



## The New Georgian Constitution: Reading Saakashvili

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It says much for Mikheil Saakashvili's reputation for unpredictability that a new constitution which deprives him of much of his power is being seen as a machination to hold on to that power.

The Georgian President has heralded the constitutional changes, backed by a vote of 112-25 in Parliament on October 15, as "fully - and I emphasise on 'fully' - in line with the European tradition" of parliamentary democracy<sup>1</sup>. However, his critics have accused him of seeking to maintain his influence for years to come, by taking up the strengthened premiership after his final presidential term expires in 2012. In a neat piece of political irony, this would be exactly the path trodden by Vladimir Putin, his Russian archrival.

### Undoing his own work

The new constitution removes a raft of powers and influence from Georgia's President and hands them to the Prime Minister and (to a lesser extent) Parliament. Much of this is simply President Saakashvili undoing his own work. After the peaceful Rose Revolution swept him to power in late 2003, he amended the country's 1995 constitution to centralise power in the presidency.

His argument was that Georgia's turbulence and instability made it vital to have a strong leader, an argument which President Saakashvili reiterated in September when he said that it would have been "a disaster" to have the new system, with multiple centres of power and a weakened presidency, immediately after the revolution<sup>2</sup>.

Indeed the continued threats facing Georgia (read: Russia) have apparently led President Saakashvili to resist attempts to render the presidency impotent. A country, he said, which faced so many challenges needed a strong head of state<sup>3</sup>. The instinct behind that argument is one of his critics' main justifications for their claims of 'creeping autocracy' in Georgia.

In any case, the alterations will not affect his current powers. They will be phased in slowly and only take full effect when the new President comes into office in January 2013.

The biggest changes<sup>4</sup> involve the shifting of power from the President to the Prime Minister. The government – headed by a newly powerful premier, with the power to appoint and dismiss key ministers – becomes more accountable to Parliament. The President will be unable to dismiss the government and will have greatly weakened powers over day-to-day policy<sup>5</sup>. The President will also hand his power of appointing governors over to the prime minister.

### Sidelining Parliament?

President Saakashvili and his ruling United National Movement (UNM) claim that the new constitution is increasing the distribution of power between different power centres, allowing for better checks and balances. However, critics argue that the changes have simply transferred political control from the presidency to the premiership (the prime minister can now, for instance, countersign presidential decrees). Either way, they allege, Parliament has been sidelined.

Their arguments have some weight. Parliament now has only one hearing for draft laws which have been used to justify a confidence vote, as opposed to three; it will lose its power to confirm presidential choices for ambassadors; more concerning is the removal of Parliament's ability to directly monitor state spending and demand its suspension in the event of violations.

<sup>1</sup> 'Saakashvili Hails Adoption Of New Constitution', *Civil.ge* 16/10/2010. <http://www.civil.ge/eng/article.php?id=22758>

<sup>2</sup> 'Saakashvili On New Constitution', *Civil.ge* 30/9/10. <http://www.civil.ge/eng/article.php?id=22713>

<sup>3</sup> 'Saakashvili Defends President's Role in New Constitution', *Civil.ge* 4/9/10 <http://www.civil.ge/eng/article.php?id=22641>

<sup>4</sup> The constitutional amendments are available in English at <http://www.venice.coe.int/docs/2010/CDL%282010%29110-e.asp>

<sup>5</sup> Precisely, the President will no longer "lead and exercise the internal and foreign policy of the state".



Replacing the newly bolstered Prime Minister and Cabinet will also become extremely challenging. A vote of no-confidence involves a long, complex procedure requiring a high level of support. Although 40% of MPs need to agree on a confidence vote and a new candidate for the premiership, 60% are needed to overcome a presidential veto of a new candidate. The whole process can take up to fifty days – a long time in politics to retain the necessary votes.

The increase in the powers of the prime minister is dramatic, and has raised serious speculation that President Saakashvili will simply take up the post in 2013, allowing him to maintain his domination of Georgian politics for years to come. He has never explicitly denied plans to run for the premiership after his presidency.

The Venice Commission, the Council of Europe's constitutional-law body, has noted these concerns. In its final opinions on the new amendments, it waspishly referred to allegations that the increase in the prime minister's power "is motivated by reasons of personal power and not by a genuine desire for improving the machinery of government, as should be the case"<sup>6</sup>.

### Critics decry timing, complexity

The attitude of the government has also attracted heavy criticism, particularly its somewhat dismissive approach towards the Venice Commission. The Commission has been closely involved in the drafting of the new constitution, on the invitation of the Georgian government. It expected that the Saakashvili administration would wait for its final recommendations before voting the constitution into law, but Parliament convened on the very same day (October 15) that the Venice Commission's final suggestions were being discussed. A last-minute copy was sent through to Tbilisi, by which time the government was already pressing ahead.

Other detractors have pointed to the timing of the new constitution. The debates on it took place in August, the country's holiday month, and there were no publicly televised discussions of the issue. The Georgian Young Lawyers Association has accused the government of ignoring suggestions made by civil society and NGOs<sup>7</sup>. These were more or less the only alternative voices, since the UNM dominates Parliament and most opposition factions have, in any case, boycotted proceedings.

Opposition groups do bear some responsibility for the one-sided deliberations. Failing to provide a dissenting voice, or to fire up their supporters against the amendments, gave the UNM free rein over the process. Some analysts have ascribed the lack of energetic opposition to "a vast reserve of popular political apathy"<sup>8</sup> which has taken hold since the fadeout of long-running street protests in July 2009.

It is difficult to deny that there is a sense of exhaustion in Georgian politics. Attempts to unseat President Saakashvili after the disastrous war with Russia in August 2008 have failed, largely because the opposition movement had no credible, unifying figure it could coalesce around. Accusations of being too close to Moscow (with undertones of being a Kremlin agent) have stuck to some of the most prominent, such as ex-Parliament Speaker Nino Burjanadze<sup>9</sup>.

### A wolf in sheep's clothing?

Whether the muted reaction to the constitution is a good thing or a bad thing depends on one's attitude towards President Saakashvili. For those who still support him, the political sluggishness in Tbilisi reflects the UNM's popular support and the genuine desire of 'Misha' to transform Georgia into a European-style democracy. If he stood for the premiership in 2012 this would enable the continuation of his policies, and would - in any case - be a perfectly democratic manoeuvre.

<sup>6</sup> Venice Commission (2010) *Final Opinion on the Draft Constitutional Law on Amendments and Changes to the Constitution in Georgia*, 15/10/2010, para.34. [http://www.venice.coe.int/docs/2010/CDL-AD%282010%29028-e.asp#\\_ftnref1](http://www.venice.coe.int/docs/2010/CDL-AD%282010%29028-e.asp#_ftnref1)

<sup>7</sup> *Appeal of Georgian Young Lawyers Association, Transparency International Georgia and Levan Mikelzade Foundation to Parliament of Georgia* 26/8/10.

[http://transparency.ge/sites/default/files/post\\_attachments/NGOs%27%20Appeal%20to%20the%20Parliament%20of%20Georgia.pdf](http://transparency.ge/sites/default/files/post_attachments/NGOs%27%20Appeal%20to%20the%20Parliament%20of%20Georgia.pdf)

<sup>8</sup> Corso, M 'Signs of Political Exhaustion in Tbilisi' *Eurasianet* 21/10/10. <http://www.eurasianet.org/node/62213>

<sup>9</sup> 'Burjanadze Visits Moscow', *Civil.ge* 3/310. <http://www.civil.ge/eng/article.php?id=22047>



For his critics, the new constitution is a further warning that President Saakashvili is a wolf in sheep's clothing, an autocrat who plays at being a democrat to please his Western backers. The man who has crushed street protests with rubber bullets, rashly invaded South Ossetia and silenced Georgia's independent media is now seeking to prolong his regime through underhand manipulation of the constitution.

This view is too alarmist. It ignores Russia's complicity in the build-up to the August war, as well as the genuine plurality, prosperity, and freedom which now exists in Georgia as a result of the Saakashvili government's drive against corruption. In late October the international watchdog Transparency International announced that Georgia ranked 68<sup>th</sup> in the world on its Corruption Perceptions Index, just below EU member Italy and above heavyweights such as Brazil. Russia, by contrast, came in 154<sup>th</sup> place<sup>10</sup>. The lack of a meaningful political alternative owes more to squabbling and weak leadership by the political opposition than to political intimidation on the part of the UNM.

Nonetheless, Georgia's democratic deficit is real. President Saakashvili's bombastic nature and impatience with political opponents are unaffordable in a country with such a young democracy. And political leaders could easily use the ongoing threats facing the country to completely erode its fragile plurality. Russia has completely annexed South Ossetia and Abkhazia; Russian military forces remain just a few hours from Tbilisi.

The danger is that Mr Saakashvili will use these threats to consolidate his own rule, arguing that a strong leader – whether sitting in the Presidential Palace or the Prime Minister's office - is essential to lead the country through its crisis. The platitudes about balancing powers under the new constitution would be rendered meaningless.

President Saakashvili should realise that he will gain more support from the West, and thus a better shield against further Russian threats, by buttressing his democratic achievements, not by undermining them in pursuit of personal power. Changing the constitution was legal and does indeed address the country's political imbalances. But standing for Prime Minister in 2012 would make a mockery of his claims to be a force for democratisation in Georgia. When his term as President expires, he should retire with good grace.

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<sup>10</sup> Transparency International (2010) *Corruption Perceptions Index 2010*.  
[http://transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://transparency.org/policy_research/surveys_indices/cpi/2010/results)