



EECMD
EASTERN EUROPEAN CENTRE
FOR MULTIPARTY DEMOCRACY

Overcoming the Crisis: Towards a 21st Century Election Administration

Vision and Principles for a Reform Package

The publication was prepared by the Eastern European Centre for Multiparty Democracy (EECMD) as part of **the Supporting and Strengthening a Democratic Political Culture in the Pre-Election Period project**. Opinions expressed herein do not necessarily reflect the views of the Open Society Georgia Foundation.

The Supporting and Strengthening a Democratic Political Culture in the Pre-Election Period project is funded by the Open Society Georgia Foundation and aims to create a positive political agenda and strengthen civic engagement in the pre-election period.

INTRODUCTION

The results of the parliamentary elections of October 31, 2020, were rejected by opposition political parties, who then boycotted participating in the run-offs and taking their seats in the newly elected legislature. Local and international observation missions reported election day irregularities that significantly reduced public trust in the voting process and confidence in its results.

Because of prevailing concerns regarding the overall integrity of the elections, it is now timely and reasonable to call for fundamental reform of the election administration system. Such reform should focus on achieving two major objectives: increasing public trust in the election administration by transforming it into a more independent and transparent body and ensuring extensive public engagement in the electoral process. Achieving these primary objectives promises an improved political culture and a higher sense of civic responsibility. Structural reforms combined with mechanisms for wide public participation can improve electoral processes and increase trust in them.

Tweaks that would settle current dissent are necessary, but such cosmetic interventions cannot address the structural challenges that Georgia's democracy, and particularly its election administration, are facing at the moment. Minor adjustments to the existing system have been implemented before, but due to their short-term nature, they did not lead to the ultimate goal – free, fair, and trusted elections in Georgia. Overcoming the present crisis, even though consensus on temporary measures, is necessary. However, rebuilding the election administration from the ground up should be thought of as the main priority. **It is paramount that the election administration is completely free from political parties' control and prepared to address 21st-century challenges. These can be achieved only by a professional election administration body.**

This document proposes a package of fundamental and ambitious reforms of the election administration body, which, if implemented, would facilitate conflict resolution between the ruling and opposition parties and foster consensus on key issues related to election administration. It would also increase trust in electoral processes and eventually improve the quality of democracy in Georgia.

This document is meant to inform those civic and political groups who are actively involved in creating legislative frameworks for several crucial issues related to democratic development. Considering the current political climate, urgent implementation of some radical reforms would be challenging. Hence, where possible, alternative options are also offered.

Discussing the entire complex system of election administration in detail exceeds the scope of this document, which only aims to introduce a broad vision of reform related to the architecture of the election administration and foster a substantive discussion about the pillars of electoral reform.

ROOTS OF THE TRUST AND EFFECTIVENESS CRISIS

Public trust in the voting process is usually conditioned by the public's perception of the independence and impartiality of the election administration. The more independent, accountable, and competent the body administering the elections is, the less space it leaves for political actors to interpret the election results differently and manipulate public attitudes. Two major factors determine public confidence in the election administration: how free it is from the influence of the political parties - namely, the ruling party's control - and how effectively it addresses emerging challenges.

According to the current design of the electoral system based on the Election Code of Georgia, the election administration is an independent administrative body, accountable only to the Parliament of Georgia. Parliament, the president, political parties, and, to a certain degree, civil society organizations are involved in the formation of the Central Election Commission (CEC). The president, through consultations with selected civil society organizations, nominates candidates for the five members and chairperson of the CEC. On the recommendation of the President of Georgia, the parliament elects five members of the CEC, while the CEC chairperson is elected by two-thirds of all members of the CEC. Political parties also appoint six members in proportion to the number of votes received in the latest parliamentary elections. A single party can appoint no more than three members. Prior to the 2020 parliamentary elections, the CEC consisted of representatives from the following parliamentary parties: Georgian Dream – 3 members, United National Movement, European Georgia, and the Alliance of Patriots of Georgia – 1 member each.

The formation of the district and precinct commissions replicate the rule of forming the CEC. On these commissions, six members are appointed by the upper-level commission, and the other six members are appointed by the political parties pursuant to the same mechanism described above. Notably, out of the six professional members of District Election Commissions (DECs), five are appointed for five years, and one serves only for a single election cycle.

The selection of DEC and PEC members is based on simple criteria: a DEC member must be certified as an electoral administration officer, have some form of higher education, and be impartial. The criteria for PEC membership are even simpler: a candidate must only be at least 18 years old. The law also defines who may not be elected or appointed as a DEC and PEC member because of family ties with upper-level commission members or potential conflicts of interest.

As envisaged by the Election Code of Georgia, an election commission member is not a representative of their appointer or voter. A commission member is independent in their activities and shall only act in accordance with the law. Despite this, the perception that commission members are independent and impartial administrators is hindered by several factors.

The selection of CEC membership candidates by the president and their approval by parliament is widely perceived as a politicized process because it largely depends on which civil society organizations are involved in consultations with the president and which candidate is selected to be submitted to parliament and the CEC. Notably, parliament makes its decision with the majority of votes on its full list. As a result, the ruling party is able to elect CEC members independently, thus excluding the parliamentary minority from the process.

The selection of DEC members is not based on professional experience, knowledge, or merit – at least not as much as necessary for competent election administration. The election administration official certification exam checks basic knowledge of electoral legislation and does not fully suffice to assess a candidate's professional preparedness to fulfill such a serious responsibility. Ahead of a parliamentary election, due to the high number of applicants and a lack of time, the CEC and DECs do not have the opportunity to interview candidates personally. Even if such opportunities were to arise, **the law does not mandate that they actually conduct the interview.** Moreover, the law does not require a candidate to show up for the interview. In addition, since most political parties do not have member databases, the election administration lacks mechanisms to determine a candidate's party affiliation.

Therefore, the law does not establish reasonable and objective criteria for the selection of commission members, nor does it require such criteria to be set by the higher-level commissions. As a result, the entire selection process is vague and amorphous.

Within this legislative framework, opposition political parties do not feel included in either the process of forming commissions or in decision-making. Obscurities fuel reasonable doubt that the building of the election administration and its operation is essentially a function of partisan appropriateness rather than the principles of independence, impartiality, transparency, and accountability. This deteriorates the public's trust in elections and electoral processes.

The deficit of trust in electoral processes is largely conditioned by the election administration's lack of mechanisms to exercise its rights and responsibilities independent of the influence of political parties.

Political parties, on the other hand, have a range of partisan motives that often come into conflict and hinder the election administration's ability to act autonomously and effectively.

In fact, half of the election commission members are accountable to the political parties that appointed them and not to the election administration, which is inadequately equipped with leverage mechanisms to override these parties' influence. This can lead to standoffs when representatives of the election administration are essentially moved by conflicting motives, fostering political crises and deepening division.

The existing mixed system of election commissions creates a superficial impression of pluralism and checks and balances. In reality, however, it hinders the development of an independent and capable election administration and, consequently, democratic electoral processes. Election commissions can either be either fully subject to the control of political parties who take full responsibility over the election administration, or they can entirely secede from the influence and control of political parties. We believe that the latter is a far better option for the fundamental transformation of the election administration, and this involves the radical restructuring of DECs and PECs.

The real independence of the CEC requires its members to be fully accountable to the commission chairperson and absolutely free from partisan influence. The existing system cannot guarantee any of that because the political parties who designed this system were motivated by their own short-term objectives.

It is necessary that political parties finally compromise their narrow partisan motives for wider public interest and guide the election reform process according to the following principles.

PROPOSALS FOR REFORM

The proposed model for reform is based on six defining principles:

1. Separate the election administration from political parties' control and simultaneously increase parties' oversight role, competency, and capacity.
2. Ensure real accountability for the election administration to CEC members and its staff.
3. Automate the components of the voting process so that the space for interpretation and manipulation is significantly diminished.
4. Institute new electronic voting and vote counting technologies.
5. Increase public engagement in the vote-counting process.
6. Improve the skillsets and working conditions of election administration staff.

ELECTION OF CEC MEMBERS AND CHAIRPERSON

According to prevalent practice, election administrations can be generally designed as collegial bodies or be centered around the main authority, the chief election administration officer, regardless of whether election administrations are governmental or independent bodies. Both have their advantages and disadvantages. Current discussion regarding election administration reform is centered on the collegial model, but such a status quo bias impedes prospects for radical and fundamental reform.

THE FIRST PROPOSAL: A CHIEF ELECTION ADMINISTRATION OFFICER MODEL

The history of national elections in Georgia shows that the Central Election Commission (CEC) is comprised of parties and independent members with conflicting motives and has failed to become a trusted and effective organization. The roots of this problem have already been explored above. In contrast, Georgia has successfully managed to establish one independent and effective body even though its head is elected with the support of only one party. This body, the Public Defender's Office of Georgia – also known as the

Ombudsman – is an institution whose success, in contrast with the CEC and its chairperson, is largely defined by the effective, full authority of the Public Defender to make and execute decisions within its mandate without confrontation with or disruption by political parties. The positive experience of the Public Defender’s Office can be applied to the election administration body as well.

It is reasonable to reorganize the election administration around a chief election administration officer or administrator.

The chief election administration officer would be the head of the election administration body and be directly and fully responsible for conducting elections nationwide. This chief officer should be equipped with all relevant rights and resources to manage the administration effectively.

Even though the chief officer would be the only leader of the administration body in this model, it would still be necessary to establish a monitoring council with the capacity and the mandate to control and monitor the transparency and effectiveness of the election administration. Such a council should consist of parliamentary political parties, and these political parties should receive adequate financial resources to conduct effective monitoring of the CEC.

» Election of the Chief Election Administration Officer

The chief election administration officer should be elected by the “double majority” principle, meaning that the candidate should be supported by both a majority of the ruling party and a majority of the parliamentary minority. Due to hyperpolarization, the low level of political culture, and the weak tradition of political consensus, it would be quite challenging to follow this model in practice. However, its advantages completely outweigh those challenges. First, the “double majority” model would encourage the practice of reaching an agreement in parliament. This would foster cooperation among parties and create a sense of shared responsibility for the effectiveness of the election administration. It would also force political parties to seek an impartial and widely accepted professional for the position, and such a person is certainly available in Georgia.

In addition, the “double majority” method would foster cooperation between moderates and curb radicals. Consequently, it would help keep polarized partisan confrontations and deadlock in check.

Finally, a multiparty mandate would build confidence in the chief election officer and equip them with a wider avenue for operation.

FORMATION OF DISTRICT ELECTION COMMISSIONS (DECS)

The chairperson, deputy chairperson, and the secretary of each DEC would be appointed by the chief election administration officer. As with the CEC, political parties would have a critical role in monitoring and overseeing the operation of the DECs as well. Political parties would serve on the DEC monitoring council and have all the necessary resources to execute this function.

FORMATION OF PRECINCT ELECTION COMMISSION (PECS)

In a model where the election administration is designed around the authority of the chief election administration officer, the PEC formation rule should mirror the appointment of its superior commission, the DEC. More precisely, PEC members should be appointed by the relevant DEC chairperson or by two-thirds of its members from a pool of candidates who meet the relevant professional criteria.

COLLEGIAL ELECTION ADMINISTRATION BODY: A SECOND OPTION

The collegial model has been the traditional election administration model in Georgia. However, its advantages - shared responsibility and checks and balances - remain by-and-large non-functional in Georgia's political reality. Still, it would be possible to make the most of these advantages if the principles of the commissions' formation were fundamentally changed.

In the collegial model, CEC members and the chairperson would still be elected by the "double majority." The advantages of this have already been explored above.

THE ALTERNATIVE PATH

In an environment of hyperpolarization, it is possible that the ruling party and the opposition might not find common ground regarding the candidate for CEC chairperson. To avoid such an impasse, it would be reasonable to allow the parliamentary majority and minority to submit their candidates for high-level positions in the CEC with a proportion of 2:1. For instance, the parliamentary majority would submit three nominations for the CEC chairperson and the secretary positions, while the parliamentary minority would submit three nominations for the deputy chairperson's position.

The election of other CEC members could replicate the same scheme: the parliamentary majority would submit nominations for 2 (or 4) positions, and the opposition would nominate the candidates for 1 (or 2) positions. The rest of the CEC would be nominated by qualified political parties according to the rules prescribed by law. What constitutes as "qualified political party" should be determined based on objective criteria, such as the votes garnered in the most recent parliamentary elections.

This model, on the one hand, would ensure that the opposition has a larger role in the parliamentary process and in the formation of the election administration. On the other hand, it would give the parliamentary minority confidence that the ruling party does not have a monopoly on the formation of the election administration.

» **The Number of CEC Members**

Currently, the CEC consists of twelve members. For comparison, Canada's independent election administration, Elections Canada, is entirely managed by a single chief election officer. In India, the world's largest democracy, the same functions are assigned to just three election administrators.

Georgia's elections are not complex enough to require such a large election administration body.

The existing system is the product of a political bargain among a group of key individuals and dominated by the most powerful. They traditionally benefit from the system and reap significant political and financial rewards. Bargaining and making deals, as a part of consensus building, is necessary and crucial, but in Georgia's reality, political deals impede the emergence of effective institutions that adequately address these challenges.

A small, independent, and professional CEC would administer elections more effectively than a body with many conflicting interests whose members are appointed by a single ruling party. There are numerous independent and competent professionals in Georgia who could fit the criteria perfectly and serve on a small CEC. **The mainstream perception that the only way to guarantee the independence and fairness of elections is through the cross-party checks and balances that only the existing mixed system can provide lacks practical evidence. What is practiced around the world often proves the opposite.**

In the long run, a professional election administration, free from political parties' influence, should be established. Such a body could be collegial with decisions made by the majority of commission members or fully managed by the chief election administration officer. Either way, commission members or the chief officer should have all the legal mechanisms to exercise their duties. At the same time, they should take full responsibility for the elections they oversee.

FORMATION OF DISTRICT ELECTION COMMISSIONS (DECS)

To ensure the effective function of DECs, it is necessary to revise the rules of appointment of its members, increase their professional quality, and improve their working conditions. Without such an approach, no ambitious reform can bring desired results because commission members would continue to lack the qualifications and motivation necessary to complete their work to a high standard.

PROFESSIONAL QUALITY OF DEC'S

First, the criteria for DEC members' selection should be based on higher-level requirements that would assess a candidate's qualifications more comprehensively. These include knowledge of the election code as well as other skills and competencies. It is important to raise professional standards to assess a candidate's knowledge of election legislation and their skills for dealing with official documents.

Only candidates with the best results should be selected. If there are more qualified candidates than vacant positions, DEC members should either be selected by the chief officer or, if the CEC is a collegial body, elected by a two-thirds majority.

This procedure would require the engagement of either an existing assessment body or the establishment of an independent evaluation council. Currently, the Electoral Systems Development, Reforms, and Training Center, a legal entity of public law, is responsible for conducting certification exams for election officials designed to determine candidates' knowledge and competencies. However, as noted, the current certification test is insufficient for a comprehensive assessment. It is important to use the experience of the National Assessment and Examination Center (NAEC) or other highly trusted and component bodies experienced in conducting examinations which they could apply to the needs of the election administration body.

DEC members should be employed with a permanent contract, and their qualifications would apply to any model of election administration.

FORMATION OF PRECINCT ELECTION COMMISSIONS (PECs)

PECs are the lowest but most crucial level of election administration. Voters witness how democracy actually works in practice at their polling stations, and the impressions they receive there condition their overall attitudes toward the electoral process and their participation in it.

THE FIRST OPTION

Initially, it would be important to create a registry of independent election officials consisting of trusted public figures equipped with relevant qualifications. They would be randomly assigned to precincts according to the regional geography of Georgia. This model, like any other, carries some risks, but these could be preventatively mitigated. For instance, highly trusted, qualified, and randomly assigned commission members might still be guided by partisan motives. To balance this, the chief officer or chairperson of the CEC should be equipped with the right to veto a candidate.

THE SECOND OPTION

Public participation in the electoral process is a cornerstone of democracy. It is crucial that civic engagement in election administration at the PEC level be more substantial than before. Georgian citizens should be more trusted to take responsibility, get directly involved, and decide the fate of their elections and democracy themselves.

Thus, it is vitally important to implement fundamental and ambitious reform in this regard. Such reform would enable PECs to engage citizens in the vote-counting process. **Therefore, Georgian citizens should be randomly assigned to precincts as PEC members, and it would be mandatory to perform this assigned duty, with some necessary exceptions.**

To ensure the independence of the commission members and avoid the risks of partisan influence, the identity of PEC members should remain confidential until election day. The election administration would be responsible for training and instructing these PEC members.

Very often, it is erroneously perceived that vote counting is a very complicated process and that only skilled and qualified candidates can complete this task. At the same time, regrettably, despite extensive training traditionally conducted by the election administration and international organizations, the lack of adequately trained and skilled PEC members is a common issue. The problem is exacerbated by the high turnover of PEC members, very often far too close to election day since parties can withdraw their candidates at any time before the election. If PEC members were randomly assigned and participation in it were perceived as a civic duty, the election administration would be better positioned to train and instruct PEC members before election day.

The model of citizens being randomly assigned to precincts would have a far-reaching positive effect. **Wider civic participation in the electoral processes would enhance democratic traditions. Contributing to the free and fair elections would become a matter of civic duty and personal dignity for Georgian citizens.** It is misleading to consider that ordinary citizens with relevant training who do not represent the election administration body, or a non-governmental organization would be any less fair or less capable of counting votes in the precincts. Previous elections have demonstrated that the current system in place does not prevent shortcomings and irregularities, usually fostered by the partisan bias and motives of PEC members. Thus, radical reform of the existing model based on the wide public participation concept is urgent. Such new PECs would administer the elections better and contribute to the development of democratic institutions and traditions. Over time, more and more Georgian citizens would be concerned about free and fair elections.

OTHER MATTERS

» The Role of Political Parties

As noted earlier, it is paramount that the CEC breaks out of the grip of political parties and becomes truly independent. The history of elections in independent Georgia demonstrates that parties' engagement in election administration and decision-making on the commissions does not produce a net positive result. It neither garners public trust in elections nor strengthens their credibility.

Obviously, political parties would not be deprived of their monitoring and oversight roles. Any political party running for office should be able to appoint its representatives at each level of the election administration to observe the process and have some limited involvement mechanisms such as a deliberative vote. Also, budgetary resources should be available for political parties to execute their oversight and monitoring functions. Further, the CEC should offer opportunities for training and international experience sharing and provide informational materials to assist political parties in strengthening their new roles.

REMUNERATION FOR DEC AND THE PEC MEMBERS

DEC members' compensation varies by district but usually ranges from GEL 900 to 1450, while precinct commission members earn only GEL 225-321. Such low remuneration is inadequate for the tasks and responsibilities members undertake in existing electoral practice. PEC decisions actually determine election results, and polling stations represent the face of both elections and the state of democracy in the country.

Thus, it is vital that DEC and PEC members are fairly compensated for their responsibilities and workload.

The pay gaps among the CEC, DEC, and PEC members are huge when the actual responsibilities on the lower-level commissions are no less significant.

ELECTRONIC VOTING, VOTE COUNT, AND ONLINE VOTING

Modern technologies simplify election management and provide an excellent opportunity to garner wider public trust in the process. Despite widespread concerns regarding the downsides and risks associated with electronic technologies, it is necessary to introduce new technologies in Georgia's elections because not doing so bears several risks as well.

At this moment, it is necessary to pilot electronic voting technologies in the election administration process and, if successful, fully integrate them later.

Vote count automation should be the top priority for the CEC. The introduction of electronic voting and vote count technologies would provide election results almost immediately. To balance risks and be able to audit election results, voting machines that also leave paper trails should be made a priority. This would maintain the long-standing tradition and democratic ritual of actually casting a vote at the polling station.

It is also necessary to start piloting remote voting opportunities and technologies. These would enable citizens to cast their votes through private electronic devices such as computers and mobile phones. However, this should only be available for citizens living in Georgia to minimize the risk of foreign manipulation or interference. Internet voting technologies would enable many different groups who are otherwise limited in exercising their rights, such as the elderly, the disabled, and first-time voters, to participate in elections. It would also serve as an additional barrier to manipulating and influencing voters' will at the polling stations.

PROCESS OF ELECTION ADMINISTRATION REFORM

An ideal election administration does not exist - any model carries advantages and disadvantages. The package of reforms that we are offering is guided by the following major principles: separating the election administration from political parties' control and influence, improving the qualifications of election professionals, raising their compensation, and promoting wider civic engagement in election administration. There are obviously strong models based on other principles too. The process of reform is no less important than the substance of the reform itself. Sadly, electoral or other reforms are usually implemented in an exclusive setting and non-inclusive format. Election administration reform, however, is the type of reform that requires wider public consensus to avoid the call for fundamental changes after each election. Thus, it is crucial for maintaining political stability.

Though the substance of election administration reform is of the utmost importance, the process is no less significant. Timely implementation of such reform should be based on inclusive public discussion and wide consensus.

An inclusive process would contribute to increasing public trust in the election administration and bolster its effectiveness.

A single-party dominated process, no matter how positive the changes it may bring, is traditionally less trusted than an inclusive reform process because that inclusivity implies the opportunity for diverse representation and informed participation. Any results of exclusive processes and formats would be continuously questioned and subject to revision after each major political change.



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