

Monitoring of A WAY AHEAD FOR GEORGIA Agreement Implementation

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Agreement Implementation

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Prepared through an initiative of the Open Society Georgia Foundation, this document brings together assessments by Georgian Democracy Initiative (GDI), Open Society Georgia Foundation (OSGF), International Society for Fair Elections and Democracy (ISFED) and Transparency International Georgia (TIG). The views and opinions expressed by the report are those of the author and do not necessarily reflect the position of Open Society Georgia Foundation (OSGF).

INTRODUCTION

On 19 April 2021, the document proposed by President of the European Council Charles Michel was signed by representatives of the ruling party and a segment of opposition parties who then entered the parliament to perform their duties. Initial signatories included the following opposition parties: Lelo - Mamuka Khazaradze; Republican Party; bloc Giorgi Vashadze - Strategy Aghmashenebeli; Girchi; and Aleko Elisashvili - the Citizens.¹ The document was also signed individually by Salome Samadashvili who, after signing the document, made a statement about leaving the United National Movement party. Later, the document was signed by Davit Usupashvili from Lelo; Teona Akubardia and Paata Manjgaladze from Strategy Aghmashenebeli; Grigol Vashadze, the former chairman of United National Movement; Davit Bakradze, the former chairman of Bakradze, Ugulava, Bokeria - European Georgia - Movement for Freedom as well as Armaz Akhvlediani, a member of the same party, and Shalva Sgavgulidze, a majoritarian candidate from the same party. Furthermore, the document was supported by the team of former Prime Minister, Giorgi Gakharia,² as well as the MPs who gained seats in the Parliament through the Alliance of Patriots' party list and renamed themselves European Socialists.³ The last party that took a decision on entering the parliament was the United National Movement and signed the agreement on 2 September 2021.⁴

1. See media report: <https://bit.ly/3jnrdN2>

2. Giorgi Gakharia stepped down as the prime minister and left the Georgian Dream political party hours after the arrest of Nika Melia on 18 February 2021. He stated: "It is unacceptable to enforce a measure, even lawfully determined by justice, against a single particular person when it threatens health and life of our citizens or may trigger a political escalation in the country;" <https://bit.ly/3yxFyee>. Later, the Georgian Dream was abandoned by some of its members to join Gakharia who, on 29 May 2021, founded a new political party - For Georgia; <https://bit.ly/3mOBUug>. These persons are considered members of the "Gakharia team." _

3. See media report: <https://bit.ly/2UUX4LH>

4. See media report: <https://bit.ly/2WSjUV0>

ADDRESSING PERCEPTIONS OF POLITICISED JUSTICE

Prepared by Georgian Democracy Initiative (GDI)

- In the interest of Georgia’s political stability and in order to implement this agreement, the signatories commit to address, within one week of signing this agreement, the two cases of perceived politicised justice, either by an amnesty and/or by taking such steps as to produce an equivalent outcome. In particular, within one week of signature of the agreement, a party represented in Parliament shall initiate an amnesty law for all violations and convictions stemming from the 19-21 June 2019 protests.
- Moreover, Parliament shall address the perception of politicised justice through legislation and amending the Rules of Procedure as necessary, to require a higher than simple majority threshold for the lifting of parliamentary immunity.

Timeline:

1. Within one week of signature: actions necessary to fulfil this provision shall be taken.
2. All signatories then enter Parliament to vote on the legislative changes and the reform of parliamentary rules.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: As the Georgian Dream and the parliamentary opposition had their own visions of amnesty law,⁵ two draft laws were initiated in the legislative body.⁶ According to the draft law initiated by the ruling party, the amnesty was to apply to all cases related to the events of 20 June 2019, except for crimes defined in Articles 117, 144¹-144³ of the Criminal Code of Georgia. Acts punishable pursuant to these articles include:

- Intentional infliction of grave injury (Article 117);
- Torture (Article 144¹);
- Threat of torture (144²);
- Humiliation or inhuman treatment (144³).

5. Statement of Shalva Shavgulidze, one of the initiators of the draft law presented by the political opposition; <https://bit.ly/3jqbigM>

6. The draft law presented by the Georgian Dream on 27 April 2021 <https://bit.ly/3DzxcXI>, also, the draft law registered by the opposition on 28 April 2021, which was initiated by MPs Armaz Akhvediani, Teona Akubardia, Davit Bakradze, Giorgi Vashadze, Paata Manjgaladze, Ana Natsvlishvili, Salome Samadashvili, Khatuna Samnidze, Davit Usupashvili, Shalva Shavgulidze, Mamuka Khazaradze, Badri Japaridze, Zurab Girchi Japaridze; <https://bit.ly/3gFOhVn>

The draft law proposed by the opposition listed the articles of the Code that would be covered by the amnesty, leaving all other offences outside the project, including potential future investigations into the 20 June events.

Yet another difference between the draft laws concerned a victim's consent. According to the draft law of the opposition, an individual public official could be granted amnesty for a violation only upon the consent of the victim of that violation.

In parallel with initiating the draft laws, on 27 April 2021, the President of Georgia signed an act of pardon,⁷ releasing Giorgi Rurua from jail.⁸ Giorgi Rurua, a founder and shareholder of Mtavari Arkhi, a media outlet critical to the government, actively supported the permanent protest rallies held on Rustaveli Avenue after the events of 20 June 2019. He was detained near his house on 18 November. The Ministry of Internal Affairs declared that Rurua was arrested on charges of illegal purchase, storage and carrying of a firearm, an offence defined in Paragraphs 3 and 4 of Article 236 of the Criminal Code. On 30 July, the Tbilisi City Court sentenced him to four years in prison.⁹ Giorgi Rurua's arrest was perceived both by his lawyers and the opposition parties as political retaliation.¹⁰ Furthermore, the opposition maintained that Giorgi Rurua's release, along with the release of Gigi Ugulava and Irakli Okruashvili, was one of the conditions in the agreement between the ruling party and the opposition, mediated by foreign diplomats on 8 March; however, the Georgian Dream denied the existence of any such condition.¹¹

At 7:30 a.m. on 23 February, the Government of Georgia, in a special operation using the police force, detained Nika Melia, the chairman of the United National Movement, in the headquarters of the political party. The aim of the special operation, in the assessment of local NGOs, was "to execute a politicised decision of the court of 17 February and to detain Chairman of United National Movement Nika Melia."¹² The special operation was preceded by a Tbilisi City Court decision in favour of the application made by the Chief Prosecutor to withdraw bail for Nika Melia and move forward with his incarceration. That decision was denounced both by local¹³ and international¹⁴ organisations.

The fulfilment of this section of the agreement was a long process. Nika Melia was

7. Official statement of President of Georgia: <https://bit.ly/3gG5XjU>

8. See media report: <https://bit.ly/3gBBQKk>

9. Statement of Tbilisi City Court: <https://bit.ly/3mNbadv>

10. See media report: <https://bit.ly/3DyAtpG>

11. Ibid.

12. Statement of nongovernmental organisations: <https://bit.ly/38zcyjwN>

13. Statement of nongovernmental organisations about a criminal case against Nika Melia: <https://bit.ly/3Dvl35w> and <https://bit.ly/3zwjGwc>

14. Reaction of international community: <https://bit.ly/2V0cRZy>

released upon the decision of Tbilisi City Court on 10 May 2021, three weeks after the agreement was signed.¹⁵ Prior to the decision, Nika Melia's GEL 40,000 bail had been posted by the EU with the assistance from the European Endowment for Democracy and the Georgian Young Lawyers' Association (GYLA).¹⁶

On 9 June 2021, the ruling party initiated a draft Law on Amendments to Rules of Procedure of the Parliament of Georgia.¹⁷ According to the explanatory note of the draft law, the Rules of Procedure of the Parliament needed to be amended in order "to fulfil the obligations assumed under the agreement mediated by the President of European Council and signed by Georgian political parties on 19 April 2021, to reduce political polarisation in Georgia and avoid excessive politicisation related to the lifting of parliamentary immunity."¹⁸

The amendments adopted on 25 June 2021 increased the threshold for the lifting of parliamentary immunity. In particular, after discussing at a plenary sitting the issue of detaining or arresting MP, searching his/her apartment, working place, car or him/her personally, a decision shall be made in the form of a decree by three-fifths of all members of the parliament.¹⁹ Furthermore, "if the parliament gives consent on the detention or arrest of MP, the powers of the detained or arrested MP shall be suspended for the period of detention or arrest by a decree adopted by three-fifths of all members of the parliament."²⁰

Not Done: As noted above, the parties to the agreement disagreed over several provisions of the amnesty draft law.²¹

The first important difference between these two draft laws concerns the consent from persons who may be granted amnesty. As proposed by the Georgian Dream in its draft law: "All persons who, in relation to 19-21 June 2019 events, committed crimes between 19 and 21 June 2019 and do not refuse to accept the amnesty in accordance with the rule set forth in this law, shall be released from criminal liability and punishment as well as suspended sentence."²² This provision contradicts the nature of amnesty itself and in the given case, raised doubts that it specifically targeted one individual, Nika Melia, to harm his interests.²³ Seeking a prior consent of an accused person as a precondition for granting amnesty is not provided in the

15. See media report: <https://bit.ly/3kQVEef>

16. Statement of EU delegation to Georgia: <https://bit.ly/2WDAJTu>

17. See the draft law: <https://bit.ly/3jt8QXc>

18. See the explanatory note to the draft law: <https://bit.ly/3zEMUh6>

19. See amendments of the Rules of Procedure: <https://bit.ly/38kmhLT>

20. Ibid.

21. See media report: <https://bit.ly/3kyxXak> <https://bit.ly/3zsQzPc>

22. See Paragraph 1 of Article 1 of the draft law initiated by the Georgian Dream: <https://bit.ly/2WDXxwy>

23. See media report: <https://bit.ly/3t0NX8N>

Georgian legislation.²⁴ Furthermore, the draft law proposed by the ruling party does not contain a list of those articles that will be covered by the amnesty. Consequently, the mentioned amnesty law may apply to any pending or future criminal case stemming from 19-21 June 2019 protests, except the crimes defined in articles 117, 144¹-144³ of the Criminal Code of Georgia.²⁵

In contrast to the aforementioned, the draft law initiated by the opposition parties did not require a prior consent from persons. According to that draft law,²⁶ persons accused/convicted of crimes defined in Paragraphs 1 and/or 2 of Article 225 of the Criminal Code of Georgia (Organisation, management or participation in group violence), also persons accused/convicted of crimes under Subparagraph B) of Paragraph 3 of Article 333 (Exceeding official powers), except for persons who committed the mentioned crime while holding a public political office, shall be released from criminal liability and punishment.²⁷ The draft law of the opposition parties additionally emphasises the need to release persons from fines imposed for offences defined in article 166 (Disorderly conduct), 173²⁸ and 174¹ (Violating the rules for organising or holding assemblies or demonstrations) of Administrative Offences Code of Georgia, where such fines have not been paid before the enactment of the amnesty law. The initiators of the draft law aimed at relieving participants of the 19-21 June 2019 protest rallies of criminal liability and punishment, as well as those law enforcement officers carrying out police measures during the rally and when dispersing it, who were accused/convicted of offences defined in Paragraphs 1 and 2 of Article 1 of this draft law, thus expunging their conviction records.²⁹ Also, persons accused of offences pursuant to articles 166, 173 and 174¹ of Administrative Offences Code of Georgia, would also be relieved of administrative penalties.³⁰

According to initiators of the draft law, the consent of a victim with regard to separate crimes pursued the aim of ensuring full-fledged involvement of victims of 19-21 June 2019 events in the realisation of the 19 April 2021 agreement that seeks

24. See Article 77 of the Criminal Code of Georgia: <https://bit.ly/38qm5l9>

25. See Article 2 of the draft law initiated by the Georgian Dream: <https://bit.ly/2WDXxwy>

26. See the draft law initiated by the opposition, <https://bit.ly/3kD0CuJ>

27. It should be noted that the draft law allowed the exception from this provision, in particular, according to article 3 of the draft law, the law shall apply to persons covered by article 2 of the law, who were accused/convicted pursuant to Subparagraph B) of Paragraph 3 of Article 333 of Criminal Code of Georgia, in case of a notarised written consent of relevant victim (a natural person).

28. Non-compliance with a lawful order or demand of a law-enforcement officer, military servant, officer of a Special State Protection Service, enforcement police officer, an employee of the Special Penitentiary Service, an employee of General Inspection of Justice Ministry of Georgia or LEPL National Agency for Crime Prevention and Probation at the same ministry, or an equal-status person, or any other offence against such person.

29. See the explanatory note to the draft law: <https://bit.ly/38qkifB>

30. Ibid.

to normalise the situation in the country, deescalate tensions and overcome the political crisis.³¹

GDI issued a statement about a possible application of amnesty to all violations and convictions. In the organisation's opinion, "release of government representatives from current or future liability and/or punishment contradicts the essence of the state and seriously undermines the idea of human rights protection."³² The statement also reads that "when there is a resource for the government to interpret the political agreement signed by political forces in favour of human rights and a possibility to apply the Law of Georgia on Amnesty only to participants in the rally, the authors must fully understand the responsibility for grave results of human rights violations stemming from the application of amnesty to state representatives who committed offences."³³

The Georgian Dream unilaterally approved its own draft law in the second reading³⁴ and postponed the third reading, initially scheduled for 24 June 2021, for an additional 30 days:³⁵ however, no further steps have been taken in this regard since then. Consequently, the Law on Amnesty, included as a commitment in the agreement, has not yet been adopted.

One hundred days after the signing of 19 April agreement, that is on 28 July 2021, the Georgian Dream declared the agreement null and void.³⁶ This decision of the ruling party was criticised both nationally³⁷ and internationally.³⁸ Against this backdrop, it is not clear how things will play out with regard to the Law on Amnesty envisaged in the 19 April agreement.

Consequently, the mentioned commitment in the agreement may be regarded as partially fulfilled. Giorgi Rurua and Nika Melia were released from prison and the Rules of Procedure of Parliament of Georgia were amended. However, it remains unclear how things will play out in terms of adoption of the Law on Amnesty for all violations and convictions that stem from 19-21 June 2019 protests.

31. Ibid.

32. The statement of the organisation: <https://bit.ly/3gObtkF>

33. Ibid.

34. Vote results: <https://bit.ly/2WCi4ag>

35. Decision of the bureau of Georgian parliament: <https://bit.ly/2UXK3kx>

36. See media report: <https://bit.ly/3zz2nQ8>

37. Statement of nongovernmental organisations: <https://bit.ly/3jqNsSb>

38. Statement of US Embassy in Georgia, <https://bit.ly/2UYe8jZ>; See also, statement of President of European Council, <https://bit.ly/3zuwoQO>

AMBITIOUS ELECTORAL REFORM

*Prepared by International Society for Fair Elections
and Democracy (ISFED)*

- All future parliamentary elections shall be fully proportional. The next two parliamentary elections shall have a threshold between natural and 2%.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: According to a draft constitutional law tabled in the parliament, the next two parliamentary elections shall be fully proportional and have a 2% threshold.³⁹ On 18 July an organisational commission of general discussion of the draft law was set up.⁴⁰ On 7 September, the draft constitutional law was unanimously approved by the deputies in the first reading.⁴¹

Not Done: There are two more readings and voting on the draft constitutional law in progress in the Parliament of Georgia and consequently, the commitment has not been fully fulfilled yet.

- A grouping of at least four Members of Parliament shall be allowed to form a parliamentary faction to which MPs of other parties can be included.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: According to the draft law called the Draft Constitutional Law on Changes and Amendments to the Constitution of Georgia that was tabled in the parliament, a faction shall be comprised of at least four members in the parliament of the next two convocations.⁴² On 7 September, the draft constitutional law was unanimously approved by the deputies in the first reading.⁴³

39. Draft Constitutional Law of Georgia on Introduction of an Amendment into the Constitutional Law of Georgia: <https://bit.ly/3uNlofR>
 40. Parliament Resolution - <https://bit.ly/3iASISy>
 41. Parliament Endorsed Draft Constitutional Changes in First Reading with 126 Votes: <https://bit.ly/3a7MTHI>
 42. Draft Constitutional Law of Georgia on Introduction of an Amendment into the Constitutional Law of Georgia: <https://bit.ly/3uLwS3n>
 43. Parliament Endorsed Draft Constitutional Changes in First Reading with 126 Votes: <https://bit.ly/3oBq1bK>

Not Done: As of now, voting on the draft constitutional law is underway in the Parliament of Georgia, there are two more readings and consequently, the commitment has not been fully fulfilled yet.

- The parties shall support the bill tabled in Parliament on 2 March, with the following complementary or modifying amendments:
- Local elections: a 4/1 ratio of proportional and majoritarian mandates for the 5 largest cities and 2/1 for all others; thresholds shall be 2.5% in Tbilisi and 3% everywhere else.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

According to a revised Electoral Code, 80% of mandates in the Tbilisi City Council shall be proportional. This principle also applies to mandates in the councils of other large cities. The ratio between majoritarian and proportional candidates in municipal councils has increased to 2/1. Furthermore, the thresholds are set at 2.5% in Tbilisi and at 3% in all other municipalities.⁴⁴

The Parliament approved the amendments to the Electoral Code in the third, final reading, by 86 votes to 3. Two parliamentary opposition factions – United National Movement - United Opposition Strength in Unity and Lelo - Partnership for Georgia – did not approve the election-related changes.⁴⁵

- Central Election Commission: 8 professional members and 9 political party members. Professional members appointed by two-thirds majority of the Parliament’s full composition. One of the political party members representing an opposition party shall be Deputy Chairperson.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: According to the legislative amendments, the Central Election Commission (CEC) shall consist of 17 members, including the chairperson. Political par-

44. Amendments introduced into the Election Code: Assessment and Recommendations. August 27, 2021 <https://bit.ly/3oC63hm>

45. Parliament Endorsing Draft Election Code with 86 Votes: <https://bit.ly/2YikdJe>

ties appoint nine members while the parliament elects eight members, including the chairperson, from candidates nominated by the president, for the term of five years. The CEC chairperson and eight professional members shall be elected by a two-thirds majority of the parliament’s full composition. According to the amendments, the deputy chairperson shall be a member representing an opposition party.

Not Done: According to the new amendments to the Election Code, a political party shall lose the right to appoint a member to the CEC if all of its members who have been elected to the parliament through the party list and are discharging duties of MP, leave the party to join another political party. The right to appoint a member to the CEC shall be transferred to the latter.⁴⁶

Consequently, representatives of nine political parties will be in the CEC, but they will not be the nine political parties that cleared the threshold in the 2020 election. Two of them were excluded from the CEC and their places were taken by the political parties of which one did not participate independently in the 2020 election, while another participated as a member of the election bloc and through the bloc, got more public funding than other parties that cleared the hurdle.

After the passage of the electoral reform, on 28 June, 9 political parties appointed their members to the CEC. A competition was announced for two professional commission members and CEC chair. Five professional members of CEC remained the same, as their terms had not expired.

- **District Election Commissions: same proportions and two-thirds majority in CEC on professional members’ appointment.**

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: Much like the CEC, a district election commission (DEC) shall consist of 17 members. Eight members shall be appointed by the CEC and nine members by political parties. Eight professional DEC members shall be appointed by a two-thirds majority. The draft law also includes an anti-deadlock mechanism for the election of professional members: a simple majority of the CEC members in a repeat ballot.⁴⁷

46. Election Code of Georgia, article 196¹.4 - Temporary rule of filling in a vacancy in the CEC before the 2021 elections to municipal bodies.

47. According to the 19 April agreement, the anti-deadlock mechanism is specified only with regard to the election of members to the CEC, not members to lower-level election commissions.

Not Done: With such formulation of the provision, the rule of electing non-party DEC members remains virtually the same and they will again be elected by a simple majority of the CEC. It is worth noting that for the 2021 local elections, only 44.95%, that is 98 temporary members of DECs have been elected by a two-thirds majority of the CEC.

- **Precinct Election Commissions: same proportions. Professional members appointed by simple majority plus one vote in DECs. PEC protocols to be signed by at least 5 professional members plus one political party member.**

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: According to Paragraph 2 of Article 24 of the Election Code, eight members of a precinct election commission (PEC) shall be appointed by a two-thirds majority of the full composition of a corresponding DEC, provided that the supporters of a candidate include at least three DEC members who were elected by the CEC for the term of five years. If votes are equally divided and a winner cannot be identified, a repeat vote shall be immediately held to identify the victor. In a repeat ballot, a candidate receiving a simple majority of the full composition of the relevant DEC shall be deemed elected. If the result is an even split again, the winner shall be determined by drawing lots.

Every PEC member shall sign a summary protocol of voting results. A summary protocol shall be valid if it is signed by a majority of PEC members.

Not Done: According to the Election Code, a summary protocol of voting results shall be valid if it is signed by a majority of PEC members.⁴⁸ The share of professional members in this majority is not determined.

- **CEC Chairperson shall be elected by two-thirds majority of the Members of Parliament.**

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

According to the amended Election Code, the CEC chairperson shall be elected by a two-thirds majority of the full composition of the parliament (100 votes). In accor-

48. Election Code, Art. 71.6¹

dance with the agreement, an anti-deadlock mechanism for electing the CEC chairman was also approved.

On 2 August, a new chairperson was elected by the Parliament of Georgia, using the anti-deadlock mechanism, on the fourth attempt, by 83 votes to 3.

- An “anti-deadlock” mechanism for the election of the Chairperson and/or of the professional members of the Central Election Commission shall be established as follows:
 1. The first two attempts shall require a two-thirds majority. The third attempt shall require a three-fifths majority. Subsequent attempts shall require a simple majority.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

According to the amended Election Code, the chairperson and professional members of CEC shall be elected by a two-thirds majority of the full composition of the parliament (100 votes). If a candidate fails to receive such support in the first two attempts, the third attempt shall require a three-fifths majority (90 votes). If a candidate fails to receive necessary votes again, the fourth attempt shall require a simple majority of the full composition of the parliament.

As mentioned earlier, on 2 August, new chairperson was elected by the Parliament of Georgia, using anti-deadlock mechanism, on the fourth attempt, by 83 votes to 3.

2. Votes shall take place no earlier than four weeks after the previous vote.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

The interval between subsequent votes was to be at least four weeks, however, in the course of discussions of the amendments, the four-week interval was cut down to one week for the 2021 local elections. Along with the main rule on a four-week interval between votes,⁴⁹ a temporary rule for filling a vacancy in the CEC was added to the Rules of Procedure of the Parliament of Georgia before the 2021 election

49. The Rules of Procedure of the Parliament of Georgia, Article 205.7-8: <https://matsne.gov.ge/ka/document/view/4401423?publication=24>

to municipal bodies. According to this rule, no more than one vote shall take place within one calendar week.⁵⁰

The Venice Commission gave a negative assessment to it as early as on the stage of draft law and noted that it might decrease the possibility of reaching a consensus between the ruling party and opposition parties.⁵¹ This expectation proved true in practice as none of the three candidates (chair and two professional members) for vacancies in the CEC garnered the support of the parliamentary opposition and on 2 August, they were elected by a simple majority of the parliament for the terms of six months.

3. Any appointment pursuant to this anti-deadlock procedure (lower than a two-thirds majority) shall be temporary, with a term limited to six months, during which the standard appointment procedure shall be re-launched.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

According to the amendments, a candidate that is not elected by a two-thirds majority shall serve for the term of six months.

Elected candidates will serve for six months.

• Clear criteria for the recounts of ballots shall be defined. The automatic 10% recount of all precincts on a random basis remains.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

District election commissions shall recount ballots of 10% of all precincts across the country.

According to the amendments to the Election Code, no later than six days after the polling date, a DEC, at its sitting, shall randomly select five election precincts from among the election precincts within the election district, open the packages received

50. The Rules of Procedure of the Parliament of Georgia, Article 2282.² – Temporary rule of filling a vacancy in the CEC before the 2021 elections to municipal bodies.

51. European Commission for Democracy through Law (Venice Commission), Urgent Joint Opinion on revised draft amendments to the Election Code, CDL-PI(2021)011, 18.06.2021, §21, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2021\)011-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2021)011-e)

from corresponding PECs and recount ballots; there are 73 election districts in the country, consequently, the number of precincts to be recounted comprises 10%.

It should be noted, however, that the principle of selection on a random basis is ambiguous; for a result to be representative, a size and specifics of a precinct need to be taken into account.

Criteria for recount – a DEC shall open relevant election documentation and recount polling results if **the number of votes cast for an electoral subject, the total voter turnout or/and the number of invalid ballot papers** have been corrected in a summary protocol of polling results drawn up by a PEC and it is not enclosed with a protocol of correction.

- A special task force shall be set up under the CEC’s mandate to include the Public Defender’s Office and invite credible non-partisan election observer organisations, as well as trusted invited domestic and international experts, to review the dispute resolution process and provide timely recommendations to the CEC. The task force may be given additional functions such as involvement in recounts.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: According to the amendments, a task force shall be set up to provide recommendations to the CEC concerning election disputes. It shall include representatives of the Public Defender’s Office and international and/or local experts selected by election observer organisations.

Not Done: The law lacks clarity about the selection criteria of members of the task force as well as the mandate of the task force. Such ambiguity raised doubts that problems would emerge in the process of selecting members to the task force and the doubts proved true. Among observer organisations applying for the task force there are 15 such organisations whose credibility and financial transparency are seriously questioned. Furthermore, initially, the CEC decree provided for task force members to be selected by consensus by observer organisations; however, according to the amendment introduced on 6 August, in case of failure to select task force members by consensus, a repeat vote will take place and the candidates supported by a two-thirds majority of observer organisations will be deemed selected. This change allows questionable observer organisations to fully staff the task force. Hence, the selection will probably not increase trust in the election administration.⁵²

52. Ibid.

- In line with the Venice Commission and OSCE/ODIHR Joint Opinions of 20 March 2021, related to two draft laws tabled in January 2021 to amend provisions on party registration and on party financing, the adoption of the proposed amendments shall be reconsidered.

According to the above-mentioned joint opinions:

1. A political party shall not be deregistered if a foreign citizen participates in its election campaign;
2. Public funding of a political party shall not be linked to failure or relevant party members to take up their mandates in the parliament.

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Done: The initiative to deregister a political party because a person ineligible to exercise active suffrage participates in its campaign was not included in the law.

Not done: According to amendments to the Organic Law of Georgia on Political Associations of Citizens, a political party shall lose the right to receive public funding when the powers of half or more of elected MPs from that party are terminated earlier than the term of office expires and it is impossible to recognise the powers of so many successors that the number of elected MPs from that political party exceeds half of the mandates obtained by the MPs from that party.

Furthermore, a political party shall not receive public funding for a period of six months if more than half of the elected MPs from this party failed, without good reason, to attend more than half of the regular plenary sittings of the previous regular plenary session of the parliament. The same applies to political parties in an election bloc. These rules will enter into force on 1 February 2022.

A party that lost the right to receive public funding, which it obtained as a result of the 2020 elections, before the enactment of this law, will recover this right upon the entry into force of this law and will receive the amount which it would have received before the enactment of this law had it not lost the right to receive the above-mentioned funding. Such political party is given the right to refuse public funding within one month of the enactment of this rule.⁵³

53. Organic Law of Georgia on Introducing Amendments into the Organic Law of Georgia On Political Associations of Citizens: <https://matsne.gov.ge/ka/document/view/5194833?publication=1>

RULE OF LAW/JUDICIAL REFORM

Prepared by Open Society Georgia Foundation (OSGF)

Parliament shall adopt ambitious judicial reform in this Parliamentary term as the first step in a broad, inclusive and cross-party reform process

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

The political agreement sets out the contextual as well as procedural requirements in the areas of rule of law and judicial reform, which imply that the sides must strive for political consensus while drafting or adopting reforms. It should be noted that the Georgian Dream refused to initiate any meaningful reforms after the document was signed, however, it is still important to analyse those fractional legislative amendments that the ruling party refers to as the proof of fulfilment of the obligations undertaken herein. While the substantive evaluation of those amendments will be provided below it is essential to note that the procedural aspect of the obligation requiring high quorum and political consensus was disregarded altogether.

In particular, during the 2021 spring session of the parliament, amendments were made to the Organic Law of Georgia on Common Courts intending to further specify judicial appointment procedures. On 24 March 2021, three MPs from Georgian Dream tabled the draft law which was speedily adopted on 1 April 2021, before receiving the final opinion of Venice Commission and without any engagement from the opposition parties or nongovernmental sector in the process.

On 29 June 2021, a Draft Law on Amendments to Constitution of Georgia was registered in the Parliament of Georgia. Although the bill was drafted to fulfil the assumed obligations and the parliamentary opposition participated in the process, on 7 September 2021, the ruling party deleted from it all the provisions that concerned the reformation of the prosecutor's office. Consequently, a guaranteed limited inclusivity in the drafting process cannot be viewed as the fulfilment of obligations assumed under this component of the agreement. In general, before as well as after the signing of the agreement, the ruling party has taken decisions regarding the rule of law and judicial reform behind closed doors, without the substantive involvement of opposition parties or nongovernmental sector.

- **To increase the independence, accountability and quality of the judicial system, the Georgian authorities will, in line with two packages of judicial reforms adopted in 2017 and 2019:**

a) Further enhance transparency and merit-based selections in the appointment of judges to first instance and appeal courts, notably by publishing written justifications for appointments of judges with reference to integrity and competence criteria

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

In the reporting period, the Parliament of Georgia has not adopted a single legislative regulation that would improve the process of appointment of judges to first instance and appeals courts. Furthermore, the waves of reforms or smaller-scale initiatives implemented in the past few years, cannot ensure the realisation of the principle of merit-based selection in practice.

Although the legislative amendment adopted in December 2019 requires from the High Council of Justice to substantiate its decisions on appointments of judges, the Council does not substantiate its refusal to appoint judges. Moreover, there is no mechanism for candidates to appeal a decision of the Council on disqualifying them after the stage of interviewing.

The Organic Law sets official criteria, scores and appraisal procedures, but a final decision is taken by means of secret ballot. When voting, Council members are not constrained by scores gained by candidates. Consequently, a candidate who has not acquired the best scores may be appointed as a judge. This clearly contradicts the principle of objective and impartial selection.

The High Council of Justice of Georgia appoints judges to first instance and appeal courts by a two-thirds majority; however, since the rule of staffing of the Council itself is not consensus-based, the logic of voting does not serve the aim of presenting interests of various groups and fails to ensure a “merit-based” selection in practice.

It is worth noting that Article 37 of the Organic Law provides an opportunity for judges to transfer between courts without taking part in a competition (including to be promoted to upper courts), which bypasses an impartial and transparent process. Practice of past few years has shown that this rule has been more frequently applied for promoting judges, by ignoring the principle of merit-based appointments.

b) Submit to the Parliament draft legislation on the appointments to the Supreme Court in line with the related Venice Commission opinion No. 949/2019 of 24 June 2019, notably as concerns the staggered approach to appointments, open voting in the High Council of Justice, and the need for the latter to justify the nominations

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

With regard to the selection of judges to the Supreme Court, in September 2020, the parliament adopted legislative amendments in an attempt to accommodate the recommendations of the Venice Commission of 24 June 2019. According to these amendments, the first secret ballot on shortlisting the candidates was abolished; a procedure of public hearing after the registration has been determined; each member of the Council is required to provide written justification of the scores and appraisal of a candidate and to publish it on the webpage (without indicating a Council member’s name). As a result, it has become possible to appeal decisions of the Council at various stages.

The legislative amendments were considered and adopted within a span of several days, without the involvement of civil society and political opposition; furthermore, the Parliament of Georgia applied to the Venice Commission on 22 September 2020 and adopted the draft law on 8 October, i.e. before the Venice Commission published its opinion. In its opinion of 8 October, the Venice Commission stated that despite some improvements, the draft law did not meet key challenges faced by the judicial system.

The following revision of the Organic Law took place on 1 April 2021, with the amendments mainly altering the rule of selection and appointment of Supreme Court judges. In particular, the semi-open ballot was abolished; appraisal and justification thereof have become public; the opportunity to appeal decisions of the Council have broadened; the rule of voting after a public hearing of candidates was abolished; and it became mandatory to allow candidates with the top scores to proceed to the next stage.

Bearing in mind the acute political crisis in the country, ongoing mediation with the involvement of international partners and mistrust in the judiciary, such procedural improvements fall short of the requirement for a fundamental reformation of the judiciary. Similar views are expressed in the Venice Commission’s urgent opinion of 28 April, which recognises steps taken towards the improvement of the law, but clearly

indicates that a number of issues remain unsolved, including the possibility of unequal treatment towards candidates. For this very reason, the Venice Commission stresses the need to restart the process and recommends pausing the appointment of judges until a new, substantive reform takes place. The opinions of the Venice Commission published in 2019 as well as thereafter make it clear that the Commission understands in depth that the main challenge of the judiciary in Georgia is the lack of public trust, however, none of legislative changes adopted so far has responded to that challenge.

d) Adopt the legislation implementing the ruling of the Constitutional Court of Georgia from June 2019 by setting rules for the publication of judicial decisions.

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

In order to implement the judgment of the Constitutional Court of Georgia from 7 June 2019, MPs presented a draft law on 1 July 2021, but its reading has been already postponed twice and it is not clear when the parliament will be able to adopt it. Furthermore, the mentioned draft law includes a number of provisions that undermine transparency and accountability. In particular, the amendments make it impossible for a judicial act to be obtained as public information within one year of adoption; moreover, until 2024, a blanket ban is imposed on the issuance of judicial acts adopted before 1 January 2022.

- In the meantime, as regards the Supreme Court, all ongoing appointments shall be paused and the application process shall be reopened, including to new candidates, once new legislation has entered into force. Refrain from making appointments to the Supreme Court under existing rules;**

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

In December 2019, of a total 20 candidates to the Supreme Court, the Parliament of Georgia appointed 14. According to the assessment of both national and international actors, the process did not meet the standards of impartial and objective selection.

In the same month, the High Council of Justice nominated seven candidates to the parliament again, including six candidates for seats that were not filled during the first attempt, and one candidate for an additional vacancy. Against the backdrop of sharp criticism from international and national organisations, the parliament temporarily suspended the process of consideration of these candidates.

Based on the amendments adopted in September 2020, which do not meet the requirements set by the Venice Commission and the OSCE, the High Council of Justice resumed the process of filling in 11 vacancies in the Supreme Court. Despite the political crisis and sharp criticism, the process was not suspended since September and the Council conducted interviews with candidates. Consequently, by the time of adoption of amendments in early April 2021, the High Council of Justice had already conducted hearings of more than half of the candidates. It was precisely based on this fact that the Venice Commission recommended the Georgian government to restart the process. However, the appointments to the Supreme Court continued not only after the legislative amendments of 1 April but also after the signing of the agreement on 19 April.

In contrast to the obligation assumed under the agreement, on 17 June, the High Council of Justice of Georgia considered the issue of appointing 100 judges and submitted nine nominees to the parliament for the appointment to the Supreme Court. In the assessment of OSCE/ODIHR, the selection, questioning and interviewing process did not meet international standards.

Despite calls from international and local organisations, on 12 July, the parliament approved the appointment of six nominees. It must be noted that 93% of the participants of the plenary session were members of the ruling party because the opposition parties boycotted the process. At the end of the day, the process once again failed to ensure the selection of candidates by objective, merit-based criteria. International actors involved in the mediation clearly state that by taking this step, the ruling party has breached the spirit of the agreement.

- **Substantive reform of the High Council of Justice to increase transparency, integrity and accountability, including in appointments, appraisals, promotions, transfers, disciplinary measures and appeals shall be drawn up, submitted to the Venice Commission and the OSCE/ODIHR for an opinion and their recommendations shall be fully implemented.**

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Despite four waves of reform, the independence and impartiality in the High Council of Justice of Georgia, which is a collegial body established to administer the courts, remains a challenge. Especially problematic is the practice of taking pre-agreed and coordinated decisions (including on nominating judges), which renders the existence of collegial body meaningless. The principle by which the Council works totally excludes pluralism, debate and decision-making based on consensus/agreement. It is precisely because of mistrust towards the High Council of Justice that the Venice Commission describes the situation in Georgia as “unordinary” and places the emphasis on the necessity to ensure a higher degree of transparency.

Actions of influential groups in the High Council of Justice are also facilitated by an effective regulation of selecting members of the Council, which does not allow to select candidates by criteria of independence and impartiality. To improve the situation, it is necessary to change the rule of staffing the High Council of Justice as well as the scope of its authority through strengthening deliberative democracy and implementing consensus-oriented procedures. In particular, when manning the High Council of Justice, a functional weight should be assigned to the minority interests of the Conference of Judges of Georgia, while when electing non-judge members, the role of the opposition must be enhanced.

Instead of the substantial reform required by the 19 April agreement, the Conference of Judges, on 26 May 2021, elected four judge members to the High Council of Justice for the term of four years. Furthermore, the corps of judges was not informed in advance of who could be a candidate for the Council’s membership and they learned about it only on the day of the conference and an absolute majority of judges supported the nominated candidates without asking any questions and showing any interest.

All in all, the ruling party has not yet started to discuss a substantive reform of the Council and this type of initiative was not put forward during the last draft constitutional amendments either. It should also be noted that the Parliament of Georgia has to appoint five non-judge members to the High Council of Justice. International actors mediating the 19 April agreement as well as OSCE/ODIHR recommend the ruling party to undertake substantive reforms and pause the appointment of new Council members until this process has been completed.

- **As regards future Prosecutors General, following necessary procedures for constitutional revision, including a public debate, the parties commit to pursuing a shared political position that a vote of a qualified majority of the Members of Parliament, ensuring the broadest, cross-party political support, shall be required for the appointment of the next Prosecutor General and to align these appointments with international best practices to ensure appointments are made in a transparent, non-partisan manner, based on merit**

Furthermore, the parties commit to pursuing a shared political position on establishing an “anti-deadlock” mechanism for the election of future Prosecutors General, as follows:

1. The first two attempts shall require a qualified majority. Subsequent attempts shall require a simple majority.
2. Votes shall take place no earlier than four weeks after the previous vote.
3. Any appointment pursuant to this anti-deadlock procedure (lower than the qualified majority) shall be temporary, with a term limited to one year, during which the standard appointment procedure shall be re-launched.

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Despite legislative changes implemented in the past few years, the political independence and accountability of the prosecutor’s office is not adequately ensured. The prosecutor’s office remains a politically motivated, closed entity. One of main challenges is the current rules for electing the prosecutor general, whereby the parliament appoints a candidate by a simple majority. Consequently, the initial version of constitutional amendments, which envisaged the election of prosecutor generals by a three-fifths majority in the parliament of next two convocations, was more or less in line with the requirement to achieve a political consensus. However, after declaring the 19 April agreement void, amendments on the appointment of prosecutor generals were completely deleted from the draft, which indicates that the ruling party lacks the will to depoliticise the law enforcement system.

- The parties commit to further judicial reform through an inclusive process, including an assessment of the effectiveness of the 3rd and 4th waves of judicial reform. International advice and support will be sought for implementation of these reforms, in particular as regards the integrity of appointees.

Overall Assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Since 2012, under a declared goal of establishing an independent and impartial judiciary, legislative packages were drafted four times, through the so-called four waves of reforms. Although the amendments have somewhat modernized the legislative

framework, the absence of political will turned them into a mere façade and at the end of the day, placed courts of all instances under the control of influential groups. In this setting, talks about the future reform of the judicial system cannot be continued without a proper, systemic analysis of the opportunities that have been missed in the past. The non-governmental sector has prepared a similar analysis several times over the past few years, but so far, the ruling party does not acknowledge a critical situation in the judiciary and consequently, refuses to fulfil the obligations assumed under the 19 April agreement.

POWER SHARING IN THE PARLIAMENT

Prepared by Transparency International Georgia (TIG)

Opposition MPs shall be assigned five committee chairmanships, two of which will be among the following five committees:

1. Committee on Procedural Issues and Rules
2. Committee on Legal Issues
3. Human Rights Committee
4. Budget and Finance Committee
5. Foreign Relations Committee

Overall assessment:

Fulfilled	Partially Fulfilled	Not Fulfilled

Not Done: One of the aspects of power sharing in parliament is the possibility of electing opposition MPs as committee chairpersons, which was envisaged in the 19 April agreement. According to the document, opposition MPs shall be assigned five committee chairmanships, two of which shall be among the committees listed in the agreement.

The parliament has the total of 16 committees and chairpersons of these committees are elected by a simple majority of parliament members.⁵⁴ Accordingly, the chairpersons of all 16 committees are the members of the ruling party/GD faction. This provision in the Rules of Procedure of the Parliament of Georgia gives full control over the election of chairpersons to the parliamentary majority, thereby actually precluding the possibility of electing opposition MPs.

To fulfil this obligation, the parties needed to agree on the list of committees to be chaired by opposition MPs. Bearing in mind international practice, this could be done either through negotiations between political forces or changes to legislation. None of the steps has been taken in the reporting period and consequently, the obligation has not been fulfilled.

- Opposition MPs shall be assigned the position of first chairmanship among the following Parliament delegations to international fora: Euronest PA, EU-Georgia Parliamentary Association Committee, Parliamentary Assembly of the Council of Europe and the OSCE PA.

⁵⁴ Rules of Procedure of the Parliament of Georgia, 06/12/2018, 3875-რბ, Article 30, paragraph 6, available at: <https://matsne.gov.ge/document/view/4401423?publication=24>

Overall assessment

Fulfilled	Partially Fulfilled	Not Fulfilled

Not Done: Permanent delegations are formed in the parliament to establish regular relations with international interparliamentary organisations. The composition of these delegations is determined based on proportional representation quotas. These quotas are determined by Committee on Procedural Issues and Rules.⁵⁵

During the reporting period, no legislative amendment has been made to the rule of composition of permanent parliamentary delegations; as for heads of delegations, by the end of the reporting period all the delegations specified in the 19 April agreement have been led by majority MPs. In particular, Maka Botchorishvili heads the delegation to Euronest PA as well as the EU-Georgia Parliamentary Association Committee⁵⁶, Irakli Chikovani heads the delegation to the Parliamentary Assembly of the Council of Europe⁵⁷, and Nikoloz Samkharadze heads the delegation to the OSCE PA⁵⁸; all the three are representatives of the Georgian Dream faction.

Overall assessment

- Other positions shall be assigned in the future using a more inclusive formula such as the D'Hondt rule (applied to minimise disproportionality).

Fulfilled	Partially Fulfilled	Not Fulfilled

Not Done: The obligation implies the development of such principle that ensures inclusive distribution of parliamentary positions. The principle shall set a minimum proportionality standard that will be observed in future when assigning parliamentary positions and which will create additional guarantees of power sharing in the parliament.

55. Rules of Procedure of the Parliament of Georgia, 06/12/2018, 3875-რბ, Article 189, paragraph 2, available at: <https://matsne.gov.ge/document/view/4401423?publication=24>

56. Maka Botchorishvili, website of the Parliament of Georgia, available at: <https://parliament.ge/parliament-members/7109/activity> [accessed on 5.09.2021].

57. Irakli Chikovani, website of the Parliament of Georgia, available at: <https://parliament.ge/parliament-members/2247/activity> [accessed on 5.09.2021].

58. Nikoloz Samkharadze, website of the Parliament of Georgia, available at: <https://parliament.ge/parliament-members/5939/activity> [accessed on 5.09.2021].

The agreement specifies that the formula for assigning positions shall be devised by D'hondt method.⁵⁹ Obviously, the implementation of this provision of the agreement requires legislative changes; however, no legislative amendment has been made in the reporting period that would introduce the changes to the Rules of Procedure of the Parliament or any other normative act, which correspond to the guarantees defined in the mentioned provision.

It should be noted here that the amendment to the Rules of Procedure of the Parliament, adopted during the reporting period, enables two MPs to set up a political group⁶⁰ that can enjoy similar rights to a parliamentary faction. Furthermore, a constitutional amendment has been initiated to reduce the minimum number of faction members from seven to four.⁶¹ Both amendments provide additional opportunities for MPs who are left outside a faction, ease their access to mechanisms of parliamentary control, etc. However, these steps cannot be regarded as the fulfilment of this provision of the 19 April agreement.

- **The parties shall seek to establish a Jean Monnet Dialogue with the European Parliament.**

Overall assessment

Fulfilled	Partially Fulfilled	Not Fulfilled

Not Done: The Jean Monnet Dialogue for Peace and Democracy is an instrument developed by the European Parliament in the area of parliamentary mediation to facilitate an inter-party dialogue.⁶²

On 23 June, the Democracy Support and Election Coordination Group (DEG) of the European Parliament selected MEPs Marina Kaljurand and Miriam Lexmann as

59. D'hondt method is a mathematical formula used in collegial bodies for distribution of mandates and positions. See more: Kotanidis, Silvia. 2019. "Understanding The D'hondt Method: Allocation of Parliamentary Seats and Leadership Positions." Online. European Parliament, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637966/EPRS_BRI\(2019\)637966_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/637966/EPRS_BRI(2019)637966_EN.pdf) [accessed on 5.09.2021].

60. "On Introduction of an Amendment into the Rules of Procedure of the Parliament of Georgia", 661-IV06-X03, 11/06/2021, Article 1, available at: <https://matsne.gov.ge/ka/document/view/5188880?publication=0>

61. Draft law on Introduction of an Amendment into the Constitutional Law of Georgia, available at: <https://info.parliament.ge/#law-drafting/22438>

62. See more: Jean Monnet Dialogues, European Parliament, <https://www.europarl.europa.eu/global-democracysupport/en/mediation-and-dialogue/jean-monnet-dialogues> [accessed on 5.09.2021].

co-facilitators in a Jean Monnet Dialogue process in Georgia, and they, along with Viola von Cramon, will engage in the activity of the format.⁶³

According to the information received from the Parliament, it has taken the following steps to initiate a dialogue: on 18 May 2021 Kakhaber Kuchava, the Chairperson of the Parliament, expressed readiness to start a dialogue with the President of the European Parliament David Sassoli; on 14 July, 2021, the Democracy and Electoral Coordination Support Group (DEG) organised a videoconference “on the importance of ensuring rights and accountability between political parties”, Kakhaber Kuchava and David Sassoli attended the conference. In August 2021, Kakhaber Kuchava sent a letter to David Sassoli, in which he officially invited him to Georgia this autumn and offered an official opening of Jean Monnet’s dialogue as part of his visit.

Despite the above preparatory works, no specific steps have been taken, including no public discussion of the format of the dialogue was initiated. Meetings with political groups on this issue have not been conducted and it is unknown who will participate in this format from ruling or opposition parties. Therefore, this part of the agreement has not been fulfilled yet.

63. See the public announcement of DEG Group at: https://twitter.com/EP_DEG/status/1407598044149817345 [accessed on 5.09.2021]

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