



Office for Democratic Institutions and Human Rights

GEORGIA

PARLIAMENTARY ELECTIONS

1 October 2012

OSCE/ODIHR Election Observation Mission
Final Report



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I. EXECUTIVE SUMMARY

Following an invitation from the Ministry of Foreign Affairs of Georgia, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an election observation mission (EOM) on 22 August to observe the 1 October 2012 parliamentary elections. The OSCE/ODIHR assessed the electoral process for compliance with OSCE commitments, other international standards for democratic elections as well as national legislation. For election day observation, the OSCE/ODIHR joined efforts with observer delegations from the OSCE Parliamentary Assembly (OSCE PA), the European Parliament (EP), the Parliamentary Assembly of the Council of Europe (PACE) and the NATO Parliamentary Assembly (NATO PA).

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 frequent use of harsh rhetoric and a few instances of violence. The campaign often centred on the advantages of incumbency, on the one hand, and private financial assets, on the other, rather than on concrete political platforms and programs.

While freedoms of association, assembly and expression were respected overall, instances of harassment and intimidation of party activists and supporters marred the campaign 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 the OSCE 1990 Copenhagen Document.

The new Election Code, the key legislation regulating the conduct of elections, is generally conducive for democratic elections, although notable shortcomings remain that are at odds with OSCE commitments. Important previous recommendations by the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission) were implemented, including granting the right to vote to some categories of prisoners, permitting independent candidacy and reducing residency requirements. Key remaining shortcomings include the disparity of the population size among single mandate constituencies, which undermines the equality of the vote; the legal potential for post-election disqualification of contestants; and a seat allocation method that may not respect voters' choices. The Election Code underwent substantial amendments shortly before the elections, contrary to good electoral practice.

Fourteen political parties, two election blocs comprising a further eight parties, and two independent candidates were registered in an inclusive and transparent process, providing voters with a wide choice. In total, 2,757 candidates, including 783 (28.4 per cent) women, contested 150 parliamentary seats under a mixed proportional-majoritarian system. Incentives to promote more balanced gender

¹ The English version of this report is the only official document. An unofficial translation is available in Georgian.

representation were largely ineffective, as the majority of contestants, including the United National Movement (UNM) and the opposition bloc 'Georgian Dream' (GD) did not submit more gender-balanced candidate lists.

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. Other institutions assumed the responsibility for voter registration, as well as for media and campaign finance monitoring that allowed the CEC to focus exclusively on the core task of election administration. All members of lower-level election commissions received comprehensive training from the CEC that was generally assessed positively. Women made up two-thirds of the membership of Precinct Election Commissions (PECs) and chaired half of all PECs.

Under the new Election Code, the Commission for Ensuring the Accuracy of the Voter Lists (CEAVL) assumed the responsibility for compilation and verification of voter lists. The CEAVL conducted a door-to-door verification campaign, which together with other verification efforts undertaken by parties and civil society enhanced public trust in the quality of voter lists. However, the civil registry from which voter lists are drawn still lacks a comprehensive and uniform address system and efficient mechanisms for timely updates of addresses and inter-agency exchange of civil status changes.

The Inter-Agency Commission (IAC), mandated to consider complaints alleging campaign violations, proved a useful forum to review stakeholders' concerns. The IAC's non-binding recommendations were implemented in a timely manner by the relevant authorities. Some of the recommendations raised concern over the actual scope of the IAC's authority as at times it exceeded its mandate and challenged the principle of separation of powers, with one recommendation in particular resulting in postponing the enforcement of a court decision.

The Law on Political Unions of Citizens (Law on Political Unions) was drafted in an effort to create a comprehensive legal framework regulating party and campaign finance. However, the law contains gaps, ambiguities and disproportional sanctions negatively affecting its implementation. The Law on Political Unions also underwent substantial amendments shortly before the elections that some interlocutors criticized as beneficial to the incumbents and driven by immediate political interest. A new regulatory body, the State Audit Office (SAO), was tasked to implement the law related to party and campaign finance. The SAO enjoyed wide discretionary powers, but failed overall to apply the law 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.

The media environment was diverse. Some private television (TV) channels had limited coverage within the country, preventing full voter access to a wide variety of information. 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.

Overall, election day was calm and peaceful throughout the country and the process was assessed positively by international observers. Procedures were generally adhered to, although counting and tabulation received a less positive assessment. The CEC began releasing preliminary results and posting results protocols on its website in the early morning hours the day after the elections, contributing to transparency.

The active involvement of a large number of citizen 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. However, on election day, members of civil society groups accredited as citizen observers displayed political bias in several instances and were observed interfering in the process in some polling stations.

The Election Code clarifies deadlines and establishes a fast track for dispute resolution and review of appeals against election commissions' decisions. The CEC simplified the process by standardizing the form to submit complaints and provided trainings and a manual on the dispute resolution process to party lawyers and civil society. Some 236 complaints were filed with the election administration and courts in the pre-election period and some 384 complaints were filed on and after election day. Most complaints were filed by citizen observers and GD representatives with District Election Commissions (DECs).

Shortly after the elections, as early indications of possible outcomes of the majoritarian races became available, a number of DECs came under pressure from groups of supporters, in particular from the GD bloc. In some 20 districts, supporters gathered in considerable numbers outside DECs, often in response to calls from their respective majoritarian candidates. Similar gatherings were organized in front of courts during hearings challenging the results at individual PECs. The CEC and the Supreme Court condemned these and other attempts to exert undue influence on DECs and courts.

On 14 October, reruns were conducted in 11 precincts in three majoritarian constituencies where the vote had been annulled as a result of irregularities and violations. Reruns were conducted in a calm and orderly atmosphere, although the turnout was low.

The CEC registered the new members of parliament on 19 October. Among the 150 new parliamentarians 18 are women, which constituted a significant increase over the outgoing parliament. Eight new members have a national minority background. On 21 October, the inaugural session of the new parliament was held in Kutaisi, the new seat of the parliament.

A number of recommendations in this report are meant to set out ways in which the electoral process may be further improved. The OSCE/ODIHR stands ready to support Georgia in its efforts to implement these recommendations.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of Georgia to observe the 1 October parliamentary elections and based on the recommendation of a Needs Assessment Mission conducted in Tbilisi from 11 to 15 June, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an election observation mission (EOM) on 22 August. Led by Nikolai Vulchanov, the mission comprised a core team of 16 experts based in Tbilisi and 28 long-term observers (LTOs) deployed throughout the country.

For election-day observation, the OSCE/ODIHR joined efforts with observer delegations from the OSCE Parliamentary Assembly (OSCE PA), the European Parliament (EP), the Parliamentary Assembly of the Council of Europe (PACE) and the NATO parliamentary Assembly. Tonino Picula, Head of the OSCE PA delegation, was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the short-term observer mission. The PACE delegation was led by Luca Volontè, Milan Cabrnich headed the delegation of the EP, and the NATO PA delegation was led by Assen Agov.

On election day, 393 observers from 42 countries were deployed, including 290 observers by the OSCE/ODIHR, as well as 53 parliamentarians and staff from the OSCE PA, 22 from the PACE, 14 from the EP and the NATO PA each. Voting was observed in some 1,450 of the 3,677 polling stations, and counting was observed in 157 polling stations. The tabulation process was observed in 42 of the 73 District Election Commissions (DECs).

The elections were assessed for their compliance with the OSCE and Council of Europe (CoE) commitments for democratic elections, other international standards for democratic elections as well as with the national legislation. This final report follows a Statement of Preliminary Findings and Conclusions released at a press conference in Tbilisi on 2 October 2012.² In the Autonomous Republic of Adjara, Supreme Council elections took place in parallel with parliamentary elections. The OSCE/ODIHR followed these elections only to the extent that they affected the conduct of the parliamentary elections.

The OSCE/ODIHR EOM wishes to thank the authorities of Georgia for the invitation to observe the elections, as well as the Central Election Commission (CEC), the Ministry of Foreign Affairs (MFA), the Parliament of Georgia, the Supreme Court, the Inter-Agency Commission (IAC) and other state and local authorities for their assistance and co-operation. It also expresses its gratitude to the representatives of political parties, media, civil society, and other interlocutors in Georgia for their input. The OSCE/ODIHR also wishes to express appreciation to the diplomatic representations of the OSCE participating States and international organizations for their co-operation and support.

III. BACKGROUND

On 1 August, President Mikheil Saakashvili called parliamentary elections for 1 October, in line with constitutional requirements. In the outgoing parliament, elected on 21 May 2008, 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 Labour Party (LP) – 6 mandates each, and the Republican Party (RP) – 2 mandates. In an act of protest against alleged election violations by the ruling party, two majoritarian members of parliament (MPs) from the RP relinquished their mandates, which were filled by the CDM and the National Democratic Party following the 2008 by-elections. A few opposition members decided to boycott the proceedings of the parliament, including the drafting process of a new Election Code.

In its Statement of Preliminary Findings and Conclusions on the 2008 elections, international election observers concluded that “overall, these elections clearly offered an opportunity for the Georgian people to choose their representatives from amongst a wide array of choices. The

² For all previous OSCE/ODIHR reports on Georgia, see <http://www.osce.org/odihr/elections/georgia>.

authorities and other political stakeholders made efforts to conduct these elections in line with OSCE and Council of Europe commitments.” However, the mission “identified a number of problems which made this implementation uneven and incomplete.”

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. These constitutional amendments will enter into force after the next presidential election, anticipated in the second half of 2013.

IV. ELECTORAL SYSTEM

The 150-member parliament is elected for a four-year term under a mixed electoral system: 73 members are elected in single-mandate constituencies under a majoritarian system and 77 on closed party lists in one nationwide constituency under a proportional system.³ Registered political parties and blocs can contest seats both in the majoritarian race (one candidate per electoral district) and in the nationwide constituency (a list of between 100 and 200 candidates). A majoritarian candidate must obtain at least 30 per cent of the total number of valid votes in the constituency to be elected. If no candidate reaches this threshold, a run-off is held within 14 days between the two candidates who received the highest number of votes. Political parties and blocs must pass a threshold of five per cent of the valid votes in the nationwide constituency in order to qualify for seat allocation.

V. LEGAL FRAMEWORK

The key electoral legislation includes the Constitution, the Election Code, the Law on Political Unions, the Law on the State Audit Office, the Criminal Code, the Administrative Offences 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,⁴ which is contrary to good electoral practice.⁵

The new Election Code, as adopted in December 2011 and revised on two occasions in 2012, incorporated some important OSCE/ODIHR and Council of Europe’s Commission for Democracy through Law (Venice Commission) recommendations, including those contained in a Joint Opinion.⁶ For the first time, the right to vote was extended to prisoners (those sentenced for misdemeanours) 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 as a candidate, introduced financial incentives to promote greater gender balance on candidate lists,⁷ and placed some restrictions on the use of administrative resources.

³ Constituency boundaries correspond to the existing territorial-administrative units.

⁴ 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.

⁵ See Paragraph 65 of the Code of Good Practice in Electoral Matters of the Venice Commission, [http://www.venice.coe.int/docs/2002/CDL-AD\(2002\)023-e.pdf](http://www.venice.coe.int/docs/2002/CDL-AD(2002)023-e.pdf).

⁶ The OSCE/ODIHR and the Venice Commission published a Joint Opinion on the draft Election Code on 19 December 2011 (Joint Opinion), available at www.osce.org/odihr/86401.

⁷ Parties are entitled to a 10 per cent higher state subsidy when they include 2 members of the under-represented gender in each 10 positions on their list.

However, other key recommendations remained unaddressed. One notable shortcoming is the disparity of the population size in single mandate constituencies, which undermines the equality of the vote required by paragraph 7.3 of the 1990 OSCE Copenhagen Document.⁸ The number of voters in individual constituencies ranged from around 6,000 to over 140,000. The maximal deviation from the average size should not exceed 10 per cent (15 per cent if special circumstances apply).⁹ Though the authorities in 2011 stated intentions to engage in redistricting, these have yet to materialize.

The OSCE/ODIHR reiterates its long-standing recommendation to address the disparity of the population size in single mandate constituencies for parliamentary elections.

In addition, provisions remain that allow political public officials to combine campaign activities with the conduct of their official duties. Such officials, who include governors, mayors and chief executives of municipalities (*gamgabeli*), should be bound by the rules that apply to judges and election commission members and be barred from campaigning.¹⁰ Other provisions 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, however, such equality may be undermined, as political parties in government enjoy easier access.¹¹

Further, election subjects risk post-election disqualification for certain campaign violations related to vote buying, abuse of administrative resources, campaign finance violations, as well as the failure to pass a drug test conducted after an election, but prior to being installed in office.¹² These sanctions challenge OSCE commitments.¹³

It is recommended to remove provisions from the Election Code that may prevent elected candidates who have obtained the necessary number of votes from being duly installed in office.

Some amendments to the legal framework were introduced after the 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 bloc 'Georgian Dream' (GD), Bidzina Ivanishvili, to vote and stand as a candidate after he lost his Georgian citizenship.¹⁴ In addition, the Election Code provides a possibility for political parties or blocs that clear the threshold for seat allocation, but receive 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 election subjects. Although the OSCE/ODIHR does not recommend any particular system, an electoral system "must be compatible with the rights protected by Article 25 [of the International Covenant on

⁸ See Joint Opinion, Paragraph 20.

⁹ See Paragraph 2.2 (iv) of the Code of Good Practice in Electoral Matters.

¹⁰ See Joint Opinion, Paragraph 62.

¹¹ Ibid, Paragraph 60.

¹² All candidates are required to pass a drug test, either when applying for registration as majoritarian candidates or after being elected on a party list.

¹³ 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 (...)"

¹⁴ On 16 October 2011, President Saakashvili passed a decree by which Mr. Ivanishvili would be granted Georgian citizenship once his French citizenship was withdrawn. One year later, on 16 October, Mr. Ivanishvili's citizenship was restored.

Civil and Political Rights (ICCPR)] and must guarantee and give effect to the free expression of the will of the electors.”¹⁵

The implementation of the provision in the Criminal Code on vote buying, which was last amended in May 2012 following a civil society campaign, remains unclear as the current wording has yet to be tested and interpreted in court.¹⁶ Vote buying is also addressed in the Election Code yet its definition differs from the Criminal Code as does the approach to dealing with implementation of provisions.

Provisions of the Criminal Code and the Election Code on vote buying should be reviewed and harmonized.

The Law on Gender Equality, which entered into force on 12 April 2010, became Georgia’s first law promoting gender equality and has generally been seen as a framework for further steps in this regard. On 5 May 2011, the Gender Equality Action Plan was adopted under the auspices of the Parliamentary Gender Equality Council. The Council assembled government, parliament and the civil society together and was instrumental in promoting the introduction of incentives for more gender-balanced candidate lists.

Given the number of issues raised in this and previous reports, consideration should be given to initiate a comprehensive review of the electoral legal framework. While in line with good electoral practice, significant changes should not be introduced to the legal framework within one year of elections, some technical and procedural elements can be improved before the presidential election anticipated to take place in October 2013.

VI. ELECTION ADMINISTRATION

The elections were administered by a three-tiered election administration comprised of the CEC, 73 DEC, and 3,648 Precinct Election Commissions (PECs). In addition, the CEC established 71 special polling stations in military units, hospitals, detention centres and prisons; 2 polling stations for Georgian military personnel serving in Afghanistan; and 45 polling stations at consular offices abroad.¹⁷

Election commissions at all levels have 13 members each, seven of whom are nominated by the political parties that qualify for state funding.¹⁸ Five CEC members are appointed by parliament from nominees proposed by the president, with additional procedures instituted to select the CEC chairperson. The CEC members serve a five-year term.

For DEC and PEC, the remaining six members are appointed by higher-level election commissions. DEC members appointed by the CEC serve five-year terms, while DEC party appointees and all PEC members only serve for the election period. The six administratively

¹⁵ See Paragraph 21 of the UN Human Rights Committee General Comment No. 25. In addition, Article 28 of the Constitution guarantees the free expression of the will of voters.

¹⁶ See Complaints and Appeals Section for examples of cases of vote buying that were brought before the courts although lacked adjudication.

¹⁷ No polling stations were formed in the Russian Federation due to the absence of diplomatic relations.

¹⁸ Eligibility to appoint members to election commissions is granted to seven parties that receive the highest state funding. State funding is provided to parties that passed a four per cent threshold in the most recent parliamentary elections or a three per cent threshold in the last municipal elections.

appointed members tended to vote as a bloc and were commonly joined by the UNM party appointees, giving them a *de facto* majority on election commissions at all levels. This tendency was often apparent in voting patterns during decision-making. Throughout the election period, the turnover of PEC members was not uncommon.¹⁹ In many cases, PEC members nominated by political parties had not been initially informed of their nominations or resigned due to legal and financial liability concerns associated with their responsibilities.

Only one woman served on the CEC. In the DEC, women represented 44 per cent of the permanent membership and 55 per cent of party appointees. They held 14 chair positions (19 per cent), 16 deputy chairs (22 per cent), and 47 secretary positions (64 per cent). Women were well represented among members of PECs in polling stations. On average, 10 out of 13 members or 69 per cent were women, and more than half (52 per cent) of PECs were chaired by women.²⁰

The competencies of the CEC were narrowed under the new Election Code. Other institutions 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 sessions and consultative working groups that were open to observers, party representatives and media. Sessions leading to CEC decisions were often vigorous and argumentative, reflecting the polarized political environment. At times, requests by commission members appointed by opposition parties and party representatives to place certain issues on the agenda were deferred indefinitely.²¹ The CEC maintained a comprehensive website, which was updated daily with prompt uploads of all decisions, press announcements, training manuals and information bulletins.

The CEC conducted voter information campaigns on various aspects of the electoral process and ensured that information materials were produced in minority languages. All DEC and PEC members received comprehensive training provided by the CEC Training Centre that was assessed positively by the OSCE/ODIHR EOM, with some specific aspects to consider for improvement (see Election Day Section). Training sessions and handbooks on the complaints and appeals process were also provided by the CEC Legal Department to party lawyers and activists, observer organizations, judges and the media.

Some controversy arose over the issue of military voting. Based on requests by military commanders, DEC established 27 special ‘military unit’ polling stations to facilitate voting of military personnel. According to the Election Code, citizens registered to vote at special ‘military unit’ polling stations are entitled to receive both a proportional and majoritarian ballot at their place of service, irrespective of their civilian place of registration.²² The GD filed numerous complaints alleging that these polling stations were established to distort the majoritarian vote in favor of the UNM in targeted regions and challenged the right of military voters to receive a majoritarian ballot.

¹⁹ OSCE/ODIHR LTOs reported turnover of PEC members appointed by political parties in several districts. Most notably, in Kutaisi (131 PECs), 405 changes occurred involving 218 members of the GD, 136 of Christian Democratic Union (CDU), 40 of the LP, and 11 of the UNM.

²⁰ As reported by OSCE/ODIHR observers on election day.

²¹ On 14 September, the GD representative requested that deadlines for filing election day complaints be put on the agenda; on 18 September, the Conservative Party appointee requested that the eligibility of military personnel to vote in majoritarian elections be put on the agenda.

²² See Paragraph 3.2 (xi) of the Code of Good Practice in Electoral Matters, which states that “military personnel should vote at their place of residence whenever possible. Otherwise, it is advisable that they be registered to vote at the polling station nearest to their duty station.”

All of these challenges were dismissed. On election day, OSCE/ODIHR observers also noted that some special ‘military unit’ polling stations were established in factories and Ministry of Defence repair shops; *de facto*, they only served civilian ministry employees, who had been reassigned from their regular polling station.

It is recommended that civilian Ministry of Defence employees and related enterprises and uniformed personnel not assigned to barracks or base housing vote at their regular polling stations. The possibility that all other military personnel stationed within Georgia vote at regular polling stations could be revisited.

On 24 September, a CEC decree limited video and photography in polling stations on election day. The restriction triggered strong criticism from opposition parties, civil society and media outlets for reducing media access and transparency.²³ An appeal by the civil society to repeal this decree was rejected. However, the decree was adopted after the completion of training of PEC members, which resulted in the associated provisions not being consistently applied on election day in all PECs.

VII. 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. The CEAVL was chaired by a member of the opposition New Rights Party. In June and July, the CEAVL conducted a comprehensive door-to-door verification of voter data. The CEAVL reported that on the basis of its verification campaign 25,949 deceased voters were removed from the lists. However, in nearly 650,000 cases, persons listed at an address were unknown to the current residents or had reportedly moved. Another 291,000 former residents were thought to be abroad.²⁴

Currently, there are no legal provisions or procedural mechanisms to systematically suspend registration, reassign voters or remove them from the list of their last known residence address except when they update their own information with the Civil Registry Department (CRD). Failing to re-register results in names remaining on a voter list indefinitely at an address where they no longer reside. Relatively few formal complaints were filed. However, those that were filed challenged the entries of hundreds of voters in specific communities on the basis that they did not reside at the residence address on record. Such cases were generally dismissed.

Overall, there appeared a general consensus in the public’s perception that voter lists had been significantly improved based on the verification activities undertaken by the CEAVL.²⁵ Nonetheless, the civil registry from which voter lists are drawn still lacks a comprehensive and uniform address system. In addition, the civil registry lacks efficient mechanisms for timely updates of addresses and inter-agency exchange of civil status changes.

It is recommended that the CRD undertake a comprehensive effort, in coordination with CEAVL and other relevant authorities, to develop a comprehensive, uniform and timely updated address

²³ See CEC Decree 42/2012 clarifying Article 8.25 of the Election Code.

²⁴ CEAVL Resolution No. 53 on Verification of Voter Lists Door-to-Door Campaign, 30 July 2012.

²⁵ GD undertook its own nationwide door-to-door voter list verification exercise which resulted in generally similar statistical findings as those reported by CEAVL. In addition, some civil society organizations, such as the Voters League, conducted limited door-to-door canvassing in certain communities.

system. In addition, more effective mechanisms for reporting change of residence and timely inter-agency sharing of information regarding civil status changes could be established.

The CEC remains charged with the organization and preparation of voter lists by district and precinct upon receipt of the updated nationwide voter register from the CEAVL. Beginning on 28 August, preliminary voter lists were posted for public scrutiny in all polling stations. However, according to the OSCE/ODIHR EOM, few voters checked and updated their information. On 29 September, the CEC announced that final voter lists included 3,613,851 registered voters.²⁶ While 206,795 internally displaced persons (IDPs) were included in the lists, an estimated 2,000 IDPs were disenfranchised due to the absence of a current temporary address on their IDP cards,²⁷ precluding them from being assigned to an appropriate precinct's voter list.²⁸

The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is encouraged to update and replace the IDP cards of persons for whom no current temporary address is identified in order that these citizens can be properly entered into the voter list and be able to vote in future elections.

Citizens abroad were entitled to register to vote at polling stations established in consular offices regardless of whether or not they were included in the consular registry. However, the MFA, the CRD 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. Following criticism from citizens' organizations abroad and opposition parties, the CEC extended the initial deadline for voter registration abroad by three days and established polling stations in five additional countries. However, these new polling stations were only established one day before the extended deadline leaving little time for voters to apply.

It is recommended that the MFA, in coordination with the CEC, provides comprehensive and timely information on how to register to vote at consular offices abroad, including posting information on respective websites specifying the required documents for registration. In general, deadlines related to establishing precincts and PECs abroad should be reviewed to ensure they are aligned to allow voters sufficient time and convenience to register.

VIII. CANDIDATE REGISTRATION

In order to participate in the elections, contestants had to first register with the CEC. A party without representatives in the outgoing parliament and not qualified to receive state funding had to collect 25,000 signatures, while qualified parties had to collect only 1,000 signatures. A total of 41 parties

²⁶ This included 43,176 voters on consular registries abroad, 2,125 voters serving sentences for minor crimes, 54,019 military unit and Ministry of Interior special force voters, and 206,795 internally displaced persons.

²⁷ Figures projected by "Consent", an NGO working extensively with IDPs, which were generally acknowledged by the Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia. Reportedly some IDPs had not yet been settled when they were originally registered as IDPs; some others have been resettled since being registered as IDPs but their documents have not been changed.

²⁸ The OSCE/ODIHR previously recommended reviewing aspects of the civil registration system, such as the possibility to register without providing an address, in order to ensure that voting rights are guaranteed. See p.25 of the OSCE/ODIHR EOM Final Report of the 2010 Municipal Elections at <http://www.osce.org/odihr/elections/71280>.

applied, of which 19 were not registered.²⁹ In addition, four initiative groups, consisting of at least five voters, nominated independent candidates for elections in single-mandate constituencies. To register they had to submit signatures of supporting voters equal to one per cent of the number of voters registered in the respective district and to pay an electoral deposit of GEL 5,000.³⁰ The signature collection requirement was waived for independent incumbent MPs.

In total, 14 political parties and two electoral blocs comprising eight parties³¹, as well as two independent majoritarian candidates contested the elections.³² By the 1 September registration deadline, all election subjects submitted their list of candidates for the proportional contest, which totalled 2,313 candidates. By the 21 September deadline for withdrawal of candidacy, 444 majoritarian candidates registered to contest the 73 seats. The most contested majoritarian district was Saburtalo (Tbilisi) with 10 candidates, while Adigeni had only two candidates. Only the UNM and the GD fielded majoritarian candidates in all election districts.

Overall, the candidate registration process was transparent and inclusive.³³ The registration of a total of 2,757 candidates provided voters with a wide range of choice. There were 723 and 60 female candidates in the proportional and majoritarian contests, respectively, which together accounted for 28.4 per cent of all candidates. Positive incentives to promote more balanced gender representation were largely ineffective, as the majority of contestants, including the United National Movement (UNM) and the opposition bloc 'Georgian Dream' (GD) did not submit more gender-balanced candidate lists.

During the registration of election subjects, an issue arose concerning the assignment of the list number to the GD. The GD 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 number. 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 CEC decision.

IX. ELECTION CAMPAIGN

The election 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. It often centred on the advantages of incumbency of

²⁹ The 19 political parties failed to submit signature lists, submitted insufficient documentation or voluntarily withdrew their applications.

³⁰ Equal to some EUR 2,300 (1 EUR equals approximately 2 GEL). The deposit is more than nine times higher than the average monthly salary, which, according to National Statistics Office of Georgia was GEL 636 in 2011.

³¹ Parties and blocs including their electoral numbers: Kakha Kukava – Free Georgia (1), National-Democratic Party (4), United National Movement (5), Justice for Georgia (9), Giorgi Targamadze – Christian Democratic Union (10), Public Movement (17), Freedom – The Way of Zviad Gamsakhurdia (19), Jondi Baghaturia – Georgian Group (23), New Rights (24), People's Party (26), Merab Kostava Society (30), Future Georgia (35), Labour Council of Georgia (36), Shalva Natelashvili – Labor Party of Georgia (38), Georgian Sportsmen's Community (40), Bidzina Ivanishvili – Georgian Dream (41).

³² Aleksi Shoshikelashvili in Telavi (District 17) and Vladimir Vakhania in Zugdidi (District 67) – the two other independent candidates withdrew from the race.

³³ The few complaints on candidate registration were mostly related to residency and support signature requirements, and the right to use the name of a political party.

the UNM, on the one hand, and private financial assets of the GD, on the other, rather than on concrete political platforms and programs. Other contesting parties stated that they were unable to compete with the financial and organizational capacities of the two key contenders and their access to media. The polarization did not foster a constructive, issue-based election campaign, but resulted in a pro-government and anti-government orientated discourse and exchanges of mutual accusations. Main issues addressed in party programs included employment, agriculture, healthcare, education and regional development.

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 the UNM and the GD,³⁴ and some cases of vandalism of campaign offices.³⁵ Instances of use of xenophobic and discriminatory rhetoric were noted throughout the campaign that resulted in sanctions, as a rule.³⁶

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.³⁷ The Inter-Agency Commission (IAC), a body composed of senior officials of the executive mandated to consider complaints or allegations of violations by civil servants, reviewed these allegations and confirmed some 44 administrative detentions and additional fines related to violent incidents or threats.³⁸ 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.³⁹ The IAC reported that following its appeal the number of detentions of campaign activists notably decreased.

On 18 September, the campaign shifted its focus after videos showing torture of prisoners in a Tbilisi prison (Gldani No. 8) were released. This led to thousands of protesters demonstrating across the country and the subsequent resignation of two government ministers.⁴⁰ Opposition parties later joined the protests and increased their criticism of the governing party. 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.

While it appears that the opposition had opportunities to convey their messages to the electorate, representatives of the GD, other opposition parties and NGOs complained about an atmosphere of subtle pressure and intimidation towards opposition views, as well as towards public employees and

³⁴ On 26 September, the OSCE/ODIHR EOM observed UNM supporters physically obstructing a GD rally in the central square of Sighnaghi.

³⁵ The UNM reported attacks on their campaign offices in Chiatura. The GD reported vandalism of their campaign offices in Nikortsminda, Chrebalo and Poti.

³⁶ On 18 September, the CEC drew an administrative protocol on Kakha Kukava, the party leader of "Kakha Kukava – Free Georgia", for a circulating a statement via social media containing "calls for religious hostility". Mr. Kukava was subsequently fined GEL 2,000.

³⁷ Information received from the GD on 25 September.

³⁸ The IAC is also known as the Inter-agency Task Force for Free and Fair Elections (IATF) and was created under the auspices of the National Security Council.

³⁹ Statement issued by the IAC Chairperson on 26 September.

⁴⁰ The OSCE/ODIHR EOM observed 14 such demonstrations in Tbilisi, Gori, Kutaisi, Telavi, Samtredia, Bolnisi, Rustavi and Batumi.

recipients of social benefits. OSCE/ODIHR LTOs reported a number of instances when public administration employees and teachers were encouraged to attend UNM rallies. In one instance, 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.⁴¹

The main activities of most parties were door-to-door campaigning and smaller meetings with voters in villages and local communities. Only the UNM, the GD and, to some extent, the CDU organized big rallies and campaign events. The intensity of campaigning varied considerably from place to place. Campaign billboards were particularly visible in Tbilisi, mostly for the UNM.⁴² The poster campaign of other parties slowly picked up after 10 September, following the IAC recommendation that local authorities allocate additional poster space and after local municipal administrations informed contestants on locations.

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.⁴³ There were reports of UNM majoritarian candidates' offices being located in the same building as the municipality.⁴⁴ Several municipal officials were fined for campaigning for the UNM in government offices.⁴⁵ UNM candidates were, on occasion, given preferential access to public venues and transport.⁴⁶ In addition, in a number of cases, municipal and public service websites were used to display messages of the ruling party.⁴⁷

The separation between the party and the State should be duly ensured in law and in practice. As emphasized in previous OSCE/ODIHR and Venice Commission reports, the legal framework should be reviewed to remove provisions allowing political public officials to campaign when on duty and permitting the use of state-funded buildings under equal access provisions since in practice such equality may quickly be undermined as political parties in government have easier access to such resources.

Throughout the electoral campaign, the IAC proved a useful forum for the review of concerns raised by stakeholders. It played a pro-active role in deterring campaign violations through issuing 12 recommendations on corrective measures. IAC recommendations, which were legally non-binding, were implemented in a timely manner by all relevant authorities. However, in some instances, recommendations raised concern over the actual scope of the IAC's authority, which at times

⁴¹ Statement by the IAC of 14 September (The schoolmaster was subsequently dismissed).

⁴² UNM also dominated the advertisement space on privately owned busses used for public transport in Tbilisi and other urban centers. However, following anti-government protests during 19-21 September and instances of attacks on such busses, the UNM stickers were removed.

⁴³ Paragraph 5.4 requires "clear separation between the State and political parties".

⁴⁴ UNM offices were located in public buildings in Tbilisi (Samgori district) and Martvili.

⁴⁵ The Deputy Head of Marketing of the State Service Development Agency was fined for publicly displaying a promotional video of the agency, which featured a UNM candidate. Two public employees were fined for displaying UNM campaign material in municipal offices in Gurjaani and Chalaubani.

⁴⁶ OSCE/ODIHR LTOs reported that on 8 September supporters of a large UNM rally in Kutaisi were shuttled from Samtredia with transport organized by the municipality. On 28 September, around 200 municipal minibuses from Tbilisi were ordered to Rustavi to bring supporters for the final UNM rally.

⁴⁷ Including in Akhalkalaki, Akhmeta, Bolnisi, Dusheti, Dmanisi, Lanchkhuti, Martvili, Mestia, Senaki, Svaneti, Tsalenjikha, Zugdidi and Svaneti.

exceeded its mandate and challenged the principle of separation of powers. In particular, one IAC recommendation resulted in postponing the enforcement of a court decision.⁴⁸

X. CAMPAIGN FINANCE

A. LEGAL FRAMEWORK

The Law on Political Unions and the Election Code regulate public and private funding of political parties and campaigns, ceilings on campaign expenditure, reporting and disclosure requirements, and provide sanctions for violations. The legal framework also includes the Law on State Audit. The applicable legislation was repeatedly and substantially amended during the last year before the elections in an effort to create a comprehensive regulatory framework in compliance with international recommendations, including those of the Group of States against Corruption (GRECO) and CoE.⁴⁹

In December 2011, campaign finance provisions were substantially amended. The changes included a ban on corporate donations, the introduction of a campaign expenditure ceiling (of GEL 48 million), a new calculation of the financial year starting on 1 November instead of 1 January, and the option for authorities to impose fines of five or ten-fold the amount of an illegal donation. Also introduced was the concept of ‘persons with electoral goals’, which obliges such individuals to establish special funds for election-related financial transactions. The legal framework saw further amendments in May and June 2012. Yet, some legal provisions remained ambiguous and inconsistent.⁵⁰ Furthermore, some OSCE/ODIHR EOM interlocutors criticized the amendments as beneficial to the incumbents and driven by immediate political interest. The GD alleged that most amendments were tailored to constrain the political activities of the parties in their coalition in view of the perceived financial capacity of its leader.

Given the identified deficiencies, substantial changes to the applicable legal framework for party and campaign financing should be introduced. Relevant stakeholders should be consulted in the drafting process and election contenders could receive timely and comprehensive training prior to the enforcement of the amended law.

The legislation stipulates that any citizen may donate up to a total of GEL 60,000 per year to one or more parties and only via bank transfer. In-kind donations are also permitted. All election subjects are obliged to submit financial reports of income and expenditure to the State Audit Office (SAO) every three weeks from their date of registration.⁵¹ However, the Law on Political Unions does not

⁴⁸ Following IAC recommendation No. 8, the National Enforcement Bureau suspended the execution of a court decision concerning the enforcement of fines to the GD bloc associated with violations of party financing legislation totaling GEL 2,850,717.06.

⁴⁹ GRECO Evaluation Report on Georgia on Transparency of party funding, 27 May 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf); see also Recommendation Rec(2003)4 of the CoE Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns [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). (Thus far, the new amendments have not been reviewed by GRECO or the CoE).

⁵⁰ One election subject believed that if they exceeded the expenditure ceiling, it would result in their disqualification from the election, whereas in such cases a five-fold fine may also be imposed (see Article 341.8, Law on Political Unions).

⁵¹ All election subjects submitted their financial reports on time and using the forms provided by the SAO.

require the SAO to publish these reports, detracting from transparency.⁵² Parties are required to notify the SAO of each donation within five days of receipt. Both parties and the SAO are obliged to publicize the lists of campaign donors and donations. However, the SAO did not publicize these lists in a consistent and timely manner. While the SAO is to verify the completeness, accuracy and the legality of submitted reports, it is under no legal obligation to publish its conclusions.

To further enhance the transparency of campaign financing, it is recommended that the SAO be obliged to publish campaign finance reports submitted by election contestants, as well as the results and conclusions of the verification that it conducts in a timely manner.

The Law on Political Unions envisages various sanctions for illegal donations to a party. The donations may be confiscated and transferred to the state budget or the donor or the party may be levied a fine five-fold of the value of the illegal donation. In addition, the law provides for GEL 2,000 and 3,000 fines for breaches related to campaign finances in general.

In some 100 cases of illegal donations by individuals and legal entities, courts imposed five-fold fines on donors, which in at least 66 cases resulted in ordering the seizure of bank accounts, movable or immovable property of the donor, or both.⁵³ In at least 27 cases, property was auctioned off. 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 also informed the OSCE/ODIHR EOM that they suspended fines on electoral subjects as well as seizure of property, following a recommendation by the IAC. The inconsistency of the application of sanctions in case of incompliance raised questions as to the impartiality of enforcement and challenged public confidence. The sanctions must bear a relationship to the violation and respect the principle of proportionality to avoid creating the potential for selective and non-uniform application.⁵⁴

The law could provide an exhaustive list of irregularities and applicable sanctions that are proportional, effective and dissuasive. The SAO should apply sanctions consistently, including by sending warnings to parties that receive illegal donations and by transferring such donations to the state budget before imposing further sanctions.

B. IMPLEMENTATION

The Financial Monitoring Service for Political Finances of the SAO, formerly the Chamber of Control, is mandated to exercise oversight of campaign finance. By law, the SAO is independent, but the perception of its independence and impartiality was severely undermined by the political affiliations of its management.⁵⁵

The SAO enjoys wide discretionary powers and in 40 cases examined by the OSCE/ODIHR EOM it applied these powers disproportionately against opposition parties and their donors. The SAO

⁵² See Paragraph 200 of the Joint Venice Commission and OSCE/ODIHR Guidelines on Political Party Regulation; <http://www.osce.org/odihr/77812>.

⁵³ A total of some GEL 132,498,481 of fines was imposed, including a single fine of GEL 20,243,827 on Mr. Ivanishvili.

⁵⁴ See Paragraphs 216 and 225 of the Guidelines on Political Party Regulation; and Article 16 of the Recommendation Rec(2003)4 of the CoE Committee of Ministers.

⁵⁵ The current SAO Director was until 23 July an MP for the UNM. Both the former Director and Deputy-Director stepped down in order to run in the elections as candidates for the UNM.

summoned more than 200 individuals as witnesses in cases of possible breaches of law and questioned over 100 individuals and legal entities that donated to the GD; of these, 68 were eventually fined by courts. In contrast, only 10 UNM donors were investigated and 8 were fined, although the overall amount of donations to the UNM was some 6.5 times higher than that for the GD. In general, sanctions were imposed on the donors rather than on parties.

The SAO exercised wide discretion in determining which donors to investigate and how to make inquiries. At times, the investigations were conducted without respect for due process and in an overall intimidating manner that may have deterred other potential donors.⁵⁶ In several cases the possible offense investigated did not appear to be substantial.⁵⁷ While transparency and accountability in political finance must be ensured, citizens should not be discouraged from political participation, including from making donations to a party or candidate of their choice, nor should their right to privacy and right to data protection be compromised.⁵⁸

In all 79 cases adjudicated by the SAO and courts it was deemed that donations by individuals were illegal on the grounds that the donor did not have sufficient income to make a donation. Such conclusions were most commonly drawn on the basis of scrutinizing donor tax records from the past two years. Such criteria are not provided for in the law, and do not constitute sufficient basis for determining the income of a donor and deeming a donation illegal.⁵⁹ The SAO did not conclude a Memorandum of Understanding with the Revenue Service, as required by its regulations, to establish procedures for cross-checking tax documents. Furthermore, although the Monitoring Service was established in January, the SAO only adopted its internal regulations in July, well after many investigations were already completed.

To prevent inconsistent or arbitrary practices, it is recommended that the legal framework clearly define the scope of the SAO's authority, the criteria and methodology for the SAO to conduct inquiries of possible breaches of the law, including illegal donations, and regulate the co-operation and exchange of information with other state and public bodies.

From 1 January to 25 September, disclosed donations to all parties and blocs totalled GEL 29,213,353. The UNM received 978 donations totalling GEL 20,701,268, whereas the GD bloc received 1,433 donations totalling GEL 3,440,712.⁶⁰ The UNM received the maximum allowable donation of GEL 60,000 from 116 donors and the GD from five donors.

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, which totalled GEL 2,847,908. This amount was added to the income of the GD bloc. Moreover, Mr. Ivanishvili and the GD candidate Mr. Kaladze were fined as 'persons with electoral goals'⁶¹ for

⁵⁶ See the Public Defender's address to the SAO of 15 March 2012:
<http://www.ombudsman.ge/index.php?page=1001&lang=1&id=1491>.

⁵⁷ Donations to the GD investigated by the SAO included a contribution of GEL 100 and one in-kind contribution equal to GEL 10.

⁵⁸ See Paragraph 202 of the Guidelines on Political Party Regulation.

⁵⁹ Donors, who did not declare any income in the last two years, were sanctioned despite demonstrating that they had sufficient income from previous years to make the donations.

⁶⁰ Figures publicized on the SAO website <http://sao.ge/?action=news&npid=277&lang=eng>.

⁶¹ According to the SAO regulations 'an electoral goal can be defined as the intention to affect the political process, the intention to change or maintain the current political reality or the intention of a specific person to take part in and win elections or come to power in government.'

illegal donations to the GD totalling GEL 22,575,367. This amount was also added to the income and expenditure of GD bloc. The amount includes GEL 12.6 million which were allegedly used for purchasing satellite dishes by *Global Contact Consulting Ltd* intended for country-wide distribution as a means to extend the penetration of opposition channels broadcast on satellite networks. The donors were fined despite the authorities seizing all dishes. It also included amounts withdrawn by Mr. Ivanishvili and Mr. Kaladze from their private bank accounts, on a number of occasions from November 2011 until July 2012, upon the assumption that these amounts were donated to the GD bloc. The SAO also included the income of the civil movement Georgian Dream as of November 2011, in the GD bloc income. It appears that in all the mentioned cases the status of a 'person with electoral goals' was applied retroactively, as of November 2011, although the concept was only introduced in December. Furthermore, the SAO never applied the concept 'persons with electoral goals' by means of a formal decision, as required by law.

The SAO should ensure that it applies the status of a 'person with electoral goals' to an entity by means of a formal decision and notify promptly both the person and the election subject, to whom the person is affiliated, about the status and subsequent obligations.

XI. MEDIA

A. GENERAL OVERVIEW

The media environment was diverse with public and private broadcasters and numerous print media outlets, which were generally available across the country. While media outlets reflect some plurality of viewpoints, they remain sharply divided along political lines, and only few succeed in pursuing a more independent editorial policy.

Channel 1 and *Channel 2* of the Georgian Public Broadcaster (GPB), together with *Rustavi 2* and *Imedi TV*, which are private broadcasters and generally perceived as supportive towards the UNM-led government, were the only TV stations with nationwide coverage. 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.⁶² This limited citizens' opportunity for full access to the available variety of information.

The print media as well as numerous websites offered a wide range of views and political positions, of which some were openly critical towards the government. However, their circulation, viewership and potential influence are considerably lower than those of TV, which is by far the most important and popular source of political information

B. LEGAL FRAMEWORK

The Constitution guarantees freedom of speech and of the press and prohibits censorship. Other media-related legislation includes the Law on Broadcasting, the Code of Conduct for Broadcasters, the Law on Freedom of Expression, and the Freedom of Information Chapter of the General Administrative Code. 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

⁶² Due to the announced transition to digital broadcast set for 2015, no terrestrial licenses have been issued since 2005.

programs. The Code of Conduct for Broadcasters calls for “thorough and balanced coverage of campaign activities of qualified subjects”. The Law on Broadcasting additionally prohibits any legal entities related to administrative bodies and political parties from holding broadcast licenses.

The Election Code contains provisions governing media conduct during an election campaign, and provides for the allocation of free and paid airtime and print media space to certain election contestants. Provisions distinguish between qualified subjects and other subjects: qualified subjects are candidates or political parties that are represented by a faction in parliament, received at least four per cent of the proportional vote in the last parliamentary elections, or three per cent of the proportional vote in the last municipal elections. On 8 August, the CEC ruled that 4 of the 16 election contestants were qualified subjects.⁶³

Each qualified subject, for the purposes of free advertisement, was allocated 90 seconds per 3 hours of broadcast on every private TV station and 60 seconds per broadcast hour on GPB and community broadcasters. This time was actively used by all qualified contestants, although some chose not to place their advertisements on certain TV stations for political reasons. The OSCE/ODIHR EOM media monitoring of free advertisements revealed that all advertisement blocks aired by *Channel 1* and *Channel 2* of GPB started and finished with UNM spots, which may have given the UNM an advantage over other contestants.⁶⁴ Other subjects (unqualified) were only entitled to free advertisement on GPB. The legal framework is silent on the amount of time allocated. GPB decided to allocate each contestant 15 seconds twice per day. Only three of twelve eligible political parties used this advertising opportunity.

Paid advertisements were used mainly by the UNM and, to a lesser extent, by the GD. The prices for paid political advertisements on major TV stations were quite high, especially given the limits on campaign funds. In some cases *Rustavi 2* and *Imedi* were charging over GEL 20,000 per minute of broadcast, which significantly exceeds the cost for regular commercial advertisements.⁶⁵ Apart from election contestants, two non-profit organizations purchased airtime to run negative advertisements; one was against the GD and the other against the authorities and the UNM. These same spots were also broadcast as free advertisements by the GD and the UNM.

Considerations could be given to limiting the rates for paid political advertising and align them with the rates for regular commercial advertising.

In an attempt to address mounting criticism by the opposition and the NGO community of insufficient media access and following consultations with media advocacy groups, ‘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. Media outlets could not object to their inclusion. While in general these provisions helped TV stations to increase their penetration into cable networks, they mainly benefited the urban population.⁶⁶ The provisions were in general welcomed by the majority of cable operators, TV

⁶³ The qualified subjects were the LP, UNM, CDM, and GD.

⁶⁴ GPB initially told the OSCE/ODIHR EOM that free spots would appear in random order.

⁶⁵ OSCE/ODIHR Handbook on Media Monitoring for Election Observation Missions suggests that “Rates for paid campaign-related airtime and advertising space should not exceed comparable rates for commercial advertisement”.

⁶⁶ According to the Georgian National Communications Commission, as of June there were some 194,000 cable subscribers in Georgia. The majority of the subscribers – some 179,300 or 92 per cent were located in Tbilisi.

stations and NGOs. By law, these provisions were only applicable to the pre-election campaign. In a welcome response to calls by civil society groups and some political parties, the majority of cable providers continued broadcasting the TV stations affected by these provisions on election day and beyond.

In order to ensure the population's access to a wide range of political views, consideration could be given to introduce 'Must Carry' provisions in the Law on Broadcasting without limiting to the election campaign period only. Such provisions should stipulate who covers the costs of the inclusion.

The key regulatory body for the broadcast media is the Georgian National Communications Commission (GNCC), which carries responsibility for licensing and overseeing activities of the broadcast media. Established in 2000, it consists of five members selected and appointed by the president with the consent of the parliament. For the duration of the campaign, the GNCC oversaw the implementation of the 'Must Carry' provisions, levied fines and suspended licenses of the cable providers in case they did not comply with the legal framework. The GNCC received four complaints from TV stations accusing cable broadcasters of not implementing the 'Must Carry' provisions. It dismissed all four stating that the TV stations had failed to provide the cable operators with the necessary equipment. On 30 August, the UNM filed a complaint to the GNCC challenging the refusal of TV 9 to broadcast a spot that depicted the GD in a negative way as a part of the UNM free advertisement. The OSCE/ODIHR EOM was not aware of the GNCC passing any decision on the complaint, although it was obliged to do so within 30 days of receipt.

The GNCC appeared insufficiently resourced to fulfill its legal obligation to conduct media monitoring.⁶⁷ The GNCC is to assess media compliance with the allocation of free time, maintaining equal conditions for paid time, as well as for the balance in the news programs and talk shows. While the body is to react to and may levy fines in case of identified problems with political advertising, it is not entitled to react to identified imbalances in news or talk shows. 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 to the self-regulatory bodies of major media outlets.

Legal authority could be vested in the GNCC to impose sanctions for violations of equal access and fair treatment, based on the results of their own media monitoring thus allowing for prompt corrective actions if necessary.

C. MEDIA MONITORING RESULTS⁶⁸

Throughout the campaign public and private broadcasters aired numerous talk shows and debates, which provided candidates with a platform to present their opinions. However, contrary to their legal obligations, the majority of TV stations monitored by the OSCE/ODIHR EOM displayed partisan editorial policies in the news and talk shows. This, together with the limited coverage of major opposition media outlets, limited citizens' access to the variety of information.

⁶⁷ The GNCC's media monitoring indicated a lack of balanced coverage in most media outlets monitored.

⁶⁸ From August 30 till the end of the election campaign period the OSCE/ODIHR EOM conducted media monitoring using quantitative and qualitative analysis of the primetime hours (18:00-00:00hrs) of eight TV channels and two newspapers. The monitored TV channels were GPB's Channel 1 and Channel 2, TV Adjara, Rustavi 2, Imedi, TV 9, Maestro and Kavkasia. The monitored newspapers were 24 Saati and Rezonansi.

OSCE/ODIHR EOM media monitoring results indicated that among the monitored media outlets, only *Channel 1* provided politically balanced news coverage of the campaign. In the newscasts of *Channel 1*, the key contestants, the UNM and the GD, received similar proportions of mostly positive and neutral coverage – 14 and 18 per cent respectively. Significant amounts of positive coverage, 11 and 10 per cent respectively, were devoted to the CDU and LP. Five other active contestants received extensive coverage, with each of them being allocated between five and seven per cent of mostly positive coverage. The amount of coverage dedicated to the authorities was insignificant, with the president receiving two per cent and the government 12 per cent of coverage. *Channel 2* provided all major political parties with a platform to present their views in a free non-moderated environment and provided extensive news coverage of their campaign activities.

TV Adjara, which *de facto* belongs to the government of the Autonomous Republic of Adjara, displayed bias in favor of the authorities and the ruling party by allocating them some 82 per cent of primetime news coverage, mainly positive in tone. Some 39 per cent of this coverage was devoted to the UNM, 20 per cent to the president, 13 to the government, and 10 to the Adjara government. The GD received only 13 per cent coverage, mainly negative in tone, while all other contestants received a combined total of less than 4 per cent. *TV Adjara* operates without legal basis and contrary to the Law on Broadcasting, which prohibits state institutions from holding broadcast licenses. Amendments to this law passed in 2005 required the government to “elaborate proposals for the re-organization” of *TV Adjara* by the end of 2006. Since then, the deadline was postponed several times with new amendments. The latest deadline expired on 1 November 2011, without any government initiative to change the status quo.

Consideration should be given to complete the transformation of TV Adjara into a public broadcaster.

The private nationwide TV stations, *Rustavi 2* and *Imedi*, also demonstrated bias in favor of the UNM. On these two stations, the UNM received significant coverage (27 and 21 per cent respectively), which was mostly positive in tone, while the GD received 19 and 29 per cent of coverage, mostly negative in tone. Both stations also devoted an extensive amount of coverage to the president (17 and 12 per cent) and the government (17 and 20 per cent respectively).

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 ruling party. In particular, the 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 UNM received some 17 and 13 per cent of coverage mainly negative and neutral in tone. While in the first two weeks of the monitoring, *Kavkasia* allocated the UNM and the GD comparable amounts of coverage, the coverage of the GD significantly increased in the last three weeks of the campaign. During the entire monitoring period *Kavkasia* allocated the majority of its coverage to the GD (29 per cent), though providing considerable amount of positive and neutral coverage also to the UNM and the CDU (15 and 7 per cent respectively).

The print media monitored by the OSCE/ODIHR EOM presented a plurality of views, with *24 Saati* showing its support to the governing authorities and *Rezonansi* criticizing the government, authorities, and the UNM while demonstrating support to the GD.

XII. COMPLAINTS AND APPEALS

The new Election Code establishes a fast track for dispute resolution and review of appeals against election commissions' decisions. It clarifies deadlines and gives an additional day for filing complaints at the PEC level. Appeals and decisions are to be made within one to three calendar days. The rulings of the two Courts of Appeal are final.⁶⁹ The CEC standardized the complaints submission form, which simplified the process, and provided training and a manual on the dispute resolution process to party lawyers and civil society. PEC and DEC members were also trained on the polling day complaint process. The potential for a parallel complaints system was largely removed, as recommended by the OSCE/ODIHR and the Venice Commission. However, the option remained to challenge certain decisions or actions taken by a PEC on election day, either to DEC or courts.⁷⁰ This remaining provision may create uncertainty for complainants and result in conflicting decisions of commissions and courts thus compromising effective remedy.⁷¹

The remaining potential for challenging certain decisions or actions taken by the PEC on election day either to DEC or courts should be removed from the Election Code in order to fully ensure an effective remedy.

In the pre-election period, the OSCE/ODIHR EOM noted some 236 complaints filed with the election administration and courts. Complaints were mostly filed by DEC members appointed by the GD and civil society.⁷² Approximately one third were filed by women. Eighteen DEC or CEC decisions were challenged in courts, and none were reversed. The Supreme Court reported 106 cases heard by courts from 12 August to 12 October, including 49 that were appealed. Twenty-two cases were granted or partially granted, including two on appeal. Generally, the complaints and appeal process was characterized by efficiency, well-reasoned decisions and a high degree of transparency, and especially at CEC level enjoyed general confidence. DEC decisions appeared to enjoy less confidence.

Election commissions could submit administrative protocols of violations to a city or district court requesting administrative sanction. Depending on the nature of the violation, the court adjudicates it within three to fifteen days. During the electoral process, the CEC and DEC members drew up 61 protocols, four of which were rejected. The imposed fines on civil servants and PEC members ranged from GEL 1,000 to 2,000 for violating election legislation.

⁶⁹ Final rulings from two different courts, the Tbilisi and Kutaisi Courts of Appeal, may result in inconsistent decision-making. Furthermore, it appears that final rulings cannot be challenged in cassation to the Supreme Court.

⁷⁰ This excludes decisions adopting summary result protocols.

⁷¹ See Article 2 of the ICCPR, Article 13 of the European Convention on Human Rights, and Paragraph 5.10 of the 1990 OSCE Copenhagen Document.

⁷² Complaints included 2 filed at PECs, 132 at DEC members, and 83 at the CEC, as well as 19 in courts. All court cases were challenges to election administration decisions, except for one civil case on the ground of disrespect of honor and dignity. Of the total complaints, 138 were rejected or dismissed.

The Prosecutor's Office opened investigations in seven cases of suspected vote buying.⁷³ In two of these cases decisions to seize property and detain suspects appeared to have been taken on questionable legal grounds. The case related to seized property involve the broadcast providers *Global Ltd* and *Maestro Ltd*, which made attempts to increase the penetration of satellite networks by distributing satellite dishes and receivers. In the case against *Global Ltd* and *Maestro Ltd* no suspects were ever named or found guilty. 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".⁷⁴ The seizure was lifted by the Tbilisi City Court only after election day stating that the "grounds for the seizure do not exist anymore".⁷⁵ In the other case, referred to as the Kutaisi-case, the detained suspects were released a few days after election day.⁷⁶

Another case involved Merab Kachakhidze, who was arrested for suspected vote buying in July, prior to the calling of the elections. While still in detention, he became a candidate for the GD, and was subsequently elected to parliament. A court hearing on 14 September intended to be on only the merits of the vote buying case instead served to extend his detention until 8 October when he paid 500 GEL to the state budget, and was released the following day.⁷⁷ The grounds for extending his detention were uncertain.⁷⁸

Authorities admitted that the administrative offences procedures do not guarantee due process in line with the case law of the European Court of Human Rights, and the relevant code is under review.⁷⁹ During the campaign, at least three cases of verbal abuse resulted in administrative detention of the abusers. Under the Administrative Offences Code, the burden of proof is on the defendant, which is an infringement of the presumption of innocence.⁸⁰ Civil society has called for refraining from enforcing administrative detentions.⁸¹ In addition, a number of interlocutors raised concerns about the increasing number of people detained in the last ten days of the campaign.⁸²

It is recommended to complete the reform of the Administrative Offences Code as a matter of priority and bring administrative offences procedures in line with the case law of the European Court of Human Rights to ensure the right to a fair trial.

⁷³ To the knowledge of the OSCE/ODIHR EOM, none of seven of these cases of alleged vote-buying were adjudicated on merit and no suspects were convicted for vote-buying.

⁷⁴ 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*).

⁷⁵ See decision of Tbilisi City Court from 2 October.

⁷⁶ The detained suspects were Mikheil Amashukeli, Mikheil Meskhi and Gaga Ambroladze.

⁷⁷ Released by an ordinance based on Article 1681 of the Criminal Procedural Code, which enables the Prosecutor's Office to stop an investigation when the suspect complies with the listed requirements.

⁷⁸ The original motion appeared filed on behalf of the Ministry of Internal Affairs, rather than by the Prosecutor's Office, which constitutes a potential gross procedural violation.

⁷⁹ See the CoE Review of the Draft Code on Administrative Offences Code of Georgia as of June 2012: www.coe.int/t/dghl/cooperation/capacitybuilding/Source/expertises/Opinion%20Georgia%20Admin%20Offences%20Code.pdf.

⁸⁰ The cases involved GD activists Kalamadin Mamedov, Natik Rasolov, and Kapiton Jorjoliani. The court rulings in these cases appear to contradict the European Court case law under which the right to a fair trial including the presumption of innocence also applies to administrative sanctions. (Engel and others v. Netherlands (5100/71) and Salabiaku v. France (10519/83)).

⁸¹ Statement of 25 September from Georgian Young Lawyers' Association (GYLA)

⁸² In response, on 28 September, the IAC reported 44 persons in detention and indicated that the number of administrative detentions for the current year was within the average of the previous year. (See also the Election Campaign Section)

XIII. 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 Azeri (6.5 per cent) and Armenians (5.7 per cent). Several parties and blocs contesting the elections included members of national minorities in their lists and as majoritarian candidates, nominating them in districts where minorities form substantial parts of the population such as Akhalkalaki and Ninotsminda (Armenians) and Marneuli (Azeri). In the outgoing parliament, there were only six MPs (four per cent) of ethnic minority origin, and national minorities are also under-represented on local council levels.

According to the CEC, 12 election districts and 337 precincts were in minority areas. In total, 2,774 persons with minority background, including 757 women, served on the PECs. The CEC translated voter lists, ballot papers and protocols and conducted trainings in minority languages, in line with international standards.⁸³ 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.⁸⁴

XIV. CITIZEN AND INTERNATIONAL OBSERVERS

The CEC registered 50 citizen 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 sources of funding. Overall, the CEC and DEC's accredited 62,115 citizen and 1,641 international observers. The active participation of such large numbers of citizen observers served to enhance the transparency of the process. Civil society and citizen observer organizations, including the International Society for Fair Elections and Democracy (ISFED), Georgian Young Lawyers' Association (GYLA), and Transparency International Georgia undertook a number of activities to support the electoral process and monitor the elections. This included observation of the pre-electoral process, monitoring the work of DEC's and of the media, voter list verification, establishment of telephone hotlines and information websites, as well as the deployment of observers on election day. In addition, over 33,000 representatives of parties, blocs and candidates, as well as 3,295 journalists were registered before election day.

XV. ELECTION DAY

Overall, election day was calm and peaceful across the country with a voter turnout reported by the CEC at 61.31 per cent. International observers followed the process throughout the day in 165 polling stations during opening, in some 1,450 during voting, in 157 during counting and in 42 DEC's during results tabulation.

International observers assessed all stages of the election day process positively with election officials generally adhering to procedures, although counting and tabulation received a less positive

⁸³ Paragraph 12 of the UN Human Rights Committee General Comment No. 25 recommends “information and materials about voting should be available in minority languages.”

⁸⁴ See Midterm Report on Activities Planned and Implemented for Simplifying and Supporting Electoral Processes for Ethnic Minority Voters for the Elections of the Parliament of Georgia of October 1, 2012 at www.cec.gov.ge/index.php?lang_id=ENG&sec_id=147&info_id=9911.

assessment. The CEC began releasing preliminary results and posting results protocols on its website in the early morning of the day after the elections contributing to the transparency of the process.⁸⁵ No discrepancies were noted between the results in PEC protocols received by OSCE/ODIHR observers in polling stations or DEC's on election day and those posted later on the CEC website.⁸⁶

A. OPENING AND VOTING

Opening procedures were generally followed and OSCE/ODIHR observers assessed the process positively in 146 polling stations out of 165 observed or 89 per cent. Although polling officials appeared knowledgeable about procedures, observers noted that the number of voters and the number of ballot papers received were not announced and recorded in 17 and 22 polling stations, respectively. In general, PEC members as well as citizen observers and representatives of parties were present in nearly all polling stations observed during the opening. Most polling stations opened on time with delays of more than 15 minutes only occurring in 12 of 165 polling stations observed.

Voting was generally well organized and polling officials administered the vote in a competent and professional manner. Observers evaluated the process positively in 93 per cent of polling stations observed and negatively in 7 per cent. The process was assessed more negatively in rural areas (9 per cent) compared to urban areas (5 per cent).⁸⁷ Citizen observers and party representatives were present in nearly all polling stations (95 and 99 per cent respectively). However, their presence combined with high voter turnout contributed to overcrowding in 12 per cent of polling stations observed and led to some tension both inside and outside of polling stations. The layout of polling stations was assessed as inadequate in six per cent of polling stations observed and observers also reported restrictions to their work in five per cent. When such problems with the polling environment were noted, OSCE/ODIHR observers tended to give a more negative overall assessment.

Unauthorized persons were present in 52 polling stations (4 per cent) and in 15 stations were observed interfering in the process.⁸⁸ In addition, there were also reports of authorized party proxies or citizen observers interfering in the voting process or intimidating voters.⁸⁹ In several instances civil society observers were openly naming themselves as representatives of a certain candidate or a party or otherwise displaying bias.

Civil society organizations, political parties and candidates should ensure that their representatives and proxies in polling stations receive comprehensive training to ensure respect for provisions prohibiting observer interference in the voting and counting processes and maintain impartiality when carrying out observation.

⁸⁵ Due to a cyber attack on the CEC website the release of preliminary results and the upload of PEC protocols were halted for a few hours in the early morning following election day.

⁸⁶ The OSCE/ODIHR EOM reviewed 477 PEC summary results protocols received by observers in polling stations and at DEC's following the count and tabulation. Transparency International Georgia identified two PEC summary protocols displaying significant discrepancies, including one from the Signaghi DEC 13 PEC 5, where the vote was subsequently annulled and reruns were held. See <http://transparency.ge/en/post/general-announcement/fraudulent-protocol-deci>.

⁸⁷ OSCE/ODIHR observers based in Gori assessed voting as bad or very bad in 17 per cent of polling stations, while observers based in Tbilisi, Batumi, Zugdidi and Samtredia gave a more positive assessment (only 2 to 4 per cent of bad or very bad).

⁸⁸ Interference by unauthorized persons was most frequently observed in Akhalkalaki, Marneuli, and Mtskheta.

⁸⁹ OSCE/ODIHR observers filed some 40 exceptional observation reports noting problems with undue or intimidating behaviour of authorized persons.

Throughout voting, some procedural problems were identified. OSCE/ODIHR observers noted that voters did not always mark their ballots in secret and observed group-voting in five per cent of polling stations observed. Some inconsistency in the use and checking of ink, which is envisaged as a safeguard against multiple voting, was reported from seven per cent of polling stations observed. In order to be valid, a ballot paper must contain the signature of the issuing PEC member and the PEC stamp on the reverse. This raises concerns of possible violations of the secrecy of the vote.⁹⁰

Stamping and signing of the ballot paper, if retained, should not take place at the point when the ballot is being issued to the voter.

Voter identification (ID) procedures were generally followed. In eight per cent of polling stations observed individuals were turned away as their names were not on the voter list. In a further five per cent of polling stations voters were turned away because of lack of proper ID. The lack of voter ID was in particular noted as a problem in special polling stations established in prisons and detention centres.⁹¹

In order to ensure that all eligible voters held in prison or detention facilities are able to exercise their right to vote, those in charge of compiling voter lists in these institutions should ensure that all eligible voters are in possession of proper voter ID.

B. COUNTING

While counting procedures were generally followed, observers evaluated the counting process less positively than voting, with a negative assessment given in almost one sixth of polling stations observed (25 out of 159 polling stations). The procedures to be implemented prior to the opening of ballot boxes were not always followed. The number of voter signatures was not counted and announced in 12 polling stations, and unused ballots were not annulled by cutting off a corner (25 observations) or packed away (12 observations) prior to opening of ballot boxes. Such shortcomings created potential for breaches to the integrity of the vote. There were indications that ballot box stuffing had occurred earlier in a limited number of polling stations.⁹²

In 42 of the 157 counts observed, PECs had difficulties completing the results protocols, which led to procedural errors or omissions, including cases of pre-signing protocols in one tenth of polling stations observed. Results protocols were not always displayed, as required by law detracting from transparency.

There is a need to further train PEC members, emphasizing consistency in applying procedures with particular emphasis on the completion of results protocols.

Almost all counts observed by OSCE/ODIHR observers were attended by party or candidate proxies (99 per cent) and citizen observers (97 per cent). Unauthorized persons were only noted in four polling stations; however, in all instances they were observed interfering in the counting process. As

⁹⁰ See Paragraph 34 of the Code of Good Practice in Electoral Matters.

⁹¹ In DEC 58, PEC 68 was located in a prison in Tskaltubo.

⁹² OSCE/ODIHR observer reports include from DEC 30 (Kaspi) with noted of stacks of envelopes in mobile ballot boxes in four polling stations; DEC 67 PEC 90 (Zugdidi); and DEC 35 PEC 8 (Khashuri). The results of PEC 8 in Kashuri were annulled due to reported irregularities and repeat voting was organized.

during voting, OSCE/ODIHR observers again noted inappropriate behavior by authorized persons and blurring of lines between some civil society and partisan observers.⁹³

Polling stations assigned as counting stations for special ‘military unit’ polling stations endured long counts, which in some cases lasted for more than eight hours.⁹⁴ PECs at such polling stations mixed and counted the ballots of special precincts with their own ballots and reported results in one summary results protocol. In several cases such combined precincts had up to 2,786 registered voters, which exceeded the limit of 1,500 voters as stipulated by the Election Code.⁹⁵

Ballots cast at special polling stations with more than 50 voters should be counted and reported separately rather than mixed with the ballots of regular polling stations. It is further recommended to set a reasonable limit on the size of combined regular and special precincts in terms of the overall number of registered voters.

Though procedures were generally followed during counting, observers reported that the validity of ballots was not determined reasonably and consistently in 18 cases.⁹⁶ The CEC subsequently reported that country-wide 2.83 per cent of all ballots cast were deemed invalid.⁹⁷ In 17 cases, observers reported that PECs completed results protocols that were pre-signed by PEC members. Other significant procedural errors or omissions were reported in 22 cases. These deviations from the prescribed counting procedures negatively impacted observers’ overall assessment of the count.

Upon the completion of the results protocol, PECs were to fax a copy to the CEC if possible. OSCE/ODIHR reported faxing of protocols in 56 polling stations observed during the count. In the majority of observations, all authorized persons present received copies of the results protocol at their request.⁹⁸

Despite a largely peaceful election day, isolated disturbing incidents occurred in Khashuri. After midnight, uniformed personnel, allegedly from the Special Forces of the Ministry of Interior, entered some polling stations during the vote count and at gunpoint demanded that the respective PEC sign blank result protocols.⁹⁹ The GD and citizen observer groups later challenged the results from these polling stations, which in most cases resulted in ballot recounts, reruns, or both (See Post-Election Day Developments Section). Following the investigation into the disruption of the vote count in the Khashuri PECs, the OSCE/ODIHR EOM was not aware of any arrests or charges filed against the perpetrators.

⁹³ For example, in DEC 32 PEC 99 (Gori) an observer from a local NGO who was also referred to as ‘the UNM coordinator’ provided advice and handled ballot material during counting.

⁹⁴ The OSCE/ODIHR EOM observed 29 counts at precincts that had special polling stations assigned to them for counting purposes (combined precincts).

⁹⁵ Although Article 23.1 of the Election Code limits the number of voters per precinct to 1,500, the CEC Decree 6/2012 of 3 February effectively lifted this limit for the combined precincts. In Samgori (Tbilisi) DEC 6, one combined regular (PEC 83) and special precinct (PEC 122) had 2,786 registered voters

⁹⁶ A frequent reason for ballot invalidation was the crossing out of the remaining numbers of other parties or candidates in addition to the circling of a unique number of the preferred party or candidate. Although such marking, which reflects a now obsolete voting practice, is considered invalid, it can be argued that it is possible to determine the will of the voter.

⁹⁷ The percentage of invalid votes reported by the CEC relates to the proportional contest. The CEC summary protocol fails to provide information on invalid votes in majoritarian contests.

⁹⁸ In most of the remaining cases, the photocopier was reported to be out of order.

⁹⁹ Reported by the GD and citizen observer groups and confirmed by OSCE/ODIHR observers.

C. TABULATION

The tabulation process was largely transparent though some overcrowding in DEC's was noted. In 13 of 97 observed tabulations of PEC protocols observers reported that they lacked a clear view of the process, and in 14 cases assessed that the DEC facilities were inadequate for tabulation. Overall, observers assessed the tabulation of PEC results positively in 31 and negatively in 11 of the 42 DEC's observed.

PEC protocol figures did not reconcile in 11 of 97 tabulations observed and in further 11 cases protocols arrived without being completed correctly or in full.¹⁰⁰ In 14 cases observed, the PEC corrected the figures by completing a replacement protocol. In a few instances the DEC sent the PEC back to complete protocols with missing signatures.¹⁰¹ OSCE/ODIHR observers generally noted an adequate understanding of procedures by DEC's; however, they reported significant procedural errors or omissions from eight DEC's. Official complaints were filed by candidate proxies or civil society groups in one in ten observed tabulations.

DEC's should be provided with more detailed written instructions and comprehensive training on the procedures for the intake and tabulation of PEC protocols.

Citizen observers and party representatives were usually present at DEC's, adding to the transparency of the process. Tension inside or outside the DEC was noted in five cases. At times, circumstances outside DEC's impacted the tabulation process. In Tetrtskaro, at least two PEC's were required to have their ballots and protocols escorted directly to the CEC as large crowds prevented their access to the DEC.

XVI. POST-ELECTION DAY DEVELOPMENTS

A. ELECTION DAY COMPLAINTS AND APPEALS

According to the CEC, a total of 384 complaints were filed to election commissions across the country alleging polling day violations, challenging the PEC results protocols, or both. The OSCE/ODIHR EOM noted that the majority of complaints, 278, were submitted by citizen observers or GD representatives. Representatives of other election contestants, including the UNM, filed only a few complaints. In addition, election commissions referred 14 cases of violations for prosecution. Out of the 106 complaints that challenged the outcome of the vote, nine requested a recount of the ballots and 97 the invalidation of results of a particular PEC; only six DEC's invalidated PEC results by their decision upon complaints. More than half (210) of all election day complaints were filed by women.

On 16 October, the Supreme Court reported 70 appeals filed on post-election cases. The OSCE/ODIHR EOM was made aware that courts rejected a total of eight requests to annul DEC decisions on the invalidation of PEC results; only in four cases did the court reverse a DEC decision. In two DEC's this led to the invalidation of PEC results (Khashuri DEC 35 PEC 1, 2, 9 and 13; and Tetrtskaro DEC 26 PEC 23), in one DEC a recount was ordered (Sagarejo DEC 11 PEC 49) and in

¹⁰⁰ OSCE/ODIHR observed that incomplete results protocols lacked stamps or signatures or not all the required three copies of the protocol had been completed.

¹⁰¹ OSCE/ODIHR observer report from DEC 45 in Tsageri.

the remaining instance, the court reversed a DEC decision that invalidated results (Akhaltstik DEC 37 PEC 16).

Within the competence of the DEC, the Election Code provides for a range of disciplinary measures including warnings, reprimands, termination and withholding of all or part of a PEC member's remuneration.¹⁰² Although DEC's mostly ruled in favor of reprimands, they occasionally ordered deductions from PEC members' salaries. Out of 52 cases of sanctions against PEC members reported by the CEC, 3 complaints demanded administrative fines rather than disciplinary measures; they were rejected. Throughout the electoral process, DEC's sought court approval for imposing administrative fines of GEL 2,000 in 45 cases. This amount exceeds the amount earned by PEC or DEC members for their month of service and may act as a deterrent against taking up the assignment as PEC member.¹⁰³

B. POST-ELECTION DAY DEVELOPMENTS

Shortly after the elections, as early indications of possible outcomes of majoritarian races became available, a number of DEC's came under pressure from groups of supporters. In particular, such pressure emanated from GD supporters, who gathered in considerable numbers outside some DEC's and at times were encouraged to do so by their respective majoritarian candidates. The pressure on the DEC's, which included verbal threats against chairpersons and members, continued during the following days and peaked as DEC's were set to decide on challenges to individual PEC results filed on or after election day. Overall, some 20 disputed election districts were affected, mostly involving close races between the UNM and the GD candidates, but also included some districts showing a clear victory for the UNM candidate, based on early results.

Following a decision by the DEC in Tetrtskaro to annul precinct results allegedly taken under duress and reports about physical attacks on the DEC premises in Terjola, on 3 October, the CEC chairperson held a briefing and issued a press release in which he called "upon election subjects and their supporters not to interfere with the work of the election administration, work that is defined by legislation, so as to guarantee the provision of final results".¹⁰⁴ Additionally, the chairperson of the Supreme Court called on political forces to refrain from exerting pressure on courts and complying with communication procedures with judges.¹⁰⁵ On 4 October, the GD leader Mr. Ivanishvili issued a statement calling on GD supporters to stop rallying outside the DEC's and to let the courts and election commissions settle any remaining disputes.¹⁰⁶ These calls were largely followed. In Zugdidi, however, where the UNM candidate according to preliminary results led the race, demonstrations of GD supporters and acts of pressure on the DEC to annul the vote continued for another day.

On 10 October, as a result of annulments of precinct results by courts or election commissions, the CEC announced repeat voting in three election districts where the difference between the valid votes

¹⁰² The CEC developed guidelines for DEC's in this regard. See "Uniform practice on administrative proceeding and application of sanctions in disciplinary procedures in DEC's against PEC head officials/members" at http://www.cec.gov.ge/index.php?lang_id=ENG&sec_id=154&info_id=9073.

¹⁰³ PEC salaries range from GEL 225 to 312 per month.

¹⁰⁴ Briefing by the CEC chairperson on 3 October. The statement listed 18 election districts, in which obstruction was noted. In subsequent briefings on 4 and 5 October, the CEC added more districts. The CEC provided links to video documentation of the situation in and around DEC's.

¹⁰⁵ Statement by the Supreme Court chairperson Kublashvili on 5 October. On 19 October, he stated that a district court judge in Tetrtskaro drew an administrative violation protocol against a GD supporter who was fined GEL 2,000 for violating the "rules for communicating with judges".

¹⁰⁶ See www.civil.ge/eng/article.php?id=25313.

cast for the top two candidates was less than the number of registered voters in the annulled precincts.¹⁰⁷ In all three districts, the contest was between the UNM and GD candidates. Reruns were held on 14 October in 11 precincts.¹⁰⁸ The CEC replaced the entire membership of three PECs for the reruns due to ongoing investigations against individual members for involvement in election fraud. Prior to the rerun, the UNM candidate in Khashuri issued a statement about his resignation from the race claiming undue influence on voters in the election district by his GD opponent.¹⁰⁹

Although the OSCE/ODIHR EOM did not carry out systematic observation of the reruns, the overall assessment was that they were conducted in an orderly and calm atmosphere with general adherence to procedures. In Khashuri, UNM representatives were almost absent, while GD representatives and supporters were present inside and especially outside polling stations observed. Overall, the CEC reported a significantly lower voter turnout (32.9 per cent) than in the general election. A higher turnout was reported only in Signaghi (72.9 per cent). In all three districts the GD majoritarian candidates were declared the winners as a result of the reruns.

C. ANNOUNCEMENT OF RESULTS

The CEC summarized the final election results on 19 October (see Annex). The CEC reported voter turnout at 61.31 per cent. An informative portal displayed detailed information on precinct results for both majoritarian and proportional elections, including scans of the protocols submitted by the PECs.

Eighteen women (12 per cent of MPs) were elected to parliament, which marks an increase compared to the previous parliament, but also underscores the need for further action in order to achieve a balanced gender representation in the legislature.¹¹⁰ Of the 18 women, 11 were elected on the proportional ballot and 7 won seats in majoritarian contests. Eight candidates with a national minority background were elected to the new parliament, three on the proportional ballot and five on the majoritarian. On 19 October, the CEC registered the newly elected MPs. Two days later, on 21 October, the inaugural session of the new parliament took place in Kutaisi, the new seat of the parliament.

XVII. RECOMMENDATIONS

These recommendations as contained throughout the text are offered with a view to enhance the conduct of elections in Georgia and bring them fully in line with OSCE commitments and other international standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations that remain to be addressed. OSCE/ODIHR stands ready to assist the authorities of Georgia to further improve the electoral process and in following up on recommendations contained in this and previous reports.

¹⁰⁷ DEC annulled the results of the vote in 16 polling stations (including one abroad). Reruns were declared in 11 precincts; in the remaining 5 the results were simply annulled since the gap between candidate number one and two was too big to qualify for a rerun.

¹⁰⁸ One polling station in Signaghi DEC 13 PEC 5; one in Gori DEC 32 PEC 4; and nine in Khashuri DEC 35 PEC 1, 2, 3, 8, 9, 10, 13, 45, and 46.

¹⁰⁹ Withdrawal of candidacy is not possible in reruns; the candidate remained on the ballot on election day.

¹¹⁰ While the elections resulted in an increased number of women in parliament, the current representation of women is significantly below the current OSCE average of 23.6 per cent; see compiled data from the Inter-Parliamentary Union 'Women in Parliament' database, <http://www.ipu.org/wmn-e/world.htm>.

A. PRIORITY RECOMMENDATIONS

1. The OSCE/ODIHR reiterates its long-standing recommendation to address the disparity of the population size in the single mandate constituencies for parliamentary elections.
2. Given the number of issues raised in this and previous reports, consideration should be given to initiate a comprehensive review of the electoral legal framework. While in line with good electoral practice, significant changes should not be introduced to the legal framework within one year of elections, some technical and procedural elements can be improved before the presidential election anticipated to take place in October 2013.
3. It is recommended that the CRD undertake a comprehensive effort, in coordination with CEAVL and other relevant authorities, to develop a comprehensive, uniform and timely updated address system. In addition more effective mechanisms for reporting change of residence and timely inter-agency sharing of information regarding civil status changes could be established.
4. It is recommended that civilian Ministry of Defence employees and related enterprises and uniformed personnel not assigned to barracks or base housing vote at their regular polling stations. The possibility that all other military personnel stationed within Georgia vote at regular polling stations could be revisited.
5. Given the identified deficiencies, substantial changes to the applicable legal framework for party and campaign financing should be introduced. Relevant stakeholders should be consulted in the drafting process and election contenders could receive timely and comprehensive training prior to the enforcement of the amended law.
6. To prevent inconsistent or arbitrary practices, it is recommended that the legal framework clearly define the scope of the SAO's authority, the criteria and methodology for the SAO to conduct inquiries of possible breaches of the law, including illegal donations, and regulate the co-operation and exchange of information with other state and public bodies.
7. Legal authority could be vested in the GNCC to impose sanctions for violations of equal access and fair treatment, based on the results of their own media monitoring thus allowing for prompt corrective actions if necessary.

B. OTHER RECOMMENDATIONS

Legal Framework

8. It is recommended to remove provisions from the Election Code that may prevent elected candidates who have obtained the necessary number of votes from being duly installed in office.
9. Provisions of the Criminal Code and the Election Code on vote buying should be reviewed and harmonized.

Election Administration

10. Ballots cast at special polling stations with more than 50 voters should be counted and reported separately rather than mixed with the ballots of regular polling stations. It is further recommended to set a reasonable limit on the size of combined regular and special precincts in terms of the overall number of registered voters.
11. Stamping and signing of the ballot paper, if retained, should not take place at the point when the ballot is being issued to the voter.
12. There is a need to further train PEC members, emphasizing consistency in applying procedures with particular emphasis on the completion of results protocols.
13. DEC's should be provided with more detailed written instructions and comprehensive training on the procedures for the intake and tabulation of PEC protocols.

Voter Registration

14. The Ministry of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees of Georgia is encouraged to update and replace the IDP cards of citizens for whom no current temporary address is identified in order that these persons can be properly entered into the voter list and be able to vote in future elections.
15. It is recommended that the MFA, in coordination with the CEC, provides comprehensive and timely information on how to register to vote at consular offices abroad, including posting information on respective websites specifying the required documents for registration. In general, deadlines related to establishing precincts and PECs abroad should be reviewed to ensure they are aligned to allow voters sufficient time and convenience to register.
16. In order to ensure that all eligible voters held in prison or detention facilities are able to exercise their right to vote, those in charge of compiling voter lists in these institutions should ensure that all eligible voters are in possession of proper voter ID.

Campaign Environment

17. The separation between the party and the State should be duly ensured in law and in practice. As emphasized in previous OSCE/ODIHR and Venice Commission reports, the legal framework should be reviewed to remove provisions allowing political public officials to campaign when on duty and permitting the use of state-funded buildings under equal access provisions since in practice such equality may quickly be undermined as political parties in government have easier access to such resources.

Campaign Finance

18. To further enhance the transparency of campaign financing, it is recommended that the SAO be obliged to publish campaign finance reports submitted by election contestants, as well as the results and conclusions of the verification that it conducts in a timely manner.

19. The law could provide an exhaustive list of irregularities and applicable sanctions that are proportional, effective and dissuasive. The SAO should apply sanctions consistently, including by sending warnings to parties that receive illegal donations and by transferring such donations to the state budget before imposing further sanctions.
20. The SAO should ensure that it applies the status of a 'person with electoral goals' to an entity by means of a formal decision and notify promptly both the person and the election subject, to whom the person is affiliated, about the status and subsequent obligations.

Media

21. Considerations could be given to limiting the rates for paid political advertising and align them with the rates for regular commercial advertising.
22. In order to ensure the population's access to a wide range of political views, consideration could be given to introduce 'Must Carry' provisions in the Law on Broadcasting without limiting to the election campaign period only. Such provisions should stipulate who covers the costs of the inclusion.
23. Consideration should be given to complete the transformation of TV Adjara into a public broadcaster.

Complaints and Appeals

24. The remaining potential for challenging certain decisions or actions taken by the PEC on election day either to DEC's or courts should be removed from the Election Code in order to fully ensure an effective remedy.
25. It is recommended to complete the reform of the Administrative Offences Code as a matter of priority and bring administrative offences procedures in line with the case law of the European Court of Human Rights to ensure the right to a fair trial.

Election Day/Citizen and International Observers

26. Civil society organizations, political parties and candidates should ensure that their representatives and proxies in polling stations receive comprehensive training to ensure respect for provisions prohibiting observer interference in the voting and counting processes and maintain impartiality when carrying out observation.

ANNEX: FINAL ELECTION RESULTS

<i>Summary Figures</i>	
Total number of voters	3,613,851
Number of voters who voted	2,215,661
Voter Turnout	61.31%
Invalid ballots	62,874 or 2.83%

No. on Ballot	Name of Party/Electoral Bloc	Number of Votes (proportional)	Percentage (proportional)	Number of received mandates		
				Prop.	Maj.	Total
1	Kakha Kukava-Free Georgia	5,865	0.27	0	0	0
4	National Democratic Party	3,023	0.14	0	0	0
5	United National Movement - More Benefits to People	867,432	40.34	33	32	65
9	Justice for Georgia	4,073	0.19	0	0	0
10	Giorgi Targamadze - Christian Democratic Union	43,805	2.04	0	0	0
17	Public Movement	546	0.03	0	0	0
19	Freedom - The Way of Zviad Gamsakhurdia	1,013	0.05	0	0	0
23	Jondi Baghaturia - Georgian Group	2,324	0.11	0	0	0
24	Political Union New Rights	9,255	0.43	0	0	0
26	People's Party	527	0.02	0	0	0
30	Merab Kostava Society	997	0.05	0	0	0
35	Future Georgia	701	0.03	0	0	0
36	Labour Council of Georgia	581	0.03	0	0	0
38	Shalva Natelashvili - Labor Party of Georgia	26,621	1.24	0	0	0
40	Georgian Sportsman's Community	1,572	0.07	0	0	0
41	Bidzina Ivanishvili - Georgian Dream	1,181,862	54.97	44	41	85

Official figures as announced by the Central Election Commission of Georgia on 19.10.2012.

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it co-ordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).