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# OPINION ON THE RULES OF PROCEDURE OF THE JOGORKU KENESH OF THE KYRGYZ REPUBLIC

## KYRGYZ REPUBLIC

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Based on an unofficial English translation of the Law on the Rules of Procedure of the *Jogorku Kenesh* of the Kyrgyz Republic commissioned by the OSCE Office for Democratic Institutions and Human Rights.

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# EXECUTIVE SUMMARY

The new Rules of Procedure of the *Jogorku Kenesh* (hereinafter "RoP") were adopted on 20 October 2022 with the aim to ensure conformity with the provisions of the new Constitution adopted in 2021, which shifted the country to a presidential system, resulting in the change of the electoral system and of the role of the parliament, among others.

This Opinion does not constitute a full and comprehensive review of the entire legal framework governing the work of the *Jogorku Kenesh*, as well as the legislative process in the Kyrgyz Republic. It should be read together with the main findings and recommendations from the *2021 ODIHR-Venice Commission Joint Opinion on the Draft Constitution of the Kyrgyz Republic* ("2021 Joint Opinion") as they relate to the role and functioning of the *Jogorku Kenesh* and status of the members of parliament (hereinafter "MPs" or "deputies") and the *2022 ODIHR Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic*.

Overall, the RoP appear to be quite comprehensive, and cover issues ranging from the roles of MPs, factions and committees to procedural matters, including the legislative process. While passing such parliamentary rules as primary legislation provides a certain level of security, this may however pose disadvantages with respect to flexibility in amending the text.

At the same time, a number of aspects could be improved, especially to guarantee a more prominent role for the *Jogorku Kenesh* and its bodies in carrying out their core functions of oversight and representation.

In particular, the provisions pertaining to the parliamentary oversight could be enhanced to make the process more transparent, effective and powerful. Similarly, the RoP would benefit from improvements for ensuring more open, transparent, effective and inclusive public participation and expert involvement in public consultation processes, both in the context of law-making and exercise of oversight functions.

In addition, number of provisions on factions and political groups, role of the opposition, as well as on recalling parliamentary mandates would benefit from revision to ensure compliance with international human rights standards and OSCE commitments, though noting that this may also require amending the Constitution for that purpose, as underlined in the 2021 Joint Opinion. Indeed, the RoP were adopted pursuant to the Constitution of the Kyrgyz Republic adopted in 2021 and mirror or implement its provisions. Many of the aforementioned weaknesses take their origin from the respective constitutional norms that do not appear to maintain the principle of the separation of powers with checks and balances among the different institutions.

The RoP could also be improved with a view to insert more collegial decision-making rather than concentrating such powers in the hands of the Speaker of the Parliament, as well as to ensure a gender and diversity perspective throughout the RoP.

More specifically, and in addition to what is stated above, ODIHR makes the following key recommendations in order to enhance the RoP and to ensure

greater compliance with international human rights and democratic governance standards and recommendations and OSCE human dimension commitments:

A. To consider introducing norms applicable specifically to the revisions of the RoP; [para. 22]

B. Regarding the leadership of the *Jogorku Kenesh* and collegial decision-making:

1. to specify the number of deputies the Speaker may have, while ensuring that one or more of these positions is allocated to the opposition, and consider enhancing the existing gender equality provisions to contribute to more pluralistic, greater gender- and diversity-balanced representation at the leadership level; [para. 24]
2. to review the RoP with a view to enhance collegial decision-making modalities within the *Jogorku Kenesh*, including by strengthening and defining more clearly the role of the Coordinating Council and the rules governing its decision-making process; [para. 28]

C. Regarding factions and political groups:

1. to reconsider the provision not allowing MPs to leave a faction; [paras. 29-31]
2. to ensure that the requirements to establish a deputy group are not stricter in terms of minimum number of MPs than those to establish the smallest parliamentary faction; [paras. 32-33]
3. to introduce a separate Article clearly listing the core individual rights applicable to each and every MP irrespective of belonging or not to a faction/deputy group before elaborating additional prerogatives that factions/deputy groups may have with an aim to ensure efficiency of parliamentary work, proportional representation and participation in the internal bodies of Parliament; as well as consider allocation to individual MPs of appropriate financial, material and technical resources and means to properly perform their functions and duties; [paras. 34-35]

D. Regarding the procedure for revoking the mandates of deputies:

1. to clearly define the list of “valid reasons” justifying a deputy’s absence from the plenary meetings, considering termination of a mandate for the most serious violations of the parliamentary rules, as well as the types of evidence to be submitted as justifications and a simple mechanism for its evaluation; [para. 37]
2. to reconsider, as recommended by ODIHR-Venice Commission in the 2021 Joint Opinion, the institution of recall of elected representatives provided by the Constitution; [para. 38]

E. Regarding parliamentary committees:

1. to consider defining permanent committees and their thematic directions in the RoP; [para. 40]
2. to ensure that gender balance and diversity considerations are taken into account during the process of appointing the Chairpersons, Deputy Chairpersons and in the composition of the committees and to consider allocating a share of committee chairpersonship and/or their deputies to the opposition; [para. 42]

F. To provide more detailed rules on the exercise of the citizens' right to legislative initiative, related procedure and parliamentary assistance in this respect; [paras. 46-48]

G. Regarding public consultations:

1. to clarify in the RoP that civil society organizations and the public should be invited to the parliamentary hearings to ensure public consultations with them, whilst also defining practicalities of such consultations and ensuring that they are open, transparent, accessible, inclusive and effective; [para. 50]

2. to consider introducing specific checklists and time-frames for public consultations with the involvement of experts and civil society, including representatives of minority and other diverse groups, as well as offering equal opportunities for women and men to be heard and meaningfully contribute to the discussions, while also ensuring the setting-up of adequate feedback mechanisms; [para. 52]

H. Regarding legislative procedures:

1. to consider amending Article 53 to allow for the possibility of further extending the deadline for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it or providing that such reasons and grounds for not meeting the deadline are considered when deciding on rejection of the draft law; [para. 56]

2. to envisage a clear methodology of conducting gender and human rights impact assessment of draft legislation, introducing a more comprehensive approach that will include a projection of desired outcome a law should have, an analysis of the human rights impact of the proposed legislative initiative, potentially direct or indirect discriminatory impact of the proposed provisions, etc.; [para. 54]

3. to provide more detailed provisions defining grounds for closing a debate, introducing safeguard to the right of MPs, especially those representing opposition, to meaningfully participate in parliamentary debates; [para. 57]

4. to supplement Article 76 in such a way that the application of urgent procedures for passing a law is treated as an exception, based on specific, clear and pre-determined criteria, while requiring a justification of the need to resort to accelerated procedures and an opportunity for the Parliament to reject the request to apply such procedures; [para. 61]

K. Regarding parliamentary oversight:

1. to amend Article 109 by introducing exception to the parliamentary requests with respect to the merits of cases examined or pending before courts; [para. 74]

2. to introduce legal consequences for a failure to respond to parliamentary, deputy and committees' requests; [para. 77]

I. To further enhance Chapter 29 both in terms of underlying ethical values and an oversight mechanism. [paras. 97-98]

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

***As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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# I. INTRODUCTION

1. On 30 November 2022, the Vice-Speaker of the Jogorku Kenesh of the Kyrgyz Republic invited the OSCE Office for Democratic Institutions and Human Rights (hereinafter "ODIHR") to review the Law No. 106 on the Rules of Procedure of the Jogorku Kenesh of the Kyrgyz Republic (hereinafter "RoP") adopted on 16 November 2022.
2. On 8 December 2022, ODIHR responded to this request, confirming the Office's readiness to prepare the legal opinion on the compliance of the RoP with international human rights and democratic governance standards and OSCE human dimension commitments.
3. This Opinion should be read together with the main findings and recommendations from the *2021 ODIHR-Venice Commission Joint Opinion on the Draft Constitution of the Kyrgyz Republic* ("2021 Joint Opinion"),[1] especially as they relate to the role and functioning of the *Jogorku Kenesh* and status of the members of parliament (hereinafter "MPs" or "deputies"). ODIHR also published an *Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic*, which provides useful findings and recommendations that should supplement the present Opinion in relation to parliamentary ethics.[2] The *Jogorku Kenesh* is also currently engaged with ODIHR on conducting gender assessment of the Parliament with a view to enhance gender sensitivity of the institution.
4. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist the OSCE participating States in the implementation of their OSCE human dimension commitments.

# II. SCOPE OF REVIEW

5. This Opinion covers only the RoP submitted for review. The Opinion also refers to the Constitution of the Kyrgyz Republic, in so far as it is relevant as it determines the overall framework regulating the separation of powers and the role and powers of the Parliament in the country, and the RoP need to be compliant with the constitutional provisions. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal framework governing the work of the *Jogorku Kenesh*, as well as the legislative process in the Kyrgyz Republic.
6. The Opinion raises key issues and provides indications of areas of concern. In the interest of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the RoP. The ensuing legal analysis is based on international and regional human rights and democratic governance standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national practices, ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards, while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with

[1] See ODIHR and Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic* (19 March 2021).
[2] See ODIHR, *Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic* (2022).

caution, since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as country context and political culture.

7. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[3] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[4] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.[5]

8. This Opinion is based on an unofficial English translation of the RoP commissioned by ODIHR, which is attached to this document as an Annex. Errors from translation may result. The Opinion is also available in the Russian language. In case of discrepancies, the English version shall prevail.

9. In view of the above, ODIHR would like to stress that this Opinion does not prevent ODIHR from formulating additional written or oral recommendations or comments on the respective subject matters in the Kyrgyz Republic in the future.

# III. ANALYSIS AND RECOMMENDATIONS

## 1. Relevant International and Regional Standards and OSCE Commitments

10. OSCE participating States have committed to build, consolidate and strengthen democracy as the only system of government, and have recognized it as an inherent element of the rule of law.[6] Democracy is likewise one of the universal core values and principles of the United Nations, and the Council of Europe.[7] Respect for human rights and fundamental freedoms is an essential part of democracy and the rule of law. Furthermore, the importance of pluralism with regard to political organizations[8] along with institutional and individual integrity of parliament and parliamentarians and public accountability have been recognized by OSCE participating States as core aspects of political life.[9]

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3 See the *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. The Kyrgyz Republic acceded to the Convention on 10 February 1997.

4 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.

5 For the purpose of this Opinion, a guiding definition of "diversity" encompasses both "workplace diversity" (i.e., fair representation in the parliamentary bodies and staff of the different groups of society within a setting that recognizes, respects and reasonably accommodates differences, thereby promoting full realization of the potential of all its members and employees) as well as respect for and promotion of diversity in its procedures and practices, and in the outcomes of the Parliament's work. This does not preclude other diversity considerations, as contextually appropriate and possible, to be taken into account by the Parliament when reforming its working environment and work procedures, and more generally when performing all its functions.

6 CSCE/OSCE, *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (*1990 OSCE Copenhagen Document), 5 June-29 July 1990, para. 3

7 European Commission for Democracy through Law (Venice Commission) of the Council of Europe: Parameters on the Relationship Between the Parliamentary Majority and the Opposition in a Democracy: A Checklist, 24 June 2019, para. 10. See also ECtHR: *Hyde Park v. Moldova (No. 1)*, judgment of 31 March 2009, para. 27, where the Court reiterates that democracy "*is the only political model contemplated in the Convention and the only one compatible with it*."

8 CSCE/OSCE, *Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE* (1991 OSCE Moscow Document), 3 October 1991, para. 5.

9 See e.g., OSCE, *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990, which states that *"[d]emocracy, with its representative and pluralistic character, entails accountability to the electorate, the obligation of public authorities to comply with the law and justice administered impartially".* See also *1999 OSCE Istanbul Document*, 19 November 1999, where OSCE participating States committed to strengthen their efforts to *"promote good government practices and public integrity"* in a concerted effort to fight corruption.

11. The UN Human Rights Committee in its General Comment No. 25 (1996) noted that the right to participate in public affairs, voting rights and the right of equal access to public service as reflected in Article 25 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR")[10] requires that *"[c]itizens also take part in the conduct of public affairs by exerting influence through public debate*".[11] In addition, the modalities of citizens' participation, which include public debate and dialogue, should be established by the constitution and other laws of the state concerned.

12. Numerous OSCE commitments stress the role of openness and transparency in public affairs, including law-making, and the importance of effective and inclusive participation in public and political life. In the 1990 OSCE Copenhagen Document the participating States have reaffirmed "*their commitment to ensure effectively the rights of the individual to know and act upon human rights and fundamental freedoms, and to contribute actively, individually or in association with others, to their promotion and protection*."[12] The OSCE commitments also require legislation to be adopted "*as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* and that legislation is *"adopted at the end of a public procedure*".[13] OSCE participating States have also specifically committed to "*secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society*"[14].

13. OSCE participating States also specifically committed to ensure equal opportunities for the effective participation in political and public life of women, persons belonging to national minorities, Roma and Sinti, especially of Roma and Sinti women, persons with disabilities.[15] The Ljubljana Guidelines on Integration of Diverse Societies (2012) of the OSCE High Commissioner on National Minorities note that *"[d]iversity is a feature of all contemporary societies and of the groups that comprise them*"[16] and recommend that the legislative and policy framework should allow for the recognition that individual identities may be multiple, multi-layered, contextual and dynamic.

14. While the Kyrgyz Republic is not a Member State of the Council of Europe (hereinafter "CoE"), as a member of the European Commission for Democracy through Law of the Council of Europe (hereinafter "Venice Commission", "VC"), CoE instruments, relevant case-law of the European Court of Human Rights (hereinafter "ECtHR") and Venice Commission's documents are also of relevance and may serve as useful reference documents from a comparative perspective. In particular, the Venice Commission's Rule of Law Checklist[17] provides useful guidance regarding the process for enacting laws, which should be transparent, accountable, inclusive and democratic.

15. A number of other documents of a non-binding nature elaborated in various international and regional *fora* are useful as they provide more practical guidance and examples of

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[10] See the *UN International Covenant on Civil and Political Rights* (hereinafter "ICCPR"), adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. The Kyrgyz Republic acceded to the Covenant on 7 October 1994.

[11] UN Human Rights Committee, *General Comment No. 25*, 1996, para. 8.

[12] See *1990 OSCE Copenhagen Document*, para. 10.

[13] See *1991 OSCE Moscow Document*, para. 18.1; and *1990 OSCE Copenhagen Document*, para. 5.8.

[14] 2003 OSCE Maastricht Document, para. 36.

[15] See OSCE, *Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 44(d); *2003 OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area*, para. 88; OSCE Ministerial Council, *Decision No. 4/13 on the enhancing OSCE efforts to implement the Action Plan on Improving the Situation of Roma and Sinti Within the OSCE Area, With a Particular Focus on Roma and Sinti Women, Youth and Children* (2013), para 4.2; *Report of the CSCE Meeting of Experts on National Minorities* (Geneva, 1991); OSCE/CSCE *1991 Moscow Document*, para. 41.1.

[16] See Ljubljana Guidelines on Integration of Diverse Societies, 7 November 2012

[17] Council of Europe's Venice Commission, Rule of Law Checklist, adopted by the Venice Commission at its 106th Plenary Session (Venice, 11-12 March 2016), para. 18.

practices to enhance the gender- and diversity sensitiveness of the *Jogorku Kenesh* of the Kyrgyz Republic,[18] such as for example:

- the 2019 ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities;[19]
- the 2022 ODIHR Tool on Addressing Violence against Women in Parliament;[20]
- the 2021 ODIHR Guide on Realizing Gender Equality in Parliament;[21]
- the 2017 ODIHR Practical Guide on Gender-Sensitive Legislation;[22]
- publications of the Inter-Parliamentary Union (IPU), including the 2012 Plan of Action for Gender-sensitive Parliaments[23] and the 2022 Report on Public Engagement in the Work of Parliament,[24] among others;
- OECD's publications relating to good public governance and accountable and effective public institutions.[25]

## 2. BACKGROUND AND GENERAL COMMENTS

16. On 11 April 2021, a new Constitution of the Kyrgyz Republic introducing a presidential model of governance was adopted in a national referendum. Following its adoption, the authorities of the Kyrgyz Republic launched a process of revising national legislation with a view to update the legal framework in conformity with the provisions of the new Constitution.

17. A new Law no. 106 on the RoP of the *Jogorku Kenesh* was adopted by the Parliament on 20 October 2022 with the aim to ensure compliance with the new Constitution. The Law was signed into law by the President of the Kyrgyz Republic on 16 November 2022.

18. The abovementioned constitutional changes, which shifted the country from a parliamentary system to a strong presidential model of governance were assessed in the 2021 Joint Opinion.[26] ODIHR and the Venice Commission concluded that "*one of the fundamental concerns with the Draft Constitution is the overly prominent role and prerogatives of the President over the executive and the other branches of powers, with a weakened role of the Parliament and potential encroachments on judicial independence. This creates a real risk of undermining the separation of powers and the rule of law in the Kyrgyz Republic.*"[27]

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[18] See for example ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, including a checklist with further detailed guidance on pages 110-117; Inter-Parliamentary Union (IPU), *Parliament and Democracy in the Twenty-First Century: a Guide to Good Practice*, 2006; IPU and UNDP, *Diversity In Parliament: Listening To The Voices Of Minorities And Indigenous Peoples*, 2010. See for further reading, e.g., regarding the diversity-sensitiveness of the UK House of Commons, Professor Sarah Childs, *Report – The Good Parliament* (2015).

[19] See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019).

[20] See ODIHR, *Addressing Violence against Women in Politics in the OSCE Region: ODIHR Toolkit* (2022), including specific *Tool 2 on Addressing Violence against Women in Parliament* (2022).

[21] See ODIHR, *Realizing Gender Equality in Parliament: A Guide for Parliaments in the OSCE Region* (2021).

[22] See ODIHR, *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017).

[23] IPU, *Plan of Actions for Gender-sensitive Parliaments* (2012), pages 8-9, which defines a gender-sensitive parliament as "*a parliament that responds to the needs and interests of both men and women in its composition, structures, operations, methods and work. Gender-sensitive parliaments remove the barriers to women's full participation and offer a positive example or model to society at large. They ensure that their operations and resources are used effectively towards promoting gender equality. […] A gender-sensitive parliament is therefore a modern parliament; one that addresses and reflects the equality demands of a modern society. Ultimately, it is a parliament that is more efficient, effective and legitimate*". See also the 2022 IPU Kigali Declaration and IPU Strategy 2017-2021.

[24] IPU, *Global Parliamentary Report 2022 - Public engagement in the work of parliament*.

[25] See <Public governance - OECD>.

[26] See ODIHR and Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic* (19 March 2021).

[27] *Ibid.* para. 16 (2021 Joint Opinion).

19. The framework rules relating to the *Jogorku Kenesh*'s powers and composition are regulated by the Constitution, and further detailed in different laws and in the parliamentary RoP. Hence, the legal analysis of the RoP should take into consideration the constitutional provisions, which have served as the basis for designing the RoP. The concerns raised in the 2021 Joint Opinion, especially as they relate to the role and functioning of the *Jogorku Kenesh* and status of MPs, remain applicable for the most part, as further detailed below.

20. The RoP are divided into nine Sections, consisting of 33 chapters, covering the following issues: the basis for the *Jogorku Kenesh*'s activities; the organization of its work; the legislative procedure; special legislative procedures (constitutional amendments, laws on international treaties and national budget); procedures for discussion and decision-making; control procedures, i.e., parliamentary oversight; review of issues under the jurisdiction of the *Jogorku Kenesh*; interactions with voters, state bodies, local self-government bodies and civil society organizations; support for the activities of the *Jogorku Kenesh*, including expert and linguistic services of the staff.

21. The RoP are rather detailed in relation to the legislative and oversight functions. Although Section VIII addresses the issue of working with voters and ensuring the openness and transparency of the *Jogorku Kenesh*'s work, the participation and involvement of the general public in the legislative and oversight work is not properly reflected in the respective Sections III, IV and VI on legislative procedure, special legislative procedure and control/oversight procedures, respectively. **When addressing the legislative and oversight functions, it is recommended to make proper cross-references to the relevant provisions regarding public involvement in the parliamentary work or elaborate further how the *Jogorku Kenesh* will further engage with the public and associations when exercising its core functions.** The same comments apply regarding "parliamentary hearings", which feature under Section VI on parliamentary control procedures, whereas they are also fundamental elements of an open and inclusive legislative procedure or to ensure public participation more generally (see also Sub-Section 5.3 *infra*).

22. It is also noted that the RoP do not include special provisions regarding their amendments. It is assumed that introduction of amendments to and revisions of the RoP, being a primary legislation, are regulating by general norms relevant for legislative amendments. While passing such rules as primary legislation provides a certain level of security, this may also pose disadvantages with respect to flexibility in amending the text that should also be kept in mind. It is recommended, however, to consider introducing norms applicable specifically to the revisions of the RoP. It is important for the RoP to enjoy some stability and not be routinely changed; hence, every change of the RoP should be properly discussed and adopted – preferably by a qualified majority.[28] **It is recommended to supplement the RoP in this respect.**

23. Finally, the RoP are inevitably a quite lengthy document, since they cover a wide array of topics. Given that parliamentary proceedings may often require the RoP to be consulted urgently, it is important that they are drafted and presented as clearly and logically as possible. In this context, it is noted that the RoP do not appear **to have a contents page or an index, either or both of which would make the RoP more readily accessible to users.[29] It would be advisable to supplement them in this respect**.

[28] See e.g., Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015-e, paras. 35-38.

[29] See e.g., ODIHR, *Opinion on draft Sections I-III of the Rules of Procedure of the National Assembly of Armenia* (2016), paras. 18-19.

**RECOMMENDATION A.**

To consider introducing norms applicable specifically to the revisions of the RoP.

## 3. PARLIAMENTARY STRUCTURE: *JOGORKU KENESH* AND ITS BODIES

### 3.1. The Leadership of the *Jogorku Kenesh* and Collegial Decision-making

24. According to the RoP, the *Jogorku Kenesh* is headed by the Speaker ("*Toraga*" or "*Toraym*"),[30] and his/her deputies (Article 16). The RoP do not specify the number of deputies the Speaker may have. Neither does it guarantee a Deputy Speaker position to the opposition. The lack of clarity in this respect may create situations of arbitrary decisions on the number of deputies and potentially weaken the parliament as a democratic and sustainable institution. **It is recommended, thus, that the RoP specify the number of deputies the Speaker may have. For ensuring plurality and greater gender- and diversity-balanced representation of the leadership level, it is also advisable that one or more of such posts is held by a deputy from the opposition,[31] while also ensuring compliance with gender balance requirement among the deputies of the Speakers** (see also Sub-Section 8 *infra* on gender and diversity considerations).

25. Article 81(2) of the Constitution lists the overall powers and competences of the Speaker,[32] to be further elaborated in the RoP. Article 18 of the RoP further vests a broad range of decision-making powers to the Speaker, from political decisions to day-to-day management of parliamentary affairs.[33] Some of these competences appear to give the Speaker a broad discretion in matters, which should in principle be subject to institutional parliamentary review, and hence risk creating a vertical structure dominated by the Speaker, which might lack necessary checks-and-balances and clear and transparent reporting mechanisms. The RoP do not specify whether the Speaker has full discretion in this respect and if some form of institutional parliamentary review exists. **The RoP should specify the extent and the manner in which this competence is exercised, especially the Speaker should be required to provide reasons for the dismissal of staff to avoid purely arbitrary decisions.**

26. Article 18(2) of the RoP establishes that orders of the Speaker that contradict the norms of the Constitution and the laws of the Kyrgyz Republic can be changed or cancelled by decision of the *Jogorku Kenesh*. It does not envisage, however, detailed procedural rules

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[30] Article 3(1)(42) of the Rules of Procedure refers to the "Toraga" or "Toraym" of the *Jogorku Kenesh* but then it is implied that the term "Toraga" will be used throughout the Rules of Procedure. It is worth emphasizing that the term "Toraga" is not a gender neutral term, which would imply that the position is occupied by a man only. Established international practice requires legislation to be drafted in a gender neutral/sensitive manner, and hence reference to post-holders or certain categories of individuals should be adapted to use a gender-neutral word (see also Sub-Section 7 of the present Opinion).

[31] See *the 1991 OSCE Moscow Document*, which states that "*The participating States again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organisations*." See also Parliamentary Assembly of the CoE (PACE), Resolution No. 1601 (2008) of 3 January 2008 on the *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*.

[32] Article 81(2) of the Constitution states that the Speaker "*1) conducts meetings of the Jogorku Kenesh; 2) carries out general management of the preparation of issues for consideration at meetings of the Jogorku Kenesh; 3) signs the acts adopted by the Jogorku Kenesh; 4) represents the Jogorku Kenesh in the Kyrgyz Republic and abroad, ensures the interaction of the Jogorku Kenesh with the President, the People's Kurultai, state executive bodies, judicial authorities and local self-government; 5) carries out general management and control over the activities of the apparatus of the Jogorku Kenesh; 6) exercises other powers to organize the activities of the Jogorku Kenesh, provided for by the Rules of the Jogorku Kenesh.*"

[33] These include 29 powers, including among other, parliamentary staff appointment and dismissal, carrying out general management and control over staff activities, ensuring compliance with gender representation requirements (no more than 70 per cent of persons of the same sex), issuing orders on business trips of MPs and approval of their reports, exercising control over the use of parliamentary property, distributing powers among the deputies, and forming advisory councils.

on the implementation of this provision. **It is necessary, thus, to introduce procedure on this into the RoP; or should other legislative acts provide for such a rule, a cross-reference should be made in the RoP to the relevant legislative provisions.**

27. At the same time, the RoP do not define the exact list of powers or duties of the deputies of the Speaker. In accordance with Article 20(1), deputies of the Speaker perform individual powers of the Speaker in accordance with his/her order on the distribution of duties. Furthermore, in case of the Speaker's absence or temporary disability, his/her responsibilities should be performed by one of the deputies in accordance with the decision of the Speaker (Article 20(2)). This gives the Speaker a broad authority in defining the scope of the competencies of his/her deputies that may not offer proper intra-institutional balancing mechanism. Even if the option of allotting one of the deputies' post to a representative of the opposition is retained, as recommended above, the Speaker would be able to define the scope of duties of the deputies depending on his/her political interests. All the more, such unlimited delegation of the Speaker's powers to his/her deputies might imply even the delegation of those powers that relate to core functions or political decisions (for example, signing the laws as per Article 18(3) of the RoP) leading to political and institutional instability. It is recommended **to define a clear scope of competencies of the First Deputy of the Speaker and of other his/her deputies that should include, first and foremost, organization of the work of the Parliament and replacing the Speaker during his/her absence, including who should lead the parliamentary sessions at that time (as a rule, it should be the First Deputy and, if unavailable, other deputies of the Speaker)**.

28. Article 1(7) defines the Coordinating Council as "a permanent body" created to "*collectively address issues of effective organization of the activities of the Jogorku Kenesh*" which, according to Article 22(1), carries out "*general planning of the activities of the Jogorku Kenesh, discussion and resolution of organizational issues aimed at the effective implementation of its powers by the Jogorku Kenesh*". It is composed of the Speaker, his/her deputies, chairpersons of committees, faction leaders and heads of deputy groups, and in their absence — their deputies. The Coordinating Council's quite generic and limited functions, compared to the extensive list of powers of the Speaker, seem to suggest that it is a consultative body rather than a platform for more collegial decision-making within the parliament. **It is, therefore, recommended to review the RoP with a view to enhance collegial decision-making modalities within the *Jogorku Kenesh*, including by strengthening and defining more clearly the role of the Coordinating Council and the rules governing its decision-making process.** In addition, Article 16 of the RoP provides that "*the leadership of the Jogorku Kenesh consists of the [Speaker] and their deputies*" without **specifying what this means procedurally, institutionally and for sustainability and transparency of decision-making. This should be clarified**.

**RECOMMENDATION B.**

1. To specify the number of deputies the Speaker may have, while ensuring that one or more of these positions is allocated to the opposition, and consider enhancing the existing gender equality provisions to contribute to more pluralistic, greater gender- and diversity-balanced representation at the leadership level.
2. To review the RoP with a view to enhance collegial decision-making modalities within the *Jogorku Kenesh*, including by strengthening and

defining more clearly the role of the Coordinating Council and the rules governing its decision-making process.

### 3.2. Factions and Political Groups

29. The RoP envisage the formation of parliamentary factions (Article 10) and deputy groups (Article 11). An MP elected on the party list, becomes a member of the corresponding faction from the moment of taking the oath. According to Article 10(4), refusal of a deputy elected on a party list from joining a faction and leaving the faction of the same party is not allowed (Article 10(4)). In principle, acknowledging that an individual MP receives a mandate from voters via universal suffrage and not from a political party, an MP should be free to change party allegiance or become independent.[34] In addition, a prohibition to leave a faction undermines the fundamental right to freedom of association of an MP, which also encompasses the negative right not to participate and not to become a member of a party, as explicitly recognized in Article 20(2) of the Universal Declaration of Human Rights.[35] Members should be free to choose no longer to share the political ideology, religion, belief or socio-economic principles the party is based upon, and as a key element of the voluntary nature of association, to leave a faction at any time, as they may do regarding the cancellation of party membership.[36] In light of the foregoing, **the outright ban to leave a faction would appear overly restrictive and should be reconsidered.**

30. At the same time, faction and deputy group discipline is important for collective decision-making. The rationale behind the above prohibition of leaving a faction may have been introduced in order to prevent fragmentation and opportunistic cross-flooring, which may be understandable. It is noted, however, that in most countries, party switching in Parliament is prevented not by constitutional or legal mechanisms but otherwise, such as by party discipline.[37] In any case, an individual MP should not be legally bound by party's instructions when debating or voting on a particular issue[38] and should be able to freely form opinions, not necessarily sharing the faction's political views, and vote contrary to the party's instructions or even change party allegiance.

31. It is unclear what the consequences of such a refusal to join a faction would be. In any case, **leaving a faction should not result in the loss of the parliamentary mandate**.[39] As already underlined in the 2021 Joint Opinion, the revocation and recall of elected representatives appear at odds with the principle of representation and also weakens the

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[34] See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), paras. 131-132. See also Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015-e, paras. 51-55 and para. 40, which refers to a "*right to change party allegiance*".

[35] Universal Declaration of Human Rights, proclaimed by the United Nations General Assembly in Paris on 10 December 1948 (General Assembly resolution 217 A).

[36] See *ODIHR and Venice Commission Guidelines on Political Party Regulations (2020)*, paras. 142-143.

[37] *Ibid.* paras. 53-55 (2019 Venice Commission's Checklist). The constitutions of a number of countries explicitly prohibit imperative mandate (e.g., Andorra, Article 53; Armenia, Article 66; Croatia, Article 74; France, Article 27; Germany, Article 38.1; Italy, Article 67; Lithuania, Article 59 – which refers to no restriction of representatives by other mandates; Romania, Article 69; Spain, Article 67.2). The majority of European states do not have imperative mandate and it is worth noticing that some former communist regimes have vigorously rejected attempts to re-introduce imperative mandate. Thus, in Lithuania, the Constitutional Court has ruled on a number of occasions that the mandate means that electors have no right to revoke a member of the *Seimas* and his/her freedom cannot be limited by parties or organisations that nominated them (see the Venice Commission, *Report on the imperative mandate and similar practices*, (14 March 2009), para 11). For instance, in Latvia, if an MP leaves a faction or a political group, they become independent deputies with less possibilities to access parliamentary resources and representation possibilities but they can still carry their mandate to the end of their term.

[38] See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 131.

[39] See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 131.

independence of deputies from the faction and the party.[40] As the membership in the faction is linked to party membership, by cancelling their party membership, an individual MP should be able to leave the faction. In principle, cancellation of membership **should occur without fine or penalty,[41] and the same should be applicable regarding the leaving of a faction as a consequence of membership cancellation**.

32. According to the RoP, MPs elected in single member constituencies may create a deputy group with at least seven members and could be dissolved if the number of members drops below seven (Article 11(7)). However, no minimum number is determined for creating a faction with members elected on a party list (Articles 10-11). This might put some MPs in an unequal position as factions could be formed by less than seven members and seems to contradict Article 11(4) of the RoP, which provides that both "factions and deputy groups have equal powers". To comply with this principle of equality between factions and deputy groups, it would be advisable that **the requirements to establish a political group are not stricter than those to establish a political faction.**

33. When it comes to the minimum number in connection with the creation of factions and/or deputy groups, particular attention needs to be paid to the characteristics of the party system of a country. Defining an adequate threshold for a minimum number of MPs in a deputy group would depend on the political situation in the country and the level of political fragmentation in parliament. Whilst some national parliaments establish a minimum number of MPs required to form factions, in case such a number is too high, this may be a problem for small opposition parties with only a few seats.[42] Due consideration should also be given to the need to ensure efficiency, since it would be challenging to get decisions adopted in a parliament if there are too many factions/deputy groups with equal rights of procedural participation.[43] The legal drafters should **ensure that the respective requirements for setting up a deputy group are not stricter in terms of minimum number of MPs than those to establish the smallest parliamentary faction, while having in mind the need to ensure efficiency of parliamentary work but also to no discriminate against smaller parties.**[44]

34. Article 13(1) of the RoP lists the rights of factions and deputy groups; Article 13(2) provides that MPs elected in single-mandate constituencies and not included in factions and deputy groups shall enjoy the same rights as MPs of factions and deputy groups. This provision is welcome as all MPs should have the same individual rights irrespective of whether they belong to the ruling majority, to the opposition, or are independent.[45] That being said, some of the rights listed in Article 13(1) would be hardly transferrable/applicable to an individual MP, such as the review of voters' appeals against the actions of members of a faction/deputy group and taking disciplinary measures, to recall the nominees from the faction/deputy groups among others. Moreover, it appears that a number of provisions of the RoP list additional rights for factions and deputy groups that do not appear applicable to individual MPs. For example, the RoP do not envisage support staff for individual MPs, while work of factions and deputy groups is supported by a secretariat (Article 14). Similarly, a faction or a deputy group can declare

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40 See ODIHR-Venice Commission, *Joint Opinion on the Draft Constitution of the Kyrgyz Republic* (19 March 2021), para. 69.

41 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 143.

42 See Venice Commission, *Report on the Role of Opposition in Democratic Parliaments*, adopted by the Venice Commission at its 84th Plenary Session, Venice 15-16 October 2010 (Role of Opposition), para 62.

43 *Ibid.* para. 110 (2010 Venice Commission's Report on the Role of Opposition in Democratic Parliaments).

44 In the current convocation of the *Jogorku Kenesh*, the smallest faction includes 5 MPs.

45 See e.g., PACE, Resolution No. 1601 (2008) of 3 January 2008 on the *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, which provides that *"[e]qual treatment of members of parliament has to be ensured in all their activities and privileges*". See also e.g., Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015-e, para. 40.

themselves as an opposition (Article 15), whilst there is no such option for individual MPs. Only factions and deputy groups may raise the issue of the impossibility of the President to fulfil their duties due to illness (Article 133), or submit the proposal for early termination of a deputy's mandate (Article 135). At the same time, to ensure the efficiency of parliamentary work, it may at times be necessary to adjust the principle of equality of MPs with regard to procedural issues and provide additional prerogatives to factions/deputy groups[46] to ensure efficiency of parliamentary work as well as proportional representation and participation in the internal bodies of the Parliament, providing that the basic individual rights of all deputies are the same.[47] **This is notwithstanding potential adjustments to the principle of equality of MPs conferring certain privileges to factions/deputy groups.** It is also fundamental that appropriate financial, material and technical resources and means are provided to individual MPs to enable them to properly perform their functions and duties.[48]

35. To ensure clarity**, it would be advisable to start by stating more clearly the core individual rights applicable to each and every MP irrespective of belonging or not to a faction/deputy group** *(for example, to table bills and motions; to speak in debates; to ask oral or written questions to the Government; to participate in committee work; to receive information and documents presented to parliament; parliamentary immunities, such as parliamentary non-liability (freedom of speech) and parliamentary inviolability (freedom from arrest); freedom of political opinion, including protection from "imperative mandate"; the right to change party allegiance (see Sub-Section 3.3. in this respect) etc.)* **and then further elaborate the additional prerogatives that factions/deputy groups may have with an aim to ensure efficiency of parliamentary work, proportional representation and participation in the internal bodies of Parliament. The RoP should also guarantee individual MPs the allocation of appropriate financial, material and technical resources and means to properly perform their functions and duties as an MP.**

36. Lastly, Article 15 of the RoP recognizes the right for factions and deputy groups to declare themselves as belonging to the opposition. Furthermore, it is recognized that the RoP allow parliamentary factions and deputy groups, including opposition, to make a parliamentary inquiry. At the same time, the RoP make no distinction regarding the exercise of parliamentary powers by the opposition compared to other factions/groups in cases such as election of deputies of the Speaker (Article 19), leadership and composition of the parliamentary committees (Articles 23 and 24), representation in temporary investigative commissions (Article 31), as well as the MPs' right to ask or clarify the question to the representative of the Government (Articles 103 and 104). As underlined in the *ODIHR-Venice Commission Joint Guidelines on Political Party regulation*, *"[o]pposition parties should have the ability to sometimes set the parliamentary agenda, hold public hearings, be involved in budget discussions, and conduct investigations without the assent of the executive or parties supporting the executive, in order to strengthen the control function of the opposition*".[49] **It is recommended to consider**

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[46] See Venice Commission, *Report on the Role of Opposition in Democratic Parliaments*, adopted by the Venice Commission at its 84th Plenary Session, Venice 15-16 October 2010 (Role of Opposition), paras. 109-110.

[47] These should include at a minimum, the rights to vote (on legislation, budgets, etc.); to table bills and motions; to speak in debates; to ask oral or written questions of the Government; to participate in committee work; to receive information and documents presented to parliament; parliamentary immunities, such as parliamentary non-liability (freedom of speech) and parliamentary inviolability (freedom from arrest); freedom of political opinion, including protection from "imperative mandate" and the right to change party allegiance; the right to initiate cases before the Constitutional Court (where it exists); see Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015-e, para. 40.

[48] PACE, Resolution No. 1601 (2008) of 3 January 2008 on the *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*, para. 3. See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 127, which provides that *"[a]t a minimum, all opposition party groups and their individual members should be given adequate resources to perform their functions. Such resources include, but are not limited to, access to government documents, control over a reasonable share of parliamentary time and support from parliamentary assistants*."

[49] See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 128.

**supplementing the RoP with respect to the rights and prerogatives of the opposition, including with respect to the election of deputies of the Speaker, leadership and composition of the parliamentary committees, representation in temporary investigative commissions, as well as the MPs' right to ask or clarify the question to the representative of the Government, with a view to further strengthen the oversight function of the Parliament.**

**RECOMMENDATION C.**

1. To reconsider the provision not allowing MPs to leave a faction.

2. To ensure that the requirements to establish a deputy group are not stricter in terms of minimum number of MPs than those to establish the smallest parliamentary faction.

3. To introduce a separate Article clearly listing the core individual rights applicable to each and every MP irrespective of belonging or not to a faction/deputy group before elaborating additional prerogatives that factions/deputy groups may have with an aim to ensure efficiency of parliamentary work, proportional representation and participation in the internal bodies of Parliament; as well as consider allocation to individual MPs of appropriate financial, material and technical resources and means to properly perform their functions and duties.

### 3.3. Procedures for Revoking of Mandates

37. The Constitution of the Kyrgyz republic (Article 79) and Article 134 of the RoP define the grounds for the early termination of MPs' powers, which include, among other, "absence from meetings of the *Jogorku Kenesh* without a valid reason for 10 working days during one session". The RoP do not provide for the list of "valid reasons" justifying the absence (apart from Article 85(2) which relates to the situation when MP is absent during the voting on matters not related to draft laws and does not seem to be applicable for all other occasions of absence). **It is, therefore, advisable to clearly define in the RoP the list of "valid reasons" justifying a deputy's absence from the plenary meetings, as well as the types of evidence to be submitted as justifications and a simple mechanism of their evaluation.**[50] Furthermore, the termination of the mandate should only be considered for the most serious cases of misconduct. It may appear as disproportionate to apply this measure immediately following the absence for 10 working days without first applying other, less intrusive measures.

38. Further, Articles 2(3) of the RoP allows MPs to be "recalled" "*in the manner and in the cases provided for by the RoP and the Law on the status of MP of the Jogorku Kenesh*". This provision is based on Article 76(3) of the Constitution stating that "a deputy of the *Jogorku Kenesh* may be recalled in the manner and cases provided for by constitutional law". While noting that the modalities of such recall were not elaborated in the Constitution, in its *2021 Joint Opinion* with the Venice Commission, ODIHR raised concerns regarding the system of revocation or recall of elected representatives, noting that it is at odds with the principle of representation and generally closely linked to

[50] See ODIHR, *Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic* (2022), para. 42, regarding a similar provision in the Code of Ethics.

imperative mandates, which weakens the independence of deputies from the faction and party.[51] It is understood that the Draft Constitutional Law on the Status of MPs[52] will further elaborate on the grounds and modalities of the recall, the analysis of which go beyond the scope of this Opinion. **ODIHR thereby reiterates the concerns raised in the *2021 Joint Opinion*** as well as the importance of guaranteeing the free mandate of MPs. In any case, once the Constitutional Law on the Status of MPs is adopted, the RoP should be reviewed to ensure compliance with its provisions, in accordance with the principle of hierarchy of norms, which is fundamental to the rule of law.

**RECOMMENDATION D.**

1. To clearly define the list of "valid reasons" justifying a deputy's absence from the plenary meetings, considering termination of a mandate for the most serious violations of parliamentary rules, as well as the types of evidence to be submitted as justifications and a simple mechanism for its evaluation.

2. To reconsider, as recommended by ODIHR-Venice Commission in the 2021 Joint Opinion, the institution of recall of elected representatives provided by the Constitution.

### 3.4. Parliamentary Committees

39. Parliamentary committees are the core tool of parliamentary scrutiny and democratic law-making. It is within the committees that detailed and scrupulous debates happen that reflect the complexities of today's democracies, economies and social sphere. However, the respective RoP provisions on the committees lack details and specifics to make sure they fully realize this important role.

40. For instance, Article 23(2) provides that the *Jogorku Kenesh* determines "*the number of committees, issues of their jurisdiction, and also forms their composition*". However, it does not specify in accordance to which procedure this should happen. This may leave room for political manipulation in establishing the committee structure and the field of their operation, implying the possibility that the thematic directions of the committees' work are decided each term anew. This might risk losing long-term consistency and expertise in particular fields that develops.[53] While the *Jogorku Kenesh* should be able to establish *ad hoc* or temporary committees, **the list of permanent committees, which should include the committees dealing with the most important affairs, such as constitutional, legislative, human rights, financials/budget, etc., should be defined in the RoP.**

41. Chairs of the parliamentary committees may be elected by the plenary, as it is considered currently by Article 24 of the RoP. Alternatively**, consideration could be given to having chairs of committees elected by the MPs of committees. Such provision would**

[51] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 69. See also paragraph 7.9 of *the 1990 OSCE Copenhagen Document* provides that "*ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires or is otherwise brought to an end in a manner that is regulated by law in conformity with democratic parliamentary and constitutional procedures*." See also Venice Commission, *Report on the recall of mayors and local elected representatives*, CDL-AD(2019)011, paras. 17-18.

[52] The Draft Constitutional Law on the Status of MPs as adopted in second and third readings on 28 December 2022 is available here. On 24 February 2023, the Law was vetoed by the President and on 16 March 2023, a conciliation group was established to further elaborate on the Law.

[53] For instance, Rules of Procedure of parliaments of Estonia, Lithuania and Latvia all include specific parliamentary committees but also have clear provisions of how ad hoc and investigation committees can be created. In Lithuania, RoP even include a description of the topical remit of each committee's work (see Seimas of the Republic of Lithuania Statute, Chapter XI).

**allow for more decentralization in parliamentary work, strengthen the internal democracy and empower individual deputies by creating a more horizontal leadership structure.**[54]

42. The process of forming the composition of the committees, including their chairpersons and members, needs to be inclusive and representative (both in terms of the political spectrum and gender and diversity considerations, including historically marginalized groups). **The leadership and composition of the committees should be gender balanced and respect diversity** (see para. 109 *infra*). **To enhance the role of the opposition, as underlined above, consideration could be given to allocating a share of committee chairpersonship and/or their deputies to the opposition**.[55]

**RECOMMENDATION E.**

1. To consider defining permanent committees and their thematic directions in the RoP.
2. To ensure that gender balance and diversity considerations are taken into account during the process of appointing the Chairpersons, Deputy Chairpersons and in the composition of the committees and to consider allocating a share of committee chairpersonship and/or their deputies to the opposition.

## 4. LEGISLATIVE PROCESS

43. The legislative process is set out in Section III of the RoP, which covers, in Chapters 7-10 issues related to legislative initiative (submission and preparation of the drafts), review and general debates on draft legislation, first and second readings of draft laws, review of returned laws (from the President), and official interpretation of laws. Section IV covers special legislative procedures, which include amending the Constitution (Chapter 11), adoption of laws on ratifying or denouncing international treaties (Chapter 12) and approval of national budget (Chapter 13).

### 4.1. Right to Legislative Initiative

44. Chapter 7 of the RoP outlines the process of submitting draft laws to the *Jogorku Kenesh*. Article 44 determines the subjects of the right to legislative initiative, among which are (1) 10,000 voters (popular initiative); (2) the President; (3) deputies of the *Jogorku Kenesh*; (4) Chairperson of the Cabinet of Ministers; (5) the Supreme Court on matters within its jurisdiction; (6) *People's Kurultai*; and (7) Prosecutor General on matters within their jurisdiction, thereby mirroring Article 85 of the Constitution.

45. **ODIHR thereby refers to the concerns raised in the 2021 Joint Opinion regarding Article 85 of the Constitution, especially as regard the Supreme Court's legislative initiative powers[56] and unclear status of the *People's Kurultai* vis-à-vis the *Jogorku***

[54] For instance, in Latvian Parliament the composition of committees is confirmed in the plenary of the parliament but the respective chairs are elected by the committee members.

[55] See ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020), para. 127.

[56] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 94, noting in particular the concerns relating to the compatibility with the principle of the independence of the judiciary, particularly given the Supreme Court's task of interpreting legislation following its adoption meaning that it should not be involved in the political process of adopting

***Kenesh*.[57] More detailed rules on the exercise of the legislative initiative by the *People's Kurultai* would be beneficial**.

46. With respect to the popular initiative mentioned under Article 44(1) of the RoP, Article 148(4) also provides that the parliament reviews and adopts legislative proposals of citizens and their associations and should encourage popular initiatives as per Article 153(3)(3). It is commendable to empower citizens to initiate new legislation as this is an important means for citizens to exercise their right to participate directly in public affairs. At the same time, the RoP do not elaborate a separate procedure regulating the processing of these initiatives through the parliament, giving an impression that the usual legislative process is followed. At the same time, these legislative proposals of citizens deserve particular attention or further details, especially as regards the timeline, process of signature collection, how to organize the public consultation and public hearings, which should precede the submission of the initiative, order of representation and requirement that the parliament explain when and if the proposal is rejected.

47. In addition, the RoP do not envisage any assistance in the formulation of the popular initiative and its submission, while at the same time there is a requirement to comply with the rules established for the introduction of draft laws (Article 46). When it comes to the submission of individual bills and the required consultations, it is customary that parliaments offer assistance of the legislative council (or the Ministry of Justice) and/or bills can be developed with the assistance of the parliamentary commission.[58] Article 46 justifiably demands the required support documents to the legislative initiative and that these documents should be submitted in both state and official languages. However, without any assistance given to the initiators of popular initiatives, the exercise of this right may remain burdensome and ineffective.

48. **It is thus recommended to provide more detailed rules on the exercise of the right to legislative initiative, related procedure and parliamentary assistance in this respect**.[59]

> **RECOMMENDATION F.**
>
> To provide more detailed rules on the exercise of the citizens' right to legislative initiative, related procedure and parliamentary assistance in this respect.

### 4.2. Public Consultations

49. A proper consultation process promotes transparency, accountability and inclusiveness in the law-making process, and serves to improve awareness and understanding of the policies pursued among relevant stakeholders and the public.[60] It is commendable that results of the public hearings and public discussions are required for submitting a draft

legislation, emphasizing that this may also raise doubts as to the Supreme Court judges' objective impartiality if they are called upon to interpret and apply a law that they contributed to develop.

57 See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 94.

58 See, for example, the case of Canada: Private Members' Business - Introduction (ourcommons.ca).

59 *Ibid.* See also *ODIHR Assessment of the Legislative Process in the Kyrgyz Republic* (2015), where it was recommended to "*enhance the quality of draft laws prepared by Members of Jogorku Kenesh, the Jogorku Kenesh may consider establishing such a unit*", para. 60.

60 According to recommendations issued by international and regional bodies and good practices within the OSCE area, public consultations generally last from a minimum of 15 days to two or three months, although this should be extended as necessary, taking into account, the nature, complexity and size of the proposed draft act and supporting data/information; see ODIHR, *Opinion on the Draft Law of Ukraine "On Public Consultations"* (2016), para. 40. See also Venice Commission, *Rule of Law Checklist*, Part II.A.5.

law (Article 46). In order to enhance consultation with stakeholders at the pre-legislative stage, there should also be a requirement on providing feedback to consultees.[61]

50. At the same time, the RoP do not have detailed rules on how to organize the public consultation and public hearings, which should precede the submission of the draft law. According to Article 115(3) of the RoP, parliamentary hearings by factions, deputy groups, committees and commissions "*shall invariably be held on draft laws on ensuring the constitutional rights, freedoms and duties of citizens, the legal status of political parties, non-profit organizations and the media, on the budget, taxes and other mandatory fees, on the introduction of new types of state regulation of entrepreneurial activity, on ensuring environmental safety and crime prevention*". This could mean that in these cases, parliamentary hearings are obligatory. At the same time, it is to be noted that Article 151 of the RoP leaves the issue of inviting the representatives of civil society organizations (hereinafter "CSOs") on the committee meetings at the discretion of the committees. While it could be assumed that relevant committees are expected to invite CSO representatives to the hearings, it remains unclear whether or not, in the above-mentioned cases, parliamentary hearings with the involvement of the CSOs or general public should be obligatorily organized (in cases defined under Article 115) or it depends on the consideration of the relevant committee (as is the case under Article 151, which grants the right to the committees to invite CSOs and expert to attend the committee hearing). **This uncertainty is problematic, and needs to be addressed, whilst ensuring an external participation in public hearings when draft laws are debated with the floor given for raising issues**.

51. The RoP should be supplemented with provisions ensuring more meaningful participation of civil society and experts/professionals in the committee/parliamentary hearings and meetings. Not only should the discussions be inclusive (in the sense of involving all MPs), they sometimes require hearings with external participants, such as experts (i.e. professionals in the relevant field) and different groups and individuals, especially those who may be affected by the draft law, and stakeholder organizations (for instance those who represent social, ethnic, professional, religious etc. groups affected by the policy at stake). The RoP envisage that they can attend parliamentary hearings (Article 117), be present at the open plenary meetings of the *Jogorku Kenesh* (Article 153), as well as make written submissions of proposals to the drafts (Article 151) and expert review/opinions (Article 152). At the same time, it would be advisable to provide for more systematized and detailed rules on how to organize consultations with involvement of all interested and affected stakeholders and individuals. It is important that, for example, MPs from the minority should be able to invite experts and stakeholders to be heard at the committee meetings, and such requests should be, as a rule, granted.[62]

52. Bearing in mind that the scope of this Opinion is limited to the RoP submitted for review, and without prejudice to the fact that the rules on public consultations might be defined by other legislative acts of the Kyrgyz Republic currently in force, it would be still advisable **to define how consultations may be done in practice, to ensure that they are open, transparent, accessible, inclusive and effective. This could require the developments of more specific checklists, recommendations and adapting the time-frames** to ensure involvement of experts and civil society, including representative of minority and other diverse groups, as well as offering equal opportunities for women and men to be heard and meaningfully contribute to the discussions, while also ensuring the setting-up of adequate feedback mechanisms. The relevant rules on consultation need to adapt the timing and methods of consultation accordingly, by enhancing outreach to

[61] See *ODIHR Assessment of the Legislative Process in the Kyrgyz Republic* (2015), para. 64.
[62] See Venice Commission, *Parameters on the Relationship between the Parliamentary Majority and the Opposition in a Democracy: a checklist*, CDL-AD(2019)015-e,, para. 77.

particularly marginalized groups, conducting smaller or larger, local or regional, online or offline events, depending on the respective groups and their needs. Translation and interpretation of different draft concepts or laws need to be envisaged in the interest of different minority groups, as appropriate. **In selecting means of consultation, online or written consultations, as well as consultation events and the premises, the special situation of marginalized or under-represented groups should also be taken into consideration**.[63] In particular, and as appropriate, reasonable accommodation needs to be provided to ensure that consultations are accessible to persons with disabilities, including by considering accommodative measures – such as communication of information in adjusted formats, easy-to-read and easy-to-understand versions, physical access to events and venues for consultations, etc.[64] (see also Sub-Section 8 *infra* on gender and diversity considerations).

53. Additionally, relevant international recommendations concerning the rights of the child require that children are also consulted on draft policies and laws that impact them.[65] States thus have a duty to systematically create appropriate conditions to help children express their views, through the creation of institutionalized structures, anchored in law and policy, and targeted measures and discussion platforms involving a wide range of youth-led advocacy and interest groups throughout the policy- and law-making process.[66]

**RECOMMENDATION G.**

1. To clarify in the RoP that CSOs and the public should be invited to the parliamentary hearings to ensure public consultations with them, whilst also defining practicalities of such consultations and ensuring that they are open, transparent, accessible, inclusive and effective.

2. To consider introducing specific checklists and time-frames for public consultations with the involvement of experts and civil society, including representatives of minority and other diverse groups, as well as offering equal opportunities for women and men to be heard and meaningfully contribute to the discussions, while also ensuring the setting-up of adequate feedback mechanisms.

### 4.3. General Procedures

54. According to Article 46, a draft law shall be accompanied by an official letter, to which a number of other documents are appended. This includes, among others, information about the financial basis, the results of the public hearing and public discussion, potential social, economic, legal, human rights, gender. environmental, corruption consequences, as well as regulatory impact assessment (hereinafter "RIA") of the draft law aimed at regulating entrepreneurial activity, carried out in accordance with the methodology approved by the Cabinet of Ministers. It appears, however, that whilst for the entrepreneurial activity there is a clearly envisaged requirement on conducting an ex-ante

[63] See *Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes* (2015) prepared by civil society experts with the support of the OSCE Office for Democratic Institutions and Human Rights, para. 19. See also WCAG 2 Overview | Web Accessibility Initiative (WAI) | W3C on web content accessibility for persons with disabilities (with the latest 2.2 to be issued in May 2023).

[64] ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), pp. 87-88.

[65] ODIHR, *Opinion on the Law on Youth of Serbia*, 8 November 2021, para. 15.

[66] Committee on the Rights of the Child, General Comment No.12: The right of the child to be heard, CRC/C/GC/12, para. 127, noting that that local youth parliaments, municipal children's councils, ad hoc consultations, extending consulting hours of politicians and officials, and school visits can help children engage in their communities at the local and national level to the greatest extent possible.

RIA, no such modality is envisaged to assess an impact of the draft law on gender equality, human rights and other important areas. **It is thus, recommended to envisage a clear methodology of conducting assessments, evaluating the likely impact of the legislation (e.g., budgetary, regulatory, human rights, gender equality, environmental and other impacts). The existing rules and practises should reflect gender and diversity perspectives, specifically those related to the impact assessment of draft legislation. The aim should be to introduce a more comprehensive approach to gender and human rights assessments that will include an analysis of the human rights impact of the proposed legislative initiative, based on sex-disaggregated data, a review of the potentially direct or indirect discriminatory impact of the proposed provisions of different groups, a projection of desired outcome a law should have, aiming at reducing existing inequality between women and men and other persons and groups. A conclusion about conducting a separate gender and human rights impact assessment should be also among the documents envisaged by Article 46 necessary for the draft's registration and the absence of one should justify the draft's return to the initiator (as per Article 48).**

55. As per Article 47, if the draft law complies with the requirements, the Speaker shall, within two days, on the basis of a certificate from the legal service, adopt a resolution on sending the draft law to the corresponding committees. The draft law and accompanying documents are then sent to factions, deputy groups, committees, MPs, expert services that carry out special expert review and also post the draft law on the official *Jogorku Kenesh* website. The expert service is responsible for conducting a mandatory legal, human rights, gender, environmental and anti-corruption "expertise" (Article 49(1)) at the different stages of the law-making process. Whilst the aforementioned expertise is commendable, it should not replace a proper *ex ante* impact assessment that should be done as early as possible, ideally at the policy-making stage before the draft law is submitted to the Parliament and unless this is the case already, the relevant practice should be properly regulated in the applicable legislation.

56. According to the RoP, laws are adopted in three readings and time interval between each reading may not be less than 10 working days and more than 30 working days, except for the adoption of draft laws in connection with the introduction of a state of emergency, an emergency situation and (or) force majeure circumstances (Article 53(13)(9)). The responsible committee may extend this period only once for one month. It should be noted that the sufficiency of time for parliamentary debates may only be assessed in the specific context, and no uniform standard is appropriate in this respect. Hence, whilst it is difficult to define how much time is necessary for debating a draft law in parliament, it is still important to consider that there is an adequate time to discuss the draft taking into account the complexity and importance of the draft law that would normally require longer time, including time needed for meaningful public consultations (for example, Constitutional amendments are adopted in at least three readings with a break between readings of two months, Article 63). This is particularly important as according to Article 53(12) of the RoP, in case of non-compliance with the deadline, the draft law is to be rejected. While it is important to adhere to deadlines, having not met this requirement should not serve as a ground for rejection of the draft and more flexibility should be afforded when the deadlines could also be deliberately compromised. **In this respect, it is advisable to allow for the possibility of further extending the deadline for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it or providing that such reasons and grounds for not meeting the deadline are taken into account when deciding on rejection of the draft.**

57. When it comes to the parliamentary debates, under Article 79(4), the Speaker "*having received a proposal to close the debate, informs the deputies about the number of those who signed up and spoke, finds out which of those who signed up insists on speaking and, taking this into account, puts the question of ending the debate to a vote*." It is unclear, however, who can submit such proposal, as well as when, and under what circumstances. It is also problematic that this provision provides the Speaker with a considerable discretion to decide on this issue, which in some cases may serve to undermine parliamentary debate, and freedom of expression in general. As a result of the individual decision of the Speaker, not all MPs who have signed up to speak would be given such an opportunity, even if they have the possibility to submit written text of their speeches for inclusion in the transcripts of the meeting (Article 79(5)). Whilst there should be a possibility for the Speaker to regulate speaking rights of individual MPs, this power might be abused by the Speaker affiliated with the majority, in order to silence legitimate criticisms expressed by the opposition MPs, thereby undermining the freedom of political debate.[67] Hence, there should be **the possibility to appeal Speaker's decisions on closing the debate to a collective body where the opposition is adequately represented. Therefore, more detailed provisions in the RoP would be necessary to ensure that MPs, especially those representing the opposition, are given meaningful opportunity to speak and participate in a debate.**

### 4.4. Special Legislative Procedures

58. Article 63 of the RoP makes a reference to Article 116 of the Constitution on initiating changes to the Constitution. Article 63(3) also provides that *"[c]hanges and additions to the provisions of the third and fourth sections of the Constitution are adopted by the Jogorku Kenesh following the initiative of the President or of two thirds of the total number of deputies of the Jogorku Kenesh*" – which mirrors the wording of Article 116(3) of the Constitution. However, the RoP do not provide for the procedure for changes and additions to the provisions of the first, second and fifth sections of the Constitution, which according to Article 116(2) of the Constitution can be adopted following the initiative of at least 300,000 voters or the President, or two-thirds of the total number of deputies of the *Jogorku Kenesh* at the referendum announced by the President. In the 2021 Joint Opinion, ODIHR raised concerns regarding the adoption of a new Constitution and constitutional amendments by a referendum but without involvement of the legislature.[68] The 2021 Joint Opinion further underlined the importance that a referendum "*be preceded by a phase where parliament discusses and debates the new text, and subsequently adopts it with a reinforced majority*", with "*a clearly defined timeframe and procedure of a qualified vote, by the Jogorku Kenesh*".[69] In any case, the RoP do not elaborate on the timeframe and procedure for amending Sections I, II and V of the Constitution. **The procedure for amending the Constitution should be regulated in a more detailed manner, or, if it should follow the ordinary legislative procedure, a cross-reference should be made to the applicable rules of the RoP**.

59. According to Article 53(6) of the RoP, draft laws "*defined by the President and the Chairperson of the Cabinet of Ministers as urgent are reviewed by the Jogorku Kenesh out of turn provided there is a conclusion of the responsible committee*". Furthermore, Article 76(1) provides that the *Jogorku Kenesh*, at the proposal of the Speaker, faction,

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[67] Everyone's right to freedom of expression, including parliamentarians', is protected by Article 19 of the ICCPR (Article 10 of the European Convention of Human Rights). Freedom of expression is a core criterion for a democratic state and freedom of speech is the most critical parliamentary privilege. For reference, the ECtHR has noted that *"[...] interferences with the freedom of expression of an opposition member of parliament [...] call for the closest scrutiny on the part of the Court [...]*"; see for comparison purpose, ECtHR, *Castells v. Spain*, Application no. 11798/85, 23 April 1992.

[68] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 154.

[69] *Ibid.* para. 157 (2021 Joint Opinion).

deputy group, responsible committee or at least one third of the deputies, may decide to review the issue under the expedited procedure. However, Article 76 does not envisage any specifics regarding expedite procedure, such as instances where accelerated proceedings are permissible (or not), deadlines and voting modalities.

60. Expediency or urgency in a law-making process may be justified in situations of crisis. However, since such procedures narrow the space for parliamentary scrutiny, there should be very clear prescriptions of how this procedure is used and on what occasions it can be applied. In principle, underlying legislation or procedures need to outline clear and explicit criteria and instances where accelerated proceedings are permissible,[70] and the government or other bodies with legislative initiative shall be held to justify the need for expeditious procedures in detail.[71] Accelerated procedures should not be used to amend the Constitution.[72] They should also not be applied to legislation that introduce important or wide-ranging reforms, such as legislation significantly impacting the exercise of human rights and fundamental freedoms, except under a state of emergency or equivalent status. Even though urgent procedures can be used in cases of public emergency or due to other compelling reasons, it is important that urgent procedures are properly justified. While different forms of accelerated law-making, skipping some elements of a normal legislative cycle, may at times be necessary, they should not be used to circumvent rules on public consultations. Despite the urgency of certain decisions, care should be taken to involve experts and civil society, including minority, gender and other diverse groups, as much as possible in decision-making. Parliamentary RoP should also provide parliaments with the option of rejecting the request to apply the expedited procedure where the necessary criteria are not met.

61. Based on the wording of Articles 53 and 76, the President, the Government, as well as responsible committees are not required to provide any justification for initiating urgent procedures. There is also no limitation as to the instances where accelerated proceedings are permissible and no opportunity for rejecting the request to apply the expedited procedure. Hence, there are no safeguards in place to prevent the *Jogorku Kenesh* from applying the urgent procedure for many important draft laws, which could lead to diminishing the essential role of the parliamentary scrutiny and oversight. In light of the above, **it is recommended that Article 76 be supplemented in such a way that the application of urgent procedures for passing a law is clearly treated as an exception, based on specific, clear and pre-determined criteria, while requiring a justification of the need to resort to accelerated procedures and an opportunity for the Parliament to reject the request to apply such procedures.**

62. Furthermore, the term "exceptional", for instance justifying that closed meetings be held (Article 34), should be clarified for the sake of legal certainty.

**RECOMMENDATION H.**

1. To consider amending Article 53 to allow for the possibility of further extending the deadline for the parliamentary readings when the complexity of the matter covered by the draft law, extraordinary circumstances or other valid reasons justify it or providing that such reasons and grounds for not

[70] See ODIHR, *Assessment of the Legislative Process in the Republic of Armenia*, 2014, para. 51. See also ODIHR, Assessment of the Legislative Process in the Republic of Moldova, 2010, p. 40.
[71] ODIHR, *Assessment of the Legislative Process in the Republic of Moldova*, 2010, p. 40.
[72] See, in this context, Venice Commission, *Opinion on Three Legal Questions Arising in the Process of Drafting the New Constitution of Hungary*, 28 March 2011, paras. 16-19.

meeting the deadline are considered when deciding on rejection of the draft law.

2. To envisage a clear methodology of conducting gender and human rights impact assessment of draft legislation, introducing a more comprehensive approach that will include a projection of desired outcome a law should have, an analysis of the human rights impact of the proposed legislative initiative, potentially direct or indirect discriminatory impact of the proposed provisions, etc.

3. To provide more detailed provisions defining grounds for closing a debate, introducing safeguard to the right of MPs, especially those representing opposition, to meaningfully participate in parliamentary debates.

4. To supplement Article 76 in such a way that the application of urgent procedures for passing a law is treated as an exception, based on specific, clear and pre-determined criteria, while requiring a justification of the need to resort to accelerated procedures and an opportunity for the Parliament to reject the request to apply such procedures.

### 4.5. The procedure for ratification and denunciation of international treaties

63. Article 65(2) of the Rules of Procedure contains a list of documents to be submitted to the *Jogorku Kenesh* together with the draft law on the ratification or denunciation of an international treaty (by the President or the Cabinet of Ministers). These documents include, in addition to the text of the treaty, the opinion of the Cabinet of Ministers on the conformity of the treaty with the legislation of the Kyrgyz Republic and an assessment of the possible financial, economic and other consequences of its ratification; information on the status of the preparation and signature of the international treaty; and an opinion of the Constitutional Court on the constitutionality of an international treaty. By requiring the submission of the Constitutional Court's opinion, this provision may imply a requirement of mandatory control of constitutionality of all international treaties submitted to ratification to the *Jogorku Kenesh*. Moreover, the text of the Article suggests that such a control would also be required in case of the denunciation of an international treaty. Therefore, it seems that the RoP impose obligations on both the judiciary and the executive: either the President or the Cabinet of Ministers must submit an appeal to the Constitutional Court and the Constitutional Court must give an opinion in response to the appeal.

64. The competence of the *Jogorku Kenesh* to "*ratify and denounce international treaties in the manner prescribed by law*" is prescribed by Article 80(1)(4) of the Constitution, as is the competence of the Constitutional Court to "*give an opinion on the constitutionality of international treaties to which the Kyrgyz Republic is a party that have not entered into force*" (Article 97(2)(3) of the Constitution).

65. In addition, the Constitutional Law on the Constitutional Court of the Kyrgyz Republic provides that the control of constitutionality of international treaties should only take place in case of uncertainty as to whether an international treaty that has not entered into force for the Kyrgyz Republic is consistent with the Constitution (Article 26(2) of the Constitutional Law). This formulation suggests that the control should only be exercised in case of a doubt as to the compatibility of a treaty, or some of its provisions, with the Constitution, not automatically with respect to all provisions of all international treaties

subject to ratification. Moreover, Article 22 of the Constitutional Law speaks about "*the right to apply for an opinion on the constitutionality of international treaties which have not entered into force for the Kyrgyz Republic*", suggesting that requesting an *ex ante* control of constitutionality of international treaties is optional.

66. In light of the above, in order not to extend the scope of competences or tasks conferred on other state organs and not to create a risk of overburdening the Constitutional Court with such *ex ante* controls of constitutionality of international treaties, Article 65(2) should not be interpreted as requiring a mandatory control. In this respect, ODIHR refers to the Venice Commission's Opinion on the Amendments to the Law on the Rules of Procedure of the Parliament of the Kyrgyz Republic.[73]

67. In light of the above considerations, and to avoid ambiguity, **it is recommended to clarify that the submission of the opinion of the Constitutional Court is not mandatory in all cases for ratifying a treaty (and *a fortiori* for denouncing a treaty) but only when it has been requested by the competent authorities/bodies in accordance with the Constitutional Law on the Constitutional Court.**

### 4.6. Official Interpretation of Laws

68. Chapter 10 of the RoP elaborates the *Jogorku Kenesh's* role regarding the official interpretation of laws, as provided in Article 80(1)(3) of the Constitution. As underlined in the 2021 Joint Opinion, while the Parliament can adopt legislation that further develops provisions existing in other pieces of legislation, the interpretation of the existing laws normally should belong to the judiciary.[74]

## 5. PARLIAMENTARY OVERSIGHT

69. Parliaments have a crucial role to exercise general oversight over the executive, having an ultimate authority to adopt legislation. Quality control mechanisms embodied through the oversight will help to ensure that the regulatory tools that states have in place actually function in practice. Such mechanisms in different countries range from providing advice and feedback during the application of the tools, to issuing a formal opinion on their quality that is either kept confidential or made publicly available.[75] It helps promoting better administration and maintenance of the essential balance of powers in a democracy. Parliamentary control is also necessary to help improve the transparency of the government's actions and enhance public trust towards the executive. At the same time, oversight power entails both a capacity (legal mandate) and sufficient resources (financial, human and organizational) to carry out the necessary tasks. Moreover, effective oversight requires parliament to work closely with the governmental institutions, which include audit institutions, national human rights bodies and ombudspersons, as well as civil society organizations. Lastly, robust behavioural standards for parliamentarians, such as codes of conduct, conflict of interest policies also play a key role in enabling and ensuring effective oversight.

70. Section VI of the RoP outlines different aspects of parliamentary oversight, including review of annual reports and budget (Articles 100-102), procedures of "questioning" (Articles 103-104), procedures and conditions for parliamentary inquires (Articles 105 –

[73] See Venice Commission, *Opinion on the amendments to the Law on the Rules of Procedure of the Parliament of the Kyrgyz Republic*, adopted by the Venice Commission at its 134th Plenary Session, Venice, 10-11 March 2023.
[74] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 71.
[75] See OECD: *Better Regulation Practices Across the European Union*, 2019, Chapter 1: Regulatory Policy in the EU and EU Member States, Quality Control of Regulatory Management Tools.

111), committee control over the implementation of laws and decisions of the *Jogorku Kenesh* (Articles 112-114), and parliamentary hearings (Articles 115 – 119).

71. In the 2021 Joint Opinion, ODIHR and the Venice Commission raised concerns regarding the weakened role of the parliament and recommended to provide stronger oversight capacities to the *Jogorku Kenesh*, including through committees, to both initiate and review draft laws and ensure an appropriate budget to support this important function of checks over the powers of the President and the executive.[76] While it is a matter to be addressed by the Constitution, it should be noted that there is no adequate oversight over the powers of the President, which weakens the oversight powers of the legislative, and undermines the effectiveness of it.

72. Overall, the regulation regarding the oversight functions would benefit from further elaboration. At the same time, since there is a separate law on the oversight functions of the parliament,[77] such aspects may be also elaborated in that law, in addition to introducing effective oversight mechanisms in the RoP. In any case, it is important to ensure coherence and consistency with such law by making relevant cross-references as appropriate.

### 5.1. Parliamentary Inquires

73. The RoP define the possibility to make request by individual MPs to the state bodies on the issues within their respective competences (Article 110) and parliamentary request by the Speaker, a faction, a deputy group, a committee or a group of deputies on the issues of public interest, the socio-economic policy pursued by the government, as well as the practice of applying laws and decisions of the *Jogorku Kenesh* (Article 109). A deputy request can be sent to state bodies, with the exception of courts and judges in relation to the merits of cases examined or pending (Article 110). A similar exception can be read in Article 113 in connection with the control function of the committees over the implementation of laws and decisions of the parliament. At the same time, Article 109 of the RoP do not contain this restriction in the case of parliamentary requests. This may raise concerns regarding the separation of power and respect for judicial independence, if this implies parliament's oversight function over the judiciary.[78] Any parliamentary inquiry or similar processes should comply with the *sub judice* rule that is, refraining from taking actions or pursuing lines of inquiry that could prejudge or influence the outcome of the ongoing case or investigations or trials that are or are about to be initiated.[79]

74. This is particularly relevant as according to Article 109, the parliamentary inquiry can be initiated by "a group of deputies", which is different from a "deputy group" as described above in Sub-Section 3.2, which could potentially imply that even two MPs could address such a request to the judiciary.[80]**It is therefore recommended to supplement Article 109 with the same exception regarding courts and judges in relation to the merits of cases examined or pending.**

75. The parliamentary request is sent by the initiators to the Coordinating Council for inclusion in the agenda of the meeting of the *Jogorku Kenesh* and, based on the results of

[76] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, paras. 16 and 17(C).
[77] See Law On the procedure for exercising control functions by the *Jogorku Kenesh* of the Kyrgyz Republic No. 121 of 13 August 2004, as amended.
[78] See ODIHR *Note on Parliamentary Inquiries into Judicial Activities* (2020).
[79] *Ibid.* para. 17.
[80] The Rules of Procedure should normally determine the exact number of people who can initiate different procedures. For instance, ten members of the Finish parliament has have right to demand that the Constitutional Committee initiates an inquiry into the conduct of a government minister, while in Norway, 1/3 of the members of the Committee on Constitutional Control has the right to initiate inquiries and call hearings. See Venice Commission, *Report on the Role of Opposition in Democratic Parliaments*, adopted by the Venice Commission at its 84th Plenary Session, Venice 15-16 October 2010 (Role of Opposition), para. 122.

its consideration, a resolution should be adopted (Article 109(3)). The RoP do not foresee any deadline within which the respective bodies or officials are required to respond to the parliamentary request, only mentioning that the deadline for each request should be defined separately and that it can be extended by the Coordinating Council to up to 10 days (Article 109(4)). In the case of deputy requests regulated under Article 110, a body or official has one month to respond to the request (Article 110(4)). An absence of clear deadlines for the parliamentary request in the RoP might result in either arbitrary short timeframes or longer deadlines, which may leave the issue unresolved. It is recommended to specify the respective deadline in the RoP.

76. Article 109(3) of the RoP envisages that based on the results of consideration of the parliamentary request, a resolution should be adopted by the *Jogorku Kenesh*. However, it does not provide for any particular modalities in this respect, including which majority is required for the resolution to be passed. **It would be advisable to specify in the RoP the number of votes necessary to support the parliamentary request, having in mind the importance of ensuring that parliamentary minorities have the means to exercise their oversight competences**[81] (see also paras 24, 36 and 42 *supra* regarding the role of the opposition).

77. Lastly, the RoP provide that officials are obliged to respond to the MPs' inquires (Article 110(4)), however, it is not provided what happens in case of failure to meet the legal requirement to respond to the request. **It is recommended, therefore, to specify the legal consequences for a failure to respond to requests to enhance the oversight mechanisms.**[82]

### 5.2. Control over the Implementation of Laws and Decisions

78. Parliamentary committees are mandated to control the implementation of laws and decisions of the *Jogorku Kenesh*, which may harm the rights and interests of citizens. In case of violation, the committees can take a decision on elimination of breaches (Article 112). The committees can also approach the relevant state bodes, institutions and organizations (with the exception of courts and judges on the merits of cases examined or pending) on facts of violation or non-compliance with the provisions of laws and decisions of the *Jogorku Kenesh*, as well as on other issues of state and public importance; they may also involve relevant representatives and request documents and materials (Article 113). Respondents are obliged to provide the committees with the documents, materials, and information requested by them within one month (Article 113(5)).

79. As in the case of the parliamentary inquiries, no legal consequences are envisaged for state bodies, institutions and organizations for failure to respond to the committee's request. **To enhance the effectiveness of committees' oversight functions, it is recommended to supplement Article 113 accordingly.**

80. Parliamentary committees are also mandated to monitor and evaluate the adopted laws and decisions related to their profile on an annual basis (Article 114). The results of the performed monitoring and evaluation are published in the media and posted on the official website of the *Jogorku Kenesh*. **To ensure the overall transparency of the process, the abovementioned publication clauses should also be applicable to the decisions of the committees as per Article 112 that should be also published.**

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[81] See e.g., PACE, Resolution No. 1601 (2008) of 3 January 2008 on the *Procedural guidelines on the rights and responsibilities of the opposition in a democratic parliament*; and Venice Commission, *Report on the Role of Opposition in Democratic Parliaments*, adopted by the Venice Commission at its 84th Plenary Session, Venice 15-16 October 2010 (Role of Opposition), paras. 120-121.

[82] In this respect, the practice varies greatly among OSCE participating States; see ODIHR *Note on Parliamentary Inquiries into Judicial Activities* (2020), para. 43 and references therein.

81. More generally, it seems that the RoP embrace the idea of the ex-post evaluation of legislation (e.g., in Article 27(10)), even though it does not require any information about it when it comes to the accompanying materials to the legislative initiative. The legislative process needs to be viewed as a cyclic process in which the results of any exposed evaluation can be one of the grounds and justification for the legislative initiative. **Thus, paying more attention to the role of ex-post evaluation in the legislative process is recommended**.

82. Given the scale of law-making activity, the amount of legislation that (some but not necessarily all) committees have to deal with, the question arises whether the parliamentary committees may have enough time and resources to ensure an effective oversight, including in terms of annual monitoring and evaluation of implementation of laws. While there is no immediate solution how this can be resolved in more effective way, one way to approach is to enhance the capacity and resources of the committees. ODIHR and Venice Commission have previously emphasized the need for appropriate budgeting for the work of committees.[83]

### 5.3. Parliamentary Hearings

83. According to Article 115 of the RoP, parliamentary hearings can be initiated by factions, deputy groups, committees and commissions on issues within their jurisdiction. As underlined above, it is questionable that parliamentary hearings are exclusively addressed under the Section VI on control procedures as they are also essential to the exercise of the legislative and representation functions of the *Jogorku Kenesh*. Information on topic of parliamentary hearings, the time and place of their holding should be posted online once such decision has been approved, but not later than five days before the hearing. It is commendable that the RoP seek to ensure openness of parliamentary hearings by allowing representation of citizens and civil organizations (Article 117) and their publication on the official web-site of the *Jogorku Kenesh* (Article 119). It is however questionable whether five days constitute sufficient advance notice to trigger public participation. To ensure a meaningful participation of interested stakeholders, **it would be recommended to consider expanding time-period for posting information about the dates of parliamentary hearings and posting of relevant information, so that relevant stakeholders have sufficient time to become aware of such a hearing**.

84. Regarding openness and transparency of parliamentary work, it is noted that Article 95 of the RoP does not provide free access to the original transcripts of the plenaries of the *Jogorku Kenesh* that are only available to a limited group of persons, i.e. factions, deputy groups, committees, commissions and deputies. Similarly, it seems that the general public does not have a right to get acquainted with the case-file of a parliamentary meeting (Article 96). These restrictions contradict to the overall idea of the parliamentary openness and transparency, embodied in the key principles of the parliamentary activity (Article 4) and in Article 151 (Openness and transparency in the legislative activities of the *Jogorku Kenesh*). Such limitations should be reconsidered.

**RECOMMENDATION K.**

1. To amend Article 109 introducing exception to the parliamentary requests with respect to the merits of cases examined or pending before courts.

[83] See *ODIHR and Venice Commission Joint Opinion on the Draft 2021 Constitution of the Kyrgyz Republic*, para.66.

2. To introduce legal consequences for a failure to respond to parliamentary, deputy and committees' requests to enhance the oversight mechanisms.

## 6. APPOINTMENT, DISMISSAL AND LIFTING OF IMMUNITIES OF CERTAIN PUBLIC-OFFICE HOLDERS BY THE *JOGORKU KENESH*

85. Chapter 23 of the Rules of Procedure deals with the appointment or approval of appointment, suspension from office, dismissal and lifting of immunities of certain public office-holders, including judges and chairpersons of the Constitutional Court and the Supreme Court,[84] members of the Central Election Commission (CEC),[85] the *Akyikatchy* (Ombudsperson) and his/her deputies,[86] two members of the Council for Justice.[87] Such prerogatives reflect the *Jogorku Kenesh*'s powers as envisaged in Article 80 of the Constitution. The specific provisions regarding the eligibility and selection criteria, grounds for dismissal as well as procedures for the selection/appointment and dismissal of the above-mentioned public-officer holders or members of these judicial or other bodies are further detailed in relevant constitutional laws and/or ordinary legislation. The analysis of such legislation, particularly the provisions pertaining to the dismissal/removal grounds, goes beyond the scope of this Opinion.

86. In the 2021 Joint Opinion, ODIHR and the Venice Commission already raised some concerns regarding the presidential prerogatives pertaining to judicial appointments and the President's influence over the composition and/or independent institutions such as the CEC or the Council for Justice, the high degree of politicisation in judicial appointment procedure, as well as concerns related specifically to the appointment of President and Vice-Presidents of the Supreme Court and of the Constitutional Court.[88] ODIHR hereby refers to the findings and recommendations contained in the Joint Opinion.[89] As for the Ombudsperson, the Joint Opinion recommended that the Constitution be supplemented to also elaborate the overall competencies, guarantees of institutional independence, term of office and grounds for dismissal of the institution but this was not addressed.

87. *Removal of judges of the Supreme Court and of the Constitutional Court, and the chairpersons of the respective courts* - It is fundamental to reiterate that the irremovability

[84] Judges of the Constitutional Court and of the Supreme Court are elected by at least half of the votes of the total number of deputies, following the proposal of the President following the proposal of the Council for Justice; the Jogorku Kenesh with at least half of the votes of the total number of deputies, following the proposal of the President, on the basis of the proposal of the Council of Judges, agrees to the appointment of the respective Chairpersons (Article 122(5) and (6) of the Rules of Procedure). The Jogorku Kenesh has the right to take a decision by open voting on early dismissal of judges of the Constitutional Court and the Supreme Court — by at least half of the votes of the total number of deputies, upon the proposal with justification of the President (Articles 123(3)(1) and (2) and 123(4)(2)); and for the Chairpersons of the respective courts, upon the proposal with justification of the President on the basis of the proposal of the Council of Judges (Article 123(4)(3)).

[85] Half of the members of the Central Election Commission (CEC) — are elected by secret ballot following the proposal of the President, half — on the initiative of factions, deputy groups, deputies elected in single-mandate districts and not included in factions and deputy groups (Article 122(8)(2) of the Rules of Procedure); and are dismissed by a majority vote of the total number of deputies upon the proposal with justification of the President or of the Jogorku Kenesh regarding half of the composition of the CEC that they elected (Articles 123(3)(2) and 123(4)(5) and (6)).. Pursuant to Article 122(8) of the Rules of Procedure, the Jogorku Kenesh elects by secret voting the *Akyikatchy* (Ombudsperson) — following the proposal of parliamentary factions, deputy groups, deputies elected in single-mandate constituencies and not included in factions and deputy groups (para. 4); and the deputies of the Ombudsperson — following the proposal of the Ombudsmperson (para. 5). Decision on early dismissal of the Ombudsperson is adopted by the Jogorku Kenesh by open voting by a majority vote of the total number of deputies, following a proposal for early dismissal with justification submitted by factions, deputy groups, deputies elected in single-mandate constituencies and not included in factions and deputy groups (Article 123(4)(9)).

[87] Pursuant to Article 122(8)(6) of the Rules of Procedure, one representative from among the deputies of the Jogorku Kenesh to the Council for Justice — following the proposal of factions and deputy groups, deputies elected in single-member districts and not included in factions and deputy groups; one representative from among the candidates from representatives of the legal community to the Council for Justice — following the proposal of a public association of lawyers.

[88] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, Section IV.D.6 regarding the judiciary, especially paras. 78-79, 92-93, 95-97, and IV.D.10 regarding the Central Election Commission.

[89] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 71.

of these judges forms a vital part of their independence and it is essential that political bodies, such as a parliament, are not empowered to terminate the powers of individual judges of the Constitutional or Supreme Courts.[90] In the 2021 Joint Opinion, ODIHR and the Venice Commission specifically recommended "*to review the modalities for the dismissal of Constitutional Court judges to limit the potential influence of political considerations or abuse by the President and/or the Jogorku Kenesh*".[91]

88. Article 122(2) and (3) of the RoP requires a vote of at least half of the votes of the total number of deputies to proceed with the dismissal of the Chairpersons of the Supreme Court and of the Constitutional Court and their judges, respectively. It is noted that Article 80(3) of the Constitution does not specify the majority required for the dismissal of judges of the Supreme Court and of the Constitutional Court, as well as the chairpersons, which may presumably mean that the same majority as for the election of these judges, or for giving consent to the appointment of the chairpersons, would apply. Article 14(2) of the Constitutional Law on the Supreme Court specifies that the majority required for giving consent to the early dismissal of the Chairperson of the Supreme Court is "*at least half of the votes of the total number of deputies of the Jogorku Kenesh*" but Article 15 which deals with early removal/dismissal of Supreme Court judges simply refers to the grounds and procedure stated in the Constitution and the Constitutional Law on the Status of Judges, which itself does not clarify the matter.[92] Article 7 of the Constitutional Law on the Constitutional Court regarding the grounds for dismissal of the Chairperson does not specify the majority required, nor does it deal with the dismissal of Constitutional Court judges since Article 3(3) of the Constitutional Law generally refers to "constitutional laws and laws" to regulate the matter without specifying.

89. When reviewing the draft Amendments to the Constitution of the Kyrgyz Republic in 2016, ODIHR and the Venice Commission expressed strong concerns regarding the lowering of the voting threshold from two-thirds to the majority of the total number of deputies to dismiss the judges of the Supreme Court and the Constitutional Chamber and its potential to negatively affect judicial independence.[93] **To protect their independence, it is thus recommended that the majority required for removing the judges of the Constitutional Court and of the Supreme Court and the Chairpersons of these courts is a qualified majority higher than the majority required for election/appointment**.

90. *Removal of the Prosecutor* – Generally, a procedure whereby the parliament may dismiss the Prosecutor General similarly raises some concerns as it may negatively impact the autonomy of the prosecution service from the political branches and functional independence of prosecutors more generally.[94] Generally, it is recommended to provide of a qualified majority,[95] which is not the case in Article 80(3)(10) of the Constitution, which requires at least half of the total number of deputies to give consent to the dismissal of the Prosecutor General upon the proposal of the President.

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[90] See e.g., ODIHR, *Opinion on the Constitutional Law on the Constitutional Court of Kazakhstan* (2022), para. 59. See also Venice Commission, *Report on the Independence of the Judicial System*, Part I: the Independence of Judges, paras. 39-43; and *Ukraine - Urgent opinion on the Reform of the Constitutional Court* (9 December 2020), CDL-AD(2020)039, para. 35.

[91] See ODIHR-Venice Commission, *Joint Opinion* on the Draft Constitution of the Kyrgyz Republic, 19 March 2021, para. 97.

[92] See <Constitutional Law of the Kyrgyz Republic dated November 15, 2021 No. 134 "On the Supreme Court of the Kyrgyz Republic and Local Courts" (minjust.gov.kg)>.

[93] See ODIHR-Venice Commission, Kyrgyzstan - *Joint Opinion on the Draft Law "On Introduction of Amendments and Changes to the Constitution" of Kyrgyz Republic*, CDL-AD(2016)025, para. 54.

[94] See e.g., ODIHR, *Strengthening functional independence of prosecutors in Eastern European participating States: Needs Assessment Report*, 4 March 2020, page 52. See also Venice Commission, *Compilation of Venice Commission Opinions and Reports concerning Prosecutors* (2022), Section IV.B.3.

[95] See e.g., Venice Commission, *Opinion on the Constitution of Montenegro*, CDL-AD(2007)047, para. 108.

91. *Removal of the Ombudsperson* – At the outset, it is important to reiterate the vital role played by national human rights institutions (NHRIs) in promoting and protecting human rights at the national level. The importance of NHRIs is also recognized in OSCE commitments, which, *among other*, require participating States to "*facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law*".[96] The *UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (Paris Principles)[97] underline that without a stable mandate "there can be no independence" of an NHRI.[98] The General Observation 2.1 of the Global Alliance of National Human Rights Institutions (GANHRI) Sub-Committee on Accreditation (SCA)[99] provides additional guidance regarding guarantees of tenure for members of the NHRI decision-making body.[100]

92. Article 80(3)(8) of the Constitution provides that the *Jogorku Kenesh* "*elects, in cases provided for by law, dismisses the Akyikatchy (Ombudsman); gives consent to bringing him or her to criminal liability*". Article 80(5)(2) additionally provides that the *Jogorku Kenesh* "*hears the annual reports of the Akyikatchy (Ombudsman)*". According to Article 110 of the Constitution, the organization and procedure for the activities of the *Akyikatchy*, as well as guarantees of their independence, are determined by constitutional law. It is understood that the said Constitutional Law has not yet been adopted and that the existing 2002 Law on the Ombudsman (*Akyikatchy*) of the Kyrgyz Republic, as amended, remains in force.[101] Pursuant to Article 123(3)(2) of the Rules of Procedure, the *Jogorku Kenesh* has the right to take a decision on early dismissal of the Ombudsperson by open voting by a majority of the total number of deputies. The proposal for early dismissal *with justification* shall be submitted by factions, deputy groups, deputies elected in single-mandate constituencies and not included in factions and deputy groups (Article 123(4)(9)).

93. Generally, where a process for removal of the Ombudsperson involves the parliament, care must be taken to ensure that removal cannot be for political reasons and must be by a qualified majority vote that is preferably higher than the one required for election.[102] This is fundamental for protecting the independence of the Ombudsperson and for preventing the politicization of his or her possible dismissal. **It is therefore recommended to increase the majority required for the purpose of dismissing the Ombudsperson.** There should also be a procedure for challenging the decision on early

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96 See *1990 OSCE Copenhagen Document*, para. 27.

97 The *UN Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights* (hereinafter "the Paris Principles") were adopted by UN General Assembly Resolution 48/134 of 20 December 1993.

98 *Ibid.* Paris Principle B.3.

99 The GANHRI, formerly known as the International Coordinating Committee for National Human Rights Institutions (ICC), was established in 1993 and is the international association of national human rights institutions from all parts of the globe. The GANHRI promotes and strengthens NHRIs in accordance with the Paris Principles, and provides leadership in the promotion and protection of human rights; see <https://ganhri.org/>.

100 See GANHRI Sub-Committee on Accreditation (SCA), *General Observations*, adopted on 21 February 2018. General Observation 2.1 provides in particular that "*the enabling legislation of an NHRI must contain an independent and objective dismissal process, similar to that accorded to members of other independent State agencies*" and that "*the grounds for dismissal must be clearly defined and appropriately confined to only those actions which impact adversely on the capacity of the member to fulfil their mandate*". General Observation 2.1 further elaborates that *"[w]here appropriate, the legislation should specify that the application of a particular ground for dismissal must be supported by the decision of a court or other independent body with appropriate jurisdiction*". In the Justification to General Observation 2.1, the SCA further highlights that *"[m]embers may be dismissed only on serious grounds of misconduct or incompetence, in accordance with fair procedures ensuring objectivity and impartiality set out in the national law*", because this is essential so that the Head of the NHRI is able to undertake their responsibilities without fear and without inappropriate interference from the State or other actors.

101 See Law No. 31 of 2002 July 136 on the Ombudsman of the Kyrgyz Republic (minjust.gov.kg).

102 See e.g., ODIHR, *Opinion on the Draft Constitutional Law on the Commissioner for Human Rights of Kazakhstan* (1 September 2022), para. 68. See also e.g., Venice Commission, *Principles on the Protection and Promotion of the Ombudsman Institution (Venice Principles)*, CDL-AD(2019)005, 3 May 2019, Venice Principle 11, which emphasizes that the parliamentary majority required for removal – by Parliament itself or by a court on request of the Parliament – shall be equal to, and preferably higher than, the one required for election.

dismissal in courts (presumably the Constitutional Court when the decision is adopted by the Parliament).[103]

94. It must be noted that the Article 80(5)(2) refers to the hearing of the annual report of the Ombudsperson. Article 130 of the RoP further elaborates that the Ombudsperson is expected to submit to the *Jogorku Kenesh* an annual report on the status of human rights and freedoms in the Kyrgyz Republic. The same Article establishes that based on the results of hearing the reports of the Ombudsperson, the *Jogorku Kenesh* must assess the expediency of implementing the Ombudsperson's recommendations by state bodies, local governments and their officials and take an appropriate decision. It must be emphasized that the hearing of the Ombudsperson's annual report is envisaged under Chapter 25 of the RoP which concerns the "*Hearing messages, statements, speeches and annual reports*" and does not fall under Article 100 of the RoP, which deals with the reports of state bodies that *must be approved* by the *Jogorku Kenesh* with an assessment of the activities of the respective state body. It is noted however that Article 7(7) of the existing 2002 Law on the Ombudsman (*Akyikatchy*) of the Kyrgyz Republic, which is still in force pending the adoption of the new Constitutional Law, provides that the *Akyikatchy* and Deputies may be dismissed in the event of non-approval of a report they have submitted to the Parliament. This provision does not comply with the Paris Principles as it endangers security of tenure, which constitutes a fundamental guarantee of NHRI independence. In this respect, in its report from March 2012, the SCA pointed out that this provision "*has the potential to affect the ability of the [Ombudsperson] to submit independent and unbiased reports on the human rights situation in the country*" and further "*expresse[d] its concern that this provision is so broad as to impact on the security of tenure […] and may adversely affect the independence of the [Ombudsperson]*", also noting that *"[d]ismissal should not be allowed based solely on the discretion of appointing authorities*".[104] It is indeed **essential that the parliament should not be required to formally adopt such an annual report since such a vote would indirectly call into question the independence of the institution,**[105] all the more if non-adoption constitutes a ground for dismissal which is not compliant with Paris Principles as stated above. Indeed, as underlined in previous ODIHR opinions, the main purpose of the parliamentary debate should be informational in nature, so as to bring to the parliament's intention the issues raised by the report and for the parliament to take action to address them, as appropriate.[106]

95. *Procedural safeguards in case of dismissal* - Another concern related to the issue of dismissal is that the Rules of Procedure do not provide for the right of the above-mentioned office-holders whose dismissal is envisaged to be heard prior to the vote on the dismissal in Parliament.[107] It is recommended **that a procedure be prescribed in Article 123 of the Rules of Procedure ensuring a public hearing so that the case, as well as the views of the said public-holders, are made public**.

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[103] See e.g., ODIHR, *Opinion on the Draft Federal Law on the Support to the National Human Rights Institution of Switzerland* (2017), para. 75; and *Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland* (2017), para. 56. See also Venice Commission, *Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova*, adopted by the Venice Commission at its 103rd Plenary Meeting (Venice, 19-20 June 2015), CDL-AD(2015)017, para. 61.

[104] See SCA, *Report of March 2012*, p. 11.

[105] See e.g., ODIHR, *Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland* (2017), para. 80. See also e.g., Venice Commission, *Opinion on the Draft Law on Ombudsman for Human Rights of Bosnia and Herzegovina*, adopted by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), CDL-AD(2015)034, para. 36.

[106] See e.g., ODIHR, *Opinion on the Draft Act on the Independent National Human Rights Institution of Iceland* (2017), para. 80.

[107] Regarding the Prosecutor General, see e.g., ODIHR, *Opinion on the Draft Constitutional Law of Kazakhstan on the Prosecution Service* (2022), Sub-Section 4.2; Venice Commission, *Compilation of Venice Commission Opinions and Reports concerning Prosecutors* (2022), Section IV.B.3; and Venice Commission, *Opinion on the Draft Law on the Public Prosecutors Office and the Draft Law on the Council of Public Prosecutors of "the former Yugoslav Republic of Macedonia"*, CDL-AD(2007)011, para. 61. Regarding NHRI specifically, see for instance, Venice Commission, *Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova* AD(2015)017, paras. 60-61.

96. *Lifting of the Immunity of the Prosecutor General and of the Ombudsperson* - According to Article 126(1) of the RoP, the *Jogorku Kenesh* shall give its consent to bring the Prosecutor General and the Ombudsperson (and his/her deputies) to criminal responsibility upon the proposal of the President or of the Prosecutor General, respectively. The commission of inquiry in charge of the matter is obliged to hear the office-holders subject to the proposal to lift immunity (Article 126(3)). Article 126(5) requires an absolute majority of the statutory number of deputies of the *Jogorku Kenesh* for the adoption of a resolution lifting the said immunity. As underlined above regarding dismissal, in order to protect the independence of the office-holders, it is important that if the lifting of the immunity is to be decided by the parliament, a special majority is required.[108] While the indicated majority is a higher threshold than a simple majority of those deputies present at the parliamentary session, it is doubtful whether such a majority would prevent a potential politicization of the decision regarding the lifting of immunity.[109] **A higher majority could be, therefore, considered in order to de-politicize and avoid abuse of the procedure**.

## 7. PARLIAMENTARY ETHICS

97. Chapter 29 addresses some issues relating to the parliamentary ethics of the MPs. Article 141 primarily deals with instances of conflict of interest, also referring to the Code of Ethics, as well as general behaviour during meetings. Article 142 deals with rules of discipline and ethics in the buildings of the *Jogorku Kenesh*, including dress code and prohibited conducts, while Article 143 elaborates on the measures that may be adopted against deputies and related procedural matters. While addressing some of the ethics issues, **Chapter 29 should be further expanded both with regards to the underlying ethical values as well as the oversight mechanism**.

98. **In this respect, all recommendations presented in *2022 ODIHR Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic* are applicable, including that MPs should be provided and get themselves familiar with the Code of Ethics at the start of their term as a part of the induction course on raising the awareness about principles and values that the Code is promoting**.[110]

99. In addition, as previously noted by ODIHR, in light of various studies suggesting that the overwhelming majority of women in parliaments has been subjected to violence (psychological or physical), there is a need that parliamentary rules address sexual or other forms of harassment or violence against women in politics, making parliaments a safe place for women to work.[111] **It is, therefore, recommended to supplement the RoP in this respect, clearly providing for the highest standards of integrity, courtesy and mutual respect towards women parliamentarians and those belonging to minority groups, making it clear that sexist and other exclusionary language is intolerable.** This should clearly identify the behaviours and acts that are prohibited towards both the other MPs and the parliamentary staff as well as the penalties and consequences for such

[108] For instance, regarding the NHRI, see GANHRI SCA, *General Observation 2.3*, which recommends that "*a special majority of parliament*" be required as a guarantee of independence.

[109] See e.g., regarding NHRI, ODIHR, *Final Opinion on the Draft Act Amending the Act on the Commissioner for Human Rights of Poland* (2016), para. 59. See also, although in the context of removal from office, Venice Commission, *Opinion on the Law on the People's Advocate (Ombudsman) of the Republic of Moldova*, CDL-AD(2015)017, paras. 60-61.

[110] See *ODIHR Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic*, 2022, para 73.

[111] For example, a survey conducted by the Inter- Parliamentary Union (IPU) suggests that 85.2 per cent of the women parliamentarians had suffered psychological violence in the course of their parliamentary term of office, and 67.9 per cent has been confronted with sexist or sexual remarks on multiple occasions over the course of their terms. See IPU, *"Sexism, harassment and violence against women in parliaments in Europe"*, 2018.

breaches.[112] **It is also key that applicable legislation, RoP or other policy of the *Jogorku Kenesh* provides for an effective and independent complaints-handling mechanism, applicable both to MPs and parliamentary staff that is confidential, responsive to the complainants, fair to all parties, based on a thorough, impartial and comprehensive investigation and timely**.

100. While it is mentioned in the Code of Ethics that it was elaborated in order to implement the Law "On the Rules of Procedure of the *Jogorku Kenesh*" and the Law on the Status of MPs of the *Jogorku Kenesh* of the Kyrgyz Republic, it would be advisable to clearly indicate which ethics related issues need to be regulated by the Code of Ethics, and which should be subject to regulation by the RoP and other legislation. Given the complementary nature of the Code of Ethics, it should not create a potential overlaps and diverging interpretations of binding legal norms provided in the RoP and other legislation.

101. For example, Article 141 of the RoP established some rules on the parliamentary ethics which deputies should adhere to. Although the RoP make a reference to the Code of Ethics in this respect, it would be advisable to ensure that these provisions are synchronized for the purpose of legal clarity and to avoid possible overlap. Similarly, Article 143 establishes measures applicable to MPs in case of inappropriate behaviour during the session (warning; deprivation of the floor when considering a specific issue by turning off the microphone; deprivation of the right to speech for a period until the end of the meeting), and consequences of being absent from the parliamentary meetings/ sessions for no valid reasons (deduction from the salary). At the same time, Chapter 10 of the Code of Ethics stipulates a number of disciplinary measures for non-compliance with its provisions, which go far beyond the above-mentioned measures defined by Article 143 of the RoP.

102. The rules on conflict of interest defined in Article 141 of the RoP look quite general and run the risk of being ineffective. Aside from the requirements obliging each MP to adhere to the rules of ethics for deputies, the RoP neither impose any form of transparency/disclosure requirements on deputies, nor include certain anti-corruption provisions, e.g., disclosure requirements or limits with respect to the receipt of gifts or favours. Unless provided by other legislation, the RoP should be supplemented in this respect.

103. While more details are provided in the Code of Ethics (even though the respective provisions of the Code of Ethics on the conflict of interest also raise a lot of questions[113]), **it is recommended to adopt more systematized and detailed rules on conflict of interest, or if these rules are already available in other legal acts, a cross-reference to them should be necessary**. In any case, it is essential to ensure consistency and coherence of the respective rules with binding legal norms provided in other legislation on conflict of interest, corruption prevention, receipt of gifts etc. to avoid potential overlaps and diverging interpretations.

104. Apparently, there are no rules on who, beyond the interested deputy, can initiate the process of establishing the conflict of interest and what are the modalities of this process. As already noted by ODIHR, while there are various approaches to monitoring and sanctioning potential breaches of codes of conduct/ethics by MPs, overall the relevant mechanism should provide for a clear procedure for lodging complaints about suspicions

[112] See *ODIHR Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic*, para. 31. See also ODIHR, *Comments on the Law on the Assembly and Rules of Procedure of the Assembly of Northern Macedonia (2020)*, para. 66; and pages 37-38 of 2019 *IPU Guidelines for the elimination of sexism, harassment and violence against women in parliament*.

[113] See ODIHR, *Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic (2022)*, Recommendation G and Sub-Section 7.2.

of MPs' breach of the Code. **In this respect, a clear complaint and monitoring mechanism could be defined by the RoP, including identifying and establishing the relevant body responsible for overseeing the compliance with the Code of Ethics and discipline, to ensure its greater legality and enforceability.**

**RECOMMENDATION I.**

To further enhance Chapter 29 both in terms of underlying ethical values as well as oversight mechanism.

## 8. GENDER AND DIVERSITY CONSIDERATIONS

105. Parliamentary rules of procedure should reflect gender and diversity perspectives. Gender and diversity mainstreaming should be an important aspect of staffing policies with respect to parliamentary support staff and the secretariat.

106. It is noted that one of the key principles guiding the activities of the *Jogorku Kenesh* is to ensure the representation of no more than 70 percent of persons of the same sex in its bodies (Article 4(9)). In addition, Article 18(1)(13) of the RoP provides that the Speaker should ensure to "*appoint officials of the Staff in accordance with this Regulation, observing the principle of representation by no more than 70 percent of persons of the same sex".* According to Article 122(1) of the RoP, the *Jogorku Kenesh*, when electing, approving, giving consent to the appointment of public officials and reviewing candidates for that purpose, should take into consideration the representation of no more than 70 percent of persons of the same sex.

107. These provisions are in principle welcome and demonstrate the willingness to put in place governance structures that are more gender balanced in terms of representation. At the same time, parliament should be encouraged to further enhance gender balance beyond the said threshold, otherwise risking creating a "glass ceiling" for representatives of an under-represented sex, and thus potentially contributing to the perpetuation of gender inequality.[114] It is therefore advisable **to consider introducing a staggered timeline attached to a gradual increase of the target threshold, in order to create proper incentives to gradually, over time, reach greater gender balance in all bodies of the *Jogorku Kenesh*, especially in management positions**.[115]

108. Moreover, there are neither further provisions in the RoP to promote more gender-balanced or equal representation of women and men, including in the decision-making positions, nor any gender and diversity considerations for the composition of committees and parliamentary bodies. It is important to ensure that women and minority groups are sufficiently represented in parliaments and in parliamentary bodies, in particular, that

[114] See e.g., ODIHR, *Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine* (2013), paras. 30-31.

[115] UN Economic and Social Council (ECOSOC) Resolution 1990/15 of 24 May 1990 recommended a target of 30% women in leadership posts by 1995 and of 50% by 2000; the Beijing Platform for Action (1995) stipulates the aim of "gender balance". The Council of Europe Recommendation on balanced participation of women and men in political and public decision making (2003) defined gender balance as meaning "*that the representation of either women or men in any decision-making body in political or public life should not fall below 40 per cent*," which set a "*quantitative parity threshold, with 40 per cent women and 40 per cent men, the remaining 20 per cent being open to either of the sexes in a flexible way*" to help achieve equal representation. The Sustainable Development Goals pledge achieving 'gender equality' by 2030, with the specific indicator to "*ensure women's full and effective participation and equal opportunities for leadership at all levels of decision-making in political, economic and public life*." A key target of the Sustainable Development Goals (SDG 16.7) is to ensure responsive, inclusive, participatory and representative decision-making at all levels.

women and men have equal opportunities in appointments to public positions, when seeking to run for public office in parliaments, and that minority groups are not unduly disadvantaged. The leadership of parliaments and the composition and leadership of committees should be also gender balanced and respect diversity. When legislatures establish parliamentary committees, care should be taken that such bodies are not only composed of representatives of different political parties, but also of a balanced number of women and men, and of persons of different religions and ethnicities.

109. In this respect, it would be advisable to supplement the RoP with the requirement that a certain balance between men and women, and an appropriate representation of diverse groups, should be ensured during the process of appointing the committee members and their leadership. One way of doing this would be to introduce minimal representation rates for female and male MPs in all parliamentary working bodies and delegations, as well as minimal representation rates for leadership roles of parliamentary working bodies.

110. Further, gender or diversity requirements do not necessarily or automatically translate into more balanced or diverse representation in the said bodies.[116] 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, nor monitoring mechanism.[117] To ensure the effectiveness of gender balance requirements, **the RoP should specify the consequences in case of non-compliance with the minimum threshold in the context of appointments and recruitments (e.g., ground for refusing the said appointments)**[118] **and specify that the Speaker or the Chief of Staff should report annually on the representation of women and men within parliamentary structures, at all levels**.

111. Article 18(1) on the Speaker's powers should include also development of policies, measures or guidance for a better alignment of work-life balance, including family-friendly and flexible working hours and related entitlements, as well as introducing family and children friendly spaces in the parliament building, for MPs and parliamentary staff.[119] The inclusion of persons with disabilities in political life should also be promoted, by including them in key parliamentary bodies, and more generally, public decision-making processes, including policy- and law-making, as well as ensuring accessibility of the *Jogorku Kenesh*'s website, documents as well as premises.[120]

112. Finally, ensuring that gender neutral and inclusive language is used not only in the legislative procedure but also in legislation, including in the RoP, is an important contribution to gender equality and inclusiveness. In this respect, the RoP should be reviewed to ensure that gender neutral and inclusive language is used throughout. In this respect, for instance, Article 3(1)(42) refers to the "*Toraga*" or "*Toraym*" of the *Jogorku Kenesh* but then implies that the term "*Toraga*" will be used throughout the RoP. As the

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[116] See e.g., OSCE/ODIHR, *Opinion on draft laws of Mongolia on presidential, parliamentary and local elections* (25 November 2019), paras. 28-29.

[117] See ODIHR, *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2019), para. 45. See also e.g., *Report of the UN Working Group on the issue of discrimination against women in law and in practice*, A/HRC/23/50, 19 April 2013, para. 39; and OSCE *Gender Equality in Elected Office: A Six-Step Action Plan* (2011), pp. 33-34.

[118] For instance, where a clear requirement is made to reflect a gender balance or promote diversity in the relevant legislation, a proposed list that does not reflect a gender balance could be referred back for revision by the relevant parliamentary group; see ODIHR, *Opinion on Draft Amendments to Ensure Equal Rights and Opportunities for Women and Men in Political Appointments in Ukraine* (2013), paragraphs. 32-35. See also the French *Law n ° 2014-873 of 4 August 2014 for real equality between women and men*, Articles 66 and 75, which provide that said appointments shall be annulled if gender balance is not respected (except for appointments of members from the under-represented gender), though this will not render null and void the decisions that may have already been adopted by said body in the meantime.

[119] See e.g., *ODIHR Opinion on the Code of Ethics for the Deputies of the Jogorku Kenesh (Parliament) of the Kyrgyz Republic*, para. 32; ODIHR, *Comments on the Law on the Assembly and Rules of Procedure of the Assembly of Northern Macedonia (2020)*, para. 66; and pages 16-17 of 2017 *IPU Plan of Action for Gender-Sensitive Parliaments*.

[120] See *ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019), Section V on Parliaments.

term "*Toraga*" is not a gender neutral term, this could imply that the position is occupied by a man only. To ensure the use of gender neutral and inclusive language, it is recommended that, whenever possible, reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word, though ensuring that this does not convey a pejorative connotation.[121]

*[END OF TEXT]*

[121] See e.g., <THE UNITED NATIONS Gender mainstreaming in speaking and writing>. See also, as another example, European Parliament, *Gender-Neutral Language in the European Parliament* (2008, updated in 2018); *European Parliament Resolution on Gender Mainstreaming in the European Parliament* (2021); Council of the European Union, *General Secretariat, Inclusive Communication in the GSC* (2018).