Office for Democratic Institutions and Human Rights

GEORGIA

PARLIAMENTARY BY-ELECTIONS
27 April 2013

OSCE/ODIHR Election Expert Team
Final Report

Warsaw
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OSCE/ODIHR Election Expert Team Final Report [1]

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 Expert Team (EET) on 16 April for the 27 April parliamentary by-elections. The by-elections were held in three single-mandate constituencies where members of parliament elected in the 1 October 2012 parliamentary elections were subsequently appointed to government positions.

Since the 2012 elections, the political space in Georgia has seen tense co-habitation between the new governing coalition of the Georgian Dream (GD) bloc and the opposition United National Movement (UNM). Arrests, trials and interrogations of some UNM members following the 2012 elections negatively impacted the environment around the by-elections.

The Election Code was amended in December 2012, which allowed for by-elections to be held in April. However, this process was criticized for lacking consultation with relevant stakeholders. The three constituencies were of disparate voter population size, challenging the principle of the equality of vote. Some diverging interpretations of the legal framework surfaced during the by-elections, including on the appointment of Precinct Election Commission (PEC) secretaries. The Constitutional Court lifted the requirement for independent candidates to submit election deposits.

The election administration structure remained the same as during the 2012 elections, comprising the Central Election Commission (CEC), three District Election Commissions (DEC), and 177 PECs. The CEC carried out preparation for the by-elections in a professional and timely manner and reported that nearly all members of the PECs received training. Updated voter lists for the three districts totalled 212,698 registered voters. One DEC chairperson was dismissed and replaced ahead of the elections for violating PEC appointment procedures.

The by-elections were competitive with 13 political parties, 1 electoral bloc and 4 initiative groups fielding a total of 23 candidates. The campaign was low-key with some candidates organizing local meetings with voters, and leaflet distribution. In general, candidates were able to freely campaign. All contestants submitted required financial reports and donation information to the State Audit Office in a timely manner.

The media landscape remained diverse and pluralistic, although polarized along political lines. Several TV channels featured debates with the main contestants and offered free airtime. However, clarity and consensus were lacking on which media were obligated to provide free airtime.

Several complaints were submitted to the CEC and DECs prior to election day. This complaint process was highly transparent, but some investigations into complaints lacked thoroughness. The Inter-Agency Commission for Free and Fair Elections (IAC) was re-established for the by-elections. However, the IAC did not always adopt recommendations in a collegial manner. In the limited

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

number of polling stations visited by the OSCE/ODIHR EET on election day, the voting and counting were well-organized and professional, and procedures were generally followed. However, a general lack of distinction between partisan and non-partisan observers was noted as a serious concern. The 70 complaints received by DECs on election day were largely denied consideration on technical grounds.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following an invitation from the Ministry of Foreign Affairs of Georgia to observe the 27 April parliamentary by-elections, on 16 April the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Expert Team (EET).[2] The OSCE/ODIHR EET was headed by Harald Jepsen (Denmark) and consisted of six election experts drawn from as many OSCE participating States.

The findings of this report focus on parliamentary by-elections in three majoritarian districts. The OSCE/ODIHR EET looked at several aspects of the electoral process; particularly the legislative framework for the by-elections, election administration, campaign finance, media, and complaints and appeals. The EET did not include long-term or short-term observers and did not undertake a comprehensive and systematic observation of election day proceedings. Team members, however, visited a limited number of polling stations and followed the tabulation of results in the three districts where by-elections took place. This final report should to be read in conjunction with the OSCE/ODIHR EOM Final Report for the 1 October 2012 parliamentary elections, which offers a more comprehensive assessment of the electoral process.

The OSCE/ODIHR EET wishes to thank the authorities of Georgia for the invitation to observe the elections, the Central Election Commission (CEC), the Ministry of Foreign Affairs, other state and local authorities, political parties, and civil society for their assistance and co-operation. The team also wishes to express appreciation to diplomatic representations of OSCE participating States and international organizations for their co-operation throughout the course of the EET's work.

III. POLITICAL BACKGROUND

On 15 February, the CEC appointed parliamentary by-elections for 27 April in three single-mandate constituencies, Nadzaladevi, Baghdati and Samtredia.[3] Seats in these constituencies became vacant after the 2012 parliamentary elections when three elected members of parliament were appointed to government posts of the Georgian Dream (GD) bloc.

The 2012 parliamentary elections resulted in the first peaceful change of government since Georgia's independence in 1991. The GD bloc, led by Bidzina Ivanishvili, won 85 mandates and the United National Movement (UNM), led by President Mikheil Saakashvili, won 65 mandates. The period since these elections has seen tense co-habitation between the current governing coalition and the opposition. Arrests, trials and interrogations of some UNM members following the 2012 elections negatively impacted the environment around the by-elections. While the UNM characterized such actions as political persecution, the GD justified it as accommodation of public demand to "restore

[2] All previous OSCE/ODIHR election-related reports concerning Georgia can be found at: www.osce.org/odihr/elections/georgia.

[3] Nadzaladevi District is in Tbilisi, and Baghdati and Samtredia districts are in the Imereti Region.

justice" for alleged crimes by UNM officials in previous government. Although municipal elections are scheduled for 2014, party representation in local governments changed considerably since October 2012, when the UNM chaired all 64 local self-government units. Fifty chief executives (*gamgebelis*) and 25 assembly (*sakrebulo*) chairpersons have since resigned and many UNM *sakrebulo* members joined the GD or declared themselves independent. Additionally, a number of local public servants resigned or were dismissed and were subsequently replaced by GD supporters in selection processes, which were criticized by some domestic organizations for lacking transparency.[4]

IV. ELECTORAL SYSTEM AND LEGAL FRAMEWORK

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.[5] Constituency boundaries for majoritarian elections correspond to the existing territorial-administrative units. In the three by-election districts, as during the 2012 parliamentary elections, there continued to be a disparity in the number of registered voters, which undermined the equality of the vote required by paragraph 7.3 of the 1990 OSCE Copenhagen Document.[6] The need to address this issue has been underscored in previous reports of the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission).

The by-elections were primarily regulated by the Election Code. The Code was not revised after the October 2012 parliamentary elections other than an amendment to Article 129, adopted in December 2012, which permitted parliamentary by-elections to be held in April (in addition to taking place in October as stipulated in the Code).[7] The CEC and civil society groups were critical of the expedited and non-consultative manner in which the parliament adopted this amendment, in particular the lack of consultation with the CEC on the feasibility of establishing an additional by-election period.

A number of problematic provisions in the Election Code relating to the by-elections were identified. These included provisions on the appointment of election officials (see Election Administration Section), free airtime for by-election subjects (see Media Section), and campaign prohibitions for public officials. On campaign prohibitions, Article 45.4 provides that particular public officials must not at any time "conduct and participate in pre-election agitation", defined by Article 2.z(8) to include "presence in representations of political parties." The majority of interlocutors, including the CEC and civil society groups, interpreted this provision as prohibiting police officials (and other listed officials) from passively attending campaign events. The CEC further interpreted the prohibition as applying only to indoor campaign events. However, on 21 April, the Samtredia District Court ruled

4 See International Society for Fair Elections and Democracy reports of monitoring post-election processes in local self-governments, 24 December 2012, 12 February and 22 April 2013 at www.isfed.ge/eng.

5 A majoritarian candidate must obtain at least 30 per cent of valid votes cast 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.

6 There were 140,892 registered voters in Nadzaladevi District, 48,455 in Samtredia District, and 23,351 in Baghdati District.

7 Numerous CEC decrees adopted for the 2012 parliamentary elections were re-adopted with amendments tailored for the by-elections, while other decrees did not require revision and remained in force.

that the provision only restricted active campaign participation and excluded passive attendance at campaign events.[8] On 29 April, the Kutaisi Appeals Court upheld the District Court's decision.

Amendments to Articles 45.4 and 2.z(8) of the Election Code could be enacted to clarify the extent of campaign-related prohibitions for public officials.

On 11 April, the Constitutional Court declared the Election Code provision requiring independent majoritarian candidates to submit election deposits for registration as unconstitutional.[9] The Court held that the provision violated Article 14 of the Constitution, which guarantees all citizens equality before the law. The Election Code does not require party-nominated candidates to submit such electoral deposits. This judgment was issued nine months after the submission of the case by an independent majoritarian candidate who ran in the 2012 elections, and does not have retroactive effect.[10] The decision did not refer to its applicability to election deposits already paid by independent candidates for the by-elections. However, based on the Court's decision, the CEC adopted a decision to return the deposits of four registered independent candidates and to withhold the deposit for one independent candidate who withdrew. The CEC did not provide a legal basis for this exception.

The Law on the Constitutional Court could be amended to provide an expedited deadline for consideration of cases concerning the constitutionality of rules applicable to parliamentary elections to ensure timely and effective remedies.

V. ELECTION ADMINISTRATION

The three-tiered election administration remained the same for the by-elections as for the 2012 parliamentary elections. It consisted of the CEC, three District Election Commissions (DECs) comprising 39 members, of which 17 were women, and 177 Precinct Election Commissions (PECs) comprising 2,301 members, of which 74 per cent were women. The CEC did not change its composition. However, qualified political parties had the discretion to re-appoint or change their representatives on DECs and PECs.[11] The CEC estimated that nearly half of the PEC members and one third of the DEC members appointed for the 2012 elections were replaced.

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8 On 24 April, the chairperson of the Inter-Agency Commission for Free and Fair Elections (IAC) criticized the Court's interpretation, contending that the law is clear that police officials are prohibited from attending campaign meetings. As in previous elections, the IAC was re-established for the by-election period. The IAC comprised high-level officials from various ministries and was chaired by the Secretary of the National Security Council. The IAC had a limited mandate to address issues of abuse of administrative resources in the election campaign process and had the authority to adopt non-binding recommendations for public servants and administrative bodies.

9 In Article 116.7, the phrase "a bank deposit certifying the 5,000 GEL deposit made by the majoritarian candidate for an MP on the account prescribed by the CEC" was annulled by the court. (1 EUR equals approximately 2 GEL)

10 Article 22.4 of the Law on the Constitutional Court provides an exceptional expedited deadline of 12 days to consider cases related to the constitutionality of the general rules governing presidential elections and the constitutionality of presidential elections. No such expedited deadline exists for cases concerning parliamentary elections.

11 Five DECs members appointed by the CEC serve five-year terms. The remaining eight DEC members and all PEC members serve for the period of the election.

On 16 April, the CEC dismissed the chairperson of DEC Nadzaladevi and issued a disciplinary warning to the DEC secretary for violating the procedures for appointing PEC members.[12] The DEC chairperson was immediately replaced and election preparations proceed uninterrupted.

All DEC and PEC members as well as DEC lawyers received training by the CEC, which reported a near 90 per cent attendance rate by PEC members at the last stage involving election day simulation. The CEC produced voter information on voting procedures, which was aired on its website and on TV, and also piloted a project to supply Braille ballot guides to polling stations with registered blind voters to enable them to vote independently.

The CEC's interpretation of Article 25.15 of the Election Code regarding the appointment of PEC secretaries resulted in UNM's exclusion from PEC secretary positions and led to some controversy.[13] Most interlocutors agreed that this provision was drafted with the intention that the opposition holds PEC secretary positions. However, as the winning political entity in the 2012 parliamentary elections was a coalition and not a party, the verbatim interpretation of the provision resulted in the UNM being considered the party with the best results and thus excluded from PEC secretary positions. Although the CEC's decree on this issue was not challenged in court, a group of NGOs released a statement criticizing the CEC's literal interpretation. In response, the CEC issued a statement explaining the legal basis for its decision and suggested that the issue should be resolved through legal reform.[14]

Article 25 of the Election Code could be clarified in line with the intentions of the law to ensure balanced political representation in PEC management positions.

VI. VOTER REGISTRATION

For the by-elections, the CEC received updates to existing voter lists from the Ministry of Justice, Ministry of Internally Displaced Persons and other relevant institutions, which conducted regular updates since the last elections. The mandate of the previous Commission for Enhancing Accuracy of the Voter List terminated on 31 December 2012, and no additional verification of the accuracy of voter lists was conducted. By 24 March, the CEC sent preliminary voter lists to PECs in the three districts for public scrutiny. DECs reported receiving few requests for record corrections, mainly related to the update of addresses. A total of 212,698 voters were registered for the by-elections, some 214 voters more than in the 2012 elections.

VII. CANDIDATE REGISTRATION

All 14 parties and the 2 election blocs that registered with the CEC for the 2012 parliamentary elections had the right to participate in the by-elections. While a CEC decree extended this right to

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12 On appeal, the Tbilisi City Court upheld the CEC decision on termination of powers and an appeal to the Tbilisi Court of Appeal was also dismissed.

13 Article 25.15 states: "The secretary of the PEC shall be elected from members appointed by parties (except for the party-appointed member with best results in previous parliamentary elections)." Based on this provision, the CEC issued a decree on 26 February providing that "the secretary of the PEC shall be elected from members appointed by the parties (except for the member appointed by the UNM)."

14 On 17 April, the IAC chairperson issued a recommendation to the CEC to reinterpret Article 25.15 in accordance with the aims of the provision, while the Ministry of Justice issued a statement supporting the CEC's interpretation.

other political parties, no others nominated candidates. Registration was inclusive with no candidate denied registration. A total of 14 election subjects comprising 13 political parties and 1 electoral bloc, and 5 independents nominated by initiative groups were registered. In total 23 candidates participated in the by-elections, including one woman.[15]

VIII. ELECTION CAMPAIGN AND CAMPAIGN FINANCE

The by-election campaign was low-key and activities included organizing meetings with voters in neighbourhoods, distributing leaflets and putting up posters. Only one billboard, for the GD, was erected and the only large rally was held on 19 April by the UNM in Tbilisi with over 5,000 supporters. In general, contestants were generally able to campaign freely. The GD bloc focused its campaign on highlighting previous election promises, emphasizing government initiatives on social protection in Nadzaladevi and on agriculture issues in the two Imereti districts. The UNM criticized the government for not tackling unemployment, stopping infrastructure projects, reducing benefits for some recipients, and its foreign policy.

The UNM brought several allegations of abuse of administrative resources by the GD to the IAC. Among the complaints, the UNM alleged that 27 teachers in Tbilisi were forbidden by school principals to serve as UNM PEC members, and two off-duty police commanders participated in a meeting with the GD candidate in Samtredia. The UNM additionally claimed that its activists in Tbilisi Nadzaladevi and Samtredia and *sakrebulo* members in Samtredia were pressured by police interrogations over alleged corruption cases. On 30 March, the IAC recommended investigators to postpone interrogations of candidates or their activists on old cases until after the by-elections.[16] By the second week of April, OSCE/ODIHR EET interlocutors noted that this moratorium was being observed.

The legislation applicable to party and campaign financing saw substantial amendments after the 2010 municipal elections in an effort to create a comprehensive regulatory framework in line with international recommendations by the Group of States against Corruption (GRECO) and others. The 2012 OSCE/ODIHR Final Report indicated a number of problematic areas related to campaign finance, including disproportionate fines and selective implementation of the applicable regulations. Following the 2012 elections, all fines related to campaign finance violations were negated according to an amnesty law adopted by the new parliament.[17]

The Financial Monitoring Service for Political Finances of the State Audit Office (SAO) has been mandated to exercise oversight of campaign finance since 2011. Detailed financial statements and audit reports are submitted to the SAO and made public through the SAO website no later than one month after publication of final results. All by-election contestants submitted financial reports of income and expenditure and information on donations in a timely manner.[18] While the SAO requested the tax documents of some donors from the Revenue Service (state tax authority) where

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15 Breakdown of candidates by district: 10 in Nadzaladevi, 8 in Baghdati and 5 in Samtredia. One independent candidate withdrew in Nadzaladevi before election day.

16 IAC recommendations and statements are available at: www.nsc.gov.ge/eng/elections2012.php?typ=1#start.

17 The Law on Relinquishing Administrative Fines was adopted on 19 December 2012 as a one-time temporary measure for acts that occurred before 1 October 2012.

18 Information on donations received was published on the SAO website as required by law whereas financial reports of income and expenditures are not required by law and were not publicized.

further investigations were deemed necessary, the SAO did not conclude a Memorandum of Understanding with the Revenue Service as required by its regulation.

From 1 October 2012 to 19 April 2013, the SAO reported that all electoral subjects for the by-elections received a total of 290 monetary and in-kind donations. The GD bloc received 205 donations totalling GEL 1,311,366, the UNM received 2 donations totalling GEL 16,800, and a further eight parties received a total of 79 donations. One independent candidate received five donations totalling GEL 20,277.[19] The SAO stated that its policy was to investigate potential illegal donations only after election day to avoid speculations of political bias.

IX. MEDIA ENVIRONMENT

The media landscape for the by-elections was diverse and pluralistic and television remained the main source of information. A few media outlets, including *Imedi TV*, had changes in ownership structure and editorial lines since the 2012 elections, but the media environment remained polarized along political lines.

The legal framework for the media remained unchanged for the by-elections. The "Must Carry, Must Offer" provision introduced prior to the 2012 elections, which helped television stations to penetrate cable networks, also applied to the by-elections. The implementation of this provision has continued uninterrupted since the 2012 elections, despite Article 51.17 of the Election Code, which limits the provision to an election campaign period.

Specific provisions regulate the media campaign during by-elections. The obligation to provide free airtime to contestants is limited to local broadcasters.[20] The definition and classification of 'local broadcasters' was subject to different interpretations.[21] The Georgian National Communication Commission (GNCC) only notified the broadcasters it deemed to be 'local' and the three 'qualified' election subjects of the obligation of local broadcasters to provide free airtime.[22] The GNCC did not publish the list of broadcasters considered 'local' for the by-elections. This contributed to a lack of clarity and transparency of media obligations and candidate rights among contestants.

The GNCC could consider establishing clear and objective criteria for classifying local broadcasters and publishing comprehensive information on broadcaster obligations to provide free airtime.

The GNCC conducted media monitoring of the by-election campaign. However, the GNCC acknowledged to the OSCE/ODIHR EET that it lacked resources, which limited its capacity to comply with its legal obligations. The GNCC did not release any media monitoring reports. The

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19 One donor exceeded the donation cap by GEL 750. While no sanctions were imposed due to the insignificant amount, the SAO recommended the candidate return the excess money to the donor.

20 See Article. 51.14 of the Election Code states that the "obligation to allocate free airtime provided by this Article shall solely be applied to the local broadcaster in the course of by-elections."

21 Article 2 (z) and (aa) of the Broadcasting Law defines local broadcasting as "broadcasting that is accessible for at least 90 per cent of the population of a relevant service zone (…)" and national broadcasting as "broadcasting as accessible for at least 90 per cent of the population of Georgia (…)", respectively.

22 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. The qualified subjects were the Labor Party, UNM, and GD.

GNCC also claimed that the lack of clarity on the definitions of some legal terms made it difficult to fulfil obligations to monitor media compliance.[23]

The GNCC could publish legally detailed, binding regulations of media coverage for any electoral event. Such regulations should be made public and shared with all stakeholders prior the beginning of an election campaign.

The GNCC received three complaints during the by-election campaign, all lodged by the UNM. The first related to the GNCC rejecting a UNM request to obtain free advertisements on *TV 9, Maestro* and *Imedi TV*. As 'national broadcasters', the GNCC ruled the three TV stations were not obliged to offer free airtime. However, the GNCC issued a non-binding recommendation to the three stations to provide free advertisement to all qualified subjects.

The second complaint alleged abuse of administrative resources by a publically funded, local newspaper, *Samtrediis Matsne*, which published an article in favor of a GD by-election candidate. At the time of this report, the GNCC decision on the *Samtrediis Matsne* case was pending. On 23 April, the Samtredia District Court dismissed a case on the same matter, initiated by the Samtredia DEC on grounds that Article 49.4 of the Election Code prohibiting use of administrative resources for campaign purposes does not apply to media, as media does not conduct election campaigns.

The third complaint by the UNM related to the participation of all three GD by-election candidates in a prime time comedy show on *Imedi TV*, which the UNM claimed to violate the general principles of media impartiality and fairness by the broadcaster by not offering the same opportunity to other candidates. The GNCC redirected this complaint to the self-regulatory body of *Imedi TV* for redress.

Following a UNM complaint to the IAC, the IAC chairperson issued a recommendation to the government to temporarily stop the broadcasting of advertisements promoting activities of the Ministries of Agriculture, and of Education and Science during pre-election periods, which were perceived by some contestants as indirect election campaigning in favor of the governing bloc. In addition, the Ministry of Justice issued a separate recommendation that supported the discontinuation of such advertisements during the by-election period.

While national broadcasters were not legally obliged to cover the by-election campaign, some outlets including the Georgian Public Broadcaster (GPB) *Channel 1* and private *Rustavi 2*, *Imedi TV* and *Maestro* organized election debates or hosted candidates on their programs. In the last week of the campaign, the GD aired paid advertisements on national TV channels. GPB *Channel 1* and some private TV stations offered additional free airtime to the contestants.

X. COMPLAINTS AND APPEALS

The legal redress mechanisms within the election administration were highly transparent. The CEC maintained a complaints registry on its website, including all complaint documents filed with the CEC and DECs, and subsequent actions and decisions, including by the courts. In the pre-election period, the CEC received six complaints: four from the UNM and two forwarded by the IAC. The Samtredia DEC received one complaint from a citizen observer group. Several of these complaints

[23] For example, Article 51.2 of Election Code refers to the obligation of general broadcasters intending to broadcast the election campaign to organize election debates without providing details on the format or frequency of debates.

alleged abuse of administrative resources and use of public position for campaign purposes in favor of GD candidates. Two media-related complaints received by the CEC were forwarded to the GNCC for consideration, while one of these complaints was also forwarded for consideration to the Samtredia DEC, which submitted an administrative violation protocol to the district court (see Media Section). This raises concerns regarding the lack of clarity of jurisdiction over media-related matters, and increases the risk of conflicting decisions issued by different bodies.

It is recommended that the CEC and GNCC establish more formal procedures to clarify jurisdiction over media-related complaints and to ensure that such complaints are handled in an effective manner.

In total, the IAC held three public sessions in the pre-election period open to contestants' representatives and citizen and international observers. Before the by-elections, the IAC considered eight complaints, most filed by the UNM, related to investigations of opposition activists by law enforcement agencies, threats against teachers to refrain from representing UNM on PECs, the presence of off-duty police officers at campaign meetings, the use of social programs for campaign purposes, refusals to air free campaign spots, and broadcasting of social advertisements perceived as campaigning. The Election Code states that the IAC acts as a collegial body in adopting recommendations and the IAC's internal operating procedures require that decisions be taken by majority vote. However, in all but two cases, the IAC chairperson issued unilateral statements and recommendations separate from the rest of the IAC. All statements and recommendations called for further investigations or for such activities to cease.

The IAC also considered cases, which fell outside of its legal mandate for dealing with issues of abuse of administrative resources.[24] Some complaints were forwarded to the CEC or GNCC for consideration. Despite the lack of collegiality and cohesion in the work of the body, civil society groups continued to commend the IAC's initiative and general effectiveness in addressing electoral disputes.

It is recommended that the IAC consider only those issues falling within its legal mandate and act as a collegial body by making decisions and adopting recommendations through established voting procedures.

The IAC chairperson issued two public statements in response to the results of two investigations. One was critical of the CEC's lack of "meaningful investigation" into a complaint it dismissed relating to misuse of administrative resources by a GD candidate, which related to a social program implemented by the Ministry of Agriculture.[25] In connection with this statement, all IAC members called on government agencies and campaigners to guarantee the full separation of government and political party activities. The other statement by the IAC chairperson questioned the thoroughness of an investigation that led to the dismissal of a complaint against a high-level police official who attended a GD candidate's campaign meeting, calling on the CEC to further investigate the case and on the Ministry of Interior to remind its employees that they are legally prohibited from participating in the election campaign. The OSCE/ODIHR EET also noted the insufficient investigation of some of the complaints. It observed an apparently perfunctory investigation conducted by the Nadzaladevi

[24] For instance, cases related to improper performance of a DEC chairperson and the CEC's interpretation of the PEC secretary selection process.

[25] The complaint alleged that the candidate took part in, and credit for, a social program that distributed tractors to villagers in Samtredia District.

DEC of a complaint alleging that a number of DEC Nadzaladevi and PEC members attended a GD candidate's campaign meeting.

The CEC and DECs should carry out thorough and impartial investigations of all complaints, gathering and confirming information from all available sources.

XI. CITIZEN AND INTERNATIONAL OBSERVERS

The CEC accredited 20 domestic civil society and 7 international organizations to observe the by-elections. One international organization was rejected for not providing sufficient documentation on the sources of its funding. DECs received a number of additional registration requests from local observer groups, which intended to only observe in one district, although some were rejected on technical grounds. Overall, the CEC and DECs accredited 1,858 civil society and 75 international observers, as well as 436 contestant representatives. In addition, representatives of 17 media outlets were accredited to follow election day proceedings in polling stations and at DECs.

XII. ELECTION DAY

Election day was held in a calm atmosphere in all three districts. In the limited number of polling stations visited by the OSCE/ODIHR EET, procedures were generally followed. Polling station officials appeared well-trained and managed voting and counting processes in a well-organized and professional manner. Vests for polling officials and different accreditation badges for each category of citizen and international observer added to transparency in polling stations. The CEC reported voter turnout in Nadzaladevi at 27.21 per cent, Baghdati at 49.21, and Samtredia at 44.49 per cent.

The OSCE/ODIHR EET noted a significant presence of party and candidate representatives and civil society observers in all polling stations visited. Their efforts contributed to improving transparency and increasing citizen involvement in the process. However, it is of concern that the OSCE/ODIHR EET encountered a number of civil society observers who identified themselves as representatives of contestants or who were presented by representatives of contestants as representing the same subjects. In this way, some contestants appeared to have deployed more than the one representative per polling station permitted by law.

It is recommended that all stakeholders respect a clear separation of partisan and non-partisan observation and comply with the legal provisions and accreditations procedures as laid out in the law.

The tabulation of election results in all three DECs was transparent and well-organized. PEC result protocols that had been amended by the respective PEC after completion, as a rule, arrived with an explanatory note attached; the OSCE/ODIHR EET did not note any instances of protocols being amended in a DEC premises during their observation. Adding to transparency, PEC result protocols were uploaded and made publicly accessible on the CEC website once processed by the DECs.

The three DECs received a total of 70 complaints, most filed by accredited citizen observers, and to a lesser extent by contestants' representatives, mainly alleging various violations of opening, voting

and counting procedures.[26] The majority of complaints were denied consideration on technical grounds. Many of these were refused on the basis that the PEC had addressed the violations, while others were left unconsidered for reasons such as failure by the complainant to include the exact time of the violation. Disciplinary action was taken by DECs against PEC members in several cases of established violations, including warnings and fines. There were a number of claims about irregularities in the mobile voting process. In one case, a mobile voter list was not signed by the voters or ballot issuer, and PEC members were only given a warning by the DEC. These ballots were not invalidated by the PEC. However, in another case, a PEC invalidated all ballots in a mobile ballot box on the basis that only one voter's signature was missing in the mobile voter list. Thus, the handling of detected irregularities in the mobile voting process by the PECs appeared to lack consistency.

In response to complaints, on election day the CEC cancelled accreditations of three citizen observers (each representing a different NGO) in Samtredia and Baghdati districts, based on Article 39 of the Election Code where the individuals were not entitled to be observers as they were members of the local administration or assembly.[27] On election day, the Baghdati DEC received a complaint by a citizen observer group alleging direct police pressure on PEC members in one polling station. Following an announcement by the Minister of Internal Affairs (MIA) that the allegations were not confirmed, the CEC appealed to the Minister to further investigate the matter, stating that dismissal of such complaints during the election process needs to be more persuasive. On 2 May, the CEC issued an open letter informing the MIA that contrary to the requirements of the law, the Head of Baghdati Regional Police refused to participate in the administrative legal proceedings at the DEC on the complaint, and requested the Minister to compel the police head to appear before the DEC.

It is recommended that allegations of police pressure on PEC members be fully investigated and perpetrators be brought to justice in accordance with due process and rule of law requirements.

XIII. 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; in particular those contained within the OSCE/ODIHR EOM Final Report for the 1 October 2012 parliamentary elections. The OSCE/ODIHR stands ready to assist the authorities of Georgia to further improve the electoral process.

A. PRIORITY RECOMMENDATIONS

1. Amendments to Articles 45.4 and 2.z$^{(8)}$ of the Election Code could be enacted to clarify the extent of campaign-related prohibitions for public officials.

2. Article 25 of the Election Code could be clarified in line with the intentions of the law to ensure balanced political representation in PEC management positions.

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[26] Nadzaladevi DEC received 50 complaints, Samtredia DEC received 14 complaints, and Baghdati DEC received 6 complaints. The number of complaints filed directly to PECs was unavailable.

[27] The NGOs were "Future Choice", "New Generation Democratic Elections", and "Election Environment Development Centre".

3. It is recommended that the IAC consider only those issues falling within its legal mandate and act as a collegial body by making decisions and adopting recommendations through established voting procedures.

4. The GNCC could publish legally detailed, binding regulations of media coverage for any electoral event. Such regulations should be made public and shared with all stakeholders prior the beginning of an election campaign.

5. It is recommended that all stakeholders respect a clear separation of partisan and non-partisan observation and comply with the legal provisions and accreditations procedures as laid out in the law.

B. OTHER RECOMMENDATIONS

Legal Framework

6. The Law on the Constitutional Court should be amended to provide an expedited deadline for consideration of cases concerning the constitutionality of rules applicable to parliamentary elections to ensure timely and effective remedies.

Media

7. The GNCC could consider establishing clear and objective criteria for classifying local broadcasters and publishing comprehensive information on broadcaster obligations to provide free airtime.

Complaints and Appeals

8. It is recommended that the CEC and GNCC establish more formal procedures to clarify jurisdiction over media-related complaints and to ensure that such complaints are handled in an effective manner.
9. The CEC and DECs should carry out sufficiently thorough and impartial investigations of all complaints, gathering and confirming information from all available sources.

10. It is recommended that allegations of police pressure on PEC members be fully investigated and perpetrators be brought to justice in accordance with due process and rule of law.

ANNEX: FINAL ELECTION RESULTS

Nadzaladevi District (9)

No.	Candidate	Affiliation	Votes
1	Kakha Kukava	Kakha Kukava – Free Georgia	6,772
5	Mirza Davitaia	United National Movement	5,926
9	Kvicha Asanidze	Movement – For Free Georgia	20
19	Zaza Mezvrishvili	Freedom – the way of Zviad Gamsakhurdia	33
30	Giorgi Liluashvili	Merab Kostava Society	46
36	Gia Nemsadze	Labor Council of Georgia	133
38	Giorgi Gugava	Shalva Natelashvili – Labor Party of Georgia	1,233
41	Tamar Kordzaia	Bidzina Ivanishvili – Georgian Dream	15,487
42	Ioseb Manjavidze	Initiative Group	5,078
44	Zviad Chitishvili	Initiative Group	4,497
		Total	39,751
		Invalid votes	519

Baghdati District (52)

No.	Candidate	Affiliation	Votes
4	Davit Sharabidze	National-Democratic Party	14
5	Vladimer Tsikoridze	United National Movement	2,383
9	Paata Bakuradze	Movement – For Free Georgia	39
19	Lasha Tamashasvhili	Freedom – the way of Zviad Gamsakhurdia	5
36	Archil Ioseliani	Labor Council of Georgia	14
41	Paata Kiknavelidze	Bidzina Ivanishvili – Georgian Dream	6,975
42	Roman Rokabidze	Initiative Group	751
43	Zurab Mskhvilidze	Initiative Group	1,104
		Total	11,491
		Invalid votes	205

Samtredia District (54)

No.	Candidate	Affiliation	Votes
5	Emzar Shubladze	United National Movement	3,963
9	Gocha Badzgaradze	Movement – For Free Georgia	33
19	Badri Gogelashvili	Freedom – the way of Zviad Gamsakhurdia	19
36	Morison Kobulia	Labor Council of Georgia	26
41	Giorgi Kakhiani	Bidzina Ivanishvili – Georgian Dream	17,163
		Total	21,556
		Invalid votes	301

Official figures as announced by the Central Commission of Georgia on 10 May 2013.

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).