



**ISFED**

INTERNATIONAL SOCIETY FOR  
FAIR ELECTIONS AND DEMOCRACY

## **Evaluation of Pre-Election Environment**

### **For the 2018 Presidential Election of Georgia**

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## Context

Ordinary presidential election will be held in Georgia on 28 October 2018. The International Society for Fair Elections and Democracy (ISFED) monitors the pre-election period nationwide through up to 70 long-term observers (LTOs). The monitoring entails pre-election, Election Day and post-election observation. ISFED LTOs have already been monitoring the pre-election environment since August 10. As the official campaign period begins, ISFED presents evaluation of the electoral legislation and the situation with regard to political and media pluralism in the country during the pre-election period.

The upcoming presidential election is especially interesting and important owing to the fact that it will be the last direct and universal election of the president. Based on amendments introduced in the Constitution of Georgia in 2017, post-2018 president will be elected without universal elections, via indirect voting.<sup>1</sup> In addition, as an exception, term of power of president elected in 2018 through direct elections will be 6 years instead of 5.

Launch of the campaign for presidential election was preceded by significant movements in the ruling party and important changes in the government. On May 11, former Prime Minister Bidzina Ivanishvili was elected as a chair of the party Georgian Dream – Democratic Georgia.<sup>2</sup> Prior to Bidzina Ivanishvili's formal return to politics, media was actively reporting about a serious clash of opinions among certain groups within the ruling party on a number of issues.

On June 13, a month after election of Ivanishvili as a chair of the party, Prime Minister Giorgi Kvirikashvili resigned,<sup>3</sup> then Minister of Finance Mamuka Bakhtadze was nominated as his replacement.<sup>4</sup> In mid-July the new PM nominated the new Cabinet and the Governmental Program to Parliament for their approval, focusing on the concept of the so-called “small and effective” government. Number of ministries in the renewed composition of the government was reduced from 14 to 12.

In addition to the movements in the ruling party, the period from May 11 to June 13 was also marked by large-scale waves of protest in Georgia. Two separate waves of protest concerned different issues, however these rallies as a whole manifested public's growing disgruntlement over the judicial system in the country.

At 01:00am on May 12, the Ministry of internal Affairs of Georgia conducted a large-scale special operation in nightclubs “Bassiani” and “Café Gallery” with the official stated pretext of identifying drug dealers. Members of Special Forces who were masked and armed with automatic firearms invaded the nightclubs right in the middle of their events. The form of the special operation and police dispersal of the protest rally outside Bassiani after the special operation, followed by arrest of peaceful demonstrators, triggered a powerful public protest<sup>5</sup> against excessive use of force by the police, police control and restriction of freedom of expression. The protest rallies took place on May 12-13 on Rustaveli Avenue.

Another large-scale wave of protest concerned shortcomings in the investigative system, which public saw clearly in the case of Khorava Street brutal murder of two teenagers on 1 December 2017. The verdict<sup>6</sup> delivered by court about the case on May 31 further intensified suspicions of Davit Saralidze,

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<sup>1</sup> Constitution of Georgia, Art.50; <https://matsne.gov.ge/ka/document/view/30346>

<sup>2</sup> Bidzina Ivanishvili elected as the chair of the Georgian Dream, Radio Tavisupleba, 11 May 2018, <https://www.radiotavisupleba.ge/a/29221479.html>

<sup>3</sup> PM Kvirikashvili resigns, Batumelebi, 13 June 2018, <http://batumelebi.netgazeti.ge/news/141478/>

<sup>4</sup> Mamuka Bakhtadze nominated as Prime Minister, Ajara TV, 14 June 2018, <http://ajaratv.ge/news/ge/30500/premier-ministris-kandidatad.html>

<sup>5</sup> Rally “for our freedom” currently taking place outside Parliament, Samkhretis Karibche, 13 May 2018, <http://sknews.ge/index.php?newsid=17678>

<sup>6</sup> Defendant in the case of willful murder of Davit Saralidze on Khorava Street was found not guilty by court, 31 May 2018, <http://liberali.ge/news/view/37164/sasamartlom-khoravas-quchaze-davit-saralidzis-ganzrakh-mkvlelobis-saqmeze-braldebuli-gaamartla>

father of one of the teenagers that were killed, that the investigation had been flawed and not all participants of the bloody incident had been prosecuted. The public's reaction to the case was intense, large-scale protest rally was held in Tbilisi that lasted a few days. Amid the protest, Chief Prosecutor of Georgia Irakli Shotadze resigned, the Public Defender was provided with access to the case files, and an investigative commission was set up in Parliament for studying shortcomings in the investigation of Khorava case murders. Parliamentary minority has the majority in the investigative commission. It is expected that the commission will publish its findings in September.

Also in May, aggressive ultra-nationalistic groups became quite active. In parallel with the rally held in support of Bassiani nightclub on May 13, radical groups staged a counter-rally and attempted to lay siege to the young protesters. Citing the risk of possible violence by the aggressive participants of the counter-rally, the Minister of Internal Affairs offered that participants of the protest in support Bassiani nightclub leave Rustaveli Avenue by busses from inside the courtyard of the Parliamentary building. This led public to believe that the government used the counter-rally of radical groups to neutralize protest of the youth.

Radical ultra-nationalistic groups became active once more on May 17. This day marks the International Day Against Homophobia, Transphobia and Biphobia, and it has stirred quite commotion in Georgia for many years. This year, unprecedented mobilization of parish from different eparchies was announced for May 17.<sup>7</sup> Against this background and as the ultra-nationalistic groups became more active, LGBT rights organizations cancelled the May 17 rally outside the Government Chancellery, however individual activists still gathered and despite large-scale police presence there was a small incident.<sup>8</sup>

## Legislative Changes

Different changes were made in the Election Code before official launch of the campaign period for the presidential election.<sup>9</sup> Some of these changes were initiated by the electoral administration, while others by the parliamentary legal committee. The latter introduced changes that accompanied the new constitutional amendments. In addition, proposed by the Government of Georgia, changes were made concerning voter address, registration of voters that reside abroad and revision of names of some ministries.

The package of legislative changes initiated by the electoral administration concerned three organic laws – the Election Code of Georgia, the law on Political Association of Citizens and the Local Self-Government Code. According to the CEC, adoption of new regulations had to do with improving norms of the Election Code, eliminating flaws and simplifying certain electoral procedures. However, initial version of the legislative package introduced by the CEC contained certain controversial issues that ISFED and its partner organizations<sup>10</sup> found unacceptable, and so the monitoring organizations prepared a joint opinion about the proposed legislation and submitted it to the electoral administration and Parliament.<sup>11</sup> To participate in discussions about the proposed legislation and express their opinions, the three organizations attended the meetings at the parliamentary legal committee. The committee took into account a significant part of opinions submitted by NGOs.

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<sup>7</sup> Following dispersal of small rally of LGBT activists in 2013, the Patriarchy declared May 17 the day of “family purity” since 2014 and it has been mobilizing its parish in an attempt to prevent events of LGBT activists on Rustaveli Avenue

<sup>8</sup> A speaker was attacked at anti-homophobic rally, Liberali, 17 May 2018, <http://liberali.ge/news/view/36792/video-antihomofobiur-aqtsiaze-sityvit-gamomsvlels-tavs-daeskhnen>

<sup>9</sup> Proposed legislation is available at: <https://info.parliament.ge/#law-drafting/16169>; <https://info.parliament.ge/#law-drafting/15922>; <https://info.parliament.ge/#law-drafting/15923>; <https://info.parliament.ge/#law-drafting/15921>

<sup>10</sup> Georgian Young Lawyers' Association and Transparency International – Georgia

<sup>11</sup> Opinion on pending amendments to the organic law of Georgia – Election Code of Georgia, ISFED, 28 May 2018, <http://www.isfed.ge/main/1384/geo/>

In the final legislation approved by Parliament on July 21, the term “votes cast in election/referendum” was included under the definition of terms in the Election Code. More specifically, number of votes cast in election/referendum is determined by the sum of actual ballots in ballot box(es) and it does not include votes cast through ballots recognized as cancelled. In addition, the timeframe for starting electoral measures and procedures for election/referendum was revised, so was the term of effect of a disciplinary liability and it was determined that disciplinary liability can be lifted prematurely, which monitoring organizations disapproved of. In response to the new trend of copying information from voter lists, detected during previous elections, photo and video recording and any other type of processing of information or data that are not categorized as public information was prohibited, except when otherwise prescribed by the Election Code. The new regulations also prohibited withdrawal of candidacy in the second round of presidential elections, which is another issue that monitoring organizations had a different opinion about. Even though the issue of withdrawal of candidacy from a second round was also addressed by the OSCE monitoring mission in its recommendations, Parliament did not accept any arguments in this regard.

## Electoral Administration

Despite public trust towards the electoral administration and the results of recent elections, due to shortcomings in its activities the electoral administration became the target of criticism on numerous occasions during the 2016 parliamentary and the 2017 local self-government elections.<sup>12</sup>

ISFED has found that complaints process is the biggest challenge to the electoral administration.<sup>13</sup> Instances of narrow interpretation of the electoral legislation are problematic, which leads to disregard of requirements of the law and encourages future violations. For instance, during previous elections the CEC and district commissions failed to adequately respond to cases of illegal campaigning by civil servants using social networks, in disregard of requirements of the Election Code. In an attempt to seek attention to the acts of illegal campaigning using social networks, in 2018 monitoring organizations demanded that campaigning on social networks be included in the memorandum of cooperation between the CEC and monitoring organizations. At the initial stage, agreement could not be reached and signing of the MOC was postponed until the parties come to an agreement.<sup>14</sup>

Another serious challenge involving the electoral administration is composition of district and precinct commissions. The process of recruitment of members of PECs and DEC members was flawed and not sufficiently transparent in previous years, which created suspicions that the process was subjected to political influences.<sup>15</sup> Selection of additional district commission members by the CEC in August 2018 also triggered suspicions about possible conflicts of interest and political influences. In addition, on August 27 a political union “United We Stand” released recordings possibly involving Krtsanisi DEC chairperson talking about recruitment of commission members in agreement with the Georgian Dream.<sup>16</sup> While it is important to determine authenticity of the audio recording, contents of the recording contain elements of crime and require adequate investigation. Under these circumstances, recruitment of professional members for PECs warrants particular attention. For many years ISFED has been pointing out the flaws

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<sup>12</sup> Final report of monitoring the 2017 local self-government elections, p.14, ISFED, 19 March 2018, <http://www.isfed.ge/main/1355/geo/>

<sup>13</sup> Pre-election disputes: Achilles Heel of the Electoral Administration, ISFED, 28 March 2018, <http://www.isfed.ge/main/1362/geo/>

<sup>14</sup> Memorandum of Cooperation between NGOs and the CEC, ISFED, 27 August 2018, <http://www.isfed.ge/main/1399/geo/>

<sup>15</sup> First interim report of the 2017 local self-government elections, ISFED, 8 September 2017, <http://www.isfed.ge/main/1276/geo/>

<sup>16</sup> “United We Stand” demands resignation of the CEC Chair, Reginfo, 27 August 2018, <http://reginfo.ge/politics/item/9102-%E2%80%9Ewala-ertobashia%E2%80%9C-zeskos-tavmjdomaris-gadadgomas-itxovs>

in the process of composition of the electoral administration and the need to rule out possible political influences. Selection of PEC members by district electoral commissions should be transparent, clear and based on unambiguous and clear criteria.

With regard to composition of electoral commissions, the electoral administration is facing a new challenge related to legislative changes adopted last year. Under the new regulation, number of commission members to be appointed by parties has been reduced from 7 to 6. In addition, instead of the principle of parity practiced before (i.e. each of the 7 members was appointed by first 7 qualified parties that had secured state funding), the rule of appointment now depends on number of votes garnered in parliamentary elections.<sup>17</sup> As a result, number of parties that can appoint members of the electoral administration has been reduced, while the number of commission members appointed by the ruling party has grown significantly at the expense of opposition parties. Based on the results of the 2016 parliamentary elections, out of 6 political members of the electoral administration 3 are appointed by the ruling party. While there are suspicions about impartiality of professional members of electoral administration and possible political influences in the process of their appointment, increasing the number of members appointed by the ruling party among party-appointed commission members puts trust towards the electoral administration at risk. As a result, the electoral process may suffer a significant blow.

Another issue to note is that the term of office of the CEC Chair Tamar Zhvania expires in September 2018. According to the law, she will keep her office until the end of the election. The incumbent chair has the right to serve two consecutive terms in the office. If she decides to hold the office for the second time, she may need support of majority of Georgian MPs, which may call political neutrality and objectivity of the CEC Chair into question.

## **Inter-Agency Commission**

The Inter-Agency Commission for Free and Fair Elections started operating on July 16, as prescribed by the Election Code. Despite several important recommendations issued by the Commission during previous elections, this format is inadequate for effective prevention of violations due to non-binding nature of recommendations and lack of monitoring mechanisms. The attitude of the Commission towards monitoring organizations and violations reported by them is problematic. Instead of addressing violations during meetings, the commission chairperson and representatives of organizations with dubious reputation often attack representatives of observer organizations. Such approach casts a shadow on the work of the commission and reduces trust towards this format, as an effective mechanism for responding violations.

## **Media Environment and Social Media**

Media environment has not undergone any important changes since the local self-government elections. Television continues to be the primary source of information for vast majority of the population. Among general national broadcasters, Rustavi 2, Imedi and the Georgian Public Broadcaster are major players on the television market.

The interim measure adopted by the European Court of Human Rights with regard to the case of Rustavi 2, the television company especially critical of the government, remains in effect. The Ministry of Justice

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<sup>17</sup> Election Code of Georgia, Art. 19(5)

of Georgia requested abolition of the interim measure in April 2018.<sup>18</sup> In light of important flaws identified in Rustavi 2 ownership dispute in all three instances of court, adoption of the interim measure by the ECHR last year contributed greatly to maintaining pluralist and critical media in Georgia, including to ensuring media stability in the election period. Therefore, we find that keeping the interim measure in place until the ECHR delivers its final judgment is important for sustainability of democratic processes and preventing monopolization of media space.

The 2017 local self-government elections saw disinformation campaigns directed against Tbilisi mayoral candidates using social networks as a main challenge. These campaigns relied on sponsored contents of anonymous Facebook websites with unidentified funding sources.

With the kickoff of the election campaign ahead of the presidential elections, disinformation campaigns targeting different electoral subjects have already become evident on Facebook. In addition, number of social media pages that aim to promote divisive narratives instigating intense discussions about values, to spread Russian propaganda messages and flare anti-Western attitudes are growing steadily. ISFED finds that disinformation campaign on social media carried out by unidentified sources of funding puts the electoral process and equal playing field at risk, while spread of false information and narratives hinders the democratic process. For this reason, for the 2018 parliamentary elections ISFED is implementing a pilot program of social media monitoring, with the aim of identifying, documenting and analyzing activity and disinformation on Facebook within the context of elections.

In parallel with growing use of social networks in the political life in Georgia, it is important to subject spending for political purposes on the Internet and social media websites to effective control and develop appropriate methodologies. To this end, ISFED has already applied to the State Audit Office with a recommendation for elaboration of appropriate strategy. At this point, we are not aware of any concrete steps made by the state for combating misinformation in electoral processes.

## Political Parties and Candidates

Main opposition parties have already nominated their presidential candidates. The United National Movement and a few other opposition parties have created the movement “United We Stand” and they have nominated former Minister of Foreign Affairs Grigol Vashadze as their presidential candidate. From the European Georgia, leader of the party Davit Bakradze will be running for president. Leader of another opposition party Shalva Natelashvili (Labor Party) has also nominated himself as the presidential candidate.

Chair of the ruling party Bidzina Ivanishvili announced on the Public Broadcaster that the party will most likely not nominate its own presidential candidate. Instead, it will support an independent candidate or drop off the presidential race altogether.<sup>19</sup> According to the Chair of Parliament, the Georgian Dream – Democratic Georgia will unveil its final decision about the presidential candidate after September 8.<sup>20</sup>

Incumbent president Giorgi Margvelashvili has not made any announcements about his participation in the presidential election and it is yet to be confirmed whether or not he will be running for president.

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<sup>18</sup> Georgia demands in Strasbourg that Rustavi 2 be transferred into the ownership of Khalvashi – Netgazeti, 20 April 2018, <http://netgazeti.ge/news/269756/>

<sup>19</sup> Exclusive interview with Bidzina Ivanishvili during the TV program Current Topics, Channe 1, 24 July 2018, <https://1tv.ge/video/aqqualuri-tema-maka-cincadzis-stumaria-bidzina-ivanishvili-partia-qartuli-ocnebis-tavmjdomare/>

<sup>20</sup> Kobakhidze: we will announce our position about [the presidential] candidate after September 8, Tabula, 24 August 2018, <http://www.tabula.ge/ge/story/136123-kobaxidze-saprezidento-kandidatze-pozicias-8-seqtembris-shemdeg-gavazhgherebt>

The following individuals have expressed their desire to run for president as independent candidates: leader of the Development Movement – Davit Usupashvili, independent MP and majoritarian representative of Mtatsminda District – Salome Zurabishvili.

The electoral campaign has not yet entered active phase, however even before the election was called, Grigol Vashadze and Davit Bakradze were already engaged in active campaigning. They are actively meeting with local populations in municipalities. Salome Zurabishvili launched her election campaign on August 16.

## **Recommendations**

### **For the electoral administration:**

- It is especially important that in the process of recruitment of professional members of electoral commissions the CEC and DEC ensure transparent process based on concrete criteria and clear procedures, which will promote recruitment of qualified members and rule out any suspicions about any political interference;
- The electoral administration should take strict actions in response to acts of illegal campaign by civil servants using social media;
- With regards to complaints process and application of law, the electoral administration should avoid the practice of narrow and verbatim interpretation of law. Instead, it should act in accordance with the spirit of the law and the norm.

### **For political parties/electoral subjects:**

- Political parties and candidates should not allow mobilization and presence of their supporters at public meetings of opposing parties/electoral subjects;
- During pre-election meetings, television airtimes and public speeches, they should refrain from forms of expression that target an individual or a group of individuals on account of their social and ethnic affiliation, race, sex, age, ethnic origin, nationality, religion, sexual orientation, gender identity, disability, language, ideology, social class, work or any other status;
- Within their capacity, political parties should contribute to the conduct of election processes in a safe and incident-free environment.

### **For the State Audit Office**

- The SAO should create effective strategy for monitoring campaign expenditures on social media and taking adequate actions in response to alleged illegal donations.