

INTERIM REPORT
20 May – 14 June 2016

17 June 2016

I. EXECUTIVE SUMMARY

- On 21 January, the parliament (*State Ikh Khural*) scheduled general elections for 29 June. These elections will be conducted under a majoritarian system, stemming from both the Constitutional Court ruling that invalidated the proportional part of the electoral system some two months before election day and the parliament's swift reaction to amend the electoral system.
- The Constitution provides for the fundamental rights and freedoms that underpin democratic elections. However, a number of OSCE/ODIHR EOM interlocutors note that the Law on Elections (LoE) adopted on 25 December 2015 and amended afterwards contains a number of shortcomings, gaps, conflicting provisions and ambiguities.
- In May, the parliament established 76 single-mandate constituencies and approved their boundaries. These constituencies are not always contiguous with administrative districts and there are profound population discrepancies among them.
- The four-tiered election administration, headed by the General Election Commission (GEC), has so far met key legal deadlines. The election administration bodies lack transparency and a formalized approach in their decision-making, and often do not publicize information of public interest in a timely manner.
- A total of 1,912,901 voters are registered for the 2016 elections. Some 150,000 Mongolians living abroad, as well as military, police and election officers, deployed outside their precinct of residence, will not be able to cast their votes.
- Parliamentary seats will be contested by a total of 498 candidates, including 69 independents. From 15 political entities whose candidates are registered, only the Democratic Party (DP) and the Mongolian People's Party (MPP) will contest all 76 single-mandate constituencies. While 26 per cent of registered candidates are women, there are 27 constituencies with no female candidates.
- The LoE establishes a detailed legal framework for the 17-day campaign period, starting from 11 June, including the substance of the campaign platforms. There are no reporting requirements on campaign finance until after the elections.
- The media sector is vivid, yet marked by political alignment. The media's ownership structure is not transparent and programmes paid for by political parties overshadowed editorial content prior to the campaign. The public broadcaster will allot up to seven hours of free airtime to candidates per day during the campaign. On 26 May, the OSCE/ODIHR EOM commenced its media monitoring.
- The LoE allows challenges to the decisions and actions of the lower election commissions to higher commissions, with GEC decisions appealable up to the Supreme Court. The complaints process at the GEC is not formalized. The number and nature of complaints is not made public.

- The LoE provides for citizen and international election observation. GEC has accredited two citizen observer groups who will predominantly focus on election day procedures. Two other organisations that applied for registration have not been accredited.

II. INTRODUCTION

On 21 January, the parliament (*State Ikh Khural*) scheduled general elections for 29 June. Following an invitation from the Ministry of Foreign Affairs of Mongolia and based on the recommendations of a Needs Assessment Mission, conducted from 5 to 8 April 2016, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 20 May.¹ The OSCE/ODIHR EOM, headed by Ambassador Audrey Glover, consists of a 15-member Core Team based in Ulaanbaatar and 14 long-term observers (LTOs) deployed throughout the country on 27 May. Mission members are drawn from 21 OSCE participating States. Participating States have been requested to second 300 short-term observers to observe election day procedures. The parliamentary elections have been scheduled on the same day as elections for the Citizens Representative *Khurals* of the capital city and *aimags* (provinces). The OSCE/ODIHR EOM will comment on those only to the extent that they impact on the conduct of the parliamentary elections.

III. POLITICAL BACKGROUND

The 2016 parliamentary elections are taking place against the backdrop of economic stagnation and public disillusionment with politics. Since the early nineties the political power has oscillated between the Democratic Party (DP) and the Mongolian People's Party (MPP). Since 2012, the DP maintains political preponderance, including a control of both the legislature and the executive. It also holds most gubernatorial seats in *aimags*.² Five parties are represented in the parliament. Among them, the DP, the MPP and the Mongolian People's Revolutionary Party (MPRP) have extensive party structures down to the municipality level.

Personalities, rather than ideologies, play important roles in the political process, and the adoption of the majoritarian system appears to facilitate the fragmentation of smaller parties. Following the failure of the MPP and the MPRP to form a coalition, several prominent MPRP politicians and local MPRP organizations defected to the MPP. The DP also picked up a few defectors from the Civil Will-Green Party (CWGP) and other small parties.

The heads of the Constitutional Court and the Independent Authority Against Corruption were relieved of their duties, in February and April 2016, respectively. New heads have not yet been appointed, raising concerns that these two institutions, which play an important role in the electoral process have been left without effective leadership in the run-up to the elections.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Mongolia is party to key international human rights conventions. The 1992 Constitution establishes direct applicability of those instruments in domestic law and requires their fulfilment in good faith. The constitution itself guarantees the fundamental rights and freedoms that underpin democratic elections, as well as gender equality and the principle of non-discrimination.

The electoral legal framework primarily includes the Constitution, the 2015 Law on Elections (LoE), the 2006 Law on the Central Election Body (LCEB), the 2011 Law on the Automated Election System

¹ [See all previous OSCE/ODIHR reports on Mongolia](#)

² Governors in 16 out of 21 *aimags* (provinces), as well as the mayor of Ulaanbaatar, are DP affiliates.

(LAES) and GEC regulations.³ However, the GEC does not have a general power to adopt any regulations it deems necessary; the scope of regulations is limited by the LCEB and LoE.

Following an inclusive consultation process, a new election law was adopted on 25 December 2015, consolidating various election laws.⁴ It envisaged a mixed election system for the parliamentary elections, combining proportional and majoritarian components.⁵ A number of OSCE/ODIHR EOM interlocutors note that the LoE contains a number of shortcomings, gaps, conflicting provisions and ambiguities. Some previous OSCE/ODIHR recommendations concerning the electoral legal framework were addressed, including facilitation of participation of voters with disabilities, but most remain unaddressed.

On 22 April 2016, the Constitutional Court, in a swift decision on two petitions, invalidated the proportional part of the electoral system for violation of the constitutional provision for “direct” elections. Despite parliament’s constitutional right to request the court to review its decision, it accepted the ruling and, though there is no legal deadline to implement it, swiftly amended the LoE on 5 May, establishing a fully majoritarian system.

Furthermore, parliament changed the multi-member district system to a single-member one, increasing the number of majoritarian constituencies from 26 to 76, and reduced the deadline for delineation of election districts from 150 days to 45 days prior to the elections. Consequently, the members of parliament are to be elected under a first-past-the-post system in 76 single-mandate constituencies. Additionally, the gender quota, which had been set in the new election law at 30 per cent of nominated candidates, was reduced to 20 per cent. The parliament also repealed the out of country voting for parliamentary elections, disenfranchising some 150,000 Mongolians living abroad. The adoption of the election law only six months before the elections and subsequent fundamental amendments less than two months before raises serious concerns in view of international good practice.⁶

V. BOUNDARY DELIMITATION

Parliament is mandated to demarcate constituencies upon a GEC proposal and has to consider the size of the population and the division of administrative units. In effect neither of these two criteria were fully adhered to.

On 11 May, the GEC submitted to the parliament recommendations on how the boundaries should be delineated, containing notable disparities in relation to the voters registered per electoral constituency. On 12 May, the parliament re-designed electoral constituencies and approved the boundaries of the 76 constituencies in such a way that 50 constituencies deviated more than 15 per cent from the national average of 25,169 voters per constituency.⁷ In addition, there are 10 *sums* (counties) where voters are divided between two or three constituencies and several non-contiguous constituencies.⁸

³ Other relevant laws include, the Law on Political Parties, Law on Assembly, Criminal Code, Law on Anti-Corruption, Law on State Audit, Law on Gender Equality, and various laws regulating the judiciary and media.

⁴ Four laws regulating the presidential, parliamentary, capital city, *aimags*, *sums* (counties) and district elections were consolidated in the new law.

⁵ Forty-eight members were to be elected in the majoritarian contest in 26 multi-member constituencies and 28 seats were to be elected by proportional system in a single nationwide constituency with a five per cent threshold.

⁶ Section II.2.b of the [2002 Venice Commission Code of Good Practice in Electoral Matters](#) (Code of Good Practice) recommends that fundamental elements of electoral law should not be amended within the last 12 months before an election.

⁷ Paragraph 2.2 (iv) of the Code of Good Practice recommends that the permissible departure from the norm should not be more than 10 per cent and should certainly not exceed 15 per cent.

⁸ The smallest constituency in Khovd comprises 11,304 voters; the biggest in Ulaanbaatar, constituency number 63 in Chingeltei, has 41,836 voters. Furthermore, constituency number 33 in Uvs is divided into three non-contiguous parts. Baganuur, an area on the outskirts of Ulaanbaatar, was broken up in four parts with each part attached to a different constituency of Sukhbaatar district, which is non-contiguous with Baganuur.

VI. ELECTION ADMINISTRATION

The parliamentary elections are administered by the General Election Commission (GEC), 22 Territorial Election Commissions (TECs), 339 *Sums* and District Election Commissions (DECs) and 1,998 Precinct Election Commissions (PECs). Nine GEC members, among them one woman, were appointed by parliament for six-year terms in 2012. The commissioners must be civil servants. The law is silent on any other selection criteria and protects GEC members from arbitrary dismissal.

On 18 April, the GEC appointed 196 TEC members, 43 per cent of them women, drawn from lists of civil servants prepared by local administrations. Similar procedures were to be applied by TECs when selecting more than 2,000 DEC members and some 14,000 PEC members. The recruitment was completed by 30 May. There was no unified practice for the selection of commission members. Stakeholders' trust in local election management bodies (EMB) varies significantly. The OSCE/ODIHR EOM received reports on perceived political bias in the composition of TECs and DECs in eight *aimags* and in the capital. However, the appointment of EMB officials was rarely challenged.

The LoE requires EMBs at all levels to make their decisions transparently, openly and by majority vote. However, most meetings are conducted on an *ad hoc* basis without public notice and there is no consistent system of publication of notifications of meetings. The GEC has held eight sessions since the beginning of May. Not all resolutions are posted on the GEC website, nor are meeting agendas or minutes. The OSCE/ODIHR EOM observers note that TECs and DECs by and large mirror the GEC approach regarding transparency.

The late introduction of a new electoral system has markedly compressed the preparation timeframe. Nonetheless, the GEC has so far met key legal deadlines. Cascade trainings for election workers are underway as is programming of the electronic vote count machines for the upcoming elections. However, OSCE/ODIHR observers heard stakeholders' concerns regarding the accuracy of the counting process in view of faulty counting of invalid ballots in the 2013 elections. The GEC has reportedly re-programmed the electronic vote count machines to address the issue.

Following the MPP initiative, in December 2015 a provision for the manual recount in at least 50 per cent of polling stations was introduced in the LoE to increase transparency and confidence in the electronic vote counting equipment.⁹ Regulations for the required random manual re-count at 50 per cent of PECs, as well as for the way these will be selected, have yet to be developed by the GEC. This raised concerns among the lower-level EMBs who also noted that the lack of proper communication from the GEC may lead to an inconsistent application of the LoE.

The GEC has designed a civic and voter education campaign that is available online. It is not yet visible in traditional media and does not specifically address key elements of the new electoral system. The Voter Education Center, a non-governmental organization, in cooperation with the GEC, has developed a *Facebook* page and a hotline. In addition, some civic education is conducted by other organisations. A civil society organization has launched a voter education campaign on a private broadcaster and respective state agencies have explained the voter registration and campaign finance to voters.

⁹ Initially the MPP proposed a 100 per cent manual recount, stating their lack of trust in the electronic voting equipment.

VII. VOTER REGISTRATION

All citizens that have attained the age of 18 and with full legal capacity have the right to vote, except persons serving a prison sentence irrespective of the gravity of the crime committed. The voter registration system is passive. The voter lists (VL) are extracted from the National Civil Registration and Information Database, based on personal and biometric data. The VL was displayed for public scrutiny online from 1 March and should be available at respective polling locations from 9 June. OSCE/ODIHR observers report that with a few exceptions the PECs have received the VL. In small communities, PEC members on their own initiative are informing voters about mistakes in the VL and are encouraging them to formally request changes. Any alterations in the VL, including voters' requests for transfer to other polling locations, can be made until 15 June. However, a voter cannot change polling stations within the same *aimag* or within Ulaanbaatar. A total of 1,912,901 voters are registered for 2016 elections. Groups such as election workers and police officers, not deployed at the polling station where they are registered to vote, may not be able to vote due to both legal restrictions and practical constraints.

VIII. CANDIDATE REGISTRATION

A citizen who is at least 25 years old and is not declared legally incapacitated is eligible to be a candidate. The LoE sets additional restrictive conditions for candidacy, disqualifying a person for having a criminal record regardless of the crime committed, for outstanding debts or taxes, as well as those who have not completed compulsory military service. Public servants who wish to stand as candidates must resign by 31 January of the election year. Only parties that are registered with the Supreme Court at least 180 days before an election can nominate a candidate. Independent candidates must collect at least 801 supporting signatures.

Parliamentary seats will be contested by a total of 498 candidates, including 69 independents.¹⁰ Out of 12 political parties and three coalitions whose candidates are registered, only the DP and the MPP nominated a full slate. In a number of constituencies the competition will be fierce among 10 and more contestants; there are also 2 constituencies with only 2 candidates. All political entities complied with the 20 per cent gender quota with the DP and MPP nominating the lowest percentage of women.¹¹ Overall, 26 per cent of party candidates and 19 per cent of independents are women. In more than one-third of constituencies there are no women candidates.

Two political parties and 13 candidates, including 5 independents, were rejected by the GEC on various grounds. The CWGP, denied for irregularities in its registration documents, challenged the GEC's decision up to the Supreme Court, which ruled that the GEC had misapplied the registration rules and ordered it to register the party. The MPRP's leader, rejected for his criminal record, challenged the GEC's decision and the police reference in court; as of 13 June the case is still pending.¹²

IX. CAMPAIGN ENVIRONMENT AND CAMPAIGN FINANCE

The LoE establishes a detailed legal framework for the campaign, including the substance of the campaign platforms. The State Audit Office (SAO) must pre-approve campaign platforms for

¹⁰ As of 13 June, six cases against candidate registration are pending in the court.

¹¹ Both parties nominated 21 per cent of female candidates. Smaller parties nominated significantly higher percentage. The Civil Society Party, for example, nominated 12 women, representing 44 per cent of its total.

¹² The police reference explained that though the individual is amnestied, his criminal records had not been eligible to be expunged under the applicable amnesty laws. Under the current Criminal Code, a convicted person has a criminal record lasting from one to ten years after the completion of sentence.

compliance with economic and development laws and policies.¹³ Moreover, the LoE includes exhaustive provisions on who can campaign and how and when, prohibiting any activity not expressly authorized in the law. At the same time, incumbents can publicize their achievements in office without any limitations, including prior to the campaign period. The campaign lasts 17 days, starting from 11 June. The campaign silence will commence 24 hours before the polling day.

The overall pre-campaign environment was calm, with the notable exception of the MPRP's three-day hunger strike, triggered by the anticipation of the GEC's decision to refuse registration to several leaders of the party.¹⁴ There were isolated instances of possible early campaigning. The OSCE/ODIHR observers noted would-be parliamentary candidates attending public events in an official capacity, thus potentially blurring the lines between the campaign and activities of the local administration.¹⁵ In Ulaanbaatar and Umnugovi *aimag* OSCE/ODIHR EOM noted distribution of booklets to voters on the achievements of incumbents. Moreover, in the run-up to the elections, the government raised pensions and announced that it will buy back 30 per cent of shares in a coal-mining venture, which had been previously distributed to the public free of charge.¹⁶ On 11 June, key political parties held official campaign opening ceremonies in the capital and in the *aimags*.

The law does not provide for any reporting on campaign finance until after the elections. Parties represented in the parliament receive annual state financing that is not considered as campaign funding.¹⁷ The campaign is to be financed from donations, limited to MNT 3 million for an individual and to MNT 15 million for a legal entity.¹⁸ All transactions should go through a designated bank account. There are different expenditure limits per candidate per constituency varying from MNT 85 million to MNT 225 million set by the SAO. Each political entity has an additional spending limit of MNT 4.4 billion for a nationwide campaign.¹⁹ This increased ceiling was set on 18 May, after the establishment of the new election system, which contravened the deadline for setting the limit not later than 120 days prior to the election.

X. MEDIA

The media sector is vivid, yet marked by political alignment. The ownership structure is not transparent. There are ties between media and political actors. More than 400 media outlets operate in Mongolia, despite a limited advertising market. Television is still the primary source of information; print media is declining and Internet usage is growing, yet constrained by the urban-rural digital divide. Since 2006, the Mongolian National Public Radio and Television (*MNB*) has been transformed into a public service broadcaster.

The constitution guarantees freedom of expression and the Law on Freedom of Media prohibits censorship as well as passing any laws restricting media's freedom. Defamation is a criminal offence. The newly adopted Criminal Code, effective from 1 September, repeals criminal responsibility for defamation, but libel and dissemination of false information during elections will remain a criminal

¹³ The SAO informed the OSCE/ODIHR EOM that all platforms submitted by the parties, coalitions and independents failed to comply with the legal requirements and modifications were requested. Criteria for the platform audits and the results of the evaluation are not made public.

¹⁴ On 28 May the strikers camped out next to the GEC, collecting signatures in their support.

¹⁵ An event was observed in Khentii *aimag*, at the opening ceremony for a road project on June 5, where the attendees were told to support the local governor, now a DP candidate.

¹⁶ A complaint was lodged to the GEC by an Mongolian Traditional United Party candidate calling for deregistration of the Prime Minister and Speaker of Parliament for the latter initiative, on grounds it constituted vote buying under the LoE. On 13 June, the GEC refused to consider the case for lack of jurisdiction.

¹⁷ Under the LPP, following the elections, parliamentary parties receive a lump sum equal to MNT 1,000 (approx. EUR 0.44) per valid vote received and each four months the parties receive a lump sum equal to MNT 10 million (approx. EUR 4,400) per MP.

¹⁸ Approx. EUR 1,300 and EUR 6,600, respectively.

¹⁹ Some EUR 1.9 million.

offense, punishable by up to one year imprisonment. In addition, significant fines for defamation are in place.

The legal framework grants all candidates a right to access media, but limits the news programmes to five minutes per political party per day on each broadcaster. The LoE provides for free airtime and paid advertisements, prohibits hidden advertising as well as the publication of opinion polls seven days prior to the elections. Debates must include at least four representatives of different political entities or independent candidates. On 26 April, the GEC and the Communication Regulatory Commission (CRC) jointly approved a regulation on election-related broadcast coverage. The public broadcaster is required to offer free airtime to candidates on an equal basis. Two days after the legal deadline, on 8 June, the GEC approved the free airtime schedule. *MNB* will allocate 15 minutes to each of the 498 candidates, which adds up to seven hours per day throughout the campaign period. Paid political advertisement on private broadcasters cannot exceed 60 minutes per day. According to the GEC, a total of 43 television channels and 16 radio stations will broadcast paid ads.

The LoE tasks the CRC and the Authority for Fair Competition and Consumer Protection (AFCCP) to monitor the media's compliance with legal provisions. The AFCCP is charged with handling media-related complaints. Additionally, the GEC must establish a media council to oversee the media's conduct. Jurisdictions of these bodies appear to be overlapping. So far, the AFCCP reviewed an MPP candidate's complaint against 11 websites allegedly violating the LoE and acknowledged defamation and false information. On 13 June, it recommended to the CRC to block access to these websites for six months.²⁰ The CRC also has legal powers to suspend broadcasting licenses.

On 26 May, the OSCE/ODIHR EOM commenced its media monitoring of a cross-section of media outlets with quantitative and qualitative analysis of their election-related coverage.²¹ The OSCE/ODIHR EOM also analyses election-related coverage in several online media outlets.²² Ahead of the campaign period, media mainly focused on DP and MPP, as well as MPRP, while little coverage was given to others. Also, TV spots promoting achievements of the government have been extensively aired by most TV channels. Entire programmes paid for by political parties, over which the media do not exercise editorial control, were frequently aired, overshadowing editorial content and independent reporting.

XI. COMPLAINTS AND APPEALS

Following previous OSCE/ODIHR recommendations, the LoE clarified to some extent the complaint and appeal process. Any individual or legal entity can challenge the legality of the "election organization process and activities" to the higher election commission. The GEC must resolve complaints by a resolution of the commission, in open session within three days. However, in practice the GEC chairman decides which complaints will be responded to by him or the GEC's Secretary and which ones are decided by the whole commission. Moreover, the complaints process is not for the most part on the public record so far.

Appeals against GEC's decisions and (in)actions are to be filed to the Administrative Court of Appeal, with a further appeal to the Supreme Court. This system was established by February 2016 amendments to the LoE. The necessity to modify the newly established complaints process on an urgent basis is unclear and raised concerns among the OSCE/ODIHR EOM interlocutors. The

²⁰ The websites are: Grandnews.mn, Zuwluguu.com, Paparatsi.mn, Kaka.mn, Shar.mn, Janjin.net, Goomaral.com, Mnews.mn, Agshin.mn, Choibalsan.mn, and Medee.nuudel.mn.

²¹ The sample includes five television channels (*MNB*, *Eagle TV*, *Mongol HD TV*, *TV5*, and *TV9*), daily from 18:00 to 24:00 hours; one radio station (*MNB Radio1*), daily morning news and four newspapers (*Udriin Sonin*, *Unen*, *Unuudur*, and *Zuunii Medee*).

²² *Ikon.mn*, *news.mn*, *polit.mn*, *shuud.mn*, and *sonin.mn*.

Constitutional Court deals with cases concerning the constitutionality of GEC's decisions. Deadlines for the resolution of election-related disputes were reduced to some extent in accordance with a previous OSCE/ODIHR recommendation.

The LoE establishes penalties for various administrative offences, including campaign-related violations, such as fines and dismissal from public service, imposed by ordinary courts. The law also provides for the possibility to de-register a candidate for such offences as using a loudspeaker after 23:00. The Criminal Code has various election-related offences that are under the jurisdiction of the police and ordinary courts.

XII. PARTICIPATION OF PERSONS WITH DISABILITIES

Legal instruments grant the inclusion and address the needs and necessities of people with disabilities. Since 2009 Mongolia has been party to the Convention on the Rights of Persons with Disabilities. The LoE establishes a number of mandatory measures to facilitate the voting rights of disabled persons, an improvement over the former election law. The GEC must enable access to voting locations, provide a Braille template and have at least one booth for people with disabilities at each polling station. The National Human Rights Commission will observe the implementation of those requirements.

The 2016 Law on Human Rights of Persons with Disabilities recognizes the rights for disabled persons to political participation and places a duty on political entities to make their campaign messages accessible to disabled persons and to support them to be a candidate and to be elected. At least one candidate with a disability is standing for election.

XIII. CITIZEN AND INTERNATIONAL OBSERVERS

The LoE provides for citizen and international election observation. The observer organization is accredited by the GEC; the PEC is to issue accreditations to individual observers. The application should be submitted to the GEC not later than three days before polling. Thus far the GEC has accredited two citizen observer groups who will primarily focus on election day. The Civil Society Network for Fair Elections and the Business Incubator Center for Disabled Citizens are planning to deploy some 200 and 10 observers respectively.

Two organisations that applied for registration have not been accredited. According to GEC, the Civil Fair Court, whose president is a candidate, and the Voting Rights and Justice, whose members are were considered by the GEC to be affiliated with the MPP, did not meet accreditation requirements. The GEC, however, did not make its formal decision on the matter available to the OSCE/ODIHR EOM.

XIV. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM established its presence in Mongolia with a press conference on 20 May 2016. The Mission has been welcomed by the Ministry of Foreign Affairs and has met with other government authorities, notably the GEC, as well as representatives of political parties, media and civil society. A first briefing for diplomatic representations of OSCE participating States and Partners for Co-operation was held on 7 June. All LTO teams have been briefed, trained, accredited and deployed as of 27 May and have established contacts with local EMBs, governmental institutions, political parties, civil society and media. The OSCE/ODIHR will join effort with the European Parliament, which will deploy its observer delegation for election day observation.

*The English version of this report is the only official document.
An unofficial translation is available in Mongolian.*