

Office for Democratic Institutions and Human Rights

MONGOLIA

PRESIDENTIAL ELECTION 2013

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT 4-6 March 2013



Warsaw 26 March 2013

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MONGOLIA PRESIDENTIAL ELECTION 2013

OSCE/ODIHR Needs Assessment Mission Report 4–6 March 2013

I. INTRODUCTION

Following an invitation by the Minister of Foreign Affairs of Mongolia at the Dublin Ministerial Council on 7 December 2012 to observe the upcoming presidential election and in accordance with its mandate, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) undertook a Needs Assessment Mission (NAM) from 4 to 6 March 2013. The NAM included Beata Martin-Rozumiłowicz, Head of the OSCE/ODIHR Election Department, Richard Lappin, OSCE/ODIHR Senior Election Adviser, and Alexander Shlyk, OSCE/ODIHR Election Adviser.

The purpose of the mission was to assess the pre-election environment and the preparations for the presidential election. Based on this assessment, the NAM should recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming election, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, the election administration, and the judiciary, as well as with representatives of political parties, media, civil society, and the international community. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for its assistance and cooperation in organizing the visit. The OSCE/ODIHR is grateful to all of its interlocutors for taking the time to meet with the NAM.

II. EXECUTIVE SUMMARY

The upcoming presidential election in Mongolia will be held in the second half of June 2013, with the possibility of a second round within two weeks. The exact date will be determined by parliament at least 65 days prior to election day. The president is directly elected for a four-year term.

The forthcoming election will be conducted under a revised legal framework, including the Law on Election of the President of Mongolia (presidential election law – PEL) that was promulgated on 21 December 2012. The amendments provide further details on a number of areas, specifically with regard to out-of-country voting, the use of new voting technologies (NVT), procedural aspects of voting, counting, and tabulation, as well as sanctions for possible election-related violations.

The election will be administered by a four-tiered election administration, headed by the General Election Commission (GEC). Members of commissions at all levels are appointed from among civil servants. Despite a lack of clarity regarding the appointment criteria for commission members, few OSCE/ODIHR NAM interlocutors voiced concerns regarding the impartiality of the election administration.

Citizens over the age of 18, with the exception of those legally incapacitated by a court decision or sentenced to imprisonment, are eligible to vote. Voter registration is passive and based on the

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civil registration system. Biometric identification cards have been in use since 2010, and state authorities estimate that 97 per cent of the population possess such cards. However, some OSCE/ODIHR NAM interlocutors raised concerns whether eligible voters without biometric identification cards will be able to vote in the forthcoming election.

On election day, voters will be required to present their identification cards to polling station staff and have their fingerprints scanned. They will cast hand-marked ballots into ballot boxes equipped with scanners that will count the votes automatically. Some OSCE/ODIHR NAM interlocutors anticipated procedural problems on election day in respect of the reliability and accuracy of the technology used for the identification of voters and the counting of votes.

The PEL allows for domestic and international election observation, in line with Paragraph 8 of the 1990 OSCE Copenhagen Document. The GEC informed the OSCE/ODIHR NAM that it plans to adopt a regulation regarding international and domestic observers that will detail their rights and accreditation procedure.

A presidential candidate must be a Mongolian citizen by birth, at least 45 years of age, eligible to vote, and a permanent resident in the country for the last 5 years. Candidates can only be nominated by parliamentary political parties or coalitions of parliamentary parties. The law does not permit individuals to stand as independent candidates.

The official campaign period commences 35 days prior to election day. The PEL provides detailed regulations of permitted and prohibited methods of campaigning and the GEC has established limits on campaign expenditures by political parties and candidates. OSCE/ODIHR NAM interlocutors expressed few concerns with regard to the campaign finance regulations or practice, but pointed out that the amounts of possible fines for violations are relatively small.

Mongolia has a diverse media landscape that allows for a broad range of political views. The PEL contains a number of provisions governing media coverage during the election. The public service broadcaster is required to provide free-of-charge and equal coverage to all candidates, while paid electoral coverage by private broadcasters cannot exceed one hour per day and will be additionally regulated by the GEC and the Communications Regulatory Commission.

The PEL provides for resolution of electoral complaints and appeals by higher-level election commissions and for criminal or administrative cases to be considered by the courts of first instance with appeals to the higher-level courts. OSCE/ODIHR NAM interlocutors pointed out that while few complaints are typically filed with the election commissions or courts during elections, the process of adjudication of complaints and appeals may benefit from review.

The OSCE/ODIHR NAM was the first OSCE/ODIHR election-related activity deployed to Mongolia. While most interlocutors expressed confidence in the professionalism of the election administration and their ability to organize elections in an efficient manner, some voiced concerns about election day procedures. Most interlocutors underscored the need to observe the forthcoming election with a full election observation mission, recognizing that improvements could be made to the electoral process and that an assessment and recommendations by the OSCE/ODIHR could contribute to this and help to build confidence in the electoral process. In particular, areas that could benefit from further attention include implementation of the amended legal framework, media coverage of the electoral campaign as well as its overall conduct, the use of technology for voter registration, identification, and counting of votes, and the effectiveness of the complaints and appeals process.

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Given these circumstances, the OSCE/ODIHR NAM recommends the deployment of an Election Observation Mission. In addition to a core team of analysts, the OSCE/ODIHR recommends the secondment of 30 long-term observers and 300 short-term observers from OSCE participating States to ensure a wide and balanced geographical coverage of the country.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Mongolia is a parliamentary republic with legislative power vested in the unicameral parliament, the *Ulsyn Ikh Khural*. The Head of State is the president, who is directly elected for a four-year term. The president can propose candidates for the position of the prime minister and a number of other state offices, and his veto of adopted laws can be overcome by a two-thirds parliamentary majority.

Current President Tsakhiagiin Elbegdorj was elected on 18 May 2009, defeating the previous incumbent, Nambaryn Enkhbayar, then the leader of the Mongolian People's Party (MPP). During the 2009 elections, President Elbegdorj was supported by the Democratic Party (DP), the Civil Will Party (CWP), and the Mongolian Green Party (MGP). Mr. Enkhbayar became the leader of the Mongolian People's Revolutionary Party (MPRP) after it split from the MPP in 2011.

Following the 28 June 2012 parliamentary elections, the DP holds 31 of 76 seats in the parliament and formed a ruling coalition with the Justice Coalition, which has 11 parliamentary seats and is comprised of the MPRP and the Mongolian National Democratic Party. The MPP is the largest opposition party in the parliament with 25 seats. The CWP and the MGP merged in 2012 to form the Civil Will – Green Party, which currently holds two parliamentary seats.

Mongolia became the 57th participating State of the OSCE on 21 November 2012 and took upon itself all existing commitments, including those related to democratic elections. The OSCE/ODIHR NAM was the first OSCE/ODIHR election-related activity in Mongolia.

B. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Elections are regulated by the 1992 Constitution (amended in 1999 and 2001), which provides guarantees of fundamental civil and political rights, as well as the Law on the Central Election Body. The conduct of the presidential election is primarily regulated by the Law on Election of the President of Mongolia (presidential election law – PEL). The legal framework also includes the Political Parties Law, the Anti-Corruption Law, several laws governing the judicial system, as well as supplementary regulations and decisions of the General Election Commission (GEC).¹

Mongolia is party to the International Covenant on Civil and Political Rights (ICCPR) since 1974, the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) since 1981, and acceded to the UN Convention on the Rights of Persons with Disabilities (CRPD) in 2009.

The forthcoming election will be conducted under a revised legal framework, including the PEL that was promulgated on 21 December 2012.² According to a number of OSCE/ODIHR NAM interlocutors, the amendments provide further details on a number of areas, specifically with regard to out-of-country voting, the use of new voting technologies (NVT), procedural aspects of voting, counting, and tabulation, as well as sanctions for possible violations by election commission members, electoral contestants, and voters. Additionally, a number of laws governing specific aspects of the conduct of elections were recently revised as part of a broader and ongoing process of legal and judicial reform.

According to the Constitution and the PEL, the President is elected on the basis of universal and free suffrage by secret ballot.³ A candidate needs to receive a majority of the votes cast to win in the first round. In the event that no candidate obtains over 50 per cent of the votes cast, a second round will be held between the two leading candidates within 14 days. If no candidate obtains the majority of votes cast in the second round, the election will be held anew. The PEL provides for the presidential election to be held in the second half of June, a provision that was criticized by some interlocutors of the OSCE/ODIHR NAM who were concerned that it may negatively affect nomadic groups and seasonal workers. The exact date of the election is yet to be announced, but should be confirmed by the parliament at least 65 days before the election. According to the PEL, the parliament will also set the polling dates (up to three days) for the voters residing abroad.

For the election to be valid at the polling station level, at least 50 per cent of the voters registered there need to vote. If the turnout falls below this threshold, the GEC shall order repolling at a respective polling station within seven days of its decision for those who did not vote on the first occasion. The turnout during the re-polling will be added to the initial turnout figure.

C. ELECTION ADMINISTRATION

The forthcoming presidential election will be administered by a four-tiered election administration comprised of the GEC, 22 Territorial Election Commissions (TECs) in the provinces (*aimags*) and Ulaanbaatar, some 330 District Election Commissions (DECs) in both capital city districts and rural districts (*soums*), and some 2,000 Precinct Election Commissions (PECs). PECs will also be established in 39 diplomatic and consular representations abroad.

The GEC is a nine-member body comprising a permanent chairperson, secretary and seven parttime commissioners. Members are appointed for six-year terms by the parliament from among civil servants based on nominations by the Parliamentary Standing Committee on State Structure (five members), the president (two members), and the Supreme Court (two members). The chairperson and the secretary are appointed by the parliament from among the GEC members based on the nomination by the speaker of the parliament. Current members of the GEC were appointed in 2009.

The OSCE/ODIHR NAM was informed that the PEL was adopted with minimal participation from the MPP, the largest opposition party in the parliament.

Article 9 of the PEL provides that the principles of "rule of law; transparency; integrity; expeditious, objective and fair dispute resolution; and inevitability of legal liability of an organization or official that is in breach of voter rights and/or electoral legislation" also apply to the conduct of presidential elections.

According to the PEL, the GEC appoints the nine-member TECs (seven members in Ulaanbaatar), which, in turn, appoint the seven-member DECs and PECs. Members of election commissions at all levels are drawn from among civil servants. The legal framework does not detail the criteria for appointment of civil servants to the commissions, but the OSCE/ODIHR NAM was informed that these include prior experience in organizing elections, and selecting people with specific expertise such as lawyers and IT professionals.

The PEL allows for domestic and international election observation, in line with Paragraph 8 of the 1990 OSCE Copenhagen Document. The GEC informed the OSCE/ODIHR NAM that it plans to adopt a regulation regarding international and domestic observers that will detail their rights as well as the accreditation procedure.

On election day, voters will cast hand-marked ballots into ballot boxes equipped with scanners that will count the votes automatically. The PEL mandates that after the end of vote count, the DECs will randomly select one PEC in each *soum* and two PECs in each district to conduct manual recounts of the cast ballots. The PEL, however, does not specify what actions shall be taken in the event that the results of the automated and manual counts differ. A number of OSCE/ODIHR NAM interlocutors, including political parties, expressed a lack of confidence in the NVT used and alleged that the process of their procurement as well as testing during previous elections lacked transparency.

Despite a lack of clarity regarding the appointment criteria for commission members, few OSCE/ODIHR NAM interlocutors voiced concerns regarding the impartiality of the election administration. While they expressed general confidence in their professionalism at all levels, they anticipated procedural problems on election day, in respect of the reliability and accuracy of technology used in the identification of voters and counting of votes.

D. VOTER REGISTRATION

Citizens over the age of 18, with the exception of those legally incapacitated by a court decision or sentenced to imprisonment, are eligible to vote. Voter registration is passive and based on the civil registration system in which every person is linked to a specific address. Biometric identification cards have been in use since 2010, and the state authorities estimate that 97 per cent of the population possess such cards. Some OSCE/ODIHR NAM interlocutors alleged that this estimate might be inflated, especially among nomadic groups. Concerns were also raised whether eligible voters without biometric identification cards will be able to vote in the forthcoming election.

The State Registration Agency (SRA) is mandated by the PEL to prepare the nationwide voter list and publish it on its website before 1 March. The SRA informed the OSCE/ODIHR NAM that voters will be able to verify their records and the location of the polling station to which they are assigned by entering their unique personal identification number online. Until 15 May, respective government agencies will notify the SRA about the voters who are legally incapacitated, imprisoned, left the country for a period of 60 days or longer, as well as those

The GEC will also establish a committee in charge of organizing the out-of-country voting at least 45 days before the out-of-country election day(s). This committee will establish sub-committees in each diplomatic representation of Mongolia at least 40 days before these election day(s).

The OSCE/ODIHR NAM was informed that each polling station will be equipped with a ballot cover in Braille print to assist visually impaired voters.

who serve in the military or border posts outside their area of permanent registration. These voters will be marked as "temporarily removed" in the voter lists. Military and border guard personnel will be removed from the voter lists at their places of original residence and added to the lists in the area where their regiments are located.

According the PEL, the TECs will receive voter lists from the SRA no later than 25 days before election day and forward them to the DECs no later than 20 days before the election. The DECs will display the voter lists for public scrutiny until 10 days before the election. Voters will be able to file complaints regarding omissions or incorrect records in the voter lists with the local SRA office, which will examine the case and, if necessary, instruct the DEC to correct the records within three days. Voters residing abroad will be able to request registration with the corresponding Mongolian diplomatic mission between 40 and 25 days before the voting day(s).

On election day, voters will be required to present their identification cards to PEC members and have their fingerprints scanned. The OSCE/ODIHR NAM was informed that every polling station will be equipped with a screen on which details of the voter, including a photograph, will be displayed to all present. If no discrepancy is found between the fingerprints, identification card and the record in the voter list, voters will be able to receive the ballot and cast their vote. Some OSCE/ODIHR NAM interlocutors expressed concerns with regard to the transparency and functioning of voter identification technology on election day.

E. CANDIDATE REGISTRATION

A presidential candidate must be a Mongolian citizen by birth, at least 45 years of age, eligible to vote, and a permanent resident in the country for the last 5 years. Additionally, the PEL provides that candidates cannot have overdue loans or income taxes (as determined by a court decision) or a criminal record. The law also requires that a candidate proves the Mongolian citizenship of both of his/her parents.

Candidates can only be nominated by parliamentary political parties or coalitions of parliamentary parties. Contrary to Paragraph 7.5 of the 1990 OSCE Copenhagen Document, the law does not permit individuals to stand as independent candidates. The GEC registers candidates 35 days before the election. In case of a candidate's death or criminal conviction, an eligible party may propose a replacement candidate until 30 days before the election. Registered candidates will be listed on the ballot in the order of the number of parliamentary seats held by the nominating party, a provision that was criticized by some interlocutors of the OSCE/ODIHR NAM.

F. CAMPAIGN AND CAMPAIGN FINANCE

The official campaign period commences on the day of candidate registration and lasts until one day before election day. The PEL requires candidate's official campaign representatives to register with the GEC. The PEL provides detailed regulations of permitted and prohibited methods of campaigning, including the number and format of printed materials that can be used by candidates. The law prohibits the distribution of money and goods to voters, organization of mass entertainment events, arrangement of foreign or domestic tours for voters, and distribution

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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."

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of false information using print, broadcast or electronic media from the beginning of the election year until the close of polls. Opinion polls are prohibited in the week prior to election day.

The GEC has established limits on campaign expenditure by political parties and candidates at MNT 5 billion and MNT 3 billion respectively. The law provides for maximum donations of MNT 10 million from individuals and MNT 50 million from legal entities. All donations should be made by bank transfer and in-kind donations should be accounted for with a monetary appraisal. Donations from labour unions, religious groups, non-governmental organizations, or foreign entities are prohibited. The PEL considers all donations during the election year to be intended for campaign purposes and prohibits parties from receiving non-campaign related donations.

Political parties and directors of the banks where candidates' campaign finance accounts are located are required to submit corresponding campaign expenditure reports to the GEC within 30 days after the election. The GEC is required to publish the names of citizens and legal entities whose donations exceed MNT 1 million and MNT 20 million respectively within 45 days after the election. The GEC can order audits of the campaign expenditures of parties and candidates by the State Audit Office. Penalties for campaign finance violations depend on the severity of the violation, vary for the actors involved, and range from MNT 420,000 to MNT 2.8 million. OSCE/ODIHR NAM interlocutors expressed few concerns with regard to the campaign finance regulation or practice, but pointed out that the amounts of possible fines for violations are relatively small.

G. MEDIA

Mongolia has a diverse media landscape that allows for a broad range of political views. Apart from the Mongolian National Public Radio and Television (MNPRT) that includes two television and three radio channels, private broadcasters such as *UBS*, *Channel 25*, *TV5*, *TV9*, and *Eagle TV* also have a large audience. Print media that feature political content include newspapers such as *Unen* and *Ardiin Erkh*.

The media legal framework comprises the 1998 Law on Freedom of Media, which prohibits government institutions from controlling media outlets, and the 1995 Law on Telecommunications. The Law on Freedom of Media places responsibility on media outlets for the content of published or broadcast information, while the Criminal Code envisages criminal responsibility for libel and defamation. Following the adoption of the 2005 Law on Public Radio and Television, MNPRT was transformed from a state-run entity into a public service broadcaster. It is governed by a 15-member National Council appointed upon nominations by the president, prime minister, the parliament (3 members each) and from among media experts and representatives of civil society (6 members). Activities of the MNPRT are financed primarily by public funds and user fees, with a small share coming from sponsorship and advertisement. A number of OSCE/ODIHR NAM interlocutors noted the lack of transparency of media ownership and alleged that it is highly concentrated. They also highlighted that a limited advertising market leads to a media dependency on advertisement purchases by central and local government, especially outside the capital.

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⁷ 1 EUR is approximately 1,840 MNT.

Continuing criminalization of defamation and libel in Mongolia has been criticized by the UN Human Rights Committee, see http://www2.ohchr.org/english/bodies/hrc/docs/CCPR.C.MNG.CO.5.Add.1.pdf.

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The PEL contains a number of provisions governing media during the election and MNPRT is obliged to provide free-of-charge equal coverage to all candidates. MNPRT informed the OSCE/ODIHR NAM that special time slots will be dedicated to broadcasting candidate spots. Private broadcasters are required to air paid candidate advertisements under equal conditions and the total time dedicated to advertisements by each broadcaster cannot exceed one hour per day. Specific rules pertaining to election coverage by the broadcast media will be detailed in a regulation to be prepared jointly by the GEC and the Communications Regulatory Commission, the government agency responsible for licensing and regulation of the electronic media. Adherence to this regulation will be verified by the Unfair Competition Regulatory Authority that can order suspension of the license for up to three months in case of a violation.

Some OSCE/ODIHR NAM interlocutors pointed out that the requirement to provide equal time to all contestants is sometimes difficult to maintain. A number of interlocutors of the OSCE/ODIHR NAM also acknowledged the difficulty of differentiating between newsworthy coverage and campaign-like appearances of candidates, but highlighted that the broadcasters managed to maintain a balanced approach during previous elections.

The Law on the Central Election Body provides for establishment of a Media Council, comprised of representatives of professional media institutions, civil society, and electoral contestants, for the campaign period. A number of OSCE/ODIHR NAM interlocutors pointed out that while this council has been created during previous elections, it lacked effectiveness in adjudicating media-related complaints. Although campaign coverage is monitored by a number of civil society organizations, OSCE/ODIHR NAM interlocutors welcomed an election-related activity of the OSCE/ODIHR that would include a media monitoring component.

H. COMPLAINTS AND APPEALS

Adjudication of electoral complaints is governed by the Law on Central Election Body, the PEL, the Law on Administrative Procedure, as well as the Laws on the Constitutional Court and the Constitutional Court Procedure. The PEL provides for resolution of electoral complaints and appeals by higher-level election commissions and for criminal or administrative cases to be considered by the courts of first instance with appeals to the higher-level courts. Although the PEL does not establish clear deadlines for the resolution of the election complaints and appeals by the election commissions, a number of OSCE/ODIHR NAM interlocutors pointed out that, in practice, cases are typically resolved within a period of three to five days. Complaints lodged with the courts of first instance should be resolved within 60 days of submission, while appeals at the Appellate Courts and the Supreme Court should be considered within 30 days. While interlocutors noted that efforts are made by the courts to expedite the resolution of election-related complaints, the OSCE/ODIHR NAM was informed that a number of complaints from the 2012 parliamentary and local elections are still pending.

Decisions of the GEC can be appealed to the Administrative Chamber of the Supreme Court, which can forward cases pertaining to constitutional rights to the Constitutional Court. The latter can also directly receive complaints with regard to the constitutionality or alleged violations of individual's electoral rights. While decisions of the GEC, including the announcement of election results, may be appealed to the Constitutional Court, some interlocutors stated that resolutions of the GEC not adopted in the form of an official decision may fall outside the

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The OSCE/ODIHR NAM was informed that, due to the heightened interest of electoral contestants, the allocation of time slots on MNPRT during the last day of the campaign will be decided by lottery.

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jurisdiction of the Constitutional Court. Each case is initially adjudicated by a five-member panel of the Constitutional Court, but, if the parliament disagrees with the judgment, it would become final once re-considered by a panel of seven to nine judges.

OSCE/ODIHR NAM interlocutors pointed out that while few complaints are typically filed with election commissions or courts during elections, the process of adjudication of complaints and appeals may benefit from review.

IV. CONCLUSION AND RECOMMENDATION

While most interlocutors expressed confidence in the professionalism of the election administration and their ability to organize elections in an efficient manner, some voiced concerns about election day procedures. Most interlocutors underscored the need to observe the forthcoming election with a full election observation mission, recognizing that improvements could be made to the electoral process and that an assessment and recommendations by the OSCE/ODIHR could contribute to this and help to build confidence in the electoral process. In particular, areas that could benefit from further attention include implementation of the amended legal framework, media coverage of the electoral campaign as well as its overall conduct, the use of technology for voter registration, identification, and counting of votes, and the effectiveness of the complaints and appeals process.

Given these circumstances, the OSCE/ODIHR NAM recommends the deployment of a standard Election Observation Mission. In addition to a core team of analysts, the OSCE/ODIHR recommends the secondment of 30 long-term observers and 300 short-term observers from OSCE participating States to ensure a wide and balanced geographic coverage of the country.

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ANNEX: LIST OF MEETINGS

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General Election Commission

Batnyam Altanjargal, Secretary

Ministry of Justice

Oyunsaikhan Altangerel, Head, Policy Implementation and Co-ordination Department

Constitutional Court

Tserenbaltav Sarantuya, Justice Yo. Unuborgil, Officer

Supreme Court

Dashzeveg Erdenechuluun, Head of Administrative Offices

National Human Rights Commission

Jamsran Byambadorj, Chief Commissioner Nanzad Ganbayar, Commissioner

State Registration Authority

Tsetsen Purevdorj, Acting Chairman Domkhuu Enhktsetseg, Head, Registration Department

Communications Regulatory Commission

Chuluuntumur Oyungerel, Deputy Director, Regulatory Department

POLITICAL PARTIES

Democratic Party

Tsagaan Oyundari, Acting Secretary General

Mongolian People's Party

Tsend Munkh-Orgil, Secretary for Political Affairs and Ulaanbaatar Khishigt Chinbat, Head, International Relations and Co-operation Department Damdin Tsogtbaatar, Secretary

Mongolian People's Revolutionary Party

Gankhuyagiin Shiilegdamba, Secretary General B. Enkhzaya, Foreign Relations

MEDIA

Mongolian National Public Radio and Television

Sed-Ayushjav Batzaya, Deputy Director, Director of "MM" News Agency

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Badamdorj Lkhagvasuren, Head, International Relations Department

Eagle TV

Jargalmaa Bardach, Director

CIVIL SOCIETY

Globe International

Khaskhuu Naranjargal, President

MonFemNet

Tumursukh Undarya, National Co-ordinator Tsevegmid Mandkhaikhatan, Public Relations and Information Manager

INTERNATIONAL COMMUNITY

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