



## INTERNATIONAL ELECTION OBSERVATION MISSION

### Mongolia — Presidential Election, 26 June 2017

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## STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

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### PRELIMINARY CONCLUSIONS

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The presidential election was competitive and well-organized, featuring a short yet fierce campaign. The freedoms of assembly and expression were generally respected. The protracted resolution of complaints, as well as pending court cases, led to uncertainty regarding candidacies. Media coverage was extensive but devoid of analytical reporting. The election administration was effective despite the perception of partisanship in the appointment of mid-level election commissions. In the polling stations visited, voting and counting were orderly, but transparency was somewhat limited by the GEC releasing only aggregated results.

The electoral legal framework provides for fundamental rights and freedoms, forming an adequate basis for the conduct of democratic elections. While a number of previous OSCE/ODIHR recommendations have been addressed, several previously identified shortcomings, in particular regarding suffrage rights, persist.

The General Election Commission (GEC) enjoyed stakeholders' trust, met key deadlines, and operated in a transparent manner. By law, the GEC has limited authority to adopt supplementary regulations it may deem necessary. Composition of many mid-level commissions was changed following the transition of power in local assemblies in 2016, which led a number of stakeholders to question their independence.

For this election 1,978,298 voters were registered. Stakeholders expressed overall confidence in the accuracy and inclusiveness of the voter register. The Law on Elections contains disproportionate provisions restricting suffrage rights, including a blanket disenfranchisement of people serving a prison sentence, regardless of the gravity of the crime committed, contrary to the International Covenant for Civil and Political Rights and the 1990 OSCE Copenhagen Document.

Three candidates representing all three parliamentary parties contested the election. By law, no other party had the right of nomination and candidates could not stand independently. Overall, current candidacy requirements are overly restrictive and limit voters' choice.

The 20-day long official campaign was dynamic, and freedom of assembly was respected. However, the political discourse was not exempt from xenophobic rhetoric. Several leaked recordings alleging candidates' involvement in corruption and other illegal activities shaped the campaign narrative. Instances of blurring the line between state administration and campaigning were observed. The relatively short campaign period, as well as the requirement for pre-approval of candidates' platforms placed restrictions on candidates' ability to convey their messages to the public.

Campaign finance regulations levelled the playing field to a certain extent, yet the provisions for transparency and accountability are insufficient and did not address concerns of corruption in political life. Additional efforts by the State Audit Office fall short of providing voters with accurate information on campaign financing prior to the election, which is important for making a fully informed choice.

The public broadcaster complied with legal requirements to provide candidates with free airtime. Commercial broadcasters inserted items paid for by the candidates' campaign teams in their

newscasts. Both public and private media were generally devoid of analytical reporting. Defamation will be decriminalised only after the election.

Women's participation in public and political life was not prominently featured during candidates' campaigns or in the media. However, two candidates' platforms addressed issues of gender equality. Women outnumbered men in lower-level election commissions and were well represented in campaign teams, though continued to be underrepresented in the GEC.

The legal framework recognizes the right of persons with disabilities to political participation. The GEC made an effort to provide a meaningful opportunity for them to exercise their voting rights and two candidates included issues related to persons with disabilities in their platforms. Despite the efforts by the election administration to facilitate their voting, many polling stations remained inaccessible to voters with limited mobility.

The legal framework affords observers considerable rights. Citizen observers were active prior to election day contributing to voters' understanding of the electoral process, including by issuing timely statements on a range of issues, such as media's coverage of the election, campaign finance and accuracy of electronic vote count equipment. The GEC accredited 17,947 observers from political parties that nominated candidates.

Every citizen has the right to challenge decisions and activities pertaining to the electoral process. Overly long deadlines for adjudicating election-related complaints compromise the right to an effective legal redress resulting in unresolved litigation and confusion regarding candidacies. Pre-election complaints filed with election administration bodies, among other, challenged the composition of lower-level commissions; police received some 500 campaign-related complaints, concerning, among others, defaced posters, defamation of candidates and alleged vote-buying.

In the polling stations visited, polling staff efficiently facilitated voting, adhering to established procedures. The introduction of ballot secrecy sleeves was a welcome initiative, yet caused confusion in some polling stations, at times not fully ensuring the secrecy of vote. The GEC started to release aggregated results immediately after the automated count, but did not publish them broken down to the district or polling station level, thus curbing the possibility of independent scrutiny.

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## PRELIMINARY FINDINGS

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### Background

Mongolia is a semi-presidential republic, where the president and parliament exercise extensive and at times overlapping powers. An ongoing public and parliamentary debate about prospective constitutional amendments that would redistribute authority between parliament and president formed a considerable backdrop to the election.

On 26 January, the parliament (*State Ikh Khural*) scheduled the presidential election for 26 June. The presidential election follows the 29 June 2016 parliamentary elections as well as local and provincial elections held in June and October 2016, respectively. This election cycle placed the Mongolian People's Party (MPP) in a position of political preponderance with 65 of 76 seats in the parliament, and majorities in most provincial and local citizens' representative assemblies. The Democratic Party (DP) maintains nine seats in the parliament and retains one provincial governor. The Mongolian People's Revolutionary Party (MPRP) has one seat. The outgoing President Elbegdorj Tsakhiagiin represents the DP.

The election comes at a time of continued economic challenges, following recent years of paltry gross domestic product growth, falling foreign direct investment and increased unemployment. In February, Mongolia secured a bail-out agreement with the International Monetary Fund and other lenders,

alleviating the prospect of immediate insolvency and enabling the government to maintain key social programmes. Economic slowdown and growing dependence on China fed populist and xenophobic agendas, contributing to a volatile environment ahead of the election.

## Legal Framework and Electoral System

The 1992 Constitution (last amended in 2001) guarantees fundamental rights and freedoms and the electoral legal framework provides an adequate basis for the conduct of democratic elections.<sup>1</sup> The primary legislation is supplemented by regulatory acts of the General Election Commission (GEC). However, the legislation provides only limited authority to the GEC to adopt supplementary regulations, depriving it of the means to ensure coherent and consistent application of the legal provisions.<sup>2</sup>

The Law on Elections (LoE), as adopted in 2015, consolidated various election laws and was further amended twice prior to the 2016 parliamentary elections. Amendments to the legal framework have addressed a number of previous OSCE/ODIHR recommendations, such as decriminalization of defamation (entering into force on 1 July) and elimination to some extent of overlapping jurisdiction between election commissions and courts. However, long-standing recommendations to remove disproportionate limitations to the right to vote and to be elected and overly long deadlines for electoral dispute resolution, provisions which are at odds with OSCE commitments and the ICCPR obligations, have not been addressed.<sup>3</sup> Furthermore, the LoE contains gaps and inconsistencies regarding campaigning before a potential run-off, publication of opinion polls, paid campaign in media, and temporary removal of voters from the register, among others.

The president is elected in a single nationwide constituency through a two-round majoritarian system by direct suffrage. If no candidate obtains the majority of all votes cast, a second round is held within two weeks of the initial polling between the two candidates who obtained the most votes.

If the nationwide voter turnout is below 50 per cent, repeated polling is conducted within a week in those polling stations where the turnout was below this threshold. In repeated polling, only registered voters who did not vote on election day can cast a ballot. The number of votes cast during the repeated polling is added to the number of votes cast initially. Such a provision appears to be in conflict with international standards on equal suffrage and non-discrimination.<sup>4</sup>

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<sup>1</sup> The legal framework for the presidential election consists primarily of the 1992 Constitution, the 2015 Law on Elections (LoE) as amended in 2016, the 2006 Law on the Central Election Body (LCEB), the 2011 Law on the Automated Election System, and the 2005 Law on Political Parties. Relevant legal provisions of the Criminal Code, the Law on Petitions, the Law on Administrative Procedures are also applicable. Mongolia is also party to key international human rights treaties and conventions and the Constitution establishes a direct applicability of those instruments in domestic law.

<sup>2</sup> The Constitution confers upon the Supreme Court the right to interpretations of laws; since 2012 the court has declined to exercise this mandate, despite requests from the GEC. The Supreme Court informed the OSCE/ODIHR LEOM that it will not provide any legal interpretation until the Law on Courts clarifies its mandate.

<sup>3</sup> Paragraphs 7.3 and 7.5 of the [1990 OSCE Copenhagen Document](#) establish “universal and equal suffrage to adult citizens” and respect of the right of citizens “to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”.

<sup>4</sup> Equal suffrage is enshrined in [International Covenant for Civil and Political Rights](#) (ICCPR) Article 25. Denying eligible voters the right to vote in repeated polling just because their polling station exceeded the 50 per cent turnout requirement on the initial day of voting, while affording that right to others within the same electoral constituency, is discriminatory on the basis of residence location and contrary to equal suffrage principle. The monitoring of effective implementation of relevant ICCPR provisions is also undertaken under the European Union’s Special Incentive Arrangement for Sustainable Development and Good Governance.

## Election Administration

The GEC is a permanent body composed of nine members, one of whom is a woman, nominated for six-year terms. The Law on the Central Election Body (LCEB) affords reasonable protection from arbitrary dismissal, in line with international good practice.<sup>5</sup> The GEC has a wide range of responsibilities in administering the election and it carried out numerous legal and logistical tasks according to electoral calendar deadlines.<sup>6</sup> Twenty-two Territorial Election Commissions (TECs), one in each *aimag* (province) and the capital Ulaanbaatar, 339 District Election Commissions (DECs) at the *soum* (county) and *duureg* (city district) level, and 1,983 Precinct Election Commissions (PECs) were established between April and June. Women comprise a majority of members across lower-level commissions.<sup>7</sup> Trainings for commissions at all levels took place following a curriculum developed by the GEC and were carried out in a timely and consistent manner.

On appearance, the election administration is strictly non-partisan and merit-based, with members at all levels selected from a pool of trained and certified civil servants. Each commission was appointed based on a list drawn up by the corresponding local assembly. However, there is no specific procedure to govern the selection process, and commissions reflect the power distribution of the assemblies. There were notable changes in the composition of most commissions, as compared to the 2016 elections.<sup>8</sup> OSCE/ODIHR LEOM interlocutors noted that such changes correlated with the transition of power in local assemblies after the 2016 electoral cycle. While such a practice did not appear to affect the organisation of the election, it does indicate a partisan nature of the appointment of election commissions.

Of the 22 TECs, 21 are chaired by either the chief of the Governor's office (8), a director of a department of the *aimag* administration (9), or the secretary of the *aimag* assembly (4).<sup>9</sup> That the leadership of commissions are directly subordinate to public political officials compromises perceptions of impartiality.

The LoE and GEC procedures require that announcements and agendas of meetings should be made public. Meetings should be open and transparent, and recorded in minutes and by audio. While the GEC posted meeting agendas and decisions online, it was not always the case at lower-level commissions. The meetings in these commissions were often conducted with no public notice or advance agendas, and the outcomes of proceedings could not always be established. Some TECs and DECs informed the OSCE/ODIHR LEOM that meetings were not open to the public, while others invited parties only when issues under discussion concerned them. Consequently, the transparency of the election administration, established by the legal framework, was to some extent undermined. However, positively, a number of TECs actively used social media to enhance their transparency.

The GEC undertook several measures to inform voters about the election, a practice in line with

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<sup>5</sup> Section II.3.1.f of the Council of Europe [Commission for Democracy through Law \(Venice Commission\) Code of Good Practice in Electoral Matters](#) (Code of Good Practice) recommends that “the bodies appointing members of electoral commissions must not be free to dismiss them at will”.

<sup>6</sup> The GEC is charged, among other duties, with overseeing the election budget, forming Territorial Election Commissions (TECs), registering candidates, approving and overseeing ballot production, reviewing campaign finance, considering complaints and appeals against TEC decisions, and establishing results.

<sup>7</sup> Ninety-seven of 188 TEC members are women. The data obtained by the OSCE/ODIHR LEOM from DECs shows an even greater participation of women.

<sup>8</sup> Seventy-six per cent of the TEC members changed from the 2016 parliamentary elections, including all but three TEC chairpersons. The OSCE/ODIHR LEOM noted slightly lower, although still substantial, levels of turnover at the DECs visited.

<sup>9</sup> At DECs a similar pattern of appointments of senior officials from the local governor's office and assemblies was observed by the OSCE/ODIHR LEOM.

international standards.<sup>10</sup> A guidebook on citizens' right to vote and the voting process was provided to information centres at local administration offices, and public service announcements aired on national radio and TV weeks prior to the election. TECs also arranged similar information campaigns through local media outlets. DEC and PECs delivered notices on polling times and locations to voters' residences. Such efforts raised voters' awareness of the upcoming election and helped facilitate the opportunity to vote.

This is the sixth election in which Mongolia used electronic vote counting equipment (VCE). Positively, the GEC performed testing of the equipment in the presence of parties and citizen observers. Observers from each party could conduct their own independent testing, as could citizen observer organizations. The results of this testing publicly confirmed the accuracy and security of the equipment, in contrast to statements by political parties that questioned the integrity of the system. There were reportedly no requests made to the GEC to review the source code. Independent certification of the hardware or software was neither requested nor required by law. Overall, there was general confidence in the accuracy of the electronic vote counting equipment.

### Voter Registration

All citizens who have reached the age of 18 years have the right to vote, except persons deemed legally incapacitated by a court decision and those serving a prison sentence, irrespective of the gravity of the crime committed. Such blanket restrictions are inconsistent with OSCE commitments and international standards.<sup>11</sup>

A total of 1,978,298 voters were registered for this election based on an extract from the National Civil Registration and Information Database, including 7,209 citizens registered for out-of-country voting. Through the website of the General Authority for Intellectual Property and State Registration (GAIPSR), citizens could verify their registration information online from 1 March. On 31 May, the GAIPSR provided electronic and paper copies of updated voter lists to TECs and to the nine DECs within Ulaanbaatar, which in turn delivered lists to the respective lower-level commissions. The LoE stipulates that lists should be displayed at polling stations from the day of receipt, thereby providing at least a week to review voter information in person. However, this requirement was not always strictly followed. In many areas, the lists were kept at the local administration offices of the *soums*, making it difficult for rural voters to verify information, given their distances from *soum* centres. At the same time, positively, some DECs and PECs took an active role in verifying the lists with voters themselves. Overall, the OSCE/ODIHR LEOM interlocutors expressed confidence in the accuracy and inclusiveness of the voter registration process.

Through 11 June, a voter could request in person or by proxy to be transferred to another polling station outside their province of residence. To transfer, a voter had to first apply at the polling station where he or she was registered, and then submit the application to the new polling station. A total of 1,927 voters or, less than one per cent, transferred their place of voting. Allowing a citizen to change the place of voting is a positive practice that improves suffrage. However, the delays in making voter lists available locally did not facilitate citizens' opportunity to vote, as the window for completing the

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<sup>10</sup> Paragraph 11 of [United Nations Human Rights Committee \(CCPR\) General Comment \(GC\) No. 25 to the ICCPR](#) reads that “states must take effective measures to ensure that all persons entitled to vote are able to exercise that right. [...] Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community”.

<sup>11</sup> 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 paragraph 14 of [CCPR GC No. 25 to the ICCPR](#) 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”.



transfer process was relatively short. The prohibition on transferring within the same province served no practical purpose in a presidential election, and potentially disenfranchised voters.<sup>12</sup>

### Candidate Registration

The GEC registered three candidates, nominated by each of the parliamentary parties. No other party had the right of nomination, and independent candidates are not permitted by law. Eligible candidates were required to be at least 45 years old, born to two Mongolian parents, and reside in-country for the past five years. A candidate could not have loans or debts, overdue taxes or a criminal record. While it is reasonable to set qualification requirements for the office of president, current conditions are overly restrictive and contrary to the OSCE commitments and international standards on the right to be elected, limits the choice offered to voters.<sup>13</sup>

Prior to the 6 May nomination deadline, all three parliamentary parties conducted internal candidate selection, but not always in accordance with well-defined internal criteria that were made public.<sup>14</sup> The GEC approved the applications of the DP and MPP, but refused that of the MPRP, citing the candidate's failure to meet the residency requirement.<sup>15</sup> The MPRP appealed this decision to the Administrative Court of Appeals, which on 9 June upheld the GEC decision. The case was subsequently appealed to the Supreme Court, and was still pending on election day, underlining the need to further reduce deadlines for appeals to allow for an effective legal remedy.<sup>16</sup> Following the initial rejection of the MPRP's candidate, the party expeditiously nominated an alternative candidate who was registered by the GEC.

### Campaign Environment

The official campaign commenced on 6 June and ended 24 hours before election day. The LoE extensively regulates campaign activities. Local authorities and election administration play an active role in campaign regulation by allocating places for outdoor advertisement and registering candidates' campaign staff and vehicles. Distribution and promises of cash, goods and services as well as organizing festivals for campaign purposes are prohibited.

Candidates' platforms must be pre-approved by the State Audit Office (SAO) for feasibility and compliance with Mongolia's economic and development policies, limiting freedom of expression and political pluralism. In early May, all three parties submitted their platforms to the SAO, which requested that in total 41 of 208 points be revised or removed. Revised platforms were approved by 10 May.

The campaign was dynamic, respecting freedoms of assembly and association. Candidates visited all 21 *aimags* and Ulaanbaatar in quick succession, where they held rallies and met with voters. The OSCE/ODIHR LEOM observed 60 rallies, including political events at the sub-provincial level. MPP and DP rallies were more structured, with hundreds of party activists from across respective *aimags*

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<sup>12</sup> The current limitations of the transfer system potentially disenfranchised police officers deployed for the election, nomadic herders, and patients in medical facilities located far from their home precincts.

<sup>13</sup> Paragraph 15 of the [CCPR GC No. 25 to the ICCPR](#) states that "persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". Paragraph 7.5 of the [1990 OSCE Copenhagen Document](#) provides that participating States "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination". See also paragraph 24 of the [1990 OSCE Copenhagen Document](#) and Section II.1.b of the [Code of Good Practice](#).

<sup>14</sup> See paragraph 113 of the OSCE/ODIHR and Venice Commission [Guidelines on Political Party Regulation](#) which recommends establishing "clear and transparent criteria for candidate selection".

<sup>15</sup> The GEC invited the MPRP candidate and his representatives to the session. Neither observers nor media were present.

<sup>16</sup> Paragraph 5.10 of the [1990 OSCE Copenhagen Document](#) reads "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

filling venues to capacity, and indoor events broadcast on large screens to audiences outside.<sup>17</sup> The MPRP rallies were of a smaller scale, but more interactive, permitting the candidate to communicate with potential supporters.

At rallies, candidates made speeches outlining their political goals. Considerable negative campaigning was noted, in particular by the DP and MPRP candidates. The MPP candidate campaigned on a platform of economic and social stability, highlighting his party's successes in improving the economic situation. The DP and the MPRP candidates focused on corruption-related issues, endemic poverty, subservience to foreign interests, and unfair distribution of mining profits. The MPRP and MPP profess centre-left orientations, while the DP sees itself as a centre-right party. Nevertheless, ideological differences among the candidates were practically indiscernible.

MPP governors participated at nearly every large-scale MPP rally that was observed by the OSCE/ODIHR LEOM in nine *aimags* across the country.<sup>18</sup> High-ranking administrative officials took part in some of the DP rallies. Cases of misuse of administrative resources were occasionally reported and at times directly observed by the OSCE/ODIHR LEOM.<sup>19</sup> Contrary to the law, the participation of civil servants in rallies was noted.<sup>20</sup> The government made material and financial promises just days before the election.<sup>21</sup> Consequently, the line between carrying out the official functions of state and local administration and campaigning was blurred.

Each party erected a *ger* (yurt) in *aimag* centres, with activists on hand to distribute campaign materials. Street advertisements mushroomed in central locations from 6 June, with the number of posters and their locations decided by the municipal authorities. The OSCE/ODIHR LEOM observed that the DP and the MPP had a similar number of posters and billboards both in Ulaanbaatar and in the *aimags*, with the MPRP represented much less prominently, in part for financial reasons.<sup>22</sup> MPRP and DP interlocutors at times alleged bias with regard to the allocation of billboard space.<sup>23</sup> There were also instances of posters and billboards being defaced by unknown perpetrators or removed altogether.<sup>24</sup>

Partisan political programming appeared in media, both as editorial and paid content, even before the start of an official campaign. There were unverified claims concerning collusion with foreign interests, xenophobic rhetoric, content of an extremist nature and incitement to violence.<sup>25</sup> Such

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<sup>17</sup> The OSCE/ODIHR LEOM estimates that the largest rally was the one of the DP in Ulaanbaatar, attended by some 4,500 participants. Some local rallies attracted no more than 40-50 attendees. Attendance in the *aimag* capitals typically ranged from 400 to 800.

<sup>18</sup> This includes Arkhangai, Bayankhongor, Bayan-Ulgii, Darkhan, Khentii, Khovd, Khuvsgul, Sukhbaatar, Umnugovi and Uvs.

<sup>19</sup> For example, the governor of Govi Altai *aimag* undertook a five-day trip to different *soums* in his official vehicle. Also, the official webpage of Bayankhongor governor featured MPP campaign materials.

<sup>20</sup> For example, at the MPP rally in Bulgan and Khovsgol on 14 June, and in Uvs on 17 June.

<sup>21</sup> For instance, the promise to build apartment buildings for *ger* (yurt) dwellers on the outskirts of Ulaanbaatar, as discussed in the Cabinet meeting on 14 June, and the promise to raise pensions from 1 January 2018, as advertised by the Social Security Minister on 14 June.

<sup>22</sup> The OSCE/ODIHR LEOM conducted a quantitative assessment of outdoor advertisement in 10 *aimag* centres. It reveals that 48 per cent of the displayed billboards and posters were of MPP provenance; 33 per cent were installed by DP and 18 per cent – by the MPRP.

<sup>23</sup> For example, in Khovd and Umnugovi.

<sup>24</sup> The MPP and MPRP billboards in Chinggis (Khentii *aimag*) were defaced. The DEC requested removal of DP posters in Khovd on the grounds that the quota had been exceeded. The OSCE/ODIHR LEOM witnessed the appearance, and subsequent removal, of many MPP posters in Ulaanbaatar and in Umnugovi.

<sup>25</sup> In particular, the documentary *Ulaan Tarianii Khukhduud* (Children of the Red Vaccine) contained calls for extrajudicial executions of unnamed officials for alleged corruption-related crimes. The documentary, produced by a company with widely-reported links to one of the candidates, was aired on 29 May on five TV channels within prime-time programming.

programming became more frequent shortly before election day.<sup>26</sup> Campaigning was further impacted by leaks of audio and video recordings purportedly showing candidates' involvement in profiteering from office.<sup>27</sup>

Social media played an important role in the campaign. All candidates maintained Facebook pages and personal websites to promote their campaign activities and the DP and MPP candidates used Twitter. The DP candidate enjoyed greater prominence on Facebook than the other two candidates combined. The MPP and DP introduced mobile apps, which offered participation in social media conversations. In addition, the OSCE/ODHIR LEOM noted the presence of co-ordinated campaign content across social media platforms, including a bulk of negative comments targeting candidates.<sup>28</sup> Social media was also exploited to disseminate allegations of misconduct by officials and to cast doubts on the integrity of the electoral process. During campaign silence, candidates continued active negative campaigning on social media.

Women's participation in public and political life was overall not prominently featured during candidates' campaigns or in the media. However, the DP and the MPP platforms addressed issues of gender equality and women's participation in political life. About 50 per cent of attendees at observed rallies were women, as were many of the lower-level campaign managers.

Campaigning was generally conducted in Mongolian. Only in the predominantly Kazakh-populated Bayan-Ulgii *aimag* were some of the campaign materials translated into Kazakh, and some of the speakers at rallies addressed voters in Kazakh. The question of ethnic minorities was largely absent from the campaign narrative.

## Campaign Finance

The election campaign is financed by donations and candidates' own resources. The LoE limits individual donations to MNT 3 million and to MNT 15 million for a legal entity.<sup>29</sup> All cash donations should be deposited in a dedicated bank account. In-kind donations count towards expenditure limits. While most campaign expenditures in *aimags* were covered from funds allocated by party headquarters, parties also raised funds locally. The DP and MPRP candidates used social media for fundraising, while the MPP advertised for funding in print media. In addition, the MPRP candidate appealed for cash contributions at rallies.<sup>30</sup>

On 14 June, the Mongolian Anti-Corruption Agency (ACA) published income declarations of the three candidates. These are relatively detailed and include each candidate's and their families'

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<sup>26</sup> On 18 June the MPP campaign headquarters released a three-part film *Ekh Oronchiin Bagt Naadam* (Little celebration of the patriots), which accused the DP candidate of ties to Chinese businessmen, and of bringing Chinese migrant workers into the country. The film was broadcast on *Eagle TV* and *MNB* as MPP's advertisement and appeared on social media. On June 21 the DP campaign published a three-part film, *60 Terbum Arkhal* (Overbearing pride of 60 billion), which alleged, on the basis of a leaked recording, that the MPP candidate colluded with the GEC to rig the 2016 Parliamentary elections, and claimed his subservience to Chinese economic interests.

<sup>27</sup> The DP accused the MPP candidate of secretly discussing the sale of public offices. The DP candidate, meanwhile, also faced allegation of corruption.

<sup>28</sup> The OSCE/ODHIR LEOM followed a sample of 19 Facebook profiles and blogs, hosted by the political parties, candidates, opinion leaders and media.

<sup>29</sup> Equivalent to EUR 1,135 and EUR 5,680, respectively. 1 EUR is approximately MNT 2,640 (Mongolian Togrog).

<sup>30</sup> Donors were asked to supply their names and registration numbers, which were then provided to the bank when the cash was deposited in the campaign account. However, the cashbox method of campaign funding raises concerns regarding accountability and compliance with the relevant provisions of the LoE.



incomes, real estate, vehicles, stock ownership, and the number of cattle owned.<sup>31</sup> Declarations are made on the basis of self-assessment. However, declarations do not specify the value of these holdings, nor do they indicate what assets are held by the candidates' immediate family members. These limitations effectively prevent voters from forming an accurate picture of the candidates' financial standing. Members of the public have the right to file complaints with the ACA regarding the trustfulness of the declarations. The ACA has up to 19 days to investigate such complaints. As the decision would be taken only after the election, it does not equip voters with a verified information on candidates before polls.

To level the playing field for the candidates, on 24 February, the SAO set campaign spending limits at MNT 10.7 billion.<sup>32</sup> This included, among other, MNT 2.6 billion for political advertisement, MNT 1.7 billion for fuel, and MNT 1.9 billion (for campaign staff *per diem* expenses.<sup>33</sup> There is no separate allocation for campaign workers' salaries, although OSCE/ODIHR LEOM estimates that this is among the highest expense categories.<sup>34</sup> The SAO has no transparent and robust system to establish limits per category and also did not consult the electoral stakeholders prior to deciding on campaign spending limits. Promoting candidates' achievements in office is not considered campaigning, thus it is not subject to campaign limitations.

For the first time, the SAO exercised control over campaign financing by carrying out unannounced checks at party campaign offices in *aimags*, aimed at verifying the accuracy of subsequent expenditure reports. However, the reporting templates for both the SAO regional offices and the parties were not developed before the campaign and there are no requirements to disclose party funds or expenditures prior to the election.<sup>35</sup> None of the parties volunteered detailed information on their campaign spending.

Candidates should submit financial reports to the SAO within 30 days of the day of election. Prior to submissions, candidates have to choose one of 54 SAO-accredited auditors to audit their reports. The SAO will carry out only quality control of the audited reports. Moreover, while sanctions should be effective and proportionate to enable candidates to compete on a level playing field, serious campaign finance violations such as a breach of campaign spending limits or the submission of false campaign finance reports are not subject to sanction. Fines for other violations are low. The acceptance of donations from prohibited sources, such as labour unions, religious groups, non-governmental organizations and foreign entities can lead to candidate deregistration. However, the implementation of this sanction is not feasible after the election has taken place.

## Media

Some 450 media operate in a limited advertisement market. They are rarely profitable and are *de facto* sponsored from owners' other business interests. Such an environment enables owners to exert influence on editorial policy, inducing biased programming. Government advertising also constitutes

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<sup>31</sup> As revealed by the Anti-Corruption Agency, the DP candidate listed the highest personal income (MNT 130 million), followed by the MPP candidate (MNT 91 million) and the MPRP candidate (MNT 23 million) but if the family income is considered, the MPP candidate comes first with MNT 209 million, followed by the DP candidate with MNT 161 million, and the MPRP candidate with MNT 128 million. The DP candidate also holds stakes in several major companies.

<sup>32</sup> Each nominating party can spend up to MNT 6.8 billion for its nation-wide campaign, while candidate's expenditures are limited to MNT 3.9 billion.

<sup>33</sup> *Per diem* calculations are based on the figure of 13,939 campaign staff per candidate, which amounts on average to MNT 136 thousand per campaign worker, and is aimed to cover campaigner's travel expenses and meals.

<sup>34</sup> The OSCE/ODIHR LEOM interlocutors estimated that campaign worker salaries range from MNT 100,000 to MNT 300,000 for the entire campaign period.

<sup>35</sup> Article 7(3) of the [United Nations Convention against Corruption](#) recommends that "each State Party shall also consider taking appropriate legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and where applicable, the funding of political parties". Paragraph 194 of [Guidelines on Political Party Regulation by OSCE/ODIHR and Venice Commission](#) states that "voters must have relevant information as to the financial support given to political parties in order to hold parties accountable".

a notable proportion of media's income, potentially inducing self-censorship. Consequently, pluralistic editorial policies are in short supply. Television is the main source of information, while Internet, especially social networks, is popular in Ulaanbaatar and urban centres.

Freedom of expression is provided for in the Constitution, yet not effectively protected through primary legislation. Defamation will be decriminalized only after the election. Furthermore, fines for defamation, slander and dissemination of false information, as proposed in the amended Law on Administrative Offences, are high and extend to social media content.<sup>36</sup> There are no provisions requiring transparency regarding media ownership structures.

The legislation governing the media's conduct during election lacks clarity with regard to important aspects of campaign coverage.<sup>37</sup> Nevertheless, the LoE requires that media cover the electoral process objectively, and foresees the allocation of free airtime and the use of paid time by the candidates. The LoE sets the daily maximum limit for news coverage of each contestant to five minutes. Although the law prohibits advertisement within the newscasts, the State Communication Regulatory Commission (CRC) interprets it in the way that the pre-edited and paid-for by parties news-like clips broadcast within the news do not fall under the definition of political advertisement. Consequently, the majority of national and Ulaanbaatar-based television stations offered their news for sale, as per pricelists submitted to the CRC.<sup>38</sup> The OSCE/ODIHR LEOM media monitoring shows that at times paid-for pseudo news segments exceeded the five-minute limits and were not separated from the editorial content, making it difficult for voters to distinguish between the political propaganda and impartial information.

The public Mongolian National Broadcaster (*MNB*) provided each candidate with free airtime and news coverage, as per the legislation.<sup>39</sup> Contrary to its mandate and principles of high integrity applicable to a public broadcaster, news reports on contestants mainly consisted of campaign event footage submitted by parties, rendering coverage that does not effectively facilitate an informed choice on election day.

Private media content was marked by political alignment.<sup>40</sup> *Eagle News* evidently favoured the MPP and its candidate, while the coverage afforded to the DP candidate was mainly negative in tone.<sup>41</sup> A reverse pattern was observed on the *CI*, which devoted 29 per cent of its politically-relevant news coverage of candidates to the DP and its nominee, typically in a positive tone, while the coverage of the MPP and its candidate was negative in tone. The newscasts of *TV9* favoured the MPRP and its candidate; positive coverage was on occasion also granted to the MPP candidate, while the MPP as a

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<sup>36</sup> OSCE Representative on Freedom of the Media stated on [23 November 2016](#) that “no one should be penalized for the social media activities [...] unless they can be directly connected to violent actions”.

<sup>37</sup> In particular, Articles 70.1.6 and Articles 70.7 of the LoE provide conflicting information regarding the prohibition of the publication of public opinion polls. Articles 82.5 and 82.6 envisage a clear limit to the paid political advertisements only in case of four or more candidates.

<sup>38</sup> Out of 46 national and Ulaanbaatar-based television stations 38 offered their news space for sale, as per OSCE/ODIHR LEOM analysis of the media pricelists submitted to the CRC. The price lists were not officially published by the CRC, GEC or the media. While the CRC did not provide copies of the pricelists of regional broadcasters to the OSCE/ODIHR LEOM, some of the lists were made available by the GEC and respective TECs.

<sup>39</sup> On 26 May the GEC and CRC in cooperation with *MNB* decided to provide every contestant with 15 minutes of free airtime within the prime-time programming daily as well as with 2 extra minutes of daily news coverage. On 5 June the *MNB* extended the daily news coverage to five minutes.

<sup>40</sup> The OSCE/ODIHR LEOM commenced media monitoring on 29 May. The sample of media monitored included public broadcaster *MNB*, four commercial television channels (*Eagle News*, *Mongol TV*, *TV5* and *TV9*) and five private newspapers (*Udriin Sonin*, *Unuudur*, *Zuunii Medee*, *Unen* and *Zasgiin Gazryn Medee*). With the official start of the campaign, media monitoring also included coverage of additional commercial television *CI*.

<sup>41</sup> During the campaign period, *Eagle News* has devoted 32 per cent of the politically relevant coverage to the MPP and its candidate. By contrast, the DP and its candidate received 20 per cent of such coverage. While the MPP candidate was mainly covered in a positive manner, the coverage of other candidates was mainly neutral or negative.

party was mainly covered in a neutral and negative manner. *TV5* equally covered the candidates' rallies, primarily using material pre-edited by campaign teams. *Mongol TV* focused on the campaign platforms, equally sharing time among the candidates.

The public broadcaster organized a debate on 24 June, giving voters an opportunity to make a direct comparison between the three candidates. The debate was orderly, with candidates outlining their past achievements, refuting allegations of corruption, and elaborating some elements of their programmes. There was no direct engagement between the candidates and there was no audience present in the studio. While the questions selected by MNB for the MPP candidate were praising him or his family, those selected for the MPRP candidate reflected the main points raised in the negative campaign against him.<sup>42</sup> The private broadcasters' attempts to organize debates were unsuccessful, as contestants could not agree on the venue and the format.

Paid political advertisements were usually purchased as single slots within primetime, at times exceeding the limit of 15 minutes per day per contestant. Such advertisements consisted of promotional spots (21 per cent), informational coverage from the rallies (56 per cent) or criticism of opponents (23 per cent).<sup>43</sup>

The media sector's regulatory bodies, the CRC and the Authority for Fair Competition and Consumer Protection (AFCCP), did not take sufficient measures to address biased media coverage. The AFCCP issued 20 warnings to traditional and online media, mainly related to negative campaigning before the start of the campaign and publication of opinion polls on-line. However, it brought little difference to voters as the media outlets that violated the campaign coverage provisions were not disclosed, the warnings were not placed in the public domain and none of the outlets altered their editorial policies afterwards. The GEC did not establish a Media Council that would review media-related complaints as well as monitor media's compliance with campaign coverage provisions.

## Complaints and Appeals

Every citizen and legal entity has the right to challenge decisions and activities pertaining to the electoral process. Complaints against actions or omissions of an election commission can be filed with the same commission, and the subsequent decision challenged with the higher one. GEC decisions can be challenged at the Administrative Court of Appeal at first instance and further appealed to the Supreme Court. The constitutionality of GEC decisions can be disputed in the Constitutional Court, including on election results.

Plaintiffs can file complaints with election commissions within 10 days of the issuance of the disputed decision. The Administrative Court of Appeals has up to 40 days and the Supreme Court has up to 21 days to adjudicate election-related cases. The deadlines are unduly long and compromise the right to an effective legal redress.<sup>44</sup> However, during the pre-election period the courts endeavoured to schedule election-related hearings without exhausting the deadlines, thus acknowledging the problem. The Constitutional Court has no deadlines for issuing decisions.

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<sup>42</sup> The questions selected for MPP candidate included such questions: "People say that you are a kind person. Does this inherited character affect your political career negatively?" or "Your wife is a teacher and very well educated. How did you meet your spouse?"

<sup>43</sup> Across the media monitored, the DP purchased 39 per cent of the paid advertisement that was clearly marked as such, the MPP obtained 37 per cent, while the MPRP share was 24 per cent. The MPP did not buy any advertisement on one out of four commercial TV channels monitored (*CI*), while the MPRP advertisement was absent from two TV channels (*CI* and *Eagle News*).

<sup>44</sup> Article 5.10 of the [1990 OSCE Copenhagen Document](#) reads "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity".

Two GEC decisions were challenged before the Administrative Court of Appeals; both cases were dismissed. A few complaints were filed with TECs and DECAs pertaining mostly to composition of election administration, location of polling stations and campaign regulations.<sup>45</sup>

Administrative and criminal offences during the campaign are first investigated by the police and adjudicated by lower-level courts. Prior to election day, the police have received some 500 campaign-related complaints, concerning, among others, defaced posters, defamation of candidates and alleged vote-buying.<sup>46</sup>

Two prominent police cases on alleged illegal financial dealings impacted the pre-election environment. The MPRP's candidacy was challenged just three days prior to the election when a private citizen filed a complaint with the GEC alleging that the candidate, despite legal prohibition, received campaign funds from a foreign religious organization.<sup>47</sup> In a separate case, on 24 June the police confiscated MNT 1.08 billion in cash which, according to the police, was to be used to bribe voters on behalf of the DP.<sup>48</sup> Police handled both cases in an expedited manner, yet decisions were not reached before election day.<sup>49</sup> The DP and MPRP interlocutors raised concerns that public elaboration of these cases by the police and, in the MPRP case, the GEC, unfairly disadvantaged their respective candidates, since the allegations of misconduct were not proven in court.

### Persons with Disabilities

The legal framework recognizes the right of persons with disabilities to political participation, and obliges political entities to make their campaign messages accessible and to support candidates who have a disability.<sup>50</sup> However, blanket limitations on the right to vote of persons declared legally incompetent disenfranchises persons with certain psychosocial disabilities at odds with object and purpose of the CRPD. Both the DP and MPP candidates' programmes addressed the rights and quality of life of persons with disabilities. The GEC in co-operation with Civil Society Organizations (CSOs), produced voter education and election materials for persons with visual and hearing impairments, and added sign language to its voter information media campaign. The public broadcaster provided news of the campaigns in sign language and some candidates used sign language in rallies.<sup>51</sup>

The LoE foresees that a voter with a disability may be assisted by a person of his/her choice to mark their ballot. It also requires that polling stations be equipped with tactile ballot guides and appropriate voting booths. Those provisions were respected in polling stations visited by the International Election Observation Mission. Although the LoE mandates that polling stations be accessible by wheelchairs,

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<sup>45</sup> As the GEC does not keep a consolidated, nation-wide log of all complaints filed with lower-level commissions, the total number, nature and resolution of complaints was not known to the public.

<sup>46</sup> About 65 per cent of cases have been referred to the courts or dismissed.

<sup>47</sup> On 16 June a recording surfaced on social media, purportedly showing the MPRP candidate receiving USD 40,000 from a foreign religious organization, who according, to the video explicitly highlights the fact that the money is aimed to finance the MPRP's campaign. The video was taken on 23 May at the candidate's home. The video was later featured on television as paid-for advertisement by the MPP. The complaint filed with the GEC on 21 June was based on the published video footage.

<sup>48</sup> On 23 June Govi Altai police stopped a vehicle, which contained MNT 1.08 billion in cash. In a statement, police claimed that the money was being shipped to Western Mongolia by the DP to buy votes. On the same day, the DP made a statement that the police illegally confiscated money that was intended for paying salaries of some 22,000 campaign workers in five *aimags*.

<sup>49</sup> On the day the complaint against the MPRP candidate was filed, the police determined that the video recording was genuine, although without interviewing the candidate himself. Early next day the Bayanzurkh District Court returned the matter to the police, as the case, in court's opinion, was not sufficiently investigated. On 23 June, the police sent the case back to the court. The case is currently pending.

<sup>50</sup> Since 2009, Mongolia is a signatory to the [UN Convention on the Rights of Persons with Disabilities](#) (CRPD). While the Constitution provides only for the general principle of non-discrimination and does not prescribe any affirmative action for persons with disabilities, the 2006 Law on Human Rights of Persons with Disabilities and provisions in other laws guarantee reasonable protection and accommodations related to political participation.

<sup>51</sup> For example, during the DP presidential candidate's rally in Bayanzurkh.



many of them were located within buildings that remained inaccessible to persons with impaired mobility. Many persons with disabilities voted using the mobile ballot box on the day prior to the election. While mobile voting enfranchised citizens with disabilities, this was at times used as an explanation for not making polling stations accessible and does not engender participation in the electoral process on par with other citizens.<sup>52</sup>

### Citizen and International Observers

Domestic, foreign and international organizations, and parties fielding candidates, may accredit observers. The legal framework affords all observers considerable rights.<sup>53</sup> The GEC accredited six CSOs and 17,947 observers from political parties that nominated candidates.

The Civil Society Coalition for Fair Elections monitored media, campaign finance and the preparation of the electronic vote counting equipment in the pre-election period.<sup>54</sup> The coalition also carried out additional, independent testing of the vote counting equipment and the GEC server shortly before election day. Coalition members issued regular statements where they highlighted the politically polarized media and lack of transparency in campaign finance, as well as the accuracy and security of the voting machines and GEC server. Few CSOs outside of the capital engaged in activities related to the election, apart from voter education programmes. CSOs did not observe election day in a comprehensive manner; however, the coalition deployed observers to some 50 polling stations in Ulaanbaatar.

### Election Day

In the polling stations visited, the election day was orderly and polling station staff efficiently facilitated voting, adhering to established procedures. Female polling workers outnumbered men in all polling stations visited by the IEOM. Party observers were present in all polling stations visited, while presence of citizen observers was only noted in a few instances in the capital. The police received more than 150 complaints on election day, including 86 on alleged vote buying. During the day, the DP and MPRP also made public pronouncements regarding illegal incentives for voters.

No serious delays in the opening of polling stations were reported, and all required material was present. The GEC's polling instructions were consistently implemented, despite last-minute novelties, such as the introduction of indelible ink for voters in Ulaanbaatar.<sup>55</sup> No serious issues were reported concerning the biometric identification of voters and the VCE.<sup>56</sup> The introduction of ballot secrecy sleeves was a welcome innovation, although not always understood. Consequently, the secrecy of the vote was at times compromised.

Polling stations visited by IEOM closed on time and official counts were totaled by the VCE. As per GEC decision, some 50 per cent of polling stations, close to the maximum prescribed by law, were randomly selected for a manual recount. Recounts took place immediately or with only slight delays. While most recounts observed by IEOM were swift, a few were disorganized. While IEOM observers

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<sup>52</sup> Disability organizations estimate that up to 90 per cent of voters with physical disabilities rely on the mobile ballot box rather than voting at their polling station. Article 29 of [CRPD recommends that State parties](#) “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, without discrimination and on an equal basis with others, and encourage their participation in public affairs”. See also [Venice Commission's Revised Interpretative Declaration to the Code of Good Practice in Electoral Matters on the Participation of People with Disabilities in Elections](#).

<sup>53</sup> Including the right to document the voting process by using audio and video recording and obtain printouts of the vote count and digital images of ballots cast.

<sup>54</sup> The members of the network include: Open Society Forum, Globe International, MIDAS, Women for Change, New Governance Initiatives, Youth Policy Watch.

<sup>55</sup> In response to a request from the DP, the GEC decided on 23 June to introduce indelible ink in all 403 polling stations in Ulaanbaatar. Voters' fingers were consistently marked in the polling stations visited by the IEOM.

<sup>56</sup> The IEOM observers at the GEC and TECs were informed about isolated cases of technical problems with biometric readers and VCE.

were widely welcomed in polling stations, one IEOM team was not permitted to observe the count and one was precluded from observing the proceedings in the TEC.

Results were electronically transmitted from the polling stations to the GEC immediately after the automated count. The ballots cast at diplomatic missions abroad were counted in the presence of observers at the GEC immediately after polls closed on election night.<sup>57</sup> The GEC's release of preliminary results was broadcast live, enhancing overall transparency. However, the results were not published on the GEC website in a format disaggregated to either *soum* or polling station level, thus curbing the possibility of independent scrutiny. The GEC announced a final voter turnout of 68.27 per cent.

*The English version of this Statement is the only official document.*

*An unofficial translation is available in Mongolian.*

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## MISSION INFORMATION AND ACKNOWLEDGEMENTS

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Ulaanbaatar, 27 June 2017 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavor involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (PA) and the European Parliament (EP). The assessment was made to determine whether the election complied with OSCE commitments, other international obligations and standards for democratic elections, and with national legislation.

Guglielmo Picchi (Italy) was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and Leader of the short-term OSCE observer mission. Georgios Varmenos (Greece) headed the OSCE PA delegation. Laima Liucija Andrikiene (Lithuania) led the EP delegation. Ambassador Geert-Hinrich Ahrens is the Head of the OSCE/ODIHR Limited Election Observation Mission (LEOM), deployed from 22 May.

Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the election will depend, in part, on the conduct of the remaining stages of the electoral process, including the tabulation of results and the handling of possible post-election day complaints and appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Standing Committee during the Annual Session in Minsk on 5 July 2017. The EP Foreign Affairs Committee will discuss the EP EOM report of Ms Andrikiene (MEP) at one of its forthcoming meetings.

The OSCE/ODIHR LEOM includes 12 experts in the capital and 20 long-term observers deployed throughout the country.

On election day, 66 observers were deployed, including a 22-member delegation from the OSCE PA and a 9-member delegation from the European Parliament. Observers were drawn from 30 OSCE participating States.

The observers wish to thank the authorities of Mongolia for the invitation to observe the election, and the General Election Commission for the assistance. They also wish to express their appreciation to other state institutions, political parties and civil society organizations and the international community representatives for co-operation.

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<sup>57</sup> On 10 and 11 June, 4,816 voters abroad cast their ballot at diplomatic missions.



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