



Office for Democratic Institutions and Human Rights

GEORGIA

EXTRAORDINARY PRESIDENTIAL ELECTION

5 January 2008

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

20-21 November 2007



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OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

With a view to a formal invitation to observe the extraordinary presidential election which is set to take place on 5 January 2008, the Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Georgia on 20 and 21 November 2007. The OSCE/ODIHR NAM was composed of Nicolas Kaczorowski, Deputy Head of the OSCE/ODIHR Election Department, Tatyana Bogussevich, OSCE/ODIHR Election Adviser, and Childerik Schaapveld, OSCE/ODIHR Democratic Governance and NGO Adviser. The OSCE/ODIHR subsequently received an invitation on 26 November 2007 to observe the presidential election.

The purpose of the OSCE/ODIHR NAM was to assess the pre-election environment and level of preparation for the elections, and to advise on modalities for a possible election-related activity. The OSCE/ODIHR NAM held meetings in Tbilisi with representatives of the authorities, election administration, political parties, media, civil society and of the international community (see annex for list of meetings).

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Central Election Commission, representatives of political parties, civil society and media for their co-operation. The OSCE/ODIHR would also like to thank the OSCE Mission to Georgia for the support and assistance provided during the NAM.

II. EXECUTIVE SUMMARY

On 8 November 2007, following six days of demonstrations, President Mikheil Saakashvili offered to shorten his mandate and proposed an extraordinary presidential election. The date of the election is now confirmed for 5 January 2008 following the resignation of the President.

Some ten potential candidates have already announced their intention to stand in the forthcoming election, including the current President. Candidates must collect 50,000 signatures in order to register with the CEC. The election campaign will officially begin with the announcement of the election. The OSCE/ODIHR NAM interlocutors foresee an active and tense campaign in light of significantly diverging views within society and the political class that were exacerbated by the violent dispersion of demonstrators and the subsequent declaration of the state of emergency on 7 November. The OSCE/ODIHR NAM was informed that some potential candidates have already commenced campaigning.

The legal framework for this election is still undergoing changes. Shortly after the announcement of the election, the United National Movement (UNM) initiated a series of amendments pertaining to important aspects of the election, including *inter alia* the composition and functions of the election administration. The amendments were discussed during three readings in Parliament and are due to be finalized shortly.

The election administration does not appear to enjoy a high level of confidence. In response to opposition demands, lawmakers agreed to include seven political party representatives in the Central Election Commission (CEC) that will therefore be composed of 13-members, including six presidential nominees confirmed by Parliament. While the 76 District Election Commissions (DECs) will not have a multi-party composition, the number of parties represented in Precinct Election Commissions (PECs) will be increased to seven. The short timeframe within which the election was called, and the late revisions of the legal framework, are likely to make the preparations for the election all the more complicated.

Efforts have been undertaken to improve the accuracy of voter lists, a cause for concern in previous elections. The CEC completed a countrywide door-to-door campaign to verify voter lists and is currently updating the voter database on the basis of the information collected. The OSCE/ODIHR NAM was informed that the total number of registered voters is approximately 3.4 million. The CEC has promised to publish voter lists for public review on its website and subsequently in premises of lower level election commissions. The possibility of re-introduction of election day registration is currently under consideration.

The Electoral Code foresees free airtime granted to candidates in private and public broadcasters. While legal provisions are still under discussion in Parliament, the Public Broadcaster informed the OSCE/ODIHR NAM of its intention to allocate free airtime and to conduct a series of issue-oriented debates. Most OSCE/ODIHR NAM interlocutors raised serious concerns about the temporary closure of Imedi TV, a popular private channel, during the state of emergency.

Civil society is very active in Georgia and non-partisan observer organizations are preparing to launch numerous election-related activities, including the deployment of long and short-term observers and the conduct of a parallel vote tabulation. A number of voter information and awareness raising efforts are also being prepared.

The OSCE/ODIHR recommends that a standard Election Observation Mission (EOM) be established according to the OSCE/ODIHR methodology to observe the extraordinary presidential election. The OSCE/ODIHR will request from the OSCE participating States the secondment of 24 long-term observers and 300 short-term observers for the observation of election day proceedings. The OSCE Parliamentary Assembly has already announced its intention to deploy some 60 observers.

Simultaneously with presidential election, a non-binding plebiscite will be organized to consult voters on the date for the next parliamentary poll. The OSCE/ODIHR EOM will follow and report on the conduct of the plebiscite only to the extent that it affects the presidential election.

III. FINDINGS

A. POLITICAL CONTEXT

On 8 November 2007, following a number of political developments in the country, President Mikheil Saakashvili offered to shorten his mandate and proposed an extraordinary presidential election to be held on 5 January 2008.

From 2 to 7 November 2007, opposition political parties organized daily demonstrations in Tbilisi demanding *inter alia* the rescheduling of parliamentary elections from autumn to spring 2008 and the revision of election-related legislation. On 7 November 2007, the demonstration was dispersed with violence by the Georgian police and the state of emergency was subsequently imposed by the President, citing an attempt to violently overthrow the government. Initially imposed for 15 days, the state of emergency was lifted on 16 November.

This crisis led to a political dialogue between the authorities and opposition parties. The legal framework for the conduct of elections became one of the central issues of the negotiations, which resulted in some concessions by the majority party. In response to the demands of the opposition to re-schedule the next parliamentary elections, the President initiated the conduct of a plebiscite to consult the public on the preferred timeframe.

On 16 November, the President appointed a new Prime Minister, Lado Gurgenidze, in replacement of Zurab Nogaideli. With the exception of two ministers, the composition of the cabinet remained unchanged.

B. LEGAL FRAMEWORK

The conduct of the presidential election is regulated primarily by the Constitution and the Electoral Code, which is currently being revised by Parliament. In response to the demands of the opposition, the parliamentary majority initiated a number of significant amendments due to enter into force before the forthcoming election. Although Parliament discussed the amendment during three readings, they have not yet entered into force at the time this report was finalized.

The draft amendments *inter alia* provide for:

- Introduction of party representation in the CEC and increased party representation in PECs;
- Possibility for election contestants to correct minor mistakes in their candidate registration documents;
- Reduction of decision-making authority of DEC;
- Elimination of the turnout requirement for the second round of presidential elections;
- Introduction of election day registration at polling stations;
- Reduction of the maximum number of voters per polling station to 1,500;
- Counting of valid votes only for the calculation of thresholds and determination of election results;

- Elimination of minor restrictions in the activities of international observers;
- Counting of votes cast at polling stations abroad by the CEC¹.

While some opposition parties expressed satisfaction with the proposed amendments, others expressed concern over their swift adoption shortly before the election. Some OSCE/ODIHR NAM interlocutors regretted that the process was not sufficiently inclusive, thus not permitting a broad consensus over the changes.

It is, however, noteworthy that despite the time constraints and the charged political environment, the draft amendments seem to take into consideration the result of consultations held between the OSCE/ODIHR, the Venice Commission of the Council of Europe (VC/CoE) and the Georgian authorities in 2007. They also appear to address a number of recommendations offered in the 2006 Joint Opinion on the Electoral Code² and in the reports of earlier election observation missions³.

Under the election legislation currently in force, the candidacy rights in presidential elections are granted to citizens of Georgia with the right to vote if at least 35 years of age and residing in the country for the last 2 years before the election⁴. Voting rights are granted to citizens of 18 years of age except persons recognized as incapacitated, and persons serving a sentence in penitentiary institutions, following a final decision of a court.

Article 89 of the Electoral Code specifically addresses the conduct of extraordinary presidential elections, stipulating that in case of early termination of authority of a president, the Parliament announces elections at least 45 days before election day.

The Electoral Code provides that a presidential candidate, who receives more than 50 per cent of the votes of the voters that took part in the election, is elected. If none of the candidates receives 50 per cent of the votes, a second round of elections is held in two weeks time between the two candidates who obtained the largest number of votes. The candidate who receives the larger number of votes of those voters who take part in the second round of elections is elected. The Code currently in force envisages one third turnout requirement for the second round of presidential elections to be valid.

The conduct of plebiscites is regulated by the Law on Referendum as adopted in 1996. Article 81 of the Law defines the plebiscite as a universal public opinion poll conducted to reveal the attitude of the public on important State matters. The plebiscite is called by the President and its result has the status of a recommendation only.

¹ The draft amendments also suggest two important changes pertaining to parliamentary elections. The threshold for parliamentary representation is suggested to be lowered from 7 to 5 per cent and majoritarian component of parliamentary elections to be replaced with regional proportional lists for the allocation of 50 seats.

² The Joint Opinion on the Electoral Code is available at http://www.osce.org/documents/odihr/2006/12/22781_en.pdf.

³ Reports of previous election observation mission deployed to Georgia can be found at <http://www.osce.org/odihr-elections/14464.html>.

⁴ Article 80.1 of the Electoral Code also stipulates that in order to qualify as a presidential candidate an applicant has to reside in Georgia for 15 years altogether.

Though generally supportive, OSCE/ODIHR NAM interlocutors considered the plebiscite as a secondary issue in the forthcoming electoral campaign.

C. ELECTION ADMINISTRATION

The forthcoming election will be administered by a three-tiered election administration, including the Central Election Commission (CEC), 76 District Election Commissions (DECs) and over 3,500 Precinct Election Commissions (PECs).

Currently, the CEC is composed of seven non-partisan members under the leadership of a recently appointed chairman. In line with draft amendments currently under consideration, the CEC composition is likely to change. It is anticipated that the CEC will comprise 13 members, with six members nominated by the President and elected by Parliament, and one member nominated by each of seven political parties receiving state funding⁵. The CEC that will administer the forthcoming election has yet to be formed.

Most of the OSCE/ODIHR NAM interlocutors welcomed the introduction of party representation at the CEC level as a confidence building measure that will allow for greater inclusiveness. Opposition parties have raised concerns over the control that the authorities have over the CEC. Some, however, fear that party representation may hamper the CEC to act impartially.

The composition of five-member DECs, defined in the Electoral Code as standing, professional and non-partisan, is expected to remain unchanged. The draft amendments are, however, expected to strip the DECs of some decision-making authority.

At the polling station level, the draft amendments envisage the formation of 13-member election commissions with six of its members nominated by respective DECs and seven by political parties qualifying for State funding. The maximum number of voters per polling station is to be reduced from 2,000 to 1,500. This measure will necessitate redrawing of precinct boundaries and will increase the number of PECs.

Despite the tight timeframe and the late amendments, the election preparations appear well underway, including planned trainings of election commission members, finalization of polling station manuals, as well as development of voter education and information campaigns.

In order to foster the participation of national minorities, election materials, including ballot papers, election code, election day manuals, and protocols will be translated in minority languages. Furthermore, training of election officials will also be provided to national minorities in their preferred languages.

⁵ According to the Law on Political Associations of Citizens, political parties that receive at least 4 per cent of votes in parliamentary elections qualify for state funding. Based on the results of the 2004 parliamentary elections, seven political parties including the UNM, New Rights, Industrialists, Labour, Freedom, Republican, and Conservative parties qualify for representation in the new CEC.

According to the CEC, video cameras will be used at polling stations as was the case during the 2006 local elections. Polling stations in Tbilisi and other large cities, as well as minority areas, will be equipped with two cameras, one focused on the ballot box and another on the table where ballots are issued. The measure is regarded by the CEC as fraud deterring; recordings can be used as evidence in court in election-related cases.

The draft amendments oblige the CEC to publish preliminary results by polling station on its website within 48 hours after the closing of the polls.

D. VOTER REGISTRATION

The CEC has overall responsibility for the maintenance of a centralized and computerized voter register. On 19 October 2007, the CEC launched a country-wide door-to-door voter list verification project in order to address previous concerns related to the accuracy and completeness of voters lists. Some 3,000 special groups included representatives of the UNM, Industrialist-New Rights⁶ and Labour parties. As a result, and according to the CEC, two thirds of the total number of registered voters were verified. Five per cent of voters were added to the lists, 10 per cent of records corrected and 1,5 per cent of records of deceased persons removed. As of 25 November 2007, the voters lists will be posted on the CEC website, and subsequently at DEC and PEC premises for public review.

As in previous elections, internally displaced persons (IDPs) will be included in the regular list of voters; however the CEC will consider opening special polling stations in some places. During the time of the OSCE/ODIHR NAM, legislators also considered re-introduction of election day registration of voters. In light of concerns over the quality of voters lists, this was regarded as a useful measure for ensuring enfranchisement of all individuals eligible to vote, but missing on the list of voters. Some NGOs that the OSCE/ODIHR NAM met with appeared skeptical about the suggested amendment, allegedly for the reason of enhanced possibilities for multiple voting.

E. CANDIDATE REGISTRATION AND ELECTION CAMPAIGN

Both political parties and initiative groups of voters are entitled to nominate candidates. Candidates must collect 50,000 signatures in order to register with the CEC, not later than 40 days before election. The draft amendments pertaining to signature verification (see section "Legal Framework") appear to aim at ensuring greater inclusiveness of the candidate registration process.

Some ten potential candidates have already announced their intention to stand in the forthcoming election, including the current President. The nine-party opposition coalition⁷ formed in late September has announced the candidacy of Levan

⁶ The New Rights and Industrialist parties contested the 2004 parliamentary elections in an electoral bloc.

⁷ The coalition includes Republican Party, Conservative Party, Georgia's Way, Labor Party, Freedom, On Our Own, Party of People, Movement for United Georgia and the National Forum. It also includes ex-minister for the settlement of conflicts Giorgi Khaindrava.

Gachechiladze, an independent Member of Parliament. The New Rights and the Industrialist parties nominated Davit Gamkrelidze, leader of New Rights, as their candidate. The candidacies of Gia Maisashvili from the Party of Future, Shalva Natelashvili from the Labour Party and Fazil Aliev from the International Council of Georgian Azerbaijanis are also expected to be put forward. The high number of potential candidates is regarded as increasing the likelihood of a second round.

While the election campaign will start with the announcement of the election, it is only from the moment of registration that candidates have the right to start campaigning through the mass media. OSCE/ODIHR NAM interlocutors foresee an active and tense pre-electoral campaign in light of significant divergences of opinion, as well as a deep polarization within society and political class that was exacerbated by the violent dispersion of demonstrators and the subsequent declaration of the state of emergency on 7 November. Despite the fact that the campaign has not officially started, the OSCE/ODIHR NAM was informed that some potential candidates have already commenced campaigning.

In the run-up to the announcement of the election, legal proceedings were initiated by the prosecution against a number of political figures on various grounds.⁸ The authorities declared their intention not to bring formal charges and not to detain leaders of the opposition under investigation until after the election.

Opposition parties and civil society representatives also informed the OSCE/ODIHR NAM of some cases of continued prosecution of participants of the 7 November demonstration. The representatives of the ruling party maintained that administrative charges were brought only against violent demonstrators; others were fined or released for lack of evidence.

F. MEDIA FRAMEWORK

The media conduct is regulated by the Constitution, Law on Broadcasting, Law on Freedom of Speech and Expression, as well as the Freedom of Information Chapter of the General Administrative Code. During an electoral period, the activities of the media also fall under regulation of articles 73 and 73¹ of the Electoral Code, which stipulate the obligations of both public and private electronic as well as print media.

During the OSCE/ODIHR NAM visit, legislators were finalizing amendments pertaining to the amount of free airtime and print space that mass media will be obliged to allocate to election contestants. The current legislation draws a difference between “qualified”⁹ and “unqualified”¹⁰ election subjects, stipulating that requirements

⁸ Georgia’s ex-Defense minister Irakli Okruashvili is due to face trial on charges of extortion, negligence, abuse of position and money laundering. Criminal investigations were launched against Badri Patarkatsishvili, the Georgian business tycoon and former owner of Imedi TV, on charges of coup plotting. Criminal proceedings were also initiated against Shalva Natelashvili. Constantine and Tsotne Gamsakhurdia, sons of the first Georgia’s President Zviad Gamskhurdia, on suspicion of espionage, high treason and coup plotting.

⁹ “Qualified” subjects are candidates of political parties that are represented by a faction in the Parliament, or received not less than four per cent of the proportional vote in the last election.

¹⁰ “Unqualified” subjects must demonstrate public support for their candidacies through opinion poll results in order to enjoy free airtime/print space.

pertaining to the creation of equal conditions in debates and free airtime refer to qualified subjects.

The Public Broadcasting Company (PBC)¹¹ informed the OSCE/ODIHR NAM that it was preparing to allocate free airtime and to organize issue-oriented debates separately between “qualified” and “unqualified” electoral subjects. To ensure balanced coverage of the campaign in the news, the Broadcaster will develop and abide by the internal Code of Conduct, the primary objective of which will be to provide equitable time of activities to all election subjects. The PBC has established a special monitoring unit that will carry out both qualitative and quantitative assessment of the coverage.

For the first time, the CEC will undertake a media monitoring effort. The monitoring itself will be performed by an external contractor, based on a methodology developed by the CEC. The CEC explained that, if needed, on the basis of the findings of the monitoring, it will be able to issue warnings as well as forward cases to the Georgian National Communications Commission (GNCC).¹² However, it will not be able to impose sanctions.

The generally free media environment in Georgia has been affected by the recently lifted state of emergency, during which restrictions were imposed on the broadcasting of information programs and newscasts by electronic media across the country, with the exception of the Public Broadcaster.¹³ In addition, three television channels – Imedi TV, Kavkasia and TV Channel 25 - were taken off air for several days. The two latter channels, as well as other electronic media, resumed normal operation only following the end of the state of emergency.

However, Imedi TV, a popular private channel perceived as pro-opposition, has remained off the air since the 7 November police raid of the premises of the channel. Furthermore, the Tbilisi City Court and the GNCC subsequently decided to suspend Imedi’s license for three months for having broadcast a statement of Badri Patarkatsishvili that allegedly called for the violent overthrow of the government. The same statement appeared to have also been broadcast by other TV channels without the same legal consequences for them. Radio Imedi, a separate legal entity, has been prevented from broadcasting allegedly without legal grounds. The temporary closure of Imedi TV and radio has drawn criticism from opposition parties and from the international community. The OSCE Representative on Freedom of the Media, Miklos Haraszti, visited Tbilisi on 23-24 November to consult with Georgian authorities on the possibility of re-opening of the television channel.

G. INTERNATIONAL AND DOMESTIC OBSERVERS

In line with OSCE commitments, the Electoral Code provides an overall inclusive framework for the activities of domestic and international observers. The Ministry of Foreign Affairs informed the OSCE/ODIHR NAM that following the official announcement of the elections, the authorities intend to extend invitations to the

¹¹ The public broadcasting company comprises two television channels, one of which primarily broadcasts the sessions of the parliament, as well as two radio channels.

¹² The GNCC is responsible for the oversight of the broadcast media as well as licensing.

¹³ The restrictions did not proliferate to print media and information agencies.

OSCE/ODIHR, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the Parliamentary Assembly of the North Atlantic Treaty Organization, as well as to national parliaments and international NGOs. The authorities have called for the deployment of a maximum number of observers.

Throughout the OSCE/ODIHR NAM, interlocutors across the political spectrum emphasized the importance of international observation of the upcoming election, and highlighted the necessity of observation of the pre-electoral campaign, including media coverage. Observation of preparation and conduct of elections in parts of Abkhazia and South Ossetia under governmental control was also welcomed.

Domestic NGOs and observer groups plan to carry out a wide range of activities for the forthcoming election, including the deployment of several thousand long- and short-term observers, as well as to conduct a parallel vote tabulation. Monitoring of the work of election administration, voter education and awareness raising activities are also envisaged.

IV. CONCLUSIONS AND RECOMMENDATIONS

On the basis of the findings described above, the OSCE/ODIHR recommends that a standard Election Observation Mission (EOM) be established according to the OSCE/ODIHR methodology to observe the forthcoming presidential elections. The OSCE/ODIHR EOM would follow and report on the conduct of the plebiscite only to the extent that it will affect the presidential election.

The OSCE/ODIHR EOM will follow the work of the election administration, the pre-election campaign, access to media, candidate registration, complaints and appeals, and election preparations. The OSCE/ODIHR will request from the OSCE participating States the secondment of 24 long-term observers, as well as 300 short-term observers for the observation of election day proceedings.

ANNEX: LIST OF MEETINGS

Tbilisi, 20 and 21 November 2007

AUTHORITIES

Ministry of Foreign Affairs

Mr. George Manjgaladze, Deputy Foreign Minister

Mr. Alexander Nalbandov, Director, Department of International Organizations

Central Election Commission

Mr. Levan Tarkhnishvili, Chairperson

POLITICAL PARTIES

National Movement

Mr. Mikheil Machavariani, Deputy Speaker of the Parliament

Mr. Giga Bokeria, Deputy Chairman of Legal Issues Committee

Mr. Paliko Koublashvili, Chairman of the Committee of Regional Policy, Self-Government and Mountainous Regions

Conservative Party

Mr. Kakha Kukava, Chairman

New Rights Party

Mr. Mamuka Katsitadze, Member of Parliament

Georgia's Way

Ms Marina Muskhelishvili

Industrialist Party

Mr. Zurab Tkemaladze, Chairman

Republican Party

Mr. Davit Usupashvili, Chairman

Ms Tinatin Khidasheli, International Secretary

Freedom

Mr. David Bardavelidze, Secretary General

Mr. Giorgi Khaindrava, member of the United Opposition Coalition

MEDIA

Imedi TV

Mr. Bidzina Baratashvili, General Director

Public Broadcasting Company

Ms Tamar Kintsurashvili, General Director

Ms Khatuna Kveselava, Head of Information Service

Ms Tatia Julakidze, Assistant to the General Director

IWPR

Ms Sophia Bukia, Editor of the Caucasus Reporting Service

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GYLA

Ms. Lali Chkhetia, Project Director

Ms. Tamar Khidasheli, Board Member

NGNI

Mr. Koki Ionatamishvili, Leader

Liberty Institute

Giorgi Meladze, Member

DIPLOMATIC COMMUNITY

Embassy of the United States of America

Ms Joye Davis-Kirchner, Political Officer

USAID

Mr. Nick Higgs, Director of Democratic Governance Office

Embassy of the Russian Federation

Ambassador Vyacheslav Kovalenko

Mr. Dmitry Yakushev, First Secretary

Ms Zarina Gabieva, Third Secretary, Press Attaché

Mr. Alexandre Savinov, Chief of Protocol

Delegation of the European Commission to Georgia

Mr. Robert Liddell, First Counsellor

Embassy of Switzerland

Ambassador Lorenzo Amberg

Embassy of France

Ambassador Eric Fournier

Embassy of United Kingdom

Ambassador Denis Keefe

Embassy of Netherlands

Ambassador Onno Elderenbosch

Embassy of Germany

Ambassador Patricia Flor