

Accountable Governance – Progress and Challenges in Georgia

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For many years already, Georgia has been on an ambitious track of democratic transformation as it has undertaken various reforms and declared European and NATO integration its foreign policy goals. Successive governments in Georgia have contributed to these reforms and steady progress on European integration, which resulted in signing of the Association Agreement with the EU in 2014. Amid Russian occupation of 20% of the Georgian territory, looming threat of dominant hostile military power, Russian hybrid warfare and anti-western propaganda, Georgia has persistently continued progress towards the EU and the NATO and was often recognized as a frontrunner among the Eastern Partnership countries. Back in 2012, Georgia achieved a peaceful transition of power through elections, a feat that only a handful of post-Soviet countries can be proud of.

However, Georgia faces an array of significant challenges on its path towards democratic development. Over time, Georgia has struggled to consolidate democratic gains through ensuring a multi-party and pluralistic democracy. While different governments have all brought progress and certain reforms, especially in their first term in office, all have also been characterized with attempts to consolidate power, limit opposition, media and critical voices and resort to undemocratic means to remain in power. Such tendencies are especially evident in the second term of a government in office when public support diminishes and discontent grows.

As countdown to Georgia's decisive 2020 Parliamentary Election intensifies, concerns are growing over democratic backsliding in the country. In recent months the ruling Georgian Dream (GD) party has voted down promised constitutional amendment to move to a fully proportional representation, filled in the majority of supreme court positions with candidates of questionable merits, government has resorted to violent crack-down of peaceful protests, opposition leaders and owners of independent media outlets have come under selective investigations, and a contract for strategic deep-sea port construction has been cancelled amid concerted efforts to undermine the businessmen behind this U.S. and EU-backed project. Domestic and international stakeholders alike are worried that such negative trend of developments could indicate that the ruling party is willing to risk the country's reputation and democratic progress in attempt to remain in power at all cost. Some even question whether the GD remains committed to Georgia's declared path towards Euro-Atlantic integration. On this backdrop, the 2020 elections could prove to be one of the most challenging and pivotal in the country's recent history.

Fighting Corruption

After Rose Revolution in 2003, Georgia has achieved a significant progress in fight against corruption, particularly in eliminating petty corruption in public administration. Surveys show that efforts in this regard have been sustainable throughout various governments and petty corruption has remained consistently low. However, so called "elite" corruption at the higher level has continued to be a challenge especially since across different administrations, power has been concentrated in the hands of a small group of individuals.

Over the recent years, the biggest challenge for Georgia's state institutions and governance structures has been the outsized influence of GD founder and former Prime Minister of Georgia, billionaire Bidzina Ivanishvili. While holding no official elected office, Mr. Ivanishvili has monopolized decision-making and even controlled dismissals and appointments of PMs, other cabinet ministers and heads of independent institutions. Key appointees have direct links and are personally accountable to Ivanishvili as they are handpicked from Ivanishvili's private companies or from his close trusted circle. Since Ivanishvili has solidified its influence over all branches of government, there is lack of public accountability and system of checks and balances does not properly function. Such degree of informal governance has increasingly been characterized as state capture¹ and represents a grave concern for Georgia's civil society.

¹ From Concentrating Power to State Capture: Georgia's Backsliding Anti-Corruption Reforms, Transparency International, 14 February 2019, <https://bit.ly/2GJPKYq>

Judiciary

Plagued with the soviet legacy, Georgia has never really had a truly independent judiciary and the courts have been subject to undue political influence by various governments. In 2012, the GD came into power with the promise to free judiciary from illicit influences, which was followed by several “waves” of judicial reforms. As a result, there has been some improvement, however political influences are still strong in high-profile cases of political importance.

While the first wave of judicial reform was largely positive and based on the civil society recommendations, subsequent reform waves have been protracted or important provisions have been sacrificed in the process of deal-making with influential group of judges (so-called “clan”) within the court system. These influential judges have been serving the political interests during the previous government and have managed to maintain their hold over the judiciary by pledging allegiance to the ruling party and Mr. Ivanishvili. They hold various administrative positions within the court system and control the High Council of Justice (HCOJ), a body responsible for administration of common court system with significant powers including over appointment and dismissal of judges. Through these powers, the influential group of judges have tightened grip over first and second instance courts by appointing as life-term judges (until retirement) individuals loyal to their clan.

Until recently, the Supreme Court remained free from such influences, however since 2018, power of nominating Supreme Court justices was transferred to HCOJ with final vote taking place in the Parliament. This provided influential judges with an opportunity to extend their influence over the highest instance court in Georgia. Despite civil society’s efforts to ensure proper legislative and procedural safeguards to this process, GD adopted legal framework that provided influential group of judges at the HCOJ with possibility to put forward candidates loyal to the clan and the ruling party. Out of the 20 candidates put forward to the Parliament as candidates for the Supreme Court, 14 were approved by the Parliament despite significant concerns over the integrity, competence and even questionable legal education of some candidates. In doing so, the Parliament disregarded Venice Commission recommendations² about optimal number of justices to be appointed and received a critical assessment from the OSCE/ODIHR³.

Elections

Georgia has made significant strides for improving its electoral process. The legislative framework is largely sound, election day is usually administered without significant irregularities and the trust towards election outcomes has gradually increased but remains fragile. Achieving equal pre-election environment has remained a challenge however. Abuse of state resources, intimidation on voters, vote buying and other practices have been used throughout years to influence the free will of voters. The most recent 2018 Presidential elections demonstrated that progress achieved is not irreversible and increased political competition can trigger pre-election violations to previously unprecedented scale⁴. Nevertheless, the biggest challenge to equal and fair electoral environment has been the electoral system and the rule of distribution of parliamentary mandates.

Georgia’s parliamentary electoral system⁵ has long been criticized for enabling single-party dominance over the country’s institutions and inefficient checks and balances by producing disproportionate results to the advantage of incumbent larger and well-funded parties⁶. GD chairman Ivanishvili’s promise of transition to a fully proportional representation in response to the youth-led June 2019 protests and longstanding civil society demands was a welcome development at the time. However, GD’s later backtracking on their promise has been largely viewed as an attempt to cling to power and maintain unfair advantage over the opposition in the critical Parliamentary elections.

Amid outsized influence of GD founder billionaire Ivanishvili over the state institutions, weakened opposition, fragile media landscape, and hostile attitude towards civil society organizations, transition to a fully proportional electoral system was viewed as an important mechanism to reduce polarization, increase the role of smaller parties in decision making and encourage cooperation and consensus-based political culture among the parties. GD’s failure to adopt the promised

² Georgia Urgent Opinion on the Selection and Appointment of Supreme Court Judges, European Commission for Democracy Through Law (Venice Commission, 16 April 2019, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2019\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2019)002-e)

³ Political wrangling compromises the independence of appointments to Georgia’s highest court, ODIHR report finds, OSCE/ODIHR, 9 January 2020, <https://www.osce.org/odihr/443500> and Second Report on the Nomination and Appointment of Supreme Court Judges in Georgia, ODIHR Report, 9 January 2020, <https://www.osce.org/odihr/443494?download=true>

⁴ The Initiative to Write Off Debts Represents Unprecedented Case of Alleged Vote Buying, Joint statement by ISFED, GYLA, TI, 19 November 2018, <https://bit.ly/2uTzIzQ>

⁵ In the current electoral system in Georgia, out of 150 mandates of a single-chamber parliament, 77 seats are distributed through proportional vote in a nationwide constituency, and 73 seats are contested in single-mandate majoritarian districts.

⁶ For example: the last 2016 parliamentary elections produced a super constitutional majority when ruling Georgian Dream party obtained 77% of the mandates despite only receiving 49% of the votes. The disproportionate representation is due to the fact that single-mandate majoritarian mandates are, as a rule, won by larger incumbent parties at the disadvantage of smaller ones with less resources.

constitutional amendment on transition to a fully proportional representation for the upcoming 2020 elections has damaged citizens' trust in the political process and caused a political deadlock.

Despite mounting criticism from within Georgia, the Members of European Parliament, critical letters from the U.S. Congressmen and Senators, and repeated calls to ensure promised electoral system change, GD seems reluctant to recognize its responsibility over the current political deadlock and offer meaningful solutions to deescalate the situation. While the EU, U.S., German and CoE ambassadors have initiated and mediated several rounds of consultations between the ruling party and opposition over the electoral system, no agreement has been reached so far. Opposition has put forward various alternative proposals that would improve the electoral system and ensure increased proportionality of mandates to election results. However, GD has turned down all opposition proposals and has threatened that constitutionally guaranteed transition to a proportional electoral system for 2024 elections may even be at risk.

GD's attempts to dismiss the electoral system issue and increasing confrontation with opposition could further escalate the political crisis and fuel even higher polarization. If political process fails to ensure a fair electoral system and equal pre-election landscape, this could push and intensify street protests. Such turn of events could further deteriorate pre-election environment ahead of the key 2020 parliamentary elections in Georgia.

Another factor contributing to polarized environment in Georgia are hostile sponsored political discrediting campaigns on social media targeting opposition, media, CSOs and activists. ISFED's social media monitoring during the 2018 presidential elections has revealed and reported to Facebook over 160 pages engaged in highly coordinated discrediting campaigns to influence voters. The sophisticated social media operations continued throughout 2019. Recently, Facebook took down over 400 accounts on its platform, among them 344 pages, some of which "posed as news organizations and impersonated political parties, public figures, activist groups and media entities". Facebook's investigation revealed and linked this activity to GD-led government of Georgia⁷. Despite the take-down, many such pages are still active and engaged in similar discrediting campaigns.⁸

What should be done?

As a young democracy, Georgia faces significant challenges both internal and external. While the country and its people have demonstrated potential for progress and ability to carry out ambitious reforms, latest developments raise concerns over democratic backsliding in the country. Regardless, recent experience shows that the EU integration process has been a key driver for reforms in Georgia. For example, a tangible legislative reform such as anti-discrimination law has been possible because of the Visa Liberalization process requirements. Despite significant challenges at the moment, EU and NATO integration process has a potential to anchor and guide Georgia's future development as well as provide Georgia's vibrant civil society with effective support to advocate for more reforms and democratic progress.

In order to prove its commitment to democratic development, Georgia needs to ensure that the 2020 Parliamentary elections are democratic. To rebuild trust towards political process and continue democratic progress, introduction of a proportional electoral system or modification of the existing electoral system in a way that ensures a more proportional distribution of mandates is key. GD should also refrain from exerting political pressure over opposition, media, civil society and independent activists and ensure fair and equal pre-election environment free from intimidation, abuse of state resources, vote buying or other undue influence over the voters, including through sponsored discrediting campaigns and other social media disinformation operations.

What can the EU and Member States do?

- Continue supporting Georgia's democratic transformation and its efforts of Euro-Atlantic integration;
- Continue close monitoring of political developments in Georgia and demand from authorities to remain committed to democracy, rule of law, protection of human rights, political pluralism, media freedom, and common European values.
- Continue diplomatic efforts to bring together the ruling party and the opposition and facilitate dialogue for achieving a solution on the electoral system for the 2020 elections. Increase pressure on Georgian Dream and Government of Georgia to reach a compromise and ensure legitimacy of the upcoming parliamentary elections in Georgia.
- Increase engagement with the Georgian authorities to demand that pre-election environment provides for equal playing field and necessary safeguards for democratic conduct of the 2020 parliamentary elections.

⁷ Removing Coordinated Inauthentic Behavior From Georgia, Vietnam and the US, Facebook, 20 December 2019, <https://bit.ly/30XmO8P>

⁸ ISFED report on Facebook's take-down of coordinated inauthentic behavior in Georgia: 28 December 2019, <https://bit.ly/36AOW4k>

- Urge the government and Parliament of Georgia to suspend further appointment of judges to the Supreme Court until the relevant law is amended to reflect recommendations from the Venice Commission, OSCE/ODIHR and Coalition of domestic civil society organizations.
- Call on Georgia to further reform judiciary to decentralize power from the HCOJ and influential group of judges, while strengthening independence of individual judges. E.g., the HCOJ work should become more transparent and procedurally bound, instead of appointed by HCOJ, court chairpersons should be elected by judges within the court.
- Back the efforts to establish an independent anti-corruption agency in Georgia, legally safeguarded from undue political influences, to tackle high-level corruption by investigation and prevention mechanisms.
- Continue providing political, technical and financial support to civil society in Georgia.