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FINAL 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 providing several mechanisms to promote gender and diversity in political parties' internal and external processes.

Several provisions of the Law 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 some simplification of the party registration process, a less restrictive framework regarding the types of activities that political parties may carry out, and a more precise definition of some of the grounds for dissolving political parties. In addition, the Law adjusts the rules governing eligibility for and modalities of access to public funding – most notably by reducing the eligibility threshold from three to one per cent – to be more equitable, including for smaller or newly established parties. While going beyond the scope of this Opinion, ODIHR reiterates one of its previous key recommendations to significantly lower the current constitutional threshold for registering a political party – set at one percent of the total electorate – though acknowledging the challenges posed by constitutional amendment rules.

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 registration, granting more autonomy to parties in their internal organization and decision-making, more strictly circumscribing the rules on dissolution, centralizing oversight of party financing, introducing clearer regulation of third parties, and reviewing financing rules and mechanisms, and reporting requirements. Notably, the prohibition of the party to participate in elections if it is declared inactive should be reconsidered entirely.

Furthermore, it is recommended to reassess the approach to public funding, with consideration given to a more equitable 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. The Law could also be expanded to strengthen internal party democracy and organization. Finally, many provisions of the Law do not align with the electoral legislation currently in force in Mongolia, and there is a strong need of harmonization of the legal framework.

Additionally, the legal drafters could consider further integrating gender aspects throughout public funding mechanisms outlined in the Law and introducing meaningful incentives for political parties to promote and enhance women's political participation. 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.

In December 2024, the deadline for the implementation of many provisions of the Law was postponed to 31 December 2025 giving parties additional time to align their charters and internal structures with the new Law. This includes, among other provisions, Article 17.7, which requires that a party's central representative, executive, and supervisory bodies' composition must include at least 40 per cent representation of either gender. While establishing a solid foundation for implementing systemic

legislation is essential – and acknowledging the difficulties that certain political parties may face in reorganizing internally to comply with the Law – the question of further postponing its implementation should be carefully assessed and further delays may not necessarily constitute an effective solution. It should be emphasized that a properly organized, participatory, democratic lawmaking process for the adoption of the Law in the first place would have not only contributed to a more qualitative Law but also would have significantly facilitated its implementation, ultimately contributing to increased public trust in democratic institutions. These considerations should be borne in mind in the context of future reform efforts.

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. 36]
2. 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. 42-44]

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. 49]
2. to shorten the deadlines for examining party registration applications to make the process faster and more efficient; [para. 53]
3. to amend the Law to entrust a relevant authority with the task of party registration, ensuring that the founders or political parties can challenge decisions related to the denial of party registration before an independent and impartial tribunal; [para. 55]
4. 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. 60]

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; [paras. 61-64]

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 laws and facts and is not bound by the decision of the GEC on the dissolution of a political party; [para. 76]
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. 74]

E. **Regarding public funding**: 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. 85]

F. **Regarding private funding**:

1. to reinstate regulations on bank loans, including provisions on third-party repayment and loan forgiveness by creditors; [para. 110]
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. 111]
3. to consider establishing a certain cooling off period during which corporate entities are restricted from entering into contracts before and after making donations to a political party; [para. 93]
4. to introduce in the Law a clear definition of "third parties", along with reasonable and proportionate limitations as to the third-party financing and other potential regulations applicable to third party campaigners suited to the local context to avoid circumvention of financial regulations, while providing regular review of the regulation of third-party involvement; [para. 107]

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. 118]
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. 122]

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 report in order to reduce the reporting burden on political parties; [para. 133]
2. to exclude private addresses of donors from the report at the time of publication; [para. 133]

I. **Regarding oversight and sanctions**:

1. to consider centralizing oversight functions within one body with strengthened capabilities to detect and address illegal sources of funding, providing greater transparency and accountability in political finance operations, while ensuring that all political party financial reports are reviewed for consistency and uniform application of the rules; [para. 135]
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. 141]

These and additional recommendations are included throughout the text of this Final 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 prepared a preliminary analysis that aimed at providing an initial assessment of the compliance of the legal framework with relevant international standards and good practices. The Preliminary Opinion on the Law of Mongolia on Political Parties was published on 10 April 2025. The initial findings and recommendations outlined in the Preliminary Opinion were then presented and discussed during a country visit that took place on 7-11 April 2025. During the visit, ODIHR held a series of meetings with the Chair and representatives of the GEC, representatives of the Standing Committee on State Structures of the *State Great Hural* (Parliament) of Mongolia, the National Audit Office (hereinafter "NAO"), the Independent Authority Against Corruption, representatives of political parties, non-governmental organizations, experts who have been involved in reforming the Law and other stakeholders. ODIHR is grateful to the representatives of the Ministry of Foreign Affairs of Mongolia, the GEC and other stakeholders who have facilitated the organization of these meetings.

4. The Final Opinion aims to reflect the additional information and feedback received during these meetings to better tailor the recommendations to the local context and specific challenges. Following the Preliminary Opinion, the Final Opinion also seeks to elaborate further on several issues of interest, including the regulation of third-party contributions, the digital aspects of political parties' financial reporting, the regulation and definition of non-financial contributions, the regulation of media advertising and political advertising, among others. ODIHR stands ready to continue providing legislative assistance by reviewing any potential draft amendments to the Law and other existing or draft legislation pertaining to political parties and electoral process.

5. 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]

6. This Final 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]

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*."

II. SCOPE OF THE FINAL OPINION

7. The scope of this Final 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.

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

9. The Final 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.

10. 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.

11. 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.

12. 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

13. 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

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.

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]

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

15. 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]

16. While Mongolia is not a Member State of the Council of Europe (hereinafter "the CoE"), the Final Opinion also refers 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.

17. 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

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.
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 acceded to the Convention 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*.

the party (paragraph 5.4). Additionally, Ministerial Council Decision 7/09 on women's participation in political and public life is applicable.[15]

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

19. 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]

20. 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 relevant reports of the CoE Group of States against Corruption (GRECO).

21. 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]

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.
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>.

2. Background and Status of Implementation of Previous ODIHR Recommendations

22. The Law on Political Parties of Mongolia was adopted on 7 July 2023 and entered into force on 1 January 2024.

23. 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]
- less restrictive framework regarding the types of activities that political parties may carry out;[29]
- more strictly circumscribing some of the grounds for dissolution of political parties and certain 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.

24. 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").

25. 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.

26. On 7 July 2023, the Law on the Procedure for Implementing the Law on Political Parties (hereinafter the "Implementing Law") was adopted and subsequently amended on 13

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, the 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.

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 Final Opinion *infra*).

31 See ODIHR-Venice Commission *2022 Joint Opinion*, paras. 93 and 98, including by lowering the threshold from three per cent to one per cent 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 per cent 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).

December 2024 to extend the deadline for the implementation of several obligations by the political parties.[33] Under the amended Implementing Law, a party must take measures to bring its charter, program, and internal organization into conformity with the Law by 31 December 2025, and "*shall submit the amendments to the Supreme Court within 30 days*" (Article 2). At the same time, the Implementing Law does not clearly list which provisions of the Law are subject to postponement until the end of 2025.

27. It became evident during the visit that the requirement of Article 17.7 of the Law that a party's central representative, executive, and supervisory bodies' composition shall include at least 40 per cent representation of either gender has not been met by the majority of political parties, which also claimed that this requirement is challenging to implement. In particular, many political parties were still in the process of aligning their charters and internal regulations with the new Law, while only a few had fully completed this process, including meeting the gender representation requirements.

28. From the information gathered during ODIHR's meetings with different stakeholders, it remains unclear whether there is an intention to further postpone the implementation of the Law beyond December 2025, although most parliamentary parties informed ODIHR experts they are committed to adhering to this deadline. While establishing a solid foundation for implementing systemic legislation is essential – and acknowledging the difficulties that certain political parties may face in reorganizing internally to comply with the Law – the question of further postponing its implementation should be carefully assessed and further delays may not necessarily constitute an effective solution. Furthermore, beyond ensuring technical compliance with the Law's provisions, public authorities should more effectively raise awareness among political parties about the new requirements in order to ensure smooth implementation.

29. In its 2024 Final Report following the parliamentary elections, ODIHR noted that the 2023 constitutional amendments, which increased the size of the Parliament, had as its aim enhancing the parliament's strength and diversity and that the elections resulted in a higher proportion of women MPs and increased plurality in terms of the number of parties represented in parliament. This should in principle lead to improved lawmaking processes in the future. However, it should be noted in retrospect, that a properly organized, participatory, democratic lawmaking process for the adoption of the Law in the first place would have not only contributed to a more qualitative Law but also would have significantly facilitated its implementation, ultimately contributing to increased public trust in democratic institutions. To avoid unnecessary or impracticable laws and frequent substantive amendments, the need for developing new legislation should be thoroughly assessed at the outset of every policy- and lawmaking process. Additionally, the entire legislative cycle, including drafting, consultation, discussion, implementation, and evaluation, should be inclusive and participatory.

30. In light of the above, **it is strongly recommended that the further implementation of the Law be discussed with all relevant stakeholders**. This process should assess whether the Law adequately fulfils its intended purpose and is capable of achieving the desired results. Particular attention should be given to consulting the most affected actors – especially smaller political parties – and ensuring that they are provided with the necessary state support to prepare for and successfully implement the Law (see also Sub-Section 9 on the Procedure for Amending the Law *infra*). Finally, as was emphasized during ODIHR meetings with the relevant counterparts, there are major contradictions between the Law on Political Parties and electoral legislation, particularly the Law on the Parliamentary Elections. While some of those discrepancies are discussed in this Final Opinion, ODIHR stands ready to provide a full comprehensive analysis of the electoral

33 See <ON THE PROCEDURE FOR COMPLIANCE WITH THE LAW ON POLITICAL PARTIES /REVISED WORDING/>.

legislation of Mongolia, subject to a separate request, in order to assess in detail its compliance with international standards and OSCE commitments.

3. DEFINITION OF POLITICAL PARTIES

31. 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.[34] 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.[35] 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, or supporting specific individuals for leadership positions, without necessarily proposing national-level policies[36].

32. 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 persons with disabilities in decision-making compared to the Draft Law analysed in the 2022 Joint Opinion.[37] 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.[38] It is recommended **to include such functions among key political parties' functions in Article 4.2 of the Law**.

33. 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.[39] This distinction creates a distinct level of involvement for those unable or unwilling to pay a membership fee.[40] 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

34 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).

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

36 *Ibid*, paras. 102-103,

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

38 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.

39 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*".*

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

member. **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

34. 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[41] 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,[42] all persons with disabilities shall enjoy legal capacity[43]and States should seek to assist them to exercise their legal 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,[44] **legal incapacitation and restrictions on voting rights on this basis are inconsistent with international standards and OSCE Commitments**.[45]

35. 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*

41 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".

42 See the *UN Convention on the Rights of Persons with Disabilities* (CRPD) para 9, adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. Mongolia acceded to the Convention on 13 May 2009.

43 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 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.

44 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*).

45 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.

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.[46] No individual or group wishing to associate as a political party should be advantaged or disadvantaged in this endeavour by the State, and the regulation of parties must be uniformly applied.[47]

36. In light of the foregoing, **ODIHR reiterates its recommendation from the 2022 Joint Opinion[48] 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[49] and in the *2024 ODIHR EOM Final Report*.[50]

37. 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

46 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 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."*

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

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

49 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*".

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

grounds in the ICCPR is exhaustive[51] and shall be narrowly interpreted.[52] **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.

38. 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.

39. 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.

40. 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.[53] This would also constitute an excessive restriction to their rights to freedom of association and freedom of expression.[54] 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.[55]

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51 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.

52 *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.

53 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."*

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

55 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

41. 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, **foreign nationals, at least those with legal residency, and stateless persons should be eligible to become members of political parties if they so wish and this should be reflected in the Law, as appropriate and relevant.**

42. 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[56] 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[57] and "special civil servants" as defined in Article 13 of the Law on Civil Service.[58] At the same time, Article 37.1.4 of the Law on Civil Service further states that except for state political officials (who are listed in Article 11 of the same Law),[59] 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,[60] 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.

43. 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*".[61] 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,[62] 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.

44. 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,[63] **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**

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.

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

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

58 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.

59 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

60 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.

61 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.

62 2020 *Joint Guidelines on Political Party Regulation*, para. 148.

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

justified, for instance to ensure the political neutrality of the said civil servants while performing their duties.

45. 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.[64]

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.

2. 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 while performing their duties.

5. REGISTRATION OF POLITICAL PARTIES

46. 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.[65] At the same time, as underlined in the 2020 Joint Guidelines, substantive registration requirements and procedural steps for registration should be reasonable.[66]

47. 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 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.[67]

64 2020 *Joint Guidelines on Political Party Regulation*, paras. 54, 56 and 59.

65 *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>.

66 *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.

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

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.[68]

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

49. Some of the supporting documents required 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 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.[69]

50. Article 12.3.6 of the Law still requires 801 signatures of members confirming their intention to join the party as opposed to the one per cent of the electorate threshold required in the Constitution.[70] 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.[71] 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."*[72] The rather low threshold of 801 signatures compared to Mongolia's population of approximately 3.58 million,[73] 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 one 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.[74]

51. Based on information from the last parliamentary elections, with 2,224,233 registered voters,[75] one per cent of the total electorate would amount to 22,242 voters – more than 25 times higher than the 801 members required by Law. Notably, various OSCE participating States have taken different approach to requirements pertaining to signatures but they do not exceed 0.4 per cent of the respective electorate. As already

68 *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*".".

69 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*,, para. 90.

70 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.

71 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, paras. 94-97.

72 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.

73 See <National Statistics Office of Mongolia>.

74 ODIHR-Venice Commission *2022 Joint Opinion*, para. 25.

75 IFES Election Guide | Country Profile: Mongolia.

noted in the 2019 Opinion, the constitutional requirement of having at least one per cent of the electorate supporting the establishment of a political party would be the most restrictive in the OSCE region.[76] Given Mongolia's strict signature collection requirements, as noted during the country visit, and considering the local context where there is limited culture of openly expressing political support, along with the limitation that one voter can support only one political party, meeting the one per cent threshold to register a new party would be extremely difficult. **Therefore, and as already noted in the 2022 Joint Opinion, the one per cent constitutional threshold should be reconsidered and substantially lowered,** despite the difficulties arising from the constitutional amendment rules, which bar changes to recent amendments for eight years after their adoption.[77]

52. At the time of applying to register a new party, 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 signatories are not members of any other party. In addition, the Court's Political Party Registration Procedure, approved by a resolution of the Supreme Court of 23 February 2024, requires political parties to submit certificates confirming that 801 members are not affiliated with any other political party. As ODIHR learned during the visit, the Supreme Court strictly enforces this requirement and has already refused to register certain political parties for failing to provide the necessary certificates confirming that all listed members are not affiliated with other parties. 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."*[78] **The requirement that founding members should not belong to another party should be reconsidered entirely.**

53. 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 in the Party Register shall be issued by 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 (Article 14.1 of the Law). 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**

76 2019 ODIHR *Opinion on the Draft Law on Political Parties of Mongolia*, para. 35.
77 See ODIHR-Venice Commission *2022 Joint Opinion*, para. 23. Article 3.3 of the Law on Procedure for Amending the Constitution of Mongolia, states that: "Once an amendment to the Constitution has been made, it shall be prohibited to re-amend such an amendment within eight years from the date of entry into force of the amendment". It is noted that the draft amendments to the Constitution published on 14 April 2023 were envisaging the removal of the one per cent threshold, although they were subsequently eliminated from the final draft constitutional amendments as adopted because of the restrictions provided in Article 3.3 of the Law on Procedures for Amending the Constitution of Mongolia.
78 ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 96.

shorten the deadlines for examining party registration applications to make the registration process faster and more efficient.

54. During the country visit, several interlocutors raised concerns about the absence of an appeal procedure in the Law to challenge a decision of the Supreme Court denying the registration of a political party. As the Supreme Court is designated as the competent authority for registering political parties in its capacity as the highest judicial body, no right to legal redress exists in cases where registration is denied. Although, at the drafting stage, various options were considered, including assigning this function to the GEC, the adopted version of the Law ultimately vested this responsibility in the Supreme Court. It should also be noted that, at the time of parliamentary elections, the GEC registers as electoral contestants the registered parties, against an additional set of requirements.

55. The inability to appeal against the Supreme Court's decision denying registration, as well as to argue and defend its statute in court, is not in line with the right to an effective remedy, as enshrined in the ICCPR and OSCE commitments. As provided by international obligations and OSCE commitments, strong procedural guarantees are necessary, to ensure everyone's right to *"effective means of redress against administrative decisions so as to guarantee respect for fundamental rights and ensure legal integrity*, [including] *the possibility for judicial review of such […] decisions."*[79] State legislation should provide an effective remedy for any violation of fundamental rights of political parties and their members, in particular the right to freedom of association and expression.[80] The remedy may be provided by a competent administrative, legislative or judicial authority, but must be available for all violations of fundamental rights guaranteed by international and regional instruments.[81] **Party founders or political parties should be provided with clear and effective procedural safeguards to challenge decisions related to the denial of party registration.** To this end, **the Law could be amended to entrust a relevant authority with the registration task, allowing, for example, either an administrative body or a district court to decide on party registration in the first instance, with the Supreme Court acting as an appeal body.**

56. According to Article 13.2 of the Law, when reviewing the completeness of an application, "*the Supreme Court shall notify the applicant to eliminate violations and submit additional information within 30 days*" if, among other issues, the number of party members does not reach 801 (as required by Article 12.3.6 of the Law – see para. 50 *supra*), or if "*a member entered into registration falls under the jurisdiction of another party or is represented by another person*". Furthermore, under Article 14.4.3, the Supreme Court may refuse to register a political party if, among other grounds, the number of members does not meet the 801-member threshold – presumably, in cases where the party fails to rectify deficiencies and to submit additional information as required under Article 13.2.

79 To ensure the right to an effective remedy, it is imperative that judicial procedures, including appeal and review, fully comply with international fair trial standards, as enshrined in Article 14 of the *ICCPR* and elaborated in *General Comment No. 32* of the UN Human Rights Committee (Article 6 of the ECHR and relevant caselaw of the ECtHR may also serve as useful reference in this respect; see also Guide on ECtHR caselaw on Article 6 of the ECHR as of August 2024). Furthermore, such procedures must be timely, accessible, and affordable, consistent with the obligations under Article 2(3) of the *ICCPR* and the Basic Principles on the Independence of the Judiciary. See also *OSCE 1990 Copenhagen Document*, particularly paragraphs 5.10 to 5.18, which reaffirm the right to a fair and public hearing by a competent, independent, and impartial tribunal, and emphasize due process guarantees, including the presumption of innocence, access to legal counsel, and the right to appeal.

80 Article 13 of the *ECHR* provides that, *"[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."* Similar provisions establishing the right to an effective remedy are found in Article 8 of the *UDHR*, Article 2 of the *ICCPR* and Article 5 of the *ICERD*.

81 See ODIHR-Venice Commission, Guidelines on Political Party Regulation, para. 282.

57. At the same time, as ODIHR was informed during the country visit, the Supreme Court applies a strict interpretation of the requirement set in Article 12.3.6. In practice, it would reject applications if there are not only less, but also more than 801 signatures.[82] Such a limitation constitutes a disproportionate restriction on the right to freedom of association, particularly as Article 12.3.6 explicitly requires a record of "*at least 801 members*", which should not preclude the submission of a higher number of members or signatures. As ODIHR was informed during its country visit, the Supreme Court also relies on its own resolution of 24 February 2024 outlining the procedure for political party registration, which has been shared with ODIHR. According to this resolution, in cases where there are more than 801 members, "*the information on more members will be returned to the applicant*". Moreover, according to this resolution, the Supreme Court also requires certificates confirming that members have reached the age of 18 on the date of joining the party and are not affiliated with another political party (see also para. 52 *supra*). Notably, these certificates are not envisaged under Article 12 of the Law, which should provide an exhaustive list of documents required for registration and does not reference this resolution or any related by-laws. It is important to note that secondary legislation, passed in order to implement primary laws, may serve to clarify several details, such as technical information or administrative procedures; however, it should not go beyond the scope of what is governed by primary law, especially in cases where it introduces additional significant burden on the applicants that may negatively impact their rights.[83]

58. Moreover, as ODIHR learned from the documentation provided by the Supreme Court of Mongolia, the Court verifies the list of 801 party members submitted with the application against the state registration database of citizens. If any discrepancies are found – such as mismatched surnames, incorrect registration numbers, errors in personal or parental names, misspellings, or missing or inaccurate address information – the Supreme Court is required, according to its resolution, to refuse to register the political party. Additionally, in accordance with the above-mentioned resolution on the procedure for party registration, it also checks whether representatives from the local area participated in the party founding meeting by verifying the attendance records and minutes of the meeting. As mentioned above, registration requirements and related procedural steps should be reasonable. As emphasized in the Joint ODIHR and Venice Commission Guidelines, it is reasonable that legislation on political party registration requires that the state be provided with basic practical information regarding the political party. At the same time, minor administrative breaches of a party to present certain documents should not lead to denial of registration.[84]

59. 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*".[85] Moreover, "*the mere fact that a party advocates a peaceful change of the constitutional order, or promotes self- determination*

82 This has also been confirmed in ODIHR Election Observation Mission Final Report: Supreme Court informed the ODIHR EOM that it is their policy to accept lists of only exactly 801 members; if the list contains more than 801 names, it is sent back to be shortened. Further, all entries are checked, and if a single entry is shown to be erroneous, the list is sent back for corrections. Such practice appears to constitute a *contra legem* interpretation and may effectively restrict the right to freedom of association. See DIHR, *Mongolia - Parliamentary Elections (28 June 2024) - ODIHR Election Observation Mission Final Report*, 13 December 2024, p. 12.

83 See *ODIHR Guidelines on Democratic Lawmaking for Better Laws* (January 2024), para. 12.

84 2020 *Joint Guidelines on Political Party Regulation*, paras. 86-87.

85 2020 *Joint Guidelines on Political Party Regulation*, para. 38.

of a specific people is not sufficient per se to justify a party's prohibition or dissolution".[86] 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*".[87] 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.[88] 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 a ground for refusal of party registration.**[89]

60. 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, which however the ODIHR election observation reports have criticised as overly restrictive[90] (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 shorten the deadlines for examining party registration applications to make the process faster and more efficient.
3. To amend the Law to entrust a relevant authority with the task of party registration, ensuring that the founders or political parties can challenge decisions related to the denial of party registration before an independent and impartial tribunal.
4. 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.

86 *Ibid.* para. 115 (2020 *Joint Guidelines on Political Party Regulation*).
87 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.
88 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.
89 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.
90 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.

6. INTERNAL ORGANIZATION, DECISION-MAKING PROCESS AND ACTIVITIES OF POLITICAL PARTIES

61. 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.[91] 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.[92] 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.[93] It should also be up to the parties themselves to determine how their conferences and decision-making procedures are organized.[94]

62. As it stands, the Law is overregulating matters that usually lie within the discretion of the political parties[95] and as a consequence, limits the party autonomy to decide on issues such as the party's internal organization and structure, membership, its leadership, charter, program and decision-making procedure. As such, the provisions 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.

63. 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.[96]

64. **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**

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91 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.

92 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.

93 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).

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

95 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.

96 *Ibid.*

requirements for decision-making should be removed in order to give full discretion to political parties in this respect.[97]

65. 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,[98] 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.[99] 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).[100]

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.

7. DISSOLUTION OF POLITICAL PARTIES

66. 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.

67. 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).

68. 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.[101] 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

97 ODIHR-Venice Commission *2022 Joint Opinion*, para. 52.
98 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (d).
99 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"*.
100 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.
101 2020 *Joint Guidelines on Political Party Regulation*, paras. 72-75.

parties enjoying regional or local support, smaller parties and parties representing national minorities.[102]

69. 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.[103] Hence, **the prohibition of the party to participate in elections if it is considered inactive, but not dissolved, should still be reconsidered entirely.**

70. 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.

71. 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.[104] 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.[105]

72. 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).

73. 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 cases as prescribed by law and considered necessary in a democratic society.[106] 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.[107] 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."*[108] 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.[109] 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.[110]

74. The Law should define narrowly formulated criteria specifying the exceptional circumstances under which the dissolution of political parties is permitted,[111] such as in case of use or call for violence, which constitute a serious and imminent threat to civil

102 ODIHR-Venice Commission *2022 Joint Opinion*, para. 68. See also 2020 *Joint Guidelines on Political Party Regulation*, paras. 68 and 102-103
103 *Ibid.* para. 101 (2020 *Joint Guidelines on Political Party Regulation*).
104 2019 ODIHR *Opinion on the Draft Law on Political Parties of Mongolia*, para. 56.
105 2020 *Joint Guidelines on Political Party Regulation*, para. 271.
106 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 50.
107 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 113.
108 See ECtHR, *Socialist Party and others v. Turkey*, no. 21237/93, 25 May 1998.
109 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.
110 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.
111 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.

peace or fundamental democratic principles.[112] Dissolution is justified only if it adheres to strict standards of legality, subsidiarity, proportionality and non-discrimination.[113] 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**.

75. 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.[114] 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.[115]

76. 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.[116] In light of the 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**.[117]

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.

112 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.

113 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 109.

114 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).

115 ODIHR-Venice Commission *2022 Joint Opinion*, para. 76.

116 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.

117 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>.

8. FINANCING OF POLITICAL PARTIES

77. 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.

78. 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 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.

79. 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*".[118]

80. 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

81. Public funding mechanisms are often established to counteract the influence of private money on political and electoral processes, prevent corruption but also to support political parties in the important role they play.[119] 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.

82. 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 maximum 0.7 per cent 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

118 ODIHR-Venice Commission *2022 Joint Opinion*, para. 78.
119 ODIHR-Venice Commission *2022 Joint Opinion*, para. 232.

of the *State Great Khural* (C1) by an amount equal to 0.5 per cent 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). It is commendable to note the reduction of the eligibility threshold from three (in the draft law) to one per cent, addressing one of the recommendations from the 2022 Joint Opinion.[120] 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 one per cent to 0.5 per cent and from 50 times the minimum monthly wage to 25 times, respectively.

83. 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.

84. During the 2024 parliamentary elections, ODIHR observed "*that such public funding system disproportionately benefits the two largest parties, MPP and DP*".[121] 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,[122] 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. These conclusions have also been confirmed during the country visit when one of the extra-parliamentary parties described to the ODIHR experts the limited amount of public funding available for the parties which passed the one per cent threshold but did not obtaining seats in the Parliament.

85. 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 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**.

86. Additionally, under the Law, the total amount of state funding allocated to eligible political parties may not exceed twice the combined total of donations and membership fees received by the party (Article 27.8). While such a matching funding scheme may foster greater public political engagement,[123] this model could also potentially have a detrimental impact on smaller political parties, which often face challenges in raising private donations.[124] This is especially so due to a historically limited practice of private subjects giving donations to political parties. Therefore, it would be advisable to consider

120 ODIHR-Venice Commission *2022 Joint Opinion*, para. 90.
121 ODIHR, *Mongolia - Needs Assessment Mission Report on the Parliamentary Elections of 28 June 2024*, 26 April 2024, p. 10.
122 ODIHR-Venice Commission *2022 Joint Opinion*, para. 95.
123 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 240.
124 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 240.

a funding model that does not entirely withhold public funding in the absence of private donations, ensuring that political parties receive a certain level of public funding – proportional to the number of votes obtained – regardless of whether they secure private contributions. Overall, matching grants or similar funding mechanisms[125] may generally disadvantage parties whose supporters predominantly belong to less wealthy segments of the population; to prevent such risk, legislators could limit matching grants for small donations up to a certain maximum.[126] As underlined in the Joint Guidelines, legislation should ensure that the formula for the allocation of public funding does not provide one political party with a monopoly position, or with a disproportionately high amount of funding compared to other parties.[127] Overall, **it is recommended to evaluate the allocation of public funding to political parties and consider adjusting the formula for its allocation , with careful consideration given to balancing it with private funding and not unduly advantaging largest political parties.**

87. Although going beyond the scope of this Opinion as it is addressed in electoral legislation, the issue of the public financing of electoral campaigns is also closely interlinked and it is fundamental that parties *clearly separate between electoral expenses and other party expenditures.*[128] During the 2024 parliamentary elections, several ODIHR EOM interlocutors regarded the campaign expenditure limits as too high, which may lead to excessive spending of some parties with a potential undue impact on voters, giving a disproportionate advantage to the larger, well-established political parties and the incumbents.[129] They also noted that the combination of high spending limits and campaigning costs negatively impacted the campaigning opportunities for women and young candidates, especially in majoritarian contests. While there are no standardized practices for capping public funding, **introducing limits on specific categories of expenditures could lead to more cost-effective voter engagement methods being employed which, in turn, could contribute to a gradual and consistent decrease in the necessary level of public financing.**

88. As provided by the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*it is reasonable for a state to determine the criteria for electoral spending and a maximum spending limit for participants in elections, in order to achieve the legitimate aim of securing equity among candidates and political parties. Parties will also need to distinguish between electoral expenses and other party expenditures. The legitimate aim of such restrictions must, however, be balanced with the equally legitimate need to protect other rights, such as those of free association and expression. This requires that spending limits be carefully constructed to not be overly burdensome. The maximum spending limit usually consists of an absolute or relative sum determined by factors such as the voting population in a particular constituency and the costs for campaign materials and services*."[130] Whichever system is adopted, such limits should be clearly defined as contestants need "*a reasonable indication as to how those provisions will be interpreted and applied*."[131] Although being regulated in the election legislation, **to enhance equality between parties in campaign opportunities, the legal**

125 Matching grants or similar matching schemes generally tend to encourage political donations by individuals by providing an extra amount from public funds when individuals make a political contribution. An example of such system is the matched party financing system in Germany implemented under Section IV and V of the Political Parties Act ("Parteiengesetz," 'ParteienG') in 1967. According to this scheme, the amount of public financing received cannot exceed the amount of private funds raised by the party itself – that is, i.e., parties must obtain at least 50 percent of their funding from sources other than the state. Donations from abroad are permissible up to EUR 1,000 (USD 1,110), however the donor must be a German citizen or a company with a majority German ownership. Anonymous donations of more than EUR 1,000 are not allowed.

126 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 240.

127 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 241.

128 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 248.

129 This has been also confirmed during the meeting with the Standing Committee on State Structures of the *State Great Great Hural* of Mongolia in the course of the ODIHR visit.

130 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 248.

131 *Ibid.*

drafters should review and consider decreasing campaign expenditure limits, assessing the maximum that a political party could reasonably be expected to spend while ensuring that spending limits are sufficiently restrictive to prevent small parties from being disproportionately disadvantaged.[132]

89. 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.[133] 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.

90. 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*).

91. Article 26.3 of the Law provides for the earmarking of 50 per cent 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.[134] 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[135] (see also Sub-Sections 8.3 to 8.5 *infra*). Moreover, ODIHR reiterates its previous recommendation **to allot a percentage of public funding to general awareness raising initiatives separately from initiatives to**

132 *Ibid.* See also e.g., CoE, Technical Paper - Assessment of the regulatory framework for political party and election campaign financing in Montenegro (2017), Recommendation 10.
133 ODIHR-Venice Commission *2022 Joint Opinion*, para. 99.
134 ODIHR-Venice Commission *2022 Joint Opinion*, para. 98.
135 See, for example, ODIHR *Final Opinion* on the Law of Montenegro on Financing of Political Entities and Election Campaigns (2024), para. 49.

increase the political participation of women, national minorities, youth and persons with disabilities, while ensuring a proper monitoring mechanism in place.[136]

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

92. 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."* [137]

93. 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).[138] It is good practice to cap the amount individuals (and legal entities) can contribute, yearly, to a political party or an electoral campaign/candidate, as well as to establish a certain cooling off period (for example, of five years) during which corporate entities are restricted from entering into contracts before and after making donations to a political party.

94. 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.

95. 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

136 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.
137 2020 *Joint Guidelines on Political Party Regulation*, paras. 209 and 213.
138 2020 *Joint Guidelines on Political Party Regulation*, paras. 209-217.

requirement to assess their value based on market prices aligns with international good practice and helps prevent circumvention of expenditure ceilings.[139]

96. Donations include both monetary and non-monetary contributions, with Mongolian natural and legal persons permitted to finance political parties. It is positive that both monetary and in-kind contributions count toward donation limits. 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.

97. Article 33.8 of the Law clarifies that the amount of donation made by a legal entity to a party shall consist of the sum of donations made by the legal entity, its affiliates, subsidiaries, branches, and representative offices of a legal entity are included in donation limits to prevent circumvention. As was explained to ODIHR during the country visit, this means that if a conglomerate (a parent company with subsidiaries, branches, etc.) attempts to donate through multiple affiliated entities, all donations are aggregated and treated as one. This aggregation ensures that the total donation cap specified in Article 33.7 – "*no more than 50 times the minimum monthly wage*" per legal entity per year – applies to the entire group, not just an individual subsidiary or legal entity. Therefore, the Law prevents conglomerates from circumventing donation limits by distributing donations across their many entities, which is generally commendable. However, as ODIHR was informed by interlocutors met during the country visit, there is no equivalent rule in the parliamentary and presidential election laws with respect to the funding of election campaigns. In practice, this means that the respective limitations on private donations can be circumvented during the campaign period rendering the provision of this Law and its provisions ineffective. Therefore, there is a strong need to harmonise the Law on Political Parties with the electoral laws.

98. 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. As ODIHR was informed during the country visit, on 19 April 2024, amendments to the Law on Political Parties were adopted prohibiting donations from legal entities engaged in the mining, mineral extraction, and processing sectors. However, it remains unclear why such a prohibition would apply exclusively to corporations from this particular sector, which could give rise to concerns about the selective targeting of certain political parties. It is recommended that this approach be reconsidered. If the intention is to safeguard the political level playing field from influence by wealthy corporate actors, **alternative approaches could be considered, such as further reducing the permissible limits of corporate donations, or preventing companies or conglomerates with a revenue exceeding certain limit to donate**.

99. Article 33.10 of the Law prohibits party affiliated organizations (i.e., a foundation, association and/or non-governmental organization affiliated to the party which engages in activities aimed at implementing and supporting party activities aimed at implementing party objectives of the party)[140] to receive donations from the sources indicated under Article 34.6 of this Law. In addition, 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.

100. At the same time, the Law fails to properly regulate so-called "third parties" i.e., "*individuals and organizations who are not legally tied to, or acting in co-ordination with, any candidate or political party, but who nonetheless act with the aim of influencing*

139 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.

140 See Article 3.1.6 of the Law on Political Parties of Mongolia.

the electoral result".[141] During the country visit, several interlocutors raised concerns with respect to third party involvement in election campaigns and lack of regulation in this respect, and circumvention of financial regulations. **It is this essential that the Law be supplemented in this respect.**

101. The *ODIHR Note on Third Party Regulations in the OSCE Region* (2020),[142] which offers a comparative overview of how the issue is addressed in several OSCE participating States and provides concrete guidance and recommendations, may serve as a useful reference document for that purpose.

102. In this respect, the aforementioned limits should only apply in cases where third parties and their actions are intended to benefit specific political parties or direct contestants, either in general or during campaigns, and not to NGOs and other interest groups which debate issues of public interest during the campaigns; the latter should not generally be treated in the same way as political parties and true electoral "third parties", in particular in terms of access to resources and reporting obligations.[143]

103. It is essential to extend some forms of regulation, including obligations and restrictions comparable to those applying to parties and candidates, to true "third parties" involved in the campaign to ensure transparency and accountability and avoid the circumvention of funding limits.[144] Indeed, the lack of explicit regulation creates potential loopholes.

104. At the same time, regulators should take care to distinguish third parties that do not campaign in collaboration or coordination with any of the contestants from affiliated persons or entities that are nominally separate from a party but in fact *are related, directly or indirectly*, to a political party or are *otherwise under the control* of a political party.[145] In general, third parties should be free to fundraise and express views on political issues as a means of free expression and public participation, and their activity should not be unconditionally prohibited.[146] In general, the involvement of third parties contributes to the expression of political pluralism and citizen involvement in political processes, thus a complete prohibition can be considered as an undue limitation of freedom of expression.[147]

105. Measures to address this phenomenon should be proportionate and consider the overarching goal of creating a level playing field for all political parties. For instance, as a comparison, the ECtHR in its ruling in *Bowman v. The United Kingdom* underlined that such expenditures may not be banned, but they may be subject to reasonable and proportionate limitations.[148] The applicable legislation should set proportionate and reasonable limits to the amount that third parties can spend on promoting candidates or parties, ideally by applying existing ceilings for donations to political parties to these actors, as well. Imposing registration and strict reporting requirements for third party contributions would also further enhance the effectiveness of campaign finance regulations.[149] This must be accompanied by a clear oversight mandate given to an

141 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 218. See also *ODIHR Note on Third Party Regulations in the OSCE Region* (2020).
142 See *ODIHR Note on Third Party Regulations in the OSCE Region* (2020). See also ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 218.
143 ODIHR-Venice Commission *2022 Joint Opinion*, para. 81.
144 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 256.
145 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*. para. 219.
146 *ODIHR Handbook for the Observation of Campaign Finance* (2015), p. 37.
147 For example, the ECtHR considered a case against the United Kingdom on whether a limit of GBP 5 on third-party campaign expenditures violated the right of freedom of expression under Article 10 of the ECHR. The Court ultimately concluded that the limit was set too low but recognized the state's legitimate purpose in restricting such expenditures. See *Bowman v. United Kingdom*, judgment, ECtHR, no. 24839/94, 19 February 1998.
148 See ECtHR, *Bowman v. United Kingdom*, no. 24839/94, 19 February 1998.
149 See Council of Europe, *Recommendation Rec(2003)4 of the Committee of Ministers* to member states on common rules against corruption in the funding of political parties and electoral campaigns. Article 6: Rules concerning donations to political parties, "should

institution with the necessary independence, powers and resources to effectively monitor compliance and enforce regulations, including as appropriately issuing sanctions or initiating sanctioning procedures.[150]

106. In light of the foregoing, **it is recommended to envisage in the Law a clear definition of "third parties"**,[151] **along with reasonable and proportionate limitations as to the third-party financing and other potential regulations applicable to third party campaigners[152] suited to the local context to avoid circumvention of financial regulations.** Any decision on how to regulate third party involvement should be reviewed regularly, ideally after each general election.[153]

107. **In this respect, the legal drafters could consider applying to third parties limitations and/or obligations to safeguard against potential loopholes through which unlimited funding could otherwise be channelled and financial transactions be veiled, such as applying the same existing ceilings for donations to political parties and rules on spending as those applicable to political entities, reporting requirements, bans on purchasing advertising, etc.**[154] One of the solutions may be the establishment of a registry of third-party campaigners for whom expenditure limits would apply, with a possibility to sanction unregistered third-party campaigners for which the oversight authorities and the courts would establish a clear connection with a political entity.[155] **In any case, unless regulated by the electoral legislation, the Law should prescribe effective, proportionate and dissuasive sanctions in case of violation of the rules for third-party campaigning and an effective mechanism for enforcement, including discontinuation of the unlawful campaign activity and removal of campaign materials**.[156]

108. 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).

109. Monthly membership fees are capped at five per cent 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.

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also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party."

150 *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), pp. 35-36.

151 The Law should seek to set out clear criteria for distinguishing between entities and individuals: **(1)** formally or directly connected to or affiliated with or under the control of a party – ***which are not considered "third parties"*** but rather seen as part of political parties in a political finance context (see *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), paras. 71-74, meaning that their financial activities should be reported by the political party as part of the party finances, with restrictions on party financing, such as prohibited donations and caps on donations, also applying to them); **(2)** unofficially or indirectly connected to a party, such as those collaborating or coordinating with a party or direct contestant – who ***would be considered third parties "indirectly related" to a political party*** and as such should be subject to reasonable and proportionate limitations as to the third party financing and other potential regulations/obligations; **(3)** other unrelated or not connected to any party but campaigning in favour or against a political party or direct contestant, without coordination or direction from it – for which ***some level of regulation on third parties may be considered if/as appropriate in the country context***, providing the limitations are reasonable and proportionate (for instance some forms of registration requirements, reporting obligations as well as restrictions imposed on sources of funding and types of expenditures, see *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), para. 61); **(4)** other unrelated or not connected to any party and which do not campaign in favour or target a political party or direct contestant – which ***would not normally be considered as part of "third party" campaigning,*** although the legal definitions used in some countries mean that some forms of issue advocacy might be considered as favouring or disfavouring a particular direct contestant.

152 For instance, certain reporting requirements, donation bans or limits, spending limits, bans on purchasing advertising, etc. See *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), para. 145.

153 *ODIHR Note on Third Party Regulations in the OSCE Region* (2020), para. 149 (8).

154 *Ibid. ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, paras. 218-221 and 255-256. See also *ODIHR Note on Third Party Regulations in the OSCE Region* (2020).

155 For example, in the Czech Republic and in Slovakia, third parties are obliged to register. Another good practice is when the definition of a third party is connected to donations received rather than the activities conducted by an entity (see UK and Ireland, for example).

156 *Ibid.*

110. 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.[157] 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,[158] 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.**

111. Political parties can generate income from selling publications, promotional materials, and assets. The 2022 Joint Opinion[159] 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.[160] **It is therefore recommended to broaden Article 35.2 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 35.22 of the Law to allow the sale of party related materials, with revenues below market price accounted for as donations.

3. To envisage in the Law a clear definition of "third parties", along with reasonable and proportionate limitations as to the third-party financing and other potential regulations applicable to third party campaigners suited to the local context to avoid circumvention of financial regulations, while providing regular review of the regulation of third-party involvement.

8.3. Gender and Diversity Considerations

112. 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.[161] 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

157 International IDEA Political Finance Database, Question 25.
158 ODIHR-Venice Commission *2022 Joint Opinion*, para. 89.
159 ODIHR-Venice Commission *2022 Joint Opinion*, para. 87.
160 2020 *Joint Guidelines on Political Party Regulation*, para. 225.
161 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%".

appropriate enforcement or sanction mechanisms or incentives to ensure implementation in practice.[162] **The legal drafters should consider reflecting the requirement of gender parity in Article 17.7, while including proper enforcement mechanism.**

113. 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, the precise meaning of the Article should be further elaborated.**

114. Public funding could be utilized as a tool to promote women's political participation, offering financial incentives tied to meaningful representation and equality initiatives.[163] 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.[164]

115. 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 gender quota mandated by the PEL[165] and for any elected MPs with disabilities - a one-time bonus "*in the subsequent year of the respective regular election*" (Article 27.7).

116. 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*".[166] **In light of international good practices, it may be worth making the one-time bonus initiative more permanent (e.g., on an annual basis) and consider linking the allocation of public funding to ensuring compliance with gender and disability quotas.**

117. As highlighted in the 2022 Joint Opinion,[167] "*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.**[168]

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162 See the CEDAW Committee, *General recommendation No. 40 (2024)* on the equal and inclusive representation of women in decision-making systems, para. 51 (d).
163 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.
164 International IDEA Political Finance Database, *Question 36*.
165 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.
166 ODIHR, Mongolia - Election Observation Mission Final Report on the Parliamentary Elections of 28 June 2024, 13 December 2024, p. 13.
167 ODIHR-Venice Commission *2022 Joint Opinion*, para. 96.
168 ODIHR-Venice Commission *2022 Joint Opinion*, para. 96.

118. **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.**[169] 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.[170] The Law could be supplemented in this respect**.

119. 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.[171] 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.[172]

120. In this respect it would also be beneficial to mention funds to support specific youth organizations, persons with disabilities, minorities within parties, including for 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.[173] The above initiatives would align with international standards aimed at promoting gender equality and diversity in political participation.[174] 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.

121. 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,[175]

169 See *ODIHR Compendium of Good Practices for Advancing Women's Political Participation in the OSCE Region* (2016).
170 See the CEDAW Committee, *General recommendation No. 40 (2024*) on the equal and inclusive representation of women in decision-making systems, para. 51 (d).
171 For example, in Sweden funds are earmarked for party activities that promote gender equality. In Canada, fees are reduced or waved for women candidates.
172 See the CEDAW Committee, *General recommendation No. 40 (2024*) on the equal and inclusive representation of women in decision-making systems, para. 51 (e).
173 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).
174 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.
175 i.e., origin, ethnicity, language, "race", age, gender, social origin, status, wealth, occupation, position, religion, opinion, and education.

which are not fully congruent with those listed in international human rights instruments,[176] 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).

122. These provisions are overall welcome and demonstrate the willingness to put in place governance structures that can be called truly democratic, representative and inclusive.[177] 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.[178] 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.[179] 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[180] 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 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**.[181] In this case, before such measures are implemented, **the political party should be first given a fair warning and an opportunity to correct**[182] (see also Sub-Section 8.5 on Oversight and Sanctions *infra*).

123. 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.**[183] 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.[184]

176 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.

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

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

179 *Ibid.*

180 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.

181 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.

182 2019 ODIHR *Opinion*, para. 62

183 2020 *Joint Guidelines on Political Party Regulation*, para. 169.

184 See e.g., ODIHR, *Handbook on Promoting Women's Participation in Political Parties* (2014), p. 53.

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

124. 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.[185] 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.[186] 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.[187] Citizens need access to relevant financial information about political parties to hold them accountable. However, regulations should avoid imposing excessive burdens on political parties.

125. 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.[188]

126. 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

185 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.

186 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 247.

187 See ECtHR, *Cumhuriyet Halk Partisi v. Turkey*, no. 19920/13, 26 April 2016.

188 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.*"

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.[189]

127. 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 more than one donation within 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).

128. 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).

129. 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 statements and related documents for 10 years, addressing a recommendation made in the 2022 Joint Opinion.[190]

130. 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, by 15 March and to submit the audited annual reports to the GEC (Article 38.1). It also establishes incompatibilities regarding the role of an auditor (Article 38.5).

189 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*".

190 ODIHR-Venice Commission *2022 Joint Opinion*, para. 100.

131. Importantly, under Article 37.5 of the Law, the CFO of a political party is prohibited from holding any job or position related to finance in any business entity or organization. Given the financial reporting obligations placed on political parties, combined with the limited amount of public funding available to newly established, small, or extra-parliamentary parties, it appears unreasonably strict to require political parties to employ a full-time accountant. In this regard, consideration could be given to allowing political parties to engage a part-time financial officer, who could combine their work for the party with employment in the private sector.

132. 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. 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.[191] 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 report.** Importantly, during the meeting with ODIHR, representatives of NAO emphasized the need for political parties to have a comprehensive training on reporting requirements. 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). Notably, according to Article 9.8 of the Law, the party shall have its year-end financial statements audited, and post them on its website within the first quarter of each year, and disclose them to the public, and its members and supporters. **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**.[192]

133. 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.[193] **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, 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**.

191 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 258.
192 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 259.
193 ODIHR-Venice Commission *2022 Joint Opinion*, para. 102.

RECOMMENDATION H.

1. To simplify and streamline reporting requirements, including donation-related, while also mandating political parties to submit a single 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

134. 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."*[194] 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."*[195] 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*."[196] Article 16 of the Recommendation 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[197] 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.

135. While the GEC is the oversight body responsible for supervising political party financing, the NAO 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 NAO, 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 NAO for review (see para 101 of the Joint Opinion). It appears that both the GEC and the NAO are required to issue conclusions on the reports submitted. However, it is unclear how coordination between these two institutions works in practice, particularly regarding information-sharing and access to databases. **In general, consideration could be given to centralizing oversight functions within one body with strengthened capabilities to detect and address illegal sources of funding, ensuring greater transparency and accountability in political finance operations.** This would ultimately uphold the integrity of electoral processes and enhance public trust

194 See ODIHR-Venice Commission, *Guidelines on Political Party Regulation*, para. 276.
195 *Ibid*, para. 278.
196 See the CoE Committee of Ministers' Recommendation Rec2003(4).
197 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.

in democratic institutions (see also additional comments the imposition of fines in paras. 140-141 *infra*). **Alternatively, the Law can be revised by formalizing cooperation mechanisms between the different institutions, i.e., the GEC, NAO and Independent Agency Against Corruption.**

136. Importantly, the body enforcing the relevant legislation should be granted adequate powers to effectively carry out these functions. According to the ODIHR-Venice Commission Guidelines on Political Party Regulation, "*[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*."[198] 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*."[199] The process of auditing alone may be rendered ineffective if the oversight body may do so solely on the basis of information submitted to it, and is not able to examine whether that information is realistic or accurate, and whether it presents an actual and complete picture of a contestant's income and expenditures, with involvement of internal and external expertise where necessary.

137. In the course of ODIHR meetings with the NAO, it did not become clear whether it considered its relevant responsibilities as extensive and whether it could be lacking full investigative authority and direct access to certain databases. At the same time, without sufficient investigative powers, including carrying out on-site inspections, it can be challenging for any oversight body to effectively detect illegal sources of political party or campaign finance.

138. During the country visit it became evident that the Independent Authority Against Corruption has necessary capacities to perform oversight functions, although it is not directly involved in the process of checking the reports.

139. 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**.

198 See the *ODIHR and the Venice Commission Joint Guidelines on Political Party Regulation*, para. 278.

199 See also See also *Joint Opinion* on the Draft Act to regulate the formation, the inner structures, functioning and financing of political parties and their participation in elections of Malta, para. 43. See also *Joint Opinion* on the draft amendments to some legislative acts concerning prevention and fight against political corruption of Ukraine, para. 36.

140. 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"*.

141. 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 consider centralizing oversight functions within one body with strengthened capabilities to detect and address illegal sources of funding, providing greater transparency and accountability in political finance operations, 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

142. 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[200]. 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*".[201] The *ODIHR Guidelines on Democratic Lawmaking for*

200 See *1990 OSCE Copenhagen Document*, para. 5.8.
201 See 1991 *OSCE Moscow Document*, para. 18.1.

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[202].

143. 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.[203]

144. 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.

145. 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 would efficiently evaluate the operation and effectiveness of the draft laws, once adopted.[204]

[END OF TEXT]

202 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.

203 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.

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