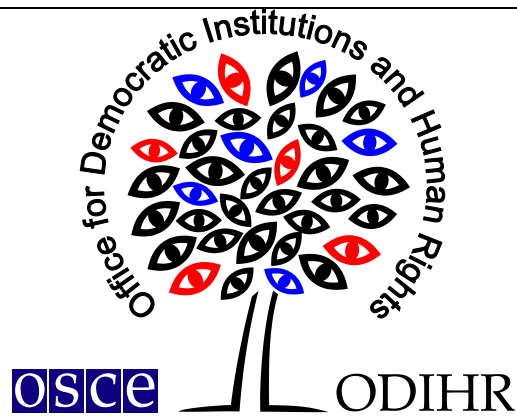


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OPINION

ON THE DRAFT LAW ON POLITICAL PARTIES OF MONGOLIA

on the basis of comments by

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based on an unofficial English translation of the Draft Law on Political Parties of Mongolia

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*This Opinion is also available in Mongolian.
However, the English version remains the only official version of the document.*

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I. INTRODUCTION

1. On 4 October 2019, ODIHR received a request from the Standing Committee on State Structures of the Parliament of Mongolia to review draft amendments to the Law on Political Parties. The request also asked ODIHR to provide a comparative review of aspects of political party regulation. In parallel, constitutional amendments were drafted in Mongolia.
2. To support Mongolian lawmakers in drafting fully compliant legislation pertaining to political party regulation as part of draft constitutional amendments in mid-November, ODIHR prepared a preliminary analysis on draft Article 19 of the Constitution pertaining to international obligations and commitments as well as good practice related to the registration of political parties, which focused on requirements for support signatures. The preliminary analysis was shared with the authorities on 12 November and was accompanied by a brief comparative overview of constitutions and party laws of some OSCE Participating States.
3. This opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of key OSCE commitments in the human dimension.

II. SCOPE OF THE OPINION

4. The scope of this opinion focuses on the Draft Law on Political Parties (Draft Law), as well as Article 19 of the Constitution. It does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of political parties in Mongolia.
5. The opinion raises key issues and indicates areas of possible refinement. It focuses on areas that require amendments or improvements rather than on the positive aspects of the draft law. The ensuing recommendations are based on relevant international obligations, OSCE commitments, and international good practice, including the [Joint Guidelines on Political Party Regulation](#) issued by ODIHR and the Council of Europe's European Commission for Democracy through Law (Venice Commission).
6. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women¹ (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality and commitments to mainstream a gender perspective into OSCE activities, the Opinion analyses the potentially different impact of the Law on women and men.² ODIHR also considers obligations under the Convention on Rights of Persons with Disabilities.³
7. **This opinion is based on an unofficial English translation of the draft law. Inaccuracies may occur in this opinion as a result of an incorrect translation. This**

¹ UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW"), adopted by General Assembly resolution 34/180 on 18 December 1979. Mongolia ratified CEDAW on 20 July 1981

² See par 32 of the OSCE Action Plan for the Promotion of Gender Equality adopted by Decision No. 14/04, MC.DEC/14/04 (2004), available at <http://www.osce.org/mc/23295?download=true>.

³ Convention on the Rights of Persons with Disabilities, 13 December 2006, entered into force 3 May 2008, available at <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>; Mongolia acceded to the Convention on 13 May 2009.

Opinion is also available in Mongolian. However, the English version remains the only official version of the document.

8. In view of the above, ODIHR would like to note that this opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation in Mongolia in the future.

III. EXECUTIVE SUMMARY AND CONCLUSIONS

9. While the Draft Law contains some provisions that are in line with OSCE commitments and international obligations, serious shortcomings pertain to the fundamental rights to associate and join a political party, the independence of political parties, their funding and accountability as well as effective mechanisms for legal redress. Furthermore, provided that the parliament is to review the Draft Law stakeholders are encouraged to ensure extensive and inclusive consultation throughout the drafting and adoption process.
10. To improve the compliance of the draft law with international obligations and OSCE commitments, ODIHR makes the following key recommendations:
 - A. To ensure political parties' autonomy to decide on the structure of the party and decision-making rules; [pars 21-25]
 - B. To ensure the right of citizens to become members of a political party without any unreasonable limitation, and to promote participation of women, youth, persons with disabilities and minorities [pars 26-27],
 - C. To remove "citizens deprived of legal capacity by a court" from the ambit of Article 11.2; [pars 28-29]
 - D. To considerably lower the number of signatures required to register a political party, to remove the current requirements from Article 19 of the Constitution and to ensure the right of citizens to become members of a political party without any disproportionate limitation; [pars 32-36]
 - E. To ensure that a party can, within an adequate timeframe, supplement its application with additional documents before being refused registration; [par 40]
 - F. To consider linking the allocation of public funding to measurable efforts to promote the political participation of women and persons with disabilities; [par 45]
 - G. To allow any citizen over a specific age to express support and donate to multiple parties provided that all donations are within legally-allowed limits; [par 50]
 - H. To introduce a ban on intermediaries to donate (both monetary and in-kind) on behalf of an individual or legal entity which is not authorised to donate to a political party; [par 51]
 - I. To amend the draft law so that all in-kind donations are subject to reasonable limits on the total amount of such contributions should be imposed; [par 52]
 - J. To provide for detailed itemized reporting for financial reports and to specifically detail income and expenditure of public funding; [par 55] and
 - L. To tailor sanctions to the type of violation and to detail what type of sanction a respective violation entails. [par 62-64].

11. These and a number of additional recommendations, which are included throughout the text of this opinion (highlighted in bold), are aimed at further improving the compliance of the legal framework governing political parties with OSCE commitments and international human rights standards.

IV. ANALYSIS AND RECOMMENDATIONS

A. International Obligations Relating to Political Parties

12. This opinion analyses the draft law submitted for review with regard to its compatibility with international obligations and OSCE commitments with respect to the formation rights and obligations of political parties.
13. The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as a collective instrument for political expression, must be able to fully enjoy such rights. Obligations regulating fundamental rights afforded to political parties are found principally in Article 22 of the [International Covenant on Civil and Political Rights](#) (ICCPR), which protects the right to freedom of association and Article 19, which contains the right to freedom of expression and opinion.⁴ [General Comment 25 of the UN Human Rights Committee](#) on the right to participate in public affairs, voting rights and the right of equal access to public service, interpreting State obligations under Article 25 of the ICCPR, is also of importance. The United Nations (UN) Convention against Corruption requires, in Article 7.3, its States Parties to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.⁵ In addition, paragraph 7.6 of the [1990 OSCE Copenhagen Document](#), commits participating States to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.” The Copenhagen Document also includes the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4).
14. These obligations are supplemented by various recommendations of the United Nations (UN), the OSCE and the Council of Europe. These include, the ODIHR and Venice Commission [Joint Guidelines on Political Party Regulation \(2011\)](#)⁶, the ODIHR and Venice Commission [Joint Guidelines on Freedom of Association \(2015\)](#) the Venice Commission [Code of Good Practice in the field of Political Parties](#), Council of Europe Committee of Ministers’ [Recommendation \(2003\)4](#) on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns, as well various ODIHR and Venice Commission opinions.

⁴ While Mongolia is not a member State of the Council of Europe, the obligations imposed by [the European Convention on Human Rights](#), jurisprudence of the European Court of Human Rights and other Council of Europe mechanisms and instruments, can provide useful guidance beyond the Council of Europe’s geographical scope of application.

⁵ [UN Convention against Corruption](#), adopted on 31 October 2003, ratified by Mongolia on 11 January 2006

⁶ OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* (2010) (hereinafter Guidelines on Political Party Regulation).

B. Reform process

15. The Draft Law for amendment of the Constitution was submitted to the *State Great Khural* (parliament) on 6 June 2019, and was subsequently adopted on 14 November. Provided that the parliament is to review this Draft Law in the near future, and given the impact that this opinion may have on the ongoing reform process, stakeholders are encouraged to ensure extensive and inclusive consultations throughout the drafting and adoption process. Successful reform should be built on at least the following three elements: 1) clear and comprehensive legislation that meets international obligations and standards and addresses prior recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders, including civil society;⁷ and 3) political commitment to fully implement the legislation in good faith. ODIHR stresses that an open and transparent process of consultation increases the confidence and trust in the adopted legislation and in the state institutions in general. **Without prejudice to possible ongoing public consultations, ODIHR recommends to ensure that the legislation benefits from broad, inclusive and meaningful consultations with an input by all relevant stakeholders.**

C. General Remarks

16. Article 4 of the Draft Law sets the guiding principles on the regulations of political party activities. While setting general principles is welcomed, paragraph 4 warrants attention. It prohibits “to establish a party that undermines Mongolia's sovereignty and independence, disassemble national unity, unconstitutional seizure of state power, use power aggression, disturb and threaten public, execute murders, and discriminates based on race and ethnicity for the purpose of conducting and advertising against the independence and territorial integrity of other countries, as well as religious, military and militant and fascist parties.” It should be noted that Article 22 of the ICCPR allows restrictions in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others. However, “national unity” does not fall under these described restrictions, it is a vague definition, which may result in an unjustified limitations of the right if political participation.
17. Apart from that, the Draft Law seems to prohibit the establishment of “religious parties”. Notwithstanding the principle of non-discrimination, freedom of association precludes the prohibition of parties formed on ethnic, racial, linguistic or religious grounds. In order for a restriction on freedom of association to be accepted as reasonable, the activities or aims of a political party would need to constitute a real threat to the State and its institutions or/and involve the use of violence.⁸ It is difficult to accept that this would automatically apply to all political parties affiliated with or carrying the name of a certain religious denomination, without exception. Rather, such limitations would only be permissible with regard to political parties whose militant religious character poses a serious and immediate danger to the constitutional order, and which seek to pursue their aims in an illegal or possibly even violent manner. It is worth noting that it is normal practice in many OSCE participating States for

⁷ See paragraph 5.8 of the 1990 OSCE Copenhagen Document which requires “legislation, adopted at the end of a public procedure.”

⁸ See e.g., pars 167-168 of the *OSCE/ODIHR Comments on the Draft Constitution of Turkmenistan*, available at https://www.legislationline.org/download/id/6321/file/288_CONST-TKM_21Jul2016_en.pdf; pars 13-14 of the OSCE/ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties of the Kyrgyz Republic* (2009), available at <http://www.legislationline.org/topics/country/20/topic/16>.

political parties to operate on the basis of or inspired by religious beliefs, or with the participation and support of religious communities.⁹ While States may request political parties from using religious symbols (see pars 19-20 below), a blanket ban on “religious parties” would constitute a disproportionate limitation of freedom of association and should be reconsidered.

18. Article 9.4 prohibits a party to “name the party or use symbols of administrative and territorial units, localities, ethnic groups, ethnicity, religious groups, religious and government organizations, business entities, other parties, non-governmental organizations or persons.” The prohibition on the use of names and symbols associated with national or religious institutions are generally reasonable provided that legislation is formulated with sufficient precision and clearly prescribe the prohibited symbols, names and terms. Some OSCE participating States, for historical reasons, prohibit political parties to use communist or Nazi symbols, as well as religious symbols.¹⁰
19. The compatibility with human rights of some of these laws has been challenged before the constitutional courts in number of countries as well as before the ECtHR. These courts have taken a critical stance on laws banning the use of certain political symbols and have criticised these laws either in part or in their entirety.¹¹ Legislation restricting the use of certain symbol needs to be drafted with utmost care¹² and needs to be sufficiently clear and foreseeable in order to comply with the principle of legal certainty.¹³ In the context of Mongolia, having a blanket prohibition on the name of a party on ethnic or a religion component or related to non-governmental organizations or persons may indirectly discriminate certain religious, ethnic or other groups and would be contrary to the principles of freedom of association, freedom of expression and non-discrimination.¹⁴ **The Draft Law should be amended in a way to ensure freedom of expression and participation of ethnic, religious and minority groups. In addition, this provision would also prevent associations from transforming into a political party bearing the same name. It is therefore recommended to reconsider this prohibition.**
20. Article 18 provides that the “platform of a party shall align with the Constitution of Mongolia and the national interest”. The concept of national interest is quite broad and limits right of expression of political parties as provided by international obligations. This may also result in the arbitrary denial of registration or dissolution of a party. Similarly, a reference to “national interest” is also made in Article 27.1.5 in relation to party’s rights to communicate with international organizations and parties. A fundamental aspect of democracy is to allow diverse political programmes to be proposed and debated. **It is therefore recommended to remove “national interest” from Article 18.2 and Article 27.1.5** Additionally, Article 18, at least in its translation, is quite convoluted and seems overly prescriptive. The extent to which an “election platform” aligns with the “party platform” does not have to be regulated

⁹ See e.g., par 42 of the OSCE/ODIHR, *Comments on the Concept Paper on State Policy in the Sphere of Religion of the Kyrgyz Republic* (2014), available at <http://www.osce.org/odihr/118672?download=true>.

¹⁰ See the Venice Commission [Guidelines](#) on Prohibition and Dissolution of Parties (CDL-INF (2000) 1)

¹¹ These are *Czechoslovakia* (1990), *Hungary* (2000, 2013), *Poland* (2011) and *Moldova* (2013) ;see eg ECtHR judgment on *Fratanolov v. Hungary* (application no 29459/10).

¹² See eg European Court of Human Rights, *Vajnai v. Hungary*, application no. 33629/06, Judgment of 8 July 2008, paragraph 54 *et seq* ; ODIHR-Venice Commission, *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of Their Symbols* (21 December 2015), par 52.

¹³ ODIHR-Venice Commission, *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of Their Symbols* (21 December 2015), pars 77 *et seq*.

¹⁴ As provided by paragraph 70 of the Guidelines on Political Party Regulation (see *op. cit* footnote 6), “[r]egulation of party names and symbols to avoid confusion is also important in enabling the state to ensure a duly informed electorate, able to exercise free choice.”

by law and should be left for parties to decide themselves.

D. Structure and Management of Political Parties

21. The Draft Law is detailed on the organization of political parties, including their structure and decision-making process. Paragraph 1 of Article 17 notes that the internal organization and management of the party should be governed by the rules of the party. However, it further details what a party is obliged to include in their rules: concept, values, goals and principles (Article 17.2.1), procedures for registration or withdrawal of membership (Article 17.2.3), procedures for establishing and dissolving supreme and representative organizations, and other organizations, establishing managing and supervisory organizations, their structure and organization, procedure for electing the chairman of party, their powers, term of office and decision-making procedures (Article 17.2.5). It also makes imperative for each party to have “supreme” and “representative” organizations in its structure, as detailed in Articles 19 to 23.
22. Under international good practice, political parties are granted a certain level of autonomy in their internal and external functioning. According to this principle, political parties should be free to establish their own organization and the rules for selecting party leaders and candidates, since this is regarded as integral to the concept of autonomy of a party, as an association may hold.¹⁵ In this respect, current provisions on party structure appear to be too detailed and unnecessary, limiting political party’s right to self-regulate these matters. **It is recommended to review these provisions by giving political parties the autonomy to decide on the structure of the party.**
23. Moreover, internal democracy is a key element for the functioning of political parties.¹⁶ In this respect, obligations in this Draft Law imposed on a political party to self-regulate do not appear to be necessary. For example, Articles 7.1.6, provides that political parties have to resolve internal matters and make decisions by majority vote. It is noted that Article 26.1 additionally provides that party shall make its decision by simple majority vote “[u]nless otherwise stipulated by law or by rule of party”. However, unless this is due to errors in translation, different wording of these article may create confusion rather than help to solve it. Furthermore, Article 26.2 of the Draft Law also stipulates that “selecting candidates for nominations of internal election of party and state political positions shall be decided by secret voting”. This binds political parties and makes it controversial or legally impossible to consider other options of voting for certain decision. **It is recommended to remove provisions imposing minimum voting requirements for decision-making from the Draft Law and give full discretion to political parties.**
24. In addition, Article 7.1.10 notes that a political party may not interfere in public activities or have political influence. While the non-interference component ensures the separation of the State and the party as provided by paragraph 5.4 of the Copenhagen Document, it appears unusual that a political party may not have “political influence” provided that they are established to exercise political authority. Presumably, the aim of the above provision is also to avoid undesirable interference with the work of the bureaucratic apparatus of the public

¹⁵ See the Venice Commission [report](#) on the Method of Nomination of Candidates within Political Parties (CDL-AD(2015)020).

¹⁶ Paragraph 62 of the Guidelines on Political Party Regulation (see *op. cit* footnote 6) provides that “[t]he internal functions of political parties should generally be free from state interference. Internal political party functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed to by the parties themselves; see also See ODIHR and Venice Commission [joint opinion](#) on the Draft Constitutional Law on Political Parties of Armenia.

institutions. However, the wording of Article 71.10. appears overbroad and may lead to the confusion. To recall ODIHR's definition of a political party, it is s "a free association of persons, one of the aims of which is to participate in the management of public affairs, including through the presentation of candidates to free and democratic elections... [t]his definition of parties includes associations at any level that function in order to present candidates for elections or exercise political authority through election to governmental institutions."¹⁷ **It is recommended to remove or revise this provision from Article 7.1.10.**

25. Positively, Article 17.2.9 of the Draft Law includes a provision promoting gender equality among the members of political parties; however, there are no additional or specific measures and guarantees on the promotion of gender equality within internal party structures. In this regard, it is important to recall that the Convention on the Elimination of All Forms of Discrimination against Women , in its Article 7, obliges parties to take all appropriate measures to eliminate discrimination against women in political and public life and to ensure that they enjoy equality with men in political and public life .¹⁸ CEDAW General Recommendation No 23 provides further guidance stating that "Measures that have been adopted by some political parties include setting aside for women a certain minimum number or percentage of positions on their executive bodies, ensuring that there is a balance between the number of male and female candidates nominated for election, and ensuring that women are not consistently assigned to less favourable constituencies or to the least advantageous positions on a party list. States parties should ensure that such temporary special measures are specifically permitted under anti-discrimination legislation or other constitutional guarantees of equality."¹⁹ OSCE Ministerial Council Decision No. 07/09 on Women's Participation in Political and Public Life "encourage(s) all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balanced representation in elected public offices at all levels of decision-making." According to the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation, "legislation on political parties should ensure that women and men have an equal chance to be candidates and to be elected" **This can be achieved through various means, for instance by introducing financial intensives (linking gender diversity with public finding) or introducing gender quotas that could increase women's parliamentary representation..**

E. Membership of Political Parties

26. The Constitution recognizes the right of citizens to join associations, political parties or other voluntary organizations on the basis of social and personal interests and opinion. Under Article 5.1 of the Draft Law, a Mongolian citizen with voting rights can voluntarily establish a political party or become a member of a party, and according to Article 11.1, a Mongolian citizen can establish a party with the purpose of exercising and protecting the rights, freedoms and interests of the citizens guaranteed by the Constitution. It is commendable that the party membership is voluntary, which is in line with Article 20 of the Universal Declaration on Human Rights.
27. It is also commendable that Article 5.3, similar to the Constitution, prohibits intimidating, offending, or discriminating a citizen for becoming a member of a party and forcing someone to join or leave a party (Article 5.5). However, neither the Constitution (including

¹⁷ See *op. cit* footnote 6 pars 9 and 26 (Guidelines on Political Party Regulation).

¹⁸ *Op. cit.* footnote 1 (CEDAW).

¹⁹ CEDAW General Recommendation No 23 "Political and public life" (1997) par 33 available at https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/INT_CEDAW_GEC_4736_E.pdf

Article 19) nor the draft law extends on fundamental rights guaranteeing the right of association without discrimination, as provided by Article 2 of the ICCPR. Such principles are only provided in Article 7.1.8 of the Draft Law in relation to the party's responsibility to provide equal opportunity for a member to be nominated for the party's executive positions or elections. While this is also necessary, broader guarantees would be foremost essential for enjoying the right to association in general. Principle 5 of the Joint Guidelines on Political Party Regulation provide that "[s]tate regulations of political parties may not discriminate against any individual or group on any ground such as "race", colour, gender, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation or other status."²⁰ In this respect, either the Draft Law or the Constitution could benefit from having the broader guarantees of equal rights to form or join a political party. This would also facilitate the full participation and representation of women, persons with disabilities and minorities in the political process.²¹ **Depending on what the legislature decides, either the Draft Law or the Constitution should extend to ensuring the right of citizens to become members of a political party without any unreasonable limitation, including provisions to promote participation of women, youth, persons with disabilities and minorities.**

28. In addition, Article 11.2 prohibits foreign citizens, stateless persons, citizens deprived of legal capacity by a court, as well as those having been imprisoned due to crimes of misusing an official position or undermining national security to establish a political party. A general exclusion of foreign citizens and stateless persons from membership in political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections.²² **Consideration could be given to review the general prohibition in light of the above.**
29. Additionally, Article 11.2 is not in line with the CRPD. Article 12.2 of the CRPD states that "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life" whereas pursuant to Article 29 (b) (i) States Parties shall undertake to promote actively an environment in which persons with disabilities can participate in "non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties". **As a State Party to the CRPD, the drafters should remove "citizens deprived of legal capacity by a court" from the ambit of Article 11.2.**
30. Moreover, Article 5.2 provides that a person cannot be a member of more than one political party. The right to freely associate is a fundamental right that should not limit an individual's membership to one party. Such prohibition should rather be left with parties to decide whether they see membership in their party as exclusive. The respective provision could, however, require instead that a person cannot be a founding member of more than one political party (as long as both parties are registered and functioning). Paragraph 77 of

²⁰ ODIHR and Venice Commission [joint opinion](#) on Draft Law Political Parties in the Kyrgyz Republic has positively noted on inclusion of the principle of equal opportunities regarding the members of political parties.

²¹ The OSCE Ministerial Council Decision No. 7/09 on "Women's Participation in Political and Public Life" called upon OSCE participating States to "consider possible legislative measures, which would facilitate a more balanced participation of women and men in political and public life and especially in decision-making," and to "encourage all political actors to promote equal participation of women and men in political parties, with a view to achieving better gender-balance representation in elected public offices at all levels of decision-making;" see OSCE Ministerial Council Decision 7/09, 2 December 2009, Women's participation in political and public life, available at <https://www.osce.org/mc/40710?download=true> (hereinafter "MC Decision 7/09"). See also [ODIHR opinion](#) on the Decree Law of the Republic of Tunisia on the Regulation of Political Parties.

²² See Venice Commission, Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues (015 April 2004) CDL-AD (2004)007rev, Guidelines on, item "H".

the Joint Guidelines on Political Party Regulation states that “[s]uch a limitation is too easily abused and can lead to the disqualification of parties who in good faith believed they had fulfilled the requirements for registration.” **It is recommended to reformulate the respective paragraph to allow citizens to be a member of more than one party. Additionally, Article 5.4 prohibits “some public servants” membership in political parties. The Draft Law should clarify the type of public servants banned from membership in political parties or cross-reference to relevant legislation doing so.**

31. Finally, Article 5.8 provides that a member of parliament, who has been elected as independent, “shall be suspended” from joining a political party during their term. While it can be an issue of translation, the term “suspended” may also imply that a member will be suspended from parliament if they join a party. This provision is restrictive both for the right to associate as well as contrary to the principle of a free and independent mandate.²³ The report on the impact of political party control over the exercise of the parliamentary mandate prepared under the auspices of the *Interparliamentary Union* recommended that: “[t]he national legislature should consequently protect the basic elements of the free parliamentary mandate, in particular the MPs’ responsibility to represent the entire nation, the MPs’ freedom to determine their political affiliation, and their irrevocability.”²⁴ **It is recommended to remove this article.**

F. Registration of Political Parties

32. Conditions for party registration are outlined in Article 19 of the Constitution and Articles 12 to 14 of the Draft Law. In general, not all OSCE participating States require the registration of political parties, however, it is also acknowledged that political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations; hence it is reasonable to require the registration of political parties with a state authority. As provided by paragraph 66 of the Joint Guidelines on Political Party Regulation “substantive registration requirements and procedural steps for registration should be reasonable. Where such registration requirements exist, they should be carefully drafted to achieve legitimate aims necessary in a democratic society.” Paragraph 1 of Article 19 of the Constitution provides for a general clause for political party registration. Paragraph 3 further mentions the importance of a political party’s conformity with democratic principles, including on transparency of party financing. It also references the law [on political parties] for regulating the financing, activities and structure of a political party.
33. Article 19.2 of the Constitution requires a political party to have support signatures of at least one per cent of the electorate to be established. OSCE participating States have taken different approaches to registration requirements, such as a minimum number of signatures or members, with the collection of signatures prior to the registration of a political party the most frequent requirement. It can go from as low as 3 in Andorra, 100 in Croatia or 200 in Latvia, Montenegro or Slovenia to as high as 10,000 in Serbia, Slovakia and Ukraine or even 20,000 in Uzbekistan. However, none of the above examples, exceed 0.4 per cent of the respective electorate. Previously, ODIHR has recommended to a number of OSCE participating States to lower number of required signatures.”

²³ See also Resolution 1601 (2008) of the Parliamentary Assembly of the Council of Europe “Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament.” Guideline 1: “Independence: Parliamentarians must exercise their mandate independently and must not be bound by any instruction or receive a binding mandate.”

²⁴ See the Report [Interparliamentary Union](#) (2013).

34. In the judgment of *Republican Party v. Russia*, the ECtHR disagreed with the government's argument that only those associations that represent the interests of considerable portions of society should be eligible for political party status. It considered that small minority groups must also have an opportunity to establish political parties and participate in elections with the aim of obtaining parliamentary representation."²⁵ The Court further stated in *Gorzelik and Others v Poland* that "democracy does not simply mean that the views of the majority must always prevail: a balance must be achieved which ensures the fair and proper treatment of minorities and avoids any abuse of a dominant position."²⁶
35. As mentioned above, OSCE participating States have taken different approaches to requirements pertaining to signatures. In Mongolia there were in total 1,983,588 registered voters in the 2017 presidential elections.²⁷ Respectively, the proposed constitutional amendments introducing minimum requirement registration - at least one per cent of the electorate, would be the most restrictive in the OSCE region. Good practice provides for the minimum number of support to be determined "not as an absolute number but rather a reasonable percentage of the total voting population within a particular constituency."²⁸ In addition, the state must ensure that registration requirements are not burdensome so as to restrict the political activities of small parties or to discriminate against parties representing minorities.²⁹ As provided by paragraph 91 of the Joint Guidelines on Political Party Regulation "[s]trict considerations of proportionality must be applied in determining if prohibition or dissolution of a party is justified."³⁰
36. In contrast, the number of signatures required under the draft constitutional amendment compared to a number of voters in the country goes against the proportionality principle and undermines the right of individuals to associate freely.³¹ Creating such barriers for individuals seeking to establish political parties might prevent them to efficiently exercise their right to freedom of association and, as such, constitutes a disproportionate limit to the right of individuals to association. As a result, such practice could also undermine political pluralism. **The number of signatures required to register a political party should be considerably lowered, and the current requirements removed from Article 19 of the Constitution. It should ensure the right of citizens to become members of a political party without any disproportionate limitation.**
37. To be registered, a political party must submit an application, signed by its chairperson, to the General Election Commission (GEC) within 10 days from the establishment of the party. The application should include the party's name, abbreviation, symbol, flag, platform, official address as well as a list of at least 801 members. Application should also be supported by the party's property information, a list of donations made by party members and supporters, as well as a party property report reflecting the donations and expenditures incurred with the establishment of the party. As provided by the Joint Guidelines on Political Party Regulation, it is a legitimate requirement that political parties provide basic information with the application for registration defining the organizational structure. This is necessary given the

²⁵ *Republican Party of Russia v. Russia* (application no 12976/07).

²⁶ See also *Gorzelik and Others v Poland* (application no 44158/98).

²⁷ See OSCE/ODIHR Limited Election Observation Mission Final Report on the Presidential Election of Mongolia, 26 June and 7 July 2017 available at <https://www.osce.org/odihr/elections/mongolia/352876?download=true> (hereinafter LEOM Report 2017).

²⁸ See *op. cit.* footnote 6 par 76 (Guidelines on Political Party Regulation).

²⁹ See also paragraph 54 of the Venice Commission Code of Good Practice in Electoral Matters.

³⁰ See also paragraph 11 of [Resolution 1308 \(2002\)](#).

³¹ See *op. cit.* footnote 6, principles 4, 5, 6 and 7 (Guidelines on Political Party Regulation).

need for responsible persons to be identified within the party for the receipt of communications from the state and for the operational oversight of certain activities, such as elections.

38. However, there is no reason for the State to require the inclusion of the party platform at the point of applying to be registered as a political party, as the party platform might not be completely set at the time of registration and might only be developed. **This issue should be left up to the political party to decide internally and it is recommended to review this provision.**
39. In addition, the format of the application is determined by the GEC; however, the Draft Law does not specify the way an application should be submitted, for example in hard copy or electronically. This could lead to arbitrary or inconsistent application of the Law: some parties may misinterpret the requirement, which could potentially lead to their disqualification. In addition, requiring registering within maximum of 10 days from the establishment of the party is also unreasonably restrictive. **The Draft Law should be amended respectively. In addition, with the aim to facilitate the registration process and simplify the administrative procedures in place, an online application could be considered.**
40. Pursuant to Article 14 of the Draft Law, the GEC prepares the report on conformity of the submitted documents with the requirements of the law and submits it to the Supreme Court, which seems to suggest that the final decision on registration lies with the Supreme Court. In support of this is Article 15 which mentions that GEC is responsible for publishing the Supreme Court's decision on registration of a party. However, according to Article 16 of the Draft Law, issues a conclusion in case the application for registration shall be denied. The Supreme Court, under Article 16.6 of the Draft Law, has the power to refuse registration for the reasons listed in the Draft Law. **While this could be an issue of translation, it is recommended to revisit the above mentioned provisions of the Draft Law and ensure that they are consistent, non-contradictory and accessible.** There seem to be no opportunities to supplement an existing application with missing documents. Good practice provides that parties should be given an opportunity to "make minor changes to their registration information, such as the primary office address or name of official contact, only through a process of notification" rather than requiring re-registration.³² What is currently available is to request the re-registration, or reorganize a meeting of to establish a party and request a re-registration. In both cases, requirements are somewhat excessive. **Parties should be given the possibility, within an adequate timeframe, to supplement their application with additional documents before being refused registration.**

G. Dissolution of Political Parties

41. To recall paragraph 43 of the Joint Guidelines on Political Party Regulation, there is a general presumption in favor of the formation, functioning and protection from dissolution of political parties. Their formation and functioning should not be limited, nor their dissolution allowed, except in extreme cases as prescribed by law and considered necessary in a democratic society. As provided by paragraph 90 of the Joint Guidelines on Political Party Regulation as the most severe of available restrictions, the prohibition or dissolution of political parties is only applicable when all less restrictive measures have been deemed inadequate. In addition, the case law of the ECtHR provides that dissolution of a party should only be applied

³² Ibid par 87.

in the most serious cases, as a measure of last resort, if the requisite aim cannot be achieved by applying less invasive measures.³³

41. Under Article 45.1.1., the GEC issues a report on dissolution, in the event a party has not nominated candidates for eight consecutive years. Bearing in mind that the dissolution is one of the most restrictive measures, it is recommended to avoid its application when and if other measure can prove to be effective. Therefore, the automatic dissolution of a party for not contesting elections for eight years appears excessive.³⁴
42. Similarly, a party will be dissolved if it fails to file a correct financial report three times in a row. It should be noted that “the opportunity for a state to dissolve a political party or prohibit one from being formed should be exceptionally narrowly tailored and applied only in extreme cases. Such a high level of protection has been deemed appropriate by the ECtHR, given political parties’ fundamental roles in the democratic process.”³⁵ **Provided that the dissolution of a political party shall be a measure of last resort, it is recommended to amend these provisions and ensure that applicable sanctions are proportionate and allow for a certain level of flexibility based on the seriousness of the offence.**

H. Financing of Political Parties

Public Funding

43. According to Article 29.1, in total 0.04 per cent of the annual State budget is allotted to support political parties in the parliament. The GEC calculates the annual support to parties within three months from the elections, which is then paid from January the following year in two equal installments for the duration of four years (Article 30). Subsequently, annual financing of political parties from the State budget, in the amount of 0.05 percent of the minimum wage for each valid vote, is envisaged for a 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, however as the total fund is fixed by the law, there are no guarantees that all parties receive this funding. In addition, while this principle is generally based on an objective criterion, it favors larger parties, specifically those that have been elected. As provided by paragraph 187 of the Joint Guidelines on Political Party Regulation, “[l]egislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly on or disproportionate amount of funding. To promote political pluralism, good practice also recommends that some funding is extended beyond those parties represented in parliament to include all parties putting forth candidates for an election and enjoying a minimum level of citizen support. This is particularly important in the case of new parties, which must be given a fair opportunity to compete with existing parties.”³⁶ **It is recommended to consider a more equitable distribution of funds, including for non-parliamentary parties, which would not be based solely on the number of votes received.**

³³ See the ECtHR judgment in the case of the *Republican Party of Russia v. Russia* (application no 12976/07); the *United Macedonian Organization Ilinden – PIRIN and others v. Bulgaria* (application no 59489/00).

³⁴ See also ODIHR and Venice Commission [opinion](#) on Draft Act of Malta to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and Their Participation in Elections.”

³⁵ See the ECtHR judgment in the case of *United Communist Party of Turkey and Others v. Turkey* (application no 19392/92).

³⁶ Op. cit. footnote 6 par 188 (Guidelines on Political Party Regulation).

44. Moreover, public funding could be considered as a tool for promoting women’s participation and providing financial incentives.³⁷ This could be linked to a party’s equality initiatives, such as training of female politicians, programmes related to women’s empowerment and funds to support the functioning of women’s sections.³⁸ Similarly, some public funding could also be ear-marked for initiatives supporting participation of persons with disabilities in political life. Pursuant to Article 29 of the CRPD, states shall “[e]nsure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected.”³⁹ **Consideration could be given to link the allocation of public financing to measurable efforts to promote political participation of women and persons with disabilities.**
45. Also, contrary to good practice, Article 29 obliges a political party to distribute 50 per cent of total funds received from the state to its “mid-level brunch,” and mid-level branch to allot 70 per cent of these funds to the “primary branch.” Such support should be considered an internal party function and generally not be limited through legislation. Paragraph 166 of the Joint Guidelines on Political Party Regulation provides that “[l]egislation should generally allow political parties at the national level to provide support for their regional and local offices, and vice versa. Such support should be considered an internal party function and generally not be limited through legislation.” **It is recommended to review this provision.**
46. Lastly, 0.01 per cent of annual fiscal state budget revenue is allotted for possible foundation activities of a party.⁴⁰ This is separate from the State funding for political parties and in case funds allotted for party funding are used for foundation, a party has an obligation to transfer the spent amount to the state budget or the sum will be deducted from the next funding. **With the aim of more accountability of the process, and in order to avoid repeated abuse, it is recommended to introduce sanctions for such misconduct.**

Private Funding

47. Article 33.6 prohibits anonymous donations, as well as those from foreign citizen or stateless persons, foreign, international organizations and legal entities, trade unions, religious and non-governmental organizations.⁴¹ International obligations tend to be restrictive when it comes to foreign funding of political parties. As noted in the ODIHR Opinion on Malta “[t]his requires a careful and nuanced approach to foreign funding which weighs the protection of national interests against the rights of individuals, groups and associations to co-operate and share information.” While it is a political choice of each State, prohibition should not prevent financial donations from nationals living abroad. In the context of Mongolia, which does not

³⁷ Ibid par 192, “it is reasonable for states to legislate minimum requirements that must be satisfied before the receipt of public funding. Such requirements may include... gender-balanced representation.” See also ODIHR [opinion](#) on the Law on Financing of and Control of Funding of Political Campaigns in Lithuania.

³⁸ See also The [Beijing Declaration and Platform for Action](#), the Council of Europe Recommendation [Rec\(2003\)327](#), as well as the OSCE Ministerial Council [Decision 7/09](#)

³⁹ See also ODIHR [opinion](#) on the Constitutional Law of the Republic of Armenia on Political Parties.

⁴⁰ According to Article 34.1 a party may have affiliated foundation with the role to provide consultation on developing party policies, capacity building and promoting citizen’s political education.

⁴¹ As noted in *op. cit* footnote 6 par 173 (Guidelines on Political Party Regulation), donation limits “have historically also been placed on domestic funding, in an attempt to limit the ability of particular groups to gain political influence through financial advantages. It is central characteristic of systems of democratic governance that parties and candidates are accountable to the citizenry, not to wealthy special interest groups. As such, a number of reasonable limitations on funding have been developed. These include limitations on contributions from state-owned/ controlled companies and anonymous donors.”

allow dual citizenship, it is an unlikely scenario and thus unproblematic. Similarly, Article 33.8 exempts certain activities from this ban; however, it is not entirely clear whether these activities also extend to protection of fundamental rights, and right to expression and association, as well as political cooperation with other organizations. As noted in paragraph 172 of the Joint Guidelines on Political Party Regulation, regulations may “permit some support from a foreign chapter of a political party, in line with the intent of paragraphs 10.4 and 26 of the Copenhagen Document, which envision external co-operation and support for individuals, groups and organizations promoting human rights and fundamental freedoms. Depending on the regulation of national branches of international associations, financial support from such bodies may not necessitate the same level of restriction.”⁴² **Consideration could be given to review the prohibition on cooperation with international organizations with the aim to promote and protect human rights and fundamental freedoms.**

48. Donations from legal entities and private individuals are allowed and it is appropriate for parties to seek private financial contributions. Citizen can donate up to twelve times the minimum monthly salary (Article 33.9), and a legal entity (if established for longer than a year), up to fifty times the minimum monthly salary (Article 33.10). Positively, and in line with good practice, it is prohibited to receive donations from state-owned (and local-government owned) entities, as well from “citizens and legal entities who have been contracted to participate in procurement of goods and services with state and local funds.”⁴³ **While it may be an issue with the translation of Article 33.7, this prohibition should be more explicit, limiting, prohibiting or otherwise strictly regulating contribution from legal entities which provide goods and services for public administration.**⁴⁴
49. In addition, a citizen or legal entity may donate once a year and only to one party or party branch. Giving a support to a political party is a form of expression and political participation; a citizen should not be limited to supporting only one party. In the event a donation is executed within a year and does not exceed the allowed sum, a citizen should be allowed to donate as many times as they desire. To recall paragraph 10 of the Joint Guidelines on Political Party Regulation, “[p]olitical parties are collective platforms for the expression of individuals’ fundamental rights to association and expression and have been recognized by the [ECtHR] as integral players in the democratic process.” Also, regulations on the functions of political parties should be carefully considered to ensure they do not impinge upon the principle of political pluralism. **Consideration should be given to allowing any citizen over a specific age to express support and donate to as many parties as they desire provided that all donations are made within the legally-allowed limits.**
50. There are a number of other aspects that would warrant attention, including a clear definition of third parties, as well as stricter regulations on in-kind donations. Although there are provisions which obligate a party to keep a record of a donor’s name and address (Article 33.14.2) and a party member or its supporter is prohibited to receive a donation without registering it (Article 33.17), there is neither an explicit ban nor safeguards on intermediaries to donate on their behalf. Unregulated third-party donations would be one way of circumventing legal norms. **It is recommended to introduce a ban on donating (both monetary and in-kind) as an intermediary on behalf of an individual or legal entity**

⁴² See also [ODIHR opinion](#) on Laws Regulating the Funding of Political Parties in Spain.

⁴³ In the event a political party receives donations from a prohibited donor, it is obliged to notify the GEC and transfer the donation back within 5 working days (Article 33.14.3). In addition, if the donation is anonymous and “non-refundable,” a party is obliged to inform the GEC and transfer this donation to the state budget within ten working days (Article 33.14.4).

⁴⁴ See Article 5 of the Council of Europe Committee of Ministers Recommendation (2003) 4.

which is not authorised to donate to a political party.

51. In-kind donations are allowed. In this respect the legislation leaves several loopholes that would by-pass donation limits. Specifically, there is no financial-value cap on such donations. Good practice provides that a donation to a political party is “any deliberate act to bestow advantage, economic or otherwise, on a political party” which includes in-kind donations, including in the form of real estate.⁴⁵ As it is the objective of donation limits to diminish the possibility of corruption and the disproportionate influence of a few wealthy individuals on political parties, it is particularly important to apply limits, especially on valuable in-kind donations. **All in-kind donations should be subject to reasonable limits on the total amount of such contributions should be imposed.**

I. Reporting Requirements

52. Article 7(3) of the United Nations Convention against Corruption obliges signatory states to make good-faith efforts to improve transparency in election-candidate and political party financing. Requirements for the disclosure of political financing are the main policy instruments for achieving such transparency. While other forms of regulation can be used to control the role of money in the political process, such as spending limits, bans on certain forms of income, and the provision of public funding, effective disclosure is required for other regulations to be implemented effectively.”
53. A political party must submit an annual financial report to the GEC within two month from the end of fiscal year (Article 36). The report must include: (1) sum of accumulated cash, (2) income earned from party’s business activity, (3) expenditures, (4) balance, and (5) donation statement. The donation statement should include: (1) total amount of donations and number of donors, (2) donor’s full name, including patronym, address, amount and valuation of in-kind donations, (3) legal entity’s name, address, amount and valuation of in-kind donations. Positively, the Draft Law provides for public disclosure of the party’s annual report through the party’s website, or if not available, via a media outlet, which should be kept online for four years.
54. The Draft Law attempts to break down the income and expenditure of political parties, but it does not provide the detailed itemization of donations. For example, it does not include separate reporting on public funding. According to the Joint Guidelines on Political Party Regulation, “[r]eports should clearly distinguish between income and expenditures. Further, reporting formats should include the itemization of donations into standardized categories as defined by relevant regulations. The nature and value of all donations received by a political party should be identified in financial reports.”⁴⁶ **In line with good practice, it is recommended to provide for detailed itemized reporting for financial reports. Income and expenditure of public funding should be specifically detailed.**
55. Conversely, the report includes a number of details on donors, including names and private addresses. While these details safeguard against possible abuse, they raise concerns with regard to the privacy rights of individual donors, especially that this information becomes

⁴⁵ See Article 2 of the Council of Europe Committee of Ministers Recommendation Rec (2003) 4.

⁴⁶ See *op. cit* footnote 6 par 203 (Guidelines on Political Party Regulation).

public. While promoting transparency is important and in line with prior recommendations⁴⁷, disclosure requirements should ensure that the required privacy and data-protection safeguards have been respected. As also provided by paragraph 203 of the Joint Guidelines on Political Party Regulation, “[w]hile publication of financial reports is crucial to establishing public confidence in the functions of a party, reporting requirements must also strike a balance between necessary disclosure and the privacy concerns of donors.”⁴⁸ **It is recommended to remove the private address of donors from the report at the time of publication.**

56. There appears to be a lack of consistency within the legislation regarding reporting deadlines. For example, Article 33.15.5 provides that a party has an obligation to record donor’s information and submit the information to the GEC in a timely manner; but no specific deadline is provided. If the purpose of the article is to submit such information only as part of the annual report, then it should be clearly stated. In addition, as per Article 38, the GEC shall examine report and in case of inaccuracies give a party a possibility to correct those inaccuracies within a “set deadline”, which, in fact, is not specified. An absence of clear deadlines may allow for an inconsistent application of these provisions or arbitrary sanctions for their non-compliance. **This aspect of the Draft Law would benefit from clarification by providing clear and reasonable deadlines.**
57. Lastly, oversight shall be monitored by an independent body, to avoid discriminatory or biased treatment. It may also be challenging for any oversight body to detect illegal sources of funding for political party without sufficient powers of investigation. According to paragraph 220 of the Joint Guidelines on Political Party Regulation, “legislation should grant regulatory agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate.” As monitoring of income and expenditure from private sources is necessary to ensure integrity and independence of political parties from wealthy individuals and political corruption, it is also utmost important to undertake oversight for public funds against any abuse. This Draft Law does not appear to provide such safeguards. It also lacks details on how a potential violation may be brought to the attention of the GEC. According to the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation, irregularities in financial reporting, non-compliance with financial-reporting regulations or improper use of public funds should result in temporary or permanent loss of all or part of such funds for the party. Other available sanctions may include the imposition of administrative fines on the party. It is also important to ensure that Regulations must always be applied in an objective and non-discriminatory manner. All parties should be subject to the same regulatory provisions and be provided equal treatment in the implementation of regulations.⁴⁹ **In this respect, it would be important to supplement the legislation to ensure that the GEC, the State Audit Office (SAO) or another independent body, has power to follow up on and investigate alleged irregularities if it receives credible information of falsified reports or other serious financial violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement**

⁴⁷ See, with respect to campaign finance, *op. cit.* footnote 29, Recommendation 21 (LEOM Report 2017) and Recommendation 20 OSCE/ODIHR Election Observation Mission Final Report Parliamentary Elections of Mongolia, 29 June 2016 available at <https://www.osce.org/odihr/elections/mongolia/271821?download=true> (hereinafter EOM Report 2016).

⁴⁸ See also [ODIHR Handbook for the Observation of Campaign Finance](#), which provides that “[w]hen considering disclosure requirements, the need to provide transparency should, at times, be balanced against donors’ wishes to preserve the privacy of their political preferences, particularly if disclosure may result in serious political repercussions.

⁴⁹ *Op. cit.* footnote 6, pars 215, 218 (Guidelines on Political Party Regulation).

their mandate.⁵⁰This body should also be given sufficient resources in fulfilling these duties.⁵¹

J. Legal Redress

58. Paragraph 116 of the Joint Guidelines on Political Party Regulation provide that “[a]ssociations, their founders and members should have the right to an effective remedy concerning all decisions affecting their fundamental rights, in particular those concerning their rights to freedom of association, expression of opinion and assembly. This means providing them with the right to appeal or to have reviewed by an independent and impartial court the decisions or inaction by the authorities, as well as any other requirements laid down in legislation, with respect to their registration, activities, prohibition and dissolution or penalties.”⁵²
59. A party may address the Constitutional Court on the decision of its refusal to register (Article 16.5) or dissolution (Article 45.6. It would be preferable for the Draft Law to clearly state deadlines for filing appeals or for decisions to be taken or else to cross-reference legislation which contains these deadlines. In addition, there seems to be no legal redress over the deprivation or suspension of State funding. A political party’s rights in this respect are not fully guaranteed. The principle of effectiveness requires that some remedies be granted expeditiously. Remedies that are not provided in a timely fashion are insufficient to satisfy the requirement that a remedy be effective. **Therefore, political parties should be given clear and effective procedural safeguards to contest the decisions on denial of registration, suspension or dissolution, as well as on funding.**
60. In addition, according to Article 24, a party creates its own dispute resolution mechanism, which shall review and resolve the disputes: (1) arising between members of party, as well as branches and units; (2) arising out of the interpretation and application of party rules; (3) arising out of the internal elections of party. Article 19.8 also notes that these disputes shall only be settled by the *Dispute Resolution Organization*, and shall not be settled by the court. Article 24.6.4 of the Draft Law mentions the right to appeal of parties but it seems unclear if this covers appeal to a court of law. While “party constitutions should ideally provide members who believe that the party’s constitution has been violated with internal avenues of redress”⁵³, only in exceptional circumstances, access to civil courts should be provided following exhaustion of internal remedies. **It is recommended to amend the Draft Law accordingly.**

K. Sanctions

61. Article 16 of the Council of Europe’s Committee of Ministers Recommendation Rec (2003)4 states that “States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to proportionate, effective and dissuasive sanctions.” Sanctions available for infringements of this Draft Law seem to be regulated by Article 28, which appears at the bottom of the draft law, following Article 45 (which seems

⁵⁰ Ibid par 220.

⁵¹ See, with respect to campaign finance, *op. cit.* footnote 27 Recommendation 6 (LEOM Report 2017), *op. cit.* footnote 47 Recommendation 5 (EOM Report 2016) and Recommendation 18 OSCE/ODIHR Election Observation Mission Final Report Presidential Election of Mongolia, 26 June 2013 available at <https://www.osce.org/odihr/elections/105150?download=true>.

⁵² See also Article 15 of the Human Rights Committee’s General Comment No. 31.

⁵³ *Op. cit.* footnote 6 par 112 (Guidelines on Political Party Regulation).

to be a technical error). This article makes reference to Civil Code or Criminal Code depending on the nature of misconduct. The wording of this article is utterly confusing. It stipulates that “the conduct of an official in breach of this law it shall impose the liability specified in the Law on Civil Service” and that “any person or legal entity that violates this law shall be subject to liability under the Criminal Code or Law on Infringement”. However, it is not clear whether “official” refers to the party officials or public officials (or both) and what type of violations may trigger “liability under the Criminal Code or Law on Infringement”. The Draft also makes a reference to sanctions in various other articles; however, they are not coherent and exhaustive which can **potentially lead to ineffective and inconsistent implementation. For clarity and consistency, consideration could be given to include all applicable sanctions under Article 28 of the Draft Law and/or makes cross references to the relevant provisions of applicable legislation (Law on Civil Service Criminal Code or Law on Infringement).**

62. In addition, the Draft Law is rigid on suspending or removing the State funding to the party based on (1) failure to submit the financial report, as well as due to (2) “violation of other procedures set forth in this law” (Article 29.10). While not explicitly mentioned, it is believed that the GEC makes such recommendation; it also decides on the allocation of funds. These sanctions are broad and incompatible with the principle of proportionality. This is particularly important as the Draft Law does not envisage any opportunity for a political party to eliminate errors, which it may not be aware of. , which seems disproportionate. This should also include consideration of the amount of funds involved, whether there were attempts to hide the violation, and whether the violation is of a recurring nature.⁵⁴ **It is recommended to review Article 29.10 with the aim to make the grounds for suspending and depriving the state funding in line with the principle of proportionality. As a minimum, before being deprived of a funding a party should be first given a fair warning and an opportunity to correct. When these steps are exhausted, the allocation of public funding could then be conditional upon the adequate fulfilment of reporting requirements.**
63. Lastly, the criteria for sanctioning political parties should be formulated with greater clarity, and in line with the permissible restrictions. **Sanctions should be specifically tailored to the type of violation and the draft law should be particularly clear about what type of sanction respective violation entail. Also, if sanctions for the violations of this draft law are detailed in other pieces of legislation, it would be important to ensure that they are cross-referenced and consistent.**

[end of text]

⁵⁴ See paragraphs 224-228 of the Joint Guidelines on Political Party Regulation.