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# **ODIHR OPINION ON DRAFT LAWS OF MONGOLIA ON PRESIDENTIAL, PARLIAMENTARY AND LOCAL ELECTIONS**

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## **I. INTRODUCTION**

1. On 21 May 2019, the Permanent Mission of Mongolia to the OSCE in Vienna forwarded to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request of the Mongolian authorities to provide an opinion on the draft Law on the Election of the President of Mongolia, the draft Law on the Election of the State Great *Hural* (Parliament) of Mongolia and the draft Law on the Elections of Capital City, *Aimag*, *Soum* and District *Hurals* of Citizen Representatives (draft Election Laws). ODIHR responded to this request confirming the readiness to provide an opinion on the draft laws.

2. In preparation of the opinion, a delegation composed of Ulvi Akhundlu, ODIHR Election Adviser, Tatyana Hilscher-Bogussevich and Marianna Skopa, ODIHR experts, visited Ulaanbaatar on 11-12 September 2019. The delegation met with the General Election Commission (GEC), the State Great *Hural* Standing Committee on State Structure, the Supreme Court, the Administrative Court of Appeals, as well as representatives of civil society. This Opinion takes into account the information obtained during the above-mentioned visit.

3. The present Opinion was prepared with the aim of assisting the Mongolian authorities, political parties and civil society in their efforts to bring the election legislation in line with OSCE commitments, other international obligations and standards, and international good practice in the field of democratic elections. ODIHR stands ready to provide further assistance in addressing the conclusions and recommendations contained in this Opinion.

## **II. SCOPE OF THE REVIEW**

4. The scope of this review covers only the draft Law on the Election of the President of Mongolia, the draft Law on the Election of the State Great *Hural* (Parliament) of Mongolia and the draft Law on the Elections of Capital City, *Aimag*, *Soum* and District *Hurals* of Citizen Representatives. Thus limited, the opinion does not constitute a full and comprehensive review of the entire legal framework applicable to elections in Mongolia.

5. Following the adoption by the State Great *Hural* on 11 September of the text of constitutional amendments that will be the subject of a referendum further changes may be expected to certain provisions of the draft Election Laws. The delegation was informed that constitutional amendments with a bearing on the conduct of elections include provisions related to candidacy requirements for presidential elections, political party registration and political party finance. The proposed constitutional changes also include a provision that prohibits changes to electoral legislation within a year before an election. Provided before the referendum on constitutional amendments, this Opinion does not take account of changes that might result from that process.

6. This Opinion raises key issues and indicates areas of concern that could benefit from further review and improvement. In the interest of conciseness, it focuses on amendments the draft laws bring about and areas where ODIHR has previously offered recommendations. The ensuing recommendations are based on relevant OSCE commitments and other international obligations

and standards, as well as international good practices. Reference is also made to the relevant findings and recommendations from previous ODIHR election observation reports.

7. This Opinion is based on an unofficial English translation of the three draft Election Laws. Inaccuracies may occur in this Opinion as a result of imprecise translations.

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

9. Each draft Election Law regulates a specific type of election departing from previous practice of a single, unified Election Law. The decision to revert back to separate pieces of legislation appears to have been driven by the motivation to better regulate the aspects pertaining to the different types of elections and to duly reflect the differences in applicable requirements and procedures.

10. ODIHR has assessed the consolidation of election laws in 2015 as a positive step towards establishing a cohesive electoral framework. The overall election legislation in place since then was evaluated by ODIHR as providing an adequate basis for holding democratic elections; however, requiring further revision to eliminate inconsistencies, conflicting legal provisions and omissions. The current legislative review process thus offers opportunities to address the identified shortcomings, in line with past ODIHR recommendations.

11. As a preliminary remark, it should be noted that 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 previous recommendations; 2) adoption of legislation by broad consensus after extensive public consultations with all relevant stakeholders; and 3) political commitment to fully implement the legislation in good faith. In particular, ODIHR stresses that an open and transparent process of consultation and preparation of the future amendments increases the confidence and trust in the adopted legislation and in the state institutions in general.

12. While, commendably, the consultations on planned legislative revisions were launched well ahead of the next elections, anticipated in June 2020, it is regrettable that it has not been possible to complete this process sooner to ensure, in line with international good practice, that no changes be introduced to the fundamental aspects of the election law less than one year before an election.<sup>1</sup>

13. The draft Election Laws contain a number of provisions that address certain previous ODIHR recommendations and are in line with international good practice. The following provisions and changes are positively noted:

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<sup>1</sup> See [Code of Good Practice in Electoral Matters](#) of the European Commission for Democracy Through Law (Venice Commission) of the Council of Europe, Guideline II. 2 b.

- A. Removal of certain restrictions to the right to stand, such as completion of military service;
- B. Removal of a restriction for the transfer of voters within the same province for presidential elections;
- C. Introduction of a gender quota for candidacies in local government elections;
- D. Provisions on campaign finance that mandate a single body to conduct monitoring of relevant provisions, introduce mid-term publication of campaign expenditures and regulate in-kind donations in line with international good practice;
- E. The access granted to parties, candidates, and non-governmental organizations to the process of compiling and verification of voters' lists.

14. However, the draft Election Laws fail to address a number of ODIHR recommendations, many of which pertain to restrictions or an absence of guarantees of fundamental rights and freedoms. To further improve the compliance of the draft Election Laws with OSCE commitments and international standards, the following recommendations are offered:

- A. To eliminate blanket restrictions to the right to vote based on incapacitation and serving of a prison sentence.
- B. To eliminate further undue restrictions to the right to stand, including those based on overdue debts and taxes, criminal record, as well as the prohibition on independent candidacies and for nominations of presidential candidates by non-parliamentary parties.
- C. To establish clear criteria for the selection and appointment of lower-level commission members;
- D. To introduce specific and clear provisions to ban misuse of administrative resources by incumbents and to establish an effective monitoring and sanctioning mechanism.
- E. To review provisions on election campaign, including for campaigning through the internet and social media, that may disproportionately restrict the freedom of expression.
- F. To establish an election dispute resolution mechanism that provides for effective remedy with clearly defined competencies of adjudicating bodies and deadlines streamlined with the electoral process.
- G. To introduce a legal requirement for the publication of election results with a breakdown to a polling station level.

15. 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 the conduct of elections in Mongolia with OSCE commitments and other international human rights standards and obligations, as well as recommendations contained in previous ODIHR election observation reports.

16. ODIHR remains at the disposal of the authorities of Mongolia for any further assistance that they may require and stands ready to review the final version of the Election Laws.

## IV. ANALYSIS AND RECOMMENDATIONS

### The process of development of draft Election Laws

17. First proposals to revert back to separate laws with a motivation of better regulating different types of elections and of duly reflecting the differences in applicable requirements and procedures were made already one year after the unification of electoral legislation in 2015. A package of amendments, including the proposed split, was presented to parliament in December 2016. However, its adoption was postponed due to the limited time ahead of the June 2017 presidential election.

18. The delegation was informed that the work on the electoral reform was re-invigorated in 2018. A working group tasked to develop draft laws and to consider necessary changes was established. At least three larger meetings in an inclusive format and a number of smaller meetings were organized since then by the authorities and civil society organizations. According to the GEC, the draft Election Laws were published for public consultation in October 2018. A considerable number of proposals from stakeholders, including civil society, were reportedly received and aggregated for further consideration by the working group.

19. While, commendably, the consultations on planned legislative revisions were launched well ahead of the next elections, anticipated in June 2020, it is regrettable that it has not been possible to complete this process sooner to ensure, in line with international good practice, that no changes be introduced to the fundamental aspects of the election law less than one year before an election. Stakeholders noted that the constitutional reform has been dominating the legislators' agenda, with discussions of electoral issues having been considerably less prominent.

#### A. ACTIVE SUFFRAGE

##### 1. Voting rights

20. All three draft Election Laws retain the same provisions as the current Law on Elections (LoE) of 2015 with regard to voting rights. Citizens that have attained the age of 18, on or before election day, have the right to vote, except for citizens deemed as lacking legal capacity by a court decision and persons serving a prison sentence, irrespective of the gravity of the crime committed. Such blanket restrictions on suffrage on the basis of criminal conviction and mental disability are at odds with OSCE and other international commitments.<sup>2</sup> *It is therefore, recommended that blanket*

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<sup>2</sup> Paragraph 14 of [UN Human Rights Committee \(UNHRC\) General Comment No. 25 to Article 25](#) of the International Covenant on Civil and Political Rights (ICCPR) requires 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 also paragraph 24 of the [1990 OSCE Copenhagen Document](#), which 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.” Also, Article 29 of the [2006 Convention on the Rights of Persons with Disabilities](#) (CRPD) requires states to “guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others” and Article 12 states that “states parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.

*restrictions be removed from the draft Laws; restrictions on prisoners' right to vote should be proportionate to the severity of the crime committed.*

## 2. Voter registration

21. Voter registration is passive and based on the national civil register that uses biometric data. The current Law on Elections allows voters to request a transfer to another polling station for parliamentary and presidential elections outside the *aimag* (province) of their residence up to 14 days before election day. The draft Laws foresee such a possibility only for presidential elections; while, in line with a previous ODIHR recommendation, there is no longer a restriction of transfer within the same *aimag*, the new provisions establish a longer deadline of 25 days before election day. It is not clear what purpose the longer deadline would serve, and it may lead to disenfranchisement. The procedures for the transfer remain rather cumbersome, as the voter must deliver the transfer note to the new polling location.

22. For the purpose of parliamentary elections transfer is foreseen only for staff of election administration, members of information technology team and supervisors and election campaign staff of candidates upon the request and an official letter of the relevant organization or the candidate<sup>3</sup> - no deadline for such transfer is set. However, the provisions that foresee voting by mobile ballot box for these categories of voters - except for campaign staff - are also retained.<sup>4</sup> ***Provisions on voting by persons who are on duty on election day, such as polling staff and police personnel, could benefit from further clarification.***

23. In a welcome development, it is foreseen in the draft Laws that representatives of parties, coalitions, non-governmental organizations and candidates can observe the activities of preparation of voter lists, of removal of duplicates and of voter lists delivery.<sup>5</sup> However, persons that wish to observe these activities must be registered with the Intelligence authority, which is also mandated by the draft Laws with monitoring the preparation of voters' list, removal of duplicates and voter list delivery. In addition, the Intelligence authority approves the procedures of 'exposure' of the voter lists to persons that have the right to follow their preparations, based on recommendations of the authority in charge of state registration. ***It is unclear why the Intelligence authority is given a role in the process of preparation of voters' lists and what competencies its 'monitoring' entails.***

## B. PASSIVE SUFFRAGE

### 1. Candidate eligibility in presidential elections

24. Despite previous ODIHR recommendations, the draft Law on Election of the President retains the same provision as current legislation - that reflects the relevant constitutional provisions - and fails to provide for independent candidatures or candidates proposed by non-parliamentary parties.

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<sup>3</sup> The same provision is contained in the draft Law on the Election of the President.

<sup>4</sup> Article 59.2 of the Law on the Election of the President and article 70.2 of the Law on the Election of the Parliament.

<sup>5</sup> Under the LoE, a soft copy of the voters' list can be handed to representatives of political parties and coalitions upon their request.

The nomination of presidential candidates only by parliamentary parties runs contrary to OSCE commitments and other international obligations<sup>6</sup> and limits the choice offered to the electorate. A recurrent recommendation of ODIHR election observation missions has been that relevant provisions be amended to allow for independent candidatures in presidential elections, in order to bring legislation in line with OSCE commitments.

25. Furthermore, a number of limitations to the right to stand in the presidential election established in the Constitution are repeated in the draft Law on Election of the President. Presidential candidates must be at least 45 years old, born to Mongolian parents and to have resided in the country for the past five years. The delegation was informed that the proposed constitutional amendments raise the age requirement to at least 50 years and limit the president's tenure to one six-year term. The amendments retain the privilege of parliamentary parties to nominate candidates and do not bring about any other change to candidacy requirements. ***Consideration should be given to ceasing the opportunity of the current constitutional reform to address the existing restrictions on passive voting rights to bring provisions in line with OSCE commitments.***

## 2. Other candidacy requirements

26. Candidates in parliamentary elections must be at least 25 years old. Candidates in local government elections must also be at least 25 years old and in addition must have resided in the administrative unit where they are standing for at least 180 days before election day.<sup>7</sup> Candidates in all types of elections must have no outstanding debts or overdue taxes and must not have been convicted on criminal charges. These requirements, as replicated in all three draft Election Laws, have been assessed as overly restrictive by ODIHR observation missions.

27. In a positive development, the requirement to have completed military service is not included in the draft Election Laws. Furthermore, the LoE requirement that political parties, when selecting candidates for parliamentary elections, have the obligation 'to consider the individual as adequate to be a member of parliament based on his/her qualifications, education, experience, abilities, aspirations towards the good of the country and its people and capacity to abide by the integrity, rule of law and ethical standards' has also been omitted. Addressing a previous ODIHR recommendation, civil servants who wish to stand for election must resign from their posts by the start of the nomination process, as opposed to several months before as per the LoE.<sup>8</sup> ***Notwithstanding the elimination of certain restrictions to the right to stand, other limitations, including the residency requirements, could be reconsidered.***

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<sup>6</sup> Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) provides that participating States "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination." Paragraph 17 of the UNHRC General Comment 25 to Article 25 of the ICCPR also affirms that "the right of persons to stand for election should not be limited unreasonably by requiring candidates to be members of parties or of specific parties."

<sup>7</sup> Paragraph 15 of the [UNHRC General Comment No. 25 to Article 25](#) of the ICCPR states that "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". Paragraph 24 of the [1990 OSCE Copenhagen](#) document provides that restrictions on rights and freedoms must be strictly proportionate to the aim of the law.

<sup>8</sup> As per the LoE, presidential candidates must resign from public posts before January 1 of the election year, while candidates in parliamentary and local government elections must resign by January 31 of the election year.

### 3. Gender quotas

28. The 20 per cent gender quota for candidates nominated by political parties and coalitions in parliamentary elections is retained. Additionally, a 10 per cent gender quota is introduced for candidate nominations in local government elections. While provisions seeking to enhance the participation of women as candidates are welcome, these quotas are rather low and in a majoritarian system they do not necessarily or automatically translate into more elected posts for women. Even though in parliamentary elections in 2016 all political parties complied with the quota, the ODIHR observation mission noted the absence of women candidates in over a third of the constituencies. Women elected in 2016 represented only 17 per cent.

29. Furthermore, the law does not state the legal consequences in case of non-compliance with the quotas nor does it contain any sanctions. *It is recommended that the provisions aimed at enhancing the participation of women as candidates be clarified and strengthened, including through the stipulation of dissuasive sanctions for non-compliance. Given the limited effects of quotas in a majoritarian system, financial incentives could be considered.*

#### C. ELECTION ADMINISTRATION

30. The structure of the electoral administration matches the territorial organization of the country. Elections are administered by a four-tiered election administration that consists of the General Election Commission (GEC), a permanent body,<sup>9</sup> Territorial Election Commissions (TECs) in each *aimag* and in the capital, District Election Commissions (DECs) at county and city level, and Precinct Election Commissions (PECs) for polling and counting. TECs, DECs and PECs are temporary bodies. The LoE does not contain any criteria for the selection of election commission members other than the requirement for them to be civil servants and to have obtained a certificate upon completion of training provided by the election administration nor does it contain any detailed or unified appointment mechanism. The draft Laws contain similar provisions and do not establish any further criteria.

31. ODIHR observation missions have received several reports of perceived political bias in the actions and decisions of TECs and DECs. These perceptions were frequently formed due to the composition of election commissions that often tended to reflect the power distribution at local level. *To reduce perceptions of bias and to enhance public trust in the election administration, consideration should be given to establishing detailed and transparent criteria for the appointment of lower-level election commission members.*

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<sup>9</sup> The function, organization and powers of the GEC are primarily regulated by the Law on the Central Election Body.

## D. ELECTION CAMPAIGN

### 1. Freedom of expression

32. There are only a few changes on campaign provisions in the draft Laws compared with the LoE. Restrictive provisions such as the review of political parties' and candidates' election platforms by the state audit authority for compliance with development and fiscal policies are maintained. Certain aspects of the campaign, such as the number of vehicles that may be used for election campaign and the number of staff that may be employed at campaign headquarters, are regulated even further, with maximum numbers of assets and personnel established. The campaign period is prolonged: for presidential elections the campaign period is at least 30 days as opposed to 19 days under the LoE;<sup>10</sup> for parliamentary and local government elections the campaign period will be at least 21 days as opposed to 17 days under the LoE.

33. The prohibition to 'slander, libel or insult others, or distribute false news and information' is retained in the draft Laws.<sup>11</sup> It is also prohibited to 'slander or defame a candidate, damage his/her reputation.' Such restrictions are at odds with international commitments with regard to freedom of expression in a political context.<sup>12</sup> *To protect and facilitate freedom of speech, it is recommended to review provisions on election campaign with a view to render them less restrictive.*

### 2. Presidential election-campaigning ahead of the second round

34. The LoE explicitly prohibits campaign before additional polling - in case the number of votes of candidates is equal or if turnout is less than 50 per cent - and before reruns following the invalidation of elections, but is silent on campaigning between the first and the second round of presidential elections. During the 2017 presidential election, the LoE provisions were interpreted in a restrictive manner and campaigning ahead of the second round was deemed prohibited by stakeholders, including the GEC. The draft Law on the Election of the President fails to rectify this lacuna. *It is recommended that a period of campaigning between two rounds should be permitted and regulated.*

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<sup>10</sup> Unlike the LoE that sets a fixed timeframe for election campaign, the draft Laws set the beginning of election campaign on the day candidates receive their candidate identification card by the election commission following registration - at least 31 days before election day for the presidential election and at least 22 days before election day for parliamentary and local government elections.

<sup>11</sup> Breach of this provision incurs a fine and deregistration of a candidate in parliamentary and local government elections even after election day under the LoE. The draft Law on the Elections of Capital City, *Aimag*, *Soum* and District *Hurals* of Citizen Representatives keeps the sanction of de-registration of candidates in local government elections, but breach of this provision incurs only a fine under the draft Law on the Election of the State Great *Hural* (Parliament).

<sup>12</sup> Paragraph 25 of [UNHRC General Comment No. 25 to Article 25](#) of the ICCPR states that "free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential." Also, paragraph 38 of [UNHCR General Comment No. 34 to Article 19](#) of the ICCPR points out that "the mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties...Moreover, all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition."

### 3. Use of administrative resources

35. Political appointees may participate in election campaign. There are, however, no specific provisions, neither in the LoE nor in any of the draft Laws, that would clearly and unambiguously oblige them to maintain a strict separation between administrative functions and election campaign. Past ODIHR reports indicate that incumbents frequently capitalized on their positions and that lines between state administration and campaigning were blurred. The prohibition in the draft Laws for reports of performed work by incumbents to be published after 1 February of an election year is a step in the right direction,<sup>13</sup> although the relevant article in the draft Law on election of the President could benefit from further revision.<sup>14</sup> However, the absence of legal provisions and an effective sanctions mechanism to ensure the separation of party and state run contrary to OSCE and international commitments.<sup>15</sup> *To ensure a level playing field for all contestants, clear provisions to ban misuse of administrative resources and an effective mechanism with the power to enforce appropriate sanctions should be considered.*

### 4. Campaign in media and on the Internet

36. Provisions on media coverage of election campaign have been assessed by past ODIHR election observation missions as restrictive and containing inconsistencies. The draft Laws bring about minimal changes to current provisions. The Communications Regulatory Commission (CRC) replaces the GEC as the body responsible for approving the schedule and time allotment of free airtime in the public broadcaster. In addition, the public broadcaster can submit its recommendation which will be reviewed by the CRC and approved at the latest seven days before the start of election campaign.<sup>16</sup>

37. Restrictions on the time of news content about political parties or candidates - with the maximum duration of news content prolonged from 5 to 10 minutes - and overly prescriptive requirements on the organization of debates - with the presence of all presidential candidates and at least four candidates for parliamentary or local government elections - are retained. In the 2016 parliamentary elections, the ODIHR EOM noted that the latter precluded some local broadcasters from organizing debates in districts with fewer than four candidates. These provisions limit

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<sup>13</sup> Under the LoE, such reports may be published at any time including during the election campaign; it is also stated that such reports will not be counted towards the amount of election material.

<sup>14</sup> Article 33.9 states that “in the event a member of parliament is running for election, their reports on performed work can be distributed before February 1<sup>st</sup> of the election year.” It does not cover the case of an incumbent President running for re-election.

<sup>15</sup> Paragraph 5.4 of the [1990 OSCE Copenhagen Document](#) requires: “a clear separation between the State and political parties”. Furthermore, the [2016 Joint ODIHR and Venice Commission Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes](#) state that “the legal framework should provide effective mechanisms for prohibiting public authorities from taking unfair advantage of their positions by holding official public events for electoral campaign purposes, including charitable events, or events that favour or disfavour any political party of candidate. More precisely, reference is made to events which imply the use of specific funds (state or local budget) as well as institutional resources (staff, vehicles, infrastructure, phones, computers etc.). This does not preclude incumbent candidates from running for election and campaigning outside of office hours and without the use of administrative resources”.

<sup>16</sup> The LoE does not foresee the submission of recommendations by the public broadcaster and approval of the schedule is delivered at least five days before the start of the campaign.

editorial freedom and may be to the detriment of pluralism and the free flow of information<sup>17</sup>. *It is therefore recommended to review these provisions with a view to ensure a fair and balanced coverage of the election campaign, with guarantees of respect for media independence and editorial freedom.*

38. The draft Election Laws retain the competence of the Authority for Fair Competition and Consumer Protection to monitor compliance with the legal provisions for certain violations, while other violations fall under the competence of the CRC. In this respect, a long-standing ODIHR recommendation remains unaddressed. *It is recommended that a single, independent body should be responsible to ensure media compliance with the legal provisions regulating election campaign coverage and for handling all media-related complaints.*

39. The sanction of license suspension for media breaching campaign silence and for not observing certain regulations on paid political advertisement are reduced in the draft Laws to three months from six months under the LoE. The draft Laws also seem to prohibit in general the conduct of opinion polls.<sup>18</sup> The provision of the LoE that prohibits the publication of opinion poll results during the week before election day has been omitted, leaving general restrictions on opinion polls as such in place.<sup>19</sup> *The prohibition to publish opinion polls raises questions of compliance with principle of freedom of expression and should be reconsidered.*

40. The draft Election Laws regulate campaign on the Internet in more detail than the LoE. These regulations raise a number of concerns. As per the draft laws, candidates, parties and coalitions may run a campaign website each and may also campaign through social media and other websites. An obligation is imposed for candidate, party and coalition websites and social media accounts to be registered with the CRC (for parliamentary and presidential elections) and with the respective election commission (for local elections). The prohibition to use unregistered websites or ‘others’ name’ and accounts is included. It is unclear if the phrase ‘others’ name’ refers to impersonation or false names. It is not clear either what the definition of ‘other websites’ encompasses; a subsequent provision, which states that in case election campaign is conducted in these websites, the flag, sign, candidate name, website address can be advertised, appears to indicate that it refers to paid political advertisement in third-party sites. While only official websites and social media accounts need to be registered, the access to all websites, including ‘other websites’, may be

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<sup>17</sup> Paragraph 25 of [UNHRC General Comment No. 25 to Article 25](#) of the ICCPR states that “In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.”

<sup>18</sup> Paragraph 8 of the [Recommendation CM/Rec\(2007\)15](#) of the Committee of Ministers of the Council on Europe on measures concerning media coverage of election campaigns stipulates that “any restriction on [...] publication/broadcasting of opinion polls (on voting intentions) on voting day or a number of days before the election should comply with Article 10 of the European Convention on Human Rights [freedom of expression], as interpreted by the European Court of Human Rights.” In its [Comparative Study of Laws and Regulations Restricting the Publication of Electoral Opinion Polls](#), Article 19 has concluded that “bans of longer than 24 hours will rarely, outside of special circumstances, [...] be able to be justified.”

<sup>19</sup> Article 70.2 of the LoE states: “Any entity is forbidden to conduct an opinion poll on parties or candidates, or publish or distribute its results in any manner in the week before the polling day”. This article seems to conflict with a general prohibition contained in articles 70.1.6 and 82.16

suspended in Mongolia until election day, if an entity that violated the provision of registration with the CRC ‘cannot be found’ and the envisaged fines cannot be applied. The provision worded as such seems to penalize third-party websites for breaches committed by a contestant. It also appears to create a possibility to hold private users of social media, who might not have any affiliation to parties or candidates, but express views about the contestants through their accounts, accountable - a measure that would unduly and disproportionately restrict freedom of expression. ***It is recommended that these provisions be revised to eliminate the possibility of holding third parties and private persons accountable for election contestants' non-compliance with imposed requirements.***

41. Provisions further require that the comments function on official campaign websites as well as in social media should be disabled and non-compliance with this provision incurs a fine. Such restriction impedes unduly political debate and the free flow of information and runs contrary to obligations to protect the freedom of expression.<sup>20</sup> ***Relevant provisions should be revised and brought in line with international obligations on freedom of opinion and expression.***

## E. CAMPAIGN FINANCE

42. Campaigns are financed from donations and/or political parties’ and candidates’ own assets. All transactions should go through a designated bank account. In case donations are received and expenses are incurred in a manner other than through the appropriate account, the draft Laws set higher fines than the LoE.<sup>21</sup> The campaign account is required to be registered with the State Audit Office (SAO) only; there is no requirement, as under the LoE, to register the account also with the GEC and the Mongolian Tax Authority. In general, the draft Election Law provisions indicate that the SAO is the only body responsible to monitor and ensure compliance with campaign finance provisions.<sup>22</sup> More specifically, besides registration of campaign accounts, reports on political parties’ and candidates’ election expenditures, bank managers’ statements on consolidation of campaign accounts transactions must be deposited directly with the SAO and not with the GEC, whose role in campaign finance oversight seems to be eliminated. This should be assessed as a positive development inasmuch as it eliminates overlapping competencies and strengthens the role of the oversight body.

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<sup>20</sup> Paragraph 11 of [UNHRC General Comment No. 34 to Article 19](#) of the ICCPR states that “Paragraph 2 [of article 19] requires States parties to guarantee the right to freedom of expression, including the right to seek, receive and impart information and ideas of all kinds regardless of frontiers. It includes political discourse, commentary on one’s own and on public affairs, canvassing, discussion of human rights, journalism, cultural and artistic expression, teaching, and religious discourse.” Paragraph 12 specifies that ‘Paragraph 2 protects all forms of expression... and the means of their dissemination... They include all forms of audio-visual as well as electronic and internet-based modes of expression’. See also the [2004 OSCE Permanent Council Decision No. 633 on Promoting Tolerance and Media Freedom on the Internet](#): “Participating States should take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal declaration of Human Rights...”

<sup>21</sup> Fines are increased from 21 to 26 times the monthly minimum wage to 31 to 40 times the monthly minimum wage.

<sup>22</sup> The only exception is the procedure for the establishment of expenditure limits that the State Audit Office must issue jointly with the GEC (articles 43.3, 49.3 and 48.3 for the presidential, parliamentary and local government elections respectively).

43. Limitations on donations per individual contributor remain the same, up to MNT 3 million for an individual and MNT 15 million for a legal entity. In a welcome departure from the LoE, which states that the value of in-kind donations shall be established by mutual agreement, the draft Laws require that the value of such donations be established based on the average market price. This amendment is consistent with international good practice and eliminates the risk of circumventing expenditure ceilings.

44. It is equally positive that all three draft Election Laws foresee the preparation of a mid-term report on campaign funding and expenditure that should be publicly available as well as its submission to the SAO three days before election day, thus addressing an ODIHR recommendation and bringing campaign finance reporting requirements more in line with international standards and good practice.<sup>23</sup> However, the relevant provisions do not specify in what manner and modalities the political parties should make these reports publicly available. ***In this respect, the provision on publication of campaign finance reports could benefit from further clarification.***

45. Another positive amendment is the obligation of the Anti-Corruption Agency to publish on its website all of presidential candidates' income and assets declaration 30 days before election day and all parliamentary candidates' income and assets declaration 22 days before election day.<sup>24</sup>

46. Final reports on campaign income and expenditure are audited by private audit firms and must be submitted to the SAO 45 days after the elections by political parties and 30 days after the elections by candidates. The SAO does not have the power to audit campaign accounts or impose financial penalties.<sup>25</sup> The draft Laws do not bring about any change to the SAO powers, therefore past pertinent ODIHR recommendations remain valid. ***Specifically, the SAO should be vested with the authority to perform effective campaign monitoring and audits. The SAO should also be granted the authority to impose sanctions.***

47. Breach of campaign spending limits does not incur any sanctions, either under the LoE or the draft Election Laws. ***It is recommended that effective, dissuasive and proportionate sanctions for campaign finance violations be established.***

## F. ELECTION DAY

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<sup>23</sup> Article 7(3) of the [2004 United Nations Convention against Corruption](#) reads “Each State Party shall also consider taking appropriate legislative and administrative measures ... to enhance transparency in the funding of candidatures for elected public office and where applicable, the funding of political parties.” Paragraph 194 of the [2011 OSCE/ODIHR and Venice Commission Joint Guidelines on Political Party Regulation](#) states that: “Transparency is also important because the public has the right to receive relevant information and to be informed. Voters must have relevant information as to the financial support given to political parties in order to hold parties accountable.”

<sup>24</sup> In 2017, the Anti-Corruption Agency published income and assets declarations of the three presidential candidates 12 days before the election. A legal obligation, however, to publish these declarations is not contained in the LoE.

<sup>25</sup> Paragraph 214 of the [2011 OSCE/ODIHR and Venice Commission Joint Guidelines on Political Party Regulation](#) states that: “The regulatory authority should be given the power to monitor accounts and conduct audits of financial reports submitted by parties and candidates. The process of conducting such audits should be stated in relevant legislation.”

48. The draft Election Laws do not contain significant changes regarding voting, counting and tabulation procedures. The order of appearance of presidential candidates on the ballot paper would be determined based on the date of registration of the nominating political party or coalition with the Supreme Court and not according to the nominating party's parliamentary strength, as mandated by the LoE. Also, police officers are permitted to be present in places where mobile voting takes place.

49. Other changes pertain to observers in polling stations. Contestants can appoint up to three observers<sup>26</sup> (four in the LoE) and non-governmental organizations up to two (one in the LoE) per polling station.

50. There is no legal requirement for publishing election results immediately following tabulation. ODIHR election observation missions have reported that in previous elections the GEC published results several days after election day; disaggregated results per polling station were published after the complaint period was over for the 2016 parliamentary elections and not published at all following the 2017 presidential election. A relevant ODIHR recommendation remains unaddressed. ***To enhance the integrity of and voters' confidence in the electoral process, it is recommended to introduce a legal requirement for publication of election results disaggregated to polling station level.***

## G. ELECTORAL DISPUTE RESOLUTION

51. The LoE establishes a system of administrative and judicial mechanism of election dispute resolution. Complaints alleging an infringement of rights and against a decision or an omission of an election commission can be filed with the same commission, whose decisions can be challenged with the hierarchically higher one. Decisions of the GEC can be challenged by petition at the Administrative Court of Appeal at first instance and subsequently to the Supreme Court.<sup>27</sup> There is no specific procedure for disputing election results and general provisions apply. The Constitutional Court has, however, the competence to review whether decisions of the GEC on presidential and parliamentary election results are in breach of the Constitution.

52. Deadlines stipulated in the LoE for the adjudication of disputes before the courts - even if shorter than standard court procedures - have been deemed by ODIHR election observation missions unreasonably long and not aligned with the election calendar, precluding effective legal redress. ODIHR has recommended that deadlines be shortened and harmonized with the electoral process.

53. The draft Election Laws contain much fewer provisions compared to the LoE. The administrative venue of dispute resolution is retained, albeit with much fewer details;<sup>28</sup> complaints on election commission decisions can be filed with the higher election commission that must render a decision in writing within three working days from filing.

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<sup>26</sup> The text does not differentiate between party/candidate agents and election observers.

<sup>27</sup> For local government elections, the decisions of superior election commissions can be challenged to the Administrative Court of Appeal.

<sup>28</sup> For instance, there is no provision related to legal standing or to procedures for filing and adjudicating a complaint before an election commission.

54. For the presidential and parliamentary elections, the respective draft Election Laws only state that ‘a complaint or petition of the GEC under their power set forth in this Law shall be submitted to the Constitutional Court’.<sup>29</sup> The rationale behind the elimination of the competence of the Administrative Court of Appeal and of the Supreme Court in election dispute resolution remains unclear. The procedure before the Constitutional Court concerns exclusively matters of conformity of GEC decisions with the Constitution<sup>30</sup> and as such it does not suffice to guarantee a timely and effective legal redress for all stages of an election process. On the basis of the text of the draft Election Laws, it cannot be ascertained whether the dispute resolution architecture complies with OSCE commitments.<sup>31</sup> ***Notwithstanding provisions that may exist in other applicable legislation, it is recommended that a system of election dispute resolution that guarantees the right to an effective redress be established; instances and their competencies must be clearly defined and deadlines should be streamlined with the various stages of the electoral process.***

55. For the adjudication of election-related offences, the draft Laws refer to the ‘Law on the Offence Procedure’. It is unclear in the translated text to exactly which piece of legislation these provisions refer to. A new provision, common in all three draft Election Laws, states that ‘the competent entity adjudicating election-related complaints, claims shall make the decision within the election year taking its unique cases in consideration’. It is unclear whether it refers to criminal and administrative election-related offences or whether it encompasses other types of complaints. In addition, this provision appears to leave even longer maximum timeframes for the resolution of electoral disputes, than the LoE, since it could mean that it would be permissible, for instance, for disputes related to parliamentary elections held in June to be resolved until December of the same year. ***The provision of the draft law establishing a deadline for adjudication of election-related complaints should be further clarified and specified, including to ensure timely legal redress.***

56. Only in the draft Law on local government elections, the following provision is contained: ‘The offences indicated in this Law shall be adjudicated according to article 112 of the Law on Administrative Procedures and shall not complain (*sic*) about judge resolution and court decision on whether to open a case for hearing.’. The wording seems to suggest that first instance court decisions on election-related offences (acquittal or imposition of fines) are final and cannot be appealed. Such provision prevents the possibility of legal redress. It may also conflict with other provisions applicable to court procedures.

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<sup>29</sup> For local government elections, decisions of superior election commissions can be challenged to the Administrative Court of Appeal at first instance.

<sup>30</sup> Article 8.2.6 of the Law on the Constitutional Court (1992)

<sup>31</sup> Paragraph 5.10 of the [1990 OSCE Copenhagen Document](#) states that ‘everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental right and ensure legal integrity.’