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OPINION ON THE CODE OF ETHICS FOR THE DEPUTIES OF THE JOGORKU KENESH (PARLIAMENT) OF THE KYRGYZ REPUBLIC

KYRGYZ REPUBLIC

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Based on an unofficial English translation of the Code commissioned by the OSCE Office for Democratic Institutions and Human Rights.



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EXECUTIVE SUMMARY

The importance of institutional and individual integrity of parliament and parliamentarians and of public accountability has been increasingly recognized as core aspects of political life. Parliamentary codes of conduct/ethics, which seek to guide the behaviour of parliamentarians, constitute an important instrument of parliamentary integrity systems and practices across the OSCE region.

However, their mission goes beyond clear-cut rules prescribing or prohibiting particular acts. Being voluntary in nature, they intend to express common values and fundamental principles to maintain and enhance public trust both in parliament itself and in representative democracy more generally. Codes of conduct/ethics do not in themselves guarantee ethical behaviour and should serve as an aspiration to an ethical and moral conduct rather than a commandment. At the same time, a substantial improvement of parliamentary integrity is not possible without the setting up of a robust framework of mechanisms and tools for the codes' implementation in practice. Their effectiveness also depends on a range of factors which can vary greatly from country to country, but include a functioning civil society, the existence of a cultural, political and administrative context conducive to transparency and integrity on the part of politicians and civil servants, as well as free media.

The Code of Ethics for the Deputies of the *Jogorku Kenesh* (Parliament) of the Kyrgyz Republic (hereinafter "the Code") adopted on 20 June 2008 serves as a complementary document to the existing legal framework regulating the work of the *Jogorku Kenesh* and parliamentarians. It provides instructions and guidance for ethical behaviour of Members of Parliament (hereinafter "MPs" or "deputies"), as well as rules for responding to unacceptable conduct of MPs. It contains important provisions that are largely based on and have been inspired by international standards and good practices on developing ethical guidance for public officials.

At the same time, the Code would benefit from general revision primarily to strengthen the safeguards for deputies' exercise of their right to freedom of expression, provide higher ethical standards to address sexual or other forms of harassment or violence against women parliamentarians, as well as to introduce effective appeals and monitoring mechanisms affording due process guarantees.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the Code as a promoter of ethical and moral behaviour of parliamentarians in accordance with international standards and good practices:

- A. to make appropriate changes throughout the text emphasizing the status of the Code as a framework for recommended and desirable behaviour by parliamentarians, rather than imperative rules; [para. 22] and to specify in the Code the set of ethical standards that should guide MPs when performing their work; [para. 27]
- B. regarding equality, non-discrimination and private life:
 - 1. to expand Article 2.1 by specifying that parliamentarians need to perform their duties without prejudices and shall not incite any kind of discrimination, harassment or violence based on national or ethnic origin, religion or belief, disability, sex, sexual orientation, gender identity,

- political opinion, or any other ground, and to replace the term “loyalty” with “respect”; [para. 30]
2. to explicitly include the highest standards of integrity, courtesy and mutual respect towards women parliamentarians in the Code, making it clear that sexist and other discriminatory language is intolerable, as well as give due consideration to introducing provisions on flexible working hours and family-friendly environment, as well as parental leaves for both parents; [para. 32]
 3. to clarify the conditions under which the regulation of the private life of a parliamentarian would be acceptable by the rules of this Code; [para. 35]
- C. to introduce in Article 5.2 guarantees on the right to freedom of expression, especially during political and/or plenary debate, unless it provokes hatred or intolerance on any ground, direct or indirect, or calls for violence; [para. 40]
- D. regarding rules of conduct at meetings:
1. when devising a dress code policy, to take into account the potential issues of discrimination, especially given possible religious, ethnic and/or gender sensitivities; [para. 45] and to reformulate Article 2.5 by stating that whichever attire is chosen, it should not diminish or denigrate anyone’s dignity; [para. 44]
 2. to ensure compliance of Article 2.5 with the new Rules of Procedure to avoid a full prohibition of the usage of mobile phones during parliamentary sessions; [para. 46]
- E. to provide under Chapter 4 of the Code that the staff of the Parliament when carrying out their duties should adhere to the same parliamentary ethics as MPs, and introduce safeguards against harassment and ill-treatment, including an effective and independent complaint mechanism; [paras. 51-52]
- F. to add a reference to gifts (from foreign officials/citizens) to Article 8.6 or Chapter 6, which regulates rules of conduct of a parliamentarian during the interaction with foreign states and citizens; [para. 55] and to consider including non-binding recommendations regarding post-employment or conditions for future employment of MPs (and possibly their close relatives), while ensuring compliance with legislation in force; [para. 57]
- G. regarding conflict of interest:
1. to add provisions recommending that parliamentarians abstain from involvement in meetings/decisions that could be compromised by their private-capacity interests and affiliations; [para. 59]
 2. to introduce conflict of interest safeguards for parliamentary staff and family members in connection with decisions taken and meetings attended; [para. 60]
 3. to replace reference to the “interests of the state” with “should act solely in terms of the public interest” in Article 9.6; [para. 62]
- H. to supplement the Code with a clear complaint and monitoring mechanism, including identifying and establishing the relevant body responsible for overseeing the compliance with the Code, as well as ensuring procedural safeguards, affording the parliamentarian in question due process guarantees in case of alleged non-compliance with the provisions of the Code. [para. 67 and 70]

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 OSCE commitments, the OSCE/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 22 July 2022, the Secretary General of the *Jogorku Kenesh* of the Kyrgyz Republic, sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “ODIHR”) a request for a legal review of the Code of Ethics for the Deputies of the *Jogorku Kenesh* of the Kyrgyz Republic (hereinafter “the Code”).
2. On 3 August 2022, ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the Code with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. ODIHR conducted this assessment within its mandate to assist the OSCE participating States in the implementation of their OSCE commitments.

II. SCOPE OF THE OPINION

4. The scope of this Opinion covers only the Code submitted for review. At times, the Opinion refers to the Law “On the Rules of Procedure of the *Jogorku Kenesh* of the Kyrgyz Republic”, in so far as it regulates the conduct of deputies and complement the Code under review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating parliamentary rules and standards and public integrity in the Kyrgyz Republic.
5. 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 Code. The ensuing legal analysis is based on international and regional human rights and rule of law 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 legislation, ODIHR does not advocate for any specific country model; but 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 be approached with 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.
6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*¹ (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*² and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.
7. This Opinion is based on an unofficial English translation of the Code commissioned by ODIHR, which is annexed to this document. Errors from translation may result. The

1 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, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women>. The Kyrgyz Republic acceded to the Convention on 10 February 1997.

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

Opinion is also available in Russian. In case of discrepancies, the English version shall prevail.

8. 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 respective subject matters in the Kyrgyz Republic in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS

9. The importance of institutional and individual integrity of parliament and parliamentarians and of public accountability has been increasingly recognized as core aspects of political life. While the international community of parliaments and parliamentary support organizations have successfully elaborated international standards or benchmarks for the parliament as an institution, far less progress has been made towards developing standards for the ethical conduct of individual MPs.³
10. Relevant legally binding documents at the UN level include in particular the *United Nations (UN) Convention against Corruption* (hereinafter “UNCAC”)⁴ concerning corruption of public officials, including parliamentarians. The Convention provides the benchmark for anti-corruption initiatives, by setting out a comprehensive set of standards, measures and rules for countries to implement, that include both preventative measures and criminalization of certain acts. Particularly, Article 8 of the UNCAC provides that States Parties “*shall promote, inter alia, integrity, honesty and responsibility among its public officials, in accordance with the fundamental principles of its legal system*” (para. 1) and “*shall endeavour to apply, within its own institutional and legal systems, codes or standards of conduct for the correct, honourable and proper performance of public functions*” (para. 2). The United Nations Office on Drugs and Crime (hereinafter “UNODC”) *Legislative Guide for the Implementation of UNCAC* describes the measures needed to implement the Convention and takes a three-stage approach which identifies a) the mandatory requirements that states need to take; b) the optional requirements which states are obliged to consider and c) further optional measures which states may wish to implement, including in relation to the development of codes of conduct.⁵ The principles related to the accountability and integrity of public officials, such as those reflected in the UN General Assembly Resolution 51/59 “Action

3 The Inter-Parliamentary Union (IPU) adopted the *Universal Declaration on Democracy* in 1997 (available at: <https://www.ipu.org/our-impact/strong-parliaments/setting-standards/universal-declaration-democracy>), which in addition to outlining the key elements of democracies, notes that democracy “requires the existence of representative institutions at all levels and, in particular, a Parliament in which all components of society are represented and which has the requisite powers and means to express the will of the people by legislating and overseeing government action.”. Since that time, many regional parliamentary associations, including the Commonwealth Parliamentary Association (CPA) and the Assemblée Parlementaire de la Francophonie (APF), have adopted benchmarks or criteria for democratic parliaments, which describe the key characteristics of a democratic parliament. More recently, the Declaration on Parliamentary Openness has become an important reference point for parliaments that wish to become more open and transparent. The Declaration on Parliamentary Openness has been endorsed by over 180 civil society parliamentary monitoring organizations from over 80 countries, as well as an increasing number of parliaments and parliamentary associations.

4 See *United Nations (UN) Convention Against Corruption* (New-York, 2004). The Kyrgyz Republic ratified the UNCAC on 16 September 2005.

5 See UN Office on Drugs and Crime (UNODC), *Legislative Guide for the Implementation of the UN Convention against Corruption* (2nd revised edition, 2012), paras. 71-97.

against Corruption”, which outlines “a model international code of conduct for public officials”, also serve as useful guidance at the international level.⁶

11. In addition, the *International Covenant on Civil and Political Rights* (hereinafter “ICCPR”),⁷ particularly its Articles 17 and 19, has to be respected as important guarantee of parliamentarians’ rights, especially their rights to respect for private and family life and freedom of expression.
12. At the OSCE level, the public accountability and integrity of parliaments are cornerstone principles to which OSCE participating States have committed, dating back to the 1990 Paris Document, where they affirmed 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”.⁸ In the 1999 Istanbul Document, they followed up with the pledge to strengthen their efforts to “promote good government practices and public integrity” in a concerted effort to fight corruption.⁹
13. The OSCE human dimension commitments on democratic institutions recognize that vigorous democracy depends on the existence as an integral part of national life of democratic values and practices as well as an extensive range of democratic institutions.¹⁰ This implies that, further to building democratic institutions, it is important to ensure that public officials adhere to certain professional and ethical standards.¹¹ In this regard in its 2006 *Brussels Declaration*, the OSCE Parliamentary Assembly (OSCE PA),¹² after recognizing that good governance, particularly in national representative bodies, is fundamental to the healthy functioning of democracy, encouraged all parliaments of OSCE participating States to:
 - develop and publish rigorous standards of ethics and official conduct for parliamentarians and their staff;
 - establish efficient mechanisms for public disclosure of financial information and potential conflicts of interests by parliamentarians and their staff; and
 - establish an office of public standards to which complaints about violations of standards by parliamentarians and their staff may be made.
14. Furthermore, Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly¹³ notes a code of conduct as a significant step towards enhancing the institutional framework that supports transparency, accountability and integrity.
15. While the Kyrgyz Republic is not a Member State of the Council of Europe (hereinafter “CoE”), the European Convention on Human Rights and Fundamental Freedoms (hereinafter “ECHR”),¹⁴ the developed case law of the European Court of Human Rights (hereinafter “ECtHR”) and other CoE instruments, such as the Criminal Law

6 • UN, *General Assembly Resolution 51/59 on Action against Corruption*, New York, 12 December 1996.

7 See the *UN International Covenant on Civil and Political Rights*, adopted by the UN General Assembly by the Resolution 2200A (XXI) of 16 December 1966, available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights>; The Kyrgyz Republic acceded to the Covenant on 7 October 1994.

8 See the *Charter of Paris for a New Europe*, Paris, 19 - 21 November 1990

9 See the *1999 OSCE Istanbul Document*, 19 November 1999.

10 See *Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE* (Copenhagen, 5 June-29 July 1990), para. 26.

11 See ODIHR, *Background Study: Professional and Ethical Standards for Parliamentarians*, (Warsaw, 2012), p. 8.

12 See OSCE Parliamentary Assembly, *Brussels Declaration of the OSCE Parliamentary Assembly and Resolutions* (Brussels, 2006), paras. 32–33.

13 *Resolution on a Code of Conduct for Members of the OSCE Parliamentary Assembly* adopted on its 29th annual session in Birmingham on 2-6 July 2022, para 2.

14 The ECHR was, signed on 4 November 1950, and entered into force on 3 September 1953.

Convention against Corruption,¹⁵ may serve as useful reference documents from a comparative perspective. The ethics and conduct regime interacts with provisions for parliamentary immunity and the freedom of expression of MPs, this being political speech *par excellence*. The importance of the right to freedom of expression, as guaranteed by Article 10 of the ECHR, especially for an elected representative of the people has been consistently emphasized by the ECtHR in its case-law, though noting that MPs may have to face restrictions pertaining to their political conduct as well.¹⁶ Politicians also have the right to respect for private and family life as guaranteed by Article 8 of the ECHR,¹⁷ though it should be balanced with the right of the public to be informed, considering in particular to what extent an infringement of their privacy could be justified in light of the contribution to a debate of general interest to society and taking into account their public function/power/profile as relevant criteria.¹⁸

16. The Open Government Partnership, a multilateral initiative aimed at securing concrete commitments from governments to promote transparency, empower citizens and fight corruption, further included the adoption of ethical and integrity standards for MPs in its Open Government Declaration, which had been signed by 78 countries so far, including Kyrgyz Republic.¹⁹
17. In addition, a number of other international documents enshrine international good practice in democratic governance, including basic principles to uphold the integrity of the parliament and retain public trust, while requiring MPs to act in such a way as to not bring the institution into disrepute²⁰. Among others, the [ODIHR Background Study: Professional and Ethical Standards for Parliamentarians \(2012\)](#) and ODIHR Study [Parliamentary Integrity: A Resource for Reformers \(2022\)](#) provide analyses and examples of good practices on how to build and reform systems that set professional and ethical standards for MPs and regulate their conduct to ensure that those standards are met.²¹ A number of other resource documents have been developed at the CoE level and constitute soft law instruments which are advisory in nature but may serve as useful reference documents from a comparative perspective.²² The efforts of CoE Group of States against Corruption (GRECO) towards developing stronger integrity guidelines

15 See [CoE, Criminal Law Convention on Corruption](#) (Strasbourg, 27 January 1999).

16 See e.g., ECtHR, [Karácsony and Others v. Hungary](#) [GC], Applications nos. 42461/13 and 44357/13, judgment of 17 May 2016, para. 139, where held that, while the freedom of parliamentary debate is of fundamental importance in a democratic society, it is not absolute in nature. Indeed, as emphasized by the ECtHR, “the exercise of freedom of expression in Parliament carries with it ‘duties and responsibilities’ referred to in Article 10(2) [of the ECHR] in order to ensure the effective operation of Parliament” and parliaments are entitled “to react when their members engage in disorderly conduct disrupting the normal functioning of the legislature. Just as the generally recognized rule of parliamentary immunity offers enhanced, but not unlimited, protection to speech in Parliament, so some restrictions on speech in Parliament – motivated by the need to ensure that parliamentary business is conducted in an orderly fashion – should likewise be regarded as justified” (para. 139).

17 See e.g., ECtHR, [Karhuvaara and Itälehti v. Finland](#), Application no. 53678/00, judgment of 16 February 2005, para. 42.

18 See e.g., ECtHR [Von Hannover v. Germany](#), Application no. 59320/00, judgement of 24 September 2004; and [Karhuvaara and Itälehti v. Finland](#), Application no. 53678/00, judgment of 16 February 2005.

19 “Open Government Declaration”, Open Government Partnership, September 2011, <https://www.opengovpartnership.org/process/joining-ogp/open-government-declaration/>. In particular, Kyrgyz republic is currently implementing 17 commitments from their 2018-2020 action plan, featuring commitments related to transparency, participatory law-making, freedom of information and civic space. See <https://www.opengovpartnership.org/members/kyrgyz-republic/>

20 See, for example, the [Westminster Foundation for Democracy Handbook on Parliamentary Ethics and Conduct: A Guide for Parliamentarians](#), which was produced under the auspices of the Global Task Force on Parliamentary Ethics of the Global Organization of Parliamentarians Against Corruption (GOPAC).

21 See ODIHR, [Background Study: Professional and Ethical Standards for Parliamentarians](#), (Warsaw, 2012); and ODIHR Document: [Parliamentary Integrity: A Resource for Reformers \(2022\)](#).

22 See, for instance, [CoE Guiding Principles for the Fight against Corruption](#), which include Principle 15, i.e., “to encourage the adoption, by elected representatives, of codes of conduct”, available at: [https://rm.coe.int/rights-and-duties-of-local-and-regional-elected-representatives-the-ri/1680718f96](https://polis.osce.org/council-europe-resolution-97-24-twenty-guiding-principles-fight-against-corruption#:~:text=Guiding%20principles%20include%20raising%20public,well%20as%20increasing%20international%20cooperation; Parliamentary Assembly of the CoE, Resolution 1214 attesting to growing international consensus on the necessity of a disclosure mechanism for members’ interest as a minimum in regulating parliamentary conduct; CoE Resolution 316 of the Congress of Local and Regional Authorities (available at: <a href=)) focusing on the risks of corruption and emphasizing the importance of promoting a “culture based on ethical values”; and the [CoE Recommendation CM/Rec \(2017\) on the legal regulation of lobbying activities in the context of public decision making and explanatory memorandum](#) (available at: <https://rm.coe.int/09000011680700a40>).

for members of parliament should also be mentioned²³. In particular, in its Fourth Evaluation Round assessing anti-corruption measures among parliamentarians, judges and prosecutors, the GRECO evaluation teams strongly emphasized the importance of codes of conduct and recommended that they should be developed as soon as possible in countries where such codes had not been established.²⁴

2. BACKGROUND

18. The Code, adopted on 20 June 2008 by resolution of the *Jogorku Kenesh*, serves as a complementary document to the existing legal framework regulating the work of the *Jogorku Kenesh* and parliamentarians, and provides instructions and guidance for ethical behaviour, as well as rules for responding to unacceptable conduct of MPs.
19. The legal review of the Code was requested, among other, to ensure its compliance with the new Rules of Procedure of the *Jogorku Kenesh*. Following the adoption of the 2021 Constitution of the Kyrgyz Republic, a new draft Constitutional Law “On the Rules of Procedure of the *Jogorku Kenesh*” was elaborated and adopted by the Parliament on 20 October 2022. On 16 November 2022 the Law was signed by the President of the Kyrgyz Republic. As appropriate, the present Opinion will make reference to the new Rules of Procedure..
20. Generally, codes of conduct/ethics represent a set of rules of behaviour to which the signatories voluntarily agree to adhere. Such codes cannot guarantee ethical behaviour by applying sanctioning regime to punish wrongdoers. They rather recognize the fact that the conduct of individual MPs is ultimately a concern for the parliament as an institution; thus a failure to respond to unacceptable behaviour may have detrimental effect on public trust in parliament as an institution, and in representative democracy overall.
21. At the same time, a substantial improvement of parliamentary integrity would not be possible without the setting up of a robust framework of mechanisms and tools for their implementation in practice. The effectiveness of such codes also depends on a range of factors that can vary greatly from country to country, but include a functioning civil society the existence of a cultural, political and administrative context conducive to transparency and integrity on the part of politicians and civil servants; and free media.²⁵

3. GENERAL PROVISIONS

22. The preamble of the Code stipulates that it “*is a voluntary commitment by a parliamentarian [...] to observe the rules of conduct and ethical standards in order to decently serve the society, organize effective law-making activities, and exclude the possibility of conflicts of interests, abuses and corruption.*” At the same time, Article 1.2 notes that the norms of behaviour established by this Code “*should be followed by a parliamentarian in order to promote citizens’ trust to the [parliament] and the establishment of due culture in the activities of parliamentarians*”. In this respect, the

23 The Kyrgyz Republic has not acceded to any Council of Europe conventions or partial agreements, but in 2014 the Parliamentary Assembly of the Council of Europe (PACE) granted the Kyrgyz Parliament Partner for Democracy Status; the results of the first assessment, based on a report by Jacques Maire (France, ALDE), are available at: <https://pace.coe.int/en/news/8774/partnership-with-the-kyrgyz-parliament-has-produced-mixed-results-says-pace>

24 See *GRECO, Fourth Evaluation Round, Evaluation and Compliance Reports*: out of 49 countries part of the GRECO’s evaluation, 28 have adopted or have taken steps in adopting such a code. However, only nine of these countries have fully complied with GRECO’s recommendations in this respect.

25 See European Commission (EC) Study, *European Institute of Public Administration, Regulating Conflict of Interest for Holders of Public Office in the European Union*, October 2007, p.130.

language of Article 1.2 should not be overly imperative and rigid. This formulation risks transforming the Code into a formalistic document, the implementation of which might be difficult in practice. The Code should serve as an ethical foundation and help to develop a culture of integrity and ethics among parliamentarians, contributing to greater public trust. For example, the British Code of Ethics²⁶ and the Latvian Code of Conduct²⁷ are formulated in more aspirational language, recognizing the value of admitting potential mistakes by parliamentarians. **It is recommended, therefore, to make appropriate changes throughout the text emphasizing the status of the Code as a framework for recommended and desirable behaviour by parliamentarians, rather than imperative rules.**

23. The mission of the codes of conduct/ethics goes beyond clear-cut rules prescribing or prohibiting particular acts. Being voluntary in nature, they intend to express common values and fundamental principles to maintain and enhance public trust both in parliament itself and in representative democracy more generally. However, the Code does not explicitly define these ethical standards in the Kyrgyz Republic.
24. Article 1.1 states that parliamentarians should take an oath by attesting to “*perform [their] duties in the interests of all the people*”. The collective values are envisaged in Article 1.4 stating that parliamentarians “*should be aimed at achieving the welfare and prosperity of the state*”, and that they should “*refrain from any activities and behaviours that may harm their authority, as well as the authority of the Jogorku Kenesh and the state as a whole*” (Article 1.5).
25. At the same time, the exact list of values of individual conduct – both within the parliament and when interacting with the general public – are not clearly identified. It is only Article 3.3 which requires a parliamentarian, when meeting the voters in person, to strive to be a model of professionalism, decency and fairness, stating that “*a parliamentarian must be worthy of the voters' trust and by their own example promote the strengthening of state discipline and the fulfillment of civic duties*”. Also Article 7.1 contains similar requirements for the conduct of a parliamentarian when interacting with the staff of the Administration of the Jogorku Kenesh (“*should be a model of professionalism, serve as an example of fairness, goodwill, and contribute to the setting a favorable ethical and psychological environments for effective work*”).
26. Although, defining the specific list of principles lies primarily with participating States, should reflect national consensus and ideally emerge from a domestic process,²⁸ some examples could serve as useful guidance in this respect.²⁹
27. **It is recommended, therefore, to specify in the Code the set of ethical standards that should guide MPs when performing their work. These could include honesty, transparency, impartiality, equality and non-discrimination, universality of human rights, primacy of law, accountability, merits and professionalism, as an overview of the expectations placed on MPs, as representatives of the people.**

26 [The Code of Conduct of the UK Parliament](#) at the outset clearly establishes that: “*The purpose of this Code of Conduct is to assist all Members in the discharge of their obligations to the House, their constituents and the public at large*”, Article 1.

27 The purpose of [the Code of Ethics in Latvia](#) is “*to establish high standards of behavior and thereby increase society's trust in the work of the [parliament]*”, Article 1.

28 See the [Toolkit for drafting codes of conduct for members of Parliament](#), Partnership for Good Governance II (2019-2021), Regional Project “Strengthening measures to prevent and combat economic crime”, implemented by CoE, available at: <https://rm.coe.int/eccd-pggii-reg-tp-code-of-conduct-03-2019-en-fin-2772-8509-3633-v-1/1680a271ca> p. 12.

29 See e.g., Article 4 of [the Lithuanian Code of Conduct for State Politicians](#), which lays down the following principles of conduct: respect for an individual person and the state; justice; honesty; transparency and publicity; decency; exemplariness; selflessness; impartiality; and responsibility. See also, [The European Code of Conduct for all Persons Involved in Local and Regional Governance](#) (available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://rm.coe.int/european-code-of-conduct-for-all-persons-involved-in-local-and-regional/16808ec7e3>) and the [Code of conduct for members of the Parliamentary Assembly of CoE](#) (available at: <https://assembly.coe.int/LifeRay/APCE/pdf/Procedure/CodeOfConduct-EN.pdf>).

28. While it is mentioned in the Code 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, the complementary nature of the Code to the existing legislation regulating the work of the Parliament and the role of MPs is not clearly mentioned.
29. The risk is that by addressing such issues as conflict of interest, corruption prevention, receipt of gifts etc. in a summarized manner in the Code, this may create potential overlaps and diverging interpretations of binding legal norms provided in other legislation. The Code could therefore benefit from a **clearer indication of when other pieces of legislation are also applicable and make relevant cross-references to the said laws**. In case of opting for collation of any of their provisions for the purposes of the Code, this should be done with the highest possible accuracy.³⁰

RECOMMENDATION A.

To make appropriate changes throughout the text emphasizing the status of the Code as a framework for recommended and desirable behaviour of parliamentarians, rather than imperative rules.

To specify in the Code the set of ethical standards that should guide MPs when performing their work.

4. FUNDAMENTAL RIGHTS AND RULES OF CONDUCT AT MEETINGS

4.1. Equality, Non-Discrimination and Private Life

30. It is commendable that Article 2.1 recognizes the equality among parliamentarians and calls them to be loyal to other parliamentarians and be “*guided by the principles of free collective discussions and decision-making on issues under consideration*”, as well as “*should respect the diversity of opinions, avoid conflicts, and find ways to overcome disagreements through discussions*”. Article 2.4 also promotes the “*politeness*” and “*respect*” to the chairperson and fellow parliamentarians. **Article 2.1 could, however, be expanded by specifying that parliamentarians need to perform their duties without prejudices and shall not incite any kind of discrimination, harassment or violence based on national or ethnic origin, religion or belief, disability, sex, gender identity, political opinion or any other ground. In addition, as demanding “loyalty” towards political competitors could potentially stifle political competition and vibrancy in parliamentary work, it could be replaced by “respect”.**
31. In addition, various studies suggest the overwhelming majority of women in parliaments has been subjected to violence (psychological or physical).³¹ These findings call for changes in parliamentary ethical norms to address sexual or other forms of harassment or violence against women in politics, making parliaments a safe place for women to work, as well as creating gender-equal working environments. **It is recommended that the Code explicitly provides for the highest standards of integrity, courtesy and**

³⁰ See e.g., ODIHR, [Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia](#), paras. 30-35.

³¹ For example, a survey conducted by the Inter-Parliamentary Union 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. (available at: <https://www.ipu.org/resources/publications/issue-briefs/2018-10/sexism-harassment-and-violence-against-women-in-parliaments-in-europe>).

mutual respect towards women parliamentarians, making it clear that sexist and other exclusionary language is intolerable.³² 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 breaches.³³ It is also key that applicable legislation, Rules of Procedure 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.³⁴ MPs and parliamentary staff should also receive mandatory training on violence against women in politics, covering what is acceptable behaviour, mechanisms to address the cases of violence and harassment, etc.³⁵

32. In addition, it is recognized as a good practice to organize the parliamentary work to allow men and women parliamentarians to spend sufficient time with their families and to allow both parents to take maternity or paternity leave under the same conditions, unless there is a reasonable and objective justification.³⁶ **It is, thus, recommended to consider introducing provisions on flexible working hours and family-friendly environment, as well as parental leaves for both parents.**
33. Other than a prohibition of slander and reputational damage to the parliamentarian (see Section 4.2 *infra*), the Code does not regulate the private lives of parliamentarians. Article 17 of the ICCPR provides that “[n]o one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation”. However, the respect for private and family life has to be balanced against the right to freedom of expression and access to information, as guaranteed by Article 19 of the ICCPR, which includes the freedom “to seek, receive and impart information and ideas of all kinds”. The public has the right to be informed, which is an essential right in a democratic society that, in certain special circumstances, may even extend to aspects of the private life of public figures, particularly where politicians are concerned and where this contributes to a debate of general interest to society.³⁷ Thus, the fair balance has to be struck between the competing interests of the individual MP and of the community as a whole.
34. In this regard, the Code does not define which kind of the behaviour of MPs involves a possibility to interfere with his/her private life.³⁸

32 See e.g., ODIHR, *Comments on the Law on the Assembly and Rules of Procedure of the Assembly of Northern Macedonia* (2020), para. 66. See also IPU *Guidelines for the Elimination of Sexism, Harassment and Violence against Women in Parliament* (2019), available at: <https://www.ipu.org/resources/publications/reference/2019-11/guidelines-elimination-sexism-harassment-and-violence-against-women-in-parliament>, page 35 and ODIHR, *Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016), pages 86 and 97.

33 *ibid.* 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 (2019 *IPU Guidelines*).

34 *ibid.* ODIHR, *Comments on the Law on the Assembly and Rules of Procedure of the Assembly of Northern Macedonia* (2020), para. 66; and pages 42-43 (2019 *IPU Guidelines*).

35 Violence against women in politics in the Kyrgyz Republic: Results of study (available at: <https://www.osce.org/programme-office-in-bishkek/519390>).

36 See, e.g., *ibid.* ODIHR, *Comments on the Law on the Assembly and Rules of Procedure of the Assembly of Northern Macedonia* (2020), para. 66; and IPU, *Gender-sensitive Parliaments - A Global Review of Good Practices* (2011), available at: <https://www.ipu.org/resources/publications/reports/2016-07/gender-sensitive-parliaments>, pages 92-94. Another good international practice, is the one introduced by the newly adopted *Directive (EU) 2019/1158 of the European Parliament and of the Council of 20 June 2019 on work-life balance for parents and carers, to be transposed by 2 August 2022*, which provides that “each worker has an individual right to parental leave of four months”, irrespective of their gender. See also, for the purpose of comparison, ECtHR, *Konstantin Markin v. Russia* [GC] (Application no. 30078/06, judgment of 22 March 2012), and *Hulea v. Romania* (Application no. 33411/05, judgment of 2 October 2012), both of which found violations of the Convention because of the authorities’ failure to provide both parents with the right to parental leave.

37 See, for a comparative perspective, on Articles 8 and 10 of the ECHR on the right to respect for private and family life and the right to freedom of expression respectively, ECtHR, *Von Hannover v. Germany*, Application no. 59320/00, judgement of 24 September 2004, para. 64; and *Karhuvaara and Iltalehti v. Finland*, Application no. 53678/00, judgment of 16 February 2005, para. 45.

38 See also ODIHR, *Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia* (2021), paras. 58-59.

35. **The Code would, therefore, benefit from clarifying the conditions under which the regulation of the private life of a parliamentarian would be acceptable by the rules of this Code.**

RECOMMENDATION B.

1. To expand Article 2.1 by specifying that parliamentarians need to perform their duties without prejudices and shall not incite any kind of discrimination, harassment or violence based on national or ethnic origin, religion or belief, disability, sex, sexual orientation, gender identity, political opinion or other ground and to replace the term “loyalty” with “respect”.
2. To explicitly include the highest standards of integrity, courtesy and mutual respect towards women parliamentarians in the Code, making it clear that sexist and other discriminatory language is intolerable, while giving due consideration to introducing provisions on flexible working hours and family-friendly environment, as well as parental leaves for both parents.
3. To clarify the conditions under which the regulation of the private life of a parliamentarian would be acceptable by the rules of this Code.

4.2. Right to Freedom of Expression of MPs

36. As mentioned, everyone’s right to freedom of expression, including parliamentarians’, is protected by Article 19 of the ICCPR. 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 [...]*”.³⁹
37. In several of its sections, the Code seems to limit parliamentary privilege, including the freedom of MPs to make a statement that, even being offensive or derogatory in nature, would not necessarily be considered to be defamation given particular circumstances. Article 1.6 states that “*statements of a parliamentarian that affect the honor and dignity of another parliamentarian as well as offensive statements should not be allowed.*” While the protection afforded to statements should not leave individual parliamentarians vulnerable to slander and defamation by their colleagues, the above provision may undermine the freedom of speech.
38. The limits of acceptable criticism are wider as regards a politician than as regards a private individual. Even though some regulation may be considered necessary to prevent forms of expression such as direct or indirect calls for violence, being subject to certain “restrictions” or “penalties” established by the internal rules of the parliaments, a final ruling on the compatibility of such measures with freedom of expression enshrined in Article 19 of the ICCPR may vary depending on the particular context of each case. In this respect, the requirements of such protection should be weighed in relation to the interests of open discussion of political issues.⁴⁰

39 See for comparison purpose, ECtHR, *Castells v. Spain*, 23 April 1992, available at: [https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2211798/85%22\],%22itemid%22:\[%22001-57772%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2211798/85%22],%22itemid%22:[%22001-57772%22]}). See also ODIHR Document: *Parliamentary Integrity: A Resource for Reformers (2022)*, p. 26.

40 See also ODIHR *Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia*, paras. 50-52.

39. Similarly, Article 5.2 states that “[a] *parliamentarian may speak on behalf of the Jogorku Keesh or its bodies (faction, committees, temporary commissions) only if they are officially authorized to express their opinion.*” Advisably, general issues of intra-faction discipline should be addressed by the internal rules of procedure of each parliamentary faction. These should also contain norms that provide for possibilities of dissent – how a dissenting view is voiced and registered. In addition, the wording in Article 5.2 – “*a parliamentarian may publicly express his/her personal opinion, specifically disclaiming that the opinion is personal*” – is too restrictive as expressing an opinion is a core part of any parliamentarian’s work and no specific disclaimer should be necessary. If such norm remains, this may cause unnecessary retribution against opponents, both within a factions and from outside.
40. As noted, freedom of speech is a crucial pillar of democratic debate: if a person speaking in parliament believes that a fact or opinion needs to be presented in a debate, that person should not be deterred from raising it for fear of retribution. As a comparison, the ECtHR case-law does not prohibit discussion or dissemination of information received even if it is strongly suspected that this information might not be truthful.⁴¹ To suggest otherwise would deprive persons of the right to express their views and opinions and would thus place an unreasonable restriction on the right to freedom of expression. **In this respect, Article 5.2 should be revised to strengthen guarantees for deputies’ exercise of their right to freedom of expression, especially during political and/or plenary debate, unless it provokes hatred or intolerance on any ground, direct or indirect, or calls for violence to safeguard the freedom of the parliamentary debate.**
41. Article 2.1 provides that “*each parliamentarian must be loyal to other parliamentarians, regardless of their political affiliations.*” Parliamentarians are voted into office on the basis of an individual mandate. Even though they usually belong to a political party⁴² and often feel a degree of loyalty towards the individuals and groups who elected them, they cannot be compelled to behave or vote in a certain way that would limit their freedoms of expression and association. Article 2.1 further adds that “*a parliamentarian may not impose [their] position through threats, ultimatums or other similar actions.*” There might be occasions that symbolic “*threats and ultimatums*”, for instance, to go public, are part of freedom of expression and can work to achieve their policy goals. **In this respect, this part of Article 2.1 could be rephrased to provide that a parliamentarian may not impose their position through threats, ultimatums or other similar actions “that are directed against or diminishes the physical or moral wellbeing of another parliamentarian or a member of public.”**
42. Article 2.2 allows a parliamentarian to be absent from the session only for a “*valid reason*”. It would be advisable to add nuance to this norm with regard to the seriousness of the absence. Currently the norm is envisioned to apply to an absence from faction, committee and temporary commission meetings. For instance, missing a faction meeting is more of an internal fractional matter, whereas unjustifiably missing a plenary session is a serious issue, which is appropriately addressed in Article 10.3 (5) providing for the possibility of a monetary sanction (deduction of salary) for an unjustified non-attendance. In addition, the list of “*valid reasons*”, justifying the absence, should be enumerated in the Code or the reference to the relevant legislation defining such reasons should be provided, as well as what passes for a proof of such “*validity*” and a simple mechanism of its evaluation could also be envisioned.

41 See e.g., ECtHR, *Salov v. Ukraine*, Application no. 65518/01, judgment of 6 December 2005, para. 113.

42 At the same time, the current Parliament of the Kyrgyz Republic has single mandate MPs who are not members of political parties, and within the parliament do not belong to any faction/MP group.

43. Lastly, Article 2.3 prohibits “[i]ndividual and collective actions of parliamentarians aimed at disrupting the meetings [...] including: leaving the meeting room for reasons not recognized as valid [...] speaking on issues other than those under discussion; [...] commenting on statements and other actions of parliamentarians inconsistent with this Code and the current legislation of the Kyrgyz Republic.” If read in conjunction with Article 2.1 of the Code,⁴³ this would not allow any comments that contradict the statements of others and would serve to undermine parliamentary debate, and freedom of expression in general. Leaving a session is a form of expression of opinion that equally needs to be protected. Prohibiting these forms of expression is particularly worrisome as per Article 143.5 of the Rules and Procedures of the Parliament of 2022 “[l]ists of deputies who were absent without a valid reason are announced by the representative of the committee at a meeting of the Jogorku Kenesh and published on its website within one day from the date of announcement”, followed by the deduction of 1/10th from the monthly payments of the deputy for each day of absence. **In view of the above, it is recommended to revise Articles 2.2 and 2.3 of the Code by removing the prohibitions of being absent from meetings.**

RECOMMENDATION C.

To introduce in Article 5.2 guarantees on the right to freedom of expression, especially during political and/or plenary debate, unless it provokes hatred or intolerance on any ground, direct or indirect, or calls for violence.

4.3. Rule of Conduct at Meetings

44. Article 2.5 provides that during the work of the parliament, “*parliamentarians must wear business attire*”.⁴⁴ Since the concept of business attire can be open to interpretation and may potentially prevent parliamentarians from using their clothing to express ideas and notions that they would like to promote, this could be perceived as an infringement of individual freedom. As already provided by ODIHR, while codes of conduct may also include rules or guidelines on a suitable dress code, “*this is considered by many too great an encroachment on the individual freedom of [parliamentarians] and is arguably irrelevant to whether they perform their role effectively. On the other hand, (...) such issues can have political relevance, as when, for example, [parliamentarians] of extremist or nationalist parties attend parliament wearing uniforms or symbols of an ideological cause*”.⁴⁵ **It would be, therefore, advisable to reformulate the provision by stating that whichever attire is chosen, it should not diminish or denigrate anyone’s dignity.**
45. In addition, while a parliament may have different rules for appropriate attire to be worn by men and women, the regulations should not be more stringent with respect to either group.⁴⁶ **When formulating a dress code policy, potential issues of discrimination**

43 Article 2.1 of the Code states that “*parliamentarians should be guided by the principles of free collective discussions and decision-making on issues under consideration, should respect the diversity of opinions*”.

44 At the same time Article 142.2 of the Rules and Procedures of the Parliament states that at the session “*deputies and persons present at its meetings wear clothes corresponding to the official nature of the activities of the Jogorku Kenesh,*” extending these rules of conduct beyond parliamentarians.

45 See ODIHR document: [Parliamentary Integrity: A Resource for Reformers \(2022\)](#), p. 52

46 For example, in the United Kingdom, the dress code in the House of Commons has been relaxed significantly over the years – up until 1998, any parliamentarian wishing to make a point of order was still required to wear a top hat. In 2017, the Speaker of the United Kingdom House of Commons deemed that men no longer needed to wear jackets and ties in the Commons. However, parliamentarians are expected not to use their clothing to display slogans or make points. See also [ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia](#), paras. 44 and 45.

should also be taken into consideration, especially given possible religious, ethnic and/or gender sensitivities.

46. Article 2.5 further provides that use of mobile phones is prohibited during parliamentary sessions. While the intention of the Code could be to avoid a disruption during the session, mobile phones have a range of uses and an ultimate prohibition may lead to arbitrary enforcement. In addition, technological developments support the work of parliamentarians as well as assist parliaments in holding their members to higher standards. For example, the Internet and related new technologies enable parliamentarians to be better informed and to inform others. Furthermore, the new Rules of Procedure no longer include this reference to mobile phones. **It is recommended, therefore, to amend Article 2.5 to ensure compliance of its provisions regarding the usage of mobile phones with the new Rules of Procedure. Overall, the respective provisions should not imperatively prohibit the use of mobile phones, but could restrict it if such usage risks disrupting the work of parliament.**
47. The Code does not address any issues connected to voting on behalf of others, whilst Article 84(4) of the new Rules of Procedure prohibits MPs to transfer the right to vote to another deputy. While the practice of "ghost-voting" should be regulated by the legislation in force and the respective provisions of the new Rules of Procedure are welcome in this respect, the Code could add a reference to the existing regulation, warning against "dishonest voting" and making clear that such practice should not be acceptable.

RECOMMENDATION D.

1. When devising a dress code policy to take into account the potential issues of discrimination, especially given possible religious, ethnic and/or gender sensitivities, and to reformulate Article 2.5 by stating that whichever attire is chosen, it should not diminish or denigrate anyone's dignity.
2. To ensure compliance of Article 2.5 with the new Rules of Procedure to avoid a full prohibition of the usage of mobile phones during parliamentary sessions.

5. RULES OF CONDUCT DURING INTERACTION WITH VOTERS

48. Citizens expect public servants and holders of public office to operate efficiently and transparently and to adhere to the highest standards of integrity.⁴⁷ In this respect, it is commendable that the Code envisages the communication with citizens, both to keep them informed and to consider their requests. Based on the feedback, a parliamentarian makes proposals to *"respective national and local authorities and non-profit organizations with the purpose of solving the issues raised by citizens"* (Article 3.2). While such prerogative would uphold a parliamentarian's obligation to serve the people, it should be interpreted with due respect to the independence of associations/non-profit organizations⁴⁸ and consequently, care should be taken not to allow for intrusive communication from parliamentarians in cases of proposals to civil society. If these are

47 See [the Regulating conflicts of interest for Holders of Public Office in the European Union](#) a comparative study of the rules and standards of professional ethics for the Holders of Public Office in the EU-27 and EU institutions, p.42.

48 See ODIHR-Venice Commission, [Joint Guidelines on Freedom of Association](#) (2015), para. 41, which provides that "[a]n association must be independent and free from undue interference of the state or of other external actors" and that "[a]n association is not independent if Guidelines on Freedom of Association 28 decisions concerning its activities and operations are taken by anyone other than the members of the association or a body designated by its members to do so."

self-organized civil society groups, they should in no way feel pressure from parliament as regards the desired conduct of their activities and operations through the submission of such proposals.⁴⁹

49. In addition, Article 3.4 provides that “*responses to applications should be given to the applicant within 30 calendar days*”. While this promotes transparency, such detailed provisions appear to be unnecessary, given the voluntary nature of this document. It is noted that there are no similar provisions defining such deadlines neither in the Rules of Procedure nor in the Law on the Status of MPs. **Details on the application process, deadlines and mechanisms of processing requests could be instead regulated by the legislation currently in force** At the same time, to ensure transparent and timely communication with the citizens, a reference to such legislation could be made in the Code.

6. INTERACTION WITH THE STATE AND LOCAL AUTHORITIES

50. Chapter 4 of the Code regulates a parliamentarian’s conduct when interacting with national and local public authorities and their officials. This includes a prohibition of using a power of authority for personal purposes (Article 4.1), and adhering to norms of parliamentary ethics when interacting with national and local public authorities (Article 4.2).
51. This is welcomed as it reinforces parliamentary ethics outside of the parliament. However, to be effective and credible, any parliamentary ethics regime must also extend to parliamentary officials and staffers.⁵⁰ This is particularly important as officials and staffers play important, behind-the-scenes roles in advising politicians and guiding their deliberations. In a growing number of OSCE participating States, parliamentary officials have been subjected to tightened rules and/or additional measures. Codes of conduct/ethics geared to the specific role of parliamentary officials, especially in their dealings with the private sector, have for instance been adopted in Finland, Ireland, Malta, and Portugal.⁵¹ In this context, the respective provision in the Code of Conduct of the Parliament of Scotland can serve as a good practice stating that “*Consistent with their duties as employers, members must take all reasonable steps to ensure that their staff are fully aware of, understand and abide by the policies, rules, requirements and behavioural standards that apply to the conduct of staff when carrying out their duties.*”⁵² **It is recommended to provide in Chapter 4 that the staff of the parliament, when carrying out their duties, should also adhere to the same parliamentary ethics as parliamentarians. At the same time, the relevant provisions of the Code applicable to the parliamentary staff should correlate with the Law of the Kyrgyz Republic “On the State Civil Service and Municipal Service” of 27 October 2021 as amended (in particular, Chapter 7) and other relevant legislation.**
52. Chapter 4 could also benefit from provisions on dealing with complaints pertinent to relationships between MPs and public officials/employees for specific types of conduct. When interacting with parliamentary staff “*a parliamentarian should be a model of professionalism, serve as an example of fairness, goodwill, and contribute to the setting*

49 Ibid. [Joint Guidelines on Freedom of Association](#) state that “[a]ssociations shall have the right to freedom of expression and opinion through their objectives and activities. This is in addition to the individual right of the members of associations to freedom of expression and opinion. Associations shall have the right to participate in matters of political and public debate, regardless of whether the position taken is in accord with government policy or advocates a change in the law.”

50 See ODIHR Document: [Parliamentary Integrity: A Resource for Reformers \(2022\)](#), p.14

51 See *The Parliamentary Ethics*, the European Parliament's Office for Promotion of Parliamentary Democracy, available at: <https://www.parliament.cat/document/intrade/59368>, p. 20.

52 See [the Code of Conduct for Members of the Scottish Parliament](#), Section 7.

*a favorable ethical and psychological environments for effective work” (Article 7.1). However, there are no safeguards for protecting staff from behaviour that constitutes harassment, bullying and sexual or other forms of misconduct. Non-discriminatory and professional behaviour between parliamentarians, parliamentary officials, and their own staff should be an essential aspect of codes of conduct/ethics. This includes considering how a code of conduct/ethics can promote professional and non-discriminatory behaviour, “free of all forms of direct or indirect violence, harassment or discrimination against women or against anyone in parliament”.⁵³ An effective complaint mechanism shall cover all parliamentary employees, guarantee safety, confidentiality and expediency of the complaint process along with a well-defined and independent investigation process and provide for effective sanctions proportional to the gravity of the case.⁵⁴ **It is recommended to introduce safeguards against harassment and ill-treatment to Chapter 4, including an effective complaint mechanism.***

RECOMMENDATION E.

To provide under Chapter 4 that staff of the Parliament, when carrying out their duties, should adhere to the same parliamentary ethics as MPs, and introduce safeguards against harassment and ill-treatment, including an effective and independent complaint mechanism.

7. FINANCIAL REQUIREMENTS AND CONFLICT OF INTEREST

53. As a general remark, situations covered under Chapters 8 and 9 constitute instances of conflict of interest. These two chapters could be merged to ensure coherence and enhance existing safeguards against conflict of interest.

7.1. Use of Public Assets and Funds

54. With respect to the management of public funds, the Code requires parliamentarians to respect budgetary and financial discipline during the exercise of their function and to refrain from receiving any compensation for extra-parliamentary activities. For example, the Code explicitly prohibits them to use their status for personal purposes (Article 8.1), use the funds for actions outside of their duties (Article 8.2), and use their name with the indication of their status in any advertisement or financial and commercial enterprise (Article 8.5).
55. Article 8.6 also regulates gifts from third parties. Parliamentarians may not receive and accept gifts, money or services for their actions or inactions pertaining to their official duties, as well as to lobby any issue in exchange of material benefit (Article 9.2). This prohibition, however, does not extend to official/foreign visits and receipt of such gift could be perceived as bribery. As required by the UNCAC, there should be specific legislation explicitly addressing the issue of active bribery of foreign public officials and officials of public international organizations.⁵⁵ Foreign bribery is an act involving

53 See ODIHR Document: [Parliamentary Integrity: A Resource for Reformers](#) (2022), p. 63.

54 For example, [the Code of Conduct for Members of the Scottish Parliament](#) states that “Complaints from staff of bullying or harassment, including any allegation of sexual harassment, or any other inappropriate behaviour on the part of members will be taken seriously and investigated”, p. 49.

55 See [UNCAC](#), Article 16.

a foreign national providing or offering a benefit to another person from a different country, or causing a benefit to be provided or offered to another person from a different country, where the benefit is not legitimately due. This issue is relevant given the high degree of economic development and integration among the OSCE participating States.⁵⁶ **It is recommended that Article 8.6 is amended accordingly to include a reference to gifts (from foreign officials/citizens). Alternatively, a reference to such gifts could be included in Chapter 6, which regulates a parliamentarian's rules of conduct during the interaction with a foreign state and foreign citizens.** Furthermore, the Code should make a more clear difference between the small gifts of insignificant value offered as a matter of courtesy and gifts received with an aim to trade influence.

56. According to Article 8.3, the position of a parliamentarian is not compatible with posts in any other state or municipal organization. Also, a parliamentarian may not “*engage in entrepreneurial activities, be a member of a governing body or supervisory board of a commercial organization*”. Whilst this provision is welcomed, the Code does not regulate post-employment restriction which can raise several risks of conflict of interest, including an abuse of office and undue influence after leaving the office. As noted by ODIHR “*[a] particularly controversial area concerns the careers of parliamentarians once they leave office, in their post-public employment. [...] plans for their future career can influence how they act while in parliament. [They] might abuse their power to favour a certain company, with a view to ingratiating themselves and gaining future employment. Alternatively, once working in the private sector, they might influence former colleagues to favour their new employer*”.⁵⁷
57. While some states do not impose such restrictions, others have addressed this issue with separate legislation requiring a waiting period before moving to the private sector.⁵⁸ For example, Norway requires parliamentarians to wait six months after leaving office before taking up a private-sector role. In addition, many countries utilize a “soft-law” approach of including recommendations about post-public employment in non-binding codes of conduct, including Ireland and Slovakia. While acknowledging the value of such restrictions necessary for safeguarding public trust and integrity, the codes of conduct/ethics do not replace legislation, only complement it, and therefore their conformity with other respective laws is essential. **To be in line with good practice, the Code could be amended to include (non-binding) recommendations regarding post-employment or conditions for future employment of MPs (for example, general provisions limiting consulting services for matters closely related to the previous parliamentary functions and activities), while ensuring compliance with legislation in force. In addition, to eliminate any perception of unethical conduct, the same standards could also be extended to close relatives.**

56 See in Ireland, the Code of Conduct for Members of Dail Eirenn Other than Office Holders (available at: https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_on_members_interests_dail_eireann/other/2012/2012-05-30_code-of-conduct-for-members-of-dail-eireann-non-officeholders_en.pdf), Chapter 8 (i) Members must not accept a gift that may pose a conflict of interest or which might interfere with the honest and impartial exercise of their official duties. (ii) Members may accept incidental gifts and customary hospitality See also the Code of Ethics of Democratic Party in Italy stating that “*in the performance of their duties, Deputies shall refrain from accepting gifts or similar benefits, unless the gifts have a value of less than EUR 250 and are offered in accordance with protocols of official courtesy, or are received in accordance with protocols of official courtesy by Deputies acting in their capacity as official representatives of the Chamber*.”

57 See ODIHR Document: [Parliamentary Integrity: A Resource for Reformers](#) (2022), p. 72.

58 For example, Serbia's Anti-Corruption Agency Act prohibits public officials from employment with any organization engaged in activity relating to the office formerly held for two years after leaving office, elected officials are excluded from this prohibition. In addition, European Union commissioners are banned from lobbying for 24 months after leaving office, but there is no such ban for European parliamentarians.

RECOMMENDATION F.

To add a reference to gifts (from foreign officials/citizens) to Article 8.6 or Chapter 6, which regulates a parliamentarian's rules of conduct during the interaction with a foreign state and foreign citizens and to consider including (non-binding) recommendations regarding post-employment or conditions for future employment of MPs (and possibly their close relatives), while ensuring compliance with legislation in force.

7.2. Conflict of Interest

58. Citizens expect parliamentarians to perform their duties with integrity, and in a fair and unbiased way. In addition to verbal integrity, legislative safeguards should be in place to ensure that parliamentarians do not allow their private interests and affiliations to compromise their decisions and actions. In this respect, inadequately managed conflicts of interest on the part of a parliamentarian, or any public official, have the potential to weaken citizens' trust in the parliament and public institutions more generally. The objective of an effective conflict of interest policy can be achieved *"by ensuring that public bodies possess and implement relevant policy standards for promoting integrity, effective processes for identifying risk and dealing with emergent conflicts of interest, appropriate external and internal accountability mechanisms, and management approaches -- including sanctions -- that aim to ensure that public officials take personal responsibility for complying with both the letter and the spirit of such standards"*.⁵⁹
59. The Code prescribes a number of instances where a conflict of interest arises. For example, a situation where *"a parliamentarian participates in the discussion of and votes on issues that affect [their] own interests, or a situation that results in [them] receiving any other benefits using their parliamentary powers"* (Article 9.1). A parliamentarian would need to declare at the beginning of a meeting if *"an issue is presented for discussion in which the parliamentarian had or could have a personal interest in the future"* (Article 9.3). The latter contributes to the transparency as private interests and affiliations that could compromise the disinterested performance of public duties should be disclosed in a timely manner to enable adequate resolution. Despite this, the formulation *"an issue in which the parliamentarian had or could have a personal interest in the future"* is too vague and could cover a wide range of issues, including any benefits that MPs might be eligible to in the future. Furthermore, it is unclear from the Code whether a mere declaration of a personal link is sufficient or if a parliamentarian should be excluded from such a discussion and meeting. The practice varies among participating States. For example, Sweden's parliament adopted a prohibition of conflict of interests in 1999, stipulating that *"a member may not participate in the deliberations of the Chamber or be present at a meeting of a committee on a matter which concerns him (or her) personally or a close relative"*.⁶⁰ Similarly, in Canada, *"[n]o public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that, in the making of the decision, he or she would be in a conflict of interest (...)"*.⁶¹ For a general perception of impartiality and integrity, it would be recommended that a

59 See the Recommendation of the Council on OECD Legal Instruments OECD Guidelines for Managing Conflict of Interest in the Public Service, available at: <<https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>>, para. 4

60 See *The Parliamentary Ethics*, the European Parliament's Office for Promotion of Parliamentary Democracy, available at: <<https://www.parliament.cat/document/intrade/59368>>.

61 See Article 6, Conflict of Interest Act in Canada.

parliamentarian abstains from involvement in meetings/decisions that could be compromised by their private-capacity interests and affiliations.

60. In addition, the Code does not offer safeguards against conflict of interest for staff members and no specific course of action is envisaged for family members (including partners) or other specific relations (friends, former colleagues or business partners etc.) apart from the income and property declaration (Article 8.4). **Conflict of interest safeguards connected to decisions taken and meetings attended should be introduced for staff and family members.**
61. The Code could also be more specific regarding the parliamentarian's relations with other third parties who may not be professional lobbyists (advocacy bodies, foreign authorities, clubs representing national or business interests), including contacts outside of the meetings of the Parliament and its commissions, for enhancing openness and transparency of parliamentarians.⁶²
62. Lastly, Article 9.6 provides that a parliamentarian "*should always bear in mind [their] responsibility to the voters and respect the interests of the state*". While acknowledging the importance of their commitment to the public interest, democratic values and impartiality, this provision seems to contradict the principle of internal party autonomy offering political parties general freedom from state interference with their right as free associations to autonomously manage internal affairs.⁶³ **Consideration could be given to replace "respect the interests of the state" in Article 9.6 with "should act solely in terms of the public interest".**
63. Finally, there should be a clear indication, which is the statutory legal act that stipulates conflict of interest regulations for parliamentarians, the oversight mechanisms and enforcement of restrictions⁶⁴.

RECOMMENDATION G.

1. To add provisions recommending that a parliamentarians abstain from involvement in meetings/decisions that could be compromised by their private-capacity interests and affiliations.
2. To introduce conflict of interest safeguards for parliamentary staff and family members in connection with decisions taken and meetings attended.
3. To replace reference to the "interests of the state" with "should act solely in terms of the public interest" in Article 9.6.

8. MONITORING AND SANCTIONING

64. Insufficient or poorly designed enforcement mechanisms and a lack of due process might present severe risks to parliamentarians while assessing their compliance with the provisions of the Code. This may also contribute to the abuse of the complaints process by individuals or groups, either inside or outside of the parliament, seeking to intimidate opposition members or to prevent them from expressing their views freely in debate.

⁶² See also [ODIHR Opinion on the Draft Code of Ethics for Members of Parliament of the Assembly of the Republic of North Macedonia](#), para. 68.

⁶³ See ODIHR Venice Commission *Guidelines on Political Party Regulation* (2020, 2nd ed.), para. 151.

⁶⁴ For instance, Code of Conduct in Italy makes a general reference that "deputies shall, both under general legislation and pursuant to the Rules of Procedure of the Chamber, scrupulously and rigorously adhere to obligations of transparency and disclosure regarding their financial assets and interests, loans received and positions held in any organisation or company, whether public or private." See Code of conduct for members of the chamber of deputies, Chapter II Deputies Duties, Italy.

Therefore, it is important that the Code contains safeguards to ensure that rules on conduct are not applied in a way that might restrict parliamentarians' right to debate and express their views freely.

65. Chapter 10 of the Code stipulates a number of disciplinary measures for non-compliance with its provisions. Violations of the Code should be considered by the Committee on Ethics and Rules of Procedure of the *Jogorku Kenesh* (hereinafter “the Committee”)⁶⁵ based on the initiative of the Committee members or on a written complaint received by the Committee (Article 10.2). At the same time, Article 143 of the new Rules of Procedure of 2022 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 the relevant procedure in this respect that should be taken into consideration when defining the respective measures in the Code.
66. Suitable sanctions for misconduct, as well as tools for their effective enforcement are crucial. In most OSCE participating States, systems of parliamentary discipline include a wide range of sanctions, *“from the relatively soft ‘naming and shaming’, through fines and temporary suspensions from office (with loss of pay), up to the ultimate political sanction of loss of a parliamentary seat. For conduct that breaks the law, there are, legally enforced penalties”*.⁶⁶ Commendably, Article 10.3 includes both proportionate and progressively severe sanctions. Specifically, it provides for healthy mix of moral actions (apology, information to faction) as well as financial penalties (deduction of 1/22 from the parliamentarian's monthly fees for each day of unjustified absence from plenary meetings). **The possibility of a warning that the committee will avail itself to these disciplinary measures could be added to this list.**
67. Even though the Code imposes sanctions in case of its violation, a sufficient review and enforcement mechanism is not properly foreseen in this respect. Whilst there are various approaches⁶⁷ to monitoring and sanctioning of potential breaches of codes of conduct/ethics by MPs, overall the relevant mechanism should provide for a clear procedure for lodging complaints about suspicions of MPs' breach of the Code (including establishing and functioning of the body in charge of examining the relevant complaints, establishing the range of persons that can lodge a written complaint, considering including citizens, citizens associations, colleague MPs who are not part of the responsible body/Committee); a mechanism for presentation of the argumentation from the side of the member whose conduct is being reviewed; ensuring equal voices for MPs from opposition parties and their representation in the mechanism and its bodies to avoid any possibility of using the respective procedures against political opponents; a clear decision mechanism on sanctioning and a fair appeal process. **Given the above, a clear complaint and monitoring mechanism needs further elaborating, including identifying and establishing the relevant body responsible for overseeing the compliance with the Code, giving due consideration to the process of nomination of its members securing its independence/impartiality.**

⁶⁵ It should be noted, however, that the Committee on Ethics and Rules of Procedure is not mentioned among the parliamentary committees of the Jogorku Kenesh of the 7th convocation (<http://www.kenesh.kg/ru/committee/list/34>) and therefore, it is unclear which body is responsible for examining violations of the Code.

⁶⁶ See ODIHR's *ODIHR Background Study: Professional and Ethical Standards for Parliamentarians* (2012), p. 69. See also ODIHR Document: *Parliamentary Integrity: A Resource for Reformers* (2022), p.17

⁶⁷ For instance, in the UK parliament, the Committee on Standards and the Parliamentary Commissioner for Standards can conduct and inquiry in the alleged breach of the Code of Conduct by the MP. If they conclude that the Code of Conduct has been breached, the following can be recommended: a) a written apology; b) an apology on the floor of the House by means of a point of order; c) an apology on the floor of the House by means of a personal statement; d) for non-Members, withdrawal of Parliamentary passes, either indefinitely or for a fixed period; e) suspension from the service of the House for a specified number of sitting days (during which time the Member receives no salary and must withdraw from the precincts of the House; f) in cases of very serious breaches – expulsion, see the Code of Conduct for Members of Parliament, prepared pursuant to the Resolution of the House of 19 July 1995, Article 1, available at: <https://publications.parliament.uk/pa/cm201719/cmcode/1882/188201.htm> (last visited on 11 November 2021).

68. According to the Code, if a committed offence is disgracing the honour and dignity of parliamentarians and undermining the authority of the parliament, according to the Code, the Committee also informs voters about the unworthy behaviour of the parliamentarian through the media (Article 10.4). **This should be further elaborated, detailing the process of how the decision to inform the media is reached, who speaks on behalf of the Committee and how “the unworthy behaviour” is portrayed and presented to the public. This is particularly important as this provision could be used for personal retribution and damage the reputation of others, which should be avoided.**
69. Allegations of misconduct can destroy the career of an opponent, even if the complaint lacks foundation. It is, therefore, important to uphold the rights of the accused. In this respect, the Code is not explicit in the way and process of investigation, undermining the due process. For example, the Code does not envisage a right for parliamentarians to express their position or to have a right to appeal, protecting their right to an effective legal redress. It is therefore advisable that the Code clearly establishes that during all hearings, either at the initiative of the Committee members or acting upon a written complaint, the MPs whose conduct is being evaluated have the right to be present and express their position. It should also be envisioned that in cases of justified inability to attend, the timing of the meeting should be arranged so that the MPs in question or their authorized representatives are present. It is also advisable to provide that all such hearings are open to public except in cases when classified information is discussed or a decision to hold a closed session is taken by the majority of the commission members⁶⁸.
70. For this reason, the impartiality of the Committee seems to be particularly important for a preliminary assessment of the complaint and other further enforcement actions. It is important to stress that an initial assessment is not an investigation. A key objective of a non-partisan preliminary assessment is to screen out politically motivated complaints that fall outside of the Code’s scope. It is also paramount that before finalizing their response to the complaint, the Committee should share the findings in draft with the MPs so that they have an opportunity to comment on the accuracy of the evidence and the provisional findings based on that evidence and affording due process guarantees. In this respect, the Polish example seems to constitute a good practice.⁶⁹ **Consideration should be given to supplement the Code with the procedural safeguards, affording the parliamentarian in question due process guarantees.**
71. The Code would also benefit from additional provisions on regular evaluation and reporting mechanisms, through which citizens, media, officials and the general public can maintain debate about acceptable behaviour, thoroughly assess the integrity standards in place and their impact on MPs’ work, as well as raise their concerns and flag new challenges.
72. Furthermore, it would be beneficial to state in the Code that the work of the body in charge of enforcing the Code should be collated into an annual report to be presented before the Parliament. This should be a reflective exercise that seeks to assess more broadly whether the rules and their enforcement contribute to the overall task of building a culture of integrity.
73. It is also advisable to add provisions on advice, training and support to MPs and parliamentary staffers on the Code through outreach. For example, MPs should have the

68 For instance, in Latvia all meeting of the Ethics Committee are open to public, except when the committee members, by the vote of 2/3 of the members present decide to hold a closed session. A proposal to hold a closed session can be submitted (orally or in a written form) by a member of the committee, including the chairperson in cases of, e.g. necessity to work with classified information.

69 The Polish Sejm Ethics Committee is regulated by [Parliamentary Rules and Procedures](#), Chapter 13 articles 143–148, as well as the [Regulations of the Polish Sejm Ethics Committee](#). For example, the Deputy about whom the complaint is made has the right to present to the Committee his or her verbal clarifications regarding the matter. In case of doubts regarding his or her asset declarations, the Deputy may be called upon to present written or oral clarifications in 30 days.

right to receive and get themselves familiar with the Code at the start of their term as a part of the induction course on raising the awareness about principles and values that Code is promoting. Moreover, MPs often need detailed and coherent guidance on reformed parliamentary rules and standards and should receive a periodic (at least annual) training on sensitive ethical issues and to renew the knowledge. It is also advisable to consider adding specific provisions on confidential counselling, as well as on mentoring and experience-sharing activities for both new and experienced MPs in case they have doubts about possible violations of the ethical rules. Furthermore, elaboration of the manual/instruction for implementation of the Code, containing more details and useful examples, would be highly advisable to ensure the Code's efficient and correct application.

74. Online training programmes could be developed in the form of interactive e-learning courses on parliamentary ethics. Incorporating e-learning techniques into the general ethical management framework could be a powerful tool to convey messages to a broader audience, including parliamentary staffers and the media.

RECOMMENDATION H.

To supplement the Code with a clear complaint and monitoring mechanism, including identifying and establishing the relevant body responsible for overseeing the compliance with the Code, as well as ensuring procedural safeguards, affording the parliamentarian in question due process guarantees in case of alleged non-compliance with the provisions of the Code.

9. GENDER-NEUTRAL LANGUAGE

75. The Code does not use gender neutral terminology. All provisions referring to parliamentarians use only the male form of a 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.⁷⁰ It is recommended that, whenever possible, reference to post-holders or certain categories of individuals be adapted to use a gender-neutral word, whenever possible. Alternatively, the plural form of the respective noun could be used instead of the singular (e.g., them, they) or it is recommended to use both male and female words.⁷¹

10. PROCESS OF AMENDING OR DEVELOPING A NEW CODE

76. Any code and accompanying guidelines should be under permanent interpretation, application and debate, i.e. it has to be a living document that forms a platform where discussions and agreements about MPs' acceptable and ethical conduct take place.
77. The planning and preparation for the drafting of a Code of conduct/ethics for MPs, and the drafting process itself are fundamental to ensure broad consensus about its content, greater acceptance and ultimately compliance with its rules. At the initial stage, the

⁷⁰ See ODIHR, *Comments on the Law on the Assembly and the Rules of Procedure of the Assembly from a Gender and Diversity Perspective* (2020), paras. 105 and 107; and *Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation* (2017), page 63. See also the UN Economic and Social Commission for Western Asia (ESCWA), *Gender-Sensitive Language* (2013); European Parliament, *Resolution on Gender Mainstreaming* (2019); Council of the European Union, 'General Secretariat, *Inclusive Communication in the GSC*' (2018); and European Institute for Gender Equality's *Toolkit on Gender-sensitive Communication* (2018).

⁷¹ See ODIHR, *Report on the Assessment of the Legislative Process in the Republic of Armenia* (October 2014), paras. 47 and 48.

process of developing such a Code requires a comprehensive assessment of the particular context, compatibility with formal and informal rules and (international and national) norms in the existing legislative framework, as well as challenges and risks affecting the work of the parliament and MPs. Further, catalyzing an inclusive, open and meaningful public discussion on integrity standards and expectations of MPs' conduct enables the parliament to develop a common understanding on appropriate conduct, thereby boosting a sense of ownership, as well as addressing the low levels of public confidence.⁷²

78. Consultations⁷³ should not only be conducted with the wider public but also with all relevant internal stakeholders, such as with representatives of all parliamentary political parties and fractions in the process of developing a code of conduct, aiming for a cross-party consensus. This is crucial in building legitimacy, developing a sense of shared ownership among MPs and contributing to their effective, responsible and consistent use of the developed Code. Practice suggests that ensuring the clearly delineated responsibility of one body for driving the development process, established in a fair, inclusive and transparent process, is another vital precondition for an effective and enforceable code of conduct.⁷⁴

[END OF TEXT]

ANNEX: CODE OF ETHICS FOR THE DEPUTIES OF THE JOGORKU KENESH OF THE KYRGYZ REPUBLIC

⁷² See e.g., ODIHR Document: [Parliamentary Integrity: A Resource for Reformers \(2022\)](#), p. 44.

⁷³ UNODC, [Legislative Guide for the Implementation of the UN Convention against Corruption](#) (2nd revised edition, 2012), para. 91, which states that "[s]ome good practices include the development of rules through a process of consultation rather than a top-to-bottom approach, the attachment of ethical rules to employment contracts and the regular provision of awareness-raising initiatives".

⁷⁴ See e.g., ODIHR Document: [Parliamentary Integrity: A Resource for Reformers \(2022\)](#), pp. 44-45.