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PRELIMINARY OPINION ON THE LAW ON POLITICAL PARTIES

MONGOLIA

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Based on an unofficial English translation of the Law on Political Parties of 2024.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Overall, the Law on Political Parties of Mongolia (hereinafter the "Law") establishes a comprehensive framework for regulating political parties and their financing. It covers party membership, registration and dissolution, private and public funding, reporting requirements, as well as oversight and sanctioning, while also showing a commitment to promote gender and diversity in political parties' internal and external processes.

ODIHR welcomes the provisions of the Law which address some of the recommendations made by ODIHR and the Venice Commission, particularly in the 2022 Joint Opinion and ODIHR's 2019 Opinion. These include, in particular, the relative simplification of the party registration process, a less restrictive framework regarding the types of activities that political parties may carry out, more strictly circumscribing the grounds for dissolution of political parties while adjusting the rules of eligibility and modalities of access to public funding, including by such as the reduction of the eligibility threshold from three to one per cent, to be more equitable, including for smaller or newly established parties.

At the same time, some areas of the Law require further improvement to uphold the right to freedom of association and close potential loopholes that could undermine effective regulation of political party financing. This includes revisiting provisions on eligibility for party membership and on registration, granting more autonomy to parties in their internal organization and decision-making, more strictly circumscribing the rules on dissolution, reviewing financing rules and mechanisms, and reporting requirements. Notably, the prohibition of the party to participate in elections if it is considered inactive should be reconsidered, along with the restrictions preventing foreign nationals and stateless persons from becoming a member of political party.

Furthermore, it is recommended to reassess the approach to public funding, with consideration given to a more egalitarian allocation method, such as the one that gives more weight to the number of votes won, while reducing the emphasis on the number of seats obtained by the respective party. Additionally, the Law could be expanded to strengthen internal party democracy and organization by striking a balance between external regulations, such as those that provide for minimum gender representation, and what should be internal democratic norms, i.e. describing the decision-making processes within the party.

Consideration should also be given to further integrating gender aspects throughout the public funding mechanisms outlined in the Law and introducing meaningful incentives for political parties to promote and enhance women's political participation, thus reflecting the constitutional principle of equality between women and men. It is equally important to consider other measures for inclusion that extend beyond gender, such as youth and persons with disabilities, ensuring diverse and equitable representation across all segments of society.

More specifically, and in addition to what is stated above, ODIHR makes the following recommendations to further strengthen the provisions of the Law in accordance with international standards and good practices:

A. Regarding establishment and membership in political parties:

1. to remove from Article 5.1 of the Law the requirement of being "eligible to vote" to establish or join a political party and more generally to repeal in other legislation the restrictions relating to the eligibility to vote for citizens "deprived of legal capacity by a court", while entirely reconsidering the concept of depriving anyone of legal capacity in Mongolia; [para. 29]

2. to extend eligibility for political party membership to include foreign nationals with legal residency and stateless persons, while replacing the reference to "citizen"/"citizens of Mongolia" by "individual" or "everyone" in order to ensure that foreigners and stateless persons may become members of political parties if they so wish; [para. 34]

3. to clarify in the Law the term "core civil servant" by specifying the type of public officials prohibited from membership in political parties or by cross-referencing the relevant legislation, while ensuring that any restriction on political party membership is strictly justified, for instance to ensure the political neutrality of the said civil servants; [paras. 35-36]

B. Regarding registration of political parties:

1. to amend Articles 11.4.2 and 12.3.4 of the Law by eliminating the requirement to finalize party's platform at the first founding meeting and excluding it from the list of the documents to be submitted for registering a political party; [para. 41]

2. to reconsider the deadlines for examining party registration applications to make them shorter and more efficient to simplify and speed up the registration process; [para. 44]

3. to consider eliminating Article 14.10 of the Law which prevents the submission of an application for registration of a political party to the Supreme Court during the 90 days preceding the *State Great Hural* election; [para. 46]

C. To review Articles 8 and 15-19 of the Law by giving political parties the autonomy to decide on the structure of the party and decision-making process, in particular by removing the provisions imposing minimum voting requirements for decision-making; [para. 50]

D. Regarding dissolution of political parties:

1. to specify in the Law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the GEC on the dissolution of a political party; [para. 62]

2. to formulate more narrowly and precisely the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity and proportionality; [para. 60]

E. To review the current public funding system, with consideration given to a more egalitarian allocation method — such as increasing the coefficient for the first allotment based on the number of votes received by an eligible party in the election of the *State Great Khural*, while reducing the emphasis on the number of seats obtained by the respective party; [para. 72]

F. Regarding private funding:

1. to reinstate regulations on bank loans, including provisions on third-party repayment and loan forgiveness by creditors; [para. 83]

2. to broaden Article 35.1 of the Law to allow the sale of party related materials, with revenues below market price accounted for as donations; [para. 84]

G. Regarding gender and diversity:

1. to consider introducing in the Law effective incentive mechanisms to ensure a gender balanced electoral party lists, by allocating on a permanent basis an additional portion of public funding to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women candidates are not placed too low on the party list, and that when a woman withdraws, she is replaced by another woman; [para. 85]

2. to consider introducing legislative measures to ensure compliance with legal requirements aimed at enhancing the participation of women within party structures and as candidates for public offices, such as the denial or reduction of public funding; [para. 91]

H. Regarding transparency and reporting requirements:

1. to simplify and streamline reporting requirements, including donation-related, while also mandating political parties to submit a single unified and audited report in order to reduce the reporting burden on political parties; [para. 106]

2. to exclude private addresses of donors from the report at the time of publication; [para. 106]

I. Regarding oversight and sanctions:

1. to revise the Law to ensure effective cooperation between the General Election Commission and State Audit Office by formalizing cooperation mechanisms, such as a Memorandum of Understanding or Cooperation, while ensuring that all political party financial reports are reviewed for consistency and uniform application of the rules; [para. 108]

2. to amend the Law to explicitly outline sanctions for all irregularities specified within it, detailing the specific penalties for each type of infraction, and ensuring that penalties for political party financing violations are proportionate and consistently enforced; [para. 111]

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

As part of its mandate to assist OSCE participating States in implementing their OSCE human dimension commitments, ODIHR reviews, upon request, draft and existing laws 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 29 January 2025, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) received a request from the Chairperson of the General Election Commission of Mongolia (hereinafter the "GEC") for a legal review of the Law of Mongolia on Political Parties, which entered into force on 1 January 2024 (hereinafter the "Law").
2. On 12 February 2025, ODIHR responded to this request, confirming its readiness to prepare a legal opinion on the compliance of the Law with international human rights standards and OSCE human dimension commitments.
3. Given the importance of the reform, ODIHR decided to prepare a preliminary analysis of the compliance of the Law with relevant international standards and good practices, and formulate initial recommendations. With a view to gain a better understanding of the local context and challenges, ODIHR will present and discuss the preliminary findings and recommendations with all relevant stakeholders. Based on the information thus collected, these findings and recommendations from the Preliminary Opinion will be revisited and fine-tuned in a Final Opinion.
4. The present legal analysis should be read together with the *ODIHR-Venice Commission Joint Opinion on the Draft Law on Political Parties of Mongolia (2022)*[1] (hereinafter the "2022 Joint Opinion") as well as the relevant findings and recommendations from the *ODIHR Election Observation Mission Final Report on the Parliamentary Elections of 28 June 2024 (hereinafter the "2024 ODIHR EOM Final Report")*.[2]
5. This Preliminary Opinion was prepared in response to the above request. ODIHR conducted this assessment within its general mandate to assist OSCE participating States in the implementation of their OSCE human dimension commitments.[3]

II. SCOPE OF THE PRELIMINARY OPINION

6. The scope of this Preliminary Opinion covers the Law submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework governing the regulation of political parties and their financing in Mongolia.
7. The Preliminary Opinion raises key issues and highlights areas of concern. In the interest of conciseness, it focuses on those provisions of the Law that require amendments or improvements rather than on its positive aspects. The ensuing legal analysis is based on international and regional human rights standards, norms and recommendations as well as relevant OSCE human dimension commitments and international good practices, including the ODIHR-Venice Commission Joint Guidelines on Political Party

1 See ODIHR-Venice Commission, *Joint Opinion on the Draft Law on Political Parties of Mongolia* (20 June 2022). See also ODIHR, *Opinion on the Draft Law on Political Parties of Mongolia* (27 November 2019).

2 See ODIHR, *Mongolia - Parliamentary Elections (28 June 2024) - ODIHR Election Observation Mission Final Report*, 13 December 2024. See also ODIHR Electoral Recommendations.

3 See in particular, the *1990 OSCE Copenhagen Document*, para. 7.6., whereby the OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities*."

Regulation.[4] Reference is also made to relevant findings and recommendations from ODIHR election observation reports.

8. The Preliminary Opinion also highlights, as appropriate, good practices from other OSCE participating States. 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.

9. Moreover, in accordance with the Convention on the Elimination of All Forms of Discrimination against Women[5] (hereinafter "CEDAW") and the 2004 OSCE Action Plan for the Promotion of Gender Equality[6] and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion integrates, as appropriate, a gender and diversity perspective.

10. This Opinion is based on an unofficial English translation of the Law, which is annexed to this document. Errors from translation may result. Should the Opinion be translated in another language, the English version shall prevail.

11. In view of the above, ODIHR stresses that this review does not prevent ODIHR from formulating additional written or oral recommendations or comments on respective subject matters in Mongolia in the future.

III. LEGAL ANALYSIS AND RECOMMENDATIONS

1. Relevant International Human Rights Standards and OSCE Human Dimension Commitments

12. Political parties are essential in the democratic process and foundational to a pluralist society. They should be regulated in a manner that supports the rights to freedom of association and expression, as well as genuine and democratic elections. These rights are fundamental to the proper functioning of a democratic society.[7] To fulfil their core functions, political parties need appropriate funding both during and between election periods. At the same time, the regulation of political party funding and its transparency are essential to guarantee political parties' independence from undue influence of private and foreign donors, state and public bodies, as well as to ensure that parties have the opportunity to compete in accordance with the principle of equal opportunity.[8]

13. Fundamental rights afforded to political parties and their members are found principally in Articles 19 and 22 of the International Covenant on Civil and Political Rights (hereinafter "ICCPR"), which protects the rights to freedom of expression and opinion and the right to freedom of association, respectively. Article 25 ensures the right to participate in public affairs.[9] International standards on financing political parties and

4 See the ODIHR-Venice Commission, *Guidelines on Political Party Regulation* (2nd ed., 2020).
5 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. Mongolia ratified the Convention on 20 July 1981.
6 See the *OSCE Action Plan for the Promotion of Gender Equality*, adopted by Decision No. 14/04, MC.DEC/14/04 (2004), para. 32.
7 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation*, para. 17.
8 *Ibid*.
9 See *International Covenant on Civil and Political Rights* adopted by the UN General Assembly by resolution 2200A (XXI) of 16 December 1966. Mongolia ratified the Covenant on 18 November 1974.

election campaigns are found in Article 7 paragraph 3 of the United Nations Convention against Corruption (hereinafter "UNCAC").[10]

14. Furthermore, the CEDAW promotes gender equality and diversity inclusion, in particular, Articles 4 (on temporary special measures to enhance gender equality) and 7 (on eliminating discrimination against women in political and public life). Article 29 of the UN Convention on the Rights of Persons with Disabilities (hereinafter "CRPD") also focuses on the participation of persons with disabilities in political and public life.[11]

15. While Mongolia is not a Member State of the Council of Europe (hereinafter "the CoE"), the Preliminary Opinion will also refer as appropriate to the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter "the ECHR"),[12] other CoE's instruments and caselaw of the European Court of Human Rights (hereinafter "the ECtHR"), since they contain provisions similar to those in the ICCPR, and serve as tools of interpretation and as useful and persuasive reference documents on this issue, from a comparative perspective.

16. In addition, by joining the OSCE in 2012, Mongolia has expressed its adherence to various commitments related to the right to freedom of association, including the right to associate through political parties, expressed in several OSCE documents.[13] In particular, according to paragraph 7.6 of the 1990 OSCE Copenhagen Document, OSCE participating States committed to "*respect the right of individuals and groups to establish, in full freedom, their own political parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities.*"[14] Other OSCE commitments under the Copenhagen Document include the protection of the freedom of association (paragraph 9.3), of the freedom of opinion and expression (paragraph 9.1) and obligations on the separation of the State and the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is applicable.[15]

17. These standards and commitments are supplemented by various guidance and recommendations from the UN, the CoE and the OSCE. At the international level, these include General Comment No. 25 of the UN Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service interpreting state obligations under Article 25 of the ICCPR,[16] the CEDAW General Recommendation No. 23: Political and Public Life.[17] In addition, the CEDAW General

10 See *UN Convention against Corruption* (UNCAC), adopted by the General Assembly on 31 October 2003, by resolution 58/4. The Convention entered into effect on 14 December 2005, and Mongolia ratified it on 11 January 2006.

11 See the *UN Convention on the Rights of Persons with Disabilities* (CRPD), adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Mongolia ratified the Covenant on 13 May 2009.

12 See the *Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms* (ECHR) entered into force on 3 September 1953. Article 11 of the ECHR sets standards regarding the right to freedom of association, protecting political parties and their members as special types of associations. Article 3 of the First Protocol to the ECHR guarantees the right to genuine elections. Caselaw of the ECtHR provides additional guidance for CoE Member States on ensuring that laws and policies comply with key aspects of Article 11 (the right to freedom of peaceful assembly and to freedom of association). Furthermore, the right to freedom of opinion and expression under Article 10 of the ECHR and the right to free elections guaranteed by Article 3 of the First Protocol to the ECHR are also relevant when reviewing legislation on political parties.

13 For an overview of these and other OSCE Human Dimension Commitments, see ODIHR, *Human Dimension Commitments (Thematic Compilation)*, 4th Edition, particularly Sub-Sections 3.1.9, 4.1.2, 4.2.2 and 5.2.

14 See the *1990 OSCE Copenhagen Document*.

15 See the *OSCE Ministerial Council Decision 7/09*, 2 December 2009, Women's participation in political and public life.

16 See the *UN Human Rights Committee General Comment 25*: The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7.

17 See the CEDAW Committee, *General Recommendation No. 23*: Political and Public Life.

Recommendation No. 40 on the equal and inclusive representation of women in decision-making systems provides specific recommendations with respect to political parties.[18]

18. Furthermore, the CoE Committee of Ministers' Recommendation (2003)4 on Common Rules Against Corruption in the Funding of Political Parties and Electoral Campaigns (hereinafter "CoE Committee of Ministers' Recommendation Rec(2003)4"), as well as the Parliamentary Assembly of the CoE, Recommendation 1516(2001) on financing of political parties may serve as useful reference.[19]

19. The ensuing recommendations will also refer, as appropriate, to other nonbinding documents that provide further detailed guidance. These include the ODIHR and Venice Commission Joint Guidelines on Political Party Regulation (hereinafter "2020 Joint Guidelines"),[20] ODIHR and Venice Commission Joint Guidelines on Freedom of Association,[21] ODIHR Guidelines on Promoting the Political Participation of Persons with Disabilities,[22] the OSCE High Commissioner on National Minorities (hereinafter "OSCE/HCNM") Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes (2014)[23] and OSCE/HCNM Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999)[24], as well as and relevant reports of the CoE Group of States against Corruption (GRECO).

20. Other useful reference documents include the Venice Commission Code of Good Practice in the field of Political Parties,[25] as well various ODIHR and Venice Commission joint opinions.[26]

2. STATUS OF IMPLEMENTATION OF PREVIOUS ODIHR RECOMMENDATIONS

21. At the outset, ODIHR welcomes the provisions of the Law which address some of the recommendations made by ODIHR and the Venice Commission in the 2022 Joint Opinion and recommendations made by ODIHR in its 2019 Opinion, particularly with respect to:

- the relative simplification of the process of party registration[27] and more lenient deadlines and regulation for registering amendments to a party statute or appointment of new party leader;[28]

18 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, especially: para. 39 (c) ("*Introduce codes of conduct, with an intersectional perspective, in parliament, government, regional and local councils and political parties, public service and private sector companies to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling and provide corresponding training to all officials and staff*"); para. 45 (d) ("*Provide equitable financial and other support to women candidates, including spending caps and affordable advertising to ensure a level playing field in political campaigns*"); para. 51 (d) ("*Mandate and enforce parity in decision-making bodies of political parties and trade unions, with penalties for non-compliance and incentives for compliance*"); para. 51 (e) ("*Support the creation and strengthening of women's sections in political parties and trade unions, including through earmarked funds*").

19 See *the Council of Europe Committee of Ministers, Recommendation Rec(2003)4* to member states on common rules against corruption in the funding of political parties and electoral campaigns, adopted on 8 April 2003. See also *Parliamentary Assembly of the Council of Europe, Recommendation 1516(2001)* on financing of political parties, adopted by the Standing Committee, acting on behalf of the Assembly, on 22 May 2001.

20 See ODIHR-Venice Commission, *Joint Guidelines on Political Party Regulation* (2nd edition, 2020).

21 See ODIHR-Venice Commission, *Joint Guidelines on Freedom of Association* (2015).

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

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

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

25 Venice Commission, *Code of Good Practice in the field of Political Parties*, CDL-AD (2009)021.

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

27 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 43, for instance, the removal of the provisions envisaging a complex procedure with several stages for the formation of a political party, such as the setting-up of a working group, the organization during at least 60 days of public meetings to recruit a certain number of citizens, etc.

28 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 53, increase of the time period (from 30 to 60 days) within which the party shall submit amendments introduced in a party statute as well as decisions on appointing a party leader to the Supreme Court, with the non-compliance with the deadline no longer serving as a ground for refusing to register the amendments or the new leader of a party.

- less restrictive framework regarding the types of activities that political parties may carry out;[29]
- more strictly circumscribing the grounds for dissolution of political parties and list of prohibited activities;[30]
- adjusting the rules of eligibility and modalities of access to public funding, to be more equitable, including for smaller or newly established parties;[31]
- requiring the GEC to retain party financial statements and related documents for 10 years.

22. It is also welcome that a number of provisions welcomed by ODIHR and the Venice Commission in the 2022 Joint Opinion were retained and feature in the adopted Law, such as those governing donations to party-affiliated organizations to prevent the use of affiliated organizations as channels for third-party financing, as well as prohibiting donations made on behalf of another (e.g., "straw donors").

23. At the same time, the concerns raised in the 2022 ODIHR-Venice Commission Joint Opinion on the Draft Law on Political Parties of Mongolia[32] remain applicable for the large part, as further detailed below.

3. DEFINITION OF POLITICAL PARTIES

24. Article 4.1 of the Law provides a definition of a political party as "*the union of the citizens of Mongolia associated on voluntary basis upon expressing the political will of the citizens, participating in elections by proposing national level policies, and taking collective decisions".* It is welcome that the above definition does not contain a reference to the "*collective responsibility*", which, as was mentioned in the 2022 Joint Opinion, was rather problematic since a party cannot be held responsible for its members' isolated actions, especially if such actions are contrary to the party charter or party activities.[33] The reference in the definition to the participation in elections read together with Article 21.1.1 of the Law suggests that the presentation of candidates for elections is a defining requirement, which is indeed fundamental to distinguish political parties from interest groups, or other associations seeking to influence policy without itself presenting candidates for election.[34] Additionally, the reference to "proposing national level policies" may be unduly limiting and may also have discriminatory effects against parties enjoying regional or local support, or those promoting the rights of national minorities,

29 See ODIHR-Venice Commission *2022 Joint Opinion*, paras. 58, 62 and 64, for instance, broadening the scope of international activities of political parties by allowing a political party to become members of international party organizations, removing the prohibition of the payment of salaries and bonuses to party members and supporters during election and non-election periods for embodying their political will, expressing their political position and actively participating in the activities of the party, and deleting the requirement to base the electoral platforms of political parties on research and be consistent with the party platform.

30 See ODIHR-Venice Commission *2022 Joint Opinion*, paras. 60 and 75, including by removing the ground for dissolution of a political party based on two years of inactivity following the non-presentation of candidates to the State Great Hural elections during two consecutive terms, or inactivity of its governing bodies for five years, while also more strictly referring to "serious threat" instead of "direct or serious threat" and removing the general reference to "constitutional order" (see also Sub-Section 7 of the Preliminary Opinion *infra*).

31 See ODIHR-Venice Commission *2022 Joint Opinion*, paras. 93 and 98, including by lowering the threshold from 3 percent to 1 percent of the total votes to access public funding, thereby benefitting non-parliamentary and newly established parties (*2022 Joint Opinion*, para. 93); and reducing from 60 to 50 percent of public funding for specific purposes which is beneficial for smaller parties, which may struggle to cover basic operating costs if the great majority of public funding is used for other purposes (*2022 Joint Opinion*, para. 98).

32 See *ODIHR-Venice Commission Joint Opinion on the Draft Law on Political Parties of Mongolia*, approved by the Council for Democratic Elections at its 73rd meeting (16 June 2022) and adopted by the Venice Commission at its 131st Plenary Session (Venice 17-18 June 2022).

33 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 30. See also 2020 *Joint Guidelines on Political Party Regulation*, para. 118; and Venice Commission, *Guidelines on prohibition and dissolution of political parties and analogous measures*, CDL-INF(2000)001, para. 4. The ECtHR held dissolution to be disproportionate where this was based on remarks of a political party's former leader (ECtHR, *Dicle for the Democratic Party (DEP) of Turkey v. Turkey*, no. 25141/94, 10 December 2002, para. 64).

34 See 2020 *Joint Guidelines on Political Party Regulation*, para 64 and Annex II, p. 173.

or supporting specific individuals for leadership positions, without necessarily proposing national-level policies[35].

25. Article 4.2 of the Law describes in detail the key functions of a political party, with very progressive provisions, such as the promotion of "*political education and active participation of citizens*" (4.2.3), or the training of "*responsible citizens capable of holding a state political position*" (4.2.4). At the same time, the list of functions no longer contains reference to ensuring the participation of women, youth and people with disabilities in decision-making compared to the Draft Law analysed in the 2022 Joint Opinion.[36] While the representation and participation of women, elders, youth and persons with disabilities is mentioned when referring to parties' *internal* organization, policies and activities (Article 8.5), the previous wording was demonstrating the unique and fundamental role political parties play to contribute to more democratic, inclusive and participatory political and public decision-making processes.[37] It is recommended **to include such functions among key political parties' functions in Article 4.2 of the Law**.

26. Articles 3.1.1 and 3.1.3 of the Law provide the definitions of a "party member" and a "party supporter", making a distinction on the basis of payment of the membership fee associated with voting rights.[38] This distinction creates a distinct level of involvement for those unable or unwilling to pay a membership fee.[39] It is worth noting that in addition, there is a possibility for a party, under Article 32.6 of the Law, to provide in its own charter and regulations for a party membership fee deduction or exemption for a party member. Generally, political parties should decide freely whether to allow participation in party functions to someone who is not paying a membership fee. **Political parties should be able to decide internally (in their charters) whether to allow participation in their party functions irrespective of the payment of a membership fee. The Law should not be regulating this matter.**

4. ESTABLISHMENT AND MEMBERSHIP IN POLITICAL PARTIES

27. Article 5.1 of the Law provides that "*citizens of Mongolia who are eligible to vote shall have the right to associate upon voluntary basis, form the Party, join or leave the Party, participate in political activities in conformity with laws and the party rules and platform, and support or not support the party*". As mentioned in 2022 Joint Opinion, pursuant to Article 5.2 of the Law on the Election of the President of Mongolia[40] adopted in December 2020, a citizen who has been deprived of legal capacity by a court – including on the basis of intellectual or psychological disability – or who is serving a prison sentence – irrespective of the nature and gravity of the crime – shall not be entitled to participate in elections. Pursuant to Article 12 of the CRPD, all persons with disabilities shall enjoy legal capacity[41] and States should seek to assist them to exercise their legal

35 *Ibid*, paras. 102-103,

36 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 31.

37 See ODIHR, *Handbook on Promoting Women's Participation in Political Parties* (2014). The *Beijing Declaration and Platform for Action*, adopted 15 September 1995, Fourth World Conference on Women, para. 191.

38 According to Article 3.1.1 of the Law, "a party member" means "a citizen who accepts party's purpose and conceptions, the party's platform and rules, became a member upon joining the party on a voluntary basis, pays membership fees, and participates in activities of such party *with the right to vote and to elect and be elected".* According to Article 3.1.3, "a party supporter" means "a citizen who actively participates in the activities of the party voluntarily upon supporting the objectives and conceptions of the party*".*

39 See 2020 *Joint Guidelines on Political Party Regulation*, para. 156.

40 Article 5.2 of the Law on the Election of the President of Mongolia (24 December 2020) states: "A citizen who has been declared legally incompetent by a court decision or is serving a prison sentence shall not be entitled to participate in elections".

41 Article 12 (2) of the CRPD states that "*States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life*". See also UN Committee on the Rights of Persons with Disabilities, *General Comment No. 1 to Article 12 of the CPRD on equal recognition before the law* (2014), para. 7, whereby legal capacity is recognized as "*an inherent right*

capacity, by providing them with access to different types of supported decision-making arrangements, rather than pursue a system of legal incapacitation. As emphasized in previous opinions and election reports,[42] **legal incapacitation and restrictions on voting rights on this basis are inconsistent with international standards and OSCE Commitments**.[43]

28. As a consequence, such restrictions also limit the right to establish and register, as well as join, a political party for citizens deprived of legal capacity and persons serving a prison sentence without regard to the nature and gravity of the crime. Pursuant to Article 29 (b) (i) of the CRPD, States Parties shall undertake to promote actively an environment in which persons with disabilities can participate in "*non-governmental organizations and associations concerned with the public and political life of the country, and in the activities and administration of political parties"*. In addition, freedom of association, including in the formation of and support to political parties, is essential to ensuring the full enjoyment and protection of the rights to freedom of expression, freedom of association and political participation. All individuals and groups that seek to establish or join a political party must be able to do so on the basis of equal treatment before the law and without discrimination on any ground.[44] No individual or group wishing to

accorded to all people, including persons with disabilities"; see also para. 6, which emphasizes that legal capacity is the key to accessing full and effective participation in society and in decision-making processes and should be guaranteed to all persons with disabilities, including persons with intellectual disabilities, persons with autism and persons with actual or perceived psychosocial impairment, and children with disabilities, through their organizations.

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

43 Article 29 of the 2006 CRPD requires states to "*guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others*" and Article 12 of the CRPD states that "*States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life*". See also CRPD Committee, *Concluding observations on the combined second and third periodic reports of Mongolia*, 5 October 2023, paras. 25-26. Paragraph 24 of the *1990 OSCE Copenhagen Document* provides, in part, that "*any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law*". See also ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (Warsaw: 2019), especially p. 36; and paragraph 9.4 of the 2013 CRPD Committee's Communication No. 4/2011, which states that "*Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention*". See UN Human Rights Committee (UN HRC), *General Comment No. 25 on Article 25 of the ICCPR* (1996), CCPR/C/21/Rev.1/Add.7, paragraph 14, which requires that "*if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence*"; see also UN HRC, *Yevdokimov v. Russian Federation*, 9 May 2011, in which the Committee held that the blanket restriction on the right to vote based on criminal conviction without regard to the gravity of the crime was a violation of Article 25 of the ICCPR. For recommendations regarding the removal of the requirement of "active legal capacity" to become a member of a political party; see also ODIHR, *Opinion on the Constitutional Law of the Republic of Armenia on Political Parties* (11 October 2019), para. 43; and ODIHR-Venice Commission, *Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia*, CDL-AD(2020)004, para. 23, which welcomed the lifting of similar restrictions.

44 See 2020 *Joint Guidelines on Political Party Regulation*, Principle 8 and para. 54. See Articles 2 and 26 of the ICCPR and, for reference, Article 14 of the ECHR and Protocol No. 12 to the ECHR. See also Article 29 of the CRPD, which requires states to "*guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others*" and Article 12 of the CRPD, which provides that "*States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life*". See also CRPD Committee, *Concluding observations on the combined second and third periodic reports of Mongolia*, 5 October 2023, paras. 25-26. Paragraph 24 of the *1990 OSCE Copenhagen Document* provides, in part, that "*any restriction on rights and freedoms must, in a democratic society, relate to one of the objectives of the applicable law and be strictly proportionate to the aim of that law*". See also ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (Warsaw: 2019), especially p. 36; and paragraph 9.4 of the 2013 CRPD Committee's Communication No. 4/2011, which states that "*Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention*". See also UN Human Rights Committee (UN HRC), *General Comment No. 25 on Article 25 of the ICCPR* (1996), CCPR/C/21/Rev.1/Add.7, para. 14, which requires that "*if a conviction for an offence is a basis for suspending the right to vote, the period of such suspension should be proportionate to the offence and the sentence*"; see also UN HRC, *Yevdokimov v. Russian Federation*, 9 May 2011, in which the Committee held that the blanket restriction on the right to vote based on criminal conviction without regard to the gravity of the crime was a violation of Article 25 of the ICCPR. For recommendations regarding the removal of the requirement of "active legal capacity" to become a member of a political party; see also ODIHR, *Opinion on the Constitutional Law of the Republic of Armenia on Political Parties* (11 October 2019), para. 43; and ODIHR-Venice Commission, *Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia*, CDL-AD(2020)004, para. 23, which welcomed the lifting of similar restrictions. See also OSCE, *1990 OSCE Copenhagen Document*, para. 7.6., The OSCE Copenhagen Document (1990), para. 7.6, states that "*Participating States will respect the right of individuals and groups to establish, in full freedom, their own political*

associate as a political party should be advantaged or disadvantaged in this endeavour by the State, and the regulation of parties must be uniformly applied.[45]

29. In light of the foregoing, **ODIHR reiterates its recommendation from the 2022 Joint Opinion[46] to remove from Article 5.1 of the Law the requirement of being "eligible to vote" to establish or join a political party. More generally, the restrictions relating to the eligibility to vote for citizens "deprived of legal capacity by a court" should also be repealed in other legislation, while the concept of depriving anyone of legal capacity in Mongolia should be reconsidered entirely. In addition, the legal drafters should also review the blanket restriction on the eligibility to vote based on criminal conviction without regard to the nature and gravity of the crime.** This recommendation would also be in line with the recommendations made in the 2019 Opinion[47] and in the *2024 ODIHR EOM Final Report*.[48]

30. Article 5.9 of the Law refers to restrictions to the exercise of the right to form a political party or to freedom of association, which shall be necessary and appropriate for the "*protection of national security, public order, public morals, public health, or protection of other fundamental human rights and freedoms as well as those specifically provided by laws*". The provision goes beyond the restriction grounds specifically listed in Article 22 (2) of the ICCPR. As emphasized in the 2020 Joint Guidelines, the list of restrictive grounds in the ICCPR is exhaustive[49] and shall be narrowly interpreted.[50] **It is therefore recommended to remove from Article 5.9 the reference to "*those [restrictions] specifically provided by laws*"**. Otherwise, Article 5.11 seems to provide for a presumption in favour of the lawfulness of political parties' establishment and objectives as long as Articles 5.9 on general limitations and 5.10 on non-discrimination are complied with. This is welcome in principle provided that in practice, the establishment and objectives will be deemed lawful regardless of the formalities applicable for establishment or official recognition, in accordance with Principle 1 of the 2020 Joint Guidelines.

31. The Law also contains a number of limitations concerning the naming of a political party. Article 6.1 of the Law requires that the name of a political party shall include the general term "party" at the end, which may be too prescriptive. Further, Article 6.6 of the Law provides that in case of deregistration, reorganization by merger or change of name, a newly established party or other parties are prohibited from reusing the names/abbreviated names, symbols and flags of such party for 12 years. While there may be local circumstances that may justify such duration, the length of this restriction appears very long and therefore too restrictive. Moreover, Article 23.3 provides that the reorganized party following a merger may use the name of one of the parties to the merger as the name of the newly established party. This provision seems to contradict Article 6.6

parties or other political organisations and provide such political parties and organisations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities." See also Council of Europe, *Recommendation CM/Rec(2011)14 of the Committee of Ministers to member states on the participation of persons with disabilities in political and public life*, point 1, which further invites members states to enable persons with disabilities "*freely and without discrimination, particularly of a legal, environmental and/or financial nature to [...] meet, join or found political parties."*

45 *Ibid.* para. 54 (2020 *Joint Guidelines on Political Party Regulation*).

46 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 38.

47 2019 ODIHR *Opinion on the Draft Law on Political Parties of Mongolia*, paras. 28-29, which recommended to remove the prohibition to establish a political party for "*citizens deprived of legal capacity by a court*" and for "*citizen[s] who is sentenced to imprisonment due to committing a crime of misusing official position or national security until the punishment is counted*".

48 See ODIHR, *Mongolia - Parliamentary Elections (28 June 2024) - ODIHR Election Observation Mission Final Report*, 13 December 2024, p. 9.

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

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

of the Law. **It is therefore recommended to the drafters to reconsider such limitations with a view to ensure consistency.**

32. According to Article 3.1.1 of the Law, "a party member" means "*a citizen who accepts party's purpose and conceptions, the party's platform and rules, became a member upon joining the party on a voluntary basis, pays membership fees, and participates in activities of such party with the right to vote and to elect and be elected".* This means that non-citizens and stateless persons cannot become members of political parties. In addition, Article 5.1 of the Law refers to the right of "*citizens of Mongolia who are eligible to vote*" to join or leave a political party, thereby suggesting that only citizens of Mongolia may be members of political parties.

33. As specified in Article 25 of the ICCPR, certain rights may apply only to citizens, e.g., the right to take part in the conduct of public affairs, to vote and to be elected, and to access public services. At the same time, and as already noted in the 2022 Joint Opinion, a general exclusion of foreign citizens and stateless persons from *membership* in political parties is not justified.[51] This would also constitute an excessive restriction to their rights to freedom of association and freedom of expression.[52] As emphasized in the 2020 Joint Guidelines, only the possibility of aliens to establish political parties can be restricted but not the membership of aliens in political parties.[53]

34. In addition, while recognizing the right of States to link certain modes of public office and political participation to a citizenship requirement, in line with previous recommendations, **consideration should be given to extend eligibility for political party membership to include foreign nationals, at least those with legal residency, and stateless persons. It is, therefore, recommended to replace the reference to "citizen"/"citizens of Mongolia" by "individual(s)" or "everyone" in order to ensure that foreigners and stateless persons may become members of political parties if they so wish**.

35. Article 5.3 of the Law provides that if a party member is appointed as a so-called "core civil servant", his or her party membership shall be suspended. The Law on Civil Service[54] distinguishes between four categories of civil servants and its Article 6.2 specifies that two of such categories shall be regarded as "core civil service", i.e., "administrative civil servants" as defined in Article 12 of the Law on Civil Service[55] and "special civil servants" as defined in Article 13 of the Law on Civil Service.[56] At the

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51 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 48. See also 2020 *Joint Guidelines on Political Party Regulation*, para. 149; and Venice Commission, *Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues* (15 April 2004), CDL-AD (2004)007rev, item "H". See also ODIHR-Venice Commission, *Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia*, CDL-AD(2020)004, para. 23, which states that *"a general exclusion of foreign citizens and stateless persons from membership of political parties is not justified, as they should to some extent be permitted to participate in the political life of their country of residence, at least as far as they can participate in elections."*

52 *Ibid.* para. 149 (2020 *Joint Guidelines on Political Party Regulation*).

53 2020 *Joint Guidelines on Political Party Regulation*, para. 149. See also Venice Commission, *Opinion on the Ukrainian Legislation on Political Parties*, CDL-AD(2002)017, para. 37, where the Venice Commission specifically recommended that "*foreign citizens and stateless persons should be allowed to participate to some extent in the political life of their country of residence, at the very least by making possible their membership in political parties"*; 2019 ODIHR *Opinion*, para. 28; and Venice Commission, Guidelines and Explanatory Report on Legislation on political parties: Some Specific Issues (15 April 2004), CDL-AD (2004)007rev, Guidelines on item "H". See also, as a comparison, *Recommendation 1500 (2001) on Participation of Immigrants and Foreign Residents in Political Life in the CoE Member States*, which notes that democratic legitimacy requires equal participation by all groups of society in the political process, and that the contribution of legally resident non-citizens to a country's prosperity further justifies their right to influence political decisions in the country concerned (para. 4). As also previously noted by ODIHR and the Venice Commission, *"the regulation in this area is not completely uniform across Europe and Article 16 of the ECHR expressly recognises the right of states to impose restrictions on the political activity of aliens. Yet, the ECtHR has held that this provision should be construed as only allowing restrictions on "activities" that directly affect the political process."* See ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 87. See also ECtHR, *Perinçek v. Switzerland [GC], no. 27510/08*, 15 October 2015, para. 121. See also ODIHR *Opinion on the Act on Political Parties of Poland*, para. 26.

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

55 i.e., administrative and executive professionals providing counseling in the development of public policy in the administration of government as well as administrative supervision.

56 Article 13 of the Law on Civil Service defines the category of "special civil servants" which include judges and prosecutors at all levels, the military, the police and other investigators, diplomats, representatives of key independent institutions or agencies, among others.

same time, Article 37.1.4 of the Law on Civil Service further states that except for state political officials (who are listed in Article 11 of the same Law),[57] a civil servant shall not participate in any form of political party during his or her term in office. This implies that not only "core civil servants" but also "general public servants" as defined in Article 14,[58] are excluded from party membership during their terms of office. As such, Article 5.3 of the Law is not fully in line with Article 37.1.4 of the Law on Civil Service.

36. It is important to note that Article 22 (2) of the ICCPR specifically envisions restrictions concerning membership in associations of two categories of public servants i.e., members of the armed forces and of the police. In the 2020 Joint Guidelines, it is emphasized that although generally legitimate, restrictions to political party membership "*may be considered undue infringements if they are applied in an overly broad manner, e.g., to all persons in government service*".[59] The category of so-called "core civil servants" in the Law on Civil Service goes much beyond what is contemplated in the ICCPR as it not only encompasses the military and the police, but also other representatives of institutions/agencies, as well as administrators, executive professionals and supervisors. While certain restrictions applicable to certain categories of public servants are legitimate as they seek to prevent bias and to maintain the neutrality and impartiality of the public service,[60] the personal scope of such restrictions/prohibitions should not be overly broad. On a side note, Article 37.1.4 of the Law on Civil Service goes even further by prohibiting an even broader category of civil servants to participate in any form of political party. The limitation to political party membership applicable to "core public servants" as it stands appears too broad and should be more strictly circumscribed. In any case, as also recommended in the 2022 Joint Opinion,[61] **the term "core civil servant" should be clarified in the Law by specifying the type of public officials prohibited from membership in political parties or by cross-referencing the relevant legislation, while ensuring that any restriction on political party membership is strictly justified, for instance to ensure the political neutrality of the said civil servants.**

37. Article 5.6 of the Law states that *"[e]xcept as provided by law, it shall be prohibited to identify a citizen as a member of any party without the consent of the citizen in the official personal reference"*. This provision is welcome as it offers an opportunity to eliminate the mention, without consent, of political identification in official personal identification documents, which is a particularly sensitive type of information, which may facilitate discriminations and allocation of privileges based on party membership, thereby potentially constituting prohibited discrimination.[62]

RECOMMENDATION A.

1. To remove from Article 5.1 of the Law the requirement of being "eligible to vote" to establish or join a political party and more generally to repeal in other legislation the restrictions relating to the eligibility to vote for citizens "deprived of legal capacity by a court", while entirely reconsidering the concept of depriving anyone of legal capacity in Mongolia.

57 This includes key political positions such as the President, Vice-Presidents, the Chairperson and Vice-Chairperson of the Parliament, the Prime Minister and members of the government

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

59 2020 *Joint Guidelines on Political Party Regulation*, para. 148. See also, for example, as a comparison, the case of the European Court of Human Rights (ECtHR), *Vogt v. Germany* [GC], no. 17851/91, 26 September 1995, where the ECtHR found that the dismissal of a public teacher on the basis of her membership in a political party was an infringement of her rights as set out in Articles 10 and 11 of the ECHR.

60 2020 *Joint Guidelines on Political Party Regulation*, para. 148.

61 ODIHR-Venice Commission *2022 Joint Opinion*, para. 59.

62 2020 *Joint Guidelines on Political Party Regulation*, paras. 54, 56 and 59.

2. To extend eligibility for political party membership to include foreign nationals with legal residency and stateless persons, while replacing the reference to "citizen"/"citizens of Mongolia" by "individual" or "everyone" in order to ensure that foreigners and stateless persons may become members of political parties if they so wish.

3. To clarify in the Law the term "core civil servant" by specifying the type of public officials prohibited from membership in political parties or by cross-referencing the relevant legislation, while ensuring that any restriction on political party membership is strictly justified, for instance to ensure the political neutrality of the said civil servants.

5. REGISTRATION OF POLITICAL PARTIES

38. Articles 11 to 14 of the Law outline the procedure for establishing a political party and conditions for party registration. In general, not all OSCE participating States require the registration of political parties. However, it is also acknowledged that political parties may obtain certain legal privileges, based on their legal status, that are not available to other associations. Hence, it is reasonable to require the registration of political parties with a state authority.[63] At the same time, as underlined in the 2020 Joint Guidelines, substantive registration requirements and procedural steps for registration should be reasonable.[64]

39. Comparing to the Draft Law which was analysed in the 2022 Joint Opinion, the current version of the Law envisages a relatively more simplified procedure for the registration of a political party. In particular, it no longer requires setting up of a working group, as well as conducting public meetings to recruit citizens, and the obligation for participants to the public meetings to submit their names, ID and contact details to the working group.[65] Such simplification is overall welcome as it should result in a less complicated process of party formation and registration with fewer formalities which is especially relevant for the establishment of new political parties, thereby contributing to the enjoyment of the right to freedom of association without unnecessary limitations.[66]

40. Despite of the attempts of simplifying the registration procedure, some the formation and/or registration requirements still appear rather cumbersome.

41. Some of the supporting documents to be submitted for registering a political party may appear unreasonable. Requiring that the party's platform be finalized at the first founding meeting might be not feasible (Article 11.4.2). Additionally, regardless of when the party has a chance to finalize its platform, there is no reason for the state to require the inclusion

63 *Ibid.* para. 85 (2020 *Joint Guidelines on Political Party Regulation*). Most Western European countries (e.g., Germany, Greece, Spain, Switzerland) do not establish any special registration requirements for political parties as compared to other associations while in countries like Denmark, Italy or The Netherlands, political parties are not even obliged to register. In other countries, the collection of a minimum number of signatures prior to the registration of a political party is the most frequent requirement. It can go from as low as 3 in Andorra (population of approx. 80,000), 100 in Croatia (population of approx. 3.9 million) or 200 in Latvia (population of approx. 1.88 million), Montenegro (population of approx. 0.62 million) or Slovenia (population of approx. 2.12 million) to as high as 10,000 in Serbia (population of approx. 6.62 million) and Slovakia (population of approx. 5.43 million) or even 20,000 in Uzbekistan (population of approx. 35.7 million). Some countries, however, use party membership as the basis to establish the minimum levels of support required for registration, for instance 3 in Romania, 10 in Hungary or Kyrgyzstan or 40,000 in Kazakhstan. In Bulgaria, both a minimum number of signatures (500) and member (2,500) is required. For instance, in Canada, there is no legislation regulating the formation of federal political parties or their legal, internal and financial structures but a party may choose to register, in which case it should have at least 250 members who are electors, in a country which population represents approximately 40 million inhabitants; see <https://www.elections.ca/content.aspx?section=pol&dir=pol/bck&document=index&lang=e>.

64 *Ibid.* para. 86 (2020 *Joint Guidelines on Political Party Regulation*). See also ODIHR, *Opinion on the Constitutional Law of the Republic of Armenia on Political Parties*, 11 October 2019, paras. 21-22.

65 ODIHR-Venice Commission *2022 Joint Opinion*, para. 45.

66 *Ibid.* para. 88 (2020 *Joint Guidelines on Political Party Regulation*). In the 2020 Joint Guidelines, ODIHR and the Venice Commission emphasized that "[d]eadlines that are overly long constitute unreasonable barriers to party registration and participation"

of the party's platform at the time of applying for registration as a political party (Article 12.3.4), as the decision on registration of the party should not be contingent on the content of the party's platform. This issue should be left to the political party to decide internally. Regarding the submission of the charter, as noted in the 2020 Joint Guidelines, such requirement is not inherently illegitimate, providing that it is not used to unfairly disadvantage or discriminate against any political party, especially those espousing unpopular ideas.[67]

42. Article 12.3.6 of the Law still requires 801 signatures of members confirming their intention to join the party as opposed to the 1 per cent of the electorate threshold required in the Constitution.[68]. A requirement based on minimum support established through the collection of signatures is legitimate. However, the state must ensure that requirements are reasonable and democratically justifiable and not so burdensome as to restrict the political activities of small parties or to discriminate against parties representing minorities.[69] As provided by the Guidelines, *"[g]iven variances in the size and nature of states throughout the OSCE region, it is generally preferable that the minimum number of persons required to establish support be determined, at least at the local and regional level, not as an absolute number, but rather as a reasonable percentage of the total voting population within a particular constituency."*[70] The rather low threshold of 801 signatures compared to Mongolia's population of approximately 3.58 million,[71] i.e., 0.022 per cent of the population, would appear reasonable, and accessible enough to ensure political inclusivity. At the same, as underlined in the 2022 Joint Opinion, compared to the constitutional requirement of 1 per cent of the total electorate (Article 19^1 of the Constitution as introduced in 2019), which should enter into force in 2028, the required threshold is much lower, which may have as a consequence a possible contradiction between the Law and the Constitution.[72]

43. It is noted that Article 13.2.3 of the Law requires the Supreme Court to check whether the required minimum number of members is met, while ensuring that such members do not belong to another party. In this respect, the Guidelines underline that *"[i]t should be possible to support the registration of more than one party, and legislation should not limit a citizen or other individual to signing a supporting list for only one party. Any limitation of this right is too easily abused and can lead to the disqualification of parties that in good faith believed that they had fulfilled the requirements for sufficient signatures."*[73] **The requirement that founding member should not belong to another party should be reconsidered entirely.**

44. Further, it is essential that the legislation ensures that the registration process is completed in a timely and predictable manner. Regarding the timeline to register a political party, Article 13.1 of the Law specifies that the Supreme Court shall review the completeness of the application and accompanying documents within 21 days after receiving the application for party registration. If certain violations are found in the application or accompanying documents, the Supreme Court shall notify the applicant to eliminate such violation and submit additional information within 30 days (Article 13.2). A decision whether to register or refuse to register the respective party shall be issued by

67 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*,, para. 90.
68 According to Article 191 (2) of the Constitution of Mongolia, the Party shall be formed by associating uniting at least one per cent of Mongolian citizens, eligible to vote in the election. This paragraph shall enter into force starting from 1 January 2028.
69 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 94-97.
70 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 95. In general, a minimum level of support amounting to 1,000 party members for a population of eight million inhabitants (i.e., 0.0125% of the population) would be considered reasonable, while 5,000 party members (i.e., 0.0625% of the population) would be deemed a disproportionate requirement, which is not necessary in a democratic society; see, Venice Commission, *Opinion on the Draft Law on Amendments to the Law on Political Parties of the Republic of Azerbaijan*, CDL-AD(2011)046, para. 18.
71 See <National Statistics Office of Mongolia>.
72 ODIHR-Venice Commission *2022 Joint Opinion*, para. 25.
73 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 96.

a meeting of all judges of the Supreme Court upon discussing it within 30 days after the expiration of the aforementioned periods of 21 days or 30 days, and the Office of the Supreme Court shall deliver within three working days the decision to the applicant in writing or electronically, and inform the public. The Office of the Supreme Court shall issue a certificate and seal control number within five working days after the announcement of the decision to register the party in the political party registration. Overall, the registration process might take up to 65 days, which seems rather excessive. Excessively long procedures for consideration of the party registration appears to be at odds with the abovementioned principles requiring substantive registration requirements and procedural steps for registration to be reasonable, and not overly restrictive and burdensome. **It is thus, recommended, to reconsider the deadlines for examining party registration application to make them shorter and more efficient to simplify and speed up the registration process**.

45. Article 14.4.1 of the Law further states that the Supreme Court shall refuse to register a party if, among others, *"[t]he the charter and platform of the party are contrary to the Constitution of Mongolia and other laws*". First, such a ground appears overly broad and vague and may be subject to potentially diverging interpretation. Moreover, as emphasized in the 2020 Joint Guidelines, "*the law should not forbid a political party from advocating a change to the constitutional order of the state, as long as the means used to that end are legal and democratic, and the change proposed is in itself compatible with fundamental democratic principles*".[74] Moreover, "*the mere fact that a party advocates a peaceful change of the constitutional order, or promotes self- determination of a specific people is not sufficient per se to justify a party's prohibition or dissolution*".[75] The party programmes may be incompatible with the current principles and structures of a given state as embedded in the Constitution and/or other laws, but may still be compatible with the rules of democracy, as it is "*the essence of democracy to allow diverse political programmes to be proposed and debated, even those that call into question the way a State is currently organised, provided that they do not harm democracy itself*".[76] Consequently, a political party must be able to promote a constitutional change on two conditions: firstly, the means used to that end must be legal and democratic; secondly, the change proposed must be compatible with fundamental democratic principles.[77] In light of the above, **the legal drafters should reconsider the incompatibility of the party charter and platform with the Constitution and other laws as grounds for refusal of party registration.**[78]

46. Article 14.10 of the Law prevents the submission of an application for registration of a political party to the Supreme Court during the 90 days preceding the *State Great Hural* election. It is noted that Article 26 of the Law on Parliamentary Elections provides that political parties registered with the Supreme Court at least 180 days before the voting day are entitled to participate in the elections of the *State Great Hural* and to nominate candidates and may declare their intention to participate in the parliamentary elections to the GEC at least 60 days before the election day. There should not be time limits in the Law on the registration as a party and on the suspension of the deadlines specified in Articles 14.1 and 15.1 once the registration is submitted. Indeed, there is no reason to limit the right of individuals to associate during the election period, as there are in any case specific provisions for limiting participation in elections in the electoral legislation,

74 2020 *Joint Guidelines on Political Party Regulation*, para. 38.
75 *Ibid.* para. 115 (2020 *Joint Guidelines on Political Party Regulation*).
76 See ECtHR, *Socialist Party and Others v. Turkey*, no. 21237/93, 25 May 1998, para. 47; and ECtHR, *Freedom and Democracy Party (ÖZDEP) v. Turkey* [GC], no. 23885/94, 8 December 1999, para. 41.
77 2020 *Joint Guidelines on Political Party Regulation*, para. 116. See also, for reference, ECtHR, *Refah Partisi (the Welfare Party) and Others v. Turkey* [GC], nos. 41340/98 and 3 others, 13 February 2003.
78 See ODIHR, *Mongolia - Parliamentary Elections (28 June 2024) - ODIHR Election Observation Mission Final Report*, 13 December 2024, p. 7. See also ODIHR-Venice Commission *2022 Joint Opinion*, para. 56.

which however the ODIHR election observation reports have criticised as overly restrictive[79] (see also Sub-Section F(3) on Political Parties in Elections of the 2022 Joint Opinion). **It is recommended to delete Article 14.10 of the Law**.

RECOMMENDATION B.

1. To amend Articles 11.4.2 and 12.3.4 of the Law by eliminating the requirement to finalize party's platform at the first founding meeting and excluding it from the list of the documents to be submitted for registering a political party**.**
2. To reconsider the deadlines for examining party registration applications to make them shorter and more efficient to simplify and speed up the registration process.
3. To consider eliminating Article 14.10 of the Law which prevents the submission of an application for registration of a political party to the Supreme Court during the 90 days preceding the *State Great Hural* election.

6. Internal Organization, Decision-making Process and Activities of Political Parties

47. Overall, as already critically assessed in the 2022 Joint Opinion, the Law remains overly detailed with regard to the structure and functioning of political parties, including their internal organization, content of the charter and internal decision-making processes.[80] According to international recommendations and good practice, political parties are granted a certain level of autonomy in their internal structure and decision-making, as well as external functioning and internal democracy is recognized as a key element for the functioning of political parties.[81] Pursuant to this principle, political parties should be free to establish their own organization and the rules for selecting their party leaders and candidates, since this is regarded as integral to the concept of associational autonomy of a party.[82] It should also be up to the parties themselves to determine how their conferences and decision-making procedures are organized.[83]

48. As it stands, the Law is overregulating matters that usually lie within the discretion of the political parties[84] and as a consequence, limits the party autonomy to decide on issues such as the party's internal organization and structure, membership, its leadership,

79 See e.g., ODIHR, *Mongolia - Needs Assessment Mission Report – Parliamentary Elections* (22 April 2020), Section E; and regarding presidential elections, ODIHR, *Mongolia - Special Election Assessment Mission Final Report* (22 October 2021), Section VIII.

80 ODIHR-Venice Commission *2022 Joint Opinion*, para. 52. See also ODIHR, *Mongolia - Parliamentary Elections (28 June 2024) - ODIHR Election Observation Mission Final Report*, 13 December 2024, p. 7.

81 2020 *Joint Guidelines on Political Party Regulation*, para. 151, which states that "[t]he internal functions and processes of political parties should generally be free from state interference. Internal political party functions are best regulated through the party constitutions or voluntary codes of conduct elaborated and agreed on by the parties themselves. Legal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs." See also ODIHR, *Opinion on the Constitutional Law of the Republic of Armenia on Political Parties* (11 October 2019), paras. 21-22; and ODIHR-Venice Commission, *Joint Opinion on Draft Amendments to the Legislation concerning Political Parties of Armenia*, CDL-AD(2020)004, paras. 19-21.

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

83 *Ibid.* para. 155 (2020 *Joint Guidelines on Political Party Regulation*).

84 See e.g., Article 8.3 of the Law, which specifies the voting thresholds; Article 16 contains detailed provisions on the structure and organization of a political party, while Articles 17-18 describe the supreme governing body and the supervisory body of a political party, their executive powers and modalities of work, particularly Article 17.4 requires at least two thirds of the members of the supreme governing body of the party to issue a proposal for amending to the charter of the party, while requiring two-thirds of the members to approve an amendment. Article 17.4 further states that this amendment shall not exceed one third of the charter of the party which also does not seem completely justified, especially at this appears unclear how to measure the amount changed: either by a number of clauses or number of words changed. Article 19.4 of the Law establishes that the party may have a committee to organize the electing works of the candidates from the party to the elections of the *State Great Khural* of Mongolia. The requirements for the composition of the committee, its formation, regulation of conflict of interest, and operational procedures shall be in accordance with Article 8 of the Law and charter of the party.

charter, program and decision-making procedure. As such, the provisions appear too detailed and unnecessary, as they limit political parties' right to self-regulate these matters, and thereby constitute an excessive encroachment on the autonomy of political parties.

49. Overall, it would be advisable that the Law specifically refers to the principles of democracy with respect to parties' internal structures and rules and give parties a rather wide autonomy to decide about their structure since party internal functions and processes should generally be free from state interference. This includes the freedom to determine their organizational structure and establish rules for selecting party leaders and candidates, as these are integral to a party's autonomy as an association. At the same time, it is important that the current provisions, especially on appointment and voting process, are not interpreted or applied in an overly restrictive manner, limiting the parties' ability to choose how to self-regulate.[85]

50. **It is recommended to review Articles 8 and 15-19 of the Law by giving political parties the autonomy to decide on the structure of the party and decision-making process, though still respecting democratic principles as stated above. Especially, and as recommended in 2022, the provisions imposing minimum voting requirements for decision-making should be removed in order to give full discretion to political parties in this respect**.[86]

51. At the same time, as noted in the 2020 Joint Guidelines, it is legitimate for states to introduce some legislative requirements for the internal organisation and selection of candidates for elections, in the interest of democratic governance, to promote the equal and inclusive representation of women in decision-making bodies of political parties,[87] or otherwise ensure the equal treatment or participation of under-represented persons or groups, minorities or marginalized groups, although without interfering too much with the internal matters of political parties.[88] In that respect, as mentioned in Sub-Section 8.3 *infra*, it is welcome that gender and diversity considerations become an integral part of a party's internal decision-making processes, especially regarding the nomination to the party's leadership positions and to candidates to public offices (Articles 8.1 and 8.2).[89]

RECOMMENDATION C.

To review Articles 8 and 15-19 of the Law by giving political parties the autonomy to decide on the structure of the party and decision-making process, in particular by removing the provisions imposing minimum voting requirements for decision-making.

85 *Ibid*.
86 ODIHR-Venice Commission *2022 Joint Opinion*, para. 52.
87 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (d).
88 2020 *Joint Guidelines on Political Party Regulation*, paras. 28, 151 and 176. Paragraph 151 provides: *"[l]egal regulation of internal party functions, where applied, must be narrowly construed so as to respect the principle of party autonomy and not to unduly interfere with the right of parties as free associations to manage their own internal affairs".*
89 See UN Committee on the Elimination of Discrimination Against Women (CEDAW), *General Recommendation No. 23: Political and Public Life*, 1997, A/52/38, paras. 32-34.

7. DISSOLUTION OF POLITICAL PARTIES

52. Articles 21-25 of the Law deal with the grounds and procedure for considering a party inactive, and with deregistration, reorganization, termination and dissolution of political parties respectively.

53. Pursuant to Article 21 of the Law, based on the information submitted by the GEC, the Supreme Court shall consider a party inactive in the following situations: if the party failed to nominate candidate for the regular election of the *State Great Khural* for two consecutive terms; if the party failed to submit its financial statements to the central election body for two consecutive years; if the party failed to convene the supreme governing body or central representative body of the party for a period of 5 years. As a consequence, public funding for the party shall be terminated (Article 21.2) and the inactive party shall not be allowed to participate in all levels of elections until the violation is eliminated; those party members wishing to run for elections should do so independently (Article 21.2).

54. At the same time, according to the Law, the inactivity of a political no longer constitutes a ground for dissolution as was the case with the Draft Law reviewed in 2022.[90] This is welcome since, as underlined in the 2022 Joint Opinion, the requirement to regularly contest national (parliamentary) elections in order not to be considered inactive, and ultimately dissolved, is disproportionate and may also have discriminatory effects against parties enjoying regional or local support, smaller parties and parties representing national minorities.[91]

55. However, even if inactive, the parties should be able to participate in elections and should not lose the basic rights awarded to all associations and this should not affect their continued existence as an association.[92] Hence, **the prohibition of the party to participate in elections if it is considered inactive, but not dissolved, should still be reconsidered entirely.**

56. Moreover, such ground for inactivity of the political party as a failure to convene the supreme governing body or central representative body of the party for a period of 5 years appears to be very restrictive and contradict with the principle of the party autonomy.

57. Another positive development is that the Law now provides for a clear deadline of 60 days for the Supreme Court to take the decision whether to consider the party active based on the evidence submitted by the GEC, which should help avoid inconsistent or arbitrary application and potential abuse.[93] As emphasized in the 2020 Joint Guidelines, the timeline for decisions regarding the regulation of political party activities shall be stated clearly in law and the process as a whole shall be transparent.[94]

58. In accordance with Article 25.1 of the Law, the GEC can issue a proposal with justification on the dissolution of the party if it poses "*a serious threat to the independence, sovereignty, territorial integrity and national unity of Mongolia*"; "*conducts any activity of acquiring state right by unconstitutional method*"; "*is armed or militarized, become a militarized structure, conducts activities through violence in order to achieve its goals*" (Articles 10.1.1, 10.1.2 and 10.1.3 of the Law).

59. According to a good practice, the formation and functioning of a political party should not be limited, nor their dissolution allowed, except as a last resort measure in extreme

90 2020 *Joint Guidelines on Political Party Regulation*, paras. 72-75.
91 ODIHR-Venice Commission *2022 Joint Opinion*, para. 68. See also 2020 *Joint Guidelines on Political Party Regulation*, paras. 68 and 102-103
92 *Ibid.* para. 101 (2020 *Joint Guidelines on Political Party Regulation*).
93 2019 ODIHR *Opinion on the Draft Law on Political Parties of Mongolia*, para. 56.
94 2020 *Joint Guidelines on Political Party Regulation*, para. 271.

cases as prescribed by law and considered necessary in a democratic society.[95] The Guidelines state that political parties should never be dissolved for minor administrative or operational breaches, in the absence of other relevant and sufficient circumstances.[96] It is *"of the essence of democracy to allow diverse political programmes to be proposed and debated, (…) provided that they do not harm democracy itself."*[97] Dissolution can only be justified in the case of parties which advocate the use of violence as a political means to overthrow the democratic constitutional order, thereby abolishing the rights and freedoms guaranteed by the constitution.[98] It should be used with utmost restraint, when it is clear that the party really represents a danger to the free and democratic political order or to the rights of individuals and where other, less radical measures, could not prevent the said danger.[99]

60. The Law should define narrowly formulated criteria specifying the exceptional circumstances under which the dissolution of political parties is permitted,[100] such as in case of use or call for violence, which constitute a serious and imminent threat to civil peace or fundamental democratic principles.[101] Dissolution is justified only if it adheres to strict standards of legality, subsidiarity, proportionality and non-discrimination.[102] It is, thus, recommended **to formulate more narrowly and precisely the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity and proportionality**.

61. In terms of procedure, according to Article 25.2 of the Law, the GEC issues a conclusion on the dissolution of a political party and submits it to the Supreme Court if one of the three above-mentioned dissolution grounds exist.[103] Such decision is adopted by a three-fourths vote of all members of the GEC. As noted in the 2002 Joint Opinion, this may be problematic as this means that it will depend on a "political" majority and may accordingly favour the ruling party instead of being based on evidence.[104]

62. Moreover, it remains unclear from the wording of the Law whether the dissolution would amount to a decision made by the Supreme Court acting as an administrative body rather than a judicial decision, following a procedure where the party's right to a fair trial will be fully respected, with a real opportunity for the party's representatives to defend themselves and oppose the dissolution before the Supreme Court. If the Supreme Court does not examine the merits of the case and considers itself bound by the decision of the GEC, the review by the Supreme Court cannot be considered an effective remedy, which would thereby be contrary to Principle 7 of the 2020 Joint Guidelines.[105] In light of the

95 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 50.
96 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 113.
97 See ECtHR, *Socialist Party and others v. Turkey*, no. 21237/93, 25 May 1998.
98 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*. See also ODIHR-Venice Commission, *Joint Opinion* on the Draft Law on Political Parties in Azerbaijan, CDL-AD(2023)007, para. 94.
99 See Venice Commission, *Guidelines on Prohibition and Dissolution of political parties and analogous measures*, CDLINF(99)15, pp. 3-4; Venice Commission, *Opinion* on the proposed Amendment to the Law on Parties and other SocioPolitical Organisations of the Republic of Moldova, CDL-AD(2003)008, para. 10.
100 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.
101 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 114 and 120. See also ODIHR-Venice Commission *Joint Interim Opinion on the Law of Ukraine on the Condemnation of the Communist and National Socialist (Nazi) Regimes and Prohibition of Propaganda of their Symbols*, adopted by the Venice Commission at its 105th Plenary Session Venice (18-19 December 2015.
102 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.
103 i.e., "*a serious threat to the independence, sovereignty, territorial integrity and national unity of Mongolia*" (Article 10.1.1); "*conducts any activity of acquiring state right by unconstitutional method*" (Article 10.1.2); "*is armed or militarized, become a militarized structure, conducts activities through violence in order to achieve its goals*" (Article 10.1.3).
104 ODIHR-Venice Commission *2022 Joint Opinion*, para. 76.
105 2020 *Joint Guidelines on Political Party Regulation*, paras. 53 and 285. See also, for comparison purpose, ECtHR, *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, 26 October 2000, para. 100, where the Supreme Court had refused to examine the merits of a complaint under Article 9 of the ECHR, alleging State interference with the internal organization of a religious community, finding that the Council of Ministers enjoyed an unlimited discretionary power in deciding whether or not to register the constitution and leadership of a religious denomination; the Supreme Court had merely ruled on the formal question whether the Decree had been issued by the competent body; the ECtHR held that the appeal to the Supreme Court against the Decree was not, therefore, found to constitute an effective remedy.

above, **it is recommended to specify in the Law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the GEC on the dissolution of a political party**.[106]

RECOMMENDATION D.

1. To specify in the Law or other applicable legislation that the Supreme Court has full adjudication powers to review law and facts and is not bound by the decision of the GEC on the dissolution of a political party.
2. To formulate more narrowly and precisely the exceptional circumstances under which the dissolution of a party may be possible, as a measure of last resort and in line with the strict standards for legality, subsidiarity and proportionality.

8. FINANCING OF POLITICAL PARTIES

63. In general, the adoption of political finance regulatory frameworks is intended to curb the negative influence of money in politics by creating a more level "playing field" for electoral and political actors, providing for transparency in politics through the disclosure of financial information, and by holding all electoral and political actors accountable through effective oversight and sanctioning mechanisms.

64. At the outset, it is important to note that the provisions on financing of election campaigns, which are governed by other legislation, such as the 2019 Parliamentary Elections Law (hereinafter "PEL"), last amended in 2023, and the 2020 Law on Presidential Elections (hereinafter "LPE"), are not subject to analysis in this Preliminary Opinion. At the same time, to strengthen transparency and accountability in political finance, a comprehensive approach should be considered to ensure alignment and consistency between the various pieces of legislation governing political party financing and campaign finance. This approach should be coordinated to uphold the overarching principles of equality, transparency, and accountability.

65. As mentioned in the 2022 Joint Opinion, "*party financing schemes, in particular, public funding, should aim to ensure that all parties, including opposition parties, small parties and newly established parties, can compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to safeguard the proper functioning of democratic institutions*".[107]

66. There are two distinct sources of financing: state (or public) funding and contributions from individuals and legal entities (private funding). Most countries have adopted a mixed system of financing, and the Law similarly provides for such a system. According to Articles 26.1 and 26.2 of the Law, political party funding may include financial assistance (and indirect assistance as per Article 30) provided by the state, membership fees, donations, income derived from the party's own property, and other income permitted by the Law.

8.1. Public Funding

67. Public funding mechanisms are often established to counteract the influence of private money on political and electoral processes, prevent corruption but also to support

106 See Article 25.7 of the Law on Courts of Mongolia, available at: <https://www.legislationline.org/download/id/10060/file/Mongolia_Law_Judiciary_2021_Eng.pdf>.
107 ODIHR-Venice Commission *2022 Joint Opinion*, para. 78.

political parties in the important role they play.[108] Such funding aims to level the playing field and promote political pluralism by providing newly formed or smaller political forces with easier access to the electoral arena. Furthermore, public funding, that can be either direct or indirect (e.g., free or subsidized access to broadcast media, use of public buildings or spaces for campaign activities) can support greater equality for underrepresented or marginalized groups, such as women and persons with disabilities.

68. Articles 27 of the Law outlines the formula for calculating the annual state funding, as well as the eligibility criteria and allocation method for public funds. The annual state grant is calculated by multiplying no more than 0.7 percent of the minimum monthly wage by the total number of voters. Parties that received more than one per cent of the votes in the most recent *State Great Khural* (parliamentary) election are eligible for state funding (Article 27.3). The Law explicitly prohibits the provision of state financing to parties that fail to meet the one per cent vote threshold (Article 27.4). According to Article 27.5 of the Law, the allocation of state funding is divided into two tranches: the first allotment is calculated by multiplying the number of votes received by an eligible party in the election of the *State Great Khural* (C1) by an amount equal to 0.5 percent of the minimum monthly wage (T1), and the second allotment is determined by multiplying the number of seats won in Parliament (C2) by 25 times the minimum monthly wage (T2). Additionally, the total state funding allocated to eligible political parties cannot exceed twice the total sum of donations and membership fees received by the party (Article 27.8).

69. It is commendable to note the reduction of the eligibility threshold from three to one per cent, addressing one of the recommendations from the 2022 Joint Opinion.[109] It is also important to highlight the decrease in the coefficients used to calculate the two allotments of state funding — i.e., T1 and T2 — from 1% to 0.5% and from 50 times the minimum monthly wage to 25 times, respectively.

70. To promote political pluralism and ensure that voters have meaningful alternatives for making informed choices, it is considered good practice to extend funding beyond parties represented in parliament or municipal assemblies to include all parties that are fielding candidates in an election and have a minimum level of public support. This is especially important for smaller or newly formed parties, which must be given a fair opportunity to compete with established parties.

71. During the 2024 parliamentary elections, ODIHR observed "*that such a public funding system disproportionately benefits the two largest parties, MPP and DP*".[110] Indeed, of the 126 seats in the *State Great Khural*, 110 are held by these two parties — 68 by MPP and 42 by DP. As highlighted in the 2022 Joint Opinion,[111] this inequality is further reinforced by the distribution criteria, since three out of five factors apply exclusively to parliamentary parties — that is, those with elected members — including the provision allocating 25 times the minimum monthly wage per parliamentary seat (equivalent to EUR 5,500). As a result, non-parliamentary and newly established parties face structural disadvantages, making it more difficult for them to compete and function effectively.

72. As emphasized in the 2020 Joint Guidelines, there is no universally prescribed system for distributing public funding, and each legislator may set minimum thresholds of support for political parties to qualify. At the same time, it is recommended to reconsider the criterion based on the total number of seats obtained by the respective party in the *State Great Khural* (Article 27.6.3), as it disproportionately benefits parliamentary

108 ODIHR-Venice Commission *2022 Joint Opinion*, para. 232.
109 ODIHR-Venice Commission *2022 Joint Opinion*, para. 90.
110 ODIHR, *Mongolia - Needs Assessment Mission Report on the Parliamentary Elections of 28 June 2024*, 26 April 2024, p. 10.
111 ODIHR-Venice Commission *2022 Joint Opinion*, para. 95.

parties, whereas the number of votes received in the *State Great Khural* election is already factored in (Article 27.6.2). **A review of the current public funding system is, therefore, advisable, with consideration given to a more egalitarian allocation method — such as increasing the coefficient for the first allotment based on the number of votes received by an eligible party in the election of the *State Great Khural*, while reducing the emphasis on the number of seats obtained by the respective party.**

73. Indirect state funding is available to eligible political parties but only in non-election years (Article 30.1). This support includes access to conference and meeting halls free of charge, as well as 30-minute broadcast slots on national public radio and television. While the suspension of indirect state funding from January 1 until the announcement of election results in an election year can be justified in the interest of maintaining equality among electoral contestants, it would be also advisable to envisage in the Law that indirect state funding is provided during the campaign period, as also defined by the Law on Parliamentary Elections of Mongolia (Article 44). At the same time, it is important to ensure that the campaign time period is long enough, while **the campaign finance regulations should provide for an equal access of all contestants, particularly those from underrepresented groups, to indirect state funding during the election period to create a level playing field**. In particular, and as recommended in the 2022 Joint Opinion, gender considerations could also be applicable regarding indirect public support, for instance regarding minimum media coverage requirements for women candidates.[112] Moreover, a proper monitoring mechanism should be in place to ensure whether the respective indirect public funding benefits underrepresented groups, while also adjusting the party finance submission forms.

74. In many countries, state funding can be earmarked or targeted to encourage political parties to adopt more inclusive and diverse practices, as well as to promote specific policies. Examples of such targeted funding include initiatives for gender equality, the inclusion of candidates with disabilities, the promotion of youth or national minority candidates, and earmarked funds for research, policy initiatives, supporting women's sections or youth wings of political parties or strengthening intra-party institutions (see also Sub-Section 8.3 on Gender and Diversity *infra*).

75. Article 26.3 of the Law provides for the earmarking of 50 percent of public funding, with at least 20 per cent spent on ensuring the political participation of women, elders, youth, persons with disabilities and social interest groups and on training young politicians, women politicians and politicians with disabilities, at least 15 per cent spent on improving the political education of party members and citizens, and at least 15 per cent for research. While the 2022 Joint Opinion welcomed the provision, it raised concerns that earmarking a significant percentage of public funding (60 per cent in 2022) could be detrimental to smaller parties, which may not be able to sustain themselves and cover their basic operating costs if the great majority of public funding is used for other purposes.[113] The reduction to 50 per cent is a positive step, but the focus should now be on ensuring that earmarked funds are used effectively and for eligible expenditures. In this respect, it is essential that proper monitoring and oversight of spending of earmarked public funds is strengthened and enforced, and that proportionate sanctions are applied in case of non-compliance, including for failure to report on expenditure and for not directing such funds in line with their purpose[114] (see also Sub-Sections 8.3 to 8.5 *infra*). Moreover, ODIHR reiterates its previous recommendation **to allot a percentage of**

112 ODIHR-Venice Commission *2022 Joint Opinion*, para. 99.
113 ODIHR-Venice Commission *2022 Joint Opinion*, para. 98.
114 See, for example, ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns (2024), para. 49.

public funding to general awareness raising initiatives separately from initiatives to increase the political participation of women, national minorities, youth and persons with disabilities, while ensuring a proper monitoring mechanism in place.[115]

RECOMMENDATION E.

To review the current public funding system, with consideration given to a more egalitarian allocation method — such as increasing the coefficient for the first allotment based on the number of votes received by an eligible party in the election of the *State Great Khural*, while reducing the emphasis on the number of seats obtained by the respective party.

8.2. Private Funding

76. Private funding is a form of citizen participation as it allows individuals to freely express their support for a political party or a candidate of their choice through financial and in-kind contributions. The Guidelines on Political Party Regulation provide that the "*funding of political parties is a form of political participation, and it is appropriate for parties to seek private financial contributions, i.e., donations (…). With the exception of sources of funding that are banned by relevant legislation, all individuals should have the right to freely express their support for a political party of their choice through financial and in-kind contributions. However, reasonable limits on the total amount of contributions may be imposed and the receipt of donations should be transparent […] Legislation mandating donation limits should be carefully balanced between, on the one hand, ensuring that there is no distortion in the political process in favour of wealthy interests and, on the other hand, encouraging political participation, including by allowing individuals to contribute to the parties of their choice."* [116]

77. In order to ensure integrity in the financing of political parties and election campaigns, it is common to set donation limits for contributions given by natural (and legal) persons, personal contributions to candidates' personal campaigns and to ban certain types of donations (from foreign or anonymous sources, legal entities, and corporations with government contracts or partial government ownership).[117] It is good practice to cap the amount individuals (and legal entities) can contribute, yearly, to a political party or an electoral campaign/ candidate. A balance needs to be struck between allowing individuals to finance electoral and political activities, in line with international standards and good practice, and avoiding electoral/ political actors' over-dependence on a small number of large donors, which is unhealthy for political parties and democracy.

78. Article 3.1.13 of the Law defines donations as monetary and non-monetary assets, services, payment discounts, and exemptions given to parties without repayment. Cash donations are prohibited, and all contributions must go through party bank accounts (Article 33.2). Non-monetary donations, as defined in Article 33.3, include items provided free of charge or below market value, such as event costs and sponsorships. The requirement to assess their value based on market prices aligns with international good practice and helps prevent circumvention of expenditure ceilings.[118]

115 ODIHR-Venice Commission *2022 Joint Opinion*, para. 98; see also *ODIHR-Venice Commission, Joint opinion on draft amendments to the legislation concerning political parties of Armenia*, CDL-AD(2020)004, para. 38.
116 2020 *Joint Guidelines on Political Party Regulation*, paras. 209 and 213.
117 2020 *Joint Guidelines on Political Party Regulation*, paras. 209-217.
118 2020 *Joint Guidelines on Political Party Regulation*, para. 216; see also ODIHR, *Opinion on draft laws of Mongolia on presidential, parliamentary and local elections* (25 November 2019), para. 43.

79. Donations include both monetary and non-monetary contributions, with Mongolian natural and legal persons permitted to finance political parties. Articles 33.6 and 33.7 of the Law cap annual donations at twelve times the minimum monthly wage (approx. EUR 2,640) per individual and fifty times (approx. EUR 11,000) per legal entity. Article 33.8 clarifies that affiliates, subsidiaries, branches, and representative offices of a legal entity are included in donation limits to prevent circumvention. It is also positive that both monetary and in-kind contributions count toward donation limits.

80. Article 34.6 of the Law prohibits donations from various sources, including foreign individuals and entities, state bodies, trade unions, religious organizations, certain state-owned entities, party-affiliated organizations, minors, and anonymous donors. Article 33.10 of the Law extends these restrictions to party-affiliated organizations, while Article 33.11 sets limits on donations received by both parties and their affiliates. This is a positive step in preventing the use of affiliated organizations as channels for third-party financing.

81. Defining and prohibiting donations made on behalf of another (e.g., "straw donors") is another crucial anti-circumvention measure, helping the oversight body verify donor legitimacy in cases of suspected illegal financing. It is commendable that the Law includes provisions prohibiting such practices (Articles 34.6.10, 34.10, and 34.11).

82. Monthly membership fees are capped at 5 percent of the minimum monthly wage, or one minimum monthly wage for elected members (Articles 32.2 and 32.3). Paying membership fees on behalf of another is prohibited, and such fees are considered donations, subject to a cap of 12 times the minimum monthly wage.

83. Loans are a common practice and source of financing for electoral actors. In Europe, 60 per cent of countries allow candidates to take out loans for election campaigns.[119] However, if left unregulated, loans may be used by donors to circumvent donation limits and bans. While the regulation of loans was previously envisaged in the Draft Law reviewed in 2022,[120] the Law no longer contains any provisions on loans. **Consideration should be given to reinstating regulations on bank loans, including provisions on third-party repayment and loan forgiveness by creditors.**

84. Political parties can generate income from selling publications, promotional materials, and assets. The 2022 Joint Opinion[121] noted that parties are otherwise prohibited from earning income through other activities (Article 35.2), including the sale of additional party-related materials — a common practice even when sold below market price.[122] **It is therefore recommended to broaden Article 35.1 to allow the sale of such materials, with revenues below market price accounted for as donations.**

RECOMMENDATION F.

1. To reinstate regulations on bank loans, including provisions on third-party repayment and loan forgiveness by creditors.
2. To broaden Article 35.1 of the Law to allow the sale of party related materials, with revenues below market price accounted for as donations.

119 International IDEA Political Finance Database, Question 25.
120 ODIHR-Venice Commission *2022 Joint Opinion*, para. 89.
121 ODIHR-Venice Commission *2022 Joint Opinion*, para. 87.
122 2020 *Joint Guidelines on Political Party Regulation*, para. 225.

8.3. Gender and Diversity Considerations

85. It is welcome that several provisions of the Law demonstrate a willingness to mainstream gender and diversity in political parties' internal and external processes. The Law establishes gender and diversity requirements for participation in party executive bodies, as well as in their policies and activities. In particular, it requires that when forming central representative body, central executive body or a supervisory body of the party, "representation of at least 30 per cent of either gender" should be ensured when nominating candidates (Article 8.2.3 of the Law). This is welcome as it introduces a gender requirement already at the stage of nomination and not only for the selection/appointment. In addition, the Law specifies that the composition of the aforementioned bodies shall ensure the representation of at least 40 per cent of either gender (Article 17.7) which is a welcome objective.[123] It is noted that the CEDAW Committee *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, goes even further by mandating "gender parity", meaning 50:50, in decision-making bodies of political parties along with appropriate enforcement or sanction mechanisms or incentives to ensure implementation in practice.[124] **The legal drafters should consider reflecting the requirement of gender parity in Article 17.7, while including proper enforcement mechanism.**

86. It is also equally important to consider other measures for inclusion that extend beyond gender, ensuring diverse and equitable representation across all segments of society. In this respect the Law requires the party to ensure the representation and participation of social interest groups such as women, elders, youth and people with disabilities in its policies and activities (Article 8.5. **While this provision is welcome, it would be good to have a clearer idea of what this entails.**

87. Public funding could be utilized as a tool to promote women's political participation, offering financial incentives tied to meaningful representation and equality initiatives.[125] The few OSCE participating States that have enacted legislation connecting gender equality with political finance have implemented various strategies to address the gender-targeted funding gap. These strategies include financial incentives (Croatia, Moldova, Romania), sanctions (Armenia, France), and the earmarking of public funds specifically to support gender equality (Finland, Moldova). According to International IDEA's political finance database, 20 per cent of countries globally provide some form of gender-targeted public funding.[126]

88. The Law includes provisions linking the allocation of public funding and its amount to measurable efforts to promote the political participation of women and persons with disabilities, which is commendable. In particular, Article 26.3.1 envisages at least 20 per cent of state financing for supporting political participation and training of social interest groups including women, elders, youth, and persons with disabilities. The Law further provides a financial incentive for parties that nominate women candidates beyond the

123 See e.g., ODIHR, *Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016), pp. 29-30. See also Council of Europe Committee of Ministers, *Recommendation Rec (2003)3 on the balanced participation of women and men in political and public decision-making*, 30 April 2002, preamble of the Appendix, which specifies that "balanced participation of women and men is taken to mean that the representation of either women or men in any decision-making body in political or public life should not fall below 40%".

124 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (d).

125 See, for example, ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns, para. 50; ODIHR-Venice Commission *2022 Joint Opinion*, para. 26.

126 International IDEA Political Finance Database, *Question 36*.

gender quota mandated by the PEL[127] and for any elected MPs with disabilities - a one-time bonus "*in the subsequent year of the respective regular election*" (Article 27.7).

89. As noted by ODIHR in its Election Observation Mission Final Report for the parliamentary elections of 28 June 2024 in Mongolia, *"[a]part from the DP, MPP, and Motherland Party, all other contestants nominated more women candidates than required by the gender quota*".[128] **In light of international good practices, it may be worth making the one-time bonus initiative more permanent and consider linking the allocation of public funding to ensuring compliance with gender quotas.**

90. As highlighted in the 2022 Joint Opinion,[129] "*it is unclear what would happen if one of the women MPs or MP with disabilities resigns during the term of office (…). Of note, if the latter, there may always be a risk that a party may nominate lots of women with an agreement that they would immediately resign just after the election, as has happened in certain countries*". **The Law should clarify whether the number of women candidates to be considered is the number of serving MPs or the number of elected MPs at the election.**[130]

91. **In light of international good practices and recommendations, a certain portion of public funding on a more permanent basis could be allocated to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women candidates are not placed too low on the party list. Further provisions could require that if a woman candidate withdraws, she is replaced by another woman. Additional incentives could also be tied to political parties that achieve a minimum level of women in leadership positions or adopt other measures to combat discrimination and violence against women in politics, etc.**[131] In this regard, the CEDAW Committee *General recommendation No. 40 (2024*) specifically recommends **the introduction of codes of conduct in political parties, with a view to eliminate all forms of gender-based violence against women and hate speech, with independent complaint mechanisms and confidential counselling.[132] The Law could be supplemented in this respect**.

92. Moreover, public funding could support programmes such as training for female politicians, women's empowerment initiatives, and the functioning of women's sections, as well as interest representation bodies within party structure taking the lead on the advancement of gender equality.[133] Funds could also be allocated to awareness-raising and educational campaigns targeting politicians, the media, and the public to emphasize the importance of full, free, and equal democratic participation for women. Regarding women's sections of political parties in particular, it is noted that CEDAW General Recommendation No. 40 specifically calls upon states to support the creation and strengthening of women's sections in political parties, including through earmarked funds.[134]

93. In this respect it would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, including for

127 PEL mandates that at least 30 per cent of all candidates nominated by parties must be of each gender, with every other candidate on the proportional party lists required to be of a different gender.
128 ODIHR, Mongolia - Election Observation Mission Final Report on the Parliamentary Elections of 28 June 2024, 13 December 2024, p. 13.
129 ODIHR-Venice Commission *2022 Joint Opinion*, para. 96.
130 ODIHR-Venice Commission *2022 Joint Opinion*, para. 96.
131 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).
132 See the CEDAW Committee, *General recommendation No. 40 (2024*) on the equal and inclusive representation of women in decision-making systems, para. 51 (d).
133 For example, in Sweden funds are earmarked for party activities that promote gender equality. In Canada, fees are reduced or waved for women candidates.
134 See the CEDAW Committee, *General recommendation No. 40 (2024*) on the equal and inclusive representation of women in decision-making systems, para. 51 (e).

awareness-raising and educational campaigns among politicians, in the media and among the general public, about the need for the full, free and equal democratic participation in political and public life.[135] The above initiatives would align with international standards aimed at promoting gender equality and diversity in political participation.[136] Specifically with respect to youth, it would be beneficial to explore additional mechanisms that enhance youth political participation, including potential financial and other incentives for political parties that actively promote young people's advancement in leadership and decision-making roles. This could involve the adoption of youth action plans, the establishment of dedicated youth wings within parties, structured mentorship and capacity-building initiatives, as well as financial and logistical support for young candidates during election campaigns.

94. Finally, the Law also incorporates a clear anti-discrimination statement (Article 8.6). It is noted that the provision enumerates, imitatively, a number of protected grounds,[137] which are not fully congruent with those listed in international human rights instruments,[138] as further interpreted. It is recommended **to include a reference to the prohibition of discrimination on any ground, while also specifically referring to other grounds, such as disability, health status, migrant or refugee status, sexual orientation and gender identity etc.** The Law also contemplates regular reporting to the National Committee on Gender Equality in accordance with the Law on Promotion of Gender Equality (Article 8.7 of the Law).

95. These provisions are overall welcome and demonstrate the willingness to put in place governance structures that can be called truly democratic, representative and inclusive.[139] However, gender or diversity requirements do not necessarily or automatically translate into more balanced or diverse representation of under-represented persons in party structures or in elected offices.[140] This is often because the legislation does not state the legal consequences in case of non-compliance with the said requirements nor does it contain any sanctions.[141] In order for gender equality legislation to be effective, infringements of gender equality provisions should be met with effective, proportionate and dissuasive measures to ensure compliance and have a real deterrent effect[142] and/or with financial incentives. More specifically, while the formula for calculating the amount of public funding takes into account the number of women candidates and candidates with disabilities, the Law does not specify the consequences for not complying with gender and diversity requirements in party governing bodies and activities. As emphasized in the Guidelines, legislative measures on gender equality only work if they are effectively implemented, and **a variety of measures could be considered to ensure**

135 See ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities* (2019); *Addressing Violence against Women in Politics In the OSCE Region: Toolkit* (especially Tool 3 for Political Parties) (2022); *Handbook on Promoting Women's Participation in Political Parties* (2014); OSCE High Commissioner on National Minorities, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life* (1999).

136 As embedded in the CEDAW, the CRPD, the Beijing Declaration and Platform for Action (United Nations, Beijing Declaration and Platform for Action), CoE Recommendation Rec(2003)3 of the Committee of Ministers to member states on Balanced Participation of Women and Men in Political and Public Decision Making (adopted on 12 March 2003), and *OSCE Ministerial Council Decision No. 7/09 on Women's Participation in Political and Public Life*, 4 December 2009. See also *International IDEA Funding of Political Parties and Election Campaigns*, p. 354. See also *ODIHR Opinion on Laws Regulating the Funding of Political Parties in Spain*, para. 70.

137 i.e., origin, ethnicity, language, "race", age, gender, social origin, status, wealth, occupation, position, religion, opinion, and education.

138 Articles 2 and 26 of the ICCPR refers to "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". Article 5 of the CRPD which prohibits all discrimination on the basis of disability. See also 2020 *Joint Guidelines on Political Party Regulation*, para. 134.

139 See e.g., ODIHR, *Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016), pp. 29-30.

140 ODIHR, *Opinion on draft laws of Mongolia on presidential, parliamentary and local elections* (25 November 2019), paras. 28-29.

141 *Ibid.*

142 2020 *Joint Guidelines on Political Party Regulation*, para. 169. See also e.g., *OSCE Gender Equality in Elected Office: A Six-Step Action Plan* (2011), pp. 33-34; Parliamentary Assembly of the Council of Europe (PACE), *Resolution 2111 (2016)*, especially para. 15.2.2; see also 2010 ODIHR-Venice Commission *Guidelines on Political Party Regulation*, para. 136, which presents a variety of sanctions for political parties not complying with legal measures aimed at ensuring gender equality, ranging from financial sanctions, such as the denial or reduction of public funding, to stronger, legal measures, such as the removal of the party's electoral list from the ballot.

compliance with legal requirements aimed at enhancing the participation of women within party structures and as candidates for public offices, such as the denial or reduction of public funding.[143] In this case, before such measures are implemented, **the political party should be first given a fair warning and an opportunity to correct**[144] (see also Sub-Section 8.5 on Oversight and Sanctions *infra*).

96. Finally, it is not clear whether **the National Committee on Gender Equality or which other (independent) body will be in charge of monitoring the compliance with gender and diversity requirements provided in the Law**, and what will be the criteria for assessing compliance and the consequences, and whether it will be empowered to enforce or sanction non-compliance. **The Law should be supplemented in this respect to ensure that ultimately, these provisions are effectively implemented.**[145] In addition, the Law could also contemplate the development of internal party codes of conduct or policies to prohibit discrimination and harassment based on sex or gender, as a good practice.[146]

RECOMMENDATION G.

1. To consider introducing in the Law effective incentive mechanisms to ensure a gender balanced electoral party lists, by allocating on a permanent basis an additional portion of public funding to political parties having higher number of women on their lists for election campaigns, with a rank-order rule ensuring that women candidates are not placed too low on the party list, and that when a woman withdraws, she is replaced by another woman.

2. To consider introducing legislative measures to ensure compliance with legal requirements aimed at enhancing the participation of women within party structures and as candidates for public offices, such as the denial or reduction of public funding.

8.4. Transparency and Reporting Requirements

97. International and regional standards stress the importance of transparency, underscoring its pivotal role in political finance regulation. The disclosure of funding sources and spending practices aims to ensure the legality of fundraising and expenditure activities, aligning with the principles of the UNCAC and the CoE Committee of Ministers' Recommendation Rec(2003)4.[147] The Guidelines also emphasize that transparency of party financing is essential to public trust in political parties as institutions and democratic processes at large, to safeguard voters' rights and prevent corruption.[148] Given the pivotal role political parties play in the functioning of democracies, the public has a legitimate interest in being informed about their activities and funding, as well as ensuring that irregular expenditures are monitored and sanctioned.[149] Citizens need access to relevant financial information about political parties to hold them accountable. However, regulations should avoid imposing excessive burdens on political parties.

143 See e.g., *op. cit.* footnote 16, para. 169 (2020 *Joint Guidelines on Political Party Regulation*); and ODIHR, *Opinion on the Law of Mongolia on the Promotion of Gender Equality* (30 September 2013), para. 73. See also ODIHR, *Opinion on draft laws of Mongolia on presidential, parliamentary and local elections* (25 November 2019), para. 29; and Venice Commission, *Code of Good Practice in the field of Political Parties (2002),* CDL-AD (2002) 23, para. 22.
144 2019 ODIHR *Opinion*, para. 62
145 2020 *Joint Guidelines on Political Party Regulation*, para. 169.
146 See e.g., ODIHR, *Handbook on Promoting Women's Participation in Political Parties* (2014), p. 53.
147 See Article 7.3 of the *UN Convention Against Corruption*. See also, *Recommendation Rec(2003)4* of the Council of Europe Committee of Ministers to member states on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, Appendix, Article 3.
148 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 247.
149 See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

98. Reporting rules are equally vital to ensure that political parties and candidates comply with political finance legislation. Most political finance regulatory frameworks mandate political parties, candidates, and, in some cases, third parties to report their financial transactions. This includes documenting direct and in-kind contributions and routine operational spending. Financial reports should ideally distinguish between contributions and expenditures, categorizing them systematically and providing details such as dates and amounts for each transaction, accompanied by supporting documentation (e.g., receipts, checks, bank transfers, and loan agreements). It is considered good practice for political finance oversight bodies to develop standardized reporting templates to facilitate compliance.[150]

99. A widely recognized good practice involves managing all contributions and expenditures through a designated bank account under the supervision of an appointed financial agent. This approach enhances the accuracy of reported financial transactions and supports the oversight body's ability to monitor party financing effectively. According to Article 26.7 of the Law, all financing sources received by political parties must be deposited in the party's single bank account, in line with good practice.[151]

100. Political parties are required by the Law to maintain a searchable open database on their websites, publishing quarterly details of donations made by natural and legal persons equal to or exceeding twice the minimum monthly wage. This includes the donor's name, the donation amount, and the date of receipt, whether monetary or non-monetary (Article 34.1). The same information must also be submitted to the GEC. Parties that fail to publish this information or submit it to the GEC lose their right to the first tranche of state funding (Article 34.3). Article 34.2 of the Law stipulates that if a citizen or legal entity contributes above the donation limit, the total donation amount, along with the previous donations and their respective dates, must be disclosed. However, this provision does not specify the sanctions for breaching the donation limits. Political parties must maintain records of all donations and verify their permissibility (Article 34.5). If an illegal donation is received, the party must notify the donor and the GEC within 10 days and transfer the donation to the GEC (Article 34.5.3).

101. According to Article 36 of the Law, political parties must record all financial information about their routine activities. Article 36.3 lists all income that must be recorded and reported in the party financial statement, while Article 36.4 outlines all expenses that must be included. The party's assets must also be reported (Article 36.6). The Minister of Finance is responsible for developing the reporting template and providing guidance to political parties on the reporting procedure. Parties are required to register donations in paper and/or electronic form per the registration format approved by the central election body (Article 36.9). However, it remains unclear how this obligation aligns with the requirement for political parties to maintain an open database of all donations received (Article 34.1) and the sanction imposed for non-compliance with the electronic reporting requirement (Article 34.3).

102. It is commendable that the Law specifies that party financial statements must include the financial information of affiliated organizations, consolidating the financial statements of party branches, structural units, and policy research institutes linked to the party (Articles 33.12 and 36.14). The GEC is required by the Law to retain party financial

150 ODIHR Handbook for the Observation of Campaign Finance recommends that "*It is good practice for authorities to introduce a standard template and guidance for reporting, which enables timely analysis and meaningful comparison between different parties and candidates. (…) Reporting formats should include the itemization of all contributions and expenditures into standardized categories as defined by the regulations. Itemized reporting should include the date and amount of each transaction, as well as copies of proof of the transaction.*"

151 Paragraph 212 Guidelines on Political Party Regulation states that "*another means to avoid undue influence from unknown sources is to state in relevant legislation that donations above a certain (low) amount shall be made through bank transfer, bank check or bank credit card, to ensure their traceability in terms of amount and sources*".

statements and related documents for 10 years, addressing a recommendation made in the 2022 Joint Opinion.[152]

103. Article 37.2 of the Law requires political parties to submit semi-annual financial statements by 20 July and an annual report by 10 February. Parties must also provide a brief report on their activities, including the number of members as of 31 December of the reporting year, whether meetings of the supreme governing and central representative bodies were held, the use of earmarked state funding, and details on own-generated income (Article 37.4). The party's central representative body appoints one or more internal auditors for a four-year term, with the possibility of one reappointment (Article 37.7). The party leader and chief financial officer (hereinafter "CFO") must confirm and sign the financial statements, with the CFO's signature guaranteeing their accuracy (Articles 37.9 and 37.10). The Law also establishes certain incompatibilities between the roles of CFO and party leader (Article 37.5). The Law requires political parties to have their financial statements audited by a "legal entity of audit", funded from the state budget, and to submit the audited annual reports to the GEC by 15 March (Article 38.1). It also establishes incompatibilities regarding the role of an auditor (Article 38.5).

104. The reporting requirements for political parties appear complex and burdensome. Parties must appoint internal auditors, undergo external audits funded by the state, and submit two annual reports alongside an audited annual report. However, the deadlines seem misaligned. In particular, it remains unclear why audited reports are required by 15 March when annual reports are due by 10 February. As noted in the Guidelines, generally, reporting requirements should be such that smaller and new parties can also fulfil them, and should not hinder such parties' participation in political life.[153] Preparing and submitting multiple reports per year may be particularly challenging for small or new parties with fewer human capacities and established internal structures**. To eliminate contradictions and ambiguities, Articles 37.2 and 38.1 should be revised. Additionally, in order to reduce the reporting burden, it is recommended to simplify and consolidate the reporting requirements, mandating political parties to submit a single unified and audited report.**

105. As per Article 43.1 of the Law, the GEC publishes parties' financial statements and brief operational reports on its website "from time to time", which appears to be a rather vague formulation. Article 43.4 of the Law requires political parties to disclose their financial and operational reports on their websites within three working days of submission to the GEC and to keep them online for 10 years. However, it is unclear whether this deadline runs from the submission of the annual report (10 February) or from the lodging of the audited annual report (15 March). **The Law should be revised to clearly specify the publication timeframe for political party financial reports with a view to making financial statements publicly available in a coherent, comprehensive and timely manner over an extended period of time**.[154]

106. Article 43.8 of the Law outlines the obligation for political parties to publish the full names and addresses of all donors. This raises concerns regarding the privacy rights of individual donors, as also noted in the 2022 Joint Opinion.[155] **It is therefore recommended that the private addresses of donors be excluded from the report at the time of publication**. This obligation appears to duplicate the requirement for parties to maintain a register of donations using the reporting template developed by the GEC (Article 36.9), and may also contradict the requirement for political parties to maintain,

152 ODIHR-Venice Commission *2022 Joint Opinion*, para. 100.
153 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 258.
154 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 259.
155 ODIHR-Venice Commission *2022 Joint Opinion*, para. 102.

on a quarterly basis, a searchable open database on their website only for donations equal to or exceeding twice the minimum monthly wage, along with the donors' identities (Article 34.1), and to report this information to the GEC, which in turn publishes it within 5 working days of its receipt. **To reduce the reporting burden on political parties, donation-related reporting requirements should be simplified and streamlined**.

RECOMMENDATION H.

1. To simplify and streamline reporting requirements, including donation-related, while also mandating political parties to submit a single unified and audited report in order to reduce the reporting burden on political parties.

2. To exclude private addresses of donors from the report at the time of publication.

8.5. Oversight and Sanctions

107. According to the Guidelines, *"monitoring can be undertaken by a variety of different bodies and may include an internal independent auditing of party accounts by certified experts or a single public supervision body with a clear mandate, appropriate authority and adequate resources."*[156] They further stress that *"[g]enerally, legislation should grant oversight agencies the ability to investigate and pursue potential violations. Without such investigative powers, agencies are unlikely to have the ability to effectively implement their mandate. Adequate financing and resources are also necessary to ensure the proper functioning and operation of the oversight body."*[157] Similarly, the Committee of Ministers Recommendation' Rec2003 (4) requires that: "*independent monitoring should include supervision over the accounts of political parties and the expenses involved in election campaigns as well as their presentation and publication*."[158] Article 16 of the Law establishes that "*States should require the infringement of rules concerning the funding of political parties and electoral campaigns to be subject to proportionate, effective and dissuasive sanctions*." When determining sanctions, all violations should uniformly incur proportionate, effective, and dissuasive penalties[159] with the proposed sanctions/fines being designed in a way to ensure their proportionality with the seriousness of a violation, for instance considering the frequency/recidivism, size/scale, mitigating circumstances or not, etc.

108. While the GEC is the oversight body responsible for supervising political party financing, the State Audit Office (hereinafter "SAO") oversees campaign finance. At the end of the review process of the financial reports, the GEC issues a conclusion on whether there are any errors or discrepancies in the report and, if there are, whether there is an inconsistency in the financing provided to the party (Article 39.2). In case of inaccuracies identified by the GEC, the party has 5 working days to correct them. Financial reports of parties that have received public funding (Article 39.5) are then submitted to the SAO, which has until 5 April to issue its conclusions. While the deadline for the SAO to review these reports has been prolonged, it is unclear why only the financial reports of political parties eligible for state funding are submitted to the SAO for review (see para 101 of the Joint Opinion). It appears that both the GEC and the SAO are required to issue conclusions on the reports submitted. However, it is unclear how coordination between these two

156 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 276.
157 *Ibid*, para. 278.
158 See the CoE Committee of Ministers' Recommendation Rec2003(4).
159 See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 272, which requires that sanctions should be applied against political parties found to be in violation of relevant laws and regulations and should be dissuasive in nature. Moreover, in addition to being enforceable, sanctions must at all times be objective, effective, and proportionate to the specific violation. See also ODIHR *Opinion* on Laws Regulating the Funding of Political Parties in Spain (30 October 2017), para. 67.

institutions works in practice, particularly regarding information-sharing and access to databases. **The Law should be revised to ensure effective cooperation between the different institutions by formalizing cooperation mechanisms, such as a Memorandum of Understanding or Cooperation, and ensuring that all political party financial reports are reviewed for consistency and uniform application of the rules.**

109. The verification process may be rendered ineffective if the oversight body relies solely on the information submitted to it, without the ability to assess whether that information is accurate and presents a complete picture of a political party's income and expenditures. While political parties are required to report any errors or inconsistencies identified after the submission of their financial statements to the GEC (Article 40.1), and the GEC may request political parties to correct deficiencies or provide explanations within 5 working days (Article 39.3), it is not specified whether GEC can request additional information from political parties, commission expert reports or opinions, or seek assistance from public administration bodies in gathering the necessary information. In the case of receiving impermissible donations, GEC may require the concerned party to reimburse twice the amount of such illegal donations (Article 42.1). However, it appears that there is no provision for legal redress or an appeal mechanism against the GEC's decisions in this regard. The Law should be amended **to further define the GEC's investigative and enforcement powers, outline adversarial proceedings and administrative procedures for obtaining additional information during the verification process, and grant the GEC direct access to all necessary institutional databases to detect and address illegal sources of funding**. Additionally, **the Law should specify provisions for legal redress against GEC decisions**.

110. While sanctions are the primary tools for oversight bodies to enforce political finance regulations effectively, it is equally important for the oversight body to provide guidance to political parties to help them comply with their legal obligations. Good practices recommend a wide range of sanctions that are effective, proportionate, and dissuasive. Legislation may include measures as administrative warnings (e.g., "naming and shaming"), fines, forfeiture, suspension or loss of public funding, compliance notices, deregistration, and/or criminal penalties. It is also essential to provide for effective legal redress as provided by OSCE commitments and international obligations, which ensures everyone's right to "*effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*" and provides "*the possibility for judicial review of such regulations and decisions"*.

111. The 2022 Joint Opinion noted that the Draft Law appeared to conflate absolute prohibitions leading to party dissolution with other prohibited activities, without clearly specifying the corresponding sanctions. Article 28.1 of the Law states that to receive public funding in a given year, a party must submit its request to the GEC by August 1 of the preceding year. However, the Law does not indicate what consequences apply if a party fails to meet this deadline. Similarly, no sanction is outlined if a party removes financial reports from its website before the required 10-year period (Article 43.5) or fails to correct discrepancies identified by the GEC within the 14-day deadline (Article 43.6). Additionally, while Article 29.6 provides for the loss of the first tranche of state funding if a party fails to submit semi-annual reports, it does not specify penalties for missing the 10 February deadline for annual reports (Article 37.2) or the 15 March deadline for audited annual reports (Article 38.1). **It is recommended that the Law be amended to explicitly outline sanctions for all irregularities specified within it, detailing the specific penalties for each type of infraction, and ensuring that penalties for political party financing violations are proportionate and consistently enforced**.

RECOMMENDATION I.

1. To revise the Law to ensure effective cooperation between the General Election Commission and State Audit Office by formalizing cooperation mechanisms, such as a Memorandum of Understanding or Cooperation, while ensuring that all political party financial reports are reviewed for consistency and uniform application of the rules.

2. To amend the Law to explicitly outline sanctions for all irregularities specified within it, detailing the specific penalties for each type of infraction, and ensuring that penalties for political party financing violations are proportionate and consistently enforced.

9. PROCEDURE FOR AMENDING THE LAW

112. The importance of inclusive and open lawmaking process should be highlighted. In paragraph 5.8 of the 1990 OSCE Copenhagen Document, OSCE participating States have committed to ensure that legislation will be adopted at the end of a public procedure[160]. Moreover, key commitments specify that *"[l]egislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives*".[161] The *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (2024) underline the importance of evidence-based, open, transparent, participatory and inclusive lawmaking process, offering meaningful opportunities to all interested stakeholders to provide input at all its stages[162].

113. Effective consultations in the drafting of laws, as outlined in the relevant OSCE commitments, need to be inclusive, involving both the general public and stakeholders with a particular interest in the subject matter of the draft legislation, in this case all political parties as well as civil society organizations. Sufficient time should also be provided to ensure that the consultation process is meaningful, allowing adequate time to stakeholders to prepare and submit recommendations on draft legislation throughout the legislative process.[163]

114. It is welcome in this respect that the GEC is undertaking an assessment of the existing Law/legal framework and of its implementation with a view to inform possible future reform of the Law.

115. In light of the above, **the public authorities are encouraged to ensure that any future amendments to the Law and electoral legal framework in general are preceded by a proper impact assessment and subjected to inclusive, extensive, effective and meaningful consultations throughout the legislative process, including with representatives of various political parties, academia, civil society organizations, which should enable equal opportunities for women and men to participate**. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the lawmaking process, including before Parliament. As a principle, accelerated legislative procedure should not be used to pass such types of legislation. As an important element of good lawmaking, a consistent monitoring and evaluation system on the implementation of legislation should also be put in place that

160 See *1990 OSCE Copenhagen Document*, para. 5.8.
161 See 1991 *OSCE Moscow Document*, para. 18.1.
162 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), in particular Principles 5, 6, 7 and 12. See also *Venice Commission, Rule of Law Checklist*, CDL-AD(2016)007, Part II.A.5.
163 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), paras. 169-170. See also ODIHR, *Assessment of the Legislative Process in Georgia* (30 January 2015), paras. 33-34. See also ODIHR, *Guidelines on the Protection of Human Rights Defenders (2014)*, Section II, Sub-Section G on the Right to Participate in Public Affairs.

would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[164]

164 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 23. See e.g., OECD, International Practices on Ex Post Evaluation (2010).