

Warsaw, 30 September - 8 October 2010

Working Session 1

## **Georgia: Constitutional Reform June 2009 – October 2010**

Information Note  
Distributed by the Delegation of Georgia

On July 21, 2010, the Constitutional Commission submitted a final draft of proposed amendments to the current Constitution of Georgia. These amendments will: significantly transform the structure of the Georgian government and the balance of powers among the various branches of government; enhance the protection of private property; strengthen the independence of the judiciary and local governments; and increase the role of political parties in decision-making. The draft introduces a so-called “mixed system” of governance— a strong Parliament, a government formed by and directly accountable to the Parliament, and a directly elected president acting as arbiter but also as the representative of the state. Through a clearly defined system of checks and balances, the different branches balance each other to avoid the concentration of power in any one branch.

After Georgia regained independence in 1991, radicalization and polarization became endemic features of political life. Channels of communication between majority and opposition parties were limited. By concentrating most of the executive powers in the hands of the president, the existing constitutional model compelled opposition parties to concentrate on attacking that office. Inevitably, this stoked political turbulence. By redistributing powers from president to Parliament and the government nominated by Parliament, the proposed draft amendments move the center of political gravity to the Parliament. This thereby expands the opportunities for opposition to participate in the decision-making and accountability processes and facilitates the development of an inclusive and democratic political culture. The Constitutional Commission drafted its amendments in the hopes of fostering political stability and minimizing institutional incentives for confrontation, thus laying a strong foundation for future political development.

The amendments were drafted through an inclusive process involving a wide spectrum of stakeholders— including domestic and international experts, civil society representatives, academics, political parties and the general public at large—that lasted more than a year. Input from these groups of stakeholders during both the conceptualization and drafting stages was critical to the final draft.

## The Drafting Process

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Within November 2008 state of union address President of Georgia named constitutional reform as top priority under second wave of the democratic reforms. Consequently, the Constitutional Commission was established in June 2009 at the initiative of the President of Georgia. The objective of the Commission was to draft amendments to the Constitution that would introduce a better-defined system of checks and balances, including a stronger Parliament, more-balanced presidential powers, and strengthened guarantees of judicial independence. In order to ensure the involvement of extra-Parliamentary political parties, the Commission was a non-Parliamentary body.

The Commission chair was an impartial, respected scholar nominated by the opposition parties; a former chairman of the Constitutional Court, he had been one of the authors of the current Constitution. The Secretary of the Commission also was a representative of an opposition party. The Commission brought together representatives of all major political parties and state institutions, as well as the expert community, academia, and civil society. The structure of the Commission membership prevented any political party or state institution from holding a majority. All decisions were made by a two-thirds majority vote.

To inform its deliberations, the Commission worked in close cooperation with relevant international organizations and conducted a number of study tours in both established and new democracies (France, Germany, Poland, Czech Republic, Turkey). Numerous EU member-state constitutions were also reviewed as possible models.

A working draft constitution was discussed at the Berlin Conference, organized by The Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) in July 2010 and attended by Commission members, representatives of the Venice Commission, and distinguished experts who had provided comments on a preliminary draft. Participants discussed the document article by article and provided recommendations.

The Commission then adopted a final draft of amendments to the Constitution that reflected most of the recommendations that had been made in Berlin. On July 21, the draft was submitted to the Parliament of Georgia, at which stage at least one month of public deliberations are required by law; details of the public discussions are included below.

## Content of the Proposed Amendments

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**Summary:** The proposed amendments reshape the structure of government to balance state institutions by shifting a number of significant powers from the presidency to the Parliament and the government, which will be led by the prime minister. Among the key points under the proposed new system:

- The Parliament is the only authority that can form/dismiss the government.

- The party or coalition with the most seats will have the power to nominate prime – minister who selects the members of the cabinet. This is in contrast to the current model, under which the President selects the prime minister and presents the cabinet to the Parliament for approval.
- Even small parties can participate in the formation of the government. As far as the candidate for the post of prime-minister shall be elected by a majority of members of parliament and if none of the parties represented holds the majority, minority or smaller parties gain decisive vote in formation of government.
- The government will exercise executive powers and is directly accountable solely to the Parliament.
- The president is the head of state, acts as the arbiter between the legislative and executive branches in case of political crises, is Commander-in-Chief of Armed Forces, and represents Georgia internationally.
- A rigorous system of checks and balances will be put in place to avoid the abuse of powers by any branch of government.

### **Powers of the Parliament**

- The political party with the most MPs in Parliament nominates the prime minister, who in his/her turn presents the cabinet and governmental program to the Parliament for a vote of confidence. Approval of the government requires 50% +1 votes by listed MPs;
- Parliament is entitled to initiate votes of no-confidence towards the government at any time on any grounds. If a majority of MPs supports a vote of no-confidence by naming a new prime minister (constructive vote of no-confidence), and if the president agrees, the government shall be dissolved. The new government shall be formed within a certain time limit. In case the president rejects the Parliamentary decision, the Parliament may, with a three-fifths majority of its members, dismiss the government; the president will have to abide by this decision; If a three-fifth majority is not collected, President may dismiss the Parliament.
- The government shall be able to attach the issue of confidence to any draft law submitted to Parliament, and voting on the specified draft law equals to a vote of confidence for the government. The rejection of the draft law leads to the initiation of a vote of no-confidence;
- The procedure of overcoming a presidential veto has been simplified; to overcome a veto, the support of a majority of listed MPs is necessary (instead of the current three-fifths majority).

### **Powers of the President**

- The President no longer participates in the exercise of executive powers. The President shall remain the head of state but shall not lead the executive branch. He/she shall not be entitled to convene a session of the government. He/she can participate in cabinet meetings on concrete issues;

- The President no longer appoints and dismisses the ministers/members of the government;
- The law on the state budget no longer requires the consent of the President on the budget;
- The President's competence to exercise foreign relations has been clearly separated from the powers of the government. Only in very limited cases can the President exercise these powers without the consent and countersignature of the Prime Minister (these cases involve the signing of a limited number of specific international treaties).
- The President is no longer entitled to abolish acts issued by the government. This competence is left solely to the Constitutional Court and other courts of Georgia.
- The function of the President as State Arbiter has been kept unchanged.
- The President remains the Commander-in-Chief of the Armed Forces of Georgia, as head of state.
- Because he is state arbiter, the President shall be elected by universal suffrage.

### **Powers of the Government**

- The Government is sole executive branch in the State.
- According to the proposed draft constitution, the government shall be solely accountable before the Parliament of Georgia. Currently, the government is responsible and reports to both the president and the Parliament. This change strengthens the role of the Parliament and its ability to exercise control over governmental activities.
- In most cases, presidential decrees will need to be countersigned by the Prime Minister to become valid. A limited number of decrees by the president do not require countersignature by the Prime Minister; these are specifically delineated in the new draft.
- The government is the only state body entitled to initiate and submit the draft law on the state budget to the Parliament. Therefore, the Parliament shall be entitled to exercise control over the state budget and fiscal activities with regard only to the government itself.

### **Strengthening Powers of Political Parties**

- The procedure to initiate an investigative commission in the Parliament has been simplified, thus granting Parliamentary minority parties greater ability to act. Commissions can now be established by 20% of the listed MPs, instead of 25%.
- The procedure to impeach the President has been clarified; a third additional vote by the Parliament is no longer necessary.

## **Judiciary**

- The draft law significantly enhances the powers and institutional independence of the judiciary. The changes grant lifetime appointments to common court judges following a three-year probationary period.
- According to the draft law, the High Council of Justice shall be entitled to file a constitutional complaint to the Constitutional Court of Georgia should it consider any normative act as breaching the provisions of the Constitution with regard to issues relating to the judiciary.

## **Property Rights**

- Article 21, on the right to property, has been modified and clarified. According to the draft, this article defines more precise and clearer guarantees for the protection of property. It requires prior and just compensation for any limitation, confiscation, or seizure of private property.

## **Local Self-Government**

- The draft law proposes adding a new chapter to the Constitution on local self-government. The chapter contains most of the guarantees and principles regarding the organization of local self-government outlined by the European Charter on Local Self-Government. The provisions of the chapter clarify and define circumstances under which state organs may restrict and finance the activities of the organs of local-self-government.
- Under the new draft, the bodies of the local-self government may file a constitutional complaint to the Constitutional Court should they consider any normative act in breach of the provisions of this chapter of the Constitution. This gives additional remedy to local self-government to preserve the rights proscribed to it by the Constitution and exercise its function as outlined by the new draft.

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## **Public discussion process**

On July 21, Parliament formally initiated the process of public discussion of the draft constitution by establishing a public debate commission consisting of 36 members, including members of Parliament (with equal representation for opposition and majority members), representatives of NGOs, and academics. The Commission is chaired by the Speaker of Parliament.

Beginning on July 28, 30 public meetings were held in the capital and in all regions of Georgia (Tsageri, Oni, Kutaisi, Telavi, Gori, Marneuli, Akhalkalaki, Poti, Batumi, Ozurgeti, and Zugdidi). Local communities had the opportunity to discuss the draft with

representatives of academia as well as experts, NGOs, opposition political parties, minority organizations, the judiciary, the business community, and the diplomatic corps.

A special website attached to the Parliament web-portal was created with support of the UNDP to facilitate public discussions. The website aims to allow interested persons to access information on:

- The current constitution and the text of draft amendments;
- The schedule and protocols of the Commission meetings;
- Analytical pieces by experts;
- A web forum where citizens can post their proposals and questions.

Meetings of the committee were open for media and interested parties. Questions and proposals are registered to be discussed afterwards at Commission sessions.

On September 13, the Commission held its final session. Proposals put forth during the public discussion period were considered. After an in-depth debate, it was decided that a number of proposals deserve special attention and should be incorporated into the draft amendments—namely:

1. The reintroduction of the organic laws. The organic law is of higher status than an ordinary law in the hierarchy of legislation, meaning that it requires a higher quorum (a majority of listed MPs, rather than simply a majority of attending MPs) in order to be adopted. If an ordinary law is in contradiction with the organic law, then it is considered void. Ordinary laws regulate major fields of institutional arrangements and public life.
2. Strengthening constitutional rights concerning private property. Compensation for private property that is confiscated should be “full” in addition to being “fair”. The constitutional protection of right to property is extended to right to inheritance.
3. Appointment of Governor by whole government instead of prime-minister - it is a collective decision of the government rather than personal decision of the prime – minister as proposed by initial draft.
4. A number of technical and linguistic issues were resolved.

Apart from issues enlisted above members of the Commission decided to continue discussion on remaining topics during parliamentary hearings.

### **Discussions in Parliament**

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The proposed amendments will be debated during three Parliamentary hearings, as well as three hearings in each committee. This gives interested parties additional opportunities to take part in the discussion process. The expected date of final adoption is mid-October 2010, roughly 15 months after the launch of the Constitutional Commission.