

2020 roadmap for electoral, referendum and political finance reforms

Executive Summary

On December 19, 2019, after eight years of consultations and negotiations between political actors, civil society, and the expert community, the Verkhovna Rada of Ukraine finally adopted a new election code. The final version of the code largely reflects recommendations proposed by civil society and election experts to ensure human rights and facilitate the political participation of various stakeholder groups, including IDPs and other internally “mobile” groups of citizens, voters with disabilities, and women. It will also serve to expand the list of election-related data available in the public domain and allow for proper evaluation of electoral processes. The electoral reforms, however, should not be limited only to the harmonization of the electoral laws and the introduction of the new electoral systems.

The new open-list proportional system introduced by the Code for parliamentary and local elections has a number of features of the closed list proportional system. In particular, ballot papers are designed in such a way that they encourage voters to vote for one of the party lists rather than for an individual candidate on the respective lists. The box for selecting an individual candidate is placed at the very bottom of a lengthy ballot; many voters would likely not notice the box, simply vote for one of the party lists, and leave rather than take the additional time to identify and fill in the number of their preferred candidate. Under the open-list proportional system to move to the top of the multi-mandate constituency (MMC) list, a candidate would need to receive a number of votes that equal 25 percent of the electoral quota.

The electoral quota may, in parliamentary elections depending on voter turnout, be rather high, some 7,000-9,000 votes. If no candidate receives votes amounting to 25 percent of the electoral quota, seats are distributed to candidates on the MMC party list according to the sequence determined by the political party in question. In addition, in parliamentary elections, if a party meets the national vote threshold for seat allocation, the top nine candidates on that national party list are given priority in getting elected, regardless of voter preference. These top nine candidates are not assigned to any MMC, so voters cannot cast a preferential vote for them even if they wanted.

In addition to the harmonization of the electoral laws and electoral system change, a meaningful electoral reform should also provide for improvement of the election procedures, the effective implementation of these procedures in practice, the introduction of proportionate, effective and dissuasive sanctions for election-related offenses, ensuring that election commissioners are professional and that the role of the law enforcement agencies and courts in protection of the electoral rights is strengthened.

Key reform priorities for elections, referendums, and political finance should include:

- **further promotion of political competition**, in particular, by allowing independent candidates to stand for local elections and by strengthening voters’ influence on the allocation of seats to candidates under the open list proportional system used in parliamentary and local elections;
- **decreasing the size of the electoral deposit to be paid by parties and candidates to run in the local elections**; clarification of the procedures, which the respective election commissions must follow when they verify candidates’ compliance with the eligibility requirements set forth by the electoral legal framework; disallowing candidates for certain elections to withdraw their candidacy in the last minute before the election day and thereby potentially derail the election;
- **establishing a unified approach for the composition of the election commissions in all elections (where it is practically possible and makes sense)**; establishing the regional and local branches of the CEC; implementing internal structural and operational reforms within the CEC (including the adoption of a CEC communication strategy for various stakeholder groups, enhancing transparency, accountability, and inclusiveness of CEC operations, the introduction of long-term planning of CEC

- operations); strengthening the professionalism of members of election commissions through mandatory training and certification of election commissioners;
- **ensuring a better regulation of election campaigning**, in particular, election campaigning on the Internet and in the new media;
 - **enhancing transparency of political and campaign finance**; addressing the recommendations for political finance reform proposed by the Group of States Against Corruption (GRECO), the Venice Commission and the Office of Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR); taking measures to prevent excessive funding of political parties and election campaigns by imposing restrictions on paid political advertising on radio and television; full launch of the electronic financial reporting system for political parties and candidates;
 - **improving the procedures for voter registration and for overall administration and maintenance of the State Register of Voters**; auditing of the State Register of Voters; further facilitation of electoral participation of IDPs and economic migrants;
 - **combating impunity for election-related offenses** and ensuring an effective election dispute resolution;
 - **promoting more extensive use of information technology in elections** (without shifting to Internet voting);
 - **ensuring better accessibility of elections for voters with disabilities**; facilitating active women participation in the election process; and
 - **strengthening other forms of direct democracy, including referenda.**

Jointly developed by the International Foundation for Electoral Systems (IFES) and OPORA Civil Network with the support of the United States Agency for International Development (USAID), Global Affairs Canada, and UK aid, this paper provides an overview of the key priority areas for further reform. The issues covered in this document, as well as the recommendations it offers to address these issues, could and should create the basis for further election, referendum and political finance reforms in Ukraine.

Most of these reforms should be implemented no later than in May 2020 so that the improved provisions of the Election Code and other relevant legal acts can benefit the 2020 local elections. Electoral contestants and administrators need to be properly prepared for these elections: the CEC, in particular, needs to be given ample time to issue the necessary guidelines, conduct voter awareness, develop and distribute election-related materials as well as adopt the secondary legislation necessary for the proper enforcement of the new electoral legal framework.

Introduction

In Ukraine, 2019 was marked by a number of positive election-related developments. Despite the intense competition between the two leading presidential candidates, Volodymyr Zelenskyy and Petro Poroshenko, the 2019 presidential elections were generally held in line with international standards for free, fair and democratic elections. For that reason, these elections were praised by international and domestic election observation missions.

The pre-term parliamentary elections held on July 21, 2019, also complied with international standards. The election of the new President and creation of a pro-president majority in the new parliament (Verkhovna Rada) created the necessary political environment for the acceleration of election, referendum and political finance reforms. The need for such acceleration has been repeatedly highlighted by election experts and civil society activists for years.

The early termination of powers of all the CEC commissioners on September 13, 2019, and the subsequent appointment of the new CEC members to replace the dismissed commissioners proved that the CEC remains vulnerable to political influence, as their dismissal was not necessarily tied to their performance holding elections in 2019. However, the CEC's renewal also opens a window of opportunities for implementing needed operational and structural reforms within the institution, which were not implemented by the

previous CEC due to time constraints and the administrative burden of having to conduct two national elections in 2019.

The adoption of the Election Code by the new Verkhovna Rada on December 19, 2019, was a tremendous step towards implementing election law reform. Most provisions of the new code became effective starting from January 1, 2020. The adoption and promulgation of the code generally harmonized the electoral legal framework in Ukraine, which has been a long-standing recommendation of international observer missions and domestic experts since the beginning of the 2000s.

While certain aspects of elections will still be regulated by the Law on the Central Election Commission and the Law on the State Register of Voters, the fact that many election procedures for the presidential, parliamentary and local elections have been harmonized is a significant achievement.

The advantages of the election code go beyond the harmonization of election procedures. Other advantages of the code include, in particular:

- introducing an open-list proportional system for the parliamentary and some local elections, in which voters are able to influence the allocation of seats to candidates on party lists;
- ensuring better accessibility of elections to voters with disabilities;
- introducing enforceable gender quotas in all types of electoral systems used to elect MPs and local councilors, including the single non-transferable vote system used in lower-level local elections;
- enhancing the overall transparency of many election procedures;
- establishing CEC branches at regional and local levels in charge of voter registration and with certain devolved powers of the CEC Secretariat; and,
- institutionalizing the CEC Training Center and making it in charge of ensuring the professionalism of the election commissioners and voter outreach.

The new election code also addressed lessons learned from the 2019 elections. In particular, it specified the term “residence in Ukraine,” explained how to calculate the term of residence, and how the respective election commission and other state agencies should verify candidates’ compliance with the candidate eligibility requirements (including residence).

The new Rada succeeded in taking measures to regulate the procedure for initiating and holding a national referendum by establishing a parliamentary working group tasked with the drafting of a new National Referendum Law. Parliament also enhanced the political finance legal framework. Amendments to the Political Party Law adopted in December 2019 provided for the establishment of an electronic system for party financial reporting and specified the requirements to the financial data to be disclosed by parties in their quarterly financial reports. They also removed legal constraints with respect to sources of party funding, established procedures for making private donations to political parties, and increased the annual amount of public funding available to eligible political parties.

Despite these welcome measures, there are still a number of outstanding issues to be addressed within the framework of electoral legal reform. In particular, the Code of Administrative Adjudication needs to be harmonized with the new election code; the system of sanctions for administrative and criminal election-related offenses needs to be further strengthened; and, campaign finance would benefit from enhanced transparency to decrease the heavy dependence of the parties and candidates on shadow and oligarch funding.

Other necessary improvements include the introduction of requirements for mandatory training of the election commissioners, strengthening the accessibility of elections for voters with disabilities, and facilitating the more extensive use of information technology in elections. Due to the accelerated process in which the new code was adopted, it suffers from a number of flaws and inconsistencies that must be addressed. In particular, the chapters of the code governing national and local elections use inconsistent election terminology and certain procedures (e.g. for the establishment of the election commissions) still have to be unified for both national and local elections.

This document highlights the key issues in the areas of elections, referendums and political finance, and offers a set of recommendations for improvements in the respective areas.

Key recommendations

Based on the issues identified in this document, the International Foundation for Electoral Systems (IFES) and OPORA Civil Network suggest a set of key recommendations in the areas of elections, referenda, and political finance. The table below identifies the respective reform priorities, the measures needed to make these priorities achievable, the agencies in charge of implementing the respective measures, and the deadlines for taking these measures. Encouragingly, several of the recommendations offered below for the consideration of the CEC are already under review or being implemented by the Commission.

The Parliamentary Committee on State Power, Local Self-Governance and Regional and Urban Development should renew public consultations to consider the proposed recommendations with all stakeholders, including the CEC, representatives of parliamentary factions and groups, local self-governance bodies, the expert community, and civil society activists.

Given the emergency situation regime across Ukraine, such consultations should be conducted using the available on-line platforms complying with the principles of transparency and inclusiveness and terminate no later than by the end of April 2020 so that the electoral legal framework and practices are improved in a timely fashion, i.e. well in advance of the 2020 local elections.

№	Reform priority	Measures	Agency in charge	Deadline
1.	Further improvement of the open list proportional system for parliamentary and local elections	1.1. To strengthen voters' influence on the allocation of seats to candidates on the party lists registered in multi-mandate constituencies, the number of votes needed for a candidate on the list to move to the top of the list and change the sequence of candidates on the list determined by the political party should be decreased (the number of votes should be reduced from the current 25 percent to 5-10 percent of the electoral quota)	Verkhovna Rada of Ukraine	May 2020
		1.2. To ensure equality of the candidates in parliamentary elections, the provisions granting a priority in getting elected to the top nine candidates on the national party lists who are not assigned to any multi-mandate constituency should be removed from the Election Code	Verkhovna Rada of Ukraine	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
		1.3. To ensure proportional representation each multi-mandate constituency created under the open list proportional system should be represented in the Parliament/local council in proportion to the number of registered voters in the MMC in question rather than in proportion to the voter turnout as foreseen in the current Code	Verkhovna Rada of Ukraine	May 2020
		1.4. To change the ballot paper format/design under the open list proportional system to encourage the voters to vote for individual candidates on the list rather than for the entire list	Verkhovna Rada of Ukraine	May 2020
		1.4. To provide for a clear and “user-friendly” procedure for establishing the election results and for the allocation of seats to the parties and candidates running under the open list proportional system	Verkhovna Rada of Ukraine	May 2020
		1.5. To clarify the procedure for calculating the electoral quota in the parliamentary elections	Verkhovna Rada of Ukraine	May 2020
2.	Improvement of the candidate nomination and registration procedures	2.1. To reduce the size of electoral deposit for the presidential and local elections to make sure that the right to be elected can be effectively exercised	Verkhovna Rada of Ukraine	May 2020
		2.2. To provide that electoral deposits must be returned not only to the winners of the elections but also to the parties/candidates who receive a certain, legally established, number of the votes cast	Verkhovna Rada of Ukraine	May 2020
		2.3. To specify the procedure and terms for verifying candidates’ compliance with candidate eligibility requirements	Verkhovna Rada of Ukraine	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
		2.4. To ensure a level playing field for political parties in local elections by allowing higher level (e.g. oblast level) party branches to nominate candidates for elections at the lower level (i.e. rayon or city level) in the absence of local party branches at those lower level(s)	Verkhovna Rada of Ukraine	May 2020
		2.5. To exclude from the Election Code the provisions allowing a presidential candidate in the second round of the vote (run-offs) to withdraw from elections	Verkhovna Rada of Ukraine	May 2020
		2.6. To harmonize the deadlines for withdrawal of candidacy and cancelation of candidate registration by the CEC in presidential elections	Verkhovna Rada of Ukraine	May 2020
3.	Ensuring appropriate conditions for domestic non-partisan election observation	3.1. To specify the rights of the NGO observers registered by the CEC in the nationwide election constituency	Verkhovna Rada of Ukraine	May 2020
		3.2. To lift the requirement that NGOs must obtain notary certification of certain supporting documents to get CEC accreditation to observe elections	Verkhovna Rada of Ukraine	May 2020
4.	Ensuring professionalism and stability of the election commissions	4.1. To provide for a unified approach to the nomination and appointment of election commission members and to set a ceiling on the maximum number of commissioners to be appointed to election commissions, regardless of the type of elections (wherever it is practically possible)	Verkhovna Rada of Ukraine	May 2020
		4.2. To provide for an exhaustive list of grounds for complete renewal of the DEC and PECs between the first and the second round in presidential elections	Verkhovna Rada of Ukraine	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
		4.3. To provide for mandatory training and certification of election commissioners by the CEC Training Center	Verkhovna Rada of Ukraine	May 2020
		4.4. To facilitate the use of IT in the document flow and overall operations of election commissions	CEC; Verkhovna Rada of Ukraine	During 2020
5.	Strengthening independence, institutional capacity, transparency and accountability of the CEC	5.1. To specify the procedure for the President's consideration of CEC nominees proposed by party factions/MP groups	Verkhovna Rada of Ukraine	During 2020
		5.2. To exclude or significantly restrict the possibility of early termination of powers of all the CEC commissioners	Verkhovna Rada of Ukraine	During 2020
		5.3. To facilitate the establishment of an expert advisory board/panel at the CEC	CEC	During 2020
		5.4. To ensure publication of all the election-related data in an open-data format (unless access to such data is restricted by the law)	CEC	During 2020
		5.5. To develop, approve and implement CEC communication strategy aimed to ensure effective communication between the CEC and key stakeholder groups	CEC	During 2020
		5.6. To develop, approve and implement CEC Strategic Plan (covering the entire 7-year term of the CEC's term in office), as well as CEC annual operation plans to implement the Strategic Plan	CEC	During 2020
		5.7. To enhance accountability of the CEC include a provision into the legal framework requiring the CEC to present annual activity reports to the Verkhovna Rada, as well as specify the requirements to the content of such annual reports	Verkhovna Rada of Ukraine	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
		5.8. To provide that the heads of CEC regional and local branches are appointed by the Head of the CEC Secretariat rather than by the CEC Chair, and/or to delineate the roles of the CEC Chair and Head of the CEC Secretariat in coordinating operations of the CEC branches	Verkhovna Rada of Ukraine	During 2020
		5.9. To ensure timely and sufficient funding of the regional and local branches of the CEC	Verkhovna Rada of Ukraine; Cabinet of Ministers	During 2020
6.	Ensuring effective election-related procurement within the narrow timeframes of the election processes	6.1. To amend the Public Procurement Law so that election commissions are able to effectively procure election-related goods/works and services within the narrow time frames of the election process without undermining the general principles of transparency and accountability of public procurement as established by the Public Procurement Law	Verkhovna Rada of Ukraine	July 2020
7.	Strengthening guarantees of the electoral rights	7.1. To provide for the possibility to change electoral address based on a court decision establishing the actual place of residence of the citizen/voter in question	Verkhovna Rada of Ukraine	May 2020
		7.2. To continue inter-departmental and expert discussions with respect to liberalizing the procedure for domicile registration (in particular, by replacing the permission-based Soviet “propiska” system by a declaration-based system where citizens notify the authorities of their place of actual residence)	Verkhovna Rada of Ukraine Ministry of Interior State Migration Service of Ukraine	During 2020

№	Reform priority	Measures	Agency in charge	Deadline
		7.3. To afford voters with disabilities the possibility to specify (in a request filed to the State Register of Voters maintenance bodies) the kind of accessibility instruments they need to effectively exercise their voting rights	Verkhovna Rada of Ukraine	May 2020
		7.4. To exclude the possibility of listing voters with disabilities as homebound voters without their prior consent/request	Verkhovna Rada of Ukraine	May 2020
		7.5. To provide that only those parties which ensured the election of least 50 percent women among the total number of party MPs elected will be entitled to receive additional public funding currently reserved for parties that ensured the election of no less than 30 percent women to the Verkhovna Rada	Verkhovna Rada of Ukraine	May 2020
		7.6. To introduce an amendment to the Political Party Law whereby political parties would be required to ensure a balanced representation of women and men in the party governing bodies	Verkhovna Rada of Ukraine	May 2020
8.	Enhancing transparency and effectiveness of voter registration procedures	8.1. To provide for a mandatory audit of the State Register of Voters	Verkhovna Rada of Ukraine	May 2020
		8.2. To ensure that political parties and candidates are able to effectively verify the accuracy of records in the State Register of Voters database	Verkhovna Rada of Ukraine	May 2020
		8.3. To provide for a full publication of the State Register of Voters data (with due respect to Constitution of Ukraine and European standards for protection of the personal data)	Verkhovna Rada of Ukraine	May 2020
		8.4. To expand the list of statistical voter registration data to be publicly disclosed by the CEC	CEC; Verkhovna Rada of Ukraine	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
9.	Combating impunity surrounding election-related offenses	9.1. To strengthen the system of sanctions for election-related offenses by adopting changes to the Criminal Code and the Code of Administrative Offences (based on the draft law No 8270 registered in the previous Parliament by the Cabinet of Ministers)	Verkhovna Rada of Ukraine	May 2020
		9.2. To launch a permanent training program for the police and judges on election-related issues in the period between elections	National School of Judges; National Police	On a permanent basis
		9.3. To ensure publication of up-to-date data on ongoing investigations of electoral crimes and on the outcomes of these investigations (in an open data format)	National Police; Ministry of Interior	On a permanent basis
		9.5. To facilitate the evaluation of the court practice in election-related cases and issuing relevant guidance to the lower-level judges	Supreme Court; National School of Judges	On a permanent basis
10.	Improvement of the election dispute resolution procedures	10.1. To align the Code of Administrative Adjudication with the Election Code	Verkhovna Rada of Ukraine	May 2020
		10.2. To introduce an electronic case management system and to ensure publication of comprehensive data on election disputes resolved by the CEC on a regular basis	CEC	During 2020
		10.3. To extend the deadline for filing complaints to election commissions from 2 to 5 days (following the date when the alleged violation was committed), as well as to restrict the possibility of rejecting complaints for technical/formalistic reasons	Verkhovna Rada of Ukraine	May 2020
11.	Implementing a well-thought approach towards the use of IT in election processes	11.1. To facilitate public consultations on the advantages and risks of electronic voting	CEC; Verkhovna Rada of Ukraine; Ministry of Digital Transformation	May 2020

№	Reform priority	Measures	Agency in charge	Deadline
		11.2. To provide for electronic transmission of the election result protocols from PECs to the CEC	Verkhovna Rada of Ukraine; CEC	2020-2021
		11.3. The consider expanding the use of IT in communications between the election commissions and candidates (e.g. submission of the registration documents in electronic format etc.)	CEC; Verkhovna Rada of Ukraine	During 2020
12.	Improvement of the election campaigning procedures	12.1. To establish proportionate, effective and dissuasive sanctions for violating campaigning provisions by adopting changes to the Code of Administrative Offences	Verkhovna Rada of Ukraine	May 2020
		12.2. To hold public consultations between political actors and experts aimed to identify the best approach towards regulation of election campaigning on the Internet, new media and social networks	Verkhovna Rada of Ukraine; CEC	During the first half of 2020
		12.3. To establish basic principles for regulating political advertising on the Internet and social networks	Verkhovna Rada of Ukraine	May 2020
		12.4. To strengthen the role of the National Broadcasting Council in identifying and/or prosecuting campaigning-related violations committed by media, including Internet media	Verkhovna Rada of Ukraine	
13.	Enhancing transparency and accountability of political and campaign finance	13.1. To provide for a real-time publication of information on donations transferred to and expenses made from campaign fund accounts of the electoral contestants, as well as to ensure the publication of the respective information	Verkhovna Rada of Ukraine; CEC; National Bank of Ukraine	During 2020

No	Reform priority	Measures	Agency in charge	Deadline
		13.2. To bring the provisions of the Election Code governing the procedures for making donations to electoral contestants, as well as campaign finance reporting, in compliance with the recent changes to the Political Party Law introduced in December 2019	Verkhovna Rada of Ukraine	May 2020
		13.3. To consider and implement measures aimed to prevent excessive funding of election campaigns	Verkhovna Rada of Ukraine	May 2020
		13.4. To provide for a sufficient term for launching the electronic financial reporting system for political parties and candidates by NAPC, as well to ensure full publication of the e-reports filed by parties and candidates once the e-system is launched	Verkhovna Rada of Ukraine; CEC NAPC	2020-2021
		13.5. To clarify the mandates of the NAPC and election commissions with respect to campaign finance oversight in national and local elections	Verkhovna Rada of Ukraine	May 2020
		13.6. To transfer responsibility for primary verification of the campaign finance reports in the local elections from the territorial election commissions (TECs) to the local branches of the CEC	Verkhovna Rada of Ukraine	Once the CEC branches are established

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