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The End of Direct Presidential Elections

The Constitutional Reform Process in Georgia

Tornike Zurabashvili*

Executive summary

As part of the ongoing constitutional reform process, the ruling Georgian Dream-Democratic Georgia party (Georgian Dream) intends to abolish direct election of the president of Georgia, transferring voting power from the public to a college of electors composed of 300 parliamentarians and local and regional government representatives. The process has raised a number of questions. Why does the ruling party favor indirect election of the president? How was the constitutional reform process organized? Were there shortcomings in the process? If so, how can those shortcomings be mitigated before the amendments come into force? This policy brief analyzes the shortcomings of the constitutional reform process in Georgia, specifically as the process relates to presidential election procedures. It additionally provides the author's reflections on the issue. Lastly, this brief provides recommendations for further action.

*Tornike Zurabashvili is a Tbilisi-based political analyst and the Editor-In-Chief of Civil Georgia, a trilingual source of information on Georgia.

Key Findings and Recommendations

To the Parliament of Georgia:

- Ask the prime minister of Georgia to initiate a plebiscite on the entire draft constitution text or on the presidential election clause alone and pledge to accept it, whatever the result might be;
- Ensure that nationwide discussions on the draft constitution engage as many people in as many localities as possible;
 - Use regional and local media outlets to inform the public about the constitution draft, including in ethnic minority languages;
 - Use innovative approaches in the process including digital platforms (ex: allowing citizens to comment on the draft online);
 - Engage with political parties through televised discussions on the proposed changes; and
- Ensure that the nationwide discussions on the draft constitution engage the presidential administration as well; and
- Commit to adopt the Venice Commission recommendations, both those of a “legal” and “political” nature.

To Civil Society Organizations:

- Ensure that the nationwide discussions on the draft constitution engage as many people in as many localities as possible, including through using local CSO activists and networks;
- Coordinate messages and efforts on the reform process and its specific issues; and
- Ensure that the reform process is backed by civil society expertise, in particular with respect to the effects of the proposed changes on the state of Georgia’s democracy.

To International Organizations:

- Support the nationwide discussions on the draft constitution;
- Offer a neutral platform for dialogue for opposing parties, and
- Ensure that the reform process is backed by international expertise, including through funding research projects on the electoral, political, and policy implications of the proposed change.

Introduction

On April 22, 2016, following four months of deliberations, the 73-member Constitution Reform Commission tabled its proposals for a new Georgian constitution.ⁱ According to proposals contained in the draft document, the office of the president will no longer be elected through direct popular vote. Instead, the president will be elected by a 300-member college of electors; 150 of whom will be members of parliament and the remaining 150 members of local municipal councils and the Supreme Councils of the Autonomous Republics of Adjara and Abkhazia (in exile). If approved, this amendment will come into effect starting with the 2023 presidential election.

The proposal has raised a number of pertinent questions. Why does the ruling party favor indirect election of the president? How was the constitutional reform process organized? Were there shortcomings in the process? If so, how can those shortcomings be mitigated before the amendments come into force? This policy brief analyzes the shortcomings of the constitutional reform process in Georgia, specifically as the process relates to presidential election procedures. It additionally provides the author's reflections on the issue. Lastly, this brief provides recommendations for further action.

Constitutional Reform Process

The history of the Georgian Dream-led constitutional reform process dates back to 2013, a year after the Georgian Dream coalition won a decisive victory over the then-ruling United National Movement. The three-year tenure of that 58-member Constitutional Reform Commission, established by the ruling Georgian Dream coalition in December 2013 to address "serious shortcomings" in the constitution,ⁱⁱ yielded no result. Lacking intra-coalition consensus and sufficient legislative votes to pass the proposed constitutional amendments, Georgian Dream backtracked on its plans to amend Georgia's constitution.

The environment changed drastically in the aftermath of the 2016 parliamentary election. With the absence of a clear parliamentary counterweight caused by a fragmented opposition, Georgian Dream, with a much larger mandate, re-launched the constitutional reform process. The 73-member State Constitutional Commission, consisting of constitutional experts and representatives of seven political parties, government agencies, and non-governmental organizations, was established on December 15, 2016 and tasked with offering its official proposals by the end of April 2017.ⁱⁱⁱ

The Commission endorsed the draft constitutional amendments with 43 votes to eight at its final session on April 22, following four months of intensive, closed-door discussions.^{iv} The document will now be submitted to parliament and the latter, in accordance with Georgian legislation, will launch a month-long nationwide discussion on the document before putting it to vote at the legislature.

Critical Analysis of the Constitution Reform Process

Presidential Boycott

According to the Venice Commission, the Council of Europe's advisory body for legal affairs, "the adoption of a new and good Constitution" should be based on the widest consensus possible within society^v and on the inclusion of various political forces, non-governmental organizations, citizens' associations, the academic community, and the media.^{vi}

At the core of every constitutional reform should be the principle of maximizing consensus about the process: only in that case would it be possible to agree on a text that endures and serves as the guiding document of the country. Regretfully, such consensus was lacking throughout the process. The parliament, which led the entire reform process, failed to include all interested political parties and, importantly, to reassure the president—who has been at odds with the ruling party—that the amendments were not targeted at him personally.

As a result of dissatisfaction with the composition of the Constitutional Reform Commission, the presidential administration boycotted the commission^{vii} and publicly criticized the reform process on numerous occasions.^{viii} The president also initiated a public campaign, "The Constitution Belongs to Everyone", aimed at engaging the wider public in the constitutional review process.^{ix} The public campaign bypasses the parliament and effectively duplicates the nationwide discussions that are to be launched once the draft constitution is submitted to parliament.

As the commission neared the end of its work, seven opposition parties left the body, accusing the ruling party of wanting to cement its power through constitutional changes. When combined, the presidential and political party boycotts severely affected the constitutional reform process and undermined public trust in the work of the commission. It will also affect the state of the country's democracy: by adopting the new constitution text without broad political participation, the ruling party will reinforce the long-lasting tradition of single party-led constitutional review processes and contribute to the erosion of the principle of constitutionalism and, hence, the country's long-term prospects of democratic consolidation.

Lack of a Clear Objective

The ruling party initiated the constitutional reform process without setting out a detailed vision of the kind of presidency it aimed to establish. Stating that the reform process would bring Georgia's existing "deviated" system into line with "standard" parliamentary form of government through abolishing direct presidential election^x was neither substantial nor convincing; the role and powers of the "new" presidency in the new institutional setting remained unclear throughout the process.

Presidents in democratic political systems vary greatly; they may be activist, neutral, ceremonial, or otherwise. Each type of presidency has its advantages and disadvantages and differs across countries. The choice among them, then, should rest on the fundamental needs of the country; constitution drafters must take into account the overall state of the country's political, economic, and security environment when choosing the type of the presidency they wish to establish.

That the draft constitution maintains the president's status as commander-in-chief but no longer makes room for the National Security Council (replaced by the National Defense Council in wartime), indicates that the ruling party opted for a ceremonial type of presidency. Such a choice is not necessarily positive or negative. Stripping the president of the right to engage in regular defense policy making might restrict the president's undue interventions in executive politics and thus contribute to the country's overall institutional stability and democratic development. At the same time, that the president as commander-in-chief will no longer have a clear electoral mandate and direct say over defense and security affairs might weaken the president's authority as commander-in-chief and disrupt the operational chain of command. In Georgia's case, it could weaken defense capabilities in wartime.

Close examination of the constitutional reform process demonstrates that the choice over the president's role and powers, including the decision to abolish direct presidential election, was made without broad public and political party discussion about Georgia's long-term priorities and the way in which the presidency fits within those priorities. As a result, the uncertainty over the final objective of the constitutional changes, specifically as they relate to the president's place in the overall system, significantly affected the quality of the reform process.

One System, Two Interpretations

The unsettled debate on the nature of Georgia's current constitutional form of government added to the existing uncertainty. Debate about the country's constitutional arrangement emerged shortly after the victory of the Georgian Dream coalition in the 2012 Parliamentary Election.^{xi} Some Georgian Dream politicians argued that the country was to transition from a presidential to a parliamentary system of government while others said that the new constitution, which was to be enacted following the October 2013 presidential election, would make the country semi-presidential, a distinct form of institutional arrangement where a directly-elected fixed-term president coexists with a prime minister and cabinet who are collectively responsible to the legislature.

The parliamentary vs semi-presidential debate was not settled and has recently resurfaced. "We intend to maintain the existing form of parliamentary governance ... We believe that the parliamentary system, and it is universally recognized, creates much more guarantees for democracy and pluralism than presidential or semi-presidential systems," Parliament Speaker Irakli Kobakhidze stated on March 2.^{xii}

"When did the Georgian people decide to move to the parliamentary model?" The question is left hanging in midair," President Giorgi Margvelashvili said in response to Kobakhidze on March 23.^{xiii}

The lack of consensus among the country's political leaders over the constitutional arrangement made it impossible to hold a meaningful discussion on the role and functions of the presidency in both the current and proposed constitutions. Such a consensus is necessary for any constitutional change to move forward: without a clear understanding of the kind of arrangement a country has, the likelihood of political actors agreeing on the role and powers of the president decreases significantly.

Pre-Determined Choice

That the ruling party intended to abolish direct presidential election was well-known long before the constitutional reform process was initiated.

Georgian Dream's opposition to direct election was first expressed back in 2014, when the cabinet ministers and coalition lawmakers clashed with President Giorgi Margvelashvili over the latter's attempts to exercise his constitutional powers, most notably on foreign affairs. Georgian Dream questioned the legitimacy of the president's actions then and argued for changing the direct presidential election, which they regarded as a catalyst of President Margvelashvili's political ambitions.

Parliamentary Chairman Irakli Kobakhidze, the main figure behind the constitutional reform process, has signaled on numerous occasions both before and during the reform process that the forthcoming amendments would see the direct presidential election abolished, citing the incompatibility of direct election with the parliamentary model of government.

That the ruling party had made an explicit choice in favor of indirect election—and that this decision would not be subject to revision—limited the scope of discussion within the constitutional reform commission and left an impression that the overall process was intended to legitimize Georgian Dream's long-sought plan for abolishing the presidential election.^{xiv}

The manner in which the process was conducted also contributed to the widely-held assumption that constitutional reform was aimed specifically at weakening the presidency of Giorgi Margvelashvili due to his acrimony toward the ruling party. Georgian Dream's compromise, that the new mode of presidential election would come into force beginning with the 2023 presidential election and thus not affect the upcoming 2018 election, remedied the situation but failed to resolve those concerns entirely.

Venice Commission Approval

Speaking at the Constitutional Reform Commission's final session on April 22, Parliamentary Chairman Irakli Kobakhidze reiterated that "all legal suggestions" of the Venice Commission, the Council of Europe's advisory body for legal affairs, would be "adopted and reflected" in the draft constitution.^{xv} Kobakhidze stated:

"This is a commitment that we have made and we will not derail from it ... we will wait for the Venice Commission conclusions and the Parliament will make its final decision based on these conclusions."

Georgian Dream's commitment to comply with the recommendations of the Venice Commission is without question a positive development for the process, as well as the country's democracy in general. It is, however, outside the subject matter of this policy brief; because the mode of presidential election qualifies as a "political" question rather than a strictly "legal" matter, the Venice Commission will most probably not explicitly comment on the acceptability of adopting an indirect election procedure. And even if it does so, the parliament will have no formal commitment to comply with the recommendation, citing its "non-legal nature."

Ways Ahead: Claiming the Necessary Legitimacy

As a rule, the constitutional amendment process in most European countries takes place entirely in parliament. In a number of countries, however, a popular referendum is required as well, which may be mandatory or optional. In France, Ireland, Romania, and Switzerland, for instance, a referendum is required on a mandatory basis for any constitutional amendment passed by parliament. On the other hand, in Austria, Estonia, Liechtenstein, Slovenia, and Sweden, a referendum may be required on an optional basis upon demand by parliament.^{xvi}

Although Georgian legislation does not establish such a requirement for constitutional amendments, it allows for holding a referendum and a plebiscite on important public questions.

The ruling party should, therefore, explore the possibility of initiating a referendum or plebiscite on the proposed changes. Putting the entire draft constitution or, at least, its election-specific provision, to the electorate's judgment would be a highly positive step by the ruling party and contribute to strengthening public trust in the overall legitimacy of the process. It will also contribute to the country's prospects for democratic advancement: by adopting the new constitution text with broad electoral participation, the ruling party will set a positive precedent for a future reform processes and contribute to strengthening constitutionalism in the country.

By adopting the new constitution text without broad political participation, the ruling party will reinforce the long-lasting tradition of single party-led constitutional review processes and contribute to the erosion of the principle of constitutionalism and hence, the country's long-term prospects of democratic consolidation.

Two issues in particular stand out: Georgian Dream's electoral platform ahead of the 2016 parliamentary election did not contain any reference to their intention to change the direct presidential election procedure.^{xvii} Thus the ruling party, despite enjoying a clear constitutional majority, lacks the necessary electoral mandate to pursue its plans when it comes to changing the mode of presidential election. This directly contradicts to the notion of parliamentary democracy: it is a common practice in European democracies that when a government decides to introduce a controversial policy or pursue a potentially unpopular step, it must either call a snap election or a referendum/plebiscite to seek a popular mandate.

That the proposed change will restrict the electoral rights of the population is an important factor to bear in mind as well; by making the presidential office elected indirectly, the ruling party will be stripping the electorate of its right to directly elect the president. Such a change should require explicit approval from the voters themselves, which can only be obtained through asking those very voters whether they would prefer for the president to be popularly or indirectly elected.

Conclusion

Assessment of the recent constitutional reform process demonstrates that it suffered from serious shortcomings. First and foremost, the Constitutional Reform Commission failed to include all interested political parties and importantly to address the widely-held assumption that the reform process was targeted specifically at President Giorgi Margvelashvili. Moreover, the ruling party initiated the constitutional reform process without setting out a detailed vision of the kind of presidency it aimed to establish. The lack of consensus among political leaders over the nature of the country's constitutional arrangement further weakened the process.

To tackle some of these problems and, most importantly, to claim the democratically-appropriate popular mandate, Georgian Dream should closely cooperate with political actors, civil society organizations and international organizations and employ a variety of instruments to increase the public participation in the process, including through initiating a plebiscite and broad nationwide discussion on proposed changes.

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