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# OPINION ON SELECTED LEGISLATION PERTAINING TO THE POLITICAL PARTICIPATION OF PERSONS WITH INTELLECTUAL OR PSYCHOSOCIAL DISABILITIES

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## KAZAKHSTAN

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Based on an unofficial English translation of the relevant legislation commissioned by the OSCE Office for Democratic Institutions and Human Rights.

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## **EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS**

Since ratifying the UN Convention on the Rights of Persons with Disabilities, the authorities of Kazakhstan have made significant efforts to facilitate the participation of persons with disabilities in the electoral process, including in terms of access to information and polling stations. These are welcome initiatives, as also emphasized in recent OSCE/ODIHR election observation reports.

At the same time, the Civil Code still stipulates that persons with intellectual and psychosocial disabilities shall be recognized by courts as legally incapable, which means that in such cases, a guardian will be appointed to undertake all transactions on their behalf. Once declared legally incapable, the Constitution of Kazakhstan and other relevant legislation prohibits the respective individuals from voting, standing for office, becoming members of election commissions or the civil service, or participating in public councils and local meetings or gatherings. This has significant repercussions for such individuals, including in relation to the exercise of their political rights.

This approach is at odds with key international standards on the political rights of persons with disabilities, as set out, for example, in the above-mentioned UN Convention. These standards clearly state that persons with intellectual or psychosocial disabilities shall enjoy legal capacity and participate in political and public life on an equal basis with others, which includes the right and opportunity to vote and be elected. Rather than restrict the legal capacity of persons with disabilities, states should instead protect people with disabilities from all forms of exploitation, violence and abuse and help persons with disabilities exercise their legal capacity, by providing them with access to different types of supported decision-making arrangements. The key decision-makers in Kazakhstan are thus encouraged to review the relevant legislation accordingly.

More specifically, and in addition to what is stated above, OSCE/ODIHR makes the following recommendations to further enhance the compliance of said provisions with international standards:

- A. to review the Civil Code and other relevant laws allowing for guardianship and replace them with laws and policies that will provide access to necessary support mechanisms to allow persons with disabilities to exercise their legal capacity, and at the same time review the application of the guardianship model for substance abusers; [pars 34-36]
- B. with respect to political participation of persons with disabilities and data collection:
  1. to remove the restrictions of the rights of citizens with intellectual or psychosocial disabilities to vote and stand for office on the basis of their legal capacity, found in Article 33 par 3 of the Constitution and in Article 4 par 3 of the Law on Elections, as well as other related legislative provisions;

2. to adopt regulations that facilitate access to public and political life of persons with intellectual or psychosocial disabilities and extend existing support measures in the Law on Elections to such voters as well;
  3. to require in legislation that state authorities to collect and make public data on voting disaggregated by disability, age and gender; [pars 42-48]
- C. to remove prohibitions on persons with disabilities in the public service and on election commissions in Article 16 par 3 (2) of the Law on the Civil Service and Article 19 par 2-1 of the Law on Elections respectively, and to replace them with provisions that comply with Kazakhstan's obligations under the UN Convention on the Rights of Persons with Disabilities; [par 52]
- D. to remove Article 10 par 1 (3) of the Law on Public Councils and Article 39-3 par 1 of the Law on Local Government and Self-Government, and allow persons with intellectual and similar disabilities to be nominated as members of public councils, and to attend and participate in local meetings and gatherings; [par 60]
- E. To expand Article 8 par 6 of the Law on Political Parties to ensure that it also protects persons with disabilities from discrimination; [par62] and
- F. With respect to the law-making process:
1. to ensure that the legislation submitted for the review undergoes sufficient evidence-based reviews outlining its impact on persons with intellectual and psychosocial disabilities and that wide and inclusive consultations are conducted based on the findings of such reviews; [par 68]
  2. to ensure that, efforts to reform the any future legislation should undergo similar impact assessments, and should also be subjected to inclusive, extensive, effective and timely consultations, while new legislation should undergo consistent monitoring and evaluation. [par 68]

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

***As part of its mandate to assist OSCE participating States in implementing OSCE commitments, the OSCE/ODIHR reviews, upon request, draft and existing legislation to assess their compliance with international human rights standards and OSCE commitments and provides concrete recommendations for improvement.***

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## I. INTRODUCTION

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1. On 24 September 2020, the Commissioner for Human Rights in the Republic of Kazakhstan sent to the OSCE Office for Democratic Institutions and Human Rights (hereinafter “OSCE/ODIHR”) a request for legal review of legislation governing the legal capacity of individuals and of relevant laws on the participation of persons with “intellectual and mental disabilities” in political life in Kazakhstan,<sup>1</sup> to assess the compliance of such legislation with international standards and practices.
2. On 7 October 2020, the OSCE/ODIHR responded to this request, confirming the Office’s readiness to prepare a legal opinion on the compliance of the above legislation with international human rights standards and OSCE human dimension commitments.
3. This Opinion was prepared in response to the above request. The OSCE/ODIHR conducted this assessment within its mandate to assist OSCE participating States in the implementation of their OSCE commitments.

## II. SCOPE OF THE OPINION

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4. The scope of this Opinion covers only the legislation submitted for review. Thus limited, the Opinion does not constitute a full and comprehensive review of the entire legal and institutional framework regulating to the political participation of persons with disabilities in Kazakhstan.
5. The Opinion raises key issues and provides indications of areas of concern. In the interests of conciseness, it focuses more on those provisions that require amendments or improvements than on the positive aspects of the respective legislation. The ensuing legal analysis is based on international human rights and rule of law standards, norms and recommendations as well as relevant OSCE human dimension commitments. The Opinion also highlights, as appropriate, good practices from other OSCE participating States in this field. When referring to national legislation, the OSCE/ODIHR does not advocate for any specific country model; it rather focuses on providing clear information about applicable international standards while illustrating how they are implemented in practice in certain national laws. Any country example should always be approached with caution since it cannot necessarily be replicated in another country and has always to be considered in light of the broader national institutional and legal framework, as well as the specific country context and political culture.
6. Moreover, in accordance with the *Convention on the Elimination of All Forms of Discrimination against Women*<sup>2</sup> (hereinafter “CEDAW”) and the *2004 OSCE Action Plan for the Promotion of Gender Equality*<sup>3</sup> and commitments to mainstream gender into OSCE activities, programmes and projects, the Opinion seeks to integrate, as appropriate, a gender and diversity perspective into its review of the rights of persons with intellectual and mental disabilities.

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<sup>1</sup> In her letter, the Commissioner for Human Rights specified that this review should involve following legislation of Kazakhstan: the Civil Code, the Elections Code, the Law on Political Parties, the Law on Local Government and Self-Government, the Law on Public Councils, as well as other legislative acts concerning the legal status of persons with intellectual and mental disabilities.

<sup>2</sup> *UN Convention on the Elimination of All Forms of Discrimination against Women* (hereinafter “CEDAW”), adopted by General Assembly resolution 34/180 on 18 December 1979. Kazakhstan acceded to the Convention on 26 August 1998.

<sup>3</sup> See [OSCE Action Plan for the Promotion of Gender Equality](#), adopted by Decision No. 14/04, MC.DEC/14/04 (2004), par 32.

7. This Opinion is based on an unofficial English translation of the relevant legislation commissioned by the OSCE/ODIHR, which is attached to this document as an Annex. Errors from translation may result. The Opinion is also available in Russian. However, the English version remains the only official version of the Opinion.
8. In view of the above, the OSCE/ODIHR would like to stress that this Opinion does not prevent the OSCE/ODIHR from formulating additional written or oral recommendations or comments on the respective subject matters in Kazakhstan in the future.

### **III. LEGAL ANALYSIS AND RECOMMENDATIONS**

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#### **1. AN INTRODUCTION TO THE POLITICAL RIGHTS OF PERSONS WITH DISABILITIES AND RELEVANT INTERNATIONAL HUMAN RIGHTS STANDARDS AND OSCE HUMAN DIMENSION COMMITMENTS**

9. The right to political participation, as set out in Article 21 of the Universal Declaration on Human Rights, was later codified in Article 25 of the International Covenant on Civil and Political Rights (ICCPR).<sup>4</sup> Article 25 consists of several provisions, which focus on the right to equal participation in public affairs, the right to vote and to be elected, and the right to have equal access to public service respectively.
10. When looking at the rights of persons with disabilities, it is important to note that the term “disability” summarizes a great number of different functional limitations. Persons may be disabled due to physical, intellectual or sensory impairments, mental conditions or mental illness, either permanently, or on a temporary basis. Such impairments, conditions or illnesses may exist from birth, or may have occurred later in life, and may have little, or major impact on individuals’ daily lives, in which case the individuals concerned may require significant levels of support.<sup>5</sup>
11. Persons with an intellectual disability have certain limitations in their cognitive functioning and skills, which may include communication, social and self-care skills.<sup>6</sup> Intellectual disabilities include conditions that lead to an increased difficulty in learning, and where the condition has been present since childhood or adolescence.<sup>7</sup>
12. In this context, it needs to be borne in mind that persons with mental and intellectual disabilities are among the most marginalized, vulnerable, and excluded groups in society. They often face various forms of social and cultural stigma and discrimination, as well as barriers to exercising their civil, political, economic, social and cultural rights.<sup>8</sup>

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<sup>4</sup> The International Covenant on Civil and Political Rights (adopted by General Assembly resolution 2200A (XXI) on 16 December 1966) entered into force on 23 March 1976. The Republic of Kazakhstan ratified the Covenant on 24 January 2006.

<sup>5</sup> United Nations Development Programme (UNDP), *Promoting the Human Rights of Persons with Disabilities in Europe and the Commonwealth of Independent States: Guide*, 2013, p. 14.

<sup>6</sup> See also OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, with a similar definition for intellectual disabilities on p. 21, which also lists examples for this form of disability, such as Down syndrome, foetal alcohol spectrum disorder, or (in some cases) autism.

<sup>7</sup> See OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, p. 21.

<sup>8</sup> Conference of States Parties to the Convention on the Rights of Persons with Disabilities, Note Prepared by the Secretariat to facilitate the round-table discussion on the theme “Promoting the rights of persons with mental and intellectual disabilities”, held at the 9<sup>th</sup> session of the Conference, on 14-16 June 2016, par 1.

13. The 2006 UN Convention on the Rights of Persons with Disabilities<sup>9</sup> (CRPD) covers a variety of areas relating to the rights of persons with disabilities. Article 1 of the CRPD stresses that this shall include “those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.
14. While the CRPD also refers to “mental impairment”, this term is not used by international organisations or international nongovernmental organizations in the field of disability. Instead, the UN Committee on the Rights of Persons with Disabilities has consistently used the term “psychosocial disabilities”. A person with a psychosocial disability may have alterations in thinking, mood or behaviour associated with distress or interference with personal functions.<sup>10</sup> These alterations may be labelled with terms such as “mental illness”, “mental disorder” or “psychiatric disorder”.
15. The CRPD contains principles that apply to the implementation of the rights set out in it. One of these principles is respect for difference and the acceptance of persons with disabilities as part of human diversity and humanity (Article 3 par d). Article 1 of the CRPD also aims to ensure the full participation of persons with disabilities in all aspects of life, rather than removing or restricting such rights, and promotes the principle of equal treatment, also in relation to girls and women (Article 6).
16. Article 12 of the CRPD establishes that persons with disabilities have the right to recognition everywhere as persons before the law and that they enjoy legal capacity on an equal basis with others in all aspects of life. This is not dependent on the type or nature of the disability, or the level of a person’s needs. States shall provide persons with disabilities with access to the support that they may need to exercise their legal capacity.
17. The participation in political and public life of persons with disabilities is outlined in Article 29 of the CRPD. This provision stipulates that states shall ensure that persons with disabilities can participate in political and public life on an equal basis with others, directly or through chosen representatives,<sup>11</sup> which includes the right and opportunity to vote and be elected. States shall also guarantee persons with disabilities the free expression of their will as electors. In addition to the above, Article 29 par b) of the CRPD obliges states to actively promote an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs, and to encourage such participation.<sup>12</sup> The denial or restriction of legal capacity often triggers a denial of political rights to certain persons with disabilities, especially of the right to vote.<sup>13</sup> Further, states should take appropriate steps, including via legislation to “employ persons with disabilities in the public sector” (Article 27 (1) (g) of the CRPD). This implies not only that selection and employment criteria must be non-discriminatory, but also that positive measures should be taken to create an enabling environment for the realization of full and equal participation of persons with disabilities, meaning that reasonable accommodation should be provided to persons with disabilities in the workplace.

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<sup>9</sup> The UN Convention on the Rights of Persons with Disabilities was adopted on 13 December 2006 during the sixty-first session of the General Assembly by resolution A/RES/61/106. The Republic of Kazakhstan ratified it on 21 April 2015.

<sup>10</sup> Ibid., where psychosocial disabilities are defined as “any condition that affects mental or emotional health. Examples include people with anxiety, depression, agoraphobia, bipolar disorder, schizophrenia or post-traumatic stress disorder (PTSD)”.

<sup>11</sup> States should do this by, *inter alia*, ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to use, and by protecting the right of persons with disabilities to vote, stand for elections, hold office and perform all public functions at all levels of government (see Article 29 par a ) i) and ii)).

<sup>12</sup> This should include participation in non-governmental organizations and associations concerned with the public and political life of the country, as well as the activities and administration of political parties and the formation and membership in organizations representative of persons with disabilities at international, national, regional and local levels (Article 29 par b)).

<sup>13</sup> See UN Committee on the Rights of Persons with Disabilities, [General comment No. 1](#) (2014) Article 12: Equal recognition before the law (Corrigendum), par 48.

18. At the OSCE level, the 1990 OSCE Copenhagen Document contains general commitments to the fact that all persons are equal before the law and entitled to equal protection without discrimination (par 5.9). In the same document, OSCE participating States have committed to “guarantee universal and equal suffrage to adult citizens” (paragraph 7.3) and ensures “the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination” (paragraph 7.5).<sup>14</sup> In 1991, OSCE participating States emphasized the importance of the political participation of persons with disabilities in the OSCE Moscow Document (Article 41), by committing “to ensure protection of the human rights of persons with disabilities”, “to take steps to ensure the equal opportunity of [persons with disabilities] to participate fully in the life of their society” and “to promote the appropriate participation of such persons in decision-making in fields concerning them”.<sup>15</sup> Most recently, the 2018 Berlin Declaration of the OSCE Parliamentary Assembly observed that persons with disabilities remained widely under-represented in parliaments across the OSCE region and urged all OSCE participating States to ensure “participatory processes for persons with disabilities in all phases of developing legislation or policies in the spheres of political and public life.”<sup>16</sup>
19. The OSCE/ODIHR has also published specific documents on the rights of persons with disabilities in the sphere of political participation, notably the 2017 Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities and the 2019 Guidelines on Promoting the Political Participation of Persons with Disabilities and has raised the rights of persons with disabilities in its election observation reports and legal opinions. Furthermore, according to the 1999 OSCE Istanbul Document, OSCE participating States have explicitly committed to follow up on OSCE/ODIHR’s electoral recommendations. It is worth noting that in election observation reports concerning Kazakhstan of 2019 and 2021, OSCE/ODIHR specifically recommended to reconsider the requirements concerning individuals’ legal capacity in terms of the rights to voting and stand for election, and other norms disenfranchising persons with disabilities with a view of bringing them in line with Kazakhstan’s international standards and obligations.

## **2. DOMESTIC LEGISLATIVE FRAMEWORK**

20. The Constitution of Kazakhstan contains numerous provisions on human rights and the right of citizens to public participation. Notably, Article 12 par 2 states that human rights shall belong to everyone upon birth and be recognized as absolute and inalienable. Article 14 further stipulates that everyone shall be equal before the law.
21. At the same time, par 2 of this provision does not include disability among the prohibited grounds of discrimination, and the Constitution does not make specific reference to the human rights of persons with disabilities. The Constitution and other laws also limit certain political rights for persons with intellectual or psychosocial disabilities, where a court has declared such persons to be legally incapable.
22. The Civil Code of Kazakhstan provides all persons with equal legal capacity (Article 17 par 3), with the exception of persons recognized by a court as legally incapable if they, “as a result of a psychiatric disease or mental disability”, cannot understand the meaning of their acts or direct them (Article 26). In such cases, a guardian will be appointed to

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<sup>14</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990 (Copenhagen Document).

<sup>15</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (Moscow Document).

<sup>16</sup> OSCE Parliamentary Assembly Berlin Declaration, Berlin, 7-11 November 2018.

- undertake all transactions on their behalf. Similarly, citizens who following “the abuse of alcoholic drinks or narcotic substances puts their family into a difficult financial position” may have their legal capacity restricted by court (Article 27). Also in this case, the court will establish guardianship, although the individual retains the ability to conduct minor day-to-day transactions. In the cases of both Articles 26 and 27, citizens may regain full legal capacity based on a pertinent court decision, if they are assessed as having recovered or if they cease their alcohol or drug abuse.
23. The right to political participation is set out in Article 33 of the Constitution and specifies that citizens of Kazakhstan may participate in the management of state affairs directly or through their chosen representatives, and to address public and local self-administrative bodies personally, or via individual or collective appeals. Based on Article 33 par 2, citizens have the right to vote and to be elected to office both at the national and at the local self-government levels, as well as to participate in all national referenda. However, par 3 of this provision states that the right to vote and be elected and to participate in an all-nation referendum shall not extend to, among others, citizens judged incapable by a court. This principle is reiterated in Article 4 par 3 of the Law on Elections, which states that citizens who have been recognized by a court as legally incapable shall not take part in elections, and in other relevant provisions regulating particular kinds of elections as set out in the Constitution, the Law on Elections, and the Law on Local Government and Self-Government.<sup>17</sup>
  24. Persons recognized by courts as incapable or partially capable are prohibited from being members of election commissions (Article 19 par 2-1 of the Law on Elections); Article 19 par 6 (5) also specifies that members shall be relieved of their duties if, among others, courts have deprived them of or restricted their legal capacity. Similarly, even though Article 33 par 4 states that all citizens have an equal right to serve in the public service, the 2015 Law on the Civil Service provides that citizens may not be admitted to the civil service if they are legally recognized as incapacitated or partially incapacitated (Article 16 par 3 (2)).
  25. The Law on Public Councils,<sup>18</sup> in its Article 10 par 1 (3), stipulates that persons “on the account in the organizations of public health services concerning mental illness” may not be candidates for membership in such public councils. Likewise, according to Article 39-3, par 1 of the Law on Local Government and Self-Government, persons “adjudged by courts as disabled” may not attend gatherings and meetings of local communities on “issues of local significance”. The above-mentioned gatherings are examples of citizens’ participation in local self-government, and take place as needed to debate and decide on issues and documents of relevance to the community, such as defining priority tasks of a community and how to implement them, appointing delegates to community meetings for a period of four years, making suggestions to local and regional governance bodies on issues of local significance, and hearing and debating reports from such bodies. The meetings of local communities, on the other hand, involve discussions on local programmatic and development documents, budget development and monitoring of budget implementation, hearing and debating reports of and elections to/dismissals from

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<sup>17</sup> Notably, Articles 54 par 1, 70, 86 and 115 of the Law on Elections clarify that this ban extends to the right to be elected as President, deputy of the Senate, deputy of the *Mazhilis* (Lower Chamber of Parliament), and as a member of a local self-governing body. Moreover, Article 47 par 1 of the Constitution foresees the premature removal from office of the President in cases where there is a continued incapacity to carry out official duties due to illness (which shall be determined by a commission set up for this purpose), while Article 52 par 5 states that the powers of Members of Parliament shall be terminated in cases where, among others, they are declared incapable. The same applies to deputies of *maslikhats* (local government bodies) under Article 20 par 3 of the Law on Local Government and Self-Government, whose mandates shall be terminated prematurely if a court has declared them legally incapable or partially legally capable.

<sup>18</sup> The Law on Public Councils outlines the legal status, formation and organization of public councils, which are consultative, advisory, supervisory bodies formed by ministries, bodies directly subordinated and accountable to the President of the Republic of Kazakhstan, as well as bodies of local state administration formed on issues within their competence (Article 1). The purpose of such bodies is to “express the opinion of civil society on socially important issues” (Article 3 par 1).

local self-government bodies, as well as other current and/or topical issues concerning a community.

26. Article 23 of the Constitution guarantees the right of all citizens to form associations, and Article 8 par 1 of the Law on Political Parties allows all citizens who are at least 18 years of age to be members of political parties. Paragraph 6 of the same provision states that membership of a political party cannot be limited on professional, social, race, tribal, national or religious bases, or dependent on sex and property status.

### **3. THE LEGAL CAPACITY OF PERSONS**

27. As explained in detail in the previous section, Article 26 of the Civil Code stipulates that individuals with intellectual or similar disabilities, and other persons recognized by courts as legally incapable due to a “psychiatric disease or mental disability”, need to be replaced by a guardian for all transactions that these persons wish to undertake. A court declaration removing legal capacity has serious consequences not only for a person’s private transactions, but also for the rights of the respective individual to participate in public life, including the right to vote and be elected to office, as will be shown in other sections of this Opinion. It also means that such persons are deprived of their legal standing; they are therefore unable to appeal against any incapacitation measure or initiate judicial procedures to have their full legal capacity restored.
28. In this context, it should be noted that the type of guardianship model outlined in Article 26 of the Civil Code can be described as proxy decision-making or substituted decision-making. As stated by the UN Committee on the Rights of Persons with Disabilities, substituted decision-making means that legal capacity is removed from a person for all decisions pertaining to their daily life. A substitute decision-maker is appointed by someone other than the person concerned (and possibly against their will), and decisions are taken based on what are considered to be the objective best interests of the person concerned, rather than on the person’s own will and preferences.<sup>19</sup> Instead of supporting the exercise of legal capacity and respecting the rights, will and preferences of persons with disabilities, substituted decision-making does the opposite; it deprives individuals of their legal capacity and hands over decision-making to someone else, thereby imposing the will of the state and of other individuals on such persons.<sup>20</sup> For this reason, the UN Special Rapporteur on the Rights of Persons with Disabilities has, based on the findings of the UN Committee, clearly stated that all forms of substitute decision-making are prohibited under the Convention, including substituted decision-making as a result of an assessment of a person’s mental capacity.<sup>21</sup>
29. This finding is based on the wording of Article 12 of the CRPD, which stipulates that states must recognise the universal legal capacity for all persons with disabilities, including for those requiring more intensive support. This means that people who have been assessed as having “severe” or “profound” intellectual disabilities still retain their legal capacity. As noted by the UN Committee, legal capacity and mental capacity are distinct concepts. While legal capacity involves the ability to hold and exercise rights and duties, mental capacity refers to a person’s decision-making skills, which naturally vary from one person to another and may be different for a given person depending on many

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<sup>19</sup> UN Committee on the Rights of Persons with Disabilities, Eleventh session 31 March–11 April 2014, General comment No. 1 (2014) Article 12: Equal recognition before the law (Corrigendum), par 27.

<sup>20</sup> *Ibid.*, par 17.

<sup>21</sup> UN Special Rapporteur on the rights of persons with disabilities, Report on the right of persons with disabilities to equal recognition before the law, A/HRC/37/56, 12 December 2017, par 26.

factors, including environmental and social factors.<sup>22</sup> Article 12 of the CRPD thus clarifies that perceived or actual deficits in mental capacity are not legitimate reasons for the denial of legal capacity, and may not be used as such.

30. It follows that states should adopt legislation that expressly recognizes the capacity of persons with disabilities to create, modify or end legal relationships and shall provide effective legal protection against any interference with such capacity.<sup>23</sup> Instead of restricting the legal capacity of persons with disabilities, states should protect people with disabilities from all forms of exploitation, violence and abuse (Article 16 of the CRPD) and against any interference in all aspects of life.<sup>24</sup>
31. Moreover, to help persons with disabilities exercise their legal capacity, states must provide them with access to supported decision-making arrangements of varying types and intensity, including informal and formal support arrangements.<sup>25</sup> Such arrangements include, for example, support networks (circles of support), peer and self-support groups, support for self-advocacy, independent advocacy and advance directives, in other words planning documents that set out in advance the arrangements to be put in place when the author lacks the ability to make decisions in the future.
32. The arrangements need to be available to persons with disabilities via relevant legislation and programmes and need to be accessible to them as well (for instance, by producing information in Easy Read formats and in accessible formats online). Moreover, they need to be effective and affordable. In contrast to substitute decision-making regimes, under a supported decision-making arrangement, legal capacity can never be removed or restricted; a supporter may not be appointed by a third party against the will of the person concerned; and support must be provided based on the will and preferences of the individual.<sup>26</sup>
33. For this reason, and in line with the above international human rights standards, **it is recommended that the relevant decision-makers review the Civil Code and other relevant laws allowing for guardianship and replace them with laws and policies allowing persons with disabilities to access support in exercising their legal capacity.** This approach would leave the legal capacity of persons intact, while providing them with the assistance that they may need to take full and informed decisions. Such laws and policies need to include proper safeguards to ensure that the rights, will and preferences of the respective individual are adequately respected, to protect them in the provision of support; support should never amount to substituted decision-making. In situations where

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<sup>22</sup> UN Committee on the Rights of Persons with Disabilities, Eleventh session 31 March–11 April 2014, General comment No. 1 (2014) Article 12: Equal recognition before the law (Corrigendum), par 13.

<sup>23</sup> UN Special Rapporteur on the rights of persons with disabilities, Report on the right of persons with disabilities to equal recognition before the law, A/HRC/37/56, 12 December 2017, par 24.

<sup>24</sup> Ibid.

<sup>25</sup> See other state practice, e.g. Sweden, which in 2000 established a nation-wide system of “personal ombudsmen” that provides easy and non-bureaucratic support in decision-making for persons with severe intellectual or psychosocial disabilities. These highly skilled personal ombudsmen engage in outreach and establish relationships with people in need of support. They assist individuals in taking control of their own situation, identify care needs, and ensure that these individuals receive the necessary help. A 2005 study showed that individuals with disabilities supported by a personal ombudsman required less care and that their psychosocial situation had improved. For more information see

<https://zeroproject.org/policy/sweden-2/#:~:text=In%202000%2C%20Sweden%20established%20a,individuals%20in%20need%20of%20support.>

See also the Irish 2015 Assisted Decision-Making (Capacity) Act, which, while not yet fully in force, foresees new systems of decision-making assistance, co-decision-making and decision-making representation. For more information, see <https://inclusionireland.ie/wp-content/uploads/2020/12/Decision-making-and-Consent-Assisted-Decision-making-Capacity-Act-2015.pdf>. See further the 2001 Representation Agreement Act of British Columbia (Canada), which provides a mechanism whereby individuals may arrange in advance the modalities of decision-making should they become incapable of making decisions independently, at [https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96405\\_01#section2](https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96405_01#section2).

<sup>26</sup> UN Special Rapporteur on the rights of persons with disabilities, Report on the right of persons with disabilities to equal recognition before the law, A/HRC/37/56, 12 December 2017, pars 27 and 29.

the will and preferences of a person cannot be established even after significant efforts, including through the provision of support and accommodations, a person should be appointed to take decisions on behalf of the person, who would undertake best interpretation of the will and preference of the respective individual.

34. The above safeguards should include time limits, periodic review of arrangements, dispute-solving and monitoring mechanisms. Overall, a comprehensive system needs to be in place to coordinate the effective access to supported decision-making of persons with disabilities, following a human rights-based approach.<sup>27</sup> This approach needs to take into account equality between men and women and the rights of the most disadvantaged and marginalized groups and should respond to the diversity of support needs of persons with disabilities.<sup>28</sup>
35. Furthermore, while the situation of persons who abuse alcohol or narcotics outlined in Article 27 of the Civil Code is undoubtedly very different from that of persons with intellectual disabilities, their legal capacity is likewise limited by a guardian if their substance abuse “puts their family into a difficult financial position”. While the need to protect the families of such persons is understood, **it is questionable whether such strong interference with the rights and lives of these persons is proportionate. It is recommended to rethink this approach, and to resolve such issues in a manner that takes into consideration both the rights of the families to sufficient financial support, but also the respective individuals’ rights to dispose of their funds as they see fit.**

#### RECOMMENDATION A.

To review the Civil Code and other relevant laws allowing for guardianship and replace them with laws and policies that will provide access to necessary support mechanisms to allow persons with disabilities to exercise their legal capacity, including advance directives and forms of supported decision-making, and to review the application of the guardianship model for substance abusers.

#### 4. SUFFRAGE RIGHTS

36. As stated in Article 33 par 3 of the Constitution and Article 4 par 3 of the Law on Elections, as well as other provisions of the Law on Elections,<sup>29</sup> if persons with mental or psychosocial disabilities are deprived of their legal capacity, they become ineligible to vote and stand for elections; in cases where this happens after elections have taken place, these persons shall be removed from office.<sup>30</sup>
37. The above approach is in direct violation of Article 29 of the CRPD, which obliges states to ensure that there are no barriers for persons with disabilities to effectively and fully participate in political and public life on an equal basis with others. States should focus on providing access and support to enable people to vote and stand for election. The above approach also raises concerns with respect to Article 25 of the ICCPR, which

<sup>27</sup> Ibid., pars 30, 31 and 62.

<sup>28</sup> Ibid., par 66. See also UN Special Rapporteur on the rights of persons with disabilities, Report on access to rights-based support by persons with disabilities, A/HRC/34/58, 20 December 2016, par 58.

<sup>29</sup> See Articles 54 par 1, 70, 86 and 115 of the Law on Elections.

<sup>30</sup> See in particular Article 47 par 1 and Article 52 par 5 of the Constitution, as well as Article 20 par 3 of the Law on Local Government and Self-Government.

provides that the right to public participation (including the right to vote) shall be exercised without discrimination and unreasonable limitations.

38. The OSCE/ODIHR has repeatedly stressed the importance of removing barriers that prevent persons with disabilities from voting and standing for election and has noted that legislation depriving citizens without legal capacity of suffrage rights is not in line with international standards.<sup>31</sup> Through the enjoyment of political rights, persons with disabilities assert their autonomy, thereby fully allowing their full and effective participation and inclusion in society.<sup>32</sup> As stated by the UN Committee of the Rights of Persons with Disabilities, “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability”.<sup>33</sup> The same is true for the right to stand for election. Thus, it is clear that neither general restrictions nor individual court decisions are acceptable bases for the removal of suffrage rights.<sup>34</sup> Put simply, a person’s disability (or notions of his/her mental capacity or ability) cannot be a valid reason to restrict this person’s right to political participation.
39. Moreover, excluding all persons declared legally incapable by courts from the right to vote or stand for election runs contrary to the requirements of Article 25 of the ICCPR. It is also not strictly proportionate to the aim of the law, as required by par 24 of the 1990 OSCE Copenhagen Document.
40. Notwithstanding the fact that many countries still have systems in place that are comparable to the system in Kazakhstan, there is a clear trend towards reducing restrictions on the right to vote of people with disabilities deprived of legal capacity across the OSCE area.<sup>35</sup> In 2014, full participation rights were guaranteed to all persons with disabilities, including those without legal capacity, among others in Austria, Croatia, Italy, Latvia, the Netherlands, Sweden and the United Kingdom. Since then, France, Ireland, Spain, Germany, and Denmark, among others, undertook reforms of their systems to enable all people to vote, including those under guardianship who had to go through an assessment with a judge. Reforms are at the proposal stage in several additional OSCE participating states.
41. In line with relevant OSCE/ODIHR election observation reports<sup>36</sup> and as emphasized by the UN Special Rapporteur on the Rights of Persons with Disabilities in 2018,<sup>37</sup> **it is recommended to abolish all barriers that prevent persons with intellectual or psychosocial disabilities from exercising their rights to vote or stand for office. It is**

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<sup>31</sup> See OSCE/ODIHR Limited Election Observation Mission Final Report on Parliamentary Elections of the Republic of Kazakhstan, 11 January 2021, p. 2, which at the same time noted that “authorities made significant efforts to facilitate participation of persons with disabilities in the electoral process, including access to information and polling stations.” The Report did, however, recommend further awareness training for polling officials as well as targeted voter education, to further “increase the participation of persons with disabilities in the electoral process” (p. 10). See also OSCE/ODIHR Election Observation Mission, Final Report on the Early Presidential Elections of the Republic of Kazakhstan, 9 June 2019, p. 9.

<sup>32</sup> Office of the UN High Commissioner for Human Rights, Thematic study on participation in political and public life by persons with disabilities, 21 December 2011, A/HRC/19/36, par 14.

<sup>33</sup> UN Committee on the Rights of Persons with Disabilities, Communication No. 4/2011: Human Rights Committee: views adopted by the Committee at its tenth session (2–13 September 2013), 16 October 2013, CRPD/C/10/D/4/2011, par 9.4.

<sup>34</sup> OSCE/ODIHR, Handbook on Observing and Promoting the Electoral Participation of Persons with Disabilities, 2017, p. 22.

<sup>35</sup> Research conducted by the European Union Agency for Fundamental Rights (hereinafter “FRA”), see [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2019-right-vote-ep-elections-legal-capacity\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2019-right-vote-ep-elections-legal-capacity_en.pdf)

The European NGO Inclusion Europe noted further legal reform efforts since then in other countries, including France, Spain, Germany, and Denmark, which reformed their systems to enable all people to vote, including those under guardianship who had to go through an assessment with a judge, see <https://www.inclusion-europe.eu/wp-content/uploads/2015/03/Legal-capacity-and-citizenship-English.pdf>. Notably, the German Federal Constitutional Court ruled in January 2019 that provisions on disenfranchisement from voting of persons placed under full guardianship were unconstitutional, see press release no. 13/2019 of 21 February 2019, on order 2 BvC 62/14 of 29 January 2019.

<sup>36</sup> OSCE/ODIHR Election Observation Mission, Final Report on the Early Presidential Election of the Republic of Kazakhstan, 9 June 2019, Recommendation D. 3.

<sup>37</sup> UN Special Rapporteur on the rights of persons with disabilities, Report on Kazakhstan of 19 January 2018, A/HRC/37/56/Add.2, par 113 b).

**also advisable to adopt legislation that ensures reasonable adjustments in electoral information, processes and environment to make it as easy as possible for such persons to exercise their suffrage rights**, in line with Article 29 of the CRPD.

42. Additionally, as also stated by the UN High Commissioner for Human Rights, Article 29 provides persons with disabilities not only with the right, but also with the opportunity to vote and be elected. Rather than prohibiting the political participation of persons with disabilities, the emphasis in electoral law, policy and practice should be to facilitate access to political life. This means that **state parties to the CRPD need to adopt positive measures to ensure that all eligible persons have the actual opportunity to exercise their rights to vote and stand for office**. It is not enough for states to extend voting rights to persons with disabilities (though this is an important first step); they also need to make sure that persons with disabilities may truly make use of such rights by, among others, allowing persons with disabilities to receive information about political parties and their manifestos, as well as the electoral process in accessible formats, including, e.g., Easy Read brochures. Similarly, persons with intellectual or psychosocial disabilities should, if they wish to stand for office, be actively assisted in these efforts, including via assistive and new technologies.
43. In terms of access to polling stations, OSCE participating States, have committed to “encourage favourable conditions for the access of persons with disabilities to public buildings and services, housing, transport, and cultural and recreational activities”, which includes access to polling stations, campaign venues and other premises in the course of elections.<sup>38</sup> In this context, it is welcome that the Election Law was amended in recent years to ensure greater participation of persons with disabilities in the electoral process, leading also to enhanced access to the Central Election Commission’s (CEC) website for persons with sight or hearing impairments, and to sign-language translation of CEC sessions.<sup>39</sup> Moreover, access to polling stations in Kazakhstan has improved substantially for persons with disabilities who are permitted to vote, with the majority of polling stations visited by OSCE/ODIHR observers during the recent parliamentary elections providing unassisted access to voters with disabilities.<sup>40</sup> Although this has been particularly important for the persons with physical disabilities, making polling stations and public institutions more accessible may also be crucial for persons with intellectual or psychosocial disabilities.
44. The competent authorities are encouraged to ensure that all polling stations provide such access to persons with disabilities, both intellectual/psychosocial and physical, including to wheelchair users. The use of assistive voting devices should likewise be facilitated, so that persons with visual impairments can vote independently. **Overall, the CEC should continue to undertake efforts, in consultation with organizations representing disabled persons and other stakeholders, to facilitate the autonomous participation of persons with disabilities in the electoral process, including through further improving the physical accessibility of polling stations and providing adequate information in accessible formats.**
45. It is important that polling stations are accessible to people with a range of disabilities, including those who do not cope well in large crowds. **The possibility of assisted voting by a person of one’s choice, as set out in Article 42 par 1 of the Law on Elections,**

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<sup>38</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (Moscow Document), par 41.1.

<sup>39</sup> See OSCE/ODIHR Limited Election Observation Mission Final Report on Parliamentary Elections of the Republic of Kazakhstan, 11 January 2021, p. 10.

<sup>40</sup> *Ibid.*

**should also apply to persons with intellectual and psychosocial disabilities.<sup>41</sup> Further, those temporarily residing in mental health hospitals or social care institutions must also be enabled to vote, e.g. with the help of mobile polling stations, which are already foreseen in Article 41 par 6 of the Law on Elections for persons unable to come to polling stations for health reasons, or by being given the opportunity to vote by post in advance. It is important to have measures in place to ensure that staff of such facilities do not vote on behalf of their patients/residents.**

46. Finally, and on a general note, it has been observed that contrary to Article 31 of the CRPD, there are no legal requirements in Kazakhstan requiring that electoral data be collected and disaggregated by various types of disabilities and gender. Consequently, there is no data available on the registration and turnout of persons with disabilities in order to assess their voting participation, or on the number of persons with disabilities who have registered as candidates.
47. In this context, the CRPD Committee recommends that **states “update and collect data and statistics on persons with disabilities disaggregated by age, sex, type of impairment, ethnicity and geographic position.”<sup>142</sup>** Furthermore, the collection and regular updates of data are important to inform, formulate and implement fact-based policies related to the electoral participation of persons with disabilities and to address barriers that prevent their full participation.

#### RECOMMENDATION B.

To remove the restrictions of the rights of citizens to vote and stand for office on the basis of legal capacity found in Article 33 par 3 of the Constitution and in Article 4 par 3 of the Law on Elections, as well as other related legislative provisions;

To adopt regulations that facilitate access to public and political life of persons with intellectual or psychosocial disabilities and extend existing support measures in the Law on Elections to such voters as well;

To require in legislation that state authorities collect and make public data on voting disaggregated by disability, age and gender.

## 5. THE RIGHT TO ACCESS OTHER FORMS OF PUBLIC OFFICE

48. In Kazakhstan, Article 16 par 3 (2) of the Law on the Civil Service prohibits citizens from being admitted to the civil service if they are legally recognized as incapacitated or partially incapacitated. Similarly, Article 19 par 2-1 of the Law on Elections states that persons recognized by court as incapable or partially capable cannot be members of election commissions; if they are declared legally incapable or partially capable after their appointment, they shall be relieved of their duties (Article 19 par 6 (5)).

<sup>41</sup> See also Office of the UN High Commissioner for Human Rights, Thematic study on participation in political and public life by persons with disabilities, 21 December 2011, A/HRC/19/36, par 15.

<sup>42</sup> See UN Committee for the Rights of Persons with Disabilities, Concluding observations on the initial report of Serbia, CRPD/C/SRB/CO/1, 23 May 2016, par 64, where Serbia was urged to include such information in its existing database on social services.

49. As set out in previous sections of this Opinion, the current legal provisions prevent persons with intellectual or psychosocial disabilities from being part of any kind of public office.<sup>43</sup> This approach is at odds with Article 25 par c) of the ICCPR, which provides individuals with the right to have access, on general terms of equality, to the public service in their country. While public service is not mentioned explicitly in Article 29 of the CRPD, this provision does specify that persons with disabilities should be allowed to participate in political and public life on an equal basis with others and to “perform all public functions at all levels of government”.
50. Moreover, states that have ratified the CRPD have committed to allow and put in place an enabling environment for all persons, including those with intellectual and psychosocial disabilities, to participate in all aspects of public life, including public service. States must do this by, among others, supporting persons with disabilities, as needed, with relevant tools and information to ensure that they may apply for and perform roles in public service on an equal level with other individuals. To ensure access on general terms of equality, the criteria and processes for appointment, promotion, suspension and dismissal of civil servants must be objective and reasonable and may not give rise to any form of discrimination. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.<sup>44</sup>
51. For this reason, and in order to ensure full adherence of Kazakhstan’s domestic legislation with the principles and obligations of the CRPD, **it is recommended to remove the above-mentioned legal prohibitions for persons with disabilities in the public service and on election commissions, and to replace them with provisions that enable, rather than prohibit, access to such positions, which would ensure greater compliance with the human rights approach outlined in the CRPD.**

#### **RECOMMENDATION C.**

To remove the above-mentioned prohibitions on persons with disabilities in the public service and on election commissions in Article 16 par 3 (2) of the Law on the Civil Service and Article 19 par 2-1 of the Law on Elections respectively, and to replace them with provisions that comply with Kazakhstan’s obligations under the CRPD.

## **6. THE RIGHT TO PARTICIPATE IN PUBLIC ADVISORY BODIES, MEETINGS AND ASSOCIATIONS**

52. The 2015 Law on Public Councils outlines the legal status, formation and organization of public councils, which are consultative, advisory, supervisory bodies formed by ministries, bodies directly subordinated and accountable to the President of the Republic of Kazakhstan, as well as bodies of local state administration formed on issues within their competence (Article 1). The purpose of such bodies is to “express the opinion of civil society on socially important issues” (Article 3 par 1). According to Article 10 par 1 (3), persons who are “on the account in the organizations of public health services

<sup>43</sup> See also UN Special Rapporteur on the rights of persons with disabilities, Report on Kazakhstan of 19 January 2018, A/HRC/37/56/Add.2, par 88, noting that despite Kazakhstan’s intentions to open the labour market to persons with disabilities, such persons remained largely excluded from employment in general. The UN Special Rapporteur thus encouraged the Government of Kazakhstan to make every effort to render the labour market and working environments inclusive of and fully accessible to all workers with disabilities.

<sup>44</sup> UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, par 23.

- concerning mental illness” may not be candidates for membership in such public councils.
53. Moreover, according to Article 39-3, par 1 of the Law on Local Government and Self-Government, persons “adjudged by courts as disabled” may not attend gatherings and meetings of local communities. Such gatherings are examples of citizens’ participation in local self-government, and take place as needed to debate and decide on issues and documents of relevance to the community, but also to appoint delegates to meetings for a period of four years.
  54. The above approach, which deprives persons with intellectual or psychosocial disabilities from participating in advisory bodies, or in local community meetings or gatherings, is restrictive and not in line with the CRPD and other human rights instruments and OSCE commitments that Kazakhstan has ratified and entered into.
  55. Primarily, the respective provisions are not compliant with the general right to public participation set out in Article 25 of the ICCPR. This provision states that every citizen shall have the right and the opportunity to participate, directly or through his/her chosen representatives, in the conduct of public affairs. The provision specifies that this shall take place without discrimination or unreasonable restrictions. As stated in the UN Human Rights Committee’s General Comment No. 25 on Article 25, citizens also take part in the conduct of public affairs by exerting influence through public debate, including the freedom to criticize and oppose, or hold peaceful demonstrations and meetings.<sup>45</sup>
  56. Moreover, Article 29 of the CRPD stipulates that states should ensure that persons with disabilities can participate in political and public life on an equal basis with others, directly or through chosen representatives. The approach chosen by the above laws would deprive persons with intellectual and similar abilities from participating in even the most basic forms of public participation, i.e. public meetings and advisory bodies, and thus is in direct contradiction with the CRPD. Prohibiting people with disabilities from engaging in this form of political participation also constitutes direct discrimination, prohibited by Article 5 of the CRPD.
  57. Additionally, OSCE participating States have committed to, among others, ensure the “the equal opportunity of [persons with disabilities] to participate fully in the life of their society” and “to promote the appropriate participation of such persons in decision-making in fields concerning them”.<sup>46</sup> Public councils and local community meetings would appear to be appropriate and useful channels whereby political participation could take place, and should not be closed to persons with intellectual or similar disabilities.
  58. At the same time, as noted in the 2019 OSCE/ODIHR Guidelines on Promoting the Political Rights of Persons with Disabilities,<sup>47</sup> states often presume that that persons with disabilities are uninterested or unable to participate in political life, and do not provide them with sufficient opportunities to participate in civic or political education programmes, and related materials providing civic and voter education are often inaccessible. Such educational gaps may lead to little or no understanding of the basics of democratic decision-making structures, policies, branches of power and mechanisms for creating legislation. Ensuring equal opportunities for persons with disabilities to participate fully in the political life of society thus also means providing them with

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<sup>45</sup> UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, pars 8 and 25.

<sup>46</sup> Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (Moscow Document), par 41.

<sup>47</sup> OSCE/ODIHR, Guidelines on Promoting the Political Participation of Persons with Disabilities, 2019, p. 35.

sufficient education and materials to ensure that persons with disabilities are sufficiently educated on political processes, structures and institutions.

59. For the above reasons, **it is recommended to remove Article 10 par 1 (3) of the Law on Public Councils and Article 39-3 par 1 of the Law on Local Government and Self-Government, and to instead allow persons with intellectual and similar disabilities to be nominated as members of public councils, and to attend and participate in local meetings and gatherings, with the requisite support, including education and access to the necessary materials.**
60. Finally, the UN Human Rights Committee has stressed, in its General Comment No. 25, that citizens also take part in the conduct of public affairs through their capacity to organize themselves. This participation is supported by ensuring freedom of expression, assembly and association, including the freedom to engage politically through political parties.<sup>48</sup>
61. In this context, it is recalled that the Constitution does not limit the rights of persons with intellectual and psychosocial disabilities to found and join associations and be members of political parties. The Law on Political Parties also contains no membership ban for this category of persons. **At the same time, Article 8 par 6 specifies that membership of a political party cannot be limited on professional, social, race, tribal, national or religious bases, or dependent on sex and property status. Given that this provision does not contain any reference to other unnamed protected characteristics, it does not protect against discrimination based on a person's disability, including intellectual or psychosocial disability. It is recommended to expand Article 8 par 6 accordingly.**

#### **RECOMMENDATION D.**

To remove Article 10 par 1 (3) of the Law on Public Councils and Article 39-3 par 1 of the Law on Local Government and Self-Government, and allow persons with intellectual and similar disabilities to be nominated as members of public councils, and to attend and participate in local meetings and gatherings.

#### **RECOMMENDATION E.**

To expand Article 8 par 6 of the Law on Political Parties, to ensure that it also protects persons with disabilities from discrimination.

## **7. RECOMMENDATIONS RELATED TO THE PROCESS OF PREPARING AND ADOPTING THE DRAFT LAW**

62. OSCE participating States have committed to ensure that legislation will be “adopted at the end of a public procedure, and [that] regulations will be published, that being the condition for their applicability” (1990 Copenhagen Document, para. 5.8).<sup>49</sup> Moreover, key commitments specify that “[l]egislation will be formulated and adopted as the result

<sup>48</sup> UN Human Rights Committee General Comment 25, The right to participate in public affairs, voting rights and the right of equal access to public service, UN Doc. CCPR/C/21/Rev.1/Add.7, pars 8 and 25.

<sup>49</sup> Available at <<http://www.osce.org/fi/odihr/elections/14304><http://www.osce.org/fi/odihr/elections/14304>>.

- of an open process reflecting the will of the people, either directly or through their elected representatives” (1991 Moscow Document, para. 18.1).<sup>50</sup> The Venice Commission’s Rule of Law Checklist also emphasizes that the public should have a meaningful opportunity to provide input.<sup>51</sup>
63. Article 4 par 3 of the CPRD establishes a duty on states to closely consult with and actively involve persons with disabilities through their representative organizations in the development and implementation of all laws and policies relevant to the rights of persons with disabilities. This includes implementation of Article 29 on participation in political and public life.
64. For consultations on draft legislation to be effective, they need to be inclusive and involve consultations and comments by the public, including groups consisting of and supporting persons with disabilities.<sup>52</sup> The UN Committee of the Rights of Persons with Disabilities’ General Comment No. 7 notes that such consultations should cover “the full range of legislative, administrative and other measures that may directly or indirectly impact the rights of persons with disabilities”.<sup>53</sup> The organizers of consultations should also provide sufficient time to stakeholders to prepare and submit recommendations on draft legislation, while the State should set up an adequate and timely feedback mechanism whereby public authorities should acknowledge and respond to contributions, providing for clear justifications for including or not including certain comments/proposals.<sup>54</sup>
65. To guarantee effective participation, consultation mechanisms must allow for input at an early stage *and throughout the process*,<sup>55</sup> meaning not only when a draft is being prepared by relevant ministries but also when it is discussed before Parliament (e.g., through the organization of public hearings). It is thus recommended to discuss the laws reviewed in this opinion, and future legal reform efforts with a wide array of stakeholders, including in particular groups representing persons with intellectual or psychosocial disabilities, to ensure that their rights and interests are adequately taken into account. Such consultations need to be effective and meaningful, and should involve not only the design, but also the implementation, and monitoring of such laws.<sup>56</sup>
66. Given the potential impact of such legislation on the exercise of human rights and fundamental freedoms, an in-depth regulatory impact assessment, including on the compliance of planned laws and policies with the rights of persons with intellectual and psychosocial disabilities, is essential. Such impact assessment should contain a proper problem analysis, using evidence-based techniques to review the current legislation, and identify the most efficient and effective option for regulatory reform.<sup>57</sup> Proper research in relation to legal capacity and supported decision-making will assist this process. Such research may lead to both quantitative and qualitative data on key matters such as the

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<sup>50</sup> Available at <<http://www.osce.org/fi/odihr/elections/14310>><http://www.osce.org/fi/odihr/elections/14310>.

<sup>51</sup> See Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

<sup>52</sup> See OSCE/ODIHR, *Guidelines on Promoting the Political Participation of Persons with Disabilities*, 2019, pp. 86-88, with some practical details on organizing consultations with persons with disabilities.

<sup>53</sup> UN Committee on the Rights of Persons with Disabilities, General comment No. 7 (2018) on the participation of persons with disabilities, including children with disabilities, through their representative organizations, in the implementation and monitoring of the Convention, 9 November 2018, par 18. General comment No. 7, par 20 also notes that measures indirectly affecting persons with disabilities might concern constitutional law, electoral rights, access to justice or the appointment of the administrative authorities governing disability-specific policies, among others.

<sup>54</sup> See e.g., [Recommendations on Enhancing the Participation of Associations in Public Decision-Making Processes](#) (from the participants to the Civil Society Forum organized by the OSCE/ODIHR on the margins of the 2015 Supplementary Human Dimension Meeting on Freedoms of Peaceful Assembly and Association), Vienna 15-16 April 2015.

<sup>55</sup> See e.g., *op. cit.* footnote 90, Section II, Sub-Section G on the Right to participate in public affairs (2014 OSCE/ODIHR Guidelines on the Protection of Human Rights Defenders).

<sup>56</sup> UN Human Rights Council, Resolution on Mental Health and Human Rights, A/HRC/43/L.19, adopted on 19 June 2020, par 15.

<sup>57</sup> See e.g., ODIHR, [Preliminary Assessment of the Legislative Process in the Republic of Uzbekistan](#) (11 December 2019), Recommendations L and M; and Venice Commission, [Rule of Law Checklist](#), CDL-AD(2016)007, Part II.A.5.

current situation of persons with intellectual or psychosocial disabilities, and substitute decision-making, also in other countries. This can provide legislators and policymakers with valuable information and help them decide on possible lines of action, e.g. to guarantee the right to legal capacity and to implement supported decision-making.<sup>58</sup>

67. In light of the above, **the public authorities are encouraged to ensure that the reviewed legislation undergoes sufficient evidence-based reviews outlining its impact on persons with intellectual or psychosocial disabilities, and that wide and inclusive consultations are conducted based on the findings of such reviews. Additionally, any efforts to reform the legislation should undergo similar impact assessments, and be subjected to inclusive, extensive and effective consultations, including with civil society and groups and representatives of persons with intellectual or psychosocial disabilities in particular, while also offering equal opportunities for women and men to participate. According to the principles stated above, such consultations should take place in a timely manner, at all stages of the law-making process, including before Parliament. As an important element of good law-making, a consistent monitoring and evaluation system of the implementation of new legislation and its impact should also be put in place that would efficiently evaluate the operation and effectiveness of the legislation, once adopted.**<sup>59</sup>

#### **RECOMMENDATION F.**

To ensure that the legislation submitted for the review undergoes sufficient evidence-based reviews outlining its impact on persons with intellectual and psychosocial disabilities and that wide and inclusive consultations are conducted based on the findings of such reviews.

To ensure that, efforts to reform any future legislation should undergo similar impact assessments, and should also be subjected to inclusive, extensive, effective and timely consultations, while new legislation should undergo consistent monitoring and evaluation

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<sup>58</sup> UN Special Rapporteur on the rights of persons with disabilities, Report on the right of persons with disabilities to equal recognition before the law, A/HRC/37/56, 12 December 2017, par 69.

<sup>59</sup> See e.g., OECD, [International Practices on Ex Post Evaluation](#) (2010).