OSCE Office for Democratic Institutions and Human Rights Election Observation Mission Mongolia Presidential Election, 26 June 2013



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I. EXECUTIVE SUMMARY

- A presidential election will be held in Mongolia on 26 June 2013. If no candidate wins an absolute majority in the first round, a second round will be held within two weeks.
- Three candidates were registered for the election. Only parliamentary parties and coalitions may nominate candidates. Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, citizens cannot stand as independent candidates in a presidential election.
- The election will be held under a new Presidential Election Law (PEL) adopted in December 2012. While the law was improved in a number of aspects, it contains significant gaps, unclear provisions, and excessive limitations, especially with regard to campaign activities.
- The election will be administered by the General Election Commission (GEC), 22 Territorial Election Commissions, 330 District Election Commissions, and 1,903 Precinct Election Commissions. All election commissioners are drawn from among civil servants. The GEC is active in making preparations for the election, within legal deadlines, but has not yet adopted practical regulations for the work of lower-level commissions. Some OSCE/ODIHR Election Observation Mission (EOM) interlocutors have indicated their lack of trust in the electronic vote counting equipment that will be used on election day.
- Around 1.9 million voters are currently registered. Voter lists should be posted for public scrutiny by 6 June, and voters can request corrections to their records or transfer to a different polling station until 16 June.
- The official campaign period started on 22 May and will end at midnight on 24 June. The PEL limits matters which may be contained in a candidate's platform to those under the president's responsibility. The campaign atmosphere is thus far low-key and calm.
- The PEL provides for free airtime on public radio and television and for paid political advertising on commercial television and radio. The legal framework places the liability for the content of political advertising on the media. It does not refer explicitly to editorial coverage of the campaign and the GEC has not formally clarified whether the campaign can be covered in news programmes.
- There does not appear to be a clearly defined complaints and appeals process with a single hierarchical structure of responsibility; different courts and government agencies are involved. The GEC only deals with alleged violations by lower-level election commissions. Most other complaints must be investigated by the police and adjudicated by courts. The OSCE/ODIHR EOM has been informed of two complaints filed with the GEC, both of which were dismissed.

• The OSCE/ODIHR EOM opened in Ulaanbaatar on 10 May, with a 13-member core team and 24 long-term observers who are deployed to 10 locations throughout the country.

II. INTRODUCTION

In line with constitutional provisions, the State Ikh Khural (parliament) of Mongolia called the presidential election for 26 June 2013. Following an invitation from the Ministry of Foreign Affairs of Mongolia and based on the recommendations of a Needs Assessment Mission, conducted from 4 to 8 March 2013, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 10 May. The EOM, led by Ambassador Audrey Glover, consists of a 13-member core team based in Ulaanbaatar and 24 long-term observers (LTOs) who were deployed on 17–18 May to 10 locations across the country. The OSCE/ODIHR EOM is drawn from 24 OSCE participating States. Participating States have been requested to second 300 short-term observers to observe voting, counting, and tabulation of results.

III. BACKGROUND

Following the July 2012 parliamentary elections, the Democratic Party (DP; led by Prime Minister Norovyn Altankhuyag), the Justice Coalition¹ (led by former President Nambaryn Enkhbayar²), and the Civil Will–Green Party (CWGP; led by MP and Minister for Environment and Green Development Sanjaasurengiin Oyun) formed a government coalition. The DP won 34 of the 76 seats in parliament, the Justice Coalition – 11, and the CWGP – 2. For the first time since 1990, the Mongolian People's Party (MPP), which won 26 seats, is in opposition.³ The last presidential election was held on 24 May 2009. Tsakhiagiin Elbegdorj of the DP was elected with 51.2 per cent of the vote, defeating incumbent N. Enkhbayar.

IV. THE LEGAL FRAMEWORK AND ELECTION SYSTEM

The legal framework for presidential elections comprises the 1992 Constitution (amended in 1999 and 2001) and the Law on the Election of the President of Mongolia (PEL), adopted in December 2012. They are supplemented by the 2006 Law on the Central Election Body, the Civil and Criminal Laws and Procedure Codes, the Administrative Procedure Law, other legislation including several new laws governing the judicial system, and a very limited number of supplementary regulations and decisions of the General Election Commission (GEC). The PEL constitutes a significant change from the old law and took effect just six months before the scheduled election. A number of OSCE/ODIHR EOM interlocutors indicated that this law was not publicly debated. Different parties were, however, represented in the drafting committee, as were GEC members, whose comments and requests were taken into account and reflected in the PEL.

The new PEL contains significant gaps and unclear provisions, which should be clarified by detailed GEC regulations, as well as excessive limitations, especially with regard to campaign activities. Several OSCE/ODIHR EOM interlocutors indicated that the legal framework is

The Justice Coalition consists of the Mongolian People's Revolutionary Party (MPRP) and the Mongolian National Democratic Party (MNDP).

In April 2012, the Independent Authority Against Corruption arrested N. Enkhbayar on corruption charges; he was sentenced to four years in prison in August 2012. In December 2012, the MPRP threatened to leave the coalition in protest over his treatment in prison. Mr. Enkhbayar was subsequently transferred to a hospital.

Three independent candidates were also elected to parliament.

According to international good practice, fundamental elements of the electoral law should not be open to amendments less than one year before an election. See the Council of Europe's European Commission for Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters, II.2.b, available at http://www.venice.coe.int/webforms/documents/CDL-EL(2002)005-e.aspx.

confusing, but noted that the results of presidential elections are generally not contested. Although the PEL was improved in a number of aspects, this is mainly due to the fact that it is based on the revised 2010 parliamentary election law, which is considered to provide a better legal basis for elections.

The president of Mongolia is elected for a maximum of two four-year terms. Citizens eligible to vote (excluding those declared legally incapacitated or serving a prison sentence)⁵ shall elect the president on the basis of universal, free, and direct suffrage by secret ballot. To be elected in the first round, a presidential candidate must receive a majority of the votes cast. In the event that no candidate obtains more than 50 per cent of the votes cast, a second round will be held within 14 days between the two candidates who received the highest number of votes. If no candidate obtains the majority of votes cast in the second round, a new election must be held. For the election to be valid at the polling station level, at least 50 per cent of the voters registered there must turn out. Otherwise, the GEC will order another poll at the respective polling station, to be held within seven days of the GEC's decision, with only those who have not voted yet being entitled to vote. The number of votes cast during the second polling will be added to the number of votes cast initially.

V. THE ELECTION ADMINISTRATION

The presidential election is administered by a four-tiered election administration, comprising the GEC, 22 Territorial Election Commissions (TECs, one for each of the 21 provinces or *aimags*, and one for the capital Ulaanbaatar), 330 District Election Commissions (DECs) and 1,903 Precinct Election Commissions (PECs). The GEC's nine members were all appointed in 2009 by parliament from among civil servants for six-year terms. Two members of the current GEC are women.

The GEC has thus far held 12 sessions in 2013, at which it approved more than 40 guidelines, procedures and samples of official electoral documents for the upcoming election. The GEC has printed a booklet with all GEC decisions and informed the OSCE/ODIHR EOM that this would be used by lower-level election commissions to guide them before and on election day. The GEC has not yet adopted practical regulations for the work of lower-level commissions.

TECs have nine members (seven in Ulaanbaatar), while DECs and PECs have seven members. All lower-level election commissions were formed within the legal deadlines. Members of election commissions at all levels are drawn from among civil servants. The legal framework does not detail the criteria for the selection and appointment of civil servants to election commissions. However, the GEC informed the OSCE/ODIHR EOM that, although there are no written regulations, experience and the 'reputation' of nominees are taken into consideration. The GEC conducted a two-day training for TEC chairpersons and secretaries who will train the other TEC members as well as DEC chairpersons and secretaries, who, in turn, will train PEC chairpersons and secretaries.

The GEC is conducting a voter education program that includes invitations to vote⁷ and a brochure with instructions on voting and mobile voting procedures, both to be sent to every household, as well as two video clips containing basic information on voting procedures, which are being

International standards require that "if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence." See Paragraph 14 of General Comment No. 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee at http://www.unhchr.ch/tbs/doc.nsf/0/d0b7f023e8d6d9898025651e004bc0eb. The OSCE/ODIHR EOM was assured that persons in pre-trial detention would be outside the scope of this restriction and would thus be able to exercise their voting rights.

TECs were established by 7 May, DECs by 12 May 2013, and PECs by 17 May.

The invitations to vote include the date and time of voting and the addresses of polling stations.

broadcast on TV. According to the GEC, voter information and ballots will be printed only in the Mongolian language but will have pictures of candidates to accommodate illiterate voters and those who do not read Mongolian. The GEC is also funding an NGO that aims to help facilitate voting for people with disabilities. There will be Braille covers in every polling station to help the visually impaired to vote.

Every polling station will be equipped with fingerprint scanners for voter identification and with Vote Counting Equipment (VCE). VCEs are ballot scanning and counting machines that produce the election results immediately upon the close of voting, including printed reports, and transmit the results directly to the GEC. According to the GEC, the results will be checked against those tabulated by TECs. Some OSCE/ODIHR EOM interlocutors have indicated their lack of trust in the VCE. A test of the VCE is scheduled before the election.

VI. VOTER REGISTRATION

Voter registration in Mongolia is passive, periodic and based on the national Civil Registration and Information Database. The State Registration Agency (SRA), which maintains the state civil register, prepares the electronic voter register anew for each election. The electronic voter register was posted on the SRA website for public scrutiny on 1 March, as required by law. On 15 May, the respective government authorities¹⁰ notified the SRA about voters who are legally incapacitated, imprisoned, have left the country for a period of 60 days or longer, or are currently serving in the military. According to the SRA website, as of 22 May, the number of eligible voters was 1,896,382, down from 1,902,288 announced on 1 March by the SRA.¹¹

Updated preliminary voter lists for each PEC are extracted from the voter register. They should be delivered to PECs, via TECs, no later than 6 June and be posted in PEC premises to allow voters to check their records. Non-registered voters, as well as those who wish to correct their records or to vote in a polling station different from the one they are assigned to, should submit a written application to the relevant registration office or PEC they are assigned to until 16 June.

Special voter lists are prepared for voters who will vote by mobile ballot box on 25 June. As the PEL provides for out-of-country voting, Mongolian citizens residing abroad can register to vote at 39 PECs established in diplomatic missions. A total of 6,494 voters registered to vote abroad by the legal deadline of 29 May and will be able to cast their ballots between 14 and 16 June.

Several interlocutors informed the OSCE/ODIHR EOM that the rapid pace of construction works and an incomplete address system, as well as inefficient communication between various government agencies, resulted in some newly built buildings having multiple addresses. This, in their view, may lead to confusion among voters and create additional barriers for participation, e.g. if voters are allocated to wrong polling stations.

According to the 2010 population census, Kazakhs are the largest national minority, at 3.9 per cent of the population. The provinces with a diverse ethnic composition are Bayan-Olgii (88.7 per cent Kazakhs), Khovd (the most multi-ethnic province with 19 ethnic groups), and Uvs, which is inhabited by the Oirat tribes.

Under the PEL, all polling stations must be accessible to voters with disabilities and at least one voting booth in each polling station must be equipped for them.

The Supreme Court, the Court Decision Enforcement Authority, and the government authorities in charge of defense and border security.

For the SRA website, see http://www.burtgel.mn/.

According to the GEC, citizens temporarily abroad are also eligible to register and vote abroad.

VII. CANDIDATE NOMINATION AND REGISTRATION

A presidential candidate must be a Mongolian citizen eligible to vote, at least 45 years old, resident in the country for the last five years, and able to prove Mongolian citizenship of both parents. According to the Constitution and the PEL, presidential candidates can only be nominated by parliamentary parties or coalitions of parliamentary parties. Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, the law does not permit individuals to stand as independent candidates. Three candidates were nominated for this election: incumbent President Ts. Elbegdorj by the DP, member of parliament Badmaanyambuugiin Bat-Erdene by the MPP, and Health Minister Natsag Udval, the first female presidential candidate in Mongolia, by the MPRP. All three nominees were registered by the GEC between 13 and 17 May and received their candidate identification cards on 22 May, in accordance with the legal deadlines set by the PEL.

VIII. ELECTION CAMPAIGN

Candidates started campaigning once the GEC issued the candidate registration cards to them.¹⁵ The campaign period ends at midnight on 24 June. Some OSCE/ODIHR EOM interlocutors claimed that the incumbent president began his campaign before the start of the official campaign period, culminating in his appearances at the 7th Ministerial Conference of the Community of Democracies in Ulaanbaatar in April and a lengthy interview broadcast by various TV networks.¹⁶ The incumbent was endorsed by two parliamentary parties, the CWGP and the MNDP, the non-parliamentary Motherland Party and Republican Party, as well as two popular sportsmen.¹⁷ The MPP on 20 May signed a Memorandum of Co-operation with three non-parliamentary parties.¹⁸

The campaign atmosphere is low-key and calm, with only a few billboards and posters in evidence and flyers and party newspapers being distributed in Ulaanbaatar and provincial capitals. ¹⁹ All candidates held small outdoor meetings²⁰ and the OSCE/ODIHR EOM observed candidate proxies canvassing door-to-door in a few provinces.

Under the PEL, candidates' platforms and campaign pledges must remain within the limits of the

These requirements seem overly restrictive and are contrary to the principle of universal suffrage as provided for in paragraph 7.3 of the 1990 OSCE Copenhagen Document which provides that OSCE participating States "guarantee universal and equal suffrage to adult citizens". See also General Comment 25, Paragraph 15 which considers residence and descent as unreasonable and discriminatory restrictions to the right to stand for election

Women remain underrepresented in Mongolian politics. Eleven of the 76 members of the current parliament are women (around 14 per cent), as are 3 of the 16 government ministers. The 2012 amendments to the Parliamentary Election Law introduced a 20 per cent gender quota for the 28 seats elected by proportional representation. Civil society representatives told the OSCE/ODIHR EOM that more effective quota requirements are still being discussed and promoted by a strong women caucus.

Ms. Udval started her campaign by visiting hospitalized party chairman N. Enkhbayar, while the other candidates launched their campaigns in the provinces. OSCE/ODIHR EOM LTOs observed Mr. Elbegdorj's campaign launch in Choibalsan (Dornod province) and Mr. Bat-Erdene's in Ondorkhan (Khentii province).

- The interview was broadcast during primetime between 17 and 20 May by AIST, HD Mongol, UBS and MNB, amongst others. These appearances resulted in a complaint by the MPP to the Authority for Fair Competition and Consumer Protection (AFCCP) and the police for early campaigning. The AFCCP dismissed the complaint, while the complaint with the police is still pending.
- Mr. Dagvadorj Dolgorsuren (sumo) and Mr. Sukhbat Agvaansamdan (Mongolian traditional wrestling), publicly announced their support of the incumbent after receiving their DP membership cards.
- The United Party of Patriots, Green Party, and Freedom Implementing Party.
- The OSCE/ODIHR EOM also noted bilingual (Mongolian–Kazakh) billboards and banners in Bayan-Olgiy province.
- The OSCE/ODIHR EOM observed outdoor rallies in Darkhan-Uul, Dornod, Khentii, Selenge, Hovd, Bayan-Olgiy and Omnogovi provinces and in Ulaanbaatar.

executive powers of the president. All three candidates have published the full versions of their platforms on their websites, mainly focusing on anti-corruption and legal reforms, environmental protection and the effects of mining, improvement of labour conditions and health programmes.

The new PEL establishes more restrictive rules aimed at ensuring equal campaign opportunities, including a ban on cash distributions and any kind of financial or employment pledges. The use of administrative resources for campaign purposes is strictly prohibited, as is the organization of any cultural, religious or sports events that can be associated with a candidate's campaign. Activities aimed at slandering or libeling others, or disseminating false information, as well as opinion polls in a certain period before elections are also banned.²¹ On 2 May, the Sant Maral Foundation, a local non-profit research institute, was fined by the Authority for Fair Competition and Consumer Protection (AFCCP) for publishing its April public opinion survey; the AFCCP categorized the survey results as political advertising.²²

IX. THE MEDIA

The Constitution guarantees freedom of expression and the right to seek and receive information. State censorship is prohibited under the 1998 Law on Freedom of the Media. In 2005, Mongolian National Broadcaster (MNB) was transformed into a public-service broadcaster under the 2005 Law on Public Radio and Television. In 2001, the Law on Information Transparency and Right to Access Information was introduced.²³

The fact that criminal liability for defamation can still lead to imprisonment, as well as fines of up to 60 times the minimum salary that may be imposed on journalists, may induce self-censorship. A draft Criminal Law decriminalizing defamation²⁴ is expected to be discussed by the parliament in 2013. Furthermore, a government resolution of 5 January 2013 introduced a content filter on user comments on the internet, aimed at combating "libel, insult, obscenity and threats".²⁵

Media ownership is not regulated by law and remains non-transparent. Media experts assess that the vast majority of media outlets are directly or indirectly owned by political actors, resulting in a lack of editorial independence. This may undermine the effectiveness of the media and prevent consumers from judging the value of information disseminated by the media. Media experts, however, acknowledged that the media market allows for a certain level of political pluralism.

The PEL and a supplementary resolution issued by the GEC and CRC on 5 April 2013 oblige the MNB to provide equal amounts of free airtime to candidates during the campaign period.

According to the AFCCP, the publication of polls is banned from 1 January 2013 until election day, although Article 33.6 of the PEL prohibits the conduct, publication and distribution of opinion poll results via all types of media outlets only in the week before election day.

The AFCCP imposed a fine of MNT 1,123,200 (the equivalent of 8 minimum salaries; around EUR 600) on the Sant Maral Foundation for publishing the results related to two questions ("In your opinion, which party can provide the best candidate for the presidential election this year?" and "Who in your opinion is the most suitable person to be the president of Mongolia?"). According to the AFCCP, the foundation was in breach of Article 33.5.4 of the PEL (ban of political ranking, slander and libel of others, dissemination of false information in printed, broadcast and electronic media) and not of Article 33.6. At the time of polling, no candidacies other than the incumbent's had been announced. The foundation noted that the AFCCP does not differentiate between scientific research and newspaper or website polls.

The constitutional guarantee on access to information "except that which the state and its bodies are legally bound to protect as a secret" and some provisions of the Access to Information Law are, however, restricted by the overly broad scope of secrecy laws in place.

As recommended by the UN Human Rights Committee following the Mongolian Government Report on the ICCPR in March 2011, available at http://ccprcentre.org/doc/HRC/Mongolia/CCPR.C.MNG.CO.5_en.pdf.

The Communications Regulatory Commission (CRC) compiles the list of 'prohibited' words used for filtering.

Furthermore, the PEL limits the amount of paid airtime commercial TV stations may broadcast to a total of one hour per day. It also explicitly prohibits defamation of others and the dissemination of false information by political actors during the campaign, placing the liability for the content of political advertising on the media. In case of breaches of relevant legal provisions, the license of a media outlet can be suspended for up to three months. For the first time, the law tasks the AFCCP with overseeing legal provisions related to broadcast media.²⁶

The legal framework does not refer explicitly to editorial coverage of the campaign. Before the start of the campaign, MNB forwarded a written request to the GEC to clarify "contradictory instructions" in the supplementary resolution and to specify whether campaign coverage may be broadcast in news programs. The OSCE/ODIHR EOM was informed that the MNB received an oral reply that providing campaign coverage in news programmes would not violate the resolution. The GEC has not formally clarified whether the campaign can be covered in news programmes.

On 18 May, the OSCE/ODIHR EOM started quantitative and qualitative monitoring of 5 television stations and 4 daily newspapers. ²⁸

X. COMPLAINTS AND APPEALS

The PEL does not appear to establish a clearly defined complaints and appeals process with a single hierarchical structure of responsibility. Different agencies and/or courts appear to have jurisdiction to decide various election related matters; the GEC does not look into violations of electoral rights and deals only with alleged violations of the PEL by lower-level election commissions.

The PEL provides for civil and criminal accountability for violations of the PEL by members of election commissions whilst they carry out their functions; for such cases, the PEL provides for monetary fines and/or loss of employment for at least one year. Decisions of election commissions can be appealed to the superior election commission, which must decide on the appeal within three days. The GEC's final decision is the basis for the respective employer to suspend employment of an electoral commissioner, which can be appealed to Administrative Courts. Complaints regarding voter registration are considered by the respective civil registration bodies and decisions of the SRA can be appealed to the Administrative Court.

All other complaints and violations, under the PEL, must be first investigated by the police and adjudicated by civil, administrative or criminal courts, depending on the nature of the case. There are no specific time limits for courts to address electoral complaints, except for criminal cases where the law provides for simplified investigation and adjudication of cases of, among others, vote buying and ballot box stuffing (both criminal offences punishable by imprisonment of 3–6 months). The PEL states that officials handling election disputes must resolve these matters expediently and in due time, depending on the nature of the complaint and dispute.

Under Article 17.2 of the Law on Competition, six out of nine members of the AFCCP, including the head as well as two full-time and three part-time members) are appointed by prime minister. The Mongolian National Chamber of Trade and Industry, trade unions, and an NGO responsible for the protection of workers' interests each nominate one part-time member who must be approved by the government.

The MNB requested a definition of "election campaign advertisement", which may not be broadcast in news programs (Article 2.2 of the supplementary resolution), a definition of "election campaign news and reportage" not considered to be political advertisement (Article 2.4) and a definition of programs that might indirectly "influence a voter's mind and choice" by not being clearly recognizable as political advertising (Article 3.19).

The media monitoring includes MNB, Eagle TV, TV5, TV9, and UBS and the following newspapers: *Udriin Sonin, Unen, Unuudur* and *Zuunii Medee*.

Furthermore, election commissioners, as civil servants, can be held accountable under the Civil Service Law.

Following a 2005 decision of the Constitutional Court, the Administrative Courts no longer have jurisdiction over acts and decisions of the GEC, which can only be reviewed by the Constitutional Court. The Administrative Courts adjudicate cases involving decisions by PECs, DECs, and TECs but do not have injunctive remedies at their disposal.

To date, the OSCE/ODIHR EOM has been informed of two complaints filed with the GEC. The first one concerned the composition of a PEC in Bayan-Ulgii province where MPP was complaining that their party representatives were not accepted. The second complaint concerned the fact that individuals can not compete in a presidential election as independent candidates. Both complainants received a written answer stating that their complaint had no legal basis; in the first case because the claim was based on the old law, and in the second one because both the Constitution and the PEL specify that only candidates nominated by parliamentary parties or coalitions can run for President.

The MPP provided the OSCE/ODIHR EOM with several complaints and requests filed with the GEC, the AFCCP, and the police. Among others, the MPP claimed that the incumbent in his campaign made pledges of a financial nature, in violation of the PEL.

XI. CITIZEN AND INTERNATIONAL OBSERVERS

The PEL provides for domestic and international observation. Parties, coalitions and NGOs have the right to accredit four observers to a PEC; if the capacity of a polling station cannot accommodate all observers, the PEC will allow at least two observers per organization. The GEC informed the OSCE/ODIHR EOM that domestic observers are as a rule accredited three days before election day. The GEC estimated that some 500 international and 1,900 domestic observers would observe this election, including "For Just Elections", a network of six NGOs which observed the 2012 parliamentary elections. On 27 March, the GEC adopted a regulation detailing the rights and responsibilities of international and domestic observers and the accreditation procedure.

XII. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM opened in Ulaanbaatar on 10 May 2013, with a press conference held on 13 May. The Head of Mission has met the GEC chairperson, the Deputy Minister of Foreign Affairs, members of parliament, the National Human Rights Commission, the Constitutional Court, and members of the diplomatic community. The EOM has also established contacts with the GEC, governmental institutions involved in the election process, political parties, civil society, and the media but has thus far not been able to meet any of the candidates. A first briefing for diplomatic representations of OSCE participating States and Partners for Co-operation was held on 31 May.

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