreements out of 22 regions and capital city have been concluded and we will focus on the Aimag level collective bargaining, one of the main pillars of collective bargaining in the Mongolian industrial relations.

At the Aimag level bargaining the regional branches of the CMTU and the MONEF, and the regional government are the main participants. Main issues dealt with at the bargaining are wages and benefit issues of the public sector workers and other socio-economic issues ranging from the utility price to the provision of computers to schools.

The Aimag level bargaining on the issue of wages is mainly related to the government support service workers, particularly teachers in various levels of schools because of the following reasons. Firstly, the Aimag level CMTU draws its main strength from "government support service workers", particularly those in the field of education in terms of finance. Secondly, despite the effort made by the Enlightenment TUF to reach out to the government support service workers in the fields of education, science, health, culture and art, the Enlightenment TUF has not represented the interests of those workers outside Ulaanbaatar. Since those teachers in the schools outside Ulaanbaatar do not belong to the Enlightenment TUF they don't have any proper representational organization but the Aimag

level CMTU. Therefore the Aimag CMTU is filling the gap left by the limited coverage of the Enlightenment TUF. Regarding the issues of pays and benefits of "government support service workers", the regional level bargaining actors appeared to endorse and apply the national agreement to the regional agreement.

Dealing with social and economic issues at the Aimag level collective bargaining obviously benefits the people living in the region and the agreements on those issues have been well reflecting the regionally specific issues. Some issues dealt with at the Aimag level bargaining, however, have some problems of mixing consultative issues and negotiable issues. Those issues of the reduction of unemployment rate and poverty rate which bargaining participants cannot be subject to the liability for the failure of the implementation can water down the liability of participants to other issues. It can also result in the reduction of credibility of the agreement itself. Although it is quite significant to agree to make an effort to achieve such valuable goals, it needs to clarify the nature of the agreements in terms of the accountability and feasibility of the implementation.

It has been found that without proper consideration or consultation procedures with the other level the Aimag level bargaining may clash or contradict with agreements of other level. This problem of contradiction between the agreements resulted from the lack of coordination. One of the examples is the case of the Energy, Geology and Mining sectoral agreement and the Aimag agreement dealing with the issue of energy price. In the agreement for 2005 and 2006 the Energy, Geology and Mining sectoral union demanded the wage increase

which can cause the increase of energy price while the CMTU in Darkhan-Uul Aimag strongly demanded the decrease of the energy price. Two demands without a sophisticated coordination process between the CMTU of the Aimag and the trade union of the Energy, Ecology and Mining industry can cause a serious problem. The relationship between the issues dealt with at the Aimag level bargaining and those of other level of bargaining is not comprehensively deliberated at Aimag level bargaining.

Given the geo-economical characteristics there is certainly the legitimate role played by the Aimag level CMTU. The collective bargaining agreement, however, should be carried out in a much more coordinated way. The linkages between the Aimag level and the upper level bargaining units such as those of the industrial and national level bargaining units should be strengthened.

3. 6. Firm Level Collective Bargaining

The enterprises of Mongolia can be classified into five kinds in terms of the nature of the ownership ; state owned, privatised former-state-owned, newly emerged Mongolian owned private, newly emerged Mongolian and foreign jointly owned private and foreign owned private enterprises. The privatization begun in 1991 has resulted in significant impacts on the industrial relations. Looking at the firm level the privatization has resulted in the reduction of the size of employees of the firm. Nixon and Walters (2004, 58) suggests that all firms have been downsizing since the privatization and in particular there was a sharp reduction in the size of employees between 1999 and 2000. Although there was an evident recovery in 2002, the rise is still modest.

In private sector, in particular small and medium sized companies which are estimated to account for 90% of the total business entities, the union density is low and the collective bargaining is not well developed. This underdevelopment of the trade unions at the firm level prevent the upper level unions from hearing the voices from the ordinary workers and coordinating with each other

Conclusion

The internationally acclaimed Mongolian social dialogue has a significant ups and downs in 2005. The

national collective bargaining stalled in April and consequently delayed many sub-level collective bargaining. Although the participants in the national collective bargaining finally reached the conclusion, the National Tripartite Agreement for 2005 and 2006 on the 31st of May 2005, the implementation of the issues which had caused the deadlock still remains uncertain since the government is the implementation. What are the problems of the social dialogue process and collective bargaining process in Mongolia ?

We found that the lack of commitment of the government which occupies the central position in the industrial relations and has the power to decide the allocation of resources in various policy fields has been continuously reducing the validity of the NTCLSC as the main channel of the social dialogue and collective bargaining process. The lack of coordinating capacity of social partners at regional and industrial level affected the sub-level bargaining process and became the causes of the problems of the sub-level bargaining processes.

Since those issues dealt with at the social dialogue process are invariably conflicting ones to the parties with vested interests it is vital to equip the social partners of the social dialogue mechanism with the capacity to address those issues early and find mutually acceptable package of resolution or trade-offs to maintain sustainable social and economic stability. The process of consultation within the Committee should contribute to establishing the parameters for future negotiations that would actually set the terms of the trade-off contained in the eventual agreement. However the lack of human resources in the Committee reflecting the underinvestment of the government makes it impossible for the Committee to play such a role.

The social actors participating in the Committee and collective bargaining processes at various levels with a valuable opportunity to communicate with the government directly have a tendency to be satisfied with the short-term success rather than endeavour to make longer term framework which can work to the lower level of social dialogue system and it caused the reduction of the vitality of the social dialogue process in general. The agreed issues were those which would be implemented regardless of agreement and the real contested issues were either avoided, settled through

different channel from that of social dialogue or remained unsettled.

In general both employers and the labour have the heterogeneity of interests between and among themselves. The collective agreement, the social dialogue in Mongolian context, is a valuable channel to find a common area of interests of the parties through which they can negotiate over the solution for the conflicting interests. The nature and structure of the agreement is, therefore, very much dependent upon this common area of interests of the parties. In Mongolian tripartite or bipartite negotiation bodies at each level three broad areas seem to have opened up for negotiation : traditional issues of capitalist industrial relations such as wages and working conditions; public policy formulation in areas such as incomes policy, social welfare benefits and employment policies ; and the prevention and settlement of wider social conflicts. The three areas are closely interrelated with each other and the tripartite negotiation processes have played a major role in preventing and alleviating labour and social tensions and conflicts. Tripartite actions in each of these three areas, however, differ considerably in terms of both their importance and their time horizon. Those related to the issues of labour relations have a longer-term relevance compared to public policy measures which have shorter-term implications since they usually have time horizons of a year or so and have to be adapted to newly developed socio-political situations. The different nature of the issues which are dealt with in the same agreement can cause a problem of implementation due to the different time schedule of the implementation. Another problem of dealing with issues with different nature is related to the mix-up of negotiable and consultative issues in the single form of agreement as a result of bargaining. The agreement composed of negotiable and consultative issues may give a wrong message to the participants that they could treat some negotiated and agreed issues as consultative issues and consequently result in the less liability of the participants. It could consequently result in the reduction of the credibility of the agreement as a whole and make it difficult to establish sound bargaining practices.

The omni-presence of the state and the national trade union with a huge membership base in the public

sector are the inheritance of the socialist economy. Therefore the mal-function of the social dialogue process in Mongolia may be a result of the conflict between the old industrial relations structure and the newly established social dialogue system. For 15 years of transition to market economy, Mongolia can be said to have achieved a great success in establishing capitalist system of industrial relations. The institutional problems inherited from socialist systems, however, should be resolved in order to enable the democratic and efficient social dialogue system to address the new challenges of the globalised market economy.

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