Executive summary

On July 11, 2019, the Ukrainian Parliament (Verkhovna Rada) adopted into law the Draft Election Code. The Election Code will enter into force on December 1, 2023 and thus not apply to the 2020 local elections nor to the 2023 parliamentary elections. It is therefore important to reform the existing legal framework that will govern these elections, the 2015 Local Election Law and the 2011 Parliamentary Election Law, both of which require significant changes.

This paper explores the current priorities for electoral reform and gives concrete recommendations for improving the electoral legal framework. The paper envisages that this can be done either in the form of amending the existing election laws or by introducing significant changes to the newly adopted election code, including by accelerating the date when its provisions for a specific election event will take effect. In our view, the key priorities include:

- Adoption of a new Local Election Law well in advance of the 2020 local elections and abolition of the “St. Petersburg” system in the current law;
- Introduction of an open list proportional system(s) to be used in the 2020 local elections and 2023 parliamentary elections;
- Harmonization of election laws to ensure that uniform procedures are applied to all elections;
- Overall improvement of election procedures to effectively address and regulate a more extensive use of IT in elections, the current security and disinformation threats in elections and use of new forms of media for election campaign purposes.

Furthermore, electoral reform should address a number of existing recommendations based on international standards for democratic elections, including those proposed by domestic and international election observers, the Council of Europe’s Venice Commission, OSCE/ODIHR, IFES, OPORA, the Group of States Against Corruption (GRECO) and other international organizations. These include:

- Mandatory training and certification of future election commissioners;
- Introduction of timely, proportionate, effective and dissuasive penalties for electoral violations and strengthening the capacity of police, prosecutors and judges;
- Implementation of structural and operational reforms of the CEC;
- Ensuring electoral rights of underrepresented and disenfranchised groups (IDPs, internal economic migrants, women and people with disabilities);
- Adopting a new National Referendum Law;
- Strengthening the independence and accountability of the National Agency for Prevention of Corruption (NAPC).
The above recommendation should be implemented following broad consultation with civil society organizations, state institutions, the CEC as well as relevant international organizations.

**Background**

On July 11, 2019, the Ukrainian Parliament (Verkhovna Rada) adopted into law the Draft Election Code. If promulgated by the President, the Code would be effective starting from December 1, 2023. Therefore, the new code would apply neither to the local elections to be held in 2020 throughout Ukraine, nor to the next parliamentary elections in October 2023. This means that both elections would be governed, respectively, by the 2015 Local Election Law and 2011 Parliamentary Election Law, both of which are laws that require significant changes. The possibility that the Election Code will be repealed or significantly changed (in particular with respect to provisions introducing the open list electoral system for the parliamentary and some local council elections) – even if signed by the president – should not be entirely discounted.

Many provisions of the newly adopted Code are indeed a significant step forward towards improvement of the electoral legal framework. The Code introduces a gender quota under an open list proportional system for parliamentary and local elections (whereby at least two candidates in each group of five candidates on the list must be women) and sanctions for failure to comply with the quota (such as rejection of the party list by the respective electoral commission), improves the procedure for voter register maintenance and administration, provides for electronic reporting on campaign finance by parties and candidates through a centralized electronic system, and ensures greater accessibility of the elections for voters with disabilities. Many provisions in the Code governing election campaigning, voting and vote counting are more specific compared to the current election laws and may reduce the risks of electoral fraud.

However, the code can hardly be considered flawless and room for improvement still exists. One of its key flaws is the “open list proportional system with regional lists,” which is supposed to apply in the parliamentary and most local elections. The regional party lists under this system are not entirely open and not entirely regional. Only part of the seats in the Rada are allocated under an open list system. The remaining seats are distributed under a closed list system. Each region would then be represented in the Rada in proportion to voter turnout in the respective region on election day rather than proportionally to its population size: most European states using an open list proportional system base seat allocation on population rather than voter turnout.

The Election Code lacks provisions to remove legal and practical obstacles to fully enfranchise IDPs and labor migrants in local and parliamentary elections. It also fail to ensure professionalism of election commissioners by not requiring prospective election commissioners to undergo mandatory training before being appointed to commissions: parties and candidates can replace them at will any time and they are free to appoint individuals with only little knowledge of election procedures. New forms of election campaigning, such as campaigning in social media, on messaging platforms or the internet, are also not properly regulated. The Code could be far more ambitious in combatting the flow of unreported money in the election campaign, for instance by enhancing the transparency of all
financial transactions on campaign funds. There is also room for more extensive use of IT in the election process including by enabling voters to apply for changes of their data in the State Register of Voters online.

The Code is not updated when it comes to effectively address issues related to the decentralization reform, including the preparation and conduct of elections in amalgamated local communities. Therefore, even if promulgated by the president, the Code will need to be significantly amended to eliminate these key weaknesses.

Even if the Election Code is signed by the president, its promulgation should not prevent other reform priorities from being implemented before the Code enters legal force on December 1, 2023. These reform priorities include adoption of a new Local Election Law well in advance of the 2020 local elections, the introduction of an open list electoral system consistent with international standards and good practices for certain contests in the 2020 local elections and in the next parliamentary elections, a general improvement of the election procedures in the current laws, a strengthening the system of sanctions for election related offences to ensure they are effective, proportionate and dissuasive, further implementation of political finance reform and a re-launch of the National Agency for Prevention of Corruption (NAPC), the adoption of a new National Referendum Law, and ensuring and protecting the electoral rights of women, voters with disabilities and other underrepresented groups.

This document reviews the key priorities for election law reform and suggests several recommendations for improvement, regardless of whether the current Code is signed in its current form. If the Code is signed and the date of its entry into legal force is changed so that it becomes effective starting from 2020, most of the priorities outlined below would still be relevant (except for the adoption of a new Local Election Law and harmonization of existing electoral laws).

**Adoption of the new Local Election Law**

The current Local Election Law was adopted in 2015 without open, inclusive public consultation with electoral stakeholders, and became effective near the start of preparations to 2015 local elections.

The Law replaced the parallel system used to elect local councils (except for the village and settlement councils) by a new proportional system, the so-called “St. Petersburg” system. While some politicians called this new system an “open list proportional system,” it has nothing in common with the open list systems used in European states. In fact, this system shares a number of features and consequences of the first-past-the-post system, including the fact that party representation in local councils under this system depends not on the level of support for the respective party by the citizens in the community in question, but rather on the number of votes cast for individual candidates nominated by the party. The 2015 local election results clearly demonstrated that the outcomes of the new system proved to be unpredictable not only to the voters, but also for the parties and candidates. In many cases, the candidates who received most votes in their constituencies received

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1 The existing single portal for tracking government expenditures could serve as a model for a similar portal for tracking candidates’ and parties’ campaign expenditures.

2 In draft local election law 9100-1 submitted to the outgoing Rada and drafted with participation of IFES and OPORA, an open list proportional system in multimember constituencies is envisaged for the election to the Verkhovna Rada of the Autonomous Republic Crimea, the election of oblast councils, and the election of city councils in Kyiv and Sevastopol, and on other big cities with no less than 90,000 registered voters.
no seat all, while candidates with only a few votes were elected. In some rayon and oblast councils, certain constituencies received no representation, while others were represented by two or more elected councilors.

Several electoral procedures laid down in the 2015 Local Election Law (for instance, the procedures governing the operations of election commissions, election campaigning, media coverage of the elections, vote tabulation, etc.) are not harmonized with the respective procedures in the laws governing parliamentary and presidential elections. The provisions governing campaign finance are inconsistent with the 2015 Political Finance Reform Law. The Law fails to effectively address the challenges stemming from the amalgamation of local communities, nor does it consider election security challenges related to military operations in eastern Ukraine (for instance, it does not provide for clear grounds and procedures for cancelling elections for security reasons and fails to specify the procedure for holding elections in amalgamated communities split between neighboring rayons).

Therefore, the Rada should consider and adopt a new version of the Local Election Law well in advance of the 2020 local elections. This law should not only depart from the “St. Petersburg” system, but also address procedural flaws in the current Law. The Draft Local Election Law No 9100-1, which was registered in the previous parliament on October 2, 2018, could serve as a sound basis for a new Local Election Law. Draft No 9100-1 is based on an earlier draft local election law, which was prepared in 2015 by a working group established under the Parliamentary Committee on Legal Policy and Justice with IFES support through an open and inclusive public consultation process. However, it was not supported by the Rada and the Rada decided to vote for the current flawed Law. A new local election law should be drafted through an open and inclusive process, involving all election stakeholders and prioritizing protection of the electoral rights of citizens.

This election law reform priority would be redundant if the President decides to sign the Electoral Code and the Rada amends the Code to become effective before the 2020 local elections. In this case, there would be no need for adopting a new Local Election Law. This possible development, however, still means that there is a need to change the open list proportional system for elections to local councils suggested in the Code, as this open list system has the same flaws as the open list system proposed for parliamentary elections (see the next paragraph for further details).

**Changes to the open list system introduced by the Electoral Code and Recommendations**

Shifting from the current parallel system used to elect MPs to an open list proportional system, in line with the repeated recommendations of the Venice Commission and Parliamentary Assembly of the Council of Europe, remains one of the key priorities for electoral reform in Ukraine. Even if the adopted Electoral Code is promulgated, it would not apply to the October 2023 parliamentary elections as it becomes effective only on December 1, 2023. Even if the code’s date for entry into legal force is changed to become applicable to the October 2023 elections, the open list proportional system proposed in the code is flawed and should be changed well in advance of the elections. Under the open list system proposed in the Code, only part of the seats will be allocated under an open list system in the regions; the remaining seats will be distributed under a closed list system. The electoral system proposed in the Code also implies that each region (oblast) will be represented in parliament in proportion to voter turnout on election day in that region, rather than in proportion to the number
of registered voters in the region. This system is unusual for most European states using an open list system and therefore should be reconsidered.

Of note, the need to shift from a parallel system to an open list proportional system was highlighted by the ruling coalition in the previous parliament as well as by the new President elected in 2019.

The open list proportional system chosen for parliamentary and local elections should comply with the following principles:

1) Each region/multi-member constituency should be represented in parliament in proportion to the number of registered voters rather than in proportion to voter turnout on election day;
2) There should be a threshold for moving to the top of the party list (for instance, five percent). Only if the number of votes cast for the lower listed candidate exceeds five percentage of the total votes cast for the party list, the candidate will move to the top. This provision ensures that popular candidates on party lists are elected even if placed at the bottom of the list, while parties would retain certain control over the sequence of candidates on their lists.

3) Candidates who receive a higher number of votes, provided that they pass the legally established threshold and move to the top of the list, should enjoy priority in getting a seat compared to candidates with fewer votes;

4) If open list system proposed in the Election Code continues to comprise a national list component, the sequence of filling such seats should depend on the following two criteria: the availability of undistributed seats in the regions/constituencies to which these candidates are assigned; and the number of votes received by the party in the region/constituency (under the Election Code, candidates placed higher on lists currently enjoy priority in receiving seats).  

In any case, shifting from the current system to an open list proportional system should be preceded by open, inclusive and meaningful discussion of the features of the future system and its key implications, advantages and disadvantages, including its effects on the stability and effectiveness of coalitions and the government.

Overall improvement of the election procedures

Many provisions in the current election laws and in the Electoral Code do not consider recent developments. These developments include the use of technology in various aspects of life, ongoing reforms (such as decentralization), as well as the security challenges Ukraine has been facing since 2014.

In particular, there is a need for more extensive use of technology in some election procedures, such as voter registration, verification of citizen IDs, changing of the voting place without changing the voter’s address, verification of campaign finance reports filed by parties and candidates, use of digital documents by election commissions to supplement the existing paper document flow with gradual replacement of paper formats by digital documents, and more. More extensive use of technology in elections would require consideration of the related risks (such as cybersecurity), deployment of

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3 If any seats remain undistributed in the region in question following the initial distribution of seats in that region under the open list proportional system, the priority in getting a seat should be given to the party with a higher number of votes for the list in that region, and the seat should be given to the candidate placed higher on the national list.
necessary infrastructure and access to the internet for election commissions and other bodies involved in election preparations.

In the 2019 presidential and parliamentary elections, parties and candidates generally used messaging platforms, social media and the internet more extensively for campaigning compared to previous elections. Such forms of campaigning are not properly regulated in the current election laws, not effectively monitored by state agencies, and the funding of social media and similar campaigning largely remains opaque. Amendments to election laws should therefore consider the need to regulate such forms of campaigning, at least in general terms.

Effective response to security threats requires a proactive approach from the state in addressing those challenges. There should also be a strategy to counteract domestic and foreign based disinformation campaigns in the framework of the so-called hybrid war. To address this, laws should specify the instruments/ measures needed to prevent disinformation, while state agencies should implement and properly fund voter awareness campaigns that address current disinformation and security threats. With military operations ongoing in the country’s east, the election laws should clearly specify on which grounds and pursuant to which procedures the preparations for elections can be stopped and/or elections can be cancelled due to security risks. Previously, in the absence of legal framework, these issues have been decided without clear guidance, raising suspicions of an arbitrary approach towards the cancellation or postponement of certain elections.

Repeatedly, domestic and international election observation missions have reported cases of abuse of administrative resources and involvement of public servants in election campaigning, which undermines the political neutrality of public service. During the most recent 2019 election campaigns, OPORA identified numerous cases where budget resources were abused by certain candidates who lobbied for budget allocations for election constituencies in which they planned to run in the parliamentary elections. During the campaign, these allocations, as well as the funding of various infrastructure development projects in those constituencies, were used by the candidates to attract publicity and receive additional votes. When improving election procedures, laws and secondary legislation should be reviewed to introduce effective instruments to prevent misuse of administrative resources, including abuse through budget allocations, as well as for maintaining the political neutrality of public service.

Under the current laws, electoral contestants play a minor role in ensuring that complete and accurate data on voters is included in the State Register of Voters and voter lists. There are significant restrictions on electoral contestants being able to verify data: upon their request, they only receive one CD copy of the SRV data each, with millions of entries on voters, and must try to verify this data on the premises of the CEC and under time constraints established in the Law on State Register of Voters. Given that the quality of voter lists still remains an issue (despite the overall improvement of voter list quality since 2009), parties and candidates should have adequate access to the SRV data to effectively scrutinize the comprehensiveness and accuracy of the data, as well as check for possible multiple inclusions of voters into the SRV database. Access to the SRV/voter lists should respect provisions in the current laws governing protection of personal data.

Most recommendations for improvement to the electoral legal framework proposed by domestic and international election observation missions and the Venice Commission have yet to be addressed by the Rada. In particular, contrary to these recommendations, the election laws still fail to: provide for
a clear definition of election campaigning, delineate between election campaigning and media coverage of an election, enfranchise IDPs and economic migrants in all elections, set clear criteria for drawing election constituencies and a procedure for reviewing boundaries of election constituencies, establish the grounds for invalidating election results, eliminate the so-called “fraud tolerance” thresholds (i.e. the provisions in the current laws whereby precinct results can be invalidated only if the number of fraudulent votes has exceeded five percent of the total number of votes cast), among other flaws.

The Rada should consider these recommendations and ensure that they are properly addressed when improving the current electoral legal framework.

**Harmonization of election laws**

While the new Electoral Code, if promulgated, would harmonize the laws governing nationwide and local elections, it would become effective only in December 2023. Until then, the legal framework governing the elections will remain fragmented and inconsistent, as the current election-related laws (including three election laws, the Law on State Register of Voters and the Law on Central Election Commission) were adopted at different times and can be inconsistent. However, there would be no need to harmonize the election laws if the President promulgates the Electoral Code and Parliament introduce changes to the Code so that it enters into legal force starting from 2020. This election law reform priority is relevant only if the Code is vetoed or if it enters legal force in 2023 as foreseen in its current version.

In the laws currently governing elections in Ukraine, there is no common approach toward regulation of political campaigning, campaign finance, vote counting, electoral operations and the procedures for establishing election commissions. The absence of harmonization across different laws results in confusion among election commissions, election contestants and voters.

Such confusion increases when there are last-minute changes to election laws, which is a common practice in Ukraine. If all three election laws were harmonized well in advance (at least 12 months) of an electoral contest, political parties, candidates, voters, media, and election commissions would be better prepared for the electoral event and would require less ongoing capacity support ahead of each election.

Before the adopted Code enters legal force in 2023 (or if the new Election Code is not signed and no new Code is adopted), the Rada should at least introduce changes to the Parliamentary Election Law, Presidential Election Law and Local Election Law to harmonize the procedural provisions in the laws to the highest extent possible.

**Proportionate, dissuasive penalties for violations and effective investigation of offences**

The system of sanctions for violations of Ukraine’s electoral legal requirements remains a significant weakness and vulnerability.

While Ukraine’s electoral legislation frequently articulates what is permissible under law and what is not, in many cases there are no penalties in place to ensure enforcement of the respective provisions. For example, distribution of goods and services in relation to election campaigning is formally
prohibited by law, but no penalties are in place for individuals who violate this provision. This leads to a sense of impunity and abuse of state resources.

The Criminal Code includes penalties for falsifying sensitive election documents. However, the law does not define “election documents.” As a result, domestic observers have identified numerous cases whereby nominations to election commissions were falsified – but, since nominations are not explicitly referred to as election documents, such violations are not subject to sanctions.

Another area of concern is that certain penalties in place are not effective, proportionate, or dissuasive. Administrative fines in most cases are set too low to effectively dissuade voters, candidates, and media from committing electoral offences. Many violations, such as those relating to election campaigning, only elicit official warnings, which do not prevent offenders from committing subsequent offences. Some minor criminal offences can entail lengthy prison terms; however, law enforcement agencies consider them too harsh to be imposed on the guilty and, as a result, courts release offenders on probation or close the criminal case.

Election laws, the Code of Administrative Offenses and the Criminal Code should be amended to ensure that any violation results in punishment and that those sanctions are effective, proportionate and dissuasive, as called for by international standards.

On April 13, 2018, the Cabinet of Ministers submitted Draft Law 8270 to the Rada aimed to ensure effective, proportionate and dissuasive sanctions for electoral offenses. Given that the previous Rada failed to consider the draft in the first reading, it should be re-registered in the new Rada.

The Draft Law was prepared by Civil Network OPORA in close cooperation with stakeholders, including civil society representatives, the National Police, the Prosecutor General’s Office, the Ministry of Interior and the Central Election Commission. The Draft Law proposes amendments to the Code of Administrative Offenses, the Criminal Code and laws governing national and local elections and introduce liability and sanctions for certain election related offences. It envisages criminal sanctions for distribution of goods and services to voters combined with election campaigning on behalf of a political party or candidate and for forging, destroying and stealing ballot papers and result protocols. Sanctions are also envisaged for forgery of nomination papers for election commissions membership, decisions and minutes of election commissions, voter lists and other documents produced by or submitted to election commissions. The Draft Law introduces criminal sanctions for failure of election commission members to fulfill their duties without compelling reason; for disclosure of the will of homebound and regular voters; for stealing or destroying a voter’s ballot paper; or for unlawfully restrictions on access to attend election commission meetings and election campaign events.

In the 2019 presidential and parliamentary elections, the Civil Network OPORA and the Ministry of Interior with IFES’ technical assistance delivered a series of trainings to police officers aimed to strengthen their level of knowledge of election procedures, sanctions for violations, as well as how election-related offenses must be documented, investigated and prosecuted. These trainings, as well as the overall performance of police during the recent parliamentary and presidential elections, received a positive assessment from international election observation missions.

These training efforts should be continued between major election events and should be organized in a more systematic manner in one or several police academies to cover a wider audience. Consideration should be given to assigning election-related matters to members of staff of regional police departments who would specialize on elections and election-related offences and provide
police officers and investigators at the lower level with guidance and organizational/consultative support, as well as ensure their effective communication and interaction with civil society organizations and other stakeholders during and after elections.

Strengthening the effectiveness of election dispute resolution also requires adequate training of judges and prosecutors on election-related matters. During the 2019 presidential and parliamentary elections, IFES cooperated with the National School of Judges and the Kharkiv Law University to deliver a series of trainings to the judges of District Administrative Courts and Administrative Courts of Appeals on material and procedural aspects of the election law. This effort should be continued between the elections and expanded to cover judges of local courts in charge of considering certain categories of election disputes (for instance, related to local elections, voter registration, violations committed by PECs members, etc.). No trainings have been delivered to public prosecutors so far; they should be trained in advance of major election events to strengthen their capacity to prosecute those who commit administrative or criminal offenses related to elections.

**Professional electoral administration**

Before each major electoral event, IFES and the CEC organize comprehensive, cascade trainings for election commissioners to increase their ability to administer an election.

For this purpose and with IFES technical assistance, the CEC established a Training Center. The Training Center has taken responsibility for organizing and delivering trainings for election commissioners and other electoral stakeholders. However, notwithstanding this support, the capacity of lower-level election management bodies to administer elections is weakened by the fact that they can be replaced at any time before, on and after election day by the appointing political party or candidate. It is not uncommon in Ukraine to replace trained commissioners with individuals who have limited knowledge of electoral procedures and operations just before an electoral contest.

The Council of Europe’s Venice Commission and ODIHR have recommended restricting the possibility for nominating subjects – political parties and candidates – to replace election commissioners. However, domestic experts are convinced that such a restriction might result in election commissions controlled by one party or candidate and/or their affiliates, especially given reasonable suspicions that the seats on the election commissions are currently often traded by one contestant to another.

Certain measures could contribute to increasing the level of professionalism of the commissioners without restricting the possibility to replace members on election commissions.

Laws governing elections in Ukraine should be amended to introduce mandatory certification of all election commissioner candidates by the CEC, namely by the CEC Training Center. To ensure the CEC’s internal capacity to provide ongoing support to lower-level election management bodies, the status of the Training Center and its power and responsibilities should be articulated in the Law on the Central Election Commission. Ukraine’s election laws/Election Code should make it clear that no person can be appointed to a lower level election commission without certification by the Training Center (currently, this requirement is absent from the Electoral Code). Election laws should oblige political parties and candidates to recruit potential members of election commissions only from among those certified by the Training Center. In cases when certified commissioners commit a grave violation of the election law while exercising their duties, the CEC should have the right to cancel their certification, which would be subject to renewal only following a legally established period.
Election management body (EMB) reform

The current CEC was renewed on September 20, 2018, when the Rada appointed 14 new CEC commissioners to replace 14 members whose term in office expired in 2014. One of the seventeen seats on the CEC remains vacant. Two CEC members appointed in 2014, in addition to the new 14 appointees, will remain in office until 2021.

The renewal of the CEC as well as the successful administration of the 2019 elections, which was praised by international election observation missions, opened the door for internal CEC reforms aimed to increase the professionalism, transparency and inclusiveness of the CEC’s operations.

In Ukraine, the CEC is a highly centralized body that in many aspects operates in an archaic manner. It is in charge of providing assistance to lower-level commissions, printing ballot papers for national elections, supervising operations of lower-level commissions and analyzing campaign finance reports submitted by political parties. Presently, the CEC assigns specific regions to individual CEC commissioners who supervise the election preparations in their designated region. This approach undermines the collective decision-making principle of the Commission.

The 2004 Law on the Central Election Commission provides for establishment of territorial branches of the CEC Secretariat, which are able to assume certain administrative authority. However, such branches have never been established. The Law on the Central Election Commission and other election laws (including the new Election Code) should be amended to specify the mandate of such branches and ensure that the CEC is allocated the funds needed to create and operate them. These branches can carry out a number of functions currently performed by the CEC or its secretariat, such as providing assistance to lower-level commissions, analyzing campaign finance statements and supervising operations of territorial and district election commissions.

In addition, a number of other internal, structural and operational CEC reforms are needed. The election laws/Election Code should be amended to ensure that all information posted on the CEC website (including all election results at national and local level) is published in an open data format and is accessible to people with disabilities. Future amendments to the Law should remove the possibility of commissioners with expired terms participating in the Commission’s decision-making process once their terms have expired.

The Law on the Central Election Commission should in greater detail specify the procedures for the appointment of members to the CEC and the termination of their powers, and for the consultations between the President of Ukraine, parliamentary factions and groups in this regard. It should also provide for staggered terms in office of commissioners appointed in the future and mandatory, open and inclusive public consultations on key draft regulations prepared and issued by the Commission. The CEC should have greater clarity of its mandate and increased funding to introduce voter outreach initiatives. Last but not least, the CEC should continue efforts to ensure more effective protection of information technology data and administrative operations implemented through its electronic system (such as selection of election commissioners and delivery of data to the CEC).

The key priorities for the new CEC are highlighted in a Roadmap for Reform of the Central Election Commission prepared by the Civil Network OPORA, IFES and the Reanimation Package of Reform (RPR).
Political participation of women, IDPs, internal labor migrants and people with disabilities

Until recently, the share of women in the Rada was one of the lowest in the region. However, the situation improved significantly following the 2019 early parliamentary elections with over 20 percent women MPs. Eighty-six women were elected to the Rada: 59 on nationwide proportional lists and 27 from single member constituencies. This is a dramatic increase from the previous 12.3 percent of women elected in 2014, and the highest proportion of women in parliament in Ukraine’s democratic history. It does still, however, fall short of the international target of 30 percent women, and Council of Europe’s target of 40 percent. The recent success of women in the elections should not overshadow the need for introducing a 40 percent gender quota for party lists combined with the “zipper” rule (whereby no less than two women must be included in each group of five candidates on the party lists) and effective sanctions for failure to comply with the quota (such as rejection of the party list for failure to comply).

Political rights of people with disabilities are not effectively ensured in Ukraine. Premises of precinct election commissions are in most cases not accessible to voters with disabilities. Moreover, people with disabilities have restricted access to election-related information (as accessible formats are not used by the CEC and lower-level election commissions) and voters with visual disabilities face challenges in selecting their candidates independently on election day. The CEC does not produce tactile ballot guides for technical reasons. More advocacy is needed to ensure protection of the political rights of voters with disabilities. The Ministry of Social Policy registered Draft Law 5559 in 2016 to ensure the protection of voting rights of people with disabilities. However, this draft was not considered by the previous parliament. Draft Law 5559 can be used as the basis for further development of legal provisions to ensure a better accessibility of elections for voters with disabilities. Draft Law No 5559 could be revised and reregistered in parliament in consultation with civil society organizations (including organizations of people with disabilities) and other electoral stakeholders. It is important not only to adopt the draft into law, but also to ensure it is being effectively enforced. Moreover, as recommended by IFES and others, the Constitution should be reviewed to extend full voting rights to persons with intellectual and psychosocial disabilities, as required by the United Nations Convention on the Rights of Persons with Disabilities ratified by Ukraine.

While the number of internally displaced persons (IDPs) in government-controlled territory exceeds 1.6 million (according to UN estimates), they cannot effectively exercise their voting rights. Similar voting challenges are faced by internal labor migrants and other categories of Ukrainian voters who reside in a location different from their residence registration. The overall concept of voter (and residence) registration should be reviewed to ensure that all citizens can exercise their right to vote in all elections conducted within the territory of their actual residence. IFES works closely with the Group of Influence and Civil Network OPORA on legal changes aimed to ensure the voting rights of IDPs and other “mobile” citizens. This cooperation resulted in the registration in the previous convocation of the Rada of Draft Law 6240 “Amendments to Certain Laws of Ukraine Related to Electoral Rights of Internally Displaced Persons and Other ‘Mobile’ Groups of Ukrainian Citizens.” Given that the outgoing Rada failed to consider the bill in the first reading, it should be re-registered in the new Rada. If adopted, it would amend the Law on the State Register of Voters, along with other relevant legislation, to guarantee full voting rights for millions of Ukrainians who are displaced by
conflict or are voluntarily residing in places that differ from their registered places of residence by enabling them to vote at their actual residence.

**Adoption of a new National Referendum Law**

On April 26, 2018, Ukraine’s Constitutional Court ruled that the 2012 National Referendum Law was unconstitutional. The Law was adopted without the involvement of civil society or the expert community in a process that violated procedures proscribed by the Constitution.

The Constitutional Court decision represented a positive step for Ukraine given that the application of the flawed referendum law could have posed a serious threat to democracy. As noted by national and international civil society representatives and experts, including the Venice Commission, the 2012 National Referendum Law was not consistent with international standards, good practice, or Ukraine’s Constitution.

The repeal of the National Referendum Law resulted in a legal vacuum in regulation of referenda in Ukraine, which will be particularly problematic if there is a need to change the provisions of the Constitution that require approval both of the Rada, President and a national referendum. These cases include provisions contain in Chapters I “General Provisions,” III “Elections and Referendums” and XIII “Constitutional Changes” of the Constitution. Referenda are also required to adopt fundamental foreign policy decisions, such as joining NATO or the European Union.

In 2015, members of the “For Fair Referendum” coalition prepared a new draft National Referendum Law (Draft Law 2145a), which was introduced in the Rada in June 2015. Similar to the fate of other draft laws aimed at comprehensive election law reform, it was never considered by the previous Rada. With some technical amendments already prepared by the Coalition “For Fair Referendum,” the draft National Referendum Law should be re-registered in the new Rada.

The draft National Referendum Law updates provisions on the preparation and administration of national referenda in line with the Constitution of Ukraine, international standards and good practices. It harmonizes referenda commission operations, referendum campaigning, media coverage, voting, and referendum tabulation with the respective procedures foreseen in the laws governing nationwide elections.

Re-registering and the subsequent adoption of this draft into law will fill a current legal vacuum and bring the regulation of national referendum processes in Ukraine in line with international standards, best practices and the Constitution.

**Re-launch of the NAPC and political finance reform**

In 2015, the Venice Commission and ODIHR jointly recommended that sanctions for failure to comply with political finance rules should be effective, proportionate and dissuasive, and they welcomed that adoption of the 2015 Political Finance Reform Law. While the law marked a significant step forward in
regulating the role of money in Ukrainian politics, certain provisions of the Law could benefit from further improvement.

Despite the 2015 law, Ukraine’s current system of penalizing political finance violations remains, by-and-large, ineffective. During the three years since it became fully operational, the National Agency for Prevention of Corruption (NAPC) has failed to establish itself as an institution effective in preventing corruption or reducing the flow of unreported funding in the campaign and oligarch funding of political parties. Since 2016, the NAPC has remained focused on detecting minor political finance violations (mainly financial reporting), at times using an arbitrary approach towards prosecuting specific parties and individuals for violation of political finance/anti-corruption legislation. Given the loss of public trust in the institution, its composition should be renewed.

Thus it is key, that further and more effective implementation of political finance reform in Ukraine should follow a “re-launch” of the main political finance regulator, the National Agency for Prevention of Corruption (NAPC). The renewal of the NAPC can be accomplished through amendments to the existing 2014 Law on Prevention of Corruption that governs the institution. It is recommended that this law is amended to make it possible to terminate the powers of incumbent NAPC members ahead of their term and appoint new members. If the renewed NAPC is to be led by director, provisions should be in place for the appointment of a director. The law should also ensure that the institution is accountable and independent, and that its oversight mandate is strengthened. In this respect, the NAPC should be legally mandated to electronically access state registers, information and documents. Only these efforts in combination can ensure that the NAPC is able to bring perpetrators of political finance violations to account.

Amendments to the Law on Prevention of Corruption have already been drafted by NGOs specializing on anti-corruption and political finance issues and discussed with anti-corruption experts. It can now be registered in the new parliament and adopted into law. The adoption of the draft would create legal grounds for re-launching the NAPC and bring its operations in line with international standards and good practice.

The failure of parties or candidates to submit timely financial reports to the NAPC or election commissions is punishable by a small fine of up to UAH 6,800, while repeated failure to file the reports entail similar fines. This is an important reason why only two-thirds of more than 350 registered political parties file quarterly reports to the NAPC. The system for penalizing political finance violations should be strengthened to dissuade parties and candidates from committing repeated violations.

The 2015 Political Finance Reform Law requires political parties to submit their quarterly reports in paper and electronic formats. Reporting in a paper format makes it difficult for the NAPC to analyze the reports and identify donations from prohibited sources, illegal expenses or concealed party assets. NAPC needs to establish an electronic declaration system that will integrate party and candidate financial reporting. This will enable political parties and candidates in national and local elections to complete their reports online and contribute to a more effective political finance oversight. It will also enhance transparency by ensuring that comprehensive information on political finance are available in an accessible format to public authorities, civil society watchdogs, journalists and citizens. Establishing such a system should be preceded by changes to the Political Finance Reform Law.
The rules governing donations, expenses and reporting by political parties, MPs, and presidential candidates have been harmonized by the 2015 Political Finance Reform Law. However, this law is not applicable for local elections. As has been highlighted by the Venice Commission and the Group of States Against Corruption (GRECO), the OSCE/ODIHR and IFES, the 2015 Local Election Law should be amended to effectively regulate campaign finance in local elections.

The 2015 Political Finance Reform Law requires all political parties that receive annual public funding or that participated in national or local elections to undergo an independent annual external audit. Such audits are expensive for many new or small political parties with low incomes. The auditing requirement should be reviewed to make sure that only those political parties whose income exceeds certain legally established levels, who participated in the regular or pre-term presidential and parliamentary elections or received public funding, are subject to mandatory independent auditing. The audit requirement should not apply to parties that nominated candidates in rolling local elections.

GRECO and others have also recommended to clearly delineate the powers of the NAPC and other agencies (such as the Accounting Chamber, the CEC and the Fiscal Service) involved in political finance regulation to avoid duplication of efforts and increase the overall effectiveness of political finance monitoring. This recommendation has yet to be addressed in the current legal framework.

One of the reasons for the strong dependence of political parties on wealthy donors is the absence of instruments aimed at limiting campaign spending by parties and candidates in elections. ODIHR and the Venice Commission have recommended setting campaign spending limits for all elections. Many civil society organizations, including the IFES-supported Reanimation Package of Reforms Election Group, also advocate for restrictions on television, radio and outdoor political advertising, as a means to level the playing field among candidates as advertisement-related expenses constitute a majority of electoral contestants’ campaign budgets. The need to restrict campaign expenses, which could include the introduction of spending limits and/or restrictions on political advertising, should be carefully considered.

**Conclusion**

Promulgation of the new Election Code and its entry into legal force in December 2023 must not hold delay long-awaited and comprehensive election-related reforms. The key priorities of these reforms include:

- Adoption of a new Local Election Law well in advance of the 2020 local elections to replace the “St. Petersburg” system in the current law with an open list system, as well as to improve the election procedures laid down in the current Local Election Law;

- Building up consensus among the stakeholders on key elements of the open list proportional system(s) to be used in the 2020 local elections and 2023 parliamentary elections through meaningful, open and inclusive public consultations on the system(s) and its potential outcomes;

- Harmonization of election laws;

- Overall improvement of election procedures:
  - Provide for more extensive use of IT in certain aspects of the elections (such as voter registration/changing the place of voting without changing the voter’s address);
  - Effectively address current security and disinformation threats;
Regulate election campaigning in new forms of media (including the internet);

Ensure impartiality of public service during elections and prevent misuse of administrative resources by incumbents, including budget resources at the central and local level;

Ensure effective access for parties and candidates to voter lists and the State Register of Voters’ database to scrutinize the voter data (while ensuring effective protection of the personal data of voters); and

Address other recommendations for improvement of the electoral legal framework proposed by domestic and international election observation missions, by the Venice Commission, the OSCE/ODIHR, IFES, and other international organizations;

- Mandatory training and certification of election commissioners prior to their appointment and ideally before the start of the election period;

- Introduction of timely, proportionate, effective and dissuasive penalties for electoral violations as well as strengthening the capacity of police, prosecutors and judges to resolve election disputes and prosecute perpetrators;

- Implementation of structural and operational reforms of the CEC, and launch of a new communication strategy of the CEC;

- Ensuring electoral rights of underrepresented and disenfranchised groups (IDPs, internal economic migrants, women and people with disabilities);

- Adopting a new National Referendum Law;

- Strengthening the independence and accountability of the National Agency for Prevention of Corruption (NAPC), introducing changes to the legal framework to re-launch the NAPC and renew the NAPC; and

- Further implementation of political finance reform in Ukraine by addressing recommendations for improvement of the political finance legal framework put forward by the Venice Commission, the OSCE/ODIHR, the Group of States Against Corruption (GRECO) and civil society organizations.

If the Election Code is promulgated by the President and amended to become effective starting from 2020, all the above priorities still would be relevant, except for the adoption of the new Local Election Law and harmonization of the electoral legal framework.

This analysis was developed jointly by International Foundation for Electoral Systems (IFES) and Civil Network OPORA and made possible with funding from the United States Agency for International Development (USAID), Global Affairs Canada, and UK aid. The opinions expressed herein are those of the authors and do not necessarily reflect the views of USAID, nor the governments of the United States, Canada, or the UK.