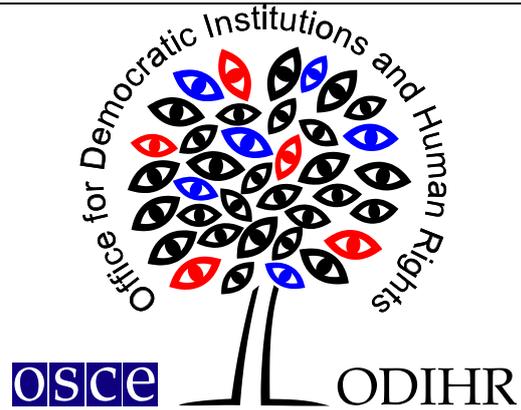


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OPINION ON THE LAW OF MONGOLIA ON THE PROMOTION OF GENDER EQUALITY

**Based on an English translation of the Law provided by the National Human
Rights Commission of Mongolia**

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I. INTRODUCTION

1. *On 21 November 2012, Mongolia became the 57th participating State of the OSCE, thereby taking upon itself all existing OSCE commitments, including those related to gender equality.*
2. *On 16 July 2013, OSCE/ODIHR received a request from the National Human Rights Commission of Mongolia to review the 2009 Law of Mongolia on the Promotion of Gender Equality for its compliance with OSCE commitments and international gender equality standards.*
3. *On 30 July 2013, the ODIHR Director responded to the Chief Commissioner of the National Human Rights Commission of Mongolia, confirming ODIHR's readiness to draft a legal opinion on the Law on the Promotion of Gender Equality, as a contribution to on-going legal reform efforts in Mongolia.*
4. *This Opinion is prepared in response to the request received by the National Human Rights Commission.*

II. SCOPE OF THE REVIEW

5. The scope of the Opinion covers only the Law of Mongolia on Promotion of Gender Equality (hereinafter “the Law”), submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of all available framework legislation governing gender equality and/or gender mainstreaming in Mongolia.
6. The Opinion raises key issues and indicates areas of concern. The ensuing recommendations are based on international gender equality standards and good practices, as found in the international agreements and commitments ratified and entered into by Mongolia. In particular, the Opinion bears extensive reference to the UN Convention on the Elimination of all Forms of Discrimination against Women (hereinafter the “CEDAW”) and General Recommendations made by the UN Committee on the Elimination of Discrimination against Women.
7. This Opinion is based on an English translation of the Law provided by the National Human Rights Commission of Mongolia. Errors from translation may nevertheless result.
8. In view of the above, the OSCE/ODIHR would like to make mention that this Opinion is without prejudice to any written or oral recommendations and comments to the Law or related legislation that the OSCE/ODIHR may make in the future.

III. EXECUTIVE SUMMARY

9. Overall, the OSCE/ODIHR welcomes Mongolia's efforts to ensure and enhance gender equality in all sectors of society. The Law constitutes a genuine attempt to mainstream gender equality aspects into all private and

public spheres. In particular, the wide scope of the Law, the sets of special measures introduced to foster gender balance in different sectors, are welcome, as are the detailed provisions aiming to guarantee gender equality in employment and labour relations, education and culture, and health care. At the same time, provisions on quotas in the civil service, and some of the provisions relating to the complaints system, and to sanctions, could benefit from some revision.

10. Based on the above, in order to ensure the full compliance of said legislation with international standards, it is recommended as follows:

Key Recommendations

- A. To clarify the definition of sexual harassment in Article 4.1.7 of the Law based on international gender equality standards; [par 26]
- B. To criminalize serious cases of gender-based violence and sexual harassment; [pars 28 and 75]
- C. To review the system of staggered quota percentages outlined in Article 10 of the Law, and ensure that gender equality is promoted at all levels of public administration, and in all sectors, including the army, border and domestic military, police, intelligence, court decision enforcement, anti-corruption and emergency agencies; [pars 36-41]
- D. To clarify and outline in Article 18 of the Law the general composition of the National Committee on Gender; [pars 58-59]
- E. To specify the nature of court proceedings leading to administrative fines in Article 26, and introduce the shift of the burden of proof to the respondent in any proceedings involving gender discrimination; [par 70]
- F. To criminalize forced abortion, currently outlined in Article 26.1.5 of the Law; [par 72]
- G. To specify in Article 26.3. that the imposition of “mandatory change training” will only be imposed in cases of serious violations of law amounting to criminal acts; [par 74]

Additional Recommendations

- H. To specify in Article 2 of the Law which “other legal acts” it is referring to; [par 16]
- I. To ensure that the title and wording of Article 3 reflect its intended aim; [par 17]
- J. To amend Article 4 as follows:
 - 1) clarify and modify the definition of gender contained in Article 4.1.1. of the Law; [par 20]
 - 2) revise the definition of gender discrimination contained in Article 4.1.4. of the Law; [pars 21-22]

- K. To reformulate the principle of equality as stipulated by Article 5.1.1. of the Law; [par 27]
- L. To clarify the exception to discrimination contained in Article 6.5.2. of the Law; [par 30]
- M. To broaden the material scope of the special measures, as defined in Article 7.1. of the Law; [par 31]
- N. To include in the Law references to special measures for women with disabilities, to ensure to them equal access to education and employment, health services and social security, and equal participation in all areas of social and cultural life; [par 33]
- O. To consider introducing into the Law a provision which ensures to women, on equal terms with men and without any discrimination, the opportunity to represent the Government at the international level; [par 35]
- P. To amend Article 12 as follows:
 - 1) include a provision enabling women to enjoy equal opportunities to participate actively in recreational activities, sports and cultural life; [par 43]
 - 2) supplement this article so that it expressly requires the teaching of sexual and reproductive rights for children and adolescents to be a permanent part of the school curriculum; [par 45]
- Q. To amend Article 13 as follows:
 - 1) clarify the meaning of certain aspects of par 5 on equal rights in the sphere of healthcare; [par 47]
 - 2) explicitly prohibit sexual harassment by health professionals; [par 48]
 - 3) guarantee access to information on all available varieties of family planning methods and prohibit discrimination in accessing sexual and reproductive health services; [pars 50-51]
- R. To ensure that neither marriage to a foreigner nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband; [par 52]
- S. To add, under Article 14 of the Law, the equal rights of women and men to choose their residence and domicile; [par 53]
- T. To grant in the Law to women and men the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; [par 54]
- U. To require the Government to work with members of legislative bodies, as appropriate, to promote a gender perspective in all legislation and policies; [par 56]
- V. To stipulate the necessity for sex-disaggregated statistics to be published in Articles 18 and 19 of the Law; [par 60]

- W. To clarify the wording of Article 19.1.9 of the Law; [par 62]
- X. To amend Article 23 as follows:
 - 1) specify that also individuals may lodge complaints alleging violations of this Law; [par 65]
 - 2) allow associations, organizations or other legal entities which have a legitimate interest in ensuring that principles of gender equality are complied with, to engage, either on behalf or in support of a complainant in any judicial and/or administrative procedure; [pars 66-67]
- Y. To amend Article 26 as follows:
 - 1) introduce fines also for indirect discrimination; [par 71]
 - 2) consider introducing a variety of sanctions for political parties for non-compliance with legal measures aimed at ensuring gender equality; [par 73] and
- Z. To include the National Committee on Gender, and the National Human Rights Commission in the list of oversight and monitoring bodies under Article 27. [pars 59 and 68]

IV. ANALYSIS AND RECOMMENDATIONS

1. International Gender Equality Standards

- 11. This Opinion analyzes the Law against the backdrop of its compatibility with relevant international gender equality standards and OSCE commitments.
- 12. Women's rights and gender equality are guaranteed in numerous human rights treaties. General international equality standards can be found in, *inter alia*, Article 26 of the UN International Covenant on Civil and Political Rights¹ (hereinafter "the ICCPR") and Article 3 of the UN International Covenant on Economic Social and Cultural Rights² (hereinafter "the ICESCR").
- 13. The main international human rights treaty pertaining specifically to women's rights is the CEDAW³ and its Optional Protocol⁴. CEDAW provides the

¹ The United Nations International Covenant on Civil and Political Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by Mongolia on 18 November 1974. Article 26 states that "[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

² The United Nations International Covenant on Economic, Social and Cultural Rights, adopted by General Assembly resolution 2200A (XXI) on 16 December 1966 and ratified by Mongolia on 18 November 1974. Article 3 states that the "States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant".

³ The United Nations Convention on the Elimination of all Forms of Discrimination against Women adopted by resolution 34/180 of the General Assembly at its thirty-fourth session on 18 December 1979 and ratified by Mongolia on 20 July 1981.

definition of “discrimination against women”, which stresses that the effect of this type of discrimination is such as to impair or nullify the recognition, enjoyment or exercise by women of human rights in the political, economic, cultural, social, civil or other fields on the same footing as men⁵. States party to CEDAW are bound to work towards eliminating discrimination of women in all areas of life, including, *inter alia*, political participation, employment, education, healthcare and family structures.

14. In addition to general OSCE commitments focusing on equal treatment⁶, OSCE participating States, in the Moscow Concluding Document⁷ affirmed their goal to achieve equality of opportunity between men and women not only *de jure*, but also *de facto*, as well as to promote effective measures to that end. In the same Document, OSCE participating States recognized that “true and full equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law”⁸.
15. The OSCE Action Plan for the Promotion of Gender Equality of 2004, in its Chapter IV, also calls on OSCE participating States to develop policies and establish mechanisms to promote and strengthen gender equality, and to comply with the relevant international instruments that they have ratified or acceded to⁹. In 2009 in Athens, the OSCE Ministerial Council called on OSCE participating States to, *inter alia*, consider specific measures to achieve gender balance in all public institutions and consider possible legislative measures to facilitate a more balanced participation of women and men in public life and in decision-making¹⁰.

2. Scope, Definitions and Principles

16. In Chapter One of the Law, the provisions contained thereunder clearly spell out the purpose and the scope of the Law, and define key terms and principles.

⁴ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women adopted by the General Assembly on 6 October 1999 and ratified by Mongolia on 28 March 2002. By ratifying the Optional Protocol, a State recognizes the competence of the Committee on the Elimination of Discrimination against Women - the body that monitors States parties' compliance with the Convention - to receive and consider complaints from individuals or groups within its jurisdiction.

⁵ See Article 2 of the CEDAW: “[...] the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”

⁶ The Concluding Document of Vienna – The Third Follow-Up Meeting, Vienna, 15 January 1989, Questions Relating to Security in Europe, Principles, par 13.8. The Ministerial Council Decision 7/09 on Women’s Participation in Political and Public of 2 December 2009 called upon all OSCE participating States to consider specific measures to achieve gender balance in all legislative, judicial and executive bodies and consider legislation to facilitate gender equality in political and public life, and especially in decision-making (pars 1 and 2).

⁷ The Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991.

⁸ *Ibid.*, par 40.

⁹ OSCE Ministerial Council Decision MC DEC/14/04 on the 2004 OSCE Action Plan for the Promotion of Gender Equality of 7 December, 2004, Chapter 4, par 42.

¹⁰ OSCE Ministerial Council Decision MC DEC/7/09 on Women’s Participation in Political and Public Life of 2 December 2009.

Article 2 specifies that legislation on gender equality shall comprise the Constitution of Mongolia, the Law, and “other legal acts” enacted in conformity with the Law. This implies that the Law shall take precedence over other laws in matters pertaining to gender equality, which is welcome. At the same time, to enhance clarity and foreseeability of the Law, Article 2 could perhaps specify which “other legal acts”, or at least which types of other legal acts it is referring to.

17. Article 3 of the Law sets out the personal scope of the Law, but only contains a reference to organizations, but not to public bodies. Presumably, Article 3 therein relates to the persons/entities that are to be *protected* by the Law. This should perhaps be clarified in the wording of Article 3.
18. Moreover, certain definitions contained in Chapter One of the Law would benefit from revision, in order to ensure that they are in congruity with international human rights standards.
19. For example, Article 4.1.1. of the Law defines the term gender as “a perception of the roles, responsibilities and statuses which a man or a woman is expected to fulfill in political, economic, social, cultural and family spheres, that establishes itself and evolves in the course of history”. In this context, it should be noted that international definitions of gender usually refer to the socially constructed roles, behaviours, activities, and attributes that a given society considers appropriate for men and women¹¹.
20. It is important to bear in mind that in contrast to aspects of sex, which refer to biological and physiological characteristics of men and women and do not vary considerably between different human societies, aspects of gender may vary rather significantly. For example, in certain societies, it may be deemed inappropriate for women to drive vehicles or smoke tobacco. Such ideas and practices are created by human actors, in particular socio-historical settings and conditions i.e. they are “socially constructed”. Gender is institutionalized through education, political and economic systems, legislation, culture and traditions¹². Instead of stating in Article 4.1.1. that the perception of such roles “establishes itself”, it would thus be more appropriate to speak of roles established by society.
21. Furthermore, Article 4.1.4. of the Law defines gender discrimination as “any action or inaction resulting in discrimination, exclusion or restriction based on sex or attributes of sex and marital status of men and women in political, economic, social, cultural, family and other spheres”. With regard to the first part of this definition, it is noted that defining discrimination as an action or inaction that could result in discrimination would appear somewhat tautological. Unless a result of misleading translation, it would appear to be more appropriate to revise this definition, e.g. by replacing the second mention of “discrimination” with the word “distinction”.

¹¹ As defined by the United Nations World Health Organization, available at: <http://www.who.int/gender/whatisgender/en/>

¹² <http://www.un.org/womenwatch/osagi/pdf/factsheet2.pdf>

22. It is also important to note that according to Article 1 of the CEDAW, “discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the *effect or purpose* of impairing or nullifying the recognition, enjoyment or exercise by women [...], on a basis of equality of men and women, of human rights and fundamental freedoms”. Such formulation reflects both forms of discrimination, namely direct discrimination (i.e. an action or omission that has the “purpose” of discriminating against women) and indirect discrimination (i.e. an action or omission that has the “effect” of discriminating against women, even if it appears neutral). To align the definition of gender discrimination under Article 4.1.4. more closely with that contained in Article 1 of the CEDAW, it is advisable to state therein that gender discrimination covers any distinction, exclusion or restriction, by action or inaction, which has the effect or purpose of impairing or nullifying the equal exercise, by men and women, of human rights and fundamental freedoms.
23. Under Article 4.1.7 of the Law, sexual harassment is defined as an “unwelcome sexual advance made in verbal, physical and/or other forms, intimidation, threat and/or other forms of coercion that make sexual intercourse an unavoidable option for the victim, or that creates an unbearable hostile environment and/or causes damage in terms of the person’s employment, professional, economic, psychological and/or any other form of well-being”. While the different forms of harassment depicted in this provision are appropriately wide in scope, it is questionable whether the behavior really needs to be such that it makes “sexual intercourse an unavoidable option for the victim”.
24. Internationally, the definition of sexual harassment appears to be quite wide. General Recommendation No. 19¹³ of the Committee on the Elimination of Discrimination against Women (hereinafter “CEDAW Committee”) mentions sexual harassment and defines it as “such unwelcome sexually determined behaviour as physical contact and advances, sexually coloured remarks, showing pornography and sexual demand, whether by words or actions”, which may be humiliating and may constitute a health and safety problem. The General Recommendation also defines such behaviour as discriminatory when a woman has reasonable grounds to believe that her objection would disadvantage her in connection with her employment, including recruitment or promotion, or when it creates a hostile working environment.
25. The actions described in the General Recommendation are wider than those listed in Article 4.1.7 – they speak of unwelcome sexual advances, but do not mention that this behavior needs to be so coercive as to suggest to the victim that sexual intercourse is an unavoidable option. General Recommendation No. 19 does, however, speak of another coercive element, namely the fact that following such unwelcome advances, a woman has reasonable grounds to believe that any objection would disadvantage her. The General Recommendation only mentions this phenomenon in the context of employment, but this situation could apply equally in other fields, e.g.

¹³ General Recommendation No 19 on Violence against women of the Committee on the Elimination of Discrimination against Women, adopted on 29 January 1992 at its Eleventh session, par 18.

vocational training, formal and informal educational settings, or sports, leisure or cultural settings.

26. Based on the above, it would be advisable to clarify the definition of sexual harassment in Article 4.1.7, by specifying that the above-mentioned unwelcome advances need to lead to a situation where a woman has reasonable grounds to believe that any objection would disadvantage her. At the same time, while references to the creation of an unbearable hostile environment are appropriate, such environment (following the language of General Recommendation No. 19) is often not only hostile, but also, or alternatively, intimidating, degrading, humiliating and offensive. Moreover, references to the unavoidability of sexual intercourse should be avoided. Finally, the alternative definition of unwelcome sexual advances constituting sexual harassment if they cause damage to a person's employment, professional, economic, psychological and/or any other form of well-being is unclear, and would benefit from revision, bearing in mind the above-mentioned standards (which do not require damaging effects of sexual harassment).
27. Article 5.1.1. defining the principle of equality of men and women would also benefit from revision. This article currently states that men and women "shall have opportunities and conditions to enjoy equal rights in political, economic, social, cultural, family and other relations, and to equally participate in social life and equally access the benefits of development and social wealth". It should be noted that having opportunities and conditions to enjoy equal rights is not tantamount to an explicit acknowledgement of the equal enjoyment or exercise of such rights by both men and women. It would be advisable to revise the wording of Article 5.1.1. and thereby strengthen the aim of both this provision, and of the Law in general.
28. Moreover, Article 6.2. of the Law provides that gender-based violence and sexual harassment shall be seen as constituting gender discrimination. It should be noted that, while such conduct does indeed constitute forms of gender discrimination, both actions could, depending on the gravity of the offence, also qualify as serious criminal acts. If not already the case, the respective criminal liability of perpetrators should be clearly delineated and laid down in an article or chapter of the Criminal Code. The Law should make reference to these provisions contained in the Criminal Code.

3. Exceptions and Special Measures

29. Article 6.5.2. of the Law stipulates that the separate placement of people by sex at workplace facilities shall not constitute discrimination. The purpose of this provision is not entirely clear. It warrants inquiring whether such separation could be justified only in certain, exceptional instances or whether it constitutes a general exception that would thus be permitted in every workplace without any reasonable justification. The latter option would contravene international standards.
30. It would be of particular concern, if such separation would lead to a difference in working conditions for male and female employees (this would also appear

to violate Article 11 of the Law containing guarantees of equal rights in employment and labour relations) or constitute a *de facto* occupational segregation by sex. The meaning of Article 6.5.2. should thus be clarified.

31. Article 7 of the Law deals with special measures aimed at ensuring equality between women and men, which is in principle a welcome addition to the Law. It should be pointed out, however, that the definition of special measures contained in Article 7.1. of the Law, in respect of the material scope, refers only to social and family relations. Given that the following Article 7.2. includes special measures in the political, economic and cultural spheres, it is much advised to amend the definition of special measures under par 1 of this provision accordingly.
32. In this context, it should also be pointed out that General Recommendation No. 18 made by the Committee on the Elimination of Discrimination against Women¹⁴ highlights the importance of measures taken to address the particular situation of women with disabilities.
33. Such special measures should ensure that women with disabilities have equal access to education and employment, health services and social security and that they can participate in all areas of social and cultural life. To strengthen the rights of this vulnerable group, it may be beneficial to introduce to the Law provisions pertaining to special measures dealing with the situation of women with disabilities.

4. Equal Treatment in Different Spheres of Society

34. Chapter Two of the Law contains specific guarantees of gender equality in state structure, economic, social and cultural spheres. Under this Chapter, Article 8 of the Law guarantees equal rights for men and women in the political sphere¹⁵.
35. It should be noted in this regard that Article 8 of the CEDAW requires States to adopt measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Government at the international level and to participate in the work of international organizations. Currently, the Law does not explicitly contain such a provision, but it may be worthwhile to consider introducing it, to ensure full compliance with international standards.
36. Article 10 of the Law speaks of equal rights in the civil service, and the introduction of quotas into the civil service, including decision-making positions in public administration, (Article 10.1.1-10.1.3) which is in principle a laudable step. However, it is not clear why the quota percentages vary depending on the

¹⁴ General Recommendation No. 18 on Disabled women of the Committee on the Elimination of Discrimination against Women, adopted on 4 January 1991 at its Tenth session.

¹⁵ The 2012 amendments to the Parliamentary Election Law of Mongolia introduced a 20 % gender quota for the 28 seats elected by proportional representation. In light of these amendments, it should be stressed that the 2010 OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation state that countries with a system based on proportional representation are encouraged to consider introducing a mandatory quota that provides for a high proportion of female candidates, ideally, at least 40 per cent. See paragraph 133 of the Guidelines, available at: http://www.legislationline.org/download/action/download/id/3499/file/Guidelines%20on%20Political%20Party%20Regulation%202010_en.pdf.

- type and/or level of the civil service post, especially why Article 10.1.1 foresees lower quotas for the national, aimag and city levels (15%), than it does for district (20%), soum (25%) and khoroo (30%) levels. This would not appear to be in line with international standards, such as those found in the UN Beijing Platform for Action¹⁶, and OSCE commitments¹⁷, which speak of achieving (full) equal representation of women and men in all governmental and public administration positions.
37. With regard to the quotas for public decision-making positions mentioned in Article 10.1.2, it is further noted that this provision requires a quota of not less than 15 % of any one sex for state secretaries and heads of agencies, while it is 20 % for managers, 30 % for heads of department in ministries and agencies, and 40 % at the local level. In this situation, the Law will most probably be seen to have been fulfilled once the target quotas have been reached, which means that there may be quite low incentives to further enhance gender equality beyond these quotas. This could well lead to a perpetuation of gender inequality at the highest levels of administration, and could constitute a “glass ceiling” for representatives of a certain underprivileged gender. It is thus recommended to review this staggered approach to quotas, and to perhaps couple it with a staggered timeline, to create proper incentives to gradually, over time, reach full gender equality at all levels of administration and public service. While Article 2 of the 2011 Law on Enforcement of the Law on the Promotion of Gender Equality speaks of a step by step implementation of Articles 10.1.2 – 10.1.4 and 10.3, this would not appear to go beyond the quotas listed in the Law.
38. Such an approach would also be more in line with the 2009 OSCE Ministerial Council Decision in Athens on Women’s Participation in Political and Public Life¹⁸ (hereinafter “2009 Athens Ministerial Council Decision”), which calls on participating States to consider possible legislative measures, to facilitate a more balanced participation of women and men in political and public life, *and especially in decision-making*. In this context, it is recalled that the UN Beijing Platform for Action mentions the aim of having 30 % women in (all) positions at decision-making levels (a target which was also endorsed by the UN Economic and Social Council).¹⁹
39. Article 10.1.3 stipulates that the representation of any one sex in special public agencies shall not be less than 40 percent, except in the army, border and domestic military, police, intelligence, court decision enforcement, anti-corruption and emergency agencies. While it is not quite clear which agencies constitute “special public agencies” (this could perhaps be clarified), it is also not apparent why the above-listed agencies are excluded from this quota.
40. In this context, it is noted that UN Security Council Resolution 1325 (2000)²⁰ urges UN Member States to ensure increased representation of women in all

¹⁶ Beijing Declaration and Platform for Action; the Fourth World Conference on Women adopted at the 16th plenary meeting, on 15 September 1995;

<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

¹⁷ *Op cit.* footnotes 6-10

¹⁸ *Op cit.* footnote 10

¹⁹ *Op cit.* footnote 16

²⁰ UN Security Council Resolution 1325 (2000), adopted by the Security Council at its 4213rd meeting on 31 October 2000.

decision-making levels in national, regional and international institutions, and mechanisms for the prevention, management and resolution of conflict. Furthermore, the 2009 Athens Ministerial Council Decision recalls the under-representation of women in decision-making structures across the OSCE area, including in police structures, and encourages participating States to consider providing for specific measures to achieve the goal of gender balance in all legislative, judicial and executive bodies, including security services, such as police services. Moreover, participating States are called upon to consider taking measures to create equal opportunities within the security services, including the armed forces, where relevant, to allow for balanced recruitment, retention and promotion of men and women.

41. Automatically excluding certain sectors, such as the army, border and domestic military, police, intelligence, court-decision enforcement, anti-corruption, and emergency services from the general introduction of gender quotas in the public service could prove a setback for enhancing gender equality and maintaining overall effectiveness in these structures.²¹ It is recommended to rethink this approach and abandon the blanket exclusion of quotas for these sectors. Instead, it would be advisable to consider ways of strengthening gender equality in these agencies as well, as a means for ensuring that they represent the entire population, and maintaining their effectiveness in general.

4.1 Education and Culture

42. The Law, in its Article 12, also provides for guarantees of equal rights in the sphere of education and culture, which in itself is laudable. However, it should be pointed out that Article 10 (g) of the CEDAW requires that measures should be taken to eliminate discrimination against women in the field of education and in particular to ensure, on a basis of equality of men and women, the same opportunities to participate actively in sports and physical education. In addition, Article 13 (c) of CEDAW provides for equal rights to participate in recreational activities, sports and all aspects of cultural life.
43. Article 12, while otherwise quite specific and detailed, does not address these aspects. For the sake of completeness, it is thus advised to reflect also the participation in recreational activities, sports and all aspects of cultural life in this provision.
44. Furthermore, Article 10 (h) of the CEDAW requires States to provide equal access to specific educational information to help ensure the health and well-being of families, including information and advice on family planning. The CEDAW Committee regularly highlights the importance of “systematic” age-appropriate sex education in schools to ensure that adolescents have adequate knowledge of the use of modern means of birth control and other sexual and

²¹ With regard to gender in the armed forces, see the Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel, published jointly by the OSCE/ODIHR and the Geneva Centre for the Democratic Control of Armed Forces in 2008, Chapter 13 on Women in the Armed Forces, which recommends, inter alia, that legislation on equal opportunities should be implemented in the military sector, and that armed forces personnel should be recruited and selected for positions based on actual, not presumed, capabilities. The Handbook further urges States to improve and enhance the military’s ability to recruit, retain and advance women.

reproductive matters²². Moreover, the CEDAW Committee's General Recommendation No. 24²³ notes the importance of ensuring, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls. In this context, it should also be stressed that the CEDAW Committee, in its consideration of the combined fifth, sixth and seventh periodic reports of Mongolia²⁴ urged the Government of Mongolia to provide sex education to girls and boys.

45. In light of the above, it is, therefore, recommended to supplement Article 12 of the Law, so that it expressly requires for the teaching of sexual and reproductive rights for children and adolescents, both male and female, to be a permanent part of the school curriculum.

4.2 Health Care

46. General Recommendation No. 24²⁵ of the CEDAW Committee underscores that the compliance with Article 12 of the CEDAW²⁶ is central to the health and well-being of women. It requires the elimination of discrimination against women in their access to health care services, throughout their life cycle, particularly in the areas of family planning, pregnancy, confinement and during the post-natal period.
47. It is commendable that the Law deals in a detailed manner with equal rights in the sphere of healthcare in Article 13. At the same time, certain aspects of this provision are not clear, for example Article 13.5., which sets out that "any form of discrimination against women and men in health care services, insisting, demanding and forcing to abort pregnancy shall be prohibited". While this prohibition is a positive step, it is not discernible how the abortion of pregnancy could be demanded of men. Unless this is a result of unclear translation, this provision should be modified. Additionally, such coercion should entail criminal liability, and should thus be reflected in the Criminal Code, to which the Law should refer (see par 72 *infra*).
48. Moreover, even though the Law in Article 6.2. prohibits sexual harassment in political, economic, social, cultural and family spheres, the provisions pertaining to health care would most certainly benefit from the additional explicit prohibition of sexual harassment by health professionals. This should be added.

²² See e.g. the Committee's Concluding Observations on the United Kingdom dated 26 July 2013, par 45, available at

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCEDAW%2fCOC%2fGBR%2f14761&Lang=en

²³ General Recommendation No. 24 on Article 12: Women and health, of the Committee on the Elimination of Discrimination against Women, adopted on 2 February 1999 at its Twentieth session.

²⁴ See CEDAW/C/MNG/7 Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined fifth, sixth and seventh periodic reports of States parties, Mongolia. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/315/80/PDF/N0731580.pdf?OpenElement>

²⁵ *Op cit.* footnote 23

²⁶ Article 12 stipulates that "States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning".

49. Furthermore, in General Recommendation No. 21, the CEDAW Committee points out that, in order to make an informed decision about safe and reliable contraceptive measures, women must have information about contraceptive measures and their use, and guaranteed access to sex education and family planning services, as provided in Article 10 (h) of the CEDAW²⁷. It should also be stressed that the CEDAW Committee, in its consideration of the combined fifth, sixth and seventh periodic reports of Mongolia²⁸ urged the Government of Mongolia to increase access, particularly in the rural areas, to affordable contraceptives for women and men.
50. Bearing all of the above in mind, and in order to align the Law with the requirements of Articles 10 and 12 of the CEDAW, it would be advisable for the Law to contain a provision which guarantees access to men and women of information concerning all available varieties of family planning methods. Additionally, gender-sensitive courses on women's health and gender-based violence could be provided for health workers, and included in their educational curricula.
51. Also, any kind of discrimination in accessing sexual and reproductive health services should be prohibited. Article 13 should be amended accordingly.

4.3 Marriage and Family

52. Article 14 of the Law pertaining to family relations is generally welcomed as a positive awareness-raising provision. However, in order to align it with Article 9 of the CEDAW, it should grant women equal rights with men to acquire, change or retain their nationality. It would be advisable, if this is not already regulated by virtue of other related legislation, for the Law to ensure, in particular, that neither marriage to a foreigner nor a change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband. Women should also be granted equal rights with men with respect to the nationality of their children.
53. Furthermore, it would be worthwhile to consider adding, under Article 14 of the Law or in a separate provision, the equal rights of women and men to choose their residence and domicile in accordance with Article 15(4) of the CEDAW.
54. Additionally, to be compliant with Article 16 (f) of the CEDAW, the Law should grant women and men the same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions, where such concepts exist in national legislation.

5. Institutional Framework

55. It is commendable that the Law comprises detailed provisions, which provide a

²⁷ General Recommendation No. 21 on Equality in marriage and family relations of the Committee on the Elimination of Discrimination against Women, adopted on 4 February 1994 at its Thirteenth session.

²⁸ See CEDAW/C/MNG/7 Consideration of reports submitted by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women, Combined fifth, sixth and seventh periodic reports of States parties, Mongolia. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/315/80/PDF/N0731580.pdf?OpenElement>

- sound basis for promoting and ensuring the *de facto* implementation of gender equality.
56. The Law, by virtue of Article 16, vests the Government with a wide range of powers in respect of gender equality. At the same time, bearing in mind the Beijing Declaration and Platform for Action²⁹, this provision could be enhanced by requiring the Government to work with members of legislative bodies, as appropriate, to promote a gender perspective in all legislation and policies.
 57. It is welcome that the Law contains several provisions pertaining to sex-disaggregated statistics, particularly Article 16.1.2, but also Article 5.1.5. As General Recommendation No. 9 of the CEDAW Committee³⁰ highlights, statistical information is absolutely necessary in order to understand the real situation of women. National statistical services responsible for planning national censuses and other social and economic surveys should formulate their questionnaires in such a way that data can be disaggregated according to sex, with regard to both absolute numbers and percentages, so that interested users can easily obtain information on the situation of women and men in a particular sector of interest.
 58. Article 18 outlines the mandate of the National Committee on Gender, which is a public body composed of “non-staff members”, and is responsible for ensuring equal participation of the public and the government in, and sustainability of, the implementation of gender equality policies. While this unclarity may be due to translation errors, it may be helpful to specify what “non-staff members” are. Moreover, it would enhance transparency of the Law if Article 18.2 would state the general composition of this Committee, specifically which type of individuals/experts should sit on it.
 59. Under Article 18.3.3, the National Committee is competent to review and issue recommendations on the implementation and results of legislation, policies, programs and recommendations by international organizations pertaining to the promotion of gender equality. As this involves a strong monitoring function, it is recommended, for the sake of completeness, to include the National Committee in the list of bodies conducting oversight and monitoring of the implementation of legislation on gender equality (Article 27 of the Law).
 60. Article 18.3.8. of the Law vests the National Committee on Gender with the power to co-ordinate the establishment of a gender database and an integrated information network and with organizing the dissemination of gender data and information. Article 19.1.2 provides the central and local government agencies with the mandate to compile local or sector-wide sex-disaggregated statistics and to assess the state of gender equality and policy impacts. While most of these provisions refer to the dissemination of sex-disaggregated statistics, it would perhaps be also advisable to stipulate the necessity of such sex-disaggregated statistics to be published, so that they are widely available to those interested.

²⁹ Beijing Declaration and Platform for Action; the Fourth World Conference on Women adopted at the 16th plenary meeting, on 15 September 1995;

<http://www.un.org/womenwatch/daw/beijing/pdf/BDPfA%20E.pdf>

³⁰ General Recommendation No. 9 on Statistical data concerning the situation of women, of the Committee on the Elimination of Discrimination against Women, adopted on 3 March 1989 at its Eighth session.

61. Article 19 outlines the mandate of local self-governance bodies of all levels in the promotion of gender equality. Under Article 19.1.5, central and local government agencies may outsource certain functions on gender equality to civil society organizations on a contract basis. While it is positive that civil society organizations are thereby involved in gender equality mainstreaming, it should nevertheless be borne in mind that this should not apply to key gender mainstreaming functions, which based on international instruments and OSCE commitments shall be exercised by the State.
62. Under Article 19.1.9, the central government authority shall submit an annual report on the implementation and results of gender equality activities to the National Committee every year. From this wording, it is unclear whether this relates only to one central government authority, or whether this applies to all relevant government authorities. It would be good to clarify this point in Article 19, unless this lack of clarity is due to misleading English translation.

6. Complaints Proceedings

63. Article 23 of the Law outlines the complaints procedure in cases of alleged gender equality violations. Under par 1 of this provision, any violation of provisions of this law (except in the case of Article 14 guaranteeing equal rights in family relations) may form the basis for lodging a complaint with the National Human Rights Commission of Mongolia.
64. Article 23.2 of the Law sets out that a trade union and/or nongovernmental organization shall have the right to lodge a complaint in case of a perceived violation by an economic entity, organization and/or an official of gender equality, equal rights, equal opportunities and equal treatment of men and women stipulated in this law.
65. It is noted that Article 23.2 speaks only of trade unions and non-governmental organizations, but not of individuals, even though they are expressly covered by the scope of the Law under Article 3. Moreover, Article 9 of the Law on the National Human Rights Commission of Mongolia³¹ also states that individuals may lodge complaints with the Commission. To ensure consistency both within the Law, and with the Law on the National Human Rights Commission, Article 23.2 should be expanded to cover the complaints of individuals (both citizens, and foreign and stateless persons).
66. Generally, associations, organizations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the gender equality is complied with, should be able to engage, either on behalf or in support of the complainant, with his/her approval, in any judicial and/or administrative procedure.
67. Article 23.2., as it currently stands, limits the ability of trade unions and/or non-governmental organizations to lodge complaints only to situations where a violation is perpetrated by an economic entity, organization and/or an official. Moreover, the provision fails to refer to judicial proceedings, which would mean that such engagement is limited to administrative proceedings. It is recommended to widen the scope of Article 23.2, to ensure full third-party

³¹ The National Human Rights Commission of Mongolia Act, adopted on 7 December 2000.

intervention rights.

68. According to Article 24.1, the National Commission shall provide independent oversight of the enforcement of gender equality related provisions of the Constitution, other laws (presumably including this Law) and international treaties that Mongolia is a signatory to. For the sake of completeness, it should thus also be included in the list of oversight and monitoring bodies under Article 27 (while specifying the Commission's independent character).

7. Sanctions

69. Penalties for breaching legislation on gender equality are outlined in Chapter Five of the Law. In this context, it should be borne in mind that infringements of gender equality provisions must be met with effective, proportionate and dissuasive sanctions, which may include compensation being paid to the victim. Any sanction provided by the national legal system must be such as to have a real deterrent effect on the discriminating person or entity. The effectiveness, proportionality and dissuasiveness of a sanction will need to be determined separately in each individual case, while bearing in mind also general factors, such as the average salary in a given country.
70. Article 26 of the Law provides for fines for infringements which range from ₮40000-250000 (approximately 20-120 EUR), and states that, unless a breach of the gender equality legislation constitutes a criminal offence, these are administrative fines that shall be imposed by a judge. It is noted that the Law does not specify the type of court proceedings that should be followed in such cases. Such specification could be helpful, to enhance clarity and foreseeability of the Law for individuals. In this relation, it is recalled that, according to international anti-discrimination standards, persons alleging discrimination against them must establish, before a court or other competent authority, facts from which it may be presumed that there has been a discriminatory act. The burden of proof then shifts to the respondent, who must prove that there has been no breach of the principle of equal treatment. This does not, however, apply to criminal proceedings or other proceedings where courts play a central role. Currently, the Law does not mention this shift of the burden of proof to the respondent in court proceedings. It is advised to amend the Law accordingly, and to add this aspect to any provisions specifying the type of court procedure to be followed in such cases.
71. It is noted that Article 26.1.1 envisages a fine for acts of direct discrimination. It is recommended to expand this provision to also foresee a fine for acts of indirect discrimination, especially in such cases where the perpetrator of such discrimination has been made aware of the discriminatory act, and has not done anything to remedy it.
72. Moreover, Article 26.1.5 of the Law states that individuals and officials shall be fined for demanding, insisting, or forcing a woman to abort a pregnancy. Given the serious coercive aspects of such act, and its grave and damaging effects, it would be advisable to include such act in the Criminal Code (provided it is not yet included therein). The Law could contain references to the respective criminal provision.
73. Article 26.1.7 of the Law envisages a fine for discrimination against equal rights

and equal opportunities of a man and a woman to join and participate in the activities of a political party. According to the OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, there are a variety of sanctions available when parties do not comply with legal measures aimed at ensuring gender equality. Sanctions may range from financial measures, such as the denial or reduction of public funding, to stronger, legal measures, such as the removal of the party's electoral list from the ballot. In all cases, sanctions should be proportionate to the nature of the violation³². It is, therefore, recommended to introduce a more varied assortment of sanctions for political parties' non-compliance with all legal measures aimed at ensuring gender equality in the Law.

74. Under Article 26.3 of the Law, individuals who committed acts of direct discrimination "based on attributes of a sex in family relations" may be ordered to attend a "mandatory behaviour change training" stipulated by the Law on Domestic Violence. It is not clear which types of acts this would encompass; in any case, such mandatory trainings should only be imposed in the case of serious violations that amount to criminal offences as serious as acts of domestic violence (in addition to other criminal sanctions). In other cases, such responses could well be regarded as disproportionate.
75. Finally, there appears to be no sanction for acts of violence against women and sexual harassment (see par 28 *supra*). It would be very advisable to introduce such sanctions in this or other (including criminal) legislation, should they not already exist.

[END OF TEXT]

³² See par 136 of the 2010 OSCE/ODIHR-Venice Commission Guidelines on Political Party Regulation, available at: http://www.legislationline.org/download/action/download/id/3499/file/Guidelines%20on%20Political%20Party%20Regulation%202010_en.pdf.