

INTERIM REPORT No. 1
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10 September 2012

I. EXECUTIVE SUMMARY

- On 1 August, President Mikheil Saakashvili called parliamentary elections for 1 October, in line with constitutional requirements. The 150-member parliament will be elected under a mixed proportional and majoritarian representation system.
- The new Election Code and the Law on Political Unions of Citizens (Law on Political Unions) have undergone significant amendments in the past year, following recommendations by the OSCE/ODIHR and the European Commission for Democracy through Law (Venice Commission), and the Council of Europe's Group of States against Corruption (GRECO), respectively. While some of these recommendations were implemented, others remain to be addressed. A number of legislative provisions were introduced after the reviews were issued.
- The elections will be administered by a three-tiered structure of election commissions. The Central Election Commission (CEC) and District Election Commissions (DECs) are finalizing the registration of candidates, which ends on 6 September. Fourteen political parties, two electoral blocs and four initiative groups of voters have qualified for candidate nomination. Election preparations are well underway with the CEC strictly complying with legal deadlines. According to the CEC, preliminary voter lists currently include 3,621,256 voters.
- In these elections, the United National Movement (UNM), governing Georgia since 2003, is challenged, among others contestants, by Bidzina Ivanishvili – Georgian Dream (GD), a coalition of six opposition parties promoting widely varying political views. Party and campaign finance became a prominent issue in the campaign after billionaire Bidzina Ivanishvili's announcement on 7 October 2011 of his decision to enter politics.
- The campaign environment is polarized. While the UNM has expressed commitment to conduct elections in full compliance with standards, the GD has expressed a lack of trust in the electoral process, raising concerns about abuse of administrative resources and intimidation of supporters. All contestants focus on door-to-door canvassing, rallies and TV spots. The UNM also runs a campaign with numerous types of billboards across Georgia.
- At times, the focus of the campaign is on the advantages of incumbency, on the one hand, and private financial resources, on the other, rather than on concrete political platforms. Some domestic interlocutors assess the Law on Political Unions and its rigorous enforcement by the State Audit Office (SAO) as efforts to constrain the political activities of the GD, while others indicate that these efforts aim to bar 'big money' from influencing political choices.
- The OSCE/ODIHR EOM has been monitoring campaign coverage by the media since 30 August, during primetime on eight TV channels and two newspapers. A 'Must Carry, Must Offer' provision obliges cable networks to include all TV channels in the broadcasting package, including pro-opposition channels, for the duration of the campaign.

- The OSCE/ODIHR EOM commenced its work on 22 August with a core team of 16 experts in Tbilisi and 28 long-term observers deployed throughout Georgia.

II. INTRODUCTION

On 1 August, President Mikheil Saakashvili called parliamentary elections for 1 October, in line with constitutional requirements. Following an early invitation by the Ministry of Foreign Affairs and based on the recommendations of a Needs Assessment Mission conducted from 11 to 15 June, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) deployed an election observation mission (EOM) on 22 August. Led by Nikolai Vulchanov, the mission comprises a core team of 16 experts based in Tbilisi and 28 long-term observers deployed throughout the country. Members of the EOM are drawn from 26 participating States. The OSCE/ODIHR has also requested OSCE participating States to second 350 short-term observers to follow election day proceedings. In the Autonomous Republic of Adjara, elections to the Supreme Council will be held concurrently with these parliamentary elections; they will only be observed by the OSCE/ODIHR EOM to the extent that they impact the parliamentary elections.

III. BACKGROUND

In the outgoing parliament, the governing majority of the United National Movement (UNM) held 119 of the 150 mandates. The United Opposition held 17 mandates, the Christian-Democratic Movement (CDM) and the Labour Party (LP) 6 mandates each, and the Republican Party (RP) 2 mandates. Protests against alleged violations during the 2008 parliamentary elections led members of the opposition to withdraw from parliament; the two majoritarian members of parliament (MPs) from RP relinquished their mandates and by-elections were held in November 2008. These mandates were filled by the CDM and the National Democratic Party.

In line with the 2010 constitutional amendments, some presidential powers will be transferred to the prime minister and government, transforming Georgia's presidential system into a semi-parliamentary one. These changes will only come into force after the 2013 presidential election. Following these elections, the parliament will move its seat from Tbilisi to Kutaisi.

IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

Key legislation regulating parliamentary elections includes the Constitution, the Election Code, the Law on Political Unions of Citizens, the Criminal and the Administrative Offences Codes, and regulations of the election administration. Together with the adoption of the new Electoral Code, the Constitution was amended to change the electoral system. Subsequent changes to the Constitution and Election Code took place in May and June and included, among others, amending suffrage rights. The Election Code was last amended on 29 June 2012.

The 150-member parliament is elected for a four-year term under a mixed system: 73 members are elected under a majoritarian system in single-mandate constituencies and 77 through a closed-list, proportional system in one, statewide constituency.¹ For the first time, independent candidates are permitted to run in majoritarian contests. A majoritarian candidate must obtain at least 30 per cent of the total number of valid votes in their constituency to be elected. If no candidate reaches this threshold, a run-off is held within 14 days between the two candidates who received the highest number of votes. All candidates are required to pass a drug test, either when applying for registration

¹ The boundaries correspond to the existing territorial-administrative units.

as majoritarian candidates or after being elected on a party list.

Political parties and blocs registered by the CEC may contest seats in both the majoritarian races (one candidate per electoral district) and in the statewide constituency (a list of between 100 and 200 candidates). A party or bloc list of candidates only participates in the allocation of seats if it passes the five per cent threshold, calculated against total number of valid votes. Women's participation is encouraged through voluntary party quotas. When a party list includes 20 per cent of a different gender for each 10 candidates, it qualifies for a 10 per cent higher state subsidy.

Changes to the electoral system included changes in the allocation of seats under the proportional component. Any party or bloc that passes the five per cent candidate list threshold is entitled to obtain six mandates. This is sufficient representation to establish a parliamentary faction, even without obtaining the number of votes required for six mandates.² This amendment, which may result in the deduction of mandates from other, winning electoral subjects, was not reviewed in the OSCE/ODIHR and Venice Commission's Joint Opinion.³ Other amendments introduced in May 2012 to the electoral legal framework and not reviewed in the Joint Opinion include the reduction of the age requirement for candidates from 25 to 21 years and tailor-made provisions to allow Mr. Ivanishvili to vote and stand as a candidate after he lost his Georgian citizenship.

Overall, while the Election Code incorporates a number of previous OSCE/ODIHR and Venice Commission recommendations, others remain unaddressed. Of particular concern are the considerable size differences of the single-mandate districts in terms of population and registered voters, which undermine the principle of equality of the vote.⁴ In 2011, the Georgian authorities stated intentions to engage in redistricting, including dividing the largest electoral districts into two. However, this has yet to occur.

V. ELECTION ADMINISTRATION

The elections are administered by a three-tiered election administration comprising the CEC, 73 DEC and some 3,690 Precinct Election Commissions (PECs). Election commissions at all levels have 13 members each; seven of whom are nominated by the political parties that qualify for state funding.⁵ The other five CEC members are appointed by parliament, with additional procedures to select the chairperson. The remaining six DEC and PEC members are appointed by higher-level election commissions.⁶ All commission members have been appointed and PECs have held their first meetings. One of the 13 CEC members is a woman, 14 DEC are chaired by women, and women comprise 56 per cent of the DEC membership. Special polling stations will be established in prisons, medical facilities, and military bases before election day. Thus far, 42 polling stations have been set up in diplomatic representations of Georgia for voting abroad.

The competencies of the CEC have changed significantly under the new Election Code. Other institutions are now responsible for ensuring the accuracy of voter lists and for monitoring and sanctioning violations of media and campaign finance regulations. Thus, the CEC will focus on the core task of election administration.

² See Article 50.2 of the Constitution and Article 125.6-7 of the Election Code.

³ The OSCE/ODIHR and Venice Commission published a Joint Opinion on the draft Election Code on 19 December 2011, available at www.osce.org/odihr/86401.

⁴ See Paragraph 7.3 of the 1990 OSCE Copenhagen Document by which OSCE participating States commit to "guarantee universal and equal suffrage to adult citizens".

⁵ See Article 30.2 of the Law on Political Unions.

⁶ CEC members and five DEC members appointed by the CEC, serve five-year terms. The remaining DEC members and all PEC members serve for the period of the election.

The CEC Training Center continues training sessions for members of DEC and PECs, including special trainings for commission members in managerial positions. The Center has also conducted training sessions for civil society and domestic observers, political parties and media. Additionally, the CEC Legal Department produced handbooks and conducted training for judges, local government and party lawyers. These efforts and the establishment of consultative working groups involving representatives of parties and NGOs reflect the commitment of the CEC to enhance inclusiveness, transparency and stakeholders' trust in the elections.

VI. VOTER REGISTRATION

The right to vote is granted to all citizens who are 18 years or older.⁷ Citizens who are deemed mentally incompetent by a court or serving a prison sentence of more than five years do not enjoy voting rights. The loosening of restrictions on voting rights of prisoners was introduced by a constitutional amendment following OSCE/ODIHR and Venice Commission recommendations.

The CEC is responsible for the electronic processing, organization and posting of voter lists on the basis of data received from the Civil Registry Agency. However, responsibility for the accuracy of the voter lists is now vested with the Commission for Ensuring the Accuracy of the Voter Lists (CEAVL). The 22-member commission is chaired by a member of the opposition party, New Rights, and comprises seven members each from government, political parties, and civil society. The CEAVL conducted a door-to-door canvas in June-July to verify and update voter lists. These lists are now available for public scrutiny and the introduction of changes, including through court appeal, is possible up to 20 September. According to the CEC, 3,621,256 voters are registered on preliminary lists as of 26 August. Based on information published on 1 August by the CEAVL, 207,055 internally displaced persons (IDPs) are included in voter lists at their current place of residence. They will be able to vote in both the proportional and majoritarian contests at regular polling stations with the presentation of their IDP cards.

VII. REGISTRATION OF CANDIDATES

In order to participate in the elections, political parties must first register with the CEC. A party without representatives in the parliament and not qualified to receive state funding must collect 25,000 signatures, while qualified parties must only collect 1,000 signatures. A total of 41 parties applied, of which 19 were not registered.⁸ In total, 14 parties,⁹ and two electoral blocs¹⁰ comprising a total of eight political parties will contest the elections. By the 1 September deadline, all election subjects had submitted their list of candidates for the proportional contest.

⁷ Article 104⁴ of the Constitution (transitional provisions) grants active and passive suffrage (until 1 January 2014) to Georgian-born EU citizens who have been residing in Georgia for the last five years.

⁸ Seven parties submitted insufficient documentation, six parties failed to submit signature lists, and further six parties voluntarily withdrew their application. Two parties appealed their rejection. In both cases courts (the Tbilisi city Court and the Tbilisi Court of Appeals) upheld the decisions of the CEC.

⁹ Parties and their electoral number include: Kakha Kukava – Free Georgia (1), National-Democratic Party (4), United National Movement (5), Justice for Georgia (9), Public Movement (17), Freedom – The Way of Zviad Gamsakhurdia (19), “Jondi Baghaturia – Georgian Group” (23), “New Rights” (24), People’s Party (26), Merab Kostava Society (30), Future Georgia (35), Labour Council of Georgia (36), Shalva Natelashvili – Labour Party of Georgia (38), Georgian Sportsmen’s Community (40).

¹⁰ “Giorgi Targamadze – Christian Democratic Union” (10) comprises the Christian-Democratic Movement and European Democrats of Georgia; “Bidzina Ivanishvili – Georgian Dream” (41) – the “Georgian Dream – Democratic Georgia”, Conservative Party of Georgia, “Industry Will Save Georgia”, Republican Party of Georgia, “Our Georgia – Free Democrats” and “National Forum”.

An initiative group that consists of at least five voters may nominate a candidate for elections in a single-mandate constituency. In order to qualify to register, they must pay an electoral deposit of 5,000 GEL and submit signatures of supporting voters equal to one per cent of the number of voters registered in the respective district.¹¹ The signature collection requirement is waived for incumbent MPs. In addition to the above-listed electoral subjects, four initiative groups have registered candidates with four DECs.

VIII. CAMPAIGN ENVIRONMENT

The campaign environment is polarized. The governing UMN is challenged by, among others contestants, the GD, which is a coalition of six opposition parties promoting widely varying political views. Party and campaign financing has become a prominent issue after billionaire Mr. Ivanishvili announced his intention to enter politics as the leader of the GD in October 2011. At times, the focus of the campaign is on the advantages of incumbency, on the one hand, and private financial resources, on the other, rather than on concrete political platforms.

The election campaign period began on 1 August. There is no general prohibition of campaigning on election day; however, campaigning on election day via television (TV), radio and in polling stations is prohibited. The campaign environment is characterized by frequent public exchanges of accusations and allegations among political adversaries. Parties and blocs cite education, healthcare, employment, regional development, agriculture, security, social welfare and rehabilitation works after the heavy storms in July among the main campaign topics.

The UNM runs the most active campaign with numerous billboards and rallies throughout the country as well as TV spots. Whereas other contestants, in particular the New Rights, Christian Democratic Union, Free Georgia, and Labour Party currently focus on rallies and voter canvassing in those regions where they have strong candidates. The GD bloc jointly campaigns with its six coalition parties across the country. Most parties use interactive websites and social media to reach out and communicate with the electorate.

Campaigning restrictions are imposed on certain categories of officials, members of religious groups, election commissions, in certain buildings, and military units. There is limited access to use administrative resources, such as state-owned buildings if all election subjects enjoy the right to use them on equal terms. Official vehicles may be used by elected public officials when campaigning. The list of such resources was previously longer, but was shortened following OSCE/ODIHR and Venice Commission recommendations.¹² State institutions must refrain from launching additional social and welfare programmes during the elections. Public officials are not allowed to campaign while carrying out their official duties, including during business trips funded by the state budget.

The use of administrative resources or official powers during the campaign is subject to sanctions. The Inter-Agency Commission (IAC) is a temporary state body established as per the Election Code prior to elections to pro-actively address allegations of such violations. The IAC holds consultations with election stakeholders, civil society and media and operates a citizen hotline. Since its establishment on 18 May, the IAC has issued eight recommendations aimed at deterring violations. It has also referred a number of cases for prosecution or to the CEC to take appropriate measures. On 16 August, the CEC, IAC and seven civil society organizations signed a Memorandum of

¹¹ Equivalent to EUR 2,500 (approx. 2 GEL = 1 EUR).

¹² Concerns were raised in the Joint Opinion about access to use state-owned buildings on equal terms as well as about the failure to provide a definition in Article 49.1 of the Election Code of “elected public official”.

Understanding about the use of administrative resources in these elections, which references the 1990 OSCE Copenhagen Document.

OSCE/ODIHR EOM interlocutors, including contestants and civil society representatives, have expressed concern over the potential use of administrative resources, campaigning by public officials, fines imposed that they find excessive, and the seizure of property. They have alleged intimidation of opposition party supporters in public service, hate speech and vote buying.

IX. CAMPAIGN FINANCE

Party and campaign financing has become a significant and controversial issue in this election. The legislation regulating this element has been substantially amended since the 2010 municipal elections.¹³ While amendments appear to represent an effort to comply with previous GRECO recommendations, including to bar ‘big money’ from influencing political choices, OSCE/ODIHR EOM interlocutors have alleged that some of them were tailored to constrain the political activities of the GD in view of the perceived financial capacity of its leader.¹⁴

The legislation provides for mixed public and private funding of political parties and their campaigns. Monetary and in-kind donations, as well as party membership fees may only be made by citizens as individuals (as opposed to legal entities). Monetary donations are only permitted via bank transfer to a single bank account belonging to a party (the first listed party, in case of a bloc); cash donations are no longer allowed.

The institution charged with monitoring compliance with party and campaign finance provisions is the Monitoring Service for Political Financing, which was established in January 2012 under the State Audit Office (SAO), formerly the Chamber of Control. The SAO adopted their internal regulations only on 11 July after public criticism for not respecting due process.¹⁵ All electoral subjects are obliged to submit a financial report every three weeks from their date of registration and report donations within five days of receipt. Thus far, all electoral subjects have complied with reporting requirements. Electronic reports are crosschecked with information contained in databases of the Civil Registry, Revenue Authority, and the IDP and the Social Assistance Service. Where there is reason to suspect misconduct, the system will ‘flag’ a donation and an investigation is opened.¹⁶

The SAO stated that in a reported effort to verify the legality of donations, it has requested information from donors about the origin of funds and property donated and received in 102 and 61 cases, respectively. The GD stated to the OSCE/ODIHR EOM that 68 of their donors had been questioned by the SAO and fined by court decisions for ‘failing to prove the origins of their property/revenue’, including for donations as low as GEL 1-2,000. The SAO stated that it has imposed a five-fold fine in 90 illegal donation cases and a ten-fold fine in 10 cases. In four cases, donations deemed illegal were transferred to the state budget. In another 66 cases, *kadagha* (liens) were imposed by court decision on the property of donors who had made illegal donations to an

¹³ Election Code, Articles 52-57; Law on Political Unions of Citizens, Articles 25-34².

¹⁴ See Group of States against Corruption (GRECO) Evaluation Report on Georgia on Transparency of party funding, Strasbourg, 27 May 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)12_Georgia_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)12_Georgia_Two_EN.pdf).

¹⁵ Thus far, the new amendments have not been reviewed by either Venice Commission or GRECO. “Recommendations from the Public Defender of Georgia to the Head of the Chamber of Control of Georgia”, May 2011, <http://www.ombudsman.ge/files/news/doc/en/shqockghplifksyrkwel.pdf>.

¹⁶ For instance, if the donor is receiving social benefits.

electoral subject.¹⁷ The GD claims that the property of some of their donors has been auctioned off on questionable legal grounds and without due process.

In particular, Mr. Ivanishvili has been found guilty of having made illegal donations to GD, either personally or through legal entities considered to be affiliated with him, amounting to GEL 19,186,275.¹⁸ Speaking at a press conference on 30 August, Mr. Ivanishvili stated that the fines imposed on him and other GD members by the court amounted to more than GEL 130 million and that his total campaign expenditure has reached GEL 52 million, which already exceeds the annual GEL 48 million ceiling.¹⁹ On this basis, the GD has expressed concerns that the CEC may ask the court to invalidate the GD's election results.²⁰ On 4 September, President Mikheil Saakashvili signed a legislative initiative aimed at revoking the possibility of disqualify the votes cast for a party in case of serious violations of campaign finance provisions. According to press reports, the initiative will be discussed by the parliament from 11 to 14 October.

A number of OSCE/ODIHR EOM interlocutors accuse the SAO of bias on the grounds of lack of due process and applying a selective approach when fining a particular electoral subject, and for imposing what they consider to be excessive fines.²¹ Some of these concerns have also been echoed by high-level delegations of international organizations.²²

X. MEDIA

The media environment is characterized by diversity, although media outlets remain divided along political lines and few outlets succeed in pursuing a more independent editorial policy. The Georgian Public Broadcaster (GPB) and two private channels, *Rustavi 2* and *Imedi*, are the only TV stations with nationwide coverage. The latter two are widely perceived as supportive of the government. The coverage of private channels, *Kavkazia*, *Maestro* and the recently reestablished, *Channel 9*, are all broadly regarded as pro-opposition, and are mostly limited to Tbilisi and satellite networks. Recent amendments to the Electoral Code have introduced 'Must Carry, Must Offer' provisions, obliging cable networks to include all national media outlets with satellite broadcasting license and those that reach over 20 per cent of the population in their distribution list. Channels are also obliged to make their content available to cable networks for transmission. These provisions apply only during the campaign period and cover some 194,000 households with access to cable TV.

The rules for allocation of free broadcast time to electoral contestants distinguish between 'qualified' and other subjects.²³ 'Qualified' subjects are entitled to receive 90 seconds per three broadcast hours on private TV stations as well as 60 seconds per broadcast hour on GPB and community

¹⁷ *Kadagha* is the term used in the applicable legislation meaning seizure of property, movable and immovable, with or without auctioning off.

¹⁸ Published on the SAO website on 11 August, see <http://sao.ge/res/files/pdf/76/document.pdf>.

¹⁹ Although Mr. Ivanishvili initially stated he would not pay the fines imposed, he eventually did.

²⁰ The GD makes the point that the expenditures of November and December 2011 are retroactively calculated in the total annual campaign finances following an amendment to the Law on Political Unions in December 2011 that backdated the start of the 2012 financial year to 1 November 2011. The OSCE/ODIHR EOM was informed by the SAO that they will only apply the spending ceiling from 1 January 2012, the date when SAO began its monitoring activities.

²¹ See also <http://www.ombudsman.ge/files/news/doc/en/shqockghplifksyrkwel.pdf>.

²² See PACE statement at <http://www.civil.ge/eng/article.php?id=25129>, the OSCE PA statement at <http://www.oscepa.org/news-a-media/press-releases/1055-georgia-previsit-end>, and Joint Statement by High Representative / Vice-President Catherine Ashton and Commissioner Štefan Füle at <http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/12/640&format=HTML&aged=0&language=EN&guiLanguage=en>.

²³ See Article 51.4 of the Electoral Code. Other subjects may qualify for treatment by media as 'qualified' if they perform well in public opinion polls. It is the discretion of media to grant this treatment on an individual basis.

broadcasters.²⁴ Unqualified subjects are entitled to receive free time on GPB only; so far, none have applied. GPB is planning to host at least two debate programmes featuring representatives of four ‘qualified’ subjects.

On 30 August, the OSCE/ODIHR commenced its quantitative and qualitative monitoring of primetime campaign coverage, including eight television channels and two newspapers.²⁵

XI. COMPLAINTS AND APPEALS

The Election Code establishes a new, fast-track disputes resolution process for appeals against election commission decisions.²⁶ Appeals and decisions are to be made within one to three calendar days. Election commissions may submit administrative protocols of violations to a city or district court requesting administrative sanctions. Depending on the nature of the violation, the court will adjudicate within three to fifteen days. In all cases, the ruling of the two Courts of Appeal is final. Election commissions may also refer cases for prosecution. The CEC has so far received and adjudicated 17 complaints.

XII. DOMESTIC AND INTERNATIONAL OBSERVERS

Accreditation of observer organizations is ongoing. As of 4 September, 33 domestic and 19 international observer organizations had been accredited. A number of domestic organizations have undertaken long-term monitoring projects, including the International Society for Fair Elections and Democracy (ISFED), Georgian Young Lawyers Association (GYLA) and Transparency International-Georgia, focusing on various aspects of the process. The National Democratic Institute for International Relations (NDI) and International Republican Institute (IRI) also run long-term monitoring projects and provide support to domestic organizations. The Public Movement for Multinational Georgia (PMMG) will draw observers from national minority communities and grassroots NGOs, and on election day will deploy to minority areas.

XIII. MISSION ACTIVITIES

The OSCE/ODIHR EOM commenced its work on 22 August. The Head of the OSCE/ODIHR EOM met with the CEC, the Ministry of Foreign Affairs, the Inter-Agency Commission and other high-level state officials. The EOM has also established contacts with political parties and blocs, representatives of the media, civil society and other electoral stakeholders. The Head of the OSCE/ODIHR EOM met a pre-election delegation of the OSCE Parliamentary Assembly (OSCE PA), led by Vice-President Tonino Picula, who has been appointed by the OSCE Chairperson-in-Office as Special Co-ordinator to lead the OSCE short-term observer mission. The OSCE participating States have been requested to second 350 short-term observers to follow election day procedures. Election day observation will be the result of a common endeavor involving the OSCE/ODIHR, the OSCE PA, the PACE, the European Parliament and the NATO PA.

²⁴ The Labour Party, United National Movement, Christian-Democratic Movement as well as the “Bidzina Ivanishvili – Georgian Dream” bloc are listed by the CEC as ‘qualified’ subjects.

²⁵ TV - GPB First and Second Channels, *Rustavi 2*, *TV Imedi*, *TV 9*, *Kaukazia TV*, *TV Maestro*, and *TV Adjara*; Newspapers - *Rezonansi* and *24 Saati*.

²⁶ All decisions of election commissions can be appealed to a higher-level election commission or court.