



POST-ELECTION STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE ON GEORGIA'S 2017 LOCAL GOVERNMENT ELECTIONS

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INTRODUCTION

The National Democratic Institute offers this statement on Georgia's 2017 local government elections in the spirit of international cooperation and support for Georgians' democratic aspirations. The first round of elections for local councils and mayors was held on October 21, with run-off elections held in six districts on November 12. The statement outlines key findings since the first round of elections, including the processing of final first round results, the resolution of complaints, and the preparations and conduct of the run-off elections. As noted in earlier reports, the elections were held under a legal framework largely in line with international standards and conducive to the conduct of democratic elections; fundamental rights and freedoms were respected; and the process was generally well administered. The Central Election Commission (CEC) fulfilled its administrative responsibilities in a timely, efficient, and transparent manner. The Institute noted that both rounds proceeded without major incidents. However, the period following the first round of elections, particularly the handling of complaints, reinforced the need for further improvements in the legal framework as well as for a broader dialogue to address lack of trust in the election process. NDI finds that a number of long-standing recommendations has yet to be adequately addressed.

The statement builds on an observation effort that included a pre-election assessment mission, which issued a statement on July 21; a team of long-term observers and analysts who observed the process from late August to mid-November and published an interim report on October 2; and an election day delegation, which issued a statement on October 22. The findings in this report are also informed by nonpartisan citizen monitoring groups, including the International Society for Fair Elections and Democracy (ISFED), the Georgian Young Lawyers Association (GYLA), and Transparency International-Georgia (TI), with which NDI has cooperated throughout the process.

TABULATION AND ANNOUNCEMENT OF FIRST ROUND RESULTS

On October 21, elections were held for 2,058 members of 64 local legislative councils (*sakrebulo*s), through a mixed majoritarian and proportional list system; and 64 mayors in 59 self-governing communities and five self-governing cities, through a two-round majoritarian system. The CEC announced the preliminary results on October 22 and final results on November 1, after all legal deadlines for complaints and appeals at the lower level were exhausted. Georgian Dream (GD) won 1,592 out of 2,058 local council seats (77.36 percent),

with only three other parties passing the 4 percent threshold. The United National Movement (UNM) received 17.1 percent, European Georgia (EG) secured 10.4 percent, and Alliance of Patriots of Georgia (APG) won 6.6 percent of the votes. Out of 58 mayoral positions determined in the first round, GD won all but one.¹ In the six mayoral elections where no candidate was able to secure more than 50 percent of the vote, second rounds were held.²

On the first round of elections, NDI and other international and domestic observers reported that the counting process was generally calm and orderly in most PECs observed. However, international and domestic observers reported several instances of serious procedural violations, errors, and delays resulting from officials' not fully understanding the procedures, as well as instances of involvement of self-declared party-affiliated observers in the count. Following election day, as the tabulation of first-round results was finalized, opposition parties and observer groups raised concerns that many summary protocols were amended and that protocol changes were frequently being justified by "explanatory notes" instead of material evidence, undermining confidence in the accuracy of announced results. The Election Code was amended this year to allow the precinct election commissions (PECs), rather than the district election commissions (DECs), to correct summary protocols up to a day after the elections on "legal and/or factual grounds."³ The CEC claims that this is an efficient method to correct simple errors in the summary protocols. However, Georgian observer groups raised concerns that this provision was too broad and changes were not based on a factual review of relevant signatures, ballots, or election day logbooks. According to available data from the first round, 1,164 summary protocols (10.7 percent) were amended.⁴ Of these corrected protocols, 274 (23.5 percent) altered the number of votes cast, while others added missing information such as the time a protocol was completed, missing PEC stamp, or signatures of PEC members. While many of the errors or omissions may have been due to PEC members' fatigue, the complexity of procedures, or confusion about the counting and reporting requirements, it remains problematic that, in most cases, there appears to have been no effort to verify the data in the protocols with the actual election materials (ballots, voter lists, or PEC log book). Of more than 30 requests for recounts, only two were granted, and one of these recounts was later deemed unlawful because it was filed with the DEC directly and not at the polling station, in contradiction to the CEC's interpretation of proper filing procedures.

In order to account for missing information, incorrect data, or discrepancies in the results, the election officials relied heavily on PEC members' explanatory notes. This may be an administratively useful practice in instances when minor adjustments should be made that do not impact the integrity of the election process or results. However, there are currently no criteria that limit the circumstances in which explanatory notes can be used as justification for reconciliation errors or discrepancies, without conducting recounts or imposing sanctions on PEC members who failed to follow proper procedures for counting and filling out results protocols. In the review of complaints, DECs accepted explanatory notes as sufficient evidence to dismiss requests for recounts, irrespective of the gravity of the alleged violation. Domestic

¹ Tianeti district was narrowly won by an opposition candidate Tamaz Mechiauri.

² In all six districts, GD candidates secured the highest percentage of votes, followed by UNM candidates in Kutaisi and Martvili, APG candidate in Borjomi, Democratic Movement - Free Georgia in Kazbegi, and independent candidates in Khashuri and Ozurgeti.

³ Article 26.2(d)¹.

⁴ 370 or 10 percent of protocols in proportional list contests were corrected, 302 (8.31 percent) in mayoral races, and 495 (13.62 percent) in majoritarian races.

observer groups assessed that this practice “undermines the existence of electoral legislation and applicable sanctions”.⁵

It is laudable that the CEC publicly released polling station-level results on its website, as well as scanned image files of protocols from PECs. This is useful for those seeking to find the results from specific PECs. However, it would be helpful in the future if these were also released in a bulk, analyzable format,⁶ which would make it possible for civil society, parties, journalists, and others to assess results from larger geographic areas.

FIRST ROUND COMPLAINTS AND APPEALS PROCESS

All opposition parties challenged the results publicly, alleging that widespread abuse of administrative resources and pressure and intimidation of voters -- before and on election day -- influenced the ultimate outcome. In protest, the UNM party decided not to participate in the second round elections in Kutaisi and Martvili, and, along with the Christian-Conservative Party, withdrew all of its members from PECs. As no formal withdrawals are legally possible between the two rounds, UNM candidates remained on the ballots, preventing the candidate with the third highest number of votes from qualifying for the second round vote, thereby rendering these two districts effectively unopposed. However, as noted in NDI’s preliminary statement, opposition parties frequently chose not to file official complaints, claiming lack of trust in the complaints resolution mechanism, insufficient time and resources to gather necessary evidence, or reluctance of witnesses to testify in cases related to alleged pressure or intimidation. Due to dismissals on procedural grounds, many complaints were not investigated.

Those complaints that were filed were directed to the election administration, courts, and certain administrative and criminal agencies, either directly or through the Interagency Commission on Free and Fair Elections (IACFF).⁷ On election day, or immediately after, some 900 complaints were filed to the DECAs, mostly related to alleged violations of voting procedures or the count. In addition to complaints filed at the DECAs, following the final summarization of first round results, 10 opposition parties filed a joint complaint to the CEC requesting annulment of DEC results and demanding recounts in several districts.⁸

The election administration has taken steps to address previous concerns related to electoral dispute resolution, including the issuance of written responses to complainants whose submissions were not considered, which improved the transparency of the process. Complaints were reviewed in open sessions, which allowed the concerned parties to argue their case. However, the right to file complaints about electoral violations is restricted to a narrow category of complainants, which is at odds with the OSCE Copenhagen Document as well as international

⁵ ISFED Evaluation of the Complaints Process at DECAs, <http://www.isfed.ge/main/1305/eng/>

⁶ Releasing data in “bulk” means that all the data is contained in a file so that the entire dataset can be obtained in one download. “Analyzable” means that the data is in a digital, machine readable format can be quickly and easily analyzed, such as CSV, XML, or JSON. More information at www.openelectiondata.net.

⁷ Often, plaintiffs filed complaints through multiple channels simultaneously.

⁸ A total of 28 complaints were filed with the CEC by opposition parties alleging either technical mistakes or concerted fraud by the relevant lower commissions. Most of these complaints were not granted, and one was partially granted on an issue unrelated to the election results. In the eight weeks before the polls, a total of 141 complaints were filed with the election administration and courts.

best practices.⁹ For example, designated party representatives could file complaints, but not party leaders or other members, and voters are unable to submit complaints except on voter registration issues. Overall, non-partisan citizen observers noted what appeared to be a concerted effort to thwart the filing of complaints, with, in some cases, officials verbally abusing and shouting at observers who attempted to do so.

Contrary to international best practice, some 20 percent of complaints filed with the election administration on or after the first round of elections was dismissed on procedural grounds, for issues such as not indicating the time of the violation, not being filed immediately, or for being submitted by unauthorized individuals, with no further consideration of the substance of the dispute.¹⁰ While the CEC explained that procedural dismissals were clearly backed by law, in many cases the relevant legal provision was open for interpretation and merited consideration. For example, following the first round of voting, a large number of complaints, some of which alleged serious violations of polling and counting procedures, was dismissed because they were submitted directly to DEC's rather than to PECs.¹¹ While the relevant provision of the election code is vaguely formulated and appears to permit plaintiffs to file complaints directly with the DEC, the CEC interprets this provision to prohibit such filings unless a complaint exists at the PEC level, and advised DEC's accordingly in these elections.¹² Both party and citizen observers reported reluctance of their representatives to file complaints at the PECs, especially over the most controversial issues, as it was unwelcomed by PEC officials and created tensions in polling stations. Importantly, domestic observers noted that the electoral administration's practice has changed over time and was not sufficiently publicized ahead of these elections, leaving contestants and domestic observers unaware of this interpretation of the law.

Although the election code grants authority to the CEC to verify or cancel decisions of lower commissions, including recounting ballots from PECs, "on its own initiative or based on an application/complaint,"¹³ the CEC dismissed several complaints on the grounds that the violation took place in the PEC and was outside the higher commission's purview.

Domestic observer groups and political parties perceive these issues as part of a pattern of avoiding adjudication, in a way that has partisan impact. They expressed concern that this weakens due process and could undermine public confidence in electoral outcomes.

RUN-OFF ELECTIONS

The second round of elections for mayors in six districts was held on November 12. NDI sent a small team of observers to run-off districts to conduct a limited assessment of the electoral environment and preparations for the second round. On election day, observers visited a small

⁹ The 1990 OSCE Copenhagen Document, paragraph 5.10 states that "everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity". Article 3.3(f). of the 2002 Venice Commission Code of Good Practice in Electoral Matters recommends that "all candidates and all voters registered in the constituency concerned must be entitled to appeal. A reasonable quorum may be imposed for appeals by voters on the results of elections."

¹⁰ Article 3.3(b) of the Venice Commission's Code of Good Practice in Electoral Matters recommends that "the procedure must be simple and devoid from formalism, particular concerning the admissibility of appeals".

¹¹ Of the 170 complaints that were left without examination on or immediately following the first round elections, at least 101 fell into this category.

¹² Article 73.3 states that "the applicant/complainant may submit their application/complaint about the same violation directly to the DEC within the same time frame."

¹³ Article 14(j).

number of precincts in Ozurgeti, Borjomi, and Khashuri to follow the opening, polling, and counting procedures.

In the lead up to the run-offs, NDI observers reported very low-key campaigns, with only Georgian Dream candidates holding larger events that included the presence of the newly-elected Tbilisi mayor or GD members of parliament. Opposition candidates and nonpartisan observers continued to allege abuse of administrative resources and pressure on voters, especially in Ozurgeti and Borjomi, the two most competitive districts, but presented limited evidence. Election officials carried out preparations for the run-off elections in an efficient and transparent manner, meeting all legal deadlines. Additional trainings were conducted for the PEC members before the runoffs and voter lists were updated to include those who became newly qualified between the two rounds and to remove deceased voters.

On election day, the election officials in the PECs which NDI visited executed their duties in a professional manner, although some procedural violations were noted in all observed districts, including limitations on observer rights and failure to follow legally-mandated procedures during the count. The presence of a high number of individuals, including party and candidate activists, outside the PECs at times could have been seen as an attempt to influence the will of the voters. Inside the polling stations, NDI and other observers noted that some of the accredited non-partisan citizen observers or media representatives were affiliated with electoral contestants, compromising the distinction between observation and party campaigning and *de facto* breaching the limitation on the number of legally allowed party or candidate representatives at the PECs.

Voter turnout varied significantly between the districts, with the highest turnout registered in Ozurgeti (56.7 percent), followed by Kazbegi (52.95), Borjomi (52.89), Martvili (38.49), Khashuri (34.66), and Kutaisi (17.98 percent).

The CEC announced the preliminary results¹⁴ on November 13, noting that 35¹⁵ complaints were submitted to six DEC's, mostly requesting disciplinary sanctions against commission members. These complaints are still being processed. Georgian Dream candidates won in five districts, while an independent candidate secured a narrow victory in Ozurgeti. Despite reported attempts by GD supporters to interfere in the drafting of the summary protocol in an Ozurgeti precinct in which the independent candidate had a decisive victory, the ultimate election results at this PEC, and subsequently of the overall mayoral contest, were not affected.¹⁶

CONCLUDING REMARKS

While generally well administered, these elections demonstrated a need for further improvements in the legal framework¹⁷ as well as a broader dialogue to address the issue of broad public trust in

¹⁴ For details see <http://results.cec.gov.ge/eng/>.

¹⁵ Out of these, 14 were filed in Ozurgeti, 12 in Borjomi, four in Kutaisi, two in Khashuri and Kazbegi each and one in Martvili.

¹⁶ See statement of ISFED related to PEC 59 in Ozurgeti: <http://www.isfed.ge/main/1313/geo/>.

¹⁷ For specific recommendations, please see previous NDI reports as well as reports by OSCE Office for Democratic Institutions and Human Rights (ODIHR) election observation missions, citizen observer groups, the Venice Commission and others. NDI preliminary statement: <https://www.ndi.org/sites/default/files/Georgia%20NDI%20PEAM%202017%20Statement%20FINAL%20FINAL.pdf>; NDI interim report: <https://www.ndi.org/sites/default/files/NDI-GE%20EOM%202017-%20IR-ENG.pdf>; NDI election day statement:

the election process. The period following the first round of elections, particularly the handling of complaints, has further exposed an increased lack of confidence in the election administration to carry out its duties in an effective and neutral manner. When virtually all opposition parties describe a belief that the CEC is operating in a partisan manner -- regardless of the validity of these views -- there is a need to undertake deeper reforms to build confidence in the process.

NDI and other observer groups have provided detailed assessments and recommendations related to the composition of election commissions,¹⁸ allegations of abuse of administrative resources, a long-standing challenge in Georgia, and pressure and intimidation of voters and candidates, complaints resolution mechanisms, measures to increase participation of underrepresented groups, and ways to ensure a more level playing field for all political contestants.¹⁹ The following additional recommendations are respectfully offered for consideration:

- Authorities should ensure that voters and electoral contestants are provided with sufficient avenues for resolution of election-related grievances and that legitimate concerns are not dismissed on procedural or formalistic grounds.
- The election administration should clarify the law related to proper registration of complaints at the DEC level, and should consider permitting complaints to be filed directly with DEC, rather than PECs, in circumstances including recounts and when confirming a violation does not require an initial direct observation of the violation. If no complaints can be reviewed at the DEC if they were not already filed at the PECs, this rule should be clearly stated and widely publicised to ensure electoral contestants are aware of it.
- The use of explanatory notes should be regulated in more detail in order to prevent abuse and avoidance of proper investigation of complaints or disciplinary sanctions.

While some needed reforms can be addressed through specific changes in the election law or procedural adjustments, the more significant problems of disparity of resources, visibility, and access for parties, alleged abuse of the state resources and employees to benefit one party, reported intimidation of voters and candidates, and eroding trust in democratic institutions, such as the CEC, require political will to resolve.

The results of local self-government elections demonstrate an overwhelming dominance of the ruling party, which won 62 out of 64 mayoral races and has a strong majority in all local councils. The party now controls all levels of elected office. As NDI and others have previously noted, dominance of the ruling party has been a feature of Georgian politics since independence, and continues to pose a challenge to political pluralism and democratic development. To address this challenge, the country's leaders should explore institutional means to promote greater political pluralism and to require public consultation on policy issues.

https://www.ndi.org/sites/default/files/NDI%20Election%20Day%20Preliminary%20Statement%202017_Final_Eng.pdf.

¹⁸ Following these elections, the changes in the composition of election commissions will further reduce the number of parties represented.

¹⁹ There was a marked disparity in finances between the ruling and opposition parties. Of the 15.3 million GEL reported in donations to parties, excluding state funding, between July 1 and October 21, Georgia Dream received over 13 million GEL (or 91 percent).

ABOUT NDI

NDI is a nonprofit, nonpartisan organization working to support and strengthen democratic institutions worldwide through citizen participation, openness and accountability in government. NDI has observed more than 200 elections in every region in the world, including numerous assessments in Georgia since 1992. For more information about NDI, please visit our website, www.ndi.org.

For the 2017 local elections in Georgia, NDI deployed a pre-election assessment mission, a team of 15 long-term observers and analysts and an election day delegation. A small assessment team remained in the country to cover the runoffs. The aims of NDI's election observation mission were to accurately and impartially assess various aspects of the election process; examine the broader political environment and factors that could affect the integrity of the process; and offer any recommendations to support peaceful, credible elections and public confidence in the process. The Institute has undertaken its mission in accordance with the *Declaration of Principles for International Election Observation* and its accompanying *Code of Conduct for International Election Observers*, which have been endorsed by 52 leading international election observation organizations.

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