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# Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia

**NEWSLETTER №6**  
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# INTRODUCTION

In August 2019, The Georgian Young Lawyers' Association (GYLA), with the support of USAID, launched the project "Free, Fair and Equal Electoral-Political 2019-2022 Cycle in Georgia". It covers the territory of Tbilisi, Kakheti, Mtskheta-Mtianeti, Kvemo Kartli, Shida Kartli, Imereti, Samegrelo-Zemo Svaneti, Guria and Adjara.

One of the primary goals of the project is to support improvement of the electoral environment through monitoring and evidence-based advocacy. To this end, GYLA will monitor ongoing political processes and develop recommendations that will be presented to the public and decision-makers.

## AGREEMENT REACHED ON ELECTORAL SYSTEM

Following the several-month long futile negotiations and the political crisis, political parties managed to reach an agreement on the electoral system on March 8, 2020.<sup>1</sup> The agreement was made possible with the active participation of representatives of the diplomatic corps.<sup>2</sup> The participants of the political dialogue signed a "Memorandum of Understanding", based on which a new model of the 2020 parliamentary election system was determined.<sup>3</sup> The agreement envisages the following conditions:<sup>4</sup>

1. The Parliament shall consist of **120 members elected through the proportional representation** and **30 members elected through the majoritarian system**. The electoral threshold for proportional elections shall be **1%**;
2. A capping mechanism rules out a possibility that a political party that receives less than **40%** of the votes in a proportional election is allowed to obtain a majority of the seats in the Parliament;
3. The deviation from the average electorate size in 30 majoritarian districts shall not exceed 15%. Preference should be given to setting up election districts **within the same regions of Georgia**, provided that the number of voters allows it. The exceptions to these rules shall be allowed in not **more than three cases** to encourage the representation of minority groups and residents in mountainous regions or to accommodate particular geographical needs.
4. The parliamentary majority shall publicly submit its proposal on the distribution of districts **no later than ten days** after the initiation of the constitutional amendments to the Parliament.
5. Provided that **early** parliamentary elections are announced between 2020 and 2024, the first such elections shall be held in accordance with the rules determined for 2020 elections. Any subsequent elections shall be held on the **fully proportional election system**, as per the rules currently foreseen for 2024 Parliamentary Elections.

Along with the "Memorandum of Understanding", the participants of the political dialogue signed a joint statement, according to which, despite the dissenting opinions, the signatories declare it necessary to respond to any attempt of politicizing judicial and electoral processes and prevent similar actions in the future.<sup>5</sup>

GYLA welcomed the agreement reached between the government and the opposition with the facilitation of in-

<sup>1</sup> "Statement of the Political Dialogue Facilitators on Agreement in Georgia (March 8)", the US Embassy website, 08.03.2020, available: <https://bit.ly/3eDlkA3>, updated on: 07.04.2020.

<sup>2</sup> Newsletter №5, pp.: 2-4, the website of the Georgian Young Lawyers' Association, available at: <https://bit.ly/2JIDYPC>, updated on: 07.04.2020.

<sup>3</sup> The Memorandum of Understanding, the US Embassy website, 08.03.2020, available at: <https://bit.ly/2VsvKlZ>, updated on: 07.04.2020.

<sup>4</sup> Id.

<sup>5</sup> "The Joint Statement", the official website of the Embassy of the United States of America, 08.03.2020, available: <https://bit.ly/2x-CrK8Z>, updated on: 07.04.2020.

# EQUITY OF MAJORITY ELECTORAL DISTRICTS

On March 17, 2020 a draft constitutional law was initiated in the Parliament.<sup>7</sup> However, the numbers of the voters in the majority districts provided in the draft bill contradict the terms of the Memorandum of Understanding signed between the political parties. As per the proposed version,<sup>8</sup> the deviation from the average size exceeds 15% in **18 cases** instead of 3,<sup>9</sup> which is almost 2/3 of the districts. Furthermore, the majority of these districts do not meet the criteria where exceptions shall apply.

No	District	Number of the Voters	Deviation from the Average	Deviation from the Average
01	Mtatsminda and Krtisanisi	95986	18.07%	18.07%
02	Vake	103461	11.69%	11.69%
03	Saburtalo	132635	13.21%	13.21%
04	Isani	112582	3.91%	3.91%
05	Samgori	145816	24.46%	24.46%
06	Didube and Chugureti	129260	10.33%	10.33%
07	Nadzaladevi	135753	15.87%	15.87%
08	Gldani	146077	24.68%	24.68%
09	Telavi, Akhmeta, Kvareli and Lagodekhi	154002	31.45%	31.45%
10	Gurjaani, Sagarejo, Dedoplistsxaro and Sighnaghi	150102	28.12%	28.12%
11	Rustavi and a part of Gardabani	141685	20.93%	20.93%
12	Marneuli and Gardabani(without the part)	137997	17.79%	17.79%
13	Bolnisi, Dmanisi, Tetritskaro and Tsalka	120642	2.97%	2.97%
14	Mtskheta, Dusheti, Tianeti and Kazbegi	87771	25.10%	25.10%
15	Kaspi and Gori (without a part)	135463	15.62%	15.62%
16	Khashuri, Kareli and a part of Gori	103811	11.39%	11.39%
17	Akhaltikhe, Borjomi, Adigeni and Aspindza	86316	26.33%	26.33%
18	Akhalkalaki and Ninotsminda	58369	50.18%	50.18%
19	Kutaisi	155609	32.82%	32.82%
20	Sachkhere, Chiatura and Kharagauli	104201	12.77%	12.77%
21	Tkibuli, Terjola, Zestaponi and Baghdati	131883	12.57%	12.57%
22	Samtredia, Tskaltubo, Vani and Khoni	144750	23.55%	23.55%
23	Zugdidi	120517	2.87%	2.87%
24	Poti, Khobi and Senaki	108893	7.06%	7.06%
25	Tsalenjikha, Chkhorotsku, Martvili and Abasha	104135	11.12%	11.12%
26	Ozurgeti, Lanchkhuti and Chokhatauri	108472	7.41%	7.41%
27	Batumi	146717	25.23%	25.23%
28	Kobuleti and part of Khelvachauri	88922	24.10%	24.10%
29	Keda, Shuakhevi, Khulo and Khelvachauri (without a part)	78898	32.66%	32.66%
30	Ambrolauri, Oni, Tsageri, Lentekhi and Mestia	44053	62.40%	62.40%

<sup>6</sup> “GYLA supports the agreement reached on the electoral system”, the website of the Georgian Young Lawyers’ Association, 09.03.2020, available: <https://bit.ly/3bvSNBy>, updated: 07.04.2020

<sup>7</sup> The draft constitutional law of Georgia, the official website of the Parliament of Georgia, 17.03.2020, available: <https://bit.ly/34S9IAV>, updated on: 07.04.2020.

<sup>8</sup> Id. P.9

<sup>9</sup> The data have been processed by the Georgian Young Lawyers’ Association based on the information received from the Central Election Commission of Georgia on the number of voters as of March 30. The first column of the table shows the number of the voters in each majority election district, the yellow color in the second column indicates the deviation from the average to the negative, the green - to the positive. In the third column, the districts deviation from the average of which exceeds 15% are marked in red.

Particularly conspicuous is the discrepancy between the electorate size in №19 “Kutaisi” (the largest) and №30 “Ambrolauri, Oni, Tsageri, Lentekhi and Mestia” (the smallest) election districts, as the number of the voters in one is 353% higher than the number of voters in the other. The Kutaisi election district is 175% larger than №28 “Kobuleti and a part of Khelvachauri” election district (the latter is the seventh smallest district).

GYLA calls on the government to change the pattern provided in the constitutional amendment and bring it into line with the principle of equal distribution of the voters as envisaged by the Memorandum of Understanding.

## CONSTITUTIONAL AMENDMENTS AND STATE OF EMERGENCY

The draft constitutional amendment on the electoral system was initiated on March 17, however, due to the pandemic of novel coronavirus disease (COVID-19) on March 21, a state of emergency was declared in the country up until April 21.<sup>10</sup> Therefore, the deliberation of the draft constitutional law was suspended until the completion of the state of emergency.<sup>11</sup> According to the current plan, the process shall resume on April 22. Until May 17, the Steering Committee on Public Considerations will have the opportunity to review the materials attached to the draft law and hold meetings in various administrative-territorial units.<sup>12</sup> The Parliament will be able to start discussing the draft bill on May 18. Based on this scenario, unless the terms of the state of emergency are changed, according to the Constitution of Georgia and the Rules of Procedure of the Parliament, it is possible to amend the electoral system at the spring session.<sup>13</sup>

## STRATEGIC LITIGATION OF GYLA

Aiming at improving the election legislation and electoral environment, GYLA continues its strategic litigation in the Constitutional Court. In this context, the organization has filed a lawsuit requesting a right to appeal to the court if an authorized person of the election administration refuses to draw up a protocol on an administrative violation.

The disputed norms define people who shall be authorized to adjudicate complaints relating to the electoral legislation and make a relevant decision on imposing a penalty on a person, as well as determine the possibility of appealing the decision to the court. The problem is that there is no provision in the law permitting appealing the refusal on drawing up a protocol of an administrative violation.<sup>14</sup>

GYLA believes that if the authorized person refuses to draw up a protocol of an offence, there should be a possibility to challenge the decision to the court to examine the legitimacy of the discretionary authority. The necessity is due to the fact that if discretionary authority is not verified, the authorized person may use his/her power to the detriment of the right of voters. In case of such a scenario, neither GYLA will be able to ensure its own interest - to conduct effective monitoring of the election process - nor voters will be able to enjoy the electoral space to express their free will.<sup>15</sup>

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<sup>10</sup> The Decree №1 of the President of Georgia of March 21, 2020 “On declaring a Nationwide State of Emergency on the Entire Territory of Georgia”, the website of the President of Georgia, available: <https://bit.ly/2VlCbFp>, updated on: 10.04.2020.

<sup>11</sup> Article 77(7) of the Constitution of Georgia.

<sup>12</sup> Article 125(5) of the Rules of Procedure of the Parliament of Georgia;

<sup>13</sup> According to the first paragraph of Article 44 of the Constitution of Georgia, the spring session shall open on the first Tuesday of February and close on the last Friday of June.

<sup>14</sup> “GYLA Appeals against the Norms of the Election Code to the Constitutional Court”, the website of the Georgian Young Lawyers’ Association, 19.03.2020, available: <https://bit.ly/3cyOy89>, updated on: 07.04.2020.

<sup>15</sup> Id.

# ALLEGED VOTER BRIBERY

During the reporting period, two activities containing the signs of voter bribery occurred and a statement was made by electoral entities.,

According to media reports, on March 26, 2020, in Zugdidi, the non-governmental organization “New Leaders Initiative” organized an event where representatives of the Saakashvili Presidential Library and the United National Movement provided citizens with masks, disinfectants and disposable gloves.<sup>16</sup> More than 100 people arrived at the event, while gathering of more than 10 individuals in a public space was prohibited by law.<sup>17</sup> The “New Leaders Initiative” was fined by patrol police with 15,000 GEL for violating the terms of the state of emergency.<sup>18</sup>

In the given case, apart from the violation of the state of emergency, attention should be drawn to the fact that the representatives of the political union, on behalf of the party, distributed the above-mentioned items to citizens as presents. According to the law, a political party may not have the right to grant tangible or intangible assets to citizens of Georgia.<sup>19</sup> Consequently, the above act contained the apparent signs of voter bribery.

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<sup>16</sup> “Public Gathering in the Center of Zugdidi – the National Movement Distributes Disinfectants”, Adjara Public Broadcaster, 26.03.2020, available: <https://bit.ly/34TyGKX>, updated on: 07.04.2020.

<sup>17</sup> The Decree №181 of the Government of Georgia of March 23, 2020 “On the Approval of Actions to be Taken to Prevent the Spread of New Coronavirus disease in Georgia,” Article 5(2);

<sup>18</sup> “The MIA Patrol Police Department fined “New Leaders Initiative” for violating the State of Emergency.” The website of the Ministry of Internal Affairs, 26.03.2020, available: <https://bit.ly/3blBFhA>, updated on: 07.04.2020.

<sup>19</sup> The Organic Law of Georgia “On Political Associations of Citizens, Article 252 (1);