



## **STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE PRE-ELECTION DELEGATION TO GEORGIA**

*Tbilisi, Georgia, July 27, 2018*

This statement is offered by an international delegation organized by the National Democratic Institute (NDI). The delegation's purpose was to accurately and impartially assess electoral preparations in advance of the October presidential election; review the broader political environment; examine factors that could affect the integrity of the electoral process; and offer recommendations that could help advance dialogue and consensus-building toward 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 55 leading international election observation organizations. In September, NDI will deploy a team of long-term analysts. This will be supplemented by an international observation delegation on election day.

Members of the delegation include Per Eklund, former EU ambassador to Georgia; Karl Inderfurth, former U.S. assistant secretary of state and NDI board member; Christine Todd Whitman, former governor of New Jersey; Marija Babic, independent electoral expert; Laura Thornton, NDI global associate and senior director in Georgia; and Melissa Muscio, NDI program director for Georgia, Turkey, and Central Asia.

The delegation would like to stress that it does not seek to interfere in Georgia's election process and recognizes that, ultimately, it will be the people of Georgia who will determine the credibility of their elections and the country's democratic development. The delegation therefore offers this pre-election statement in the spirit of supporting and strengthening democratic institutions and processes in Georgia.

### **CONTEXT**

Georgia enters the election with numerous democratic assets. Fundamental freedoms of expression, assembly, and association are largely respected. Civil society organizations (CSOs) play an active role in political life. For the most part, Georgian media provides space to diverse viewpoints and television remains the primary source of information for Georgian citizens. Voters have a variety of political choices, and citizens largely trust the electoral process. According to NDI public opinion research, they deemed last year's local elections and the 2016 parliamentary elections as safe, orderly, and without intimidation. International election observers assessed them as credible, efficiently administered, and transparent.

Georgia heads into this presidential election with uncertainty. The date still has not been set; the ruling party has not yet determined whether it will field a candidate; the current president has not decided whether or not he will run; parties are divided about the relevance of this election given the limitations of the office, sending a message of ambivalence to the public. Even with reduced responsibilities, the president has the

public mandate to represent citizens and shape national discussions. Further, he or she has the potential to serve as an additional check on government and represents the country in foreign policy.

The presidential election campaign should not be viewed in isolation and will take place in an environment shaped by recent legal and political changes. The amended constitution of 2017 introduced numerous changes to the electoral and political environment, including controversial reforms, such as terminating the direct election of president after the 2018 presidential election and postponing fully proportional elections to 2024, restricting foreign land ownership, and defining marriage as a union only between a man and a woman. These changes remain front and center in the public discourse today. In May, a series of widespread street protests shook Tbilisi, including protests against the handling of drug-related arrests in city nightclubs, anti-LGBTI and self-declared fascist marches, and rallies following allegations of police mishandling evidence and cover-ups in the murder of two teenagers in December 2017. The latter case struck a nerve in Georgian society, feeding perceptions of lack of justice and unequal application of the law in cases involving those with political connections. Protestors called for the immediate resignation of the prosecutor general, which subsequently took place, and of the justice minister, who is still in her position. In a welcome move, a parliamentary investigative commission headed by the opposition was established to examine the case.

On the political front, the former prime minister, Bidzina Ivanishvili, officially re-assumed the position of head of the ruling party Georgian Dream (GD), pledging to resolve disagreements within the party, among other reasons. Shortly after, there was the sudden and surprising departure of Prime Minister Giorgi Kvirikashvili, reportedly due to disagreements with the party chair and concerns about economic policy. In June, the cabinet was reshuffled and Mamuka Bakhtadze, former finance minister, became prime minister. Despite these political shake-ups, citizens remain disengaged. According to NDI polls, for several years, most citizens do not support any of their political options, with at least half of citizens consistently describing themselves as undecided. This is particularly true among the country's youth. Polls also show Georgians have minimal engagement with elected leaders and evaluate their representatives' performance poorly.

In 2017, a NDI delegation reported observing the emergence of two parallel views of Georgia -- one seen through the lens of ruling GD party leaders and officials and one described by other parties, civil society organizations, and some observers. This observation remains valid today. Government representatives described their reform agenda and successful progress toward the establishment of a European parliamentary democracy. Those outside the ruling party pointed to opaque and unexplained decision-making, concentrated in the party chair, whether it is the dismissal and appointment of the government, selection of party leaders and candidates, or control over key bodies such as the state security services. Opposition parties and civic leaders also described the elimination of the direct election of the president as a step backwards for democracy, particularly in a country with a history of a dominant party, and repeatedly lamented the lack of checks and balances and separation of powers in Georgia. They also point to a reduction in balanced, comprehensive political coverage in Georgia. Rustavi 2, one of the two main broadcasters, continues to face legal and financial barriers and other media outlets, especially regional media, report a lack of financial resources. Changes in policies and programming at the Georgian Public Broadcaster also reduced political discussion.<sup>1</sup> These divergent views on the country's democratic course affect the way in which the election process and its challenges are assessed.

Although not yet seen as a critical issue in these elections, both opposition and ruling parties agree that Georgia is subject to a steady flow of disinformation and the increase of intolerant movements and

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<sup>1</sup> See Media Development Foundation (MDF) report 'Pre-Election Financial Media Environment 2017'; Transparency International (TI) Georgia report 'Media Advertising Market - Changes and Challenges in 2016'; TI-Georgia statement on the Rustavi 2 Case; TI-Georgia report 'Georgian Media Environment from 2012 Parliamentary Elections till Present'.

messages. Once campaigning gets underway and election day nears, disinformation and anti-democratic efforts could intensify. According to groups monitoring disinformation, the prevailing messages in Georgia focus on European Union (EU) and NATO membership as a threat to Georgian culture, religion, and national identity, as well as Russian aggression and loss of territories. Non-governmental organizations and political parties ascribed the origins of most of these messages to Russia, saying they are intended to undermine confidence in democratic values and norms. Some concerns were raised about the messages of such efforts, particularly xenophobic and anti-LGBTI narratives, infiltrating into the campaign rhetoric of parties and candidates. Civil society disinformation experts pointed to the fact that this had already occurred, as the constitutional amendments included both a foreign land ownership ban and marriage-rights amendment.

## **LEGAL FRAMEWORK**

The elections must be held on a Sunday during the month of October. The president of Georgia, with the prime minister's counter signature, fixes the date of elections no later than 60 days in advance. Elections are conducted by a three-level election administration comprising the Central Election Commission (CEC), 73 district election commissions (DECs) and some 3,600 precinct election commissions (PECs). Commissions at each level consists of 12 members, with six representing political parties and others appointed by the parliament or upper level commissions as so called professional members. The CEC chairperson is nominated by the president and elected by the CEC with a two-thirds majority for a five-year term. The mandate of the current CEC chairperson expires after the election process is concluded and she can be re-appointed.

A reduction in powers of the president started in 2013 as part of Georgia's transition from a presidential to a parliamentary system, though, as mentioned above, many lament the impact on already weak checks and balances in the country. Changes to the constitution, enacted in 2017, eliminated the direct election of the president starting in 2024, taking away a key source of presidential power -- the popular mandate -- and further reduced some responsibilities of an already weakened presidential office. The ruling party claims to have maintained direct elections for 2018 as a "consolation prize" of sorts for the incumbent president. The president will retain the responsibility of representing Georgia abroad; will have a role to play in some judicial appointments to the High Council of Justice and Constitutional Court, but no longer the Supreme Court; can exercise veto power, although parliament can easily override it; and, most importantly, has the public platform to advocate on behalf of citizen interests. The National Security Council has been abolished, only to be reestablished when or if it is rehoused in another office, a gap viewed as dangerous by domestic and international security experts.

## **CAMPAIGN ENVIRONMENT**

Several CSOs, GD and other government leaders, as well as some opposition parties were hard pressed to articulate the importance of this election and appeared to view it as a relatively futile exercise. The uncertainty of the election date is leading to concerns about a compressed campaign period and is causing frustration among opposition parties and media representatives as they attempt to plan. Characterizing the election as "strange," GD leaders noted the difficulty of campaigning on issues that the public cares about, given the lack of policy-making powers of the office. As such, they raised concerns that campaigns would instead devolve into personal attacks, or even a referendum on the government. GD has not selected a candidate yet and leaders have indicated that they may not, perhaps to avoid this potential protest vote and a possible second round. Alternatively, they may back an independent candidate, citing their awareness of concerns of one party dominance. The current president also has not made a decision on whether to run. The lack of information about the current president's candidacy and GD's selection further contributes to the perception of the election's unimportance.

By contrast, the two major opposition parties, United National Movement (UNM), in a coalition with 10 smaller parties called Strength is in Unity, and European Georgia (EG) appeared determined to capitalize on the opportunity to use the race as a platform to challenge the ruling party and raise their profile and influence ahead of 2020 parliamentary elections. UNM has nominated former Minister of Foreign Affairs Grigol Vashadze, while EG has nominated party head and minority leader David Bakradze. They view the race as an opportunity to test their apparatus and messages. Both parties argue that the office is significant and provides opportunities to check the government and hold leaders to account. Each had already identified relevant campaign issues that fall under the purview of the president, including judicial appointments and the benefits that the president could bring to the country through strategic strengthening of foreign relations. Importantly, opposition parties emphasized the moral authority of having a popular mandate and asserted that the president can draw important visibility to the people's needs. Both thought it possible to tie the functions of the president to daily issues people care about, particularly the economy. EG will be faced with the additional task of differentiating itself from UNM. Though the two parties claim they have grown further apart in terms of policy, citizens remain unclear about who is which party, according to EG leaders. Other parties and candidates who have declared their intention to run include Zurab Japaridze from Girchi and Shalva Natelashvili from the Georgian Labor Party.

Although citizens strongly support the direct election of president,<sup>2</sup> they appear to be relatively disengaged about the upcoming presidential poll. In recent NDI focus groups, participants appeared to understand well the limited responsibilities of the office and many articulated a desire to see the president's powers increase. Under the current system, however, they expressed the belief that it "doesn't make a difference" who is president. This lack of interest, combined with undecided citizens, and potential decisions not to compete by GD and the incumbent president, could have an adverse effect on voter turnout. Political parties acknowledged that they must inspire the public with compelling arguments about why this election and office remain relevant to encourage voters. The CEC is conducting talks with voters around the country to explain the process and significance of this election, the media intends to hold debates and discussions to explore campaigns and their issues, and the prime minister referenced plans to bolster political participation in the voting process.

## **ELECTORAL INTEGRITY CHALLENGES**

### *Systemic Challenges*

Georgia's legislative framework is broadly in line with international standards and conducive to the conduct of democratic elections. However, a number of longstanding issues that pre-date the current government remain unresolved despite having the authority to do so. These challenges appear to be more entrenched in the electoral culture and require political will -- rather than mere legislative fixes -- to be addressed. They can be grouped into two main and intertwined areas: disparity of resources and intimidation. The resource challenge involves uneven campaign donations and alleged abuse of state resources, both advantaging the ruling party. Alleged intimidation by various state agencies from school administrations to the state security services and unresolved acts of violence, albeit rare, send a message of impunity and introduce an element of fear in the environment. While some believe that these acts are part of an organized intimidation effort, others maintain that these are merely actions of individuals misguidedly seeking to please their superiors. These problems are not new and have passed from one ruling party to the next.

There is no consensus on these problems. The opposition asserts that the disparities in the financial playing field makes the election effectively uncompetitive. The State Audit Office (SAO) reported that in 2017 GD received 90 percent of campaign funding.<sup>3</sup> Opposition parties described donors' expressed hesitancy to

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<sup>2</sup> April 2017 NDI poll: 84 percent support direct elections; <http://caucasusbarometer.org/en/na2017ge/PRESELECT/>

<sup>3</sup> See the SAO's [final report on 2017 Municipal Elections](#).

contribute to them given the advantage of incumbency and benefits of contributing to the ruling party.<sup>4</sup> Further creating imbalance, opposition parties and observer groups described to the delegation the state use of human resources, such as pressuring civil servants and their families to vote for the government party as well as physical and financial resources, such as the use of public buildings, vehicles, and equipment for campaign purposes. They acknowledged that such cases were difficult to monitor and few of their complaints to relevant bodies were submitted and resolved.

The ruling party representatives, however, denied to the delegation that there has been a large discrepancy in funds available to the parties, explaining that the SAO reports are not accurate because they do not capture the unreported funding of opposition parties. GD leaders asserted that opposition parties received substantial undeclared funding, including from abroad, and that this was evident in their visible spending on activists and materials. The SAO took, in their view, a more “passive” approach to avoid “repressive methods” in tracking opposition party funding. The ruling party also argued that abuse of state resources rarely occurs, pointing to the small number of case rulings.

The perception of intimidation is also conflicting. Opposition leaders described the various levels of intimidation related to elections, including harassment of their activists by local officials, pressure on state employees to campaign and/or vote for the ruling party or risk losing their jobs, and intimidation of voters outside polling stations. They repeatedly singled out the state security services as responsible for intimidation, leading voters to doubt the secrecy of their vote. CSOs and opposition parties acknowledge that electoral acts of violence have become a rarity, but they point out that the lack of resolution of previously documented cases creates an atmosphere of impunity and can engender an environment of fear for citizens. The perpetrators who committed violence against opposition leaders in Khortskeli in 2016, for example, have still not been brought to justice despite acknowledgment of their activists’ wrongdoing by GD leaders, ample video evidence, and witness reports. Intimidation is difficult to verify, with few willing to testify, so observer groups are unable to track the existence and breadth of the problem. The ruling party leaders, however, deny that such intimidation is a continuing problem, claiming they have already taken “concrete measures” to avoid these types of incidents.

As such, there is no agreement between the ruling party and opposition parties and CSOs on the two most reported and serious concerns -- resources and intimidation. Political will of the government is necessary to resolve these key challenges. Even if the government is skeptical of their validity, leaders have a responsibility to address these concerns to build public confidence in the political process and increase trust in their leadership.

### *Procedural and Legal Issues*

In addition to the challenges above, a number of problems exist that could be addressed through legal and procedural fixes. In June 2018, prominent Georgian observer organizations published comprehensive recommendations on improvements to the electoral code.<sup>5</sup> These and other relevant recommendations are yet to be discussed or adopted by relevant authorities and implemented in an adequate manner.

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<sup>4</sup> Joint International Society for Fair Elections and Democracy (ISFED), TI-Georgia and the Georgian Young Lawyers’ Association (GYLA) Evaluation of the Pre-Election Environment: 15 out of 31 companies that donated to the ruling party were awarded state contracts in 2017 through a simplified procurement, totaling GEL 2,145,022, while they donated GEL 1,021,793 in favor of the party. According to TI-Georgia, some of the natural persons that donated in favor of the ruling party were affiliated with 70 legal entities that were awarded at least a single state contract through a simplified public procurement in 2017.

<sup>5</sup> Recommendations for Improving the Electoral Environment available at <http://www.isfed.ge/main/1389/eng/>

One key concern outlined in the CSO report is the composition of the election administration. Legal amendments introduced last year have significantly narrowed the number of parties eligible for election commission seats and tilted the composition in favor of the majority party.<sup>6</sup> This has sparked protest among opposition and observers, especially in light of concerns that the so-called professional election commission members are affiliated with GD and are unable to exercise the impartiality required of the position.

Another problem is shortcomings in the procedures regarding the correction of protocols, reconciliation of ballots, and recount provisions. The election code allows PECs to correct results protocols based simply by writing an explanatory note rather than recounting the ballots or examining other relevant material evidence. The legal framework does not require consistency between the number of ballots cast and results, nor does it specify exact grounds for a recount. As such, when there is no reconciliation of the vote, requests for recounts have been dismissed.<sup>7</sup>

CSOs and parties remain concerned about the electoral authorities' narrow interpretation of laws related to the abuse of administrative resources and unlawful campaigning. Further, they have recommended clarity on rules regarding canvassing and social media in campaigns. Additionally, they have expressed frustration with the existing mechanisms for resolution of complaints and grievances. In their view, election officials have frequently dismissed their concerns on purely formalistic grounds, avoiding sufficient review of the merits of each case.

#### *CEC*

The Commission reported ongoing activities aimed at addressing issues raised during previous elections. The CEC is working on increasing election officials' knowledge of the election procedures and the recent amendments. It is training DEC members on complaints resolution mechanism and is preparing to employ a new training methodology for PEC members to improve the counting process and reduce the number of errors in the results protocols. As part of its efforts to enhance citizens' awareness of the election processes, the CEC is holding various trainings, university courses, lectures or field visits, and providing grants to CSOs to train political party representatives on election procedures or work on voter education and outreach. The Commission is placing a special emphasis on first time voters and youth and hopes that participants in these programs would also apply to serve as PEC members in the fall. The CEC plans to reissue recommendations to the DECs to consider experience and training when selecting new PEC members.

#### *Inter-Agency Commission for Free and Fair Elections (IACFF)*

A week prior to the delegation's visit, the IACFF, a temporary body established by July 1 of each electoral year to respond to allegations of electoral violations by state officials, held its first meeting. The IACFF works under the Ministry of Justice, coordinates multi-stakeholder dialogue on electoral issues, and is authorized to recommend action to government offices, law enforcement authorities, public servants, and political parties. While interlocutors from parties and CSOs acknowledged the IACFF's role as a forum to air grievances, they expressed dissatisfaction with the current working environment of the commission and little trust in the body's political will to deter violations and ensure that its recommendations are upheld. Regrettably, CSOs are considering leaving the format altogether.

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<sup>6</sup> The CEC, DECs and PECs were reduced from 13 to 12 members, with six professional and six party-nominated positions. Instead of the previous system of allocating one partisan seat to each qualifying party, the amended code allocates partisan seats to parties based on the proportion of total votes received by each party in the previous parliamentary elections. Only parties that cross the five percent threshold and form a faction in parliament are eligible for election commission seats.

<sup>7</sup> Of more than 30 requests for recounts in 2017 municipal elections, only two were granted.

## RECOMMENDATIONS

Recently parliament enacted reforms addressing some concerns from previous elections, including provisions enhancing secrecy of voter data, extension of observers' rights to follow the work of the election commission outside of the official election period, registration of deregistered voters, and bring the electoral laws in line with new constitutional amendments. These amendments address some of the previously made recommendations and should positively impact the electoral process.

However, a number of long-standing recommendations from both citizen observer groups and the international community, including those of NDI, should be considered seriously. This delegation offers here only recommendations that can be addressed ahead of the upcoming election. Longer-term recommendations, such as those requiring legislative action, will be made in subsequent NDI observer reports.

- The president should set an election date as soon as possible to ensure relevant regulations around campaigning can be applied and parties and candidates can commence their official campaigns.
- Parties, government, election officials, CSOs, and media should use this opportunity to engage with the public to bolster the democratic process and encourage civic participation.
- Government leaders should undertake a visible, concerted effort to ensure that there is a clear separation between the party and the state and that public officials or administrative resources are not employed for campaign purposes. Government leadership should clearly communicate to all civil servants and the public that abuse of administrative resources will not be tolerated, and that violators will face prosecution.
- The CEC should exercise its legal authority to investigate the substance of serious claims related to potential electoral violations, even when complaint procedures did not meet formal requirements.
- During the upcoming recruitment process for professional PEC officials, the election administration should better clarify the qualifications and selection procedures, ensure that vacancies are broadly advertised well in advance, and guarantee that all hiring decisions are taken transparently, during the commission sessions in which all parties are present.
- The CEC should ensure that all PEC members are properly trained and understand counting procedures and that results protocols are not amended without checking the material evidence, including by conducting recounts when necessary.
- The IACFF should address concerns raised by CSOs and political parties and ensure a constructive working environment to effectively address issues brought to its attention in a timely, professional, and impartial manner.
- To avoid the perception of impunity, prosecutors and judges should ensure impartial, swift application of justice to the cases of violence during the 2016 and 2017 elections to help deter such incidents in the future and send a positive message to the public.
- Finally, as elections approach, it is possible that Georgia will be subject to an increased disinformation and attacks on its democracy. Georgian CSOs and government authorities should continue efforts to counter these threats.

While this delegation believes recommended legislative and technical fixes can address some of the problems raised in the election process, the most serious obstacles to the 2018 election cannot be addressed through laws and procedures. As stated, the issues of resources, particularly alleged abuses of state resources, and intimidation of voters and candidates, require political will. These problems have plagued elections across different governments and will, without action, continue to be passed onto future elections. Therefore proactive leadership at all levels of government is required.

Mechanisms for oversight, enforcement, and sanctioning need to be implemented. Clear directives to all state employees outlining expectations of conduct and consequences for violations of appropriate political participation are needed. This should be monitored through specific oversight of state bodies, particularly state security services. Breaking this cycle of abuse will have a measurable effect on building public trust in elections and bolstering Georgia's democracy, and present an important opportunity for this government.

### **THE DELEGATION AND ITS WORK**

The six-member NDI delegation held meetings from July 23 to 26 with prospective candidates and political parties from across the political spectrum; members of the CEC; the SAO; and the IACFF; the president; the prime minister; CSOs, including citizen election observer groups; media representatives; and representatives of the international and diplomatic communities. The delegation is deeply grateful to all those with whom it met and who shared their views generously. The delegation also expresses its appreciation to the United States Agency for International Development for supporting this mission.

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 elections in Georgia since 1992.

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