



OSCE/ODIHR ELECTION OBSERVATION MISSION Mongolia — Presidential Election, 26 June 2013

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Ulaanbaatar, 27 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) deployed an Election Observation Mission (EOM) for the 26 June presidential election.

Mongolia became the 57th participating State of the OSCE on 21 November 2012 and thus took upon itself all existing OSCE commitments, including those related to democratic elections. The 26 June presidential election was the first one observed by the OSCE/ODIHR in the country. The election was assessed for its compliance with OSCE commitments and international standards for democratic elections, as well as with national legislation. This statement of preliminary findings and conclusions is delivered prior to the completion of the process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the election process, in particular the tabulation of results and the handling of possible post-election day complaints and appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the election process.

PRELIMINARY CONCLUSIONS

The 26 June presidential election in Mongolia was characterized by a competitive campaign conducted in an environment that respected fundamental freedoms, although restrictive legal provisions prevented media from providing sufficient information to the voters. The electoral legal framework, while recently improved, contains gaps and inconsistencies and does not ensure effective legal remedies for complainants. The General Election Commission (GEC) administered the technical aspects of the election effectively but did not always take the necessary steps to ensure consistent and uniform implementation of the electoral legislation. On election day, voters were able to cast their votes freely and voting was assessed positively in 99 per cent of the polling stations observed, although the secrecy of the vote was not always ensured.

The election was held under a new Presidential Election Law (PEL), adopted in December 2012 without public debate. The PEL was improved in a number of aspects, but still contains significant gaps and unclear provisions. It also unduly restricts several aspects of the election process, especially with regard to campaign regulations. These deficiencies contributed to uneven interpretation and application of the law, as observed by the OSCE/ODIHR Election Observation Mission (EOM). The manner in which it was reportedly drafted and adopted appears to have decreased confidence in the electoral process.

Election commissions at all levels administered the technical aspects of the election effectively and generally enjoyed the trust of the electoral stakeholders. The GEC and Territorial and District Election Commissions (TECs and DEC)s made the necessary preparations within legal deadlines. The GEC did not adopt a comprehensive set of regulations for their work, nor did it always take the necessary steps to ensure the consistent and uniform implementation of the election legislation. The GEC did not always work in an open and transparent manner and did not inform the OSCE/ODIHR EOM about some of its sessions. Members of election commissions at all levels were drawn from

among civil servants. The legal framework does not detail specific criteria for their selection and appointment, and a number of OSCE/ODIHR EOM long-term observers (LTOs) reported credible allegations that civil servants affiliated with the ruling Democratic Party (DP) were appointed at all levels of the election administration, including in the leading positions.

Voter registration in Mongolia is passive, periodic and based on the national Civil Registration and Information Database. Political party interlocutors expressed overall confidence in the voter registration system. The quality of voter lists was, however, negatively impacted by a lack of coordination between authorities involved. Voter lists were not always posted at Precinct Election Commission (PEC) premises for public scrutiny but were accessible upon voters' requests.

Three candidates contested the election. The Constitution and the PEL limit the right to nominate presidential candidates to parliamentary parties and coalitions. Contrary to paragraph 7.5 of the 1990 OSCE Copenhagen Document, individuals cannot stand as independent candidates. Some eligibility requirements for presidential candidates are overly restrictive and not in line with OSCE commitments and other international standards.

The campaign environment was competitive and characterized by respect for the fundamental freedoms of assembly, association and movement; contestants were able to campaign without hindrance, and rallies remained free of incidents. Doubts expressed by some political parties regarding the reliability of the electronic vote-counting equipment (VCE) became a campaign issue. All three candidates made pledges of a financial nature, in violation of the PEL. The election campaign was active but lacked animated debate between candidates or their representatives.

The legal framework generally provides for freedom of expression. While the media market allows for a certain level of political pluralism, the overwhelming majority of media outlets are reportedly directly or indirectly owned by political actors and interference of media owners in the content of news programmes undermines the media's editorial independence. Electronic media largely complied with the legal provisions regarding free and paid political advertisement. There were, however, hardly any programmes that provided an opportunity for journalists, experts and the public to put questions to candidates, and for candidates to debate with each other. This prevented the media from fulfilling its function to provide for a robust public debate on election matters and political options.

The PEL does not establish a clear complaints and appeals process with a single hierarchical structure of responsibility. There was a lack of understanding among stakeholders of the electoral dispute process and no consistent interpretation of the applicable regulations. Timeframes for the adjudication by courts also do not provide for timely and effective redress, as required by paragraph 5.10 of the 1990 OSCE Copenhagen Document. Regrettably, the OSCE/ODIHR EOM was only provided with limited access to complaints filed with the GEC and the police and was thus not able to analyze all complaints submitted and adjudicated.

Election day was calm and peaceful. The GEC put voter turnout at 64.8 per cent. The voting process was assessed positively in almost all polling stations observed. Procedures were generally followed but the secrecy of the vote was not always ensured. The vote count was assessed mostly positively, despite some procedural irregularities observed. The tabulation process at many DEC's lacked organization and transparency. The GEC released preliminary results on 27 June, but these were not broken down to polling station level.

PRELIMINARY FINDINGS

Background

In line with constitutional provisions, the State Great Khural (parliament) of Mongolia called the presidential election for 26 June 2013. Following the July 2012 parliamentary elections, the Democratic Party (DP; led by Prime Minister Norovyn Altankhuyag) won 34 of the 76 seats in parliament, the Justice Coalition (led by former President Nambaryn Enkhbayar)¹ won 11, and the Civil Will–Green Party (CWGP; led by MP and Minister for Environment and Green Development Sanjaasurengiin Oyun) won 2. These parties formed the government coalition. The Mongolian People’s Party (MPP), which won 26 seats, is in opposition.² 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.

Legal Framework and Election System

The legal framework for this election comprises the 1992 Constitution (amended in 1999 and 2001), the Law on the Election of the President of Mongolia (PEL, 2012), the Law on the Central Election Body (2006) and laws governing the judicial system. Recent legislative changes include progressive legislation on gender equality.³ The legal framework does not, however, provide for effective protection of minorities and vulnerable groups.⁴ This election was the first presidential election to be held under the new PEL, which constitutes an improvement over the previous law but contains significant gaps and unclear provisions, as well as undue restrictions, especially with regard to campaign regulations. The GEC, while empowered to issue detailed regulations, has not done so, for example, on criteria for appointment of election commission members or election-day complaints procedures.

The law took effect just six months before the scheduled election, which is not in line with international good practice.⁵ A number of OSCE/ODIHR EOM interlocutors informed that the PEL was drafted and adopted hastily, without public debate, and claimed that proposals from other parties were not taken into account. Different parliamentary parties were, however, represented in the drafting committee, as were members of the General Election Commission (GEC), whose comments and requests were taken into account and reflected in the PEL. The deficiencies in the law contributed to uneven interpretation and application of the law, as observed by the OSCE/ODIHR EOM, and the manner in which it was drafted and adopted appears to have decreased confidence in the electoral process.

¹ The Justice Coalition comprises the Mongolian People’s Revolutionary Party (MPRP) and the Mongolian National Democratic Party (MNDP).

² Three independent candidates were also elected to parliament. Eleven of the 76 members of the current parliament are women (around 14 per cent).

³ For example the Law on Gender Equality and the Strategy and Gender Equality Action Plan, passed in 2011 and 2013, respectively, under aegis of the National Committee on Gender Equality. While women remain underrepresented in Mongolian politics, the 2012 amendments to the Parliamentary Election Law introduced a 20 per cent gender quota for the 28 seats elected by proportional representation.

⁴ More details can be found in UN treaty bodies and the Universal Periodic Review (UPR)’s recommendations. See <http://www.ohchr.org/EN/countries/AsiaRegion/Pages/MNIndex.aspx>.

⁵ 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](http://www.venice.coe.int/webforms/documents/CDL-EL(2002)005-e.aspx).

There is no public financing of political parties and the PEL only foresees donations as financial sources for parties and candidates. The GEC set the maximum election expenditure at MNT 5.1 billion (some EUR 2.7 million) per party and MNT 3.1 billion (some EUR 1.6 million) per candidate. Campaign donations are limited to MNT 10 million (some EUR 5,300) per individual and 5 times that per legal entity and can be made only in the election year. The law prohibits donations from a number of sources.⁶ Violations are punishable by minor fines but any amount above the respective limits set by the GEC will be confiscated. The PEL provides for detailed reporting requirements, including full name, address and amount of donation made by a citizen or a legal entity, with the GEC mandated to receive, review and publish these reports within 45 days after elections.

The president is elected for a four-year term, on the basis of universal, free, and direct suffrage by secret ballot. Mongolian citizens who are at least 18 years old on election day, with the exception of those declared legally incapacitated by a court or serving a prison sentence, are allowed to vote.⁷ To be elected in the first round, a candidate must win a majority of the votes cast. Otherwise, a second round is held within 14 days, between the two leading candidates. If no candidate obtains a 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 a repeat poll at the respective polling station, to be held within seven days of the GEC's decision, with only those who have not voted already being entitled to vote. The number of votes cast during the repeat election will be added to the number of votes cast initially, and the combined results of both polls will be considered as the final results. The PEL prohibits campaigning between the day before the first-round election day and possible repeat polls. According to the GEC, the same applies to the period between the two rounds, which could unduly restrict the fundamental freedoms in the context of elections.

Election Administration

The presidential election was 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), 339 District Election Commissions (DECs) and 1,896 Precinct Election Commissions (PECs). The GEC has nine members appointed by parliament for six-year terms. Two members of the current GEC are women. TECs have nine members (seven in Ulaanbaatar), while DECs and PECs have seven members and tend to be staffed by more women than men. All lower-level election commissions were formed within the legal deadlines.

Members of election commissions at all levels were drawn from among civil servants. The legal framework does not detail the criteria for the selection and appointment of civil servants to election commissions. There are no written regulations or instructions on the composition of election commissions, but the GEC informed the OSCE/ODIHR EOM that experience and the 'reputation' of nominees were taken into consideration. A number of OSCE/ODIHR EOM long-term observers

⁶ Foreign countries, organizations or citizens, state or local authorities or legal entities owned by them, people in debt, labor unions, religious organizations and NGOs, among others.

⁷ 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. Paragraph 24 of the 1990 OSCE Copenhagen Document provides, in part, that "any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law." 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.

(LTOs) reported credible allegations that civil servants affiliated with the DP were appointed at all levels of the election administration, including in the leading positions.⁸

Election commissions at all levels administered the technical aspects of the election effectively and generally enjoyed the trust of the electoral stakeholders. The GEC held 12 sessions since the beginning of the year. The OSCE/ODIHR EOM was only informed about and invited to attend one of at least two sessions which were held after it commenced its work. The GEC did not always work in an open and transparent manner: it did not announce its sessions on the website, nor did it publish minutes of its sessions. GEC decisions are published on the GEC website under 'Legal Acts', where the decisions are only numbered but not dated and can therefore not be linked to a specific session.

The GEC approved more than 40 guidelines, procedures and samples of official documents and printed a booklet with GEC decisions which was used by lower-level election commissions to guide them before and on election day. It did not, however, adopt a comprehensive set of regulations for the work of lower-level commissions. Although the GEC is the body charged with administering the election, it did not always take the necessary steps to regulate certain aspects of the process in order to ensure consistent and uniform implementation of the election legislation. This was despite the potential for problems on election day and after, e.g. with regard to the publication of preliminary election results or whether video footage from those polling stations where video cameras were installed could be used in the complaints and appeals process.

The GEC organized cascade training for TEC, DEC and PEC members, which was positively assessed by the OSCE/ODIHR EOM LTOs. The GEC also conducted a voter education programme which included invitations to vote and a brochure with instructions on election day and mobile voting procedures, both sent to every household, as well as two video clips containing basic information on voting procedures, which was broadcast on TV. Voter information and ballots were printed only in the Mongolian language. Ballots had pictures of the candidates to accommodate voters who are illiterate or do not read Mongolian. The GEC also funded an NGO that aims to facilitate voting for people with disabilities. Under the PEL, polling stations must be accessible to voters using wheelchairs and equipped with at least one special voting booth for disabled voters.

Every polling station was equipped with fingerprint scanners for voter identification and with electronic VCE. VCE 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 TEC-level aggregated results produced by the VCEs will be checked against those tabulated by the TECs on the basis of paper protocols. Some OSCE/ODIHR EOM interlocutors, including from political parties, indicated their doubts regarding the reliability of the VCE.⁹ The GEC printed 6,494 ballots for out-of-country voting and 1,893,207 for voting in Mongolia within legal deadlines.

On 13 June, the GEC officially endorsed the initiative of the Information Technology, Post and Telecommunications Authority, a governmental regulatory agency, to award each voter who casts a

⁸ The OSCE/ODIHR LTOs reported such perceptions from the provinces of Bayan-Ölgii, Dornod, Dundgovi, Govi-Altai, Hentii, Hövsgöl, Omnogovi, Övörhangai, Selenge, Tov, Uvs, Zavkhan, and the city of Ulaanbaatar. In a number of instances, the OSCE/ODIHR LTOs were able to confirm this information through analysis of appointment procedures and resulting composition of the election commissions. See section on complaints and appeals for details on related complaints.

⁹ See also section on the campaign environment.

ballot in the election with mobile phone credit in the amount of MNT 1,000 (some EUR 0.50).¹⁰ This practice seems to violate several articles of the PEL.¹¹

Voter Registration

Voter registration in Mongolia is passive, periodic and based on the national Civil Registration and Information Database. The State Registration Agency (SRA) that also 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 the PEL. Preliminary voter lists were extracted from the electronic voter register and delivered to PECs by the legal deadline of 6 June.

PECs delivered invitation cards to the voters in a timely manner. The SRA prepared a voter education spot, which was aired on television and radio from 6 to 16 June, encouraging voters to register or check their records. Additionally, flyers with similar information were distributed through newspapers. Voters could register, request corrections or ask to be transferred to a different polling station between 6 and 16 June.¹² Some OSCE/ODIHR EOM interlocutors viewed the 16 June deadline for such changes as inflexible and limiting voters' opportunities to register or correct their records closer to election day.

OSCE/ODIHR EOM LTOs reported that the voter lists were not displayed at many of the PEC premises they visited during the official scrutiny period of 6 to 16 June. The lists were, however, accessible at PECs upon requests of voters who wished to check their records. OSCE/ODIHR EOM LTOs also reported cases where voter lists were not available at all during this period due to PEC members being involved in door-to-door checks and delivery of voter invitation cards. In other cases, PECs were not operational until shortly before election day. This effectively reduced the ten-day scrutiny period during which voters could verify their records and request corrections. Special voter lists were compiled for voters who voted by mobile ballot box on 25 June. The total number of voters registered was 1,856,190.¹³

While political party interlocutors expressed overall confidence in the voter registration system and the quality of voter lists, other OSCE/ODIHR EOM interlocutors reported a lack of co-ordination between local councils and the SRA, the absence of uniform address standards as well as high numbers of voters registered at some addresses.

The PEL provides for out-of-country voting. Of a total of 6,494 voters who filed a request to vote abroad, 6,233 were registered by the legal deadline of 29 May.¹⁴ Some 4,248 voters voted from 14 to 16 June at 39 polling stations established at diplomatic missions.

¹⁰ The associated costs will be covered by the mobile phone service operators. See <http://gec.gov.mn/details/793>.

¹¹ According to Article 5.4 of the PEL, “[Any] attempt to force, prevent or otherwise influence a voter's participation and free expression of his/her will in an election shall be prohibited.” Article 5.5 stipulates that “[A] voter shall be provided with an opportunity to express his/her will by secret ballot without undue influence.” In addition, Article 43.8 states: “It is prohibited to distribute foreign and domestic assistance funds to citizens or sell or use them for election campaign purposes in the course of election organization.”

¹² A total of 40,715 voters used this opportunity.

¹³ See the SRA website <http://www.burtgel.mn/>.

¹⁴ As provided for by the PEL, voters who are out of the country for 60 days or more were temporarily removed from the voter lists, while those who returned to Mongolia were required to re-register no later than 16 June. According to the GEC, citizens temporarily abroad are also eligible to register and vote at polling stations abroad. According to the SRA, requests of 261 voters were rejected because they did not hold a biometric ID card, did not submit the complete documentation required by law, or because their name and personal identification number did not match in the population register.

Candidate 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. These requirements are overly restrictive and not in line with OSCE commitments and other international standards.¹⁵ According to the Constitution and the PEL, presidential candidates can only be nominated by parliamentary parties or coalitions of parliamentary parties.¹⁶ 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 within legal deadlines.

The Campaign Environment

The campaign environment was characterized by respect for the fundamental freedoms of assembly, association and movement; contestants were able to campaign without hindrance, and rallies remained free of incidents. The initial phase of the election campaign was characterized by low-key activities, complaints about the incumbent president's early campaign start¹⁷ and concerns raised with regard to the use of the VCE. In its final stages, the campaign became more visible and focused mainly on the competition between the incumbent and B. Bat-Erdene, and was characterized by a polarized political environment, with some instances of nationalistic rhetoric.¹⁸ Despite being active, the election campaign lacked animated debate between candidates or their representatives. On 24 June, the public Mongolian National Broadcaster (MNB) television and radio aired the only debate between the candidates. The format of the debate, which had been

¹⁵ The requirement that both parents must be Mongolian citizens is contrary to paragraph 7.3 of the 1990 OSCE Copenhagen Document which provides that OSCE participating States “guarantee universal and equal suffrage to adult citizens”. Furthermore, General Comment 25, Paragraph 15 considers residence and descent as unreasonable and discriminatory restrictions to the right to stand for election. This legal provision also contradicts Art.2 of the ICCPR, which prohibits discrimination on the grounds of national or social origin, birth or other status.

¹⁶ Some smaller parties voiced their dissatisfaction to the OSCE/ODIHR EOM regarding their access to the electoral process and about the restrictions on the right to nominate a candidate, which they consider to limit voters' choice.

¹⁷ Some OSCE/ODIHR EOM interlocutors claimed that the incumbent began his campaign before the start of the official campaign period, culminating in a lengthy interview broadcast by various TV networks during primetime between 17 and 20 May. These appearances resulted in a complaint by the MPP alleging early campaigning to the Agency for Fair Competition and Consumer Protection (AFCCP) and the police. The AFCCP dismissed the complaint, arguing that during the interview no points from the incumbent's campaign platform were discussed; the complaint with the police is still pending.

¹⁸ During a rally in the Dornod province on 11 June representatives of B. Bat-Erdene highlighted the superiority of their candidate in comparison to others because of his birthplace in the Khentii province, implying that the ‘genuine’ Mongols live in central provinces but not in in the Zavkhan, Govi-Altai, and Khovd provinces. This was reported on 12 June in the newspaper *Odriin Sonin*. Reportedly, people protested against this statement in Western provinces, in particular in Uvs. N. Udval promised to put an end to selling the country to foreigners and to decrease foreign investment, as observed by OSCE/ODIHR EOM LTOs in Oenderkhan, Khenti province on 23 May and 3 June; Choibalsan, Dornod province on 2 June; Choir, Govisumber province on 13 June; Olgii, Bayan-Olgii province on 18 June.

defined by the campaign teams beforehand, restricted the discussion to specific topics,¹⁹ limited the time frame and did not provide for any discussion.

Whereas the incumbent and DP representatives repeatedly stressed the importance of the VCE as being “consistent with the interests of justice”,²⁰ candidates B. Bat-Erdene and N. Udval claimed that the GEC provided insufficient voter information on the VCE and highlighted the lack of GEC regulations for cases where the results of the electronic and manual vote counts do not match. On 5 June, B. Bat-Erdene appealed to the other two candidates to agree to manual vote counts in the most populated areas,²¹ alleging voters’ distrust in and lack of transparency of the electronic vote counting procedure. In response, the GEC on 6 June issued a letter to the MPP, demanding that the MPP candidate stops calling for a breach of the PEL. The Agency for Fair Competition and Consumer Protection AFCCP,²² acting on a complaint from the DP, considered B. Bat-Erdene’s appeal a violation of Article 33.7.7 of the PEL and issued a warning to him. The MPP continued lobbying for manual counts. On 19 June, in the *Onoodor* newspaper, the General Police Agency warned the MPP that such appeals could influence public attitudes and may lead to public disorder.

The new PEL established more restrictive rules aimed at ensuring equal campaign opportunities, including a ban on cash distributions and on any kind of financial or employment pledges that do not fall under the executive powers of the president.²³ OSCE/ODIHR EOM LTOs observed instances of all three candidates making pledges of a financial nature, in violation of the PEL;²⁴ in a few such cases, the MPP and the DP filed complaints.²⁵ While candidates’ campaign pledges overlapped to a large degree,²⁶ each candidate emphasized certain areas more than others, resulting in distinct differences in their platforms. All candidates campaigned at provincial capital and district levels, while their representatives and campaigners were active at the village level.

OSCE/ODIHR EOM LTOs observed 56 campaign events of all three candidates throughout the

¹⁹ These topics included candidates’ future priorities in general and economic development, independence of courts, defense policy, mining, national heritage, education, health, agriculture, national security, decentralization, and corruption.

²⁰ See <http://cdmongolia.mn/statements/>.

²¹ Ulaanbaatar city, Darkhan-Uul, Orkhon, and Hövsgöl provinces.

²² The AFCCP is tasked by the joint GEC/CRC Resolution to monitor “the Mongolian presidential election campaign by TV and radio.” Due to a lack of facilities and methodology, the AFCCP does not conduct a quantitative or qualitative monitoring and reacts only upon complaints. In case of breaches of relevant legal provisions, the license of a media outlet can be suspended for up to three months by the CRC.

²³ Only two of the areas highlighted by the candidates, the reform of the judiciary and foreign relations, constitute presidential powers, whereas in other spheres the president has mostly symbolic powers.

²⁴ Ts. Elbegdorj made such pledges on 22 May in Choybalsan (Dornod province), on 4 June in Altai (Govi-Altai province), on 6 June in Ölgii (Bayan-Ölgii province), on 9 June in the Chingeltei district of Ulaanbaatar, on 11 June in Zuunmod (Tov province) and on 16 June in Saikhan soum (Selenge province). For details see OSCE/ODIHR EOM Interim Report No.1. B. Bat-Erdene pledged to build secondary schools and kindergartens as well as provide young people with cheaper apartments (8 June in Ulaanbaatar, Bayanzurkh district), to continue the student stipends programmes of 70.000 MNT per month (on 10 June in Sukhbaatar, Selenge province, and 19 June in Dalanzadgad, Omnogovi province). Furthermore, on 10 June in Darkhan-Uul province he made pledges with regard to 1,072 shares of the *Oyu Tolgoi* company that every Mongolian citizen will receive. N. Udval also pledged scholarships to students by stating that the money would come from tax payments rather than from mining profits (on 18 June in Ölgii, Bayan-Ölgii province).

²⁵ The MPP filed a complaint with the Capital City Police on 25 May (see OSCE/ODIHR EOM Interim Report No. 2). On 7 June, the DP filed a complaint to the GEC (with a copy to the AFCCP) about B. Bat-Erdene’s pledges with regard to the continuation of student stipends that were broadcast in form of political advertising on various TV channels.

²⁶ All candidates pledged to fight corruption, unemployment, the negative effects of mining in the social, environmental, economic and governance spheres, and alcoholism, and to reform the judiciary, reduce partisan influence in the public administration, improve living standards, promote investment in schools and hospitals, and continue a foreign policy of good relations with Russia and China.

country. An estimated 54 per cent of attendants at the rallies observed by the OSCE/ODIHR LTOs were women. There were indoor and outdoor rallies, small-scale meetings with voters in markets and central streets. The MPP and the DP used an extensive network of offices, including campaign *gers*, for the distribution of leaflets and party/candidate newspapers. Party campaigners also conducted door-to-door canvassing. The number of banners and billboards increased during the last campaign week.²⁷ Posters and party flags of all three candidates became more visible closer to election day, including in the vicinity of PECs, as well as on private houses and *gers*. Candidates and their political representatives actively used online media and social networks, in particular Facebook and Twitter, and sent campaign text messages to mobile phones.²⁸

The Media

The legal framework generally provides for freedom of expression. The criminalization of defamation, however, constitutes a major shortcoming, and possible imprisonment for defamation and an increasing number of criminal lawsuits filed against journalists (with damages awarded up to 60 times the minimum salary) foster self-censorship.²⁹ Furthermore, a content filter on user comments on the internet, introduced by a government resolution of 5 January 2013 with the aim of combating “libel, insult, obscenity and threats” violates international standards on media.³⁰

While the media market allows for a certain level of political pluralism, the media environment is characterized by an overwhelming majority of media outlets reportedly being directly or indirectly owned by political actors. In addition, there is a lack of transparency in media ownership, which is not regulated by law.³¹ Journalists informed the OSCE/ODIHR EOM that access to news programmes, either through interference of owners in the editorial autonomy or through payment, is common. Furthermore, journalists reported that media owners influence the placement of so-called ‘black PR’ in order to discredit political opponents.³² The significant lack of editorial independence undermines investigative journalism and the democratic functioning of media in general and the lack of transparency in ownership prevents the public from evaluating the information disseminated by the media.³³

Provisions in the PEL and a supplementary resolution issued by the GEC and the Communications Regulatory Commission (CRC), the government agency responsible for licensing of the electronic media, on 5 April 2013 on “The procedure on running the presidential election campaign via TV and radio broadcasters” are overly restrictive and unnecessarily impede media in their reporting and coverage of news. The law obliges the MNB to provide for free airtime according to a schedule

²⁷ The OSCE/ODIHR EOM also noted bilingual (Mongolian–Kazakh) billboards and banners in Bayan-Ölgii province.

²⁸ On the last day of campaign, B. Bat-Erdene sent text messages addressing young people and pledging cheap mortgages without pre-payment for apartments as well as temporary support to successful students.

²⁹ A draft Criminal Law decriminalizing defamation is expected to be discussed by the parliament in 2013.

³⁰ See the Joint Declaration by the OSCE Representative on Freedom of the Media together with the UN, the OAS and the ACHPR Special Rapporteurs on Freedom of Expression, available at <http://www.osce.org/fom/78309>, which states that “Content filtering systems which are imposed by a government or commercial service provider and which are not end-user controlled are a form of prior censorship and are not justifiable as a restriction on freedom of expression.”

³¹ A draft law on Freedom of the Press submitted to parliament by the president, including provisions on ownership transparency and editorial independence, was withdrawn by the president after the second reading in 2013.

³² Such practices are reportedly common and have increased during previous election campaigns, when some TV stations started operating only during the election period.

³³ See the Report of the EU High Level Group on Media Freedom and Pluralism “A free and pluralistic media to sustain European democracy”, available at <http://ec.europa.eu/digital-agenda/sites/digital-agenda/files/HLG%20Final%20Report.pdf>.

prepared by the GEC, and commercial TV stations to provide equal amounts of paid airtime to candidates, up to one hour per day in total. Contradictory provisions leave it unclear whether the campaign may be covered in news programmes.³⁴ The OSCE/ODIHR EOM was informed that in order to comply with legal provisions, media should cover the campaign by giving the same amount of news coverage to all candidates and by broadcasting equal amounts of political advertising.

The PEL explicitly prohibits defamation and the dissemination of false information by political actors, placing the liability for disseminating unlawful statements, including in political advertising, on the media.³⁵ The AFCCP received and decided on several media-related complaints, in one case imposing fines on journalists for deliberately misspelling a word in a campaign message by B. Bat-Erdene.

OSCE/ODIHR EOM media monitoring³⁶ results confirmed that the electronic media outlets complied with the legal provisions regarding free and paid political advertisement by broadcasting an equal amount of advertising of all three candidates.³⁷ Campaign coverage in the current events and news programmes was, however, very limited.³⁸ While the public MNB and the commercial TV9 covered candidates' campaign in the news in a balanced way, the commercial TV stations Eagle TV and TV5 displayed bias towards the incumbent.³⁹ Although all monitored TV stations air regular discussion programmes, only one debate among the candidates took place on 24 June. There were hardly any programmes that could provide an opportunity for journalists, experts and the public to put questions to candidates, and for candidates to debate with each other. This prevented the media from fulfilling its function to provide for a robust public debate on election matters and political options and negatively affected voters' ability to contribute to and participate in the decision-making process in an informed way.

³⁴ The GEC did not respond formally to a written request by the MNB to specify whether campaign coverage may be broadcast in news programmes. The OSCE/ODIHR EOM was informed that the MNB received an oral reply that campaign coverage in news programmes would not violate legal provisions. The commercial TV station UBS informed the OSCE/ODIHR EOM, however, that they do not cover the election campaign in the news since "candidates' campaign can not be broadcast during news programmes, according to the law".

³⁵ See Joint Statement on the Media and Elections by the OSCE Representative on Freedom of the Media (RFOM), the UN, the OAS and the ACHPR Special Rapporteurs on Freedom of Expression available at <http://www.osce.org/fom/37188>, which states that media should "be exempted from liability for disseminating unlawful statements made directly by parties or candidates – whether in the context of live broadcasting or advertising – unless the statements have been ruled unlawful by a court or the statements constitute direct incitement to violence and the media outlet had an opportunity to prevent their dissemination".

³⁶ The OSCE/ODIHR monitored the following media starting from 22 May: television stations MNB, Eagle TV, TV5, TV9, and UBS, as well as the newspapers *Udriin Sonin*, *Unen*, *Unuudur* and *Zuunii Medee*.

³⁷ UBS informed the OSCE/ODIHR EOM that it did not broadcast N. Udval's paid political advertising since, although offered by the TV station, no contract was signed with the candidate.

³⁸ While MNB broadcast a total of 3 hours and 20 minutes of campaign coverage of all three candidates for the entire campaign period from 22 May to 14 June, the commercial TV stations broadcast significantly less: 1 hour 46 Minutes (Eagle TV), approximately 1 hour (TV5), and 36 Minutes (TV9). UBS did not cover the campaign in news programmes and informed the OSCE/ODIHR EOM that it interpreted the legal provisions as not allowing for campaign coverage in news programmes.

³⁹ MNB devoted 31 per cent of its news coverage to B. Bat-Erdene, 36 per cent to Ts. Elbegdorj and 33 per cent to N. Udval. TV9 gave 32 per cent of its coverage to B. Bat-Erdene and Ts. Elbegdorj, while N. Udval received 36 per cent. Eagle TV gave 55, 26 and 19 per cent of coverage to Ts. Elbegdorj, B. Bat-Erdene, and N. Udval, respectively. TV5 showed the same approach by devoting 43, 29, and 28 per cent to Ts. Elbegdorj, B. Bat-Erdene, and N. Udval, respectively. All figures refer to candidates' campaign coverage excluding institutional events.

Complaints and Appeals

The PEL does not establish a clear complaints and appeals process with a single hierarchical structure of responsibility. Different agencies and/or courts have jurisdiction to decide various election-related matters. While the PEL is silent on the issue, the GEC confirmed that its decisions can be appealed to the Chingeltei district court, or to the Constitutional Court for matters pertaining to the constitution. The Constitutional Court will only accept petitions from citizens who file a complaint against a written GEC decision. Under the PEL, all other complaints and violations must be first investigated by the police and, on their recommendation, adjudicated by local courts.

The fact that the legislation provides for multiple avenues for election dispute resolution and lacks a clear delineation of the jurisdiction and remedial powers of the various decision-making bodies is contrary to the OSCE commitment to ensure effective redress and to international good practice.⁴⁰ Moreover, there is a lack of understanding among stakeholders and no consistent interpretation of the election-dispute process. One political party questioned whether the authorities would act impartially and effectively when addressing electoral complaints.

Under the PEL, decisions of election commissions can be appealed to the superior election commission and must be decided on within three days. Under the laws governing the judicial system, they can also be appealed to the courts who should adjudicate them within the standard timeframes.⁴¹ Since these timeframes can amount to several months, they do not provide for timely and effective redress within the electoral period, as required by paragraph 5.10 of the OSCE 1990 Copenhagen Document.⁴² Few cases were, however, adjudicated by the courts during this election.

The OSCE/ODIHR EOM was not provided with sufficient access to complaints filed with the GEC or the police. A large number of complaints filed with the GEC concerned the composition of election commissions. The way the GEC dealt with these fuelled allegations by the MPP that its decisions lacked impartiality.⁴³ Many complaints filed with the police or the AFCCP pertained to violations of campaign-related provisions.

Citizen and International Observers

The PEL provides for domestic and international observation. Parties, coalitions and NGOs have the right to accredit up to four observers to a PEC; if the capacity of a polling station cannot accommodate all observers, the PEC must allow at least two observers per organization. Domestic observation was primarily carried out by party and candidate observers. Civil society organizations

⁴⁰ Paragraph 18 of the OSCE 1991 Moscow Document contains an obligation of the OSCE participating States to “ensure an effective means of redress against administrative decisions.” See also Paragraph 3.3(c) of the Venice Commission’s Code of Good Practice in Electoral Matters, p.11, states: “The appeal procedure and, in particular, the powers and responsibilities of the various bodies should be clearly regulated by law, so as to avoid conflicts of jurisdiction (whether positive or negative). Neither the appellants nor the authorities should be able to choose the appeal body.” See, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁴¹ According to the Civil and Criminal Procedure Laws, courts have 60 days to adjudicate a case and 30 days to decide on appeals. Furthermore, the laws foresee 7–14 days for investigation. In part due to these timelines, to date, no complaints investigated by the police were transferred to the courts for adjudication. A simplified criminal adjudication procedure applies only to a few criminalized electoral offences.

⁴² Paragraph 5.10 of the OSCE 1990 Copenhagen Document establishes the right of everyone to seek “effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

⁴³ A total of 39 complaints concerned the composition of election commissions. The GEC responded in the form of resolutions listing approved election commissioners but not providing reasons for refusing others or providing any criteria used in deciding who to appoint. Other responses did not refer in substance to the merits of the complaints, and one response included a call to stop interfering in matters within the GEC’s powers.

did not observe the pre-election day period, in part due to a lack of funds and a restrictive GEC decision on accreditation.⁴⁴ A limited number of domestic observers were present in the polling stations observed on election day. The NGO MIDAS initiated and carried out a test of the VCE, at the GEC premises and in the presence of party representatives, media and the OSCE/ODIHR EOM.

Election Day

Election day was calm and peaceful. The GEC put voter turnout at 64.8 per cent. The GEC released preliminary results on 27 June, but these were not broken down to polling station level.

Opening was assessed positively in all but 3 of the 72 polling stations where it was observed by the OSCE/ODIHR observers. Forty-two of the observed polling stations opened with, at times long, delays due to the fact that the PEL sets 07:00 hrs both as the start of voting and as the time when the PEC meets to make final preparations.

Voting was assessed positively in 99 per cent of the polling stations where it was observed. Procedures were generally followed but the secrecy of the vote was not always ensured (10 per cent), especially during the mobile voting on 25 June (29 out of 70 observations). ID checks and finger print scans were carried out according to procedures and in five per cent of polling stations observed, one or more voters were turned away because their name could not be found on the voter list. OSCE/ODIHR EOM observers reported occasional technical problems with the finger print scanners and the VCE.

Women accounted for 77 per cent of the PEC membership and 56 per cent of chairpersons in polling stations observed. Candidate representatives were present in almost all polling stations observed, and citizen observers in 11 per cent. Over one half of polling station premises were not readily accessible to persons with disabilities, and the layout of 26 per cent was not suitable for these voters. Braille covers for the visually impaired were often not available. The layout of a small number of polling stations observed (two per cent) was not adequate to conduct polling, which resulted in overcrowding there.

The vote count was assessed positively in all but 14 of the 80 polling stations where it was observed. OSCE/ODIHR EOM observers noted some procedural irregularities, such as PECs not performing all steps in the required order. The number of voters whose fingerprints were scanned and biometric ID data verified was often not cross-checked with the number of actually issued ballots, which could have been an additional safeguard against potential irregularities. OSCE/ODIHR EOM observers frequently were not given a copy of the VCE report, although they are entitled to receive it. During 21 counts observed, the PEC had problems completing the PEC protocol. Results of the manual recounts matched the ones produced by the VCEs in most of the 16 polling stations where they were observed.

The tabulation process at DEC's was assessed negatively in 20 of the 59 observations by OSCE/ODIHR EOM observers due to lack of organization and transparency. One half of DEC premises visited were inadequate for the reception and processing of PECs, which resulted in overcrowding and reduced the transparency of the process. Procedures were largely followed, but observers noted some problems with PEC protocols, which were not filled in completely or correctly. Some observers were restricted in their observations.

⁴⁴ According to GEC Decision No. 23, Article 2.2, "an NGO shall submit a written request to monitor elections to the GEC 15 days after the election day has been announced" (i.e. 50 days before election day).

*The English version is the only official document.
However, this statement is also available in Mongolian.*

MISSION INFORMATION & ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission opened in Ulaanbaatar on 10 May, with 14 experts in the capital and 24 long-term observers deployed throughout Mongolia.

On election day, 167 short-term observers were deployed. In total, there were observers from 33 OSCE participating States. Voting was observed in 659 polling stations out of a total of 1,896 in 16 provinces and all 9 districts of Ulaanbaatar. Counting was observed in 85 polling stations across 16 provinces and all 9 districts of Ulaanbaatar. Observers submitted 59 reports on tabulation process from 35 out of 339 DEC's.

The OSCE/ODIHR EOM wishes to thank the authorities of Mongolia for the invitations to observe the election, the General Election Commission for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs and other authorities for their assistance and co-operation. The observers also wish to express appreciation to the embassies and international organizations accredited in Mongolia for their co-operation and support.

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