



**NDI Long-Term Election Observation
2012 Parliamentary Elections in Georgia
Interim Report
August 3 – 27, 2012**

I. INTRODUCTION

This interim report presents the preliminary findings of NDI's long-term observation mission comprised of three analysts focusing on election administration and political environment, during the period August 3-27, 2012. The aim of NDI's long-term election observation efforts is to accurately and impartially assess various aspects of the election process. The report builds on the findings of the NDI pre-election delegation, as well as NDI's long-term presence in Georgia. The team visited 24 districts and conducted more than 120 meetings with government and election officials, and representatives of political parties, civil society and the media. NDI will deploy approximately 20 short-term observers (STOs) to assess election-day proceedings. The Institute undertakes all international observation missions 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 40 of the leading international election observation organizations.

II. EXECUTIVE SUMMARY

The polarization between the ruling United National Movement (UNM) and the Georgian Dream bloc, the two largest electoral subjects, is escalating as a result of rhetoric characterizing each other as a fundamental threat to either a sovereign or a democratic Georgia. This rhetoric is compounded by the actions of both groups, creating false perceptions and undermining public confidence in the elections. The government has the obligation to enact fair electoral laws and to enforce them impartially. The opposition has the obligation to adhere to the law. Both sides, at times, appear to be avoiding these responsibilities in their respective attempts to gain political advantage.

III. BACKGROUND

On August 1, the President of Georgia announced that the parliamentary elections would be held on October 1, satisfying the 60-day notification required by law. Constitutional amendments in 2010 reduced the powers of the president in favor of the prime minister and the parliament, and will take effect following the 2013 presidential election.

The upcoming elections will be conducted under a new election code adopted in December 2011. The latest amendments were passed on June 29, 2012.

The 150-member parliament will be elected for a four-year term; 77 members will be elected under a list-based proportional system and another 73 in single-mandate constituencies. The new Code provides that apart from political parties and blocs, independent candidates can also contest majoritarian districts. As of August 25, there were 21 “election subjects” registered to contest the October 1 elections, including two election blocs and 19 political parties/unions. Four independent candidates have also registered. The United National Movement (UNM), the Georgian Dream Coalition, the Christian-Democratic Movement (CDM) and New Rights have all announced their candidates for prime minister.

IV. CAMPAIGN ENVIRONMENT

Across Georgia, election campaigns are ramping up. Most parties are in the process of nominating their majoritarian candidates and do not intend to publicize party lists before the September 1 deadline. The political environment is consistently described as polarized, with the primary competitors being largest and wealthiest groups: UNM, with what is seen as benefitting from significant government resources, and Georgian Dream, backed by billionaire Bidzina Ivanishvili. Smaller political parties criticize the polarization and disparity between their resources and those of the two main opponents, arguing that this has created a narrow space for their organizational and campaign efforts.

There is a lack of trust among opposition parties and many in civil society concerning the government’s ability to play an impartial role. Opposition parties regularly describe scenarios with citizens losing social benefits or pensions, facing harassment or receiving penalties at their business if they openly support an opposition party. As the discussion of government interference often turns into undocumented allegations of widespread abuses, it is difficult to discern whether the examples cited are from the current election cycle or past experience.

Rumors and unfounded allegations appear to be used as campaign tools to undermine candidates, parties and the electoral process. A video provided by the Georgian Dream in an effort to substantiate allegations of violence targeting their supporters showed violence taking place in previously reported incidents (such as those in Karaleti and Mereti), but it did not demonstrate who initiated the conflicts. Despite the staging of two major Georgian Dream rallies in Batumi and Rustavi without incident, there continue to be sporadic incidences of

violence. These serve to perpetuate the notion that the two largest electoral subjects are acting like enemies, not political adversaries or electoral opponents. Both sides need to contain animosities and prevent violence, while the government has a responsibility to ensure equal protection of the law and prosecution of violators.

Opposition political parties allege numerous cases where local authorities, village trustees or police were pressuring voters. Nonpartisan civil society organizations have cited similar instances. These allegations are more prevalent in smaller, rural communities and minority regions than in the urban centers. While these claims could not be independently verified, past elections have experienced such problems, and steps should be taken to ensure impartial administration and law enforcement, just as those making allegations should provide adequate documentation to substantiate such claims.

Political parties are targeting ethnic minority communities that have traditionally experienced, due to language barriers, an information vacuum during elections. This could increase electoral competition within those populations. Historically these communities have often supported ruling parties with their votes. This year, UNM is providing multi-language election materials and, in marked contrast to previous elections, opposition electoral contestants, such as the Georgian Dream coalition and New Rights, have targeted these communities with election materials in local languages.

Inter-Agency Task Force

The IATF was established by Article 48 paragraph 3 of the Election Code “in order to prevent and respond to the violations of election legislation of Georgia by public servants.” Article 48, paragraph 9 states: “In case the violation is confirmed, the commission shall be authorized to submit a recommendation to any public servant, administrative body, and the CEC requesting to carry out appropriate measures within a reasonable time.”

The IATF is an inter-agency task force and not a legal entity and therefore it does not have formal enforcement authority. As a semi-governmental body, the IATF is made up of members of the executive branch of the government and serves as an internal accountability mechanism over the executive and local branches of the government. Decisions of the IATF are not subject to the oversight of the judiciary.

On August 16, the CEC, IATF and seven nongovernmental organizations (NGOs) signed a memorandum of understanding on the use of administrative resources, which will guide future administrative and court proceedings. Civil society organizations and opposition parties continue to make widespread accusations about the misuse of state resources and government interference and intimidation. The IATF has made an effort to respond quickly to allegations. Since August 13, the IATF has responded to media reports about the improper display of party propaganda in government buildings, recommending that the CEC take action to remedy these complaints. The Gurjaani Regional Court has fined two individuals; a third case is pending in Rustavi City Court.

Reaction to the IATF has generally been positive among both civil society and political parties. However, while the IATF has demonstrated the ability to respond quickly to some allegations, civil society representatives have been critical of the time it has taken to respond to some accusations of the misuse of government resources.

There is confusion as to what constitutes a violation under the law and what is legitimate government spending. Although there are numerous allegations of the misuse of government resources (such as premises, phones, and vehicles) to conduct campaign activities, opposition parties are also critical of the government's investments in infrastructure and social programs during the past year, describing new roads, bridges, developments and increases to the pension program as a misuse of administrative resources and criticizing these programs as part of the government's efforts to "buy votes." Based on conversations with government, opposition party and civil society interlocutors, there appears to be a lack of understanding regarding clear divisions between the state and the ruling party.

Although the IATF and CEC are seen as the bodies to address the misuse of government resources, neither entity has authority or capacity equivalent to the State Audit Office (SAO) in its oversight of political party financing. Despite the parallels cited by opposition and civil society representatives concerning violations of campaign finance laws by Georgian Dream and the misuse of administrative resources in favor of UNM, at times the law appears to be selectively enforced, and the penalties applied to be disproportionate.

Campaign Finance

Recent amendments to the *Organic Law of Georgia on Political Unions of Citizens* designated the State Audit Office (SAO), formerly known as the Chamber of Control, to monitor party financing.

The SAO has taken measures to improve its outreach and communication in order to support party efforts to provide accurate reporting of their finances. However, the SAO's recent actions relating to the freezing of the personal accounts of Bidzina Ivanishvili and Kakha Kaladze, on the grounds that they had not identified that multi-million dollar withdrawals had not been spent on campaign activity, have reinforced perceptions of disproportionate and selective application of the law. The Parliamentary Assemblies of both the Council of Europe and the OSCE assert that the SAO decisions have been punitive and "disproportionate."

The legal justification being used for this action is Article 26¹ of the *Organic Law on Political Unions of Citizens*. In discussing the case of account seizures and the methodology used for detecting the illegal funding of campaigns, SAO officials cited this law as requiring that individuals with declared political or electoral goals fall under a "higher threshold of financial transparency."

In the case of Bidzina Ivanishvili's and Kakha Kaladze's accounts, the SAO did not base its conclusions on how the funds were spent, but rather on "grounded suspicion" and

identification of these individuals as having declared political and electoral goals. The basis for both international and domestic criticism is that the burden of proof is unduly on the accused.

On August 18, the SAO deducted more than 100,000 Georgian lari from six Georgian Dream Coalition party bank accounts as part of an effort to collect fines of GEL 2.85 million pertaining to illegal contributions. Bank account information provided by the Georgian Dream showed lack of clarity or transparency about the formula the National Bureau of Enforcement (NBE) used to deduct funds from individual accounts. However, the documents did not appear to support claims that all party finances had been frozen.

In the same week that representatives of the Parliamentary Assemblies for the Council of Europe and OSCE released statements regarding the SAO, the IATF recommended, and the National Bureau of Enforcement (NBE) agreed, to postpone collection of the fine. This case demonstrates the challenges for the government in the application and enforcement of campaign finance law. The issue is further complicated by Georgian Dream's approach to compliance with campaign finance law, reflected in repeated statements that its leaders are unwilling to pay fines they characterize as "illegal."

V. ELECTION ADMINISTRATION

Election Commissions

Elections will be administered by a three-tiered structure composed of the Central Election Commission (CEC), 73 district election commissions (DECs), and approximately 3,800 precinct election commissions (PECs).

The majority of interlocutors have expressed a general sense of trust in the CEC's ability to administer the 2012 parliamentary elections in a timely and efficient manner. Civil society representatives have commended election officials on their openness and transparency. The regular CEC sessions are open to the public and meeting minutes are generally posted on the CEC website within 24 hours of the meetings.

Opposition parties and civil society representatives voiced concerns about the independence and impartiality of election commissions below the CEC, saying the rules on their composition favor the ruling party. However, they expressed comfort with the ongoing appointments process of commission members. Only three formal complaints were submitted to the CEC against PEC appointments. One complaint was accepted and the individual was removed from the commission on the grounds that she had previously been convicted of election violations. Two complaints were rejected on procedural grounds.

The CEC has made a considerable effort to ensure that consistent and adequate support is offered to lower-level commissions. To date, all DEC representatives interviewed have praised

the resources provided by the CEC, including training, project management software, election timelines, printed publications and election manuals. PEC representatives spoke positively about the first stage of PEC training, conducted between August 17 and 26. Both participants and trainers have said that the quality of the program content and the methodology used were significantly improved from previous elections. According to the information available, a number of PEC members did not attend the first phase of training sessions.

The CEC has awarded small grants for voter education projects targeting women and youth populations in communities densely populated by ethnic minorities. Election manuals and trainings in minority languages have been made available to PECs.

Assignment of Election Numbers

Parties invest time and expend resources in an effort to create a brand through the design of campaign materials. Election numbers, which dictate placement on the ballot, have become central to these efforts. Although no other political parties expressed concerns about the assignment of election numbers, the controversy over the allocation of the Georgian Dream Coalition's number has raised questions about the neutrality of the CEC.

Article 119, paragraph 4 of the Election Code states that "if political parties having participated in the latest parliamentary elections established an election bloc for the elections, they shall specify in the statute of the bloc the assigned number of the party they will use." The Georgian Dream and its coalition member, the Conservative Party, interpreted the law as allowing the Georgian Dream to adopt automatically the number used by the Conservative Party during the previous 2008 election. They submitted a statute informing the CEC of their intention to use number 7. On August 20, the CEC awarded Georgian Dream number 41, stating that "a bloc of political parties has the right to keep the same number as the number which was assigned to one of the member political parties during the previous parliamentary elections if ALL(sic) parties in the bloc participated in the most recent elections."

The CEC's decision has been called into question because the phrase "all parties" is not included in either the Georgian or English translation of the electoral code. Although critics argue that the application of this provision has been inconsistent, the CEC states that the current decision is based on the 2008 application of the law by the CEC as it related to the allocation of number 7 to the Conservative Party as the leading party of the United Opposition coalition. The CEC decision followed a strict application of the law. In 2010, exceptions to the law were made by CEC decrees in response to applications from the Conservative Party (National Council) and the Christian Democratic Union.

There was a legal possibility for the Georgian Dream Coalition to acquire the number 7 by initially registering only parties that had participated in the 2008 parliamentary elections, then adding additional parties. However, the Coalition did not pursue this course of action. In addition, the Georgian Dream has declined to file for a special CEC decree requesting the number 7. While the CEC has established a precedent by which exceptions can be made and

has demonstrated a willingness to accept such exceptions, the Conservative Party (Georgian Dream) didn't utilize the available legal means for attaining its objective.

On August 20, Georgian Dream announced its intention to challenge the CEC decision in court, but two days later reversed this decision, announcing that it would contest the elections under the number 41.

Although the CEC may have acted within a strict interpretation of the law, it is indicative of the Georgian political environment that many have characterized this decision as a political act.

Voter List

The newly established *Commission for Ensuring Voters List Accuracy* (VLC) prepared the 2012 voters list. The VLC is frequently described as a highlight of the government's recent electoral reform, increasing public confidence in the electoral process. The Commission has an inclusive membership, with an equal number of party, civil society and the government representatives and it is chaired by the leader of an opposition party. Although a member of the Coalition participating in the Commission, the Georgian Dream chose to conduct a parallel exercise. Notwithstanding improvements in the voter list preparation, opposition parties and civil society representatives express concern that there continues to be room for manipulation and that inaccuracies remain. Questions have been raised about the eligibility of voters without registered addresses, non-existent addresses and suspiciously high numbers of individuals registered at a single residence. Some concerns have also been raised about special polling stations, including those for the diaspora and military personnel, and those in prisons and hospitals. Most interlocutors reported reserving their judgment on the accuracy of the voters list until posting for public scrutiny at the PECs begins on August 28.

According to the CEC, the latest version of the voter list, updated by August 15, includes 3,613,747 voters. Political parties have received copies of both district- and precinct-level lists.

VI. CIVIL SOCIETY

Civil society and domestic observer groups are actively involved in the election process through voter and civic education campaigns and monitoring various aspects of the election environment. There are efforts to coordinate activities and cooperate both in pre-election, election day and post-election observation and reporting. Three prominent local NGOs -- the International Society for Fair Elections and Democracy (ISFED), the Georgian Young Lawyers' Association (GYLA) and Transparency International - Georgia (TI-Georgia) -- established a web portal dedicated to elections, including a map and details of reported violations and incidents. The portal and a toll-free number enable NGOs and citizens to submit their reports, either electronically or via SMS. The portal can be found at www.electionportal.ge. As part of its election programs in Georgia, NDI has supported this nonpartisan monitoring effort.

While the ruling party and the opposition have the right to take issue with the substance of civil society reporting, any effort to unduly or improperly influence their reporting would be a violation of domestic and international norms. It is in the best interest of all parties to have a constructive relationship with civil society.

So far, the CEC has registered 28 domestic and 10 international observer groups. A number of interlocutors voiced concerns about the emergence of several new domestic and international observer groups. In their view, a lack of transparency about funding sources and methodology, raise doubts about their impartiality and might impact the overall perception of observers. The Declaration of Principles for International Election Observation and the Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations and their respective codes of conduct provide appropriate ethical standards and methodologies for election observation, and credible observation can be evaluated based on those principles.

NDI will continue to observe and analyze the electoral process and offer independent, impartial observations and findings. The June 29th statement of the Institute's pre-election delegation to Georgia and other relevant materials can be found at www.ndi.org. NDI expresses its appreciation to the United States Agency for International Development (USAID), which has funded its election observation work in Georgia and, along with the National Endowment for Democracy and the Swedish International Development Cooperation Agency, supports NDI democracy assistance programs in Georgia.