



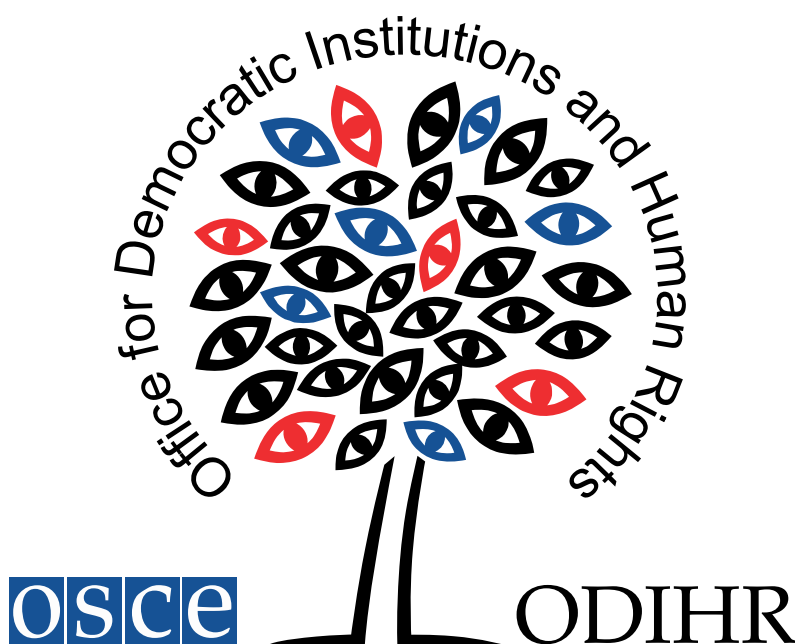
Office for Democratic Institutions and Human Rights

UNITED STATES OF AMERICA

GENERAL ELECTIONS

8 November 2016

OSCE/ODIHR Election Observation Mission
Final Report



Warsaw
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**UNITED STATES OF AMERICA
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8 NOVEMBER 2016**

OSCE/ODIHR Election Observation Mission Final Report

I. EXECUTIVE SUMMARY

Following an invitation from the US government, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an Election Observation Mission (EOM) to observe the 8 November general elections. The OSCE/ODIHR assessed the compliance of the election process with OSCE commitments, other international obligations and standards for democratic elections, as well as with domestic legislation. For election day, the OSCE/ODIHR EOM was joined by a delegation from the OSCE Parliamentary Assembly to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued on 9 November 2016 concluded that “The 8 November general elections were highly competitive and demonstrated commitment to fundamental freedoms of expression, assembly and association. The presidential campaign was characterized by harsh personal attacks, as well as intolerant rhetoric by one candidate. Diverse media coverage allowed voters to make an informed choice. Recent legal changes and decisions on technical aspects of the electoral process were often motivated by partisan interests, adding undue obstacles for voters. Suffrage rights are not guaranteed for all citizens, leaving sections of the population without the right to vote. These elections were administered by competent and professional staff, including on election day, which was assessed positively by IEOM observers, despite some instances of long queues and malfunctioning voting equipment”.

The election of the president and vice-president is indirect, conducted through an Electoral College that allows for a candidate to be elected without winning the popular vote nationwide. Both before and after the elections, several interlocutors expressed concern with this system. Concerning direct elections of Senators and Representatives, a number of interlocutors stated that the drawing of electoral district boundaries was largely driven by partisan interests. Almost all OSCE/ODIHR EOM interlocutors agreed that these elections took place in an increasingly polarized environment, with partisan animosity deepening, and against the backdrop of gridlock in Congress.

New Voting Technologies are used extensively across the country. Contrary to good practice, 15 states use Direct Recording Equipment machines that do not provide a voter-verified paper audit trail. This does not allow voters to ensure their votes have been recorded properly or authorities to conduct possible recounts. While some jurisdictions recently upgraded their voting systems, many election officials noted that NVT have not been replaced due to a lack of resources at the federal, state and local level, raising issues with the security, reliability and operability of the equipment. A number of concerns were raised by various stakeholders regarding gaps in security which could be used by malicious attackers with sufficient resources to gain unauthorized access. This, in combination with outdated equipment or voting and counting software, could lead to lost or inaccurately counted votes.

US citizens 18 years of age and older are eligible to vote. Some 4 million residents of US overseas territories and 600,000 residents of the District of Columbia do not have voting representation in Congress. In addition, residents of US overseas territories do not have the right to vote in presidential elections. More than 6 million convicts, including those who served their sentences as well as many facing trial, are disenfranchised, disproportionately impacting African Americans. These restrictions contravene the principle of universal and equal suffrage, as provided in OSCE commitments.

The legal framework is highly decentralized and complex, with significant variation between states. A number of previous OSCE/ODIHR recommendations remain unaddressed in the law and certain deficiencies in the legal framework persist, such as the disenfranchisement of citizens living in various territories, restrictions on the voting rights of convicted criminals, and infringements on secrecy of the ballot. In 2013, provisions of the Voting Rights Act were struck down, removing a timely and effective safeguard for the protection of rights for racial and linguistic minorities. A wide range of electoral litigation remained unresolved before election day, particularly with respect to voter registration and voter identification.

Individual states are responsible for administering elections with duties often delegated to some 10,500 jurisdictions across the country. The elections were administered by competent and committed staff and enjoyed broad public confidence. The work of the Election Assistance Commission (EAC) had a positive impact for state and county officials, enabling the exchange of best practices and providing standards for New Voting Technologies. A number of technical recommendations made by previous OSCE/ODIHR missions, as well as the 2014 Presidential Commission on Election Administration, were addressed.

Voter registration is active and implemented at the state level. Various initiatives have been undertaken to improve voter list accuracy and inclusiveness, often with bipartisan support. These included online registration, as well as inter-state projects to identify potential duplicate records and inaccuracies. Notwithstanding these measures, more than an estimated 35 million eligible voters were not registered for these elections, underscoring the need for continued efforts to enhance voter registration, particularly among marginalized communities.

Voter identification rules are politically divisive and vary across the states, with 32 states requiring identification, of which 16 require photo identification. Provisional ballots are generally available if a voter does not have sufficient identification; however, eligibility is established only after the close of the polls, at times requiring additional information from the voter. A high volume of litigation regarding voter identification continued up to election day, generating confusion among voters and election officials regarding the application of the rules. Efforts to ensure the integrity of the vote are important, but should not lead to the disenfranchisement of eligible voters.

Candidate registration requirements vary considerably between states. A large number of candidates, including independents and representatives of small parties, were registered for congressional elections in an inclusive manner, providing voters with a variety of choice. Four presidential candidates were registered in a sufficient number of states to be elected. Variations in rules make it cumbersome for third party or independent candidates to register across all states for presidential elections.

Women are underrepresented in elected office. Women comprised 17 per cent of congressional candidates and hold 20 per cent of seats in the new Congress. This was the first time a major party nominated a woman as candidate for president but elements of the campaign were marked by misogynistic language. Women were well represented amongst electoral staff, including in decision making positions.

There are strong legal guarantees to ensure the right and opportunity to vote for persons with physical disabilities. While all polling stations are required to include specialized equipment to assist such voters, electoral staff were not always well trained in how to use the technology. Voting rights for persons with mental and intellectual disabilities vary considerably and some restrictions are at odds with international standards.

The campaign was dynamic and vivid, demonstrating a commitment to fundamental freedoms of expression, association and assembly. The campaign was dominated by the presidential race that largely focused on undecided voters in a small number of “battleground” states. The two major candidates offered distinct policy alternatives, but often used highly charged rhetoric and employed personal attacks. Intolerant speech by one candidate was frequent, including about women, minorities and people with disabilities. Both candidates faced scandals during the campaign that provoked widespread public debate about their qualifications for office. Third-party candidates received minimal attention.

The Federal Election Commission (FEC) oversees a campaign finance regime that imposes few actual limits on donations and does not limit expenditure. All financial reports are published expeditiously, but transparency is diminished by the absence of disclosure for some types of non-profit organizations that play an important role in the campaign. Partisan decision making has limited the FEC’s ability to reach decisions on key campaign finance issues or provide sanctions where violations occurred.

The media is pluralistic and vibrant, although increasingly polarized. A robust system of protection for media independence is in place, but hostility towards the media’s role as a critical watchdog was voiced by one presidential candidate. The media extensively covered the campaign and a series of presidential debates attained record viewing. OSCE/ODIHR EOM media monitoring revealed partisan campaign coverage, in particular on cable television and in online spaces. Overall, the media provided voters with a wide range of information and enabled them to make an informed choice.

Legal measures are available to address electoral disputes and access to the courts is unrestricted. There is no fixed timeframe for resolving election-related disputes, which puts into question the effectiveness of a remedy, as provided for by OSCE commitments. Provisions on recounts vary widely and are often insufficiently defined, which can result in complaints not being addressed in a consistent and timely manner. Three state-wide recounts were requested by the presidential candidate Jill Stein on the grounds of alleged hacking from abroad, although no evidence was submitted at the time. One recount showed minimal discrepancies and the remaining two were suspended by the courts.

Most state law is silent on observation, leaving discretion to election officials. Restrictions on observation of early voting and election day are in place in 17 states. Citizen observers and party representatives were active and widespread throughout the country, providing an added layer of transparency and confidence in the election process.

More than one-third of voters are estimated to have cast their vote before election day, either in person or by post, including citizens abroad. Early voting enjoys broad public trust and a number of measures were implemented to ensure security. However, secrecy of the vote was not always guaranteed for postal voting and out-of-country voting by electronic means, contrary to OSCE commitments.

Election day procedures were generally followed and assessed positively by the IEOM observers. In a number of locations throughout the country long queues to access polling stations were observed. In numerous instances, multiple citizens intending to vote at a polling station were not found on the voter list, underlining systemic concerns with voter registration. Secrecy of the vote was not always guaranteed, generally where voters were not provided with ballot sleeves when using ballot scanners. Despite widespread concerns that voters would be intimidated at the polls, no serious incidents were observed by the IEOM or were reported to it. Polling officials were mainly co-operative, even in

those areas that do not clearly provide for international observation. IEOM observers could not, however, fully observe procedures in 73 polling stations across 19 states.

In the days after the elections, a number of demonstrations broke out in major cities and student campuses across the country. The demonstrators protested against the election of Mr. Trump and his use of divisive and offensive rhetoric. At the same time, civil rights groups reported an increase in hate crimes, primarily against racial and religious minorities.

Discussion of the alleged interference of the Russian government in the US elections became a key theme in the post-electoral period. Following reports from US intelligence agencies that alleged that the Russian government acted to influence the elections through malicious cyber activity, among other reasons, the US imposed sanctions on the Russian Federation and expelled Russian diplomats.

II. INTRODUCTION AND ACKNOWLEDGEMENTS

Following a timely invitation from the US government and based on the recommendation of a Needs Assessment Mission conducted from 16 to 20 May, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 4 October to observe the 8 November general elections.¹ The EOM was headed by Ambassador Audrey Glover and consisted of 14 experts based in Washington, DC and 26 long-term observers (LTOs) deployed throughout the country.

On election day, the OSCE/ODIHR EOM joined efforts with an observer delegation from the OSCE Parliamentary Assembly (OSCE PA) to form an International Election Observation Mission (IEOM). Christine Muttonen was appointed by the OSCE Chairperson-in-Office as Special Co-ordinator and leader of the OSCE short-term observer mission. Makis Voridis headed the OSCE PA delegation. In total, 295 observers from 44 countries were deployed on election day, including 192 long-term and short-term observers by the OSCE/ODIHR, and a 103-member delegation from the OSCE PA. Opening was observed in 93 polling stations and voting was observed in 1,059 polling stations across the country. Counting was observed in 83 polling stations. This final report follows the Statement of Preliminary Findings and Conclusions, which was released at a press conference in Washington, DC on 9 November 2016. The OSCE/ODIHR EOM remained in the United States until 16 November and followed post-election day developments.

The OSCE/ODIHR EOM assessed compliance of the electoral process with OSCE commitments and other international standards and obligations for democratic elections and with national legislation. State and local elections were held concurrently with the general elections and were observed by the OSCE/ODIHR EOM only to the extent they impacted the general elections.

The OSCE/ODIHR EOM wishes to thank the government of the United States of America for the timely invitation to observe the elections, as well as the Department of State and the National Association of Secretaries of State and representatives of other federal and state institutions and election authorities for their assistance and support. The OSCE/ODIHR EOM also wishes to express its appreciation to international organizations and embassies accredited in the US, as well as political parties, media representatives and civil society organizations for their co-operation and support.

¹ See previous [OSCE/ODIHR election-related reports on the United States](#).

III. POLITICAL BACKGROUND

The US is a federal presidential republic comprising 50 states, the District of Columbia, and a number of overseas territories.² Executive powers are vested in the president, who serves as head of state and head of government. The president is responsible for implementing and enforcing federal law and, to that end, appoints the cabinet and heads of federal agencies. Legislative power is exercised by the Congress, a bicameral body consisting of the Senate and the House of Representatives. The states exercise wide authority relative to the federal government and have their own governors, constitutions, laws, legislatures, and courts.

On 8 November, in line with the Constitution, elections were held for president and vice president, 34 of 100 senators, and all 435 representatives. A large number of elections were also held for state and local offices, as well as various referenda and initiatives.³ The last presidential election was held in 2012, when the Democratic incumbent, President Barack Obama, was re-elected for a second and final term. The last congressional elections were held in 2014, resulting in a Senate comprised of 54 Republicans, 44 Democrats and 2 Independents, as well as a House of Representatives comprised of 247 Republicans and 188 Democrats.⁴ Women are generally underrepresented in public office, holding some 20 per cent of seats in the outgoing Congress and 4 of the 15 cabinet posts.

The general election process began in early 2016 with the selection of party candidates following nationwide caucuses and primaries. After the primary campaigns, which showed divisions within each of the main parties, Hillary Clinton won the nomination for the Democratic Party and Donald Trump for the Republican Party. They were selected from a total of 23 aspiring presidential candidates in over 70 primary elections and caucuses. This was the first time a major party nominated a woman as candidate for president. Only two other candidates, Gary Johnson of the Libertarian Party and Jill Stein of the Green Party, were registered in enough states to be able to win the election.

While the presidential race received most of the national attention, control of both the Senate and House was at stake. Almost all OSCE/ODIHR EOM interlocutors agreed that these elections took place in an increasingly polarized environment, with partisan animosity deepening, and against the backdrop of political gridlock in Congress.

IV. ELECTORAL SYSTEM

The president and vice president are elected jointly for a four-year term. The election is indirect, conducted through an Electoral College comprised of 538 electors. All 50 states have a number of electors equivalent to their total representation in Congress, while the District of Columbia has three. The electors are nominated by parties and elected through a popular vote, largely through ‘winner takes all’ contests.⁵ The system allows for a candidate to win the popular vote nationwide while falling short of the majority of Electoral College votes. There is no federal law requiring electors to vote in line with their nominating party, but some state laws provide sanctions for so-called “faithless

² Including American Samoa, Baker Island, Guam, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Northern Mariana Islands, Palmyra Atoll, Puerto Rico, Virgin Islands, and Wake Island.

³ Including legislative seats in 49 states, executive offices in 23 states, judges in 35 states, and 163 referenda and initiatives in 35 states.

⁴ The outgoing House of Representatives included 246 Republicans, 186 Democrats and 3 vacancies.

⁵ Maine and Nebraska are exceptions where Electoral College votes are split, with two votes allocated to the winner of the state-wide popular vote, and one vote allocated to the winner of each congressional district.

electors” or invalidate them. In these elections, a total of ten electors voted against the assigned vote from their electorate.⁶

Both before and after the election, many OSCE/ODIHR EOM interlocutors expressed concern over the continued use of a system that separates the popular vote from winning the office of President.⁷ While any formal change to the Electoral College would require a constitutional amendment, several states have passed a National Popular Vote (NPV) act whereby states would pool their electoral votes in favour of the candidate that wins the national popular vote.⁸ For the NPV to take effect, states with a combined total of at least 270 electoral votes must join the initiative.

Senators and Representatives are directly elected, principally in “first-past-the-post” contests. Each state constitutes a single electoral district for the Senate, and elects two Senators who serve staggered six-year terms. At most, one Senator from each state may be elected at any election. Seats in the House are proportionally allocated to states according to their population, with a minimum of one per state. Representatives serve two-year terms.

Elections to the House are conducted in districts, which are revised every ten years, following a nationwide census.⁹ Districts must be drawn up on the basis of approximately equal population figures, ensuring an “equally effective voice” for voters. Redistricting based on the 2010 census has been the subject of sustained legal challenges, including several cases that remain ongoing. Some courts found that district boundaries were drawn on partisan or racial grounds, which undermined competitive elections and the principle of equal suffrage.¹⁰ In these elections, 28 candidates for the House ran unopposed. Positively, a number of states have established independent redistricting commissions and, in 2015, the Supreme Court held that an Independent Redistricting Commission established in Arizona was consistent with the Constitution.¹¹ Such bodies can build public confidence in the process and remove partiality from final districting decisions.¹²

To meet requirements regarding the equality of the vote, states should consider the establishment of independent redistricting commissions to draw district boundaries free from political interference. Such commissions should undertake broad public consultations and make

⁶ Of the ten “faithless electors”, Hillary Clinton lost five of her assigned votes, Donald Trump lost two, and three were invalidated under their respective states’ laws. See [Certificates of Vote](#) of the Electoral College by state.

⁷ The Electoral College vote was won by Mr. Trump, who secured 304 Electoral College votes. Ms. Clinton won the popular vote, receiving 48.3 per cent of votes cast as compared to 46.2 per cent for Mr. Trump.

⁸ [The National Popular Vote Act](#) has been enacted in 10 states and the District of Columbia and it is on the legislative agenda in 12 other states.

⁹ In 1964 [Reynolds v. Sims](#) established that there must be equal representation for equal numbers of people, ensuring the principle of “one-person one-vote” in redistricting. In 2016 the Supreme Court in [Evenwel v. Abbott](#), held that the principle is complied with if states use the total population as a baseline, rather than the number of eligible voters.

¹⁰ Litigation was successful in [North Carolina](#) and [Florida](#). Additional cases challenged revisions in Maryland ([Shapiro v. McManus](#)), North Carolina ([LWVNC v. Rucho](#)) and Wisconsin ([Whitford v. Nichol/Gill](#)).

¹¹ See [Arizona State Legislature v. Arizona Independent Redistricting Commission](#) from 29 June 2015. Commissions in Alaska, Arizona, California, Idaho, Montana and Washington can be characterized as independent.

¹² Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits OSCE participating States to guarantee “universal and equal suffrage to adult citizens”. Paragraph 21 of the UN Human Rights Committee (CCPR) General Comment No.25 on the International Covenant of Civil and Political Rights (ICCPR) states that “the drawing of electoral boundaries and the method of allocating votes should not distort the distribution of voters or discriminate against any group”. Section I.2.2 of the 2002 Council of Europe’s Venice Commission Code of Good Practice on Electoral Matters recommends that districting be impartially by a commission, “the majority of whose members are independent”.

recommendations on new boundaries well in advance of an election, allowing adequate time for any recourse to judicial review.

V. LEGAL FRAMEWORK

In accordance with the federal system established in the Constitution, federal legislation provides minimum standards for elections, with implementation primarily regulated at state level.¹³ Federal and state court decisions also form an integral part of the legal framework. Electoral law, as a result, is decentralized and complex, with significant variations between states. The US is party to major international and regional instruments related to the holding of democratic elections.¹⁴

Federal legislation includes the 1965 Voting Rights Act (VRA), which outlaws discriminatory law and practice on the grounds of ethnicity and language; the 1986 Uniformed and Overseas Citizens Absentee Voting Act and 2009 Military and Overseas Voting Empowerment Act (MOVE), which facilitate out-of-country voting; the 1984 Voting Accessibility for the Elderly and Handicapped Act and 1990 Americans with Disabilities Act, which promote access to the polls for people with disabilities; the 1993 National Voter Registration Act (NVRA), which facilitates voter registration; the 1971 Federal Election Campaign Act and 2002 Bipartisan Campaign Reform Act, which regulate campaign finance; and the 2002 Help America Vote Act (HAVA), which establishes minimum standards for administering elections, including for new voting technologies (NVT).

The Department of Justice (DoJ) monitors state implementation of federal election law and can bring enforcement suits in cases of non-compliance. In particular, Section 5 of the VRA requires jurisdictions with a history of discrimination to obtain federal pre-clearance of changes to electoral law from the DoJ or the federal district court in the District of Columbia. Unlike other sections of the VRA, Section 5 has an expiration date which, in 2006, was extended by Congress for 25 more years. In 2013, the Supreme Court, in *Shelby County v. Holder*, ruled that the formula to determine which jurisdictions are subject to pre-clearance (Section 4b) is unconstitutional as it is based on outdated information that does not necessarily reflect current circumstances.¹⁵ As a result, no jurisdiction was required to pre-clear election-related changes prior to these elections, with three exceptions that were covered by separate court orders.¹⁶

The *Shelby County* decision removed a longstanding, timely and effective safeguard that protected racial and linguistic minorities from legal changes that have a discriminatory intent or impact. Since the ruling, a number of new registration, identification and voting arrangements were introduced that

¹³ This was reaffirmed by the Supreme Court in 2013 in [Arizona v. Inter Tribal Council of Arizona](#).

¹⁴ Including the 1966 ICCPR, 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and 2003 Convention against Corruption. The US is also a member of the Council of Europe's Group of States against Corruption (GRECO). Although signed, the US to date has not ratified the 1979 Convention for Elimination of All Forms of Discrimination against Women and 2006 Convention on the Rights of Persons with Disabilities (CRPD). The US ratified the ICCPR in 1992, with a number of reservations, understandings, and declarations. In particular, the Senate declared that "the provisions of Article 1 through 27 of the Covenant are not self-executing." Thus while the ICCPR is binding upon the US as a matter of international law, it does not necessarily form part of domestic law.

¹⁵ See, [Shelby County v Holder](#). The Supreme Court did not rule on the constitutionality of Section 5 itself.

¹⁶ These three jurisdictions are: Charles Mix County in South Dakota; the Village of Port Chester in state of New York; and the city of Evergreen in Alabama.

were challenged on the grounds of intent to suppress minority voters.¹⁷ The courts found adverse impacts on African American and Latino voters in several cases.¹⁸

In order to ensure the right and opportunity to vote for all citizens, particularly national minorities, Congress should give urgent consideration to establish the formula to identify jurisdictions to be subject to Section Five of the Voting Rights Act, in line with the ruling in Shelby County v. Holder.

VI. ELECTION ADMINISTRATION

There is no federal body that oversees the entire electoral process and individual states are responsible for administering elections, with duties often delegated to some 10,500 jurisdictions across the country.¹⁹ An estimated 180,000 polling stations were established for these elections.

The composition of election administration bodies at the state level varies widely. In 22 states a single individual is in charge of administering elections, 10 states use a board of elections, and 18 states divide administration duties between two or more offices. In 24 states the secretary of state serves as the chief election official, while other states appoint their chief election official. Many decisions are made by lower-level election officials at the jurisdiction level. Chief election officials of states and counties are often elected as party candidates, at times in elections they themselves administered, raising possible conflicts of interest.²⁰ Despite their possible party affiliation, most OSCE/ODIHR EOM interlocutors generally expressed confidence in the impartiality of election administrators.

Election officials at the state and county level should be released from their duties if they are candidates in elections.

Election staff at both the state and local level were competent and committed, with many having several years of experience. However, some jurisdictions had problems recruiting poll workers. Some county election officials reported a lack of resources that affected the recruitment and training of polling officials. In some jurisdictions where one party is dominant, establishing bipartisan commissions was difficult. In various parts of the country the number of polling stations was reduced, increasing the distances voters had to travel to vote. This often had a disproportionate impact on marginalized groups, including Native Americans.²¹ Training of poll workers was conducted by state or county boards, either in-person or online. Women were generally well represented amongst the electoral staff, including in decision-making positions.

A thorough review of the obstacles faced in identifying, hiring and training poll workers should be conducted. States should ensure that resources for conducting elections, including hiring staff and establishing polling stations, are evenly allocated in all jurisdictions.

¹⁷ Article 5(c) of the 1965 [ICERD](#) prohibits racial discrimination in the exercise of political rights, including the right to vote. See also, the 2007 [UN Declaration on the Rights of Indigenous Peoples](#) and 2016 Organization of American States' [Declaration on the Rights of Indigenous Peoples](#).

¹⁸ See, for example, [One Wisconsin v Thompson](#); [North Carolina NAACP v McCrory](#); [Veasey v Abbott USDC for the Southern District of Texas](#). See also UN Committee on the Elimination of Racial Discrimination (CERD) "[Concluding observations on the combined seventh to ninth periodic reports of the United States of America](#)" (25 September 2014), CERD/C/USA/CO/7-9, paragraph 11.

¹⁹ A jurisdiction is a locality, generally a county or city that is responsible for administering elections within a specific geographic boundary.

²⁰ For example, in Florida, 66 election supervisors ran for elections, many under party tickets.

²¹ Arizona, Florida, Mississippi, Nebraska, Nevada, New Mexico, North Carolina and Utah.

The bipartisan Election Assistance Commission (EAC) is a federal body that provides guidance on meeting HAVA requirements and serves as a clearinghouse for information about the election administration. After functioning without commissioners since 2011, three commissioners were appointed in January 2015, making the EAC operational and addressing a prior OSCE/ODIHR recommendation. The work of the EAC had a positive impact for state and county officials, providing a valuable exchange of best practices, including guidance regarding NVT, online voter registration, effective management of polling stations, and early voting. In doing so, the EAC played a key role in promoting efficient election administration and addressing practical recommendations made by the 2014 Presidential Commission on Election Administration.²²

Federal legislation prohibits discrimination and ensures equal opportunity for persons with disabilities in political life. The majority of OSCE/ODIHR EOM interlocutors noted progress in facilitating registration for voters with disabilities and providing physical or technological access to voting. However, practice varies across jurisdictions, including between urban and rural areas. The OSCE/ODIHR EOM noted that some poll workers did not understand how to use voting equipment designed for voters with disabilities, impacting the opportunity for voters with disabilities to vote independently in person.²³ Positively, the HAVA requires that all polling stations make specialized equipment available to assist voters with disabilities. However, in some polling stations, it was observed that this equipment was not assembled.

To further enhance the participation of voters with disabilities, comprehensive training and procedures should be developed. Specialized equipment already available at each polling station should be prepared and available throughout election day.

Official information about polling station locations and voting procedures was mostly sent to voters by the electoral authorities. State and county websites were also used as platforms to provide voters with information on a variety of electoral topics, including information about registered candidates, rules for provisional ballots, voting equipment, time and place for early voting, voting places and opening hours on election day. In jurisdictions with minority populations, officials prepared election materials in minority languages, as required by the VRA and HAVA. Most jurisdictions also made voter information available in accessible formats for persons with disabilities. Political parties and civil society were also very active in providing voter information.

VII. VOTER RIGHTS

US citizens who are eighteen years of age on election day are eligible to vote. While some 600,000 citizens residing in the District of Columbia have the right to vote in presidential elections, they lack full representation in Congress.²⁴ Some 4 million residents of US overseas territories do not have full representation in Congress and do not have the right to vote in presidential elections.²⁵ This

²² See, [2014 Report and Recommendations of the Presidential Commission on Election Administration](#).

²³ See Article 29a of 2006 CRPD which obliges states “to ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected”. See also, section 301 (a) (3) of HAVA.

²⁴ The District of Columbia has no representation in the Senate and only a non-voting delegate in the House.

²⁵ Including American Samoa, Guam, Northern Mariana Islands, Puerto Rico and the US Virgin Islands.

contravenes the principle of universal and equal suffrage as set out in OSCE commitments and other international standards and obligations.²⁶

Citizens resident in the District of Columbia and US overseas territories should be provided with full representation rights in Congress. In addition, the right to vote in presidential elections should be extended to citizens resident in US overseas territories.

An estimated 6.1 million citizens are disenfranchised due to a criminal conviction, including some 3.1 million who have served their sentences.²⁷ Minorities are disproportionately affected, as they are overrepresented in the criminal justice system, and it is estimated that 2.2 million African Americans are disenfranchised.²⁸ Prisoner and ex-prisoner voting rights are determined by state laws. These laws vary considerably meaning that citizens from different states, who have committed the same crime, have their voting rights affected differently. In Maine and Vermont, those convicted are not disenfranchised at any stage. However, in a few states, prisoners and ex-prisoners permanently lose their right to vote unless pardoned by the state governor, while in most states, persons on parole are prohibited from voting. Several OSCE/ODIHR EOM interlocutors noted that ex-prisoners are often not properly informed about their eligibility for restoration of voting rights by election officials or probation officers and thus fail to secure their right to vote. Positively, prior to these elections, a few states restored voting rights to some convicted criminals that had served their sentence.²⁹ However, the current restrictions on those with criminal convictions remain widespread and lack proportionality, contrary to OSCE commitments and other international standards.³⁰

An additional 730,000 citizens incarcerated in jails, including pre-trial detainees and minor (non-felon) offenders, are effectively disenfranchised as they are not permitted to vote, despite having the legal right to do so. A few jurisdictions facilitate voter registration in jails and offer absentee voting, providing opportunities for detainees and minor offenders to vote.³¹

Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate. Rights should be restored when sentences have been completed, with the law clarified and communicated to those affected. Pre-trial detainees should be provided with the means to vote.

Voting rights for persons with mental and intellectual disabilities varies considerably across the US, with some states not providing any grounds for disqualification, while others can disqualify

²⁶ Paragraph 7.3 of the 1990 OSCE Copenhagen Document provides that participating States will “guarantee universal and equal suffrage to adult citizens”. Article 25 of the 1966 ICCPR states that “every citizen shall have the right and the opportunity...to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage...”. Paragraph 1 of the 1996 CCPR General Comment No.25 on the ICCPR states that “...the Covenant recognizes and protects the right of every citizen to... vote and to be elected... the Covenant requires States to adopt such legislative and other measures as may be necessary to ensure that citizens have an effective opportunity to enjoy the rights it protects...”.

²⁷ See [6 Million Lost Voters](#), The Sentencing Project, 6 October 2016. See also CCPR “[Concluding observations on the fourth periodic report of the United States of America](#)” (23 April 2014), CCPR/C/USA/CO/4, para. 24.

²⁸ See, UN [Report of the Working Group of Experts on People of African Descent on its mission to the USA](#).

²⁹ Including measures taken since the last presidential election in Alabama, California, Delaware, Maryland and Virginia.

³⁰ Paragraph 24 of the 1990 OSCE Copenhagen Document provides that restrictions on rights and freedoms must be “strictly proportionate to the aim of the law.” Paragraph 14 of 1996 CCPR General Comment No. 25 to the ICCPR states that grounds for the deprivation of voting rights should be “objective and reasonable.” See also paragraph 7.3 of the 1990 OSCE Copenhagen Document.

³¹ For example, the District of Columbia, where the Department of Corrections conducts [voter registration](#) and facilitates absentee voting, and Colorado, where [the law provides](#) for the registration of pre-trial detainees.

individuals based on a court decision determining incapacity or guardianship status.³² It is unclear how many persons with disabilities were legally deprived of the right to vote in these elections. Restrictions on the right to vote for persons with mental and intellectual challenges the 2006 CRPD, which provides that there should be no restriction on the suffrage rights of such persons irrespective of the type of disability.³³

States should review their legislation regarding voting rights for persons with disabilities. Blanket restrictions on the suffrage rights of persons with mental disabilities should be removed or be decided by courts on a case-by-case basis, depending on specific circumstances.

VIII. VOTER REGISTRATION

Voter registration is active and implemented at the state level, with no centralized register. Voters could register in person, by post or through an authorized third party. Minimum standards are provided by federal legislation. States are required to co-ordinate and match their records with other state and federal databases. State-wide voter registration databases were accessible to voters to check and update their status. All states allowed registration until at least 9 October, 11 states and the District of Columbia allowed election day registration, and North Dakota did not require any registration.³⁴ Voters could also register by post, using a federal form maintained by the EAC.³⁵ Applications required a signed statement to confirm citizenship, under penalty of perjury.³⁶ HAVA requires first-time voters that register by post to prove their identity by either providing specific information that matches to a government database or a piece of identification.

Various state and civil initiatives were undertaken to improve voter list accuracy and inclusiveness, often with bipartisan support. A majority of states implemented online voter registration, which according to a number of OSCE/ODIHR EOM interlocutors, led to increased accuracy, efficiency, and cost savings.³⁷ In the run-up to these elections, online registration systems in Illinois and Arizona were hacked, putting voters personal information at risk and the integrity of voter registers.³⁸ The Department of Homeland Security (DHS) reported to the OSCE/ODIHR EOM that in 20 additional states there were unsuccessful hacking attempts on voter registration systems. The DHS offered cyber security assistance to all states, of which 33 and some additional jurisdictions accepted.³⁹

³² See [A Guide to the Voting Rights of People with Mental Disabilities](#) by Bazelon Center for Mental Health Law & National Disability Rights Network.

³³ See Article 29a of the 2006 CRPD. See also, paragraph 9.4 of the [2013 CRPD Committee's Communication No. 4/2011 \(Zsold Bujdosó and five others v. Hungary\)](#) which stated that: "Article 29 does not foresee any reasonable restriction, nor does it allow any exception for any group of persons with disabilities. Therefore, an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention".

³⁴ In Florida, Georgia, North Carolina and South Carolina, deadlines were extended due to hurricane Matthew.

³⁵ In all states except New Hampshire, North Dakota and Wyoming.

³⁶ Alabama, Arizona, Georgia and Kansas passed legislation requiring proof of citizenship with the application. Federal courts [temporarily ruled](#) against these measures, prohibiting states from requiring such evidence for federal elections.

³⁷ The District of Columbia and 32 states offered online registration for these elections and 6 other states are in the implementation phase.

³⁸ See point two of the [EAC chairperson's testimony before Congress from 28 September](#). Article 7 of the [1990 UN General Assembly Guidelines Concerning Computerized Data Files](#) recommends that "appropriate measures should be taken to protect the files against... unauthorized access, fraudulent misuse of data...".

³⁹ See [statement](#) by the DHS Press Office.

Authorities should consider adopting formal procedures to ensure effective and continuous cyber-security measures to protect online voter registration systems.

Five states authorised different types of automatic registration to further improve voter registers.⁴⁰ An increased number of states also participated in two different inter-state projects to identify duplicate records and inaccuracies. The Electronic Registration Information Center (ERIC) included 20 states and the District of Columbia, and the Interstate Voter Cross-Check Program (IVCP) includes some 25 states. While IVCP is limited to providing lists of suspected duplicates to participating states, ERIC provides comprehensive assistance to identify various types of inaccurate voter list entries. States participating in ERIC reported improvements to the OSCE/ODIHR EOM, including the removal of duplicate entries of voters who change their residence between states and deceased persons, as well as generating opportunities for registration for persons identified as unregistered.⁴¹ If a potential duplicate record is identified, most states require that an attempt is made to contact the individuals concerned before they are removed from the voter list. These state-led initiatives to improve the accuracy of voter lists are in line with previous OSCE/ODIHR recommendations to facilitate voter registration.

States not already participating in inter-state projects should consider doing so, to improve the accuracy of state voter registers across the country.

According to the NVRA, states may conduct programmes, which are uniform and non-discriminatory, for the systematic removal of voter list entries that meet specific criteria, within 90 days of elections.⁴² However, in some instances, the removal of voters from the lists was not in compliance with NVRA requirements, underlying a need for more transparency and oversight in the process.⁴³

Authorities should ensure that voter registers are maintained in full compliance with federal legislation. To ensure transparency of voter registration, the states could introduce oversight or audit procedures.

According to the Census Bureau, there are some 220 million citizens eligible to vote.⁴⁴ The total number of registered voters will not be known until the EAC publishes its post-election report by June 2017, but some estimated that more than 35 million eligible citizens were not registered.⁴⁵ A number of OSCE/ODIHR EOM interlocutors noted that low-income voters, racial and linguistic minorities, Native Americans, and citizens with disabilities face greater obstacles in the registration process and continue to have lower than average registration rates. Clear information on how to register was not consistently provided across all jurisdictions. Collectively, despite some welcome

⁴⁰ California, Connecticut, Oregon, Vermont and West Virginia. For these elections, automatic voter registration was implemented only in Oregon. In addition, voters in Alaska voted positively on a [ballot initiative](#) to introduce automatic voter registration, during these elections.

⁴¹ See also, the reports from [RTI International](#) and the [Government Accountability Office](#) (page 29).

⁴² Including if they did not respond to a mailed notice intended to confirm their voter list entries and, following that, did not vote in two consecutive federal elections.

⁴³ In Ohio, a federal court ruled on 23 September that the removal of voters from lists violated the NVRA and that those affected should be reinstated. In Georgia, an “exact-match” voter verification process resulted in a high rate of rejected applications, leading to a court case. In addition, the DoJ initiated enforcement actions against Alabama and Connecticut for failure to comply with the NVRA, both resulting with court orders aimed to reach compliance with federal law.

⁴⁴ Estimates based on data provided by state election officials project this figure to be 231 million. See information from the [United States Elections Project](#).

⁴⁵ See research from [The Pew Charitable Trusts](#).

improvements, these challenges underscore the need for continued efforts to enhance voter registration accuracy and inclusiveness across the country.⁴⁶

Authorities should review existing measures to further reduce the number of unregistered voters, including addressing undue obstacles and burdensome procedures faced by marginalized sections of the population. Clear and accessible civic education programmes aimed at inclusive voter registration should be in place.

IX. VOTER IDENTIFICATION

Voter identification rules vary widely. In 32 states, voters were required to show identification before voting, of which 16 required photo identification. However, in 24 of these 32 states, voters could instead sign an affidavit or provide additional personal information to cast a provisional ballot, with eligibility established only after the close of the polls. In eight states, provisional ballots are counted only if the voter returns and shows an accepted form of identification. The remaining 18 states and the District of Columbia establish the identity of voters by asking for personal information or comparing signatures to those provided at the time of registration.

Unlike for voter registration, there are no minimum federal standards regarding voter identification. The identification requirements for postal and for in-person voting differ in 24 states, while the remaining states and the District of Columbia have the same identification requirement for all types of voting. In some states where identification is required, the rules defining which types of documents are accepted are restrictive, which could potentially limit access to the polls for some citizens, including students and Native Americans, which is at odds with the VRA.⁴⁷

Voter identification is a politically divisive issue. Republicans tend to view strict voter identification as key to preventing potential fraud and protecting electoral integrity. Democrats, on the other hand, largely believe that the risk of fraud is minimal and does not warrant restrictions that could disenfranchise voters. The DoJ, a number of civil rights organizations and private plaintiffs have engaged in litigation to stop the implementation of identification requirements that have a discriminatory impact in various states, including with respect to racial and linguistic minorities, Native Americans and people with disabilities. Ongoing litigation generated confusion among voters and election officials, particularly in states where repeated court orders were issued due to states' non-compliance.⁴⁸ Efforts to ensure electoral integrity are important but they should be clearly defined so as to avoid disenfranchisement of eligible voters.⁴⁹

States should refrain from introducing voter identification requirements that have or could have a discriminatory impact on voters. Consideration should be given to establishing federal standards

⁴⁶ Paragraph 11 of 1996 CCPR General Comment No. 25 to Article 25 of the ICCPR provides that “States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. Where registration of voters is required, it should be facilitated and obstacles to such registration should not be imposed”.

⁴⁷ For example, North Dakota accepts 4 different types of identification, while Colorado accepts 13. In some states, Native Americans are not permitted to vote with their federally recognized tribal identification. Student IDs are not a valid form of voter identification in five states, while in an additional nine states there are [variations of what types of student IDs are acceptable](#).

⁴⁸ Federal courts in North Carolina, North Dakota, Texas and Wisconsin have made rulings restraining states from fully implementing voter identification requirements. Litigation was also initiated in Alabama and Virginia.

⁴⁹ Paragraph 7.3 of the 1990 OSCE Copenhagen Document commits participating States to “guarantee universal and equal suffrage to adult citizens”.

for voter identification for both in-person and postal voting, to avoid possible discrimination and comply with the Voting Rights Act.

X. CANDIDATE REGISTRATION

Candidacy requirements are established in the Constitution. Presidential candidates must be natural born US citizens, at least 35 years of age, and resident in the US for at least 14 years. Candidates for the Senate must be at least 30 years of age and a citizen for at least 9 years, while candidates for the House of Representatives must be at least 25 years old and a citizen for at least 7 years. Members of both Houses of Congress are required to be residents of the states they represent.

Detailed registration requirements are established by state law, with considerable variation. All states offered the possibility for recognized political parties to nominate candidates. The definition of a ‘recognized party’ varies, depending either on the number of registered voters declaring party affiliation or on the number of votes the party received in previous elections. Smaller political parties and independent candidates may run if they collect a certain number of supporting signatures, usually several months before the elections.⁵⁰ The majority of states also allow for voters to “write-in” unregistered candidates on election day.

In some states, prospective candidates must obtain signatures from more than one per cent of eligible voters, contrary to international good practice.⁵¹ In several states threshold requirements are linked to turnout at previous elections, rather than registered voters, which can also create thresholds in excess of international good practice.⁵² Supreme Court jurisprudence indicates that any barrier to candidacy must be reasonable and non-discriminatory.⁵³ However, the number of signatures required and the signature submission deadlines vary considerably from state to state, which made it difficult for third party or independent candidates to register across all states for the presidential elections. Both the Green Party and Libertarian Party challenged ballot access requirements in several states, with success in a few instances.⁵⁴

In line with good practice, the number of supporting signatures for candidate nomination should not exceed one per cent of registered voters. Additionally, federal legislation could clarify rules on nomination, such as appropriate advance deadlines, thereby promoting certainty for candidates.

Four presidential candidates were registered in a sufficient number of states to be elected through the Electoral College, including two women, with a total of 296 candidates appearing on various state ballots across the country. A total of 180 candidates, including 30 women, competed for the 34

⁵⁰ In [Williams v. Rhodes](#) (1968), the Supreme Court struck down an early nomination deadline in Ohio, as amounting to a barrier to running for election.

⁵¹ Section 1.3.ii of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that “the law should not require collection of the signatures of more than one per cent of voters in the constituency concerned”.

⁵² In New Mexico, aspiring presidential candidates must obtain the number of voter signatures equal to three per cent of the total vote cast in the previous election for governor. In North Carolina, the requirement is equal to two per cent of voters in that election. Indiana requires signatures equal to two per cent of votes cast in the previous election for secretary of state. Wyoming requires a number equal to two per cent of the votes cast in the previous election for US Representatives.

⁵³ See [Anderson v. Celebrezze](#) and [Burdick v. Takushi](#). The rationale of the courts included the avoidance of voter confusion, overly long ballots, or frivolous candidacies.

⁵⁴ In [Libertarian Party of Arkansas v Martin](#) a law was struck down that required new parties to choose nominees at least a year before an election. In [Green Party v Georgia](#) a threshold of one per cent of registered voters for ballot access was found to be too high. Both cases were decided by Federal Courts in 2016.

Senate seats and 1,168, including 204 women, competed for the 435 House seats.⁵⁵ This provided voters with a variety of choices. Two transgender women ran for a major party for the first time.

XI. ELECTION CAMPAIGN

Campaigning took place in an open atmosphere with respect for fundamental freedoms of expression and assembly. The campaign was dominated by the presidential race that largely focused on undecided voters in a small number of so-called “battleground” states, although the number of competitive states increased in the run-up to election day.⁵⁶ While the main presidential candidates campaigned on immigration, trade, healthcare, job creation and foreign policy, congressional races primarily focused on local issues. The OSCE/ODIHR EOM noted a certain level of voter apathy in states with uncontested races.

Presidential and congressional candidates used campaign rallies, canvassing, advertising, social media, yard signs, door-knocking and phone calls to extensively reach out to voters and provide campaign information. While Ms. Clinton used a range of campaign methods, Mr. Trump departed from traditional methods, largely neglecting direct mail or canvassing and relying on his ability to leverage airtime and print space in the media. The Republican Party, however, did contribute to Mr. Trump’s campaign through extensive voter-contact efforts. Third-party candidates received minimal attention.

The campaign was characterized by a high degree of partisan hostility between the two major presidential candidates. Both candidates used a tone that was confrontational, often employing personal attacks during campaign events and characterising each other as unfit for the office of president. Mr. Trump frequently used offensive and intolerant language, including against women, ethnic and racial communities, and people with disabilities. Mr. Trump also stated that, if elected, he would seek to put Ms. Clinton in jail. Ms. Clinton referred to a number of supporters of Mr. Trump as “deplorables”. The negative rhetoric was often reflected in tightly contested congressional races. A few cases of disruptions at rallies were reported.⁵⁷

Mr. Trump alleged media bias against his campaign and repeatedly claimed that the electoral process was rigged. On several occasions, he appealed to his supporters to watch the polls and prevent fraud, raising fears of intimidation on election day.⁵⁸ Mr. Trump’s allegations of electoral fraud and his refusal to say that he would accept the election results were widely denounced as undermining the electoral process, including from within the Republican Party.⁵⁹

Mr. Trump’s candidacy was deeply divisive among Republicans. The release of an audio tape on 7 October where Mr. Trump is heard boasting about having non-consensual sexual contact with women led many senior Republicans and congressional candidates to distance themselves from Mr.

⁵⁵ There are no temporary special measures at the federal level to promote women candidates and the US is not a party to the Convention on the Elimination of All Forms of Discrimination.

⁵⁶ Including Arizona, Florida, Georgia, Iowa, Michigan, Nevada, New Hampshire, North Carolina, Ohio and Pennsylvania.

⁵⁷ More serious incidents included a firebomb attack against a Republican Party office in North Carolina and an arson attack on an African American church in Mississippi with graffiti supporting the Republican presidential candidate.

⁵⁸ In the run-up to election day, the Democratic National Committees from Arizona, Michigan, Nevada, New Jersey, Ohio and Pennsylvania charged the Republican National Committee and Mr. Trump with violating a 1982 New Jersey court order, with nationwide scope, for restraining “ballot security activities” that amount to voter intimidation. None of the motions was successful.

⁵⁹ See also [Statement by the National Association of Secretaries of State](#) from 18 October.

Trump.⁶⁰ In response, Mr. Trump accused the Republican party leadership, including the Speaker of the House, of being disloyal. In the final days of the campaign, however, several senior Republicans re-joined Mr. Trump's campaign. The discord within the Republican Party contrasted with the sustained support lent by high profile Democrats to Ms. Clinton, including from President Obama and the First Lady.

The release by WikiLeaks on 7 October of thousands of emails from Ms. Clinton's campaign chairperson prompted renewed public discussion of her ties to financial institutions and wealthy donors, as well as her judgment on handling of matters of national security. US intelligence agencies accused the Russian government of being behind the hacking of the emails.⁶¹ (see *Post-election Day Developments*). On 28 October, the Federal Bureau of Investigation (FBI) announced that it received evidence from an unrelated case, that appeared to be "pertinent to the investigation" into Ms. Clinton's use of a private email server while Secretary of State. This featured prominently in the last days of the campaign. On 6 November, the FBI concluded that there was no case to bring against Ms. Clinton. Many electoral stakeholders opined that this contravened DoJ guidelines to remain neutral and maintain confidentiality in ongoing investigations in an election year.⁶²

XII. CAMPAIGN FINANCE

Campaign finance is regulated by federal law under the supervision of the Federal Election Commission (FEC), which is a six-person body, comprised of no more than three representatives from any political party. Decisions require at least four votes. Commissioners are appointed by the president and approved by the Senate. At the time of the elections, mandates of four of the six commissioners had expired with no agreement on who should replace them. The FEC produced free materials and hosted events in major cities to educate campaign workers about the law and to promote voluntary compliance. In case of identified violations, it may impose administrative fines proportionate to the violation or submit the case to a district court. However, partisan voting limited the FEC's effectiveness in providing guidance on pressing issues and issuing sanctions in sensitive cases.

Consideration could be given to reviewing the formula for the composition of the FEC in order to promote effective oversight and enforcement of campaign finance law.

Campaigns can be funded by individuals, parties and Political Action Committees (PACs). Limits on aggregated donations were struck down by the Supreme Court in 2014, allowing citizens to make contributions to as many different candidates and political parties as they wish, but maintained individual limits per category.⁶³ Foreign and anonymous donations are prohibited, while corporations and unions cannot make direct contributions to parties and candidates but can make contributions through a PAC, subject to limits. Some OSCE/ODIHR EOM interlocutors reported that women congressional candidates faced greater difficulties raising funds than their male counterparts. Federal public financing is available for presidential but not congressional elections. However, it imposes

⁶⁰ Including candidates in Arizona, Minnesota and Pennsylvania, as well as the National Republican Congressional Committee.

⁶¹ See, [joint statement by the DHS and the Office of the Director of National Intelligence](#).

⁶² See paragraph 1-4.410 of the [US Attorneys' manual from 1953, as revised in 1997](#) which prohibits DoJ officials to use their authority or influence to interfere with or affect the result of an election.

⁶³ See, [McCutcheon v FEC](#). Individuals could contribute up to USD 2,700 per election to a candidate, USD 10,000 per calendar year to a state party, USD 33,400 per calendar year to a national party, and USD 5,000 per calendar year to a PAC. See the [FEC's full breakdown on contribution limits](#).

limits on how much candidates may raise and spend and Ms. Stein was the only candidate who used public financing for this election.⁶⁴

The public financing system for presidential elections could be reformed, revising expenditure limits to make it more relevant to prevailing practice.

There are no limits on campaign spending, as the Supreme Court has held that any limitation would constrain free speech, as enshrined in the First Amendment to the Constitution.⁶⁵ In 2010, in *Citizens United v. FEC*, the right to “independent speech” was extended to outside groups such as corporations and unions, allowing them to spend without limit.⁶⁶ In order to be considered “independent”, outside groups cannot co-ordinate spending with a candidate or party. However, many OSCE/ODIHR EOM interlocutors noted gaps in enforcing this law in practice. The *Citizens United* ruling remains politically divisive, with Ms. Clinton having pledged to overturn the decision if elected. In California and Washington, voters requested their elected representatives through referenda to seek a constitutional amendment to reverse the impact of this court decision. It is estimated that some USD 7 billion was spent by candidates, parties, and PACs in these elections.⁶⁷ Some OSCE/ODIHR EOM interlocutors raised concerns that large donations are concentrated in the hands of a few wealthy donors, giving them undue influence over policy and law-making.

Candidates, parties, and PACs regularly filed reports with the FEC, disclosing funds raised and spent. The reports identified individuals who donated in excess of USD 200 and were published online by the FEC within 48 hours of receipt, providing important transparency.⁶⁸ However, some non-profit organizations can make unlimited independent campaign expenditures without any disclosure of the identity of the donors or the amount donated, provided that campaigning is not their primary activity.⁶⁹ This diminishes an otherwise transparent system as these donors are not subject to the jurisdiction of the FEC, thus circumventing disclosure rules, at odds with international obligations.⁷⁰

To improve transparency of campaign finance, disclosure of the sources of funding of non-profit organizations that engage in campaign activities should be required. In addition, FEC rules regarding co-ordination should be reviewed and clarified to ensure that spending by outside groups is genuinely independent.

⁶⁴ The public funding entitlement for the 2016 election was USD 96.14 million.

⁶⁵ See, [Buckley v Valeo](#).

⁶⁶ See, [Citizens United v. FEC](#).

⁶⁷ The figures are based on a projection by the [Center for Responsive Politics](#), which uses FEC data for its analysis.

⁶⁸ The FEC published [reports](#) for presidential and congressional races on its website on a regular basis.

⁶⁹ Section 501(c) of the Internal Revenue Code lists 29 types of organizations which fit into this category. They include social welfare organizations and chambers of commerce.

⁷⁰ Article 7(3) of the 2003 [UN Convention against Corruption](#) obliges to “consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office”. See also, the [2011 GRECO Evaluation Report on the US on the Transparency of Party Funding](#) and the [2016 GRECO Second Compliance Report on the US](#).

XIII. MEDIA

A. MEDIA ENVIRONMENT

The media landscape is pluralistic and diverse, albeit increasingly polarized. The broadcast media include 1,780 commercial and public television stations and 15,489 radio stations.⁷¹ The environment is traditionally dominated by major television networks including CBS, NBC and ABC, with cable channels such as Fox News, CNN and MSNBC, growing in popularity. There are some 1,300 print publications, but media consumption, including on politics, in particular among young and middle-aged groups, is shifting towards online media and social networks, primarily Facebook and Twitter.

Public service broadcasters are popular among more senior audiences. At the same time, National Public Radio (NPR) enjoys a significant and growing audience beyond traditional listeners. Most public TV stations are affiliates of the Public Broadcasting Service (PBS) and air programmes that commercial broadcasters tend not to offer, such as educational, cultural, and public affairs shows. Mostly financed through federal government subsidies, a continuous lack of resources jeopardizes the development of public service broadcasters.⁷²

Financial resources for public service broadcasters could be increased to provide space for impartial election reporting.

In 1996 the Telecommunication Act was adopted and was the first major reform of telecommunications policy since 1934, which reduced Federal Communication Commission (FCC) regulations concerning cross ownership and effectively allowed for consolidation of the media market among big companies. At the same time, growing fragmentation of available media sources, in particular in the online sphere, has led to economic difficulties within the business model of traditional media and, according to several OSCE/ODIHR EOM interlocutors, a lower professional quality.

Journalists generally enjoy a high degree of freedom to undertake their activities. However, national security and counterterrorism measures implemented in recent years by the government, including attempts to compel reporters to reveal their sources on such issues have been reported by international organizations dealing with matters of freedom of expression.⁷³ Positively, the OSCE Representative on Freedom of the Media (RFoM) welcomed legal reform that improved transparency and access to information, addressing other issues previously criticized by media organizations.⁷⁴

B. LEGAL FRAMEWORK

The First Amendment to the Constitution guarantees freedom of the press and expression, providing for a robust system of protection for media independence. It is further strengthened by various self-regulation mechanisms and decisions of the Supreme Court which affirm that no limitations should constrain freedom of speech. The 1996 Telecommunications Act, elements of the Code of Federal Regulations and FCC regulations outline several key principles for broadcasters to adhere to during elections.

⁷¹ See data to 30 June 2016 from the [Federal Communications Commission](#).

⁷² Paragraph 16 of the 2011 CCPR General Comment No. 34 to Article 19 of the ICCPR provides that states “should guarantee [public broadcaster] independence and editorial freedom. They should provide funding in a manner that does not undermine their independence”.

⁷³ See, for example, Reporters Without Borders [report](#) from 2016.

⁷⁴ See [statement](#) of the OSCE RFoM from 4 July 2016.

Broadcasters (licensed stations, cable systems and direct broadcast satellite providers) are required to keep a publicly accessible “political file” reporting all requests to purchase airtime. In line with a prior OSCE/ODIHR recommendation, the range of media required to post their political files on the FCC website was expanded from only TV stations to include radio stations, cable systems and satellite operators.⁷⁵ In the 60 days prior to general elections, commercial broadcasters are to provide “reasonable access” to all federal candidates who want to purchase airtime. All advertisements must include sponsorship identification and stations are not allowed to censor the content of a candidate’s advertisement.

In addition, an “equal opportunity” rule stipulates that if a candidate for public office purchases airtime or is granted other channel’s facilities, other candidates in that contest must be afforded equal conditions. There are several exemptions to this rule, such as newscast appearances, debates and scheduled or on-the-spot interviews that were introduced to protect editorial freedom. The FCC has interpreted that the equal opportunity rule applies only to candidates and not their supporters.⁷⁶ As a consequence, commercial media exercised wide discretion with editorial policy.

Public broadcasters are subject to a general prohibition from endorsing or opposing candidates for public office and cannot air paid advertisements. In contrast, numerous publications, including major nationwide newspapers in an unprecedented manner, declared their political stance by officially endorsing or opposing presidential candidates.⁷⁷

The Commission on Presidential Debates (CPD), established in 1987 as an independent entity, is mandated to organize debates between presidential candidates. In these elections the CPD organized four debates between the two leading presidential and vice presidential candidates. Based on FEC regulations that require candidate selection to be made on the basis of “pre-established, objective” criteria, the CPD adopted guiding rules in October 2015.⁷⁸ The criteria were legally challenged by Mr. Johnson and Ms. Stein. They argued that the criteria did not allow for a level playing field and resulted in only candidates from the two main parties participating.⁷⁹ The debates were aired by all the major networks and attracted a large audience.⁸⁰

⁷⁵ See the [FCC Report and Order from 28 January 2016](#).

⁷⁶ See the [FCC ruling from 8 May 2014](#).

⁷⁷ Out of the 100 newspapers with the widest circulation, 57 endorsed Ms. Clinton, 4 endorsed Mr. Johnson, 3 recommended not to vote for Mr. Trump and 2 endorsed Mr. Trump.

⁷⁸ Since 2000, the criteria for participation are as follows: to be constitutionally eligible, candidates must appear on a sufficient number of state ballots to have a mathematical chance of winning a majority vote in the Electoral College, and have a level of support of at least 15 per cent as determined by five selected national public opinion polls, using the average of those organizations’ most recently publicly-reported results at the time of the determination.

⁷⁹ Besides other conditions, which they complied with, two other national candidates did not have a level of support of at least 15 per cent, as an average of five selected national public opinion polls. On 5 August 2016, a District of Columbia District Court dismissed a complaint filed jointly by candidates Mr. Johnson and Ms. Stein in September 2015 against the CPD requesting an invitation to the presidential debates. In an additional complaint, filed in August 2015 against the FEC, both candidates challenged a failure of the FEC to enforce FECA provisions concerning debates. The case is pending. Paragraph 7.6 of the 1990 OSCE Copenhagen Document commits participating States to provide “political parties and organizations with the necessary legal guarantees to enable them to compete with each other on a basis of equal treatment before the law and by the authorities”.

⁸⁰ The first debate, on 26 September, was watched by 84 million people, making it the [most watched](#) presidential debate in US history, while the debate on 19 October was the [third most watched debate](#).

To provide viewers with an opportunity to see each of the candidates with a potential to win the presidency, consideration could be given to adjusting criteria for participation in the first presidential debate.

C. MEDIA MONITORING FINDINGS



The media election coverage was vibrant, extensive, and often visibly partisan, in particular on cable networks and in online spaces.⁸¹ A hostile atmosphere towards the media marked the electoral campaign, where their role as a critical watchdog was challenged by Mr. Trump, his campaign and some media outlets that supported his candidacy, such as Fox News and Breitbart.⁸²

Freedom of the media to operate without any intimidation or pressure should be upheld.

OSCE/ODIHR EOM quantitative and qualitative assessment revealed that the monitored media clearly prioritized presidential candidates from the two main parties, while the other two candidates each received less than two per cent of coverage on major broadcast media. Nevertheless, overall media reporting allowed voters to access a wide range of information on candidates and their positions, thus enabling them to make an informed choice.

The public broadcasters covered the candidates in a similar manner, airing documentaries produced by PBS and informative and analytical podcasts by NPR. In their newscasts, PBS and NPR provided significant coverage, with Mr. Trump receiving 42 and 38 per cent respectively, of mostly neutral and negative coverage, and Ms. Clinton receiving 31 and 27 per cent respectively, of mostly neutral coverage.

The three main national television networks provided the candidates with similar news coverage to the public broadcasters. Overall, Mr. Trump and his campaign, received between 42 to 48 per cent of prime-time news coverage, mostly neutral or negative in tone. Ms. Clinton received between 36 and 41 per cent of mainly neutral coverage. In contrast, cable networks often took a highly-partisan approach, in particular Fox News, that presented highly biased coverage against Ms Clinton (50 per cent of her coverage), especially in some talk shows.

While the newspapers often took a partisan approach in their coverage, such as the New York Times and USA Today that showed a high volume of negative coverage of Mr. Trump, some also offered a variety of well-researched and analytical reports. The rapidly developing online media sector, including social networks such as Facebook and Twitter, as well as a large number of non-traditional news websites featured prominently in the campaign. A high volume of dubious news, misinterpretations and distorted facts, were disseminated online, with higher intensity closer to election day. The sources of such news were often unclear.

⁸¹ The OSCE/ODIHR EOM media monitoring commenced on 7 October and included: public television and radio broadcasters, PBS and NPR; three television networks, ABC, CBS and NBC; two cable television channels, CNN and Fox News; and three newspapers, The New York Times, The Wall Street Journal and USA Today. The OSCE/ODIHR EOM also observed election-related coverage in the online media, Breitbart, Huffington Post, Politico, The Hill and Washington Post.

⁸² In a 13 October rally at West Palm Springs, a *Swastika* sign was placed at the media tables. [Numerous](#) negative media-related comments were made by Mr. Trump on his Twitter account and at campaign events. On 12 October, Mr. Trump requested retraction and apology by The New York Times following a story alleging his non-consensual sexual behavior, or he would pursue legal remedies in case of non-compliance. The newspaper rejected the request and claimed its readiness to let the case be decided by the courts.

XIV. COMPLAINTS AND APPEALS

Legal redress is available to both public and private actors. The DoJ has the power to enforce federal law, including the VRA, HAVA, and MOVE, and may initiate court actions in instances where allegations of non-compliance are made. A variety of measures are available, including court orders and the imposition of fines. Campaign finance complaints may be made to the FEC.

The rules provide for unrestricted access to the courts. Individuals, political parties, civil society organizations and interest groups may all bring civil suits in state and federal courts if they consider their rights to have been affected. Final appeal lies with the Supreme Court, but the current absence of a complete bench creates uncertainty as to the resolution of potential electoral disputes. Members of the Supreme Court are political appointees, nominated by the president and confirmed by the Senate.⁸³

Meaningful engagement with the courts requires legal counsel, which can be costly and may present a barrier to some putative plaintiffs. In addition, there is no fixed timeframe within which election-related disputes must be resolved. This results in many complaints and challenges to provisions of electoral law not being finally adjudicated for several years, contrary to OSCE commitments.⁸⁴ Temporary injunctions are readily available, which tend to preserve the *status quo* and protect plaintiffs from harm. They were widely used in advance of the election. A wide range of electoral litigation remained unresolved before election day, with the DoJ and civil society groups having challenged many measures introduced in the wake of *Shelby County*, particularly with respect to voter registration and voter identification. At times, this led to uncertainty and confusion among voters and election officials as to the exact provisions of the law applicable in the run-up to the election.⁸⁵

To avoid uncertainty during an election year, fundamental elements of electoral law should not be open to amendment less than one year before an election.

Recounts in the resolution of election contests are governed by state law and provisions vary widely. Depending on the state, a recount of all votes cast may be conducted automatically when the margin between contesting candidates is narrow. In most states, a recount can also be requested by election officials, candidates or voters.⁸⁶ In most states, if the candidate is requesting recount, he/she is obliged to cover the related costs, with the possibility of reimbursement if the election results are reversed by the recount. In some state statutes there is no deadline set for recounts, while in New York and Wyoming the law does not establish recount procedures. In several states, the grounds for requesting and granting recounts lack clarity. Several recounts were initiated after the presidential election (see *Post-election Day Developments*).

States should introduce deadlines and effective measures in order for recounts to provide a timely remedy.

⁸³ Justice Antonin Scalia died in February 2016. Chief Judge Merrick Garland was nominated by President Obama in March 2016. The nomination expired on 3 January 2017, with the end of the 114th Congress.

⁸⁴ Paragraph 5.10 of the 1990 OSCE Copenhagen Document provides that “everyone will have an effective means of redress against the administrative decisions”. See also Article 2.3(a) of the 1966 ICCPR.

⁸⁵ Section II.2.b of the 2002 Venice Commission Code of Good Practice on Electoral Matters recommends that “the fundamental elements of electoral law, in particular the electoral system proper, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendment less than one year before an election”.

⁸⁶ A total of 43 states and District of Columbia permit candidates, voters or other election stakeholders to request a recount.

XV. ELECTION OBSERVATION

In line with its OSCE commitments, the US Government invited the OSCE/ODIHR and OSCE PA to observe these elections.⁸⁷ In 2015, the National Association of Secretaries of State renewed its resolution, welcoming “OSCE international election observers from the OSCE member countries to observe elections in states where allowed by state law”.⁸⁸ California, Missouri, New Mexico, and the District of Columbia explicitly provide for international observers by law. Most state law is silent on observation, leaving discretion to election officials. Restrictions on observation of early voting and election day are in place in 17 states.⁸⁹ This is not in line with the commitment to provide for international observation.

Legislation should guarantee access in all states to international observers invited by the US authorities, to ensure full compliance with Paragraphs 8 of the 1990 OSCE Copenhagen Document and paragraph 25 of the 1999 OSCE Istanbul Document.

Observation was widespread through the country, both from political party representatives and civil society groups, adding an important layer of transparency. Many of these groups had lawyers to provide immediate legal support in case of disputes, as well as volunteers to facilitate voter access.

The DoJ deployed more than 500 monitors to 67 jurisdictions in 28 states, based on concerns arising from past or potential risks of electoral law violations. In addition to the monitors in the field, the department also opened a hotline for the public to report concerns on election day. As a result of *Shelby County*, the DoJ deployed fewer monitors than in previous elections, with powers to be present in polling places authorized by court order.⁹⁰

XVI. EARLY VOTING

It is estimated that more than one-third of all voters cast their vote prior to election day, either in person or by post. In general, OSCE/ODIHR EOM interlocutors expressed trust in election authorities to administer early voting in an impartial and secure manner. In jurisdictions observed by the OSCE/ODIHR EOM, adequate measures were in place to prevent unauthorized access to ballots cast early, including overnight storage and the use of ballot box seals.

All states provided some voters with the possibility of postal voting, with 27 states and the District of Columbia not requiring voters to provide a reason for their request. Oregon and Washington conducted general elections entirely by post and Colorado was mainly conducted by post.⁹¹ In a positive effort to address potential issues of loss, misdirection, or late delivery of postal ballots, the US Postal Service (USPS) produced guidance for election administrators related to election mail

⁸⁷ Paragraph 8 of the 1990 OSCE Copenhagen Document provides 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”. Paragraph 25 of the 1999 Istanbul Document reaffirms that OSCE participating States “will invite observers to our elections from other participating States, the ODIHR, the OSCE Parliamentary Assembly and appropriate institutions and organizations that wish to observe our election proceedings”.

⁸⁸ See [2015 NASS Resolution Supporting International Election Observers](#).

⁸⁹ Alabama, Alaska, Arizona, Connecticut, Delaware, Florida, Louisiana, Mississippi, New Jersey, North Carolina, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, West Virginia and Wyoming.

⁹⁰ Court orders applied throughout the State of Arkansas, and for the jurisdictions of Evergreen in Alabama and Charles Mix County in South Dakota.

⁹¹ Colorado and Washington provide a limited number of polling stations for in-person voting, including for voters with disabilities, while Oregon election officials conduct home visits for assisted voting.

design and procedures.⁹² Some states, however, did not provide voters with a secrecy envelope, which meant that the ballot was returned in a single envelope that contained voter information, potentially violating the secrecy of vote as provided by paragraph 7.4 of the 1990 OSCE Copenhagen Document.⁹³

Jurisdictions should ensure the secrecy of postal ballots are always safeguarded when received by election officials by providing secrecy envelopes.

In-person early voting was available in 34 states and the District of Columbia. In Massachusetts, early voting in person was introduced for the first time, while in four states, authorities recently introduced legislation to limit the possibilities for early in-person voting.⁹⁴ The early voting period ranged from 3 to 45 days, depending on the state. During early voting, long queues were reported in some locations, often attributed to a limited number of polling locations and opening hours, as well as complex ballots with numerous races to consider.⁹⁵

Where in-person early voting is used, states should ensure that the location and opening hours of polling stations provide, as far as possible, equal accessibility for all voters.

The Federal Voting Assistance Program, under the Department of Defense, supports states in administering out-of-country voting by facilitating voter registration and ballot requests, as well as providing extensive information to voters and guidance to election officials. The MOVE Act requires states to distribute ballots to voters abroad at least 45 days before election day, which all states fulfilled. Thirty-two states allowed electronic submission of marked ballots from out-of-country voters, which required voters to waive the secrecy of their vote, contrary to OSCE commitments.

Federal authorities should develop secure voting methods, including for out-of-country voters, with a view to ensuring the secrecy of the vote while allowing for the expedient return of ballots.

XVII. NEW VOTING TECHNOLOGIES

New Voting Technologies (NVT) were used extensively across the country. The most widespread were optical ballot scanners attached to a ballot box that accept paper ballots, as well as Direct Recording Electronic (DRE) machines, used for electronic voting, which may or may not have a printer attached to provide a voter-verified paper audit trail (VVPAT). Most states use more than one type of NVT as the authority to purchase equipment and regulate its usage is in many cases delegated to counties. In line with federal legislation, all states provided NVT at polling stations to assist voters with disabilities and language barriers to cast ballots secretly and independently.

In 2015, in line with international good practice and a prior OSCE/ODIHR recommendation, the EAC updated the 2005 Voluntary Voting System Guidelines (VVSG), to provide additional guidance and a comprehensive basis for NVT security and functioning which was used in some form in 47

⁹² See [USPS guidance](#) from 17 March 2016.

⁹³ Paragraph 7.4 of the 1990 OSCE Copenhagen Document provides "...that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public". See also paragraph 20 of the 1996 CCPR General Comment No.25 to the ICCPR.

⁹⁴ Such laws were passed in Nebraska, North Carolina, Ohio and Wisconsin. A reduction of the early voting period in North Carolina was overturned by a federal court.

⁹⁵ For example, in Arizona, District of Columbia, Florida, Georgia, Maryland, North Carolina and Texas.

states.⁹⁶ Thirty-seven states and the District of Columbia used federally defined testing and certification of equipment.⁹⁷ In addition, the Department of Homeland Security convened an Election Infrastructure Cybersecurity Working group to further address these issues. While some jurisdictions recently upgraded their voting systems,⁹⁸ many election officials noted that NVT have not been replaced due to a lack of resources at the federal, state and local level, raising issues with the security, reliability and operability of the equipment.⁹⁹

To help address security, functioning and reliability concerns of aging equipment, the authorities could allocate additional resources to upgrade or replace existing electronic voting and counting systems.

The OSCE/ODIHR EOM noted that a number of election authorities were confident in the security measures put in place based on pre-election tests, chain of custody procedures for safekeeping of equipment, and that voting and counting machines are offline. Despite the use of the VVSG and a range of testing and security measures implemented across the states, a number of concerns were raised by various stakeholders regarding gaps in security which could be used by malicious attackers with sufficient resources to gain unauthorized access. This, in combination with outdated equipment or voting and counting software, could lead to lost or inaccurately counted votes.

To prevent unauthorized access to voting equipment due to security gaps, election officials should consider a detailed and formalized examination of their storage, maintenance, testing and set-up procedures. Standardized post-election audits of electronic voting machines should be undertaken by manually examining randomly selected paper ballots and comparing the results to machine results. Reports of such processes should be made public.

Consideration should be given to enhance nationwide or inter-state mechanisms to provide comprehensive security of electronic voting and counting systems.

Reliance on paper-based voting continues and optical or digital scanners were used to count paper ballots in polling stations in 44 states and the District of Columbia. The use of DRE machines has declined in recent years; however, they are still used in one or more jurisdictions in some 30 states. Despite a previous OSCE/ODIHR recommendation and contrary to good practice, 15 states still use DRE machines that do not provide a VVPAT and in five states such machines are used in all jurisdictions.¹⁰⁰ The lack of a VVPAT makes it impossible for voters to ensure their votes have been cast as intended and recorded as cast, and for authorities to establish that votes have been counted as cast through a post-election audit or recount.

To promote transparency and verifiability of electronic voting and counting systems, authorities should consider adopting legislation for the mandatory use of a voter-verifiable paper audit trail in elections.

⁹⁶ See Council of Europe (CoE) [Recommendation](#) (2004)11 on Legal, Operational and Technical Standards for E-Voting.

⁹⁷ See the updated [VVSG 1.1](#) and [VVSG 1.1. vol.2](#) from 31 March 2015.

⁹⁸ For example, in Colorado, Florida, Maryland and Virginia.

⁹⁹ See [2014 Report and Recommendations of the Presidential Commission on Election Administration](#).

¹⁰⁰ Delaware, Georgia, Louisiana, New Jersey and South Carolina. Section 3.2.v of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that “voters should be able to obtain a confirmation of their votes”.

XVIII. ELECTION DAY

The IEOM deployed 298 observers to 1,059 polling stations in 33 states. Polling officials were mainly co-operative, even in those jurisdictions that do not clearly provide for international observation. IEOM observers, however, could not fully observe procedures in 9 per cent of polling stations observed. Party affiliated and citizen observers had a clear view of procedures in 96 per cent of observations, although in some instances polling officials limited their movement within polling stations.

A. OPENING AND VOTING

The opening of polling stations was assessed positively in almost all observations. Polling stations opened on time and polling officials were generally aware of procedures and acted in a collegial and transparent manner. While few significant procedural problems were observed, in most observations the ballot boxes were not shown to be empty and sealed securely.

Voting was assessed positively by IEOM observers in 96 per cent of observations. Polling officials largely adhered to procedures and voters were familiar with the process. Election officials worked in a professional and open manner. In 76 per cent of observations, the ballots and voting information were provided in languages other than English, where required. Polling stations were accessible for voters with disabilities and special voting equipment was widely available for their use, however in 72 cases IEOM observers reported that the equipment was not always set-up for voting. In 10 per cent of observations IEOM observers noted overcrowding in polling stations. In a number of locations long queues to access polling stations were observed, which in 10 per cent of these cases resulted in more than 30 minutes waiting time. In many cases these queues were due to a lack of staff and high voter turnout, especially in the morning and before the polls closed (see *Election Administration*).

IEOM observers noted that multiple citizens intending to vote at a polling station were not found on the voter list in almost half of the polling stations observed, which underlines systemic concern regarding the effectiveness of voter registration methods. However, these voters had the possibility of casting provisional ballots. While some states have rules to count provisional ballots regardless of where they were cast within the state, others only count provisional ballots if they were cast in the county, or even only in the precinct where the voter is registered.¹⁰¹

In 56 per cent of observations, the authorities used electronic voter lists that helped election officials redirect voters in case they were registered at a different polling station.¹⁰² In seven per cent of observations in states where documents were required for voter identification, election officials did not apply procedures consistently.

In 12 per cent of observations, IEOM observers noted malfunctioning of electronic voting equipment, which may be attributed to outdated and poorly maintained equipment, and inadequate pre-election testing procedures.¹⁰³ In some cases, voters informed election officials that their votes

¹⁰¹ Idaho, Minnesota, New Hampshire, North Dakota, Wisconsin and Wyoming are exempt from the HAVA requirement to provide provisional ballots to voters. Idaho, Minnesota and New Hampshire do not provide provisional ballots.

¹⁰² The [Voting Information Project](#) implemented by Pew and Google allowed voters to input their addresses in google.com to determine their polling station information, including its address and opening hours.

¹⁰³ Media also reported significant problems with equipment malfunctions, for example, in Colorado, North Carolina, Tennessee and Utah.

were not accurately recorded on the screens of DRE machines, which, according to the EAC, could occur with poorly calibrated equipment. Mr. Trump claimed, without presenting evidence, that Republican votes automatically changed to Democratic votes in various voting machines across the country. No security breaches, including hacking of voting equipment, were reported on election day.

Secrecy of the vote was not always guaranteed, at odds with OSCE commitments and international obligations.¹⁰⁴ In seven per cent of observations, there were cases of voters not voting in secret. This included voters not being provided with ballot sleeves to preserve the secrecy of their vote when using ballot scanners to cast their vote. In some cases, provisional ballots were not put in secrecy envelopes before being inserted in envelopes containing voter information. In five per cent of observations, there were indications that voters were taking photographs of their ballot.¹⁰⁵

Legislation should be in place to guarantee the secrecy of the vote for in-person voting, including provisional and absentee ballots.

Campaigning is permitted on election day and continued throughout the day, often in the vicinity of polling stations. Despite widespread concerns that voters would be intimidated at the polls, no serious incidents were observed by the IEOM or reported to it. However, in some states, politically-charged tension among voters waiting in line was noted. In several instances, individuals were reported to be openly carrying firearms at polling stations.

In general, election officials extended opening hours to allow those queuing to vote. It is estimated that some 58 per cent of all citizens eligible to vote, had cast their votes prior to and on election day.¹⁰⁶

B. COUNTING, TABULATION AND ANNOUNCEMENT OF RESULTS

The vote count was almost entirely automatic through the use of NVT and was assessed positively in most polling stations observed. In several states, there are no common standards on determination of the intent of the voter.¹⁰⁷ Procedures were generally followed, however, results were not usually announced at the polling station, reducing transparency in the process. Due to time zone differences, preliminary results for various races were announced by the media before some voters had voted.

Consideration should be given to the adoption of laws and regulations that set clear criteria for the determination of voter intent when ballots are counted or re-counted.

There is no authority in charge of the compilation of election results on the national level. The IEOM observers evaluated the tabulation process positively, however, they were not always granted access to the tabulation venues. The process of tabulating results was conducted at the county and state level, concurrent with the processing and counting of provisional and any remaining absentee ballots.

By long-standing tradition, the announcement of unofficial preliminary results is made public by media networks, based on comprehensive data provided by electoral authorities.¹⁰⁸ Most media networks called the presidential election in Mr. Trump's favour in the early hours of 9 November.

¹⁰⁴ See paragraph 7.4 of the 1990 OSCE Copenhagen Document.

¹⁰⁵ Photographing ballots is prohibited in 16 states.

¹⁰⁶ See, the [United States Elections Project](#) website. More precise information collected by the EAC through questionnaires completed by state and county level authorities is estimated to be available in June 2017.

¹⁰⁷ See [American Bar Association Resolution 103](#) of 2016 on the adoption of standards for the determination of voter intent.

¹⁰⁸ See, for example, the Associated Press: <http://www.ap.org/products-services/elections/calling-races>.

Eighty-nine women were elected, resulting in the next congress having 20 per cent of women. The preliminary results do not include provisional ballots cast, nor absentee ballots postmarked before election day but not received. Election officials in a number of states did not publish the results of elections broken down to the polling station level.

To enhance transparency, jurisdictions should consider promptly publishing results by polling station. When reporting preliminary results, the election officials should also include available information on how many provisional and absentee ballots are yet to be processed. The publication of preliminary and final election results should rest with state authorities.

XIX. POST- ELECTION DAY DEVELOPMENTS

A. POLITICAL DEVELOPMENTS

As media reported a likely victory for Mr. Trump, a number of marches and demonstrations broke out in a range of major cities and student campuses, continuing after Ms. Clinton publicly conceded the election on 9 November and lasting several days. The demonstrators protested against the election of Mr. Trump and his use of divisive and offensive rhetoric. At the same time, civil rights groups reported an increase in hate crimes and cases of harassment and intimidation against members from racial and religious minority groups.¹⁰⁹ The incidents also included attacks against Mr. Trump's supporters.¹¹⁰ On 21 November, in a development welcomed by the OSCE/ODIHR, the US Attorney General called for victims of such incidents to report them to law enforcement agencies and the Justice Department.¹¹¹ While less widespread, protests continued until the time of the publication of this report.

Discussion of the alleged interference of the Russian government in the US elections was a key theme in the post-electoral period. On 29 December the FBI and DHS, expanding on the 7 October DHS statement, released a report detailing how they allege the Russian government acted to influence the US elections through malicious cyber activity.¹¹² On the same day, the US imposed sanctions on the Russian Federation, including the expulsion of 35 Russian diplomats. On 6 January 2017, the DHS published a declassified report, based on intelligence from the Central Intelligence Agency (CIA), FBI, and the National Security Agency (NSA), which accused the highest-levels of the Russian government of conducting "an influence campaign" to "undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency".¹¹³ The report further alleged that the Russian intervention developed a preference for Mr. Trump. Of note, it assessed that interference did not extend to the tallying of votes. In the aftermath of these reports, further statements and documents were released by media outlets alleging links between Mr. Trump and the Russian government that were strongly denied by Mr. Trump.

¹⁰⁹ For the period 9-16 November, [the Southern Poverty Law Center](#) (SPLC) reported over 700 cases targeting immigrants, African Americans, LGBTQ, Muslims and women. On 28 November, the Council on American-Islamic Relations [reported](#) more than 100 anti-Muslim incidents since the election.

¹¹⁰ The SPLC reported 27 cases of such incidents for the period 9-16 November.

¹¹¹ [Expressing concerns over the reports](#), the OSCE/ODIHR Director encouraged political leaders to counter racist and xenophobic discourses with messages of tolerance and inclusion, and commended the FBI for investigating the cases.

¹¹² See the 29 December 2016 [joint FBI and DHS report](#).

¹¹³ See the 6 January 2017 [joint CIA, FBI and NSA report](#).

B. VOTE RECOUNTS

On 23 November, Ms. Stein announced she would request state-wide recounts of votes cast in the presidential election in the states of Wisconsin, Michigan and Pennsylvania. She argued that the vote count could have been compromised, on the grounds of alleged hacking and malicious cyber activity from abroad, although no clear evidence was presented. Ms. Stein's recount requests were opposed by Mr. Trump's campaign, including through legal challenges.

A state-wide recount in Wisconsin was conducted from 1 to 12 December and only minimal discrepancies were noted, with no effect on the election results. After litigation in state and federal courts, the recount was finally suspended on 9 December by the Michigan Supreme Court, on the grounds that the difference of votes between the candidate requesting the recount and the winning candidate was not narrow enough to warrant a recount. In Pennsylvania, a US district judge on 12 December ruled against Ms. Stein's recount request, arguing that there was insufficient time to conduct the recount before the federally set deadline of 13 December. Another presidential candidate, Rocky De La Fuente, requested five counties to conduct a recount in Nevada on 30 November. The recount was finished on 8 December and resulted in negligible changes.

XX. RECOMMENDATIONS

These recommendations, as contained throughout the text, are offered with a view to enhance the conduct of elections in the United States and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards for democratic elections. These recommendations should be read in conjunction with past OSCE/ODIHR recommendations, in particular from the 2010 and 2012 Final Reports, which remain to be addressed. The OSCE/ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.¹¹⁴

A. PRIORITY RECOMMENDATIONS

1. To meet requirements regarding the equality of the vote, states should consider the establishment of independent redistricting commissions to draw district boundaries free from political interference. Such commissions should undertake broad public consultation and make recommendations on new boundaries well in advance of an election, allowing adequate time for any recourse to judicial review.
2. In order to ensure the right and opportunity to vote for all citizens, particularly national minorities, Congress should give urgent consideration to establish the formula to identify jurisdictions to be subject to Section Five of the Voting Rights Act, in line with the ruling in *Shelby County v. Holder*.
3. Restrictions on voting rights for persons with criminal convictions should be reviewed to ensure that all limitations are proportionate. Rights should be restored when sentences have been completed, with the law clarified and communicated to those affected. Pre-trial detainees should be provided with the means to vote.

¹¹⁴ According to the paragraph 24 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations."

4. Citizens resident in the District of Columbia and the US overseas territories should be provided with full representation rights in Congress. In addition, the right to vote in presidential elections should be extended to citizens resident in the US overseas territories.
5. Authorities should review existing measures to further reduce the number of unregistered voters, including addressing undue obstacles and burdensome procedures faced by marginalized sections of the population. Clear and accessible civic education programmes aimed at inclusive voter registration should be in place.
6. Legislation should be in place to guarantee the secrecy of the vote for in-person voting, including provisional and absentee voting.
7. States should refrain from introducing voter identification requirements that have or could have a discriminatory impact on voters. Consideration should be given to establishing federal standards for voter identification for both in-person and postal voting, to avoid possible discrimination and comply with the Voting Rights Act.
8. To improve transparency of campaign finance, disclosure of the sources of funding of non-profit organizations that engage in campaign activities should be required. In addition, FEC rules regarding co-ordination should be reviewed and clarified to ensure that spending by outside groups is genuinely independent.
9. To help address security, functioning and reliability concerns of aging equipment, the authorities could allocate additional resources to upgrade or replace the existing electronic voting and counting systems.
10. Legislation should guarantee access in all states to international observers invited by the US authorities, to ensure full compliance with Paragraphs 8 of the 1990 OSCE Copenhagen Document and paragraph 25 of the 1999 OSCE Istanbul Document.

B. OTHER RECOMMENDATIONS

Election Administration

11. Election officials at the state and county level should be released from their duties if they are candidates in elections.
12. A thorough review of the obstacles faced in identifying, hiring and training poll workers should be conducted. States should ensure that resources for conducting elections, including hiring staff and establishing polling stations, are evenly allocated in all jurisdictions.
13. To further enhance the participation of voters with disabilities, comprehensive training and procedures should be developed. Specialized equipment already available at each polling station should be prepared and available throughout election day.

Voter Rights

14. States should review their legislation regarding voting rights for persons with disabilities. Blanket restrictions on the suffrage rights of persons with mental disabilities should be

removed or be decided by courts on a case-by-case basis, depending on specific circumstances.

Voter Registration

15. Authorities should consider adopting formal procedures to ensure effective and continuous cyber-security measures to protect online voter registration systems.
16. Authorities should ensure that voter registers are maintained in full compliance with federal legislation. To ensure transparency of voter registration, the states could introduce oversight or audit procedures.
17. States not already participating in inter-state projects should consider doing so, to improve the accuracy of state voter registers across the country.

Candidate Registration

18. In line with good practice, the number of supporting signatures for candidate nomination should not exceed one per cent of registered voters. Additionally, federal legislation could clarify rules on nomination, such as appropriate advance deadlines, thereby promoting certainty for candidates.

Campaign Finance

19. Consideration could be given to reviewing the formula for the composition of the FEC in order to promote effective oversight and enforcement of campaign finance law.
20. The public financing system for presidential elections could be reformed, revising expenditure limits to make it more relevant to prevailing practice.

Media

21. Financial resources for public service broadcasters could be increased to provide space for impartial election reporting.
22. To provide viewers with an opportunity to see each of the candidates with a potential to win the presidency, consideration could be given to adjusting criteria for participation in the first presidential debate.
23. Freedom of the media to operate without any intimidation or pressure should be upheld.

Complaints and Appeals

24. States should introduce deadlines and effective measures in order for recounts to provide a timely remedy.
25. To avoid uncertainty during an election year, fundamental elements of electoral law should not be open to amendment less than one year before an election.

Early Voting

26. Jurisdictions should ensure the secrecy of postal ballots are always safeguarded when received by election officials by providing secrecy envelopes.
27. Where in-person early voting is used, states should ensure that the location and opening hours of polling stations provide, as far as possible, equal accessibility for all voters.
28. Federal authorities should develop secure voting methods, including for out-of-country voters, with a view to ensuring the secrecy of the vote while allowing for the expedient return of ballots.

New Voting Technologies

29. To prevent unauthorized access to voting equipment due to security gaps, election officials should consider a detailed and formalized examination of their storage, maintenance, testing and set-up procedures. Standardized post-election audits of electronic voting machines should be undertaken by manually examining randomly selected paper ballots and comparing the results to machine results. Reports of such processes should be made public.
30. To promote transparency and verifiability of electronic voting and counting systems, authorities should consider adopting legislation for the mandatory use of a voter-verifiable paper audit trail in elections.
31. Consideration should be given to enhance nationwide or inter-state mechanisms to provide comprehensive security of electronic voting and counting systems.

Election Day

32. Consideration should be given to the adoption of laws and regulations that set clear criteria for the determination of voter intent when ballots are counted or re-counted.
33. To enhance transparency, jurisdictions should consider promptly publishing results by polling station. When reporting preliminary results, the election officials should also include available information on how many provisional and absentee ballots are yet to be processed. The publication of preliminary and final election results should rest with state authorities.

ANNEX I: FINAL RESULTS¹¹⁵

Presidential and Vice-Presidential elections

Presidential Candidate	Vice Presidential Candidate	Political Party	Electoral College		Popular Vote	
			Vote	%	Votes	%
Hillary Clinton	Tim Kaine	Democrat	227	42.2%	65,844,954	48.04%
Donald Trump	Mike Pence	Republican	304	56.5%	62,979,879	45.95%
Gary Johnson	William Weld	Libertarian	0	0	4,488,919	3.28%
Jill Stein	Ajamu Baraka	Green Party	0	0	1,457,044	1.06%
Other candidates	n/a	n/a	7	1.3%	1,179,566	0.86%

Election for Senate - Class III senatorsⁱ

Political Party	Incumbent	Number of Seats	Number of Seats Won
Democratic	10	34 ⁱⁱ	12 ⁱⁱⁱ
Republican	24	33	22 ^{iv}

i Senate elections were conducted in 34 states. One senator was elected in the following states: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nevada, New Hampshire, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, Vermont, Washington and Wisconsin

ii In California two Democrat candidates were running for the Senate

iii This number includes 5 women

iv This number includes 1 woman

Elections for the House of Representatives

Political Party	Incumbent	Number of Seats	Number of Seats Won
Democratic	188	435	194 ⁺
Republican	247	435	241 ⁺⁺

+ This number includes 62 women

++ This number includes 21 women

¹¹⁵ Source <http://uselectionatlas.org/RESULTS/national.php?year=2016&f=0&off=0&elect=0>.

ANNEX II: LIST OF OBSERVERS IN THE INTERNATIONAL ELECTION OBSERVATION MISSION

Short-term Observers

OSCE Parliamentary Assembly

Christine	Muttonen	Austria	Special Co-ordinator
Makis	Voridis	Greece	Head of Delegation
Gerti	Bogdani	Albania	
Mesila	Doda	Albania	
Albana	Vokshi	Albania	
Arta	Dade	Albania	
Mimoza	Hafizi	Albania	
Angieli	Anasta	Albania	
Lukas	Mussi	Austria	
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Stephane	Crusniere	Belgium	
Jan	Van Esbroeck	Belgium	
Peter	Luykx	Belgium	
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Desislava	Atanasova	Bulgaria	
Luchezar	Ivanov	Bulgaria	
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Ivana	Dobesova	Czech Republic	
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Soeren Bo	Soendergaard	Denmark	
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Jean-Paul	Dupre	France	
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Juergen	Klimke	Germany	
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Georgios	Veremenos	Greece	
Gabor	Harangoza	Hungary	
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Lisa	Chambers	Ireland	
Timothy	Dooley	Ireland	

Alan	Farrel	Ireland
Denis	Landy	Ireland
Jonathan	O'Brien	Ireland
Billy	Kelleher	Ireland
Noel	Rock	Ireland
Colm	O'Callaghan	Ireland
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Federico	Fauttilli	Italy
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Alfred	Dubs	United Kingdom	
Simon	McGuigan Burns	United Kingdom	
Gavin	Shuker	United Kingdom	
John	Woodcock	United Kingdom	
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Gustavo	Pallares	Spain	Secretariat
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Alice	Vailati	Italy
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Mukhamed	Lou	Kyrgyz Republic
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Inge	Roording	Netherlands
Jan Jelle	Van Herksen	Netherlands
Iskander	De Lange	Netherlands
Koen	Van Middelaar	Netherlands

Stefan	Van de Wiel	Netherlands
Xavier	Prens	Netherlands
	Luchtmeijer - van	
Marjolijn	Spengen	Netherlands
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Ryu	Yeon Seop	Republic of Korea
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Lisa	Maguire	United Kingdom
Ben	Morgan	United Kingdom
Shelley	Williams-Walker	United Kingdom
Lorraine	Ella Turner	United Kingdom
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Sarah	Telford	United Kingdom
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Siegfried Franz	Holzapfel	Germany
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Carola	Kasburg	Germany
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Constantina Raluca	Zanfir	Romania
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Kareski	Jane	The former Yugoslav Republic of Macedonia	
Staleska	Nicolina	The former Yugoslav Republic of Macedonia	
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Railean	Roman	Moldova	
Ozerov	Yuri	Russian Federation	
Stefanovic	Jelena	Serbia	
Godarsky	Ivan	Slovakia	
Eriksson	Anders	Sweden	

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programs annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).