

POST-ELECTION INTERIM REPORT
6–18 January 2008

On 6 January, the International Election Observation Mission (IEOM), comprising the OSCE/ODIHR, the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe and the European Parliament, issued a joint Statement of Preliminary Findings and Conclusions. This statement reported that the process “was in essence consistent with most OSCE and Council of Europe commitments and standards for democratic elections, [but] significant challenges were revealed which need to be addressed urgently.” The statement also signaled that the final assessment of the election depends, in part, on the conduct of the remaining stages of the election process, including the tabulation and announcement of final results and the handling of possible post-election day complaints or appeals.

This interim report should be read in conjunction with pre-election interim reports, as well as the statement of preliminary findings and conclusions. The OSCE/ODIHR will issue a comprehensive final report including recommendations in the coming weeks.

Executive Summary

- On 13 January, the Central Election Commission (CEC) announced that Mikheil Saakashvili was elected President in the first round of the election, with 53.5 per cent of the vote.
- The political environment remained polarized after election day, with opposition parties claiming widespread irregularities and fraud, and demanding that results that were found to have been falsified be annulled and calling for a second round.
- The OSCE/ODIHR EOM identified a number of problems during the tabulation process, including examples of different data in protocols provided by Precinct Election Commissions (PECs) and District Election Commissions (DECs), and some PECs reporting unusually high turnout particularly during the last hours of voting.
- When counting ballots cast by voters added to additional voter lists on election day, the CEC did not apply uniform procedures, especially when deciding on ballot validity.
- The election administration at all levels and the courts did not fully and adequately consider and investigate a considerable number of complaints regarding irregularities in voting, counting and tabulation of election results.

Political Environment

The political environment has remained polarized, and following election day the opposition claimed widespread irregularities and fraud, notably in regions inhabited by national minorities. On 8 January, Levan Gachechiladze, candidate of the United Public Movement (UPM), and several supporters stormed into the CEC to confront the CEC Chair. Their principal demand was that results found to have been falsified be annulled, with the possibility that this could bring Mr. Saakashvili’s vote below 50 per cent and require a second round. In addition, Mr. Gachechiladze claimed that after election day he was not given live

coverage by most television channels. Opposition activists and sympathetic NGOs held demonstrations outside the CEC and the Georgian Public Broadcaster.

On 13 January, the CEC announced that Mikheil Saakashvili had won 53.5 per cent of the vote, sufficient to be elected in the first round against 25.7 per cent for Mr. Gachechiladze. All other candidates received less than 10 per cent. Following the announcement of the results, the opposition held demonstrations on 13 January, which they said would continue.

Tabulation and Announcement of Election Results

The IEOM observed the vote count and completion of results protocols at 180 PECs. A significant 23 per cent of counts observed were assessed as bad or very bad. Observers reported that in 8 per cent of counts observed, they had witnessed tampering with results protocols. In 21 per cent of counts observed, they reported significant procedural errors or omissions. According to IEOM and other domestic party and non-partisan observers, many protocols lacked required information or stamps and signatures. Data frequently showed inconsistencies; CEC staff informed the OSCE/ODIHR EOM that in around 940 of 3,511 PECs, the number of voters who voted did not reconcile with the sum of valid and invalid votes.

The CEC started posting results protocols on its website in the early morning of the day after the election. While this was a positive step, the posting of results proceeded at a slow rate. On 9 January, the CEC Chairperson announced preliminary results based on 3,482 PEC protocols.

OSCE/ODIHR EOM observers described the tabulation process at the DEC level as slow, not very well organized, and often chaotic. In some DECAs, they noted a tense atmosphere during tabulation. There were cases in which PEC protocols given to the OSCE/ODIHR EOM differed from those provided by DECAs. For example, protocols provided by DECAs for Batumi (PECs 11 and 73), Lentekhi (PEC 1), and Dmanisi (PEC 30) showed a significant increase of votes cast for Mr. Saakashvili.

Observers from the New Generation – New Initiative NGO informed the OSCE/ODIHR EOM that PECs were frequently unaware how to fill in the results protocols. Several PEC protocols from DEC 41 in Ninotsminda reviewed by the OSCE/ODIHR EOM appear to have been completed by one and the same person. Instances were noted where DECAs corrected PEC protocols, and these were posted on the CEC website for PECs 5, 22, 24 and 35 in Ninotsminda, alongside the original PEC protocols. This action was taken despite the fact that the law does not explicitly envisage DEC corrections to PEC protocols, and according to the Electoral Code, DECAs have a limited role in the vote tabulation process.

The CEC announced that the overall turnout was 56.19 per cent. In several DECAs, the turnout was considerably higher than the average. Some 23 PECs reported 100 per cent turnout¹, while another 205 commissions reported turnout between 90 and 100 per cent.

A significant number of PECs reported unusually high turnout during the last three hours of voting. According to the information produced by the CEC shortly after election day and received by the OSCE/ODIHR EOM, at 79 polling stations, more than 500 voters cast their

¹ This figure does not include 41 polling stations where PECs mistakenly entered the number of voters who voted in the line of the protocol intended for the total number of voters on the voter lists.

ballots during this period.² For instance, in Marneuli, 866 people voted in PEC 50 during the last three hours, and 657 in PEC 1. In Sagarejo, 822 voters were processed by PEC 36 in the last three hours, and in Akhalkalaki, 879 by PEC 24. Based on more complete information drawn from protocols now posted on the CEC website, as of 17 January, the number of such polling stations now stands at 45.

Around 85,000 voters were added to additional voter lists on election day. As provided by law, some 930 PECs did not count ballots cast by these voters themselves and sent these ballots to the CEC, which on 7 January decided to count them³. On 8 January, several groups composed of CEC members and staff started the count. The count took place in chaotic circumstances, and the counting groups did not apply uniform procedures, especially when deciding on ballot validity.

In this context, the OSCE/ODIHR EOM observers noted that a significant number of ballots from some PECs in certain DEC appeared to have been filled out in identical fashion, raising suspicion of wrongdoing. In such cases, numbers of all but one candidate on ballots had been circled, or all but one name had been crossed out identically. Such cases in which identical patterns of ballot marking were observed, were noted in DEC 6 (PECs 54 and 56, DEC 32 (PEC 81), DEC 60 (PEC 41), and DEC 61 (PEC 16). While some ballots completed in the above described manner were invalidated, in the majority of cases, these ballots were considered valid based on a new CEC ordinance “On identifying invalid ballot papers cast by voters added to the additional voter lists that are counted at CEC”, and adopted only after election day on 10 January. The ordinance offered a more liberal interpretation of ballot validity than that contained in the Electoral Code.

Some PECs did not send copies of IDs to accompany the ballots as required by law⁴, but the ballots were counted anyway. The CEC drew up only one general protocol for all PECs that sent ballots cast by voters added to the additional voter lists on election day, lacking detailed data for individual PECs, and attaching a separate table with PEC results. On 11 January, the CEC approved the protocol on the count of additional votes, but it was only signed by seven of 13 CEC members.

On 10 January, the UPM at a press conference claimed its members had found sealed envelopes with ballots cast by voters added to additional voter lists on a rubbish tip on the outskirts of Tbilisi. On 12 January, a UPM representative presented these envelopes during a CEC session, but the CEC Chair refused to accept them, arguing that ballots are State documents and that the finder should hand them to the police for criminal investigation.

On 13 January, the CEC approved the final election results. The CEC members appointed by opposition parties argued that there were many violations and complaints which the CEC had not reviewed, and that the results could therefore not be approved. Seven members voted to approve the final results, while six opposition-appointed members voted against.

² This figure does not include polling stations which also counted ballots cast at nearby special polling stations, as per information provided by the CEC.

³ Under the law, decisions by PECs to count ballots cast by voters registered on additional voter lists on election day at polling stations are taken by two-thirds of votes of a commission. The CEC applies the same procedure.

⁴ Article 129⁷.5 of the Electoral Code.

Complaints and Appeals

The election administration at all levels, and the courts, did not fully and adequately consider and investigate a considerable number of complaints regarding irregularities in voting, counting and tabulation of election results. Some complaints included serious allegations of multiple voting, ballot stuffing, and tampering with protocols, with requests for annulment of a significant number of PEC summary protocols. The vast majority of these complaints were submitted by opposition parties and domestic NGOs, with almost none filed by the ruling party. There was an apparent avoidance to substantively consider complaints. The OSCE/ODIHR EOM received accounts that law enforcement bodies, local administration and courts actively discouraged observers and opposition supporters not to file complaints or suggested to withdraw them.

PECs received approximately one thousand complaints, with additional instances when PECs refused to register complaints. DEC received several hundred complaints (also refusing to register some), of which almost all were rejected on grounds of technical inadmissibility or as legally ungrounded. DEC at times arbitrarily applied admissibility requirements, without providing complainants an opportunity to correct technical problems, failed to follow due process in consideration of complaints and did not adequately investigate claims.

The CEC received few complaints, some with serious allegations. It rejected or ruled inadmissible the majority of them⁵, without providing due consideration or sound legal reasoning. It incorrectly refused to consider several complaints requesting annulment of protocols, on grounds that only the courts had authority to do so⁶. In addition, the CEC Chair incorrectly declared that the CEC did not have investigative powers. In one instance the CEC refused to review the official video recording of an alleged incident in a PEC, stating that the CEC had no authority to do so. However, in a 17 January statement the CEC announced that it was now ready to provide parties the opportunity to review video recordings of voting day procedures at polling station level, upon written request, although this decision comes after the deadline for the submission of complaints related to election results.

Of more than 50 appeals to city courts, the vast majority were rejected, most as inadmissible for technical reasons. Twelve PEC summary protocols were annulled in total, which amounted to the cancellation of results in those polling stations. The OSCE/ODIHR EOM is aware of a number of criminal investigations initiated related to events on election day.

As of 15 January, the deadline expired for the submission of complaints to rayon and city courts, including the Tbilisi city court. On 15 January, four complaints against final results as announced by the CEC were lodged with the Tbilisi city court by representatives of three candidates in the election (Arkadi Patarkatsishvili-independent candidate, Shalva Natelashvili-Labour Party, Levan Gachechiladze-UPM), and by the Free Professional Union of Georgia's Teachers and Scientists. An additional complaint was accepted by the Tbilisi city court one day after the deadline on 16 January, on behalf of Davit Gamkrelidze-New Rights Party. All five of these complaints demanded nullification of final election results due to alleged irregularities, and all five were rejected as groundless. On 18 January, three candidates submitted appeals with the Tbilisi court of appeal. The courts of appeal are the last

⁵ According to information provided by the authorities, the six complaints were upheld and results of respective polling stations annulled.

⁶ Article 29.1.m of the Electoral Code states that the CEC "by its own initiative or under the application/petition check the legitimacy of decisions and acts of election commissions, their officials, and in case of any revealed violation shall invalidate or revise them by its own decree..."

instance for judicial redress of election-related cases, and final decisions would be announced by 20 January.

After the election day, some 30 cases of appeal against decisions of city and rayon courts, most of which had rejected requests for invalidation of PEC and DEC result protocols, were submitted to the courts of appeal in Tbilisi and Kutaisi. All these cases were either rejected or not satisfied.