



Office for Democratic Institutions and Human Rights

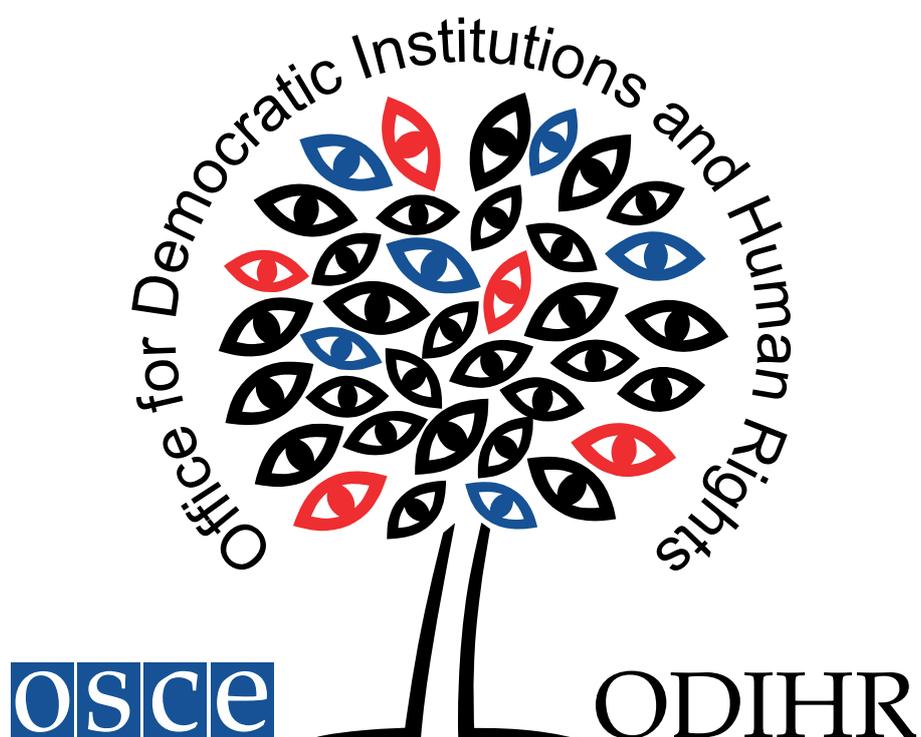
MONGOLIA

PRESIDENTIAL ELECTION

9 June 2021

ODIHR NEEDS ASSESSMENT MISSION REPORT

22-26 March 2021



Warsaw
28 April 2021

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ODIHR Needs Assessment Mission Report

I. INTRODUCTION

Following an invitation from the Ministry of Foreign Affairs to observe the 9 June 2021 presidential election, and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 22 to 26 March 2021. The NAM included Ana Rusu, ODIHR Senior Election Adviser, and Keara Castaldo, ODIHR Election Adviser.

The purpose of the NAM was to assess the pre-election environment and preparations for the election. Based on this assessment, the NAM should recommend whether to deploy an ODIHR observation activity for the forthcoming election and, if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions and with representatives of political parties, media, civil society and the international community. A list of meetings is annexed to this report.

ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and co-operation in organizing the NAM. ODIHR would also like to thank each of its interlocutors for taking the time to meet with the NAM and for sharing their views.

II. EXECUTIVE SUMMARY

The 9 June 2021 presidential election will be the first held since constitutional reforms in 2019, which altered the term and scope of the presidential mandate. Authorities and other electoral stakeholders acknowledged continued challenges posed by the COVID-19 pandemic.

The electoral legal framework was substantially revised since the previous presidential election, including the adoption of a new Law on Presidential Elections (LPE) in December 2020. Some changes partially address prior ODIHR recommendations, such as the removal of certain restrictions on the right to stand and additional measures to enhance the transparency of voter lists. However, a number of long-standing ODIHR recommendations remain unaddressed, including on voter and candidate eligibility, campaign rules, and procedures for the timely resolution of election-related complaints. Although long-term discussions related to constitutional and electoral reforms included some opportunities for public consultation, several stakeholders informed the ODIHR NAM of the need for additional and inclusive reforms to address remaining shortcomings.

Presidential elections are administered by a four-tiered structure led by the permanent General Election Commission (GEC). The GEC provides detailed information on the electoral process on its website, including in adjustable formats for persons with visual impairments, and publishes regular updates related to its meetings and preparations. Most ODIHR NAM interlocutors highly assessed the professionalism and transparency of the election administration, particularly the GEC, but some described a lack of public trust in the independence of lower commissions.

Citizens who have attained 18 years of age by election day have the right to vote, except those serving a prison sentence for any crime and those declared by a court to be legally incapacitated, including

on the basis of intellectual or psychosocial disability. Voter registration is passive and lists are extracted from a national, biometric database of civil registration. The new law introduced the possibility for voters to inspect the voter list records of all individuals registered at their address. ODIHR NAM interlocutors did not raise major concerns related to voter registration and the maintenance of voter lists, though some noted challenges in accurately registering nomadic groups and other citizens with temporary addresses.

The legal framework imposes several restrictions on candidate eligibility. Only political parties with representation in the parliament may nominate presidential candidates, despite prior ODIHR recommendations that this possibility be extended to non-parliamentary parties and independent candidates. On 16 April 2021, the Constitutional Court determined that persons who previously held the presidential office, including the incumbent president elected in 2017, are ineligible to stand for the term-limited six-year mandate in the forthcoming election.

The law contains detailed provisions on the conduct of election campaigns, including on the use of online media and social networks, and grants broad authority to the GEC and Communications Regulatory Commission (CRC) to monitor and restrict online campaigning. ODIHR NAM interlocutors anticipated that the campaign would be competitive and conducted freely, despite strict campaign rules and other practical adaptations due to the ongoing COVID-19 pandemic and related directives. Most stakeholders alleged widespread vote-buying practices in campaigns, which they anticipated would be an issue of concern in the upcoming election.

The election campaigns of presidential candidates may be financed through donations from individuals and legal entities to the nominating political parties, as well as from the assets of the nominating party and candidate. The State Audit Office is the primary entity responsible for the oversight of campaign finance, but holds limited authority to detect violations or enforce regulations. Most ODIHR NAM interlocutors, including representatives of political parties, indicated that campaign finance oversight could be further strengthened, particularly during the campaign period. Some also indicated that the current rules for campaign financing, including the system of state subvention and the high expenditure limits, favour large and well-established political parties and incumbents.

The media landscape is diverse. The Constitution guarantees the freedom of expression and the right to seek and obtain information, and the new LPE retained previous obligations for media outlets on balanced reporting and on equality of opportunity for candidates. Despite prior ODIHR recommendations related to the decriminalization of defamation, recent amendments to the Criminal Code prohibit dissemination of “false information”, and media outlets remain liable for the content of political advertising and statements made directly by political actors. The CRC conducts monitoring of all national and regional broadcasters during the campaign period for compliance with content and time requirements and holds extensive oversight powers, including the authority to suspend broadcasting in case of violations.

Procedures for election-related complaints and appeals are regulated by a number of laws on administrative and criminal violations. The LPE contains limited provisions on complaints related to decisions of election commissions. Many ODIHR NAM interlocutors raised concerns related to timelines for election dispute resolution, especially on time-sensitive matters such as candidate registration, which cannot be resolved prior to election day.

In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, including recent substantive changes to the electoral legal framework, the

status of implementation of previous ODIHR recommendations, and the views expressed by stakeholders. The ODIHR NAM noted overall confidence in the preparations conducted by the election administration, particularly at the central level. However, stakeholders highlighted several aspects of the revised legal framework and the conduct of the election that would merit particular attention, including the regulation of the campaign and its financing, as well as the obligations and oversight of traditional and online media. Interlocutors also raised significant concerns related to vote-buying and other coercive tactics during the campaign and on election day, as well as shortcomings related to procedures and timelines for election-dispute resolution. Most interlocutors underscored the added value of a potential ODIHR activity to observe the pre-election campaign environment and election day proceedings.

Based on the findings of this report, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM), subject to health and travel considerations in the context of the COVID-19 pandemic, to assess the forthcoming presidential elections. In addition to a core team of experts, ODIHR would request the secondment of 26 long-term observers from OSCE participating States to follow the electoral process countrywide, and 300 short-term observers to follow election-day proceedings. In line with ODIHR's standard methodology, the EOM would include a media monitoring element.

III. FINDINGS

A. BACKGROUND

Mongolia is a semi-presidential republic with executive power exercised by the government, led by a prime minister, as well as a directly-elected president who holds certain powers related to foreign and defense policies. Legislative power is vested in the unicameral State Great *Khural* (parliament). The incumbent president, Khaltmaagin Battulga, represents the opposition Democratic Party (DP), and was elected for a four-year term in July 2017.¹ The current prime minister, Luvsannamsrai Oyun-Erdene, took office on 27 January 2021, following the resignation of Ukhnaa Khurelsukh.² Women are underrepresented in the parliament and in other decision-making positions in government; 13 (17 per cent) members of parliament are women, and no governors of the 21 provinces (*aimags*) are women.

The forthcoming presidential election follows the 2020 parliamentary and local elections in which the governing Mongolia People's Party (MPP) increased its parliamentary majority and attained a majority of local council and mayoral seats.³ The election will also be the first held since constitutional reforms in 2019, which, *inter alia*, expanded the powers of the prime minister and altered the term and scope of the presidential mandate (see also *Legal Framework*). Many ODIHR NAM interlocutors underlined this shift of powers as a reinforcement of the system of parliamentary democracy.

Following the constitutional changes to the presidential mandate, applications were submitted to the Constitutional Court requesting clarification on whether the incumbent and other previous presidents

¹ Mr. Battulga was elected with 50.61 per cent of the vote in the second round.

² The sudden resignation followed protests related to the government's handling of a COVID-19 case.

³ MPP received 62 seats; DP, 11 seats; "Our Coalition" (Civil-Will Green Party, Mongolian People's Revolutionary Party, and Mongolian Traditional United Party), 1 seat; and Right Person Electorate Coalition (Justice Party, Mongolian Social Democratic Party, and National Labour Party), 1 seat. An additional seat is held by an independent member.

are eligible to stand for the revised, one-term mandate.⁴ On 16 April 2021, the Court held that such persons who previously held the office, including the incumbent president, are ineligible to stand in the forthcoming election.⁵ On 19 April, President Battulga issued a decree directing the Supreme Court to dissolve the MPP, on the basis of “unconstitutional seizure of state power and militarization”.⁶ The MPP responded with a statement which argued that the president’s decree overstepped his powers and undermined democratic norms.⁷

The political environment was marked in recent years by publicized allegations of corruption which involved high-ranking government officials and which have impacted subsequent political and policy agendas.⁸ Amendments adopted in 2019 to certain laws on judiciary, on the president’s initiative, authorized the National Security Council to recommend to the president the dismissal of judges and the prosecutor-general and deputy prosecutor.⁹

Authorities and other electoral stakeholders acknowledged continued challenges posed by the COVID-19 pandemic. As was the case during the 2020 parliamentary and local elections, ongoing health and travel restrictions imposed by the government in order to contain disease transmission are expected to impact the preparations for and conduct of the election, including certain limitations on intercity movement and on public gatherings.¹⁰

ODIHR has previously observed three elections in Mongolia.¹¹ Most recently, ODIHR deployed a Limited Election Observation Mission to the 2017 presidential election. The final report issued in October 2017 contained 28 recommendations, including 9 priority recommendations, on improving the electoral process to bring it closer in line with OSCE commitments.¹²

⁴ Some ODIHR NAM interlocutors noted that changes to the presidential mandate were not originally intended to take effect until 2025, but that the transitional provision was not ultimately adopted.

⁵ The Court’s decision was adopted into law by the parliament on 22 April.

⁶ See the [presidential decree](#) and an [additional statement on 22 April](#) (in Mongolian).

⁷ See statements published on [19 April](#) and [23 April](#), respectively (in Mongolian).

⁸ In September 2017, the prime minister, Jargaltulgyn Erdenebat, was dismissed by the parliament and later sentenced by a court to six years’ imprisonment for misuse of office; in March 2021, a criminal court suspended his sentence and permitted him to resume his parliamentary mandate. In November 2018, an unsuccessful no-confidence vote was initiated against the successive prime minister, Mr. Khurelsukh, by members of his own ruling party, following corruption allegations related to the illegal use of state funds by government officials. The speaker of parliament, Miyegombyn Enkhbold, was expelled by the parliament in January 2019 after his implication in the corruption case.

⁹ The National Security Council comprises the president, prime minister, and parliamentary speaker; five of the ten members of the Judicial General Council, which may also issue such recommendations, are appointed by the president. In its [2020 Opinion on the Laws on Courts, on Judicial Administration and on the Legal Status of Judges](#), ODIHR recommended that “all provisions providing for the involvement of the executive in the administration of the judiciary be removed from the laws as they risk undermining the separation of powers and the independence of the judiciary”. See also the [May 2019 statement of the UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers](#).

¹⁰ In an effort to prevent and contain the virus, the government instituted restrictions on public gatherings in February 2020, and has limited movement between municipalities since March 2020.

¹¹ See previous [ODIHR election-related reports on Mongolia](#). An ODIHR Needs Assessment Mission in February 2020 recommended the deployment of an Election Observation Mission to the 2020 parliamentary elections; however, such an activity did not take place due to international border and travel restrictions related to the COVID-19 pandemic.

¹² In paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations”.

B. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

Presidential elections must be called by the parliament on or before 1 February in the election year, and the election date must be scheduled for a working day in the first half of June. The election day is designated as a public holiday. On 20 January 2021, the parliament set 9 June as the election date for the forthcoming presidential election.

The president is elected in a single nationwide constituency by direct suffrage. If no candidate obtains the majority of all votes cast, a second round is held within two weeks; the candidate which receives an absolute majority of votes in the second round is elected. If neither candidate wins in the second round, a new election is scheduled. In addition, a turnout threshold of 50 per cent of registered voters is required for results to be valid in the first round; if this threshold is not met, additional polling is conducted within one week, only in polling stations which did not meet the 50 per cent threshold, and only for voters that did not participate in the initial election day.

Presidential elections are primarily regulated by the 1992 Constitution (last amended in 2019), the 2020 Law on Presidential Elections (LPE), and the 2006 Law on the General Election Commission. The legal framework also includes the Political Parties Law, the Anti-Corruption Law, the laws governing the judicial system and the functioning of the national broadcaster, as well as supplementary regulations and decisions of the General Election Commission (GEC) and parliamentary resolutions pertaining to elections. Mongolia is party to major international instruments related to the holding of democratic elections.¹³

The electoral legal framework was substantially revised since the previous presidential election. Long-term discussions on constitutional reforms resulted in a series of amendments in November 2019 which, *inter alia*, reduced the tenure of the president to one six-year term in lieu of two four-year terms, adjusted eligibility requirements for presidential candidates,¹⁴ introduced a membership quota for political party registration,¹⁵ and prohibited amendments to electoral laws within one year of a scheduled election.¹⁶ In 2019, the parliament began the division of the 2015 Election Code into separate laws on presidential, parliamentary and local elections, with the LPE adopted in December 2020.¹⁷ Several ODIHR NAM interlocutors noted that dividing the previously codified electoral legislation was intended to accommodate distinctive rules and timetables for different types of elections. Most interlocutors indicated that such distinctions did not necessitate the division of the Code into separate laws, but that this approach did not raise major concerns.

Some changes in the legal framework partially address prior ODIHR recommendations, such as the removal of certain restrictions on the right to stand and additional measures to enhance the transparency of voter lists. However, a number of long-standing ODIHR recommendations remain unaddressed, including on voter and candidate eligibility, campaign rules, defamation provisions, and

¹³ Including the 1966 International Covenant on Civil and Political Rights (ICCPR), 1979 Convention for the Elimination of All Forms of Discrimination against Women (CEDAW), 1965 Convention on the Elimination of All Forms of Racial Discrimination (CERD), the 2003 Convention Against Corruption (CAC), and the 2006 Convention on the Rights of Persons with Disabilities (CRPD).

¹⁴ For example, the minimum age to stand as a presidential candidate was raised from 45 years to 50 years.

¹⁵ Beginning from 2028, political parties must demonstrate membership of at least one per cent of eligible voters.

¹⁶ Additional constitutional changes related to provisions on state sovereignty and legislative, executive and judicial mandates, including parliamentary budgetary powers. Discussions on these changes began in 2016 and were highly publicized in the months leading to their adoption.

¹⁷ ODIHR had previously recommended the consolidation of the separate electoral laws. See also the [2019 ODIHR Opinion on the Draft Laws on Presidential, Parliamentary and Local Elections](#).

the timely resolution of election-related complaints.¹⁸ Additional changes to the LPE require the marking of all voters with indelible ink and extend the control procedures during electronic vote-counting. Although long-term discussions related to constitutional and electoral reforms included opportunities for public consultation, several stakeholders informed the ODIHR NAM of the need for additional, inclusive reforms to address remaining shortcomings.

C. ELECTION ADMINISTRATION

Presidential elections are administered by a four-tiered structure led by the permanent GEC and comprising 22 Territorial Election Commissions (TECs – one for each of the 21 *aimags*, and one for the capital city Ulaanbaatar), 339 District Election Commissions (DECs) in the capital city districts and rural districts (*soums*), and some 2,000 Precinct Election Commissions (PECs). Most ODIHR NAM interlocutors highly assessed the professionalism and transparency of the election administration, particularly the GEC, but some described a lack of public trust in lower commissions and insufficient safeguards for their independence.

The GEC is a permanent structure responsible for the overall administration of the elections. The current GEC was appointed in 2019 for a six-year term and consists of nine members, of whom only one is a woman.¹⁹ The GEC provides detailed information on the electoral process on its website, including in adjustable formats for persons with visual impairments, and publishes regular updates related to its meetings and preparations.

Lower-level commissions are established for each election from among lists of public employees provided by the respective local assemblies.²⁰ The LPE does not contain detailed criteria for the selection of commission members; however, for appointment to a commission, the member must receive certification following an open registration process and mandatory training conducted by the GEC.²¹ The GEC informed the ODIHR NAM that it established additional criteria to supplement the legal requirements and to enhance the transparency of the selection process. There are no gender requirements for the composition of election commissions and no such data is aggregated. TECs comprise up to nine members and were appointed by the GEC on 29 March. The TECs in turn appointed DECs of five to seven members by 10 April, and DECs will appoint PECs of seven to nine members by 10 May. PEC members may serve simultaneously on DECs or TECs. The GEC indicated that it will establish reserve lists of trained persons in case some lower-level commission members are unable to fulfil their assignment, including in connection with COVID-19 infection or quarantine.

Eligible voters residing abroad may participate in the presidential election by casting a ballot in-person at certain diplomatic representations, a new possibility which was generally praised by ODIHR NAM interlocutors. A Central Election Commission was formed by the Ministry of Foreign Affairs on 29 January to organize out-of-country voting under the supervision of the GEC; this Central Commission is also responsible for establishing branch commissions at the respective

¹⁸ For example, ODIHR has previously recommended that removal of restrictions on suffrage on the basis of intellectual or psycho-social disability, that nomination of candidates be extended to non-parliamentary parties and independent candidates, and that timelines for election dispute resolution be shortened.

¹⁹ The chairperson and secretary are appointed by parliament from among the GEC members and serve as full-time commissioners; the other seven members serve part-time.

²⁰ TECs also include, among their members, representatives of the local police and General Authority for State Registration (GASR).

²¹ Due to limitations on in-person gatherings in the context of the COVID-19 pandemic, the GEC is organizing the trainings and certification testing online, as was done during the 2020 parliamentary elections. According to information published by the GEC, 420 public employees registered for the online training for TEC membership, and 198 successfully completed the certification test.

diplomatic representations. Branch commissions are responsible for registering voters in the respective country (voters may apply by mail, e-mail or facsimile) and to conduct the polling and counting process.

If unable to cast a ballot independently due to a physical disability, voters may request assistance from a person of their choice, excluding political proxies and PEC members. ODIHR NAM interlocutors described a lack of progress in enabling the autonomous participation of persons with various types of disability, with current procedures relying on assistance in polling stations or mobile voting. Despite government regulations relating to the maintenance of physical infrastructure, previous ODIHR reports noted deficiencies in the accessibility and arrangement of polling stations which limited possibilities for independent access. Positively, the GEC provides Braille ballot guides to support the participating of voters with visual impairments; no other assistive technologies are currently utilized in the voting process.

D. VOTING TECHNOLOGIES

In an established practice, all polling stations are equipped with electronic vote-counting equipment for scanning and counting ballots. The Information Technology Centre (ITC) under the GEC, together with its working group, are responsible for the implementation and operation of the vote-counting equipment; information technology officers, selected by the ITC from among public employees, are trained to oversee the operation of the devices in polling stations. The ITC invites external auditors to observe the updating of the source code and the testing of the machines prior to the election.

Voters mark the ballot in a private booth and then submit the ballot, in a privacy sleeve, into the vote-counting device, which scans the ballot stores it in the ballot box. The new LPE requires that results reported by the vote-counting equipment are corroborated by a manual vote count in all polling stations, an increase from 50 per cent of randomly selected polling stations in prior elections.²² Surveillance cameras are installed in polling stations to record the manual counting process. Accredited observers may receive copies of results produced from vote-counting machines. ODIHR NAM interlocutors universally supported the expansion of the manual control count to all polling stations. While most stakeholders expressed confidence in the use, transparency and integrity of the ballot scanning equipment, many noted a lack of public trust in the machines and some prevalent misinformation related to their function and use.

E. VOTER REGISTRATION

Citizens who have attained 18 years of age by election day have the right to vote. Despite prior ODIHR recommendations, the LPE retains restrictions on voting rights for persons serving a prison sentence for any crime or who were declared by a court to be legally incapacitated, including on the basis of intellectual or psychosocial disability.²³

Voter registration is passive. Voter lists are extracted from the biometric National Civil Registration and Information Database, which is managed and continuously updated by the General Authority for State Registration (GASR).²⁴ The Database contains biometric data, including fingerprint data, which

²² The results of the vote-counting equipment constitute official results.

²³ See also paragraph 39 of the [2017 Concluding Observations of the UN Human Rights Committee \(CCPR\)](#).

²⁴ Various state institutions submit data to the GASR on categories of ineligible citizens to be excluded from voter lists, including citizens who have been deemed legally incapacitated, are imprisoned, or have left the country for more than 60 days. These voters will be marked as “temporarily removed” in the voter lists.

prevents multiple entries and is subsequently used to verify voter identity on election day.²⁵ Various state agencies must submit data to the GASR by 1 May on certain categories of ineligible citizens; these individuals are marked as “temporarily removed” on voter lists.²⁶

Voters can verify their records online from 1 April and in-person at PECs from 25 days prior to the election, and may request changes with the GASR until 14 days prior to election day.²⁷ Voter lists are finalized and paper copies delivered to PECs three days prior to the election; electronic copies are delivered two days prior to the election. The new LPE introduced the possibility for voters to inspect the voter list records of all individuals registered at their address, in addition to their own record. The LPE also newly permits representatives of political parties, coalitions, candidates, and civil society to observe the preparation and transfer of voter lists.²⁸ ODIHR NAM interlocutors did not raise major concerns related to voter registration and the maintenance of voter lists, though some noted challenges in accurately registering nomadic groups and other citizens with temporary addresses. Some stakeholders indicated plans to inspect the final lists and noted that provisions on observers’ access to the lists are not clear and that access has been limited in practice.²⁹

The LPE instated a ban on civil internal migration beginning 60 days prior to the election, lasting until the announcement of election results.³⁰ In addition, since 10 March 2020, the government has limited migration between municipalities in an effort to contain disease transmission during the COVID-19 pandemic.

F. CANDIDATE REGISTRATION

The legal framework imposes several restrictions on candidate eligibility, some of which were previously criticized by ODIHR, including restrictions on the basis of intellectual or psychosocial disability. Prospective candidates must be born to Mongolian parents, reside in Mongolia for at least five years prior to the election, and must not have outstanding loans, debts or overdue income taxes (as determined by a court decision). Public employees intending to stand must resign from their posts in January of the election year, months prior to the period for candidate nomination. Constitutional amendments in 2019 raised the minimum age for presidential candidates from 45 to 50 years. The LPE introduced a prohibition on candidacy for any person indicted for corruption or official misconduct, which some interlocutors described as overly restrictive and in violation of the principle of due process.

Positively, in line with prior ODIHR recommendations, provisions restricting candidate eligibility due to a criminal record or lack of military service were repealed in the new law. Still, many ODIHR

²⁵ On election day, voters must present a government-issued identification card, which is corroborated by fingerprint scanning which display the associated personal data (including photo) on a screen for verification by the PEC member. In addition to the biometric identification, the LPE newly requires that all voters are marked with indelible ink to prevent multiple voting.

²⁶ Specifically, the Border Protection Agency, law enforcement authorities, and courts submit data to the GASR on persons who have left the country for more than 60 days, are imprisoned, or are legally incapacitated.

²⁷ Representatives of political parties or coalitions participating in the election may also request changes to lists.

²⁸ To do so, any such persons must first register with the State Intelligence Authority, which is also mandated to observe these activities.

²⁹ The LPE grants accredited observers the right to be “acquainted with” the voter list and any changes, but prohibits observers to copy or record the voter list.

³⁰ A longer prohibition on internal migration was also introduced for the 2020 parliamentary elections, in an effort to prevent contestants from strategically shifting voters to different electoral districts. ODIHR NAM interlocutors speculated that the inclusion of this ban in a presidential election, which has a single nationwide constituency, is intended to prevent inaccuracies in voter lists.

NAM interlocutors described the existing limitations on eligibility as potentially limiting voters' choice in the election.³¹

Only political parties with representation in the parliament may nominate presidential candidates, despite prior ODIHR recommendations that this possibility be extended to non-parliamentary parties and independent candidates. The candidate registration process begins 40 days before the polling day, at which time nominating parties have three days to produce and submit nominating documents to the GEC, whose decision on prospective candidates must be completed within another three days. Prospective candidates must submit documents to the GEC from various state institutions to verify eligibility and must submit income and asset declarations to the Anti-Corruption Agency, which publishes them without exercising any supervisory control.³² Prior to submitting this declaration, the prospective candidate must obtain written approval of its election platform from the State Audit Office (SAO), which is tasked with affirming the legality and economic feasibility of each platform (see also *Campaign* section). Rejected candidatures may be re-submitted at least 30 days prior to election day.

ODIHR has previously raised concerns about the short timeframe for candidate registration and many interlocutors noted that, in practice, the late registration deadline has led to pre-campaigning by the parties and their intended candidates outside of electoral regulations. In addition, several interlocutors noted that the limited time between registration and the start of the campaign, as well as with the election day, compromises opportunities for effective legal redress in case of rejected applications.

G. ELECTION CAMPAIGN

The new LPE reduced the official period for election campaigning, which begins 16 days prior to election day (24 May) and ends at midnight on 7 June.³³ The GEC informed the ODIHR NAM that the new LPE prohibits the conduct of additional campaigning between the first and second round, despite a prior ODIHR recommendation.³⁴

The LPE is highly prescriptive on how candidates may organize their campaigns, containing a list of eight types of permissible campaign activities and provisions on the permissible number of campaign staff, assets, and vehicles, and the number and format of printed materials. The law prohibits the distribution of money and goods to voters, campaign advertising at mass entertainment events, calls for an election boycott, and distribution of false information. The Criminal Code prohibits discrimination against several categories of protected groups, which according to ODIHR NAM interlocutors applies also to intolerant rhetoric or “hate speech”, though such acts are not explicitly regulated.³⁵

³¹ See also paragraph 39 of the [2017 CCPR Concluding Observations](#), which criticized the previous election law on the basis of restricting “the right to stand for elections — including disqualification of candidates for overdue debts or taxes, not having completed compulsory military service or having a criminal record, regardless of the crime committed, and the requirement that civil servants planning to stand for elections must resign from their posts by 31 January of the election year[...].”

³² Income and asset declarations may be submitted electronically. Public employees, who are required to submit income and asset declarations annually, are not required to re-submit if nominated for candidacy.

³³ While previous legislation established a fixed timeframe for election campaigning, the LPE permits candidates to begin campaigning upon receipt of a candidate ID card from the GEC, 16 days prior to election day.

³⁴ During the 2017 presidential election, in the absence of regulations, the GEC prohibited the conduct of campaign activities between the two rounds.

³⁵ Paragraph 11 of the [2019 Concluding Observations of the UN Committee on the Elimination of Racial Discrimination](#) states: “The Committee remains concerned at the lack of legislation in the State party, including the revised Criminal Code, that prohibits racist hate speech in conformity with article 4 of the Convention. [...] The Committee is also concerned at the rise of hate speech related to racial discrimination on social media and,

Campaigning in public institutions is prohibited, as is the publication of reports on performed work of members of parliament before 1 February of an election year, but the LPE does not contain any provisions which explicitly require a separation of official duties and campaign activities. Prior to the start of the campaign, the SAO publishes its conclusions on whether a candidate's platform is in line with the country's medium- and long-term development and policy plans.³⁶

The LPE contains regulations on the use of online media and social networks in the campaign and grants broad authority to the GEC and Communications Regulatory Commission (CRC) to monitor and restrict online campaigning. Designated websites and social network profiles for each candidate, party and coalition must be registered with the CRC within three days of the candidate's registration. The use of unregistered websites or social network profiles for campaigning is prohibited, and the comments function on registered campaign websites must be disabled. The CRC may disable a contestant's website without a court order if a violation is detected, including on the basis of disseminating false information that impugns another candidate, and to restrict access to social networks during the campaign based on a decision of the GEC. The GEC is responsible for establishing a methodology for monitoring online campaign content based on proposals of the CRC. On 1 February 2021, the CRC published draft regulations which aim to further detail how regulations on online content will be applied and enforced.

ODIHR NAM interlocutors anticipated that the campaign would largely take place in online media and social networks and expected a negative overall tone. Stakeholders noted that campaign topics would likely include policy issues outside of the scope of presidential powers, such as healthcare and other social welfare topics, in addition to strategies on anti-corruption and economic development. Some interlocutors, including among political party representatives, described a lack of outreach to certain categories of voters who remain marginalized in national politics, including ethnic and language minorities and persons with disabilities. Positively, the LPE requires contestants to include sign language or subtitles in their televised political advertising.

Political party representatives met by the ODIHR NAM anticipated that the campaign would be competitive and conducted freely, despite an overregulated campaign period and other practical adaptations due to the ongoing COVID-19 pandemic and related directives. However, most ODIHR NAM interlocutors raised significant concerns related to alleged widespread vote-buying practices and the lack of preventive or punitive measures from authorities. Positively, the GEC has taken some steps to raise public awareness on this issue by disseminating information in traditional media and social networks.

in particular, on social networks, which was observed in the context of the 2017 presidential elections, and at the lack of information regarding complaints made by victims of such racist hate speech and the prosecution of perpetrators[...].

³⁶ The SAO assesses platforms in accordance with the Law on Budget Sustainability, the Law on Development Policy and Planning and the policy document "Mongolia Sustainable Development Vision 2030". The practice was criticized by the UN CCPR in paragraph 39 of its [2017 Concluding Observations](#).

H. CAMPAIGN FINANCE

Political parties receive state subvention proportionate to the results of the previous parliamentary elections.³⁷ The election campaigns of presidential candidates may be financed through donations from individuals and legal entities (up to 3 million MNT and 15 million MNT, respectively) to the nominating political parties, as well as from the assets of the nominating party and candidate.³⁸ Foreign and cash donations are prohibited. Donors must demonstrate source of income and may not have outstanding debts or overdue taxes. Donations from foreign persons or entities are prohibited. In-kind contributions to candidates are permitted at a reported value aligning with the market price; the LPE does not specify whether the final campaign report of the nominating party includes such contributions. All party campaign transactions should be conducted through a designated bank account that is registered with the SAO.

On 1 March, in consultation with the GEC, the SAO established expenditure limits for this election, at approximately MNT 8.1 billion for political parties and coalitions (an increase from MNT 6.8 billion in 2017, but without additional expenditure limits for candidates). ODIHR NAM interlocutors noted that the high ceiling for expenditures, together with high costs for media and print advertising, are generally inhibitive to smaller parties with less access to capital.

The bank which provides a designated campaign account must submit records of account transactions to the SAO within 30 days of the election, and a nominating political party must file a final campaign finance report within 45 days of the election. The SAO must review and publish the final report within 60 days of its receipt, and must disclose individuals that donated more than MNT 1 million and legal entities that donated more than MNT 2 million.

The SAO is the primary entity responsible for the oversight of campaign finance, but holds limited authority to detect violations or enforce regulations.³⁹ In addition to establishing campaign income and expenditure limits and reviewing party and bank reports, the SAO creates templates for campaign finance reporting and monitors the allocation of state funds toward electoral expenses. The SAO informed the ODIHR NAM that it transfers information on potential violations to other relevant institutions, such as the Tax Inspectorate (on donor eligibility), the Ministry of Finance (on reporting), and the Central Bank (on account maintenance), and that most violations are to be redressed through the courts. The SAO does not have a regional presence for monitoring campaign financing and does not proactively investigate potential unreported expenditures. Most sanctions on campaign finance violations are administrative fines regulated by the Law on Offenses. Several ODIHR NAM interlocutors described a need for more proportionate and dissuasive sanctions on campaign finance violations. Notably, the law prescribes that parties that fail to submit financial reports within the established deadlines are not to be registered for the next election.

Most ODIHR NAM interlocutors, including representatives of political parties, indicated that campaign finance oversight could be further strengthened, particularly during the campaign period.

³⁷ ODIHR has previously concluded that the system of party subvention favours larger parties. Annual funding from the state budget, in the amount of 0.05 percent of the minimum wage for each valid vote, is envisaged for any party that has received more than one per cent of valid votes cast in the parliamentary elections. The remaining funds are dispersed proportionally to other parties in the parliament, but as the total fund is fixed by the law, there are no guarantees that all parties receive this funding. The GEC calculates the annual support to parties within three months of the elections, which is then paid from January the following year in two equal instalments for a duration of four years.

³⁸ One Euro is equivalent to approximately 3,395 Mongolian *Tughrig* (MNT).

³⁹ The new LPE indicates the SAO as the primary oversight entity for campaign finance in presidential elections, a responsibility that it previously shared with the GEC and the State Tax Authority.

Some also indicated that the current rules for campaign financing, including the system of state subvention and the high expenditure limits, favour large and well-established political parties and incumbents.

I. MEDIA

The media landscape is diverse but was described by many ODIHR NAM interlocutors as polarized. Television and online media are predominant sources of political information, as the number and penetration of print media continue to decline.⁴⁰ The public Mongolian National Broadcaster (*MNB*) includes 2 television and 4 radio stations; private broadcasters include 18 television and 33 radio stations broadcasting in Ulaanbaatar and 56 television and 27 radio stations available locally throughout the country.⁴¹

The Constitution guarantees the freedom of expression and the right to seek and obtain information.⁴² The 1998 Law on Media Freedom prohibits state censorship and the 2019 Law on Broadcasting contains explicit requirements on the disclosure of media ownership and mandates the CRC to prevent the concentration of ownership. A provision prohibiting the “[d]issemination of obviously false information that insults a person's honour, reputation, or business reputation of a legal entity” was introduced to the Code in January 2020, supplementing existing criminal provisions on disseminating false information during elections.⁴³ The Law on Media Freedom holds media outlets liable for the content of political advertising and statements made directly by political actors. Several ODIHR NAM interlocutors raised concerns that negative political campaigns create risks for journalists and media outlets, which may face criminal liability when reporting on contestant rhetoric or airing political advertisements, despite the management of such advertisements by the GEC. Stakeholders also noted that overregulation could impact the quality and scope of information available to voters.

The new LPE retained previous obligations on balanced reporting and on equality of opportunity for candidates; public and private broadcast media are also obliged to disseminate educational materials for voters and political parties, and factual information on election activities. Contestants are entitled to free promotional airtime in the public broadcaster, which also plans to organize a debate between contestants.⁴⁴ Positively, the public broadcaster produces content, including news programmes, in minority languages and in sign language or with subtitles.

The LPE imposes limitations on advertisement and on editorial coverage in broadcast media. Broadcasters must register in advance with the CRC in order to air political advertisements during the campaign period. Political advertisements produced prior to the campaign may not be broadcast during the campaign period. ODIHR NAM interlocutors described an established practice in which contestants purchase paid “news” time to be aired between traditional news segments, and which is to be treated as political advertising. Private media outlets may allocate a maximum of 60 minutes of political advertising per day, and no more than five minutes per day to informational coverage of each contestant, which several interlocutors criticized as overly restrictive to editorial freedom.⁴⁵

⁴⁰ According to the [2020 “Mongolia Media – Today” report of the Mongolian Press Institute](#).

⁴¹ According to [licensee information published on the CRC website](#) (in Mongolian, accessed 11 April 2021).

⁴² In addition to the Constitution and the LPE, the conduct of media in the presidential election is regulated by the 1995 Law on Telecommunications, 1998 Law on Media Freedom, the 2005 Law on Public Radio and Television, and 2019 Law on Broadcasting.

⁴³ Previously, in 2017, defamation provisions were repealed from the Criminal Code in 2017 and transferred to the Law on Offenses.

⁴⁴ By law, the debate can only be held if all contestants agree to participate.

⁴⁵ The law further stipulates that no contestant may receive more than 15 minutes of paid advertising time, irrespective of the number of registered candidates.

The CRC is the main oversight entity for broadcast and online media and comprises a chairperson and six members appointed by the prime minister. The CRC conducts monitoring of all national and regional broadcasters during the campaign period for compliance with content and time requirements and holds substantial oversight powers, including the authority to suspend broadcasting in case of violations, without a court order. However, ODIHR NAM interlocutors noted that the CRC general issues warnings in case of violations and that most violations are subject to monetary fines. In February 2021, the CRC published two draft resolutions to supplement existing regulations on TV and radio and on online media and social networks, in conformity with the new LPE. The Authority for Fair Competition and Consumer Protection (AFCCP) also has narrow oversight authority over media coverage of election campaigns, on the principles of impartiality and the equal treatment of contestants, the prohibition on publishing opinion polls prior to elections, the prohibition on contracting with political actors for favourable coverage.

J. COMPLAINTS AND APPEALS

Procedures for election-related complaints and appeals are regulated by a number of laws on administrative and criminal violations. The LPE contains limited provisions on complaints related to decisions of election commissions. Several ODIHR NAM interlocutors described a lack of public trust in the independence of the judiciary and a politicized appointment process.⁴⁶

Complaints on decisions of election commissions are to be handled by higher commissions in a hierarchical manner. According to the LPE, complaints on decisions of the GEC may be submitted within 7 days to the Administrative Court of Appeal, which must decide on the complaint within 30 days with a maximum extension of 10 days.⁴⁷ The Court's decisions may be further appealed within 5 days to the Supreme Court which must render a decision within 21 days with no possible extension of adjudication deadlines. Election-related complaints to these courts may be submitted electronically and all relevant decisions are published online. A resolution of the Judicial General Council in November 2020 instructed courts to take temporary measures to adapt proceedings in line with government health directives related to the COVID-19 pandemic, resulting in the conduct of most court hearings online, which ODIHR NAM interlocutors described as beneficial.⁴⁸

Many ODIHR NAM interlocutors raised concerns related to timelines for election dispute resolution, especially on time-sensitive matters such as candidate registration, which cannot be resolved prior to election day. The Anti-Corruption Agency has 30 days to investigate complaints related to the misuse of state resources, which can be extended for an additional 30 days. Other election-related cases, such as those regulated in part by the Criminal Code and Law on Offenses,⁴⁹ must be resolved within the calendar year of the election, which does not guarantee timely or effective remedy, despite a prior ODIHR recommendation.⁵⁰

⁴⁶ See the [2020 ODIHR Opinion on the Laws on Courts, on Judicial Administration and on the Legal Status of Judges](#), which concluded that modalities for judicial appointments “fail to provide for a fair, impartial, open, transparent and merits-based selection process guaranteeing appointment of the most qualified and experienced candidates”. See also the May 2019 statement of the UN Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the independence of judges and lawyers.

⁴⁷ The Administrative Court informed the ODIHR NAM that, in practice, they try to render a decision within five to six days.

⁴⁸ [Resolution No. 116 of 24 November 2020](#) (in Mongolian).

⁴⁹ Criminal cases are handled by the Criminal Court and appealed to the Administrative Court of Appeal.

⁵⁰ See the [2019 ODIHR Opinion on the Draft Laws on Presidential, Parliamentary and Local Elections](#).

The decision of the GEC on final election results may be appealed to the Constitutional Court; interlocutors informed the ODIHR NAM that there is no precedent for such a case, and that the law does not explicate who has standing to file such a challenge and whether the challenge may only be filed directly on the decision of the GEC or on the resolution of parliament which certifies the results and recognizes the mandate of the elected president.

K. CITIZEN AND INTERNATIONAL OBSERVERS

The LPE provides for citizen and international organizations, as well as for authorized representatives of electoral contestants, to deploy observers to various stages of the electoral process. The number of citizen observers in polling stations is restricted to two during voting and one during the count (in addition to a media representative), regardless of the number of registered observer organizations. Public employees are prohibited from observing elections. Political parties and civil society organizations met by the ODIHR NAM indicated their intention to observe certain elements of the electoral process, particularly voter registration and election day procedures.

IV. CONCLUSIONS AND RECOMMENATIONS

In considering an observation activity, the ODIHR NAM has taken into account the various findings outlined in this report, including recent substantive changes to the electoral legal framework, the status of implementation of previous ODIHR recommendations, and the views expressed by stakeholders. The ODIHR NAM noted overall confidence in the preparations conducted by the election administration, particularly at the central level. However, stakeholders also highlighted several aspects of the revised legal framework and the conduct of the election that would merit particular attention, including the regulation of the campaign and its financing and the obligations and oversight of traditional and online media. Interlocutors raised significant concerns related to vote-buying and other coercive tactics during the campaign and on election day, as well as shortcomings related to procedures and timelines for election-dispute resolution. Most interlocutors underscored the added value of a potential ODIHR activity to observe the pre-election campaign environment and election day proceedings.

Based on the findings of this report, the ODIHR NAM recommends the deployment of an Election Observation Mission (EOM), subject to health and travel considerations in the context of the COVID-19 pandemic, to assess the forthcoming presidential election. In addition to a core team of experts, ODIHR would request the secondment of 26 long-term observers from OSCE participating States to follow the electoral process countrywide, and 300 short-term observers to follow election-day proceedings. In line with ODIHR's standard methodology, the EOM would include a media monitoring element.

ANNEX: LIST OF MEETINGS

Ministry of Foreign Affairs

Mr. Chinuukhei Bat-Erdene, Deputy Director, Department of Multilateral Co-operation
Mr. Bilguun Balkhjav, Department of Multilateral Co-operation

General Election Commission

Mr. Delgernaran, Chairperson
Mr. Bayanduuren, Secretary
Mr. Bat-Erdene, Head of Legal Affairs Division
Ms. Oyumaa, Head of Voter Education and Training Center

General Authority for State Registration

Ms. Narmandakh, Head of Civil State Registration Department
Ms. Narantsetseg, Senior specialist, Civil State Registration Department
Ms. Jargalan, Specialist, Partnership and Training Division

State Audit Office

Ms. Bundkhorol, Director of Development Policy Planning Department, Principle auditor
Mr. Enkhjavkhlan, Director of First Audit Department, Principle auditor
Ms. Naranchimeg, Director of Second Audit Department, Principle auditor
Mr. Enkhbaatar, Head of Monitoring, Evaluation and Internal Audit Department, Principle auditor

Communications Regulatory Commission

Mr. Togtokhsuren, Head of Regulatory Implementation Division, Department of Broadcasting Regulatory
Mr. Batbold, Head of Internet-Based Service and Technology Division, Department of Regulatory Policy Implementation
Ms. Munkhnaran, Specialist, Department of Broadcasting Regulatory, State Communications Inspector
Mr. Battulga, Specialist, Department of Regulatory Policy Implementation

Authority for Fair Competition and Consumer Protection

Ms. Battsetseg, Head of Competition Regulation and Market Research Department

Anti-Corruption Agency

Mr. Baasannyam, Head of the Administration Department, Commissioner in Charge
Ms. Dulamsuren, Head of the Prevention and Public Awareness Department, Commissioner in Charge
Mr. Shinebayar, Head of the Inspection and Analysis Division, Senior Commissioner

Supreme Court

Ms. G. Banzragch, Justice

Administrative Court of Appeal

Mr. Zorigbaatar Enkhbat, Judge

Political Parties

Mr. Ts. Sukhbaatar, Adviser to Chairperson, Democratic Party
Ms. Ch. Khaliun, Foreign Affairs Officer, Democratic Party

Mr. Bayarbaatar, Chairperson of the General Oversight Committee, Mongolian People's Party
Mr. Tsogtbaatar, MP, Mongolian People's Party
Ms. Munkhsoyol Baatarjav, National Labour Party

Media

Ms. Ariunbileg.O, General Producer, *Gogo.mn*
Mr. Bayarsaikhan.Ch, Head of Local Media Association
Ms. Nasanjargal.S, Head of News Department, *MN25*
Ms. Gunjidmaa.G, Executive Director, Media Council of Mongolia
Ms. Canghimeg, Ganchimeg.N, Project Coordinator
Ms. Anudari, Specialist, Foreign Relations Division, Mongolian National Broadcaster
Ms. Otgontuya Purevjav, Director of *Mongolian News* Channel, Mongolian National Broadcaster
Ms. Narantuya.D, Vice Director of News Agency

Civil Society

Ms. Battuul, International IDEA Mongolia
Mongolian Information Development Association (MIDAS)
Ms. Enkhsetseg Davga, Manager of Governance Programme, Open Society Forum
Mr. Sumati, Sant Maral Foundation
Mr. Tur-Od, Transparency International Mongolia

International Community

Mr. Marco Ferri, Minister Counselor, Deputy Head of Mission, Delegation of the European Union
Ms. Edina Bartalova, Political Attaché, Delegation of the European Union
Ms. Barkhas Losolsuren, Governance Programme Analyst, United Nations Development Programme