



Office for Democratic Institutions and Human Rights

## GEORGIA

### MUNICIPAL ELECTIONS

5 October 2006

### OSCE/ODIHR Limited Election Observation Mission Final Report



Warsaw  
20 December 2006

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**GEORGIA**  
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**OSCE/ODIHR Limited Election Observation Mission Final Report<sup>1</sup>**

**I. EXECUTIVE SUMMARY**

In response to an invitation from the Ministry of Foreign Affairs of Georgia, the OSCE Office for Democratic Institution and Human Rights (OSCE/ODIHR) deployed a Limited Election Observation Mission (LEOM) to observe the 5 October municipal elections. The OSCE/ODIHR assessed the municipal elections in terms of their compliance with the 1990 OSCE Copenhagen Document, other international standards for democratic elections and domestic legislation.

The 5 October municipal elections were called by a Presidential Decree with the shortest possible legal margin and earlier than prior indications, which placed considerable constraints on election stakeholders. This was further compounded by limited dialogue between the governing party and the opposition.

Fundamental civil and political rights were generally respected. However, the conduct of highly visible social aid programs conducted in parallel to the election campaign, including issuing of utility vouchers, payment of pension bonuses and implementation of temporary employment schemes, blurred the distinction between State activities and the electoral campaign. This considerably reinforced the advantages of incumbency and created a widespread perception of a lack of clear separation between party and State, contrary to paragraph 5.4 of the 1990 Copenhagen Document.

The election legislation was generally conducive to the conduct of democratic elections, however, it will benefit from further improvements in a number of areas. Several shortcomings identified in earlier reports of OSCE/ODIHR election observation missions and joint opinions of the OSCE/ODIHR and the Venice Commission of the Council of Europe (VC/CoE) on the Election Code of Georgia remain to be addressed, in order to bring the electoral legislation in closer compliance with OSCE Commitments, Council of Europe's and other international standards for democratic elections.

Changes introduced in 2005 to the election system for local elections were adopted without broad consultations among the political actors. The opposition criticized the 'winner takes all' election system for Tbilisi as reducing the representative nature of the *Sakrebulo* (city council) and favoring the ruling party.

The election administration largely provided for an orderly electoral process, operating within a constrained timeframe. A number of voters did not find their names on the voter lists on the election day and may have been disenfranchised, which highlights the importance of continuing the work on improving the quality of the voter register.

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<sup>1</sup> This report is available in Georgian. However, the English version remains the only official document.

Five political parties, one electoral bloc and a number of independent candidates contested the municipal elections. In general, the registration of election subjects was performed in an orderly manner. Regrettably, in 27.5 per cent of majoritarian races and in 8.7 per cent of proportional races only one candidate or party list – in all but one case that of the governing United National Movement (UNM) – appeared on the ballot. This cast a shadow on the overall degree of the competitiveness of the elections. Furthermore, some 30 per cent of all independent candidates were not able to register, largely due to the failure of the election administration to provide clear instructions on the establishment of campaign funds.

The media offered voters a plurality of views and provided them with a basic reflection of main election events, devoting significant attention to the activities of the authorities. Broadcasters mostly respected the legal requirements for allocation of free airtime and organization of debates. Regrettably, the UNM did not engage in these debates.

The legal provisions for the resolution of election disputes were satisfactory; however, their implementation remained an issue. The LEOM was made aware of more than 110 election related complaints.

While the LEOM did not observe the election day systematically, it noted that voting was generally conducted in an orderly manner and the election commissions appeared reasonably well organized. Domestic observers were prominently present; however, some observers were at times seen interfering in the process. During the count, LEOM observers noted significant procedural problems in some areas. Availability of key electoral documents in minority languages, in the respective areas, could have contributed to a more inclusive process.

Repeat voting was conducted on 17 October in 28 out of 33 polling stations, where the results of the 5 October vote were annulled by the Central Election Commission (CEC) or District Election Commissions (DECs) due to irregularities. The LEOM did not observe the repeat voting.

Final results of 5 October municipal elections, including the results of the re-runs, were published by the CEC on 19 October. While, in a welcome development, the CEC made an effort to place the information on the results of some proportional races in a PEC breakdown, by mid-November, full and comprehensive data on results for the entire country broken down by DECs and PECs was not yet posted on the CEC website.

This Final Report includes a number of recommendations, which together with recommendations provided on earlier occasions and the Joint Opinion of the OSCE/ODIHR and Council of Europe's Venice Commission on the Election Code of Georgia, are offered for consideration by the authorities of Georgia in support of their efforts to conduct elections in line with OSCE Commitments. The OSCE/ODIHR stands ready to continue its cooperation with the authorities, political parties and civil society of Georgia on these issues.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

Following an invitation received on 10 May 2006 from the Ministry of Foreign Affairs of Georgia to observe the municipal elections in Georgia scheduled for the end of November, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) expressed its

intention to send a Needs Assessment Mission to Tbilisi in early September.<sup>2</sup> However, in connection with the Decree of the President of Georgia of 26 August 2006 on the appointment of municipal elections for 5 October 2006, the OSCE/ODIHR had to cancel the Needs Assessment Mission. In view of the constrained timeframe, the OSCE/ODIHR deployed an Advance Team of election experts to Tbilisi on 5-6 September.

On the basis of the findings<sup>3</sup> of the Advance Team, on 8 September the OSCE/ODIHR deployed a Limited Election Observation Mission (LEOM), which did not envisage systematic and comprehensive election day observation by short-term observers. The Limited Election Observation Mission was headed by Ambassador Geert-Hinrich Ahrens and included a core-team of 9 international experts based in Tbilisi, as well as 19 long-term observers deployed to eight locations throughout Georgia. In total, the LEOM consisted of 28 members from 19 OSCE participating States.

The LEOM focused on the registration of candidates, the campaign environment, the performance of the election administration, the complaints and appeals process, and the media coverage of the elections. On election day, the LEOM did not deploy short-term observers. Mission members attended voting and counting of votes in a limited number of polling stations, as well as the tabulation of results in a number of election districts. The LEOM remained in the country until 14 October.

Close to election day, a Delegation of the Congress of Local and Regional Authorities of the Council of Europe (CLRAE) led by Mr. Wim Van Gelder arrived in Georgia to follow the election day procedures. On the day after the election, the LEOM issued a press release jointly with the CLRAE Delegation. The OSCE/ODIHR highly appreciates the cooperation with the CLRAE.

The OSCE/ODIHR wishes to express its appreciation to the Ministry of Foreign Affairs and the Central Election Commission of Georgia, as well as to other authorities, the OSCE Mission to Georgia, civil society organizations, international organizations, and the resident embassies of OSCE participating States for the co-operation throughout the course of the mission.

### **III. BACKGROUND**

The OSCE/ODIHR has observed a number of electoral events<sup>4</sup> in Georgia since 1999, noting both improvements achieved and areas where further efforts were required for elections in Georgia to fully comply with OSCE Commitments and other international standards for democratic elections.

Since the 2004 repeat parliamentary elections, the UNM enjoys a comfortable majority in parliament. The parliamentary opposition comprises the New Rights Party, which contested the 2004 elections jointly with the party “Industry Will Save Georgia” (the Industrialists), the Conservative Party, the Republican Party, and the Labour Party. The Republican Party

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<sup>2</sup> On 9 June 2006, the OSCE/ODIHR received an additional invitation to observe local elections from the Speaker of the Parliament of Georgia, Ms. Nino Burjanadze.

<sup>3</sup> Due to compressed schedules, these findings were summarised in Note Verbale N 411/06.

<sup>4</sup> These include the 1999 and 2003 parliamentary elections, the 2004 repeat parliamentary elections, and the 2000 and 2004 presidential elections; respective OSCE/ODIHR Final Reports are available at [www.osce.org/odihr](http://www.osce.org/odihr).

chose to withdraw from the coalition with the UNM in 2004, amid a controversy over the constitutional amendments. Other MPs followed suit and formed the Conservative Party in May 2005. The Conservative and the Republican parties contested the municipal elections jointly in the electoral bloc ‘Davitashvili, Khidasheli, Berdzenishvili’. Other opposition parties not represented in the current parliament include the National Democratic Party, the Freedom Movement (*Tavisupleba*), and the “Georgia’s Way”, established in March 2006 by the former Minister of Foreign Affairs of Georgia, Ms. Salome Zourabishvili.

Opposition parties have not participated in parliamentary proceedings in the period between April and October 2006 criticising the government for perceived authoritarianism and intolerance towards political and civic opposition, and undermining the independence of the judiciary and the media. Opposition parties have been particularly critical of recent amendments to the Unified Election Code (UEC)<sup>5</sup>, which they assessed as favouring the ruling party, and of some aspects of the amended Law on Local Self-Government.<sup>6</sup> Following their adoption and in the run up to the municipal elections, some opposition parties promoted non-participation in the elections as a demonstration of protest.

The 5 October elections to local self-government bodies were called by the Presidential Decree of 26 August 2006, which was made public on the following day, 27 August 2006. The announcement of the elections was done with the shortest possible legal margin, 40 days before the day of election, earlier than indicated on prior occasions.

The political environment for the municipal elections was characterized by limited attempts for dialogue between the dominant governing party, the United National Movement, and the opposition including the Labour Party of Georgia, the Industrialists, Georgia’s Way and the Republican and Conservative parties. Two political parties, the New Rights Party and the National Democratic Party as well as the Freedom Movement, chose not to participate in the municipal elections.

#### IV. LEGAL FRAMEWORK

The municipal elections took place following a reform in the system of local self-governance. The former Soviet districts (*rayons*) have been transformed into municipalities, and cities without subordination to any rayon have gained the status of self-governing cities. Voters of Georgia elected by popular vote members of 69 local councils in four self-governing cities, 60 municipalities, four communities established in zones of conflict, as well as the Tbilisi *Sakrebulo*. Some 1,733 councilors were elected under a newly introduced mixed proportional-majoritarian election system using two ballots, except for Tbilisi, where voters received only a single ballot for the majoritarian vote.

The legal framework for the municipal elections consisted of, but was not limited to, the UEC, which was adopted in 2001 and amended 15 times since, most recently in June and

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<sup>5</sup> These amendments include, *inter alia*, the very choice of election system for the Tbilisi *Sakrebulo* elections, the reduction of the timeline for the calling of elections from 45 to 40 days, transitional provisions enabling the Mayor of Tbilisi to remain in office during the campaign as well as the delimitation of district boundaries. The opposition was equally critical of the 7% threshold for parliamentary elections, the procedures for the formation of the CEC as well as of the provisions allowing for the involvement of officials in campaigning activities.

<sup>6</sup> The local self-government law was criticized primarily for its failure to provide for direct elections of mayors.

July 2006. The election legislation was generally conducive to the conduct of democratic elections, however, it will benefit from further improvements in a number of areas. The June 2006 joint OSCE/ODIHR and VC/CoE legal review of the UEC notes that the Code contains several positive features and addresses some of the shortcomings identified in previous reviews and reports, but fails to reflect a number of earlier identified shortcomings.<sup>7</sup>

The Code established a mixed electoral system whereby in each *sakrebulo* throughout the country, except Tbilisi, 10 members are elected on party lists through the proportional representation system, and a certain number of members are elected through the majority system in local majoritarian election districts for a four-year term. Under the new provisions, the *gamgebelis* (mayors) of municipalities and mayors of self-governing cities are civil servants, who are elected by the new *sakrebulo* with a simple majority of councilors' votes.<sup>8</sup> In contrast to the Tbilisi Mayor, *gamgebelis* (mayors) do not have to be elected from among the members of the respective *sakrebulo*.

For the city of Tbilisi, the UEC provides for a 37-member *Sakrebulo*: 25 members are elected in 10 multi-mandate local majoritarian election districts, whereby the party list which "received more votes than others, but not less than 30 percent of those who participated in the election" takes all the seats (two or three) allocated to that district. The remaining 12 seats are distributed proportionally among those parties that gained at least four per cent of the votes<sup>9</sup> in all of Tbilisi's 10 districts. The *Sakrebulo* elects the Tbilisi Mayor from among its members, by a simple majority of councilors' votes, for a four-year term<sup>10</sup>. Unlike other incumbent mayors standing as candidates, the Mayor of Tbilisi was not required to resign from his post.

In December 2005, the VC/CoE conducted a review of amendments, which introduced the new election system for the Tbilisi *Sakrebulo*.<sup>11</sup> Although the OSCE/ODIHR did not participate in this review, it shares the concerns expressed by the VC/CoE with regard to some elements of the system, including the excessive residency requirement<sup>12</sup> and the lack of a provision for independent candidates. The provision on the use of a single majority ballot in the Tbilisi *Sakrebulo* election, while voters in the rest of Georgia cast two ballots also appears problematic. The most recent amendments to the UEC of June and July 2006 were reviewed by the OSCE/ODIHR and the VC/CoE<sup>13</sup>.

Although Article 6 of the UEC contains general provisions for the equality of suffrage, the requirement to draw the boundaries of local majoritarian election constituencies on the basis of the number of voters appears to apply only to the four self-governing cities (Article 129<sup>1.2</sup>). The delimitation of local majoritarian election districts in other municipalities

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<sup>7</sup> Opinion No. 362/2005, Joint Opinion on the Election Code of Georgia as amended up to 23 December 2005, 16 June 2006.

<sup>8</sup> Organic Law on Local Self-Government, Article 39. In Tbilisi, however, the *gamgebelis* of five city administrative districts and of the rural Tskneti community are appointed by the Mayor of Tbilisi.

<sup>9</sup> With only 12 seats to distribute, the four per cent threshold appears rather theoretical. In order to gain a seat, a party or a bloc list would in effect need to obtain more than eight per cent of the votes.

<sup>10</sup> Law on the Capital of Georgia – Tbilisi, Article 22.1.

<sup>11</sup> Opinion No. 358/2005, Opinion on the Draft Organic Law on "Making Amendments and Additions into the Organic Law – Election Code of Georgia", 20 December 2005.

<sup>12</sup> According to Opinion 190/2002 of the VC/COE and the Code of Good Practice in Electoral Matters, Section I.1.1.cc.iv, the requisite period of residence should not exceed six months.

<sup>13</sup> Joint Opinion on the Election Code of Georgia as amended through 24 July 2006, Opinion no.362/2005, CDL-AD(2006)037; please see also [www.osce.org/odihr](http://www.osce.org/odihr).

follows the old territorial-administrative divisions, according to which a community (unit) elects one member to a *sakrebulo*, irrespectively of a number of inhabitants in that community (unit).<sup>14</sup> In effect, the local majoritarian election district can vary in size from a few hundred to several thousand voters. Similarly, the provision for the delimitation of the election districts in Tbilisi needs to better ensure that the principle of equality of suffrage is fully observed.<sup>15</sup>

An analysis of the size of local majoritarian election districts created for the municipal elections confirms that the delimitation did not appear to reflect international standards for equal voting power.<sup>16</sup> Moreover, the local majoritarian election districts in the four self-governing cities appeared to have been drawn in contradiction to the letter of the UEC.<sup>17</sup> Other implications of the district delimitation will be addressed in the section devoted to national minorities.

## V. ELECTION ADMINISTRATION

### A. STRUCTURE AND COMPOSITION OF THE ELECTION ADMINISTRATION

The election administration has a three-tiered structure comprising of the CEC, 76 DEC's and 3,033 PEC's. The UEC defines the seven-member CEC and five-member DEC's as standing, professional and non-partisan bodies.

The composition of the CEC was established on 3 June 2005, following the selection of its members by the Parliament based on nominations of the President. Currently, the CEC consists of a Chairperson and five members.<sup>18</sup>

Most DEC members were selected by the CEC in March-April 2006 following an open competition for vacant positions in 70 of the 76 DEC's.<sup>19</sup> DEC membership was only open to persons who had passed a test on electoral matters and received a certificate issued by the CEC. Opposition parties and some NGO representatives raised concerns over the appointment procedure of the election administration claiming that it allowed the President and the parliamentary majority held by the UNM a dominant influence over the composition of the CEC and DEC's. However, political parties had an opportunity to

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<sup>14</sup> Article 112.1.

<sup>15</sup> Article 126<sup>6</sup> of the UEC obliges the CEC to determine five local majoritarian election districts with two and five districts with three mandates 'based on the number of voters residing in the election district as of 1 January of the year of election'.

<sup>16</sup> 'The permissible departure from the norm [i.e. the average number of voters per district] should not be more than 10 per cent, and should certainly not exceed 15 per cent except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity).' Opinion 190/2002, VC/CoE, Code of Good Practice in Electoral Matters, Section I.2.2. iv and v.

<sup>17</sup> Half of the 20 local majoritarian election districts in the self-governing cities of Batumi, Poti, Kutaisi and Rustavi displayed a deviation from the norm that exceeded 10 percent. In one instance, the deviation reached 36 per cent.

<sup>18</sup> The present composition has resulted from the transfer of a former Chairperson to the post of the Minister of Justice and the appointment of a former CEC Secretary, Guram Chalagashvili, as the new head of the CEC on 22 December 2005.

<sup>19</sup> DEC 5 (Isani/Tbilisi), DEC 57 (Tkibuli/Imereti) and DEC 79, 81 and 82 (all three in Adjara) maintained the same composition as for the October 2005 by-elections, while the DEC 86 Zemo Abkhazeti in the Kodori Gorge was established after the calling of the municipal elections.

appoint members of polling station commissions and to nominate proxies to election commissions of all levels.

The three top-scoring political parties in the last parliamentary elections – the UNM, the Industrialists<sup>20</sup>, and the Labor Party of Georgia – have the right to nominate up to two-thirds of the nine-member PECs, while the rest are selected by the respective DEC. In practice, the polling station commissions that administered these elections were hastily formed by the DECs on the basis of the so-called special groups, which had been established just days before the calling of the elections for the purpose of updating the voter lists. The principles for the formation of these special groups provided for the same degree of party representation.

Managerial positions in PECs were decided upon by a simple majority vote during the first session of a commission. The UEC does not contain safeguards against the preponderance of certain political parties on managerial positions in election commissions. According to the information provided by the CEC, only 5 out of 3,033 PEC chairpersons were representatives of opposition parties.

When interviewed about the affiliation of their commission members, some PEC chairpersons were not able to give satisfactory answers.<sup>21</sup> At times, even the PEC members themselves appeared unsure about who had appointed them.

## **B. ORGANIZATION OF THE ELECTION**

The election administration largely provided for an orderly electoral process, operating within a constrained timeframe. However, the CEC did not meet all legal deadlines envisaged by law. The CEC subsequently prolonged a number of legal deadlines by its decree. In some instances, it prolonged deadlines retrospectively, when these had already expired.<sup>22</sup> With regard to the registration of election subjects, the CEC allowed for some ambiguity in its instructions to the DECs.

The CEC held regular, but short sessions open to the public and generally operated in a collegial manner. Decisions and minutes of CEC meetings were made available in the Georgian language on its website. The CEC organized trainings for all members of district and polling station commissions, developed a training manual in cooperation with an international organization and carried out a limited voter education campaign through the media, focusing mainly on voter registration procedures and on advertising its hotline.

The DECs held meetings on an ad-hoc basis and, with a few exceptions, all kept and displayed minutes of their proceedings. The DECs and PECs received sufficient resources to support their work. Ballots and voting materials were generally distributed in a timely manner.

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<sup>20</sup> Industrialists contested the last parliamentary elections in an electoral bloc with the New Rights Party, which decided not to take part in the municipal elections. Under the UEC, Industrialists, as a party in the bloc that gained the highest number of seats, had the sole right to nominate PEC members, but in a number of regions decided to share this right with its former coalition partner.

<sup>21</sup> PEC chairpersons in Bolnisi DEC 23 PEC 7, 8, 29, 47, 45 and 46; Marneuli DEC 22 PEC 3, 7 and 48; Dmanisi DEC 24 PEC 8, 9, 10 and 17.

<sup>22</sup> This concerned the deadlines for the creation of precincts and for the formation of polling station election commissions, and the cut-off date for amending the voters' list.

### **C. VOTER REGISTRATION AND VOTER IDENTIFICATION DOCUMENTS**

The CEC is responsible for the maintenance of a centralized and computerized voter register. The update of the voter lists was initiated ahead of the elections with the appointment of 2,804 special groups established by the CEC Decree of 31 July 2006. The task of the special groups, which were created for the period from 23 August to 12 September, was to carry out a door-to-door check in the designated area for each polling station.<sup>23</sup> With the announcement of elections on 26 August, the mandate of the special groups came to a halt after only a few days of work. On 1 September, the special groups were transformed into 3,005 PECs. Additional polling stations were opened before the election day; a total of 3033 PECs operated during the 5 October voting.

In most areas of Georgia, the DECAs, assisted by selected members of the PECs, continued the work started by the special groups. This entailed the conduct of door-to-door checks and the verification of voters' data. Preliminary voter lists were made available for public inspection in the PECs, and the CEC operated a hotline where people could call in free of charge to make enquiries, including about their entry in the voter lists.

The updated final voter lists reached the polling stations on the eve of the election, after the expiry of the deadline for inclusion of voters by court decisions<sup>24</sup>. The UEC does not allow for election day registration (except for citizens returning from abroad and citizens released from detention centers or hospitals on the eve of the elections). A total of 3,205,634 voters<sup>25</sup> were registered to vote, which constitutes a significant increase over past elections.

Special voter lists were drawn up for each of the 28 special polling stations established in military compounds. By a decision of the CEC, military servicemen were allowed to register to vote at their places of temporary residence, and their soldiers' IDs were accepted as valid voter IDs. However, no mechanism was put in place to remove the voters serving in military forces from the voter lists at their places of registered permanent (civilian) residence.

Internally displaced persons (IDPs) were to be registered in the general voter list according to their actual places of residence. However, they still had to produce the special IDP certificates in addition to their IDs in order to receive ballots.

Despite the commendable efforts undertaken by the authorities and the election administration to improve the quality of voter registers, the opposition parties and some civil society organizations continued to express lack of confidence in their accuracy to the LEOM.<sup>26</sup> They pointed to inconsistencies in the updating process, presence of multiple entries, spelling mistakes and other inaccuracies.

### **D. CANDIDATE REGISTRATION**

The registration of election subjects was conducted at both CEC and DEC levels. Firstly, political parties and movements registered with the CEC in order to be able to nominate

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<sup>23</sup> This was done before the final delimitation of precinct boundaries for the municipal elections.

<sup>24</sup> According to CEC information, no voter applied to court for inclusion into the voters list.

<sup>25</sup> Official information provided by the CEC. On the CEC website, however, the total number of voters according to the preliminary reports on turnout is given as 3,229,658.

<sup>26</sup> Political parties taking part in the municipal elections were given the possibility to obtain an electronic copy of the final voters lists without ID numbers.

candidates for the municipal elections. Political parties and movements could then form and register electoral blocs with the CEC. Subsequently, political parties, movements and electoral blocs registered their lists of candidates for the proportional and the majoritarian races with the respective DEC. Independent candidates could only contest elections in local majoritarian election districts outside Tbilisi, and needed to be nominated by initiative groups of voters (IGVs) registered at the DEC level.

Eleven political parties and movements applied for registration, and nine were registered by the CEC. The political movement Motherland (*Samshoblo*) and the Merab Kostava Society were denied registration on the grounds of incomplete documentation. The National Democratic Party and the New Conservative Party (New Rights) withdrew from the race on 8 September and on 11 September respectively, alleging unfair competition. A total of five parties – the UNM, the Labour Party, Georgia’s Way, Industry Will Save Georgia and the National Ideology Party – and one electoral bloc formed by the Republican and the Conservative Parties under the name “Davitashvili, Khidasheli, Berdzenishvili” (DKB) – competed in the elections.

In general, registration of candidates and party lists was performed by the DECs in an orderly manner. Some 2,400 candidates were registered in a total of 1,025 local majoritarian districts. In addition, an average of three party lists per election district offered the electorate a degree of choice. Nevertheless, 282 out of 1,025 majoritarian (27.5 per cent) and six out of 69 proportional (8.7 per cent) races were non-competitive with only a single candidate or a party list contesting the election<sup>27</sup>. This casts a shadow on the competitiveness of the elections.

This situation was compounded by the fact that a significant number of independent candidates nominated by IGVs were denied registration at DEC level.<sup>28</sup> These rejections mostly occurred in the regions of Kvemo Kartli and Imereti and were mainly caused by the failure of the election administration to provide clear instructions on the legal provisions for the establishment of campaign funds. In some local majoritarian districts affected by the ambiguous instructions from the election administration, only one candidate was left on the ballot.

A number of candidates withdrew from the race prior to the elections. In the election districts of Kharagauli, Marneuli and Borjomi, as well as in the Kakheti and Imereti regions, the LEOM received allegations of candidates having faced pressure and intimidation by local authorities or officials of the ruling party prior to their withdrawal. The LEOM was able to verify the credibility of some of these allegations.<sup>29</sup>

## **E. CAMPAIGN FINANCE**

Following recent amendments to the Law on Political Associations of Citizens, the ceiling on private financing of the activities of political parties was increased<sup>30</sup> and the threshold requirement for a political party to receive State remuneration was lowered from five to

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<sup>27</sup> In all but one case, the ballots contained a candidate/party of list put forward by the UNM.

<sup>28</sup> Some 270 independent candidates (31.6 per cent) were not registered against a total of 583 registered candidates.

<sup>29</sup> As a consequence of pressure, 19 opposition candidates withdrew in Borjomi election district 36.

<sup>30</sup> While having increased the overall ceiling, the amendments established limits for the voluntary financial contributions a party may receive from physical persons and legal entities.

four per cent of the votes gained in the last parliamentary elections. In addition, the law now clearly specifies the size of the State remuneration to political parties.<sup>31</sup>

Under the UEC, the establishment of a campaign fund is compulsory for all election subjects participating in the elections. All campaign expenditures must be paid from the account of the campaign fund, and all contributions to the fund must be clearly identifiable; anonymous contributions are immediately transferred to the State budget. The deadline for the submission of a financial report on transactions, together with an audit report, was one month after the publication of the final results; except for winning subjects, who must submit the report within eight days after the election. There are no provisions for the submission of financial reports prior to election day. Failure to comply may result in deregistration or in a prohibition to a party or a candidate to participate in the next election.

The financial and audit reports must be prepared by a private<sup>32</sup> auditing company and reviewed by a monitoring group established by the CEC, which provides detailed information on the transactions made within each campaign fund available on its website. By the time of writing this report, the information on the campaign spending by contenders was not yet published.

While the provisions for the utilization and the control over the campaign funds appeared adequate, the UEC lacked clarity with regard to the requirement of opening of a campaign fund as a prerequisite for registration of election subjects. The ambiguity stems from the uncertainty on whether the provisions on the opening of campaign funds contained in Article 46.2 apply to independent candidates or only to party/bloc candidates. The CEC issued two decrees on the issue, but failed to address the ambiguity in a consistent and timely manner. As mentioned above, this resulted in a significant number of independent candidates being denied registration.

## VI. PARTICIPATION OF NATIONAL MINORITIES

Georgia is a country with a considerable number of national minorities. According to the 2002 census data<sup>33</sup>, national minorities constitute 16.2 per cent of the population, with Azeris (6.5 per cent), Armenians (5.7 per cent) and Russians (1.5 per cent) comprising the largest minority groups. Other minority groups include Ossetians, Yezidis, Greeks, Chechens, Jews, Abkhazians and Kurds. The largest national minorities are geographically concentrated in the regions of Samtskhe Javakheti (Armenians) and Kvemo Kartli and Kakheti (Azeris).

National minorities enjoy political rights under the constitution, and Georgia has ratified the Framework Convention for the Protection of National Minorities of the Council of Europe. However, the Law on Political Associations of Citizens prohibits the registration of a political party based on territorial, racial, ethnic, linguistic or religious grounds. According to the reports of the CEC, some 230 representatives of minorities were registered as majoritarian candidates nominated by initiative groups of voters (a possibility that did not exist for the Tbilisi *Sakrebulo* elections) or approximately 10 per cent of the

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<sup>31</sup> Each qualified political party receives 2 GEL for each of the first 200,000 votes gained; 1.5 GEL for the subsequent 300,000 votes; and 1 GEL per vote above 500,000.

<sup>32</sup> The joint OSCE/ODIHR and VC/CoE opinion 362 recommended auditing by a State body.

<sup>33</sup> The 2002 census does not include data from conflict zone areas.

total number of registered majoritarian candidates that contested the municipal elections. Additionally, some 215 minority candidates were included in party lists.

A command of the Georgian language is not a legal prerequisite for candidacy in local elections.<sup>34</sup> However, proficiency in the State language (Georgian) is a requirement for DEC membership.<sup>35</sup> Although the representation of minorities at PEC level was satisfactory in most of the minority-populated areas, in Kvemo Kartli very few DEC members were from the dominant Azeri minority.

The election administration made commendable efforts to ensure access of minorities to the information about the municipal elections by producing voter education spots and materials, as well as by operating a hotline in their preferred languages. The CEC made voter lists and training manuals available in several minority languages, trained multilingual trainers<sup>36</sup> and printed bi-lingual ballots in two minority languages<sup>37</sup>. The latter effort was limited to only four election districts.<sup>38</sup> However, crucial legal documents such as the Unified Electoral Code and CEC legal acts, as well as important forms such as the PEC result protocols, were not translated into minority languages. At times, this caused confusion for the local election administration and may have affected the rights of election subjects and voters in the minority populated areas.<sup>39</sup>

The delimitation of local majoritarian election districts in general followed the old community structure within a municipality, with each local community electing only one member to the new *sakrebulo*, irrespectively of the size of a community. In some districts of Kvemo Kartli and Samtskhe Javakheti, the average number of votes required per mandate was generally lower for the Georgian communities than for the minority ones.<sup>40</sup>

According to an analysis by the CEC, 158 minority candidates were elected, and thus representatives of minorities will occupy approximately 9 per cent of the total number of seats in the newly elected *sakrebulos*.

## VII. GENDER REPRESENTATION

Women made up some 10 per cent of the candidates in local majoritarian constituencies and around 18 per cent of the candidates on the party lists. The UNM and the Industrialists had the lowest ratio of gender representation, with around 8.3 and 7.9 per cent female majoritarian candidates respectively. By contrast, Georgia's Way party had some 20 per

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<sup>34</sup> The requirements related to passive suffrage are addressed in the UEC, Art 109.1.

<sup>35</sup> A DEC member must be a person that 'freely possesses the State language'. UEC Art 33.5

<sup>36</sup> The CEC conducted training of multilingual trainers for minority areas in Georgian rather than in minority languages. In Kvemo Kartli, the LEOM noted that the training of PEC members was not always conducted in their preferred language and that some trainers displayed insufficient knowledge of key election terminology in the minority language. The LEOM assessed the translation of the training manual into Azeri as poor and inconsistent in terminology.

<sup>37</sup> The CEC did not fulfill its legal obligation (UEC Art 129<sup>3</sup>.19) to print ballot papers in Russian.

<sup>38</sup> The four districts are Akhalkalaki, Ninotsminda, Marneuli and Gardabani.

<sup>39</sup> The LEOM noted that a regrettably large number of independent candidates were de-registered in Kvemo Kartli.

<sup>40</sup> The LEOM analysis identified this pattern in the election districts of Gardabani, Dmanisi and Tsalka (in Kvemo Kartli) and Akhaltsikhe, Aspindza and Akhalkalaki (in Samtskhe Javakheti). In Akhalkalaki, the average number of votes required for a mandate in four communities dominated by ethnic Georgians was 247 votes, against 1,700 for a mandate in ethnic Armenian communities.

cent of female candidates in majoritarian districts and 37 per cent on the party lists. However, only one candidate from that party was elected.

Figures on the representation of women in the new local councils are low. The total number of seats that will be occupied by women is 197 (11.4 per cent). Four women were elected in Tbilisi (10.8 per cent) and 193 (11.4 per cent) in the rest of the country. Most women were elected through party lists.

## VIII. ELECTION CAMPAIGN

Contestants had the opportunity to present their views to the electorate without impediments in a campaign environment that was characterized by a general respect for fundamental civil and political rights. However, the election campaign remained low key until the last week before the elections, and was largely limited to the main cities.

Campaign techniques involved canvassing of voters, small-scale meetings and placement of campaign posters. Most parties explained the low key campaign by the unexpectedly early announcement of the elections. Some pointed to a lack of resources. The political parties contesting the election, with the exception of the UNM, did not seem to have developed comprehensive campaign platforms.

In Tbilisi, the campaign of the incumbent Mayor was highly visible, with posters on billboards and municipal buses across the city, activists canvassing voters and door-to-door delivery of electoral material. Campaigning by the UNM and its candidates became more active in other main cities of the country closer to the day of the election.

In the course of the campaign, the UNM made extensive use of its advantage of incumbency at state level and conducted highly visible social aid programmes, which included issuing of utilities vouchers, payment of pension bonuses, short-term employment schemes and distribution of school bags. These programs were conducted in parallel to the election campaign and received extensive coverage by the media, blurring the separation between State activities and the election campaign, contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document. Furthermore, the use of identical slogans, designs and images in electronic and print materials made it difficult to distinguish between public relations materials paid for from the State budget and campaign materials produced at the expense of the UNM. In previous elections, the OSCE/ODIHR recommended that "campaign activities must be clearly separated from official and State activities".<sup>41</sup> This recommendation is strongly reiterated.

Insufficient distinction between the party and the State was also observed in such initiatives as the UNM-managed soup kitchens, most of which were established well before the election, but which continued to operate throughout the election campaign. These activities were in contradiction to Article 73.9.a of the UEC, which prohibits the election subjects to offer any inducements to the population during the election period. The situation was aggravated by the fact that, in many of the soup kitchens visited by the LEOM, campaign activities of the UNM took place.

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<sup>41</sup> The OSCE/ODIHR Final Report on the 9 April 2000 Presidential election and the 28 March 2004 Parliamentary elections.

Some election commissioners appeared involved in campaign activities on behalf of the ruling party, including canvassing of voters with party questionnaires.<sup>42</sup> The OSCE/ODIHR is aware of one instance in which the CEC dismissed UNM-nominated PEC members for illegal campaigning. The efforts of the UNM aimed at the verification of the accuracy of voter lists, which were frequently combined with handing out of campaign materials and the conduct of a survey seeking to establish the level of support of the UNM, were assessed by OSCE/ODIHR observers as having a potential for putting undue pressure on voters.

The LEOM also received allegations that voters and candidates were pressured by local authorities and UNM activists, especially in Imereti, Kvemo Kartli and Kakheti, to vote for the governing party. In Tbilisi, the LEOM received first-hand information about pressure on enterprises by the state tax department to accept beneficiaries of short-term employment schemes and to pay their taxes in advance in order to cover election-related activities. Similar allegations of local businesses being threatened by the financial and taxation authorities were received in Kharagauli (DEC 48), Kutaisi (DEC 59), Samtredia (DEC 54), Ozurgeti (DEC 60) and Chokhatauri (DEC 62). In these and other districts, several credible allegations were also received about public servants being threatened with job loss in case of their support of the opposition.

## IX. MEDIA AND ELECTIONS

### A. MEDIA ENVIRONMENT

According to the reports of international non-governmental organisations<sup>43</sup>, Georgia has a diverse media market and its media related legal framework has significantly improved following a number of measures taken to enforce the freedom of the media and to introduce structural changes in the public service broadcaster. However, a number of problems remain. The interlocutors of the LEOM raised particular concerns with regard to the insufficient level of professional training received by journalists and the dependence of mass media on their sources of funding.

The Georgian National Communications Committee was established by the 2002 Law on Independent Regulatory Bodies to oversee the broadcast media sector and to grant licenses. It consists of four members appointed by the Parliament on the proposal of the President and lists up to 60 broadcasters, both television and radio channels. There is no supervisory body for the print media, which count some 200 publications.

Television is by far the most important source of information, with the *Georgian Public Broadcaster*<sup>44</sup> and the most popular private channels *Imedi TV* and *Rustavi 2* covering almost the entire territory of the country. The print media market is mostly dominated by private newspapers, most of which have limited outreach due to relatively low circulation. The regional media of Georgia, based outside of larger cities, are mostly economically dependent on local authorities or local businesses.

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<sup>42</sup> Illegal campaigning by election commissions was observed in Zugdidi and Ninotsminda districts and in a number of districts in Kvemo Kartli and Mskheta Mtianeti regions.

<sup>43</sup> IREX Media Sustainability Index 2005, Freedom House reports on Freedom of the Press 2005, 2006.

<sup>44</sup> The Georgian Public Broadcaster was previously known as the *1st Channel*.

## B. MEDIA LEGAL FRAMEWORK

The media-related legal framework in Georgia includes the Constitution, which guarantees freedom of expression and prohibits censorship, and a number of other laws.<sup>45</sup> During elections, however, the UEC, as *lex specialis*, serves as the main legal basis.

During an election campaign, as outlined in Articles 73<sup>1.2</sup> and 73<sup>1.3</sup> of the UEC, both public and private media outlets are obliged to allocate the minimal stipulated time/space free of charge for election advertisements<sup>46</sup>. However, the UEC as amended in June 2006 favors ‘qualified election subjects’<sup>47</sup> with Article 73<sup>1.1</sup> stipulating that “requirements concerning equal conditions in debates and election advertising refer only to qualified election subjects”.

Article 73<sup>1.10</sup> of the UEC also obliges a public broadcaster to allocate a certain amount of time to election contestants other than ‘qualified subjects’. Within the legal limits, the *Georgian Public Broadcaster* chose to allocate 28 minutes to each ‘qualified’ and five minutes to each other registered election subject. While this time allocation satisfied the legal requirements, a more equitable formula could have been adopted. However, following a complaint by the Georgia’s Way, the *Public Broadcaster* in a welcome decision invited this opposition party to take part in the last two TV debates, although it did not formally qualify for participation.

In general, the monitored channels complied with legal requirements regarding the allocation of free airtime. *Rustavi 2* and *Adjara TV*, however, occasionally failed to fulfill their obligation to make a clear distinction between free and paid advertisements, and the *Public Broadcaster* did not fully implement its obligation to air advertisements by the hour. National channels, and a few local television channels, organized debates, that provided an important forum for the exchange of views and for informing the electorate. Regrettably, the ruling party chose not to engage in these debates.

## C. MEDIA MONITORING

On 13 September, the LEOM commenced the monitoring of five television channels, including one Adjara-based channel, and nine daily and weekly newspapers.<sup>48</sup> Overall, the media reflected the main electoral events, but the coverage of campaign activities both by central and local media was rather limited, as the campaign remained low-key throughout most of the observed period.

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<sup>45</sup> Including, but not limited to, the Law on Broadcasting (2004), the Law on Freedom of Speech and Expression (2004) and the Freedom of Information Chapter of the General Administrative Code (1999).

<sup>46</sup> The June 2006 Joint OSCE/ODIHR and VC/CoE Opinion on the Election Code of Georgia notes that the terminology used in the Code to describe different categories of the media and the corresponding legal provisions require further clarifications.

<sup>47</sup> On the national level, a qualified election subject is a political party that is represented by a faction in the parliament or that received not less than four per cent of the proportional vote in the last election. On the local level, a qualified election subject is a party that gained not less than 25 per cent in local elections, or the party, whose majoritarian candidate in the last parliamentary elections passed into the second round or gained not less than 25 per cent of the vote.

<sup>48</sup> The LEOM monitored the *Georgian Public Broadcaster*, *Imedi TV*, *Rustavi 2*, *202 TV*, *Adjara TV* (televisions) and *Akhali Taoba*, *Akhali Versia*, *Alia*, *Rezonansi*, *Sakartvelos Respublika*, *24 hours* (daily newspapers), *Asaval Dasavali*, *Georgian Times*, *Kviris Palitra* (weekly newspapers).

The election-related information was mostly conveyed through free advertisements, televised debates and educational spots produced by the CEC. The volume of election related news increased some two weeks prior to the election, when the UNM and some other parties became more active in their campaigning. At the same time, the election campaign became somewhat overshadowed by the extensive media coverage of the worsening relationships between Georgia and Russia following a Georgian police action against alleged Russian intelligence personnel.

The media, however, predominantly focused on the activities of the authorities. In particular, the activities of the President, who at the same time heads the UNM, and also the incumbent Mayor of Tbilisi. Their appearance in the media coverage of festive and ceremonial events indirectly contributed to the campaign of the governing party.

The media also aired a number of spots devoted to general activities and achievements of the authorities (such as the 'Tbilisi news'). Promotional spots praising the support by the authorities of various businesses appeared in the course of the campaign. Notably, the same slogan used in these spots, "Do not stop building", was also used in the two last weeks of the campaign in paid advertisements of the UNM and of the incumbent Mayor of Tbilisi.

In its news programs, the *Georgian Public Broadcaster* dedicated the biggest share of political prime time coverage to the President and the government, 34 per cent and 30 per cent respectively. As for the contestants, the highest attention was given to the UNM (10 per cent), followed by the DKB bloc (five per cent). The tone of coverage of these two election contenders was mostly positive and neutral.

As for the private channels, *Rustavi 2* dedicated political prime time coverage in the order of 33 per cent to the President and 29 per cent to the government respectively. The UNM and the DKB bloc received nine and seven per cent of coverage respectively. By contrast, the private *Channel 202* presented political subjects in a fairly balanced manner, with most of its coverage devoted to the activities of the government.<sup>49</sup> It dedicated more time to the opposition parties, including 12 per cent coverage of the DKB bloc and of the Labor Party respectively, in an overwhelmingly neutral or positive tone. The private *Imedi TV* aired an analytical program 'Reaction', which offered its viewers some sharp criticism of the activities of the authorities.

Similarly to the broadcast media, print media provided only modest coverage of the electoral process. Most monitored newspapers provided a diversity of viewpoints, while at the same time giving preference to a political force of their choice and presenting critical remarks towards incumbents and the UNM.<sup>50</sup> The daily *24 hours* newspaper, however, offered its readers a more balanced picture of the electoral campaign.

## **X. DISPUTES, COMPLAINTS AND APPEALS PRIOR TO ELECTION DAY**

The UEC contains detailed provisions for the adjudication of election disputes, which allow for complaints to be filed with courts or election commissions. However, the Code does not sufficiently exclude the possibility that different appeal bodies may simultaneously

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<sup>49</sup> On 9 October, TV 202 temporarily suspended its broadcasting for economic reasons.

<sup>50</sup> *Rezonansi* gave preference to the DKB bloc, *Asaval Dasavali* – to the Labor Party and *Kviris Palitra* – to Industry will Save Georgia.

adjudicate one and the same complaint, which creates a potential for ‘forum shopping’ and inconsistency in decisions on complaints. Of concern is also a recent significant increase in court fees, which may have discouraged election stakeholders from seeking legal redress. Moreover, the Constitutional Court of Georgia, which serves as one of the instances for consideration of election-related complaints, was not operational during the pre-election period as several of its newly appointed judges had not been sworn in.

The OSCE/ODIHR was made aware of approximately 40 election-related complaints prior to election day. Most complaints were filed against ordinances of election commissions denying registration to independent candidates due to their failure to open a campaign fund within the specified term. All such complaints were dismissed. The LEOM noted the concerns of many interlocutors with regard to a low public confidence in the independence of the judiciary and of the election commissions, and also in their impartiality when considering election-related complaints.

Two complaints were filed against the CEC ordinance by which it registered a party list of the UNM, headed by the incumbent Mayor of Tbilisi. The list contained names of candidates to the Tbilisi *Sakrebulo* who did not appear on any of the majoritarian ballots. The two complainants argued that the CEC ordinance contradicted Article 126<sup>8</sup>.3 of the UEC, which stipulates that “party lists shall be composed of those candidates who are nominated for majoritarian elections”. Initially, the complaints were dismissed on the questionable ground that the plaintiffs, the registered electoral bloc ‘Davitashvili, Khidasheli, Berdenishvili’ and the Georgian Young Lawyers Association, were not entitled to file such complaints. In a subsequent appeal to the Appellate Court, the court accepted the appeals and considered both complaints on their merits, but eventually still dismissed both of them.

## **XI. CIVIL SOCIETY AND DOMESTIC OBSERVERS**

A total of eight non-governmental organizations were registered by the CEC to observe the municipal elections, including the following non-partisan domestic observer organizations: the International Society for Fair Elections and Democracy (ISFED); New Generation New Initiative (nGnI); and Georgian Young Lawyers Association (GYLA).

ISFED observed the pre-electoral phase with 75 long-term observers and on election day deployed 3,563 short-term observers throughout the country. NGnI deployed 2,500 short-term observers. Both organizations conducted a parallel vote tabulation (PVT) in Tbilisi, Rustavi, Batumi, Poti and Kutaisi.

GYLA ran various programmes focusing mainly on legal aspects of the elections and on media monitoring. Transparency International Georgia focused on the issue of the abuse of administrative resources in the elections.

## **XII. ELECTION DAY**

### **A. GENERAL ASSESSMENT AND LIMITATIONS**

As is standard practice in the context of the deployment of a Limited Election Observation Mission, the OSCE/ODIHR did not deploy short-term observers and did not undertake a

systematic or comprehensive observation of election day procedures. Nevertheless, LEOM members visited 122 polling stations in 35 of the 76 election districts of the country. The mission representatives attended the count in 11 polling stations and assessed tabulation of results in a limited number of DEC. Where present, LEOM members assessed voting as having been generally conducted in an orderly manner; however, they noted some irregularities, especially during the conduct of counting and tabulation.

On the election day, at the polling stations visited by the LEOM members, both partisan and non-partisan domestic observers were prominently present. While generally contributing to the enhanced transparency of the electoral process, some domestic observers appeared to lack understanding of the role of an observer.<sup>51</sup> Cases were noted in which observers and representatives of the UNM were present outside polling stations keeping a tally of voters who came to vote. This practice was perceived as intimidating to voters, and possibly infringing on the authority of the respective PEC.

## B. VOTING

At the polling stations visited, the election commissioners appeared reasonably well organized and trained, and voting procedures were widely followed. Instances of group or family voting<sup>52</sup> and improper application of the inking procedures<sup>53</sup> occurred, mainly in rural areas. In a few polling stations visited, voters were allowed to vote without producing all documents required for identification.<sup>54</sup> However, LEOM representatives often noted that commission members corrected improper behavior, including attempts of voting on behalf of another person (proxy voting).

Special video cameras, which were introduced by the election administration as an additional guarantee against possible violations, were installed and used for the first time during the municipal elections at polling stations in Tbilisi. While the CEC emphasized that the cameras were directed only at the registration tables and the ballot box, the absence of legal provisions and public information on how the usage of cameras is regulated, and how the recordings are handled after election day, may have created possibilities for infringements on the secrecy of the vote as well as of intimidating voters.

In nearly every polling station visited, the LEOM members noted instances of voters being turned away because their names did not appear on the voter lists or there were discrepancies with their personal data. According to the indicative information collected by the CEC, the approximate number of voters who were reported by the DEC and PEC as having been denied a ballot due to absence in voter lists was 20,759<sup>55</sup>. Due to the fact that the election administration chose not to record the detailed data of voters who were turned away on election day as well as due to a relatively low turnout, the scope of possible

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<sup>51</sup> Following the recommendation by the OSCE/ODIHR and the VC/CoE, the Code was amended to exclude the possibility, which had been given to observers by April 2005 amendments, to assist the commissions in the conduct of election day procedures. Some observers appeared unaware of this reintroduced welcome restriction.

<sup>52</sup> Gardabani DEC 21 PEC 1 and 3; Bolnisi DEC 23 PEC 3; Baghdati DEC 52 PEC 3 and 15.

<sup>53</sup> Signnagi DEC 13 PS 25; Gardabani DEC 21 PS 1, 3 and 5; Akhalkalaki DEC 40 PS 35 and 64, Ninotsminda DEC 41 PS 12,13 and 17; all six polling stations visited in DEC 63 Abasha.

<sup>54</sup> Gardabani DEC 21 PS 1, 3; in Zugdidi, internally displaced voters were allowed to vote while presenting only one of the two required identification documents.

<sup>55</sup> According to the results of voters lists audit, carried out by ISFED, up to 260,000 voters were not included into the voters lists.

disenfranchisement of voters caused by the inaccuracies of voter lists is not known. Recent adjustments of precinct boundaries could also explain the limited number of such cases.

### C. COUNTING

The LEOM representatives present at the count in polling stations in minority areas of Akhalkalaki, Bolnisi and Gori noted significant procedural problems. Election commissioners in these areas demonstrated a lack of knowledge of count procedures and of rules for completion of results protocols. The fact that protocols were not available in minority languages may have caused significant difficulties for election commissions in minority areas.<sup>56</sup> In other areas, while procedures were generally followed, some irregularities were noted including isolated cases of PEC members adding signatures after the closing of a polling station, domestic observers interfering in the work of commissions and of unauthorized persons following or directing the count.

The PEC result protocols contained a category ‘against all’ and the CEC reported a significant number of votes as having been cast ‘against all’ election subjects countrywide. The inclusion of such a category in protocol forms is in line with Articles 60.3, 63.2 and 64.3 of the UEC, which state that summary protocols of commissions of all levels should, among others, contain a field for recording the number of votes cast “against all”. However, elections are about representation and voting ‘against all’ implies that voters may choose not to be represented. Furthermore, ballot papers printed for the municipal elections did not contain such an option, and neither election commissions nor voters received instructions on what constitutes an ‘against all’ vote. LEOM representatives following the count noted that commissions acted on their assumptions when trying to determine between invalid ballots and those cast ‘against all’.

LEOM members reported that certified copies of protocols were in general issued to observers upon request, however the protocols were not posted for public display, as required by law, in more than half of the polling stations visited.

### D. TABULATION AND ANNOUNCEMENT OF RESULTS

Although most DEC’s visited, including those in the minority areas, made a commendable effort to facilitate an orderly processing of protocols, failures to consistently follow the procedures were noted often at DEC level, which impacted negatively on the overall assessment of the tabulation of results.

On 7 October, the results of 4 PECs were annulled by the DEC’s in Akhmeta<sup>57</sup>, Dusheti<sup>58</sup> and Gardabani. On 9 and 10 October, the CEC annulled the results of another 29 PECs, including all 19 PECs in DEC 63 Abasha. According to the CEC, the main reason for the invalidation of results in Abasha and some other PECs was an unusually high increase in turnout figures at the very end of election day, which was perceived as a consequence of possible ballot stuffing.

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<sup>56</sup> LEOM observations on both PEC and DEC level in Bolnisi and Akhalkalaki.

<sup>57</sup> Akhmeta DEC 18 PEC 13 for some time issued only the proportional ballot to voters due to uncertainty whether or not a majoritarian candidate had officially withdrawn from the ballot.

<sup>58</sup> PEC 40 in Dusheti DEC 28 had by mistake received ballot material intended for Ninotsminda.

While the CEC and DEC's did not appear to have taken unjustified actions with regard to the annulments of results, and their decisions were not challenged by the election subjects, the commissions (and particularly the CEC) have extensively used the broad provisions of the UEC permitting the election administration to annul results of voting in cases of "gross" violations. The grounds for annulment of results ranged from complaints and reports received from PECs during the election day, and increases in voter turnout perceived as implausible, to basic technical problems.

The CEC also appeared to have taken different actions towards perpetrators in cases of similar violations. It has mostly issued warnings to the DEC's and PEC's where irregularities occurred, but has also dismissed individual commission members and entire commissions. One case was filed with the Prosecutor's Office.

The CEC organized repeat voting in 28 PEC's on 17 October.<sup>59</sup> In Abasha both the majoritarian and the proportional components were repeated; in all other precincts where re-runs were held voters received only the majoritarian ballot. In line with Article 126.1, repeat voting was not conducted in precincts where the votes were judged by the CEC as not impacting upon the results of the majoritarian race. The LEOM did not observe the 17 October repeat voting.

The final election results of the 5 October municipal elections were released by the CEC on 9 October for the Tbilisi *Sakrebulo* and on 10 October for the *sakrebulo*s of municipalities and of self-governing cities, except for the precincts where the results of the vote had been annulled due to irregularities. Following the repeat voting, the CEC announced the final consolidated results on 19 October. Regrettably, the CEC was publishing the results on its website with delays, and the data was often not updated or was inconsistent. In a welcome development, the CEC made an effort to publish the results of some proportional races in a PEC breakdown. However, by mid-November, full and comprehensive data on results for the entire country broken down by DEC's and PEC's was not yet posted on the CEC website. The recommendations made to this effect in reports of previous election observation missions and legal reviews thus remain valid.

### **XIII. POST-ELECTION DAY DISPUTES, COMPLAINTS AND APPEALS**

The LEOM was informed of over 70 complaints filed to election commissions and courts on and after election day by various election stakeholders. The complaints listed both minor and major election day violations, including cases of tampering with PEC protocols, ballot box stuffing and procedural irregularities such as proxy voting and failure to apply or check for ink.

Two complaints were filed to the Tbilisi city court against the CEC decision on the allocation of the proportional mandates in Tbilisi *Sakrebulo* (CEC ordinance 321). The "DKB" electoral bloc claimed that the CEC has applied a selective interpretation of Article 126<sup>13</sup> of the UEC, by which the bloc has been deprived of a second mandate. The bloc argued that it had received more than twice as many votes as the Industrialists, who eventually received the disputed mandate, and offered an alternative interpretation of the

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<sup>59</sup> Repeat voting was held in Abasha (19 precincts), Liakhvi (five precincts), Gardabani (two precincts), Akhmeta and Dusheti (one precinct each).

provision of the Code.<sup>60</sup> The second plaintiff, the Labour Party of Georgia, listed a number of claims, mainly accusing the UNM of abuse of public funds, vote buying and intimidation of voters by posting UNM coordinators in front of polling stations on election day. The party also demanded the annulment of the entire Tbilisi election. The court did not allow the plaintiffs to call witnesses; both complaints were rejected.

#### **XIV. RECOMMENDATIONS**

The OSCE/ODIHR is offering for consideration by the authorities of Georgia, in conjunction with political parties and civil society, the following recommendations on desirable improvements of electoral practices. They should be read together with the recommendations contained in previous OSCE/ODIHR Final Reports.

##### **A. GENERAL**

1. Greater and more sustained effort should be undertaken by the authorities to guarantee full and uniform implementation of the election law.
2. Further efforts should be undertaken by the authorities to strengthen and ensure the independence of the judiciary.

##### **B. LEGAL FRAMEWORK**

3. The provisions of the law related to the application of the newly adopted election system for the Tbilisi *Sakrebulo*, including the provisions on the registration of majoritarian candidates and party lists, should be further clarified and detailed in order to eliminate the existing ambiguities and possibilities for misinterpretation.
4. Independent candidates nominated by an initiative group of voters should be granted the right to contest the elections for the *Sakrebulo* of Tbilisi.
5. Consideration should be given to review the incompatibility between holding a mandate of a Member of Parliament and being nominated as a candidate for membership of *Sakrebulo*, as this restriction may be excessive.
6. The consistency and cohesion of the legislation should be improved. The law should clarify if a provision is generic or only applicable to some, but not all elections. As a rule, provisions that have a general nature should apply to all elections (e.g. the provisions to publish results by PEC should apply to all and not to some elections).
7. The provisions allowing for 'against all' votes and their registration in the PEC result protocols should be eliminated from Articles 60.3, 63.2 and 64.3 of the Election Code.

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<sup>60</sup> Rather than allocating the two disputed mandates to the contestants with the largest remainder of votes, the CEC chose to give one mandate to Industrialists for passing the four per cent threshold (applying Art 126<sup>13</sup>.3) and to the UNM for having gained the highest number of votes (applying Art. 126<sup>13</sup>.6).

### **C. VOTER REGISTRATION**

8. Further consolidation and streamlining of the voter lists should be carried out. Registers should be updated on an ongoing basis in order to maintain and improve their accuracy. The responsibility for this process should be made explicit.
9. The fees for applications to court for inclusion in the voter list should be significantly reduced or removed from the law. Consideration should be given to prolonging the period for inclusion into the voters lists by a court decision.
10. The CEC should ensure that the legal requirement to publicize the total number of registered voters in a breakdown per district, local majoritarian district and polling station prior to election day is consistently met. The CEC should also be obliged to publish the final number of registered voters (including voters registered on election day according to the exceptional procedure for voters returning from abroad or released from detention centers and hospitals) on its website.
11. A mechanism should be put in place to avoid double entries including those of military and other categories of voters who are additionally registered to vote in polling stations established as a matter of exceptions.

### **D. ELECTION ADMINISTRATION**

12. The formula for the formation and composition of election commissions, which provides the President and the parliamentary majority with a dominant role in selecting all CEC members and gives them extensive control over the entire election administration, should be reviewed taking into consideration a broader range of opinions.
13. With a view to enhancing the collegial nature of the work of election commissions, the provisions of the law granting the chairpersons of election commissions special authority (decisive vote, right to pass ordinances, monopoly on nominations to the deputy position) should be revised.
14. The UEC should contain safeguards against the dominance of any political party on managerial positions in election commissions.
15. The CEC should improve its communication with DEC and PEC in order to ensure that all of its instructions and decisions are brought to the attention of lower-level commissions and implemented in a consistent and timely manner.
16. The provisions for checking support signatures by the CEC would benefit from additional procedural clarifications in order to exclude the possibilities of undue denials of registration of election contenders related to the collection of signatures.
17. The CEC should attempt to make more extensive use of its website as a means of public information and to ensure that the information placed on the website is correct, updated and consistent.

### **E. NATIONAL MINORITIES**

18. The efforts undertaken by the authorities during the municipal elections to provide training to election commissions in minority-populated areas in their preferred languages should be retained as a regular practice, and a higher level of qualification

of multi-lingual trainers should be ensured. Printing of key election-related information and materials, especially the final result protocols used by the PECs, in minority languages, would enhance the inclusiveness of the process and facilitate the work of election bodies in minority-populated areas.

#### **F. CAMPAIGN AND CAMPAIGN FINANCE**

19. During the election period, a clear distinction must be drawn between the state and its activities on one hand and the election contenders and the campaign on the other. This distinction must be fully observed in the conduct of the campaign by the incumbents in order to avoid the violation of equality of opportunities among the contestants, and to ensure implementation of paragraph 5.4 of the 1990 OSCE Copenhagen Document.
20. The Code should apply equal restrictions to all mayors/Gamgebelis, whether in Tbilisi or in the rest of the country, with regard to their conduct during an electoral period. Consideration could be given to requiring resignation of all elected or appointed officials standing in elections from their current positions.
21. With regard to state funding of the election campaign of contestants and use of free air time and space, consideration should be given to establishing a single date for launching of a campaign in the media for all election subjects starting from the day of closure of the registration process.
22. The provisions of the Code related to the campaign silence should be further clarified to stipulate its duration and the type of campaign activities banned during such a period.
23. The legal requirements related to the opening of a campaign fund by each category of election subjects should be further clarified.
24. The election subjects should be obliged to submit the information on the campaign financing to the CEC to be published at regular intervals prior to election day.

#### **G. MEDIA**

25. Authorities should continue to review the status of the *Georgian Public Broadcaster* by establishing a clear and transparent system of financing, based on multi-source incomes, which would lessen its dependency on the State budget.
26. The *Public Broadcaster* and other State-funded media should make further efforts to ensure neutrality and objectiveness of coverage of the election campaign. The reporting should be balanced and factual, including the coverage of the activities of the authorities. The media should provide voters with comprehensive information on all aspects of the election process through a variety of programs, outside free-of-charge slots and paid advertisements, and thus create a forum for discussion for all contestants.
27. The CEC should consider conducting its own media monitoring during an election in order to identify unequal and preferential coverage or non-compliance with requirements on allocation of free and paid airtime/space.
28. The implementation of provisions of the UEC obliging the media to submit the information on its election related arrangements, including the amount of free and paid airtime/space provided, schedules for airing/publishing the campaign materials

- as well as tariffs, should be closely surveyed and ensured by the CEC. Consideration should be given to placing all such information on the CEC website.
29. The UEC provisions for the allocation of free airtime should be amended to establish the minimum amount of free airtime for 'unqualified' election subjects. Furthermore, it is advisable to establish clear legal criteria for determining the eligibility of election subjects for free airtime rather than to leave this decision to the broadcasters, as it might result in undue refusals and inconsistencies in implementation.
  30. The procedures for seeking legal remedy in cases of violations by the media of requirements for allocation of free airtime to election subjects, as well as of other provisions contained in Articles 73 and 73<sup>1</sup>, should be clearly stated, and Articles 73.19 and 77 should be amended to provide for a timely, effective and predictable procedure.

#### **H. CIVIL SOCIETY AND DOMESTIC OBSERVERS**

31. Domestic civil society organizations and registered election subjects deploying their representatives to polling stations on election day should pay higher attention to capacity-building and training of their observers so that the basic principles of election observation such as non-interference and impartiality are fully respected.

#### **I. ELECTION DAY**

32. All PEC members should receive thorough training, which needs to explicitly address vote count procedures and the rules for completion of final result protocols.
33. Video recording and surveillance inside polling stations should be seriously reconsidered with a view to abolish this practice, so as not to compromise the secrecy of the vote or confidence in the process, and eliminate a potential factor for intimidation against voters.
34. The issue of transportation provided to the voters on election day should be regulated by the Code.
35. The provisions of the law on posting of result protocols by PECs and DEC's upon completion of the count for public inspection need to be reinforced. The commissions should be obliged to ensure that result protocols remain at display at the premises of election commissions for at least 3 days after the completion of the count.
36. Articles of the UEC dealing with the annulment of results and recounts should be thoroughly reviewed and amended to ensure that the authority of the CEC and DEC's is clearly defined, and that the grounds for invalidation are expressly stated.
37. Individuals found guilty of committing or allowing election irregularities should be held accountable in a timely and consistent manner.
38. The CEC should be obliged to publish the detailed final results both by election district on the basis of the DEC summary protocols, and by polling station on the basis of the PEC protocols in a consistent and timely manner, including on the CEC website.

## ANNEX: OFFICIAL ELECTION RESULTS

According to the official summary protocols, some 1.52 million voters (47.4 per cent of all registered voters) took part in the municipal elections. The turnout was lower in Tbilisi (34.7 per cent), than in the rest of the country (52.2 per cent). The percentage of invalid ballots was significantly lower in Tbilisi (0.9 per cent), than in the rest of the country (2.7 per cent in the majoritarian and 2.9 per cent in the proportional races respectively). Some 2901 votes were recorded as ‘against all’ in Tbilisi and another 16,723 votes in the rest of the country.

The official final results for all political parties and election subjects are as follows:

Election subject	Tbilisi (Seats)		Rest of Georgia (Seats)		Seats (Total)	Seats (%)
	Maj.	Prop.	Maj.	Prop.		
Industrialists (‘Industry will save Georgia’)	0	1	4	23	28	1.6 %
Labour Party of Georgia	0	1	5	34	40	2.3 %
United National Movement	25	9	927	578	1539	88.8 %
National Ideology Party	0	0	N/A	N/A	0	0 %
Georgia’s Way	0	0	3	0	3	0.2 %
Electoral Bloc Davitashvili, Khidashvili, Berdzhenishvili	0	1	9	45	55	3.2 %
Independents	N/A	N/A	68	N/A	68	3.9 %
Number of seats	25	12	1016	680	1733	100 %

According to the data provided up to 14 November 2006, the terms of office of 17 newly elected members of *sakrebulo*s, mostly of the UNM, were terminated. The LEOM was unable to establish whether these terminations were voluntary, and whether any elected candidates were deregistered as a result of violations that were revealed after the election.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (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 Document).

The 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 100 staff.

The ODIHR is the lead agency in Europe in the field of **election observation**. It coordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following thematic areas: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The ODIHR implements a number of targeted assistance programmes annually, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR monitors participating States' compliance with OSCE human dimension commitments, and assists with improving the protection of **human rights**. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

Within the field of **tolerance** and **non-discrimination**, the ODIHR provides support to the participating States in implementing their OSCE commitments and in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The 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 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. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

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/odihhr](http://www.osce.org/odihhr)).