Gender Analysis of Electoral Draft Laws

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Background

According to data from the Inter-Parliamentary Union\(^1\), as of March 1, 2018, Ukraine was ranked 145\(^{th}\) among 193 countries of the world in terms of women’s representation in its parliament, the Verkhovna Rada. The share of women in the Rada is just 12.3 percent. This is one of the lowest figures in Europe. Although certain mechanisms for ensuring appropriate representation of women in elected bodies have been approved legislatively, they fall short of properly stimulating political parties to ensure balanced representation of both genders among candidates in elections and, accordingly, among elected Members of Parliament.

What such mechanisms should be like depends in no small way on the electoral system under which the elections are held. It is no secret that the first-past-the-post election system is least conducive to ensuring balanced representation of women and men in elected bodies. In context, many countries have elaborated mechanisms aimed at increasing the share of women among elected deputies (financial incentives for political parties nominating or providing for the election of women, so-called “reserved seats” and nomination of female candidates in districts where they have a chance to be elected), it would be impossible to put most of these mechanisms into practice in the Ukrainian reality.

The proportional system with open party lists is not conducive to ensuring appropriate representation of women in elected bodies either, since voters often tend to prefer male candidates. Under this system, legislation usually provides for mandatory gender quotas, alternating gender of candidates on the electoral lists (i.e. “zipper”) and legal liability for noncompliance.

The proportional electoral system with closed lists is the most favorable one for women, since the order of candidates in the lists under this system is determined by the parties and the voters cannot influence it.

The question regarding the electoral system under which the next parliamentary elections will be conducted in Ukraine has not been resolved until now. The Draft Election Code, which was approved on first reading in November 2017, is still pending before the Verkhovna Rada. In a bid to change the current parliamentary electoral system, Ukrainian MPs have registered eight drafts of the parliamentary election law.

This paper presents an overview of the existing mechanisms for ensuring a balanced representation of women and men in elected bodies in Ukraine and an analysis of the provisions of the Draft Election

\(^1\) http://archive.ipu.org/wmn-e/classif.htm
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Code and the draft parliamentary election laws to ensure appropriate representation of women in the Rada. Based on the analysis, recommendations are proposed on possible mechanisms for increasing women’s parliamentary representation.

1. Mechanisms for Ensuring Balanced Gender Representation in Elected Bodies Under Current Legislation

Current Ukrainian legislation provides for several mechanisms meant to ensure a balanced representation of women and men in the Rada as well as in representative bodies of local government:

- **Gender quota at parliamentary elections.** The Political Party Law mandates parties include in their charters provisions specifying 30 percent as the minimum share of women and men on their party lists in parliamentary elections. Absence of relevant provisions in a party's statute, as well as failure to comply with such provisions (if they are included in the charter), shall not be grounds for a CEC decision refusing candidate registration. Lack of legislative requirements for mandatory alternation of candidates’ gender on party lists may result in inclusion of women in the bottom part of party lists with low chances of election.

- **Gender quota at local elections** under a proportional election system (that is, at elections of deputies of all local councils other than villages and settlements). The Political Party Law provides that party charters must specify the size of quotas determining the minimum level of women and men’s representation on the lists of candidates to local councils in multi-member election districts at no less than 30 percent. Efficiency of this quota is low for several reasons:
  - The Political Party Law and Local Election Law do not establish liability for failure to comply with the quota, i.e. refusal to register candidates included on an party list failing to comply with quota by the respective Territorial Election Commission (TEC);
  - Even if the Local Election Law established liability for noncompliance with the electoral quota, this would unlikely provide for a 30 percent actual representation of women on local councils. Under the proportional election system set forth by the Local Election Law, each candidate on a list is assigned to a particular district, whereas voters in such a district actually vote for only one of the candidates assigned to the district. This makes the proportional system quite similar to a majoritarian system which is not conducive to ensuring adequate representation of women in elected bodies. As demonstrated in the 2015 local elections, results of its use are unpredictable for parties, candidates and voters. Given that it is up to the party to decide on the particular district to which a candidate on its list will be assigned, there is a risk that women will be nominated in districts where their chances for winning are low.

- **State funding of political parties ensuring the required level of women’s representation in the Rada.** The 2015 Political Finance Reform Law allocates 10 percent of the overall annual state funding of political parties to those parties whose share of representatives of any gender elected to the Parliament is no more than two-thirds of the number of the party’s elected MPs. This money is distributed equally among the qualified. Based on results from the 2014 parliamentary election, only one party was entitled to receive that money: Samopomich. At present, state funding is the most efficient mechanism to ensure balanced representation of
women and men in elected bodies in Ukraine. However, since only one party earned the right to such funding, this mechanism requires further strengthening – by establishing gender quotas and liability for failure to comply with them in the Parliamentary Election Law.


On December 12, 2014, MPs Olena Kondratiuk (of the Batkivshchyna political party), Mariya Ionova and Iryna Herashchenko (of the Petro Poroshenko Bloc) and others submitted draft law designed to ensure equal electoral rights for women running for the Rada, titled, “On Amending Certain Legislative Acts of Ukraine (as to Ensuring Equal Rights and Opportunities for Women and Men in the Electoral Process)“.

Since its registration, the draft law has not been considered on the first reading so far.

This draft law would amend the 2011 Parliamentary Election Law and the 2010 Local Election Law (repealed in 2015) aimed at increasing women’s representation in the Rada and local councils. The draft law proposes that:

- Top five candidates on a party list in parliamentary or local elections must include no more than three representatives of one gender; and, for each next group of ten, no more than seven representatives of one gender;
- in case of noncompliance with this requirement, the Central Election Commission (in the parliamentary elections) or the respective Territorial Election Commission (in the local elections) will have the right to “reject” candidates’ registration documents.

In 2015 the Rada adopted a new Local Election Law cancelling the 2010 Local Election Law and changing the previous parallel system of elections of the Verkhovna Rada of the Autonomous Republic of Crimea, the oblast, rayon, town, city, and city rayon councils to a proportional system (so-called “St. Petersburg system“). Given that 2010 Local Election Law was repealed, provisions of the draft law relating to local elections cannot be used in practice. They must be adapted to the new system, which provides for assigning candidates on lists of local party branches to particular districts. However, in terms of its implications, this new proportional system is similar to the first-past-the-post, which is not conducive to electing women.

The draft law proposes de facto 30 percent gender quota be established for party lists, since no less than 40 percent of one gender must be included in the top five of the list, while in each of the next 10 candidates the share of women must be no less than 30 percent. The draft law does not provide for zipper in the top five or in the subsequent groups of ten candidates; nor does it limit the possibility to include women in the lower parts of the respective groups of candidates. As a result, it is possible that if 12 candidates are elected to Parliament from a party list, only two of them will be women. In this case, the share of female MPs will only be 17 percent of the total number of MPs elected from the party.

But even if a 30 percent representation of women in the Rada is ensured by the proportional component of the parallel electoral system, it should not be forgotten that only 225 of the 450 MPs of Ukraine are elected under that system. Because half of MPs are elected under a majoritarian electoral system not conducive to a balanced representation of women and men in the Parliament,
the total share of women in parliament (assuming no females are elected in the first-past-the-post election districts) and taking into account their 30 percent representation in the proportional component of the system female representation will be approximately 15 percent. Therefore, if in practice between 17 percent and 30 percent of women are elected in the system’s proportional component based on the party lists, the level of their representation in the Parliament will not be much different from the existing one.

The draft law also fails to comply with the Parliamentary Election Law which does not provide for the possibility of “rejection” of the registration documents foreseen in the draft. Under the Parliamentary Election Law, upon receipt of documents submitted for candidate registration, the CEC must adopt only one of the two decisions: to register the candidate(s) or to refuse of candidate registration. Therefore, it makes sense to directly state in the draft that in case of failure of the submitted list to meet legal requirements regarding women’s representation, the CEC must adopt a decision to refuse of registration of all candidates on the party list failing to comply with the quota requirement.

Lastly, the draft does not take into account that after registration of the list of candidates nominated by a party, it has the right to withdraw a candidate from the list on a certain deadline prior to the Election Day. Moreover, a candidate may also be excluded from the party list in a number of other cases – in case of death, refusal to be nominated and loss of the right to vote. Should such situations arise, the draft law does not obligate parties to replace excluded candidates by representatives of the same gender, which may result in a decrease in the number of women on party lists before the day of voting. The level of representation of women among the elected deputies can be further reduced.

The existing version of the draft law is unlikely to increase the current level of women’s representation in the Rada; it will have no impact whatsoever on the level of their representation on local councils. Therefore, it makes sense to adopt it only if it is substantially amended. Those amendments should include:

- establishing a 40 percent quota for electoral lists submitted under the system’s proportional component;
- inclusion of no more than three representatives of one gender in each group of five candidates on a list with mandatory alternation of women and men on the lists;
- the obligation of the CEC and respective Territorial Election Commissions to adopt a decision to refuse to register candidates included on a list if it does not meet requirements of the law, including quota/zipper requirements;
- mandatory replacement of a candidate excluded from a party list prior to the Election Day by a new candidate of the same gender (if the party is able to convene its congress within the narrow timelines remaining before the election day to replace the candidate).

3. Draft Election Code and Proposed Amendments

On November 7, 2017, the Verkhovna Rada approved the Draft Election Code (No. 3112-1) on the first reading. This draft was submitted to the Rada Parliament by MPs Andriy Parubiy (at that time, a representative of the People’s Front), Leonid Yemets (People’s Front), and Oleksandr Chernenko (Petro Poroshenko Bloc). This draft is pending second reading.
According to the draft, parliamentary and local council elections will be held under an open party proportional electoral system. At a parliamentary election, parties will nominate two types of lists: national and regional; the regional lists comprise the national one. Mandates will be distributed among parties in proportion to the number of votes they received. On the regional list, the priority to take the seats will be granted to those candidates on the list of eligible party that received more votes than any other candidate on the same list. Mandates not distributed at the regional level (so-called “compensatory seats”) will be allocated to the national list and will be filled in the order of candidate priority determined by the party while approving the national list.

The Draft Election Code sets forth a number of provisions aimed at ensuring a balanced representation of women and men on candidate lists. In case of parliamentary elections and local elections held based on proportional system, each group of five candidates in both regional and national list must include no more than three representatives of one gender. Failure to comply with that provision will result in refusal of registration of both the regional lists and the national list.

As noted above, a proportional system with open lists is generally not conducive to a balanced representation of women and men in elected bodies. However, the establishment of a 40 percent election quota and sanctions for noncompliance will compensate to some extent for the unfavorable impact of the use of this electoral system on women candidates.

On a negative note, the draft law does not provide for mandatory replacement of the candidate(s) excluded from the party lists prior to the Election Day by candidates of the same gender. Since the draft has no provisions on making such a replacement mandatory, if female candidates are excluded from the lists in between the registration of the list and the Election Day, their presence on lists before Election Day can decrease, which would also affect the share of women among the elected candidates.

The draft law also provides the order of distribution of seats in the regional lists to be determined solely on the basis of the number of votes received by candidates on those lists. That is, those candidates who have received more votes will have the priority right to obtain mandates. In view of that, just one vote can result in victory or defeat of a candidate included in a regional list. In some countries (the Czech Republic and Slovakia, for example) the legislation establishes an intraparty threshold for the candidates to move to the top of the list: only if a candidate has received a certain share of the total number of votes for the list in which he/she was included, the order of candidates specified by a party on that list will be altered. In the cases of Czech Republic and Slovakia, an intraparty threshold is as high as five percent of the total number of votes for the list. This means that if the party list received, for instance, 1000 of votes, only the candidates who received no less than 50 votes will move to the top of the list, otherwise the sequence of candidates remains as was established by the party while approving the list and the sequence of candidates on that list. This threshold is considerably high and most cases candidates fail to pass it, thus leaving the party-established sequence of candidates on the list unchanged. If an election is conducted under a proportional system with open lists, a high intraparty threshold increases women’s chances to be elected as only few candidates will receive a considerable number of votes to be moved to the top of the list. In fact, a significant intraparty threshold actually turns open lists into de facto closed lists, in which voters do not influence the order of distribution of seats among candidates on the list. Such a barrier should also be provided for in the Draft Election Code to increase women chances to be elected.
After adoption of the Draft Election Code on first reading, more than 4,000 MP amendments were proposed to it. Some of them are related to aspects ensuring a balanced representation of women and men in the Rada. In particular, MPs Leonid Yemets, Ostap Yednak and Hanna Hopko have proposed to establish an intraparty threshold to changing the order of candidates on party lists be established at the level of 0.5% of the total number of votes cast for the party, as well as to oblige the parties to replace candidates on their lists whose registration was canceled by candidates of the same gender (provided that the decision to cancel the registration of a candidate on the list was taken a certain time before the Election Day and the party is able to convene a congress to replace the candidate by a candidate of the same gender). Approval of these amendments would result in correction of the existing flaws in the Draft Election Code and would increase to some extent women’s chances for election compared to the initial version of the Draft Election Code. At the same time, the intraparty threshold proposed by the MPs (0.5%) is rather low – voters will still be able to significantly influence the order of distribution of seats among the candidates on regional lists. Therefore, the party barrier should be raised to at least three percent.

4. Draft Parliamentary Election Laws

After adoption of the Draft Election Code on first reading, eight drafts of the Parliamentary Election Law were also submitted for consideration by the Rada in a bid to adopt an updated version of the current Parliamentary Election Law.

Five of them provide for ensuring a balanced representation of women and men in the Verkhovna Rada, while three other draft laws do not provide for any specific mechanisms to ensure better representation of women in Parliament. These three drafts are:

- **Draft Law No. 7366** of December 6, 2017, submitted by MPs Oleh Barna, Serhiy Rudyk and other MPs from the Petro Poroshenko Bloc, People’s Front and Vidrozhennya).

  The draft law provides for holding parliamentary elections under a first-past-the-post system.

  While in some countries this system includes certain mechanisms for enhancing women’s chances to be elected (for example, so-called “reserved seats,” nomination of women in districts where the party has strong support and women have a winning chance, as well as allocation of additional state funding to parties nominating a certain number of women or ensuring their election to the legislature), this system, even strengthened by these mechanisms, is much less favorable for women compared to a proportional election system with voting for closed party lists. However, the draft does not even provide for any of these mechanisms, which makes a better women representation in the Rada very unlikely.

- **Draft Law No. 7366-6** of December 28, 2017, submitted by MPs Oksana Prodan of the Petro Poroshenko Bloc, Oleksiy Skrypnyk of Samopomich) and Olha Bohomolets of the Petro Poroshenko Bloc.
The draft law provides for the administering parliamentary elections under a proportional election system with voting for closed lists nominated by parties and blocs. Under this system, voting will be preceded by “primaries” where supporters of the parties will vote for individual candidates in the preliminary lists of parties and blocs. Based on results of the “primaries” held nationwide at the polling stations, the CEC will compile the final closed party and bloc lists in which the order of candidates will be determined by results of the “primaries”. Candidates that receive more votes in the primaries than other candidates from the party/bloc will be included in the final lists in descending order of the number of votes they have received.

Overall, “primaries” is not conducive to women; nor does it guarantee their inclusion in the successful part of the final list. The draft law provides for no gender quotas or any other measures to ensure a balanced representation of women and men in the Rada.

- **Draft Law No. 7366-7** of January 2, 2018, submitted by nonaffiliated MP Yevheniy Murayev. The draft law proposes parliamentary elections be conducted based on a parallel election system: half of MPs will be elected under a first-past-the-post election system and the other half under a proportional election system with open party lists. Like the first-past-the-post, the proportional system with open lists as such are not conducive to a balanced representation of women and men in elected bodies. The draft law provides for no special measures aimed at ensuring gender balance, such as quotas or zipper.

Five of the eight draft laws do establish gender quotas as well as liability for failure to comply with them:

- **Draft Law No. 7366-1** of December 20 2017, submitted by MPs Yulia Tymoshenko, Serhiy Vlasenko and other MPs representing the Batkivshchyna faction.

The draft law provides that elections of the MPs will be conducted under a closed-list proportional election system. It also specifies that each group of ten candidates in a party list must include no more than seven representatives of one gender. The draft law also introduces the imperative (more precisely, so-called “party administered”) mandate: parties will be entitled to early terminate the MP office after the elections if the MP in question violates “party discipline”.

The proposed closed-list proportional system strengthened by gender quota and liability for non-compliance, is somewhat likely to contribute to a balanced representation of women and men in the Parliament. However, since the bill includes no zipper provision requiring alternation of women and men in each group of ten candidates on the list, this gives rise to the risk that women will be included at the end of each group of ten in the list, which will decrease their chances for being elected. For example, it is possible that women will get only three mandates out of 17 obtained by their party; that is, the total share of the party’s elected female representatives will be as low as 17 percent. The overall level of representation of
women in the Rada will vary from 17 percent to 30 percent, which is much lower than international electoral standards recommend. A party-administered mandate, which the draft law seeks to introduce, would allow parties to selectively terminate powers of some of their MPs failing to observe party discipline. Its introduction may have a negative impact on the level of representation of women in the Rada, as women can be easily expelled from the Rada by their parties should they infringe party discipline. This mandate is also at odds with the Ukrainian Constitution.

Similar to the Draft Election Code, the draft law does not provide for a mandatory replacement of candidates excluded from party lists prior to the Election Day by the candidates of the same gender. The lack of provision mandating such a replacement may result in exclusion of certain candidates, in particular, women from the lists prior to the Election Day without any legal consequences for the lists failing to comply with the quota requirement.

- **Draft Law No. 7366-2** of December 20, 2017, submitted by MP Leonid Yemets (People’s Front) and unaffiliated MPs Hanna Hopko, Ostap Yednak and Natalia Veselova.

This draft law calls for conducting parliamentary elections under the open-list proportional system. Each party will nominate a national list and regional lists of candidates; the regional lists will comprise national. Voters will be able to vote for the regional list and for a particular candidate from that list. The number of seats allocated to each regional district will be proportionate to the number of voters registered in the respective district. Candidates on the regional party list with the highest number of votes will have priority to seats, provided that they receive no less than 0.5% of the total votes cast for the regional party list. If a candidate in a regional list has received less than 0.5% of the votes cast for the list, the order of distribution of seats specified by the party in the regional list will not be changed.

The draft law also makes it mandatory to include no more than three representatives of one gender in each group of five candidates in each regional and national list. Failure to comply with this requirement will result in refusal of registration of the list by the CEC. If after the registration of candidates and before the election a candidate withdrawn from the list (his/her registration has been canceled) and the time remaining before the election allows the party to hold a congress to replace the candidate on the list, the party must replace him/her with another candidate of the same gender on both the national list and the relevant regional list.

Overall, the open-list proportional electoral system is less conducive to balanced representation of women and men in elected bodies compared to a closed-list proportional system. The disadvantages of this system are offset by a gender quota, establishment of a 0.5% intraparty threshold to be passed to change the order of distribution of seats on the regional list between the candidates, as well as by the refusal of registration of the national and regional
lists in case of noncompliance with the quota and the obligation to replace candidates on lists by representatives of the same gender in case of cancellation of their candidate registration.

Although the proposed system is unlikely to raise the share of women in the Rada to 40 percent, the mechanisms embedded in the draft law to encourage proper representation of women in the parliament are likely to increase the current share of women in the Rada. While the proposed intraparty threshold of 0.5% increases women’s chances for being elected under the proposed open-list proportional system compared to the system with no such a threshold at all, the increase is not likely to be significant given that voters will still have a strong influence on the order of distribution of mandates in the list. This threshold should therefore be increased.

- **Draft Law No. 7366-3** of December 20, 2017, submitted by nonaffiliated MPs Viktor Chumak, Nataliya Novak and Dmytro Dobrodomov and Serhiy Leshchenko of the Petro Poroshenko Bloc; and, **Draft Law No. 7366-4** of December 22, 2017, registered in the Rada by Samopomich MPs Taras Pastukh, Tetiana Ostrikova and Oleh Bereziuk.

The electoral systems proposed in these bills are practically identical, differing only in specifics of territorial organization of elections. They are also the same to the Draft Election Code that was adopted on first reading. The measures for ensuring balanced representation of women and men in these two drafts are also the same as in the Draft Election Code (i.e., 40% gender quota for each group of five candidates on both the national and regional lists and mandatory refusal of registration of the lists should they fail to comply with quota). A more detailed analysis of the balanced representation provisions in the Draft Election Code is presented above.


The draft law provides for holding elections to the Verkhovna Rada under a proportional election system. Although the draft establishes a gender quota – inclusion of at least two representatives from one gender in each group of five candidates – it fails to clarify the procedure for distributing seats among candidates on the party lists or to clearly outline the principles underlying territorial organization of elections. For that reason, it is impossible to assess its potential impact on the level of representation of women in the Rada.

### 5. Conclusions

An analysis of electoral draft laws pending before the Verkhovna Rada shows that MPs have started paying more attention to issues pertaining to women’s representation in the legislative body compared to previous years. Both the Draft Election Code and five of the eight drafts of the Parliamentary Election Law provide for gender quotas and liability for noncompliance. However, these mechanisms must be further strengthened, especially when elections to the Rada are proposed to be conducted under the open-list proportional system.
The 2014 Draft Law “On Amending Certain Legislative Acts of Ukraine (as to Ensuring Equal Rights and Opportunities for Women and Men in the Electoral Process)” has become essentially obsolete. Its current version will practically have no effect on the share of women in the Parliament. Its adoption will be reasonable only if a series of substantial amendments are made to it.

6. Recommendations

If the next parliamentary elections are conducted on the basis of the current parallel election system, the Parliamentary Election Law should be amended as follows:

- a 40 percent electoral quota should be established for women on candidate lists with mandatory inclusion of no more than two representatives of one gender in each group of five candidates on electoral lists combined with a zipper rule, i.e. with alternation of genders in each group of five candidates;
- refusal to register candidates included on an candidate list by the CEC should be made mandatory if such list fails to comply with the requirements meant to ensure a balanced representation of women and men among the candidates; and
- replacement of a candidate on a list whose registration has been canceled by the candidate of the same gender must be made mandatory if a certain period of time (sufficient for holding a political party congress) remains before Election Day.

These provisions must also be included in the Parliamentary Election Law if a fully proportional system with open or closed lists is introduced. If the Rada adopts the Election Code or one of the draft laws providing for introduction of the open-list proportional system, it should include an intraparty threshold for changing the order of candidates on the regional list, allowing a candidate to move up that list only if he/she received a certain percentage of the total number of votes cast for the list of candidates. The higher the percentage, the smaller will be the voters’ impact on the order of distribution of mandates in the lists. The optimal size for such threshold is two to three percent of the total number of votes cast for the list.

It is important for legislative changes aimed at ensuring a balanced representation of women and men in the Rada to be approved as early as possible – at least one year before the next parliamentary elections scheduled for October 2019. This will allow parties to adapt to the new requirements and prompt them to mobilize female candidates into politics.

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