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INTERNATIONAL SOCIETY FOR
FAIR ELECTIONS AND DEMOCRACY

Evaluation of the Pre-Election Environment For the 2017 Local Self-Government Elections

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Executive Summary

Georgia will hold regular elections of the local self-government bodies in October 2017. The International Society for Fair Elections and Democracy (ISFED) will carry out monitoring of the local elections nationwide. Since July 24, ISFED's 70 long-term observers (LTOs) have already been observing the pre-election period in all municipalities. Before publishing interim results of the pre-election observation, ISFED presents the assessment of the pre-election environment in Georgia with respect to the electoral legislation, political and media pluralism.

Constitutional changes were the major issue of civil society and political discussions ahead of the 2017 local self-government elections. The process of Constitutional reform initiated in the mostly inclusive format of the State Constitutional Commission reached a sort of a stalemate in late June, after the ruling party made an unexpected decision to postpone changes in the electoral system until 2024.

Also unexpectedly and without involvement of general public, the Parliament of Georgia voted for merging of 14 municipalities and abolishment of the self-governing status for 7 cities just a few months before the election. The decision essentially limits the right to self-government for the cities and the villages within the self-governing communities. As a result of changes in the Election Code, a number of positive new regulations were introduced; however, changes in rules that regulate composition of electoral commissions have been criticized. According to these new regulations, number of the ruling party representatives in the electoral administration will significantly increase following the 2017 elections. To the disappointment of NGOs and political parties, no substantial changes were made in the electoral system of the self-government bodies.

Major political parties started preparations for the local self-government elections several months prior; however, election campaign has yet to enter an active phase nationwide. It is expected that primary focus of the campaign will be Tbilisi mayoral elections; most candidates who will be running for the office are already known to public.

During the period leading up to the self-government elections, perceived attempts to exert political influence on media have again been a subject of public concern. These perceptions were further solidified by changes in the public broadcaster's management and shutting down of critical programs on the broadcaster. In the dispute concerning ownership of Rustavi 2, the Supreme Court ruled against current owners of the channel despite a number of procedural irregularities in the case; however, enforcement of the ruling has been suspended until further notice by the European Court of Human Rights.

Constitutional Reform

Constitutional changes were the major issue of civil society and political discussions ahead of the 2017 local self-government elections. Having secured constitutional majority following the 2016 parliamentary elections, the ruling party initiated a process of reforming the Constitution, which has proven to be controversial.

The process of Constitutional reform initiated in the mostly inclusive format of the State Constitutional Commission at the end of last year, reached a sort of a stalemate in late June and the bill on Constitutional amendments passed two readings in Parliament with support from only Georgian Dream party, mostly on the account of a sudden decision made by the ruling party to postpone changes in the electoral system until 2024.

Change of the electoral system has been the key issue of the Constitutional reform for the civil society. NGOs and opposition parties have demanded replacing the current proportional/majoritarian parallel system by a proportional election system for several years¹ because the majoritarian component of the system promotes disproportion between the received votes and mandates and works in favor of the ruling party. Last year the Georgian Dream also announced that it would support change to a proportional election system for the 2020 elections.

In the format of the Constitutional Commission it became clear that abolishing electoral blocs and introduction of the so-called “bonus” allocation of the undistributed mandates were the prerequisites for the ruling party to support the move to a proportional electoral system. In such a system, mandates that remain unallocated due to the votes received by parties that couldn’t clear the 5% threshold would be granted to a single party that garnered most votes. The initiative was strongly criticized because granting all undistributed mandates to a single political party while electoral blocs are abolished and the 5% threshold is maintained will work in favor of the ruling party and will not eliminate the major shortcoming of the existing electoral system – disproportion of the received mandates and election results. In response to the ruling party’s initiative, the NGOs demanded a proportional allocation of undistributed mandates, reducing the threshold and/or introducing a limit to the so-called “bonus mandates” for the party that garnered most votes in elections.² In its opinion the Venice Commission welcomed the positive move towards a proportional election system but it criticized the proposed rule of allocation of mandates. Recommendations of the Venice Commission in this regard were similar to those of the NGOs’.³

On June 19, immediately after the Venice Commission published its opinion, the ruling party made an unexpected decision to maintain the existing electoral system for the 2020 parliamentary elections and postpone the transition to a proportional system until 2024. Within the same week, on June 22-23, despite a strong criticism by civil society organizations and political parties, the Georgian Dream supported the bill of Constitutional amendments at two readings held in two days during an extraordinary session of Parliament. No other party representatives voted for the bill.

Besides the electoral system, number of other initiatives of the ruling party proved to be controversial within the process of Constitutional reform: abolishment of direct election for president; definition of marriage as a union between a woman and a man to create a family; placing a limitation on the right of an alien to acquire a land by purchase, etc.

The single-party support of the Constitutional amendments stalled the discussions about the Constitutional reform. Postponement of changes to the electoral system was perceived by the civil society as an attempt of concentration of power by the ruling party.⁴ Adoption of the Constitution without a broad consensus may greatly jeopardize long-term and broad legitimization of the Constitution, which may undermine stability of political processes in the future. Therefore, it is especially important that prior to the third reading of the Constitutional changes the ruling party and the opposition put maximum efforts for dialogue that would lead to a meaningful consensus at least about changing the electoral system. Consensus between the ruling party and the opposition about this crucial issue within the Constitutional reform will help strengthen legitimization of the Constitution and development of democratic processes in the country.

¹ Address of CSOs and Political Parties to the Parliament of Georgia on the Elections System Reform, 30 May 2015; <http://www.isfed.ge/main/904/eng/>

² Georgian CSOs Address the Venice Commission, <http://www.isfed.ge/main/1222/eng/>

³ Opinion of the European Commission for Democracy through Law (Venice Commission) on the Draft Revised Constitution, 19 June 2017; <http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD%282017%29013-e>

⁴ Georgian Civil Organizations Address Federica Mogherini, MEPs and the U.S. State Department; <http://www.isfed.ge/main/1247/eng/>

Merger of Municipalities and Decrease of Self-Governing Cities

One of the important and tangible accomplishments of the local self-government reform in 2014 for development of self-government and decentralization was dividing municipalities and creating seven new self-governing cities⁵. NGOs that participated in the reform welcomed the change. This was only the first stage of the reform and the process should have continued, which is what the society expected, in order for the process of territorial optimization to extend to other municipalities.⁶

Instead, amid ongoing Constitutional reform, the public unexpectedly learned that the government was deliberating the issue of merging the municipalities divided in 2014 and abolishment of the self-governing status for 7 cities. Without any public consultations, the Ministry of Regional Development and Infrastructure (MRDI) prepared and sent to relevant municipalities a legislative initiative about abolishment of 14 municipalities (including 7 self-governing cities) and restoring the territorial arrangement that existed prior to 2014.

NGOs repeatedly urged the government to conduct discussions about the issue with involvement of general public, to no avail.⁷ Despite the calls and the discontent from civil society, individual citizens and representatives of opposition parties, Sakrebulo in all relevant municipalities discussed and approved the initiative prepared by the MRDI. In some cases the initiative was approved amidst a lot of noise and confrontation.⁸

On 30 June 2017, despite the opposition by general public, the Parliament of Georgia supported abolishment of self-governing status for 7 cities and merging of municipalities. On July 21, the President of Georgia vetoed the bill and sent it back to Parliament with his motivated objections.⁹ On July 26, Parliament overcame the president's veto, meaning that the new regulations will be enacted. Following the local self-government elections of 2017 fourteen self-governing territories will be merged into seven and only five cities will maintain their self-governing status. This decision substantially limits the self-governing right for 7 cities as well as for villages in self-governing communities.

Changes in the Electoral Legislation

In addition to the Local Self-Government Code, changes were also made in the Election Code. Some changes were technical in nature and were initiated by the Central Election Commission (CEC). These changes include positive regulations that allow electronic registration of electoral subjects, observer and media organizations in electoral administrations. They also improve coordination between state agencies in the process of registration of electoral subjects.

However, some negative new regulations have also been introduced that place certain restrictions on transparency and accountability of electoral administration by limiting public access to meetings of electoral commissions and making changes in the timeframe for provision of public information by the electoral administration. Further, an unforeseeable term "minor disciplinary violation" was introduced in the Election Code allowing higher electoral administration to relieve an electoral commission member

⁵ Gori, Telavi, Ambrolauri, Mtskheta, Ozurgeti, Zugdidi, Akhaltsikhe

⁶ The Code of Local Self Government, Art. 152, 2014,

⁷ Statement of NGOs, 18 May 2017; <http://www.isfed.ge/main/1225/eng/>

⁸ Meeting of Sakrebulo of the City of Zugdidi, 22 May 2017, <http://droa.ge/?p=3527> <http://droa.ge/?p=3504>

Meeting of Sakrebulo of the Community of Zugdidi, 19 May 2017, <http://droa.ge/?p=3316>

⁹ <https://www.president.gov.ge/getattachment/5c1bdd20-59c2-4e5f-b413-a64b03557997/N8481.pdf.aspx>

from a disciplinary liability. Monetary fines for interfering with functions of a commission also lack foreseeability, and changes in regulations for selecting commission members that would accompany a mobile ballot-box lack substantiation.

The most problematic are the new regulations about composition of electoral commissions due to enter into force after the 2017. They reduce number of political parties eligible to appoint a representative in the electoral administration and significantly increase the number of ruling party representatives. These regulations are a step backwards, both in terms of ensuring level playing field for all political parties and strengthening trust in the electoral administration. During previous elections ISFED identified important shortcomings in the process of selection of professional members of electoral commissions, prompting suspicions about political meddling in this process. Under these circumstances, increasing the number of ruling party representatives in electoral commissions will not promote public perceptions about impartiality of the electoral administration.

Because of the changes in the rules of composition of the electoral administration, the President of Georgia vetoed the pending amendments to the Election Code but parliament was later able to override the veto during an extraordinary session.

No other substantial changes have been made in the electoral legislation despite recommendations put forward by NGOs.¹⁰ Norms that regulate electoral disputes, vote buying, misuse of administrative resources and party financing need to be improved.¹¹

The Electoral System for Local Self-Government

Electoral system plays an important role in fair and democratic conduct of elections. In Georgia, local self-government representative bodies – Sakrebulo are formed on the basis of a mixed electoral system. In the mixed electoral system some Sakrebulo members are elected through a majoritarian system, others through a proportional one.¹²

Existing electoral system has important shortcomings. Failure of the electoral system to ensure equality of vote is an important problem. The problem is highlighted in the *European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) Joint Opinion*, which recommends revising the electoral system for the local self-government elections to ensure equality of the vote.¹³

In addition, the existing electoral system for local self-government elections fails to ensure the proportionality principle – i.e. votes are not proportionally translated into seats. In a mixed electoral system often parties with fewer supporters receive portion of mandates that are less than percentage of votes that they were able to obtain in the elections, while percentage of representation of more powerful political parties in Sakrebulo is higher than percentage of support that they received in the elections.

¹⁰ Recommendations for improving the electoral environment, 10 February 2016, <http://www.isfed.ge/main/1007/eng/>

¹¹ Some regulations of party financing need to be improved, ISFED, GYLA, TI-Georgia, 28 May 2017; <http://www.isfed.ge/main/1228/eng/>

¹² See the Organic Law of Georgia the Election Code, Art. 148-149.

¹³ European Commission for Democracy Through Law (Venice Commission) and OSCE Office for Democratic Institutions and Human Rights(OSCE/ODIHR) Joint Opinion on the Draft Election Code of Georgia, 19 December, 2011, pp.6-8

Such disproportionality is caused by the fact that more powerful parties receive additional mandates at the expense of the majoritarian system.¹⁴

NGOs demanded reform of the electoral system for local self-government elections as early as in 2014, and submitted recommendations to that end¹⁵ but despite numerous calls from NGOs and parties the electoral system has not been reformed in any substantial manner.

Instead of implementing a substantial reform, the authorities prepared and adopted new regulations for increasing number of majoritarian representatives in self-governing communities. These changes aimed at strengthening representation of cities within self-governing communities in municipal Sakrebulo after merging of municipalities and abolishment of self-governing status for 7 cities. According to these new regulations, number of majoritarian representatives in cities within self-governing communities will be increased by 2-5 majoritarian members, depending on population size.¹⁶

These new regulations alone are insufficient for bolstering development of cities and compensating for the loss of their own representative and executive bodies after merging of municipalities. Furthermore, implementing changes related to the electoral system in a fragmented manner and without involvement of general public is unacceptable, especially when there are serious challenges in the system.

Gender quotas

In June, a legislative initiative about gender quotas backed by 37,455 voter signatures was submitted to Parliament, with support from the Task Force for Women's Political Participation.¹⁷ The initiative envisages amending the Election Code for obligating parties and electoral blocs to submit gender balanced lists for elections where every other candidate is of a different sex. If an elected member abandons his/her mandate, next successful candidate on the party list who is of the same sex must replace him/her. The legislative initiative has been endorsed by international and local organizations working on issues of women's political participation. Regrettably, the initiative could not be discussed in Parliament in time for the 2017 local self-government elections.

¹⁴ For instance, in 2014 local self-government elections, the UNM garnered 28.87% of votes but it received only 18% of seats in Sakrebulo. In Tbilisi, the coalition Georgian Dream received 46% of votes but 74% of total seats in Sakrebulo. For detailed information, refer to: "Why should the election system be changed in Georgia?", <http://www.isfed.ge/main/783/eng/>

¹⁵ GYLA, ISFED and TI-International Joint Recommendations about the Electoral System, 20 January 2014; <http://www.isfed.ge/main/1009/eng/>

¹⁶ The Sakrebulo of a self-governing community shall be composed of 15 members elected through the proportional electoral system and 1 member elected through the majoritarian electoral system from each community and city comprised by that self-governing community. In the administrative center of a self-governing community where the number of voters is more than 4 000 but less than 10 000, 2 members of Sakrebulo will be elected through the majoritarian system. In the administrative center of a self-governing community where the number of voters is more than 10 000 but less than 20 000, 3 members of Sakrebulo will be elected through the majoritarian system. In the administrative center of a self-governing community where the number of voters is more than 20 000 but less than 35 000, 4 members of Sakrebulo will be elected through the majoritarian system. In the administrative center of a self-governing community where the number of voters exceeds 35 000, 5 members of Sakrebulo will be elected through the majoritarian system." The Election Code of Georgia, art.140, 2011

¹⁷ Legislative initiative about gender quotas was submitted to Parliament, On.ge, June 12, <http://bit.ly/2vLbcse>

Electoral Administration, State Audit Office, Interagency Commission

The **electoral administration** mostly enjoys increasing trust among public and professional circles. Activities of the Central Election Commission (CEC) are mostly transparent and cooperative towards monitoring organizations. However, monitoring organizations found a number of technical irregularities in the last elections, especially in the process of vote count and tabulation. These irregularities have called qualification of precinct electoral commission (PEC) members into question.¹⁸ Besides this, selection of professional members of PECs was problematic and raised suspicions about political meddling.¹⁹ To strengthen trust towards the electoral administration it is crucial that the CEC and district electoral commissions (DECs) treat selection of PEC members with utmost responsibility; they must ensure that the process of selection is transparent and is based on professional qualification, in order to rule out any perceptions of party or political meddling in the process.

The **State Audit Office** (SAO) also plays a crucial role in ensuring conduct of elections in a competitive environment. In addition to monitoring use and spending of public funds, it also oversees party financing and spending. Over the recent years the SAO has established itself as an impartial body free from any political influence. However, the SAO's resources are limited to ensure timely and effective response to violations that it detects.

Term of office of General Auditor Lasha Tordia expired on July 25, before the official campaign period began. Two months earlier Tordia announced that he was attacked and physically assaulted by former General Prosecutor Otari Partskhaladze and his security guards. According to the victim, the assault was related to a specific case investigated by the SAO involving transfer of land plots to Otari Partskhaladze in 2016.²⁰ The investigation into the incident has raised certain questions²¹ and three months later the question that remains unanswered is whether the case was related to the General Auditor's official activities. Parliament has failed to adequately react to assault on the head of a constitutional body. Delays in the investigation and failure to hold the perpetrators accountable leaves society in impression that there are certain influential individuals/groups who are above the law and the machinery of the government serves to protect their interest. This could send a negative message to civil servants of not only the State Audit Office but also other independent bodies.

Under these circumstances, media has periodically reported that the Georgian Dream is considering ruling party affiliated individuals as candidates for the office of the General Auditor.²² To maintain and strengthen trust in the work of the State Audit Office, it is important that the assault against the General Auditor is investigated in an impartial manner and the person selected for the office of the General Auditor is free from political influence.

In compliance with the Election Code requirements, the **Interagency Commission for Free and Fair Elections** started operating before the elections. Its first meeting was held on July 17. The format of the Commission is a useful platform for ensuring coordination among different agencies with the aim of responding to and preventing violations during the election period. However, the Commission lacks any effective mechanism for monitoring implementation of its own recommendations.

¹⁸ Final report of monitoring the 2016 parliamentary elections, 10 March 2017; <http://www.isfed.ge/main/1202/eng/>

¹⁹ Statement of ISFED about Ongoing Competition for Selection of Electoral Commission Members, 21 August 2016; <http://www.isfed.ge/main/1116/eng/>

²⁰ Tordia: Assault by Partskhaladze is connected to the SAO activities, Netgazeti, 13 May 2017; <http://netgazeti.ge/news/193777/>

²¹ Statement of NGOs about the assault against the General Auditor, 14 May 2017, <http://www.isfed.ge/main/1223/geo/>

²² Vano Zardiashvili may replace Lasha Tordia as the General Auditor, Imedi, 11 July 2017; <https://imedinews.ge/ge/saqartvelo/19325/mtavari-auditoris-postze-lasha-tordia-shesadzloa-vano-zardiashvilma-shetsvalos>

Political Parties and Candidates

The 2017 local self-government elections will be the first one to be held following important changes on the opposition landscape. After the last year's parliamentary elections, leaders of several opposition parties announced that they would be leaving politics; the *United National Movement* split in January, after a disagreement about future visions and strategies, and some of its former leaders established a new party *European Georgia*. Former Chair of Parliament Davit Usupashvili founded a new *Movement for Building* after leaving the Republican Party.

Major political parties started preparation for the local self-government elections months prior but the election campaign has yet to enter an active phase nationwide. It is expected that the focus of the campaign will be the mayoral elections in Tbilisi. Major candidates who will be running for the office are already known to public. On May 27, at their party congress the *European Georgia* nominated Elene Khoshtaria as their mayoral candidate in Tbilisi. In late June the *United National Movement* presented former Rustavi 2 host Zaal Udumashvili as their candidate for the office of Tbilisi Mayor. The political council of the *Georgian Dream* decided to nominate Kakhi Kaladze from the ruling party for Tbilisi mayoral election. On July 11, an independent candidate, Aleko Elisashvili officially launched his election campaign. The *Movement for Building* also nominated their mayoral candidate. Candidates who will be running in the local elections in other municipalities are yet to be revealed in many locations.

Media Environment

Throughout 2017, civil society has remained concerned about certain processes in the field of media. After the early resignation of the Georgian Public Broadcaster's General Director, the board of trustees replaced him in January with an individual close to former Prime Minister Bidzina Ivanishvili, which raised questions about impartiality of the GPB. In a month's time the new management unveiled a radical plan for reforming the GPB, which envisaged shutting down of all but news programs. Following a public protest, the plan was revised but soon it became known that several social/political programs (including joint projects with the RFE/RL – InterVIEW and Red Zone) would no longer be returning in the new season in fall. The developments following the change of the public broadcaster's management and shutting down of the programs was perceived by civil society as an attempt to remove from the broadcast voices that are critical of the government and reinforced suspicions about political interests of the broadcaster's management.²³

In parallel with the developments involving the GPB, court proceedings about Rustavi 2 ownership continued. On 2 March 2017, the Supreme Court of Georgia decided the ownership dispute in favor of the broadcaster's former owner. According to NGO assessment, the judicial proceedings in all three instances, as well as the final result, did not meet the requirements of the fair judiciary and reinforced suspicions about the government's political stake in these processes.²⁴ Enforcement of the Supreme Court's decision was suspended by the European Court of Human Rights, urging the Georgian authorities to refrain from any interference with the company's editorial policy.²⁵

Another noteworthy development on the media landscape was merger of three major TV companies – Imedi, Maestro and GDS (formerly owned by the Ivanishvili family) under a single holding.

²³ Statement of NGOs about shutting down of the Red Zone and InterVIEW on the Georgian Public Broadcaster <http://www.isfed.ge/main/1242/geo/>

²⁴ Statement of NGOs, 3 March 2017; <http://www.isfed.ge/main/1199/geo/>

²⁵ ECHR Extends Ruling over Rustavi 2 TV, Civil.ge, 7 March 2017; <http://www.civil.ge/eng/article.php?id=29913>

To ensure informed choice during the local self-government elections, it is important to rule out any perceptions of political influences on media. Any attempt to influence media will have a negative effect on comprehensive coverage of the election campaign. Media independence and diversity of editorial policies is an important guarantor of free and fair electoral environment.

Recommendations

- ☞ To avoid polarization and maintain a healthy political process during the electoral period, it is of paramount importance that the ruling party and the opposition put maximum efforts for dialogue with the aim of achieving a meaningful consensus about the Constitutional reform and its key issue – changing the electoral system.
- ☞ To ensure impartiality and trust in the State Audit Office, it is important that the Parliament of Georgia approves a politically neutral candidate as the new General Auditor, who will serve as the guarantor of the SAO's independence.
- ☞ The electoral administration should ensure that the process of selection of professional members of electoral commissions is transparent, based on concrete criteria and clear procedures, with the aim of promoting selection of qualified commission members and ruling out any perceptions of political influence.
- ☞ Although regulations about gender quotas do not exist at this moment, to increase women's political participation, adoption of internal party measures by political parties to promote presence of women in the party lists is desired. It is also important for the Parliament of Georgia to support the initiative for introducing gender quotas.
- ☞ It is important to ensure pluralist and critical coverage of the elections. Any attempts of political and artificial interference with media editorial policy must be prevented.

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