

# Formal and Informal Political Institutions

**Journal Issue****Author(s):**

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**Publication date:**

2020-03

**Permanent link:**

<https://doi.org/10.3929/ethz-b-000400500>

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**Originally published in:**

Caucasus Analytical Digest (CAD) 114



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## FORMAL AND INFORMAL POLITICAL INSTITUTIONS

*Special Editors: Farid Guliyev and Lusine Badalyan (Justus Liebig University Giessen)*

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## Introduction by the Special Editors

### The Interplay of Formal and Informal Institutions in the South Caucasus

Over the past decade, the three republics of the South Caucasus made changes to their constitutions. Georgia shifted from presidentialism to a dual executive system in 2012 and then, in 2017, amended its constitution to transform into a European-style parliamentary democracy.

In Armenia, faced with the presidential term limit, the former President Sargsyan initiated constitutional reforms in 2013, which in 2015 resulted in Armenia's moving from a semipresidential system to a parliamentary system. While this allowed the incumbent party to gain the majority of seats in the April 2017 parliamentary election and enabled Sargsyan to continue as a prime minister, the shift eventually backfired, spilling into a mass protest, the ousting of Sargsyan from office, and the victory of Nikol Pashinyan's bloc in a snap parliamentary election in December 2018.

In Azerbaijan, which has preserved the formally presidentialist constitution, the referendum in 2016 approved constitutional amendments that extended the presidential term from 5 to 7 years and created new posts of vice-presidents. In the following year, the president appointed the first lady, who is also believed to be a leading figure in a powerful informal network, as the first vice president.

How can these constitutional-institutional changes be explained? Two influential political science approaches provide different sets of explanations for these changes. First, a neopatrimonial perspective supporting the primacy of informal patron-clientelist networks holds that formal institutions are epiphenomenal and merely reflect the underlying competition between the various informal networks that dominate politics in poorly institutionalized Eurasian countries (Fisun 2012). Second, a patronal politics perspective inspired by the neopatrimonialist view maintains that formal institutions do matter, especially in structuring informal elite actors' views and expectations about relevant centres of power (Hale 2011).

The contributions to this special issue address these issues by looking at the interplay between informal and formal institutions in Armenia, Azerbaijan, and Georgia. In Armenia, Nona Shahnazarian looks at the deep-seated cultural roots of clientelism in post-Soviet societies and discusses the efforts by the government of Prime Minister Pashinyan to eradicate the power of oligarchs that persists to date. In Azerbaijan, Farid Guliyev looks at how formal institutions are largely a façade, although one that can be used and instrumentalized by the ruling elite to package ex ante informal power arrangements and thus maintain autocratic rule. Finally, examining the shift from the presidential to parliamentary system and the electoral system reform in Georgia, Levan Kakhishvili shows how formal and informal institutions constitute each other in this arguably most advanced reformer in the Caucasus region: formal institutions shape informal actions, while informal rules, in turn, influence which formal rules are adopted.

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## Post-Velvet Transformations in Armenia: Fighting an Oligarchic Regime

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DOI: [10.3929/ethz-b-000400500](https://doi.org/10.3929/ethz-b-000400500)

### Abstract

Nikol Pashinyan's rise to power was fuelled by resentment over cronyism, corruption, and poor governance by the ruling elite. The April 2018 revolution that happened in Armenia has garnered many names—the velvet revolution, the white revolution, the revolution of smiles—all of which serve to highlight its non-violent nature. In June 2018, Pashinyan's new team initiated a thorough audit of corrupt former officials and some of the country's oligarchs. This study examines informal economic practices and anti-corruption measures in Armenia through a methodology based on interviews and media analysis.

### From a Planned to a 'Moral' Economy

In modern money-based societies, a distinction is commonly made between the formal and the informal economy. Of course, the line between the two can be hard to draw in practice. To put the distinction more simply, the formal economy is the sum of economic exchanges that are regulated by the law and the state, whereas the informal economy exists beyond the control of the state and is regulated by social norms and practices. In the Soviet era, the black-market economy (referred to in Soviet parlance as the “shadow economy”) facilitated the existence of the Soviet state by complementing its official economy. The distribution of goods was promoted by informal social networks, referred to by the Russian word *blat* (Ledeneva, 1998). Strong Soviet power pushed informal institutions out of the public sphere, but these practices continued to dominate in private. In the post-Soviet era, given the “logic” of self-perpetuation, such practices, in particular, institutions of kinship and personal networks, continue to play a vitally important role with only one difference: if in Soviet times they supplemented the economic order, in the post-Soviet period, there was almost a complete substitution of formal interactions with informal ones. Now that the totalitarian regime has fallen, “the panoptical control of the authoritarian state transforms into the individual responsibility of community members” (Хестанов, 2003). The patrimonial order provides a unit of social organization in a “weak” state. Informal economic activities in the post-Soviet period thus gain utmost importance for daily survival. The economic vacuum that was created by the weakening and ultimate collapse of old state institutions, together with destructive wars and conflicts, has given new impulse to “rooted” social relations and personal support networks. In this dubious context, another main characteristic of economic reality is that aspiration to political activity and to power appears in Armenia (and other regional communities) as more of

a means of legitimate access to social goods rather than an opportunity to change society for the better. In this context, power is the effort to legitimize one's advantages within the social structure. The inseparability of the public-political and private spheres in the communities under study has produced new forms of patrimonialism, and as a result, the state is governed like a private possession of the ruling elites (Fisun, 2012).

### Corruption and *Dysfunctional Markets*

There are some cultural dimensions of corruption and informality. In some cases, shadow (informal) economic (re)distribution and *clientelism* at the most minimalist level function as the last refuge of democratic relations (Mars and Altman, 1983), namely, the so-called *moral economy*, or *peasant communism* (Scott, 2003, p. 541–544). However, corrupt state institutions and law enforcement significantly increase social cynicism. During the post-Soviet transition to a market economy, in the face of weak state institutions and the failure of the Soviet-style welfare state, claims of representatives of state agencies (law enforcement, judges, and academics) to informal incomes become an indisputable norm in Armenia. The moral economy of corruption places these relations in the wider context of the “corruption complex” and emphasizes their everyday nature and a certain legitimacy recognized by the victims of extortion. This set of complex relations is insensitive to the type of political regime.

Everyday discourses on bribery and evaluations of the phenomenon are contradictory and inconsistent and refer to moral categories: while cruel bribes imposed by regular citizens are condemned, stealing from the state is considered not only irreprehensible but also heroic (this value is certainly inherited from the Soviet era). The metaphors of “nobody's property (*nicheinoe*),” “governmental pie” (*kazyonnyi pirog*), and “feeder” (*kormushka*) have remained current even after the collapse of the

USSR (Голосенко, 1999). The Soviet jail subculture reflected a certain social reasoning and built a specific hierarchy of crimes: the most honourable prisoners were those sentenced for “stealing Socialist property.” This factor would make it easy for them to become “big shots” in structures much larger than a single common cell. In Soviet times, this was one of the ways of overcoming the strong ideological domination by developing alternative thinking. This subculture was immensely popular among common people. It is symbolic that the names of Armenian business magnates, oligarchs, although they had already become members of parliament, were more like prison nicknames: examples of this are the Armenian magnates “Dodi” Gago, “Grzo”, “Tzaghik” Rubo, “Lyfik” Samo, and “Nemets (German)” Rubo.<sup>1</sup>

In this context, exchanges that are illegitimate from a legal standpoint are quite legitimate from the viewpoint of customary law. The discourses about corruption and stealing are therefore dualized or even multiplied. Usually, authority as a resource (as a way to pseudo-legitimate corruption) is not questioned in the internal discourse at all. In such a semantic space, officials’ crimes of different degrees tend to become a norm of the state routine.

At the same time, in nation states that are not isolated from the democratic world and, moreover, have officially claimed to be democratic, the formal language of the political culture is liberal-democratic. It is possible to observe the distinct dividing line between legal and moral normativity, which leads to constant conflicts in the process of the liberalization of the economic structure. This often engenders ideological and bureaucratic chaos and creates a fertile ground for manipulative approaches equally towards both traditional rules and liberal values. This kind of manipulation coupled with extreme, systematic corruption transformed the previous Armenian political regimes into a mere imitation of democracy.

### Oligarchic Structure and Political Clientelism

Business integrity is a critical challenge in Armenia, as Christoph Stefes (2006, p. 29) has detailed. As in many post-Soviet states, the merger of political and economic elites interferes with equal opportunity, fair play, and anti-corruption programmes. As in Russia, the formation of oligarchic structures in Armenia and the CIS countries was facilitated by certain triggers: 1) the lack of a legal framework for new capitalist-style economic

activity and 2) the so-called “voucher privatization”, implemented according to IMF directives (Петросян, 2019). Because Armenia was involved in the processing industry and technology in the USSR, the oligarchic groups in Armenia structurally formed around *siloviki* (primarily defence ministers and representatives of internal affairs, as well as managers of transport communications, including at Zvartnots airport). Initially, the emerging oligarchic structures in economic terms were focused on export-import operations, food industry products, and humanitarian aid. One politician—Vano Siradeghyan—was central to prosecuting post-communist criminals in Armenia. By the mid-1990s, some entrenched politicians (some of them with a Soviet SPSU nomenclature background, who promptly camouflaged themselves as national actors) and local governors had developed several overlapping strategies to circumvent the competition originated by the free market. In Armenia, multiple blockades from neighbouring countries aggravated this process, which resulted in neo-patrimonial political capitalism of a protectionist nature. The merging of the business and political spheres engendered patron-clientelism in the polity. On a regular basis, Samvel Alexanyan and other oligarchs, such as Gagik Tsarukyan and SAS supermarket chain owner Artak Sargsyan, used their influence over their employees to help former government candidates get votes during elections.

However, things changed after the 2018 Velvet Revolution in the country. Kinship networks are one of the many bases of bribery and corruption, among other types of informal exchanges. These are types of *strong ties* (Granovetter, 1983), and among them, along with kinship, is friendship. Friendship acts in a way as a quasi-familial structure to form a loyalist’s network, a circle of trust. For instance, ex-president Serj Sargsyan’s (as well as other officials’) classmates and friends receive exorbitant privileges.

Before Pashinyan became prime minister, a group of businesspeople and authorities fled the country, presumably out of fear of being investigated. One of those individuals was the ex-president’s brother Alexander Sargsyan, whose reputation was that “everyone who had ‘business’ with him knows that he always demands his 50 percent without investing even a penny.” His nickname in Armenian is *Hisun-Hisun* (“50/50”), leading to his moniker of “Sashik-50 percent.” Sashik’s justification for demanding a large share of business profits was the classic post-Soviet offering of “protection” (*kry-*

1 In some cases, there are various explanations for the origins of the nicknames. “Dod” in Armenian slang is “stupid”. Perhaps, in this case, this word has a positive connotation, in the same way that Ivan the Fool is a key positive hero in the Russian fairy tale. Khachatur Sukiyan is called “Grzo” by association with a fellow villager. “Tzaghik” (“flower”) Rubo has a network of flower shops named “Brabion”. “Lyfik” Samo’s nickname comes from the Russian word *lifchik* (“bra”): In Soviet times, he used to have a shadow workshop for the production of bras.

*sha*) for that business. In short, he exploited his close connections to the inner sanctum of the ruling clan to embezzle national and private resources. He was reviled in Armenia.

### Tycoons and “Heroes”—Veterans of Karabakh War

Immediately after the Velvet Revolution, the National Security Service (NSS) targeted the large supermarket sector. Masked NSS officials stormed the “Yerevan City” supermarket conglomerate, owned by oligarch and MP Samvel Alexanyan, who had made a significant financial electoral contribution to former president Serzh Sargsyan and the RPA [Republican Party of Armenia]. It surfaced that “Yerevan City” as well as eleven other major retail chains were committing fraud in their accounting and avoiding paying taxes. In Armenia, for a small business with a turnover that does not exceed 240,000 drams, there is a simplified taxation scheme: instead of paying a certain VAT, they pay a turnover tax of two percent. The supermarket and retail owners took advantage of this and had registered hundreds of fake individual “entrepreneurs” to make it seem that their enterprise was a set of small businesses to pay low taxes. This scheme had been in use for years and had caused millions of dollars in losses to the Armenian state. The previous heads of law enforcement and the tax authority, Vladimir Gasparyan and Vardan Haruthunyan, certainly knew about this arrangement and most likely supported it. The NSS called in for questioning practically all of the officials who had any associations with retail conglomerates. In the end, Alexanyan left the RPA parliamentary faction, and his case was resolved by his willingness to cooperate with the investigation and provide reimbursements. There have been hundreds of scandals in a similar vein since the 2018 revolution.

Revolutionary prime minister Nikol Pashinyan ordered a series of raids and arrests that predominantly targeted members of the RPA. Although it is not especially constructive for society at large when a new administration uses its new powers to comprehensively attack a former administration, the Armenian government in this case needed a clean sweep. For example, on June 14, 2018, the NSS arrested General Manvel Grigoryan, a senior official in the Yerevan city government, which was then controlled by the RPA. Grigoryan was a Karabakh fighter and the head of Erkrpah, Armenia’s largest organization of war veterans. Prosecutors stated that Grigoryan misappropriated state goods and donations for the army. He was arrested after the NSS released footage of the raid on his home where large quantities of weapons, food, and ammunition were found and confiscated. Items discovered on his property included vehicles meant for the military and, rather astoundingly, donated food items

for troops that he was apparently feeding to animals in his private zoo. For decades, the Grigoryan “clan” had served as a symbol of ubiquitous corruption, lawlessness, and systemic violence. They used to rule the city of Etchmiadzin as a private neo-patrimonial fiefdom. While representatives of the former authorities have accused the new government of a political vendetta, affiliation with a certain political party was actually a key mechanism of that kind of state-sponsored theft and plunder.

### Conclusion

Corruption was one of the critical reasons for the recent revolution in Armenia. The country is now fighting corruption with a case-by-case formula with all the investigative bodies at its disposal. The Ministry of Justice has an anti-corruption strategic plan for 2019–2022. The main directions are the prevention of corruption, investigations of corruption, and anti-corruption education and awareness. However, Pashinyan’s administration has been criticized for not implementing institutional changes in the fight against corruption. In November 2019, the highly ineffective ethics committee was replaced with a new committee for corruption prevention. The decision to create the committee was made in 2017 but was delayed because of the revolution. The candidates were proposed by the government, parliament and supreme judicial council. On November 26, 2019, Haykuhi Harutyunyan, suggested by the opposition party “Bright Armenia”, was elected as head of the committee. This committee has no legal authority and will not be able to prosecute; instead, it will examine declarations from high-ranking officials and establish conflicts of interest. The anti-corruption body that will have legal authority will be set up only in 2021 with a separate corruption court.

The reduction of informal exchanges and the fight against corruption and crime, as the Georgian case clearly showed, is directly related to national security. Steps have been taken in the right direction over the past year: abuses of office by high-level officials have been publicly revealed, and major criminal cases have been brought to court. However, some parliamentarians, institutions, and, without a doubt, some oligarchs persist as obstacles to Armenia’s genuine democratic reform. Nevertheless, the new rules of the economic game—in particular, the strong call for more transparency by the new Armenian government—have resulted in a reduction of the shadow economy to the benefit of the treasury. The process is underway.

*See overleaf for information about the author and bibliography*

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## Formal-Informal Relations in Azerbaijan

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DOI: [10.3929/ethz-b-000400500](https://doi.org/10.3929/ethz-b-000400500)

### Abstract

In the neopatrimonial context, formal institutions cohabit the governance space with informal institutions. Azerbaijan is a good example of how formal institutions such as referendums, elections and the judiciary are used as window dressing behind which patrimonial relationships thrive and proliferate. While written rules act as a façade, they perform useful functions for the regime, allowing the ruler to create the appearance of legality and maintain autocratic control of the system. However, the patrimonial informality (or informalities) that underpin the neopatrimonial system and govern actual behaviour ultimately undermine the formal ‘institutions as constraints’ basis, which is necessary for democracy and the impartial rule of law to take root.

### Formal-Informal Dichotomy

Nearly three decades after the breakup of the Soviet Union, scholars still debate the relative weight of formal vs. informal institutions in post-communist societies. While many post-Soviet states have adopted the formal trappings of Western-style democracy and liberal constitutionalism, there appears to be a discrepancy between formal (written) laws and informal rules that guide the behaviour of actors in practice.

Informal rules seem to be more pronounced in those post-Soviet states where patrimonial-communist legacies have left a deeper imprint on their society. Patrimonial communism denotes the model of a communist one-party regime in Russia and other Soviet republics with a prevalence of pre-communist authoritarian-institutional legacies of personalistic rule and patron-clientelistic practices without a well-developed and professional bureaucratic administration (Kitschelt et al. 1999, 52). Patrimonial communism is contrasted with the bureaucratic-authoritarian type of communist rule in the Czech Republic and in former East Germany (GDR), where the establishment of the [Weberian-style] legal-rational bureaucratic apparatus predated the instalment of communism.

Azerbaijan exhibits the extreme form of the (neo) patrimonial ideal type. Patrimonial and patron-clientelistic relations with roots in both the communist era and pre-communist past permeate all capillaries of political life. Here, the formal bureaucratic structure modelled after the Western-style rule-of-law system and professionalized bureaucratic apparatus from where it was borrowed co-exist with (and possibly complement) the patrimonial rules of the game that prevail. Based on personal authority, rather than legal rationality and the supremacy of impersonal laws, patrimonial rule rests on the ruler’s maintenance of personal loyalty in exchange for particularistic favours to his clients, lieutenants and supporters.

Under (neo)patrimonialism, the formal structure is officially grounded in the principles of rational bureaucracy and legal authority. Legal-rational authority, according to Weber, implies that

“the legitimacy of the power holder to give commands rests upon rules that are rationally established by enactment... Orders are given in the name of the impersonal norm, rather than in the name of a personal authority; and even the giving of a command constitutes obedience toward a norm rather than an arbitrary freedom, favor, or privilege. The ‘official’ is the holder of the power to command; he never exercises this power in his own right; he holds it as a trustee of the impersonal and ‘compulsory institution’” (Weber 1946, 294–295).

However, under neopatrimonialism, legal-rational rule is adhered to only nominally, as in practice, patrimonial logic dominates and supersedes the legal-rational bureaucratic authority structure. Patrimonial relationships are regulated “through individual privileges and bestowals of favor” (Weber 1946, 198). While the neopatrimonial system is constituted by these two domains, the formal constitutional-legal order serves largely as a façade that conceals and embellishes patrimonial relationships that undermine formal institutional constraints and thus are inimical to democratization and judicial independence.

In this respect, neopatrimonialism is akin to the Potemkin village model (Pisano 2018), wherein formal rules and procedures are used *ex post* to confirm and codify informal decisions and agreements made within the elite network *ex ante*.

“A Potemkin village is a simulation: a facade meant to fool the viewer into thinking that he or she is seeing the real thing... [to] describe gaps between external appearances and underlying realities. In the Russian language, the genus



includes species such as *pokazukha* (window-dressing), *imitatsiia* (mimicry...), *feik* (doctored news images or reports)...” (Pisano 2018, 278).

## Evidence

Below, I use constitutional referendums, parliamentary elections and judicial independence (or the lack thereof) from Azerbaijan’s recent past to illustrate the interplay of formal-informal institutions in the country. It seems that Azerbaijani leaders appear to value formal institutions for their property to create a sense of conformity with constitutionalism, yet they in fact violate the impersonal nature of formal ‘institutions as constraints’. Rules are amended or circumvented by the incumbent leader in pursuit of his interests in preservation and the concentration of power as well as the succession of the presidential office within the ruling family. However, formal institutions are not mere window dressing or a showy façade to disguise the realities of patrimonial relationships; they perform important instrumental functions for the regime. Constitutions that bestow most powers upon the presidency define the locus of the ruler on the institutional map and the degree of power concentration in the executive; they enable the ruler to exercise autocratic control of the state apparatus and legitimize his and his elite network’s grip on power.

## Referendums

A referendum held in September 2016 approved the amendment to the 1995 constitution that extended the president’s term of office from 5 to 7 years and created new posts of vice-presidents. In the following year, President Ilham Aliyev appointed his wife, Mehriban Aliyeva, a leading figure from the powerful Pashayev group, as First Vice-President. Another approved constitutional amendment granted the president the right to dissolve parliament.

The rivalry between the well-established group led by presidential chief-of-staff Ramiz Mehdiyev (the “old guard”) and the Pashayev group and centred around First Lady Mehriban Aliyeva (née Pashayeva) has been a mainstay of Azerbaijani political life in recent years (Adilgizi 2019). Over the years, the Pashayevs created and expanded a business empire and accumulated power by appointing their own cadres to ministerial positions, where they clashed with Mehdiyev’s “old guard”. The “old guard” comprises senior figures from the 1990s, many hailing from the Nakhchivan province, who were loyal allies of ex-president Heydar Aliyev. When Ilham Aliyev succeeded his father in 2003, he kept these influential politicians from his father’s era to prevent the elite from potentially conspiring against him as he consolidated his personal power. However, although there were no visible disputes, the loyalty of the old guard members to

the president (and especially First Lady Mehriban Aliyeva with her presidential power ambitions) was arguably under suspicion (Safarova 2020).

In October 2019, President Aliyev began a major reshuffling of his government and presidential administration, purging officials and public managers from the older generation. In fact, the reshuffling commenced last summer with the dismissal of the Minister of Internal Affairs, Ramil Usubov, who was an influential figure in the ‘old guard’ group. As a result, a number of prominent figures were demoted from their senior-level posts, notably, Ramiz Mehdiyev, Novruz Mammadov (Presidential Foreign Policy Advisor and former Prime Minister) and Ali Hasanov (Presidential Assistant for Public and Political Affairs). Mehdiyev, a communist-era *apparatchik* and the ‘grey cardinal’ of Azerbaijani domestic political affairs, commanded considerable political power and had extensive business interests. Purges seem to have disproportionately targeted political heavyweights from the Mehdiyev-led ‘old guard’, following the logic of inter-elite rivalry described above.

Speculations abound that the real cause behind the government reshuffling has been economic, as the Azerbaijani economy was hard hit by the oil price slump starting circa 2014. As the size of oil revenues has shrunk, it has become more difficult to accommodate the growing appetites of various rent-seeking groups. Resource rent scarcity has animated and intensified competition between rival ‘*klanlar*’ (the Azerbaijani word for ‘clans’), the term used by media outlets and the public to refer to influential elite networks led by a powerful individual politician or businessperson (an ‘oligarch’), often cemented by family ties, regional affiliations or shared business interests (Guliyev 2012). According to popular rumours, the demotion of the once-powerful ‘old guard’ group (Mehdiyev-Usubov-Hasanov) from the elite network signified the strengthening of the position of the first lady’s Pashayev group and her personal power ambitions to serve as the country’s first female president.

In fact, the use of referendums has become an almost routine practice to bend rules-as-constraints in furthering the ruling elite’s informal power-transfer designs. There have been two other referendums since the adoption of the constitution in 1995, each held in anticipation of a power succession.

In late August 2002, a referendum approved amendments including the elimination of the proportional representation (PR) component of the electoral system (25 deputies were elected through party lists and 100 in single-member constituencies). However, most importantly, the constitutional amendment changed the order of succession in the case of a president’s incapacitation. According to the new rule, if the president resigned before finishing his term, the prime minister would

take over the president's office. [In 2016, the Constitution was amended to put the First Vice President as first in the line of presidential succession.]. It was clear at that time that the constitutional change was motivated by President Heydar Aliyev, whose health deteriorated, to transfer power to his son, Ilham. Ilham Aliyev had already been appointed Prime Minister before the president called for a referendum. The referendum served to clear the way for the dynastic transfer of power (Eurasianet 2003).

Somewhat similarly, another referendum in 2009 approved the abolition of term limits, which allowed Aliyev to run for presidency in 2013. The decision to eliminate term limits aimed to dissuade other elite groups from plotting against the incumbent president, as "it sent an unambiguous signal about regime and elite continuity", while reappointments of most senior minister and officials bolstered their pro-regime loyalty (Ahmadov 2011).

### *Parliamentary Elections*

On December 5, 2019, President Aliyev decreed the dissolution of the parliament and set a snap election date for February 9, 2020. In a mockery of checks and balances, it was the parliamentary majority that asked the president to dissolve the parliament citing the incompatibility of the current parliamentary composition to the president's ambitious plans to "speed the course of economic reform" (RFE/RL Azerbaijani Service 2019).

Azerbaijan's rubber stamp parliament is dominated by members of the ruling party and their proxies. The decision to hold an early election took everyone by surprise and paved the way for speculations about the implementation of another elite-orchestrated scheme of the dynastic transfer of power, this time from the president to the first lady as discussed above. According to this view, a snap parliamentary vote will cleanse the parliament of 'old guard' holdovers and replace them with MPs who will be loyal to the now omnipotent Pashayev network (BBC Azeri 2019). According to an opposition leader Ali Karimli, the move to dissolve the parliament "is not about any reforms at all, and seeks [instead] to concentrate all power and resources in the hands of the Pashayevs by extending their influence in the legislature" (Agayev 2019).

It is an open secret that there exists a certain informal practice of 'shortlisting' candidates approved by the presidential apparatus. Until recently, it was popularly believed that Ramiz Mehtiyev himself would personally check and pre-select each individual candidate before compiling a list of suitable candidates whose victory would be subsequently confirmed by what would appear to be 'free and fair' parliamentary 'election'. In an authoritarian context, elections are largely a *pro forma*

show to legitimize and cover up what has already been decided before the election takes place. In 1995, during the first parliamentary election campaign, the opposition camp claimed that the list of winning candidates was allegedly predetermined (OSCE/UN 1996). In the November 2015 parliamentary elections, the results were predictable to such an extent that the leader of an opposition bloc, Jamil Hasanli, was able to accurately predict the identity of all but 5 (out of 125) MPs that matched the list of candidates he posted one month prior to election day (BBC Azeri 2015).

### *Judicial Independence*

In discussing different models of courts in authoritarian contexts, Solomon (2015) distinguishes a hybrid model that fits Russia and other post-Soviet states. In these countries, courts are established and appear formally independent, but informal practices ensure that court decisions favour the interests of the governing regime. In post-Soviet authoritarian regimes, courts perform crucial functions of political control and legitimacy. They allow authoritarian leaders to secure legitimacy, to appear to have a normal democratic constitutional system, and "to cultivate good reputations and public relations while retaining control over the administration of justice when needed" (Solomon 2015, 433).

In Azerbaijan, executive interference in court rulings is pervasive; courts generally lack independence and are prone to corruption. According to one assessment, Azerbaijan's criminal justice system "exhibits a high degree of external influence on the judiciary, a certain degree of corruption and an informal policy of punitiveness in relation to dealing with people accused of offences" (Shahbazov and Muradov 2019, 2). The Azerbaijani Bar Association, controlled by the president, disbars arbitrarily independent members—most recently a lawyer named Shahla Humbatova—who are brave enough to defend sensitive cases involving the arrests of human rights activists and political prisoners (CRD 2019).

### **Conclusion**

In this Potemkin village hybrid of formal and informal institutions, informal patrimonial relationships take precedence over formal ones. Formal institutions are largely window dressing, but they are not irrelevant. Formal legality provides a modicum of constitutional legality and democratic legitimacy. They serve the instrumental value for the regime of signalling its conformity with accepted norms of good behaviour and package informal deals and intra-elite power arrangements. The case of Azerbaijan demonstrates how formal institutions are used to confirm informal backstage arrangements *post factum*. Formal compliance with the letter of constitu-

tional order and other formal legal norms acts to cement informal power constellations.

Moreover, informal practices are ubiquitous, and it would be faulty to assume that a dearth or weakness of formal institutions translates into some sort of institutional emptiness or institutional void. In contrast, much of the actual workings of the system are done through

informal rules, norms and practices that are recognized, accepted and practised. They structure the actual relations and expectations of actors, but further research is needed to better understand the multiplicity, structure and mechanics of operation of various informal institutions and practices.

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## From a Presidential to a Parliamentary Government in Georgia

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DOI: [10.3929/ethz-b-000400500](https://doi.org/10.3929/ethz-b-000400500)

### Abstract

Georgia has been undergoing the process of democratization for several decades now. In this process, an important but often overlooked factor is the interplay between formal and informal institutions. The pessimistic view believes that informal institutions are the key to understanding Georgian politics, whereas a more optimistic view focuses on formal institutions and disregards the former's significance. This article juxtaposes both phenomena and analyses how incumbent regimes in Georgia have tried to reform the political system. It is argued in this analysis that one has to consider the incumbent's goal to maintain political power. Consequently, the analysis of two illustrative cases, i.e., moving from a presidential to a parliamentary system and reforming the electoral system, suggests that formal institutions shape the informal practices of political actors and that these informal practices influence what formal rules get adopted or how they are interpreted.

### Introduction

Students of democratization have long hypothesized that constitutions can be either perilous for the transition process from authoritarian rule to democracy or conducive to this transformation. Often, parliamentary systems are considered as more favourable for the process of democratization than a presidential government system (Linz, 1990). Therefore, when countries such as Georgia change their constitution and move to a parliamentary government, hopes for democratic consolidation are naturally raised among observers. However, one cannot overlook the context in which such changes occur. In post-Soviet countries, including Georgia, there is always an interplay between formal rules and informal politics, and which one of these two prevails is not always clear. Consequently, constitutional changes cannot be interpreted only as positive steps towards democracy. Rather, the role of new sets of formal rules should be understood within the juxtaposition of formality and informality.

This article explores Georgia's experience of constitutional changes and provides supporting evidence for how informality leads to institutional reforms and how these reforms, in turn, influence the behaviour of actors. For this purpose, two illustrative cases are analysed: Georgia's transition from a presidential system to a parliamentary government—a reform that was initiated under the rule of President Mikheil Saakashvili in 2012—and their electoral system reform, which also requires constitutional amendments, as it is a transition from a mixed electoral system to a fully proportional vote made possible by abolishing the single-mandate majoritarian vote. The Georgian political elite has been discussing the latter reform for the last two decades, but the actual changes have been inhibited due to incumbent regimes' considerations on how to maintain power.

The following sections argue that these considerations are the key to understanding constitutional changes in Georgia. When the formal rules are too rigid to prevent power maintenance, they are loosened, whereas when the rules are favourable for power maintenance, the incumbent ensures avoiding formal changes even if the short-term costs are high.

### From Presidents to Parliaments: Why and How the Constitution Matters in Georgia

The power dynamics between the parliament and president in Georgia have been similar to a roller coaster. Following the 2003 Rose Revolution led by Mikheil Saakashvili, the constitutional changes were mostly oriented at consolidating the political power in the hands of the president. For this, President Saakashvili was often criticized and accused of “creating a constitution for himself” (Kuprashvili 2010). However, such changes could not overcome the rigid rule preventing a single person from being elected as a president more than twice. This formal rule is simply so strong and widely upheld that even a charismatic leader such as Saakashvili could not reasonably justify his staying in power after the second term. On the one hand, this indicates that at least some formal rules are untouchable and that they do influence the course of action of the incumbent. However, in the push-and-pull between formality and informality, rules can change to reflect the interests of the powerful. For Saakashvili, such a change would have been to remain in power after his second presidential term by assuming the office of prime minister, made possible by changing the constitution and introducing a dual executive system with the increased power of both the prime minister and the parliament at the expense of the president. Consequently, critics of Saakashvili feared that, similar to Vladimir Putin in Russia, he would still remain

in power after his second presidential term (Kuprashvili 2010). Of course, these fears assumed that he did intend to stay in power, and this assumption was not ungrounded. Even though Saakashvili did not manage to take up the role of prime minister, his political ambitions have not disappeared: he became a politician in Ukraine and to this day remains the chairman of his party, the United National Movement (UNM).

Unfortunately for Saakashvili, the constitutional changes turned out to be insufficient for him to maintain the political steering wheel of Georgia's political system. However, these changes paved the way to another person's informal influence. In 2012, the UNM was defeated by a newly established political party, the Georgian Dream (GD) party, founded and led by Georgia's wealthiest person, billionaire Bidzina Ivanishvili, whose fortune at the time was equal in value to roughly one-third of the country's annual GDP (Forbes 2020).

The way in which the power dynamics unfolded in Georgia after the 2012 parliamentary elections is, in fact, more interesting than Saakashvili's failed attempt at retaining political power. The increased political weight of the prime minister's institution led to an unexpected development in terms of what some authors call the oligarchic system (Kononczuk, Cenusa and Kakachia 2017). Ivanishvili only served as the prime minister for approximately 13 months in 2012–2013 and eventually resigned without retaining any formal political or party functions. However, he was still "widely perceived as the most influential political actor in Georgia" (Kononczuk, Cenusa and Kakachia 2017), essentially controlling Georgian politics. His informal method of governance included dictating major political decisions, as well as, in essence, appointing and firing prime ministers. The 2016 elections further increased his influence, as the GD party managed to obtain a supermajority in the parliament, which is necessary for adopting constitutional changes. Although in May 2018, Ivanishvili assumed the formal position of the chairman of the GD party (Agenda.ge 2018), this move should not be seen as formal rules prevailing informal practices. Instead, this development is better understood as a signal for voters that he is not abandoning politics or his own party, even if few would doubt it. With this new position, there is now a stronger link between his figure as an influential and wealthy businessman and the GD party.

What Ivanishvili's experience demonstrates is that in a formal system where the prime minister's institution represents the locus of power, the behind-the-curtain rule is possible. This rule is sufficient to informally control the political party that holds the majority in the parliament and to appoint or remove prime ministers. Had Georgia been a presidential system, it would not have been as easy or, perhaps, even possible to exert

a similar amount of influence over a popularly elected president. The example of President Giorgi Margvelashvili supports this argument. Even though he was picked by Ivanishvili as a candidate, and even if as president he did not have much formal power, Margvelashvili would often find himself in conflict with parliament and, by extension, with Ivanishvili. For example, Margvelashvili would use his veto power to promote public discussions of certain legislative changes, although the parliament could easily overrule them. One such case occurred in 2016, when the president rejected a referendum to define marriage within the constitution as the union of a man and a woman (Agenda.ge 2016). Eventually, the change was adopted by the parliament as part of a package of amendments.

Furthermore, the GD party introduced constitutional amendments in 2017–2018, according to which, from 2024, the general electorate will no longer directly elect the president. Instead, an electoral college of 300 members was set up, including "all members of the Parliament of Georgia and of the supreme representative bodies of the Autonomous Republics of Abkhazia and Ajara," as well as "the representative bodies of local self-governments" nominated by their respective political parties (Constitution of Georgia 2018). As a result, controlling the largest political party by virtue of "the circular flow of power"—a term associated with Stalin's rise to power in the Communist Party of the Soviet Union (Daniels 2007)—implies controlling who will be the president in addition to who will be the prime minister.

### **Voting Rules: Formal and Informal Bases for Success in Elections**

The importance of voting procedures cannot be underestimated even in the debates of presidentialism versus parliamentarism (see Horowitz 1990). How voters elect representatives to the legislature is important even in a setting where informal rules have high significance. In this sense, informality also pervades political party competition. Although normatively, there is no single best electoral system, some voting rules might facilitate informal practices. This is clearly visible in how Georgian voters elect their parliament. The current system includes 77 MPs who are elected through proportional party lists and 73 MPs who are elected in single-mandate constituencies with a majoritarian vote. Similar to Saakashvili, Ivanishvili also seems to operate with the intent of preserving political power by tampering with formal rules.

There is a widespread understanding in Georgia that majoritarian voting in single-mandate districts increases the chances of the incumbent party maintaining power. There are two reasons for this belief. First, this system can lead to a situation where a party that does not have

the support of the majority of voters (in the proportional voting) may nonetheless win a majority in the parliament. In fact, this is exactly what happened in the 2016 parliamentary elections; the GD party received 48.7% of the popular vote, but because their candidates won in 71 out of 73 majoritarian districts (and the two other candidates openly supported the GD party), the GD party gained a supermajority of 115 parliamentary mandates out of 150 total seats. The second reason, however, is arguably more important and intertwined with informal practices. On the one hand, those MPs who gain their mandate through such a vote tend to be less active than those who reach parliament via party lists. On the other hand, all too often, directly elected MPs seek a parliamentary mandate to ensure that their business interests are protected. Furthermore, it appears that they are repeatedly successful, not because of their personal popularity and integrity, but because of their ability to control power networks in their districts. Indeed, they often switch parties, depending on who is in the government, to ensure that their influence is maintained. Such clientelistic practices coupled with personalization of politics are perilous for democracy and inhibit healthy and programmatic party competition (see Kitschelt 1995).

As a result, no political party in power has ever been partial to changing the electoral system and adopting a fully proportional vote. In fact, Saakashvili's UNM, for example, decreased the number of seats in the Georgian parliament from 225 to 150 at the expense of seats allocated to proportional representation. However, following the 2017–2018 constitutional amendments, the GD party agreed that from 2024 onwards, all Georgian MPs will be elected in a single multimember constituency based on party lists. Nevertheless, the opposition and part of the voters would like to see these changes occur earlier in the October 2020 elections. This was one of the main demands of the large-scale protest rallies in June 2019.<sup>1</sup> It seemed that the GD party conceded and promised to amend the constitution again, ensuring that the 2020 elections would also be fully proportional. However, in November 2019, the bill did not receive the necessary two-thirds majority of the MPs. Interestingly, some of the GD party MPs, who had originally supported and even co-initiated the bill, did not vote for it. Consequently, this is where the juxtaposition of formal and informal politics should be considered against the background of the GD party's willingness to hold on its grip on power.

It can be assumed that if the elections were conducted in a single multimember constituency through proportional party lists, it would be highly unlikely for

any single political party to gain a majority in the parliament. Most likely, a coalition would be necessary to form a government, which has never happened in Georgia's political history (Agenda.ge 2019a). Consequently, it is likely that the GD party made the promise of abolishing the majoritarian vote in midst of the political turmoil but then realized that such changes would lead to its loss of power. In this situation, the GD party used formal and informal practices to break out of the deadlock.

Three MPs voted against the bill on constitutional amendments, and all of them are majoritarian MPs. A total of 37 MPs abstained from voting, and 31 of them are majoritarian MPs. Finally, seven MPs were not present, and five of them are majoritarian MPs. All 47 of these MPs are GD party members. The day after the vote, the speaker of the parliament advised the opposition to prepare for the elections, emphasizing, "Public trust and not an election system wins the race" (Agenda.ge 2019b). Downplaying the importance of the electoral reform was only one part of the GD party's strategy in legitimizing the decisive vote against the promised electoral reform. A more important part was utilizing the formal rules; the GD party claimed that their party has a high degree of internal democracy, and thus, some majoritarian MPs did not feel that the reform was justified. Consequently, although Ivanishvili "tried his best" to convince them, apparently, he was not sufficiently convincing. By emphasizing how widespread majoritarian voting in single-mandate districts is in Western democracies, the GD representatives tried to legitimize such voting procedures and appeal to the closer linkage between voters and their direct representatives.

Furthermore, the GD party has claimed that the solutions with which the opposition parties came up, e.g., a German-style electoral system but with a fixed total number of seats in the parliament, are against the constitution of Georgia. Since the Georgian constitution guarantees the mixed system for 2020, the GD party has drawn heavily on these formal rules and on how constitutional amendments work. However, the GD party's interpretation of the formal rules is undermined by their own proposal to drop the number of majoritarian MPs down to 50 to make the rules fairer, as this proposal is no less contradictory regarding the constitution.

All this resembles a carefully elaborated scheme. No independent observer of Georgian politics would believe the GD party's narrative that Ivanishvili did not manage to convince some of the majoritarian MPs. As a result, the most realistic interpretation of events is that Ivanishvili informally pulled the strings to vote down the bill on the amendments even if this meant a great political

<sup>1</sup> The protests erupted after the unexpected event of a Russian MP from the Communist Party, Sergei Gavrillov, addressing the delegates of the Inter-parliamentary Assembly on Orthodoxy (IAO) in Russian from the seat of the speaker of the Georgian parliament.

cost (over a dozen GD party MPs have quit their factions in the parliament since the vote). Later, however, the formal rules were used to justify why and how further action on ensuring fully proportional elections in 2020 would not be possible.

## Conclusion

Overall, Georgia's experience of constitutional changes has focused on the shift to a parliamentary government, and the way that the primary representative body should be elected suggests that the interaction between formal rules and informal practices can be seen as a vicious circle. In this context, it becomes apparent that political actors consider both formal rules and informal practices in their strive to maintain or gain access to power. Therefore, with this goal in mind, political actors try to modify the formal rules to their own advantage and thus avoid any changes that would pose a threat to their goals. Consequently, the initiation of constitutional amendments to increase the parliamentary and prime-ministerial powers was highly likely to be driven by the considerations of President Saakashvili. Although this plan did not work out, the changes

were continued by Ivanishvili's GD party government. In this case, Ivanishvili bent the existing rules and introduced new rules to best guarantee his informal rule from behind the curtain. However, the fact that formal institutions do matter is demonstrated by the fact that these actors cannot completely disregard them in the first place, which was clearly shown in the context of the ongoing electoral reform. For the GD party, the switch to a fully proportional electoral system means losing, if not all, at least a significant portion of their power. Therefore, even though the decision to backtrack on their own promise was a highly unpopular step, they nevertheless had to discard the proposed changes that would have threatened their firm grip on power in the future. As a result, while analysing Georgian politics, neither formal nor informal institutions can be disregarded. Formality and informality are mutually constitutive; formal rules influence how political actors design their strategies to maintain power, while these strategies simultaneously involve the modification of formal rules as well, i.e., what rules could be perilous or conducive to achieving the ultimate goal.

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Layout: Cengiz Kibaroglu, Matthias Neumann, and Michael Clemens

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