



## **INTERNATIONAL REFERENDUM OBSERVATION MISSION Republic of Turkey – Constitutional Referendum, 16 April 2017**

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### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

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#### **PRELIMINARY CONCLUSIONS**

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The 16 April constitutional referendum took place on an unlevel playing field and the two sides of the campaign did not have equal opportunities. Voters were not provided with impartial information about key aspects of the reform, and civil society organizations were not able to participate. Under the state of emergency put in place after the July 2016 failed coup attempt, fundamental freedoms essential to a genuinely democratic process were curtailed. The dismissal or detention of thousands of citizens negatively affected the political environment. One side's dominance in the coverage and restrictions on the media reduced voters' access to a plurality of views. While the technical aspects of the referendum were well administered and referendum day proceeded in an orderly manner, late changes in counting procedures removed an important safeguard and were contested by the opposition.

The legal framework is focused on elections and limited with regards to the specifics of referenda. Although the Supreme Board of Elections (SBE) adopted regulations and instructions to address some aspects of the process, the legal framework remained inadequate for the holding of a genuinely democratic referendum. Fundamental rights and freedoms that are unduly circumscribed by the Constitution and related legislation were further restricted by extraordinary state of emergency powers, and in particular by provincial governor decisions to restrict freedom of assembly and expression. Emergency decrees that amended referendum-related legislation exceeded the exigencies of the state of emergency and were not subject to appeal.

The 18 proposed amendments affecting 72 articles of the constitution were voted on as a single package, contrary to international good practice for referenda. Voters did not have the opportunity to make a choice about each of the distinct issues featured in the amendments. None of the proposed amendments featured on the ballot; voters were simply asked to vote for a yes or no option. The state did not ensure that voters were provided with impartial or balanced information on the amendments and their potential impact, thus limiting their ability to make an informed choice.

The referendum was generally well administered by four levels of electoral bodies. However, the work of the electoral boards lacked transparency – board sessions were closed for the public and observers, and only a limited number of decisions were published. Following the attempted coup in July 2016, three SBE members and 221 lower-level election board chairpersons, all judges, were replaced following their dismissals. The political party representation on Ballot Box Committees was not fully balanced and was negatively affected by the rejection of over 170 chairpersons nominated by opposition parties.

More than 58 million voters were registered to vote, including over 2.9 million abroad. Voters were able to verify their entries in the voter lists and request changes. However, those who had to flee their residence in the provinces affected by security threats faced difficulties with their registration and International Referendum Observation Mission (IROM) observers were informed that some of them were not able to vote.

The law limits full participation in the referendum only to eligible political parties and does not regulate the involvement of other stakeholders, contrary to good practice for referenda. Further, the

SBE decided that civil society organizations and professional associations are not permitted to hold campaign events. Ten parties met the requirements to campaign. Two parties unsuccessfully appealed the decision that they were ineligible and one civil society initiative was unable to register as a party.

The campaign framework was restrictive, and the campaign imbalanced due to the active involvement of the president and several leading national officials as well as many local public officials in the 'Yes' campaign. The OSCE/ODIHR LROM observed the obstruction of efforts of several parties and civil society organizations to support the 'No' campaign as well as the misuse of administrative resources. The campaign rhetoric was tarnished by a number of senior officials equating 'No' supporters with terrorist sympathizers. In numerous cases, 'No' supporters faced police interventions and violent scuffles at their events. These violations contravene OSCE commitments, Council of Europe standards and other international obligations regarding freedom and equality in the campaign.

The legal framework for the referendum neither sufficiently provides for impartial coverage nor guarantees eligible political parties equal access to public media, contrary to OSCE commitments, Council of Europe standards and other international obligations. The law gives preference to the ruling party and the president in the allocation of free airtime, and the SBE's authority to sanction for biased coverage was repealed. Freedom of expression was further curtailed under the state of emergency; the arrest of an unprecedented number of journalists and the surge of media outlet closures has led to widespread self-censorship. OSCE/ODIHR media monitoring results showed that the 'Yes' campaign dominated the media coverage.

The law does not guarantee effective redress for electoral board decisions. While the SBE reviewed some 45 complaints in a timely manner, the hearings were closed and decisions were not published. SBE decisions are not subject to judicial review. The continued dismissals and suspensions of judges and prosecutors in the referendum period impact the independence of the judiciary.

The law does not provide for international and non-partisan citizen observation contrary to OSCE commitments, Council of Europe Parliamentary Assembly (PACE) recommendations and Council of Europe Venice Commission codes of good practice. The efforts of political parties to observe the process varied, and civil society organizations significantly limited their support of observation efforts due to fear of repercussions. Following the attempted coup, 1,583 civil society organizations were dissolved, including some that previously supported observation efforts. A total of 73 international observers were registered to observe the referendum.

Referendum day proceed in an orderly and efficient manner in the limited number of polling stations visited by international observers. Some IROM observers were impeded in their observation during opening and voting when access was either not granted or limited. Police presence was widely reported both in and outside polling station and in some cases police were checking voters' identification documents before granting access to the polls. The SBE issued instructions late in the day that significantly changed the ballot validity criteria, undermining an important safeguard and contradicting the law.

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## PRELIMINARY FINDINGS

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### Background

According to the 1982 Constitution, Turkey is a parliamentary republic with executive power vested in the Council of Ministers headed by the prime minister. Legislative power is exercised by the 550-

seat Turkish Grand National Assembly (parliament), which currently comprises four political parties.<sup>1</sup> Under the present framework, the president is the head of state and holds limited functions.

Constitutional reform has influenced the domestic political agenda during the past decade.<sup>2</sup> After a multi-party agreement could not be reached between 2012 and 2015, a parliamentary process to amend the constitution was initiated by the governing AKP and supported by the MHP in December 2016.<sup>3</sup> The rushed manner in which the proposed amendments were passed in parliament, with what many criticized as a limited and not fully transparent debate whilst a number of deputies from the HDP were in jail, as well as the absence of public consultation at an earlier stage of the process, have diminished confidence in the constitutional reform process.<sup>4</sup> On 11 February, the Supreme Board of Elections (SBE) announced that the referendum would be held on 16 April.

The constitutional reform package contains 18 amendments which among other things would bring changes to the present parliamentary system, abolish the office of the prime minister and transfer some of the parliament's key oversight functions to an executive presidency, increase the number of seats in parliament to 600 and empower the president to appoint some high-level positions in the judiciary. The European Commission for Democracy through Law (Venice Commission) stated that the proposed amendments would result in a system where the separation of powers and the independence of judiciary are not assured, thus introducing a "presidential regime which lacks the necessary checks and balances required to safeguard against becoming an authoritarian one."<sup>5</sup>

A failed coup attempt on 15 July 2016 left at least 241 people dead and 2,194 injured.<sup>6</sup> In response to the attempted coup, as well as a wave of terror attacks that shook the country in 2016, the government declared a state of emergency on 21 July and extended it twice since, most recently for another 90 days starting on 19 January. Mass arrests and the prosecution under emergency decrees of over 100,000 and continued detention of over 40,000 individuals, as well as dismissals of over 150,000 civil servants, followed.<sup>7</sup> The state of emergency that restricted fundamental freedoms, as well as the ongoing security operations in the southeast that resulted in several hundred thousand people fleeing their homes, led to questions as to whether conditions were in place to permit a democratic referendum. In its opinion on the amendments to the Constitution, the Venice Commission noted that "the current state of emergency does not provide for the due democratic setting for a constitutional referendum."<sup>8</sup>

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<sup>1</sup> Four parties entered parliament after the November 2015 elections: Justice and Development Party (AKP) with a majority of 317 seats, Republican People's Party (CHP) with 134, People's Democratic Party (HDP) with 59, and Nationalist Movement Party (MHP) with 40 seats.

<sup>2</sup> The most recent constitutional referenda were held in 2007 and 2010.

<sup>3</sup> On 24 October 2016, 5 of the 40 MHP members of parliament declared that they would reject the constitutional proposals. Several MHP parliamentarians were stripped of party membership.

<sup>4</sup> Thirteen HDP deputies, including the party's two co-chairs, remain in custody, with the latest detained on 23 March. Since 4 November 2016, another eighteen were arrested and released shortly after. Protesting these detentions, HDP members of parliament boycotted the vote on the amendments in parliament.

<sup>5</sup> Venice Commission [Opinion on the amendments to the Constitution](#), adopted on 10-11 March 2017.

<sup>6</sup> [European Commission Turkey 2016 Report published on 9 November 2016](#).

<sup>7</sup> [The Parliamentary Assembly of the Council of Europe Committee on the Honouring of Obligations and Commitments by Member States](#) stated that the measures affected the judiciary, police, military, civil service, local authorities, academia, the media and the business community, shutting down over 1,000 institutions and private companies, whose assets were seized or transferred to public institutions. [According to the government](#), over 300 institutions have since been reopened and more than 35,000 public employees reinstated.

<sup>8</sup> Paragraph 12 of the 1996 UN Human Rights Council (UNHRC) [General Comment 25](#) to the International Covenant on Civil and Political Rights (ICCPR) requires that "Freedom of expression, assembly and association are essential conditions for the effective exercise of the right to vote and must be fully protected." Venice Commission [Code of Good Practice on Referendums](#) states that "democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes, including freedom to set up political parties."

## Legal Framework

Amendments to the Constitution require either a two-thirds vote in parliament or a three-fifths vote in parliament combined with the president submitting the amendments to a referendum. A referendum that results in a simple majority of votes in favor of the amendments effects the constitutional change. Contrary to international good practice, the 18 proposed amendments affecting 72 articles of the constitution were voted on as a single package.<sup>9</sup> This did not provide voters the opportunity to make a choice about each of the distinct issues featured in the amendments. There was no question on the ballot; voters were simply asked to vote for a yes or no option.

The legal framework for referenda is inadequate for the conduct of a democratic referendum.<sup>10</sup> It focuses on elections and is limited in regards to the specificities of referenda – in particular, it gives rights to the political parties but does not establish rights and equal opportunities for the camps of proponents and opponents of the proposal. Although some aspects were addressed in regulations and instructions, the SBE did not exercise fully its authority to regulate the process to ensure a clear legal framework and declined to provide interpretations on campaign rules and the relocation of polling stations when formally requested by stakeholders.<sup>11</sup> Past OSCE/ODIHR and PACE recommendations on the legal framework have not been addressed, including those on suffrage rights, campaign finances, lack of judicial review, and rights of observers.

The adoption of two emergency decrees that permanently amended election-related laws went beyond the exigencies of the emergency.<sup>12</sup> Notwithstanding the constitutional provision, the SBE decided the changes to the law would take immediate effect.<sup>13</sup> Furthermore, in appeals lodged by CHP members of parliament, the Constitutional Court decided that it does not have jurisdiction to consider appeals of emergency decrees, thus effectively barring challenges to the referendum-related decrees.<sup>14</sup> In addition, the parliament did not consider the decrees prior to the referendum or within the 30-day legal deadline, leaving their legal status uncertain and further limiting the opportunity for appeal.

Fundamental freedoms of expression, assembly and association that are unduly circumscribed by the Constitution and related legislation were further restricted by the use of extraordinary powers under the state of emergency hindering the conduct of a democratic referendum. This included provincial governors exercising their authority under the state of emergency to limit freedom of movement, association, assembly and expression (*See campaign section*).

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<sup>9</sup> One citizen complained to the Ombudsperson that the lack of opportunity to vote differently on the various proposals breached his freedom of expression. The [Code of Good Practice on Referendums](#) states that “Electors must not be called on to vote simultaneously on several questions without any intrinsic link, given that they may be in favour of one and against another. Where the revision of a text covers several separate aspects, a number of questions must therefore be put to the people.”

<sup>10</sup> The conduct of referenda is mainly governed by the constitution, 1961 Law on Basic Provisions on Elections and Voter Registers (Law on Basic Provisions), 1987 Law on Referendums on Constitutional Amendments (Law on Referendums), and the 1983 Law on Political Parties.

<sup>11</sup> The SBE received seven requests from private companies, public authorities, professional associations, and District Election Boards (DEB) seeking clarification of campaign rules for non-eligible political parties and civil society.

<sup>12</sup> Decree 687 adopted on 9 February repealed the SBE’s media sanctioning powers and Decree 680 adopted on 6 January amended a provision that affected the registration of out-of-country voters.

<sup>13</sup> Article 67 of the Constitution provides that any amendments to election legislation are not enforceable within one year of adoption. Two complaints on the issue of the applicability of the changes to the election-related laws for this referendum were unsuccessfully lodged with the SBE.

<sup>14</sup> The petitions challenged another two decrees claiming they went beyond the exigencies of the state of emergency. In previous decisions the Court ruled that while the Constitution precludes substantive review of emergency decrees, the Court has jurisdiction to determine if decrees are in fact emergency decrees and if not, to examine them in substance. In the recent cases, the Court decided it does not have jurisdiction contradicting its previous decisions.

## Referendum Administration

The referendum was generally well administered by the four levels of electoral bodies: the SBE, 81 Provincial Election Boards (PEBs), 1,080 DEBs, and some 175,000 Ballot Box Committees (BBCs).<sup>15</sup> All legal deadlines were met.

The SBE is a permanent body that consists of 11 members elected by and from judges of the Court of Cassation and the Council of State. All four parliamentary parties exercised their right to nominate non-voting members to the SBE. Out of 218 decisions adopted by the SBE, 180 were not published, including the one on the number of ballots printed.<sup>16</sup> The meetings of the SBE and lower election boards were open only to non-voting political party members, which limited transparency.

PEBs have three members and are chaired by the most senior judge in the province. DEBs are chaired by a judge and include two civil servants and four representatives of political parties. BBCs are formed for each electoral process and consist of a chair and six members – two civil servants and five representatives of political parties. The law does not provide for equal gender representation in the administration; women chaired 20 per cent of lower-level electoral boards (41 per cent at the district level) and there is only one female member of the SBE. Since the last parliamentary election, eight SBE members were replaced, all chosen by and from newly appointed judges: five due to the expiry of their terms, and three are in custody. A series of emergency decrees led to vast replacements at all levels of the referendum administration: 9 PEB chairpersons were dismissed and two more placed in custody, 143 DEB chairpersons were dismissed and 67 more placed in custody. Over 500 electoral board staff at all levels were also placed in custody.

The law does not envision an opportunity for balanced representation of the proponents and opponents of the proposed amendments in the referendum administration, as recommended by international good practice.<sup>17</sup> Of the BBC members nominated by political parties, 52 per cent were put forward by parties supporting the ‘Yes’ campaign and 48 per cent by those supporting the ‘No’ campaign. For the first time, the SBE took a decision that provided guidance for DEBs on applying the ‘good reputation’ requirement for the selection of BBC members. At least 170 BBC chairpersons nominated by the HDP were excluded due to alleged ‘bad reputation’.<sup>18</sup>

## Voter Registration

Every citizen, who has reached the age of 18 by the day of referendum, has the right to vote. Active conscripts, military students, citizens declared legally incompetent or banned from civil service by a court, and those serving prison sentences for intentional crimes are ineligible to vote. The ban on military students and conscripts, and the blanket restrictions of voting rights for the latter three categories are disproportionate and at odds with OSCE commitments and other international

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<sup>15</sup> Some 389 BBCs were established in penitentiary institutions, 3,210 out-of-country and 4,178 at customs gates.

<sup>16</sup> A total of 12.7 million ballots were printed for the referendum. The remaining 64.7 million ballots that were used had been printed in 2014 for the second round of presidential election.

<sup>17</sup> The [Code of Good Practice on Referendums](#) states that, “the fact that referendums do not necessarily entail a divide along party lines but may involve other political players means a choice must be offered, as regards the membership of electoral commissions, between balanced representation of the parties and balanced representation of the proposal’s supporters and opponents.”

<sup>18</sup> According to the Law on Basic Provisions, BBC chairpersons are appointed from “well-reputed and literate persons.” On DEBs’ request the SBE confirmed that the ‘well-reputed’ requirement applies and that DEBs may investigate the nominees for BBCs with regards to prior convictions or on-going investigations. Positively, the SBE overturned two DEB decisions for blanket rejections of HDP nominees for BBC members in Van and Edrine.



obligations and standards.<sup>19</sup> On 15 February, the SBE adopted a decision that partially addressed the rulings of the European Court of Human Rights on suffrage rights and clarified that those with convictions who are not currently in prison are allowed to vote even if their sentence is not fully executed.<sup>20</sup> At least 570,000 citizens were ineligible to vote.<sup>21</sup>

Turkey has a passive voter registration system. The voter register is managed by the SBE based on personal data from the civil registry maintained and updated daily by the Ministry of Interior (MoI). Voters were able to verify their entries in the voter lists both in person and through the SBE website, resulting in 467,984 changes. However, no changes to the voter lists were allowed after 10 March, contrary to good practice.<sup>22</sup> The SBE reported a total of 58,291,898 registered voters, including 2,972,676 for the out-of-country voting.

Special security zones were in place in parts of six provinces in the southeast affecting some 670,000 voters.<sup>23</sup> Local authorities in the southeast confirmed that police stationed near polling stations were instructed to check voters' identification documents to identify those wanted for arrest, and a number of OSCE/ODIHR interlocutors raised concerns that this may deter voters from voting. Concerns were also raised about the voter registration of those who had to flee their residence, whose number, according to various sources cited by the United Nations High Commissioner for Human Rights, is between 355,000 and 500,000 people.<sup>24</sup> On referendum day, IROM observers were informed that some of these voters were not able to vote.

## Party Registration and Participation in the Referendum

The law does not provide for broad stakeholders' participation in the referendum process, as only eligible political parties are entitled to fully participate in the campaign, nominate observers, access the voter register, and enjoy other rights. To participate, a political party must be registered with the Supreme Court Chief Prosecutor's Office (SCCPO) and have an organizational structure in at least half of the provinces and one-third of the districts in those provinces, and have held a party congress not less than six months prior to the referendum.<sup>25</sup> These eligibility criteria unduly limit political pluralism, and run contrary to international standards.<sup>26</sup>

Following an SCCPO investigation, 19 parties that were eligible to compete in the November 2015 elections were found ineligible to participate in the referendum. The SBE approved the participation

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<sup>19</sup> Paragraph 7.3 of the 1990 [OSCE Copenhagen Document](#) calls on participating States to "guarantee universal and equal suffrage to adult citizens", while paragraph 24 provides that restrictions on rights and freedoms must be "strictly proportionate to the aim of the law". Article 29 of the 2006 [Convention on the Rights of Persons with Disabilities \(CRPD\)](#) requires States to "guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others". See also Paragraph 14 of [General Comment No. 25 to the ICCPR](#).

<sup>20</sup> See [Soyler v. Turkey](#), application no. 29411/07, 17 September 2013 and [Murat Vural v. Turkey](#), application no. 9540/07, 21 October 2014.

<sup>21</sup> Including 276,292 active conscripts and students of military schools, 194,788 declared mentally incompetent by a court decision, and 100,950 prisoners.

<sup>22</sup> The Venice Commission [Code of Good Practice in Electoral Matters](#) states that, except for on election day, "there should be an administrative procedure – subject to judicial control – or a judicial procedure, allowing for the registration of a voter who was not registered."

<sup>23</sup> According to the MoI, security zones were in place in Batman, Bingol, Hakkari, Kars, Mardin, Tunceli.

<sup>24</sup> [Report on the human rights situation in South-East Turkey](#) from February 2017.

<sup>25</sup> These requirements do not apply to parties with a parliamentary group with at least 20 members in parliament.

<sup>26</sup> Article 22 of the [International Covenant on Civil and Political Rights](#) (ICCPR) reads: "No restrictions may be placed on the exercise of this right [freedom of association] other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others." See also Principle 7 stated in the [Venice Commission Guidelines on Political Party Regulation](#).

of 10 out of 92 registered political parties.<sup>27</sup> The People's Liberation Party and the Liberal Democrats Party lodged complaints with the SBE and SCCPO, respectively, claiming they fulfilled the eligibility criteria, but both claims were rejected.<sup>28</sup> A civil society initiative advocating in favor of the 'No' campaign tried to register as a political party to obtain full political participation rights in the process. Having filed its registration documents on 6 February, they remained unregistered.<sup>29</sup>

## Campaign Environment and Campaign Finance

The Law on Basic Provisions does not sufficiently regulate the conduct of referendum campaigns, and stricter campaign rules aimed at ensuring more equitable campaign opportunities apply only during the final seven days.<sup>30</sup> Moreover, the law only protects the rights of and provides opportunities to campaign to eligible political parties. While the broader legal framework for freedom of assembly and expression applies to other stakeholders, including private individuals and civil society, the SBE decided that only eligible parties are entitled to hold campaign meetings and declined to clarify whether others may campaign through other means.<sup>31</sup> Citing the state of emergency or concerns about public security, governors of some provinces either banned or introduced a permission requirement for campaign events organized by actors other than the ten eligible political parties.<sup>32</sup>

The campaign was especially visible in large population centres. Campaign means included posters, banners, billboards and vehicles clad in campaign slogans. Some stakeholders, including civil society organizations, engaged in door-to-door campaigning. Although large scale rallies and smaller meetings were observed, most campaigners relied on the Internet and, especially, social media platforms.<sup>33</sup> Contrary to international good practice, voters did not receive impartial or balanced information from the state on the amendments and their potential impact, leaving the eligible political parties to fill this gap, thus negatively affecting voters' ability to form an informed opinion.<sup>34</sup>

The campaign was characterized by the lack of a level playing field. The significantly more visible 'Yes' campaign, led by the governing AKP and to some extent the MHP, was supported by several leading national officials and many lower level public officials, including the prime minister and the president, who under the constitution is required to remain non-partisan and perform his duties without bias.<sup>35</sup> These instances blurred the line between party and state,

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<sup>27</sup> The ten eligible parties are: AKP, Motherland Party, Independent Turkey Party, Grand Union Party, CHP, HDP, Free Cause Party, MHP, Felicity Party, and Homeland Party.

<sup>28</sup> The complaints were rejected on grounds of insufficient organizational structure; the SBE refused to consider the supporting evidence lodged with the complaint and relied only on the documents provided by the SCCPO.

<sup>29</sup> On 2 March, two CHP MPs forwarded questions to the MoI regarding the registration status of the initiative.

<sup>30</sup> These stricter rules include provisions on the allocation of free airtime for the four parliamentary parties and the president, additional bans on use of public resources by officials and a prohibition on holding state events and making statements related to public works.

<sup>31</sup> For instance, in one case the SBE found that PEBs and DEBs do not have the authority to restrict others from campaigning but did not take a position on the campaign rights of other stakeholders. Later, in response to a complaint, the SBE made a decision that only eligible parties are entitled to hold public campaign meetings.

<sup>32</sup> Ankara and Samsun Governors banned campaigning by all stakeholders other than the ten eligible parties; more general bans of public events were put in place by provincial governors in Adana, Diyarbakir, Isparta, and Van.

<sup>33</sup> The OSCE/ODIHR LROM observed 35 campaign events.

<sup>34</sup> The [Code of Good Practice on Referendums](#) states: "Administrative authorities must observe their duty of neutrality, which is one of the means of ensuring that voters can form an opinion freely (...) The authorities must provide objective information." The Directorate General of Press and Information printed 15,000 copies of information material promoting the amendments and addressing a number of objections, including those raised by the 'No' campaign.

<sup>35</sup> The OSCE/ODIHR LROM observed the President campaigning in conjunction with the inauguration of public works on 16 March in Sakarya; on 18 March in Çanakkale; on 1 April in Diyarbakir; on 2 April in Ankara; and on 5 April in Bursa. The SBE received one complaint regarding the president's campaign, but decided that it has no authority over the president.

contrary to paragraph 5.4 of the 1990 OSCE Copenhagen Document.<sup>36</sup>

Cases of misuse of administrative resources were observed countrywide by the OSCE/ODIHR LROM and widely reported in the media.<sup>37</sup> Public ceremonies, such as those opening infrastructure projects, were used for campaigning, with some interlocutors alleging that public sector employees and university students were required to attend.<sup>38</sup> Public transport was regularly made free for the day of the event in the cities concerned.<sup>39</sup> Moreover, the president and other officials linked the outcome of the referendum to the government's support for the regions hosting the events.<sup>40</sup> This all contributed to the lack of equal opportunities, contrary to paragraph 7.6 of the 1990 OSCE Copenhagen Document.<sup>41</sup>

The 'No' campaign was predominantly conducted by the main opposition parties CHP and HDP, with the latter significantly crippled in its ability to campaign given that hundreds of its party members remain behind bars, including its co-chairpersons and 83 HDP mayors. The 'No' campaign was also supported by a number of civil society groups, smaller parties and former MHP parliamentarians.

Supporters of the 'No' campaign faced a number of undue limitations on their freedom to campaign.<sup>42</sup> Many 'No' campaigners suffered physical attacks.<sup>43</sup> A high number were arrested, most often on

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<sup>36</sup> [Paragraph 5.4](#) provides for a clear separation between the State and political parties; in particular, political parties will not be merged with the State. Furthermore the [Code of Good Practice on Referendums](#) states that "public authorities (...) must not influence the outcome of the vote by excessive, one-sided campaigning."

<sup>37</sup> The prime minister and several ministers used public works inauguration ceremonies for campaigning, as observed by the OSCE/ODIHR LROM on 1 April in Van and 6 April in Gaziantep. Several mayors campaigned and/or used the official municipality websites to campaign, including in Rize, Sile and in Umraniye. The OSCE/ODIHR LROM also observed cases of misuse of administrative resources, including public buses and vehicles used for campaigning in Bursa, Kars, Rize and Zonguldak provinces, as well as 'Yes' campaign material on a municipality building in Balikesir, public school buildings in Istanbul's Uskudar district, Istanbul's city walls (UNESCO heritage site), university dormitories and the building of the Directorate General of Press and Information.

<sup>38</sup> On 28 March, municipal authorities in Çarşamba and two other districts declared a district holiday on the day of the president's campaign event in Samsun. In one case, OSCE/ODIHR LROM observers obtained a copy of a letter from Van district administration encouraging students to attend the prime minister's campaigning event.

<sup>39</sup> Free public transport was provided by municipal authorities when major events used for campaigning purposes were held, as observed on 28 March in Samsun, on 2 April in Ankara, on 5 April in Bursa and in Adana on 7 April.

<sup>40</sup> The President's speeches in Diyarbakir on 1 April and Bursa on 7 April and the prime minister's speech in Kars on 31 March.

<sup>41</sup> [Paragraph 7.6](#) states that political parties and organizations will be provided with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment. The [Code of Good Practice on Referendums](#), states that "there must be no use of public funds by the authorities for campaigning purposes, in order to guarantee equality of opportunity and the freedom of voters to form an opinion."

<sup>42</sup> For example, municipal police prevented CHP members from handing out campaign materials on 21 March in Manisa; on 26 March in Van, an HDP campaign vehicle was stopped by police for noise pollution; on 30 March, activists of the Ankara Bar Association were prevented by police from distributing campaign materials.

<sup>43</sup> For instance, on 19 March, a dissident MHP 'No' campaign event was disrupted by an angry mob in Mersin province; a similar attack took place on 21 March in Nigde province; on 21 March in Gaziantep, four 'No' campaigners were attacked while distributing 'leaflets'; on 26 March, a 'No' rally faced a violent disruption in Yozgat; on 9 April police stopped three assailants from entering the campaigner's event in Bafra; on 27 March, CHP's 'No' campaign posters were destroyed and campaign truck's tires slashed in Kutahya province; on 3 April in Batman province, two gunmen injured the driver of an HDP campaign truck. According to the MoI, between 16 February and 12 April there were a total of 139 campaign related incidents, out of which 67 were directed at political parties, including 45 directed at AKP.



charges of organizing unlawful public events or insulting the president.<sup>44</sup> Some ‘No’ campaigners faced difficulties renting premises for events or had their events cancelled by the authorities or venue proprietors, often on short notice.<sup>45</sup> The HDP’s campaign poster and a song in Kurdish were banned by authorities on grounds that they violated principles of integrity of state and Turkish as official language. These obstructions contravened paragraph 7.7 of the 1990 OSCE Copenhagen Document.<sup>46</sup>

The campaign rhetoric was both emotionally charged and divisive. The ‘Yes’ campaign stressed the need for a strong executive in the face of unprecedented domestic and international challenges. ‘No’ campaigners often presented the proposed amendments as a threat to Turkey’s parliamentary tradition and its democracy overall. In the context of the campaign, several senior politicians and civil servants, including the president, the prime minister and the Antalya deputy public prosecutor, equated the ‘No’ campaign or its supporters with terrorist sympathizers or the July 2016 attempted coup plotters.<sup>47</sup> Some of them branded foreign powers critical of the proposed amendments as the country’s enemies.<sup>48</sup>

Campaign financing is insufficiently regulated in the law, which only restricts the amount and the nature of donations, but does not limit general party and campaign-related spending. Political parties must report their campaign expenses as part of their annual financial reports to the Constitutional Court, which has oversight responsibility. Contrary to international commitments and good practice, these reports are not made public and only summarized audit reports are published online.<sup>49</sup>

## Media

The Constitution provides for the right of freedom of expression but contains undue limitations and permits further restrictions in the Anti-Terrorism Law, Criminal Code, Press Law and other legislation. The vague provisions are often used as grounds for the prosecution and imprisonment of journalists. Furthermore, the Criminal Code contains broad defamation provisions, including with regard to the Turkish Nation and State, and provides special protection for public figures, including

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<sup>44</sup> On 22 March a student who posted a ‘No’ campaign video was detained for allegedly insulting the president; on 23 March students who were planning a cycling campaign tour in favour of the ‘No’ campaign were arrested for organizing an unlawful event in Davutpaşa; on 24 March, members of the Turkish Communist Party were arrested in Adana while distributing ‘No’ flyers; on 26 March in the Samadag district four members of the Social Freedom Party were detained for four days for allegedly holding an unauthorized campaign event; on 27 March a high-school student distributing ‘No’ flyers in the Antakya district was taken into custody for allegedly insulting the president; a woman was detained on 5 April while distributing ‘No’ flyers in Antakya.

<sup>45</sup> Among others, the CHP in Konya was not able to rent premises for its meeting on 22 March; a ‘No’ vote event scheduled for 1 April in the Izmir province was cancelled by the authorities with only one day notice; in Muş province, the 2 April HDP rally had to be relocated to a smaller town after permission was denied to hold the event in Muş city; staff of the MHP ‘No’ campaign informed the OSCE/ODIHR LROM that they cancelled several events because of inability to rent premises or reserve accommodation.

<sup>46</sup> [Paragraph 7.7](#) states that participating States will “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.”

<sup>47</sup> The OSCE/ODIHR observed the president making parallels between to ‘No’ vote supporters and terrorist on 28 March in Samsun, on 2 April in Ankara, and on 5 April in Bursa. The prime minister made similar remarks at campaign events observed on 22 March in Iğdir, on 31 March in Kars, and on 6 April in Osmaniye.

<sup>48</sup> For instance, speaking on 28 March in Samsun, on 2 April in Ankara and on 3 April in Rize, the president accused a number of European countries of standing behind the ‘No’ campaign in what he described as ‘Crusades’ against Turkey. The prime minister described Turkey’s European partners as adversaries as at rally in Kars on 31 March, Diyarbakir on 1 April and at Osmaniye on 6 April.

<sup>49</sup> Article 7.3 of the [2003 UNCAC](#) states that “Each State Party shall also consider taking appropriate legislative and administrative measures, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” According to the [Code of Good Practice on Referendums](#), “political party and referendum campaign funding must be transparent.”

the president. These provisions limit freedom of expression and are not in line with OSCE commitments and other international obligations and standards.<sup>50</sup> The OSCE Representative on Freedom of the Media (RoFM) recently called on the authorities “to respect their obligations on freedom of the media”, and the Commissioner for Human Rights of the Council of Europe asked the government “to reverse the numerous infringements of freedom of expression.”<sup>51</sup> Freedom of expression has been further curtailed by the closure of numerous media outlets and the arrest of journalists following the failed coup attempt, as well as by the legal framework for the state of emergency.<sup>52</sup>

The media landscape is dominated by outlets that are often owned by business groups that depend on public contracts. Since the July events, a total of 158 media outlets have been closed, including 60 television and radio stations, 19 newspapers, 29 publishing houses and five press agencies, which the Venice Commission described as a “mass liquidation of media outlets”.<sup>53</sup> The majority of the 150 journalists currently in detention were arrested following the attempted coup, and arrests continued during the referendum period.<sup>54</sup> This surge of closures, arrests, and prosecutions contravenes paragraph 7.8 of the 1990 OSCE Copenhagen Document and international standards for media freedom, and results in widespread self-censorship.<sup>55</sup>

The legal framework does not provide equal access for the ‘Yes’ and ‘No’ sides of the campaign, and neither guarantees eligible political parties equal access to the media nor provides for impartial coverage. The law provides for paid political advertisement during the campaign, but the lack of campaign expenditure limits led to the parties having unequal opportunities to reach the voters.<sup>56</sup> The law grants each parliamentary party 20 minutes of free airtime on the public broadcaster, with an

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<sup>50</sup> [Paragraph 5.1](#) of the OSCE Copenhagen Document states that “free elections that will be held (...) under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives”. [ICCPR](#) Article 19-2 states that “Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kind”. Paragraph 19 of the [General Comment 34](#) notes that “State parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation”.

<sup>51</sup> See the OSCE RoFM [press release](#) from 1 March 2017 and the [Visit Memorandum](#) of the Council of Europe’s Commissioner for Human Rights from 15 February 2017.

<sup>52</sup> Decree 671 affects the Electronic Communications Law by restricting the media in case of an emergency situation; Decree 680 modifies the Law on the Establishment of Radio and Television by adding more conditions for the licensing of media service providers.

<sup>53</sup> See the [Memorandum on freedom of expression and media freedom in Turkey \(Commissioner for Human Rights, Council of Europe\)](#) from 15 February 2017. The Directorate General of Press and Information cancelled the press cards of 777 journalists, 621 of them for alleged connections to terrorists, without court decision. According to the [Office of the UN High Commissioner for Human Rights](#), the closure of such a high number of media outlets “has not only caused thousands of journalists to lose their jobs and livelihoods, but has also undermined possibility of an informed debate over the referendum proposals.”

<sup>54</sup> See the [Opinion on the Measures Provided in the Recent Emergency Laws with Respect to Freedom of the Media, European Commission for Democracy Through Law \(Venice Commission\)](#), adopted on 10-11 March 2017. Two *Cumhuriyet* staff members were arrested on 5 April. A total of 32 TRT staff members were arrested on 8 April.

<sup>55</sup> [Paragraph 7.8](#) of the OSCE Copenhagen Document provides that “no legal or administrative obstacle stands in the way of unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process”. [ICCPR](#) Article 19, 2 states that “Everyone shall have the right to freedom of expression, this right shall include freedom to seek, receive and impart information and ideas of all kind”. Paragraph 13 of the [General Comment 34](#) notes that “The free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion”.

<sup>56</sup> On 15 April, two newspapers ran paid campaign advertisements in violation of the legal prohibition of paid political advertising after 14 April.

additional 10 minutes reserved for the ruling party.<sup>57</sup> The president is also entitled to two 10-minute speeches on the public broadcaster including the last slot for a public appeal, which he officially renounced.<sup>58</sup> These provisions give preferential treatment to the president and the ruling party and do not ensure equal treatment before the law, contrary to paragraph 7.6 of the 1990 OSCE Copenhagen document.

The Radio and Television Supreme Council (RTSC) submitted weekly media monitoring reports to the SBE. While the RTSC reports to the SBE included violations detected in their monitoring, no action was taken, as an emergency decree repealed the SBE's authority to sanction private media if they fail to provide impartial coverage.<sup>59</sup> This decree may effectively contravene paragraph 7.8 of the 1990 OSCE Copenhagen Document and international standards as it does not guarantee equal access to the media for political parties and limits voters' ability to make an informed choice. Several political parties complained to the SBE and RTSC about their access to public and private media.<sup>60</sup>

The OSCE/ODIHR LROM media monitoring findings showed that the campaign was visible in all national media.<sup>61</sup> Three out of the five monitored television stations, including the public TRT1, favored the 'Yes' campaign.<sup>62</sup> The 'Yes' campaign featured prominently in both the public and private media, with 76 per cent of total airtime on television and 77.5 per cent of space in the press, predominantly positive in tone, whereas the 'No' campaign received only 23.5 per cent of total airtime and space, mostly neutral in tone. AKP was also given a preferential treatment with 33.5 per cent of total airtime/space, whereas CHP, MHP and HDP were clearly covered to a lesser extent with 19 per cent, 2.3 per cent and 0.6 per cent of total airtime/space respectively.<sup>63</sup> AKP received positive coverage on TRT1 and *A Haber*, and mostly positive on Show TV. The tone of CHP's coverage was negative on *A Haber*, partly negative on TRT1, and partly positive on Show TV, CNN *Türk*, and Fox TV. The president and prime minister were overwhelmingly dominant in television coverage with 26 and 18 per cent respectively, whereas opposition leaders were significantly less visible.<sup>64</sup> AKP took out 63 per cent of all paid advertisements time on monitored media outlets. The public broadcaster complied with the requirement to provide free airtime. Coverage of civil society was extremely limited on television. In the press, civil society organizations that supported the 'No' campaign received more coverage (3.5 per cent) than those supporting the 'Yes' campaign (1.6 per cent).

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<sup>57</sup> Turkish Radio and Television Corporation (TRT) offers free airtime on TRT1 and TRT *Haber*, the two main national public television channels, and on *Radyo1*, the main national public radio channel.

<sup>58</sup> On 14 April, TRT1 and TRT *Haber* broadcasted 1 hour and 37 minutes interview with the president during which he discussed the merits of the constitutional reform.

<sup>59</sup> The RTSC informed the OSCE/ODIHR LROM that from 16 February to 7 April a total of 89 cases of violations by the public and private radio and television channels have been detected in their monitoring, with 55 reported to the SBE mostly due to breaches of impartiality. RTSC reports reviewed by the OSCE/ODIHR LROM showed that, from 16 February to 29 March, RTSC detected 70 violations and reported them to the SBE, including 42 cases related to impartiality, out of which 34 were in favour of the 'Yes' campaign with two involving TRT *Haber*, the public news television channel. The SBE in its decisions stated that it has no legal basis to take action on the violations.

<sup>60</sup> HDP sent two complaints to the RTSC alleging disproportionate coverage on the public channel TRT *Haber* in favour of the president and the 'Yes' campaign and an almost total absence of HDP. The Patriotic Party on 27 March complained to the SBE about the limited access of the 'No' campaign to public TRT and other private channels. CHP complained to RTSC that the TRT and ten other television channels aired AKP political advertisements during their coverage of campaign events.

<sup>61</sup> Television channels: TRT1, Show TV, Fox TV, CNN *Türk* and *A Haber*; newspapers: *Hurriyet*, *Sabah*, *Sözcü*.

<sup>62</sup> In addition to news coverage, TRT1 aired two editorial programs title "Referendum Guide" and "What is the right?" explaining referendum amendments in a mostly positive tone.

<sup>63</sup> Motherland Party, Independent Turkey Party, Free Cause Party, and Homeland Party did not receive any coverage on television or newspapers. Felicity Party and Grand Union received 0.9 per cent of total coverage in newspapers.

<sup>64</sup> The leader of CHP 9.9 per cent; the leader of MHP 3.2 per cent and all other party leaders or spokespersons, including HDP, got less than 1 per cent or did not get any coverage at all in the media monitored.

## Complaints and Appeals

The legal framework does not fully guarantee effective redress for referendum disputes. Decisions of lower electoral boards can be appealed to higher boards, up to the SBE.<sup>65</sup> However, SBE decisions are not subject to judicial review. This leaves the process and results under the final authority of an administrative body, challenging the constitutionally guaranteed separation of powers, and contrary to paragraph 5.10 of the 1990 OSCE Copenhagen Document and international good practice.<sup>66</sup>

The SBE received some 45 complaints, which were considered in a timely manner, but the dispute resolution process lacked transparency as hearings were closed and decisions were not published.<sup>67</sup> The SBE satisfied appeals lodged by opposition parties against DEB decisions to relocate polling stations in the southeast on the basis of security. While many cases of campaign interference and misuse of administrative resources were noted by the OSCE/ODIHR LROM, few complaints were lodged due to diminished confidence in the dispute resolution process. The SBE and the courts did not provide effective redress in such cases, particularly for non-party stakeholders.<sup>68</sup>

As the judiciary has primary responsibility for the referendum administration and adjudication of disputes, the recent dismissal of 3,979 judges and prosecutors, which represents almost one-third of the judiciary, including five from the judicial oversight body and numerous high court judges, impacted the independence of the judiciary in the referendum period.<sup>69</sup> In April, an additional 45 judicial officials were dismissed, and, on 4 April, three judges and a prosecutor were suspended and put under investigation for a decision to release 21 journalists detained following the coup attempt.

## Citizen and International Observers

Contrary to paragraph 8 of the 1990 OSCE Copenhagen Document, PACE recommendations and Council of Europe Venice Commission codes of good practice, the legislation does not provide for international and non-partisan citizen observation.<sup>70</sup> Only the eligible political parties are entitled to nominate observers, and their efforts varied in scope – AKP and CHP observed widely, whereas HDP reported difficulties recruiting observers due to a general atmosphere of fear of repercussions.

Following the attempted coup, 1,583 civil society organizations were dissolved, including at least three that supported observation efforts during the last elections. Some civil society organizations that

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<sup>65</sup> With the exceptions that PEB decisions related to formation of DEBs and BBCs, and DEB and PEB decisions on voter registration are final and cannot be appealed.

<sup>66</sup> [Paragraph 5.10](#) states that “Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.” The [Code of Good Practice on Referendums](#) states that “The appeal body in referendum matters should be either an electoral commission or a court. In any case, final appeal to a court must be possible.”

<sup>67</sup> The decisions, however, were not issued to concerned stakeholders in a timely manner. The OSCE/ODIHR LROM received information from the SBE prior to issuance of decisions and obtained copies of decisions once issued.

<sup>68</sup> For instance, a complaint lodged by a professional association regarding a governor’s ban on its campaign activities was not considered by the SBE and the administrative court estimated that the review of a case on the same matter would take more than 500 days from the date of its submission.

<sup>69</sup> About half of those dismissed remain in custody. Figures were provided to the OSCE/ODIHR LROM by the High Council of Judges and Prosecutors.

<sup>70</sup> [Paragraph 8](#) states that “The participating States consider that the presence of observers, both foreign and domestic, can enhance the electoral process for states in which elections are taking place.” The [Code of Good Practice on Referendums](#) recommends that “Given the distinctive nature of referendums, in that they divide not only parties but also other groupings, representatives of the proposal’s supporters and opponents - including representatives independent of the parties - and observers appointed by both sides should have access to polling stations during both the voting itself and counting.”

were engaged in observation of past elections refrained from observation or significantly limited their efforts due to the overall political and security situation. The SBE rejected accreditation requests from two civil society organizations.<sup>71</sup>

## Referendum Day

In the limited number of polling stations visited by international observers, referendum day was generally organized in an efficient manner despite the majority of the visited BBCs not being fully staffed.<sup>72</sup> During opening and voting, some IROM observers were impeded in their observation, access was either not granted or limited and decisions on access were often taken by persons who were not members of the BBC. Otherwise, IROM observers noted that BBC members followed procedures.

A few security incidents, affecting a BBC member and several voters, were widely reported and are pending investigation. In the pre-referendum period, local authorities confirmed that police stationed near polling stations would be instructed to check voters' identification documents to identify those wanted for arrest. Civil society organization reported three cases where voters were checked before accessing the polls, and it was directly observed by OSCE/ODIHR LROM in one case. A general police presence outside and inside of polling stations was noted in most IROM observations.

While a few procedural errors were noted, the counting and tabulation were generally assessed positively by IROM observers. The SBE during the referendum day issued two instructions to consider ballots improperly stamped by the BBC and those without a BBC control stamp as valid, the latter given after the counting of votes in some BBCs had commenced. These instructions undermined an important safeguard and contradicted the law that explicitly states that such ballots should be considered invalid. SBE was unable to provide the number of ballots affected and stated that since party-nominated BBC members signed the protocols the issue is closed; there is no opportunity for appealing the SBE decision.<sup>73</sup> HDP has made public claims that they detected discrepancies in 668 protocols.

At 23:25, the SBE announced the preliminary results were in favour of 'Yes' but did not provide any figures. In the media, turnout was reported as 83.7 per cent.

***The English version of this report is the only official document.  
An unofficial translation is available in Turkish.***

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<sup>71</sup> The Human Rights Association and the Association for Monitoring Equal Rights.

<sup>72</sup> Out-of-country voting took place between 27 March and 9 April in 3,210 BBCs located in 57 countries and 4,178 BBCs at customs gates. For the first time, out-of-country voters could cast their vote in any out-of-country voting location irrespective of their place of registration.

<sup>73</sup> The CHP alleges that there are potentially over a million affected ballots.



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## MISSION INFORMATION & ACKNOWLEDGEMENTS

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Ankara, 17 April 2017 – This Statement of Preliminary Findings and Conclusions is the result of a common endeavor involving the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Parliamentary Assembly of the Council of Europe (PACE). The assessment was made to determine whether the referendum complied with OSCE commitments, Council of Europe standards, other international obligations and standards for democratic electoral and referendum processes and with national legislation. Cezar Florin Preda headed the PACE delegation. Tana de Zulueta is the Head of the OSCE/ODIHR LROM, deployed from 17 March. The OSCE/ODIHR LROM includes 11 experts in the capital and 24 long-term observers deployed throughout the country. For referendum day, the LROM was joined by a 23-member delegation from the PACE.

Each of the institutions involved in this International Referendum Observation Mission has endorsed the 2005 Declaration of Principles for International Election Observation. This Statement of Preliminary Findings and Conclusions is delivered prior to the completion of the referendum process. The final assessment of the referendum will depend, in part, on the conduct of the remaining stages of the process, including the final tabulation and announcement of results, and the handling of possible post-referendum day complaints or appeals. The OSCE/ODIHR will issue a comprehensive final report, including recommendations for potential improvements, some eight weeks after the completion of the referendum process. The PACE will present its report at its Standing Committee meeting in Prague on 30 May 2017.

The observers wish to thank the authorities for their invitation to observe the referendum, and the Supreme Board of Elections and the Ministry of Foreign Affairs for the assistance. They also express their appreciation to other state institutions, political parties and civil society organizations and the international community representatives for their co-operation.

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