
Warsaw, 30 May 2023

ELE-MNG/472/2023

ODIHR Comments on the Draft Proposals for Amendments to the Law on Parliamentary Elections

MONGOLIA

Based on an unofficial English translation of the Draft Amendments
to the Law on Parliamentary Elections.



OSCE Office for Democratic Institutions and Human Rights

Ul. Miodowa 10, PL-00-251 Warsaw

Office: +48 22 520 06 00, Fax: +48 22 520 0605

www.legislationline.org

EXECUTIVE SUMMARY

These Comments cover the proposals of amendments to the Law on Parliamentary Elections of Mongolia, as submitted by the Mongolia People's Party (MPP) who holds the majority of the State Great *Khural* (Parliament) to the OSCE Office for Democratic Institutions and Human Rights (ODIHR) for review as well as the alternative version of amendments submitted by the Democratic Party (DP).¹ Therefore, they do not constitute a full and comprehensive analysis of the entire electoral legal framework of Mongolia, but rather highlight potential changes that could contribute to the implementation of previous OSCE Office for Democratic Institutions and Human Rights (ODIHR) election-related recommendations as well as those issues that remain to be addressed. Consequently, these comments should be read in conjunction with the recommendations made by prior ODIHR Election Observation Missions (EOMs) to Mongolia as well as the other ODIHR Opinions.²

The Comments are based on an unofficial translation of the proposed amendments and an unofficial translation of the 2019 Law on Parliamentary Elections. It should be noted that any assessment based on translated laws may be affected by issues of interpretation resulting from translation.

ODIHR welcomes the readiness of the authorities to improve the legal framework for elections and the consideration of its recommendations. It further reiterates the importance that any amendments should be the outcome of a consultative process that includes representatives from the political parties, respective institutions and civil society. Such conditions would also strengthen public confidence in the electoral reform process. At the same time, the follow-up of prior ODIHR electoral recommendations should continue.

The most significant aspects of the proposed amendments are the reform of the electoral system, the increase of the gender quota to 30 or 40 per cent of nominated candidates and the introduction of the out-of-country voting, which had all been modified with the May 2016 amendment of the Law on Parliamentary Elections. Notably, as the ODIHR EOM had noted,³ the May 2016 amendments were introduced without a prior public consultation and less than two months before the parliamentary elections thus undermining the stability of the electoral law and public confidence.⁴ Therefore, the proposed amendments would effectively address the shortcomings that the 2016 reforms had created. Nevertheless, the present Comments does not make any recommendations in relation to the proposed modification of electoral system for parliamentary elections. Its assessment is grounded in the OSCE commitments and the international legal obligations of Mongolia, as well as in domestic law. International law is largely silent on the choice of electoral system, as it is a matter of national sovereignty, with the requirements only of compliance with human rights principles.

¹ Following the June 2020 parliamentary elections, the MPP gained 62 seats in the 76-seat parliament, and the main opposition DP won 11 seats. Out of 76 elected candidates for the 2020 Parliament, only 13 are women.

² See the 2019 ODIHR [Opinion on Draft Laws of Mongolia on Presidential, Parliamentary and Local Elections](#).

³ See ODIHR [2016 Election Observation Mission \(EOM\) to Mongolia Final Report](#).

⁴ In particular, the 5 May 2016 amendments had repealed the out-of-country voting for parliamentary elections, reduced the 30 per cent gender quota for candidate nomination to 20 per cent and replaced the mixed electoral system to a fully majoritarian one.

Some other improvements are noted in the proposed amendments under review, mainly in relation to the transparency of the voter lists, the placement of candidates on the party lists, the requirement for campaign materials to be accessible for people with visual and hearing impairments, as well as election expenses and their impact on party and coalition registration. The proposed amendments also introduce early voting for voters unable to visit the polling station in-person on election day.

Furthermore, the suggested amendments provide some details on the appointment of chairpersons and members of temporary election committees, on which the existing law is silent; however, they need to be carefully reviewed in order to provide guarantees for the impartiality of the election administration. They further advance the transparency of the voter registration process, by empowering electoral contestants and civil society organisations to observe all stages of the preparation of the voter lists.

Nevertheless, as highlighted throughout these Comments, clarifications are needed in order to address ambiguities and inconsistencies in the proposed amendments. The draft amendments could be further improved by incorporating prior recommendations. In particular, the proposed amendments do not address previous ODIHR recommendation on removing restrictions on candidacy due to incomplete military service or an unexpired or unexpunged criminal record, or disqualification on the grounds of overdue debts and taxes. The amendments address neither the restrictions on the right to vote on the basis of legal incapacity on the grounds of disability nor the blanket restriction based on the prison sentence irrespective of the gravity of the offence. Furthermore, there are no improvements in regard to the resolution of electoral disputes in order for the legal framework to comply with international standards and OSCE commitments.

Despite the above-mentioned long-standing shortcomings which do require consideration, the proposed amendments are an overall improvement in the electoral legislation of Mongolia, albeit limited, provided that the identified, in these Comments, gaps and ambiguities are eliminated before their adoption. An additional electoral reform would be necessary to incorporate remaining recommendations of previous ODIHR reports and possibly harmonize different pieces of electoral legislation.

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

TABLE OF CONTENTS

Article 1 - Comments on the suggested provisions, articles and clauses to be added to the Law on Parliamentary Election	5
<i>CHAPTER 1 - GENERAL PROVISIONS</i>	<i>5</i>
<i>CHAPTER 2 – STRUCTURE OF ELECTORAL TERRITORY</i>	<i>6</i>
<i>CHAPTER 3 – ELECTORAL BODY AND ITS ORGANISATION</i>	<i>6</i>
<i>CHAPTER 4 – VOTER REGISTRATION LIST</i>	<i>7</i>
<i>CHAPTER 5 – PARTY OR COALITION PARTICIPATING IN ELECTION.....</i>	<i>7</i>
<i>CHAPTER 6 - CANDIDATE NOMINATION AND REGISTRATION</i>	<i>8</i>
<i>CHAPTER 7 – ELECTION PLATFORM AND CAMPAIGN.....</i>	<i>8</i>
<i>CHAPTER 8 – ELECTION EXPENSES.....</i>	<i>9</i>
<i>CHAPTER 9 – POLLING, ELECTION RESULTS.....</i>	<i>10</i>
<i>CHAPTER 10 – NON-REGULAR AND BY-ELECTION ORGANIZATION AND BY-POLLING, ADDITIONAL AND RE-POLLING TO REFILL VACANT SEAT.....</i>	<i>11</i>
<i>CHAPTER 11 – PENALTIES FOR VIOLATION OF ELECTORAL LEGISLATION AND THE JURISDICTION FOR COMPLAINT AND DISPUTE RESOLUTION.....</i>	<i>12</i>
Article 2 – Comments on the provisions of the Law on Parliamentary Elections on which amendments are proposed.....	12
<i>CONCLUSIONS.....</i>	<i>14</i>

Article 1 - Comments on the suggested provisions, articles and clauses to be added to the Law on Parliamentary Election

CHAPTER 1 - GENERAL PROVISIONS

Both drafts propose amendments to Article 4 of the 2019 Law on Parliamentary Election (hereinafter: LoE), in regard to the electoral system. Under the current system, revised in 2019, the 76 Members of Parliament (MPs) are elected from multi-member districts through an open list system; elected are the candidates who received the most votes until all seats in a district are filled. The proposed amendments introduce a mixed electoral system, with similarities to the one that was in place before the Constitutional Court decision of April 2016 that invalidated the proportional component of the electoral system and led to the May 2016 amendment of the LoE that established a fully majoritarian system. The MPP draft proposes that half of the 76 MPs be elected from the multi-mandate election districts established by law and the other half from the candidate lists of registered political parties and coalitions. The DP draft proposes that 48 MPs be elected from the election districts and 28 from the candidate lists of political parties and coalitions. *Whichever decision is taken, it would be advisable to adopt the amendments to the electoral system following inclusive consultations and comparative analysis of administrative complexity, and the ability to ensure equitable distribution of seats among districts of each proposed system with the aim to provide for equality of the vote.*⁵

The MPP draft further specifies the Article 5 regulating suffrage rights, by explicitly spelling out the right to vote of citizens residing abroad, more specifically in countries with Mongolian diplomatic representations. The DP draft introduces the online registration of citizens residing overseas in accordance with the legal procedures; online registration would facilitate citizens' participation, however the draft proposal is silent on further modalities. *In this respect, further clarification is needed. In order to protect the integrity and confidentiality of the out-of-country voter registration against cybersecurity risks, consideration could be given to introduction of additional safeguards during the online registration, such as a two-step verification of the applicants, in order to protect against fraud and impersonation.* Furthermore, none of the draft amendments include eligibility criteria for the registration procedures of diaspora voters. This may result in an inconsistent approach by election administration and could lead to disfranchisement of eligible voters. *It is recommended that more detailed legal provisions be adopted for the registration of out-of-country voters.*

Expanding on the principles of the election prescribed in Article 7 (universal, equal, secret and direct suffrage as well as transparency and rule of law), the DP proposes to add paragraphs 7.4.4 to 7.10, which provide, *inter alia*, that the State authorities will assist the General Election Commission (GEC) in organising the election, that political parties, coalitions, candidates and observers “shall monitor the voter registration list” and also introduce criminal liability for certain electoral offences. *Notwithstanding the importance of the provisions proposed by the DP in relation to the integrity of the electoral process, these however are unrelated to the principles of an election*⁶ and would be better suited to another chapter of the law.

⁵ The 2002 Council of Europe's [Venice Commission Code of Good Practice in Electoral Matters](#) identifies population-based criteria for allocation of seats across electoral constituencies, but acknowledges potential considerations related to geography and sparsely populated administrative districts.

⁶ The five principles underlying Europe's electoral heritage can be found in the 2002 Council of Europe's [Venice Commission Code of Good Practice in Electoral Matters](#).

The MPP introduces a provision to Article 9 regarding overseas voters, according to which the election day shall be set up by the GEC and “voting may take up to four days”. It is unclear, though, whether multiple voting days would be applicable to all countries, or that due to the different time zones and possibly different election days in some countries, voting could be concluded within four days. *The ODIHR recommends additional clarification of this provision, explaining exactly what is intended by the phrase “voting may take up to four days” and how this is to be implemented.*

CHAPTER 2 – STRUCTURE OF ELECTORAL TERRITORY

As both drafts propose changes to the electoral system for the election of Members of Parliament these have an impact on the electoral districts. Article 11.4 of the MPP draft empowers the Parliament to conduct redistricting based on the long-term development policy of Mongolia”, thus allowing flexibility. This broad formulation, however, includes a certain ambiguity that leaves space for interpretation. On the contrary, draft Article 11.4 as put forward by the DP suggests that the whole territory of Mongolia shall be one election district for the election of 28 Members of Parliament from the candidate list of political parties and/or coalitions. *It is recommended to further clarify the proposed amendments, especially the one that will be retained, and possibly to enshrine the delegation of apportionment to a less self-interested body than the Parliament in order to achieve more equitable representation.*

The draft Article 12.2 proposed by the MPP provides for a shorter period to establish electoral districts for an irregular election, specifically no less than 60 days, instead of the deadline imposed for regular elections by Article 12.1 of the LoE, which is before February 1st of election year. This is a positive measure for providing flexibility during extraordinary circumstances. The DP draft reiterates the principles on establishing electoral districts, included in the Constitution of Mongolia, which are nevertheless included in the LoE, therefore, the added value of this proposed amendment is unclear.

CHAPTER 3 – ELECTORAL BODY AND ITS ORGANISATION

The proposed Articles 14.5 and 14.6 of the MPP draft provide specifications on the appointment of the chairmen of the temporary election committees (provincial, capital city, soum and district election committees) which was not defined in the LoE, and stipulate that they shall be the Head or the Acting Head of the respective Governor’s Office. *Consideration should be given to revising the appointment of the heads of gubernatorial offices as chairmen of the lower-level election committees as it could potentially undermine stakeholders’ confidence in the independence and the impartiality of election administration.*⁷ The new articles also stipulate that the members of the provincial and capital city election committees will be drawn from the Office of the Citizen Representative Khural, police and chairman of the organization for state registration. The proposed amendments do not include any details on the procedure and criteria for the selection process of the members, specifically in relation to the assessment of candidates’ qualifications.

The MPP draft further provides details on the organization of out-of-country voting in new Article 19^{1.1} to 19^{1.6}, through the establishment by the GEC upon suggestion from the State Authority responsible for foreign affairs, of a central committee, operating under the oversight of the GEC, and of sub-committees, under the direct management of the central committee. In sub-paragraphs 19^{1.7} and 19^{1.8} it details the powers and obligations of each, which mirror those

⁷ This issue was also reflected in the [OSCE/ODIHR 2016 EOM to Mongolia Final Report](#), page 7.

of the other level election committees (such as provincial, capital city and precinct election committees). As with the other lower-level election commissions, the proposed amendment is silent on the selection and appointment mechanisms of their members. Although there is no standard model for the composition of the election administration, the election legislation should guarantee that election commissions are established and operate in an independent manner and that their members act impartially.⁸ *It is recommended to review the selection and appointment process in order to ensure a broad and equitable representation of all electoral stakeholders in a transparent manner allowing for a public oversight.*

CHAPTER 4 – VOTER REGISTRATION LIST

The new Articles 20.12 and 20.13 introduced by the MPP draft stipulate that the State Authority, responsible for state registration, shall deliver the hard copy of the voter lists, to the election precincts no later than 25 days prior to election day with the changes following the public display and complaints and appeals process, and the changes in the records of diaspora voters, to the precinct election committees, no later than five days prior to election day.

The new Article 20.16 introduced by the MPP draft provides for the preparation and display of the voter lists in compliance with the Law on Transparency of Public Information and the Law on Protection of Private Information, so as to ensure the protection of voters' sensitive personal data. The DP draft introduces another provision under Article 20.18, that empowers stakeholders, other than state and local self-governing bodies mentioned in Article 20.17 of the LoE, and notably representatives of political parties and/or coalitions and non-governmental organizations registered with the GEC, to observe all state activities related to voter registration. Although Article 20.17 of the LoE (which is not included in the proposed amendments) includes the term "other relevant organizations", *it would be advisable to adopt the formulation proposed by the DP draft so as to protect the rights of electoral contestants and observers to monitor the preparation of the voter lists and enhance the transparency of the process.* This seems also pertinent as Article 23.5 of the law provides for the right of an observer to view the voter lists and the changes thereof after the expiration of the legal time limit to introduce changes, which is three days before the election date.

Aiming to ensure swift resolution of complaints regarding voter registration, the MPP draft Article 23.8 empowers the GEC, when examining complaints on voter registration, to request relevant information from the State Authority responsible for state registration, and to impose deadlines to resolve the issue to relevant organizations. It is unclear however, which "relevant organizations" these could be, as the first line of this Article refers to the State Authority; if this is not due to the translation, it would benefit from a clarification.

CHAPTER 5 – PARTY OR COALITION PARTICIPATING IN ELECTION

The MPP draft introduces an important provision related to party and coalitions' registration for elections. Proposed Article 28.3.7 among other requirements stipulates that to register, a party or coalition should not have violated "the procedures set forth in this law regarding reporting of election expenditures." However, a political party's or coalition's request for registration for the elections should be submitted within at least 60 days before the election day, whereas a party or coalition is obliged to notify and register election expenses account number

⁸ Venice Commission Code of Good Practice in Electoral Matters, II.3.1; also, paragraph 20 of the [UN Human Rights Committee General Comment 25](#) to Article 25 of the ICCPR.

and the bank name with the State audit high authority at the latest 20 days before election day (Article 51.4) and to submit the statement of its election expenses audited by a private audit firm to the State audit high authority within 45 days after the election day (Article 57.3). *In this regard, it is unclear how the requirement set by the proposed Article 28.3.7 could be enforced and it is recommended to be clarified.*

CHAPTER 6 - CANDIDATE NOMINATION AND REGISTRATION

The amendments proposed by the MPP and DP in this chapter do not address prior ODIHR recommendations, such as to remove restrictions on candidacy due to incomplete military service or to an unexpired or unexpunged criminal record, or disqualification on the grounds of overdue debts and taxes.

Both MPP and DP drafts introduce a provision (Article 29.7 and 29.9 respectively) prohibiting a candidate to run for election district and party list at the same time. They also introduce a placement criteria through a new Article 30.5, which requires a “zipper” system for the placement of candidates on the party list, by alternating women and men candidates. This is a very effective measure for women candidates to actually be placed in electable positions and not at the bottom of the lists. *To further improve the effectiveness of this proposed amendment, it would be advisable if the law determines which gender should be placed first on the party and coalition lists.*

The MPP draft includes a new provision, Article 33.1.10, which proposes that the candidates’ list of a party or coalition will not be registered if the party/coalition nominates more than 76 candidates or one of the genders is not represented in at least 20 per cent of nominations, or nominate more candidates than the number of mandates allocated for a certain district or if the party or coalition does not respect the new Article 30.5 on “1:1 gender ratio” on candidate lists. Although these sanctions appear to be proportionate and dissuasive, *it is advisable that the law provides the possibility to a party or coalition to remedy the deficiencies in lists before its registration is declined.*⁹

CHAPTER 7 – ELECTION PLATFORM AND CAMPAIGN

The new Articles 38.13 and 38.14 of this chapter proposed by the MPP, stipulate that the Superior State audit authority, which is mandated to provide assessment reports of the compliance of parties’, coalitions’ and independent candidates’ platforms and donations in line with the requirements set by the LoE, has the right to request information from relevant entities and shall issue only one conclusion about the platform and donation report of each electoral contestant.

Another provision introduced by the MPP is Article 39.7, which requires from radio and television stations eligible to broadcast election campaign programs, to submit their campaign report to the State Authority responsible for fair competition within five working days after they publish it. However, the draft provision provides no specific regulations on what information should be included in this report. Notably, under existing Article 39.5 of the LoE, media outlets that broadcasted/published election campaign, should draft and publish their report about the election campaign within 10 days after the end of the campaign. Although the proposed amendment is one more step towards providing equal conditions for campaigning, as

⁹ For instance, the possibility of re-registration is provided for candidates as per Articles 33.2 and 33.3 of the LoE, following remedy of deficiencies in their application.

was recommended by the ODIHR 2016 EOM, it does not include any sanctions for relevant violations. *It is recommended that the proposed amendment be revised to provide specific details on the information that must be included in this report and to also include effective and dissuasive sanctions, or to clarify whether such violations of the proposed amendment are covered by Articles 46.24 and 46.25 of the LoE, which provide sanctions for other broadcasting violations.*

No amendments are proposed that would implement ODIHR EOM recommendations to establish a less restrictive legal framework for conducting campaign activities. On a positive note, the MPP draft introduces Articles 41.15 and 46.27, according to which campaign materials may be fully in braille letters and have subtitles or sign language interpreters. This is a step towards implementing a prior ODIHR 2016 recommendation to enhance the participation of persons with disabilities in political life.

The Article 47.12 of the MPP draft introduces the prohibition for online election campaign expenditure to exceed 15 percent of the total election expenditures, without any justification. This is problematic as election campaign activities are almost invariably a manifestation of the individual's rights to freedom of expression, which constitutes one of the basic conditions for genuine democratic elections. Such limitations are contrary to OSCE commitments and international standards. Electoral contestants should be able to enjoy the right to decide on which type of activities they prefer to focus their campaign, either on online media or traditional campaign or both. *It is therefore recommended to clarify the rationale of this prohibition and whether there are any corresponding sanctions for violation.*

The DP draft adds four more actions or activities of illegal election campaign to those already foreseen by Article 48 of the LoE. Namely, it suggests that it should be prohibited to provide scholarships to students or announce to do so in the future; to increase salary of state budget organizations as well as pensions and allowances, and to start or announce social welfare and protection programmes not already included in the current year's budget (proposed Articles 48.1.8 to 48.1.11). If adopted, these new provisions could be a measure against indirect vote buying and abuse of state resources for campaign purposes.

The MPP draft introduces paragraph 16 of Article 48, which refers to the conclusions stated in Article 48.15 for the Communications Regulatory Commission "to suspend the right to broadcast (...) for the duration mentioned in the conclusion." Providing that it is a translation error and the provision to which the new paragraph refers is the 48.14, the suspension should be imposed until the end of election results, as Article 48.14 stipulates. *The new draft paragraph would benefit from more details in relation to the "conclusions" based on which a suspension might be imposed.*

CHAPTER 8 – ELECTION EXPENSES

The MPP draft introduces paragraph 53.4, which allows for donations by a candidate to the party and/or coalition's election campaign, which should not exceed "the maximum amount of election expenses of a party and/or coalition set forth by this law". The maximum amount is established by the authorities as foreseen in Article 50.2 and is based on several factors that this provision stipulates, such as, *inter alia*, the size of the territory, location, number of voters. The proposed provision does not specify if these donations can be both cash and in-kind contributions, or only one of the two. In addition, questions arise if we compare the proposed Article 53.4 to Article 54.1 which stipulates that cash donations shall not exceed 5 million tugriks for citizens, as the maximum amount of election expenses established by Article 50.2

that should not be exceeded as a donation by a candidate might exceed the ceiling of Article 54.1. *It would be recommended for the legislator to clarify this draft provision in order to avoid ambiguities and eliminate inconsistencies.*¹⁰

CHAPTER 9 – POLLING, ELECTION RESULTS

Both drafts introduce a provision (Article 59.4) to modify the ballot paper, in accordance with the proposed amendment to the electoral system.

The MPP draft provides more details in regard to the placement of security cameras inside the polling stations, as already foreseen in Article 62.11, and specifies authorities responsible for approval of the relevant requirements for their placement as well as the use of the recordings.

The MPP draft also introduces a new Article 63, which provides for the possibility of early voting for voters unable to come in person at the polling station on election day. According to the new provision, early voting takes place during five days prior to election day, at the polling station in accordance with the established procedures, and the ballot paper is placed in a sealed ballot box. *The proposed legal provisions would benefit from additional specifications on what documents are required for voters in order to cast their ballot early, the process for submission of the relevant documents and their control as well as on safeguards in place to prevent multiple voting.* On this note, the DP draft suggests (in Article 65.16) marking the voter's finger who have cast their vote (in addition to signing the voter's registration list which is already required by Article 65.12 of the LoE). *If a decision is taken to introduce this additional fraud-prevention measure in the process, it is recommended to conduct consultations with all electoral stakeholders, and to allow sufficient time for development of relevant procedures, appropriate pilot testing, transparent procurement process, training for polling staff and voter information campaigns.*¹¹

Details on the location of polling stations for out-of-country voting, voting hours and preparation of the polling stations are introduced with Article 64¹ of the MPP draft, whereas draft Article 67¹ offers specifications on vote casting of citizens overseas. Article 67.16, stipulates that “the entity with the power to appoint observers may appoint up to two observers to observe the election activities of citizens residing overseas” *would benefit from a clarification on whether the limitation of two observers applies to a polling station in accordance with existing Article 67.1 of the LoE or to a diplomatic representation, and to also parties, coalitions and candidates; overall, it would be recommended to bring in line this provision with Article 67.1.* In regard to the observers' rights, the MPP draft introduces a provision (Article 68.2.11) permitting the non-governmental organizations registered with the GEC “to conduct external monitoring of the election expense report and its relevant documents of independent candidates, political party and/or coalitions.” Considering that the existing Article 58 of the LoE provides for the State audit high authority to publish the election expenses reports, which means that any citizen and/or organization have access to these reports, *it would be advisable to clarify the added value of the Article 68.2.11 introduced in the MPP draft.*

¹⁰ Paragraph 211 of the [2020 ODIHR and Venice Commission Joint Guidelines on Political Party Regulation](#) reads that “Limits have historically been placed on funding, in an attempt to limit the ability of particular categories of persons or groups to gain political influence and influence the decision-making process through financial advantages”. Further, Paragraph 213 provides that “[r]easonable limitations on private donations may include the determination of a maximum amount that may be contributed by a single donor. Such limitations have been shown to be effective in reducing the possibility of corruption or the purchase of political influence”.

¹¹ IFES White Paper, [Indelible Ink in Elections](#), May 2019.

The vote counting and tabulation process is modified with the introduction of Articles 71.8.4 and 71.11 by the MPP draft, so as to consider the votes obtained by candidates of a party list or coalition. A new Article is introduced with the MPP draft (Article 72¹) in order to regulate the counting of out-of-country votes. According to it, counting of out-of-country ballots should be conducted by the GEC starting at 22:00 on election day, in accordance with established ballot reconciliation procedures and with the use of vote counting machines. It is also foreseen that diplomatic missions may use vote counting machines upon the decision of the GEC. *If such a decision is taken, further details will be needed, in the law or the regulations, in order to safeguard the use of the vote counting machines abroad and the transmission of results to the central level by mitigating cybersecurity risks.*

Both drafts introduce a new Article 74 to regulate the allocation of mandates based on the proposed mixed electoral system. Regarding the majoritarian component, both drafts foresee that an equal number of candidates to the number of mandates within the election district who received the most votes shall be considered elected. In regards to the proportional component, the MPP draft stipulates that candidates must have received 50 percent or more of the total number of votes for election district but does not provide any direction in case none of the candidates receives 50 percent or more. On the contrary, the DP draft requires for a candidate to have received 28 percent or more votes of that election district, otherwise, if the number of candidates of a certain district who received 28 percent or more does not reach the number of mandates of that district, re-polling will be conducted for the remaining mandates. The allocation of seats to the political parties and coalitions is calculated in accordance with a threshold that they must reach, starting from 3 percent or more of the total votes for political parties, in both drafts. In regard to coalitions, the MPP draft differentiates between those with two or more political parties which must obtain 5 percent or more votes of the total votes for parties and/or coalitions, and those with three or more political parties that must obtain 7 percent or more votes; the DP draft introduces only a threshold for coalitions with two or more political parties that must obtain 5 percent or more votes. *Based on the afore mentioned, a clarification is necessary for the MPP draft regarding the coalitions with two or more parties and three or more parties, as the number of parties of each coalition based on which different thresholds apply appears quite ambiguous.*

The mandates of the proportional component of the electoral system are allocated similarly by both drafts, with the difference that in the MPP draft the total percentage of votes received by the political parties and coalitions that did not obtain the thresholds imposed in this new article shall be divided by 38 to get the vote number and percentage for each seat, whereas the DP draft foresees that it shall be divided by 28 (these numbers are in accordance with the modifications they propose to introduce in Articles 4.3.1 and 4.3.2 of the LoE).

CHAPTER 10 – NON-REGULAR AND BY-ELECTION ORGANIZATION AND BY-POLLING, ADDITIONAL AND RE-POLLING TO REFILL VACANT SEAT

Both drafts introduce Article 77.2 to stipulate that a re-election to fill a vacant seat of a MP from an election district elected under the majoritarian component of the mixed electoral system will take place, and/or if there is no remaining candidate considered as elected according to Article 77.1 of the LoE.

CHAPTER 11 – PENALTIES FOR VIOLATION OF ELECTORAL LEGISLATION AND THE JURISDICTION FOR COMPLAINT AND DISPUTE RESOLUTION

The MPP draft introduces Article 81.8 which stipulates that “court shall not suspend administrative decisions when adjudicating claims as stated in Article 81.3 of this law”. Unless there is a translation issue, *it would be recommended to further elaborate and clarify this provision, as the article to which it refers does not mention any suspension of administrative decisions whatsoever when adjudicating claims, neither any other provision under this chapter.*

Article 2 – Comments on the provisions of the Law on Parliamentary Elections on which amendments are proposed

The DP draft proposes to amend Article 9.2 of the LoE which refers to the setting of the polling day, in order to include that out-of-country polling day shall be set by the Parliament upon the recommendations of the GEC. This amendment differs to the proposal put forward by the MPP draft in Article 9.3 according to which the election day for citizens residing overseas shall be set by the GEC upon suggestions of the central committee for organizing out-of-country voting. *It would be advisable to adopt the MPP amendment, as it would allow more flexibility to set up the election day for out-of-country voting that would be based on technical criteria without any political considerations.*

The DP draft suggests an amendment to Article 14.12 of the LoE in order to address the appointment of the Chairman and Secretary General of election commissions. According to its suggestion, the Chairman and Secretary General of election commissions will be appointed “in turn by parties and coalitions with seats at the respective Citizen Representative Khural.” This proposed amendment is different to the MPP’s proposal in Article 14.5 that suggests for the Chairman to be the Head or Acting Head of the respective Governor’s Office; the DP proposed amendment, however, offers better guarantees towards establishing a more inclusive and transparent appointment process for the hierarchy of election commissions. Despite the fact that there is no uniform approach regarding the composition of election administration bodies, international good practice recommends the inclusion of political parties’ representatives in their composition in order to ensure pluralism and enhance the credibility of the process, under the condition that the members of election administration operate on independent and professional basis.¹² *Therefore, consideration could be given to revising the draft to allow for diversity of nominating entities in the composition of election management bodies.*¹³

An amendment proposed by the MPP draft in Article 20.13 of the LoE, which stipulated that representatives of political parties and coalitions registered to contest the elections could receive the voter lists upon request not earlier than 20 days before election day, significantly reinforces the transparency of electoral operations especially on voter registration. The new provision explicitly empowers not only political parties and coalitions, but also independent candidates and non-governmental organizations registered with the GEC to access the voter list and observe its preparation before and after the polling activities.

¹² Paragraph II.3.1.d.ii of the Code of Good Practice in Electoral Matters stipulates that “the commission should include... representatives of parties already in parliament or having scored at least a given percentage of the vote”, and paragraph 75 of the Explanatory Report states that “[p]olitical parties should be represented ...proportionally... and the representatives must be prohibited from campaigning”.

¹³ The [2006 ODIHR Explanatory Note on Possible Additional Commitments for Democratic Elections](#) states that “elections should be administered by persons who represent various interests of the society, are capable of acting in a professional and an impartial manner, and are knowledgeable in election administration”.

Both MPP and DP drafts introduce amendments to Article 30.1 of the LoE on the nomination of candidates by political parties and coalitions, in accordance with their proposals of draft Articles 4.3.1 and 4.3.2 of this law, with the MPP proposing the nomination of 38 candidates for the election districts (majoritarian component) and 38 for the party lists, whereas the DP suggests the nomination of 48 and 28 candidates respectively. The DP further suggests increasing the 20 per cent legally binding gender quota of candidates nominated by political parties and/or coalitions, as per Article 30.2 of the LoE, to 40 percent; the MPP draft suggests increasing it to 30 percent; either way, this amendment would enhance women's participation in political life, who are currently under-represented.

The MPP also proposes to amend Article 48.9 of the LoE, which prohibits a party/coalition leader, or a candidate to take part in a broadcast or program not related to the election campaign independently, and any program or interview recorded before the beginning of the election campaign to be broadcasted or published. According to its suggestion, it should be prohibited for a party/coalition leader and independent candidates to participate in non-election campaign programs and interviews from the start of the campaign period to the end of polling. This is a welcome modification to the overly restrictive campaign rules, although it differentiates between independent candidates, who are bound by this prohibition, and those proposed by parties and coalitions to whom the modified Article 48.9 does not apply.

The DP proposes to amend Article 51.3 that provides for an election expense account to be opened after the decision to register a party, coalition and independent candidate is taken, for them to be able to open donation accounts as of January 1st of the election year.

In relation to the voting, the MPP draft proposes to amend Article 66.2 of the LoE so as to accommodate the mixed electoral system; according to the proposed amendment, a voter shall mark either one party or coalition or either one candidate from the list. *The wording of this amendment, or its translation, is ambiguous and it would be advisable to review this provision.*

The proposal of the DP to amend Article 65.6 and 66.5 in order to introduce inking of the voter's right index finger once casting his/her ballot paper, would deter electoral malpractice. Likewise, the amendment to Article 71.14 proposed by the MPP, to conduct a manual count in every precinct after the polling activities have ended, instead of 50 percent of randomly selected precincts, will reinforce confidence in the process.

Among other clauses to be amended, the MPP proposes to increase the number of voters per electioneer (one electioneer for up to 400 voters), to regulate the printing of ballot papers by a legal entity with a special license with a relevant certification by the Intelligence Authority, to increase the time limit for a voter to challenge an entry in the voter registration list from 14 to 16 days before election day, to increase the number of days prior to election day for state authorities to deliver information on voters' data to the State Authority responsible for state registration from 40 to 45 days, to reduce the number of vehicles that a candidate can use in an election precinct for campaign purposes from four to two and the number of posters s/he can post in a precinct from 20 to 10, to increase the ceiling for cash donations from 5 to 10 million tugriks for citizens and from 20 to 30 million for legal entities, to deliver the ballot papers to polling stations within at least 5 days before polling instead of 3.

In its proposals for amendments, the DP suggests to reduce the time limit for a voter to challenge an entry in the voter registration list on the grounds of absence of registration or incorrect registration, from 14 to 5 days before election day, and to also reduce the time limit for political

parties and coalitions to receive upon request a copy of the voter lists from no less than 20 days before polling to 3 working days following their registration.

CONCLUSIONS

Overall, the proposed amendments include a number of improvements that have been duly noted in these Comments. Yet, some draft provisions required a careful review before adoption, in order to clarify ambiguities and to fully respect OSCE commitments for democratic elections. There are also some language/translation concerns that have been noted in this opinion. All of these concerns should be addressed in order to create a sound legal framework for democratic elections, while prior ODIHR recommendations should also be considered.

These Comments are provided by the ODIHR with the aim to assist the authorities in their efforts to improve the legal framework for elections and the ODIHR stands ready to contribute to this goal.