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**OPTIONS FOR CHANGE:
THE PARLIAMENTARY ELECTORAL SYSTEM IN UKRAINE¹**

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This analysis is primarily intended to inform the current debate on the parliamentary election law in Ukraine by providing an assessment of various options for reform in light of internationally agreed criteria for democratic elections. It may also be useful to other countries considering changes in their electoral systems, in that it sets forth the characteristics and the advantages and disadvantages of different systems for electing legislatures. The discussion will focus on two topics: (1) district design and seat allocation formulae; and (2) polling and counting procedures.

The current parliamentary electoral law is entitled ‘On the Elections of People’s Deputies of Ukraine.’ A new law was passed by the Ukrainian parliament, the Verkhovna Rada, in January 2001 and vetoed by President Leonid Kuchma in February. Efforts to draft an alternative version, acceptable to both the legislature and the executive, are under way as this is written. Both the law now in force and the vetoed bill cover the design of the electoral system and many of the provisions for the administration of elections.

Unlike in some countries, the design of the electoral system is not stipulated in the Ukrainian constitution, which states only that deputies are to be ‘elected for a four-year term on the basis of universal, equal and direct suffrage, by secret ballot’ (Art. 76), and that ‘the procedure for conducting elections of People’s Deputies of Ukraine is established by law’ (Art. 77).² Ukraine is, however, bound by its membership in various international organizations to observe the standards of electoral administration established in those organizations’ agreements

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² Articles 69-71 also establish general electoral rights.

(see Appendix I).³ The agreement which has been most influential in this regard is the 1990 Copenhagen Document of the Conference (later ‘Organization’) for Security and Co-operation in Europe (CSCE/OSCE). This document incorporates and elaborates many of the principles set out in other international agreements, and it is widely held to represent the current standard for electoral practice in Europe.⁴ As a member state of the OSCE, Ukraine is bound under international law to abide by the terms of this document. The Copenhagen commitments to openness and equality of competition; and impartiality and transparency of electoral administration will thus serve as points of reference for the present discussion.

ELECTORAL SYSTEM DESIGN

Though the majority of the world’s democracies have adopted systems of proportional representation, some of the oldest and most influential among them – Great Britain, France, the USA, Canada, and Australia – have retained single-member district systems. There has also been a dramatic increase in recent years in the number of countries with mixed systems like that currently in force in Ukraine. In moving from single-member districts to a mixed system and considering further moves toward proportional representation, Ukraine is on a path already traveled by most post-communist states. With the exception of Belarus, Uzbekistan, and Turkmenistan, all the countries in Eastern Europe and the former Soviet Union have abandoned their single-member absolute majority systems in favour of mixed or fully proportional variants. For some, such as Bulgaria and Croatia, the mixed system has been a half-way house on the way to full proportionality, and though there has been support in countries such as the Czech Republic and Slovenia for the re-introduction of single-member districts, this has not happened.

When we compare the different countries in the region on the basis of the progress they have made toward establishing accountable structures of representative democracy, we find that there is a strong link between democratic achievement and the employment of proportional representation (see Table 1). Simply put, those countries that have more proportional parliamentary electoral systems are more democratic. Comparative research on a world-wide scale has shown that this is a link that holds for other parts of the democratising world as well, but nowhere is the link closer than in the post-communist region. Those post-communist countries that can be classified as fully democratic all elect at least half the seats in the lower or only houses of their national parliaments by means of proportional representation (PR), and the average is 92 per cent. Among those states that are not democratic, virtually all elect fewer than a third of their seats by PR, and the average is 11 per cent.

But single nationwide electoral districts such as that stipulated in the Ukrainian draft law are very rare in established democracies with PR; the only two states that have such systems (outside of Latin America) are Israel and the Netherlands, both densely-populated countries in which territorial differences are less prominent than other divides. Among the PR systems in Central and Eastern Europe, there are also two cases of nationwide districts: Slovakia and Moldova.⁵

³ The most detailed statement of electoral good practice is the ‘Declaration on Criteria for Free and Fair Elections’ of the Inter-Parliamentary Union, of which Ukraine is also a member. Extracts from this document can be found in Appendix I.

⁴ The relevant sections of this document are included in Appendix I.

⁵ In Moldova this design is necessitated by the on-going uncertainty over the status of Transdnistria and the consequent difficulty in ensuring that all parts of Moldova would be represented in parliament through sub-national districting.

Table 1: Electoral Systems and Democracy in the Post-Communist World

Country	Electoral System Type as of 1 January 2000	Percentage of Seats Elected through PR	FH Political Rights 1999-2000 (Inverted) ⁶
<i>Democratic</i> ⁷			
Czech Republic	PR	100%	7
Estonia	PR	100%	7
Hungary	Mixed	54%	7
Latvia	PR	100%	7
Lithuania	Mixed	50%	7
Poland	PR	100%	7
Slovakia	PR	100%	7
Slovenia	PR	100%	7
Bulgaria	PR	100%	6
Moldova	PR	100%	6
Romania	PR	100%	6
<i>Partly Democratic</i> ⁸			
Georgia	Mixed	64%	5
Macedonia	Mixed	29%	5
Ukraine	Mixed	50%	5
Albania	Mixed	26%	4
Armenia	Mixed	43%	4
Croatia	PR	100%	4
Russian Federation	Mixed	50%	4
Kyrgyzstan	Mixed	25%	3
Yugoslavia	PR	100%	3
<i>Not Democratic</i> ⁹			
Azerbaijan	Mixed	20%	2
Belarus	Single-Member	0%	2
Kazakhstan	Mixed	13%	2
Tajikistan	Mixed	35%	2
Turkmenistan	Single-Member	0%	1
Uzbekistan	Single-Member	0%	1

Source: Database on Central and Eastern European Elections at www.essex.ac.uk/elections.

⁶ Every year the American organization Freedom House rates all countries of the world according to their level of political rights and civil liberties. The resulting scores, which are widely used by government representatives, academics, and others as measures of democracy, range on a scale of one to seven, where a score of one indicates full rights and liberties, and a score of seven denotes no rights or liberties. This scale has been inverted for use in this analysis, so that a higher number indicates a greater degree of democracy. Bosnia and Herzegovina has been omitted from this table as it is not currently a sovereign state.

⁷ The term 'democratic' here denotes a score of 7 or 6 on the 1999/2000 inverted Freedom House Political Rights scale.

⁸ The term 'partly democratic' here denotes a score of 5, 4, or 3 on the 1999/2000 inverted Freedom House Political Rights scale.

⁹ The term 'not democratic' here denotes a score of 2 or 1 on the 1999/2000 inverted Freedom House Political Rights scale.

Table 2: District Design in PR Systems in Central and Eastern Europe (Most Recent Elections to the Lower or Only Chamber)

Country	No. of Districts	Size of Chamber	No. of Seats per Territorial District	Population in 1999 (thousands)	Average population per Territorial District (thousands)
Bosnia and Herzegov.	8	42	3-6	3881	485
Bulgaria	31	240	4-13	8216	265
Croatia	10 + special minority and ex-patriot seats	151	14	4464	446
Czech Rep.	8 (31 in new law)	200		10,280	1285
Estonia	11	101	8-11	1442	131
Latvia	5	100		2430	486
Moldova	1	101	101	4281	4281
Poland	52 territorial + 1 national	460	3-17	38,695	744
Romania	42 + special minority seats	345	4-29	22,458	535
Slovakia	1	150	150	5396	5396
Slovenia	8 + special minority seats	90	11	1981	248
Yugoslavia (Fed. Rep.)	36	138	3-5	10,616	295
Average (territorial only; unweighted)	17.75	176.50	9.94	9512	1216
Ukrainian draft law	1	450	450	49,908	49,908

Sources: Database on Central and Eastern European Elections (constructed by the University of Essex, the International Foundation for Electoral Systems, and the Association of Central and East European Election Officials), available at www.essex.ac.uk/elections. Also available on CD-Rom from elect@essex.ac.uk; Inter-Parliamentary Union Parline Database at www.ipu.org; World Bank Development Indicators Database at <http://www.worldbank.org/data/wdi2000>.

Most states in the region which use PR divide their countries for electoral purposes into territorial districts, with an additional national district in the case of Poland. The average number of territorial districts in the region is 17.75, the average number of seats per district is 9.94, and the average population per district is 1,216 (see Table 2). In the Ukrainian context, research has demonstrated that the deputies elected in single-member districts are less representative of their constituents than are proportional list deputies in three senses: in terms of their socio-demographic attributes, in terms of their opinions, and in terms of their voting behaviour in the Rada.¹⁰ Though this may not be the case in all countries, it suggests that by moving to a different electoral system Ukraine could improve the overall representativeness of its Parliament.

The most obvious way to accomplish such a move would be to adopt a fully proportional model such as that described in the draft law. But were Ukraine to implement the provisions of the current draft, it would have the distinction of having the largest district of any pure PR system in the world. With a population over 40 times the Central and Eastern European average and nearly ten times that of the second-largest state (Slovakia), a single Ukraine-wide district would also be highly uncharacteristic of the post-communist region. Moreover, a single-district PR system would mean that there would be no representation on the basis of territorial identities, one of the grounds on which President Kuchma criticised the draft law at the time of his veto.

It goes without saying that the introduction of a fully proportional system would benefit political parties in the Rada. But no 'proportional representation' electoral system generates entirely proportional results, and all such systems tend to advantage large parties. Some parties would therefore benefit more than others from such a change. Had the 1998 elections been conducted under the draft law, the parties of the right would have experienced only marginal gains, whereas the seat share of the centrist parties would have gone up by about a quarter. The parties of the left would have been the big winners, increasing their share of seats from 38 to 57 per cent of the total. This system would thus have manufactured a majority for the left on the basis of only two-fifths of the vote (compare the actual and simulated results in Table 3).¹¹

Alternative System Designs. It is therefore worth considering alternative designs that might achieve the goals of strengthening parties and improving the quality of representation while at the same time meeting some of the criticisms that have been made of the provisions in the current draft. Four alternatives will be considered; the first three are based on the current mixed system and the fourth on the draft proportional system. They are:

- (1) retention of the mixed system but with an alteration in the ratio of PR to single-member (SM) seats in favour of PR;
- (2) retention of the mixed system with the current ratio of PR to SM seats, but with a compensatory distribution of PR seats;
- (3) retention of the mixed system but with an alteration in the means of selecting district deputies;
- (4) adoption of a fully proportional system but with regional lists and the option of including preferential voting.

¹⁰ Sarah Birch, 'Descriptive, Ideological, and Performative Representation in the Ukrainian Verkhovna Rada', University of Essex, 2000.

¹¹ It is worth noting that the disproportionalities (and the consequent manufactured majority) resulting from the application of this system are due primarily to the use of a relatively high threshold, rather than to the distribution formula.

The advantages and disadvantages of the four systems will be considered in turn, together with estimates of their likely partisan consequences. Simulated results under alternative models 1, 2, and 4 are provided in Table 4. These simulations employ data from the actual results of the 1998 elections. They are not intended as predictions, but rather as a means of comparing the *relative* effects of different systems. For the purposes of this analysis the structure of party ‘camps’ at the time of the 1998 elections has also been retained. Though this configuration has since changed somewhat at the élite level, analysis of voting trends over time suggests that the adherence of voters to the three main party camps has been relatively stable over the past decade.¹²

1. Alteration in the ratio of PR to SMD seats. The most straightforward change that could be made to the current electoral system in order to enhance party strength and deputy accountability would be to increase the proportion of list deputies at the expense of the proportion of SMD deputies. The advantages of such a change would be that (1) it would preserve the current principle of ballot design and seat allocation and would therefore not require extensive voter re-education; and (2) it would reduce the number of independents elected and thereby reduce the fluidity of parliament. The main disadvantage of such a system would be that it would require redistricting. The results that would have been generated in 1998 by a 75% PR/25% SMD division are presented in the first columns of Table 4. In partisan terms, such a change would have meant substantial gains for the left (but not enough to give them an absolute majority), moderate gains for the centrist parties, and no great change for the right.

2. Compensatory Mixed System. A second possible variation on the existing mixed system would retain the existing 50/50 split between PR and SMD seats but would distribute the PR seats in such a way as to compensate for the disproportionalities generated by the SMD seat distribution. This would have the advantage, in theory, of generating proportional results in the parliament overall while retaining single-member districts. In Ukraine it would have the added advantage that it would not require redistricting or a change in voting methods (though it would require voter re-education to explain the change in result calculation).

Versions of the compensatory mixed model are currently employed in Germany, Italy, New Zealand and Hungary. There are different ways of calculating compensatory PR seat distribution, depending on whether regional or national lists are employed and how the seats are allocated to parties. The large number of independents elected in Ukraine in 1998 means that no compensatory method would have been capable of generating truly proportional results unless the number of PR seats had been increased substantially and the threshold had been lowered.¹³

The simulation presented in the middle columns of Table 4 was accomplished using a simplified compensatory calculation with one national PR district (see Appendix II for details). In terms of broad party camps, the overall result of this simulation is very similar to the actual 1998 Results. The differences are within party camps rather than among them: on the left the Socialist/Rural bloc would have benefited at the expense of the Communists, and in the centre

¹² Andrew Wilson, *Ukrainian Nationalism in the 1990s: A Minority Faith*, Cambridge: Cambridge University Press, 1997; Andrew Wilson and Sarah Birch, ‘Voting Stability, Political Gridlock: Ukraine’s 1998 Parliamentary Elections’, *Europe-Asia Studies* 51:6 (1999) pp. 1039-68. Wilson and Birch, 1999; Sarah Birch, *Elections and Democratization in Contemporary Ukraine*, Basingstoke: Macmillan, 2000.

¹³ Given that only 81 of the 225 SM seats were won in 1998 by parties that cleared the four per cent list threshold, over 350 PR seats would be required to approximate a proportional result.

Table 3: Elections to the Verkhovna Rada, 1998: Actual Results and Simulated Results under Draft Law

PARTY	Actual Results, 1998							Simulated Results under Draft Law ¹⁴	
	List Votes	List Seats	% List seats	SM seats	% SM seats	Tot.	%	No. seats	%
Communist	24.65	84	37.33	38	16.89	122	27.11	169	37.56
Socialist/Rural	8.56	29	12.89	5	2.22	34	7.56	59	13.11
Progressive Socialists	4.05	14	6.22	2	.89	16	3.56	28	6.22
Working Ukraine	3.06	--	--	1	.44	1	.22		
Other left	1.10	--	--	--	--	--	--		
Total left	40.63	127	56.44	46	20.44	173	38.44	256	56.89
Greens	5.44	19	8.44	--	--	19	4.22	37	8.22
Popular Democrats	5.01	17	7.56	12	5.33	29	6.44	34	7.56
Hromada	4.68	16	7.11	7	3.11	23	5.11	32	7.11
Social Democrats (United)	4.01	14	6.22	3	1.33	17	3.78	27	6.00
Agrarians	3.68	--	--	8	3.56	8	1.78		
Razom	1.89	--	--	1	.44	1	.22		
NEP	1.23	--	--	1	.44	1	.22		
Social Liberal Union (SLOn)	.91	--	--	1	.44	1	.22		
Party of Regional Revival	.91	--	--	2	.89	2	.44		
Soyuz	.70	--	--	1	.44	1	.22		
Other centre	2.38	--	--	--	--	--	--		
Total Centre	30.84	66	29.33	36	16.00	102	22.67	130	28.89
Rukh	9.40	32	14.22	14	6.22	46	10.22	64	14.22
Reforms and Order	3.13	--	--	3	1.33	3	.67		
National Front	2.72	--	--	5	2.22	5	1.11		
Forward Ukraine	1.74	--	--	2	.89	2	.44		
Christian Democratic Party	1.30	--	--	2	.89	2	.44		
Fewer Words	.17	--	--	1	.44	1	.22		
Other right	.94	--	--	--	--	--	--		
Total Right	19.43	32	14.22	27	12.00	59	13.12	64	14.22
Against all	5.26								
INDEPENDENTS				116	51.56	116	25.78		
Invalid	3.09								
Total	100	225	100	225	100	450	100	450	100

¹⁴ See Appendix II for notes on methods of calculation.

Table 4: Simulated Seat Distributions Employing Alternative Electoral Systems (Based on 1998 Data)

PARTY/BLOC	75% PR/ 25% SM				Compensatory (modified 'German') Mixed				Regional PR	
	List	SM	Total	%	List	SM	Total	%	No.	%
Communist	126	19	145	32.22	76	38	114	25.33	140	31.11
Socialist/Rural	44	3	47	10.44	35	5	40	8.89	57	12.67
Progressive Socialists	21	1	22	4.89	17	2	19	4.22	32	7.11
Working Ukraine		1	1	.22	--	1	1	.22		
Total left	191	24	215	47.78	128	46	174	38.67	229	50.89
Greens	28	--	28	6.22	25	--	25	5.56	46	10.22
Popular Democrats	26	6	32	7.11	11	12	23	5.11	43	9.56
Hromada	24	4	28	6.22	15	7	22	4.89	35	7.78
Social Democrats (United)	20	2	22	4.89	16	3	19	4.22	37	8.22
Agrarians		4	4	.89		8	8	1.78		
Razom		--	--	--		1	1	.22		
NEP		--	--	--		1	1	.22		
Social Liberal Union (SLOn)		--	--	--		1	1	.22		
Party of Regional Revival		1	1	.22		2	2	.44		
Soyuz		--	--	--		1	1	.22		
Total Centre	98	17	115	25.56	67	36	103	22.89	161	35.78
Rukh	48	7	55	12.22	30	14	44	9.77	60	13.33
Reforms and Order		2	2	.44		3	3	.67		
National Front		3	3	.69		5	5	1.11		
Forward Ukraine		1	1	.22		2	2	.44		
Christian Democratic Party		1	1	.22		2	2	.44		
Fewer Words		--	--	--		1	1	.22		
Total Right	48	14	62	13.78	30	27	57	12.67	60	13.33
Independents		58	58	12.89		116	116	25.78		
Total	337	113	450	100	225	225	450	100	450	100

See Appendix II for notes on methods of calculation.

the Greens would have gained. One of the most significant effects of this system is that it could be expected to generate greater stability over time in seat distribution among the parties, in that the allocation of PR seats would even out variations in the SMD results (which tend to be larger).

3. Change the way single-member district deputies are elected. A common ideal for the selection of single winners is that the successful candidate should be the one who would beat all others in paired contests. Comparative analyses of different electoral systems has demonstrated that the plurality (relative majority) system currently used in Ukraine is of all systems the *least* likely to generate this ideal result.¹⁵ Two alternative systems could be employed to enhance the representativeness of SMD deputies. Unfortunately it is not possible to simulate the results of elections under either of these systems, but their likely effects will be discussed.

One option for change would be to revert to the two-round system employed in Ukraine prior to 1998. But two-round or runoff systems have a number of disadvantages, not least of which is the extra cost and effort required. A similar result can be achieved in a single round of voting by asking voters what their second choice would be if their first choice were eliminated. There are two versions of this system, known as the 'Alternative Vote' (AV) and the 'Supplementary Vote' (SV). AV – used for parliamentary elections in Australia and Fiji and for presidential elections in Ireland and Bosnia-Herzegovina - requires voters to rank order the candidates on the ballot by putting a '1' next to their first choice, a '2' next to their second choice, etc. (Usually voters have the option of ranking as few or as many candidates as they like.) If no candidate receives more than 50 per cent of first choices, then the candidates with the fewest number of first-preference votes are progressively eliminated and the second and subsequent choices of those voters are added to the relevant totals for the stronger candidates until one has an absolute majority.

SV – used in presidential elections in Sri Lanka and in the election of the mayor of London – is a slightly modified version of AV in which voters list only their first and second choices. This is simpler and generally yields the same outcome, though an absolute majority for one candidate is not always guaranteed. Both these methods simulate a two-round absolute majority system in one round of voting and both of them are more likely than plurality voting to produce a winner with broad support.

Another option would be to allow voters to vote for as many candidates as they support, and to select the one that has the greatest number of votes. This system, known as Approval Voting, has been used in the United States in some local elections and elections to posts in private organizations. It has been shown to be more likely than *any* other commonly-used system to select the winner who would beat all others in pair-wise competition, and the flexibility it allows makes it a popular system among voters. In the Ukrainian context Approval Voting has the advantage that it has been used before. The *oblast'* and *rayon* elections of 1998 allowed candidates to cast multiple votes in multi-member districts (though there was legal confusion as to how many votes each voter was allowed, and Approval Voting, where it was practised, may well have resulted more by default than by design).¹⁶ The same system could easily be employed

¹⁵ Samuel Merrill, III, *Making Multi-Candidate Elections More Democratic* Princeton, NJ: Princeton University Press, 1988.

¹⁶ A variation on this system was also employed in the local elections of 1987 for approximately five per cent of seats. Voters in these multi-member districts had the option of voting against any candidate they did not want to see elected. This resulted in some of the least popular local leaders being removed from office.

in single-member districts for parliamentary elections, provided the voting procedure was clarified.

The disadvantage of incorporating AV, SV, or Approval Voting into a mixed system is that voters might be confused by having to vote in two different ways for the two different types of deputy, and the way their ballots are counted might not be as they had intended. Were they to indicate only one choice for a SM candidate, there would not be a problem because this would be counted as a valid vote in any of the alternative systems. Voters could therefore continue to vote as before and still have their votes counted. But were they to make multiple choices on the party list ballot, their votes could only be considered valid if one of the ranking systems (AV or SV) were in force. In this case their first choice could be taken to be their vote. Were they to cast multiple un-ranked votes for parties, their ballots would be invalidated. Though all these systems would demand extensive voter education at the outset, the introduction of a ranking system would most likely *not* result in a substantial increase in invalid ballots. Use of these alternative SM systems would probably do little to alter party composition of parliament, but they would all prevent the election of candidates with limited support at the district level and would thus improve the quality of representation.

4. Regional PR. As mentioned above, most states which use PR employ regional districts. Given the fact that territorial interests and identities are important to many Ukrainian citizens, it would be well worth considering an electoral system that would bring the electoral process closer to the individual and increase accountability by allowing each voter to be represented by a smaller number of deputies with responsibility for his or her region. Such a system would also represent a reasonable alternative to the mixed system in that, like the mixed system, it would incorporate both party and territorial representation. If Ukraine were divided into 27 districts corresponding to its 27 regions, the result would still be a relatively proportional one, but the principle of regional representation would be preserved. Each district would have on average about 17 deputies, who would each represent on average 1,848 citizens - far closer to the norm in Central and Eastern European (see Table 2 above). A simulation of the results under such a system is presented in the final columns of Table 4. As with the single-district PR model detailed in the draft law, regional PR would have led to an increase for the left if it had been used in 1998, though in this case the communists would have benefited less in proportional terms than the Socialist/Rural bloc. (It is noteworthy that the Communists would also have won fewer seats under this system than they would have won under the 75%/25% mixed model). One of the most interesting features of this model is the substantial gains it would have generated for the centrist parties, who would together have won 36 per cent of the total seats, as against only 23 per cent in the actual results and 29 per cent under the draft law.

Another aspect of regional PR worth bearing in mind is that it could be designed to accommodate preferential voting - used in the Czech Republic, Estonia, Latvia, Poland, and Slovakia - where voters can select not only a party but also one or more candidates within that party and thereby influence the order in which candidates are elected from the lists. Preferential voting would satisfy the desire that voters be able to vote for individuals, but it would do so within a PR framework.

To summarise: All the alternative models described here combine elements of regional and party representation. All of them could be expected to enhance the accountability of deputies. Models 1, 2, and 4 would also strengthen the party system by generating greater

proportionality between voters' party choices and the partisan composition of the Verkhovna Rada. Models 1 and 4 would do so by reducing the number of independents elected. Had models 1, 2, or 4 been used in 1998, the parties of the left would have gained more seats than they did in fact, whereas the seat share of the right would not have been greatly affected by any of the alternative systems. The centrist parties would have experienced modest gains under systems 1 and 2 and substantial gains under system 4. Simulation of the results that would have been generated by the current draft law shows that single-district PR would have meant a slightly improved result for the center, not much change on the right, and a very substantial increase for the left, especially the Communists, whose seat share would have increased by nearly two-fifths.

NOMINATION PROCEDURES

One of President Kuchma's main objections to the current draft law is that the right to nominate candidates for election is restricted exclusively to political parties. This objection can easily be overcome by allowing groups of voters, social organizations, or citizens' initiatives to present lists under the same terms as parties. Of the eight Central and Eastern European states currently employing proportional representation (Bulgaria, the Czech Republic, Estonia, Latvia, Moldova, Poland, Romania, and Slovakia), three - the Czech Republic, Slovakia, and Latvia - allow only parties or party blocs to contest elections, while the other five allow lists by citizens' groups or independent candidacies. In Poland social organizations have also been allowed to nominate candidate lists for the Sejm. No independent candidates have won seats in any of these states, however, and the success of citizens' initiatives has been very limited. In the Ukrainian case the practical effects of such a change in the law would therefore in all probability be small, but it would help to assuage doubts about the law's constitutionality and would help to ensure that Ukraine observes its Copenhagen commitment to guaranteeing freedom of competition.¹⁷

POLLING AND COUNTING PROCEDURES

In considering changes to the provisions for polling and counting in Ukrainian election law, the aim should be to improve confidence in, and the efficiency of, electoral administration. The draft law is to be commended for the increase in detail and precision it brings to many aspects of electoral administration. Specifically, the draft (Arts. 60-71) is considerably clearer and more detailed than the existing law as regards certain of the processes for which the 1998 elections were criticised, including the tasks to be carried out at the start and close of the polls and the procedure for counting ballots and tabulating the results in the polling stations. The draft law also allows for greater transparency in that it guarantees the right of observers to have access to the voting and vote tabulation processes at the level of the polling station and the territorial election commission, and that it requires results to be published without delay.

If the existing law is retained, it should be amended to incorporate these or similar improvements.

¹⁷ It is unclear that the current draft does in fact violate the Ukrainian Constitution on this count. President Kuchma said that the draft law violates Art. 5 of the Constitution because it does not allow citizens to 'exercise power directly, as stated in Article 5 of the Constitution of Ukraine, through the election of their representative to the Verkhovna Rada of Ukraine'. Article 5 states that 'the people exercise power directly *and* through bodies of state power...' (italics added). The direct exercise of power presumably refers to referendums; it is here contrasted to the indirect exercise of power through representatives. Moreover, nothing in the draft law prevents voters from voting directly for those they want to represent them; the law requires them to vote for lists of candidates put forward by parties, not for the parties themselves, and it allows parties to include on their lists candidates who are not their members.

As suggested above, another of the strengths of the draft law is that it explicitly recognises the role of official observers in the electoral process and it codifies their status. Yet it is unfortunate that the draft law allows only party and international observers to be accredited, thereby excluding observers from domestic civil society groups. This is another criticism made by President Kuchma in his comments on the draft law, and it is a valid one. Domestic observers can help to ensure the impartiality and transparency of the electoral process by gathering and disseminating non-partisan information and objectively scrutinising the details of the polling/counting.¹⁸ The relationship between domestic, international, and party observers is a symbiotic one. Domestic groups reach into society; they can access and interpret far more information over a longer period than international observation missions. International observation missions, by contrast, reach out to the outside world; they can articulate and publicise concerns in such a way that they gain the attention of a much wider audience than can domestic observers. Party observers, for their part, have a vested interest in paying close attention to factors that might influence particular candidacies. Because of their complementary roles, domestic, international, and party observers need to work together to make the observation of elections effective.

In the 1998 elections a coalition of non-governmental organizations, the Committee of Voters of Ukraine, played an important role both in observing the elections and in training observers. It also engaged in valuable voter education. To exclude groups such as the CVU from the electoral process would be to lose an important resource. It would also represent a step back in terms of transparency of electoral administration and the development of civil society. Provided adequate mechanisms are introduced to ensure that only groups with legitimate aims are accredited, the inclusion of domestic observers in the electoral process can only improve it. For these reasons it would be advisable to include in the current law a guarantee of the right of all three types of accredited observers (those from domestic civil society groups, those from political parties and those from foreign states and international organizations) to observe the voting, counting, and vote tabulation procedures. Likewise, observers from Ukrainian civil society organizations should be added to those whose rights are specified and whose status is codified in Articles 57-59 of the current draft law.

Moreover, if the provisions in Articles 57-59 of the draft law are incorporated into the eventual law, it would be desirable to extend the rights of observers to be present at the vote tabulation activities of the Central Electoral Commission. All types of non-party observers should also be accorded the same rights of access to the electoral process as party observers (e.g. in Arts. 66(10), 66(29), 67(4), 70(16)), and these rights should be fully compatible with their duties. In particular, the meaning of Art. 58(6)(7) should be clarified so that it does not imply the right of observers to interfere in the electoral process.

Two other points may be made about details of voting and counting procedures. First, the proposed reduction in polling time from 0700-2200 hours in the current law to 0800 to 2000 in the draft law is regrettable, in view of the fact that reports from the 1998 elections indicated that even with long opening hours some polling stations had difficulty processing the flow of voters. Second, it would be advisable to include in the prescription for the layout of polling stations (Art. 40 of current law, Art. 63 of the draft law) a requirement that candidate lists be posted in polling stations in clear view of voters, and if feasible, within polling booths. This would

¹⁸ It is for this reason that the OSCE has recently initiated a programme to support domestic election observation.

enhance the transparency of the process by allowing voters ample opportunity to familiarise themselves with the entire range of candidates on each list.

CONCLUSION

In considering the impact of electoral laws, it is important to bear in mind that there is no 'best' electoral system for any individual country. All electoral systems are compromises arrived at through an effort to balance different desirable outcomes. Which system is most appropriate in a given context is a matter of judgment as to which competing set of goals is most important. Moreover, electoral law, by shaping the inputs into the parliamentary process, can only influence political outcomes to a limited extent. The eventual outputs of that process are also shaped by many other factors, including the laws governing the functioning of parliament and its relations to other institutional structures. Nevertheless, electoral system design can have important consequences both for the ability of politicians to represent citizens' interests effectively and accountably, and for the quality of electoral administration. The results of the 1998 election in Ukraine demonstrated that on both counts the current electoral law could be improved. It is hoped that the suggestions made here will help to stimulate debate about possible alternatives in Ukraine and elsewhere.

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Appendix I: Extracts from International Agreements Relating to Elections

A. OSCE Copenhagen Document of 1990¹⁹

(5) [The participating States] solemnly declare that among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and unalienable rights of all human beings are the following:

(5.1) - free elections that will be held at reasonable intervals by secret ballot or by equivalent free voting procedure, under conditions which ensure in practice the free expression of the opinion of the electors in the choice of their representatives;.....

(5) The participating States declare that the will of the people, freely and fairly expressed through periodic and genuine elections, is the basis of the authority and legitimacy of all government. The participating States will accordingly respect the right of their citizens to take part in the governing of their country, either directly or through representatives freely chosen by them through fair electoral processes.....

(7) To ensure that the will of the people serves as the basis of the authority of government, the participating States will

(7.1) - hold free elections at reasonable intervals, as established by law;

(7.2) - permit all seats in at least one chamber of the national legislature to be freely contested in a popular vote;

(7.3) - guarantee universal and equal suffrage to adult citizens;

(7.4) - ensure that votes are cast by secret ballot or by equivalent free voting procedure, and that they are counted and reported honestly with the official results made public;....

(8) The participating States...invite observers from any other CSCE participating States and any appropriate private institutions and organizations who may wish to do so, to observe the course of their national election proceedings, to the extent permitted by law. They will also endeavour to facilitate similar access for election proceedings held below the national level. Such observers will undertake not to interfere in the electoral proceedings.....

The United Nations International Covenant on Civil and Political Rights, Article 25²⁰

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- To take part in the conduct of public affairs, directly or through freely chosen representatives;
- To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- To have access, on general terms of equality, to public service in his country.

Inter-Parliamentary Union Declaration on Criteria for Free and Fair Elections

2. Voting and Elections Rights

(1) Every adult citizen has the right to vote in elections, on a non-discriminatory basis.

(2) Every adult citizen has the right to access to an effective, impartial and non-discriminatory procedure for the registration of voters.

¹⁹ This document can be found on the OSCE website at <http://www.osce.org/odihr/docs/compilation/compilation-index.htm>.

²⁰ This document is available at <http://www.hrweb.org/legal/cpr.html>.

(3) No eligible citizen shall be denied the right to vote or disqualified from registration as a voter, otherwise than in accordance with objectively verifiable criteria prescribed by law, and provided that such measures are consistent with the State's obligations under international law.

(4) Every individual who is denied the right to vote or to be registered as a voter shall be entitled to appeal to a jurisdiction competent to review such decisions and to correct errors promptly and effectively.

(5) Every voter has the right to equal and effective access to a polling station in order to exercise his or her right to vote.

(6) Every voter is entitled to exercise his or her right equally with others and to have his or her vote accorded equivalent weight to that of others.

(7) The right to vote in secret is absolute and shall not be restricted in any manner whatsoever....

4. The Rights and Responsibilities of States

(1) States should take the necessary legislative steps and other measures, in accordance with their constitutional processes, to guarantee the rights and institutional framework for periodic and genuine, free and fair elections, in accordance with their obligations under international law. In particular, States should:

- Establish an effective, impartial and non-discriminatory procedure for the registration of voters;
- Establish clear criteria for the registration of voters, such as age, citizenship and residence, and ensure that such provisions are applied without distinction of any kind;
- Provide for the formation and free functioning of political parties, possibly regulate the funding of political parties and electoral campaigns, ensure the separation of party and State, and establish the conditions for competition in legislative elections on an equitable basis;....

(2) In addition, States should take the necessary policy and institutional steps to ensure the progressive achievement and consolidation of democratic goals, including through the establishment of a neutral, impartial or balanced mechanism for the management of elections. In so doing, they should, among other matters:

- Ensure that those responsible for the various aspects of the election are trained and act impartially, and that coherent voting procedures are established and made known to the voting public;
- Ensure the registration of voters, updating of electoral rolls and balloting procedures, with the assistance of national and international observers as appropriate;
- Encourage parties, candidates and the media to accept and adopt a Code of Conduct to govern the election campaign and the polling period;
- Ensure the integrity of the ballot through appropriate measures to prevent multiple voting or voting by those not entitled thereto;
- Ensure the integrity of the process for counting votes....

(5) States should take all necessary and appropriate measures to ensure that the principle of the secret ballot is respected, and that voters are able to cast their ballots freely, without fear or intimidation.

(6) Furthermore, State authorities should ensure that the ballot is conducted so as to avoid fraud or other illegality, that the security and the integrity of the process is maintained, and that ballot counting is undertaken by trained personnel, subject to monitoring and/or impartial verification.

(7) States should take all necessary and appropriate measures to ensure the transparency of the entire electoral process including, for example, through the presence of party agents and duly accredited observers.

Appendix II: Notes on the Methods Used in Ukraine Election Result Simulations

Draft Law. Seat allocation was calculated on the basis of a quota of 38,848 (half the quota of 77,695 employed to distribute the 225 list seats in the 1998 elections). Application of the four per cent threshold restricts seat distribution to the eight parties that won list seats in 1998. Dividing the number of votes each party won by the quota, the KPU would win 168 seats, Rukh 64, the Sots./Sel. Bloc 58, the PZU 37, the NDP 34, Hromada 31, the PSPU 27, and the SDP(o) 27. The remaining four seats are distributed among the four parties with the largest remainders - the KPU, the Sots./Sel. bloc, Hromada, and the PSPU - to generate the figures shown in Table 3.

Alternative 1. 75% PR/ 25% SMD. The PR component of the results was re-calculated using a modified quota of 51,874. The four per cent threshold was retained. The SMD results were more difficult to estimate, in that the increase in district size and geographical composition required by this system would alter the district-level competitive situation. The results presented here have been simulated by halving the actual 1998 SMD results, and in case of fractional results, allocating seats to larger parties on the basis that larger parties tend to benefit from plurality rules (and they benefit more in larger districts). In the case of several parties whose fractional seat share was equal after the re-calculation, the seat in question was awarded to the party that had performed best on the list ballot (Trudova Ukraïna).

Alternative 2. Compensatory Mixed System. The results were simulated under a simplified form of compensation, retaining the four per cent threshold, the single nation-wide district, and the quota method of seat distribution. The total number of district seats won by the eight parties that crossed the threshold (81) was added to the 225 PR seats to yield 306. A simple quota was then calculated on this basis, and the 306 seats were distributed among the parties according to the largest-remainders method prescribed in the current law. The number of district seats won by each party was then subtracted from the number of seats they had been allocated through the quota distribution procedure. Due to the large number of seats won in 1998 by independents and parties that did not clear the threshold, this procedure only had a partially compensatory effect, but the result is more proportional than that achieved by the parallel system in force at the time.

Alternative 3. Regional PR. The territory of Ukraine was divided for the purposes of this calculation into 27 districts corresponding to the 27 regions of Ukraine. Seats were allocated to the districts in proportion to the number of district seats each region had in 1998 (which was doubled for a total of 450). The four per cent threshold was retained and was deployed at the level of national results. Seats were first distributed at district level through simple quotas. As it would not have been possible to distribute all the seats at this level by means of the largest-remainder method described in the current law, the vote remainders were combined to form a national pool and distributed among the remaining seats through a secondary simple quota procedure in which the largest-remainder method was again applied. This is similar to the procedure used in the other Central and Eastern European states that distribute seats in regional districts by means of quotas (the Czech Republic, Estonia, and Romania). In the case of the 1998 Ukrainian results, however, the combination of a simple quota and a relatively exclusionary threshold meant that an unusually large number of seats (233) were entered into the national pool. Use of a Droop quota ($\text{votes}/(\text{seats}+1)$) would have allowed a larger number of seats to be distributed at the district level.