

**OCTOBER 27, 2013 PRESIDENTIAL ELECTIONS
IN GEORGIA**

STEP FORWARD TO DEMOCRACY



HUMAN RIGHTS CENTER

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Introduction

Presidential Elections are always a significant political event, however Georgian Presidential Elections held on October 27, 2013 had a different effect on the country. After the coalition Georgian Dream gained majority seats in the Parliament as a result of Parliamentary Elections of 2012, the country faced for the first time a situation when the President did not represent a political party/coalition having majority in the Legislative branch. Hence, the Government was formed by another party than the one the President is from. As a result, Georgia faced the cohabitation in the power, during this period power to rule the country was divided between two political groups - Coalition Georgian Dream (hereinafter GD) having majority in the parliament and forming the government and the United National Movement (hereinafter UNM) having the president with quite extensive constitutional competences. So during the history of Georgia this was the first election as a result of which one party did not have power to control every branch of the government. Therefore, the Presidential Elections of 2013 were a power play between the Georgian Dream and former ruling party United National Movement. It was a test for the new Government as to how the population assessed the past year and a possibility for the former ruling party to demonstrate that they have support from a significant part of the people of Georgia. GD candidate winning the elections proved their support remains highest, while UNM candidate gaining second place in the Elections guaranteed their strong political position in Georgia.

On the other hand, these elections had important legal implications – as a result, the constitutional changes adopted by the parliament in 2010 are enforced after the new President took the oath. The powers of the President are diminished, while the Parliament and Prime-Minister gain more. Hence, the President's figure will not be as strong as it was before. This change affected society vastly bringing less importance to these Presidential Elections compared to the ones before. This could have been one of the reasons for low voter activity.

The effective evaluation and monitoring of the election process cannot be limited to the polling day. Freedom and fairness of the election is affected the whole pre-election period and at certain point in post-election process. Therefore qualified assessment of the election process requires an

analysis of the whole period included pre-election and post-election events. This report will try to analyze the fairness of the pre-election process, by discussing facts of abuse of state resources; furthermore we will discuss the election process during the Election Day itself and shortly after the polling date. The report will underline the violations of the Election law and Legal principle relevant to election process. It will try to show a general trend that became visible from the analysis and present general or specific recommendations how to address and solve such issues.

This report is comprised of 5 main chapters – first one deals with legal background regulating the pre-election period and describes changes brought in the law since previous general elections; second chapter discusses the facts and trends recorded during the pre-election period; third – describes the election day, underlining violations and tendencies that needs to be addressed in future; fourth chapter focuses on post-election period and the last one draws recommendations that must be taken into account to ensure problems are eliminated.

To create this report HRIDC used articles published on www.humanrights.ge, webpage administered by the organization and generally available information. Articles were delivered by local journalists working in 3 regions –Adjara, Kakheti and Shida Kartli. The Information compiled and analyzed in this report, is focused not only on violations of the law, but also on trends that are problematic and need special attention, at the same time, trends that had a positive effect are included as well.

Executive Summary

“The 27 October presidential election was efficiently administered, transparent and took place in an amicable and constructive environment. Fundamental freedoms of expression, movement, and assembly were respected and candidates were able to campaign without restriction. The campaign environment was without major irregularities. The media was less polarized during this election, and presented a broad range of viewpoints. On Election Day, voters were able to express their choice freely.”¹ This is the assessment from the major international observation mission deployed in Georgia for the Presidential Elections.

It was obvious that the Government of Georgia had political will to conduct free and fair elections. When comparing the 2013 Elections to the 2012 Parliamentary Elections clear differences emerge, laws and other regulations were not abused by the ruling party against the opposing forces, the pre-election campaign was more balanced and unrestrained; all parties had almost equal opportunities to hold campaigning process, use of force and intimidation cases were down to a minimum. Election Day though had one of the lowest voter turnouts,² definitively proved to be free from pressure and manipulation. Furthermore, the number of special precincts (police, armed forces, prisons, etc) decreased by more than two times is a good example showing this tendency. Mobilization of voters on special precincts in previous years had been always considered a strong mechanism for manipulating election results.

Despite the positive changes, there still were certain cases which need attention. In some cases state authorities have abused the power in their hand and though mostly it does not constitute a direct violation of the law, it is hindering the existence of equal and competitive electoral environment and therefore specific steps should be taken not to repeat same mistakes in the future. Involvement from state officials in campaigning should decrease to the level where threshold between state and political party is clear and different state bodies should ensure unbiased and equal treatment to all subjects.

¹ Statement of Preliminary Findings and Conclusions. Georgia — Presidential Election, 27 October 2013. OSCE. <http://www.osce.org/odihr/elections/107509> [last visited on November 26, 2013]

² Compare Central Election Data from 2013 and previous years: <http://cec.gov.ge/en/page/the-central-election-commission-announces-the-final-results-of-the-october-27-2013-presidential-elections-november-12-2013> <http://cec.gov.ge/en/page/georgia-history-of-elections-1990-2010-5814> [last visited on November 26, 2013]

Election Day needs to be treated with as high professionalism as possible, qualification of administration officials remained problematic issue this year and this is especially crucial when concerning rights of Media and Observation Missions.

The Government should continue working on amending and improving election legislation and include the practical recommendations to determine further policies as well.

Legal Background

Holding free and fair elections is an obligation Georgia has taken under numerous international documents and is guaranteed by the Constitution of Georgia. Elections however, as stated above are not limited to the polling date and due to this reason the pre-election period is governed by law extensively. During past several years Election Law of Georgia has been amended substantively especially with regards to the pre-election period.

After Parliamentary Elections 2012 “Interfactional Group Working on Election Issues” was established in the Georgian Parliament.³ The Group was tasked to amend Election Law of Georgia, the Group has defined timelines for amending different parts of the law. Some issues, included Pre-election campaign regulations, were to be completed by May 31 2013.⁴ The Working Group closely collaborated with opposition parties, local and international NGOs and other important actors.

According to the Copenhagen Document adopted by CSCE (later transformed into OSCE) in 1990 “[States must] ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere in which neither administrative action, violence nor intimidation bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them or from casting their vote free of fear of retribution;”⁵ The document also recognizes essential, to ensure “a clear separation between the State and political parties; in particular, political parties will not be merged with the State.”⁶

These principles can only be assured if there is no abuse of state resources (hereinafter ASR) during pre-election period. There are several types of State Resources according to electoral

³ http://parliament.ge/index.php?option=com_content&view=article&id=3080&Itemid=503&lang=ge in Georgian only. [last visited on November 26, 2013]

⁴ List of tasks can be found here:

http://parliament.ge/index.php?option=com_content&view=article&id=3081&Itemid=504&lang=ge in Georgian only. [last visited on November 26, 2013]

⁵ Document of The Copenhagen Meeting of The Conference on the Human Dimension of the CSCE <http://www.osce.org/node/14304> Article 7.7. [last visited on November 26, 2013]

⁶ *ibid.* article 5.4.

scholarship.⁷ The most widely used categorization was discussed in details and comprehensively researched by Magnus Ohman in “The Abuse of State Resources”.⁸ We can elaborate on the based on categorization offered by M. Ohman and Open Society Foundation:⁹

Financial resources - monetary assets such as budget of various levels of government as well as publically owned and/or managed institutions;

Regulatory (legislative) resources - the mandate to pass laws and regulations that control allowed and prohibited behaviour. The application of regulations in biased manner; use of powers to benefit or hinder certain political actor;

Institutional resources - non-monetary material and personnel resources available to the state;

Enforcement (Coercive) resources - The use of law enforcement institutions on implement laws and rules set up using regulatory resources.

It must be underlined, that according to international practice, abuse of state resources is not something that only Governments can do, though this is its general demonstration. The abuse of state resources is defined as any use of state resources to support or undermine any political actor.¹⁰ Hence, whoever has access to state resources has the ability to abuse them. As it was mentioned above, after the 2012 Election there were two parties in power. At the same time, on local levels in most places there were changes and though UNM had secured majority in every local self-government during 2010 elections, after 2012 Parliamentary elections there were changes almost everywhere. Therefore on local level both parties had access to resources. This report will consequently discuss cases where both parties have tried to abuse state resources and assess them respectively.

⁷ The Open Society Justice Initiative ”Monitoring Election Campaign Finance, a Handbook for NGOs” (2005), categorized State Resources into - “institutional resources”, “regulatory resources”, “legislative resources”, “coercive resources” and “State media”.

⁸ Ohman Magnus, The Abuse of State Resources, 2011, IFES.

http://www.ifes.org/~media/Files/Publications/Papers/2011/Georgia_Abuse_of_state_resources_July_2011.pdf [last visited on November 26, 2013]

⁹ see Ohman Magnus, The Abuse of State Resources, 2011, IFES. pp. 1-2 and The Open Society Justice Initiative ”Monitoring Election Campaign Finance, a Handbook for NGOs” (2005) pp. 99-100.

¹⁰ see Ohman Magnus, The Abuse of State Resources, 2011, IFES. p. 2.

The Election Code of Georgia regulates abuse of state resources to a certain extent. Articles 45-51 regulate pre-election campaigning and therefore provide limits to use of State Resources.¹¹ As mentioned above, certain amendments were brought in by the new government - most of which should be assessed as positive step forward. ASR was prohibited before amendments as well however some of the regulations were vague, broad and left chances to avoid law in case of bad faith interpretation. Among positive changes that were introduced by the Parliament in summer 2013 we can underline several, that make legal background more clear, give more procedural guarantees and ensure equal access to allowed state resources during pre-election period:¹²

- ✓ Adding “political party” to the relevant actors during pre-election period,¹³ previously election campaign regulations gave benefits or imposed limitations only electoral subjects or candidates to become electoral subjects, these two exist only fulfilling certain criteria of registrations at electoral administration. Hence, political parties will enjoy the same benefits and limitations before they fulfill those criteria, since campaigning might start before candidate registration is even possible;
- ✓ Clarifying when public officials are prohibited to take part in pre-election campaigning – previously law banned officials “during directly performing their duties”, amendments brought additional criterion – “during normal business hours”, which will definitely put an end to argument, whether an official campaigning during normal business hours is abusing state resources or is merely skipping his job (the latter was stated numerous times by Election Administration during adjudicating cases regarding abuse of institutional resources);
- ✓ Agitation on the event funded by the state budget (or public money) by the organizers will be considered as abuse of state resources;
- ✓ Detailed procedures were created regarding how state owned buildings can be used during the pre-election period. It includes an obligation for state organs to publish the list

¹¹ Certain provisions of the Election Code have been elaborated in the previous report. <http://humanrights.ge/admin/editor/uploads/pdf/archevnebi%20shualeduri-eng.pdf> [last visited on November 26, 2013]

¹² See current version of Organic Law on Election Code of Georgia (hereinafter Election Code), adopted on December 27, 2011, No 5636, here [last visited on November 26, 2013]: https://matsne.gov.ge/index.php?option=com_ldmssearch&view=docView&id=1557168&Itemid=&lang=en#

¹³ Changes were brought to all articles that provided benefits or limitations during pre-election campaigning.

of available buildings and latter ensuring for all parties to have a chance of using these resources in an equal way.

- ✓ All public officials, except of those political appointees protected by the Special State Security Service (such as President, PM, Ministers, Speaker of the Parliament and few others), are banned to use state owned vehicles for campaign purposes. Previously it was prohibited to use such resources for free or cheaply and special list was given for whom the exception should apply, changes were made due to security reasons and more clarity.
- ✓ Changing the timeframe for abuse of budgetary resources – previously during the whole pre-election period amending the budget was prohibited, according to recent amendments, this prohibition was limited to 60 days prior to Election Day. This change was derived from the fact, that for Presidential Elections pre-election campaign started four months before the Election Day, which was an exception for Georgian history; however the law-makers had faced the problem, which many budgetary plans were impossible to implement due to this prohibition and considered, that limiting budgetary amendments would be more reasonable for 60 days. Also exception in case force-majeure appears was added, when budgetary changes can be made even during 60 day time-frame. At the same time, procedural guarantees of this rule remain to be ambiguous.
- ✓ The last important amendment concerns an Inter-Agency Task Force (hereinafter IATF), which has been working on the pre-election period monitoring in previous years under the Security Council, according to amendments the organ will be working under the Ministry of Justice. This change was rather a political decision than a legal one, since the Head of National Security Council is appointed by the President and neither the Government, nor the Parliament have any effect on it, hence the amendment took the power from the President and shifted it towards the new ruling party.

It should also be mentioned that apart from changes to the Election Code, new ruling party also took steps to amend Organic Law on Political Unions, which included number of possibilities for the state to overpower opposition parties and limit freedom of expression. The changes brought more clarity to the law, more safeguards and protection to civil and political rights, as well as reduced fines, which all in all is a positive step towards free, fair and competitive environment.

Pre-Election Period

As mentioned above analyzing the pre-election period is important for assessing Elections overall. Below we will discuss how political campaigning was held, when abuse of state resources could have taken place, what were the shortcomings, legal problems or other important trends. It has to be noted that ASR cases might not constitute a violation of the law as such, but the practice could be unacceptable for international standards – equal and competitive electoral environment for all candidates and for strong threshold between political parties and the state.

Possible Abuse of State Resources

1. Financial Resources

Compared to the 2012 Parliamentary Elections, the 2013 elections faced less abuse of financial resources. However, there are some cases that are worth mentioning. Firstly, as it was mentioned above, that law prohibits amending Budget 60 days prior to Election Day and this change was introduced in July 2013, while before such an amendment was prohibited during the whole election period.¹⁴ 2013 was exceptional with regards to lengthy pre-election period, the President of Georgia appointed election date on July 1, 2013 almost 4 months prior to the polling date, which has not been the case during past years. Hence, it was not expected and many state or local bodies complained that Election Code tied their hands and paralyzed them. However, law clearly required not to implement projects that had not been previously included in Budget. Legislative Body of Autonomous Republic of Adjara however, amended its budget reallocating certain amount of money and adding new projects financed from State Budget by transfers. Several NGOs protested this change, however two issues were raised – Election Code did not specifically mention Budgets of Autonomous Republics and certain amendments were necessitated by force-majeure.¹⁵ After amending the law, this case was not considered as a violation by the court and at the same time, the Election Code together with limiting the time-

¹⁴ See Election Code. art. 49.

¹⁵ see <http://humanrights.ge/index.php?a=main&pid=17035&lang=eng> [last visited on November 26, 2013]

frame of the application of this rule, also clearly added Budget of Autonomous Republic, which will limit all the controversies.

On the other hand it has to be underlined that similar violations did not take place after August 27 (60th day before the Election Date), however, there was a trend that prior to that deadline, certain local self-government bodies amended their budgets claiming, that afterwards their hands would be tied – Gori municipality introduced amendments on August 26.¹⁶ It is noteworthy that the Election code does not prohibit simply amending the budgets, but also implementing new unplanned projects for 60 days prior to election is also forbidden.

It has to be noted that tendency to use budgetary resources for political gain was common practice in previous years. This did not constitute violation of the law, but it showed how state and party were assimilated with each other, budgetary programmes served campaigning goals vastly.¹⁷ During 2013 such cases almost did not take place, which is one step forward to eliminating the merging of the state and the political party.

1. Regulatory (Legislative) Resources

Election Code and Organic Law on Political Unions were used by the ruling party to oppress and limit opposing forces in 2012, which constituted abuse of legislative resources, limiting freedom of political activity and hence deteriorating fairness and equality in the pre-election period. It must be underlined that the recent amendments to these laws changed the above-mentioned situation they were positively assessed by numerous local and international observers.¹⁸ However, there still were some cases where abuse of regulatory resources can be challenged.

¹⁶ <http://humanrights.ge/index.php?a=main&pid=16996&lang=eng> [last visited on November 26, 2013]

¹⁷ see Report from Transparency International Georgia: <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources>

¹⁸ see assessment of the pre-election environment: <http://www.isfed.ge/main/483/eng/>

Report from Transparency International Georgia: <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources>

Reports from ISFED: <http://www.isfed.ge/main/482/eng/>; <http://www.isfed.ge/main/472/eng/>

OSCE Preliminary Report - <http://www.osce.org/odihr/elections/107509>

[web-pages last visited on November 26, 2013]

One of the examples of abuse of legislative resources was Parliament amending Election Code during pre-election period. Generally it is not recommended to bring any amendments so close to Election Day, unless they are absolutely necessary. However, as it was mentioned above, the Interfactional Group worked on numerous issues in a rather limited timeframe and it was unexpected that the President would appoint Election Date 4 months before, though the latter was definitely a rather positive step. Among these amendments the one concerning time-limit for changing budgets is most striking and can be assessed as an abuse by the Parliament of legislative resources, since state organs faced being tied by the pre-election period and this change was derived from the fact that they were not prepared for a 4 months limitation. Although in some cases force-majeure was claimed to be the cause of budgetary amendments, this does not justify changing the Election Code to fit the reality and delimit state agencies. A shorter timeframe for limiting budgetary change might not constitute a problem as such, but the fact that the Parliament amended the law prior to the elections, during the period when the limit was in force, points to the fact that legislators escaped from regulation by changing it. One should also underline that this regulation was very often avoided during previous years derived from the fact, that the ruling party was aware when Election Day would be appointed and a big number of budgetary changes took place several days before the President appointing the Election Date.

Another case when the President allegedly abused his power concerns his decisions to pardon a number of prisoners.¹⁹ Though such power is vested in Presidential authorities, massively using it in the pre-election campaign can be assessed as not part of the policy, but of securing voters' trust, especially after the critiques he had expressed to Parliament conducting wide-range amnesties. This is why it can be assessed as abuse of regulatory resources.

It has been numerously pointed out by international organisations that the process of detaining and bringing to justice previous high-ranked officials (such as former Prime-Minister – Ivane Merabishvili, Former Minister of Healthcare – Zurab Chiaberashvili, etc.) is politically motivated.²⁰ It is hard to assess cases without having full access to the case materials. However, they need to be looked at closely to ensure a fair trial and limit political influence on the process. During the pre-election period these cases were in the centre of attention and covered by media

¹⁹ see Report from Transparency International Georgia: <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources> [last visited on November 26, 2013]

²⁰ <http://www.oscepa.org/meetings/annual-sessions/1375-ist-dec>

extensively, if the court was biased in any aspect, this can be assessed as abuse of regulatory resources, since the people prosecuted were high-ranked political figures within the party as well as taking part in the pre-election campaign before being arrested.

It was mentioned above that the Inter-Agency Task Force has been removed from the Security Council to Ministry of Justice. This generally can be assessed as a more negative change rather than positive, since the abuse of state resources usually is made by the governing party and when a sole state monitoring body is also representing the same party there is a high risk of it being biased. Especially when such a change takes place during the pre-election period.

2. Institutional Resources

During the Parliamentary Elections of 2012 these kinds of resources were vastly abused by the ruling party.²¹ The 2013 pre-election campaign was not perfect, however it was definitely a step forward compared to previous years. There were several facts that need to be addressed.

Firstly, the biggest problem remains public servants taking part in campaigning. According to numerous reports, during the pre-election campaign of the 2013 Presidential Elections, there were almost no records of forced participation from public servants, and in case of participation, it was mostly according to the existing law.²² At the same time, during the 2012 Elections a vast number of public servants were on vacation in order to avoid violating legal requirement; this trend was also not recorded in 2013.

As mentioned above, the Election Code was positively amended in this light clarifying that public servants cannot take part in agitation while performing their functions and/or during normal working hours.²³ Even in decreased number involvement from public servants in

²¹ see <http://humanrights.ge/admin/editor/uploads/pdf/archevnebi%20shualeduri-eng.pdf> [last visited on November 26, 2013]

²² see assessment of the pre-election environment: <http://www.isfed.ge/main/483/eng/>
Report from Transparency International Georgia: <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources>
Reports from ISFED: <http://www.isfed.ge/main/482/eng/>; <http://www.isfed.ge/main/472/eng/>
[web-pages last visited on November 26, 2013]

²³ Election Code art. 49

campaigning still pales the threshold between State and Political Party, even if the law was not violated. For example in Gori Chairman of municipal board (Sakrebulo) and other representatives of local and central government participated in organizing the pre-election campaign events for Georgian Dream Candidate Giorgi Margvelashvili.²⁴ Since the chairman of the board is understood as a political figure according to the Election Code, he is allowed to participate in the Election Campaign,²⁵ but involvement of representatives from local public agencies in the election process does not serve well to competitive and equal electoral environment. On the other hand, if the representatives of local body were organizing the political event during their normal working hours or while performing their functions as public servants, they could still have violated the Election Code.

There also were rare cases when public servants were subject to intimidation by ruling party representatives. As an example, on September 3 Kaspi district administration employees were told to leave their positions if they were supporting UNM.²⁶ Such events took place massively after the Parliamentary Elections of 2012, resulting in major changes in most local self-government bodies.²⁷ It might not be direct violation of the law, but it definitely serves negatively to the pre-election environment and can be assessed as pressure to anyone opposing.

3. Enforcement (coercive) Resources

Enforcement resources as mentioned above include abuse of powers from police or similar law-enforcing agencies, which can use coercive powers, against political opposition. During the pre-election period several parties brought claims regarding this issue to the Inter-Agency Task Force, but most of them were found ungrounded.²⁸ It has to be noted that compared to the

²⁴ <http://humanrights.ge/index.php?a=main&pid=16969&lang=eng> [last visited on November 26, 2013]

²⁵ Election Code art. 2 and art. 49

²⁶ <http://humanrights.ge/index.php?a=main&pid=17095&lang=eng> [last visited on November 26, 2013]

²⁷ Report from Transparency International Georgia: <http://transparency.ge/en/post/report/ti-georgia-releases-new-monitoring-report-misuse-administrative-resources> [last visited on November 26, 2013]

Reports from ISFED: <http://www.isfed.ge/main/482/eng/>; <http://www.isfed.ge/main/472/eng/> [last visited on November 26, 2013]

²⁸ Report from IATF -

<http://www.justice.gov.ge/Multimedia%2FFiles%2Fangarishi%2FIATF%20report%2019%20Aug-30%20Sept.%20GEO.pdf> [last visited on November 26, 2013]

Parliamentary Elections of 2012, the cases were much smaller in numbers, however they still need to be eliminated.

OSCE in its preliminary report underlined the process that took place during the Primary UNM was holding in the different regions of Georgia.²⁹ It concerns cases, when during UNM meetings there were people trying to hinder the party gathering and in some instances attacked party leaders as well.³⁰ These people were arrested from the stage, however, later on, most of them were charged with minimal fines, which cannot serve as preventive measure not to attack politicians and hinder activities by those who have different political thinking. Law enforcement agencies and law applying agencies should not enable public hatred towards opposing political ideology and security of opposition parties or its representatives should be guaranteed during the pre-election campaign.

Vote Bribing

Vote bribing has been one of the biggest concerns during the 2012 Parliamentary Elections. Similar cases have not been recorded during the 2013 Presidential Elections however in some cases the issue was raised. One of the most prominent facts included Prime Minister gifting just married couple in Adjara.³¹ Though the law differentiates when gifting can be vote bribing as a criminal offense,³² even if this case did not fall within the scope of prohibition, it certainly does not serve the goal to hold a fair and equal pre-election campaign.

Pre-election Campaign by Various Parties and Media Environment

It was noted by the OSCE/ODHIR observation mission that generally the pre-election campaign during the 2013 Presidential Elections in Georgia was free, fair, equal and competitive.³³ All

²⁹ see OSCE report - <http://www.osce.org/odihr/elections/107509> [last visited on November 26, 2013]

³⁰ see case of Batumi - <http://humanrights.ge/index.php?a=main&pid=17187&lang=eng> [last visited on November 26, 2013]

³¹ <http://humanrights.ge/index.php?a=main&pid=16947&lang=eng> [last visited on November 26, 2013]

³² Criminal Code of Georgia, adopted on July 22, 1999, No 2287, art. 164¹.

³³ see OSCE report - <http://www.osce.org/odihr/elections/107509>. [last visited on November 26, 2013]

electoral subjects mostly had the ability to reach its voters, actively hold meetings, distribute their materials, etc. Candidates met with voters several times in different regions and some had a rather active campaigning process.³⁴ It has to be noted, that most meetings were held in a calm and unhindered manner, though as mentioned above, there were some cases when party meetings required police assistance to ensure safety. There were certain cases when law-enforcing agencies addressed parties to bring agitation material in conformity with the law; however this was done equally to both ruling party and opposition, which has to be assessed positively.³⁵

It has to be noted that the Media organisations were less intimidated during the 2013 Pre-election period than before.³⁶ In most instances paid advertisements were not brought to regional media organisations, which put them through financial hardship.³⁷ As to the media coverage, it has been brought to attention that almost all parties used their allocated free time, though they did not use it all.³⁸ Georgian Dream candidate started using allocated free time later than other candidates. HRIDC together with other organisations requested from media organisations to recognize Democratic Movement as qualified electoral subject, such powers are vested within the televisions, but are not mandatory; however none of them, except Public Broadcasting, agreed to use this power and allocate free time to the DM candidate – Nino Burjanadze.³⁹ Media Portal in its report also talks about the content of the advertisements, that some subjects used vast amount

³⁴ see: Giorgi Margvelashvili meeting with voters in Adjara - <http://humanrights.ge/index.php?a=main&pid=17175&lang=eng>
Koba Davitashvili campaign in Adjara - <http://humanrights.ge/index.php?a=main&pid=17191&lang=eng>
Bakradze's Pre-Election Campaign in Batumi - <http://humanrights.ge/index.php?a=main&pid=17187&lang=eng>
Giorgi Margvelashvili campaign in Gori - <http://humanrights.ge/index.php?a=main&pid=16960&lang=eng>
Giorgi Targamadze's Pre-Election Campaign in Gori - <http://humanrights.ge/index.php?a=main&pid=17031&lang=eng>
Democratic Movement office in Gori preparations for campaign - <http://humanrights.ge/index.php?a=main&pid=17063&lang=eng>
UNM office in Gori ready for campaign - <http://humanrights.ge/index.php?a=main&pid=17097&lang=eng>
Shalva Natelashvili campaign in Dvani - <http://humanrights.ge/index.php?a=main&pid=17115&lang=eng>
Giorgi Margvelashvili campaigning in Kakheti - <http://humanrights.ge/index.php?a=main&pid=16992&lang=eng>
Burjanadze campaigning in Kakehti - <http://humanrights.ge/index.php?a=main&pid=16989&lang=eng>
<http://humanrights.ge/index.php?a=main&pid=17116&lang=eng>
[web-pages last visited on November 26, 2013]

³⁵ <http://humanrights.ge/index.php?a=main&pid=17226&lang=eng> [last visited on November 26, 2013]

³⁶ see OSCE report on 2012 Elections - <http://www.osce.org/odihr/98399> [last visited on November 26, 2013]
see OSCE report on 2013 Elections - <http://www.osce.org/odihr/elections/107509> [last visited on November 26, 2013]

³⁷ see <http://humanrights.ge/index.php?a=main&pid=17108&lang=eng> [last visited on November 26, 2013]

³⁸ see Report by Media Portal - http://www.mportali.com/uploads/reports/2013/2013.09.30-saprezidento-mediamonitoringis_angarishi.pdf [last visited on November 26, 2013]

³⁹ <http://humanrights.ge/index.php?a=main&pid=17160&lang=eng> [last visited on November 26, 2013]

of allocated time for negative campaigning, this is a rather interesting trend, also being practiced during the 2012 Parliamentary Elections, though completely legal.⁴⁰ Negative agitation was used by candidates during their meetings with voters as well.⁴¹

Inter-Agency Task Force and Its Reactions

Inter-Agency Task Force for Free and Fair Elections has been operating for the past several elections. Since 2012 it has been a body established by the Election Code. According to amendments introduced in 2013 it is now operating under Ministry of Justice.⁴²

IATF meetings were held rather frequently and regularly, and all stakeholders, including local NGOs, international organizations and political parties took active part in its operation. HRIDC was also involved in addressing the Task Force.⁴³ IATF has the authority to give certain recommendations to State or Local authorities to ensure free and fair pre-election campaign.⁴⁴ In most cases IATF made general comments or general recommendations which can be assessed as preventive measures. Before the Election, IATF has provided a comprehensive report describing the content of complaints, the position from the participants and final assessments, which is rather a positive step.⁴⁵ Though removing IATF from Security Council to Ministry of Justice during the pre-election period can be assessed as an abuse of regulatory resources, it might have been an effective step, since IATF proved to be more active and discussed a vast number of cases. On the other hand it concerned cases that were beyond its mandate, OSCE considered it as a problem, since it might have made involved actors not take legal measures and lose right to

⁴⁰ see Report by Media Portal - http://www.mportali.com/uploads/reports/2013/2013.09.30-saprezidento-mediamonitoringis_angarishi.pdf p.2 also pp. 19-20, p.24. [last visited on November 26, 2013]

⁴¹ Koba Davitashvili campaign in Adjara - <http://humanrights.ge/index.php?a=main&pid=17191&lang=eng> [last visited on November 26, 2013]

⁴² Election Code art. 48.

⁴³ <http://www.hridc.tv/index.php?a=view&id=864&lang=geo> [last visited on November 26, 2013]

⁴⁴ Report from IATF - <http://www.justice.gov.ge/Multimedia%2FFiles%2Fangarishi%2FIATF%20report%2019%20Aug-30%20Sept.%20GEO.pdf> [last visited on November 26, 2013]

⁴⁵ *ibid.*

litigate.⁴⁶ At the same time, IATF has no pre-defined procedures or appeals mechanism, since it is not considered as a decision-making body

Central Election Commission

The Election administration has some adjudicating function during the pre-election campaign, examining and deciding if there was an abuse of state resources according to the Election Code of Georgia,⁴⁷ at the same time CEC is responsible for registering candidates and ensuring that the election process goes smoothly.

It has been alleged of violating requirements of the Constitution of Georgia when refusing Salome Zurbishvili registration as a presidential candidate. Though it is crucial for the election environment that all those willing to participate in the run-off to have the ability to do so, there are legal requirements that have to be met. CEC denied Salome Zurbishvili registration based on the fact that she holds dual citizenship which is prohibited by art.29.1¹ of the Constitution of Georgia.⁴⁸ Some opinions challenged this decision as biased and illegal due to the fact, that this rule concerns limits to the right of person to hold Presidential post, but not candidacy criteria.⁴⁹ Prohibiting dual citizenship for the President is a requirement set by the Constitution. Which brings up problems of conformity between Constitutional norms. On the other hand, art.104⁴ provides rule for the period until January 1, 2014 claiming, that those people born in Georgia, holding EU citizenship and have lived in Georgia for the past 5 years have the right to run for elections and art.29.1¹ does not apply to them. However Salome Zurbishvili was not born in Georgia and this rule cannot benefit her either. This case clearly raised an issue of lack of clarity of constitutional norms and need of comprehensive solution, the action in this case should have been taken by the Parliament, rather than by CEC, since the highest legislative body of Georgia was aware of the problem but did not address it in timely manner denying Salome Zurbishvili passive electoral right.

⁴⁶ OSCE report - <http://www.osce.org/odihr/elections/107509> [last visited on November 26, 2013]

⁴⁷ Election Code Chapter 2.

⁴⁸ <http://www.civil.ge/geo/article.php?id=27284> [last visited on November 26, 2013]

⁴⁹ <http://humanrights.ge/index.php?a=main&pid=17072&lang=eng> [last visited on November 26, 2013]

It has to be positively assessed that the President appointed head of CEC according to recommendation of vast number of NGOs, which has not been the case previously.⁵⁰ HRIDC was one of the organisations supporting Tamar Zhvania to be appointed as Chairman of CEC.

CEC was deemed to have acted respecting the law and all regulations. Furthermore, it simplified highly debated media regulations, which were alleged to be against freedom of expression when it was adopted before 2012 Parliamentary elections. Current regulations are in more conformity with constitutional standards and the requirements of Freedom of Expression.⁵¹

State Audit Organisation

State Audit Organisation (hereinafter SAO) was one of the most active state bodies during the 2012 Parliamentary Elections. Its mandate was used against main opposition political block and served to limit its activities. After the elections, both the legal background and the practical approach were changed, SAO limited itself to financial control, gave itself less right to interpret laws and managed to avoid politicizing its activities.

Decision by SAO was however challenged by the Democratic Movement of Georgia (party candidate Nino Burjanadze), claiming that the organization imposed illegal fine. SAO responded to the fact explaining what the reasons for fining were.⁵²

⁵⁰ see Report by Media Portal - http://www.mportali.com/uploads/reports/2013/2013.09.30-saprezidento-mediamonoringis_angarishi.pdf [last visited on November 26, 2013]

⁵¹ <http://humanrights.ge/index.php?a=main&pid=17215&lang=eng> [last visited on November 26, 2013]

⁵² <http://sao.ge/monitoring-service-of-finance/statement#> [last visited on November 26, 2013]

Election Day

Election Day – October 27 – was assessed more or less positively by local and international organizations.⁵³ Furthermore, major opposition party – UNM – recognized its results and its defeat as well.⁵⁴

HRIDC had an observation mission for the entire Election Day and it declared that minor violations observed in the selected regions, where it had sent monitors, could not influence the election results.⁵⁵ It assessed, that most violations observed were caused by incompetence of the commission members and lack of knowledge of election procedures rather than their attempt to fraud the elections and partiality in favor any election subject. However several grave and minor violations, as well as basic trends can be addressed.⁵⁶

1. Abuse of Journalist's right

In Kvareli, Chikaani village precinct #14, PEC Chairman Ivane Sepiashvili and other commission members verbally and physically assaulted accredited journalist, the editor-in-chief of the Information Center of Kakheti Gela Mtvlishvili. CEC did not adequately respond to the fact of interference into the professional activities of the journalist. Just the opposite, the CEC Spokesperson spread unverified information alleging that Gela Mtvlishvili was video-recording election documentation, for what he was demanded to leave the precinct. According to Human Rights Center's observer, the video-footage made by Gela Mtvlishvili showed that journalist did

⁵³ HRIDC report and assessments -

<http://www.humanrights.ge/index.php?a=main&pid=17250&lang=eng%5C&lang=eng>
see assessment from Transparency International Georgia: <http://transparency.ge/en/post/general-announcement/final-assessment-october-27-2013-presidential-election>
from ISFED: <http://www.isfed.ge/main/490/eng/>
GYLA - <http://gyla.ge/eng/news?info=1803>

OSCE Preliminary Report - <http://www.osce.org/odihr/elections/107509>
[web-pages last visited on November 26, 2013]

⁵⁴ <http://www.civil.ge/eng/article.php?id=26621> [last visited on November 26, 2013]

⁵⁵ <http://humanrights.ge/index.php?a=main&pid=17248&lang=geo> and
<http://humanrights.ge/index.php?a=main&pid=17320&lang=eng> [web-pages last visited on November 26, 2013]

⁵⁶ see <http://www.humanrights.ge/index.php?a=main&pid=17250&lang=eng%5C&lang=eng> [last visited on November 26, 2013]

not try to video-record the election documentation. The Commission Chairman aggressively met him from the very beginning and prohibited to video-record the precinct (though journalist had permission under the law); then the chairman insulted and expelled Mtvlishvili from the precinct by force.

Such action is unacceptable and is not only a violation of Election Code, but also represents a crime under Article 154 of the Criminal Code of Georgia - illicit interference in the professional activities of the journalist.

2. Two Observers for one Candidate

Observers of the Human Rights Center reported from several precincts that election subjects had two representatives in one precinct. This can be considered as a wrong interpretation of the Article 42 of the Election Code. Each election subject can have one representative at the precinct.⁵⁷ CEC refers to the presidential elections as parliamentary elections and does not consider that a political party or an election block is not an election subject in the presidential elections but the presidential candidate nominated by the political party or initiative group. Thus, it is a violation to allow two representatives of political parties and election blocks to be in the election commission. On the other hand, there were cases, when the precinct commission admitted that they allowed more than one representative from same election subject which violates article 42 of the Election Code. The reason for this was that commission did not notice this in timely manner which again draws our attention to lack of qualification.⁵⁸

3. Mobilizing Voters

On the Presidential Elections mobilizing voters by political parties was practically not recorded, while in previous years it had been a common practice, condemned due to being associated as pressuring the voters. However, in Tamarisi village, Marneuli district, a mini-bus had been

⁵⁷ Art. 8.15 Election Code

⁵⁸ <http://humanrights.ge/index.php?a=main&pid=17320&lang=eng> [last visited on November 26, 2013]

bringing voters to in PEC # 21 the driver claimed he was a volunteer and nobody paid him money for the transportation of voters. However, the observer from the Georgian Dream approached several times the mini-bus and talked with the voters getting out of the bus and the driver. The Commission chairperson denied any knowledge on who organized the transportation of the voters, but was aware that voters were brought from a distant village.

4. Hindering Observer from Writing a Complaint

In the polling station # 1 in Kareli DEC # 33 the commission chairperson did not allow an observer of Transparency International – Georgia to write a complaint. The Observer was going to file a complaint about the insufficient number of ballot papers. Commission members were shouting at the observer and did not allow her to file a complaint. Then CM was called on the phone and supposedly suggested to allow the observer to file a complaint. Afterwards, TI – Georgia’s observer wrote a complaint. In 2013 such cases were rather rare and though eliminated promptly needs to be addressed more extensively and preventive measures need to be found.

5. Handwritten Voters Lists

Several commission members were not included in the special list at Polling Station # 83 in Zugdidi district. The Commission chairperson, despite the protest of the observers, added commission members’ names in the special list, which is not allowed by the Election Code of Georgia. Human Rights Center’s observer filed a complaint and informed the Central Election Commission about it.

6. No Record of “Against All”

The general shortcoming that needs to be addressed during the ongoing presidential elections is the annulment of the ballot papers, where all presidential candidates are crossed; in similar ballot papers voters demonstrate their protest to every candidate. According to the current law, similar

ballot papers will be annulled during counting process that will significantly damage the general statistics of the voters' will. It should be noted, that up until 2007 such ballot papers were counted separately and the number was recorded in the final protocol.

7. Less Ballot Papers

Lack of ballot papers was still a problem of the election process, which was observed during last year's parliamentary elections. The Election Code article 63.8 requires ballot papers to be delivered on precinct in the amount of number of voters, quantity that should be divided by 50. This means that ballot papers should be closest 50X number to amount of voters. Hence any number below closest divided by 50 can be violation of law, at the same time, this raises questions of trust towards election administration. CEC has defined lack of ballots as trying to limit the possibility of abusing extra ballots and due to the fact that 100% activity of voters is almost never recorded, insufficiency of ballot papers will not hinder the process. Human Rights Center does not agree with this allegation and suggest that the CEC to eradicate this problem.⁵⁹ On the one hand delivering ballots exactly within number 50X even if less might not constitute radical problem, but there were cases where number of ballots were less than 150-200. It should be noted that ballots are printed beforehand and their number is strictly predefined. When all ballot papers are delivered to precincts, it is possible to track where each ballot goes (at the end of the election day, unused ballot papers are sealed with identified procedures), but when number of ballots are kept by the CEC with no procedures identified, there might be allegations on possibility to use ballots for election result manipulation.

8. Other Trends

The Number of special election precincts was significantly reduced and MIA and Defense Ministry timely informed the society about it. Military servants and big part of MIA officers were allowed to vote according to their residential places. Declaring a high alert in military units, police departments, penitentiary system was sort of tendency during previous elections for what

⁵⁹ <http://humanrights.ge/index.php?a=main&pid=17250&lang=eng>

officers of law enforcement agencies could not vote according to their registration places. Observers of Human Rights Center monitored the polling process in two special precincts in military units where elections were held without violations in accordance to the procedural norms.

Like during past elections, there were several representatives of unknown nongovernmental organizations, who cannot name the year when their NGO was founded and who is its chairperson. Supposedly, these “observers” represent satellite organizations of different election subjects. Although it is not violation of the law, it casts doubt over the fairness of the election process.

Another problem that needs legal solution concerns voters who enter the country close to Election Day. According to Election Code article 31, voters registered in Consulates vote abroad and their status in the main list in Georgia is “registered in consulate”. According to the same article paragraph 12, voter that asks for being registered on the Election Day has to provide document regarding the fact that he/she crossed the border and will be able to vote. However, according to practice, voters registered in the consulate are considered already registered and are not allowed to register in precinct in Georgia on Election Day. Another issue is regarding the fact that when returning to Georgia stamp in passport is put usually upon request of citizen and hence voters cannot always provide proof of having crossed the border.

Observers of HRIDC were sent in several villages close to the conflict zone in Shida Kartli. The main problem was created by the regime established by the Russian occupation army, for what citizens of Georgia trapped in the occupied territories did not have chance to cross the de-facto border and participate in the elections.⁶⁰

Finally the issue of voters removed from general list should be underlined. The decision of not allowing them to vote might have been legal since these were voters that were removed by request of owners, claiming that these voters did not reside on their addresses, but it did cause people lose right to vote without reasonable ability to fix the problem. The problem is especially important since CEC did not hold vast informative campaign (although it should be noted that

⁶⁰ see <http://humanrights.ge/index.php?a=main&pid=17220&lang=eng> [last visited on November 26, 2013]

those voters were able to get new IDs with new registration place for free) to help these voters take necessary measures in order to ensure their right to vote was guaranteed.

Overall Election Day has passed with little violations which could not have affected the results. Political will from the state was proved to be decisive with regards to holding free elections. Hence, the Presidential Elections of 2013 must be positively assessed. However, several problems remain, such as the lack of qualification, the knowledge of the procedures, the ability to control the smoothness of Election Day and so on. These issues should be addressed by the CEC in the future.

Post-Election Period

Post-Election Period usually concerns the aftermath of the Election Day, including publishing results, discussion of complaints and the decisions from government bodies that might have affect on electoral process.

Discussion of Complaints

There were not a big number of complaints during the Presidential Elections concerning Election Day. It is worth mentioning that most cases were resolved immediately by the precinct commissions. Another important trend is the way the District Commissions reacted to the procedural violations on precinct level, in some cases the Precinct Commission members were given notes or fined by deducting specific amount of salaries, which has been rather rare in previous years.⁶¹

⁶¹ see examples from Adjara - <http://humanrights.ge/index.php?a=main&pid=17354&lang=eng> [last visited on November 26, 2013]

The 2013 Elections were distinctive by the fact that no District Commission decision was appealed and there was no case in the Courts either.⁶² This can also mean that Election administration mostly held its duties according to the law and hence involved actors were satisfied with their decisions.

If one compares the 2013 Elections to the 2012 Parliamentary Elections, one has to mention, that after the Parliamentary Elections, October 1, 2012 results of the elections were annulled:

- by proportional system – at 14 election precincts of 8 election districts (total of 17.656 voters);
- by majoritarian system - 16 election precincts of 6 Districts (total of 15.623 voters).⁶³

The procedure of the complaint discussion mostly took place in all judicial instances and was highly criticized for the 2012 Parliamentary Elections. The manifestations took place in many cases, while for the 2013 Presidential Elections, major opposition party recognized the results.⁶⁴

Removing Election Material after Elections

According to art.46.8 of the Election Code electoral subjects must ensure removing campaigning posters from public areas within 15 days after the Election Day. However, this usually does not happen. The remedy for this violation can only be found in general law regarding Administrative Misdemeanors, which is not effective. Hence, some other effective practical approaches should be taken.

⁶² <http://cec.gov.ge/en/page/the-central-election-commission-announces-the-final-results-of-the-october-27-2013-presidential-elections-november-12-2013> [last visited on November 26, 2013]

⁶³ See final report from CEC - <http://cec.gov.ge/uploads/other/13/13973.pdf> [last visited on November 26, 2013]

⁶⁴ <http://www.ambebi.ge/politika/88958-davith-bagradzem-damarckheba-aghiara.html> [last visited on November 26, 2013]

Recommendations

The Presidential Elections of 2013 have proved the importance of the political will in holding free, fair and competitive elections. The legal background, though Election Code was amended to some extent after the Parliamentary Elections of 2012, has mostly been the same. However the whole election period was radically different compared to previous practice. The low number of violations or negative trends recorded can lead one to assess the 2013 Elections as positive. Nonetheless, the issues pointed out above need to be addressed to ensure they are prevented for the upcoming elections.

Legal Background

Firstly, it has to be noted, that regulations regarding the Election process need to be treated with caution. When amending the law or enacting new norms, it has to be considered, that all actors need to have time to comprehend and analyze the rights or obligations that they are presented with. Therefore, all such amendments or new initiatives should be brought into force as early as possible. It is understandable, that election law reform takes time, especially when a number of actors are involved, nevertheless, this cannot compromise rights of all stakeholders to have enough time to act accordingly.

- ✓ The Election Code should be amended to reflect only directly elected servants as “Political Officials”.

Amendments to the Election Code made after the 2012 Elections have mostly improved legal background, however certain issues stay remain problematic. One of those issues would be existence of large number of personas that are considered “Political Officials” and may campaign unlimitedly. This includes the President of Georgia, an MP of Georgia, the Prime-Minister of Georgia, other members of the Government of Georgia and their deputies, members of the Supreme Representative Bodies of the Autonomous Republics of Abkhazia and Adjara, heads of the governments of the Autonomous Republics of Abkhazia and Adjara, as well as a

member of a local self-government representative body and the head of its executive body, also State Trustee - the Governor.⁶⁵ Those directly elected should be in the list of Political Officials, since they are exercising political powers and have been brought to power by elections. However officials like the Deputy Ministers, head of the executive body of local self-government that are appointed (all except Mayor of Tbilisi) and the Governor should not be in the list. These officials have executive powers, they are not political figures and are appointed for their management skills, the status of Political Officials gives them almost unlimited right of being involved in election campaign, which results in abuse of state resources according to international standards – fainting the threshold between Party and the State.

- ✓ Election Law should be amended in a way that it reflects the procedural steps on addressing abuse of financial resources.

Mechanisms to address abuse of certain state resources need to be clarified. It was mentioned above that most ambiguous regulations were changed, but the abuse of financial resources still stays unsolved. On the one hand, the amendment that was introduced, shortening the period of budgetary changes is not clearly a positive change, since the main cause for this regulation is not to be able to affect voters will by state or local funds, on the other hand, even within the shorter timeframe, there are no procedural steps which can be followed to actually stop funding not in conformity with Election Code.⁶⁶ The law does not say who are subjected to the regulation – it merely states “interested person”, which means in every individual case the appellant should claim legal standing. It does not give procedural guarantee to stop funds from spending before decision is granted and no special timeframe for the court to deliver judgment, which results in applicability of general rules, i.e. judgment will be delivered in 2-3 months time and funding can be stopped by proving the direct damage to the appellant. Both of these results are not effective remedies for addressing violations in the pre-election campaign.

⁶⁵ Election Code art. 2, z⁵.

⁶⁶ see art. 49 of Election Code. Also see article regarding the issue:
<http://humanrights.ge/index.php?a=main&pid=17035&lang=eng> [last visited on November 26, 2013]

- ✓ Election Law should include the requirement of counting ballots with clear choice – “against all” – and the number of such ballots should be recorded in final protocols.

Ballots where voters have not voted for any candidate or have redacted all of them are considered void together with those ballots, where choice is not clearly made or for other reasons are invalid. Hence, number of voters who made a choice – against all – is not recorded in any manner. These voters have clearly expressed their position. In previous years law required the final protocol to record amount of these ballots and this practice should be taken again.

- ✓ The Constitution of Georgia should reflect clearly and without any vagueness who has a passive electoral right to take part in Elections of President.

It was mentioned above how the ambiguity of Constitutional norms caused problem in registering Mrs. Salome Zurabishvili as a candidate. Passive electoral right is an important human right and has to be widely guaranteed. Having unclear and unsystematic Constitutional norms may cause violation of that right. Hence, Parliament of Georgia should oversee what is the aim of the state’s highest law and how to guarantee that it is indisputable who has the right to run for Presidency in Georgia.

- ✓ Ballot Papers should be delivered to PEC in a number equal to a multiple number of 50 of the total number of voters in an electoral precinct, rounded up to more or at least to the closest amount. Since CEC has been following this practice since the 2012 Elections, this calls for amendment in the Election Code.

The question regarding lack of ballot papers on precinct has been raised on the 2012 Parliamentary Elections. CEC officials explained this as prevention from ballot papers being sabotaged or used for other illegal purposes. For the 2013 Presidential Elections same problem occurred. It has to be mentioned, that Election Code before the 2012 Elections required ballot papers to be delivered to PEC in number that equals to a multiple number of 50 of the total number of voters in an electoral precinct, rounded up to more than number of voters.⁶⁷ For the

⁶⁷ See Election Code, adopted on August 2, 2001, No 1047, as of redaction before being annulled. art. 54.8.

2012 Elections the new Election Code did not require ballot papers to be rounded up to more.⁶⁸ Though there is no legal requirement, it is advisable to deliver ballots in more amount or at least closest amount Furthermore, HRIDC considers, that delivering less ballot papers than closest to number of voters (divisible in 50), might be a violation of Election Code, since law requires the ballot paper amount to equal to number of voters. At the same time, ballot papers are printed in amount necessary and CEC does not refute this, meaning that ballot papers are kept somewhere other than PEC. Hence, this raises number questions.

- ✓ Media Regulations regarding Election Day should be brought in conformity with requirements of Freedom of Expression and rights of Media or Observation Mission representatives should stand higher than inability of Precinct Commission to maintain order during Election Day.

Lastly, the importance of the Media limitations to be eliminated has been underlined by HRIDC numerous times. CEC having simplified these limitations was a welcomed step, however, they still limit Media representatives to freely collect information or observers to have chance to record violations. The reasoning that CEC had been giving – ensuring that media representatives do not hinder Election Day procedures and/or no personal data is recorded beyond what can be allowed by law – does not stand as a strong argument. The Election Code includes the authority of the Precinct Commission to take all necessary actions not to allow anyone from hindering procedures to be followed and this should be enough.

Recommendations Regarding Practice

- ✓ State officials taking part in political campaign or other type of abuse of institutional resources, which might not constitute legal violations due to technicality, should take more responsibility towards amplification the threshold between Party and the State.

⁶⁸ Election Code art 63.8.

Malpractices such as mobilizing Public Servants for election events, involving different institutional resources in campaigning has drastically decreased in the 2013 Presidential Elections compared to previous years. However, it does not mean that it has reached desired condition. Hence, state should work even more on strengthening threshold between political party and the State. As for the legal background, most issues are resolved; however this does not eliminate all of them. Both Candidates and State Officials should take more responsibility during pre-election campaign. There have been cases when one cannot claim violation due to the fact that certain officials as mentioned above, are considered Political Officials, or because abuse of state resources can take place only for Election Subject or Candidate of such (Political Party was added to the list later, which is again an important improvement) and this actor brings into existence only after certain registration measures are taken in CEC.

- ✓ CEC should pay more attention to educational programmes for Election Administration officials.

The 2013 Elections proved once again that qualification in Election Administration is still low. Though there are number of trainings prior to Elections, some issues still remained problematic. This calls for strengthening educational measures. It is highly recommended that rights of Observers and Journalists are stressed out during trainings or seminars.

- ✓ CEC should interpret Election Law carefully taking into account the aims of each provision and hence take approach that will allow only one representative from single candidate.

CEC has made a false interpretation of the Law when allowing several representatives from same electoral subject on one precinct. The aim of the law is to allow electoral subjects to monitor Election Day and represent their political position. For this purpose one representative is sufficient and more might raise different problems. Law allows CEC to make interpretation that will limit amount of representative to one.

- ✓ State should ensure that remedies against violence to political expression are strong enough to achieve the goal of prevention.

It has been noted that during UNM campaign certain people were violently trying to hinder their activities. In most cases such people were arrested but sanctions were so low, that it did not serve preventive measure. Freedom of Political Expression is guaranteed and respected under the Constitution of Georgia, however when it crosses freedom of Political Expression of other people, especially using violence it can be and should be limited.

- ✓ Practical steps should be taken into account to enforce the Election Code requirement on removing posters after Election Day.

It has been mentioned that removing posters is an obligation set by law, however it is rarely respected and materials stay in the streets for months, even years. Municipal bodies together with local election administration should address this issue. It is not necessary to impose fines, if they might damage political parties unreasonably, but reminding them and giving warnings may serve the goal effectively.

Conclusion

The Presidential Elections 2013 have been an important step forward for Georgia and have demonstrated that state has political will to hold free and fair elections. However, the problems that were mentioned above should be addressed and all actors – Parliament, Electoral Administration, IATF, State Audit Organisation and other relevant bodies – should continue to work on improving electoral environment. NGOs and Political Parties should be involved as much as possible in future work, including legislative process or any initiative that can serve for advancements in election period.