



Office for Democratic Institutions and Human Rights

**REPUBLIC OF ARMENIA**  
**PRESIDENTIAL ELECTION**  
**19 FEBRUARY AND 5 MARCH 2003**

**FINAL REPORT**



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# REPUBLIC OF ARMENIA PRESIDENTIAL ELECTION

19 February and 5 March 2003

## OSCE/ODIHR Election Observation Mission Final Report<sup>1</sup>

### I. EXECUTIVE SUMMARY

The 19 February and 5 March 2003 presidential election in the Republic of Armenia fell short of international standards for democratic elections. While the election involved a vigorous countrywide campaign, the overall process failed to provide equal conditions for the candidates. Voting, counting and tabulation showed serious irregularities, including widespread ballot box stuffing.

The newly amended Electoral Code provided a basis for the conduct of elections in compliance with international standards. However, the Code was not implemented with sufficient political determination to meet OSCE commitments for democratic elections.

The field of nine candidates provided voters with a genuine choice and opposition candidates did not hesitate to criticize the incumbent. However, the political atmosphere was charged and marred by intimidation, isolated disruption of campaign events and one serious violent incident. Public resources were widely used in support of the incumbent.

The second round was clouded by the administrative detentions of over 200 opposition supporters, in contravention of OSCE commitments and a resolution of the Parliamentary Assembly of the Council of Europe. Over 80 people were sentenced to up to 15 days in jail, often in closed hearings and without the benefit of legal counsel. Some opposition leaders made intemperate statements, including calls for unconstitutional action, although the opposition candidate in the second round called on his supporters to take only action in accordance with the law. Rallies and demonstrations remained largely peaceful.

Public TV and the major State-funded newspaper were heavily biased in favour of the incumbent, failing to comply with their legal obligation to provide balanced reporting on candidates or with OSCE commitments on equal access to the media. Independent television *AI+* remained off the air throughout the election. A positive development in the second round was the first television debate between presidential candidates ever to take place in Armenia.

In general, the election administration completed efficiently the technical preparations for the election. The formula for appointing election commission members led to politically imbalanced commissions in which most opposition candidates had little confidence. The Central Election Commission (CEC) did not publish a prompt and detailed breakdown of preliminary results, contributing to further lack of confidence in the process. Despite useful efforts to improve the voter lists, they remained problematic.

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

Voting and counting were generally calm but severely flawed. Although the majority of polling stations visited were well run, international observers confirmed widespread irregularities of many types, notably ballot box stuffing, around the country. There were significant discrepancies and implausible figures in the tabulated results for a large number of polling stations. A positive development was the presence of a large number of domestic observers.

The complaints and appeals processes did not provide effective remedies for complainants. The failure of the authorities to take action in the face of clear violations of the law was of particular concern, especially in the period between the two rounds of voting.

Two cases were brought to the Constitutional Court contesting separately the outcome of each round. The cases were heard and underwent rigorous, public and thorough examination by the Court. Neither complaint was upheld, although the Court confirmed that a number of serious electoral violations had taken place. The Court also made a number of recommendations for improved implementation of the legislative and administrative frameworks.

The failure of the 2003 presidential election to meet international standards lay not in technical or procedural lapses, but in a lack of sufficient political determination by the authorities to ensure a fair and honest process. Restoring confidence in the election process will require prompt and vigorous action by the authorities, including a clear assumption of responsibility and holding accountable those who violated the law, particularly those in official positions who did so.

The OSCE/ODIHR is prepared to assist the authorities and civil society of Armenia in overcoming the impediments to fully democratic elections and to build on those improvements that have been put in place. In this regard, recommendations for both immediate and longer-term action are included in this report.

## **II. INTRODUCTION AND ACKNOWLEDGEMENTS**

The OSCE/ODIHR Election Observation Mission (EOM) for the 2003 presidential election was established in response to an invitation from the Ministry of Foreign Affairs. The EOM, headed by Peter Eicher (USA), began work on 15 January 2003 and remained in Armenia through 14 March. Thirty experts and long-term observers from 15 OSCE participating States were deployed in Yerevan and seven other cities.

On the two election days, the EOM was joined by the Parliamentary Assembly of the Council of Europe (PACE) to form the International Election Observation Mission. Lord Russell-Johnston led the PACE delegation. Some 233 observers from 35 OSCE participating States were deployed for the first round, including 8 parliamentarians from the PACE. For the second round, some 193 observers from 21 OSCE participating States, including 3 parliamentarians from the PACE, were deployed. On each of the two election days, observers visited some 800 polling stations out of approximately 1,865 throughout the country.

Two OSCE/ODIHR legal experts remained in Armenia, at the invitation of the Chairman of the Constitutional Court, to observe the Court's consideration of two cases appealing the results of the first and second rounds.

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Central Election Commission and other authorities and civil society organizations, as well as embassies and international organizations in the Republic of Armenia, for their assistance and co-operation during the observation.

### **III. BACKGROUND**

The 2003 presidential election was the fourth since declaration of independence in September 1991 and the first since Armenia joined the Council of Europe in January 2001. Significantly, it was also the first national contest to be held in the wake of the assassinations of leading figures in Armenia's political establishment during a 27 October 1999 attack on the parliament building.

A total of 15 candidates, including incumbent president Robert Kocharyan, presented applications to participate in the election. Eleven were ultimately registered by the CEC, two of whom subsequently withdrew from the race. Under Armenia's Constitution, a presidential candidate must win over 50% of the votes cast for all candidates to be elected in the first round; otherwise, the two leading candidates take part in a second round two weeks later, in which the winner is decided by simple majority.

Since no candidate won an outright majority during the first round of voting on 19 February, a second round was held on 5 March between Robert Kocharyan and Stepan Demirchyan. Robert Kocharyan had been elected President in 1998, and prior to that had served briefly as acting President following the resignation of Levon Ter-Petrosyan, under whom he had been Prime Minister. Stepan Demirchyan, Chairman of the People's Party, is the son of the late Karen Demirchyan, the parliamentary speaker assassinated in the National Assembly on 27 October 1999, who was the candidate defeated by Robert Kocharyan in the second round run-off of the 1998 presidential election.

The election provided an important test of the progress of democratic practices in Armenia, since previous presidential elections were characterized by serious flaws and generally failed to meet international standards. Issues of concern at the two previous presidential elections observed by the OSCE/ODIHR (1996 and 1998) included inaccuracy of voter lists, shortcomings in the election administration, media bias, abuse of State resources, flawed voting by military personnel, the presence of unauthorized persons during polling and counting and discrepancies in the vote count.

### **IV. LEGAL FRAMEWORK**

The Electoral Code, adopted in 1999 and amended in 2002, provided a basis for the conduct of elections in compliance with international standards. The 2002 amendments to the Code included a number of positive elements, some of which reflected recommendations made by experts on behalf of the OSCE/ODIHR and the Council of Europe's Venice Commission.

The amendments to the Code included restructuring and reducing the membership of the CEC and lower-level election commissions in a manner that in practice resulted in a lack of political balance and confidence in the election administration and proved problematic for the conduct of the presidential election (see Section V, Election Administration).

According to the amendments, the 11 Regional Election Commissions were replaced by 56 Territorial Election Commissions (TECs), resulting in a more manageable workload and generally more efficient operation by these middle-level election commissions (see Section V, Election Administration).

A key remaining deficiency in the Electoral Code relates to the lack of transparency in the tabulation of the preliminary results. The TECs are not legally required to publicly announce and post the preliminary results for each polling station under their jurisdiction when forwarding their summary totals to the CEC, even though they have this information available. During both rounds, the EOM observed instances in which the summaries produced by certain TECs contained results different from the result protocols produced during the counting of the votes at polling stations. Similarly, the CEC is not required by law to publicize a full breakdown of results by polling station when it announces the preliminary election results the day after voting.

Article 40 of the Electoral Code is not clear in specifying the proper procedures to be followed or venue to be used in challenging the decisions or omissions of election commissions. The Code provides that a complaint against a decision of an election commission can be lodged with either the election commission itself or appealed to a higher level election commission or to the Court of First Instance with jurisdiction over the election commission making that decision. An appeal against a decision of the CEC can only be lodged at the local Court of First Instance in Yerevan, irrespective of the origin of the complaint. All decisions in relation to election complaints by Courts of First Instance are final and cannot be subject to further judicial review.

Article 100 of the Constitution states that the Constitutional Court “shall rule on disputes concerning referenda and the results of presidential and parliamentary elections”, but does not grant a specific power to the Court to annul or invalidate election results. The Electoral Code and the Law on the Constitutional Court also do not specify whether the Court has such a power. This became especially problematic because, after both the first and second rounds, candidates exercised their right under the Armenian Constitution to appeal the election results to the Constitutional Court (see Section VIII, Complaints and Appeals).

Moreover, the timeframes stipulated in the Electoral Code for appeals that might result in the invalidation of a presidential election are inconsistent with provisions of the Constitution. Specifically, if elections are declared invalid, Article 51 of the Constitution requires new elections to be held within 40 days of the original election day. At the same time, Article 92 of the Electoral Code says that the CEC must declare new elections no later than 39 days before the date of that election. In order to comply with both these timeframes, any challenge to declare a presidential election invalid would have to be lodged and decided upon within 24 hours of the day of initial polling – before even the preliminary results were announced. Furthermore, Article 83.2 of the Electoral Code allows seven days for a legal challenge, and Article 102 of the Constitution allows 30 days for the Constitutional Court to render a decision. This results in an inconsistency whereby a decision on invalidating the results of presidential elections could not be implemented constitutionally.

As a practical matter, the second round of voting proceeded while the Constitutional Court was still hearing an appeal on the first round. Robert Kocharyan was sworn in for a second term as President before the Court had ruled on an appeal of the second round.

The most serious problem with the legal framework lay not in the structure or provisions of the law, but in the failure of its enforcement in the face of violations. While some election-related criminal cases were opened, no official was held administratively, politically or criminally accountable for widespread violations of the Electoral Code. The failure to act on this promptly between the two rounds was especially grave, since it sent a signal – intended or not – that the authorities were prepared to accept election violations as part of the political landscape again in the second round. In fact, violations in the second round appeared to be more blatant and open than in the first round. In its Decision on the case regarding the outcome of the second round, the Constitutional Court acknowledged the failure to hold accountable those persons responsible for violations and directed that the Office of the Prosecutor General conduct an investigation on election violations by 20 May 2003.

As noted in the joint assessments of the Electoral Code conducted by OSCE/ODIHR and the Council of Europe's Venice Commission, implementation and observance of the electoral legislation includes an obligation by the CEC and other relevant authorities to take measures against violators and to provide remedies to those aggrieved. This failure – and the resulting impunity of violators – could also negatively affect the framework for the upcoming parliamentary elections, if not promptly corrected.

## V. ELECTION ADMINISTRATION

The election was administered by a three-tier election administration: the CEC, 56 TECs (coinciding with 56 parliamentary constituencies) and approximately 1,865 PECs, one for each polling station.

The formula for appointing CEC members – three nominated by the President, and one each by the six factions in Parliament as established following the last election – resulted in two-thirds of CEC members being supporters of the President. TECs and PECs were formed according to the same formula. Although this method of appointment is not necessarily problematic, in this instance it failed to create politically balanced commissions and proved to be a great obstacle to independence, impartiality and professional performance of the election administration. The imbalance in commission membership resulted in most candidates expressing lack of confidence in the impartiality of the CEC. As observed in certain instances, it was possible for lower level election commissions to form a quorum, conduct business and adopt decisions with no presence of the opposition. The problem was even more pronounced in the second round, when the single opposition candidate had no representatives on election commissions at any level.

The CEC generally operated efficiently. It completed preparations for both rounds of the election on schedule, a particular achievement in light of the short timeframes for the second round. However, it held few formal, public meetings during the election period, reducing the transparency of its operations. Much of its work was undertaken directly by the CEC secretariat under the general supervision of the CEC Chairman. In particular, in apparent contravention of Article 41.1.11 of the Electoral Code, the legal advisors to the CEC responded directly to complaints and appeals without referring the matter to a meeting of the CEC membership for a formal decision. The CEC failed to take adequate action in response to many violations of the Code, thereby not fulfilling its obligations under Articles 41.3 and 41.24.

The CEC took positive decisions to use transparent ballot boxes and to rebroadcast abroad the free TV advertising time accorded to candidates, although the latter was not carried out. A good programme of training for election commission members was implemented. Following the 4 February violence in Artashat (see Section IV, The Election Campaign), the Chairman of the CEC took a welcome initiative to organize a meeting of the CEC with the police chiefs from the regions of Armenia, to discuss the issue of violence in the election campaign and the role of police in the election. Judges were also trained to handle both voter list problems and the complaints process.

The increased number of second level election commissions (up from 11 RECs to 56 TECs) resulted in more efficiency at this level of the election administration. While in a few cases TECs were rather late in establishing their offices, in general, they handled their pre-election responsibilities more effectively than in previous presidential elections. TECs performed less well in their post-election activities and in many cases did not fulfill their legal obligations on handling complaints. For example, in the first round, a number of TECs, including TEC numbers 16, 23, 42, and 48 were not open the day after the election to receive complaints.

Article 39.1 of the Electoral Code specifies that the activities of the election commissions are to be conducted on the principle of collegiality or partnership. In practice, however, election commissions at all levels at times operated in an adversarial manner. Opposition members of commissions were often marginalized and their proposals were seldom given serious consideration. Many decisions were taken by vote over the objections of the opposition members or without opposition members being present. Two opposition members of the CEC did not sign the protocol of final results for the first round; another attached a special opinion to the protocol. One CEC member did not sign the results protocol for the second round. CEC meetings were generally short and conducted in a manner that was not conducive to debate or discussion. Interventions by proxies, permitted by law, were not encouraged. While all meetings were covered by the media, no invitations were issued to proxies or observers, although they were free to attend.

Each candidate was entitled to nominate proxies to be present at the CEC, TECs and PECs. For polling stations, candidates could nominate three proxies, only one of whom could be present in the polling station at a time. Proxies may not vote on or intervene in the work of a commission. The CEC adopted a decision that of the up to nine candidate proxies in a polling station, only one individual at a time was allowed to move freely around the station to observe proceedings at close range. This decision limited the ability of proxies to perform their tasks effectively.

The rights of proxies and of PEC members were further restricted by the provision in Article 57.5 of the Electoral Code. This provision allows for any alleged election day violation to be recorded in the register of the PEC only if it is supported by at least two proxies or PEC members. This was particularly problematic during the second round, when there were only two proxies. A request for a recount or a post-election day complaint can be made by a single proxy.

Ballot papers, stamps and ballot box seals were procured centrally under the supervision of the CEC and distributed to TECs for onward distribution. As a security safeguard, ballots only become effective upon being signed by three randomly selected PEC members and then stamped with a unique seal immediately after a voter's identity was confirmed. However, on both election days, the EOM observed a number of both stamped and unstamped, signed and unsigned, ballot papers outside of polling stations (see Section XI, Observation of Voting and Counting). Such lapses of security indicate that current safeguards for the handling and distribution of ballot papers are inadequate.



## **A. VOTER LISTS**

The accuracy of voter lists remained a concern. Voter lists are compiled by local authorities and displayed at precincts 40 days before elections to allow for verification by voters. With some exceptions, they were on display at precincts, as required, in advance of the first round. Responsibility for making any corrections lies with local authorities. Voters serving in the military were added to the list of a polling station near to their duty base. While prisoners have no right to vote, those held in pre-trial detention could vote at polling stations in six “criminal executive units”. Residents registered as refugees are not entitled to vote in a presidential election and were removed from the lists (they were on the lists because they were entitled to vote in October 2002 local elections). There is no national voter register, making it impossible to check the lists for multiple entries.

In a number of municipalities the lists were improved in comparison with past elections, as a result of concerted efforts to correct errors. However, the lists in some regions continued to be problematic. International observers received a large number of complaints and anecdotal evidence of mistakes in the lists; spot checks verified some of these but showed others to be unfounded. Moreover, the voter lists include very large numbers of citizens with the right to have their names on the list and to vote but who are not residing in Armenia. This opens a potential for manipulation on election day in the absence of sufficient respect for the law. The EOM received numerous reports that persons not in Armenia on election days were nevertheless recorded as having voted in Armenia. Polling stations in Armenian Embassies and Consulates did provide the opportunity for some Armenians abroad to vote overseas.

As the result of a Constitutional Court decision in October 2002, voters who could not find their names on the voter lists on election day were able to appeal to courts to obtain a certificate to permit them to vote. According to the CEC, 10,400 voters who could not find their names on the voter lists on the first round election day successfully appealed to courts to obtain a certificate which permitted them to vote. These voters were able to vote in the second round without having to repeat the procedure.

Three days before the first round election day, the CEC announced that there were 2,295,330 registered voters in Armenia. However, in its protocol of results for the first round, the CEC announced that the total number of voters was 2,315,410. On the second round election day, the CEC revised the total number of voters to be 2,300,410. Only part of these discrepancies could be explained by adding in persons issued with court certificates on election day enabling them to vote.

## **B. FIRST ROUND**

There were a number of efforts to intimidate or manipulate certain PECs. For example, pressure applied by local community leaders upon four members of a PEC in Shirak region led to three of them tendering their resignations; other pressure included at least one PEC member in Yerevan region nominated by the opposition being intimidated. In three cases from Lori region there were substitutions of PEC members without their nominating faction’s consent. In Armavir region, a properly nominated substitute to a PEC complained that his membership, and that of two others in neighbouring PECs, were not recognized and they were not invited to meetings. In a number of cases, international observers reported on election day that PEC members did not know which political faction they represented, suggesting a breakdown in the appointment process.

## **C. SECOND ROUND**

While the Electoral Code does not specifically address the composition of election commissions in the second round, it clearly implies that membership should not change between the rounds. The replacement of a substantial number of PEC members after the first round was cause for concern. A number of opposition PEC members were allegedly dismissed for having missed three PEC meetings; some of these asserted that they were not duly informed when the meetings were to take place. In some areas, opposition parties tried to replace PEC members between the two rounds, in some instances contravening the spirit of the law. There were also a number of alleged resignations by opposition members of PECs, some of whom later asserted that they had not resigned. This led to confusion over PEC membership on election day; in some instances PECs refused the new members, leaving certain PECs with no members from opposition parties. In any event, the opposition candidate and his party, who in practice had no possibility to appoint PEC members, were represented in polling stations only by one proxy at any one time, with no voting rights. The membership in election commissions was therefore even more imbalanced in favour of the incumbent than in the first round.

There was no apparent official effort to replace PEC members in polling stations where falsifications and ballot stuffing had occurred in the first round; the same PEC members remained in charge.

## **D. ISSUING OF RESULTS**

Although the CEC produced a full breakdown of results down to polling station level in both the first and second rounds, it did not do so until six days after each election day when issuing the final results, greatly reducing both the transparency of, and confidence in, the results. Even then the precise figures were not easily available to the public, since the CEC website listed the precinct results in percentages for each candidate, rather than in absolute figures. Analysis of the final results of both rounds showed errors and discrepancies that could have been remedied or explained had the results been made fully available at an earlier stage (see Section XII, Election Results). Publicizing detailed preliminary results and tabulations promptly at all levels could have been instituted by the CEC as an administrative procedure without the need for a change in the law. The CEC asserted that neither it nor the TECs had the time to post and publicize preliminary results by polling station. This reasoning was not persuasive, since these detailed results existed at the TECs within 18 hours after the closing of the polls, and since both the TECs and the CEC had been provided with copy machines and computers by international donors.

# **VI. THE ELECTION CAMPAIGN**

## **A. FIRST ROUND**

Nine candidates were ultimately on the ballot for the election. Incumbent President Robert Kocharyan was nominated by a citizen's initiative group, but had the backing of about a dozen political parties or other organizations, including the ruling Republican Party and its partner in government the Armenian Revolutionary Federation (Dashnaktsutyun). Seven of the other eight candidates were leaders of political parties. Stepan Demirchyan was nominated by the People's Party. Efforts by several opposition parties to unify behind a single candidate were not successful.

One candidate, Aram Sargsyan, stopped campaigning in the week before the election and called on his supporters to vote instead for candidate Stepan Demirchyan.

The campaign began slowly but quickly grew in activity and tone, with posters, rallies and other campaign activity much in evidence around the country, and with active public participation. The field of nine candidates provided voters with a genuine choice. Opposition candidates did not hesitate to criticize the incumbent. In general, campaigning, especially by opposition candidates, was not issue-based.

Serious violence broke out at a campaign rally in Artashat for candidate Aram Karapetyan on 4 February, including the stabbing of a member of parliament who was a campaign manager for the candidate; the MP fired a gun in the course of the melee. Although the violence was strongly condemned from all quarters, it cast a shadow over the campaign. There were disturbances also at a rally for the incumbent in Yerevan on 13 February, with violence towards peaceful demonstrators who unfurled opposition banners. Earlier in the campaign there were credible reports of the disruption of an opposition candidate's campaign rallies near Yerevan through intimidation. Campaign offices for the incumbent in Ararat and Kotayk regions were vandalized, as was an opposition candidate's campaign office in Abovyan, and a major campaign billboard for another opposition candidate was subject to apparent arson.

Observer investigations, interviews with witnesses, and credible first-hand accounts revealed certain patterns of intimidation. Several persons associated with opposition campaigns were dismissed from their jobs, while others were threatened with dismissal. There was a credible pattern of reports of opposition campaign staff or volunteers being threatened to give up their activities. A number of shop owners were threatened against displaying opposition campaign posters. There was a discernible pattern of alleged intimidation by village leaders and others to support the incumbent or face consequences such as the withdrawal of utilities. Family members and reputable non-governmental organizations reported threats of violence against conscripts. Observers received and verified other cases of intimidation and received further credible reports which could not be verified. Observers also received a large number of allegations that proved unfounded upon investigation or were spurious. The cumulative effect of various practices and patterns of intimidation was a violation of an OSCE commitment. According to paragraph 7.7 of the Copenhagen Document, participating States must ensure that law and public policy work to permit political campaigning to be conducted in an atmosphere free of intimidation and free of fear of retribution.

The EOM received and investigated widespread reports of efforts to acquire individuals' passports in order to impersonate them on election day, and parallel reports of schemes to obtain passport numbers of persons who would not be voting (e.g., those not in the country) in order to fraudulently cast votes for them on election day. These reports followed consistent patterns in Yerevan and around the country. The EOM confirmed several accounts of passport acquisition. A few cases of passport fraud were confirmed by observers on election day.

The widespread use of public resources in favour of the incumbent was confirmed by observers around the country. Some public officials at the local level were engaged full-time in running the incumbent's campaign while performing their official duties, or were observed to continue conducting public business from their campaign offices. Public buildings such as mayors' offices were commonly used for campaign purposes, overwhelmingly by the incumbent's team. The

opposition asserted that it was not welcome in public buildings; the EOM verified a number of instances in which public facilities were denied to the opposition.

Where the authorities provided office space to opposition parties, in general the quality of such space did not nearly match what was made available to the incumbent for the campaign. Some opposition candidates reported difficulties in securing premises for campaign offices. Observers were credibly notified of two instances of campaigns abandoning plans to open offices following intimidation, and two other cases of official orders to vacate premises suddenly declared unsafe.

Observers received and verified many allegations that public sector employees, factory workers, teachers, students and others were instructed to attend the incumbent's rallies in various parts of the country. For example, observers attended rallies in Lori, Gegharkunik and Yerevan regions, where they spoke to people so instructed. In several regions, including Shirak, Lori and Gegharkunik, schools were closed and pupils and teachers required to attend the incumbent's rallies.

Although under Armenian law some public officials may be involved in political campaigns, and there is no prohibition of public buildings being used for campaign purposes, the patterns of such practices in this election were sufficient to breach OSCE commitments. According to paragraph 7.6 of the Copenhagen Document, all candidates should be treated equally by the authorities. Article 41.9 of the Electoral Code also requires the CEC to ensure equal conditions for the pre-election activities of presidential candidates. However, the CEC appears to have failed to meet its obligations under this provision of law.

## **B. SECOND ROUND**

On the basis of the first round results, candidates Robert Kocharyan and Stepan Demirchyan went forward to the second round.

Between the announcement of preliminary first round results on 20 February and the official start of the second round campaign, three large unsanctioned opposition gatherings took place in Yerevan. Some opposition leaders addressed the crowds with intemperate and even inflammatory statements including calls for unconstitutional action such as the takeover of the presidential palace. Stepan Demirchyan himself called on his supporters to take only legal actions. Police were much in evidence at the gatherings, but behaved correctly. Overall, the events were largely well-ordered and peaceful. Outside Yerevan, international observers witnessed police stopping public transport in order to prevent people joining the demonstrators. The President and other officials made strong public statements warning against illegal activities.

On 22 February, police began detaining opposition supporters at their homes in the very early morning, for alleged hooliganism and/or participation in unsanctioned public meetings. At least 200 individuals were detained including many opposition proxies and campaign staff. Of these, over 80 were sentenced administratively to jail time of up to 15 days, while some 65 others were fined; the rest were released without sanction. Many of the hearings were closed; the accused in general did not have legal counsel present. The whereabouts of some of the detainees was not made known to their families. On 1 March, 47 of those detained were released, many of them prior to completing their sentences.

The detentions were under provisions of Armenia's Administrative Violations Code, covering non-criminal behaviour. The Parliamentary Assembly of the Council of Europe, in a September 2002

resolution, had urged the authorities to abolish the provisions of the Code concerning administrative detention and to refrain from applying them in the interim. The detentions were also at odds with an OSCE commitment. According to paragraph 7.7 of the Copenhagen Document, neither administrative actions nor intimidation should bar candidates from freely presenting their views. The detention of opposition activists contributed to a negative and highly charged political atmosphere that clouded the run-up to the second round.

The official campaign period for the second round began on 26 February. Several of the losing candidates announced their support for the opposition candidate. There remained a general absence of issue-based campaigning. In contrast to the first round, campaign events were concentrated in Yerevan and were not much in evidence elsewhere. A Demirchyan rally in Armenia's third largest city, Vanadzor, went ahead on 1 March despite obstacles including police confiscation of sound equipment and the brief detention of people assisting the meeting organizers.

The campaign teams of both candidates complained to international observers about harassment and intimidation by the other side. On the basis of concrete information received, international observers confirmed further job dismissals of three individuals connected to the opposition candidate's campaign. There were also credible new allegations that persons who had supported candidates other than the incumbent in the first round experienced punitive job dismissal or threats of job dismissal. Two persons associated with the opposition candidate's campaign were arrested on 18 and 23 February on criminal charges related to the posting of a threatening notice on the wall of a polling station the night before the first round. International observers also confirmed an arson attack on the opposition candidate's campaign office in Abovyan. Public buildings continued to be used in support of the incumbent, repeating a pattern of unequal treatment of candidates by the authorities.

### **C. POST-SECOND ROUND DEVELOPMENTS**

Following publication of the preliminary second round results, the opposition resumed its series of protest gatherings in Yerevan and staged a picket outside the CEC building for several days up to the announcement of the final results. These gatherings were peaceful, and speakers were at pains to emphasize that there should be no recourse to actions outside the law. On 11 and 12 March at least three participants in these gatherings were detained but released with fines or warnings.

## **VII. THE MEDIA**

### **A. BACKGROUND TO THE MEDIA IN ARMENIA**

Television is the main source of news in Armenia. Public TV is among the few broadcasters to have a nationwide outreach and is considered to be the most influential media outlet in the country. Apart from public TV, approximately 45 TV stations operate in the country, around 21 of them based in Yerevan. The most significant private TV stations are *Prometevs*, *Armenia*, *Alm* and *Shant*. Two State-funded newspapers and several private outlets offer a wide range of views and political positions. However, newspapers in Armenia suffer from localized circulation.

The media environment in Armenia prior to the 2003 presidential election was negatively affected by the cases of two private TV broadcasters, *AI+* and *Noyan Tapan*, that remained off the air throughout the entire campaign period as a result of problematic tender processes in 2002. TV

AI+, in particular, was widely expected to offer an independent and diverse range of information about candidates. The December 2002 killing of the head of the public TV council – who was close to the President – and an October grenade attack on another journalist had a chilling effect on the pre-electoral environment. The combination of lost licenses and incidents of violence, as well as credibly reported intimidation, including by public authorities, cast a shadow over the media atmosphere and led some journalists and broadcasters to exercise self-censorship.

## **B. LEGAL FRAMEWORK FOR THE MEDIA**

The Constitution guarantees freedom of speech and of the media. A number of laws have specific provisions regulating various aspects of media performance. The Law on Television and Radio Broadcasting (Article 28) obligates the public TV and radio to provide information free from prejudice or preference. The Electoral Code includes provisions (Articles 18, 20, 41 and 81) governing the conduct of electronic and print media in Armenia during a pre-election campaign, *inter alia* providing for free and paid broadcast time and print space to all candidates on equal conditions for campaign purposes. To supplement the regulations in the Electoral Code, the CEC adopted decision 29/13 on 15 January further regulating the campaign in the media; Article 5 of the decision obligated employees of mass media not to create uneven conditions between the candidates or influence the citizens through prejudiced support. In both rounds the CEC did not meet its obligation to oversee equal conditions for the candidates.

## **C. MEDIA MONITORING**

The EOM monitored five television stations and six newspapers, using qualitative and quantitative analysis, from 21 January through 17 February and from 21 February through 3 March: public TV; four private channels *Prometevs*, *Armenia*, *Alm* and *Shant*; one State newspaper *Hayastani Hanrapetutyun* and five private newspapers *Azg*, *Hayots Ashkharh*, *Golos Armenii*, *Aravot* and *Orran*.

Publicly-funded media did not meet its obligation outlined in the Law on Radio and TV Broadcasting and the CEC decision of 15 January, to provide voters with information about the candidates free from prejudice or preference. Public TV did adhere to the legal provisions relating to providing free advertising time for all political contestants. However, its news coverage, analytical and other programs were biased. These clearly supported the incumbent, who received extensive coverage beyond what was reasonably proportionate to his role as head of State. The President received 41% of primetime coverage on public TV news and analytical programs, almost all (93%) in his capacity as a candidate rather than engaged in presidential duties. The next most covered candidates received 19% and 11%. Moreover, virtually all public TV coverage (93%) of the incumbent was positive or neutral, while opposition candidates received approximately equal proportions of negative and positive primetime news and analytical coverage.

Private broadcasters were even more biased in favour of the incumbent, largely ignoring opposition candidates. For example:

- *Prometevs*, one of the private channels with nationwide outreach, allocated 61% of its primetime news to the incumbent with an exclusively positive tone. In contrast, the two candidates considered as opposition front-runners accounted for 5% and 3% respectively, with this coverage mainly negative.
- *TV Armenia*, another nationwide private broadcaster, allocated the incumbent 65% of its primetime news coverage, which was overwhelmingly positive in tone. In comparison, the

channel generally ignored the opposition front-runners, who each received only 2% of approximately equal proportions of negative and positive primetime news coverage.

- *TV Alm*, allocated 61% of its primetime news coverage to the incumbent, with an overwhelmingly positive slant.
- *TV Shant* was slightly more objective than the other private broadcasters monitored by the EOM, allocating 47% of its primetime news coverage to the incumbent, once again mainly positive. The next most covered candidates received respectively 15% and 14% of mainly neutral or positive primetime news coverage.

The cost of paid political advertising, U.S. \$120 per minute, was very high by local standards, limiting candidates' possibilities to campaign in the media. The rate emerged from an unusual price-fixing agreement among public television and five private television stations that offered air time for political advertising. This rate for political advertising was approximately three times higher than comparable rates for commercial advertising on private television.

The National Commission on Radio and Television (NCRT) reported receiving and adjudicating 54 complaints. In two cases private broadcasters were fined for violating the Law on TV and Radio Broadcasting and the CEC decision of 15 January, by broadcasting paid advertisements that were not clearly designated as such. The NCRT reported receiving no media-related complaints in the period between the rounds.

The print media provided a plurality of views, but invariably showed strong bias either in favour of or against a candidate. Consequently, voters could form an objective view of the campaign only if they read several publications. The State-funded *Hayastani Hanrapetutyun* showed clear support for the incumbent by allocating him 66% of its candidate coverage, with an overwhelmingly (99%) positive or neutral slant. In comparison, two candidates considered as opposition front-runners received only 5% and 2% of the coverage, which was mainly negative in tone. The editors of *Hayastani Haranpetutyun* appear to have violated Article 20.4 of the Electoral Code (as well as the CEC decision of 15 January) which requires the leadership of periodicals established by the State to ensure equal conditions for the candidates; they would appear to be liable under Article 139.29 of the Electoral Code.

Private newspapers monitored by the EOM were sharply divided in their attitudes towards the incumbent president. While *Golos Armenii*, *Azg* and *Hayots Ashkharh* showed overt support to the incumbent, *Aravot* and *Orran* were clearly against him and provided more coverage of the opposition candidates. The daily *Aravot*, for example, allocated 37% of its coverage to the incumbent, with an overwhelmingly negative tone.

#### **D. SECOND ROUND**

In the period between the first and second rounds, public TV comprehensively failed to meet its obligation to provide voters with information about the candidates free from prejudice or preference. While adhering to the legal provisions to provide 15 minutes of free advertising to both candidates during the official campaign period for the second round, its news and analytical programs overtly promoted the incumbent, who continued to receive extensive coverage. Public TV also produced a primetime news item discrediting the opposition candidate. The President received 69% of primetime coverage on public TV news and analytical programs, almost all of it positive or neutral (93%). In contrast, Stepan Demirchyan received 31% of the coverage, of which 67% was negative. In the course of analytical programs such as "*Yerekoyan Yerevan*", the

opposition candidate was invariably under heavy criticism from public TV. Generally, Armenian public TV, which is reliant on public funds, did not properly serve Armenian citizens throughout the entire campaign period.

In a positive development, for the first time during an Armenian presidential election, a TV debate between the two main contestants took place on public TV and was aired by several other TV channels. Six journalists representing Armenian private TV companies were invited to ask questions to both candidates. The format of the debate and the selection of participating journalists were regarded as biased by the opposition candidate. In fact, all the journalists came from TV stations that supported the President. In another positive development, several private TV stations organized a number of debates and discussions between candidate representatives.

Private broadcasters monitored by the EOM once again failed to provide a level playing field for the opposition candidate and remained openly biased in favour of the incumbent in their primetime news coverage in the period between the two rounds. In contrast to the first round, five private television stations decided not to offer air time for paid political advertising, further restricting the opportunity for the opposition candidate to present his views.

The print media continued to show clear bias in favour of their chosen candidate to the extent that voters could not rely on any one source of information to gain an objective view of the campaign. The State-funded *Hayastani Haranpetutyun* remained heavily biased in favour of the incumbent, allocating him 57% of its candidate coverage with an exclusively positive tone; in comparison, 67% of coverage received by the opposition candidate was negative. The newspaper again apparently violated its legal obligations as a publication established by the State. *Hayastani Haranpetutyun* also refused to publish, even as a paid advertisement, the text of the OSCE/ODIHR statement of preliminary findings and conclusions on the second round of the election.

As in the first round, the only alternative sources of political information were a limited number of opposition newspapers that showed clear bias against the incumbent and offered a platform to his opponent. The *Aravot* daily, for example, allocated 62% of its coverage to the incumbent, but with an overwhelmingly negative tone. However, due to localized circulation, the few opposition newspapers could not compensate for the lack of balance in the electronic media. Following the second round, an opposition newspaper published bogus letters of congratulations to Demirchyan, purporting to be from the Governor of California and from a California Senator.

International observers continued to receive credible reports of intimidation and harassment of journalists. In the period between the two rounds some journalists reported that they experienced pressure, coercion and editorial interference akin to censorship following their coverage of opposition gatherings and subsequent detentions. The Russian independent TV station *NTV*, which provided full coverage of the events, went off-air in Armenia on 26 February; the local company Paradise, which re-broadcasts *NTV* programs in Armenia, reported technical problems with its transmitters. Senior public TV sources also reported that its journalists received threats.

In general, the media's coverage of the election demonstrated that Armenia still lacks a strong and independent media able to provide balanced information to enable the electorate to make a well-informed decision.



## VIII. COMPLAINTS AND APPEALS

The Electoral Code grants candidates and their proxies the right to complain about violations of the law and to appeal against any decision of an election commission. Complaints and appeals can be directed to the responsible election commission or a superior commission (either a TEC or the CEC) or to a Court of First Instance, within two days of the act or decision that is being challenged. The commissions are legally required to consider and review the complaint or appeal and to publicize their decisions. Recounts are obligatory if requested by a proxy before 14:00 on the day after the election.

The complaints and appeals processes did not function well and did not provide effective remedies to complainants. The concerns of candidates and proxies were generally not adequately addressed. In particular, complaints were handled by the CEC in a generally dismissive manner. Most of the complaints it received were answered without consideration by the full CEC. No decisions were published, contravening Article 7.2 of the Electoral Code, which could lead to liability under Article 139.30 of the Code. At the TEC level, a number of requests for recounts were refused in contravention of Article 62.10 of the Electoral Code. A very limited number of appeals were filed with courts and all were declared inadmissible or scheduled for a hearing after the end of the election period. These problems contributed to a significant lack of confidence in the transparency, effectiveness and independence of the dispute resolution mechanisms. There was also verified evidence that intimidation played a role in discouraging complaints to PECs and TECs.

### A. FIRST ROUND

During the period prior to the first round election day, the CEC received 34 complaints. On election day and during the following period, many complaints regarding election day violations were submitted directly to the CEC. A significant number were referred back to TECs and PECs without consideration by the CEC. None of the complaints submitted to the CEC were upheld. In no case did the CEC overturn a decision of a lower-level electoral commission. The CEC took no action in relation to the reports provided to it by the EOM of cases of verified election fraud and ballot stuffing.

Although the CEC provided the EOM with a detailed summary of the 34 complaints made during the pre-election period, it supplied only a list of the complaints received in relation to election day. This did not provide details of the complaints, including either their substance or the basis of the decisions. Therefore, it was not possible to assess the extent to which the substance of the decisions complied with the law.

Sixteen of the complaints made to the CEC in relation to election day were referred to the Office of the Prosecutor General, five of which were related to ballot stuffing. However, no formal investigations were opened on allegations of Electoral Code violations. Separate complaints alleging violations of the Criminal and Electoral Codes in the run-up to and on the first round election day were also made directly to the Prosecutor General. Formal investigations were opened on seven of these 16 complaints, although again none led to prosecution.

The manner in which complaints were dealt with at the TEC level was also often unsatisfactory, generally lacking transparency and reinforcing the lack of confidence in the complaints procedure. For example, as noted above, a number of TECs were not open, as required, to receive complaints up to 14:00 on the day following the election. Others refused to consider the special opinions

submitted by PEC members who had witnessed violations. Recounts were held in 14 TECs, but a number of others refused recounts, in contravention of Article 62.10 of the Electoral Code.

Only in a very limited number of instances did candidates file court cases with the courts of general jurisdiction on election complaints. Two important cases related to the eligibility of candidates. Candidates for the office of president are required to have been citizens of Armenia and resident in the country for at least ten years. The CEC denied registration to one candidate, Raffi Hovhannisyan, a former Minister of Foreign Affairs, on the grounds that he failed the 10-year citizenship requirement. On 8 January he brought a case to the Kentron and Nor-Marash Court of First Instance; the court ruled against him the following day. Hovhannisyan then appealed the decision to the Appellate Court, which on 17 January upheld the lower court's ruling. The other case was brought by several candidates, challenging whether Robert Kocharyan met the citizenship and residency requirements. The same court of first instance (Kentron and Nor-Marash) ruled that Kocharyan's residency and citizenship as certified by the Ministry of Internal Affairs was valid and that the complaint was unfounded.

In two other noteworthy cases, courts failed to provide substantive decisions on issues impacting on the electoral process. One important case appealed a CEC decision limiting the right of proxies on election day. Although the Electoral Code provides for an expedited timeframe for hearing cases regarding actions of the CEC, in this instance the judge deemed the case to fall within the normal civil procedure and scheduled the hearing for after the election. The other case involved a CEC decision that public TV must broadcast free campaign spots as part of its out-of-country programming. The court dismissed the case on the grounds that the applicant had withdrawn from the race as a candidate. The candidate's representative was not allowed by the judge to proceed with the case as an interested citizen. The net result was that implementation of the CEC decision was delayed until after election day, when it was no longer meaningful.

On 27 February, candidate Artashes Geghamyan, who officially came third in the first round with 17.66% of the vote, filed a case asking the Constitutional Court to invalidate the results of the first round of the election. On 3 March, the Constitutional Court decided to admit the case and ordered the CEC to be the official respondent. In hearings that ran for five days, the Court heard presentations from both parties and, in order to resolve allegations relating to the failure to hold recounts, ordered the CEC to organise a process in which results could be verified in 11 identified polling stations.

The Court issued its Decision on 24 March, rejecting the complaint. In essence, the Court decided that (i) most of the violations alleged by the complainant had not been proved and (ii) the violations that had been proved did not have an impact on results. The Constitutional Court noted in its remarks that the Constitution and the Electoral Code are unclear about the powers of the Court in relation to a complaint challenging the results.

As part of the decision, the Court was also critical of the "shortcomings in the running of the electoral process" by the CEC, in particular with regard to its handling of complaints and its failure to address facts contained in the OSCE/ODIHR first round preliminary statement.

All proceedings of the Court were observed by two representatives of the EOM who noted that the proceedings were organized in a fully transparent manner, with hearings held in public and both parties to the case allowed full access to all materials used. In general the Court performed its work in a rigorous and professional manner. The only problematic stage of the process was observed at

the CEC during the organization of the exercise to verify results in the 11 polling stations. This was run in a non-transparent, partisan and disorganized manner that failed to address the Court's instructions, to follow the provisions of the Electoral Code or to resolve the concerns raised by the complainant.

## **B. SECOND ROUND**

The CEC received 99 complaints relating to the second round election day. Again, the members of the CEC did not meet publicly to consider the complaints. The decisions taken were not published except in general summary on the CEC website.

A large number of the 56 TECs did not handle complaints in accordance with the Electoral Code. Complaints from proxies were reportedly not accepted by a number of TECs, including TECs 27, 28 and 29. Many other TECs refused to undertake all of the recounts requested, in contravention of Article 62.10 of the Electoral Code. For example, recounts were refused despite requests at TECs 1, 3, 4, 12, 31, 34, 35, 36, 37, 38, 41, 42, 46, 47, 48, 49, 51, 53. Many other TECs did conduct recounts, but only for some of the complaints received, for example:

- TEC 2 (9 complaints, 1 recount);
- TEC 6 (more than 15 complaints, 2 recounts);
- TEC 7 (10 complaints, 5 recounts);
- TEC 15 (8 complaints, 2 recounts);
- TEC 16 (17 complaints 1 recount);
- TEC 33 (10 complaints, 2 recounts);
- TEC 52 (14 complaints, 7 recounts).

Only a few recounts were held for polling stations where international observers observed ballot stuffing. When recounts were conducted, the results generally did not differ significantly from the original results. However, there is an inherent problem with recounts in the face of widespread ballot box stuffing: even though the count may be accurate, the ballots counted may be fraudulent.

On 17 March, Stepan Demirchyan filed a complaint with the Constitutional Court challenging the results of the second round. The Court accepted the case and after two weeks of hearings issued its decision on 16 April. The Decision, which was reached after a final closed deliberation of the Court of nearly seven hours, found that the arguments brought by Demirchyan were not refuted, but did not invalidate the results of the election. To address the violations identified during the case, the court ordered that in 40 designated polling stations where the results were proved to be implausible, the number of votes given to the candidate who won in that polling station should be deducted from the candidate's overall total. The Decision also stated that the Office of the Prosecutor General should investigate these cases and hold accountable those responsible for falsification of election documents in the 40 polling stations. Finally, the Court recommended that the newly elected National Assembly and President hold a "referendum of confidence" within a year.

As part of the Decision, the Constitutional Court addressed the occurrence of administrative detentions between the two rounds of the election. The Court considered the practice to be in violation of the European Convention on Human Rights and that the form and content of the detention orders should be subject of a discussion by the Council of Court Chairmen and the Judicial Council, entities with supervisory functions over the judiciary.

The Court again conducted its work in a professional and diligent manner. Hearings were open to the public and undertaken in an adversarial manner, allowing rigorous and equal questioning by all justices of both parties and giving equal access to all relevant documents.

## **IX. PARTICIPATION OF WOMEN**

There are no legal barriers to participation by women in the political process. Female voters comprise 51.8% of the electorate and women make up 65% of the population with a university education. However, the number of women holding political office in Armenia has fallen sharply in the past decade. In the 1995 parliamentary elections, only 12 women were elected to the 131-member National Assembly. In 1999, when the current National Assembly was elected, the number fell to just four. The current government has no female ministers. The judiciary, where women comprise nearly 30% of the judges, is the only branch of government with considerable gender representation.

There were no women among the candidates for the presidential election.

Most campaign teams included a few active and influential women in prominent positions. In general, women remain under-represented on political party executives and leaderships. Political party membership is predominantly male. Issues of particular concern to women – including access to health care, higher unemployment among women, and low levels of women's political participation – were generally not effectively addressed in the campaign.

A number of women were active in the election process through participation in the election administration, political parties and NGOs. Although only one woman is a member of the CEC, women head the CEC's Legal Department, General Services Department and Press Office. At the TEC level, 90 of the 504 TEC members (17.8%) were women. The number of women on PECs was estimated at slightly over 20%, based on information provided by international observers. Observation statistics suggest that women comprised an estimated 17% of PEC Chairpersons, 16% of Deputy Chairpersons and 57% of Secretaries. Observers noted a clear difference between rural representation of women on PECs (9%) and representation in urban areas (21%).

Women were well represented in civil society activities focusing on the election. One women's NGO, the Women's Republican Council, fielded some 300 election observers. Another NGO, the Association of Women with University Education, held a seminar shortly before the first round focusing on the gender perspective of issues such as the role of the president, development of an electoral culture, and the function of NGOs in a democratic society.

## **X. DOMESTIC OBSERVERS**

A positive aspect of the election process was the active participation of a large number of domestic observer groups. Of 31 domestic groups that applied to observe the election, 29 were accredited by the CEC. The most substantial domestic observation was carried out by the NGO "It's Your Choice", which observed the pre-election period and reported deploying observers to over 400 PECs throughout the country for the first round election day, and even more for the second round. "It's Your Choice" issued regular reports highlighting trends and listing specific instances of election irregularities. The Women's Republican Council also issued reports on its observations.

Several smaller groups also followed the broad range of electoral issues and regularly shared their assessments with international observers, as well as pointing out specific irregularities.

A number of other domestic observer groups focused on specific aspects of the election. For example, the Caucasus Media Institute and the Yerevan Press Club collaborated in media monitoring. Other groups focused on legal issues, including filing court cases. One group assessed facilities for voting by disabled persons.

## **XI. OBSERVATION OF VOTING AND COUNTING**

### **A. FIRST ROUND**

On election day, 19 February, observers reported that voting was generally calm and relatively well administered throughout the country. Voting procedures were correctly followed in most polling stations visited. Candidate proxies were present in all polling stations visited and domestic observers were seen in some 50% of polling stations. Observers assessed the voting process positively in 90% of polling stations.

However, international observers reported significant irregularities during voting in 10% of polling stations. This figure represents a disturbingly high proportion of negative findings, particularly since observers spend limited time in individual polling stations and officials are less likely to commit or allow violations while international observers are present.

The most blatant of the irregularities reported involved cases of ballot-box stuffing, including at polling stations in Yerevan, Armavir, Kotayk and Sjunik regions. A list of 22 polling stations where ballot stuffing was confirmed by international observers during the first round is included in Annex A. Confirmation by international observers of ballot box stuffing on a scale this large is highly unusual. The use of transparent ballot boxes contributed to the ability of observers to detect this method of fraud.

Beyond ballot box stuffing, observers reported other fraudulent practices during voting. "Carousel" voting was observed in Shirak region (polling station number 1373) and vote-buying was observed in a polling station in Ararat region (polling station number 0586).<sup>2</sup> Observers in Ararat, Yerevan and Gegharkunik regions witnessed individuals voting more than once (polling station numbers 0327, 0586, 0896). In Lori region, a policeman was witnessed carrying a box of at least 50 passports out of a polling station. Intimidation of proxies was observed in a number of polling stations. The presence of unauthorized persons, including government officials, in polling stations (23%) was a continuing concern, particularly as in a few cases they were seen acting in an intimidating manner.

Signed and stamped ballots were circulating outside of polling stations in Yerevan and other parts of the country, some of which were handed to international observers. A stack of some 400 blank, unsigned ballots was also delivered to the EOM headquarters. The existence of such evidence indicates unacceptable lack of control of sensitive materials.

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<sup>2</sup> "Carousel voting" involves voters in sequence casting premarked ballot papers in substitution for the blank ballot papers they receive at the polling station; the blank ballot is smuggled out and premarked for the next participant. Voters are often paid to participate in such a scheme.

International observers also reported many other instances of irregularities at polling stations. In addition, proxies, political party representatives and domestic observers reported a large number of other alleged instances of fraud or irregularities to international observers. Many of these reports were credible, but could not be independently verified. Others could be discounted after brief investigation.

While most observers reported that counting procedures were properly followed, a number of serious irregularities were observed. The counting process was negatively assessed by observers in 20% of polling stations where counting was observed, a very high proportion. Clear evidence of ballot box stuffing was confirmed by international observers in several PECs during the count; these are included in the list in Annex A. The deliberate falsification of results by a PEC Chairperson was witnessed by international observers in polling station number 0390. In another polling station, two proxies were physically assaulted by PEC members. The chairperson of one PEC was witnessed stopping on the way to the TEC to give a copy of the results to the Police.

The voting and counting processes were generally transparent. In more than 90% of polling stations where international observers monitored the vote, proxies and domestic observers were able to observe all aspects of the process. In most polling stations protocols were made available to proxies and observers. While the tabulation process in TECs in which observers were present was also generally transparent, in TECs 16 and 29 observers were restricted from viewing the process. Observers also reported that tabulation in TECs 25 and 46 lacked transparency. With rare exceptions, TECs did not post publicly a breakdown of PEC results, although international observers at a number of TECs were able to get copies of the tabulation broken down by polling station.

Between the two rounds, the EOM discussed the first round irregularities, fraud and violations of law with a range of senior Armenian officials. The EOM encouraged the officials to express public concern over the violations and to take action to hold those responsible accountable. Although the prosecutor opened seven criminal investigations relating to the election, only one of these related to election day violations and this was not pursued since the complainant would not reveal the source of some 300 ballot papers he presented. None of the specific cases reported by the EOM was pursued. The same officials continued to staff polling stations for the second round even where serious violations had taken place in the first round. Moreover, the official results for the first round included the results from polling stations with ballot box stuffing and other irregularities as if no irregularities had taken place. Taken together, these circumstances represent a general failure by the authorities to hold accountable those responsible for irregularities in the first round. This also cast doubt on the authorities' determination to improve the process in the second round.

## **B. SECOND ROUND**

Voting took place against the background of the events of the previous two weeks in an atmosphere of increased tension. Observers reported that in general technical procedures were correctly followed and assessed the process positively in 87% of polling stations visited, slightly less than in the first round.

Once again, the voting was marred by serious irregularities in a large number of polling stations. The percentage of polling stations where significant problems were observed rose to 13%, a disturbingly high figure.

Of most concern was ballot stuffing. International observers documented and confirmed ballot stuffing in more than 70 polling stations around the country; a list is included in Annex A. Evidence suggested likely ballot stuffing in a number of additional polling stations, as well.

There were also some confirmed instances of stamped and signed ballots circulating outside polling stations before and during the voting; a list of stamp numbers obtained and/or witnessed by the EOM is included in Annex B. Also circulating in Yerevan and other regions were unsealed special envelopes bearing the stamp of the CEC intended to hold PEC stamps during delivery to PECs. Such stamped, unsealed envelopes should not exist at all, much less circulate outside the control of the CEC. Their existence, at a minimum, shows unacceptably poor control of sensitive materials by election officials.

Observers also noted problems with military voting, including open voting (for example in polling station number 0362). “Carousel” voting was again reported, for example in Armavir region (polling stations number 0707 and 0801). International observers also reported falsification of signatures on voter lists, voting on behalf of deceased or absent persons, and multiple voting by the same person. In Vanadzor, international observers witnessed a vote-buying scheme.

Intimidation was witnessed by international observers in a number of polling stations. Targets of intimidation were generally proxies of the opposition candidate. The presence of unauthorized persons, including government officials, in polling stations (24%) was once more a concern. In a few cases, proxies or unauthorized persons supporting the incumbent were seen to be exerting undue influence in polling stations.

The counting process was negatively assessed by observers in many polling stations. Polling stations in which evidence of ballot box stuffing was confirmed are included in Annex A. International observers also witnessed other serious irregularities, including the addition of ballot papers after the counting process had commenced (polling station number 0293), the invalidation of ballot papers for one candidate (polling station numbers 0091 and 0890), and deliberate miscounting (polling station numbers 0004, 0556 and 0598). Unauthorized persons were present at almost half of counts observed.

While both candidates were represented by proxies in most polling stations, in a significant number more than one per candidate was present, in contravention of the law. Domestic observers were present in more than 50% of polling stations visited. In a number of polling stations, international observers, domestic observers and proxies were restricted from observing all aspects of the counting process. In two polling stations (numbers 0023 and 0029) international observers were not allowed to attend the count, in contravention of Articles 28 and 30 of the Electoral Code. In almost two-thirds of polling stations where counts were observed, copies of result protocols were not posted at the completion of the count, contrary to Article 61.8 of the Electoral Code. However, copies of protocols were generally made available to all who requested a copy.

International observers reported that the tabulation of results at TECs at which they were present was again generally transparent although in TECs 6, 12 and 37 observers were unable to view all aspects of the process. While observers were generally provided with TEC tabulation of results, in only a very few cases were TECs found to have publicly posted a breakdown of PEC results.

The EOM presented concrete evidence of election day fraud and irregularities to Armenian officials following the second round of voting. This included a list of polling stations where international observers confirmed ballot box stuffing, photographs of stuffed ballot boxes, a list of polling stations from which stamped, signed ballots were circulating, actual ballot papers from several polling stations, and stamped envelopes intended to hold PEC seals, as well as other evidence of irregularities and violations of law.

## **XII. ELECTION RESULTS**

### **A. FIRST ROUND**

On 20 February, the CEC announced preliminary results of the presidential election. The official tally showed that of 1,418,811 votes for the nine candidates, incumbent Robert Kocharyan received 707,155 votes (49.84%), just short of the required majority necessary to win in the first round, while his closest competitor, Stepan Demirchyan, received 400,846 (28.25%). Based on these results the CEC announced that a second round would be held on 5 March between Kocharyan and Demirchyan. The official results were announced five days later, showing that the incumbent's percentage fell slightly to 49.48%, while Demirchyan's total also fell slightly to 28.22%.

Detailed results were not issued until the legal deadline, six days after election day. There was no time left to correct even obvious discrepancies in the official results, a problem that might have been alleviated if detailed preliminary results had been made publicly available. The CEC subsequently corrected a limited number of inconsistencies in its own records and in a new tabulation provided to the EOM, but the official statistics stand as originally announced. The CEC Chairman attributed some of the discrepancies to data entry errors by inexperienced computer operators, and others to lapses in procedures at some PECs. However, the figures represent unacceptably high levels of erroneous data and most of the discrepancies cannot be explained this way.

The discrepancies included seven polling stations with voter turnouts of over 100% and over 120 polling stations where more ballots were found in the ballot box than were issued to voters. In six polling stations, the votes shifted from one candidate to another between the preliminary and final results; this explains most of the slight decrease in Robert Kocharyan's tally between the preliminary and final results. There were approximately 20,100 more voters on the voter lists in the official results than the official number announced three days before the election; only about half of this difference can be accounted for by persons legally added to the list on voting day.

Perhaps most disturbingly, the official results for some polling stations were different from the original protocols received by international observers at the time of counting, although no recounts were undertaken for these polling stations (for example polling station numbers 0218, 1361 and 1654).

Beyond clear mistakes, the official statistics included a number of implausible figures:

- 12 polling stations where the incumbent won every vote;
- 96 polling stations where the incumbent won more than 90% of the vote;
- 11 polling stations with 100% voter turnout, and almost 100 polling stations with over 90% turnout.



These anomalies would raise serious questions in any election. In this instance, they also show a striking disparity from an otherwise reasonably consistent pattern of results when compared to neighbouring polling stations and national averages in Armenia. The extremely high voter turnout figures in certain polling stations are even more implausible when considering the very large number of Armenian voters abroad who did not participate in the election.

## **B. SECOND ROUND**

The preliminary results for the second round, announced by the CEC on 6 March, showed that Robert Kocharyan won with 1,044,801 votes (67.52%), while Stepan Demirchyan won 503,136 votes (32.48%). Once again, the preliminary results were announced without a detailed breakdown to polling station level. The official results were issued five days later; the EOM was provided with detailed results at that time.

The official figures again included some mistakes and discrepancies. For example, there were 72 polling stations that reported more ballots in the ballot box than were issued to voters. The official result from one polling station was different from the original protocol received by international observers at the time of counting, although no recount was undertaken for this polling station (number 1709); the CEC corrected this discrepancy in the final results.

There were again a number of implausible figures in the official results, including:

- 20 polling stations where voter turnout was 100% and 147 where the turnout was over 90% (both figures up substantially from the first round);
- 200 polling stations where the incumbent received more than 90% of the votes cast.

Of the 71 polling stations in which international observers confirmed ballot box stuffing in the second round, Kocharyan won the large majority of votes in 69.

## **XIII. POST-ELECTION DEVELOPMENTS**

On 17 March 2003, three days after the departure of the EOM from Armenia, a Presidential Decision (NK-1340) was issued to create a Working Group to study the violations reported by international observers. In particular, the Working Group was tasked to look into specific evidence presented by the EOM to the CEC. This evidence included:

1. An analysis of first and second round news and analytical programming by public TV and a State newspaper demonstrating clear violations of laws requiring objective and unbiased reporting.
2. A list of public facilities used for the campaign of the incumbent, in apparent violation of Electoral Code provisions requiring the CEC to ensure equal conditions for the candidates.
3. A list of 93 polling stations at which international observers confirmed ballot box stuffing (22 in the first round and 71 in the second round).
4. Photographs of stuffed ballot boxes at identified polling stations.
5. A list of stamp numbers from eight polling stations from which stamped, signed ballots were circulating outside the polling station on second round election days.
6. A schedule of irregularities, discrepancies and implausibilities in the final results of first round, as reported by the CEC, affecting well over 100 polling stations.
7. Copies of protocols for four polling stations recording results differing from those results subsequently published by TECs or the CEC.

8. Ballot papers or stacks of ballot papers – in many instances signed and stamped – circulating outside polling stations on the two election days, and two unsealed envelopes stamped with the CEC seal, intended to hold PEC seals.

Of this evidence, the Working Group appears to have focused only on the list of polling stations where the EOM reported ballot stuffing on the second round election day and on some other irregularities noted in the EOM's second round preliminary statement. The Working Group issued its report on 28 March, essentially dismissing all of the facts and conclusions registered by the EOM.

The EOM stands by its evidence and its conclusions.

#### **XIV. RECOMMENDATIONS**

##### **A. RECOMMENDATIONS FOR IMMEDIATE ACTION**

The presidential election will be followed by parliamentary elections in May 2003. In general, it is not advisable to make significant changes to electoral procedures once an election process is underway. However, the following steps should be taken immediately. They do not require legislative changes, and their implementation would substantially improve confidence in the electoral process before the parliamentary elections:

1. The authorities should make clear consistently and at the highest levels that election fraud of any kind is unacceptable and will not be tolerated. Senior officials should accept political responsibility for the violations perpetrated by their supporters in the presidential election and should take steps to ensure proper behaviour in the parliamentary elections.
2. The authorities should immediately undertake measures to hold criminally accountable those responsible for violating the election law.
3. Persons in charge of PECs and TECs where serious violations of law occurred should be replaced, unless the violations were clearly beyond their control.
4. Public television and the State-funded newspaper *Hayastani Hanrapetutyun* should be sanctioned for their unequal treatment of candidates in the presidential election, in violation of law, and authorities should ensure their neutrality for the parliamentary elections.
5. The authorities should abolish the provisions of the Administrative Code concerning administrative detention and refrain from applying them in the interim.
6. The CEC should take and implement a decision to make available to the public a complete and detailed breakdown of the preliminary election results, down to polling station level, when the preliminary results of the parliamentary elections are announced. TECs should be required to publicly post results by PEC before forwarding them to the CEC.
7. The CEC should take a decision to allow all proxies and accredited observers to have sufficient freedom of movement in polling stations to ensure they can clearly observe all voting and

counting procedures. Proxies and observers should also be able to observe all procedures at the TECs and at the CEC, including data entry into computers.

8. The election administration at all levels should institute and implement, through receipts, strict accountability over sensitive election materials, including blank ballot papers, envelopes for polling station stamps, and polling station stamps, and should carefully control signed ballot papers.

## **B. RECOMMENDATIONS FOR LONGER-TERM ACTION**

### **The Legal and Constitutional Framework**

9. The Electoral Code should be amended to require that the preliminary election results include a detailed breakdown, down to the polling station level.
10. The parliament should review provisions regarding the composition of election commissions, with a view to ensuring political balance, confidence of election stakeholders in the process and professional performance of the election administration.
11. The Electoral Code should be amended to ensure that the timeframes allowed for any appeals of results of presidential elections are compatible with Constitutional provisions for ruling on election appeals by the Constitutional Court.
12. Article 40 of the Electoral Code, on the adjudication of complaints regarding actions and omissions of election commissions, should be reviewed and clarified in accordance with guidelines produced by OSCE/ODIHR.<sup>3</sup> In particular, the Code should (i) specify whether complainants should appeal to an election commission or to a court, (ii) ensure timeliness in the decision making process, (iii) stipulate that both election commissions and courts must provide the reasons for their decisions, and (iv) ensure judicial review and appeal of decisions at the appropriate level.
13. Article 57 of the Electoral Code should be amended to stipulate that a report of a violation can be entered into a PEC register on the request of one member of a PEC or one proxy.
14. The authorities should ensure that use of public resources during an election campaign is clearly defined in law and implemented on a non-discriminatory and equal basis.

### **Election Administration**

15. A sustained and systematic republic-wide effort is needed to improve the quality of the voter lists. Armenia should develop and maintain a regularly updated national civil/voter register to prevent multiple registration and inclusion of names of deceased citizens in the voter lists.
16. The CEC should hold regular, scheduled and formal meetings during an election period, which allow for debate and discussion. Proxies and observers must be informed of such meetings in a timely manner.

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<sup>3</sup> See "Resolving Election Disputes in the OSCE Area: Towards a Standard Election Dispute Monitoring System", OSCE/ODIHR, Warsaw, 12 July 2000.

17. As required by law, election commissions at all levels should operate on the principle of collegiality and partnership and ensure that serious consideration is given to proposals of all members.
18. As required by law, the CEC should take formal decisions on all relevant complaints and appeals and make publicly available, in a timely manner, full details of all complaints received and decisions taken.
19. TECs should ensure that they are open to receive and give due consideration to complaints.
20. Unauthorised persons should not be permitted to be present in election commission premises during voting, counting and tabulation.
21. The CEC and TECs should ensure that polling stations and voting booths are accessible to disabled voters.

### **Media**

22. In order to help ensure impartiality in the regulation of broadcasting, Articles 29 and 39 of the Law on TV and Radio Broadcasting should be amended to provide for balanced membership on the National Commission for Television and Radio and on the Public TV Council. The Council should oversee the public TV and radio independently to ensure publicly funded media live up to their requirements for neutrality.
23. The public media should develop a neutral, objective and informative editorial line and its reporting should be balanced, including when covering government activities during an election period.
24. State authorities should refrain from interfering in the activities of journalists and other media personnel with a view to influencing elections. There should not be any intimidation, threats, closures or pressure on the media by public authorities.

**ANNEX A -- Polling stations where the EOM confirmed ballot box stuffing**

**First Round**  
 19 February

| TEC | PEC  |
|-----|------|
| 2   | 0029 |
| 6   | 0122 |
| 6   | 0124 |
| 6   | 0133 |
| 10  | 0219 |
| 11  | 0250 |
| 11  | 0252 |
| 16  | 0362 |
| 22  | 0586 |
| 26  | 0694 |
| 26  | 0695 |

| TEC | PEC  |
|-----|------|
| 26  | 0703 |
| 26  | 0704 |
| 26  | 0708 |
| 26  | 0710 |
| 29  | 0800 |
| 42  | 1253 |
| 45  | 1353 |
| 51  | 1582 |
| 51  | 1585 |
| 53  | 1703 |
| 55  | 1816 |

**Second Round**  
 5 March

| TEC | PEC  |
|-----|------|
| 1   | 0004 |
| 1   | 0014 |
| 5   | 0101 |
| 6   | 0115 |
| 6   | 0119 |
| 6   | 0133 |
| 9   | 0201 |
| 11  | 0251 |
| 11  | 0252 |
| 12  | 0268 |
| 12  | 0273 |
| 12  | 0274 |
| 13  | 0285 |
| 13  | 0293 |
| 14  | 0310 |
| 14  | 0318 |
| 14  | 0320 |
| 15  | 0332 |
| 15  | 0333 |
| 15  | 0340 |
| 17  | 0385 |
| 17  | 0390 |
| 17  | 0391 |
| 18  | 0396 |
| 18  | 0397 |
| 18  | 0398 |
| 18  | 0400 |
| 18  | 0403 |
| 18  | 0406 |
| 18  | 0415 |
| 18  | 0416 |
| 18  | 0418 |
| 19  | 0450 |
| 23  | 0616 |
| 23  | 0617 |
| 23  | 0618 |

| TEC | PEC  |
|-----|------|
| 26  | 0695 |
| 26  | 0704 |
| 26  | 0705 |
| 26  | 0710 |
| 26  | 0711 |
| 26  | 0712 |
| 27  | 0732 |
| 29  | 0781 |
| 29  | 0788 |
| 29  | 0790 |
| 29  | 0794 |
| 29  | 0797 |
| 29  | 0801 |
| 30  | 0822 |
| 32  | 0890 |
| 33  | 0908 |
| 33  | 0931 |
| 34  | 0989 |
| 34  | 0990 |
| 39  | 1116 |
| 40  | 1195 |
| 40  | 1218 |
| 41  | 1230 |
| 42  | 1252 |
| 42  | 1254 |
| 42  | 1259 |
| 42  | 1260 |
| 44  | 1329 |
| 52  | 1647 |
| 52  | 1656 |
| 52  | 1688 |
| 53  | 1699 |
| 53  | 1703 |
| 53  | 1704 |
| 53  | 1705 |

**ANNEX B -- Polling stations where the EOM confirmed stamped ballot papers outside of polling stations**

Second Round  
5 March 2003

| Number of PEC stamp on<br>ballot paper |
|--|
| 0404                                   |
| 0968                                   |
| 1030                                   |
| 1496                                   |
| 1790                                   |
| 1835                                   |
| 2177                                   |
| 2178                                   |

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main 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 by the OSCE Heads of State or Government at the 1990 Paris Summit. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratisation. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates 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 six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, 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. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

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 institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](#), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR.