

Free Elections – Fair Society!



INTERIM REPORT

ON NOMINATION AND REGISTRATION OF CANDIDATES

1 NOVEMBER 2015 PARLIAMENTARY ELECTIONS

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I. EXECUTIVE SUMMARY

Election Monitoring and Democracy Studies Centre (EMDS) is a non-partisan and independent non-governmental organization which works for holding free and fair elections and development of civil society and democratic traditions in Azerbaijan. EMDS believes that holding free and fair elections can create necessary conditions for citizens to express their will. It could also be a significant contribution to development of democratic traditions, citizens' welfare and protection of human rights in the light of current political crisis.

EMDS carried out the long-term observation of the 1 November 2015 Parliamentary Elections with support of 45 long-term observers (LTOs) in 80 election constituencies and noted serious violations and the environment marred with lack of alternatives.

EMDS notes with regret that in the light of systematic violation of fundamental freedoms, ongoing crackdown on civil society, repressions against critical voices and composition of electoral commissions, the upcoming parliamentary elections cannot result in true and free expression of public will.

The National Council established by the opposition parties which were the main alternative to the government in all elections in the last 10 years, NGOs and activists decided to boycott the elections due to undemocratic situation prior to the election. The ruling YAP joined the race with 117 candidates, while Musavat nominated 73, Republican Alternative 24 and Nida civic movement 8 candidates. The election commissions registered only 23 Musavat party and 12 ReAL movement candidates, while all YAP candidates received swift registration. 945 candidates were nominated by themselves, while 2 nominated by initiative group.

The Central Election Commission carried out technical preparations to the elections in line with the requirements of the legislation. However, the election commissions remain under control of the authorities, which raises serious questions regarding fairness and freedom of upcoming elections and diminishes public trust in election.

Serious shortcomings of voters' lists noted in the previous elections remain not-addressed. The CEC announced that there is a 1 622 111 persons less voters in the country than argued by the State Statistics Committee. Neither of the institutions provided explanation of discrepancy between numbers.

EMDS received credible allegations that voters providing signatures in favour of registration of opposition candidates faced wide-spread pressure and intimidation and in number of occasions withdrew their signatures. Such cases were noted during the signature collection opposition candidates and candidates not supported by the government.

The organization also noted the unfair treatment of opposition candidates at the Constituency Election Commissions (ConECs) and the CEC during the registration process, verification of signatures and documented discrimination against candidates. EMDS is also concerned about increasing amount of unfair investigation of complaints of candidates denied registration.

EMDS believes that the establishment of the democratic pre-election conditions are essential for holding free and fair parliamentary elections on 1 November 2015.¹ However the current situation – restriction of freedom of speech and media, freedom of assembly and freedom of association creates serious restrictions for holding free and fair Parliamentary Elections on 1 November 2015.

EMDS notes with regret that the improvement of the Election Code based on the recommendation of the Venice Commission of Council of Europe did not take place. On the contrary, the amendments made to the Election further restricted participation of political rivals in the election process.

EMDS believes that freeing the political prisoners, including Anar Mammadli, Ilgar Mammadov, Tofiq Yagublu, Rasul Jafarov, Intigam Aliyev, Leyla Yunus, Khadija Ismayil, Seymour Hazi and

¹ http://gozetci.az/article/index/4533?l=en_US

others, moreover establishment of the political pluralism in television, especially in Public Television would be a significant contribution to the protection of freedom of speech in the country.

EMDS joins the findings of the Needs Assessment Mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe² and believes that the decision of Azerbaijani authorities to prevent the International Election Mission of the institution from deploying in Azerbaijan is violation of Azerbaijan's international commitments, as well as action questioning transparency and openness of the electoral processes.

II. INTRODUCTION

Election Monitoring and Democracy Studies Centre (EMDS) is an independent and impartial non-governmental organization which work for holding free and fair elections, development of civil society and democracy in Azerbaijan.

EMDS was founded on 1 December 2008 by founders and members of Election Monitoring Center (EMC) registration of which was annulled by Khatai District Court on the basis of illegal claims of Ministry of Justice on 14 May 2008.

EMDS (EMC) carries out the following actions:

- Long-term election observation;
- Supporting the improvement of election legislation;
- Supporting protection of political freedoms;
- Enhancing citizen participation in state administration;
- Voter education;
- Monitoring of activities of the elected bodies (parliament and municipalities).

EMDS experienced increased pressure from authorities following the release of its report on monitoring of 9 October 2013 presidential elections. The Prosecutor General launched a criminal investigation against EMDS and its partner organization International Cooperation of Volunteers on 27 October 2013. Following the search in the office of the organizations on 31 October, the Prosecutor office confiscated financial documents and computers of two organizations. Leaders of the organizations were charged with tax evasion, illegal entrepreneurship, abuse of authorities with intention of interference with the results of elections. On 16 December 2013, chairperson of EMDS Anar Mammadli was arrested, while its executive director and chairperson of the ICV were banned from leaving the country. On 26 May 2014, the Court sentenced Anar Mammadli to 5.5 years and Bashir Suleymanli to 3.5 years in prison, while Elnur Mamamdov received a suspended sentence of 3.5 years. On 19 March 2015, Bashir Suleymanli was released by the presidential pardon. Anar Mammadli remains imprisoned.

EMDS have observed 13 elections conducted in Azerbaijan. In total over 10,000 volunteer observers were trained in 550 trainings, and legal and technical assistance was provided for volunteers' accreditation with the election commissions.

In 2006-2009, members of EMDS (either as EMC or EMDS) implemented programs in various election constituencies to strengthen the citizen-government relations, to study the voters' opinions on the local and national problems and to build relations between the voters and the parliament. Within the framework of these programs the monitoring of the MPs' activities were also conducted. Opinion and attitude of voters towards their MPs were studied in the territories of the constituencies and the parliament sessions were observed.

²<http://www.osce.org/odihr/elections/azerbaijan/179216?download=true>

EMDS is a member of the European Network of Election Observation and Monitoring (ENEMO) which unites 22 national NGOs from 17 OSCE member states. More than 400 members of EMDS have participated in International Election Observation Mission conducted by ENEMO. In general, EMDS's members have been involved in observation of elections in 11 states within the international observation missions of ENEMO and OSCE/ODIHR.

III. PRE-ELECTION LEGAL AND POLITICAL ENVIRONMENT

A. Legal Framework

On 18 June 2010, amendments were made to the Election Code in parliament (Milli Majlis) of Azerbaijan Republic. The bill, introduced by a group of MPs belonging to the New Azerbaijan Party (YAP), contained three main amendments:

- To reduce the election campaign period from 75 days to 60 days;
- To abolish the allocation of funds from state budget;
- To reduce the election agitation campaign period from 27 days to 22 days.

While the draft law was discussed in the parliament, EMDS noted that the abolishment of the funds allocated from state budget for the registered candidates to conduct the election agitation campaign and reduction of election campaign from 75 days to 60 days will negatively affect the participation of political powers on the basis of equal opportunities and the election process in general.

It should be noted that the bill was introduced by the ruling YAP party just less than 3 months before the parliamentary elections and was accepted without holding any public discussions and studying the opinion of Venice Commission of Council of Europe.

B. Political Environment

The parliamentary election to be held on 1 November 2015 will be conducted in the light of the political crisis of human rights and freedoms in the country which occurred after previous elections (7 November 2010 parliamentary and 9 October 2013 presidential). Despite the active participation of opposition parties in the elections in 2010, no opposition or independent candidates gained any seats in the legislative body.

Opposition, especially the powers which was the main alternative to the government in all elections in the last 10 years, established National Council prior to the presidential elections held on 9 October 2013 and participated in the elections with single candidate. However, the results of the elections were falsified. International Election Mission of the OSCE/ODIHR concluded that election “was undermined by limitations on the freedoms of expression, assembly and association that did not guarantee a level playing field for candidates.”³ The authorities launched unprecedented crackdown on civil society organizations working with the Western organizations and countries opening criminal case against 20 NGOs on trumped up charges. Human rights defenders criticizing the government were arrested or forced to leave the country.

Advisor of chairperson of the opposition Popular Front Party was detained and sentenced to administrative arrest on 30 September – one month before the election.⁴

³ <http://www.osce.org/institutions/110015?download=true>

⁴ http://www.bbc.com/azeri/azerbaijan/2015/10/151003_opposition_activist_arrest

C. Freedom of expression

There was no any positive change on the situation of the freedom of speech and media prior to the 1 November 2015 parliamentary elections. On the contrary, the pressure against critical voices has further increases following the 2013 presidential elections.

Following the 2013 presidential election, authorities have increased pressure on freedom of speech and many journalists and bloggers were imprisoned on trumped up charges⁵. Family members of several journalists lost their jobs, while number of media outlets were forced to cease their operations.

According to the report on media monitoring released by the local organization Institute of Democratic Initiatives, there is space for alternative views on Azerbaijani media.⁶

On 17 September, journalist working with Meydan TV Shirin Abbasov was detained and sentenced to 30 days of administrative arrest after police kept him incommunicado for several days.⁷ Three other journalists cooperating with Meydan TV were summoned to the Office of the Organized Crimes Unit for questioning.⁸ The same Unit, which is notorious for torture and its role in politically motivated cases, summoned another journalist Islam Shikali on 28 September. A day earlier, Shikali's apartment was searched by police and his equipment and computer were confiscated.⁹

D. Human rights and civil society

Authorities continued wide-spread crackdown on human rights organizations prior to the parliamentary elections which was many human rights defenders imprisoned or forced to leave the country.¹⁰ Due to increased pressure and restrictions, international organizations also had to suspend their operations in the country.¹¹

Since the start of the election campaign, authorities claimed that Counterpart International and Chemonics International which is funded by the USAID accumulated large tax debts without providing proper justification of the claim. The actions appear to be politically motivated aiming at completely removing Western organizations from the country. Following 2013, National Democratic Institution and American Bar Association were forced to close down.

On 14 September, Office of the Prosecutor General carried out a search in the office of the Association for Rational Development (WARD) confiscating documents and computers. The chairperson of the organization Shahla Ismayilova was banned to leave the country.

Authorities continued pressure and harassment of imprisoned human rights defenders and activists during the election period. Chairperson of the ReAL Ilgar Mammadov has not been allowed to call his family. Chairperson of the EMDS Anar Mammadli was denied meeting his lawyer, while an award winning human rights lawyer Intigam Aliyev was repeatedly pressured to sign a letter of clemency.

On 7 October, Secretary General of the Council of Europe Thorbjorn Jagland announced his withdrawal from the joint working group on human rights established in 2014 with aim of creating political dialogue between authorities and civil society.

⁵ <http://gozetci.az/article/index/4295>

⁶ <http://gozetci.az/article/index/4647>

⁷ http://www.bbc.com/azeri/azerbaijan/2015/09/150917_azeri_journo_disappearance

⁸ <http://gozetci.az/article/index/4568>

⁹ <http://contact.az/docs/2015/Social/092800130974az.htm#.VhjBePntmko>

¹⁰ <http://www.azadliq.org/content/article/27070301.html>

¹¹ <http://www.anspress.com/index.php/index.php?a=2&lng=az&nid=281347>

IV. ELECTION COMMISSIONS

A. Attendance of election commissions

The results of monitoring show that there was no significant development in attendance of Constituency and Precinct Election Commissions. As in previous elections, not all members of the election commissions were present during the days, while some Precinct Election Commissions were closed during the day which are violation of the Articles 33.1 and 38.2 of the Election Code and the Article 179.1 of the Labour Code.

Findings on work of election commissions:

- On 9 September, the PEC no.3 of the 89th Goychay-Aghdash ConEC was closed at 16:20.
- On 10 September, the PEC no. 25 of the 97th Goranboy-Aghdam-Tartar was closed at 15:00.
- On 2 September, the PECs no.6, 7, 9 and 16 of the 113th Shaki City ConEC was closed from 13:00 to 15:00.
- On 16 September, the PEC no. of the ConEC was closed at.
- On 19 September, the PECs no. 20, 23 and 24 of the 97th Goranboy-Aghdam-Tartar ConEC was closed for a whole day.
- On 18 September, the PEC no. 1 of the 81st Beylagan ConEC was closed at 15:10.
- On 3 October, the PEC no. 32 of the 102nd Samukh-ConEC was closed at 11:30.

B. Meetings of Election Commissions

The meeting of the election commission is called by chair of commission or by demand of at least one third of the commission members with decisive voting rights. Election commission members with decisive voting rights are obliged to participate in all meetings of the commission, except in cases of illness and/or for other valid reasons.

Members of election commissions should be informed about the meeting and on issues to be considered at that meeting by the Chairperson of the commission 5 to 3 days before the meeting is held. A election commission meeting is considered valid upon the attendance of two thirds of its members with decisive voting rights. Minutes for all election commission should be taken and all documents entering the commission should be registered.

The findings of the monitoring confirm that while the CEC and ConECs had regular meetings, very few meetings of the PECs were observed. However, the ConECs failed to inform candidates and their representatives about the meetings. Candidates from the ruling party stated that this did not create any problems for them, while rights of other candidates were violated.

C. Registration of observers

Applications for carrying out observation within the entire territory of the Republic of Azerbaijan may be submitted to the ECE from the day elections are announced and up to 10 days prior to elections. Decisions on each application should be made within 3 days from the date of submission. Applications for carry out observation within the territory of an election constituency may be presented to the relevant ConEC from the day elections are announced and up to 5 days prior to elections. The registration can be denied only in case of false information in provided documents.

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The registration of observers both at the CEC and ConEC level was carried out in line with requirement of the legislation. As of 12 October, more than 17,000 observers were accredited at the constituency level, while 167 at the CEC.

D. Investigation of complaints received by Election Commissions

According to the legislation, all election participants have a right to file a complaint within 3 days of the date the decision is published or made, or the date actions (lack of actions) occurred, or the interested person is informed about it. Complaints about actions or lack of actions by PECs to relevant ConEC, and actions (or lack of such) of ConECs can be appealed to the CEC. The actions (or lack of such) of the CEC can be appealed to the Court of Appeal.

There has been number of complaints from the actions of PECs to ConECs, mainly regarding the refusal of registration of candidates. According to the observation of the EMDS, the investigation of complaints was not carried out in fair and objective manner. The CEC declined 42 of 57 received complaints as of 12 October, refusing almost all complaints from opposition candidates.

V. VOTER LIST

In accordance with the Election Code, permanent voter list of each election precinct should be confirmed in the form established by the CEC until 30 May. At the same time, citizens who live at least 6 months of a year in the area of a particular election constituency should be added to the permanent voter list before announcement of the elections date.

After the above-mentioned date, only the Precinct Election Commission can add names of citizens to the voter lists in accordance with the regulations defined by the CEC. The PECs should submit the voters' lists for public display and for additional verification/updating by informing the voters at least 35 days prior to Election Day, and create the necessary conditions for such display and verification.

Problems and shortcomings regarding the voter lists noted in the previous elections remained not addressed. The major shortcomings include lack of opportunities for verifying the voter lists, names of deceased person appearing on the voter lists and lack of actions by the election commissions.

Some of observed violations with regards to voter lists:

- PECs no. 1, 2 and 3 of the 25th Nizami Second ConEC failed to display voter list outside of the polling station by 1 October.
- PECs no. 48 and 52 of the 97th Goranboy-Aghdam-Tartar ConEC failed to display voter list outside of the polling station by 2 October.
- Name of the deceased Elshan Karimov officially residing in the area of the PEC no. 10 of the 89th Goychay-Aghdash ConEC appeared on the voter list.
- Name of the deceased Rasim Hajaliyev officially residing in the area of the PEC no. 4 of the 87th Aghsu-Ismayilli ConEC appeared on the voter list.
- Name of the deceased Hasanov Aygul officially residing in the area of the PEC no. 3 of the 49th Yevlakh-Mingachevir ConEC appeared on the voter list.

Overall, the monitoring noted poor participation of citizens in voter verification process which could be explained either by lack of trust in elections or the provision of the law allowing citizens to add their names on the voter lists on the Election Day.

VI. NOMINATION AND REGISTRATION OF CANDIDATES

The first stage of the parliamentary election – nomination and registration of candidates was marked with serious violations of rights of candidates from parties and blocs, with exception of the ruling YAP party. During the signature collection process, both candidates and their legal representatives faced pressure by local authorities.

ConECs attempted to create an environment without alternatives by demonstrating discrimination against candidates not supported by the ruling YAP party. Therefore, the artificial lack of alternative choice was created.

A. Legal requirements

A Candidate may be nominated through self-nomination or by voters with active suffrage rights. Political parties or bloc of political parties could also nominate a candidate. At least 450 voters' signatures should be collected in support of a candidate within the territory of the constituency for which he/she has been nominated. Voters can provide signature for more than one candidate.

B. Official information

The process of nomination and registration of candidates has started from 1 September and concluded on 2 October. According to the official information released by the CEC as of 12 October, 1246 candidates were registered, 277 of which represent 15 political parties and 19 represent the Azadliq bloc. Initiative groups nominated 2 candidates, while 948 candidates nominated themselves. Below is the main breakdown of candidates from the major political parties:

- YAP -116,
- Musavat party - 23,
- “Azadliq bloc” - 19,
- ReAL movement - 11,
- Umid party – 17,
- NIDA movement – 2,
- Other party- 108.

In 2005, 2063 candidates were registered, while 2010 elections had 1412 candidates.

C. Findings of the monitoring on the nomination and registration of candidates

EMDS has noted serious violations during the nomination and registration process which can be group under the following sub-headings.

i. Unequal treatment of nominated persons

According to the Article 55 of the Election Code, all candidates should have equal rights and responsibilities. However, some Constituency Election Commission have violated requirements of the law, and demonstrated discrimination against some candidates creating obstacles and restrictions for them. Following are examples of such violation:

- Local authorities exerted pressure and imposed restrictions to representatives of the Musavat party collecting signatures and voters providing signatures in the territory of the 47th Mingachevir, 48th Yevlakh and 82nd Aghjabadi ConECs.
- Local executive authorities instructed and intimidated local population trying to prevent them from giving their signatures to opposition candidates in the area of the 47th Mingachevir, 48th Yevlakh, 49th Yevlakh-Mingachevir.

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- Mingachevir local executive authority “warned” Musavat party’s candidate from the city Nuraddin Rustamli not to run for the election. Rustamli himself was threatened by local police officer in Khanabad village of Yevlakh while collecting signatures. The police officer also intimidated local residents trying to prevent them from giving their signatures to opposition candidates.
- Local authorities pressured Musavat party candidate from the 89th Goychay-Aghdash ConEC Namig Hajili and his volunteers collecting signatures for him. A volunteer of the party Ilgar Muradli was taken to the police custody in Goychay and released after several hours.
- Musavat party representative Gadim Soltan was kidnapped by unknown persons while collecting signatures in the area of the 50th Absheron-Gobustan ConEC. In addition, while he was collecting signatures in Arabgadim village, a person named Mazahir Mahmudoghlu collected IDs from local residents to prevent them from providing their signatures. He also threatened local residents with criminal investigation if they give their signature in favour of an opposition candidate. Despite the appeals of the party to law-enforcement agencies, the issue remains unsolved.
- Musavat party candidate from the 91st Ujar ConEC Zakir Ismayil and three party members collecting signatures for him experienced pressure and harassment by local authorities. Kanan Karimov and Zakir Ismayilov from the local authorities called local residents not to provide signatures for Musavat party candidates. Ismayilov called one of the party members collecting signatures and threatened him.
- Persons collecting signatures for Musavat party candidates in the 55th Khachmaz City, 82nd Aghjabadi, 91st Ujar, 97th Goranboy-Aghdam-Tartar and 108th Aghstafa ConECs faced psychological pressure and harassment by local authorities.
- Local residents providing their signatures in favour of candidacy of Fikrat Jafarli from the 70th Masalli City ConEC were threatened by local police and executive authority that their houses will be demolished. Another candidate from the same ConEC Mammadagha Eynullayev publicly announced withdrawal of his candidacy due to pressure from the local executive authorities.
- Voters of the 62nd Saatli, 67th Jalilabad City, 82nd Aghjabadi, 108th Aghstafa and 92nd Zardab-Ujar ConECs were intimidated and warned not to give their signatures in favour of opposition candidates.

ii. Abuse of administrative resources and interference in the electoral processes

The Article 115 prohibits interference with election results and obstruction of a voter’s right to elect or be elected. Using the services provided for the activities of state bodies, state organizations or municipalities for the purpose of collecting signatures and election campaigning is also prohibited by the law. However, the monitoring noted number of cases of abuse of administrative resources in favour of some candidate.

- IDs of employees of the budget funded organizations (schools, hospitals etc.) in 63rd Sabirabad Second and 92nd Zardab-Ujar were collected by local executive authorities or heads of those institutions.
- In 58th Hajigabul-Kurdamir ConEC, voters were instructed to provide signatures on the blank list.
- In 39th Kapaz First ConEC, IDs of teachers from schools no. 31 and 39 were collected for YAP’s candidate Khanlar Fatiyev.
- Employees of the local executive authorities participated in signature collection process in favour of YAP’s candidates in 82nd Aghjabadi and 47th Mingachevir ConECs.

- Sumgayit city House Maintenance Service called local residents inquiring about who they supported during the signature collection process.

iii. Verification of collected signatures and registration process

Candidates and their authorised representatives, along with authorised representatives of parties and blocs have a right to participate in the process of signature verification. The law stipulates the election bodies to notify above-mentioned persons about the process and meetings in a timely fashion. However, the election commissions failed to provide candidates with information about their sessions on signature verification in advance.

Following are examples of such violations along with cases of registration denial:

- 42nd Sumgayit Second ConEC refused to register the candidacy of Hafiz Babali from the ReAL movement announcing 118 of 500 collected signatures invalid. Signatures of family members and relatives of Babali were also among invalid ones.
- Musavat party candidate Dadash Ahmad appealed the decision of the 94th Barda Village ConEC refusing to register his candidacy to the CEC. The CEC declared that 192 of 550 collected signatures were invalid and the decision of the ConEC were upheld.
- Candidacy of Rashid Najafli from the Musavat party was not registered by the 82nd Aghjabadi ConEC after 224 voters providing signatures for his candidacy withdrew their signatures under pressure from the local authorities.
- 64th Neftchala and 74th Lankaran Village ConECs denied registration of candidacy of Kamran Asadov and Tural Suleymanov. The CEC refused the complaint announcing it groundless. Similar happen with regards to candidacy of Nushaba Sadikhli, Arzu Samadbayli and Vafa Jumshodova from the Musavat party.

iv. Other violations

- Candidates from the “White bloc”, Karim Agharza and Elshan Hasanov faced administrative obstacles while requesting signature collection sheets from the 60th Salyan-Neftchala and 27th Sabunchu Second ConECs respectively.
- Musavat party candidate Nadir Gafarov was required by the 54th Shabran-Siyazan ConEC to provide information about work place and occupation of his family members which is in breach of the law.
- Musavat party candidate Jahangir Amirkhanli faced administrative obstacles while submitting filled signature sheets to the 38th Nizami Second ConEC.

VII. CONCLUSIONS AND RECOMMENDATIONS

Based on results of the long-term monitoring of the first stage of the parliamentary elections, EMDS produced following conclusions and recommendations:

A. Conclusions:

- On the eve of the parliamentary elections, the situation in the country with respect to political freedoms, freedom of expression and media, and freedom of assembly does not provide conditions for holding free and democratic elections.
- The amendments made to the Election Code in the last 5 years have not created conditions for improvement of the election practice.
- As a result of pressures of local executive authorities against opposition candidates, violation of transparency, equality and legality principles in the activities of constituency election commissions, and interference in election processes, environment of lack of alternatives was deliberately established.
- The Central Election Commission conducted its activities technically well and within the timeframe specified in the legislation. However, decisions of the CEC on the complaints about constituency election commissions in the period of nomination and registration of candidates were not objective and properly justified.
- Violations which occurred in the first stage of the elections – in the process of nomination and registration of candidates – cast doubt on legitimacy of the process and therefore, the current period of the parliamentary elections cannot be considered as free, fair and democratic.

B. Recommendations:

- Proper and comprehensive investigation of violations, which took place during pre-election period (nomination and registration of candidates), should be conducted, and fair and properly justified decisions should be made.
- All persons who committed violation of election rights, particularly representatives of local executive authorities should be fully liable for their actions and be punished in accordance with law
- In the next stages of the parliamentary elections –election campaigning and the Election Day – free and fair election environment, in particular freedom of expression and media as well as freedom of assembly should be ensured for all subjects of elections, any interference in election processes should be prevented, and conditions for holding public debates prior to the elections should be provided.

Election Monitoring and Democracy Studies Centre

12 October 2015