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Mapping Structural Reform: Challenges to Composition of Precinct Election Commissions in Georgia

POLICY BRIEF

Executive Summary

The election administration, as the body in charge of conducting elections, plays one of the most important roles in the election process. In the lead up to the 2016 parliamentary elections in Georgia, the election administration was criticised for the composition of the precinct election commissions. There were suspicions that the selection of precinct commission members was not conducted in a transparent and objective manner, together with allegations that candidates were not selected based on their qualifications and experience, but rather according to their political affiliation. This was not the first time that concerns had been raised regarding the impartiality and transparency of the selection of precinct commission members. Civil society organisations and some political parties voiced similar suspicions during previous elections as well.

High trust in the election administration is an important factor in ensuring the confidence of the public and all relevant stakeholders in the entire election process. Doubts about the political impartiality of the election administration damage its reputation, which could undermine public confidence in elections and discourage voters from participating in elections. This will have an overall negative impact on the elections, which is a pre-condition for establishing democratic institutions.

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This policy brief considers the problems associated with the composition of Georgia's election administration, particularly at the precinct level, and suggests an alternative selection process designed to resolve these problems. In lieu of the current system, any candidate for precinct election commission membership should be required to be certified as an election administration official. To further address concerns about partiality and political affiliation, an electronic database of certified candidates should be created and precinct election administration members should be staffed through random selection from the database instead of competitions. The authors provide recommendations for how to introduce these changes.

Introduction

Under the 2016 National Action Plan, which guides the implementation of the Association Agreement and the Association Agenda, one of the commitments of the Georgian Government is to conduct democratic elections. Fair and free elections are one of the cornerstones of every democratic state and Georgia is no exception. As part of ensuring democratic elections, a public body responsible for administering elections is one of the most important players. In Georgia elections are conducted by the election administration, which is an administrative organ independent from other public bodies.¹

The election administration in Georgia is made up of the Central Election Commission (CEC), district electoral commissions (DECs) and precinct electoral commissions (PECs).² Each commission that operates at the national, district or precinct level has 13 members, including six members appointed through a competition (professional appointments) and seven members appointed by political parties that receive funds from the State Budget according to the Organic Law of Georgia on Political Unions of Citizens (political appointments).³

To effectively perform its functions, the election administration should be staffed with qualified, independent and impartial members. This is a precondition for the professional and impartial discharge of powers by the election administration. According to the Venice Commission's Code of Good Practice in Electoral Matters, impartial electoral commissions must be set up at all levels, from the national level to polling station level, to ensure that elections are properly conducted.⁴ Only transparency, impartiality and independence from politically motivated manipulation will ensure proper administration of the election process, from the pre-election period to the end of the tabulation of results.⁵

PECs are important within the election administration, as they are responsible for conducting Election Day procedures and counting votes. Accordingly, the professionalism and impartiality of PEC members is crucial for the fair and democratic conduct of elections. In Georgia, the selection of the professional members of the PEC through an impartial competition process has been a challenge for the election administration. In past elections, including the 2016 parliamentary elections, civil society organisations and some political parties alleged that the PECs' pro-

¹ Organic Law of Georgia "Election Code of Georgia", Art. 7, 2011

² And the Supreme Election Council (SEC) in Adjara A/R

³ Election Code of Georgia, Articles 10, 12, 13, 20, 24

⁴ European Commission for Democracy through Law (Venice Commission), Code of Good Practice in Electoral Matters, October 2002, para. 71

⁵ Ibid

fessional members were mostly selected based on political party affiliation rather than on any objective criteria. Usually this affiliation was in favour of the ruling party.

Because of the important role played by PECs in collecting and counting votes, these allegations and resultant doubts cast a shadow on the independence and impartiality of the election administration. These concerns could undermine public confidence in the election administration and elections as a whole. The voters could even be discouraged from participating in the elections, as they would not trust that their votes would be counted objectively. This would have a negative impact on the conduct of democratic elections, which is crucial for each country striving to establish democratic values and having EU aspirations. Accordingly it is important that the election administration be free from any political influence and that there are no doubts about its impartiality.

Non-governmental organisations and some political parties have been advocating for reform of the composition of the election administration. An Inter-Factional Task Force on elections was set up in the Parliament of Georgia in March 2013, in order to prepare amendments to the Election Code in a number of different areas and implement comprehensive electoral reform. The Task Force was composed of MPs and other interested stakeholders were invited to participate in the meetings and submit their recommendations. One of the Task Force's areas of focus was the composition of the election administration, but it dissolved without discussing the issue. It was expected that a new inter-factional group, established on December 26, 2013, would address these problems but it never did. The failure of the government to implement relevant reforms in response to requests from other stakeholders can be explained by the lack of political will.

Deficiencies in the composition of precinct election administration

As mentioned above, Georgia's election administration enjoys a high level of independence as an administrative body. The reason behind this independence is the function that it is entrusted to carry out: conducting free and democratic elections. In order to implement this function, the election administration must be free from political or any other influence. One of the factors guaranteeing the independence of the election administration is the way its composition is regulated.

According to Georgia's current legislation, the election administration is composed through a mixed system: seven members are appointed by political parties and six members through a competition. The latter six PEC members are elected by the respective DEC by a majority vote of the total number of DEC members.⁶ A legally competent citizen of Georgia aged 18 or older, who satisfies the requirements set forth in the law, may be appointed as a member of the PEC. Candidates should submit an application together with the copy of the identification document to the respective DEC. A DEC shall elect six PEC members no earlier than 50 days and no later than 46 days before Election Day. Voting is conducted by a roll-call vote.⁷

⁶ Election Code of Georgia, Articles 24

⁷ Election Code of Georgia, Articles 25

Since PECs are partially composed of members affiliated with specific political parties, the presence of professional members on the commissions and their selection based on objective criteria such as professionalism and qualification becomes even more important. This is necessary in order to engender trust towards the election administration. In past elections, it was exactly the selection process of PEC members that was the topic of discussion and criticism. There were allegations that the supporters or proxies of political parties were appointed as professional members. These accusations mostly concerned the ruling party. CSOs also found that sometimes parties and/or their representatives in electoral commissions attempted to pressure other DEC members into voting for candidates favoured by the party.⁸

The same problem was raised during the composition of PECs for the 2016 parliamentary elections. In particular, reports alleged that DEC members selected PEC members based on pre-made lists, instead of the applicants' competence and professionalism. Representatives of opposition parties also claimed that the lists of aspiring PEC members were composed of family members and relatives of the ruling Georgian Dream party activists.⁹

Furthermore, ISFED observed cases where DEC members voted for the first six candidates on the list. Similar cases were also detected in previous elections leading to the conclusion that preferred candidates were placed at the top of the candidate lists.¹⁰ There were also occasions when DEC members did not conduct open voting or hold a meeting in order to consider the candidates' applications.¹¹

Considering applications in advance of the selection process is understandable, as DEC members need time to form an idea about each candidate in order to take a decision. However, when DEC members agree on and make a list of the selected candidates before the open selection process, the basis for the DEC members' decisions about candidates should be made public for transparency purposes, in particular it should be known based on which criteria the certain candidates were chosen. The lack of transparency raises questions about the impartiality of the DEC members. It also creates doubts that there was political or other interference in the work of the DEC members or that DEC members consulted with third parties in the selection process of candidates.¹²

In some cases, professional members of the PECs selected for the 2016 parliamentary elections had been appointed to PECs by political parties in the 2014 local self-government elections. According to information published by the CEC, of the 21,748 selected PEC professional members, 3,115 had been appointed by political parties to PECs in 2014.¹³ The majority of those people had been affiliated with the ruling Georgian Dream party. While this is not a violation of the law, it raises questions about the political impartiality of these members, which could undermine trust in the election administration.

In addition to the concerns about the composition of the PECs, there have been problems in the process of selecting DEC members. For example, many of the DEC members selected by the CEC as professional members through a competition in

⁸ Fifth Interim Report of Pre-Election Monitoring for the October 27, 2013 Presidential Elections, International Society for Fair Elections and Democracy, available at: <http://www.isfed.ge/main/472/eng/>

⁹ Pre-election Monitoring of 8 October, 2016 Parliamentary Elections, Third Interim Report, August 9 - September 1, International Society for Fair Elections and Democracy, p. 20, 2016, available at: <http://www.isfed.ge/main/1131/eng/>

¹⁰ Ibid.

¹¹ Ibid.

¹² Statement of ISFED about Ongoing Competition for Selection of Electoral Commission Members, available at: <http://www.isfed.ge/main/1116/eng/>

¹³ Information and statistical data about composition of PECs for 8 October 2016 parliamentary elections, available only in Georgian at: <http://cesko.ge/res/docs/20160904184726.pdf>

February 2016 had a partisan past – in particular, 67 out of 182 selected candidates had previously served as electoral commission members on a party's behalf.¹⁴

This kind of practice raises suspicions about the political neutrality and impartiality of those candidates appointed as professional PEC members. The election administration might be perceived by major stakeholders and voters as affiliated and managed by political parties, especially the ruling political party, which is usually accused of manipulating and influencing the selection of professional members of the election commissions. This damages the reputation of the election administration as an independent and impartial administrative organ.

Solution to the problem: An alternative way of selecting PEC members

The main challenge to the election administration is the elimination of the doubts about the involvement and influence of political parties in the selection of professional members of PECs. This is important in order to ensure public trust in the election administration, which in turn is directly linked to public trust in the elections.

In order to resolve the problem and simplify the selection process, PEC members should be required to be certified as election administration officials. Certification tests for applicants for PEC membership should be focused mostly on polling day procedures. An electronic database of successful certified candidates should be created and maintained by the CEC. For each election, professional members of PECs should be selected from this electronic database at random. The database should allow candidates to be allocated according to their region, so that a candidate from one region is not selected to serve in a distant PEC in another region.

There are certain hurdles that would need to be overcome as part of this reform. First and foremost, the creation and maintenance of an electronic database of potential PEC members would require funds. These could be provided by a donor organisation. Another risk to the success of this reform would be a lack of interest among potential candidates to undergo the certification test. While this problem could occur initially, an active information campaign can contribute to the long-term solution of this problem. Given that there are always a high number of applications for PEC membership, it is less likely that this problem will significantly deter potential applicants. Further, the use of the electronic database for PEC composition could be piloted in certain districts before it is rolled out to the rest of the country.

¹⁴ Detailed information about the competition is available in Report of Monitoring a Competition for Selection of DEC members, <http://www.isfed.ge/main/1034/eng/>. The case is also reported in GYLA's Assessment of Selection of DEC Members, Georgian Young Lawyers' Association, <https://gyla.ge/en/post/saia-saolqo-saarchevno-komisiebis-shesarchev-konkurss-afasebs>

Conclusion

The method used to determine the composition of the election administration is vital to ensuring its independence and impartiality. The proposed alternative method of selection of professional members of PECs by electronic database can solve the problems related to the PEC composition through competition. The involvement of the DEC members in the competition and selection of candidates would no longer be necessary. This would reduce suspicions and speculations about the role of political interests in the selection process. It would become more objective and impartial, in turn ensuring the selection of more qualified and professional members. This would increase trust in the election administration, which is an important precondition for motivating voters to participate in elections and developing a culture of free and fair elections. Overall it would contribute to the democratic conduct of elections, which is one of the important commitments of the Georgian Government under the Association Agenda.

As an additional benefit, using the electronic database would be more time efficient. The current competition process requires much time and effort, as there are many applications to be considered within short timeframes during election periods. The selection of candidates from an electronic database will reduce the workload of the DEC members and will enable DEC members to focus on other relevant issues.

Recommendations

For successful implementation of the proposed reform, the following should take place:

- ▶ Creation of a special task force with the involvement of all interested stakeholders in order to consider the implementation of the reform and prepare legislative amendments. The task force shall be created soon after the elections;
- ▶ Introduction of an electronic database of certified candidates for PEC membership for future elections, including an assessment of the requirements for such a software programme and the creation of a model. IT specialists and developers should be engaged to test and prepare the system for introduction;
- ▶ Introduction of the election administration certificate as a mandatory requirement for PEC members;
- ▶ Development of a public information campaign in order to support the reform, promote trust in the election administration and attract more qualified and interested candidates to become certified for PEC membership;
- ▶ Creation of an appropriate plan for rolling out the new system, starting with piloting the system in several pre-selected districts;
- ▶ Communication with donor organisations in order to acquire the necessary financial support for the implementation of the reform.

