



## INTERNATIONAL ELECTION OBSERVATION Georgia — Parliamentary Elections, 1 October 2012

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### STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

**Tbilisi, 2 October 2012** – This Statement of Preliminary Findings and Conclusions is the result of a common endeavour 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 European Parliament (EP) and the NATO Parliamentary Assembly (NATO PA).

Tonino Picula (Croatia), Head of the OSCE PA delegation, was appointed as Special Co-ordinator by the OSCE Chairperson-in-Office to lead the short-term OSCE observer mission. Luca Volontè (Italy) headed the delegation of the PACE, Milan Cabrnoc (Czech Republic) headed the delegation of the EP, and Assen Agov (Bulgaria) headed the delegation of the NATO PA. Nikolai Vulchanov (Bulgaria) is the Head of the OSCE/ODIHR Election Observation Mission (EOM), deployed from 22 August 2012.

The assessment was made to determine whether the elections complied with the OSCE and Council of Europe commitments for democratic elections, as well as with the legislation of Georgia. This statement of preliminary findings and conclusions is delivered prior to the completion of the election process. The final assessment of the elections will depend, in part, on the conduct of the remaining stages of the election process, including the count, the 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 election process. The OSCE PA will present its report at its Standing Committee Meeting in Tirana on 6 October. The PACE delegation will present its report at its January 2013 session of the Assembly. The EP will present its report in the Committee on Foreign Affairs at its next available meeting. The NATO PA will present its report at its next annual session in November.

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### PRELIMINARY CONCLUSIONS

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The 1 October parliamentary elections marked an important step in consolidating the conduct of democratic elections in line with OSCE and Council of Europe commitments, although certain key issues remain to be addressed. The elections were competitive with active citizen participation throughout the campaign, including in peaceful mass rallies. The environment, however, was polarized and tense, characterized by the use of harsh rhetoric and some instances of violence. The campaign often centered on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete political platforms and programs.

Freedoms of association, assembly and expression were respected overall, although instances of harassment and intimidation of party activists and supporters marred the campaign environment and often ended with detentions or fines of mostly opposition-affiliated campaigners, contributing to an atmosphere of distrust among contestants. The distinction between state activities and the campaign of the ruling party was at times blurred, at odds with paragraph 5.4 of the OSCE 1990 Copenhagen Document.

Overall, election day was calm and peaceful throughout the country. International observers assessed all stages of the election day process generally positively with adherence to procedures,

although counting received a less positive assessment. The CEC began releasing preliminary results and posting results protocols in the early morning hours on the day after the elections, contributing to transparency. Preliminary voter turnout was reported at 60.8 per cent.

Fourteen parties, two electoral blocs, and four independent candidates were registered in an inclusive and transparent process, providing voters with a wide choice. The positive voluntary quota promoting a more balanced gender representation was not met by the majority of contestants, including the United National Movement (UNM) and the opposition coalition ‘Georgian Dream’ (GD), limiting its effect.

The election administration enjoyed a high level of confidence and managed the preparations for the elections in a professional manner. The Central Election Commission (CEC) operated efficiently and transparently, holding frequent meetings that were open to observers, party representatives and media. In addition, it promoted several welcome initiatives upholding participation of national minorities in the elections.

Verification efforts by the Commission for Ensuring the Accuracy of the Voter Lists (CEAVL) as well as political parties and civil society enhanced public trust in the quality of voter lists. Voter registration procedures for citizens abroad were not communicated to potential voters in a clear and timely manner, revealing insufficient regulation and co-ordination among the institutions involved.

The Inter-Agency Commission (IAC), mandated to consider complaints or allegations of campaign violations, proved a useful forum for the review of concerns raised by stakeholders. The IAC’s non-binding recommendations were implemented in a timely manner by the relevant authorities.

The Election Code is generally conducive for democratic elections, but room for improvements remains. Important previous recommendations by the OSCE/ODIHR and the Venice Commission were addressed, including granting the right for prisoners to vote, permitting independent candidacy, and reducing residency requirements. Other key recommendations have yet to be addressed. One notable shortcoming is the disparity of the population size among single mandate constituencies, which undermines the equality of the vote required by paragraph 7.3 of the 1990 OSCE Copenhagen Document. In addition, the potential for post-election disqualification of contestants provided for in a number of articles in the law is contrary to paragraph 7.9 of the OSCE 1990 Copenhagen Document.<sup>1</sup>

The Law on Political Unions of Citizens (Law on Political Unions) that regulates party and campaign finance was drafted in an effort to create a comprehensive regulatory framework. However, the law contains serious lacunae, ambiguities and disproportional sanctions negatively affecting its implementation. Both the Election Code and the Law on Political Unions underwent substantial amendments less than a year before the elections, which some interlocutors criticized as lacking impartiality.

The new regulatory body, the State Audit Office (SAO), enjoyed wide discretionary powers, but overall failed to apply the legal provisions in a transparent, independent, impartial and consistent manner targeting mainly the opposition. In this regard, questions were raised that challenged due process and the independence of the judiciary.

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<sup>1</sup> Paragraph 7.9 of the OSCE 1990 Copenhagen Document requires that participating States “ensure that candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term in office expires (...)”

The media environment was diverse, yet some private television (TV) channels had limited coverage within the country thus preventing full access to the wide variety of information available to citizens. The OSCE/ODIHR EOM's media monitoring indicated that only the Georgian Public Broadcaster (GPB) provided politically balanced news coverage of the campaign. No other monitored TV channels provided balanced news coverage, contrary to their legal obligations. In a positive development, the 'Must Carry, Must Offer' provisions, applicable only during the pre-election campaign, enabled opposition-leaning TV channels to increase their audience through access to cable networks. In addition, numerous talk shows and debates provided candidates with real opportunities to present their views.

The active involvement of a large number of domestic observer organizations and civil society throughout the entire electoral process enhanced its overall transparency. Authorities were open to their participation and were receptive to initiatives put forward by them.

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## **PRELIMINARY FINDINGS**

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### **Background**

On 1 August, President Mikheil Saakashvili called parliamentary elections for 1 October 2012, in line with constitutional requirements. The new parliament will have considerably increased authority. Constitutional amendments introduced in 2010 reduced the powers of the president in favor of the prime minister and the government. The constitutional amendments will enter into force after the next presidential election, anticipated in 2013.

In the outgoing parliament, the governing majority of the United National Movement (UNM) held 119 of the 150 mandates. The United Opposition held 17 mandates, the Christian-Democratic Movement (CDM) and the Labor Party (LP) - 6 mandates each, and the Republican Party (RP) - 2 mandates. Two majoritarian members of parliament from RP relinquished their mandates, which were filled by the CDM and the National Democratic Party following the 2008 by-elections.

### **The Electoral System and Legal Framework**

The 150-member parliament is elected for a four-year term under a mixed system. Political parties and coalitions competed for 77 seats in a proportional contest with closed lists in a single nationwide constituency, and for 73 seats in single-mandate constituencies. Allocation of seats in the proportional race is granted to parties and blocs that surpass a five per cent threshold of the valid votes. In majoritarian contests, a candidate must obtain at least 30 per cent of the valid votes to be elected. Otherwise, a run-off takes place between the two candidates with the most votes in the first round.

The key electoral legislation includes the Constitution, the Election Code, the Organic Law on Political Unions of Citizens (Law on Political Unions), the Law on the State Audit Office, the Criminal Code, and regulations of the election administration. Both the electoral system and the legal framework underwent significant amendments less than a year before the elections, which is contrary to international good practice, and which some interlocutors criticized as lacking impartiality.<sup>2</sup>

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<sup>2</sup> The Constitution, Law on Political Unions, Election Code, Law on State Audit Office and Criminal Code were adopted and/or amended in December 2011, in May and/or June 2012. See European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters (CDL-AD (2002) 23 rev), p. 26.

The new Election Code, as adopted in December 2011, incorporated some important previous OSCE/ODIHR and Council of Europe's Commission for Democracy through Law (Venice Commission) recommendations.<sup>3</sup> For the first time, the right to vote was extended to prisoners (those sentenced for misdemeanors) and the right to stand for election was granted to independent candidates, in line with OSCE commitments. New provisions also reduced residency and support signature requirements to stand, introduced a voluntary gender quota for candidate lists, and placed some restrictions on the use of administrative resources.

However, other key recommendations remained unaddressed. One notable shortcoming is the disparity of the population size among single mandate constituencies, which undermines the equality of the vote required by paragraph 7.3 of the 1990 OSCE Copenhagen Document. The number of voters in individual constituencies ranged from around 6,000 to over 140,000.

In addition, provisions remain that allow political public officials to combine campaign activities with the conduct of their official duties; and permit the use of some administrative resources for campaign purposes, in particular state-funded buildings, provided that equal access is given to all election subjects. In practice, such equality may be undermined as political parties in government have easier access.<sup>4</sup> Electoral subjects risk post-election disqualification for some campaign violations related to vote buying, campaign finance and abuse of administrative resources, as well as the failure to pass a drug test after an election, but prior to being installed in office. These sanctions challenge OSCE Commitments.<sup>5</sup>

Some amendments to the legal framework were introduced after the 19 December 2011 OSCE/ODIHR and Venice Commission Joint Opinion. The age requirement for candidates was reduced from 25 to 21 years and tailor-made provisions were introduced to allow the leader of the 'Georgian Dream' (GD), Mr. Bidzina Ivanishvili, to vote and stand as a candidate after he lost his Georgian citizenship. In addition, the new Election Code provides a possibility for political parties or blocs that clear the threshold for seat allocation, but get less than six seats (the number necessary to form a parliamentary fraction) to receive additional seats to enable its establishment. This may result in a deduction of mandates from other, winning electoral subjects.<sup>6</sup>

## **Election Administration**

The elections were administered by a three-tiered election administration comprised of the Central Election Commission (CEC), 73 District Election Commissions (DECs), and 3,648 Precinct Election Commissions (PECs). In addition, 71 special polling stations were established in military units, hospitals, detention centers and prisons; 45 polling stations at consular offices abroad; and 2 polling stations for Georgian military personnel serving in Afghanistan.<sup>7</sup>

Election commissions at all levels have 13 members each, 7 of whom are nominated by the political parties that qualify for state funding. Five CEC members are appointed by parliament, with additional procedures to select the chairperson. For DECs and PECs, the remaining six members, in addition to the political party nominations, are appointed by higher-level election commissions. The six appointed members, together with the UNM representative, were able to exercise control over

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<sup>3</sup> The OSCE/ODIHR and Venice Commission published a Joint Opinion on the draft Election Code on 19 December 2011 (Joint Opinion), available at [www.osce.org/odihr/86401](http://www.osce.org/odihr/86401).

<sup>4</sup> Joint Opinion, paragraph 60.

<sup>5</sup> Paragraph 7.9 of the 1990 OSCE Copenhagen Document requires that participating States "ensure that the candidates who obtain the necessary number of votes required by law are duly installed in office and are permitted to remain in office until their term expires (...)"

<sup>6</sup> Article 50.2 on the Constitution and Article 125.7-6 of the Election Code.

<sup>7</sup> No polling stations were formed in the Russian Federation due to the absence of diplomatic relations.

the decision-making and held a *de facto* majority on election commissions at all levels. Only one woman served on the CEC. At the DEC level, while women represented 44 per cent of the permanent membership, in 73 DEC, they only held 15 chair positions and 47 secretary posts.

The competencies of the CEC narrowed under the new Election Code, with other institutions having assumed responsibility for ensuring the accuracy of voter lists, and for media and campaign finance monitoring. This allowed the CEC to focus exclusively on the core task of election administration, which it performed in a competent and professional manner. The CEC operated efficiently and transparently, holding frequent meetings that were open to observers, party representatives and media, and promptly uploaded all decisions to its website. Discussions leading to CEC decisions were often vigorous and argumentative, reflecting the overall polarized political environment. At times, requests by commission members nominated by opposition parties to place issues on the agenda were deferred indefinitely.<sup>8</sup>

The election administration enjoyed a high level of confidence and managed the preparations for the elections in a professional and timely manner. Prior to election day, turnover among PEC members was not uncommon. In many cases, PEC members nominated by political parties were not informed that their names were being put forward or resigned due to liability concerns associated with their responsibility.<sup>9</sup> The CEC conducted voter information campaigns on various aspects of the election process. All DEC and PEC members received comprehensive training provided by the CEC Training Centre. Overall, the training and the information material produced were assessed by the OSCE/ODIHR EOM to have contributed to the professionalism of the election administration.

Some controversy arose over the 27 special polling stations set up to facilitate voting of security forces in their barracks.<sup>10</sup> According to the Election Code, military personnel are entitled to both a proportional and majoritarian ballot at their place of service, irrespective of their civilian place of registration.<sup>11</sup> The GD filed 17 complaints with the respective DEC, alleging that these polling stations were set up to distort the majoritarian vote in favor of the UNM in regions with small voter populations, such as Mestia. All of the GD complaints were reviewed and dismissed. The IAC subsequently recommended that conscripts enlisted after 1 July vote at regular polling stations.<sup>12</sup>

On 24 September, a CEC decree limited video and photography in polling stations on election day. The move triggered strong criticism from opposition parties, civil society and media outlets for reducing the transparency of the election process. An appeal on behalf of civil society to repeal this decree was rejected.

## Voter Registration

Under the new Election Code, the Commission for Ensuring the Accuracy of the Voter Lists (CEAVL) is responsible for verifying and compiling voter lists. CEAVL is chaired by a member of the opposition New Rights Party. In June and July, CEAVL conducted a door-to-door verification of voter data. Beginning on 28 August, preliminary voter lists were posted for public scrutiny in all

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<sup>8</sup> The GD representative on the CEC requested that deadlines for filing election day complaints be put on the agenda, CEC meeting, 14 September; the Conservative Party member of the CEC requested that the eligibility of military personnel to vote in majoritarian elections be put on the agenda, CEC meeting, 18 September.

<sup>9</sup> OSCE/ODIHR LTOs reported turnover of PEC members appointed by political parties in several districts. Most notably, in Kutaisi (131 PECs), 405 changes took place, involving 218 members of GD, 136 of CDU, 40 of LP and 11 of UNM.

<sup>10</sup> This included some 29,661 military and Ministry of Interior troops. Special polling stations were set up where 50 or more military voters were on the special voter list. If less than 50, they voted by mobile ballot box from a designated regular polling station.

<sup>11</sup> All special polling stations were assigned to regular polling stations for the counting and tabulation of votes.

<sup>12</sup> IAC recommendation of 21 September.

polling stations. According to the OSCE/ODIHR EOM information, few voters checked and updated their information. On 29 September, CEC announced that final voter lists included 3,613,851 registered voters.

Overall, the activities of CEAVL and other voter list verification efforts undertaken by political parties and civil society enhanced public trust in the quality voter lists. Few complaints were filed concerning the voter lists. However, some persisting problems affected their accuracy. The civil registry from which voter lists are drawn still lacks a comprehensive and uniform address system and updated information on address or civil status changes.

Citizens abroad were entitled to register to vote at polling stations established in consular offices regardless of whether they were included in the consular registry or not. The Ministry of Foreign Affairs (MFA), the Civil Registry Department and the CEC did not efficiently co-ordinate efforts and did not provide potential voters with timely and accurate information about applicable procedures and required documents for registering to vote abroad.<sup>13</sup> Following criticism from citizens' organizations abroad and opposition parties, the CEC extended the initial deadline for voter registration abroad by three days and established five additional polling stations abroad.<sup>14</sup>

### **Registration of Parties and Candidates**

The registration of 2,742 candidates, including 2,313 candidates from party lists on the proportional ballot and 429 on majoritarian ballots, provided voters with a wide range of choice. In total, 14 political parties and 2 electoral blocs comprising 8 parties, as well as 4 independent majoritarian candidates contested these elections. The registration process was transparent and inclusive.<sup>15</sup> There were 729 and 59 female candidates in the proportional and majoritarian contests, respectively, accounting for 28.74 per cent of candidates in these elections. Only 6 of the 16 electoral subjects met the voluntary quota, which entitles parties to a 10 per cent higher state subsidy, by including 2 members of the under represented gender in each 10 positions on their lists.<sup>16</sup>

Earlier in the campaign, an issue arose concerning the assignment of the list number to the GD coalition. The GD had initially assumed that it would be able to retain the number used by one of its constituent parties from the 2008 elections, based on its interpretation of the law. The CEC assigned the GD a different one. Although this assignment rendered a significant amount of GD campaign material printed with the previous number unusable, the CEC decision was in line with the Election Code and its approach in similar cases in 2004 and 2008. The GD did not file a complaint against the decision of the CEC.

### **Campaign Environment**

The campaign was competitive with active citizen participation, including in peaceful mass rallies. The campaign environment, however, was polarized and tense, characterized by the use of harsh rhetoric and some instances of violence. The campaign often centered on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete

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<sup>13</sup> The MFA communicated rules for obtaining consular registration at their embassies, rather than information on how to register to vote. Only on 10 September when the CEC extended the registration deadline did the MFA ask their embassies to put information about how to register to vote on their websites. An application form for consular registration was available, but not a form for registration to vote abroad.

<sup>14</sup> Some 786 voters registered during the extension period, compared to 1,409 voters in the preceding 10 days.

<sup>15</sup> The few complaints on candidate registration were mostly related to residency requirements, signature requirements, and registering the name of a political party.

<sup>16</sup> Neither UNM nor GD met this voluntary quota. On the proportional ballot GD fielded 33 women of 200 candidates and UNM fielded 17 of 155.

political platforms and programs.

Freedoms of association, assembly and expression were respected overall, although some incidents marred the campaign, especially as election day approached. There were numerous verbal and physical altercations between UNM and GD supporters, obstruction of campaigning by UNM and the GD,<sup>17</sup> and some vandalism of campaign offices.<sup>18</sup>

Throughout the campaign, there were reports of detentions and arrests of party activists, mainly of the GD. In the days leading up to election day, these reports become more frequent. The GD reported arrests of more than 60 of their activists during this time as a deliberate attempt to paralyze their campaign.<sup>19</sup> The IAC reviewed these allegations and confirmed some 44 administrative detentions and additional fines related to violent incidents or threats. There were only a few reports of detention or fines of supporters and activists of other parties. Due to heightened political tensions, the IAC called on law enforcement to use reasonable and less severe sanctions.<sup>20</sup> The IAC reported that following its appeal the number of detentions of campaign activists notably decreased.

On 18 September, the campaign shifted focus after videos showing torture of prisoners in a Tbilisi prison were released. This led to thousands of protesters demonstrating across the country and the subsequent resignation of two government ministers. Opposition parties later joined the protests and increased their criticism of the governing party, and some of their candidates withdrew to support the GD. While President Saakashvili continuously described the election as a referendum on the government's and the governing party's achievements, the GD called on the president to resign and asked voters to express their disgruntlement through the ballot box and not in the streets.

The OSCE/ODIHR EOM noted that the distinction between state activities and the UNM campaign was at times blurred, which contributed to certain inequities in the campaign, challenging paragraph 5.4 of the 1990 OSCE Copenhagen Document.<sup>21</sup> UNM candidates were, on occasion, given preferential access to public venues and transport.<sup>22</sup> There were also reports of UNM majoritarian candidates having their offices in the same building as the municipality.<sup>23</sup> Several municipal officials were fined for campaigning for UNM in government offices.<sup>24</sup> In addition, in a number of cases, municipal and public service websites were used to display messages of the ruling party.<sup>25</sup>

The IAC, a body composed of senior officials of the executive and mandated to consider complaints or allegations of violations by civil servants, proved a useful forum for the review of concerns raised by stakeholders. It played a pro-active role in deterring campaign violations through issuing

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<sup>17</sup> On 26 September, OSCE/ODIHR EOM observed UNM supporters physically obstructing a GD rally in the central square of Sighnaghi.

<sup>18</sup> UNM reported attacks on their campaign offices in Chiatura. GD reported vandalism against their campaign offices in Nikortsminda, Chrebalo and Poti.

<sup>19</sup> Information received from the GD on 25 September.

<sup>20</sup> Statement by the IAC chair of 26 September.

<sup>21</sup> Paragraph 5.4 requires "clear separation between the State and political parties".

<sup>22</sup> For example: On 14 September, the IAC recommended the dismissal of a schoolmaster in Rustavi for accepting a request from the UNM majoritarian candidate for a meeting at his school with teachers while leaving a similar request from the GD candidate unanswered. OSCE/ODIHR EOM reported that supporters for a large UNM rally in Kutaisi on 8 September were shuttled from Samtredia (Imereti Region) with transportation organized by the municipality; and on 28 September around 200 municipal minibuses from Tbilisi were ordered to Rustavi to bring in supporters for the final UNM rally.

<sup>23</sup> UNM offices were located in public buildings in Tbilisi (Samgori) and Kutaisi.

<sup>24</sup> The Deputy Head of Marketing of the State Service Development Agency was fined for showing a promotional video from the agency, which featured a UNM candidate; and public employees were fined for displaying UNM campaign material in municipal offices in Gurjaani and Chalaubani.

<sup>25</sup> Including in Akhalkalaki, Akhmeta, Bolnisi, Dusheti, Dmanisi, Lanchkhuti, Martvili, Mestia, Senaki, Svaneti, Tsalenjikha, Zugdidi and Svaneti.

12 recommendations on corrective measures. On a number of occasions, the IAC called on various authorities, including the CEC, to sanction those responsible for violations. The IAC issued non-binding recommendations that were implemented in a timely manner by the relevant authorities. In some instances, this raised concern over the actual scope of the IAC's authority.<sup>26</sup>

Most contestants conducted small-scale meetings in villages and local communities. Only the UNM, the GD and, to some extent, the CDU organized big rallies and campaign events. While initially more limited, the billboard and poster campaign expanded in the second week of September. Local authorities followed an IAC recommendation to allocate additional space for posters and the two main advertisement companies made more billboard space available at discount prices for all contestants.

### Campaign Finance

Campaign finance regulations were drafted in an effort to create a comprehensive regulatory framework.<sup>27</sup> However, some provisions remain ambiguous and inconsistent. The Law on Political Unions and the Election Code regulate public and private funding of political parties and of the campaign, ceilings on campaign expenditure, reporting and disclosure requirements, providing sanctions for violations. The Financial Monitoring Service for Political Finances of the State Audit Office (SAO) is mandated to exercise oversight in this field. By law, the SAO is independent, but the perception of its independence and impartiality was undermined by the political affiliations of its management.<sup>28</sup>

The SAO enjoys wide discretionary powers and in 40 cases examined by the OSCE/ODIHR EOM, the SAO applied these powers disproportionately against opposition parties and their donors. The SAO investigated over 100 individuals and legal entities that donated to the GD; of these, 68 donors were fined by courts. In contrast, only 10 UNM donors were investigated and 8 were fined,<sup>29</sup> although the overall amount of donations to the UNM was some 6.5 times higher than that for the GD. UNM received 978 donations totaling GEL 20,701,268, whereas the parties forming the GD bloc received 1,433 donations totaling GEL 3,440,712.<sup>30</sup>

Several legal entities, deemed by the SAO and the court as associated with the GD and its leader, provided in-kind services to the GD, such as leasing premises, transportation and printing. These services were assessed as not being at market prices and were therefore considered illegal donations (totaling GEL 2,847,908).<sup>31</sup> Mr. Ivanishvili and Mr. Kaladze were fined as 'persons with electoral goals' for illegal donations to GD totaling GEL 22,575,367. It would appear that the status of a 'person with electoral goals' was not applied through a formal SAO decision.<sup>32</sup>

Parties and election blocs submitted income and expenditure reports on time using the standardized forms provided by the SAO. However, the law does not require the SAO to publish these reports, to

<sup>26</sup> For example, following IAC recommendation No.8, where the National Enforcement Bureau suspended the execution of court decisions.

<sup>27</sup> Council of Europe Committee of Ministers, Recommendation (2003) 4 [http://www.coe.int/t/dghl/monitoring/greco/general/Rec\(2003\)4\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/Rec(2003)4_EN.pdf) and OSCE/ODIHR and Venice Commission: Guidelines on Political Party Regulation 2011.

<sup>28</sup> The current SAO Director was until 23 July 2012 member of parliament for UNM. Both the former Director and Deputy-Director stepped down in order to run in the elections as candidates for UNM.

<sup>29</sup> The UNM explained the limited number of UNM donors being fined by their policy to advise donors in advance on the size of their donations based on their tax declarations.

<sup>30</sup> (Approx. 2 GEL = 1 EUR); See: <http://sao.ge/?action=news&npid=277&lang=eng>.

<sup>31</sup> [http://sao.ge/?action=pdf\\_archive&p\\_id=279&lang=geo](http://sao.ge/?action=pdf_archive&p_id=279&lang=geo)

<sup>32</sup> The OSCE/ODIHR EOM has requested this decision, but has not received it yet.



the detriment of full transparency. While the SAO is to verify the completeness, accuracy and legality of submitted reports, it is under no legal obligation to publish its conclusions.

The SAO investigations focused on individual donors rather than on political parties. More than 200 individuals were summoned by the SAO for explanations as witnesses in cases of possible breaches of campaign finance provisions.<sup>33</sup> At times, these individuals were investigated without respect for due process or in an intimidating manner that may have deterred other potential donors.<sup>34</sup> While transparency and accountability in political finance should be ensured, citizens should not be discouraged from political participation, including from donating to a party or candidate of their choice, nor should their right to privacy and data protection be compromised.<sup>35</sup>

The SAO only adopted its internal regulations in July, well after many investigations had already been conducted. In addition, the lack of regulation concerning the exchange of information between the SAO and other institutions, such as the State Revenue Service and commercial banks, created the potential for inconsistent practice. This was compounded by legislation that gave the SAO and courts wide discretion in determining the probability of an offense, whether a donation was 'justifiable' and therefore legal, and when and how to conduct investigations. In practice, the SAO and courts deemed donations illegal on the grounds that the 'donor failed to prove the origins of the funds donated' on the basis of scrutiny of donors' tax records of the past two years. Such criteria are not provided for in law. In several cases investigated by SAO and examined by the OSCE/ODIHR EOM, the alleged offense did not appear to be substantial.<sup>36</sup>

In all cases of illegal donations, courts imposed five-fold fines on donors, which often resulted in ordering the seizure of property.<sup>37</sup> In most cases, the SAO did not impose any sanctions directly on political parties that received funding and did not transfer illegal donations to the state budget, as required by the law. The SAO informed the OSCE/ODIHR EOM that they suspended fines, including on electoral subjects, following a recommendation by the IAC. Sanctions in cases of incompliance were inconsistently applied, raising questions as to the impartiality of enforcement and challenging public confidence.

## Media

The media environment was diverse, yet some private television (TV) channels had limited coverage within the country thus preventing full access to the variety of information to citizens. The OSCE/ODIHR EOM media monitoring findings indicate that only the Georgian Public Broadcaster (GPB) offered balanced coverage of the campaign in their newscasts.<sup>38</sup> While GPB and the two private channels, *Rustavi 2* and *Imedi*, are the only TV stations with nationwide coverage, the two latter media are widely perceived as supportive of the government. The coverage of the three opposition-leaning private channels, *Maestro*, *Kavkasia* and recently re-established *TV 9*, was mostly limited to Tbilisi and satellite networks.

<sup>33</sup> In such cases as Global TV, Komagi Foundation and the Georgian Football Supporter.

<sup>34</sup> The Public Defender's address to the Chamber of Control of Georgia of 15/03/2012] <http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1491>.

<sup>35</sup> OSCE/ODIHR and Venice Commission *Guidelines on Political Party Regulation* 2011, (para 191, 194, 201) [http://www.venice.coe.int/docs/2010/CDL\(2010\)073-e.pdf](http://www.venice.coe.int/docs/2010/CDL(2010)073-e.pdf).

<sup>36</sup> Donations to the GD investigated by the SAO included a contribution of GEL 100 and one in-kind contribution equal to GEL 10.

<sup>37</sup> A total of some 132,498,481 GEL of fines have been imposed, including a single fine of 20,243,827 GEL on Mr. Ivanishvili.

<sup>38</sup> Starting from August 30, OSCE/ODIHR EOM monitored the prime time following channels: GPB's *First* and *Second* Channels, *Rustavi 2*, *Imedi*, *Kavkasia*, *Maestro*, *TV9*, and *Adjara*.

In July, the broadcast content provider *Global Contact Consulting Ltd* and *TV Maestro* made attempts to increase the penetration of satellite networks by distributing receivers. However, both companies had their satellite dishes and TV equipment seized by a court order “on the grounds that they were intended for (...) vote buying”.<sup>39</sup> As a result, the distribution of some 128,000 satellite dishes and 68,000 satellite receivers was stopped.

In an attempt to address mounting criticism by the opposition and the NGO community of insufficient media access and following consultations with media advocacy group, the ‘*Must Carry, Must Offer*’ provisions were introduced in the Election Code in June. These provisions obliged cable networks and satellite content providers to include all national media outlets with satellite broadcasting license and those that reach over 20 per cent of the population in their distribution list. On the other hand, the media outlets cannot object to their inclusion. While in general these provisions helped TV stations to increase their penetration into cable networks, they mainly benefitted the urban population.<sup>40</sup> By law these provisions were only applicable to the pre-election campaign. During election day, the majority of cable companies continued broadcasting TV stations affected by these provision.

The Georgian National Communications Commission (GNCC), the regulatory body for the broadcast media, was mandated to oversee the implementation of media-related provisions of the Election Code, which included monitoring for balanced coverage in news and current affairs programs. The GNCC indicated a lack of balanced coverage in most media outlets monitored by them. This is not in line with the Law on Broadcasting, which calls for non-discriminatory and pluralistic coverage of all relevant views in news programs.<sup>41</sup> However, the GNCC did not take any action due to the lack of sanctioning power in this respect. By law, such violations should be resolved by self-regulatory bodies within the respective media outlets. A complaint by a media NGO over bias of six TV stations was dismissed by their respective self-regulatory bodies, which deemed the NGO ‘not a concerned party’, as its rights were not directly violated. Apart from these challenges, no other complaints were filed against the media. It is a concern that decisions on media complaints related to impartiality of campaign coverage cannot be appealed, including to the courts.

In a positive development, talk shows and debates were numerous and frequent on all TV stations monitored by the OSCE/ODIHR EOM and provided candidates with a platform to present their opinions. The OSCE/ODIHR EOM media monitoring findings indicate that the key contestants, the UNM and the GD, received similar proportions of mostly positive and neutral coverage (14 and 18 per cent respectively) in the newscasts on the *Channel 1* of GPB. Seven other active contestants received extensive coverage, with each of them being allocated between 5 and 11 per cent of mostly positive coverage. The amount of coverage dedicated to the authorities was insignificant, with the president only receiving 2 per cent and the government, 12 per cent of coverage.

*Rustavi 2* and *Imedi*, as well as the regional TV *Adjara* demonstrated bias in favor of the UNM. On these three stations, the UNM received significant coverage (27, 21 and 39 per cent respectively), which was mostly positive in tone, while the GD received 19, 29 and 13 per cent of coverage, mostly negative in tone. In their coverage, *Rustavi 2*, *Imedi* and *TV Adjara* often blurred the line between official activities and campaign-related appearances of state officials, who were also high-ranking members of the UNM, thus indirectly benefiting the governing party.<sup>42</sup> In particular, the

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<sup>39</sup> See court decisions of 21 and 25 June (Global Ltd), court decision of 14 June and administrative protocols of 11 and 15 July (Maestro Ltd.).

<sup>40</sup> According to the GNCC, as of June there are some 194,000 cable subscribers in Georgia. The majority of the subscribers – 179,298 or 92 per cent are located in Tbilisi.

<sup>41</sup> See Article 54 of the Law on Broadcasting. In addition, the Code of Conduct for Broadcasters calls for “thorough and balanced coverage of campaign activities of qualified election subjects”.

<sup>42</sup> Paragraph 5.4 of the Copenhagen Document stipulates a clear separation between State and political parties.

president and the prime minister were extensively covered in their official capacities, even during clearly campaign-related events, such as the presentation of UNM candidates.

*TV 9* and *Maestro* devoted the largest part of their coverage (47 and 33 per cent respectively), to the GD. This coverage was mainly positive in tone. The newscasts of *Kavkasia* were focused on the activities of the GD (29 per cent), but also provided a considerable amount of positive and neutral coverage to the UNM and the CDU (15 and 7 per cent respectively).

OSCE/ODIHR EOM media monitoring results indicate that free airtime, provided by every TV station, was used by all four contestants that qualified. Paid advertisements were used mainly by the UNM and, to a lesser extent, by the GD. Other parties noted the high prices of political advertisements on nationwide channels to the OSCE/ODIHR EOM. Two non-profit organizations purchased airtime to broadcast negative advertisements against GD, in one case, and against the authorities and UNM in the other. The spots, identical to the ones broadcasted by the two NGOs, were also broadcast as free advertisements for the GD and UNM.

### Participation of National Minorities

National minorities enjoy full political rights under the Constitution, and according to the 2002 census make up 16.2 per cent of the population. The most significant minority groups are Azeris (6.5 per cent) and Armenians (5.7 per cent). Several parties and blocs included members of national minorities in their lists and as majoritarian candidates, nominating them in districts where minorities form substantial parts of the population. In Akhalkalaki, five majoritarian candidates, including from the UNM and the GD, were ethnic Armenians; with another four ethnic Armenian candidates in Ninotsminda. In Marneuli, six majoritarian candidates were ethnic Azeri. The CEC translated voter lists, ballot papers and protocols and conducted trainings in minority languages, in line with international standards.<sup>43</sup> The CEC also operated a tri-lingual hotline and regularly aired voter information in Armenian, Azeri and Russian. These welcomed initiatives were developed jointly with civil society groups representing national minorities.

### Complaints and Appeals

The new Election Code established a fast track for dispute resolution and review of appeals against election commissions' decisions. It clarified deadlines and gave an additional day for filing complaints at PEC level. The CEC standardized the form for the submission of complaints, which simplified the process, and provided trainings and a manual on the dispute resolution process to party lawyers and civil society. PEC and DEC members were also trained on polling day complaint process. The potential for a parallel complaints system has largely been removed as recommended by the OSCE/ODIHR and the Venice Commission. However, the option remains to challenge certain decisions or actions taken by a PEC on election day, either to DEC or courts.<sup>44</sup> This remaining provision may compromise effective remedy.

In the pre-election period, the OSCE/ODIHR EOM noted some 236 complaints were filed with the election administration and courts.<sup>45</sup> Complaints were mostly filed by DEC members appointed by the GD and NGOs from across the country. Eighteen DEC or CEC decisions were challenged to courts, and none were reversed. Of the complaints, 138 were rejected or dismissed, including 120 by the election administration and 18 in court. On 18 September, the CEC drew an administrative protocol to impose a 2,000 GEL fine on Free Georgia upon complaint from six NGO, which was

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<sup>43</sup> The UN Human Rights Committee, for example, recommends that "information and materials about voting should be available in minority languages", see General Comment 25 on Article 25 of the ICCPR.

<sup>44</sup> This excludes decisions adopting summary result protocols, See Election Code, Article 78.19.

<sup>45</sup> Complaints included 2 filed at PECs, 132 at DEC, and 83 at the CEC, as well as 19 in courts.

subsequently upheld by the court. The case related to a contentious video that was distributed via social media and allegedly contained “calls for religious hostility and confrontation”.

### **Domestic and International Observers**

The CEC registered 50 domestic and 61 international organizations to observe these elections. The CEC rejected applications from 27 organizations, mostly on procedural grounds or for failure to provide information about funding.<sup>46</sup> Overall, the CEC accredited approximately 20,000 domestic and 2,000 international observers. The active participation of such large numbers of domestic observers served to enhance the transparency of the process. Civil society and domestic observer organizations undertook a number of activities to support the electoral process and monitor the elections, including observation of the pre-electoral process, deployment of observers on election day, monitoring of the work of DECAs and of the media, voter list verification, and establishment of telephone hotlines and information websites.

### **Election Day**

Overall, election day was calm and peaceful throughout the country. International observers assessed all stages of the election day process generally positively with adherence to procedures, although counting received a less positive assessment. The CEC began releasing preliminary results and posting results protocols in the early morning hours on the day after the elections, contributing to the overall transparency. Preliminary voter turnout was reported at 60.8 per cent.

Opening procedures were generally followed and international observers assessed the process positively in 140 polling stations out of 158 observed, however, small delays in the opening of polls occurred.

Voting was generally well organized and polling officials administered the vote in a competent and professional manner. International observers evaluated the process positively in 93.5 per cent of polling stations observed. The process was assessed more negatively in rural areas. Domestic observers and party representatives were present in nearly all polling stations (95 and 99 per cent respectively). However, this combined with high voter turnout contributed to overcrowding in 11.5 per cent of polling stations observed and led to some tension both inside and outside of polling stations. International observers reported restrictions in their work in 5 per cent of polling stations observed. In a few instances, party representatives were observed interfering in the work of PECs. Women represented 52 per cent of PEC chairpersons in the polling stations observed.

Some procedural problems were identified. International observers noted that voters did not always mark their ballots in secret and observed group voting in 5 per cent of polling stations observed. Some inconsistency was also reported in the use and checking of ink, which is envisaged as a safeguard against multiple voting (7 per cent of polling stations observed). Voter identification procedures were generally followed. In 7.5 per cent of polling stations observed individuals were turned away as their names were not on the voter lists.

While counting procedures were generally followed, international observers evaluated the counting process less positively than voting, with a negative assessment given in almost one sixth of polling stations observed. In one third of the 135 counts observed, the PECs had difficulties completing the results protocols, which led to procedural errors or omissions, including cases of pre-signing of protocols in one tenth polling stations observed. Results protocols were not always put on display, as required by law detracting from transparency. There were indications that ballot box stuffing had occurred earlier in some 7 instances around the country, including in the polling station in Khashuri,

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<sup>46</sup> See Election Code, Articles 39 and 40.

where the counting process was later disrupted. The CEC stated that the annulling of results, in a small number of polling stations due to reported violations, is under consideration.

The tabulation process was mostly transparent, with some overcrowding noted in DEC's. International observers reported that PEC material was not properly sealed in eight cases and PEC protocol figures did not reconcile correctly in nine cases of 87 tabulations observed. In Tetrtskaro, at least two PECs had their ballots and protocols escorted directly to the CEC as large crowds prevented their access to the DEC.

***The English version of this report is the only official document.  
An unofficial translation is available in Georgian.***

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#### **MISSION INFORMATION & ACKNOWLEDGEMENTS**

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Tbilisi, 2 October 2012 - The OSCE/ODIHR EOM opened in Tbilisi on 22 August. It includes 16 experts in the capital and 24 long-term observers deployed throughout Georgia.

On election day, 393 observers from 42 countries, were deployed, including 290 long-term and short-term observers deployed by the OSCE/ODIHR, as well as 53 parliamentarians and staff from the OSCE PA, 22 from the PACE, 14 from the EP and 14 from the NATO PA. Voting was observed in 1,260 polling stations across the country. The tabulation process was observed in 55 DEC's

The observers wish to thank the authorities of Georgia for the invitation to observe the elections; the Central Election Commission, the Ministry of Foreign Affairs, the Parliament of Georgia and other state and local authorities for their assistance and co-operation. The observers also wish to express appreciation to the diplomatic community and international institutions for their co-operation and support.

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