









INTERNATIONAL ELECTION OBSERVATION MISSION Georgia – Parliamentary Elections, 8 October 2016

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

PRELIMINARY CONCLUSIONS

The 8 October elections were competitive, well-administered and fundamental freedoms were generally respected. The calm and open campaign atmosphere was, however, impacted by allegations of unlawful campaigning and some incidents of violence. The election administration and the management of voter lists enjoyed confidence. The media is pluralistic, but some monitored broadcasters lacked balance in their campaign coverage. Debates offered a useful platform for contestants to present their views. Voting proceeded in an orderly manner, but counting was assessed more negatively due to procedural problems and increased tensions.

The electoral legal framework is conducive to holding democratic elections. Late amendments to the electoral law impacted election operations and the campaign. Recent legal changes also resulted in the drawing of new constituency boundaries aiming to respect the principle of equal suffrage, as previously recommended. However, some deviations still remain and the changes did not provide sufficient parameters for determining boundaries or set procedures for future review.

The election administration, led by the Central Election Commission (CEC), worked in a timely and professional manner and the CEC enjoyed a high level of confidence amongst electoral stakeholders. More than half of the election commission members were appointed by political parties. Allegations of commissions lacking impartiality when appointing the remaining lower-level commission members persisted throughout the campaign, partially due to the discretion in the legal framework.

There is increased trust and confidence in the accuracy of the voter lists amongst election stakeholders. Election commissions gave voters ample opportunity to verify their information on the lists. Legal amendments eased registration procedures for previously disenfranchised voters and improved the inclusiveness of voter lists, but were introduced too late to be fully effective.

Twenty-five parties and blocs were registered for the proportional ballot and 816 candidates in majoritarian contests. While voters could select from a wide range of contestants, the late introduction of changes to the political party legislation impacted the registration of some parties and the inclusiveness of the registration process. Seven of nine eligible parties met the non-binding gender quota on their candidate lists and qualified for additional public funding. There were 143 female majoritarian candidates.

The campaign was competitive and largely calm, despite isolated violent incidents. While fundamental freedoms were generally respected and contestants were able to campaign freely, several parties voiced allegations of political pressure on candidates and campaign staff. The tone of the campaign between the two leading parties was confrontational and permeated the election atmosphere. Campaign issues included unemployment, economy, development of infrastructure and social security as well as the publication surveillance recordings. Incidents of the misuse of administrative resources and unlawful campaigning were reported.

Amendments to campaign finance regulations only partially addressed Council of Europe's Group of States against Corruption (GRECO) recommendations for a more uniform legal framework and proportionate and dissuasive sanctions for infringements. The State Audit Office (SAO), responsible

for overseeing party and campaign finances, investigated 694 donations and imposed sanctions on 7 donors. Partially due to new procedures requiring the SAO to obtain court approval for its investigations, campaign finance violations were often not addressed in a timely manner, undermining the effectiveness of the SAO's oversight. There was a substantial imbalance in the amount of funds that parties were able to raise.

Media legislation provides a sound framework for the freedom of media. The overall pluralism of the media landscape has improved. Media outlets are perceived as polarized. The Georgian National Communications Commission did not comprehensively disclose the findings of its monitoring and did not react in a timely and effective manner to violations they detected. OSCE/ODIHR EOM media monitoring showed that the monitored broadcasters respected legal provisions pertaining to free and paid advertising, but were not in compliance with the law with regard to the publication of opinion polls. Debates offered an inclusive and pluralistic platform for contestants to present their views, but some monitored broadcasters were biased in their news or current affairs programmes.

The Election Code establishes a timely dispute resolution process for appeals of election commission decisions, but limits the voter's right to appeal, contrary to international commitments and good practice. Election commissions and courts received 187 complaints during the campaign period, and reviewed them transparently in open sessions informing the parties of the hearings. The lack of an expedited deadline for taking administrative action against electoral offenses and insufficient resources for investigations limit the effectiveness of this remedy. Many electoral stakeholders acknowledged the need to continue reform of the judicial system.

Candidates from national minorities were nominated by several parties and blocs on their lists, but few in electable positions, and in majoritarian contests in minority populated regions. In these regions, the campaign was conducted in a free and competitive environment. It was more vivid in Azeri areas and more subdued in Armenian areas. Concerns were raised that some new boundaries between constituencies may decrease the possibility for representation of national minorities.

In an inclusive process, the CEC accredited 55 international and 111 citizen observer organizations. The participation of numerous citizen observers at all stages of the electoral process contributed to the transparency of the elections.

Election day generally proceeded in an orderly manner, but tensions increased during the day and several violent altercations took place near and in polling stations. Opening and voting were assessed positively in almost all polling stations. In the few polling stations where the process was assessed as negative, this was largely due to the interference in the work of the Precinct Election Commissions by unauthorized persons. Counting was assessed notably worse due to procedural problems and increased tensions. Tabulation in the District Election Commissions was assessed more positively. The presence of significant numbers of citizen observers and party representatives enhanced transparency, but contributed to overcrowding and they were frequently interfering in the work of the commissions.

PRELIMINARY FINDINGS

Background

On 5 June, the president called the parliamentary elections for 8 October. These were the first parliamentary elections held under the new semi-presidential political system with powers of the president reduced in favour of the prime minister and parliament. Despite the broad consensus reached on the abolishment of the majoritarian component of the electoral system in favour of a fully

proportional system ahead of the elections, the adoption of the reform was postponed until after the 2016 elections.

The elections were held against a backdrop of public discontent with politics and the political elite, and the country's continued poor economic performance. Signed in June 2014, the Association Agreement with the European Union also impacted the context of elections. The tensions between the Georgian Dream (GD) and the United National Movement (UNM) permeated all aspects of the political environment and marred the atmosphere for elections.

In the last parliamentary elections, the ruling coalition, led by the GD, won 85 of 150 seats and the largest opposition group, the UNM, 65 seats. Recent political developments fragmented the ruling coalition and parliamentary parties.¹ The GD and its coalition partners took part in the elections separately. National minorities are represented in the outgoing parliament by seven members.²

Electoral System and Legal Framework

The 150 members of parliament (MPs) are elected for four-year terms under a mixed electoral system. Of these, 77 members are elected under a closed list proportional component in one nationwide constituency and 73 in single-mandate constituencies. Parties and blocs must surpass a five per cent threshold of valid votes cast to qualify for proportional seat allocation. In majoritarian contests, candidates must receive more than 50 per cent of valid votes cast to be elected, a threshold that has been increased from 30 per cent by the December 2015 amendments.

The legal framework is conducive to holding democratic elections, but the introduction of amendments to fundamental elements of the electoral law less than a year prior to the elections is against international good practice.³ Late changes created some confusion amongst voters about where to vote and who their candidates are, which made it necessary for the election administration to adjust its operations and impacted the campaigns of some majoritarian candidates. The elections are primarily regulated by the 1995 Constitution and 2011 Election Code (last amended in June 2016) as well as decrees and ordinances of the Central Election Commission (CEC).⁴

Significant amendments were made to the Election Code in 2015 followed by a package of technical amendments adopted in June 2016.⁵ At the end of 2015, aiming to respect the principle of equal suffrage and address previous OSCE/ODIHR recommendations, new procedures for boundary

Since the 2012 parliamentary elections, the Free Democrats (FD), National Forum (NF) and the Republican Party (RP) left the GD-led coalition; four members left the GD to sit as independents. Currently, the GD is supported by

12 independent majoritarian candidates, the Industry Will Save Georgia and Conservative Party (CP) with six

The 2002 <u>Council of Europe's European Commission for Democracy through Law (Venice Commission) Code of Good Practice in Electoral Matters</u> states that the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election.

Other applicable laws include the 1997 Law on Political Unions of Citizens, Criminal Code, Administrative Offences Code, Administrative Code, 2008 Law on the State Audit Office and 2004 Law on Broadcasting. The CEC adopted 39 decrees and 292 ordinances, 192 ordinances of the CEC Chairperson. Five ordinances of the CEC Chairperson were appealed to the court, of which one was satisfied, and the others were not. Four decrees were appealed, none were satisfied.

Among the most important changes are the transitional provisions that ease conditions for some categories of voters to be registered at their factual or previously registered address. Other amendments defined the number of voters necessary to register an initiative group to support nomination of independent candidates, decreased the amount of free airtime provided to contestants on public and private broadcasters, and allowed police, in exceptional cases to prevent violence, to be present near polling stations without a request from polling staff.

members each. Four members from the UNM founded a new party – New Political Centre Girchi. Including three Armenians, three Azeri, and one Ossetian.

delimitation of single-mandate constituencies were adopted. The amendments prescribed the redrawing of constituencies in a two-stage process, defined the boundaries for 43 of 73 single-member constituencies and mandated the CEC to delimitate the remaining 30 constituencies in municipalities where more than one election district should be created.

The amendments did not provide specific parameters for determining constituency boundaries, such as population size, number of registered voters, number of people actually voting, or a mechanism applicable to minority populated areas. The law also does not specify criteria for permitted deviations in the number of voters and does not sufficiently address the issue of managing future boundary reviews. Further, the largest deviations from the average number of voters still contravene international good practice, and a few constituencies do not satisfy the principle of connectivity. Many OSCE/ODIHR EOM interlocutors reported that the delimitation process lacked sufficient transparency and engagement of relevant stakeholders.

Election Administration

Elections are managed by a three-tiered election administration: the CEC, 73 District Elections Commissions (DECs) and 3,634 Precinct Election Commissions (PECs). For these elections, 53 DECs fully exercised their functions prescribed by law, while the remaining 20 DECs acted as Subsidiary District Election Commissions (SDECs). All election commissions are composed of 13 members, 7 of whom are nominated by the political parties that qualify for public funding having obtained at least 3 per cent of the votes in the last parliamentary or local elections. At the CEC level, the additional five members are appointed by the parliament upon the nomination by the president, and there are separate procedures for the selection of the chairperson. Three CEC members are women, including the chairperson. Women comprise approximately 62 per cent of DEC and 69 per cent of PEC members.

The elections were managed at all levels in a timely and professional manner. The CEC operated transparently, promptly posting decrees, ordinances, decisions and minutes of the meetings on its website and regularly conducting briefings and meetings with stakeholders. All CEC sessions were open to observers, party and media representatives. Throughout the process, the CEC enjoyed a high level of confidence amongst stakeholders.

During the pre-election period, allegations were made about the CEC, and particularly DECs, lacking impartiality when appointing lower-level commission members. The legal criteria for electing PEC members are vague and leave space for misinterpretation, which gave rise to concerns expressed by various stakeholders.

The largest deviation in numbers of voters from the average size is currently 25.4 per cent.

In addition, 11 special precincts were established in penitentiary institutions and medical facilities. For out-of-country voting, 57 PECs were established in 42 countries.

The seven political parties that received the highest amount of state funding include the UNM, GD, CP, RP, FD, Industry Will Save Georgia and NF.

The OSCE/ODIHR and Venice Commission Joint Opinion on Amendments to the Election Code of Georgia, 14 March 2016 states that "many electoral stakeholders criticised the initial stages of creating the constituencies as lacking transparency, impartiality and broad engagement. Later stages of consultation on the proposed boundaries suffered from a lack of stakeholder engagement, which further undermined the inclusiveness of the process".

SDECs mainly provided logistical, administrative and information support to DECs. There was no tabulation of results at SDECs.

The president nominates three candidates and then the CEC members appointed by parties (with exception of the member appointed by the party with the best results in the previous parliamentary elections) elect the chairperson. If the CEC members fail to elect the chairperson within the prescribed deadline, the parliament has seven days to elect him or her.

According to figures from the CEC.

PECs were established and held their first sessions electing the three leading positions (chairperson, deputy chairperson and secretary) by the legal deadline, with the exception of 258 PECs that had to rerun their first sessions and re-elect commission members. The selection process for the three positions was carried out in accordance with the law. In the vast majority of PECs, DEC-appointed staff were selected. However, in 373 precincts where the party appointees were selected as chairpersons, the results heavily favoured the GD with 300 appointments, followed by the CP - 30, Topadze – Industrials, Our Homeland - 25, UNM - 6, Democratic Movement (DM) - 6, RP - 3 and FD - 3.

The training centre of CEC conducted comprehensive trainings for DEC and PEC members in three phases. Training sessions observed by the OSCE/ODIHR EOM were generally well-attended and conducted in a professional and interactive manner. The centre also successfully organized trainings on election-related topics for various stakeholders, such as media representatives, local administration officials, potential female candidates, representatives of electoral contestants, and citizen observers.

The authorities made a concerted effort to facilitate access for persons with disabilities. The CEC announced that 1,115 polling stations were barrier-free, including by arranging special booths for wheelchair users, and equipped all polling stations with magnifying sheets and tactile frames for visually impaired voters.

The CEC voter education and information campaign was well-prepared and comprehensive. It consisted of banners, printed materials, videos and spots on the Internet. Videos conveyed messages on various aspects of the electoral process that were available in minority languages and in sign language, and were broadcasted on private and public TV channels.

Voter Registration

Georgia has passive voter registration. Citizens over 18 years of age have the right to vote, except for prisoners sentenced to more than five years imprisonment. In March 2015, persons without legal capacity were granted the right to vote. ¹⁵ The CEC is responsible to compile voter lists (VLs) based on data provided by the Public Service Development Agency (PSDA) within the Ministry of Justice and other relevant authorities. ¹⁶

Out of 3,720,400 citizens, there were 3,513,882 voters on final VLs.¹⁷ Some 49,700 voter were registered abroad. VLs were observed by the OSCE/ODIHR EOM to be properly posted in polling stations from 8 September for public scrutiny, and additions and corrections were permitted until 22 September. In addition, voters were given ample other options for verifying their data on VLs through the CEC website, mobile phones, and a special application through 7,000 payment terminals around the country. The CEC reported that between June and September, approximately 950,000 voters checked their information via these three methods.

The PSDA is introducing biometric data in the state registry. ¹⁸ To remove inconsistencies in the VLs, door-to-door verifications were conducted and facial recognition software is being used to remove

Deputy chairpersons: DEC-appointed staff - 2,934, GD - 470, CP - 86, Topadze - Industrials, Our Homeland - 51, RP - 32, UNM - 23, FD - 19, DM - 14. Secretaries: DEC-appointed staff - 3,075, GD - 241, CP - 118, Topadze - Industrials, Our Homeland - 94, RP - 40, UNM - 13, FD - 32, DM - 21.

Following Constitutional Court Decision #2/4/532,533 of 8 October 2014 on citizens recognized as incapable.

¹³ In 3,261 of 3,634 PECs.

Ministry of Defence, Ministry of Corrections and Legal Assistance, Ministry of Internally Displaced Persons, local self-government bodies and the Supreme Court.

Population data according to the National Statistics Office.

Currently, the PSDA has biometric data for some 2,400,000 voters.

duplicate records. In addition, a photograph of the voter is included on the VLs, which, according to OSCE/ODIHR EOM interlocutors, appears to be largely accepted by the public. In general, increased trust and confidence in the accuracy of VLs was noted.

Amendments in force from 12 July gave voters without an officially registered address or valid documents the opportunity to register and be added to the VLs according to the address of their previous or factual residence by 1 August. Despite the intention of authorities to increase inclusiveness, the timeframe was insufficient. Considering the short period, the CEC adopted a special decree extending the period for registration for these categories of voters until 22 September. The CEC informed the OSCE/ODIHR EOM that 62,362 voters previously removed from the VLs were reincluded following these changes.

Candidate Registration

Any citizen of Georgia who has the right to vote, has attained the age of 21, and speaks Georgian may be elected. ¹⁹ Citizens who have not resided in Georgia for the last two years and who did not register during this time with a consulate abroad, or those deemed a drug addict or user, may not be elected. The restrictions on language and residency are disproportionate and the possible post-election disqualification for failure to pass a drug test challenges paragraph 7.9 of the 1990 OSCE Copenhagen Document. ²⁰ Certain public officials are required to resign from their positions to be eligible to stand for office.

The CEC registered 25 candidate lists for the proportional contest, with 19 parties running separately, and 16 running in 6 electoral blocs. Parties have to first register with the CEC as prospective contestants to be able to apply for registration of their candidate lists. Out of 64 parties/blocs that applied for the pre-registration, 26 were either rejected or their registration was later revoked, mainly for failure to submit the required documents.

The registration as prospective contestants of some parties was impacted by the changes introduced in May 2016 to the Law on Political Unions of Citizens. The amendments came into force during the election period on 20 June, introducing new requirements to update party data with the Public Register within 10 days after the changes take place and to have a notary present at all general meetings. Following these amendments, the registration of the Centrists and Kvaratskhelia-Socialists parties as prospective contestants was annulled by the CEC. In the case of the Centrists Party, there are strong indications that the new requirements were applied by authorities involved in a selective and possibly politically motivated manner. The consequences of late legislative changes and the lack of a formal and efficient communication mechanism between the CEC and the Public Registry impacted the inclusiveness of the candidate registration process.

The Georgian Young Lawyers' Association submitted a complaint to DEC #81 of Kobuleti, and appealed later to the CEC and Tbilisi City Court stating that the DEC violated legislation by registering a candidate who does not speak Georgian. The Court ruled that the law does not prescribe a mechanism for verifying language skills. Therefore the DEC decision to register the candidate was upheld.

Paragraph 7.3 of the 1990 OSCE Copenhagen Document states that the participating States will "guarantee universal and equal suffrage to adult citizens", while paragraph 24 provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law". See also Paragraph 14 of the United Nations Human Rights Committee General Comment No. 25 to the International Covenant on Civil and Political Rights and section I.1.1.1.d.iii of the Code of Good Practice.

Parties that were represented in the outgoing parliament and those who qualified for state funding had to collect 1,000 signatures to register as prospective contestants, while the others had to collect 25,000 signatures.

On 13 August, the party's controversial political advertisement was aired, and on 15 August, the Public Registry placed the information about the registration status of the party on its website and sent it to the CEC, which the Registry stated was in the interest of the public.

There were a total of 869 majoritarian candidates, including 53 independents. For majoritarian contests, candidates could be nominated by parties, blocs or run independently if nominated by an initiative group of at least five voters. Twenty-seven initiative groups had their registration cancelled for not submitting the necessary documentation or voluntarily withdrew. Independent candidates nominated by voter initiative groups had to submit supporting signatures of at least one per cent of the voters registered in the district. Independent candidates who were elected in the last parliamentary elections were exempt from this provision.

Out of nine parties eligible for state funding, seven met the voluntary quota of at least 30 per cent of candidates of the less represented gender among every 10 candidates of their respective list, which qualified them to receive additional 30 per cent of public funding.²³ This incentive encouraged women's participation in the proportional contest, but does not address it in the majoritarian component. There were 1,304 registered female candidates (out of a total of 3,524) in the proportional and 143 in the majoritarian contests.

Campaign Environment

The campaign officially began on 8 June, upon the call for elections. The campaign was competitive and largely calm, despite isolated violent incidents, including the bombing of an MP's vehicle.²⁴ Campaign activities intensified and visibility increased across the country two weeks prior to election day. While fundamental freedoms were generally respected during the campaign and contestants were able to campaign freely, several parties voiced allegations of political pressure on candidates and campaign staff involving local authorities, police and the State Security Service. Only a few official complaints were formally submitted on these matters and are under investigation.

The tone of the campaign between the GD and UNM was confrontational and the two parties accused one another of exacerbating the situation.²⁵ The timing of recently published surveillance recordings could have affected the image and reputation of involved candidates and negatively impacted the campaign atmosphere.²⁶ The campaign was dominated by the GD, UNM, Paata Burchuladze – State for People (SP), Alliance of Patriots of Georgia (APG), while the FD, RP, DM and several independent candidates featured to a lesser extent.

Most campaigning was conducted in the media and through billboards, posters, door-to-door canvassing, community meetings and mainly small-scale rallies. The OSCE/ODIHR EOM observed 53 rallies and meetings with voters. A few parties campaigned through social media and the Internet. According to the OSCE/ODIHR EOM media monitoring, the GD purchased 75 per cent of the total paid advertisement observed in the monitored broadcasters, SP followed with 17 per cent. Pressing

Political parties that met this requirement are DM, Labour Party (LP), Alliance of Patriots of Georgia (APG), FD, Labour Socialist Party, RP and the Left-Wing Alliance.

On 16 September, in Gamarjveba village, a UNM campaign activist was attacked and an investigation was opened. On 28 September, in Marneuli, a SP candidate was attacked allegedly by UNM candidate relatives. On 1 October, in Didinedzi, three GD campaign activists were beaten up allegedly by UNM activists. On 2 October, in Gori, at a meeting with voters, two shots were fired in the direction of an independent candidate, Irakli Okruashvili, leaving his bodyguard and a campaign activist wounded. On 4 October, in Tbilisi, a vehicle of a UNM MP was blown up, five people were injured, the incident is under investigation.

On 14 September, the Prime Minister and chair of the GD accused the UNM of radicalizing the situation in the country. On the same day, the executive secretary of the UNM accused the GD of continuing intimidation and pressure on UNM party members.

On 13 September, published surveillance recordings included private conversations between the SP chair and the *Rustavi 2* TV channel director. On 26 September, a compilation from conversations between former president of Georgia, Mikheil Saakashvili, and UNM party officials and candidates was published.

issues such as unemployment, economy, development of infrastructure as well as social security were addressed by contestants.

Interlocutors, both from the authorities and political parties, reiterated their commitment to combating the misuse of administrative resources and maintaining a calm campaign atmosphere. The OSCE/ODIHR EOM, however, received numerous allegations regarding the misuse of administrative resources. A few incidents of pressure on local public employees and teachers to attend GD campaign events were reported.²⁷ Further, in some instances, GD candidates used official public events for the purpose of campaigning, raising concerns of blurring the line between state and party, at odds with paragraph 5.4 of the OSCE 1990 Copenhagen Document.²⁸

The law prohibits changes in municipal budgets during 60 days before election day. Several interlocutors, including contestants, claimed that the government reallocated budget funds immediately prior to this deadline in order to optimize the campaign effect and has been promoting the completion of infrastructure and renovation projects among voters shortly before election day. This raises concern about the equality of contestants during the election.²⁹

While the law prohibits campaigning by certain public officials during working hours, provisions permit officials to take vacation time to campaign, which was noted on multiple occasions by the OSCE/ODIHR EOM at campaign meetings. Foreign citizens are also prohibited from campaigning; however, a former president of Georgia, now a citizen of Ukraine, campaigned for the UNM. 30

In several areas, cases of contestants being obstructed from placing campaign materials and of damaging of campaign offices were noted.³¹ The vast majority of campaign incidents that the OSCE/ODIHR EOM was made aware of related to vandalized campaign posters and billboards.³²

Campaign Finance

Amendments in 2013, 2014 and 2016 to legislation regulating campaign finances introduced provisions that lowered sanctions for violations, adjusted the types of permitted donations, allocated public funds to cover TV advertising expenses for qualified contestants and added regulations related to independent candidates. A number of previous recommendations from the Council of Europe's

For example: on 12 September, in Zestaponi, teachers were intimidated against attending a UNM campaign event. On 9 September, in Gurjaani, kindergarten teachers were asked to attend a campaign meeting of the GD majoritarian candidate.

Paragraph 5.4 of the 1990 OSCE Copenhagen Document provides for "a clear separation between State and political parties". For example, on 23 August, in Chiatura, the Minister of Interior along with a GD majoritarian candidate opened a fire station. On 20 September, in Khreiti, the GD majoritarian candidate attended and campaigned at the opening of a museum organized by municipality. See also paragraph II.B.1.3 of the 2016 OSCE/ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources during Electoral Processes.

For instance, on 27 September, the municipality of Batumi made changes to the local budget in order to implement renovation of infrastructure, while Article 49. 3 of the Election Code prohibits implementation of projects that have not been included to the budget 60 days prior election day.

On 25 September, in Batumi, Mikhail Saakashvili via video message endorsed the UNM in front of an audience. On 26 September, in Zugdidi, Mikhail Saakashvili gave a speech at a UNM rally via video message. This resulted in a complaint to the court by a citizen observer group.

For example, on 11 August, in Dedoplistskaro, the UNM's office was damaged; on 2 September, in Tbilisi, a UNM candidate's office was raided; on September 19, in Saburtalo, a GD office was broken into by three individuals. In Gardabani, the UNM billboard was taken down and replaced by one of the GD on the same building. In Rustavi, the UNM was prevented from contracting a large billboard on the main street.

For instance, in Akhaltsikhe, Dedoplitskaro, Khelvachauri, Kvemo Bolnisi, and numerous areas of Adjara and Guria region. As of 28 September, the OSCE/ODIHR EOM was aware of 23 criminal cases of damaging campaign materials, 20 of them under investigation.

Group of States against Corruption (GRECO) regarding the need for a more uniform legal framework and proportionate and dissuasive sanctions for all infringements were only partially addressed.³³ Among the majoritarian candidates, only those nominated by qualified political parties have access to public funding.

According to the information from the SAO, the majority of contestants had submitted their income and expenditure reports within the legal deadlines, except for 5 parties and 18 independent candidates. Before imposing sanctions, the State Audit Office (SAO), the oversight body, informed these contestants and provided additional time to meet the requirements. While, contrary to international good practice, the law does not set the deadlines for the SAO to scrutinize the reports, the SAO examined some of the reports it received and published those on its website every three weeks to ensure greater transparency.

The SAO investigated 694 donors, most of whom had contributed to the GD, to verify contributions and the origins of funds.³⁴ During the campaign period, the SAO sanctioned three parties and one independent candidate for not submitting financial reports on time, as well as seven donors for unlawful donations.³⁵ Furthermore, the SAO received 43 complaints related to different campaign finance violations and 28 related to vote-buying.³⁶ In consideration of these complaints, the SAO is conducting investigations. The OSCE/ODIHR EOM was informed that new procedures requiring the SAO to obtain court approvals delayed its investigations and since there is no expedited legal deadline for the SAO to respond to campaign finance violations, most will be addressed after election day. This weakened the effectiveness of campaign finance oversight.

From 8 June to 1 October, parties and blocs declared a total amount of GEL 22,874,725 (approximately EUR 8,752,830) from donations by some 1,770 donors to 17 parties and blocs as well as 22 independent candidates.³⁷ During the observation period, only the GD took a loan (one million GEL) for its campaign needs from a commercial bank, Cartu Bank.³⁸ While not a violation of campaign finance regulations, it was seen by stakeholders as inappropriate, in particular because there are no special regulations concerning loan terms and the loan could be paid back from state funds for which the GD is eligible.³⁹ There was a substantial imbalance in the amount of funds that parties were able to raise.

Media

Georgia has a wide range of media outlets and a lively media environment. The primary source of information is television while print media have limited circulation. According to all OSCE/ODIHR EOM interlocutors, there were improvements since 2012 in the overall pluralism of the media

See the <u>2015 GRECO Second Compliance Report on Georgia.</u>

For instance, 444 out of the 694 interviewed donors (including legal entities) contributed to the GD, 133 to SP, 40 to UNM, 38 to APG, 18 to FD, 8 to DM, 8 to Industrials, Our Homeland, 4 to NF, 1 – to Georgian Dasi.

Our Fatherland, Georgian Idea, Peoples Party and independent candidate Tamara Irajuli. Of the seven sanctioned donors, four donated to the SP, two to the GD, one to the APG.

Of the 43, 9 were found to be not under SAO jurisdiction, 2 were sent to the court for sanctioning and the remaining cases are pending.

⁽¹ EUR equals approximately 2.55 Georgian Lari, GEL). During the reporting period, the following contestants received highest amount of donations: the GD received GEL 15,059,230; SP – GEL 4,558,555; APG – GEL 1, 271,485; UNM – GEL 998,833; FD – GEL 421,690; DM – GEL 177,661; Topadze – Industrials, Our Homeland – GEL 130,910; NF – GEL 93,937. Out of 1,350 donors, 31 are legal entities.

The bank is allegedly linked to former Prime Minister Bidzina Ivanishvili.

According to the SAO, loans are regulated by banks and procedures for paying off the loan should be done according to the procedures and terms stated in the contract.

landscape and more recently with the growing contribution of online media. Nevertheless, media outlets, especially broadcast media, are often still perceived as polarized along political lines.

Media legislation provides a sound framework for freedom of the media. The Constitution guarantees freedoms of speech and of the press and prohibits censorship, libel is not a criminal offence, and freedom of information provisions in legislation ensure access to public information. However, in the two last years, court actions related to a case over the ownership of the *Rustavi 2* TV channel have sparked concerns and have been cited by several civil society and international organizations as an attempt to restrict media freedom. The on-going court case did not affect *Rustavi 2's* capacity to cover the election.

The Law on Broadcasting stipulates that both public and private broadcasters should ensure pluralistic and non-discriminatory coverage of all relevant views in their news programmes, while the Election Code contains detailed provisions regulating the free and paid advertisement during the election campaign and the publication of opinion polls. Recent amendments to the Election Code reduced the amount of free airtime granted to the nine contestants qualified for public funding on both public and private broadcasters to not more than 90 seconds per every three hours. The Georgian Public Broadcaster (GPB) and *Adjara TV*, in line with legal requirements, offered non-qualified contestants equal, but very limited airtime (10 seconds per day) and only one party used this opportunity. Generally, media outlets respected legal provisions on free and paid advertisement; however, broadcasters did not abide by the disclosure rules for the publication of opinion polls. One party produced an advertisement with anti-Turkish and xenophobic content, which was aired by some TV channels.

The Georgian National Communications Commission (GNCC) is responsible for overseeing media compliance with legal provisions. The GNCC conducted media monitoring and published four reports covering the period from 8 June to 22 September. However, the reports did not comprehensively disclose monitoring findings and the GNCC did not react in a timely and effective manner to most violations detected during the campaign. According to the Law on Broadcasting and the Code of Conduct of Broadcasters, the self-regulatory mechanism of each broadcaster is responsible to consider complaints related to the content of editorial coverage. During the election campaign, none of the self-regulatory bodies of major broadcasters received official complaints.

On 5 November 2015, the Tbilisi City Court directly interfered with the editorial independence of the media outlet by temporally replacing its management – the court suspended *Rustavi* 2's General Director and the Financial Director from their positions. On 13 November 2015, the Constitutional Court suspended this decision and on 30 September 2016, ruled the 5 November 2015 Tbilisi City Court action as unconstitutional. See also the <u>6 November 2015 OSCE Representative on Freedom of the Media statement on this case</u>.

For these elections, the CEC identified 11 eligible parties, of which 9 are participating in the elections.

The Election Code does not specify the amount of time to grant to non-qualified subjects.

The content of the advertisement produced by the APG violated Article 45.3 of the Election Code. On 24 September, the Office of the President, followed by civil society organizations, urged the CEC to take pertinent actions on this case and on 3 October, the CEC decided to take an administrative action against the APG. On 7 October, the Tbilisi City Court decided to fine APG in the amount of 2,000 GEL. In response to a complaint from the APG, the GNCC on 30 September decided to take an administrative action against *Rustavi 2* for violating Article 51.6 of the Election Code when the channel took the APG advertisement off air without consulting the concerned party.

The GNCC informed the OSCE/ODIHR EOM that since 8 June it monitored 53 TV channels, 30 radio stations and 31 local government funded newspapers.

However, on 8 September, three citizen observer organizations drew the GNCC's attention to the programme "Meeting with regional media" hosted by former Prime Minister Bidzina Ivanshvili on *GDS* TV every Monday and Thursday, as a possible case of unfair and unbalanced coverage.

On 12 September, the UNM addressed a letter to *Imedi* TV channel asking to be offered one-hour of live coverage starting at 21:00 to present its electoral programme, as *Imedi* TV did for the GD on 8 September. The channel did

OSCE/ODIHR EOM media monitoring showed that broadcasters widely covered the electoral contestants in a variety of formats. ⁴⁷ All monitored broadcasters, as well as local broadcasters, invited qualified contestants to participate in debates and talk shows. The distinction was often blurred between the formats of newscast and current affairs programmes, where instead of journalists reporting on news, guests discussed news items without providing more thorough information on the campaign activities of different parties. In general, media coverage focused on the GD and UNM, and political discourse was marked by their constant confrontation rather than presentations of their electoral programmes.

In the monitored newscasts, *GPB-1* provided -25 per cent to the GD and 18 per cent to the UNM with mostly neutral tone. Seven other parties were allotted between 2 and 6 per cent each. *GPB-1* devoted wide coverage to the prime minister and the government, 7 and 18 per cent, respectively, mostly in a neutral or positive tone, giving additional visibility that could have advantaged the ruling party. In addition, on 8 September, *GPB-1* and three private TV channels provided one-hour live coverage on primetime to a campaign event where the GD electoral program was presented.⁴⁸

Rustavi 2 devoted similar space to the GD and UNM in its newscast, 26 and 23 per cent, respectively, neutral in tone, and three other parties received significant coverage: SP – 11 per cent, RP – 8 per cent and FD – 8 per cent. However, Rustavi 2 devoted rather negative coverage to the ruling party in current affairs and entertainment programmes. Maestro and GDS showed a bias in favour of the GD, devoting to the ruling party -26, -36 per cent of their news coverage, respectively, mainly neutral or positive in tone. Imedi dedicated 32 and 33 per cent of news coverage to the GD and UNM, respectively. In the last several days of the campaign, these channels gave a significant amount of coverage to the UNM in connection with the bombing of a vehicle of a UNM MP, which affected the overall distribution of time between parties. Maestro and GDS also devoted significant coverage to the prime-minister and the government, allotting to them together between 18 and 20 per cent. In their news and current affairs programmes, especially during the last two weeks of the campaign, they focused on stories related to the previous government, often using a negative tone. TV Pirveli also devoted most of its news coverage, 24 per cent, to the ruling party, with the UNM receiving 18 per cent.

Complaints and Appeals

The Election Code establishes a timely dispute resolution process for appeals on election commission decisions. Representatives of parties, blocs, candidates and registered observers have the right to file complaints about any aspect of the election process. Contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document, voters only have the right to file complaints on their non-inclusion in a voter list.⁵⁰

not satisfy the UNM's request. On 27 September, UNM addressed a complaint to the GNCC for being denied equal access to *Imedi* TV channel. As of 8 October, there was no public reaction from the GNCC.

OSCE/ODIHR EOM commenced a quantitative and qualitative media monitoring of primetime coverage (18.00-24.00) of six broadcasters (*GPB-1*, *Rustavi 2*, *Imedi, Maestro, GDS* and *TV Pirveli*) on 5 September.

Following the broadcast of the GD campaign event, the *GPB-1* offered all qualified contestants one hour on primetime to broadcast a live presentation of their electoral programme. However, contestants were asked to cover the costs of recording and transmission of the live coverage, resulting in uneven access to the public broadcaster. Only the FD took advantage of this opportunity on primetime. *Imedi, Maestro* and *GDS* were the other three channels that offered one-hour live coverage of the GD campaign event on 8 September.

⁴⁹ GDS TV channel is owned by Bera Ivanishvili, the son of Bidzina Ivanishvili.

Paragraph 5.10 of the 1990 OSCE Copenhagen Document states that 'everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". At least three complaints from citizens were left without consideration based on the ground that citizens

The system of electoral dispute resolution provides for the possibility to file complaints with prosecutors, the GNCC, the SAO and local municipalities. Its complexity leaves stakeholders without clarity on the appropriate avenue to address complaints and in practice they were filed with several bodies concurrently, also due to the lack of trust in the adjudicating authorities.

Court filing fees are a minimum of GEL 100 (some EUR 38) for first instance and no less than GEL 150 (some EUR 57) for appeals. The law allows judges to postpone payment or release the complainant from court filing fees in special cases. Although, there is a practice of accepting election complaints and postponing payment until after the hearing, the absence of an explicit regulation potentially limits access to courts and undermines the effectiveness of the remedy. Many electoral stakeholders acknowledged the need to continue reform of the judicial system.

Since the elections were announced, 187 complaints have been submitted to different levels of the election administration and courts. The CEC fulfilled its legal obligation to publish all complaints and decisions taken by the CEC and courts on its website within one day. Complaints to DECs and their decisions were also posted on the CEC website, despite the lack of a legal requirement. Complaints considered by election commissions and courts were reviewed in a transparent manner at open sessions and parties were informed about the time and place of the hearings. Generally, decisions were well-grounded and motivated.

Of the 187 complaints, 98 were submitted to DECs, 55 to the CEC, 16 to Tbilisi City Court and 10 to the Court of Appeals. Most concerned violations of campaign rules, including campaigning by unauthorized persons (35 cases), the misuse of administrative resources (26 cases), or complaints requesting to file administrative protocols for alleged election violations (32 cases), and were challenging the legality of the appointment of PEC members (7 cases). Sixteen complaints were satisfied and four were partially satisfied.

The election administration, the GNCC and local municipalities are responsible for recording election-related administrative violations and have up to two months to take action. So far, seven administrative cases were initiated by the election administration and 32 cases are pending action. The lack of an expedited deadline for electoral cases and insufficient resources for investigation, left many violations unaddressed during the election period compromising the efficient protection of electoral rights. The Prosecutor's Office opened 74 investigations of election related criminal matters.⁵¹

An Inter-Agency Task Force (IATF) was established to address potential electoral violence and the misuse of administrative resources. The IATF held nine public sessions and received 104 complaints, but issued only four non-binding recommendations of a general nature. Since the taskforce is more of a forum for discussion than decision-making, it was inefficient in addressing complaints regarding concrete cases. Nevertheless, the platform of the IATF was actively used by parties and citizen observers as a mechanism to make public their concerns and as a means of having their complaints forwarded to the relevant authorities.

Participation of National Minorities

are not authorized to submit complaints. See also paragraph II.3.3.3.f of the Code of Good Practice, which states that "All candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections."

Among which, 28 are cases on violent actions and 26 on the damage of election campaign materials.

Further, in violation of the General Administrative Code, the IATF did not give timely written answers to complainants. This Code prescribes the obligation of all bodies to give answer on written applications within 10 days or one month in some special cases.

According to the 2014 census, national minorities make up 13.2 per cent of the population. The most numerous groups are the Azeri (6.3 per cent) and Armenians (4.5 per cent).⁵³ The Constitution prohibits discrimination on ethnic or religious grounds; national minorities enjoy full political rights, including the right to use their mother tongue in private and public.⁵⁴ However, political participation of national minorities is limited.

Several parties and blocs nominated candidates from national minorities on their party lists, but few in electable positions,⁵⁵ and for the majoritarian races in minority populated regions.⁵⁶ Following recent amendments to the Election Code, OSCE/ODIHR EOM interlocutors expressed concerns that some of the new boundaries between constituencies may decrease the representation of national minorities, particularly in the merged Akhalkalaki and Ninotsminda constituency.⁵⁷

National minority issues and inter-ethnic relations did not feature prominently in the campaign, although some candidates occasionally used ethnicity as a mobilizing factor. Minority languages were widely used by parties and candidates in minority populated areas. Visible campaigns were conducted in a relatively free and competitive environment, especially in Azeri areas, while it was more subdued in Armenian areas. Candidates were generally able to campaign freely in minority areas, but the campaign was marked by a few instances of hate speech and violence, indirectly affecting inter-ethnic relations. National minorities were well-represented in DECs and PECs in Armenian areas, but not represented at all in DECs and minimally represented in PECs in Azeri areas.

Citizen and International Observers

The Election Code adequately provides for observation by citizen and international organizations, as well as representatives of election contestants. The legislation contains detailed provisions on the rights and responsibilities of observers and grants access to all stages of the electoral process. The CEC registered 111 citizen and 55 international organizations (including visiting election management bodies). The registration process was inclusive and managed in a professional manner.

Various citizen observer organizations conducted long-term election observation activities focusing on different aspects of the election environment, campaign finance, media monitoring, national minority participation, and election dispute resolution. On election day, citizen observers were deployed and

Followed by Russians (0.7 per cent), Ossetians (0.4), Yazidis (0.3), Ukrainians (0.2), Kists (0.2), Greeks (0.1), Assyrians (0.1) and other groups (0.4).

Georgia has ratified the Council of Europe's Framework Convention for the Protection of National Minorities (FCNM), and has signed, but not ratified, the European Charter for Regional or Minority Languages (ECRML).

On party lists: GD – 10 of 155 candidates; UNM – 13 of 200; SP – 20 of 197; FD – 10 of 200; LP – 8 of 167; APG – 8 of 195; DM – 6 of 165; none of these candidates are placed above the 14th position.

Majoritarian contests: GD - 3 of 73 nominated candidates; UNM - 5 of 72; SP - 6 of 72; APG - 4 of 71; DM - 2 of 51; RP - 2 of 28; FD - 1 of 64; and 4 independents.

The merger of Akhalkalaki and Ninotsminda into one constituency could impact the representation of Armenians from the Samtskhe-Javakheti region. Also, some villages in the former Akhalkalaki constituency, mostly populated by Armenians, were moved to the Borjomi-Aspindza constituency, creating logistical challenges to the electoral administration and candidates, as well as potentially affecting minority representation. The number of constituencies in the largely Azeri region of Kvemo Kartli has been increased by one, but OSCE/ODIHR EOM interlocutors noted that some of the criteria used for the boundary changes were unclear.

However, on 19 September, in the reply to a journalist's question about the ratification of the ECRML and granting Armenian the status of regional language, Bidzina Ivanishvili said there were no limitations on language use, but noted the lack of proficiency in Georgian prevents Armenians from "assimilating".

A paid TV advertisement and rallies by the APG contained anti-Turkish statements, which may have vexed part of the ethnic Azeri community. Representatives of the "Georgian Force" party attacked oriental cafés in Tbilisi. A TV debate ended with a brawl between a Georgian and an Azeri candidate, but did not appear motivated on ethnic grounds.

observed procedures at all levels of the election administration and one organization conducted parallel vote tabulation. Parties and candidates nominated representatives to observe election day procedures. The participation of numerous citizen observers at all stages of the process contributed to the transparency of the elections.

Election Day

Election day generally proceeded in an orderly manner, but tensions increased during the day with several violent altercations taking place near and in polling stations. While voting was assessed as generally positive, the assessment of counting was markedly worse due to procedural problems and increased tensions. Citizen observers and party representatives were present in almost all polling stations, but were frequently interfering in the work of the commissions.

Opening was assessed positively by international observers in 153 of the 162 polling stations observed. Short delays in opening were observed in 80 polling stations, but did not affect the process. Procedures were generally followed, but some irregularities were noted: PECs did not announce or properly record information on the number of voters and ballots in 10 and 13 per cent of cases, respectively. Citizen observers and party representatives were interfering in or directing the work of PECs in some 12 per cent of observations.

Voting was evaluated positively in over 97 per cent of the observed polling stations. In the few cases where the process was assessed negatively, this was largely due to the interference in the work of the PECs by unauthorized persons. While the presence of citizen observers and party representatives in 87 per cent and 99 per cent of polling stations, respectively, contributed to the transparency of the process, they were directing and interfering in the work of some 6 per cent of PECs observed. Overcrowding was reported in over 7 per cent of the PECs. A few serious irregularities were reported, including voters with traces of invisible ink allowed to vote (2 per cent) and attempts at influencing voters (2 per cent). Almost 40 per cent of polling stations observed were not accessible for voters with disabilities; however, accessibility was somewhat better in polling stations announced as barrier-free.

The counting process was assessed markedly worse – 31 per cent of counts were assessed as bad or very bad. The negative assessments of counting were related to PECs not following procedures rather than deliberate falsification: PEC members did not invalidate unused ballots before counting (27 per cent), did not pack unused and spoiled ballots properly (20 per cent), did not mix ballots of the mobile and stationary boxes (9 per cent), valid and invalid ballots were not determined in a consistent and reasonable manner (9 and 11 per cent, respectively), and protocol data was not properly cross-checked after counting (11 per cent). In half of the observations, unauthorized individuals participated in the count. Tensions or unrest in the vicinity of the polling station was observed in almost 13 per cent of cases. Persons attempting to disrupt or obstruct the process and intimidate PEC members was also observed in 5 per cent of cases.

Other serious irregularities that negatively affected the assessment of the integrity and transparency of counting included PECs signing the protocols before completing them (11 per cent) and not recording the number of invalid and number of ballots per contestant in a proper manner (16 per cent). In over 7 per cent of PECs, observers did not have a clear view of the counting process.

Election security became an issue towards the end of polling and during the count when violent altercations affected the process in four polling stations. ⁶⁰ In one PEC, voting had to be halted until the security and safety of PEC members and voters could be restored. Violent attacks in two polling

PEC 48 in Marneuli, PEC 90 in Kutaisi and PECs 108 and 79 in Zugdidi.

stations resulted in the destruction of polling materials, reported harm to citizen and international observers, stopping the counting process and eventual annulment of results.

The assessment of tabulation was more positive. In 46 out of 58 DECs observed, the process was assessed as good or very good. In the remaining DECs, procedures were not followed (6 cases) and there were limitations in observation (5 cases). A main shortcoming was inadequate facilities for receiving election materials (17 DECs observed), which in 11 cases resulted in overcrowding, negatively affecting the tabulation process. PEC protocols were not completed correctly and in full when delivered to the DEC in 8 cases.

The CEC began announcing and posting preliminary results by districts, along with PEC protocols, from 1:00 in the morning the day after the elections. The CEC stated that it only began releasing preliminary results once it accumulated a representative sample. The preliminary voter turnout was reported at 51.63 per cent.

The English version of this report is the only official document.

An unofficial translation is available in Georgian.

MISSION INFORMATION & ACKNOWLEDGEMENTS

Tbilisi, 9 October 2016 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavor involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), the Parliamentary Assembly of NATO, and the European Parliament (EP). The assessment was made to determine whether the elections complied with OSCE commitments, Council of Europe standards, other international obligations and standards for democratic elections and with national legislation.

Ignacio Sanchez Amor was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and Leader of the OSCE short-term observer mission. Guglielmo Picchi headed the OSCE PA delegation. Emanuelis Zingeris headed the PACE delegation. Ana Gomes, headed the European Parliament delegation. Paolo Alli headed the NATO delegation. Ambassador Alexandre Keltchewsky is the Head of the OSCE/ODIHR EOM, deployed from 30 August.

Each of the institutions involved in this International Election Observation Mission (IEOM) has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the electoral process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the electoral process, including the count, tabulation and announcement of results, and the handling of possible post-election day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the electoral process. The OSCE PA will present its report at its Standing Committee meeting in Vienna on 23 February 2017. The PACE will present its report at its Standing Committee meeting in Nicosia on 26 November. The European Parliament will present its report at the debriefing with the European Parliament Committee on Foreign Affairs in Brussels on 11 October, and the NATO PA will present its report at its Annual Session in Istanbul on 18-21 November.

The OSCE/ODIHR EOM includes 14 experts in the capital and 26 long-term observers deployed throughout the country. On election day, 420 observers from 39 countries were deployed, including 324 long-term and short-term observers deployed by the OSCE/ODIHR, as well as a 37-member delegation from the OSCE PA, 28-member delegation from the PACE, 17-member delegation from

NATO PA, and a 13-member delegation from European Parliament. Opening was observed in 162 polling stations and voting was observed in 1,520 polling stations across the country. Counting was observed in 147 polling stations, and the tabulation in 58 DECs.

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

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