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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**OSCE OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS**  
**(OSCE/ODIHR)**

**MONGOLIA**

**DRAFT JOINT OPINION**

**ON THE DRAFT LAW ON POLITICAL PARTIES**

**on the basis of comments by**

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## I. Introduction

1. On 24 December 2021, the Chairperson of the *State Great Hural* (Parliament of Mongolia) sent a request for an opinion on the Draft Law of Mongolia on Political Parties to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “the OSCE/ODIHR”), to assess its compliance with international human rights standards and OSCE commitments. Given its practice of collaborating with the Venice Commission on similar matters, on 14 February 2022, the OSCE/ODIHR invited the Venice Commission to draft the Opinion jointly and confirmed to the Chairperson of the Parliament its readiness to prepare the opinion in collaboration with the Venice Commission. On 6 April 2022, the Venice Commission formally agreed to prepare a Joint Opinion. On 2 May 2022, the Presidential Administration circulated a revised version of the Draft Law of Mongolia on Political Parties (hereinafter “the Draft Law”, [\(CDL-REF\(2022\)022\)](#) which is the subject of this Joint Opinion.
2. Ms Renata Deskoska (Member, North Macedonia) and Mr Rafael Rubio Nuñez (Substitute Member, Spain) were appointed as rapporteurs for the Venice Commission. The OSCE/ODIHR Core Group of Experts on Political Parties (more specifically, Mr Fernando Casal Bértoa and Mr Richard Katz) contributed to the opinion.
3. On 10-11 May 2022, a joint delegation composed of Ms Renata Deskoska and Mr Rafael Rubio Nuñez on behalf of the Venice Commission, and of Mr Fernando Casal Bértoa, on behalf of the OSCE/ODIHR, accompanied by Mr Grigory Dikov from the Secretariat of the Venice Commission and Mr Konstantine Vardzelashvili, Ms Julia Gebhard and Ms Anne-Lise Chatelain from the OSCE/ODIHR, participated in a series of videoconference meetings with representatives of the *State Great Hural*, the sub-working group in charge of drafting Mongolia’s new Law on Political Parties, the Standing Committee on State Structures of the Parliament, the President’s Office, the Ministry of Justice, representatives of political parties, the General Election Commission (GEC), the State Audit Office, the Independent Authority against Corruption (IAAC), non-governmental organizations (NGOs) and other stakeholders. This Joint Opinion takes into account the information obtained during these meetings and through the written comments submitted by the authorities. The OSCE/ODIHR and the Venice Commission are extremely grateful to the Head of the sub-working group in charge of drafting Mongolia’s new Law on Political Parties for the support in organising these meetings. The OSCE/ODIHR and the Venice Commission further note with appreciation the stakeholders’ willingness to review and incorporate the recommendations of the Joint Opinion during the next stages of the legislative process.
4. In 2019, the OSCE/ODIHR prepared an opinion on previous draft amendments to the Law on Political Parties (hereinafter “the 2019 OSCE/ODIHR Opinion”)<sup>1</sup> and an opinion on the Draft Laws of Mongolia on Presidential, Parliamentary and Local Elections.<sup>2</sup>
5. *The present Joint Opinion was examined by the Council of Democratic Elections at its 76<sup>th</sup> meeting on ... 2022. Following an exchange of views with [...], the Joint Opinion was adopted by the Venice Commission at its 131<sup>st</sup> Plenary Session on ... 2022.*

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<sup>1</sup> OSCE/ODIHR, *Opinion on the Draft Law on Political Parties of Mongolia*, 27 November 2019, available in [English](#) and in [Mongolian](#).

<sup>2</sup> OSCE/ODIHR, *Opinion on draft laws of Mongolia on presidential, parliamentary and local elections*, 25 November 2019.

## II. Scope of the Joint Opinion

6. The scope of this Joint Opinion covers only the Draft Law, submitted for review. Thus limited, the Joint Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating political parties in Mongolia.

7. The Joint Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on areas that require amendments or improvements than on the positive aspects of the Draft Law. The ensuing recommendations are based on international human rights standards and obligations, OSCE human dimension commitments, and good national practices. Where appropriate, they also refer to the relevant recommendations made in previous legal opinions published by the OSCE/ODIHR and the Venice Commission.

8. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women<sup>3</sup> (hereinafter “CEDAW”), the commitments of the OSCE and the Council of Europe to mainstream a gender perspective into all policies, measures and activities,<sup>4</sup> the Joint Opinion also takes account of the potentially different impact of the Draft Law on women and men. The OSCE/ODIHR and the Venice Commission also consider obligations under the Convention on the Rights of Persons with Disabilities.<sup>5</sup>

9. This Joint Opinion is based on an unofficial English translation of the Draft Law provided by the sub-working group in charge of drafting the new Law on Political Parties on 13 May 2022. Inaccuracies may occur in this Joint Opinion as a result of errors from translation.

10. In view of the above, the OSCE/ODIHR and the Venice Commission would like to note that this Joint Opinion may not cover all aspects of the Draft Law, and that the Joint Opinion thus does not prevent them from formulating additional written or oral recommendations or comments on the respective legal acts or related legislation of Mongolia in future.

## III. Executive Summary

11. The OSCE/ODIHR and the Venice Commission welcome Mongolia’s efforts to amend its legal framework relating to political parties, with a view to bringing it into compliance with international human rights standards. Overall, the Draft Law is well structured, deals with most of the major issues that this kind of legislation should regulate and addresses a number of recommendations made by the OSCE/ODIHR in its 2019 Opinion. It thus brings many improvements, such as the removal of the ban on religious or ethnic political parties, which is welcome in the Mongolian context, the suppression of the requirement of being a member of only one party at the same time and the introduction of gender and diversity criteria for the allocation of public funding as well as other provisions aimed at promoting the participation of women, youth and persons with disabilities. It is commendable that this Draft Law intends to enhance the role, status and importance of political parties and stimulate the development of democratic political parties as an important tool of democratic governance.

12. During the online pre-assessment visit, the public authorities informed the rapporteurs about upcoming initiatives to reform the Constitution and potentially to reconsider the current requirement from Article 19<sup>1</sup> of the Constitution regarding the minimum number of signatures to register a political party (representing 1 percent of the total electorate) that should enter into force in 2028. If this indeed materialises in the future, this would be a particularly welcome

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<sup>3</sup> UN Convention on the Elimination of All Forms of Discrimination against Women (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Mongolia ratified the CEDAW on 20 July 1981.

<sup>4</sup> See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32, which refers to commitments to mainstream a gender perspective into OSCE activities; and Council of Europe, [Gender Equality Strategy 2018-2023](#), which includes as its sixth strategic objective the achievement of gender mainstreaming in all policies and measures.

<sup>5</sup> [UN Convention on the Rights of Persons with Disabilities](#), 13 December 2006, which entered into force on 3 May 2008. Mongolia acceded to the Convention on 13 May 2009.

development as it would remove a clearly disproportionate limitation to the right to form a political party.

13. At the same time, the Draft Law could still benefit from some clarifications and improvements to ensure its full compliance with international standards and OSCE commitments. Especially, as it stands, the formation and registration process remains overly complex and cumbersome, and there are undue restrictions to the right to establish and join political parties. The Draft Law continues to overregulate matters that normally lie within the discretion of political parties themselves, such as their internal structure and decision-making processes, which raises concerns with regard to the internal autonomy of the parties, as protected by their freedom of association. Certain provisions still confer to parliamentary political parties a predominant role to the detriment of non-parliamentary or newly established parties and independent candidates. The grounds that may justify the dissolution of a political party on the basis of its inactivity remain overly broad, without reflecting the seriousness of (potential) infringements and without providing an effective remedy.

14. In light of the above, the OSCE/ODIHR and the Venice Commission make the following key recommendations:

- A. to simplify the process for establishing and registering a political party and ensure political parties' autonomy to decide on their internal organisation, structure and decision-making rules, while removing the provisions that allow for excessive state interference into the inner functioning of the political parties; [paras. 43 and 52]
- B. to remove from Article 5.1 of the Draft Law the requirement of being "eligible to vote" to establish or join a political party, and more generally to repeal or reconsider the existing restrictions relating to the eligibility to vote in Mongolia; [paras. 34-38]
- C. to reconsider the grounds for dissolution related to two years of inactivity on the basis of non-presentation of candidates to the State Great Hural elections during two consecutive terms, or inactivity of its governing bodies for five years; and consider instead lesser sanctions such as temporary partial or complete suspension of public benefits pending regularisation, or mere de-registration (without dissolution); also removing the prohibition of the party to participate in elections if it is considered inactive, but not dissolved; [paras. 71 and 75-76]
- D. to repeal the requirement for political parties' electoral platforms to be confirmed by the State Audit Office for their economic feasibility and adherence to specific policy-based requirements; [para. 65]
- E. in light of the national context, to consider lowering the threshold of 3 percent of the total votes to access public funding, while considering more equitable modalities for public financing to also benefit non-parliamentary and newly established parties and ensure political pluralism; as well as allowing funding allocations early enough in the electoral process to ensure equal opportunities throughout the period of campaigning; [paras. 92-94]
- F. to consider introducing a provision that would trigger suspension of public funding for failure to comply with certain regulatory requirements only after a reasonable period of time (e.g. after few months) following the warning received from relevant authorities in order to give political parties the opportunity to rectify the situation; [para. 98]
- G. to introduce sanctions that are objective, effective and proportionate to ensure compliance with the legislative requirements; [paras. 28, 76, 100 and 111-112] and
- H. to specify in the Draft Law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the GEC on the dissolution of a political party. [para. 78].

These and additional Recommendations, as highlighted in bold, are included throughout the text of this Joint Opinion.

## IV. Analysis and Recommendations

### A. International Standards and OSCE Commitments relating to Political Parties

15. Political parties as private associations have been recognised as essential players in the democratic process and as foundational to a pluralist society and hence play a critical role in the public sphere.<sup>6</sup> The rights to free association and free expression are fundamental to the proper functioning of a democratic society. Political parties, as collective instruments for political expression, must be able to fully enjoy such rights.

16. Fundamental rights granted to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights<sup>7</sup> (hereinafter “ICCPR”), which protect the rights to freedom of expression and opinion and the right to freedom of association respectively. Other provisions of the ICCPR that are also relevant as they may be impacted by the Draft Law are Articles 20 paragraph 2 (prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence), 17 (right to privacy), Article 3 (right to equality between men and women), 27 (rights of ethnic, religious or linguistic minorities) and 26 (equality before the law). The General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service, interpreting State obligations under Article 25 of the ICCPR, is also of importance.<sup>8</sup> The United Nations (UN) Convention against Corruption requires, in Article 7.3, its States Parties to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.<sup>9</sup>

17. While Mongolia is not a Member State of the Council of Europe (hereinafter “the CoE”), the Joint Opinion will also refer as appropriate to the European Convention for the Protection of Human Rights and Fundamental Freedoms<sup>10</sup> (hereinafter “the ECHR”), other Council of Europe’s instruments and caselaw of the European Court of Human Rights (hereinafter “the ECtHR”), since they contain provisions similar to those in the ICCPR, and serve as tools of interpretation and as useful and persuasive reference documents on this issue.

18. In addition, by joining the OSCE in 2012, Mongolia has expressed its adherence to various commitments related to the right to freedom of association, including the right to associate through political parties, expressed in several OSCE documents.<sup>11</sup> In particular, paragraph 7.6 of the 1990 OSCE Copenhagen Document commits OSCE participating States to “respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organizations and provide such political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”<sup>12</sup> The Copenhagen Document also includes the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4).

19. Other useful reference documents include the Venice Commission Code of Good Practice in the field of Political Parties,<sup>13</sup> Council of Europe Committee of Ministers’ Recommendation

<sup>6</sup> ODIHR-Venice Commission, [Joint Guidelines on Political Party Regulation](#) (2<sup>nd</sup> edition, 2020), CDL-AD(2020)032, para. 17.

<sup>7</sup> *UN International Covenant on Civil and Political Rights* (hereinafter “ICCPR”), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Mongolia ratified the ICCPR on 18 November 1974.

<sup>8</sup> UN Human Rights Committee (UNHRC), [General Comment No. 25 on Article 25 of the ICCPR](#) (1996), CCPR/C/21/Rev.1/Add.7,

<sup>9</sup> [UN Convention against Corruption](#), adopted on 31 October 2003, ratified by Mongolia on 11 January 2006.

<sup>10</sup> The Council of Europe’s Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter “ECHR”), signed on 4 November 1950, entered into force on 3 September 1953.

<sup>11</sup> For an overview of these and other OSCE Human Dimension Commitments, see OSCE/ODIHR, [Human Dimension Commitments \(Thematic Compilation\) Human Dimension Commitments \(Thematic Compilation\)](#), 3<sup>rd</sup> Edition, particularly Sub-Section 3.1.8.

<sup>12</sup> OSCE, [Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE](#) (1990 Copenhagen Document).

<sup>13</sup> Venice Commission, [Code of Good Practice in the field of Political Parties](#), CDL-AD (2009)021.



(2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns,<sup>14</sup> as well various OSCE/ODIHR and Venice Commission joint opinions.<sup>15</sup>

20. The ensuing recommendations will also make reference, as appropriate, to other documents of a non-binding nature, which provide further and more detailed guidance, such as the second edition of the OSCE/ODIHR-Venice Commission Joint Guidelines on Political Party Regulation<sup>16</sup> adopted in 2020 (hereinafter “2020 Joint Guidelines”), the 2015 OSCE/ODIHR-Venice Commission Joint Guidelines on Freedom of Association,<sup>17</sup> the 2019 OSCE/ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities,<sup>18</sup> the OSCE High Commissioner on National Minorities (hereinafter “OSCE/HCNM”) Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes (2014)<sup>19</sup> and OSCE/HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).<sup>20</sup>

## B. Background and National Legal Framework

21. Article 16.10 of the Constitution of Mongolia guarantees to the citizens of Mongolia the “right to form a party or other mass organisations and freedom of association to these organisations on the basis of social and personal interests and opinion”. It further specifies that “[d]iscrimination and persecution of a person for joining a political party or other mass organisation or for being their member shall be prohibited”.

22. The electoral legal framework was substantially reviewed ahead of the 2020 parliamentary elections. On 14 November 2019, a new Article 19<sup>1</sup> was added to the Constitution, which in paragraph 2 provides that “A [political] party shall be established by at least one percent of Mongolian citizens, eligible to vote in the election and who have united therefor”. Article 19<sup>1</sup>(3) of the Constitution further states that the “[i]nternal organisation/structure of a [political] party shall meet the democratic principles and its capital and revenue sources and spending shall be transparent to the public” and that “[t]he structure, operational procedure, funding, and the terms of state funding support of a [political] party shall be determined by law.” As emphasised during the pre-assessment visit, the intended purpose of such a constitutional reform in relation to political parties was to enhance transparency and accountability, increase internal democracy, ensure better level playing field and ultimately restore public trust in such entities. In addition, in December 2020, the parliament adopted new, separate pieces of legislation regulating presidential, parliamentary and local elections, respectively.

23. In the 2019 OSCE/ODIHR Opinion, the OSCE/ODIHR recommended to considerably lower the number of signatures required to register a political party according to the new Article 19<sup>1</sup> of the Constitution.<sup>21</sup> While the one percent threshold will only be applicable as from 2028, it is understood from the discussions held during the online pre-assessment visit that additional constitutional amendments are under discussion and may involve the reconsideration of this requirement, which is much welcome. At the same time, the Law on Procedure for Amending the Constitution of Mongolia limits the possibility of revising recently amended constitutional

<sup>14</sup> Council of Europe, *Committee of Ministers’ Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns*.

<sup>15</sup> Available at: <<https://www.legislationline.org/odihr-documents/page/legal-reviews/topic/16/Political%20Parties/show>>.

<sup>16</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Political Party Regulation* (2<sup>nd</sup> edition, 2020), CDL-AD(2020)032 (hereinafter “2020 Joint Guidelines on Political Party Regulation”).

<sup>17</sup> OSCE/ODIHR and Venice Commission, *Guidelines on Freedom of Association* (2015), CDL-AD(2014)046 (hereinafter “2015 Joint Guidelines on Freedom of Association”).

<sup>18</sup> OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019).

<sup>19</sup> OSCE High Commissioner on National Minorities (OSCE/HCNM), *Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes* (2014).

<sup>20</sup> OSCE/HCNM, *Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

<sup>21</sup> *Op. cit.* footnote 1, paras. 32-36 (2019 OSCE/ODIHR *Opinion*).

provisions during eight years following the entry into force of the amendments, which may constitute a barrier to such a change.<sup>22</sup>

### C. Preliminary Comments

24. At the outset, the OSCE/ODIHR and the Venice Commission welcome the provisions of the Draft Law which address some of the recommendations made by the OSCE/ODIHR in its 2019 Opinion, particularly with respect to:

- the removal of the ban on religious or ethnic political parties, which is welcome in the Mongolian context;<sup>23</sup>
- the suppression of the requirement of being a member of only one party at the same time;<sup>24</sup>
- the opening of the access to public funding to non-parliamentary political parties, even though some further improvements can be made (see Section H *infra*);<sup>25</sup>
- the introduction of gender and diversity criteria for the allocation of public funding as well as other provisions aimed at promoting the participation of women, youth and persons with disabilities;<sup>26</sup>
- the regulation of third-party financing;<sup>27</sup>
- the introduction of some procedural safeguards to contest the decisions on denial of registration, suspension or dissolution of a political party before a court.<sup>28</sup>

25. In addition, the Draft Law retains the threshold of a minimum of 801 signatures of citizens to establish a political party (Article 12.3 of the Draft Law) as opposed to the 1 percent of the electorate threshold required in the Constitution. While it is positive to maintain such a relatively low number of signatures required to register a political party as recommended in the 2019 OSCE/ODIHR Opinion, this will also have as a consequence a possible contradiction between the Law on Political Parties and the Constitution when and if the new 1 percent threshold enters into force in 2028.

26. It is especially welcome that many provisions of the Draft Law demonstrate a willingness to mainstream gender and diversity in political parties' internal and external processes, in line with good practices and recommendations at the international level. Particularly, the Draft Law provides gender requirements already at the stage of political party formation, by requiring that the working group in charge of establishing a political party includes at least 40 percent of its members of the same sex as well as youth representatives (Article 11.1) and that the founding meeting be attended by at least 15 delegates of the same sex (Article 12.4). Moreover, the principle of offering equal opportunities is supposed to guide the process of nominating, electing and appointing candidates for public positions and for party leadership/executive positions (Article 8.1). Article 8.2.4 of the Draft Law further specifies the gender requirement to be applied during the selection process for such positions, i.e., having a representation of at least 40 percent of either sex, which is in line with good practices at the international level.<sup>29</sup> At the same time, it

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<sup>22</sup> See Article 3.3 of the [Law on Procedure for Amending the Constitution of Mongolia](#), which states that: "Once an amendment to the Constitution has been made, it shall be prohibited to re-amend such an amendment within eight years from the date of entry into force of the amendment".

<sup>23</sup> *Op. cit.* footnote 1, para. 17 (2019 OSCE/ODIHR [Opinion](#)).

<sup>24</sup> *Ibid.* para. 30 (2019 OSCE/ODIHR [Opinion](#)).

<sup>25</sup> *Ibid.* para. 43 (2019 OSCE/ODIHR [Opinion](#)).

<sup>26</sup> *Ibid.* para. 45 (2019 OSCE/ODIHR [Opinion](#)).

<sup>27</sup> *Ibid.* para. 50 (2019 OSCE/ODIHR [Opinion](#)).

<sup>28</sup> *Ibid.* para. 59 (2019 OSCE/ODIHR [Opinion](#)).

<sup>29</sup> See e.g., OSCE/ODIHR, [Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region](#) (2016), pp. 29-30. See also Council of Europe Committee of Ministers, [Recommendation Rec \(2003\)3 on the balanced participation of women and men in political and public decision-making](#), 30 April 2002, preamble of the Appendix, which specifies that "balanced participation of women and men is taken to mean that



**is not clear whether such a threshold applies to the nominating body and its members, or refers to the outcome of the selection process, ideally both, and this should be clarified.**

27. Article 16.2.8 of the Draft Law further states that the charter of a political party shall include procedures for ensuring gender equality, while Article 18.6 specifies that the central representative body and executive body of a political party shall be composed of members representing at least 30 percent of either gender, which is also welcome and in line with good practices.<sup>30</sup> The Draft Law also includes provisions linking the allocation of public funding and its amount to measurable efforts to promote the political participation of women and persons with disabilities, which is commendable (Article 27.3 and 28.6). Finally, the Draft Law also incorporates a clear anti-discrimination statement (Article 8.6) and contemplates regular reporting to the National Committee on Gender Equality in accordance with the Law on Promotion of Gender Equality (Article 8.7 of the Draft Law).

28. These provisions are welcome and demonstrate the willingness to put in place governance structures that can be called truly democratic, representative and inclusive.<sup>31</sup> However, gender or diversity requirements do not necessarily or automatically translate into more balanced or diverse representation of under-represented persons in party structures or in elected offices.<sup>32</sup> This is often because the legislation does not state the legal consequences in case of non-compliance with the said requirements nor does it contain any sanctions.<sup>33</sup> In order for gender equality legislation to be effective, infringements of gender equality provisions should be met with effective, proportionate and dissuasive sanctions to ensure compliance and have a real deterrent effect<sup>34</sup> and/or with financial incentives. More specifically, while the formula for calculating the amount of public funding takes into account the number of women candidates and candidates with disabilities, as well as elected ones (Articles 28.5 and 28.6), there is no sanction for not complying with gender and diversity requirements in party governing bodies and activities, such as those mentioned in Articles 8 and 18 of the Draft Law. As recommended by the OSCE/ODIHR in the past, the legal drafters **could consider a variety of sanctions for political parties in case of non-compliance with legal measures aimed at enhancing the participation of women within party structures and as candidates for public offices, such as the denial or reduction of public funding, or stronger, legal measures, such as the removal of the party's electoral list from the ballot.**<sup>35</sup> In this case, before such sanctions are imposed, **the political party should be first given a fair warning and an opportunity to correct**<sup>36</sup> (see also paras. 111-112 *infra* on sanctions).

29. Moreover, it is not clear **which (independent) body will be in charge of monitoring the compliance with gender and diversity requirements provided in the Draft Law**, and what will be the criteria for assessing compliance and the consequences. **The Draft Law should be supplemented in this respect** to ensure that ultimately, these provisions are effectively

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the representation of either women or men in any decision-making body in political or public life should not fall below 40%”.

<sup>30</sup> See *op. cit.* footnote 16, para. 170 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>31</sup> See e.g., OSCE/ODIHR, [Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region](#) (2016), pp. 29-30.

<sup>32</sup> OSCE/ODIHR, [Opinion on draft laws of Mongolia on presidential, parliamentary and local elections](#) (25 November 2019), paras. 28-29.

<sup>33</sup> *Ibid.*

<sup>34</sup> *Op. cit.* footnote 16, para. 169 (2020 [Joint Guidelines on Political Party Regulation](#)). See also e.g., [OSCE Gender Equality in Elected Office: A Six-Step Action Plan](#) (2011), pp. 33-34; Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2111 \(2016\)](#), especially para. 15.2.2; see also 2010 OSCE/ODIHR-Venice Commission [Guidelines on Political Party Regulation](#), para. 136, which presents a variety of sanctions for political parties not complying with legal measures aimed at ensuring gender equality, ranging from financial sanctions, such as the denial or reduction of public funding, to stronger, legal measures, such as the removal of the party's electoral list from the ballot.

<sup>35</sup> OSCE/ODIHR, [Opinion on the Law of Mongolia on the Promotion of Gender Equality](#) (30 September 2013), para. 73. See also OSCE/ODIHR, [Opinion on draft laws of Mongolia on presidential, parliamentary and local elections](#) (25 November 2019), para. 29.

<sup>36</sup> *Op. cit.* footnote 1, para. 62 (2019 OSCE/ODIHR [Opinion](#)).

implemented<sup>37</sup> (see also the Sub-Section H(2) on Public Funding *infra*). In addition, the Draft Law could also contemplate the development of internal party codes of conduct or policies to prohibit discrimination and harassment based on sex or gender, as a good practice.<sup>38</sup>

#### D. Scope and Purpose of the Draft Law

30. Article 4.1 of the Draft Law provides a definition of a political party as a “*voluntary association of citizens who regularly and freely expresses the political will of the citizens, participates and represents the people in elections by formulating national policies, takes collective decisions, and is collectively responsible*”. The reference to the “*collective responsibility*” is rather unclear as this could refer to the citizens’ collective responsibility when working together in favour of a particular political platform, or to the responsibility of the party as a legal entity for the decisions it makes and activities it implements or to the (potentially criminal) responsibility of the political party for the individual acts of one of its officials or of individual members. As stated in the 2020 Joint Guidelines, a party cannot be held responsible for its members’ isolated actions, especially if such action is contrary to the party charter or party activities.<sup>39</sup> Thus, actions undertaken or words expressed online or offline by particular individuals within a party, while not officially representing the party, should be attributed only to those individuals.<sup>40</sup> The same applies for the individual behaviour of members that is not authorised by the party within the framework of political/public and party activities.<sup>41</sup> **It is recommended to clarify what is meant by “collectively responsible” in light of the above.**

31. Article 4.2 of the Draft Law describes in detail the key functions of a political party, with very progressive provisions, such as the promotion of “political education and active participation of citizens” (4.2.3), of “the participation of women, youth and people with disabilities in decision-making” (4.2.4) and the training of “responsible citizens capable of holding a state political position” (4.2.5). This is welcome and demonstrates the unique and fundamental role political parties play to contribute to more democratic and participatory political processes.<sup>42</sup>

32. It is welcome that the Draft Law no longer prohibits the establishment of political parties representing national or ethnic minorities as the 2019 Draft Law did, as this is essential that national or ethnic minorities are allowed and encouraged to set up political parties.<sup>43</sup> The drafters could **consider broadening the scope of Article 4.2.4 and include a reference to the promotion of the participation of national or ethnic minorities in decision-making.**<sup>44</sup> Similarly, **Article 27.3.1 of the Draft Law regarding the training of young and/or women politicians as well as politicians with disabilities could be supplemented to also refer to representatives of national or ethnic minorities.**

<sup>37</sup> See *op. cit.* footnote 16, para. 169 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>38</sup> See e.g., OSCE/ODIHR, [Handbook on Promoting Women’s Participation in Political Parties](#) (2014), p. 53.

<sup>39</sup> See *op. cit.* footnote 16, para. 118 (2020 [Joint Guidelines on Political Party Regulation](#)). See also Venice Commission, CDL-INF(2000)001, [Guidelines on prohibition and dissolution of political parties and analogous measures](#), para. 4. The ECtHR held dissolution to be disproportionate where this was based on remarks of a political party’s former leader (ECtHR, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. [25141/94](#), 10 December 2002, para. 64).

<sup>40</sup> *Ibid.* para. 118 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>41</sup> See *ibid.* para. 118 (2020 [Joint Guidelines on Political Party Regulation](#)). See also Venice Commission, CDL-INF(2000)001, [Guidelines on prohibition and dissolution of political parties and analogous measures](#), para. 4.

<sup>42</sup> See OSCE/ODIHR, [Handbook on Promoting Women’s Participation in Political Parties](#) (2014). The [Beijing Declaration and Platform for Action](#), adopted 15 September 1995, Fourth World Conference on Women, para. 191.

<sup>43</sup> Venice Commission, [Code of Good Practice in the field of Political Parties \(2002\)](#), CDL-AD (2002) 23, para. 22. See also *op. cit.* footnote 16, para. 134 (2020 [Joint Guidelines on Political Party Regulation](#)). See also OSCE/HCNM, [Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes](#) (2014), especially pp. 29-32 on freedom of association.

<sup>44</sup> See e.g., *op. cit.* footnote 16, para. 163 (2020 [Joint Guidelines on Political Party Regulation](#)). See also OSCE/HCNM, [Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes](#) (2014), especially pp. 29-32; and OSCE/HCNM, [Lund Recommendations on the Effective Participation of National Minorities in Public Life](#) (1999), especially Recommendations 8 and 9.

33. Articles 3.1.1 and 3.1.2 of the Draft Law provide the definitions of a “party member” and a “party supporter”, making a distinction on the basis of payment of the membership fee associated with voting rights.<sup>45</sup> This distinction seems reasonable since this creates a distinct level of involvement for those unable to pay a membership fee.<sup>46</sup> It is worth noting that in addition, there is a possibility for a party, under Article 33.6 of the Draft Law, to provide in its own charter and regulations for a party membership fee deduction or exemption for a party member who has income equal to or less than the minimum wage.<sup>47</sup> Generally, political parties should decide freely whether to allow participation in party functions to someone who is not paying a membership fee. **Such aspects should be regulated in the party statutes rather than the law as this otherwise limits party autonomy to regulate this internal matter differently and decide who will have voting rights within the party.**

## E. Establishment, Registration and Membership in Political Parties

### 1. General Comments

34. Article 5.1 of the Draft Law provides that “citizens of Mongolia who are eligible to vote shall have the right to freedom of association, to form a party, join or leave a party”. Pursuant to Article 5.2 of the new Law on the Election of the President of Mongolia<sup>48</sup> adopted in December 2020, a citizen who has been deprived of legal capacity by a court – including on the basis of intellectual or psychological disability – or who is serving a prison sentence – irrespective of the nature and gravity of the crime – shall not be entitled to participate in elections. As emphasized in previous opinions and election reports,<sup>49</sup> **these restrictions on voting rights are inconsistent with international standards and OSCE Commitments and should be repealed entirely.**<sup>50</sup>

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<sup>45</sup> According to Article 3.1.1 of the Draft Law, “a party member” means “a citizen who voluntarily joined a political party by accepting objectives, ideology, action plans/platform and rules such party and *who pays party membership fees* and participates in activities of such party with *the right to vote and to elect and be elected*”. According to Article 3.1.2, “a party supporter” means “a citizen who voluntarily *joined* a party in support of the goals and ideology of the party and who *does not pay membership fees*, and who has a right to participate and express his or her views freely in activities of the party *other than decision making*”.

<sup>46</sup> See *op. cit.* footnote 16, para. 206 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>47</sup> This provision from Article 33.6 of the Draft Law is in accordance with the OSCE/ODIHR and Venice Commission, [Joint Guidelines on Political Party Regulation](#), para. 208, which states: “The inclusion of a waiver of the fee requirement in cases of financial hardship should be encouraged, to ensure that political party membership is not unduly restricted.”

<sup>48</sup> Article 5.2 of the [Law on the Election of the President of Mongolia](#) (24 December 2020) states: “A citizen who has been declared legally incompetent by a court decision or is serving a prison sentence shall not be entitled to participate in elections”.

<sup>49</sup> See e.g., ODIHR, [Mongolia - Special Election Assessment Mission Final Report](#) (22 October 2021), p. 9; and ODIHR, [Mongolia - Needs Assessment Mission Report – Parliamentary Elections](#) (22 April 2020), p. 7. See also ODIHR, [Opinion on draft laws of Mongolia on presidential, parliamentary and local elections](#) (25 November 2019), para. 20; and *op. cit.* footnote 1, paras. 28-29 (2019 OSCE/ODIHR [Opinion](#)).

<sup>50</sup> 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 of the CRPD states that “States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. 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”. See also ODIHR, [Guidelines on Promoting the Political Participation of Persons with Disabilities](#) (Warsaw: 2019), especially p. 36; and paragraph 9.4 of the 2013 CRPD Committee’s [Communication No. 4/2011](#), which states that “Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention”. See UN Human Rights Committee (UNHRC), [General Comment No. 25 on Article 25 of the ICCPR](#) (1996), CCPR/C/21/Rev.1/Add.7, paragraph 14, which 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 UNHRC, [Yevdokimov v. Russian Federation](#), 9 May 2011, in which the Committee held that the blanket restriction on the right to vote based on criminal conviction without regard to the

35. In addition, such restrictions might as a consequence also limit the right to establish and register, as well as join, a political party for citizens deprived of legal capacity and persons serving a prison sentence without regard to the nature and gravity of the crime. Freedom of association, including in the formation of and support to political parties, is essential to ensuring the full enjoyment and protection of the rights to freedom of expression and political participation and must be respected without discrimination.

36. More specifically, Article 12.2 of the CRPD states that “States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”. As emphasized in General Comment No. 1 to Article 12 of the CRPD on equal recognition before the law, legal capacity is recognized as “an inherent right accorded to all people, including persons with disabilities.”<sup>51</sup> In addition, pursuant to Article 29(b)(i) of the CRPD, States Parties shall undertake to promote actively an environment in which persons with disabilities can participate in “non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties.” As specified in paragraph 7.6 of the OSCE Copenhagen Document, the right to establish and participate in and through political parties shall in principle be open to all, free from requirements or undue regulation. Council of Europe Recommendation (2011)14 invites members states to enable persons with disabilities “freely and without discrimination, particularly of a legal, environmental and/or financial nature to [...] meet, join or found political parties.”<sup>52</sup>

37. Furthermore, as emphasized in the 2020 Joint Guidelines, all individuals and groups that seek to establish or join a political party must be able to do so on the basis of equal treatment before the law.<sup>53</sup> No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavour by the State, and the regulation of parties must be uniformly applied.<sup>54</sup> In particular, state regulations on political parties may not discriminate against individuals or groups on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.<sup>55</sup>

38. In light of the foregoing, **it is recommended to remove from Article 5.1 of the Draft Law the requirement of being “eligible to vote” to establish or join a political party and more generally to repeal in other legislation the restrictions relating to the eligibility to vote for citizens “deprived of legal capacity by a court” and to reconsider entirely the concept of depriving anyone of legal capacity in Mongolia and also review the blanket restriction on the eligibility to vote based on criminal conviction without regard to the nature and gravity of the crime.** This recommendation would also be in line with the

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gravity of the crime was a violation of Article 25 of the ICCPR. For recommendations regarding the removal of the requirement of “active legal capacity” to become a member of a political party, see also OSCE/ODIHR, [Opinion on the Constitutional Law of the Republic of Armenia on Political Parties](#) (11 October 2019), para. 43; and OSCE/ODIHR-Venice Commission, [Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia](#), CDL-AD(2020)004, para. 23, which welcomed the lifting of similar restrictions.

<sup>51</sup> UN Committee on the Rights of Persons with Disabilities, [General Comment No. 1 to Article 12 of the CRPD on equal recognition before the law](#) (2014), para. 7. Paragraph 6 emphasizes that legal capacity is the key to accessing full and effective participation in society and in decision-making processes and should be guaranteed to all persons with disabilities, including persons with intellectual disabilities, persons with autism and persons with actual or perceived psychosocial impairment, and children with disabilities, through their organizations.

<sup>52</sup> Council of Europe, [Recommendation CM/Rec\(2011\)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life](#), point 1. See also *op. cit.* footnote 16, para. 54 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>53</sup> *Ibid.* para. 54 (2020 [Joint Guidelines on Political Party Regulation](#)). The OSCE Copenhagen Document (1990), para. 7.6, states that “Participating States will respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.”

<sup>54</sup> *Ibid.* para. 54 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>55</sup> *Ibid.* para. 54 (2020 [Joint Guidelines on Political Party Regulation](#)). See Articles 2 and 26 of the ICCPR and, for reference, Article 14 of the ECHR and Protocol No. 12 to the ECHR.



recommendations made in the 2019 Opinion.<sup>56</sup> This is notwithstanding the existence of possible minimum age requirements, providing that they are strictly justified and proportionate and take into account the evolving capacity of the child, as noted in paragraph 143 of the Joint Guidelines on Freedom of Association.

39. Article 5.9 of the Draft Law refers to restrictions to the exercise of the right to form a political party or to freedom of association, which shall be necessary and appropriate for the “protection of national security, public order, public morals, public health, or other fundamental human rights and freedoms as well as those specifically provided by laws”. By potentially referring to other grounds “specifically provided by laws”, the provision goes beyond the restriction grounds specifically listed in Article 22(2) of the ICCPR. As emphasized in the 2020 Joint Guidelines, the list of restrictive grounds in the ICCPR is exhaustive<sup>57</sup> and shall be narrowly interpreted.<sup>58</sup> **It is therefore recommended to remove from Article 5.9 the reference to “those [restrictions] specifically provided by laws”.** Otherwise, Article 5.11 seems to provide for a presumption in favour of the lawfulness of political parties’ establishment and objectives as long as Articles 5.9 on general limitations and 5.10 on non-discrimination are complied with. This is welcome in principle provided that in practice, the establishment and objectives will be deemed lawful regardless of the formalities applicable for establishment or official recognition, in accordance with Principle 1 of the 2020 Joint Guidelines.

40. The Draft Law also contains a number of limitations concerning the naming of a political party. Article 6.1 of the Draft Law requires that the name of a political party shall include the general term “party” at the end, which may be too prescriptive. Further, Article 6.6 of the Draft Law provides that in case of deregistration, reorganisation by merger or change of name, a newly established party or other parties are prohibited from reusing the names/abbreviated names, symbols and flags of such party for 12 years. While there may be local circumstances that may justify such duration, the length of this restriction appears very long and therefore too restrictive. Moreover, Article 24.3 provides that the reorganised party following a merger may use the name of one of the parties to the merger as the name of the newly established party. This provision seems to contradict Article 6.6 of the Draft Law. **It is therefore recommended to the drafters to reconsider such limitations and ensure consistency.**

## **2. Establishment and Registration of Political Parties**

41. Articles 11 to 15 of the Draft Law outline the procedure for establishing a political party and conditions for party registration. In general, not all OSCE participating States and CoE Member States require the registration of political parties. However, it is also acknowledged that political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations. Hence, it is reasonable to require the registration of political parties with a state authority.<sup>59</sup> At the same time, as underlined in the 2020 Joint Guidelines,

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<sup>56</sup> *Op. cit.* footnote 1, paras. 28-29 (2019 OSCE/ODIHR [Opinion](#)), which recommended to remove the prohibition to establish a political party for “citizens deprived of legal capacity by a court” and for “citizen[s] who is sentenced to imprisonment due to committing a crime of misusing official position or national security until the punishment is counted”.

<sup>57</sup> See *op. cit.* footnote 16, para. 49 (2020 [Joint Guidelines on Political Party Regulation](#)). See also e.g., ODIHR-Venice Commission, [Joint Opinion on Draft Law No. 140/2017 of Romania on Amending Governmental Ordinance No. 26/2000 on Associations and Foundations](#), CDL-AD(2018)004, para. 34.

<sup>58</sup> *Ibid.* para. 49 (2020 [Joint Guidelines on Political Party Regulation](#)); and OSCE/ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015), CDL-AD(2014)046, para. 34. For reference, see also ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], Application nos. [41340/98](#) and 3 others, 13 February 2003, para. 100.

<sup>59</sup> *Ibid.* para. 85 (2020 [Joint Guidelines on Political Party Regulation](#)). For instance, most Western European countries (e.g. Germany, Greece, Spain, Switzerland) do not establish any special registration requirements for political parties as compared to other associations while in countries like Denmark, Italy or The Netherlands, political parties are not even obliged to register.



substantive registration requirements and procedural steps for registration should be reasonable.<sup>60</sup>

42. Article 11 of the Draft Law describes in detail the different steps to be undertaken to establish a political party, including the setting-up of a working group (Article 11.1), the organisation during at least 60 days of public meetings to “recruit the number of citizens specified in Article 12.3 [i.e. at least 801]” (Article 11.3) and the founding meeting (Article 12). Following the founding meeting, the political party would have to be registered with the GEC (Articles 13-15) and no longer with the Supreme Court as is currently the case (see also Sub-Section I on the Oversight Bodies *infra*). Altogether, the formation and registration process may take up to five months.<sup>61</sup>

43. The 2020 Joint Guidelines specify that when the collection of signatures is required to demonstrate a minimum level of citizen support, as is the case in Mongolia, “parties must be provided with a clear timeframe, including deadlines and a reasonable amount of time for the collection of such signatures”.<sup>62</sup> Moreover, the Guidelines further state that “[i]f legislation includes verification processes, the law should clearly state the different steps of the process and ensure that it is fairly and equally applied to all parties and feasible in terms of implementation” and “[s]uch processes should also follow a clear methodology, may not be too burdensome”.<sup>63</sup> The Draft Law seeks to describe in great detail the different steps to be followed to establish a political party as well as the timeframe for collecting signatures and the procedure for verifying such signatures, with the methodology applied by the GEC (Articles 14.3 and 14.4). At the same time, overall, the procedure appears rather long and overly complicated, and renders rather cumbersome the process of party formation and registration, thereby potentially restricting the right to freedom of association. This is especially so for the establishment of new political parties and their participation in elections. In the 2020 Joint Guidelines, the OSCE/ODIHR and the Venice Commission emphasized that “[d]eadlines that are overly long constitute unreasonable barriers to party registration and participation”.<sup>64</sup> **It is recommended that the registration process is simplified, for instance by removing the provisions concerning the process and stages of formation of a political party and simply listing the required documents and information to be submitted for registration.**

44. Article 15.8 of the Draft Law prevents the submission of an application for registration of a political party during the 90 days preceding the *State Great Hural* election. It is noted that Article 12 of the Law on Parliamentary Elections provides that political parties registered with the Supreme Court<sup>65</sup> at least 180 days before the voting day are entitled to participate in the elections of the *State Great Hural* and to nominate candidates and may declare their intention to participate in the parliamentary elections to the GEC at least 60 days before the election day. There should not be time limits in the Draft Law on the registration as a party and on the suspension of the deadlines specified in Articles 14.1 and 15.1 once the registration is submitted (Article 15.4 of the Draft Law). Indeed, there is no reason to limit the right of

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<sup>60</sup> *Ibid.* para. 86 (2020 [Joint Guidelines on Political Party Regulation](#)). See also OSCE/ODIHR, [Opinion on the Constitutional Law of the Republic of Armenia on Political Parties](#) (11 October 2019), paras. 21-22.

<sup>61</sup> Following the establishment of the working group (Article 11.1), there are at least 60 days for the working group to organize public meetings to gather citizens’ support (Article 11.3); followed by the public announcement of the founding meeting at least 21 days in advance (Article 12.2); within 30 days of the formation of the party, the written application for registration shall be submitted (Article 13.1); the central election body has 21 days to review the completeness of the application (Article 14.1), followed by 7 additional days for the central election body to make a decision whether to register or refuse to register a party (Article 15.1), followed by 3 working days for the central election body to notify the applicant and inform the public as well as to issue a certificate (Articles 15.1 and 15.3); if the central election body does not notify the applicant about the decision for registration of the party, the party shall be considered registered within 14 days after the expiration of the period specified in Article 15.1 (Article 15.3).

<sup>62</sup> *Op. cit.* footnote 16, para. 96 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>63</sup> *Ibid.* para. 96 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>64</sup> *Ibid.* para. 88 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>65</sup> If the Draft Law is adopted, the Law on Parliamentary Elections will need to be harmonized to recognize the new role of the GEC relating to the registration of political parties.

individuals to associate during the election period, as there are specific provisions for limiting participation in elections in the electoral legislation, which however the OSCE/ODIHR election observation reports have criticised as overly restrictive<sup>66</sup> (see also Sub-Section F(3) on Political Parties in Elections *infra*). **It is recommended to delete Article 15.4 of the Draft Law.**

45. Moreover, certain of the formation and/or registration requirements appear rather cumbersome. For instance, the obligation for participants to the public meetings to submit their names, ID and contact details to the working group (Article 11.5) seems excessive, especially if they are only attending to find out what the prospective party is about but not necessarily for ultimately becoming a member of such a party. Also, some of the supporting documents to be submitted for registering a political party may appear unreasonable. As an example, there is no reason for the state to require the inclusion of the party's platform at the time of applying for registration as a political party (Article 13.3.4), since the party's platform might not be fully ready at the time of registration and the decision on registration of the party should not be contingent on the content of the party's platform. This issue should be left to the political party to decide internally. Regarding the submission of the charter, as noted in the 2020 Joint Guidelines, such requirement is not inherently illegitimate, providing that it is not used to unfairly disadvantage or discriminate against any political party, especially those espousing unpopular ideas.<sup>67</sup>

46. Article 12.3 of the Draft Law requires 801 signatures of citizens confirming their intention to join the party. Compared to the constitutional requirement of 1 percent of the total electorate (Article 19<sup>1</sup> of the Constitution as introduced in 2019), which should enter into force in 2028, the required threshold is much lower. While the practice across the Council of Europe and OSCE region varies greatly, some countries have adopted even lower thresholds.<sup>68</sup> As informed during the online pre-assessment visit, discussions are ongoing concerning possible amendments to Article 19<sup>1</sup> of the Constitution with a view to revise and considerably lower the 1 percent threshold, which is much welcome if this materializes. This will also avoid a possible contradiction between the provisions of the Draft Law and Article 19<sup>1</sup> of the Constitution.

### **3. Membership in Political Parties**

47. According to Article 3.1.1 of the Draft Law, "a party member" means "a citizen who voluntarily joined a political party by accepting objectives, ideology, action plans/platform and rules of such party and *who pays party membership fees* and participates in activities of such party with *the right to vote and to elect and be elected*". Read together with Article 33.8 which specifies that membership fees shall be considered donations and Article 35.6.1 which prohibits donations from foreigners and stateless persons, this would imply that foreigners and stateless persons cannot become members of political parties. In addition, Article 5.1 of the Draft Law refers to the right of

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<sup>66</sup> See e.g., OSCE/ODIHR, [Mongolia - Needs Assessment Mission Report – Parliamentary Elections](#) (22 April 2020), Section E; and regarding presidential elections, OSCE/ODIHR, [Mongolia - Special Election Assessment Mission Final Report](#) (22 October 2021), Section VIII.

<sup>67</sup> *Op. cit.* footnote 16, para. 90 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>68</sup> Most Western European countries (e.g. Germany, Greece, Spain, Switzerland) do not establish any special registration requirements for political parties as compared to other associations while in countries like Denmark, Italy or The Netherlands, political parties are not even obliged to register. In other countries, the collection of a minimum number of signatures prior to the registration of a political party is the most frequent requirement. It can go from as low as 3 in Andorra, 100 in Croatia or 200 in Latvia, Montenegro or Slovenia to as high as 10,000 in Serbia, Slovakia and Ukraine or even 20,000 in Uzbekistan. Some countries, however, use party membership as the basis to establish the minimum levels of support required for registration, for instance 3 in Romania, 10 in Hungary or Kyrgyzstan or 40,000 in Kazakhstan. In Bulgaria, both a minimum number of signatures (500) and member (2,500) is required. For instance, in Canada, there is no legislation regulating the formation of federal political parties or their legal, internal and financial structures but a party may choose to register, in which case it should have at least 250 members who are electors, in a country which population represents more than 30 times that of Mongolia; see <https://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>.

“citizens of Mongolia who are eligible to vote” to join or leave a political party, thereby suggesting that only citizens of Mongolia may be members of political parties.

48. As specified in Article 25 of the ICCPR, certain rights may apply only to citizens, e.g., the right to take part in the conduct of public affairs, to vote and to be elected, and to access public services. At the same time, and as already noted in the 2019 OSCE/ODIHR Opinion, a general exclusion of foreign citizens and stateless persons from membership in political parties is not justified.<sup>69</sup> This would also constitute an excessive restriction to their rights to freedom of association and freedom of expression.<sup>70</sup> Non-nationals should to some extent be permitted to participate in the political life of their country of residence, at least as members of political parties.<sup>71</sup> As emphasized in the 2020 Joint Guidelines, only the possibility of aliens to establish political parties can be restricted but not the membership of aliens in political parties.<sup>72</sup> During the online meetings, it was mentioned that some references to “citizens” in the English version of the Draft Law would actually mean an individual in general. At the same time, some provisions of the Draft Law specifically refer to “Mongolian citizens” and their right to freedom of association (Article 1.1) or their membership in political parties (Article 5.1). To avoid any ambiguity, it is recommended **to replace the reference to “citizen”/“citizens of Mongolia” in Articles 1.1, 3.1.1, 3.1.2 and 5.1 by “individual” or “everyone” in order to ensure that foreigners and stateless persons may become members of political parties if they so wish.**

49. Article 5.3 of the Draft Law provides that if a party member is appointed as a so-called “core civil servant”, his or her party membership shall be suspended. The Law on Civil Service<sup>73</sup> distinguishes between four categories of civil servants and its Article 6.2 specifies that two of such categories shall be regarded as “core civil service”, i.e., “administrative civil servants” as defined in Article 12 of the Law on Civil Service<sup>74</sup> and “special civil servants” as defined in Article 13 of the Law on Civil Service.<sup>75</sup> At the same time, Article 37.1.4 of the Law on Civil Service further states that except for state political officials (who are listed in Article 11 of the same Law),<sup>76</sup> a civil servant shall not participate in any form of political party during his or her term in office. This implies that not only “core civil servants” but also “general public servants” as defined in Article 14,<sup>77</sup> are excluded from party membership during their terms of office. As such, Article 5.3 of the Draft Law is not fully in line with Article 37.1.4 of the Law on Civil Service.

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<sup>69</sup> See *op. cit.* footnote 1, para. 28 (2019 OSCE/ODIHR [Opinion](#)). See also *op. cit.* footnote 16, para. 149 (2020 [Joint Guidelines on Political Party Regulation](#)); and Venice Commission, [Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues](#) (15 April 2004), CDL-AD (2004)007rev, Guidelines on, item “H”. See also OSCE/ODIHR-Venice Commission, [Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia](#), CDL-AD(2020)004, para. 23, which states that “a general exclusion of foreign citizens and stateless persons from membership of political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections.”

<sup>70</sup> *Ibid.* para. 149 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>71</sup> *Op. cit.* footnote 1, para. 28 (2019 OSCE/ODIHR [Opinion](#)). See also Venice Commission, Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues (15 April 2004), [CDL-AD \(2004\)007rev](#), Guidelines on item “H”.

<sup>72</sup> *Op. cit.* footnote 16, para. 149 (2020 [Joint Guidelines on Political Party Regulation](#)). See also Venice Commission, [Opinion on the Ukrainian Legislation on Political Parties](#), CDL-AD(2002)017, para. 37, where the Venice Commission specifically recommended that “foreign citizens and stateless persons should be allowed to participate to some extent in the political life of their country of residence, at the very least by making possible their membership in political parties”.

<sup>73</sup> Available at: <<https://legalinfo.mn/mn/detail/13025>>.

<sup>74</sup> i.e., administrative and executive professionals providing counseling in the development of public policy in the administration of government as well as administrative supervision.

<sup>75</sup> Article 13 of the [Law on Civil Service](#) defines the category of “special civil servants” which include judges and prosecutors at all levels, the military, the police and other investigators, diplomats, representatives of key independent institutions or agencies, among others.

<sup>76</sup> This includes key political positions such as the President, Vice-Presidents, the Chairperson and Vice-Chairperson of the Parliament, the Prime Minister and members of the government

<sup>77</sup> This is a rather broad category of civil servants as it includes administrative, executive and assistant positions funded by the education, science, health, culture, arts, and sports budgets, among others.

50. It is important to note that Article 22(2) of the ICCPR specifically envisions restrictions concerning membership in associations of two categories of public servants i.e., members of the armed forces and of the police. In the 2020 Joint Guidelines, it is emphasized that although generally legitimate, restrictions to political party membership “may be considered undue infringements if they are applied in an overly broad manner, e.g., to all persons in government service”.<sup>78</sup> The category of so-called “core civil servants” in the Law on Civil Service goes much beyond what is contemplated in the ICCPR as it not only encompasses the military and the police, but also other representatives of institutions/agencies, as well as administrators, executive professionals and supervisors. And Article 37.1.4 of the Law on Civil Service goes even further by prohibiting an even broader category of civil servants to participate in any form of political party. The limitation to political party membership applicable to “core public servants” as it stands appears too broad and should be more strictly circumscribed. In any case, as also recommended in the 2019 OSCE/ODIHR Opinion,<sup>79</sup> **the term “core civil servant” should be clarified in the Draft Law by specifying the type of public officials prohibited from membership in political parties or by cross-referencing the relevant legislation**, while ensuring that any restriction on political party membership is strictly justified, for instance to ensure the political neutrality of the said civil servants.

51. Article 5.6 of the Draft Law states that “[e]xcept as provided by law, it is prohibited to identify a citizen as a member of any party without the consent of the citizen in the official personal identifications”. This provision is welcome as it offers an opportunity to eliminate the mention, without consent, of political identification in official personal identification documents, which tends to facilitate discriminations and allocation of privileges based on party membership and thereby constituting prohibited discrimination.<sup>80</sup>

## **F. Internal Organization, Decision-making Process and Activities of Political Parties**

### **1. Internal Structure, Organization and Decision-making Process**

52. Overall, as already critically assessed in the 2019 OSCE/ODIHR Opinion, the Draft Law remains overly detailed with regard to the structure and functioning of political parties, including their internal organization, content of the charter and decision-making process.<sup>81</sup> According to international good practice, political parties are granted a certain level of autonomy in their internal structure and decision-making, as well as external functioning and internal democracy is recognized as a key element for the functioning of political parties.<sup>82</sup> Pursuant to this principle, political parties should be free to establish their own organization and the rules for selecting their party leaders and candidates, since this is regarded as integral to the concept of associational autonomy of a party.<sup>83</sup> It should also be up to the parties

<sup>78</sup> *Op. cit.* footnote 16, para. 148 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, for example, as a comparison, the case of the European Court of Human Rights (ECtHR), *Vogt v. Germany* [GC], no. [17851/91](#), 26 September 1995, where the ECtHR found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement of her rights as set out in Articles 10 and 11 of the ECHR.

<sup>79</sup> *Op. cit.* footnote 1, para. 30 (2019 OSCE/ODIHR [Opinion](#)).

<sup>80</sup> *Op. cit.* footnote 16, paras. 54, 56 and 59 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>81</sup> *Op. cit.* footnote 1, paras. 21-25 (2019 OSCE/ODIHR [Opinion](#)).

<sup>82</sup> See *op. cit.* footnote 16, para. 151 (2020 [Joint Guidelines on Political Party Regulation](#)), which states that “[t]he internal functions and processes of political parties should generally be free from state interference. Internal political party functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed on by the parties themselves. Legal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs.” See also OSCE/ODIHR, [Opinion on the Constitutional Law of the Republic of Armenia on Political Parties](#) (11 October 2019), paras. 21-22; and OSCE/ODIHR-Venice Commission, [Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia](#), CDL-AD(2020)004, paras. 19-21.

<sup>83</sup> See *op. cit.* footnote 16, paras. 20, 155 and 176 (2020 [Joint Guidelines on Political Party Regulation](#)). See also Venice Commission, [Report on the Method of Nomination of Candidates within Political Parties](#) (CDL-AD(2015)020).



themselves to determine how their conferences and decision-making procedures are organized.<sup>84</sup> As it stands, the Draft law is overregulating matters that usually lie within the discretion of the political parties and as a consequence, limits the party autonomy to decide on issues such as the party's internal organization and structure, membership, its leadership, charter, program and decision-making procedure. As such, the provisions are too detailed and unnecessary, as they limit political parties' right to self-regulate these matters, and thereby constitute an excessive encroachment on the autonomy of political parties. **It is recommended to review Articles 8 and 16-20 of the Draft Law by giving political parties the autonomy to decide on the structure of the party and decision-making process, though still respecting democratic principles as stated above. Especially, and as recommended in 2019, the provisions imposing minimum voting requirements for decision-making should be removed in order to give full discretion to political parties in this respect.**<sup>85</sup>

53. It also contravenes the autonomy of political parties that the mere failure to submit within 30 days amendments introduced in a party statute as well as decisions on appointing a party leader to the GEC (Article 16.3) may serve as grounds for refusal to register the amendments or the new leader of a party. **It is recommended to review Article 16.3.**

54. Article 10.1.7 of the Draft Law should be clear about the possibility to establish other organizations such as think tanks or foundations linked to the party, even though some other provisions (e.g., Articles 20, 27.3 and 36.1) already show the importance of the education and research functions of political parties.

55. At the same time, as noted in the 2020 Joint Guidelines, it is legitimate for states to introduce some legislative requirements for the internal organisation and selection of candidates for elections, in the interest of democratic governance and equal treatment or participation of minorities or disadvantaged groups, although without interfering too much with the internal matters of political parties.<sup>86</sup> The 2020 Joint Guidelines further state that "[l]egal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs".<sup>87</sup> In that respect, as mentioned in Section C *supra*, it is welcome that gender and diversity considerations become an integral part of a party's internal decision-making processes, especially regarding the nomination to the party's leadership positions and to candidates to public offices (Articles 8.1 and 8.2).<sup>88</sup>

56. Article 16.4 of the Draft Law further states that "[t]he charter and platform of a party shall not contradict the main structure and the fundamental principles of the Constitution". As emphasized in the 2020 Joint Guidelines, "the law should not forbid a political party from advocating a change to the constitutional order of the state, as long as the means used to that end are legal and democratic, and the change proposed is in itself compatible with fundamental democratic principles".<sup>89</sup> Moreover, "the mere fact that a party advocates a peaceful change of the constitutional order, or promotes self-determination of a specific people is not sufficient *per se* to justify a party's prohibition or dissolution".<sup>90</sup> The party programmes may be incompatible with the current principles and structures of a given state, but may still be compatible with the rules of democracy, as it is "the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy

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<sup>84</sup> *Ibid.* para. 155 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>85</sup> *Op. cit.* footnote 1, para. 23 (2019 OSCE/ODIHR [Opinion](#)).

<sup>86</sup> *Op. cit.* footnote 16, paras. 28, 151 and 176 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>87</sup> *Ibid.* para. 151 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>88</sup> See UN Committee on the Elimination of Discrimination Against Women (CEDAW), [General Recommendation No. 23: Political and Public Life](#), 1997, A/52/38, paras. 32-34.

<sup>89</sup> *Op. cit.* footnote 16, para. 38 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>90</sup> *Ibid.* para. 115 (2020 [Joint Guidelines on Political Party Regulation](#)).



itself”.<sup>91</sup> Consequently, a political party must be able to promote a constitutional change on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must be compatible with fundamental democratic principles.<sup>92</sup> In light of the above, **the generic reference to the “fundamental principles of Constitution” provided in Article 16.4 of the Draft Law may result in unjustified limitations of the rights to freedom of association, freedom of expression and to political participation and should be reconsidered** (see also paras. 60 and 75-75 *infra* on the dissolution of political parties).

57. Finally, a number of provisions of the Draft Law deal with political parties’ transparency and disclosure obligations (Articles 9, 25.1, 34.3, 34.15.2 and Art. 37.2). For the sake of clarity, **it would be advisable to cluster them in the same article or to cross-reference them.**

## **2. Activities of Political Parties**

58. Article 7.1.7 of the Draft Law specifies the scope of the international activities of political parties i.e., “to establish contacts with political parties and international organisations of other countries”. This appears rather restrictive. As emphasized in the 2020 Joint Guidelines, limitations on the interaction and functioning of political parties at an inter-state level are unjustifiable and contrary to good practice, and should be avoided in all relevant legislation.<sup>93</sup> Generally, associations, including political parties, should be able to communicate freely and co-operate with similar associations at the international level.<sup>94</sup> In addition to what is provided in Article 7.1.7 of the Draft Law, some other potential international activities could also be considered, such as **the possibility to become members of international party organizations. The drafters could consider broadening the scope of Article 7.1.7 of the Draft Law accordingly.**

59. Article 5.12 of the Draft Law provides that “[a] core civil servant shall be prohibited from making decisions or conducting activities which protect the interest of or give an advantage to any political party during the performance of his or her official duties”. This provision should be approached with caution since in practice, there are a wide range of perfectly legitimate public decisions, which nonetheless give an advantage to one or more particular parties over others, e.g., matching grants up to a certain amount for private donations would advantage parties with many small donors over those with a few big donors. **The provision should be revised to specify that this is notwithstanding differential treatment of political parties by public authorities based on objective and reasonable grounds applied neutrally to all political parties.**<sup>95</sup>

60. Article 10.1.1 of the Draft Law provides that a party shall be prohibited from conducting activities that “pose a direct or serious threat to the independence, sovereignty, constitutional order or democracy of Mongolia, or [aimed] at achieving its goals through violence”. As mentioned in para. 56 *supra*, this should not be interpreted as preventing a political party from advocating for constitutional change so long as the means used to that end are legal and democratic and the proposed changes are compatible with fundamental democratic principles.<sup>96</sup> **The provision could be clarified in this respect.**

61. Article 10.1.4 of the Draft Law prohibits the demand and receipt of collateral or deposit or other form of monetary or non-monetary assets and services by party members and

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<sup>91</sup> See ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 47; and ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999, para. 41.

<sup>92</sup> *Op. cit.* footnote 16, para. 116 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, for reference, ECtHR, , *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. [41340/98](#) and 3 others, 13 February 2003.

<sup>93</sup> *Ibid.* para. 104 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>94</sup> OSCE Copenhagen Document (1990), para. 10.4.

<sup>95</sup> *Op. cit.* footnote 16, paras. 55-58 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>96</sup> *Ibid.* para. 116 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, for reference, ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. [41340/98](#) and 3 others, 13 February 2003.

supporters when granting the right to stand as a candidate for election. This provision is welcome as it avoids the common practice of pledge-money.

62. Article 10.1.5 of the Draft Law prohibits the payment of salaries and bonuses to party members and supporters during election and non-election periods for embodying their political will, expressing their political position and actively participating in the activities of the party. While this provision probably aims at preventing vote-buying, this could consequently mean that paid campaign workers cannot be party members or supporters, which appears at odds with the usual practice. Of note, the electoral legislation already contains overly detailed provisions on the permissible number of campaign staff and offices, which the OSCE/ODIHR has previously criticized as being too restrictive and recommended be revised.<sup>97</sup>

### 3. Political Parties in Elections

63. Article 7.2.1 of the Draft Law provides that only parties having a seat in the *State Great Hural* shall have the right to nominate candidates to President from among its members and supporters. This provision mirrors Article 31(2) of the Constitution of Mongolia, which states: “Political parties which have obtained seats in the State Great Hural nominate individually or collectively presidential candidates, one candidate for each party or coalition of parties” and Article 5.5 of the Law on the Election of the President of Mongolia.<sup>98</sup> Despite prior OSCE/ODIHR recommendations and contrary to international standards on the right to stand for election and OSCE commitments, non-parliamentary parties do not have the possibility of nominating candidates and the existing legal framework prevents independent candidates to stand for presidential election, which potentially limits voters’ choice in the election.<sup>99</sup> **The legislator could reconsider this limitation foreseen in Article 31(2) of the Constitution of Mongolia in the framework of the future constitutional reform.**

64. In the context of elections, Article 16.5 of the Draft Law requires that “the election platform of a party shall be consistent with the platform, ideology, values and goals of a party and shall be based on research”. As already noted in the 2019 OSCE/ODIHR Opinion, the extent to which an “election platform” aligns with the “party platform” should be left for the political parties to decide in each election.<sup>100</sup> In the same Article 16.5 of the Draft Law, establishing the obligation to base the electoral program on research has no legal justification. While it may be beneficial for electoral platforms to be based on research and to be consistent with the party platform, such requirement may amount to a serious limitation if they become an obstacle for the participation of political parties in elections or if they bring some other consequences. This also raises the question of who or which body shall determine whether the requirements of Article 16.5 are fulfilled. If this is of the competence of a state body, this would open the door to potentially excessive state interference into the inner functioning of political parties and the

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<sup>97</sup> See OSCE/ODIHR, [Mongolia - Special Election Assessment Mission Final Report](#) (22 October 2021), p. 12, which recommended: “The law should be amended to provide a less restrictive framework for campaigning, including regarding the type of activities permitted, as well as the assets and resources that can be used.”

<sup>98</sup> Article 5.5 of the [Law on the Election of the President of Mongolia](#) (24 December 2020) states: “A political party with a seat in the State Great Hural of Mongolia shall have the right to nominate one person to the President individually or jointly”.

<sup>99</sup> *Op. cit.* footnote 16, para. 185 (2020 [Joint Guidelines on Political Party Regulation](#)). See also UN Human Rights Committee (CCPR), [General Comment No. 25 on Article 25 of the ICCPR](#) (1996), CCPR/C/21/Rev.1/Add.7, para. 15, which 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”; and OSCE, 1990 Copenhagen Document, paras. 7.5 and 24, which paragraph 7.5 stating that participating States should “respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”. See also Venice Commission, [Code of Good Practice in Electoral Matters](#), CDL-AD(2002)023rev2-cor, Section II.1.b; and OSCE/ODIHR, [Mongolia - Special Election Assessment Mission Final Report](#) (22 October 2021), Recommendation 3 and p. 11.

<sup>100</sup> *Op. cit.* footnote 1, para. 20 (2019 OSCE/ODIHR [Opinion](#)).

campaigns of electoral contestants.<sup>101</sup> In light of the foregoing, **Article 16.5 of the Draft Law appears overly prescriptive and should be reconsidered entirely.**

65. Moreover, when registering for elections, the State Audit Office has the authority to check a political party's electoral platform to assess its economic feasibility and its conformity with the country's "sustainable development vision" and the political party can be denied registration as a result. This constitutes an excessive interference with the right to stand for elections and freedom to campaign.<sup>102</sup> During the pre-assessment visit, certain political parties emphasized that this also tends to somewhat harmonise all programmes, to the detriment of the principle of political pluralism. **The requirement for political parties' electoral platforms to be confirmed by the State Audit Office for their economic feasibility and adherence to specific policy-based requirements should be repealed.**<sup>103</sup>

66. Finally, as recommended by the OSCE/ODIHR following the last Presidential elections in 2021, **authorities could consider introducing requirements for parties and candidates to disclose campaign income and expenditure estimates before the end of the election campaign and to publish such reports online.**<sup>104</sup> Unless already provided in other legislation, the legal drafters could consider supplementing the Draft Law or electoral legislation accordingly.

### **G. Inactivity and Dissolution of Political Parties**

67. Articles 22-26 of the Draft Law deal with the grounds and procedure for considering a party inactive, and with deregistration, reorganization, termination and dissolution of political parties respectively.

68. Pursuant to Article 22 of the Draft Law, the GEC shall consider a party inactive in the following situations: if a party has not contested the *State Great Hural* election for two consecutive terms (corresponding to eight years); if a party has failed to submit its financial statements to the GEC for two consecutive years; or if a party has failed to convene meetings of its highest governing body or central representative body for five years. As a consequence, public funding for the party shall be terminated (Article 22.2) and the inactive party cannot have candidates in elections and those candidates can only run independently (Article 22.2) and if the inactivity lasts for two years, this constitutes a ground for dissolution (Article 26.1.1 read together with Article 22.1, see also paras. 73-76 *infra* on dissolution).

69. The requirement to regularly contest national (parliamentary) elections in order not to be considered inactive, and ultimately dissolved is problematic. In practical terms, this means that a political party based at a regional or local level only would be dissolved after ten years (two consecutive parliamentary terms followed by two years of inactivity). This constitutes a disproportionate restriction, which may also have discriminatory effects against parties enjoying regional or local support, smaller parties and parties representing national minorities.<sup>105</sup> **The drafters could consider requiring contestation in national, regional and local elections instead.**

70. It is welcome that Articles 22.5 and 22.6 provide for the possibility to appeal the decision on inactivity before the Supreme Court, which shall pronounce itself within 30 days. However,

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<sup>101</sup> See e.g., OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Ukraine*, CDL-AD(2021)003, para. 66.

<sup>102</sup> OSCE/ODIHR, *Mongolia - Special Election Assessment Mission Final Report* (22 October 2021), p. 11; and OSCE/ODIHR, *Mongolia - Needs Assessment Mission Report – Parliamentary Elections* (22 April 2020), p. 8. See also UN HRC, *Concluding Observations on the sixth periodic report of Mongolia* (2017), paras. 39-40.

<sup>103</sup> *Ibid.*

<sup>104</sup> See OSCE/ODIHR, *Mongolia - Special Election Assessment Mission Final Report* (22 October 2021), Recommendation 6.

<sup>105</sup> *Op. cit.* footnote 16, paras. 102-103 (2020 *Joint Guidelines on Political Party Regulation*).

**it is not clear whether the Supreme Court will have full adjudication powers or will be limited to the review of questions of law and procedure. This should be clarified.**

71. Moreover, even if inactive, the parties should be able to participate in elections and should not lose the basic rights awarded to all associations and this should not affect their continued existence as an association.<sup>106</sup> Hence, **the prohibition of the party to participate in elections if it is considered inactive, but not dissolved, should be reconsidered entirely.**

72. If the grounds for pronouncing the inactivity are eliminated within two years, the GEC shall annul its decision to consider the party inactive (Article 22.3). At the same time, no clear deadline is provided in the Draft Law for the GEC to pronounce itself, which may allow for inconsistent or arbitrary application and potential abuse.<sup>107</sup> As emphasized in the 2020 Joint Guidelines, the timeline for decisions regarding the regulation of political party activities shall be stated clearly in law and the process as a whole shall be transparent.<sup>108</sup> **It is recommended to supplement the Draft Law by providing a clear deadline for the GEC to annul its decision on inactivity.**

73. According to Article 26 of the Draft Law, the GEC shall issue a conclusion on the dissolution of a party and submit it to the Supreme Court if the violation that led to considering a party inactive is not eliminated within a period of two years (Article 26.1.1.) or if the party poses “a direct or serious threat to the independence, sovereignty, constitutional order or democracy of Mongolia, or [is aimed] at achieving its goals through violence”; or if the party is “arm[ed] or militarise[d] or become militarised” (Article 26.1.2). As mentioned in para. 60 *supra*, the grounds for dissolution of political parties listed in Article 26.1.2 of the Draft Law shall be narrowly interpreted and not prevent advocacy for constitutional changes when such changes are themselves compatible with fundamental democratic principles.

74. As stated in the 2020 Joint Guidelines, “[o]nce party registration is approved, requirements for retaining it should be minimal” as opposed to “the requirements for continuing to receive certain benefits from the state, such as public financing or ballot access in elections, [which] may be higher”.<sup>109</sup> In principle, de-registration should be limited to cases of serious legal violations and carried out according to clearly defined procedures, including review by and/or appeal to an impartial and independent body.<sup>110</sup> Moreover, “sanctions must at all times be objective, effective, and proportionate to the specific violation”<sup>111</sup> and “dissolution of parties [...] is the most severe form of holding parties accountable for legal violations and should only be applied as a measure of last resort where this is necessary in a democratic society” i.e., in case of “party’s use of violence or threats to civil peace or fundamental democratic principles” and “when all less restrictive measures have been considered to be inadequate”.<sup>112</sup> As further stated in the 2020 Joint Guidelines, political parties should never be dissolved for minor administrative or operational breaches, in the absence of other relevant and sufficient circumstances.<sup>113</sup> The Guidelines also specify that “failure to present any candidates over a specified period may be grounds for denial of registered party status, but only in cases in which denial of party registration is not tantamount to dissolution”.<sup>114</sup>

75. It may appear disproportionate that the mere inactivity for two years may trigger the dissolution of the political party, i.e., simply on the basis of non-contestation in parliamentary elections for two consecutive terms or mainly administrative reasons (delay in submitting financial reports or the absence of meetings of its governing bodies). Indeed, there may be a

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<sup>106</sup> *Ibid.* para. 101 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>107</sup> *Op. cit.* footnote 1, para. 56 (2019 OSCE/ODIHR [Opinion](#)).

<sup>108</sup> *Op. cit.* footnote 16, para. 271 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>109</sup> *Ibid.* para. 99 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>110</sup> *Ibid.* para. 99 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>111</sup> *Ibid.* para. 272 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>112</sup> *Ibid.* paras. 109 and 272 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, for reference, Parliamentary Assembly of the Council of Europe (PACE), [Resolution 1308 \(2002\)](#), 18 November 2002, para. 11.

<sup>113</sup> *Ibid.* para. 113 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>114</sup> *Ibid.* para. 113 (2020 [Joint Guidelines on Political Party Regulation](#)).



variety of reasons for a political party not to contest parliamentary elections, including for instance situations where local/regional political parties participate in other (sub-national) elections but not national ones. When it comes to the non-submission of financial statements, dissolution might be an appropriate sanction but only as a last resort and if other lesser sanctions, timed with appropriate and reasonable deadlines, are not effective in practice.

**76. The dissolution of an inactive political party for not contesting parliamentary elections for a certain period, or for relatively minor administrative/operational reasons appears excessive and should be revised.** All the more, the inactivity status linked to the failure to submit financial statements to the GEC for two consecutive years appears too strict as it may indirectly discriminate against smaller or newly established parties for which reporting and auditing obligations applicable to financial statements (Article 39 of the Draft Law) can overstretch the personal and financial resources of very small or newly established parties.<sup>115</sup> **Lesser sanctions such as temporary partial or complete suspension of public benefits pending regularization, or mere de-registration (without dissolution)<sup>116</sup> could be considered** (for a range of sanctions for non-compliance with laws and regulations, see paragraph 274 of the 2020 Joint Guidelines).

77. In terms of procedure, according to Article 26.1 of the Draft Law, the GEC issues a conclusion on the dissolution of a political party and submits it to the Supreme Court if one of the two above-mentioned dissolution grounds exist.<sup>117</sup> Such decision is adopted by a three-fourths vote of all members of the GEC. This is problematic as this means that it will depend on a “political” majority and may accordingly favour the ruling party instead of being based on evidence.

78. It is unclear from the wording of the Draft Law whether the dissolution would amount to a decision made by the Supreme Court acting as an administrative body rather than a judicial decision, following a procedure where the party’s right to a fair trial will be fully respected, with a real opportunity for the party’s representatives to defend themselves and oppose the dissolution before the Supreme Court. If the Supreme Court does not examine the merits of the case and considers itself bound by the decision of the GEC, the review by the Supreme Court cannot be considered an effective remedy, which would thereby be contrary to Principle 7 of the 2020 Joint Guidelines.<sup>118</sup> In light of the above, **it is recommended to specify in the Draft Law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the GEC on the dissolution of a political party.**<sup>119</sup>

## H. Funding of Political Parties

79. Articles 27-36 of the Draft Law regulate party financing, including public financing, membership fees, donations (monetary and non-monetary) etc. It is noted that party financing

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<sup>115</sup> *Ibid.* para. 278 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>116</sup> *Ibid.* paras. 98 and 106 (2020 [Joint Guidelines on Political Party Regulation](#)), meaning that the de-registered political party may still continue to function as an association.

<sup>117</sup> I.e., in case of inactivity, when the violation has not been eliminated within two years (Article 26.1.1) or in case the party is considered to have conducted the activities prohibited in Articles 10.1.1 and 10.1.2 i.e., posing “a direct or serious threat to the independence, sovereignty, constitutional order or democracy of Mongolia or aimed at achieving its goals through violence” (10.1.1) or “arm or militarize or become militarized” (10.1.2).

<sup>118</sup> *Op. cit.* footnote 16, paras. 53 and 285 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, for comparison purpose, ECtHR, [Hasan and Chaush v. Bulgaria](#) [GC], Application no. 30985/96, 26 October 2000, para. 100, where the Supreme Court had refused to examine the merits of a complaint under Article 9 of the ECHR, alleging State interference with the internal organisation of a religious community, finding that the Council of Ministers enjoyed an unlimited discretionary power in deciding whether or not to register the constitution and leadership of a religious denomination; the Supreme Court had merely ruled on the formal question whether the Decree had been issued by the competent body; the ECtHR held that the appeal to the Supreme Court against the Decree was not, therefore, found to constitute an effective remedy.

<sup>119</sup> See Article 25.7 of the Law on Courts of Mongolia, available at [https://www.legislationline.org/download/id/10060/file/Mongolia\\_Law\\_Judiciary\\_2021\\_Eng.pdf](https://www.legislationline.org/download/id/10060/file/Mongolia_Law_Judiciary_2021_Eng.pdf).



schemes, in particular, public funding, should aim to ensure that all parties, including opposition parties, small parties and newly established parties, can compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to safeguard the proper functioning of democratic institutions.<sup>120</sup> To this end, guaranteeing a minimum amount of funding for political parties is a means of avoiding corruption in their financing and maintain the autonomy of party organisation, also in the use of their funds. During the online meetings, it was noted that one key challenge for the operation of political parties is the limited financial resources and the difficulties for small or newly established political parties to cover operating costs, especially those associated with the renting of offices, as opposed to political parties formed quite some time ago, which were provided with offices and do not have to cover related costs.

### **1. Private Funding**

80. The Draft Law includes a broad definition of “donations”, which encompasses “monetary and non-monetary assets, tangible and intangible assets, services, discounts and exemptions provided by individual citizens or legal entities to the party free of charge” (Article 3.1.7 of the Draft Law). Cash donations are prohibited and donations can only be made through party bank accounts (Article 34.2 of the Draft Law), which allows for better oversight (see also para. 88 regarding the selling of other promotional materials at a sub-market price as donations). Article 34.3 of the Draft Law lists different types of non-monetary donations, including covering the costs of events and sponsorship, which is welcome.<sup>121</sup> This provision also requires that the value of non-monetary donations be established based on the average market price, which is consistent with international good practice and should eliminate the risk of circumventing expenditure ceilings.<sup>122</sup>

81. Article 35.6 of the Draft Law prohibits donations from a number of individuals and legal entities, such as foreign citizens or stateless persons; foreign country or foreign government organisation, party or legal entity, international organisation and business entities with foreign investment (as defined in Article 3.1.12); trade unions, religious and non-governmental organizations and professional associations, certain state-owned legal entities, party affiliated organisations as well as anonymous donations. A number of such limitations on funding are reasonable and common such as limitations on donations from businesses and private organizations, and the prohibition of donations from legal entities under the control of the state or of other public authorities, and from anonymous donors.<sup>123</sup> As noted in previous opinions, international obligations tend to be restrictive when it comes to foreign funding of political parties and this requires a careful and nuanced approach to foreign funding which weighs the protection of national interests against the rights of individuals, groups and associations to co-operate and share information.<sup>124</sup> Also, while Article 35.6.2 of the Draft Law prohibits donations from foreign countries, foreign political parties and international organisations, an exception is included in

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<sup>120</sup> *Op. cit.* footnote 16, para. 232 (2020 [Joint Guidelines on Political Party Regulation](#)). See also OSCE/ODIHR-Venice Commission, [Joint Opinion on the Draft Amendments to some Legislative Acts concerning Prevention of and Fight against Political Corruption in Ukraine](#), CDL-AD(2015)025, para. 24, which states: “Even though it is a common practice to link public funding to the result of the last elections,35 consideration could be given to extending some funding to small or new parties enjoying a minimum level of citizen support, in order to further political pluralism”; and OSCE/ODIHR and Venice Commission, [Armenia - Joint opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties](#), CDL-AD(2020)004, para. 25, which states that “legislation should ensure that new or small parties are able to receive some funding, private or public, that would allow them to effectively participate in the political process and make their ideas heard.”

<sup>121</sup> *Ibid.* para. 215 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>122</sup> See OSCE/ODIHR, [Opinion on draft laws of Mongolia on presidential, parliamentary and local elections](#) (25 November 2019), para. 43.

<sup>123</sup> *Op. cit.* footnote 16, paras. 211-212 and 214 (2020 [Joint Guidelines on Political Party Regulation](#)). See also *Op. cit.* footnote 1, para. 47 (2019 OSCE/ODIHR [Opinion](#)).

<sup>124</sup> See e.g., OSCE/ODIHR and Venice Commission, [Joint Opinion on the Draft Act to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and Their Participation in Elections of Malta](#), CDL-AD(2014)035, 14 October 2014, para. 24; and *ibid.* para. 47 (2019 OSCE/ODIHR [Opinion](#)).

Article 35.8 for the funding of activities and projects implemented in co-operation with international and foreign organizations in support of political education, democracy and human rights and freedoms. This is welcome and in line with recommendations made in the 2020 Joint Guidelines and in the 2019 OSCE/ODIHR Opinion.<sup>125</sup>

82. It is also positive that donations made by policy research institutions of a party and party-affiliated organisations are prohibited (Article 35.6.7 of the Draft Law). Article 3.1.13 provides a definition of “a party affiliated organisation” and Article 34.12 further states that such organisations shall not receive donations from prohibited donors listed in Articles 35.6 and 35.7, while Article 34.13 provides a limit to the amount of donations that the party and its affiliated organisation(s) may receive. This is welcome as the issue of affiliated organisations being used as channels for third-party financing, without any control, was specifically raised during the pre-assessment visit. At the same time, these limits should only apply in cases where third parties and their actions are intended to benefit specific political parties, either in general or during campaigns, and not to NGOs and other interest groups which debate issues of public interest during the campaigns; the latter should not generally be treated in the same way as political parties and true electoral third parties, in particular in the area of access to resources and reporting obligations.<sup>126</sup> It is also welcome that donations made on behalf of another individual or legal entity are prohibited (Article 35.6.11), as this was specifically mentioned as an issue during the online meetings, although this may be difficult to prove in practice.

83. Pursuant to Article 33.3 of the Draft Law, monthly membership fees of an elected member shall not exceed the minimum monthly wage. As noted in the 2020 Joint Guidelines, “[p]olitical parties may levy ‘taxes’ from their sitting elected officials” and “[t]his is a wide-spread practice in many democratic states”.<sup>127</sup> At the same time, the maximum amount mentioned in Article 33.3 appears to be rather onerous for elected members and should be assessed in light of the national context.

84. Article 34 of the Draft Law regulates donations, which include monetary and non-monetary donations (Article 34.1). Donations received from one individual citizen per year shall not exceed twelve times the minimum monthly wage (around 1,300 EUR) and from one legal entity, fifty times the minimum monthly wage (around 5,500 EUR). It is welcome that Article 34.10 specifies that a legal entity also includes its affiliates and subsidiaries, branches and representative offices as this avoids circumventing donations ceilings. Article 34.10 also provides that the amount of donations given to the party is calculated as the total amount of monetary and non-monetary donations, which is welcome. It is noted that increasingly, states ban donations from companies to political parties and election candidates though there is very differing practice across the OSCE and Council of Europe region.<sup>128</sup> At the same time, it was emphasized during the pre-assessment visit that in the Mongolian context, such donations by legal entities tend to favour major political parties, to the detriment of smaller or newly established parties but also that a complete ban of such donations by legal entities could indirectly discriminate against smaller or newly established political parties.

85. In light of the foregoing, **it is recommended to the legal drafters to re-assess whether the possibility of donations from legal entities should be retained at all, while guaranteeing in parallel adequate provision of public funding to ensure that newly established or smaller parties are not negatively impacted. If retained, donations from companies should be more strictly regulated.**

86. Article 35.7 of the Draft Law prohibits donations by citizens or legal entities which have been awarded a public contract following a bidding process to donate to a political party within four years following the participation in the bid. **It would be advisable to also prohibit the award of**

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<sup>125</sup> See *op. cit.* footnote 16, para. 231 (2020 [Joint Guidelines on Political Party Regulation](#)); and *op. cit.* footnote 1, para. 47 (2019 OSCE/ODIHR [Opinion](#)).

<sup>126</sup> *Ibid.* para. 221 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>127</sup> *Ibid.* para. 223 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>128</sup> *Ibid.* para. 214 (2020 [Joint Guidelines on Political Party Regulation](#)).

**a public bid to a donator during a similar period following the donation, though this may require amending the applicable legislation on public bidding.**

87. According to Article 34.6 of the Draft Law, “[n]on-monetary donations shall be made only [...] during the period from the beginning to the end of the election campaign.” Such provision limits the possibility of getting non-monetary donations strictly to the duration of the election campaign and excludes such donations to cover the regular functioning of the political parties in between elections. Generally, the 2020 Joint Guidelines recommend that **in-kind donations “follow the same rules and be subject to the same restrictions as financial donations”**.<sup>129</sup> **The blanket prohibition of non-monetary donations outside of the election campaign appears as a disproportionate limitation and should be reconsidered.** If retained, the content of Article 34.6 of the Draft Law would fit better under the electoral legislation.

88. Article 37 deals with the financial statements of a party, which should record a number of incomes, including “earnings from business activities” (Article 37.3.5). Article 36 of the Draft Law elaborates on the kind of activities a political party may carry out to generate income, i.e., income from the selling of publications related to the party itself and income from its assets (Article 36.1). The party is otherwise prohibited to earn income from any other activities (Article 36.2 of the Draft Law). At the same time, this would prevent the selling of other promotional materials at a sub-market price, which is a very common practice and should be allowed and be accounted for as donations.<sup>130</sup> **It is therefore recommended to broaden the scope of Article 36.1 of the Draft Law to also include other types of promotional materials on the political party sold at below the market price to be accounted for as donations.**

89. Regarding income from political parties’ assets, as noted in the Joint Guidelines on Freedom of Association, “associations are free to engage in any lawful economic, business or commercial activities in order to support their not-for-profit activities, without any special authorisation being required, while at the same time being subject to any licensing or regulatory requirements generally applicable to the activities concerned. In addition, due to the not-for-profit nature of associations, any profits obtained through such activities should not be distributed among their members or founders, but should instead be used for the pursuit of their objectives”.<sup>131</sup> Consequently, a political party may engage in some business activities providing that all income generated by such activities must be used exclusively for the pursuit of the party’s objectives, and must not be distributed among the party’s founders or members. At the same time, as underlined during the pre-assessment visit, political parties are not equal in terms of assets, especially small or newly established political parties. Therefore, it is welcome that Article 36.4 of the Draft Law provides for a maximum amount of such annual income corresponding to 25 percent of the public funding provided to the party.

90. Finally, Articles 36.5 to 36.8 of the Draft Law regulate loans to political parties, which is welcome since loans may constitute potential loopholes that may be used to circumvent limits on private donations and the ensuing exercise of undue influence.<sup>132</sup> Article 36.6 specifies that the maximum annual borrowing limit shall not exceed 25 percent of the public funding provided to the party. This *de facto* would prevent political parties that do not receive public funding, i.e., newly established parties which have not contested in parliamentary elections as well as non-parliamentary parties which have not reached the threshold of 3 percent of the total votes, from obtaining any loan, which is discriminatory. While states may regulate upper loan limits, **the provision should not be indirectly discriminatory towards certain parties and should therefore be reconsidered.** The Draft Law also addresses the issue of interest rates that may be below market and concessional loans, as well as repayment of loan by a third party, which are considered as donations made to the party, which is welcome.<sup>133</sup> At the same time, **it may**

<sup>129</sup> *Ibid.* para. 216 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>130</sup> *Ibid.* para. 217 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>131</sup> OSCE/ODIHR and Venice Commission, [Guidelines on Freedom of Association](#) (2015), CDL-AD(2014)046, paras. 191-194.

<sup>132</sup> *Op. cit.* footnote 16, paras. 210 and 229 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>133</sup> *Ibid.* para. 210 and footnote 197 (2020 [Joint Guidelines on Political Party Regulation](#)).

be advisable to include a specific provision either banning banks to forgive loans to political parties or expressly recognizing that when a bank forgives loans, this constitutes a donation.

## 2. Public Funding

91. Pursuant to Article 28.3 of the Draft Law, political parties that have received votes of more than 3 percent of total voters shall receive public funding. During the last parliamentary elections in Mongolia in 2020, seventeen political parties participated, out of which only five political parties obtained more than 3 percent of the total votes and would thereby be eligible for public funding according to the Draft Law, and only one of such political parties does not have representatives in the Parliament. The other parties that participated in the 2020 elections, but would not be eligible to receive public funding on the basis of the provisions of the Draft Law, have obtained between 1.04 percent and 0.01 percent of the total votes.<sup>134</sup> In 2016, only four political parties would have had access to public funding based on this 3 percent threshold.<sup>135</sup>

92. The threshold of 3 percent of the total votes to access public funding tends to favour the largest parties and as mentioned above, only a very little number of political parties would be eligible to public funding with such a threshold. More generally, no non-parliamentary party would have received public funding in the last four out of eight democratic elections. While it may be reasonable for legislation to require a party to be representative of a minimum level of the electorate prior to receiving public funding, the *de facto* low number of parties eligible to access public funding can lead to a decrease in pluralism and political alternatives.

93. As emphasized in the 2020 Joint Guidelines, there is no universally prescribed system for determining the distribution of public funding and each legislator may choose to require minimum thresholds of support for political parties to qualify for public funding.<sup>136</sup> At the same time, unreasonably high thresholds may be detrimental to political pluralism and the opportunities of small political parties.<sup>137</sup> Generally, the average pay-out threshold tends to be 2 points below the electoral threshold.<sup>138</sup> In their past opinions, the OSCE/ODIHR and the Venice Commission have for instance welcomed the initiative to lower the threshold from 5 percent to 2 percent of the total number of votes, as a condition for obtaining public funding.<sup>139</sup> This would generally allow parties that are not necessarily represented in the parliament to be eligible for public funding. Moreover, the restrictive distribution of public funding contravenes the levelling of the playing field for all parties, also for small and newly established parties, and the aim of public funding to avoid corruption and the undue reliance on private money, including by a few wealthy individuals and oligarchs.<sup>140</sup> The provisions of the Draft Law means that public funding is only allocated post-election to political parties that previously participated in the last national elections. This approach discriminates against newly founded political parties or undermine parties that missed out on one

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<sup>134</sup> See <<https://gec.gov.mn/>>.

<sup>135</sup> See <<https://gec.gov.mn/>> and OSCE/ODIHR, *Mongolia - Needs Assessment Mission Report – Parliamentary Elections* (22 April 2020), Annex I.

<sup>136</sup> *Op. cit.* footnote 16, para. 239 (2020 *Joint Guidelines on Political Party Regulation*).

<sup>137</sup> *Ibid.* para. 239 (2020 *Joint Guidelines on Political Party Regulation*).

<sup>138</sup> Most OSCE participating States, in the interest of political pluralism, guarantee access to state subsidies to non-parliamentary parties. Moldova and Tajikistan (only for campaigns) are the only countries to guarantee financial help to all parties in elections. Other very generous countries are Albania, Denmark, Finland, Germany or the Netherlands. Most countries (11), however, require parties to obtain at least 1 percent of the vote. Others raise the pay-out threshold up to 2 or around 3 percent (9 and 12 countries, respectively). All in all, the average pay-out threshold tends to be 2 points below the electoral threshold. Most countries use a mixed allocation regime, by distributing part of the funds on an equal basis and the other part in proportion to the percentage of votes (e.g. Belgium, Liechtenstein, Luxembourg, Norway, Portugal, Slovenia) or seats (e.g. Bosnia and Herzegovina, Greece, Montenegro).

<sup>139</sup> See OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Ukraine*, CDL-AD(2021)003, para. 104.

<sup>140</sup> *Op. cit.* footnote 16, para. 232 (2020 *Joint Guidelines on Political Party Regulation*).



election, as they would then not be eligible for public funding, even though they might be the ones who need it the most.

94. In light of the above, **it is recommended to the legal drafters to lower the threshold of 3 percent of the total votes to access public funding to 2 percent or even lower to obtain a more equitable distribution of public funding, so that non-parliamentary parties and newly established parties also become eligible** - as recommended in the 2019 OSCE/ODIHR Opinion.<sup>141</sup> Moreover, **the funding scheme should allow funding allocations early enough in the electoral process, to ensure equal opportunities throughout the period of campaigning.**

95. Article 28.5 of the Draft Law provides a formula for the calculation of the amount of public funding, which takes into account the number of votes received in parliamentary elections (multiplied by 1 percent of the minimum monthly wage)<sup>142</sup> as well as the number of seats won in the Parliament, the number of women candidates over the minimum gender quota of 20 percent, the number of candidates with disabilities, the number of elected women and the number of elected candidates with disabilities (which numbers are multiplied by 50 times the minimum monthly wage).<sup>143</sup> It is welcome that such formula takes into account the number of women politicians nominated in excess of the gender quota specified in the Law on the Election of the *State Great Hural* as well as the number of candidates with disabilities.

96. However, inequality between political parties is reinforced by the formula chosen for the distribution of public funding with three out of five criteria being applicable only to the parties that have been elected, and thereby discriminating against non-parliamentary parties and newly established political parties.<sup>144</sup> **It is recommended to reconsider the criteria of the total number of seats won as this benefits parliamentary parties even more, whereas the number of votes received by a party in the *State Great Hural* election is already taken into account** (Article 28.6.2).

97. The Draft Law does not elaborate much on the application in practice of the criteria taken into consideration in the formula for allocating public funding. Especially, it is unclear what would happen if one of the women MPs or MP with disabilities resigns during the term of office. **The Draft Law should specify whether the number to be taken into account is the number of serving MPs or the number of elected MPs at the election.** Of note, if the latter, there may always be a risk that a party may nominate lots of women with an agreement that they would immediately resign just after the election, as has happened in certain countries.

98. Article 29.1 of the Draft Law provides that “[i]n order to receive public funding in the eligible year, a party shall submit its request to determine the amount of such funding and to obtain funding to the GEC before 15 August of the preceding year.” The Draft Law does not specify what will happen if the parties fail to comply with the 15 August deadline. As noted by the OSCE/ODIHR and the Venice Commission in the past, depriving political parties of public funding until the next year for missing the deadline would appear disproportionate and could impact the political parties’ ability to implement their activities.<sup>145</sup> It is therefore **recommended to adopt a more proportionate approach, which would foresee a certain delay in receiving funds that would not be as lengthy.**<sup>146</sup> As noted in previous joint opinions, since suspending public funding is quite a drastic measure, it is recommended for the Draft Law **to include a provision that**

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<sup>141</sup> See *op. cit.* footnote 1, para. 43 (2019 OSCE/ODIHR [Opinion](#)). See also OSCE/ODIHR and Venice Commission, [Joint Opinion on the Draft Law on Political Parties of Ukraine](#), CDL-AD(2021)003, para. 105; and *ibid.* para. 242 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>142</sup> Minimum monthly wage amounting to 420,000 Mongolian tugriks as of 1 January 2020 (<<https://wageindicator.org/salary/minimum-wage/mongolia-1>>), corresponding approximately to €130 euros; and 1 percent of minimum monthly wage = €1,30.

<sup>143</sup> 50 times the minimum monthly wage = approx. €6,500.

<sup>144</sup> *Op. cit.* footnote 16, paras. 241-242 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>145</sup> See OSCE/ODIHR and Venice Commission, [Joint Opinion on the Draft Law on Political Parties of Ukraine](#), CDL-AD(2021)003, para. 107.

<sup>146</sup> *Ibid.* para. 107.



would trigger suspension of public funding for failure to comply with certain regulatory requirements only after a reasonable period of time (e.g. after four or six months) following the warning received from relevant authorities in order to give political parties the opportunity to rectify the situation.<sup>147</sup>

99. Article 27.3 of the Draft Law provides for the earmarking of 60 percent of public funding, with at least 30 percent spent on ensuring the political participation of women, elders, youth, persons with disabilities and social interest groups and on training young politicians, women politicians and politicians with disabilities, at least 15 percent spent on improving the political education of party members and citizens, and at least 15 percent for research. While reiterating the importance to respect the internal functioning of political parties, it is in line with international good practice to reserve some part of state funding for initiatives advancing the political participation of women and other groups that have historically been under-represented in terms of political participation.<sup>148</sup> Moreover, in a recent joint opinion, the Venice Commission and the OSCE/ODIHR specifically recommended to allot a percentage of public funding to general awareness raising initiatives separately from initiatives to increase the political participation of women, national minorities, youth and persons with disabilities.<sup>149</sup> It was emphasized that such earmarking was the only way to safeguard that public funding will be spent on the latter.<sup>150</sup> Accordingly, it is welcome that Article 27.3 of the Draft Law provides for such separate allotments. However, **the total earmarking of 60 percent of public funding appears excessive and should be reconsidered with a view to lower such thresholds**, especially as it may be detrimental to small or newly established political parties which may not have other sources of funding and may not be able to sustain themselves and cover their basic operating costs if the great majority of public funding is used for other purposes.

100. Also, the earmarking is meaningful only in so far as there are **proper reporting and monitoring mechanisms in place, with dissuasive sanctions in case of non-compliance**. It is welcome that **Article 37.4 requires the financial statements to detail the expenses linked to the activities listed under Article 27.3**. The Draft Law should be supplemented in this respect, by specifying which body will monitor respect for these provisions on earmarking. Regarding sanctions, it is welcome that Article 27.6 provides that if the earmarking provision is violated, the funds spent unlawfully shall be returned to the state budget or deducted from subsequent public funding.

101. Article 31 of the Draft Law also specifies the type of indirect assistance provided by the state to political parties including the use of public premises for the organization of meetings and broadcasting on public media. There is no mention of gender requirements regarding indirect state assistance and **gender considerations could also be applicable regarding such indirect public support**. For instance, in light of the 20 percent gender quota for nomination of candidates in parliamentary elections, **the legal drafters could consider introducing provisions regarding minimum media coverage requirements for women candidates**.<sup>151</sup>

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<sup>147</sup> See OSCE/ODIHR and Venice Commission, *Armenia - Joint opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties*, CDL-AD(2020)004, para. 39.

<sup>148</sup> See *op. cit.* footnote 16, paras. 244-245 (2020 *Joint Guidelines on Political Party Regulation*). See also Fourth World Conference on Women, Beijing Declaration and Platform for Action (17 October 1995) UN Doc A/CONF.177/20, 4; OSCE Ministerial Council Decision 7/09, 2 December 2009, *Women's participation in political and public life*. See also, for reference, PACE, *Resolution 2111 (2016) on assessing the impact of measures to improve women's political representation*, para. 15.3.4, which recommends to "ensure that part of the public funding of political parties, when applicable, is reserved for activities aimed at promoting women's participation and political representation and guarantee transparency in the use of the funds".

<sup>149</sup> OSCE/ODIHR and Venice Commission, *Armenia - Joint opinion of the Venice Commission and OSCE/ODIHR on draft amendments to the legislation concerning political parties*, CDL-AD(2020)004, para. 38.

<sup>150</sup> *Ibid.* para. 38.

<sup>151</sup> See e.g., OSCE/ODIHR, *Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016), pp. 59 and 65-66; and *Handbook on Promoting Women's Participation in Political Parties* (2014), pp. 77 and 111.

### 3. Reporting Requirements

102. According to Article 37.17 of the Draft Law, the financial statements of a political party and related documents shall be kept for 10 years following the end of the reporting period. It is unclear **whether this obligation applies to the party or to the GEC and this should be clarified**. Article 38.2 provides for the submission of semi-annual financial statements by 20 July and the annual report by 10 February. As noted in the 2020 Joint Guidelines, generally, reporting requirements should be such that smaller parties can also fulfil them, and should not hinder such parties' participation in political life.<sup>152</sup> It may in practice be quite cumbersome, especially for small political parties to prepare and submit two reports per year except, for example, during an electoral year. **It is recommended to provide longer deadlines in between reports and consider simplifying the reporting requirements.**

103. Article 40.3 provides that the GEC shall deliver to the State Audit Office the financial statements of parties that have received public funding. It is unclear why only such parties are concerned. Also, **the 10 working days for the State Audit Office to control the financial statements appear rather short and the drafters could consider extending such duration.**

104. Finally, pursuant to Article 44.1 of the Draft Law, the parties' financial statements and brief reports on party activities are published on the website of the GEC. Publication of financial reports is crucial to establishing public confidence in the functions of a political party.<sup>153</sup> Article 7 para. 3 of the UN Convention against Corruption requires States Parties to 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". Council of Europe Recommendation 2003(4) to member states on common rules against corruption in the funding of political parties and electoral campaigns also urges States to provide specific rules to "ensure transparency of donations and avoid secret donations".<sup>154</sup> As stated in the 2020 Joint Guidelines, "[t]ransparency in party and campaign finance, [...] is important to protect the rights of voters, prevent corruption and keep the wider public informed. Voters must have relevant information as to the financial support given to political parties, as this influences decision-making and is a means of holding parties accountable."<sup>155</sup> At the same time, it is important to reiterate that transparency or reporting requirements must strike a balance between necessary disclosure and the required privacy and data protection safeguards of individual donors and members, especially if there is a reasonable probability of threats, harassment or reprisals.<sup>156</sup> Articles 37.7 and 37.8 (and 37.16 regarding donations to lower level branches of a party) provide that the financial statements shall include the full names and addresses of all donors, including the private addresses of individual donors. Read together with Article 44 on the public disclosure of political parties' reports, including financial statements, this may mean the publication of all donors' names and private addresses, which raises concerns with regard to the privacy rights of individual donors, as also noted in the 2019 OSCE/ODIHR Opinion.<sup>157</sup> Hence, **it is recommended to remove the private addresses of donors from the report at the time of publication.**

#### I. Oversight Bodies and Sanctions

105. According to the existing legal framework, there are several bodies that oversee the registration, activities, financing, electoral campaigning and reporting of political parties.

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<sup>152</sup> See OSCE/ODIHR and Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Ukraine*, CDL-AD(2021)003, para. 258.

<sup>153</sup> *Op. cit.* footnote 16, para. 263 (2020 *Joint Guidelines on Political Party Regulation*).

<sup>154</sup> Council of Europe Committee of Ministers, *Recommendation 2003(4) on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns*, Article 3 a.

<sup>155</sup> *Op. cit.* footnote 16, para. 247 (2020 *Joint Guidelines on Political Party Regulation*).

<sup>156</sup> *Ibid.* para. 263 (2020 *Joint Guidelines on Political Party Regulation*).

<sup>157</sup> *Op. cit.* footnote 1, para. 55 (2019 OSCE/ODIHR *Opinion*).

Currently, the State Audit Office is in charge, during election years, of controlling the financial statements of political parties that receive public financial assistance as well as of auditing election campaign financing and checking election platforms (see also Sub-Section F(3) on Political Parties in Elections *supra*). During the pre-assessment visit, it was highlighted that one of the key challenges for the State Audit Office to perform its functions was the difficulties to authenticate the identities of donors and more generally the traceability of funding flows. In parallel, the IAAC is in charge of investigating conflict of interests, alleged corruption cases and other potential criminal offences committed by political parties and has a dedicated financial investigative unit for this purpose.

106. Pursuant to the Draft Law, the Supreme Court's competence pertaining to the registration of political parties would be transferred to the GEC. In this respect, it is fundamental that the GEC be independent and perceived as being independent. Indeed, international standards provide that, in principle, the administration of democratic elections requires that electoral management bodies are independent and impartial and operate transparently and in accordance with the law.<sup>158</sup> Moreover, an impartial and effective electoral management body is an essential element in building trust in the electoral process and confidence that the election results are reported honestly and accurately. As stated in previous OSCE/ODIHR and Venice Commission opinions,<sup>159</sup> election management bodies adopt and implement key decisions regarding the organization of elections and laws should be guided by the ultimate need to ensure that such bodies are able to carry out their duties in an independent and impartial manner, ensuring proper administration of the entire electoral process.<sup>160</sup> The Venice Commission's Code of Good Practice in Electoral Matters highlights that one of the most important procedural guarantees is to ensure that the Central Elections Committee must be permanent in nature and elections should be "organised by an impartial body".<sup>161</sup>

107. The procedures for creating electoral management bodies as well as the methods of selecting and appointing their members differ greatly across the OSCE region. However, the majority of relevant laws are guided by the ultimate need to ensure that such bodies are able to carry out their duties in an independent and impartial manner; only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the entire electoral process.<sup>162</sup> The GEC's additional responsibilities envisaged by the draft amendments, namely the registration of political parties and the receipt of party financial declarations, further underline the need to maintain this independence and impartiality and the perception of such.

108. In light of the above, it is fundamental that the independence and impartiality of the GEC be guaranteed under the applicable legal framework. Currently, the nine members of the GEC are appointed as follows: five members by the parliament upon the proposal of the Standing Committee on State Structures of the Parliament; two by the President; and two by the Supreme Court from among civil servants. In practice, this means that when the parliamentary majority is from the same political force as the President, this composition may compound the ruling party's influence over the composition of the GEC. This may potentially negatively affect the public perception of the GEC, undermine its independence and impartiality and put at risk

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<sup>158</sup> See UN HRC, [General Comment No. 25 on Article 25 of the ICCPR](#) (1996), CCPR/C/21/Rev.1/Add.7, para. 20, which provides that: "An independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant".

<sup>159</sup> OSCE/ODIHR and Venice Commission, [Joint Opinion on the Draft Constitution of the Kyrgyz Republic](#) (19 March 2021), CDL-AD(2021)007, paras. 108-112; and OSCE/ODIHR, [Comments on the Draft Constitution of Turkmenistan](#) (2016), para. 129.

<sup>160</sup> See OSCE, [OSCE Existing Commitments for Democratic Elections in OSCE participating States](#) (2003), Section 4.

<sup>161</sup> Venice Commission, [Code of Good Practice in Electoral Matters](#), CDL-AD(2002)023rev2-cor, Section II Point 3.1, a.

<sup>162</sup> See e.g., Venice Commission, [Code of Good Practice in Electoral Matters](#), CDL-AD(2002)023rev2-cor, para. 68.

public confidence in the outcome of the elections administered by such an institution. **It is therefore recommended to amend the composition of the GEC to be more balanced while ensuring that the modalities for the selection and appointment of its members provide sufficient guarantees of independence.**

109. In principle, political parties must be equally represented on electoral management bodies, with equality being construed strictly or on a proportional basis<sup>163</sup> that is to say, taking or not taking account of the parties' relative electoral strengths.<sup>164</sup> The legal drafters could for instance consider appointment modalities whereby three members would be appointed by the parliamentary majority, three members by the minority and three last members by other (independent) bodies such as a combination of the IAAC, State Audit Office, the National Committee on Gender Equality, the NHRI, the Supreme Court and/or other entities. **The composition of the GEC should be re-discussed on the basis of these considerations.**

110. According to the Draft Law, the GEC would also oversee the funding of political parties and their submission of financial reports in general. As highlighted in the 2019 OSCE/ODIHR Opinion, it is essential that the entities involved in oversight have the power to follow up on and investigate alleged irregularities if they receive credible information of falsified reports or other serious financial or other violations.<sup>165</sup> Without such investigative powers as well as adequate financing and resources, agencies are unlikely to have the ability to effectively implement their mandate.<sup>166</sup> It is also important that the relevant legislation clearly outline the various differing competences and mandates of all the bodies involved in supervision and oversight while ensuring that they complement one another.<sup>167</sup> **If the GEC is in charge of carrying out political party funding control, it will be essential that it is independent and impartial as stated above, that it has appropriate powers of investigation and resources to implement its mandate, while ensuring proper co-ordination between the GEC, the State Audit Office and the IAAC. The legal drafters could also consider dividing the investigation powers, which could remain vested with the State Audit Office and/or the IAAC, which has a dedicated financial investigative unit, while leaving decision-making powers in the hands of the GEC regarding the potential imposition of sanctions on the basis of the results of an investigation.**

111. Regarding the sanctions, the Draft Law appears to mix the absolute prohibitions affecting the existence of the party, which constitute grounds for dissolution (Articles 10.1.1 and 10.1.2) with other prohibited activities (Articles 10.1.3 to 10.1.7), but does not clearly lay out the respective sanctions. As noted in the 2020 Joint Guidelines, sanctions must bear a relationship to the violation and respect the principle of proportionality.<sup>168</sup> **It is recommended to supplement the Draft Law to detail what type of sanction each infraction entails** (see also paras. 28, 76 and 100 *supra* regarding sanctions).

112. Articles 42 and 43 of the Draft Law stipulate that in case public funding is incorrectly calculated due to errors or discrepancies in the financial reports, political parties have to repay double the amount of funding received and that illegally received or undisclosed donations have to be reimbursed at three times the amount of such donations, respectively. At the same time, there are still actions in the Draft Law, such as public disclosure of the report (Article 44) or the breach of Article 35 on non-monetary donations for which no sanction is provided, which may lead to ineffective enforcement. As noted in 2020 Joint Guidelines, "all sanctions must be flexible and proportionate in nature. In the area of finance violations, this should include a

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<sup>163</sup> Venice Commission, [Code of Good Practice in the field of Political Parties \(2002\)](#), CDL-AD (2002) 23, Point 3.1.e.

<sup>164</sup> Venice Commission, [Code of Good Practice in the field of Political Parties \(2002\)](#), CDL-AD (2002) 23, para. 75.

<sup>165</sup> *Op. cit.* footnote 1, para. 57 (2019 OSCE/ODIHR [Opinion](#)).

<sup>166</sup> *Ibid.* para. 57 (2019 OSCE/ODIHR [Opinion](#)). See also *op. cit.* footnote 16, para. 268 (2020 [Joint Guidelines on Political Party Regulation](#)). See also, with respect to campaign finance and the State Audit Office, OSCE/ODIHR, [Mongolia - Special Election Assessment Mission Final Report](#) (22 October 2021), p. 14.

<sup>167</sup> *Ibid.* para. 276 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>168</sup> *Ibid.* para. 273 (2020 [Joint Guidelines on Political Party Regulation](#)).



consideration of the amount of money involved, whether there were attempts to hide the violation, and whether the violation is of a recurring nature.<sup>169</sup> Furthermore, legislation shall include guidelines on how the violation may be brought to the attention of the relevant supervisory bodies, while specifying which body is competent to pronounce which type of sanctions.<sup>170</sup> **The Draft Law should be supplemented in this respect and include sanctions that are proportionate and dissuasive and have the potential to be effective for each type of violation, while being particularly clear on which body is competent to impose such sanctions and detailing the type of penalty that each infraction entails.** For the sake of clarity, it is recommended that all applicable sanctions be listed in the same article and/or to make cross-references to applicable legislation (Law on Civil Service, Criminal Code or Law on Infringement).

## J. Other Comments

### 1. *Right to an Effective Remedy*

113. The Draft Law provides the possibility to appeal the decisions of the GEC regarding the inactivity of a political party (Articles 22.5-22.6). Otherwise, the Draft Law is silent regarding the effective remedies for potential violations of the fundamental rights of freedom of association and expression pertaining to the registration and operation/activities of a political party. As emphasized in the 2020 Joint Guidelines, state legislation should provide an effective remedy for any violation of the fundamental rights of political parties and their members, in particular the right to freedom of association and expression.<sup>171</sup> These remedies should be provided expeditiously by a competent administrative, legislative or judicial authority.<sup>172</sup> The Venice Commission and OSCE/ODIHR take the view, that, because of the fundamental importance of political parties as instruments of the freedom of association and the democratic process, any restriction on political parties, including decisions on their registration, must be capable of being submitted to an independent court, at least in final instance.<sup>173</sup> Legislation should thus define reasonable deadlines by which applications should be filed and decisions granted, with due respect to any special considerations arising from the substantive nature of the decision.<sup>174</sup> **It is recommended to supplement the Draft Law in this respect** (see also para. 78 *supra* regarding the competence of the Supreme Court relating to the dissolution of political parties).

### 2. *Recommendations Related to the Process of Preparing and Adopting the Draft Law*

114. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, para. 5.8).<sup>175</sup> Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).<sup>176</sup> The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>177</sup> The 2015 Joint Guidelines on Freedom of Association also specifically recommend that “[l]egislation shall be adopted through a democratic process that ensures public participation and review, and shall

<sup>169</sup> *Ibid.* para. 280 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>170</sup> *Ibid.* para. 268 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>171</sup> See *op. cit.* footnote 16, para. 282 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>172</sup> *Ibid.* para. 282 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>173</sup> *Ibid.* para. 285 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>174</sup> *Ibid.* para. 286 (2020 [Joint Guidelines on Political Party Regulation](#)).

<sup>175</sup> Available at <<http://www.osce.org/fr/odihr/elections/14304><http://www.osce.org/fr/odihr/elections/14304>>.

<sup>176</sup> Available at <<http://www.osce.org/fr/odihr/elections/14310><http://www.osce.org/fr/odihr/elections/14310>>.

<sup>177</sup> See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

be made widely accessible so that individuals and political parties are aware of their rights and are able to keep their conduct and activities in conformity with the law.”<sup>178</sup>

115. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by political parties and the public, including civil society, women’s organizations and representatives of under-represented or marginalized communities. They should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, with an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.<sup>179</sup> To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,<sup>180</sup> meaning not only when the draft is being prepared by the public authorities but also when it is discussed before Parliament (e.g., through the organization of public hearings).

116. During the online pre-assessment visit, ODIHR and the Venice Commission were informed that since the development of the Draft Law in November 2021, the Presidential Administration has organised two or three open debates on the Draft Law with all political parties. Moreover, on 2 May 2022, the Presidential Administration circulated a revised version of the Draft Law to key stakeholders, including representatives of political parties and of civil society with a view to collect comments by 23 May 2022, and organize further public discussions before amending further the bill and submitting it to the Parliament in July 2022. At the same time, key institutions that have a role to play in overseeing political parties, such as the State Audit Office and the IAAC informed that they had not yet been consulted during the process of developing the Draft Law but that they will probably be at a later stage as this is a requirement. During the online meetings, the Speaker of the Parliament also informed that following the submission of the Draft Law to the Parliament, the Parliament will also organise further debates and public discussions.

117. The willingness to consult with all political parties is much welcome. At the same time, it will also be important for the drafters to acknowledge all the contributions made during the on-going consultation process and provide proper feedback to explain why certain proposals were or were not taken on board.

118. The Draft Law does not contain transitional and final provisions, and it is also unclear whether amendments to other pieces of legislation are also contemplated. **It is recommended that, from a legislative technique point of view, an act which would amend other laws and/or remove any conflicting provisions in other laws be introduced together with this Draft Law**, to ensure overall coherence of the legal framework. This would require a proper in-depth regulatory impact assessment that identifies an exhaustive list of all legal acts which should be amended or repealed.

119. In light of the above, **the public authorities are encouraged to ensure that the Draft Law is subjected to inclusive, extensive and effective consultations, including with civil society and political parties, as well as representatives of under-represented communities, offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the**

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<sup>178</sup> *Op. cit.* footnote 16, para. 282 (2020 [Joint Guidelines on Political Party Regulation](#)). See also OSCE/ODIHR-Venice Commission, Joint [Guidelines on Freedom of Association](#), para. 186.

<sup>179</sup> See e.g., [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

<sup>180</sup> See e.g., Section II, Sub-Section G on the Right to participate in public affairs of the 2014 OSCE/ODIHR [Guidelines on the Protection of Human Rights Defenders](#).

implementation of the Law and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the Draft Law, once adopted.<sup>181</sup>

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<sup>181</sup> See e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010).