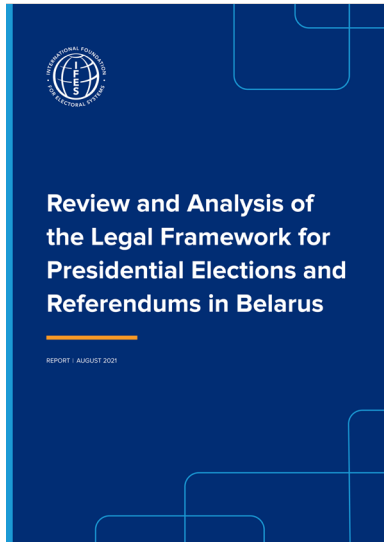




Review and Analysis of the Legal Framework for Presidential Elections and Referendums in Belarus

REPORT | AUGUST 2021



Review and Analysis of Legal Framework for Presidential Elections and Referendums in Belarus

International and local experts have repeatedly evaluated the legal framework for parliamentary elections in Belarus and found it does not adequately guarantee the conduct of elections in line with international obligations and standards.

Under a Belarus rapid response program, the International Foundation for Electoral Systems (IFES) developed two legal review papers: one focused on analyzing the legal framework for presidential elections and referenda in Belarus, and the other on the legal framework for parliamentary elections. It is recommended that they be read in conjunction as they form a composite whole, analyzing the degree to which Belarus' legal norms align with international obligations, standards and good practice in the field of democratic elections as well as with experts' past assessments and recommendations.

Review and Analysis of the Legal Framework for Parliamentary Elections in Belarus provides a number of interim and long-term recommendations. Interim measures can include changes to regulations and practice and effected through resolutions by the Central Election Commission, none of which would require legal amendments. When a comprehensive overhaul of the legal framework is possible, more improvements could be achieved through legal changes. nderistia voluptaerit harum.

Review and Analysis of the Legal Framework for Presidential Elections and Referendums in Belarus
Copyright © 2021 International Foundation for Electoral Systems. All rights reserved.

Permission Statement: No part of this work may be reproduced in any form or by any means, electronic or mechanical, including photocopying, recording or by any information storage and retrieval system without the written permission of IFES.

Requests for permission should include the following information:

- International Foundation for Electoral Systems
- 2011 Crystal Drive, 10th Floor
- Arlington, VA 22202
- E-mail: media@ifes.org
- Phone: 202.350.6700

Review and Analysis of the Legal Framework for Presidential Elections and Referendums in Belarus

REPORT | AUGUST 2021



International Foundation
for Electoral Systems



About IFES

IFES advances democracy for a better future. We collaborate with civil society, public institutions and the private sector to build resilient democracies that deliver for everyone. As a global leader in the promotion and protection of democracy, our technical assistance and applied research develops trusted electoral bodies capable of conducting credible elections; effective and accountable governing institutions; civic and political processes in which all people can safely and equally participate; and innovative ways in which technology and data can positively serve elections and democracy. Since 1987, IFES has worked in more than 145 countries, from developing to mature democracies. IFES is a global, nonpartisan nonprofit organization based in Arlington, Virginia, and registered as a 501(c)(3).

IFES By The Numbers



Reached 205M+
people with civic and
voter education



Trained 759,326
election officials
in fiscal years
2015-19



Worked in 145+
countries

Acknowledgments



Angela Canterbury led the editing, design, production, publishing, communications and outreach on the report with team members Janine Duffy and Keaton Van Beveren.

Table of Contents

I. Background and Framework of the Review	1
II. Constitutional Framework and Human Rights Issues	2
A. Constitutional Provisions of Relevance to Elections	2
1. Balance of Powers	2
2. Freedom of Association	3
3. Freedom of Assembly	4
4. Freedom of Expression and Media	4
B. Constitutional Reform Process	6
III. Election-Related Legal Framework	8
A. Legal Framework	8
B. Electoral System	9
C. Election Administration	9
D. Right to Vote and Voter Registration	11
E. Right to Stand for Election and Registration of Contestants	13
F. Campaign	17
G. Media Regulation During Elections and Referendums	20
H. Political Party and Campaign Finance	22
I. Election Dispute Resolution	26
J. Election Observation	29
K. Participation of Persons with Disabilities	29
L. Election Day Procedures	31
IV. Considerations Related to Other Possible Actions and Developments	33
V. Summary and Conclusions	34

I. Background and Framework of the Review

This analysis constitutes a review of the legal framework for the conduct of presidential elections and republic-wide referendums in Belarus. Provisions are analyzed for compliance with international obligations, standards and good practice in democratic elections. The analysis also takes into account relevant past assessments and recommendations by international organizations and national actors. The constitutional framework is analyzed insofar as it relates to the conduct of elections and referendums.

This review was carried out with the aim of offering recommendations to improve the framework for the conduct of elections and referendums to provide a basis for more pluralistic, free, honest and transparent electoral processes. Recommendations throughout the text and summarized in the final section of this analysis are subdivided into:

- (1) Improvements that could be introduced as short-term measures through changes to sub-legal acts and practice, without modifications to legal provisions, and
- (2) Longer-term reforms that require legislative and, in some cases, constitutional amendments.

This analysis also discusses considerations related to a possible constitutional reform process and other actions that could be undertaken within the existing constitutional and legal framework to overcome the crisis that occurred in connection with the August 9, 2020, presidential election. The analysis considers whether these options might be feasible, meaningful and recommendable in the current circumstances.

II. Constitutional Framework and Human Rights Issues

Belarus is a party to key international treaties and instruments related to the holding of democratic elections, including the International Covenant on Civil and Political Rights (ICCPR) and its First Optional Protocol.¹ Most recently, in 2014, Belarus ratified the Commonwealth of Independent States (CIS) Convention on the Standards for Democratic Elections, Electoral Rights and Freedoms. In 2016, it acceded to the United Nations (UN) Convention on the Rights of Persons with Disabilities. According to Article 8 of its Constitution, Belarus recognizes the supremacy of principles of international law and guarantees the consistency of the national legal framework with them.

A. Constitutional Provisions of Relevance to Elections

1. Balance of Powers

The principle of separation of powers is enshrined in Article 6 of the constitution, which stipulates that state power shall be exercised on the basis of its separation into legislative, executive and judicial branches. However, this provision is undermined by other parts of the constitution, which grant the president excessive authority over the three branches of power. The government is accountable to the president, who also exercises direct executive functions and has a dominant role with respect to the Parliament² and the authority to appoint and dismiss judges, including members of the Constitutional Court.³ The international community has criticized this constitutional structure, which gives the president far-reaching powers without democratic checks and balances, as incompatible with the principles of pluralist democracy, rule of law and the protection of human rights.⁴

Recommended legal change: In future constitutional reform efforts, provide for genuine separation between the branches of power, and integrate a system of effective checks and balances to insulate the legislative and judicial branches from excessive control by the executive.

¹ In its November 2018 [Concluding Observations on the Fifth Periodic Report of Belarus](#), the UN Human Rights Committee expressed regret over Belarus' explicit position that views adopted under the Optional Protocol are merely advisory and that it failed to implement any of the 104 views adopted by the time of the issuance of the concluding observations that found violations of the covenant. In addition to the UN, Belarus is a member of the CIS, Organization for Security and Co-operation in Europe (OSCE) and Group of States Against Corruption (GRECO) of the Council of Europe (CoE) and an associate member of the CoE European Commission for Democracy Through Law (Venice Commission). However, it is not a CoE member state.

² Presidential decrees and edicts have the same legal force as laws and prevail in case of conflicts with other laws. The Parliament can only discuss draft legislation requiring state expenses with the consent of the president. The Parliament plays a marginal legislative role, as most legal texts are developed by the national bill-drafting center under the authority of the president or the presidential administration.

³ Only the appointments of top judges of higher courts and judges of the Supreme and High Administrative courts require formal approval by the Council of the Republic, the upper house of Parliament. The constitution does not contain protections against arbitrary interference or removal of judges and therefore does not duly safeguard their independence. Since 2013, the High Administrative Court has operated under the aegis of the Supreme Court.

⁴ For instance, the 2017 [Report of the UN Special Rapporteur](#) on the situation of human rights in Belarus noted that "one of the main structural reasons for both the entrenched systemic abuse of human rights and the cyclical waves of mass repression in the country is that all powers are assumed by the executive branch [...] Although the Constitution provides for the separation of powers, the reality is a monolithic power structure with laws and governance aimed at maintaining the concentration of powers and an absence of effective human rights guarantees." See also the CoE GRECO [Summary of the Evaluation Report on Belarus](#), Third Evaluation Round, December 2017, paragraph 268.

2. Freedom of Association

Freedom of association is enshrined in Article 36 of the constitution. In addition, Article 5 stipulates that political parties “contribute towards ascertaining and expressing the political will of the citizens and participate in elections.” Despite this provision, the political party system in Belarus remains very weak, with political parties only marginally represented in the Parliament and playing a limited role. This could be linked to a combination of factors, including stringent regulations on the establishment and functioning of parties, a restrictive environment, the first-past-the-post electoral system and limited funding available.

Freedom of association is further regulated by the Law on Public Associations and the Law on Political Parties, with both creating considerable obstacles for the subjects of regulation. In particular, overly burdensome registration requirements and regulations on funding for public associations and political parties are at odds with international standards, and the Ministry of Justice is granted wide discretionary powers to decide on registration applications in a formalistic manner.⁵ While the possibility of appeals to the Supreme Court is granted, the court has upheld numerous challenges to the ministry’s refusals of registration. No new political parties have been registered since 2000 despite repeated attempts by a number of parties.⁶

On a positive note, in January 2019 the long-criticized provision (Article 193.1) criminalizing participation in unregistered parties and associations was removed from the Criminal Code. However, the ban on activities of unregistered organizations remains and is now subject to administrative liability (Article 23.88 of the Code of Administrative Offences), which government agencies, including the Ministry of Interior and the Ministry of Justice, can impose without the involvement of a court.

The Law on Public Associations and the Law on Political Parties are currently undergoing review. Draft amendments developed by a working group under the Ministry of Justice with the participation of some civil society organizations were subject to public consultation in July and August 2019. The Parliament was originally expected to review the draft amendments in 2020; this is now anticipated to happen in autumn of 2021. Civil society organizations have stated that some positive changes have been incorporated, including the Group of States Against Corruption’s (GRECO) recommendation that parties publish annual financial reports, the possibility for parties to submit registration-related paperwork electronically and clarifications on party establishment procedures. In addition, the number of required constituent members is being reduced from 1,000 to 800. Nevertheless, civil society organizations emphasize that most of the changes are administrative in nature and will bring no tangible improvements to burdensome registration requirements, space for arbitrary refusals and limitations on funding.⁷ The current draft envisages a re-registration of all existing political parties according to new rules.

Recommended legal change: Comprehensively revise laws and regulations pertaining to freedom of association, including to simplify rules for the registration of public associations and political parties; remove all liability for involvement in unregistered organizations; and review regulations on foreign and legal entity funding to ensure they do not stifle the existence and functions of those organizations.

⁵ Among other requirements, prospective parties must have at least 1,000 founders from four of six oblasts and the city of Minsk. Each must submit personal data including name, address, date of birth, citizenship, workplace, telephone number and signature. Stringent requirements for the registration of an address at which parties can be based are applicable. Paragraph 43 of the [May 2019 Report of the UN Special Rapporteur on the human rights situation in Belarus](#) states, “Procedures to register organizations remain cumbersome and provide broad discretionary powers to the registration authorities. That is especially the case for human rights organizations, independent groups or political parties.” Paragraph 5.1.3 of the [2017 Parliamentary Assembly of the Council of Europe \(PACE\) Resolution 2172](#) calls on the authorities to remove undue practical and legal obstacles to the registration of political parties and other organizations.

⁶ According to Ministry of Justice [data](#), as of July 2020 there were 15 political parties, 1,198 party structures and 3,025 public associations registered.

⁷ [Changes in Legal Environment for Non-Commercial Organizations and Freedom of Association in Belarus](#), Review for January–June 2019, Legal Transformation Center Law Trend and the Assembly of Pro-Democratic Non-Governmental Organizations, p. 9.

3. Freedom of Assembly

Freedom of assembly is guaranteed by Article 35 of the constitution and is further regulated by the Law on Mass Events. Amendments to this law in 2018 introduced a few welcome improvements. These included replacing the need to obtain permission for planned events with notification 10 days before “static” assemblies (picketing, meetings and conventions) in places designated by local authorities (Article 9.1). Local authorities were obliged to inform the organizers at least five days before the event if the request could not be granted. However, the minor liberalizations were stricken with new amendments adopted by the Parliament in April 2021. Among others, amendments removed the notification mechanism, reinstating the requirement for permission for holding assemblies.

In practice, civil society organizations report limitations on where public events can be held, assignment of inconvenient places and a requirement that organizers cover costs related to public security, medical care and cleaning. The latter requirement is based on the January 2019 [Decree of the Council of Ministers No. 49](#), which introduced new financial limitations on the freedom of assembly.⁸ Some gaps and ambiguities in the Law on Mass Events include the absence of regulation on spontaneously organized events, prohibition of simultaneous counterdemonstrations and unclear definitions of types of mass events. These result in restrictive interpretations and frequent detention of participants in peaceful demonstrations and events.⁹ Under Article 23.34 of the Code of Administrative Offenses, sanctions for participation in prohibited public events include high fines and the possibility of detention for up to 15 days. A number of international bodies have expressed concerns regarding remaining legal restrictions and practices related to the freedom of assembly.¹⁰ The majority of UN Human Rights Committee (HRC) views adopted on individual applications by Belarussian citizens relate to violations of ICCPR Article 21 on the freedom of assembly.¹¹

Recommended legal change: In line with recommendations of international monitoring bodies, laws, revise regulations and practice pertaining to the exercise of the right to freedom of assembly. Bring restrictions, including administrative and criminal sanctions and their application, into strict compliance with the principles of the freedom of assembly.

4. Freedom of Expression and Media

The constitution guarantees freedom of expression, prohibits censorship and establishes the right to receive, store and disseminate information (Articles 33 and 34). However, the legal framework contains several undue restrictions on these rights.

Defamation, libel, calls for boycott: Despite past recommendations by international bodies and citizen observer organizations, and contrary to international standards, defamation, libel and insults of public officials remain criminal offenses.¹² Particularly severe sanctions are imposed in cases related to public officials – up to five years of imprisonment for targeting the president (Articles 367, 368 and 369 of the

⁸ The OSCE Office for Democratic Institutions and Human Rights (ODIHR) [Guidelines on Freedom of Peaceful Assembly](#), paragraph 32, stipulate that “the costs of providing adequate security and safety measures (including traffic and crowd management, and first-aid services) should be fully covered by the public authorities. The state must not levy any additional financial charge for adequate and appropriate policing. [...] [T]he responsibility to clean up after a public assembly should lie with the municipal authorities.”

⁹ [Monitoring of the Right to Freedom of Assembly in 2019](#) by civil society organizations, p. 9–10.

¹⁰ In its November 2018 [Concluding Observations on the Fifth Periodic Report of Belarus](#), paragraphs 51–53, the UN HRC expressed concern that the notification mechanism applies only to events held in permanent locations designated by authorities, which, as noted in the report, are often inconvenient or distant. The committee expressed regret that the remaining legal restrictions and practice “are being used to deny the political opposition the ability to meaningfully participate in public life and to influence public opinion.”

¹¹ [2020 Report on the implementation of human rights obligations by Belarus](#) by a coalition of human rights organizations for the Third Cycle of Universal Periodic Review by the UN Human Rights Council, p. 15.

¹² Paragraph 47 of the [UN HRC General Comment No. 34](#) states that “defamation laws must be crafted with care to ensure that they do not serve, in practice, to stifle freedom of expression... States parties should consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty.” See [OSCE/ODIHR Final Reports on the 2019 early parliamentary elections](#), p. 20 and [2016 parliamentary elections](#), p. 16.

Criminal Code). These provisions are often used to exert pressure on journalists and sanction critical reporting.¹³ In addition, Article 47 of the Election Code provides for the deregistration of candidates in connection with defamation or public insult. Citizen observers report that election officials and the state-controlled media widely resort to those provisions.¹⁴ Contrary to international standards, the legislation prohibits calls for election boycotts and media reporting on such calls.¹⁵

Recommended legal change: Repeal criminal liability for defamation and insult, and introduce civil sanctions that are proportional to the harm caused.

Distribution of “prohibited” information: The 2018 amendments to the Code of Administrative Offenses introduced a fine for the distribution of “prohibited” information, including online. Article 38 of the Law on Mass Media defines “prohibited” information as including “information that in its distribution can undermine national interests of Belarus,” and which is “prohibited by other legal acts.” Such broad restrictions on freedom of expression raise questions of compatibility with the principles of legal certainty, necessity and proportionality.

Regulation of the online domain: The online media has been subject to the same obligations and restrictions as traditional media since 2014.¹⁶ However, 2018 amendments to the Law on Mass Media further regulate online media. The amendments added bureaucratic hurdles, requiring websites to register as official online media in order to obtain access to and cover the activities of official institutions; an obligation to collect the personal data of persons submitting comments and to disclose this data to the authorities upon request; and the liability of the owners of registered online media for comments posted on their sites (Article 30(1)¹⁷). The regulations also granted wide discretionary powers to the Ministry of Information to restrict access to websites without a court decision, based on its own monitoring or notification by other state bodies (Article 51⁽¹⁾). The regulations were widely assessed as having a chilling effect on the media, further restricting open debate, and have been criticized as excessive and disproportionate in light of international standards.¹⁸ Further amendments to the Law on Mass Media passed by the Parliament in April 2021 have further tightened regulations on both traditional and online media, among others broadening the list of grounds for deregistration or denial of registration of media, and for blocking of websites and online media. Given the restrictive media environment, the role of online and social media has seen a steep increase as a source of information and as a public mobilization and organization tool.

Recommended legal change: Review the legal framework regulating the work of the media and repeal provisions restricting freedom of expression, including provisions on “prohibited” information in traditional and online media. Introduce provisions to ensure that decisions of the media regulator are transparent and subject to judicial review.

¹³ See paragraph 108 of the [CoE Parliamentary Assembly Election Observation Report on the November 2019 early parliamentary elections](#) and [IREX Media Sustainability Index 2019 – Belarus](#), p. 6.

¹⁴ [Analytical report on the 2019 parliamentary elections](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 4.

¹⁵ Paragraph 28 of the [UN HRC General Comment No. 34](#) states that “while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate, including, for example, calls for the boycotting of a noncompulsory vote.”

¹⁶ With the exception of registration requirements, electronic and print media are obliged to register with the Ministry of Information, while registration of online media is voluntary.

¹⁷ Parentheses have been added to superscripted article numbers to distinguish them from footnote numbers.

¹⁸ See the [June 18, 2018](#), statement of the OSCE Representative on Freedom of the Media (RFOM), November 2018 UN HRC [Concluding Observations on the Fifth Periodic Report of Belarus](#) and paragraph 36 of the [2019 Report of the UN Special Rapporteur](#). Paragraph 43 of [UN HRC General Comment No. 34](#) to Article 19 of the ICCPR states, “Any restrictions on the operation of websites, blogs or any other internet-based information dissemination system ... are only permissible to the extent that they are compatible with [freedom of expression].” Paragraph 1(f) of the 2017 [Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda](#) by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE RFOM and Organization of American States’ Special Rapporteur on Freedom of Expression, and the African Commission on Human and Peoples’ Rights’ Special Rapporteur on Freedom of Expression and Access to Information states, “[m]andatory blocking of entire websites, IP addresses, ports, network protocols or types of uses (such as social networking) is an extreme measure – analogous to banning a newspaper or broadcaster – which can only be justified in accordance with international standards, for example where necessary to protect children against sexual abuse.”

Accreditation requirements: The foreign media and journalists are required to obtain accreditation from the Ministry of Foreign Affairs. Non-compliance results in fines under Article 22.9 of the Code of Administrative Offenses. Citizen and international observers and monitoring organizations have called for the removal of accreditation requirements to improve working conditions for media and journalists.¹⁹

Recommended legal change: Revise stringent accreditation requirements for foreign media and journalists to facilitate their unimpeded work.

B. Constitutional Reform Process

Changes to the constitution may be adopted by the Parliament or by referendum. Section I, Fundamentals of the Constitutional System, Section II, Personality, Society, State, Section IV, President, Parliament, Government, Court and Section VIII, Constitution of the Republic of Belarus and the Procedure for its Amendment, can be changed only through a referendum.

Most provisions for conducting referendums are prescribed in the Election Code. A constitutional referendum may be initiated by the president, Parliament or at least 450,000 voters (including at least 30,000 from the capital, Minsk, and each region). The president announces that a referendum will take place within two months of the time the process is initiated.²⁰ The referendum should be conducted at least three months after the appointment decree.²¹

The president determines whether the legal function of the referendum is legally binding or consultative. Contrary to good practice, no criteria or rules govern the decision.²² The president also has the power to decline a referendum question if it conflicts with the Election Code and other relevant legislation.²³ When voters initiate a referendum, the Ministry of Justice and general prosecutor determine whether the question is legally sound. There are no prescribed timeframes for completing this review.

Adoption of constitutional changes require approval by at least 50 percent of registered voters.²⁴ Previous changes to the constitution that were adopted by referendums can only be changed by referendums, not by votes. Referendums that fail to move past the initiation stage can be proposed again after one year. If voters reject a referendum, a new referendum on the same issue can be proposed after at least three years.²⁵

The Parliament can vote on constitutional changes raised through presidential or citizens' initiatives (for the latter, at least 150,000 citizen signatures).²⁶ Adoption requires two votes by Parliament within no less than three months, winning a qualified two-thirds majority in each vote. Parliament is not authorized to adopt constitutional changes during a state of emergency or in the last six months of its term.²⁷

The 1994 constitution was amended by referendums in 1996 and 2004. In March 2019, President Aleksandr Lukashenko stated his intention to further change the constitution.²⁸ Information provided to public was unclear and insufficient. Some opposition representatives have expressed interest in reverting to the 1994 constitution.²⁹ There is no real discussion or consensus in Belarusian society on this topic.

¹⁹ OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 19, [CoE Parliamentary Assembly Election Observation Report on the November 2019 early parliamentary elections](#), paragraph 71, 2018 UN HRC [Concluding Observations on the Fifth Periodic Report of Belarus](#), p. 11.

²⁰ Article 74 of the constitution and Article 117 of the Election Code.

²¹ Article 74 of the constitution and Article 117 of the Election Code.

²² Article 117 of the Election Code. See paragraph 8.a of the [Revised Guidelines on the Holding of Referenda \(CDL-AD\(2020\)031\)](#), which prescribes that "effects of legally binding or consultative referendums must be clearly specified in the Constitution or by law."

²³ According to Article 112 of the Election Code, referendums may not consider questions related to: (1) violations of the territorial integrity of the Republic of Belarus; (2) the election and dismissal of the president or officials whose positions normally fall under the jurisdiction of the president and Parliament; (3) adoption and amendment of budgets; (4) the establishment, amendment and abolition of taxes and fees (duties); or (5) amnesty and pardons.

²⁴ Article 121 of the Election Code.

²⁵ Article 116 of the Election Code.

²⁶ Article 138 of the constitution.

²⁷ Article 139 of the constitution.

²⁸ Aleksandr Lukashenko [announced](#) the preparation to the new constitution.

²⁹ Viktor Babariko [proposed](#) a referendum on reverting to the 1994 constitution.

On June 25, 2021, Parliament adopted in first reading the draft amendments proposed by the President. The amendments concern Articles 67 and 147 of the constitution and prescribe introduction of a single voting day for all deputies (of local councils and Parliament) and prolongation of functions of current local councils until the new one is elected on a single voting day.³⁰

Rules and procedures on constitutional amendments should be as clear and simple as possible to minimize problems and disputes about them.³¹ To eliminate risks of manipulation, rules regarding constitutional amendments should clearly define all terms and cite the legal basis for the changes.

There is no common European best practice for constitutional amendments or binding legal requirements.³² The underlying principle of a democratic state is that the people have the right of self-determination as defined in both international human rights covenants,³³ which state that the people of a country should be the owners of constitutional reforms. Participatory and inclusive processes are considered the norm in current constitution-making processes.³⁴

A constitution directly approved by a referendum is one of the best demonstrations of citizens' ownership of the reform. Participants in the process should be able to articulate their views freely and communicate with each other without restriction by those in power. It is important that their opinions and views be considered within the framework of clear procedures and overseen in a fair and impartial manner.³⁵ Such conditions can only be created when standards of freedom of expression are upheld, including the right to communicate one's opinion, freedom of speech and of the media, and freedom of association and assembly. These rights must be protected. Those who wish to participate in the constitutional process must be in a position to do so, for example by communicating their views through the media (including the internet) or other means, by presenting their proposals at public meetings and by having the freedom to associate with others. Where possible, the authorities should facilitate these actions. Finally, remedies should be put in place to restore the rights of and provide redress to those who feel excluded from the process or claim that their rights have been abused.

Recommended legal change: Amend the Election Code to eliminate the president's discretionary power over the legal power of the referendum.

Recommended change of practice and regulations: Authorities should openly and clearly announce rules and procedures for constitutional reform. Ensure that ways to participate in constitutional reform for different groups are clear, effective and inclusive. Authorities should ensure and facilitate options for broad and genuine public discussions. Create a special drafting committee in a transparent manner. Ensure members of the committee are not drawn exclusively from state institutions, and consider the election of members by citizens. The committee's work should be transparent, and it should accept proposals from different stakeholders. Premise constitutional reform on recognition of the primacy of international obligations of Belarus regarding both the substance of constitutional provisions and the process of enacting them.

³⁰ The [text](#) of the draft of the amendments.

³¹ See paragraph 244 of the [Report on Constitutional Amendment](#) adopted by the VC at its 81st Plenary Session (Venice, December 11–12, 2009).

³² See Report on Constitutional Amendment, adopted by the VC at its 81st Plenary Session (Venice, December 11–12, 2009).

³³ Article 1 of the ICCPR and of the International Covenant of Economic and Social Rights prescribe that "all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."

³⁴ National ownership should include "the official actors, political parties, civil society and the general public," and "human rights defenders, associations of legal professionals, media and other civil society organizations, including those representing women, children, minorities, indigenous peoples, refugees, and stateless and displaced persons, and labor and business" should be given a voice in inclusive and participatory constitution-making processes. Guidance Note of the Secretary-General: United Nations Assistance to Constitution Making Processes (April 2009), p. 4.

³⁵ See HRC, General Comment No. 25 (1996).

III. Election-Related Legal Framework

A. Legal Framework

The legal framework for elections and referendums comprises the Election Code; laws on Political Parties, Public Association, Mass Media and Mass Events; Code of Administrative Offenses; Criminal Code; Civil Procedural Code; and resolutions and decisions of the Central Election Commission (CEC). The latter are binding for all electoral stakeholders and are entirely within the CEC's mandate. By law, they are not subject to any consultation with or approval by executive or legislative bodies.

Repeated evaluations of the overall legal framework note that it does not guarantee the conduct of elections in line with international obligations and standards.³⁶ Despite occasional limited engagement with international organizations, including the Organization for Security and Co-operation in Europe (OSCE)/Office for Democratic Institutions and Human Rights (ODIHR), on post-electoral follow-up and electoral review, the majority of recommendations regarding some fundamental elements of the electoral process remain unaddressed.³⁷ No meaningfully consultative and inclusive electoral reforms processes took place over a number of election cycles despite the efforts of civil society organizations.

The Election Code, last amended in June 2015, presents a mixed approach to regulation. A number of gaps and ambiguities (discussed throughout this review) leave space for varied interpretations. Observers report that these are often used to apply provisions selectively and restrictively, mostly against opposition candidates. At the same time, some aspects of the code are regulated overly scrupulously and stringently, often resulting in undue restrictions of electoral rights. A long-standing recommendation of the OSCE/ODIHR and the European Commission for Democracy Through Law (the Venice Commission, VC) is for comprehensive legal reform involving all relevant stakeholders to integrate substantive procedural safeguards of integrity and transparency in all stages of the electoral process.³⁸

Recommended legal change: Undertake comprehensive reform of the electoral legal framework well in advance of the next elections to bring it into compliance with international obligations and standards. Precede this process with inclusive consultations with all relevant stakeholders.

The adoption of a Law on Normative Legal Acts, in force since February 2019, was a positive step toward increasing the transparency and inclusiveness of legislative processes in Belarus. The law provides for disseminating draft normative legal acts for public discussion on the internet, in the media and through parliamentary hearings and other means. Subsequent government ordinances elaborating on provisions of this law specify a minimum of 10 days for public discussion, with publication of the results within seven

³⁶ See OSCE/ODIHR final reports on [2019 parliamentary elections](#), p. 9; [2016 parliamentary elections](#), p. 6; and [2015 presidential election](#), p. 6.

³⁷ Following the 2016 parliamentary elections, a working group established on the order of the president under the auspices of the CEC considered recommendations by international observers. However, the review did not result in any changes to legislation, and long-standing recommendations by international and citizen observer organizations remained unaddressed. See the [OSCE Parliamentary Assembly 24](#) January 2018 press release on the results of a follow-up visit and the [analytical report on the 2019 parliamentary elections](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 9.

³⁸ See the 2010 [Joint OSCE/ODIHR and VC Opinion](#).

days of completion.³⁹ Civil society welcomed these changes, which are relevant to future electoral reforms, although the practical impact remains to be seen.⁴⁰

B. Electoral System

The president is elected to a five-year term through a two-round majority system. To be elected, a candidate must receive more than 50 percent of the total number of votes cast in the first round. If no candidate receives the necessary number of votes, a second round is held within two weeks between the two top candidates. Again, the winning candidate must receive over 50 percent of the votes. Articles 79 and 80 of the Election Code and Article 82 of the constitution specify that a turnout of over 50 percent is required for both rounds of the election to be valid. This requirement could lead to cycles of failed elections and possible electoral malfeasance to meet this threshold.⁴¹

Recommended legal change: Reconsider the turnout requirement for second rounds of presidential elections to avoid potential cycles of failed elections.

Belarus has no temporary special measures or incentives to advance the participation and representation of women for any types of elections. While noting that the number of women in Parliament has increased, the UN Committee on the Elimination of Discrimination Against Women (CEDAW) stated in its latest concluding observations that “women remain significantly underrepresented at the decision-making levels in parliament and that they are concentrated in the public administration at middle and lower levels only.”⁴² The CEDAW recommended the adoption of targeted measures, including temporary special measures. With regard to presidential elections, the current electoral system and the limited role of political parties and absence of public funding for their activities limit options for regulatory instruments that could advance the participation and representation of women.

C. Election Administration

Presidential elections are administered by three tiers of election commissions – central (CEC, with 12 members), territorial (TECs, with nine to 13 members) and precinct election commissions (PECs, with five to 19 members), as established through Article 27 of the Election Code. Referendums are conducted according to a four-level structure defined in Article 31 – the CEC; oblast and Minsk City commissions (nine to 13 members); region, city and city district commissions (seven to 11 members); and PECs.

In terms of general legal guarantees of independence for the election administration, Article 11.3 stipulates that electoral bodies are independent from state authorities and are not bound by the decisions of political parties and other public associations. Article 32(!) outlines the main principles of the work of the CEC, including legality, independence, collegiality, openness and transparency.

CEC composition and appointment procedures: The CEC is a permanent body with a five-year mandate.⁴³ Half of its members, including the chairperson, are appointed by the president; the rest are appointed by the Council of the Republic (the upper house of Parliament), based on proposals from local executive authorities (Article 32.1-3 of the Election Code). Eligibility requirements include higher legal education,

³⁹ Ordinances 54 and 56 of January 25 and 28, 2019, respectively.

⁴⁰ [Changes in Legal Environment for Non-Commercial Organizations and Freedom of Association in Belarus](#), Review for January–June 2019, Legal Transformation Center Lawtrend and the Assembly of Pro-Democratic NGOs, p. 5.

⁴¹ [OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections](#), p. 17, state with regard to turnout requirements, “as there are no guarantees that the repeat election will enjoy higher voter turnout, this opens the door for cycles of failed elections. It is therefore recommended that such thresholds be considered carefully [...] to preclude the repetition of failed elections. For instance, some states apply reduced turnout requirements to second rounds or repeat elections.” The inclusion of turnout requirements in the constitution, as in Belarus, makes them more difficult to amend or repeal.

⁴² CEDAW 2016 [Concluding observations on the eighth periodic report on Belarus](#).

⁴³ The CEC was appointed in December 2016, and the current CEC chairperson has held the position since 1996.

past electoral experience and compliance with stated incompatibilities (active party membership and candidacy). Candidates for the positions of the CEC deputy chairperson and secretary are proposed by the CEC chairperson; the deputy chairperson must be approved by the president.

There is no specific international standard for the composition of election administrations, and states are free to choose or change their election administration models as long as they meet the requirements of neutrality, independence, transparency and accountability and enjoy broad public confidence. The composition and appointment mechanism of the Belarusian CEC undermine its autonomy and independence and are seen as a major factor in the inability of the election administration to deliver honest elections, continuously damaging public confidence. Calls for a review of the CEC are among long-standing priority recommendations by citizen and international observers.⁴⁴

Recommended legal change: To rebuild public trust in elections and the election administration, review CEC’s composition and appointment procedures with a view to ensuring its independence from the executive.

Within the CEC and the entire election administration, only the positions of the CEC chairperson and secretary are permanent (Article 32.6(!) of the Election Code). At a minimum, it is considered good practice for national-level electoral bodies to be permanent⁴⁵ to contribute to continuity between elections, accumulation of experience, institutional consolidation and greater independence.

Recommended legal change: Consider making all CEC positions permanent, with set terms. Consider staggered mandates for CEC members.

Composition and establishment of lower-level commissions: Lower-level commissions are established for each election and referendum. Local authorities play key roles in their formation, with appointments to mid- and lowest-level commissions made by relevant local councils, executive committees and administrations.

Political parties, public associations, labor collectives and groups of citizens are granted the right to nominate members to all mid- and lower-level commissions (Election Code Article 35). In principle, these appointment procedures, combined with specifications that “as a rule” at least one-third of commission members should be appointed from among these nominees and a maximum of one-third should be civil servants (Election Code Article 34), have the potential to yield balanced representation of various groups and viewpoints.

However, the absence of clearly stipulated criteria for the selection of election officials detracts from the effectiveness of these legal provisions and leaves local authorities broad discretion in the appointment process, which is consistently characterized as not inclusive.⁴⁶ The requirement in [CEC Resolution No. 13](#) to discuss candidates’ “professional and personal qualities” as part of decision-making and, if the number of applicants exceeds the maximum number of commission members, to consider information about each, does not add further objective criteria. As a result, approaches are selective and discriminatory. Election commissions are reported to consist overwhelmingly of nominees from pro-government parties and associations, with minimal numbers of nominations from opposition groups taken into account.⁴⁷ In

⁴⁴ Paragraph 20 of the [UN HRC General Comment 25](#) states that “[a]n independent electoral authority should be established to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.” Section II.3.1 of the VC [Code of Good Practice in Electoral Matters](#) and [Code of Good Practice on Referendums](#) provide that “independent, impartial election commissions must be set up at all levels, from the national level to polling station level.” The latter is reiterated in paragraph 6.2 of PACE [Resolution 2251 \(2019\) on Updating guidelines to ensure fair referendums in Council of Europe member States](#). See also the [2006 OSCE/ODIHR and VC Joint Opinion](#); OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 9; [2016 parliamentary elections](#), p. 7; and [2015 presidential election](#), p. 8.

⁴⁵ Paragraph 73 of the [Code of Good Practice in Electoral Matters Explanatory Report](#) recommends that “any central electoral commission must be permanent, as an administrative institution responsible for liaising with local authorities and the other lower-level commissions, e.g., as regards compiling and updating the electoral lists.”

⁴⁶ See the 2010 [Joint OSCE/ODIHR and VC Opinion](#).

⁴⁷ [Reports on the formation of territorial election commissions](#) and of [precinct election commissions](#) during the 2020 presidential election by the Belarusian Helsinki Committee and Viasna Human Rights Center. See also the Council of Europe (CoE) Parliamentary Assembly [Resolution 2172](#) (2017) on the situation in Belarus.

addition, lower-level commission members are often reported to represent the same institution and have hierarchical employment relationships, which further compounds the lack of balance and independence.⁴⁸

Recommended legal change: To achieve a genuinely balanced and representative composition of election commissions, establish clear and objective criteria for the selection and appointment of commission members. To ensure legal certainty, outline general principles of inclusiveness and balance in the Election Code, and include more detailed regulations and criteria in CEC resolutions.

Recommended change of practice: Based on prior attempts by the CEC to elaborate on provisions on the establishment of lower-level commissions, introduce a resolution that requires the CEC to develop and introduce more comprehensive and detailed selection and appointment criteria.

Article 36 of the Election Code grants nominating bodies the right to recall commission members whom they nominated. No deadlines for withdrawals are set, and no justifications for recalls appear to be necessary. Provisions that grant bodies nominating election officials the right to recall them at their discretion are at odds with good practice.⁴⁹

Recommended legal change: To ensure the stability and independence of the election administration and to protect election officials from arbitrary or politically motivated removal, the legal framework should regulate the grounds on which they can be recalled. Introduce deadlines for withdrawals to avoid replacements late in the electoral process.

Meetings of local authorities appointing members to election commissions are open to nominating bodies. During the 2020 presidential election, based on [CEC Resolution No. 24](#), live-streaming of meetings was permitted. However, no access was envisaged for citizen observers and other public associations. The law requires decisions on appointments to be published within seven days (Election Code Article 34). As elaborated in [CEC Resolution No. 16](#) for the 2020 presidential election, publication must be in the media and on the internet.

Transparency: The law contains several guarantees of transparency in the work of election commissions, although these are not comprehensive. As a general requirement, Article 13 of the Election Code obliges the election administration to perform its duties openly and transparently and to inform the public about its activities. Sessions of the CEC are open to observers and media representatives. Presidential candidates are also entitled to appoint CEC members with a consultative vote from the moment of their registration (Election Code Article 33(!)). CEC resolutions, information about commission sessions at all levels and decisions adopted are to be published in the media (Election Code Article 46.12). However, there is no requirement to publish the minutes of sessions, and not all decisions adopted by the CEC are actually published, detracting from transparency.⁵⁰

⁴⁸ [Report on the 2020 presidential election](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 12.

⁴⁹ Section II.3.1.g of the [Code of Good Practice in Electoral Matters](#) states that “the bodies appointing members of electoral commissions must not be free to dismiss them at will.”

⁵⁰ OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 10, and [Analytical report on the 2019 parliamentary elections](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 9.

Recommended change of practice: To enhance transparency, require the CEC and lower-level commissions to comply with their legal obligation to publish their decisions in a timely manner.

D. Right to Vote and Voter Registration

Both the constitution (Articles 64, 66 and 68) and the Election Code (Article 3) guarantee universal and equal suffrage and grant the right to vote in all types of elections and referendums to citizens who are at least 18 years of age.

Voter eligibility: At odds with international obligations, both the constitution (Article 64) and the Election Code (Article 4) restrict the suffrage rights of persons who are disenfranchised by a court decision.⁵¹ Furthermore, persons in pre-trial detention or serving a prison sentence, regardless of the offense, are deprived of the right to vote, contrary to international standards.⁵² Over several past elections, the CEC passed resolutions facilitating the voting rights of persons convicted of minor offenses for a term of up to three months.⁵³ While these are welcome interim solutions, the measures neither address the core issue with undue restrictions on the right to vote nor ensure the clarity and stability of the legal framework.⁵⁴ The OSCE/ODIHR and the VC have long recommended reconsideration of these blanket restrictions.⁵⁵

Recommended legal change: Reconsider restrictions on the voting rights of persons declared legally incompetent or in pre-trial detention. Review the denial of prisoners' right to vote to ensure proportionality between the limitation and the severity of the crime.

Voter registration: Voter lists for all elections and referendums are compiled by local authorities and provided to the relevant PECs for further verification (Article 19 of the Election Code). Voter lists for special categories of voters, including the military and persons in special care institutions, are compiled by those institutions. Article 21 establishes a 15-day scrutiny period (two days in special institutions), during which voters have the right to review their individual records, request changes and challenge exclusion or errors to a higher election commission and, further, in court.

There are no requirements to publish voter lists, make information about updates public or provide detailed information about the number of registered voters, detracting from transparency in the management of voter lists.

Recommended change of regulation and practice: Given the wide authority of the CEC to adopt binding resolutions on all aspects of the electoral process (Election Code Article 33), and the obligation of all authorities to inform citizens of their activities in preparation for elections (Election Code Article 13), require,

⁵¹ Article 29 of the Convention on the Rights of Persons with Disabilities (CRPD) requires states to "guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others." Paragraph 9.4 of the 2013 [CRPD Committee's Communication No. 4/2011](#) (Hungary) states that "[...] 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 [...]." See also Section I.1.1. d.iii. of the [Code of Good Practice in Electoral Matters](#) and the [Interpretative Declaration to the Code of Good Practice in Electoral Matters on the participation of people with disabilities in elections](#).

⁵² 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." See also Paragraph 14 of the [UN HRC General Comment 25](#) and Section I.1.1.d.iii of the [Code of Good Practice in Electoral Matters](#).

⁵³ For instance, [CEC Resolution No. 118](#) in connection with the 2020 presidential election.

⁵⁴ [OSCE/ODIHR Guidelines for Reviewing a Legal Framework for Elections](#), p. 9, points out that "[a]lthough a government has the flexibility in determining the structure of the legal framework, the primary instrument in the field of elections must be a written law, as opposed to custom or a collection of administrative policies. As the instrument of choice, written law provides the benefits of equity, certainty, visibility and transparency, and makes the matter subject to judicial interpretation and review, as well as open to recourse by citizens."

⁵⁵ OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 11, [2016 parliamentary elections](#), p. 9 and [2015 presidential election](#), p. 10, as well as [2010](#), paragraph 16(i), and [2006](#), paragraphs 14–16 of the Joint OSCE/ODIHR and VC Opinions on election legislation.

through a CEC resolution, that detailed data on the number of voters per precinct be made publicly available. This measure will help increase transparency and accountability, facilitate independent oversight and verification, and contribute to enhancing public confidence. Provide gender-disaggregated data on voters

In addition, support public campaigns aimed at encouraging voters to verify their records as an effective tool for public oversight and confidence building.

There is no centralized voter register and therefore no reliable mechanism for cross-checks and safeguards against multiple registrations and voting. In addition, and at odds with international good practice, voters can be added to voter lists shortly before and on Election Day based on proof of residence.⁵⁶

Recommended legal change: As a long-term objective, establish a centralized, computerized and publicly accessible voter register in compliance with data protection regulations. In line with international good practice, set a legal deadline for the registration of voters before Election Day, and limit additional entries to reflect legally defined circumstances, subject to judicial control.

E. Right to Stand for Election and Registration of Contestants

The legal framework does not provide for adequate protection of candidacy rights; on the contrary, it contains a number of limitations and obstacles to candidacy.

Candidate eligibility requirements (presidential election): The right to stand as a presidential candidate is granted to Belarus-born citizens at least 35 years of age who have maintained permanent residence in the country for the last 10 years before the election (Election Code Article 57 and Article 80 of the constitution), provided that they do not have an unexpunged criminal record (Article 60). The law does not define permanent residency. Thus, restrictions on candidacy rights based on the length of residence are at odds with international obligations and standards.⁵⁷

Recommended legal change: Remove or significantly reduce the residency requirement for candidates in presidential elections.

Establishment of initiative groups (presidential election): To nominate candidates in presidential elections, the Election Code and the constitution require the establishment of initiative groups of a minimum of 100 persons and the registration of those groups by the CEC no more than 85 days before the election. In connection with the 2020 presidential election, Article 61 of the Election Code and [CEC Resolution No. 14](#) set out elaborate requirements for registration. As occurred during the 2020 election, numerous initiative groups are routinely denied registration based on a variety of grounds, often technical and administrative; verification is widely perceived as selective and geared toward elimination rather than inclusion and

⁵⁶ Section I.1.2.iv. of the [Code of Good Practice in Electoral Matters](#) recommends that “there should be an administrative procedure, subject to judicial control, or a judicial procedure, allowing for the registration of a voter who was not registered; registration should not take place at the polling station on election day.”

⁵⁷ Paragraph 15 of the [UN HRC General Comment No. 25](#) states that any restrictions on the right to stand for election must be justifiable on objective and reasonable criteria. Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as residence. See also paragraphs 7.3 and 24 of the 1990 [OSCE Copenhagen Document](#) and Section I.1.1 c of the [Code of Good Practice in Electoral Matters](#). In addition, Article 2.b of the [Commonwealth of Independent States Convention on the Standards of Democratic Elections, Electoral Rights and Freedoms](#) states that “The right of a citizen to elect and be elected... shall be given effect without any limitations of discriminatory nature on the basis of gender, language, religion or faith, political or other beliefs, national or social origin, belonging to a national minority or ethnic group, property or other similar status.” See also the [OSCE/ODIHR Final Report on the 2015 presidential election](#), p. 11.

facilitation of registration.⁵⁸ There are no provisions for informing initiative groups seeking registration of any omissions in the documentation or allowing them to make corrections prior to CEC decisions on registration applications.⁵⁹

Recommended change of regulation and practice: The CEC should adjust its approach to verifying initiative group registration documents within the legally stipulated five-day period to inform groups seeking registration of the results of the preliminary review, and grant a short time to rectify technical omissions and errors prior to the final CEC decision.

Recommended legal change: In the long term amend the law to allow for rectification of technical errors to fully guarantee the clarity and stability of the legal framework.

Establishment of initiative groups (referendum): Similar to the requirements for presidential elections, referendums can be initiated by groups of at least 100 citizens “with the right to participate in a referendum” (Article 114 of the Election Code). Limiting the right to collect signatures to eligible voters is at odds with good practice on referendums.⁶⁰

Article 114 imposes an additional requirement that members of the initiative group should “to an approximately equal extent represent citizens from each oblast and the city of Minsk.” The requirement for geographic representation within the initiative group may not be necessary given that the collection of signatures itself, as the primary indicator of popular support behind an initiative, already contains a similar representation requirement. Furthermore, this ambiguous formulation leaves space for interpretation of what “approximately equal” means and creates the risk of restrictive application.

Recommended change of regulation and practice: Clarify the meaning of the requirement for an “approximately equal” representation in initiative groups through a CEC resolution.

Recommended legal change: In the long term, adjust the provision in Article 114 to clarify representation requirements and eliminate legal ambiguity.

In addition to presenting the administrative requirements for registration, Article 114 provides for the submission of the planned referendum question. Verification of registration documents, in addition to review by the CEC, entails evaluation of the submitted referendum question by the Ministry of Justice and the prosecutor general. However, the Election Code does not appear to set any timeframes or deadlines for the establishment of initiative groups for a referendum, their registration by the CEC and the review of submitted documentation by all involved institutions. Similar to the provisions for the registration of initiative groups for presidential elections, the law does not envisage the possibility of addressing technical omissions and errors in registration documents.

⁵⁸ [Report on the 2020 presidential election](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center pp. 20–22.

⁵⁹ Article 61 of the Election Code grants the right to introduce adjustments to submitted initiative group registration documents; however, this must occur at least one day before the CEC considers the application.

⁶⁰ The VC [Code of Good Practice on Referendums](#), Section III.4.c, provides that everyone (regardless of whether they enjoy political rights) must be entitled to collect signatures. As noted in the Explanatory Memorandum of the Code of Good Practice, this includes foreigners and minors, particularly in cases when proposed referendum texts might concern their status.

Recommended legal change: Stipulate timeframes and deadlines related to the establishment and registration of initiative groups for referendums.

Recommended change of regulation and practice: Outline details related to the establishment of initiative groups in a CEC resolution, including provisions for correcting minor errors and omissions prior to the adoption of a CEC decision.

Signature requirements: In presidential elections, initiative groups must collect at least 100,000 signatures in support of their nominations (Election Code Article 60). This requirement is only marginally above the threshold of 1 percent of the electorate recommended by good practice.⁶¹ Signature lists must be submitted for verification at least 50 days before the election (Election Code Article 61).

The initiation of a referendum must be supported by 450,000 signatures of citizens who have electoral rights, including at least 30,000 citizens from each oblast and the city of Minsk (Election Code Article 113 and Article 74 of the constitution). These signatures are to be collected within two months of the registration of the initiative group (Election Code Article 115). While there are no international standards and guidelines on how to determine an appropriate number of signatures for the initiation of a referendum, the existing requirement appears comparable to practices in other countries with provisions for popular initiatives.⁶²

Signature collection: With regard to presidential elections, Article 61 of the Election Code and the related [CEC Resolution No. 14](#) for the 2020 presidential election set out overly nuanced requirements for the collection of signatures and completion of signature sheets. On a positive note, in line with good practice, Item 5 of the latter clarifies that individual voters have the right to provide signatures in support of several candidates.

The collection of signatures is permitted in all places except those prohibited by local authorities, including as a form of public activity with no permission required. However, citizen and international observers often report obstruction, unequal treatment and interference by law enforcement. In addition, permission to collect signatures in institutions and enterprises was seen during the 2020 presidential election as creating favorable conditions for the incumbent, further detracting from the equality of opportunities.⁶³

Recommended change of regulation and practice: The CEC resolution should explicitly prohibit interference with and obstruction of signature collection activities. Local authorities should facilitate and create a permissive environment for signature collection that treats all candidates equally.

Provisions on the collection of signatures for a referendum in Article 115 of the Election Code are similar to those for presidential elections, although less detailed.

Signature verification: Provisions on the verification of signatures in presidential elections (Election Code Article 61) and referendums (Election Code Article 116) are generally analogous. Signatures submitted to local authorities for referendums (region and city executive committees and local administration) and to mid-level election commissions for presidential elections (region, city and city district election

⁶¹ Section 1.3.ii of the [Code of Good Practice in Electoral Matters](#) states that the law should not require more than 1 percent of signatures within a constituency. Based on CEC [voter data](#) for the 2020 presidential election, the required number of signatures corresponds to 1.46 percent of the electorate.

⁶² See the 2005 VC [Referendums in Europe – An Analysis of the Legal Rules in European States](#), pp. 8–9 and 23–24 for comparative analyses of approaches on this matter.

⁶³ [Report on the 2020 presidential election](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 4 and [OSCE/ODIHR Final Report on the 2015 presidential election](#), p. 11.

commissions) must be verified within 10 days. The receiving bodies determine the order in which signature lists and signatures are to be verified. The law provides that, as a first step, at least 20 percent of submitted signatures are verified. The numerous grounds for invalidation of signatures are outlined in detail, although the methods for verifying compliance with these requirements are not. If 15 percent of checked signatures are found invalid, an additional 15 percent of signatures are verified. If more than 15 percent of all verified signatures are invalid, no further verification takes place, and no signatures submitted to the receiving body are taken into account. The absence of clear rules on signature verification, and the verification of only of a sample of submitted signatures, conflict with international good practice and have been repeatedly criticized by the OSCE/ODIHR and VC.⁶⁴

Recommended change of regulation and practice: Clarify verification procedures through a CEC resolution to outline the methods that verifying bodies should use to establish the validity of signatures and select lists for random verification.

Recommended legal change: Gear provisions on signature verification toward establishing the required number of valid signatures. Revise legal articles to require verification of all signatures submitted unless the necessary number of valid signatures is reached during verification.

Protocols (in presidential elections) and decisions (in referendums) on the results of signature verification by the verifying bodies are passed on to oblast and Minsk City election commissions and executive committees, respectively. These bodies, which have the right of additional verification within a five-day period, and their protocols and decisions, are forwarded to the CEC. Detracting from transparency, the law does not provide for the presence of observers during signature verification. Furthermore, the law does not envisage the publication of protocols and decisions on the results of verification and does not allow for appeal, making it impossible for initiative groups to react to and address any identified irregularities and technical issues in a timely manner. These provisions and signature verification processes have been repeatedly cited as insufficiently transparent, constituting a barrier to candidacy and undermining public confidence.⁶⁵

Recommended change of regulation and practice: Introduce a measure of transparency in signature verification through a CEC resolution to require the publication of protocols and decisions on the results of signature verification.

Recommended legal change: Comprehensively review provisions on signature verification to ensure transparency during all stages of review and decision-making, and grant the right of appeal to provide for timely remedies.

Registration of presidential candidates: Article 68 of the Election Code mandates the CEC to register presidential candidates between 35 and 25 days before the election. In addition to supporting signatures, potential candidates are required to submit a number of other documents for registration, including

⁶⁴ Section I.1.3.iv. of the [Code of Good Practice in Electoral Matters](#) recommends that signature checking should be governed by clear rules and must cover all signatures and that, once it is established that the requisite number of signatures has been verified, remaining signatures need not be checked. Similarly, Section III.3.g of the VC [Revised Guidelines on the Holding of Referendums](#) recommends that “signatures must be checked, until it has been established beyond doubt that the number of valid signatures required by law has been collected or there are no more signatures to check.” See also paragraph 27 of the [2006 Joint OSCE/ODIHR and VC Opinion](#) and [OSCE/ODIHR Final Report on the 2015 presidential election](#), p. 11.

⁶⁵ [OSCE/ODIHR Final Report on the 2015 presidential election](#), p. 11; [2006 Joint OSCE/ODIHR and VC Opinion](#) on election legislation, pp. 6–8; and [Report on the 2020 presidential election](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 4.

detailed declarations of the income and property of nominees and their spouses and close relatives. While aspiring candidates are granted the right to review the results of verification of registration documents, the law does not allow the correction of minor and technical inaccuracies or omissions before the CEC decides to accept or reject registrations.

Recommended change of regulation and practice: Adjust the CEC's verification of registration documents to inform candidates seeking registration of the results of the preliminary review, and grant them a short time to rectify omissions and minor technical errors prior to the final decision on registration.

Recommended legal change: Fix the opportunity to rectify minor technical errors and omissions in registration documents in the law.

Candidates can be deregistered on various grounds, including non-compliance with regulations on campaigning and campaign financing and the submission of inaccurate information during registration. International observers have criticized provisions on deregistration as granting overly broad discretionary powers to disqualify contestants, including on minor grounds.⁶⁶

Recommended legal change: Revise the Election Code to allow for the deregistration of contestants only in exceptional circumstances, as a measure of last resort.

F. Campaign

General provisions and guarantees: Campaigns for elections and referendums are regulated primarily by Articles 45, 45¹, 46 and 47 of the Election Code. The right to campaign for and against candidates and their platforms, and issues addressed in referendums, is guaranteed. While these articles are meant to address aspects of campaigns for both elections and referendums, their focus is largely on the former. With some provisions applicable only to elections, it remains unclear which of the more generic provisions also apply to referendums.⁶⁷ It is also unclear how some passages that focus on the entitlements and obligations of candidates, political parties and public associations are meant to apply to participants in referendum campaigns – whether as proponents or opponents.

Recommended change of regulation and practice: Address gaps and ambiguities regarding the practicalities of campaigns related to referendums through future CEC resolutions. This should include clarifications of guarantees of equality of opportunities and access for referendum participants.

Recommended legal change: Comprehensively review provisions on campaigning to clarify their applicability to referendum campaigns and guarantee equal opportunity and access for referendum participants.

⁶⁶ OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 14. Section I.1.1.d.iii of the [Code of Good Practice in Electoral Matters](#) recommends that the proportionality principle must be observed when depriving an individual of the right to be elected.

⁶⁷ For instance, Article 45.11-12 does not make clear whether campaigns for referendums are also permitted to produce campaign materials using campaign funds, as presidential and parliamentary candidates can, and whether there is an obligation to submit samples of those materials to the CEC prior to distribution. Article 45.7 does not state whether an obligation for local authorities to designate venues for campaign events also applies to referendums. Article 45.8 does not address whether participants in a referendum can use their campaign funds to rent premises for meetings with voters.

Campaign opportunities: Article 45.9 of the Election Code allows the campaign events of presidential candidates and their authorized representatives to be organized based on simplified requirements for public events, as outlined in Article 45(1). This includes the obligation of local authorities to designate locations for the distribution of campaign materials (also for referendums) and for campaign events. Organizers of all types of campaign events must submit a notification to the relevant TEC two days before the planned event, and no costs are levied on organizers.

Despite guarantees of equal opportunity and access, citizen and international observers report various challenges that contestants face in holding campaign events. CEC instructions recommend that local authorities designate a sufficient number of convenient locations that are not prohibited.⁶⁸ At odds with these recommendations, designated meeting locations and venues are insufficient in number and often inconveniently located. Incumbents' campaigns are reported to have privileged access to meeting premises at state enterprises and organizations that are not readily available to other contestants. In addition, interference by law enforcement bodies, arbitrary detentions and last-minute cancellations of events on questionable grounds are reported.⁶⁹

Recommended change of regulation and practice: Require local authorities to adopt an accommodating and facilitative approach to allocating campaign venues to ensure sufficient number and convenience. The CEC should address this more explicitly in its resolutions, instructions and training. Create conditions for peaceful assembly without fear of retribution, administrative action or intimidation.

Campaign events other than those organized by presidential candidates, including those in connection with referendums (Election Code Article 45.10), are conducted under the Law on Mass Events. Depending on the types and locations of events, prior authorization rather than notification may be required, and additional costs may be applicable. Concerns expressed in Section II.A.3, Freedom of Assembly, of the present review and recommendations regarding authorization requirements and costs related to public assemblies, are applicable.

Requirements related to campaign materials: Contestants are permitted to rent campaign premises and produce campaign materials using their campaign funds. Article 45.12 of the Election Code and [CEC Instructions to TECs](#) in connection with the 2020 presidential election require one copy of print campaign materials to be submitted to the CEC before distribution. While the purpose and consequences of submission are not clarified, observers indicate that, in the past, this provision was often understood as a requirement for prior approval. Any objectives other than verifying compliance with legal requirements for print materials are problematic, as substantive vetting of campaign materials is not compatible with the principles of freedom of expression.

Recommended legal change: Clarify or repeal requirements for the submission of print campaign materials to the CEC prior to their distribution .

Safeguards against misuse or abuse of administrative resources: To create a genuinely level playing field for contestants in elections, a crucial area that any legislation needs to address is the use of public resources. Regulations must be in place to prevent incumbents and others with more privileged access and control over state funds, assets, infrastructure, personnel and institutions from misusing or abusing

⁶⁸ [CEC Instructions for Territorial Commissions](#) in connection with the 2020 presidential election, pp. 49–50.

⁶⁹ [Report on Election Campaigning](#) during the 2020 presidential election by the Belarusian Helsinki Committee and Viasna Human Rights Center, pp. 2–3.

them to achieve electoral gains. These regulations are essential for credible elections and contribute to ensuring the separation between a party and the state, as per international standards.⁷⁰

The Election Code contains some guarantees against the misuse of administrative resources during presidential campaigns. Article 68(!) prohibits using the benefits of an official position for electoral purposes and involving state structures in collecting signatures. Article 73 elaborates that the “use of benefits of official position” includes involving subordinates and persons in professional dependence in activities that support nomination or election during their working hours; use of the premises of state bodies and organizations if other contestants are not able to use them under the same conditions; use of the communication technologies and equipment of state bodies and organizations; free or discounted use of state vehicles; and collection of signatures during duty trips.

Recommended legal changes: Further strengthen and augment provisions against the misuse of official position by addressing other forms of misuse of public and administrative resources. This could include strengthening neutrality requirements for the public administration and civil service; explicitly prohibiting civil servants and employees of public and semi-public institutions from campaigning while performing official duties; and banning activities that may indirectly benefit and create favorable public perceptions of incumbents.⁷¹

However, the implementation and enforcement of existing provisions against misuse constitute the primary problem in practice. Citizen and international observers continue to point to blatant disregard of prohibitions and incumbents’ and officials’ extensive use of administrative, institutional, budgetary and informational resources in campaigns. These practices undermine the equality of campaign opportunities and blur the line between the party and the state. While Article 73.4 of the Election Code stipulates that a candidate’s misuse of official position may result in deregistration, no other effective, dissuasive and proportionate sanctions are envisaged, and the CEC does not proactively monitor compliance or enforce the existing provisions. The CEC’s ability and commitment to effectively oversee and enforce regulations against state officials or the governing party for abusing state resources are strongly linked to the question of its independence. Concerns about the independence of the election administration described earlier are relevant to this discussion.

Recommended legal changes: Review the approach to sanctioning misuse of administrative resources to provide for a range of effective, proportionate and incremental sanctions. These could include formal warnings, administrative fines, funding-related punishments or criminal liability.

Recommended change of regulation and practice: The CEC should assume responsibility for overseeing contestants’ compliance with regulations against the misuse of administrative resources, enforce provisions and apply sanctions to ensure equal opportunity for all contestants.

⁷⁰ Paragraph 5.4 of the [OSCE Copenhagen Document](#) obliges participating states to maintain “a clear separation between the State and political parties; in particular, political parties will not be merged with the State.” Paragraph 7.6 calls on 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.”

⁷¹ These could include, *inter alia*, prohibitions of announcements or promises of financial grants or support initiatives; initiation of previously unplanned large-scale projects; unplanned increases in salaries, pensions and other social benefits; making *ad hoc* high-level appointments; and engaging in campaigns that promote the achievements of the government shortly before elections. See paragraph 112.5 of the GRECO [2017 Summary of the Evaluation Report](#), the 2011 International Foundation for Electoral Systems (IFES) [White Paper on Abuse of State Resources](#) and the 2016 [OSCE/ODIHR and VC Joint Guidelines for Preventing and Responding to the Misuse of Administrative Resources](#).

The existing provisions against the misuse of administrative resources are applicable only to presidential and parliamentary elections, not to referendums. Good practice emphasizes that the neutrality of officials and prohibitions against use administrative resources and public funds for campaign purposes should also be included in provisions related to referendums.⁷²

Recommended legal change: Supplement provisions outlining the conditions for the conduct of referendum campaigns with regulations on the use of administrative resources.

Provisions against vote buying: Election Code Article 47.3 prohibits participants in election and referendum campaigns from distributing money, gifts and other material goods; making discounted sales; providing free services; and influencing voters with promises of money and material goods. These violations may result in deregistration of contestants. Past election observation reports have not cited issues in the implementation of these provisions or reports regarding vote buying.

Opinion polls: Only organizations that are accredited by the Commission on Public Opinion Polls under the National Academy of Sciences may conduct public opinion polls.⁷³ Article 9.28 of the Code of Administrative Offenses stipulates fines for private and legal entities that do not comply with this requirement. For the first time, during the 2020 election, this provision was interpreted as also prohibiting informal surveys on websites and in social media related to elections. Paradoxically, while the requirement for prior accreditation is formally justified by the need to ensure opinion polls comply with generally established norms and principles, there appear to be no legal requirements for polling organizations or for the media that publish the polls to accompany them with information on methodology, size of sample, margin of error or other details.

G. Media Regulation During Elections and Referendums

General guarantees: According to Article 46 of the Election Code, election and referendum contestants enjoy equal access to the state media from the moment of registration. The media are obliged to provide equal opportunities for the airing of candidates' campaign speeches, publication of their programs and information in connection with referendums. For presidential elections, [CEC Resolution No. 86](#) further regulated the rights of contestants and obligations of the media for the 2020 presidential election.

Notwithstanding the general legal guarantees that the mass media should cover preparations for and the conduct of referendums, Article 46 is not entirely clear on the exact entitlements of participants in a referendum and the obligations of the media and the state to provide public information. Apart from requirements in Article 45.15 and Article 118 of the Election Code to publish the referendum question and the supporting elaborations on ballots and in polling stations, there are no stipulations regarding the allocation of airtime or print space. Based on good practice, distribution of balanced voter information about the referendum and participants' positions on it, allocation of some publicly funded broadcasting time and print space, and the organization of debates between proponents and opponents have been recommended by international organizations in some contexts.⁷⁴

⁷² Paragraph 4.10 of PACE [Resolution 2251 \(2019\) on Updating guidelines to ensure fair referendums in Council of Europe member States](#) emphasizes that "the prohibition for the authorities to use public funds for campaigning purposes should last throughout the campaign period." Paragraph I.3.1.b of the VC [Revised Guidelines on the Holding of Referendums](#) states that "political parties and their representatives, including those who are elected representatives or hold a public office, are entitled to take active part in the campaign," but emphasizes that "the use of public resources by the authorities for campaigning purposes must be prohibited."

⁷³ Based on [Decree No. 707](#) and [No. 1240](#) of the Council of Ministers.

⁷⁴ See, for instance, the [Joint OSCE/ODIHR and VC Opinion on the Draft Law 3612 of Ukraine on Democracy Through All-Ukraine Referendum](#), paragraph 89. Also, paragraphs 13–15 of the Explanatory Report to the [Code of Good Practice on Referendums](#) provide that states should "provide a certain amount of necessary information in order to enable voters to arrive at an informed opinion. Voters must be able to acquaint themselves, sufficiently in advance, with both the text put to the vote and, above all, a detailed explanation." This may include providing voters with an explanatory report setting out all views in a balanced way sufficiently in advance of the vote or sending voters balanced campaign material from the proposal's supporters and opponents. Paragraph 4.14 of PACE [Resolution 2251 \(2019\) on Updating guidelines to ensure fair referendums in Council of Europe member States](#) elaborates that "information should include, as a minimum, the referendum question and details of when and how to vote and, where possible, explanations and analysis of the proposals."

Recommended legal change: Notwithstanding the possibility of adoption of CEC resolutions on the use of media during referendums, include more detailed provisions in the Election Code on participants' entitlements and the obligations of media and the state to provide voters with balanced information. This may include stipulations on the allocation of free airtime and print space.

Access to media: During presidential campaigns, candidates are entitled to receive free airtime in the state media and equal opportunities to participate in debates. For the 2020 presidential election, based on [CEC Resolution No. 86](#), free airtime included two appearances on state television and radio totaling 30 minutes for each candidate, and one television debate. Candidates are also entitled to publish their campaign programs in state print media (during the 2020 presidential election, programs were published in two newspapers). The allocation of airtime and space is comparable to other jurisdictions in the region. While the media typically complies with its obligations to provide guaranteed airtime and print space, this offers only marginal opportunities for alternative candidates to appear in state media. The meaningfulness of this coverage for voters is questionable. During the 2020 presidential election, national media organizations reported that candidate addresses were not aired in prime time and did not constitute a genuine debate.⁷⁵

Paragraphs 11 and 12 of [CEC Resolution No. 86](#) entitle contestants to purchase airtime and print space using campaign funds. In line with good practice, the media are obliged to provide paid airtime and space to candidates on equal conditions.

Media coverage: Article 4 of the Law on Mass Media obliges the media to be guided by principles including credibility, equality and plurality of opinions. Article 46.3 of the Election Code requires the media to ensure that informational materials about presidential candidates are objective and credible and to avoid showing preference to any contestants. Media monitoring reports from past elections did not observe these principles reflected in general media coverage of elections, including newscasts and other editorial programs of the state media. Aside from receiving free airtime, contestants typically feature only minimally in editorial reporting; the lion's share focuses on incumbents and authorities, with overwhelmingly favorable coverage. Alternative viewpoints are generally absent from reporting; coverage of opposition candidates is predominantly negative and geared toward discrediting them.⁷⁶ Past citizen and international observer reports have pointed out that biased media coverage by the state media and the restrictive media environment are not in line with international obligations.⁷⁷

Recommended change of regulation and practice: Ensure that state-owned media provide impartial and balanced coverage of campaigns and contestants in all programming formats, especially in news and editorial programs. This could include changing the focus of CEC resolutions from the current equal distribution of free airtime to equitable campaign coverage. Develop policy guidance for the media and training for electoral periods.

Media oversight: The Ministry of Information is the primary regulatory body for the media, with a duty to carry out media monitoring (Article 27 of the Law on Mass Media). However, there is no independent oversight authority to monitor the media's compliance with election and referendum campaign regulations.

⁷⁵ [Coverage of the 2020 Presidential Elections in Belarusian Media, Report 2](#) by the Belarusian Association of Journalists, August 2020.

⁷⁶ [Coverage of the 2020 Presidential Elections in Belarusian Media, Report 2](#) by the Belarusian Association of Journalists, August 2020; [Lukashenka's Propaganda Model Breaks in Face of Social Media Movement, Television and Social Media Monitoring - Presidential Election in Belarus 2020](#) by Memo 98, Eurasian States in Transition Research Center and Linking Media.

⁷⁷ [Report on the 2020 presidential election](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 21; OSCE/ODIHR Final Reports on [2019 parliamentary elections](#), p. 22; [2016 parliamentary elections](#), p. 17; and [2015 presidential election](#), p. 17. See also paragraph 7.8 of the [1990 OSCE Copenhagen Document](#); paragraphs 16 and 20 of the [UN HRC General Comment No. 34](#) and the [CoE Committee of Ministers Recommendation No \(99\)15 on Measures Concerning Media Coverage of Elections Campaigns](#).

Based on Article 33.30 of the Election Code, during elections and referendums the CEC establishes a Media Supervisory Board. Its role, according to CEC resolutions,⁷⁸ is to ensure the implementation of rules on campaigning in the media and to advise the CEC on media-related complaints and applications. However, observers have pointed out that the board's composition does not ensure impartiality and effectiveness, its sessions and decisions are not public, and no systematic media monitoring is carried out.⁷⁹ Overall, the Media Supervisory Board's regulations and institutional set-up do not ensure independent and effective oversight of media conduct during election campaigns.

Recommended change of regulation and practice: Introduce extensive improvements to the working methods of the Media Supervisory Board through amendments to CEC resolutions, which regulate the board. Include the requirement to hold sessions that are open to the public, complainants and observers and to publish information on cases considered and recommendations and decisions made. With decisions on the composition and the selection of civil society representatives also fully in the CEC's purview, improve the representativeness of the board's make-up through a more inclusive approach to selection.

Recommended legal change: As a longer-term objective, vest oversight of media during elections and referendums in an independent and duly resourced oversight body that is mandated to carry out comprehensive media monitoring. This body should have a balanced composition as one of the preconditions of its impartiality and professionalism. Handling of media-related complaints should be clearly regulated to ensure effective remedies.

H. Political Party and Campaign Finance

Political party and campaign finances are regulated primarily by the Law on Political Parties, the Election Code and CEC resolutions.

Political party financing: The legislation contains virtually no regulations or requirements pertaining to general party activities and financing and differs considerably from common European practice in this area. In its latest Evaluation Report, GRECO recommends a comprehensive review of regulations on party financing to ensure greater accountability and transparency. Among other recommendations, GRECO advises proper bookkeeping by parties, accompanied by primary documents that reflect all sources of income; timely publication of party accounts; integration of spending by directly or indirectly affiliated entities into party reporting; and ensuring systematic and independent supervision.⁸⁰ The failure to implement past recommendations led to GRECO's March 2019 [declaration](#) that Belarus was non-compliant with anti-corruption standards.

Draft amendments to the Law on Political Parties that are pending review would require public associations, political parties and unions to publish annual reports of their activities and financing in the media and/or on

⁷⁸ See, for instance, [CEC Resolution No. 87](#) for 2020 presidential elections.

⁷⁹ See the [analytical report on the 2019 parliamentary elections](#) by the Belarusian Helsinki Committee and Viasna Human Rights Center, p. 24; paragraph 74 of the [CoE Parliamentary Assembly Election Observation Report on the November 2019 early parliamentary elections](#); [OSCE/ODIHR Final Report on the 2019 early parliamentary elections](#), p. 21; [OSCE/ODIHR Final Reports on 2019 parliamentary elections](#), p. 21; [2016 parliamentary elections](#), p. 17; and [2015 presidential election](#), p. 16.

⁸⁰ [2017 Summary of the Evaluation Report on Belarus](#), Third Evaluation Round, pp. 6–7.

their websites.⁸¹ The Council of Ministers would determine the scope of information to be included in reports. While publication of reports by political parties would be a positive step, in line with past recommendations, the effect of these provisions depends on the exact requirements, the scope of information to be disclosed and measures to ensure compliance.

Recommended legal change: Use the pending review of the Law on Political Parties as an opportunity to conduct a comprehensive review of regulations on political party financing with the goal of ensuring accountability and transparency.

Regulations on donations and expenditures: Campaigns for presidential elections and referendums can be funded from candidates' resources (for presidential elections), members of initiative groups (for referendums) and donations by citizens and legal entities (for both). Caps for donations from private and legal persons are somewhat higher for presidential elections (Election Code Articles 48(1).2 and 114(1).2); stakeholders have not expressed concern about the limits. Donations from anonymous or foreign sources and state or state-funded, religious or charitable organizations are prohibited. There are no comprehensive provisions or obligations regarding in-kind contributions to campaigns.⁸² Observers have long expressed concerns that citizens and businesses limit donations to the campaigns of opposition parties and candidates due to fear of retribution, and also note that protracted bank procedures have a further discouraging effect on potential donors.⁸³ The law sets considerably higher spending limits on expenditures for presidential elections (9,000 basic units, some 77,000 EUR) than for referendums (3,000 basic units, some 26,000 EUR).

Recommended legal change: Expand provisions on donations and related reporting to cover in-kind contributions.

Public funding: Under Article 24 of the Law on Political Parties and Article 48(1) of the Election Code, parties and contestants in elections are not provided any direct public funding (which was abolished in 2013).⁸⁴ The absence of public funding affects the ability to establish parties and sustain their activities and substantially reduces contestants' campaign activities. Indirect funding covers published campaign programs and voter information materials for contestants and access to meeting premises and the media. However, observers have questioned the extent to which this funding genuinely and equitably advances the campaigns of all contestants. National stakeholders and international organizations have repeatedly recommended direct state aid to political parties and/or electoral campaigns.⁸⁵

Recommended legal change: To provide contestants with equitable opportunities, provide some level of public funding for campaigns.

Contestants' campaign funds: Initiative groups' establishment of campaign funds to cover the costs of signature collection and campaigning for referendums appears to be a requirement under Election Code Articles 114(1).1 and 114.4. In presidential elections, the legislation gives candidates the option of establishing

⁸¹ [Changes in Legal Environment for Non-Commercial Organizations and Freedom of Association in Belarus](#), Review for January–June 2019, Legal Transformation Center Lawtrend and the Assembly of Pro-Democratic NGOs, pp. 8–9.

⁸² Paragraph 198 of [Joint 2011 OSCE/ODIHR and VC Guidelines on Political Party Regulation](#) recommends that "states should require political parties to keep records of all direct and in-kind contributions given to all political parties and candidates in the electoral period." The [OSCE/ODIHR Handbook for the Observation of Campaign Finance](#), p. 34, suggests that "good practice is followed, if legislation defines how in-kind contributions are valued, for example based on market prices."

⁸³ See OSCE/ODIHR Final Report on [2019 parliamentary elections](#), pp. 17–18.

⁸⁴ However, some political parties and public associations deemed pro-government enjoy preferential treatment through discounted office rents based on the [April 2013 Council of Ministers Resolution](#)

⁸⁵ See [GRECO Summary of the Evaluation Report on Belarus](#), Third Evaluation Round, December 2017, paragraph 110 and [OSCE/ODIHR Final Reports on the 2019 parliamentary elections](#) and [2016 parliamentary elections](#), p. 15. Paragraph 176 of the [Joint 2011 OSCE/ODIHR VC Guidelines on Political Party Regulation](#) relates to public campaign funding notes the potential of public funding to strengthen political pluralism. Article 1 of Recommendation on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaign (which is not binding on Belarus) encourages CoE member states to provide reasonable state support, including financial support to political parties, based on objective, fair and reasonable criteria.

campaign funds once they have registered. Citizen observer groups and international organizations have long recommended requiring, rather than allowing, campaign accounts to ensure better oversight of campaign funding and expenditures.⁸⁶

Recommended legal change: To provide legal certainty and enhance the transparency of campaign financing, recast the option for presidential candidates to establish campaign funds as an obligation.

Extra-budgetary fund under the CEC: Article 48.1 of the Election Code allows the CEC to establish an extra-budgetary fund to cover expenses related to the organization of elections and referendums. Citizens, enterprises, political parties and public associations are entitled to make voluntary contributions to this fund. According to [CEC Resolution No. 22](#) in connection with the 2020 presidential election, the CEC may use contributions to the fund to pay for the printing of informational materials about contestants or may distribute the funds to lower-level commissions to cover election-related costs. The CEC is obliged to compile a report on spending from the extra-budgetary fund within six months of elections or referendums and to publish it on its website.

While not raising any concerns about accountability or regulation, the utility of an extra-budgetary fund appears questionable. Donors might prefer to contribute to contestants of their choice, rather than a “common pot” that would benefit other contestants and electoral bodies in a less predictable manner.

Third-party financing: The legal framework does not regulate third-party campaigning and financing, much of which is reported to be associated with state-subsidized or -owned enterprises, associations and foundations.⁸⁷ Such provisions must be designed carefully, including to avoid limiting civil society space and restricting legitimate political activities. An appropriate form of regulation could focus on ensuring transparency and accountability.

Recommended legal change: Introduce regulation of third-party involvement in election campaigns, in particular to ensure transparency and proper supervision.

Reporting and transparency: The Election Code requires candidates to submit interim reports during campaigns (three reports for referendum campaigns and one for presidential campaigns) to the CEC. A final financial report on all income and expenditure is due not later than five days after an election or referendum (Articles 48(1).14 and 114(1).15). This relatively short deadline may not be sufficient to compile all required information and documentation. At odds with international obligations and good practice, the law does not require the publication of contestants’ interim and final reports to be published. This limits the overall transparency and accountability of campaign finances. International organizations recommend that the legislation address the publication of campaigns’ financial reports.⁸⁸

Recommended legal amendment: To enhance transparency, require the publication of contestants’ financial reports.

In accordance with Articles 48(1).13 and 114(1).12 of the Election Code, the CEC receives weekly bank updates on transactions made through campaign accounts and is required to publish summaries of income and

⁸⁶ See [GRECO Summary of the Evaluation Report on Belarus](#), Third Evaluation Round, December 2017, paragraph 111.

⁸⁷ Paragraph 111 of the 2017 [GRECO Summary of the Evaluation Report on Belarus](#). [OSCE/ODIHR Handbook for the Observation of Campaign Finance](#), p. 37, states that “it is important that some form of regulation be extended to third parties involved in the campaign, to ensure transparency and accountability.”

⁸⁸ Article 7.3 of the [UN Convention Against Corruption](#) requires states to “consider taking appropriate legislative and administrative measures, consistent with the objectives of this Convention and in accordance with the fundamental principles of its domestic law, to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties.” See also paragraph 111 of the [GRECO Summary of the Evaluation Report on Belarus](#)

expenditures within two days of receipt of this information.⁸⁹ International observers' reports indicate that the summaries are published irregularly, in some cases without all the required information.⁹⁰ GRECO has recommended reconsideration of the practice of publishing only summaries to ensure a more meaningful level of detail.⁹¹ Identifying an appropriate level for disclosures requires a careful balance between sufficient transparency and enabling the targeting of donors and recipients of donations on political grounds.

Recommended legal change: Augment the CEC's obligation to publish reports on income and expenditures of contestants in presidential elections and referendums to require sufficiently itemized reporting that provides a meaningful level of disclosure and facilitates scrutiny.

Oversight: Articles 48(1).12 and 114(1).13 of the Election Code mandate the CEC and financial supervision institutions to oversee income and expenditures through campaign funds, with the right to request information from banks or other relevant structures. However, the law does not outline the concrete responsibilities and obligations of the CEC, or the exact scope of its responsibilities in this regard. Neither the legislation nor CEC resolutions clearly provide for verification of information submitted by contestants or outline steps that the oversight bodies should take. Thus, the regulations do not create a clear and comprehensive framework for effective monitoring of campaign financing.

In addition, given long-standing concerns related to the independence of the election administration, recommendations have been made to reconsider the CEC's role in political party and campaign oversight and to vest this function in an independent, impartial, professional and duly resourced body.⁹²

Recommended legal change: Expand provisions on oversight of campaign spending to clearly outline the responsibilities and obligations of the CEC. This should include an explicit obligation to verify information and reports submitted by contestants and to proactively investigate alleged infringements of campaign finance regulations. As a long-term objective, it is imperative that an independent, impartial and duly resourced body be put in charge of campaign finance oversight.

Sanctions: The legal framework envisages a range of sanctions for violations of campaign finance regulations, with emphasis on overspending and the use of funds from prohibited sources. Candidates who overspend by more than 20 percent of the set limits or those receiving donations from unauthorized sources may be deregistered (Article 68(1).3 of the Election Code). Similarly, exceeding the spending limit by referendum initiative groups by more than 20 percent or using other funds to augment the limited amounts will result in "denial of the proposal to initiate a referendum" (Article 116.11 of the Election Code). It is unclear how this provision is to be applied if the referendum has already been initiated and the referendum campaign is ongoing. As commented above, deregistration is generally considered a disproportionate measure. In addition, timely and effective redress for deregistration is often difficult to achieve, as decisions on appeals may be pending beyond Election Day, rendering reinstatement unlikely or impossible.

Illegal use of funds and resources in campaigns for elections and referendums and, based on paragraph 48 of [CEC Resolution No. 23](#) for the 2020 presidential election, failure to submit financial reports results in warnings or fines under Article 9.10 of the Code of Administrative Offenses. The use of foreign funding

⁸⁹ Paragraph 36 of the [CEC Resolution No. 23](#) on the campaign funds of candidates in the 2020 presidential elections.

⁹⁰ [OSCE/ODIHR Final Report on the 2019 early parliamentary elections](#), p. 18.

⁹¹ See paragraph 111 of the 2017 [GRECO Summary of the Evaluation Report on Belarus](#)

⁹² [OSCE/ODIHR Final Reports on the 2016 parliamentary elections](#), p. 15, and on the [2019 early parliamentary elections](#), p. 18. See also paragraph 112.vii of the <https://www.osce.org/files/documents/6/4/447583.pdf>

or in-kind support in the conduct of elections and referendums may be punishable under Article 23.24 of the Code of Administrative Offenses (fines and confiscation of the illegal funding) and Article 369⁽²⁾ of the Criminal Code (fines, arrest and up to three years of imprisonment). These sanctions do not appear to apply to other irregularities, such as late submission of financial reports, submission of incomplete or false information or failure to establish a campaign fund in connection with a referendum. The imposition of sanctions should be protected from political interference; this reinforces the need for an independent and impartial body with the authority to oversee campaign and political party financing.

Recommended legal changes: To ensure legal certainty and facilitate effective enforcement, revise sanctions for in compliance with campaign finance provisions to encompass a range of proportionate and effective penalties for various violations.⁹³ To encourage compliance, include sanctions for late submission of financial reports, which may be set as an amount per day of lateness. Deregistration amounts to severe interference with suffrage rights; in general, do not use it as a sanction in the context of party and campaign financing, with a possible exception for the most serious violations.

I. Election Dispute Resolution

The legislation does not provide for a clear procedure or a single hierarchical (first instance and appellate) structure for the resolution of electoral disputes. Chapter 12 of the Election Code governs electoral violations, and Article 49.1 prescribes general rules for resolving disputes related to elections and referendum. These rules are applied unless the code prescribes specific rules for certain types of violations or appeals. As a general rule, complaints can be lodged with election commissions and appealed to higher commissions.⁹⁴ Judicial review or appeal is not generally prescribed and is possible in a very limited number of cases (for example, under Article 49, candidates who have been sanctioned by the CEC can appeal to the Supreme Court within three days of the decision), contrary to international standards.⁹⁵

Recommended legal change: Guarantee judicial review of election complaints as a general rule.

Complaints regarding election violations can be also submitted to the Prosecutor's Office, which may initiate a criminal case in accordance with criminal procedure and timelines. In most cases, election complaints can be filed by candidates, their proxies, voters, public associations, political parties and observers. With some exceptions, complaints must be filed within three days of the violation and are adjudicated within three days. When additional verification of evidence is required, the adjudication period is extended to up to 10 days at the relevant commission's initiative, whereas complaints submitted on Election Day (for example, regarding the exercise of voting) must be adjudicated immediately. Complaints submitted to election commissions should be recorded in special journals. The term for filing complaints against commission decisions is calculated from the date of the decision, and consideration or adjudication of the appeal is calculated from the date of receipt. All decisions of lower-level election commissions can be appealed to the higher-level commission.

⁹³ GRECO Summary of the Evaluation Report on Belarus, p. 7, and Article 16 of the Recommendation Rec(2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns. See also OSCE/ODIHR Handbook for the Observation of Campaign Finance, p. 52, for a range of sanctions that could be considered in connection with campaign finance violations.

⁹⁴ Article 49(1) notes that "A superior commission is entitled, when required, to consider an appeal against the issue related to the competence of a lower commission." The exception is PEC decisions on voter registration that may be appealed both to TECs and courts at the corresponding level (which could lead to "forum shopping" for the most responsive or sympathetic court).

⁹⁵ Under paragraph 5.10 of the 1990 Copenhagen Document, OSCE participating states have committed to ensuring effective means of redress against administrative decisions. Paragraph 18.4 of the 1991 Moscow Document prescribes that "participating States will endeavour to provide for judicial review of such regulations and decisions."

CEC decisions can be appealed to the Supreme Court only in explicitly prescribed cases (for example, a candidate for president can appeal a CEC decision not to register that candidate or an initiative group). The final deadline for election complaints submission is 10 days after Election Day; complaints filed later will not be considered under the law. The law requires that appeals of the decisions of lower commissions be reviewed by a quorum of commissioners; all other first-instance complaints may be reviewed by individual election commission members or staff. Appellants have the right to familiarize themselves with the materials related to the appeal. Appellants are informed of the date, time and place of the session and have the right to be present when the complaint is considered.

Pre-Election Complaints

Complaints about inaccuracies in **voter lists** must be submitted to PECs and considered no later than two days before Election Day. Complaints submitted directly before and on Election Day should be considered immediately.⁹⁶ Decisions can be appealed to a higher commission, which must consider the complaint within three days and immediately on Election Day. A PEC's decision can be directly appealed to a district or city court no later than five days before Election Day; the court must consider the complaint within three days. Its decision is final.

Entities that nominated representatives to an election commission can appeal decisions within three days from the date of adoption in the regional, Minsk City, district or city courts.⁹⁷ The court considers the complaint within three days, and its decision is final.

The refusal of the CEC to **register an initiative group** may be appealed to the Supreme Court within three days from the date of the decision by a person seeking nomination as a candidate for president.⁹⁸ The Supreme Court considers the complaint within three days, and its decision is final. The refusal to register an initiative group for a referendum can be appealed to the Supreme Court within one month.

A person nominated as a candidate for president may appeal CEC decisions on **candidate registration** to the Supreme Court within three days from the date of the decision.⁹⁹ The court considers the complaint within three days, and its decision is final. A CEC rejection of a proposal to conduct a referendum can be appealed to the Supreme Court within one month.

Candidates whose registration the CEC has cancelled may appeal the decision to the Supreme Court within three days of the decision.¹⁰⁰ The Supreme Court considers the complaint within three days. Its decision is final.

Candidates may file complaints to the CEC regarding **violations of campaign rules, including those for campaign finance**.¹⁰¹ General deadlines are applied.

Election Day and Post-Election Complaints

PECs consider complaints about irregularities during **voting or counting** at the end of Election Day.¹⁰² Candidates, their proxies, voters, public associations, political parties and observers may submit complaints, which are registered in a special journal. Decisions and the results of adjudication should be documented in the session protocol. These decisions can be appealed to higher-level commissions in accordance with

⁹⁶ Article 21.4 of the Election Code.

⁹⁷ Article 34.12 of the Election Code.

⁹⁸ Article 61.8 of the Election Code.

⁹⁹ Article 68.118 of the Election Code.

¹⁰⁰ Article 70.114 of the Election Code.

¹⁰¹ Article 74.1 of the Election Code.

¹⁰² Article 55.13 of the Election Code.

general deadlines and procedures. However, this mechanism is not in use because it overlaps with the general 10-day deadline for complaints. The structure of the appeals process requires lower-level appeals to be exhausted within the 10-day deadline before final appeals can be submitted. Therefore, final appeals will be dismissed and not considered on their merits. Further, the decisions of election commissions cannot be appealed to the courts. In addition, a candidate for president would need to file complaints with PECs across the country where irregularities are observed, rather than through a consolidated petition to the court system.

Recommended legal change: Synchronize legal deadlines for post-Election Day complaints, and delay the finalization of election results until all admitted challenges are resolved and appeals exhausted.

Regional, city or city district commissions should conduct sessions to establish election results in their jurisdictions no later than three days after Election Day. Prior complaints should be considered at a session and, with decisions, transferred to oblast or Minsk City territorial commissions within the three-day period. The higher-level commissions should determine the results and consider complaints no later than four days after Election Day. Materials from these commissions (protocols, complaints and decisions, as well as copies of regional, city or city district commission protocols) are then transferred to CEC within the four-day period.

The results of a presidential election may be invalidated wholly or in part if the CEC finds that violations were committed during the election or the count, if such violations are found to have affected the election results in the entire republic.¹⁰³ A candidate may submit a complaint to the CEC regarding violations and seek invalidation of the results no later than the third day after the election.¹⁰⁴ It is generally accepted practice that irregularities should not be the reason for invalidating an election result unless they affect the outcome.¹⁰⁵ However, in Belarus, the CEC decides whether to invalidate results, and its decision to reject complaints on election outcomes cannot be appealed. This undermines the fundamental right to appeal. If an election is invalidated, Election Code Article 81 requires that a repeat election take place within three months after the first election. Four candidates requested, unsuccessfully, that the CEC invalidate the August 9, 2020, presidential elections, and three candidates appealed to the Supreme Court, which refused to consider the complaints. Invalidation of the presidential election is no longer possible.

Recommended legal change: Guarantee the right for all candidates and voters to appeal final election results.

In a general prosecutor proposal related to violations accrued during a referendum, the CEC may (but is not required to) decide within one month of an election whether to repeat voting on a referendum in specific polling stations, or to repeat voting in the entire country within one year.¹⁰⁶

Recommended legal change: Rather than leaving decisions about repeating referendums entirely to the CEC, review the legal framework and develop clear criteria for decisions about repeat elections. Guarantee judicial review of referendum results.

¹⁰³ Article 79.13 of the Election Code.

¹⁰⁴ In cases when the CEC wholly or partially invalidates election results, presidential candidates can appeal to the Supreme Court within 10 days. According to the Civil Procedural Code, the Supreme Court must consider such appeals within five days.

¹⁰⁵ Although they are not international standards, IFES has collected some recent and indicative examples at [When Are Elections Good Enough?](#)

¹⁰⁶ Article 122 of the Election Code.

J. Election Observation

The Election Code provides for citizen and international election observation. Political parties, public associations, labor collectives and groups of at least 10 voters may nominate citizen observers. The CEC accredits observers from public associations and political parties registered at the national level, while TECs and PECs accredit observers at lower levels. The rights of citizen and international observers are prescribed exhaustively by law and usually interpreted and implemented restrictively. The law does not provide observers the right to receive certified copies of the results protocol or allow the observation of signature verification of initiative groups' signature lists, handover of the results protocol from PECs to TECs or compilation of results at TECs. In addition, election commissions have wide discretionary powers to deny access to observers. These restrictions are at odds with paragraph 8 of the 1990 OSCE Copenhagen Document and international good practice. Although the Election Code entitles observers to make copies of commission protocols, these copies have no legal power.

During the 2020 presidential elections, the CEC limited the number of observers at polling stations due to COVID-19.

Recommended legal change: Allow observers to familiarize themselves with the content of voter lists and receive certified copies of results protocols; as a provisional solution, prescribe these rights in a CEC resolution.

Recommended change of regulation and practice: Ensure the unrestricted access of citizen and international observers to observe all aspects of the electoral process throughout, voting, counting and tabulation.

K. Participation of Persons with Disabilities

Belarusian legislation lacks a general prohibition of discrimination, definition of discrimination or legal mechanisms for protection against discrimination. The term “discrimination” is mentioned only in the context of labor law.¹⁰⁷ There is no case law regarding protection from discrimination, including on the grounds of disability.

Recommended legal change: Introduce comprehensive anti-discrimination legislation.

Persons with psychosocial or intellectual disabilities whom the courts declare incapable are deprived of the right to vote, stand for election or be members of election commissions, political parties and other civic organizations.¹⁰⁸ Although no official statistics exist, approximately 45,000 persons are deprived of legal capacity. Additional legal procedures on the deprivation and restoration of legal capacity do not ensure the best interests of persons with disabilities.¹⁰⁹ (See Section III.D on the right to vote.)

National legislation defines the main aspects of physical and architectural accessibility but says little about accessibility of information or other aspects of accessibility. The absence of comprehensive information negatively influences the elections.

¹⁰⁷ Article 14 of the Labor Code of the Republic of Belarus.

¹⁰⁸ Article 4 of the Election Code, Article 13 of the Law on Political Parties.

¹⁰⁹ Article 375 of the Civil Procedural Code allows the court to consider cases on the deprivation of legal capacity without the participation of a person with a disability if it considers that the person's presence is not possible for health reasons. Further, a citizen recognized as incapable has no opportunity to request restoration of legal capacity. Article 376 allows such cases to be initiated by a guardian or other legal representatives.

A voter who is unable to come to a polling station on Election Day has the right to vote at a place where he or she is located.¹¹⁰ There is no legal requirement that elections be conducted only in fully accessible buildings. State institutions (election commissions and local executive authorities) should facilitate accessibility in polling stations; for example, it is recommended that polling stations should be on a building's ground floor to accommodate persons with mobility issues.

Recommended change of regulation and practice: Introduce stricter requirements regarding the accessibility of polling stations. Select accessible buildings to serve as polling stations. Where access to polling stations is limited, the state should provide mobile ramps. Polling stations should always be located on the ground floor to allow direct access by voters with disabilities.

During the last several elections, the CEC adopted resolutions to facilitate the participation of persons with disabilities, prescribing special booths or tables for wheelchair users and providing informational material in braille, along with magnification sheets and stencils for those who are blind or have low vision. Training for commission members does not always address arrangements for voting by persons with disabilities. The 2019 CEC resolution on the participation of persons with disabilities in parliamentary elections mentioned such candidates for the first time. The resolution states that campaign locations should be accessible where possible, and that candidates can use proxies to campaign.

The CEC website is not accessible for voters who have low vision or are blind, deaf or hard-of-hearing. Political parties and candidates are not required to be more inclusive. State television channels must provide subtitles and sign language interpretation only for campaign information (official appearances by candidates) and usually as part of only one news block during the day.

Recommended change of regulation and practice: Ensure the accessibility of information, such as by making the CEC website accessible, broadcasting CEC sessions and statements of the CEC chairperson with subtitles and ensuring that all television news broadcasts use subtitles and sign language interpretation. Include in training for commission members information on organizing voting for persons with disabilities.

It is common practice to set up polling stations in health centers, preventive care centers, hospitals and other health facilities that provide inpatient medical treatment.¹¹¹ While this helps ensure the right to vote, observation in such facilities is uncommon, and broad possibilities exist for the manipulation of voters.

A voter who is unable to fill in a ballot alone has the right to assistance by a person other than a member of an election commission, candidate, proxy or observer.¹¹² No additional measures or guarantees are prescribed for candidates with disabilities (e.g., sign language interpreters, additional finances) to ensure equal campaign conditions.

Recommended change of regulation and practice: Create a special fund or use the CEC extra-budgetary fund to address the needs of candidates with disabilities to increase the overall political participation of persons with disabilities in these and other roles.

¹¹⁰ Article 54 of the Election Code.

¹¹¹ Article 17 of the Election Code.

¹¹² Article 52 of the Election Code.

L. Election Day Procedures

The voting procedures described below are applicable for both elections and referendums.

Early Voting

The Electoral Code provides for a five-day early voting period. No justification is required. Only two PEC members are required to be present to administer early voting. Ballot boxes are sealed in the presence of observers for overnight storage, a daily voting protocol listing the number of voters who have already voted is displayed at the polling station and the total number of voters who voted early is reported as a separate figure in the results protocol.

Recommended change of regulation and practice: Introduce sufficient safeguards to ensure the integrity of the early voting process, such as tamper-resistant, numbered seals that are accounted for and recorded. Require all members of the PEC to be present during early voting. Post daily protocols from the start of early voting until the deadline for filing complaints. To increase trust in and the accountability of the early voting process, publish daily, disaggregated turnout information for each polling station.

Election Day

According to Article 50 of the Electoral Code, voting is conducted from 8 a.m. to 8 p.m. Before the start of voting on Election Day, ballot boxes are to be checked and sealed. A PEC member issues ballots to voters to on the basis of the voter list and upon presentation of a passport or other document specified by the CEC.

Mobile Voting

The PEC is obliged to provide the opportunity to vote to those who, for health or other valid reasons, cannot come to a polling station on Election Day. For citizens who make requests orally or in writing, PECs organize mobile (home) voting on Election Day; voters are not required to provide official confirmation of inability to come to the polling station. Current procedures for mobile voting create opportunities for manipulation, and observers cannot check whether voters actually requested mobile voting.

Recommended change of regulation and practice: Introduce stricter qualifications for mobile voting, and further detail the procedures to safeguard the integrity of the election process.

Vote Count and Tabulation

The method of vote counting by PECs is not described in the law or CEC regulations.

Recommended change of regulation and practice: Establish clear, open and transparent procedures for the count, and ensure strict implementation by PECs. Procedures should include: announcing aloud the mark on each

ballot and showing it to commission members, observers and party agents; conducting the vote count separately for each ballot box; reflecting the results of those counts separately in the final protocol for each ballot box; and tallying results at PECs in an open and transparent manner.

After the PEC chairperson, deputy or secretary signs the protocol, one copy is immediately submitted to the corresponding higher-level commission and the second to the body that formed the PEC. The third copy is stored in the commission files. Observers have the right to receive a copy of the protocol on voting results, Although this copy is not signed by commission members or certified by the commission's stamp. The protocol forwarded to the TEC should be accompanied by any dissenting opinions of commission members, statements by the candidates' proxies and other individuals about violations during the voting or counting and any decisions taken in these cases.

Recommended change of regulation and practice: Distribute certified result protocols to individuals wishing to receive a copy. PECs should systematically post the protocols in an easily accessible place, as provided by law.

Neither the law nor CEC regulations describe the procedure for TECs' receipt of the protocols and ballots. Each TEC approves the election results for each electoral district at a meeting no later than four days after the end of voting. Thus, despite a CEC decision that observers may be present during the transfer of protocols of voting results and ballots from PECs to TECs, they are deprived of the opportunity to observe this crucial election phase.

Recommended change of regulation and practice: Prescribe uniform tabulation procedures through a CEC resolution. To enhance the transparency of tabulation and instill public confidence in the accuracy of the results, higher-level commissions should conduct uninterrupted tabulation from the handover of PEC protocols until they complete the protocols in the presence of PEC members and observers. Observers' viewing of the tabulation should be unrestricted.

To allow electoral contestants to verify the accuracy of the election results, immediately publish detailed PEC result protocols on the CEC website.

IV. Considerations Related to Other Possible Actions and Developments

Recounts and cancellation of election results: If errors in precinct (PEC) and/or territorial election commission (TEC) protocols are detected, along with any other violations committed during voting or counting, the Central Election Commission (CEC), on its own initiative or at the request of a presidential candidate, can conduct a recount.¹¹³ TECs perform recounts in the presence of the CEC and, where necessary, PECs. Candidates must submit applications for a recount to the CEC no later than the third day after elections, and there is no right of appeal to the CEC's decision. No recount is possible after this point.

The CEC should announce the final election results no later than 10 days after Election Day. This decision is not subject to judicial review. The CEC announced the results of the August 9, 2020, presidential election on August 14.

Vacant position: New presidential elections may be scheduled if the position becomes vacant. The president may resign at any time,¹¹⁴ with the resignation accepted by the House of Representatives.

Parliament may dismiss the president for several reasons, including health reasons that result in an inability to fulfill the duties of the role. The decision requires a qualified majority of two-thirds of members of Parliament, based on the opinion of a special commission created by the chambers for this purpose. The president may also be removed from office for the commission of high treason or other serious crimes. In this case, the removal is initiated by one-third of members of the House of Representatives, and a majority of the House of Representatives must approve the decision to file an accusation and investigate. The Council of the Republic then investigates the charge. The president is removed from office upon the vote of at least two-thirds of members of Parliament. Failure to support such a decision within one month from the initiation of the accusation results in rejection. A proposal to remove the president cannot be initiated in case of the early termination of the powers of the Parliament's procedure. The Supreme Court considers the case against the president on its merits.

If the office of the president is vacated (that is, if the president resigns or is removed from office), elections are held no earlier than 30 days and no later than 70 days from the date of the vacancy. The Election Code does not specify the terms for such elections; these should be established by the Central Election Commission.¹¹⁵

Special attention should be paid to the election calendar for such elections to allow maximum possible time for its preparation.

¹¹³ Article 79.12 of the Election Code.

¹¹⁴ Article 87 of the constitution.

¹¹⁵ Article 56 of the Election Code.

V. Summary and Conclusions

The legal framework of Belarus contains a number of gaps, omissions and ambiguities that leave space for varied interpretation and application. At the same time, some aspects of election law are regulated overly scrupulously and stringently, unduly restricting electoral rights. Evaluations of the overall legal framework repeatedly note that it does not guarantee the conduct of elections in line with international obligations, standards and good practice. A comprehensive legal reform involving all relevant stakeholders is needed, including to integrate substantive procedural safeguards for integrity and transparency into all stages of the electoral process.

The conduct of future electoral processes could be effected through a number of **changes to Central Election Commission (CEC) resolutions and instructions**. These documents, which are binding for all electoral stakeholders, are entirely within the CEC's mandate and are not subject to consultation with or approval by executive or legislative bodies. Corresponding adjustments to training materials and efforts could also play an important role in embedding these suggestions into practice. However, the feasibility of the proposed non-legislative improvements, as summarized below, is contingent on the CEC's openness and willingness to embrace such changes.

Changes that May Be Introduced Through CEC Resolutions and Instructions

- Ensure all decisions by the election administration are published in a timely manner;
- Require the publication of information on voter list updates and detailed voter numbers;
- Clarify signature verification methods, and require the publication of protocols and decisions on the results of verification;
- Allow initiative groups and candidates to correct omissions and minor errors in registration documents;
- Emphasize to local authorities and law enforcement the need to create a permissive environment for signature collection, campaigning and the right of peaceful assembly for all contestants;
- Proactively oversee compliance with regulations that forbid misuse of administrative resources, enforce provisions and apply sanctions as necessary;
- Address the importance of equitable media coverage of contestants not only through free airtime but also in news and other editorial formats;
- Adopt an inclusive approach in establishing the Media Supervisory Board, and oblige it to hold public sessions and publish its recommendations and decisions;
- Clarify legal provisions pertaining to the registration of initiative groups, campaigning opportunities and media access in connection with referendums;
- Grant observers unrestricted access to all aspects of the electoral process, including the right to familiarize themselves with voter lists and receive copies of result protocols;

- Introduce clearer and more stringent requirements for the accessibility of polling premises;
- Ensure that election administration staff are trained to organize voting for persons with disabilities;
- Improve the accessibility of information pertaining to elections, especially disaggregated results, including on the CEC website and in public announcements;
- Introduce stricter qualifying requirements and safeguards of integrity in mobile voting;
- Develop clear and transparent vote count procedures, and ensure strict compliance with them;
- Issue copies of result protocols to all interested parties, and post them in precinct election commissions for public scrutiny;
- Announce rules and procedures for constitutional reform openly and clearly;
- Ensure that information about the ways that different groups can participate in constitutional reform is clear, effective and inclusive;
- Ensure and facilitate possibilities for broad and genuine public discussions;
- Transparently create a special drafting committee whose members are not limited to representatives of state institutions (and may be elected by citizens) and that works transparently and accepts proposals from different stakeholders; and
- Premise constitutional reform on recognition of the primacy of the international obligations of Belarus regarding both the substance of constitutional provisions and the process of enacting them.

A considerable number of improvements require **changes to the legal framework**. Recommended changes are grouped below according to their priority. The division into priority and other recommendations may require review and adjustments depending on developments and the order of anticipated electoral events.

Priority Recommendations

- Provide a basis in the constitution for genuine separation of powers, and integrate effective checks and balances to insulate the legislative and judicial branches from excessive control by the executive;
- Eliminate the president's discretionary authority over the legal power of the referendum, and remove restrictions on the rights to freedom of association, assembly and expression;
- Decriminalize defamation and insult;
- Review CEC composition and appointment procedures to ensure its independence;
- Adopt clear and objective criteria for the selection and appointment of election commissioners, and stipulate grounds and deadlines for withdrawals;
- Review blanket restrictions on the right to vote based on incapacity, imprisonment and detention;
- Remove or significantly shorten the residency requirement for presidential candidacy;
- Amend verification rules to require checking of support signatures until the required number of valid signatures is reached, and provide for transparency at all stages;
- Set a deadline and reduce opportunities for adding voters to lists close to Election Day;

- Introduce safeguards to ensure the integrity of early voting;
- Permit initiative groups and candidates to correct omissions and minor errors in registration documents;
- Strengthen and further detail provisions against the misuse of administrative resources, and clarify their applicability to referendums;
- Regulate in-kind contributions and third-party involvement in campaigns, with a focus on transparency and accountability;
- Require the publication of contestants' financial reports and sufficiently itemized reports by oversight bodies based on the information provided;
- Explicitly require oversight bodies to verify information and financial reports submitted by contestants and to proactively investigate alleged campaign finance violations;
- Provide for a range of effective, proportional and incremental sanctions for violations of election legislation, including with regard to campaign financing and misuse of administrative resources;
- Provide for judicial review of election complaints as a general rule;
- Synchronize legal deadlines for all post-election complaints, and require the resolution of all complaints and appeals before the determination of final election results;
- Guarantee all candidates and voters the right to appeal final election results;
- Provide observers unrestricted access to all aspects of the electoral process, including familiarizing themselves with voter lists and receiving copies of result protocols; and
- Prescribe uniform tabulation procedures.

Other Recommendations

- Establish permanent positions for all CEC members;
- Establish a centralized, computerized and publicly accessible voter register;
- Repeal turnout requirements for second rounds of presidential elections;
- Outline clear registration requirements for referendum initiative groups, including applicable timeframes;
- Review and provide further detail on campaigning and access to media guarantees during referendums to ensure equitable opportunities;
- Clarify or repeal the requirement to submit campaign materials to the CEC before distribution;
- Vest the authority to oversee media conduct during elections and referendums with an independent and duly resourced oversight body with a mandate to carry out comprehensive media monitoring;
- Adopt comprehensive anti-discrimination legislation;
- Review regulations on general political party financing to ensure accountability and transparency;
- Consider providing some level of public funding to political parties or campaigns;

- Transform presidential candidates' option to establish campaign funds into an obligation; and
- Vest an independent, impartial and duly resourced body with campaign finance oversight.

As a final note, it should be emphasized that reforming the conduct of elections in Belarus is not only a question of amending legal texts but depends to a large extent on the political will to create a conducive environment and implement legal provisions in good faith.



HQ | 2011 Crystal Drive | Arlington, VA 22202 | USA

 www.IFES.org