

DIRECTORATE-GENERAL FOR EXTERNAL POLICIES
POLICY DEPARTMENT



**The electoral reforms in
three association
countries of the Eastern
Neighbourhood -
Ukraine, Georgia and
Moldova**

AFET



STUDY

The electoral reforms in three association countries of the Eastern Neighbourhood - Ukraine, Georgia and Moldova and their impact on political developments in these countries

ABSTRACT

This study focuses on electoral reform in Ukraine, Georgia and Moldova, which have all concluded Association Agreements with the EU. Recent experience in all three countries has shown that political elites are changing (or not changing) the electoral system to hold onto power. Beyond the choice of electoral system, changes have often been introduced in a rush, without a genuinely inclusive, thorough and public debate. Frequent changes to legal frameworks, often made just prior to elections, have also not contributed to stability of law. Issues identified during elections are symptomatic of deeper weaknesses that must be addressed, including: lack of an independent judiciary, insufficient rule of law, non-functioning or selective use of oversight mechanisms, weak government institutions, concentration of media ownership, political corruption and misuse of state resources. All three countries are also experiencing widespread public discontent with the political elite, and political renewal is much needed. While electoral reform can play a role, efforts should be made to promote internal party democracy and overcome barriers to entry for new political actors.

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Executive Summary

Electoral reform is premised on the idea that no election is perfect, and all countries can improve on their practice. However, electoral reform is also about deciding the rules of the game, and can be used by political actors to maintain power. Experiences of electoral reform in Ukraine, Georgia and Moldova have shown that political elites are changing (or not changing) the electoral system to improve their chances at winning elections and staying in office. While it is the prerogative of political parties to consider the effects of specific electoral systems on their chances, discussions about key aspects of the election process such as electoral systems should be inclusive and transparent, with the aim of finding consensus between political forces so that the resulting legal framework provides a level playing field for all.

Recent changes to electoral systems in Moldova and Georgia have lacked a consensus building approach, and in the end have been approved only by the governing party and their allies. Changes have been introduced in a rush, without time for a genuinely inclusive, thorough and public debate. In Ukraine, civil society and some opposition parties have struggled to put electoral reform on the political agenda, despite a post-election governing coalition pledge to do so, as the status quo is seen to benefit those currently in power.

The political implications of changes to electoral systems can be difficult to predict. However, the widespread use of the parallel mixed system in the region, have had negative consequences on democratic development. The parallel mixed system brings together two separate systems for the allocation of parliamentary seats – a number of MPs are elected on the basis of proportional representation, while the remaining MPs are elected on a majoritarian basis, in single mandate constituencies. Experience from Ukraine and Georgia has shown that, in the regional context, majoritarian seats are often associated with business interests and appear to encourage corrupt electoral practices such as vote-buying and misuse of state resources. While the authorities in Georgia and Ukraine have both stated their intention to move away from the parallel mixed system, and Georgia has passed constitutional amendments to this effect, Moldova has recently introduced it.

The study also concludes that while electoral reform is important, no electoral system or set of recommendations on improving the broader electoral process is going to be able to remedy more serious problems of democratic development. Flaws identified by election observers are often only symptomatic of deeper systemic weaknesses that persist, to varying degrees, in each of these countries and must be addressed through broader efforts to promote democratic accountability throughout the electoral cycle. These include: lack of an independent judiciary, insufficient rule of law, non-functioning or selective use of oversight mechanisms, weak government institutions, concentration of media ownership, political corruption and misuse of state resources. Until such fundamental issues are resolved, elections in these countries will continue to have certain weaknesses that will not be easily overcome, regardless of what electoral system is in place.

Widespread public discontent with the political class is present in all three countries. While this is true in many countries worldwide, it is acutely so in these three cases, partly because of the interplay between business interests and political interests and the dominance in politics of a very few wealthy individuals. Rather than coalescing around a set of common principles, therefore, political forces coalesce around these wealthy individuals. Parties are weak and often lack internal democracy. Renewal of political elites is urgently needed. While electoral system reform can play a minor role in encouraging political renewal, other factors include the need for greater women's participation, strengthening enforcement of campaign and political finance regulations and facilitating equitable access to media for emerging political parties.

As Ukraine, Georgia and Moldova have all concluded Association Agreements with the EU, the European Parliament follows developments closely and is in a strong position to contribute to the reform process. The study respectfully offers a number of recommendations for the consideration of the European

Parliament. These include:

- Continue and expand its parliamentary support activities for these countries, in particular to further encourage consensus-building approaches that could also lead to more inclusive electoral reform.
- Identify new ways to encourage and support internal party democracy, including through increased focus by international election observation missions to this issue and enhanced EU support for party building programming, including at the local level.
- Give political weight to the recommendations of the Venice Commission and OSCE/ODIHR regarding electoral reform, emphasising the need for a genuinely inclusive and transparent process. Consider linking political conditionality to the implementation of priority recommendations.
- Ensure that promoting women's participation is an integral part of electoral reform efforts, including the implementation of temporary special measures in elections, such as mandatory gender quotas and preferential campaign finance arrangements.
- Support and monitor the development of strong and accountable government institutions, including an independent judiciary, prosecutor's office, functioning regulatory authority for campaign and political finance, media oversight body and impartial election administration.
- Encourage support for civil society organisations to actively promote and monitor issues of public accountability throughout the electoral cycle, including between elections. Actively monitor the environment for civil society organisations to freely conduct their activities.
- Help to protect and encourage the development of independent media outlets and an enabling media environment through strong political statements and funding. Support for investigative journalism is particularly relevant for countering political corruption.

In Moldova:

- Should the political conditionality criteria for the macro-financial assistance not be met, the macro-financing assistance funds should not be disbursed. Such an action should be accompanied by a clear public statement on the reasons for the decision.

In Georgia:

- Focus on issues of political culture and internal party democracy in order to effectively address the remaining challenges to democratic reform. Assess Georgia's progress on its own merits, rather than only comparing developments in Georgia to the rest of the EaP countries.

In Ukraine:

- Encourage all parties to engage in an inclusive and transparent process to develop a new consensus based draft law on electoral system reform that can be considered by parliament well in advance of elections.

Overall, stakeholders from government, political parties, civil society and media alike appreciate and encourage the active engagement of the European Parliament on issues of democratic and electoral reform. They view the Parliament's comparative advantage as a political body that can speak out forcefully in defence of human rights and democracy when it is threatened, and they expect the Parliament to continue to do so.

1 Introduction

In recent years, the European Union (EU) and the wider international community have increasingly focused on ensuring follow-up to recommendations of election observation missions (both domestic and international), in order to bring election frameworks in line with international and regional standards.¹ In the Organisation for Security and Cooperation in Europe (OSCE) region, it is the Office for Democratic Institutions and Human Rights (ODIHR) that conducts election observation missions (EOMs), usually together with the European Parliament, the Parliamentary Assembly of the Council of Europe and the OSCE Parliamentary Assembly. At the same time, the EU is responsible for conducting EOMs in other parts of the world.² Ensuring such follow-up through electoral reform can demonstrate the positive impact of election observation by encouraging states to take steps to resolve issues identified during elections.

Electoral reform in any country is politically sensitive as it is about the 'rules of the game'. While political parties and other stakeholders may have a genuine interest in improving their country's electoral process, they also have a political interest in trying to identify electoral systems and other mechanisms that are most likely to favour their own political chances. Such debates over electoral reform are a normal part of the political process, but it is also the case that frequent changes to the electoral framework do not promote stability in a democracy, and significant changes too close to the elections may be unfair to some political forces (the Council of Europe's Venice Commission suggests major changes should be not be made within one year of elections³).

Most election recommendations do not address electoral systems, as international election observers view the choice of an electoral system to be a sovereign matter for the country, related to its own political context.⁴ Election observer recommendations deal with all aspects of the electoral process – the legal framework, election administration, voter registration, candidate registration, the election campaign, media and complaints and appeals. Some election recommendations require constitutional or legal changes, while others are about the implementation of the legal framework.

This study considers the broader context of electoral reform and implementation of electoral recommendations in Ukraine, Georgia and Moldova, but focuses mainly on recent experience of changes and consideration of changes to electoral systems, as these have attracted widespread international and domestic interest alike. The interest and engagement of the EU, the OSCE/ODIHR, the Venice Commission and others in the debate on electoral system reform, despite their stated neutrality on the issue, demonstrates the importance attached to it for the democratic development of these countries.

Ukraine, Georgia and Moldova are all states in democratic transition. They share many features in common – a Soviet past, tensions between pro-EU and pro-Russian forces, frozen conflicts on their territories and business interests involved in the political environment. They have reached a certain degree of democratic consolidation, with elections judged as broadly credible and competitive by international and domestic observers alike, but with persistent weaknesses identified as well. At the same time, while these countries share similar challenges, they are shaped by their own specific political, economic and security contexts.

These three countries have also all concluded Association Agreements with the EU, which specify commitments from their side on a wide range of reforms. These agreements have linked follow-up to election recommendations to the broader reform agenda, which all three countries have pledged to

¹ See, for example, European Union, *Beyond Election Day: Best Practices for Follow-up to EU Election Observation Missions*, Brussels, 2017.

² The EU and the OSCE/ODIHR use a comparative methodology, and for that reason the EU does not usually observe elections in OSCE region.

³ Venice Commission, *Code of Good Practice in Electoral Matters Guidelines and Explanatory Report*, Strasbourg, May 2003, II.2.b.

⁴ Election Observation and Democracy Support, *Handbook for European Union Election Observation*, 3rd edition, European Union, Brussels, 2016, p. 44.

The electoral reforms in three association countries of the Eastern Neighbourhood - Ukraine, Georgia and Moldova implement. Monitoring the implementation of these reform processes is a priority for the European Parliament and it has therefore requested this study to provide an analysis of electoral reforms recently implemented and currently under consideration, including their likely political implications.

2 Overview of key electoral reforms in Ukraine, Georgia and Moldova

Ukraine, Georgia and Moldova have all engaged in comprehensive electoral reform efforts since their independence. These have included follow-up to OSCE/ODIHR and Venice Commission recommendations, as well as electoral system reform. This section details the key electoral reforms since 2009 in each country.

2.1 Ukraine

Ukraine has engaged in almost continuous electoral reform since its independence, including frequently changing the electoral system. One study estimates the electoral framework for parliamentary elections has changed almost 40 times.⁵ While the reforms have taken into consideration a number of recommendations made by the OSCE/ODIHR and the Venice Commission, some key reforms have remained unaddressed. At the same time the electoral reform that has taken place has not included a comprehensive review of the electoral framework as a whole, but instead has focused piecemeal on each type of election legislation – parliamentary, presidential or local – and has thus failed to eliminate gaps and inconsistencies through the consolidation of a unified electoral code. Such reforms often happen immediately before the conduct of elections, in contradiction to good electoral practice and often lack the necessary transparency and consultative process among stakeholders.

Following its independence, Ukraine conducted the 1991 and 1994 elections with a majoritarian two-round system in 450 single mandate constituencies (SMCs). It then adopted a parallel mixed system with 225 members of parliament (MPs) selected in SMCs on a plurality basis and 225 MPs selected through proportional representation (PR) with a 4% threshold for elections in 1998 and 2002. After the 2004 'Orange Revolution', a fully proportional system with a single national constituency and a 3% threshold was introduced and used in the 2006 and early 2007 elections. A parallel mixed system, with a raised threshold of 5% and no possibility for electoral blocs, was reintroduced prior to the 2012 elections and was used again in 2014. With its four major electoral system reforms – from a majoritarian system to a mixed system to fully proportional and back to mixed – Ukraine is one of the countries in the world with the most frequent changes to its electoral system and thus to the rules of the game for election stakeholders.⁶

The reintroduction in 2012 of the parallel mixed electoral system (used previously in 1998 and 2002) was much criticised at the time by civil society and the international community. The OSCE/ODIHR noted in its final report on 2012 parliamentary elections that 'Most OSCE/ODIHR interlocutors complained about the current electoral system, which re-introduced deficiencies that were noted when it was previously used.'⁷ The citizen observer group Citizen Voters of Ukraine (CVU) further specified that the majoritarian component of the mixed system in Ukraine 'creates conditions for use of administrative resources, vote-buying and distortion of the peoples' will'.⁸ The raising of the threshold from 3% to 5% and banning of electoral blocs were also contrary to the advice of the Venice Commission, OSCE/ODIHR and others.⁹

The Venice Commission and OSCE/ODIHR also criticised the process with which the 2012 electoral reform took place. In particular, while the Working Group on reforming and codifying the electoral legal framework included representatives of different state institutions, parliamentarians, civil society,

⁵ S. Tkachenko and S. Halling, *Prospects for Electoral Reform in Ukraine*, European Platform for Democratic Elections, Berlin, June 2017, p. 3.

⁶ M. Bakken and A. Sorescu, *Electoral System Design in Moldova*, Promo-LEX, Chisinau, 2017.

⁷ OSCE/ODIHR, Election Observation Mission final report, Ukraine, Parliamentary elections, 28 October 2012, Warsaw, 2013.

⁸ Citizen Voters of Ukraine, Final Report on the 2012 Parliamentary Elections, 2012.

⁹ Venice Commission and OSCE/ODIHR, *Joint Opinion on the draft law on election of people's deputies of Ukraine*, CDL-AD(2011)037, Strasbourg/Warsaw, October 2011.

academics and legal and constitutional experts, the initial phase of the reform process lacked transparency and inclusiveness. Decisions on the electoral system, the parliamentary threshold and the banning of electoral blocs were taken unilaterally by the majority without any discussion.¹⁰

While some provisions introduced in 2012 prior to the parliamentary elections addressed previous Venice Commission/OSCE/ODIHR recommendations, including the possibility for independent candidates to run for office, the unrestricted access for media to all public election-related events, and the elimination of provisions allowing voters to be added to the voter list on election day, several other serious issues were not addressed. In particular, limitations on candidacy rights, adequate campaign finance provisions, clear criteria for the delineation of SMCs, and more effective sanctions for serious violations of the law.¹¹ The OSCE/ODIHR strongly recommended that consideration be given to harmonising the electoral law with other laws relevant to parliamentary elections (mainly the Law on the Central Election Commission, the Criminal Code and the Code of Administrative Procedure) by consolidating all legislation into one code. It further urged that any changes should be 'enacted in an inclusive and transparent process, sufficiently in advance of the next elections to provide all election stakeholders adequate time to familiarize themselves with the rules of the electoral process.'¹²

In July 2013 another round of reforms to the parliamentary election law were passed, with some recommendations of the Venice Commission and OSCE/ODIHR taken on board, including some limited measures to increase transparency of campaign finance. However, a number of significant recommendations were not included.¹³ Following the reforms, a series of four roundtables approved by the Ministry of Justice were convened to discuss OSCE/ODIHR and the Venice Commission recommendations on electoral reform.

Following the stepping down of President Viktor Yanukovich in February 2014 after the events of the 'Euromaidan', early presidential elections were called for 25 May 2014. The unexpected election together with the new political/security context of the occupation of Crimea by Russian forces necessitated a number of expedited changes to the election legislation. While there was a lack of consultation and transparency, which included the need to harmonise legislation for the presidential election with the previous reforms to the parliamentary election law, election stakeholders generally saw the process as acceptable, given the circumstances.¹⁴ The OSCE/ODIHR noted, however, that had it been given additional regulatory powers, the Central Election Commission would have had more flexibility to react itself to changes in the overall political-security context.

Early parliamentary elections took place again in October 2014 with the parallel mixed system in place, despite previous demands that the outgoing parliament reform the system. However, following the reinstatement of the 2004 constitutional amendments in February 2014,¹⁵ the provision was re-introduced that MPs lose their mandate if they fail to join or leave the faction of the political party for which they were elected, despite repeated criticism of this provision by the Venice Commission and the OSCE/ODIHR as being contrary to international standards and fundamental freedoms.¹⁶

In November 2014, the main political parties in Ukraine agreed to change the electoral system from a mixed

¹⁰ Venice Commission and OSCE/ODIHR, *Joint Opinion*, CDL-AD(2011)037, p.4.

¹¹ OSCE/ODIHR, Election Observation Mission Final Report Ukraine Parliamentary Elections 2012, Warsaw.

¹² OSCE/ODIHR, EOM Final Report Ukraine 2012, p.5.

¹³ Venice Commission and OSCE/ODIHR, *Joint Opinion on draft amendments to legislation on election of people's deputies of Ukraine*, CDL-AD(2013)026, Strasbourg/Warsaw, Oct 2013, p. 5.

¹⁴ OSCE/ODIHR Election Observation Mission Final Report Ukraine Early Presidential Elections 2014, Warsaw, p. 7.

¹⁵ Constitutional amendments passed in 2004 after the Orange Revolution were declared illegal by the Constitutional Court of Ukraine in October 2010. In February 2014 (following the Euromaidan events) the parliament passed a law that reinstated the 2004 amendments.

¹⁶ See Venice Commission, *Report on imperative mandate and similar practices*, Strasbourg, June 2009.

system to a proportional one. The Coalition Agreement (2014), which was signed by the five biggest pro-European parties in the parliament, pledged:

*'Introduction of proportional system of elections to the Verkhovna Rada of Ukraine [parliament] in which voters will have the opportunity to vote for specific candidates in multi-member constituencies, which is proportional system with open lists.'*¹⁷

Following the agreement, the parliament registered several draft laws on changing of the electoral system in 2014 and 2015, but no further steps were taken until recently (see below).

In October 2015, the parliament adopted a series of amendments aimed at anti-corruption, that included provisions related to political party and campaign financing. Notably the amendments introduced a system of direct public funding of political parties, in response to previous OSCE/ODIHR recommendations, among other changes. The OSCE/ODIHR and Venice Commission joint opinion welcomed the amendments, and in particular the introduction of public financing, which 'is an essential tool in the fight against corruption' and 'reduces the dependency of political parties on wealthy individuals.'¹⁸ The joint opinion also proposed a number of recommendations that could further improve the framework for political party and campaign finance.

In the run-up to the 2015 local elections, a new local election law was passed only four months before election day in an expedited manner, without inclusive public debate. According to the OSCE/ODIHR, the law was criticised by stakeholders both for the manner of its adoption and for its complexity.¹⁹ The law introduced three electoral systems, increased the threshold from 3 to 5 per cent, limited rights of independent candidates and provided for the recall of local councillors and mayors. While the law introduced a 30 per cent gender quota, it did not include sanctions for those that did not comply. It also did not include measures to enfranchise internally displaced persons (IDPs). These changes led the OSCE/ODIHR to assess that 'the legal framework falls short of some OSCE and Council of Europe commitments and other international standards and obligations, and did not ensure the integrity of key aspects of the election'²⁰. It further commented that the legal framework contained gaps and ambiguities and should be reviewed to develop a unified election code, as previously recommended.

Following local elections, the debate on changing the parliamentary election system was re-launched, with a number of discussions initiated by civil society and the international community. In February 2016, the Venice Commission and IFES organised a series of events on electoral system design. In addition to calling for a PR open list system, the Concluding Statement called for the establishment of a working group on electoral system reform to develop a road map for the electoral reform process that includes public debate and ensures transparency.²¹

In April 2016, the chairman of the parliament established a working group on promoting electoral reform that initiated an inclusive process to consider a proportional parliamentary electoral system with open lists. The working group was tasked to identify key steps and elements for the implementation of such a system, including parliamentary threshold, size of constituencies, independent candidacies, vote allocation systems, ballot design and voting procedures. The working group included all parliamentary factions, academics, national and international experts. It met seven times, the last meeting taking place in October 2016, and considered all registered draft laws on reform of the electoral system. While the working group

¹⁷ See 'Coalition Agreement "European Ukraine"', Kiev, 27 November 2014.

¹⁸ Venice Commission and OSCE/ODIHR, Joint Opinion on the Draft Amendments to Some Legislative Acts concerning Prevention of and Fight Against Corruption, CDL-AD(2015)025, Strasbourg/Warsaw, 26 October 2015, p.8.

¹⁹ OSCE/ODIHR EOM Final Report, Ukraine, Local elections, 25 October and 15 November 2015, p. 6.

²⁰ OSCE/ODIHR EOM Final Report, Ukraine, Local elections, 2015, p. 7.

²¹ 'Statement of Outcome of Electoral System Week in Ukraine', Venice Commission and IFES, 3 February 2016.

helped to keep electoral reform on the parliamentary agenda, the various factions were unable to agree on the basis for a draft law. MPs who have been elected in SMC seats are also reportedly reluctant to support reform that would remove this method of election to parliament.²²

Then in February 2017, the draft laws on changing the electoral system, registered in parliament in 2014 and 2015, were reviewed by the Parliamentary Committee on Legal Policy and Justice and sent to the plenary for further consideration. Advocates of electoral system reform continued to push for the parliament to consider the draft laws – on 17 October opposition political parties and CSOs held a sizeable rally in front of the parliament demanding, among other things, that the changes to the electoral system be considered.²³ As a result, a debate on the draft laws on electoral system reform was finally held in the parliament on 19 October, but all three draft laws under consideration were rejected.²⁴ At the time of writing, it appeared possible that another parliamentary working group would be formed to develop a compromise draft in the following months.

A number of additional election issues are still under consideration in the Ukrainian parliament. These include:

IDP voting rights. A draft law (no. 6240) was registered in March 2017 to guarantee full voting rights to Ukraine's significant number of IDPs (estimated at 4% of voters) and internal 'labour migrants'. The draft would allow IDPs and other citizens the right to vote for local elections and in the SMC elections in their place of actual residence, rather than their place of permanent residence (*propiska*).²⁵ While the draft law has 24 MPs as sponsors, it has not been advanced to the plenary for debate as political will is lacking. Although international law obliges states to facilitate voting for IDPs, this has not been a priority for the governing coalition, possibly because IDPs are perceived to favour other parties, such as the Opposition Bloc.

Gender quota. The introduction of a strengthened gender quota is also currently under consideration in the parliament, which would be a significant step given Ukraine's lack of progress in this area. Some are advocating for a 40% quota with places on the list specified. Amendments to this effect have been registered in the parliament.

CEC Appointment. Another urgent election issue in Ukraine is the need to appoint a new Central Election Commission (CEC).²⁶ CSOs and the international community have drawn attention to the fact that 13 of 15 members of the Central Election Commission have remained over two years beyond their term of office, and that the CEC is losing credibility as a result.²⁷ This is due to a change in law providing that CEC members remain in office until the appointment of new members, which the parliament has so far failed to do.

2.2 Georgia

Recent years have seen frequent changes to Georgian election legislation, often just prior to elections. While ruling parties tend to make changes depending on political needs of the moment, the CEC also regularly proposes adjustments to the legislation to introduce improvements or to introduce technical changes. The frequent conduct of elections, with parliamentary, presidential and local election cycles,

²² Tkachenko and Halling, p. 5.

²³ 'Protesters set up first large tent camp since EuroMaidan revolution,' Kyiv Post, 17 October 2017.

²⁴ 'MPs reject draft laws on elections' (in Russian), Ukrainskaya Pravda, 19 October 2017.

²⁵ IFES, OPORA and Group of Influence, 'Statement of Participants in Public Discussions "Draft Law 6240 – The Way to Ensure Electoral Rights of IDPs and Labour Migrants"', 24 July 2017.

²⁶ The EU has highlighted the importance of the appointment of members of the Central Election Commission whose mandate has expired. See 'Joint Press Release: EU-Ukraine Human Rights Dialogue', Kyiv, 13 June 2017.

²⁷ See, for example, Opora, 'Parliamentary factions did not submit new candidates for members of the CEC to the President – Administration of the President of Ukraine', Kiev, 12 July 2017.

means that discussions on electoral reform take place nearly every year.

At the same time, the Georgian electoral system itself is in the Constitution, which may partially account for the fact that the parallel mixed system, through which a number of seats are allocated through proportional representation with a single national constituency and a number of seats are allocated through majoritarian SMCs, has been in place since its independence.²⁸ Comprehensive constitutional reform was last carried out in 2010 under the United National Movement (UNM) government in cooperation with the Venice Commission, but the changes did not include the electoral system. At that time, the stated transition from a presidential system to a parliamentary one was cautiously welcomed by the Venice Commission.²⁹ At the same time, the constitutional changes were viewed by some as a way to allow former President Mikheil Saakashvili to remain in power beyond the constitutionally mandated two terms, by strengthening the role of prime minister in the hope that he could take it on.

However, the 2012 parliamentary elections saw a dramatic change in electoral fortunes as the same parallel mixed electoral system that had ensured the dominance of the UNM allowed a coalition led by the Georgian Dream party (GD), started by businessman Bidzina Ivanishvili, to come to power with 85 of 150 MPs.

Following its victory, GD announced its intention to carry out comprehensive electoral reform. The speaker of the parliament created an Inter-Factional Working Group on Electoral Issues consisting of 18 MPs. Civil society groups attended Working Group sessions and submitted a number of recommendations, some of which, primarily related to campaign finance, were reflected in the resulting amendments.

Another Working Group was created at the end of 2013, prior to the 2014 local elections. Civil society again prepared recommendations and actively advocated for changing the parliamentary electoral system. While the suggested changes to reform the electoral system were not adopted, the Working Group adopted some reforms, including an increase to the threshold for mayors and *Gamgebeli* (local executives) to 50% +1 and a decrease in the threshold for election of *Sakrebulo*s (local councils) from 5% to 4%.

In 2015 civil society again pushed to reform the electoral system prior to the 2016 parliamentary elections. Eight CSOs and 14 opposition political parties signed an agreement demonstrating widespread consensus³⁰, but the ruling party was not willing to change the system. Still, amendments were made to the election code at the end of 2015 that increased the threshold for SMC contests from 30 to 50 per cent and introduced new rules for boundary delimitation after the Constitutional Court ruled that discrepancies between constituencies were contrary to the principle of equality of the vote. The Law on Political Unions of Citizens was also amended, with new provisions coming into force after the start of the parliamentary campaign, affecting the registration of several political parties.³¹

By 2016, electoral system reform was clearly on the political agenda. Two constitutional amendments to change the electoral system were pending in the parliament simultaneously – an opposition-initiated proposal backed by 200,000 signatures aimed to change the electoral system ahead of 2016 elections and a counter-proposal by GD proposing to change the system for the 2020 parliamentary elections. Neither proposal was able to secure enough votes to pass, however.

The results of the 2016 parliamentary elections gave the ruling GD a constitutional majority, with 115 of

²⁸ While the type of system (parallel mixed) has remained the same, the number of MPs has changed. Currently the parliament has 150 MPs, 77 of whom are elected on a PR basis and 73 of whom are elected in SMCs. The number of MPs was reduced from 225 to 150 in 2008, when there were 75 PR MPs and 75 SMC MPs. There are no seats in the parliament maintained for breakaway regions, although until 2008 there were 10 additional MPs representing displaced citizens from Abkhazia. The 2005 constitutional reform (which came into force in 2008) cancelled this provision.

²⁹ Venice Commission, Final opinion on the draft constitutional law on amendments and changes to the constitution of Georgia, CDL-AD(2010)028, Strasbourg, October 2010.

³⁰ ISFED, 'Address of CSOs and Political Parties to the Parliament of Georgia on the Elections System Reform', 3 May 2015.

³¹ OSCE/ODIHR, Election Observation Mission Final Report Georgia Parliamentary Elections 2016, Warsaw.

150 MPs. GD won nearly all of the SMC seats (71 of the 73, with the two others going to candidates that openly supported GD), helping to give GD 76.7% of the seats with 48.7% of the votes. Immediately following the elections, GD announced it would carry out constitutional reform, including replacing the unpopular parallel mixed electoral system with a fully proportional one and introducing indirect presidential elections. The proposed introduction of indirect presidential elections was widely seen as an attempt by the GD to side-line President Giorgi Margvelashvili, who was nominated by GD, but had broken ties with the party and had been viewed as an inconvenient check on its power.

In January 2017, parliament formed a State Constitutional Commission to consider constitutional reforms, including electoral system reform. The composition of 73 members was relatively inclusive, with opposition political parties, CSOs and academic experts represented, although the presidential administration chose not to take part. The Commission's four working groups, including one dedicated to electoral reform, met frequently during the Commission's four months of deliberations.

However, the process that had begun with consensus around the need for a change in the electoral system became fractious as opposition party and CSO representatives felt their views were not taken into consideration. Opposition parties boycotted the final stages of the Commission, and CSOs, including election observer groups, voted against the draft amendments because of elements introduced in the PR system that were seen to unduly favour the ruling party. These included maintaining the threshold at 5%, abolishing electoral blocs and a 'bonus' allocating all undistributed mandates, based on votes cast for parties failing to meet the threshold, to the winning party.³²

The Venice Commission issued its opinion on the draft revised constitution on 19 June, welcoming the change from the parallel mixed system to a fully proportional system, but also commented that the combination of the three above elements (the 5% threshold, cancelling electoral blocs and the 'bonus'), when taken together, were problematic. From the beginning of the process, GD had pledged to take on board any comments of the Venice Commission.

Then on 22 and 23 June 2017, GD unanimously approved amendments to the Constitution in first and second readings at an emergency parliamentary session boycotted by the three opposition parliamentary factions. The amendments differed in several respects from the draft agreed by the State Constitutional Commission and those submitted for review by the Venice Commission. Of particular concern to opposition parties and CSOs was the announcement by the Chairman of Parliament that the transition from the parallel mixed system³³ to a fully proportional system would not be implemented for the 2020 elections, but only in 2024. The GD explained the postponement was the result of SMC MPs refusing to agree to cancel the SMC seats for the 2020 elections.

The parliament's rapid approval of the amendments in the first two readings, with a postponement in the implementation of the PR system, led to widespread criticism by the opposition and civil society, expressed in open letters to the EU and the wider international community.³⁴ While civil society had not agreed with all aspects of the previously agreed draft, many CSOs had decided that the trade-offs were worthwhile to secure their main demand - the shift to a fully proportional election system. The last minute changes were seen as a betrayal, however, and many viewed the postponement of the fully proportional system as an attempt by GD to guarantee its continued electoral dominance.³⁵

³² See ISFED, Transparency International, GYLA, OSGF, *Joint Assessment of the Work of the State Constitutional Commission of Georgia*, 8 May 2017.

³³ The current Georgian parliament consists of 150 MPs, of whom 73 are elected in single mandate constituencies and 77 are elected through proportional representation.

³⁴ ISFED, 'Alert on State of Democracy in Georgia – letter from 30 CSOs on constitutional reform process', 27 June 17.

³⁵ RFE/FL, 'Blame Game Follows Collapse of Talks on Georgian Constitutional Amendments', 4 Sept 2017.

The president of the Venice Commission publicly voiced his disappointment with the manner in which the draft was passed and urged stakeholders to engage in consultations to find consensus.³⁶ Efforts at the end of August and early September 2017 by the Venice Commission to broker talks between the sides broke down, with both sides accusing the other of intransigence.

Prior to the third reading of the constitutional amendments in parliament, the ruling party announced that for the elections in 2020 electoral blocs would be allowed and the electoral threshold would be reduced to 3%. Furthermore, the 'bonus' system for awarding unallocated mandates would not be introduced into the PR system. These concessions were communicated to the Venice Commission in a 20 September letter, and the Venice Commission issued a draft opinion on the draft constitutional amendments on 21 September. The draft opinion states that while the 'postponed entry into force of the proportional election system to October 2024 is highly regrettable,' that the amendments proposed by authorities in the 20 September letter 'may alleviate to some extent the negative effects of the postponement of the entry into force of the full proportional system.'³⁷ The Venice Commission also welcomed the ruling party's commitment to abandon the 'bonus' system.

On 26 September, the parliament passed the constitutional amendments in the third reading with a vote of 117 to 2, boycotted by opposition parties. Since only minor changes are allowed in the third reading, the concessions in the 20 September letter to the Venice Commission were not included, but would have to be passed through further constitutional amendments. The ruling party expects these further amendments to be introduced in the spring parliamentary session.³⁸ Civil society expressed the view that the additional concessions, while a positive step, did not outweigh the problems of keeping the SMC seats for the 2020 elections.³⁹ On 9 October the President vetoed the constitutional amendments and returned them to parliament with his objections⁴⁰. The parliament overrode the presidential objections on 13 October.⁴¹

Several further changes were made to the electoral code and local government legislation in the run-up to the 2017 local elections that, while less dramatic than the constitutional changes, were nevertheless viewed by stakeholders as significant. Amendments to the electoral code included changes to the composition of the electoral commissions, which would increase the representation of the ruling party on election commissions at the central, district and precinct levels, although this change did not affect the 2017 local elections, and will only be implemented in future elections.⁴² A draft law on a mandatory gender quota for party lists has also been registered in the parliament and approved in committee.

Amendments to the local government legislation, meanwhile, reduced the number of self-governing cities from 12 to five by merging them with the surrounding communities. Some viewed this change as an attempt to dilute the influence of urban voters, because support for GD is stronger in rural areas.⁴³ Both

³⁶ RFE/RL, 'Georgia's Ruling Party, Opposition Seek Consensus On New Draft Constitution', 24 Aug 2017.

³⁷ Venice Commission, *Draft opinion on the draft revised constitution as adopted by the parliament in the second reading*, CDL-PI(2017)006, Strasbourg, September 2017.

³⁸ Email exchange with GD MP, 7 October 2017.

³⁹ Email exchange with CSO leader, 3 October 2017.

⁴⁰ The President vetoed the provisions related to the 'bonus' and the ban on electoral blocs for the 2020 elections, as the governing party had asked him to do in order to comply with commitments to the Venice Commission. He also changed wording on the freedom of religion and allowing the Constitutional Court to rule on constitutionality of election legislation with a majority vote. Finally he commented that the PR system should be implemented in 2020 and that direct presidential elections should be maintained.

⁴¹ 'Parliament overrides presidential veto on constitutional amendments', *civil.ge*, 13 October 2017.

⁴² The six seats designated for political parties on the election commission will be allocated to parliamentary parties in proportion to the number of votes received in the previous elections, while currently seats are allocated one to each party that passed the 3% threshold for reimbursement of campaign expenses.

⁴³ National Democratic Institute, 'Statement of the NDI pre-election assessment mission to Georgia', Tbilisi, 21 July 2017.

sets of amendments were passed in parliament and then vetoed by the president, but the ruling party overrode the veto in parliament at the end of July. Civil society complained that the process was not sufficiently inclusive or transparent, and approximately 120 CSOs signed a letter calling on the government to uphold the self-governing cities amid concerns that citizens would become more distant from their representatives.⁴⁴

2.3 Moldova

Until the recent changes, Moldova has had a fully proportional system with one national constituency since 1994. Although other options were contemplated at the time, the fully proportional system was chosen because it offered a straightforward solution for the situation with the breakaway region of Transnistria, as no constituencies would need to be drawn and no parliamentary seats would be left vacant.

At the same time, certain aspects of the electoral system have been changed since then. In 2010 the method for allocating seats was changed from the D'Hondt formula to a new method referred to as the 'robin hood system', which shares unallocated mandates equally among the parties qualifying for parliament. This system, implemented to benefit the governing pro-European coalition at the expense of the Communists,⁴⁵ was adopted only four months prior to the November 2010 elections, and went ahead despite a commentary issued by the Venice Commission and the OSCE/ODIHR advising against it.⁴⁶

The electoral threshold for political parties to enter parliament also changed over time. In 1994 the threshold was set at 4% of valid votes, but it was increased to 6% prior to the 2001 parliamentary elections. It was lowered back to 4% for the 2009 elections and then raised again to 6% for the 2014 elections. The thresholds for electoral blocs have also changed. Initially electoral blocs had the same threshold as for political parties (4%), then raised to 9% for the 2005 elections, then 7% in 2010 and 9% again in 2014. In 2009, electoral blocs were not allowed.

In April 2013 a more fundamental reform was proposed to parliament, when draft amendments were submitted by the ruling party, without any prior consultation, to introduce a parallel mixed system with 51 MPs elected through a proportional system and 50 MPs through SMCs. The bill's adoption on 19 April 2013 was met with significant concerns expressed by national stakeholders and the international community. Then an *ad hoc* parliamentary committee determined the law would violate the constitution and the amendments were repealed, returning to the PR system.

In November 2013 the Venice Commission was asked to comment on the text of draft amendments again introducing a mixed electoral system. In its March 2014 opinion, the Venice Commission 'strongly recommended that the choice of the electoral system of Moldova [be] the result of an open and inclusive debate.'⁴⁷ On the merits of the proposed amendments, the Venice Commission stated that, in the Moldovan context, the mixed system 'could potentially have a negative effect at the local level, where independent majoritarian candidates may develop links with or be influenced by local businesspeople or other actors who follow their own separate interests.' The Venice Commission also recommended 'a clearer methodology for the delimitation of constituencies' and 'a convincing and implementable solution' to the representation of Transnistria and of Moldovan citizens abroad. The Venice Commission welcomed the proposed lower minimum representation thresholds. Subsequently a political conflict between the governing parties, the Democratic Party of Moldova (PDM) and the Liberal Democratic Party of Moldova (PLDM), caused the PDM to withdraw its support on a number of draft laws, including the proposed

⁴⁴ Transparency International and 121 other CSOs, 'Statement of civil society and media organisations regarding plans to abolish seven self-governing cities', Tbilisi, 31 March 2017.

⁴⁵ Botan, I., 'Robin Hood Seat Distribution Method', Adept, November 2010.

⁴⁶ Venice Commission and OSCE/ODIHR, *Joint opinion on the draft working text amending the election code of Moldova*, CDL-AD(2010)014, Strasbourg/Warsaw, June 2010.

⁴⁷ Venice Commission and OSCE/ODIHR, *Joint opinion on the draft law amending the election legislation of Moldova*, CDL-AD(2014)003, Strasbourg/Warsaw, March 2014.

electoral reform.

While several changes were made to the election code in 2014, some of which corresponded to OSCE/ODIHR and Venice Commission recommendations, other proposed changes failed to be adopted. Notably proposed amendments to party and campaign finance regulations were drafted with the involvement of the CEC and civil society and included an extensive consultation and negotiation process, but were not addressed by the parliament.

In March 2016, the Constitutional Court ruled that a 16-year old constitutional amendment introducing indirect presidential elections to be unconstitutional, prompting legal changes in July 2016 and direct presidential elections to be held on 30 October 2016 (with a second round on 13 November).⁴⁸ The process around changing the election code was criticised by civil society and the OSCE/ODIHR as lacking sufficient debate and public consultation.⁴⁹ The ruling, which was in response to a challenge brought by the PLDM in 2015, resolved a long-standing issue as the inability of the Moldovan parliament to elect a president between 2009 and 2012 has caused a prolonged political crisis.

Most recently in July 2017, the parliament changed the electoral system from full PR to a parallel mixed system, with 50 seats elected proportionally in a nationwide constituency and 51 seats elected in SMCs in a single round. The process of electoral reform has been controversial, as the amendments were passed quickly in only two readings, despite calls for a third reading, and lacked inclusive discussion and public debate. The process also largely disregarded the joint opinion of the Venice Commission and OSCE/ODIHR on the draft legislation. The two bodies expressed significant concerns about the proposed electoral system, called for a more inclusive process and urged stakeholders to focus instead on addressing weaknesses in the campaign and political party finance legislation.⁵⁰ The joint opinion concludes that 'in light of the lack of consensus on this polarizing issue, such a fundamental change, while a sovereign prerogative of the country, is not advisable at this time.'

The newly adopted system was the result of a compromise between two drafts proposals – one for a fully majoritarian system supported by the PDM and one for a mixed system supported by the Socialist Party of Moldova (PSRM). The legal committee in parliament held a number of discussions on the drafts over a two-month period, which appeared to be dominated by those affiliated with the governing party. While several CSOs opted out of the discussions, the leading citizen observer group Promo-LEX participated, but its key recommendations were not taken on board.⁵¹

The governing party actively promoted the advantages of a majoritarian system in a nationwide campaign, stressing that it would make MPs more accountable to citizens. Opposition parties opposed the government's draft, signing a joint statement in April.⁵² Meanwhile Promo-LEX held its own series of public debates on electoral reform, including in the regions, which were inclusive of opposition parties and allowed for consideration of a broad range of options of electoral systems rather than focusing narrowly on the majoritarian and parallel mixed systems proposed in parliament.

The adoption of the parallel mixed system has been heavily criticised by opposition parties and civil society alike.⁵³ A number of public protests have also taken place since its adoption.⁵⁴ Opposition political parties

⁴⁸ 'Moldova switches to direct presidential elections', RFE/RL, 4 March 2016.

⁴⁹ OSCE/ODIHR, EOM Final Report Republic of Moldova Presidential Election 2016, Warsaw, p. 6.

⁵⁰ Venice Commission and OSCE/ODIHR, Joint Opinion on the draft laws on amending and completing certain legislative acts, Moldova, CDL-AD(2017)012, Strasbourg/Warsaw, 19 June 2017.

⁵¹ Interview with Promo-Lex representatives, 25 September 2017.

⁵² 'Consensus between PAS, PPDA, PLDM, PCRM and "Our Party" against a uninominal vote' (in Romanian), Ziarul National, 12 April 2017.

⁵³ Promo-LEX and 7 other CSOs, 'Statement on the amendment of the electoral system in the Republic of Moldova HDIM 2017', Warsaw, 13 Sept 2017.

⁵⁴ See, for example, statements at www.freemoldova.org.

have expressed concern that the amendments are designed to keep the government in power, despite its low opinion poll ratings, and to favour the PSRM, aiming to keep other parties out of the parliament. Particular concern has been expressed about the SMC (or 'uninominal') seats, which would be awarded on a plurality basis in one round – potentially allowing a candidate with, for example, 15% of the votes to potentially win a seat.

Critics have noted that the delimitation of SMC boundaries is not included in the law, but is instead to be done by a government-appointed boundary commission. Opposition parties in particular are concerned that constituencies may be gerrymandered to split areas where they have support, and have declined to take up their seats in the boundary commission in protest. Significantly, the law and regulations that guide the boundary delimitation process do not specify any quota for the number of SMCs to be allocated to the diaspora, which plays an important role in Moldovan politics, and to Transnistria, where elections are not conducted, but whose voters can go to other polling stations to cast a vote. The issue of how many SMC seats to allocate to the diaspora, and for which countries, and to Transnistria, are politically sensitive and the boundary commission has not, at the time of writing, announced a decision.

For the proportional seats, the maintaining of the 6% threshold despite a decrease in the number of proportional seats is expected to act as a further barrier to the entry of smaller political parties, especially given that the number of proportional seats has been decreased by half to 50.

Following the introduction of the amendments changing the electoral system, the EU decided to link political conditionality to the disbursement of 100 million EUR in macro-financing assistance. The EU linked the financial assistance to respect for 'effective democratic mechanisms, including a multi-party parliamentary system and the rule of law'⁵⁵ - widely interpreted as a reference to the electoral system. On 6 October the Prime Minister of Moldova acknowledged that Moldova would not receive the macro-financial assistance from the EU in 2017, as the conditions had not been fulfilled.⁵⁶

Following the presidential election, the Constitutional Court issued a judgement on the validation of the results, taking into consideration the complaints it had received and the reports of both international and citizen observer groups.⁵⁷ The Court identified a number of issues that it addressed to the parliament to improve the election process, including the complaints procedures, criteria for determining polling stations abroad, increasing distribution of ballot papers abroad, sanctioning of media for partial election coverage, penalties for vote-buying and limiting the role of the church in the election campaign. However, these issues were mostly not addressed as part of the recent electoral reform, despite efforts by civil society to promote these reforms prior to 2018 parliamentary elections.

⁵⁵ Joint Statement by the European Parliament, the Council and the Commission, Annex to the legislative resolution, 'Macro-financial assistance to the Republic of Moldova, European Parliament, P8_TA-PROV(2017)0283.

⁵⁶ 'Moldova will not receive EU funding this year – PM', Reuters, 6 October 2017.

⁵⁷ 'Results of presidential election, confirmed by the Constitutional Court of Moldova', Constitutional Court, 13 December 2016, available at <http://www.constcourt.md/>.

3 Status of election recommendations made by civil society and the international community

Since the 1990s, the recommendations made by international and domestic election observation groups, including the EU, the European Parliament and the OSCE/ODIHR, have become an important contribution to improving legal frameworks for elections. These observer missions have produced a body of recommendations over time that act as a 'roadmap' for participating States to improve their elections, and their legal frameworks in particular. Between elections, the Council of Europe's Venice Commission plays an authoritative role reviewing legal frameworks in its member states and issues legal commentary on constitutions, electoral legislation and draft laws, often in joint opinions with the OSCE/ODIHR.

The EU and other international organisations have increased their focus on follow-up to the recommendations of EOMs, including those of the European Union, the OSCE/ODIHR and citizen observer groups. The European Parliament deploys inter-parliamentary delegations to the Association Agreement countries (Ukraine, Georgia and Moldova), which are explicitly tasked with monitoring the implementation of EOM recommendations.

3.1 Role of the Venice Commission

The Venice Commission's role to review draft and newly passed election-related legislation, often jointly with the OSCE/ODIHR, appears to be greatly respected and appreciated by government, political party and civil society stakeholders alike in all three countries of the study. The Venice Commission enjoys a high level of credibility and its reviews of constitutions, legislation and draft laws are generally viewed as a definitive legal opinion with considerable weight.

At the same time, it is important for stakeholders to also understand the role and limitations of the Venice Commission. While the Venice Commission can play an important role on providing an authoritative international opinion on legislation on the basis of international and regional standards for democratic elections, its experts are only able to comment on the text of the legislation itself. The political context of the legislation and the process in which it was passed remain outside the mandate of the Venice Commission. Nevertheless, in all three countries the Venice Commission has made an effort to emphasise the need for an inclusive and transparent process around changes to the election legislation. It has also frequently pointed to provisions in the Code of Good Electoral Practice which state that fundamental elements of the electoral law should not be changed within one year of elections⁵⁸, and to the explanatory report of the Code, which cautions against changing voting systems frequently or just before an election, as even when no manipulation is intended, such changes will appear to be dictated by immediate party political interests.⁵⁹

The Venice Commission is also limited regarding what it can say about electoral systems. As electoral systems are recognised to be the sovereign choice of the country and many different electoral systems are present in Council of Europe countries, the Venice Commission generally avoids advising for or against specific electoral system. It is notable for this reason that, in all three countries of the study, the Venice Commission has made its opposition to specific proposed electoral systems explicit at times. For example in its June 2017 Joint Opinion on the Moldova draft laws, it stated 'In light of these concerns and in view of a lack of consensus on this polarizing issue, a fundamental change, while a sovereign prerogative of the country, is not advisable at this time.' This statement had a great resonance in Moldova and has often been repeated by election stakeholders who oppose the reform. The willingness of the Venice Commission to make such unusually strong statements can be interpreted as a sign of its deep concern about the

⁵⁸ Venice Commission, *Code of Good Practice*, II.2.b.

⁵⁹ Venice Commission, *Code of Good Practice*, Explanatory Report II.2.

proposed changes.

Of course opposing political forces will interpret and present the opinions of the Venice Commission differently. In Georgia, during the recent process of constitutional reform, the government pledged to implement all comments of the Venice Commission. Indeed it made several changes to the draft amendments in order to formally comply with the opinion, which arguably led to an improved outcome. At the same time, the opposition parties and civil society interpreted comments in the media by the president of the Venice Commission regarding the constitutional reform as a clear sign that the Venice Commission opposed the constitutional amendments, and in particular the postponement of a fully proportional electoral system from the 2020 to the 2024 elections. Opponents of the reform appeared to have a further expectation that the Venice Commission would play a political role in pressing the government to implement a PR system for the next elections. However, this was based on a misunderstanding of the role of the Venice Commission, which is an impartial body not involved in politics. Instead it should have been the role of others in the international community to make political statements on the constitutional reform process.

In the case of Moldova, the governing party disregarded the joint opinion of the Venice Commission and OSCE/ODIHR when it passed amendments changing the electoral system, although the Speaker of Parliament claimed that the recommendations 'have been 99% implemented'⁶⁰. The EU had also spoken out strongly in support of the joint opinion⁶¹, and placed political conditionality on a 100 million EUR macro-financial assistance package for the country.

In Ukraine, the Venice Commission has provided a number of opinions on Ukrainian election-related legislation.⁶² It has also played an active role participating in working groups on electoral reform convened in the parliament and organising seminars together with civil society.

Role of the Venice Commission

3.2 Role of the OSCE/ODIHR

The OSCE/ODIHR has a mandate to observe elections in OSCE participating States. Two months after it observes an election, it issues a final report that detail the mission's findings as well as a set of recommendations to improve elections in line with international standards, in particular the 1990 OSCE Copenhagen Document, which contains election specific commitments for participating States. In recent years the OSCE/ODIHR has emphasised the need for participating States to follow-up on the recommendations, for example by publishing a handbook on follow-up.⁶³ The OSCE/ODIHR also makes return visits to the country to present final reports, offers support on the implementation of recommendations and participates jointly with the Venice Commission on legal commentaries involving election-related legislation. Participating States are encouraged to present reports on a voluntary basis to the OSCE Human Dimension Committee. However, to date, few countries have followed this practice.

The OSCE/ODIHR stresses that election observation is not an end in itself - it will only be beneficial if recommendations are given serious consideration and effectively addressed.⁶⁴ Follow-up to recommendations should not be a 'tick-box exercise', but instead should be part of a genuine process that aims to improve the conduct of elections and to bring them in line with international and regional standards for democratic elections.

⁶⁰ 'Speaker: Elections planned for 2018 in Moldova to demonstrate efficiency of mixed system', Interfax-Ukraine, 20 July 2017.

⁶¹ 'EU Warns against Planned Changes in Electoral System', RFE/RL, 20 June 2017.

⁶² Of particular significance was the 2011 Joint opinion, which is still used as a reference point for election reform discussions in Ukraine.

⁶³ OSCE/ODIHR, *Handbook on the Follow-up of Electoral Recommendations*, Warsaw, 2016.

⁶⁴ OSCE/ODIHR, *Handbook on the follow-up*, 2016, p.7.

According to the OSCE/ODIHR⁶⁵, the three countries have made progress to varying degrees in recent years on improving the framework for elections through follow-up to recommendations. While all three countries review the OSCE/ODIHR's recommendations following elections, there is often little will to work on them until within one year of the next electoral event, when it is too late to make any significant changes, according to the guidance of the Venice Commission which discourages changes to the legal framework within one year of an election.⁶⁶ This can lead to rushed processes that do not include inclusive consultation with the political parties, civil society and the public.

Another tendency is for these countries to selectively choose which recommendations to implement, and often the key recommendations that would have the most potential impact are not those that are considered or implemented. For example, in all three countries in the study, the OSCE/ODIHR has repeatedly urged authorities to conduct a broad review of election legislation to address gaps and inconsistencies, but this has not happened. Of course such a review would take time and need to be conducted several years before the next election.

Each country has its own political dynamic and context that has affected the implementation of election recommendations and the conduct of electoral reform more broadly.

In Georgia, significant progress has been made on implementing a number of technical issues. The CEC leadership, which has come from civil society, has demonstrated a clear understanding of the value of election recommendations, and has a department assigned to regularly review the recommendations of international and domestic observers following each election. Those recommendations that do not require legal changes are often adopted by the CEC, and those requiring legal changes are submitted as legal amendments to the parliament. At the same time, there are some key recommendations that still have not been addressed, including reviewing the legal framework for gaps and ambiguities, removing candidacy restrictions, ensure efficient oversight and transparency of campaign finance, strengthening provisions to prevent misuse of administrative resources, introducing a binding gender quota and ensuring effective redress for complaints.

In Moldova, some progress has been made over time on technical issues, but not to the same degree as in Georgia. The frequency of political crises has not allowed for measured consideration of OSCE/ODIHR recommendations and the current political environment does not appear to welcome consideration of genuine democratic reform. Following the presidential election, the Constitutional Court reviewed the recommendations of international and domestic observers and communicated the priority issues to parliament, but these were not fully addressed by the amendments to the election code passed in July 2017. Key recurring OSCE/ODIHR recommendations include: reviewing the legal framework for ambiguities and gaps, strengthening party and campaign finance regulation and oversight, ensuring timely updates of voter registration, providing effective media oversight and reviewing the complaints process to ensure effective redress.

In Ukraine, significant progress was made in 2012-13 implementing recommendations of the OSCE/ODIHR as part of a broader process on electoral reform. Civil society has overall been very effective at advocating for the implementation of OSCE/ODIHR recommendations in addition to recommendations of citizen observers. However, this progress was largely interrupted in 2014 by the security crisis in eastern Ukraine.

Key OSCE/ODIHR recommendations to be addressed include: the harmonisation of electoral legislation for all types of elections, lifting of restrictions on candidacy and the freedom of mandate, allowing for electoral blocs, strengthening enforcement and sanctions for campaign finance, promoting women's participation through additional temporary special measures, introducing anti-corruption measures to protect the

⁶⁵ Interview with OSCE/ODIHR official, 22 September 2017.

⁶⁶ Venice Commission, *Code of Good Practice*, II.2.65.

impartiality of election administration, providing the right to vote for IDPs, strengthening the sanctions for election violations, ensuring effective remedy of election complaints and increasing the transparency of results tabulation.

3.3 Role of civil society

Civil society organisations, and citizen observers in particular, are well positioned to play a key role in electoral reform. They can issue recommendations following an election process, convene stakeholders to consider priority recommendations, and then continue to promote their recommendations with the public and decision-makers alike throughout the inter-election period. Citizen observers can also track the progress of implementation of both international and domestic election recommendations, and report periodically on this progress to the public.

While there are few examples globally where CSOs have played a key role in promoting and advocating election recommendations, citizen observer groups in all three countries covered in the study have been effective at electoral reform advocacy. International Society for Fair Elections and Democracy (ISFED) in Georgia, Promo-LEX in Moldova and OPORA and CVU in Ukraine have all led election observation efforts, together with their coalition partners, which have resulted in comprehensive reporting that provides an evidence basis for their recommendations and the advocacy process that comes from them.

The progress made by these organisations on successfully promoting their recommendations depends of course on the political environment, and is somewhat out of their control. However when there are opportunities to engage in policymaking through joining parliamentary committees or similar, these organisations have taken part in an active and constructive manner, and have at the same time kept citizens informed of the ongoing reform processes. These ongoing efforts over many years have earned the citizen observer groups the respect of authorities, election stakeholders and citizens.

The reform processes under consideration for this study have shown the sustained efforts of citizen observer groups together with broader civil society to push for electoral and wider democratic reform over time. For example in Georgia, ISFED has been advocating for change in the electoral system for over 10 years. While the current process has been far from ideal, they still are credited with putting electoral reform on both the public and policy agenda. In Ukraine, a broad range of CSOs continue to hold seminars and participate in working groups on electoral reform, as well as hold public protests, in a concerted effort to keep the issue on the political agenda. In Moldova, CSOs have similarly conducted expert seminars and public debates on options for electoral reform, while public protests against the adopted electoral system have also taken place.

At the same time, as political space for civil society continues to become more closed, both in the region and more globally, CSOs supporting democracy can increasingly find themselves in difficulty. Electoral reform is about gaining power, and at times citizen observers and other CSOs may become obstacles to the consolidation of political objectives through their dogged promotion of citizen interests. It is important that election stakeholders and the international community alike remain vigilant regarding the political environment for these organisations to operate freely without impediments – legal or otherwise. In Moldova, for example, the government suggested amendments in July 2017 to a draft CSO law that would restrict the foreign funding of CSOs and establish new requirements for CSOs that conduct ‘political activities’, with strict penalties for non-compliance. The draft law, which had originally sought to improve the status of CSOs and was the result of an inclusive working group with the Ministry of Justice, was withdrawn after civil society protests.⁶⁷

⁶⁷ Declaration of 78 Moldovan CSOs, ‘The attempt to limit the foreign funding of NGOs endangers the functioning of democracy in Moldova and cannot, under any circumstances, be accepted’, 11 July 2017 at <http://crjm.org/wp-content/uploads/2017/07/2017-07-11-Declaration-MJ-initiative-contrary-to-law.pdf>.

4 Political implications of electoral reforms

While the political implications of new and proposed electoral system reforms remain to be seen, some effects can be predicted, to an extent. However, the changing political landscapes in all three countries make any such predictions challenging, with established political parties regularly splitting and new parties emerging. While the political forces responsible for the reforms have made their own calculations, experience has shown that the effects of a change in an electoral system is often contrary to expectations and may bring unexpected results.

4.1 The legacy of the parallel mixed system

The parallel mixed system (a number of the seats chosen through proportional representation, and a number through SMCs – often half and half) has been commonly used in countries of the former Soviet Union, including Russia, often with the stated intention to combine the advantages of both the majoritarian and proportional systems.⁶⁸ However, there is little evidence to show that the experience of parallel mixed systems in the region have led to a consolidation of democracy. Rather, in the cases of Ukraine and Georgia, the parallel mixed systems have strengthened the power of the ruling elite at the expense of pluralism and political renewal.⁶⁹

Women's participation has also suffered, as SMCs tend to disadvantage potential women candidates, and few women have been elected to these seats as a result.⁷⁰ For example, women won only two of 225 SMC seats in Ukraine in the 2014 elections and five of 73 SMC seats in Georgia in 2016.

In Ukraine, the re-introduction of SMCs through a parallel mixed system in 2012 is widely seen to have allowed for negative electoral practices, such as vote-buying and misuse of state resources, while tending to preserve vested interests.⁷¹ While there appears to be broad public support to move away from SMCs and introduce a PR system, possibly with open lists, there is little political will within the ruling political elites to introduce such changes as they benefit from the current parallel mixed system. In particular, the governing coalition parties, Petro Poroshenko Bloc and People's Front, have declining opinion poll ratings and would rely on winning a significant number of SMC seats to remain in government in the 2019 elections.

In Georgia, the use of a parallel mixed system has not contributed to long-term political stability, as it has failed to balance the major political forces. Instead, the ruling parties have the ability to sweep most of the SMC seats, receiving a constitutional majority - as the UNM achieved in 2008 and GD in 2016. The super-majorities that resulted have not been able to provide adequate representation of the diversity of Georgia as a result. While one argument for majoritarian systems is that they bring constituents closer to the MPs, this has not been the case in Georgia where the majority of SMC MPs are wealthy businessmen, with little apparent interest in grassroots politics, who have shifted political allegiances as the ruling party has changed.

The political implications of the parallel mixed system in Moldova remain to be seen, but the Venice Commission has voiced concern that independent SMC candidate may 'develop links or be controlled by wealthy businesspeople' as has been the case Ukraine.⁷² Observers also point to Gagauzia, where SMC seats

⁶⁸ R. Dahl, Georgia's Parliamentary Electoral System: Options for Advancing Voter Equality, IFES, Washington, March 2011, p.4.

⁶⁹ It is important to note that, unlike the Mixed Member Proportional (MMP) system used in Germany, for example, the parallel mixed system does not provide for proportionality in political outcomes. While the German system also has half of the seats allocated through SMC and half through PR, the two parts of the system are integrated to ensure that the overall proportionality of the seats matches the results of the proportional vote through a compensatory mechanism.

⁷⁰ See for example, M. Krennerich, 'The impact of electoral systems, including gender candidate quotas, on women's participation in parliament', presented at Regional Conference on Gender Equality in Electoral Processes, Tbilisi, 25 – 27 November 2015, p. 3.

⁷¹ Gunn, J., 'Governance, Democratization and Mass Media' in *Struggle for Ukraine*, Chatham House, October 2017.

⁷² Venice Commission and OSCE/ODIHR, *Joint opinion*, CDL-AD(2017)012, Strasbourg/Warsaw, 19 June 2017, p. 5.

in the regional assembly have been won by independents candidates, who have then pledged their allegiance to the ruling party, as a possible scenario for the national level SMC seats under the parallel mixed system.

4.2 The proportional representation system adopted in Georgia

While there was broad political consensus in Georgia to move from a parallel mixed system to a PR system, the process around the drafting and passing of constitutional amendments has been much criticised by national stakeholders, the Venice Commission and the EU alike for lacking a consensus building approach.⁷³ As a result, the constitutional amendments were passed with only the support of the governing party, and the resulting constitution lacks the support of many stakeholders.

The rushed constitutional reform process has also resulted in a situation where the final version of the constitution does not correspond to the stated intentions of the governing party. In a 20 September 2017 letter to the Venice Commission the government expressed its commitment to make several further adjustments to the newly passed electoral system. These are to allow electoral blocs for the upcoming 2020 elections, which will still be conducted with the parallel mixed system, and to abandon the idea of a 'bonus' for the 2024 elections, which will be conducted with a proportional system. Until these changes are implemented through additional constitutional amendments, it is difficult to make definitive predictions about the implications of the new electoral system.

The eventual introduction of a PR system should provide for a more fair and balanced representation of the public's political choices than the current parallel mixed system, assuming that the constitutional provision giving a 'bonus' of unallocated mandates to the leading party will be amended (see simulation in annex). The 5% parliamentary threshold and the banning of electoral blocs for the 2024 elections will decrease the proportionality of the system, as they will raise the barrier for entry to parliament, resulting in an increase in 'wasted votes' from parties that do not meet the threshold. It is worth noting that in the 2016 elections, only three parties were able to pass the 5% parliamentary threshold.

Of course, as the Venice Commission has pointed out, maintaining the ability to compete as electoral blocs and lowering the threshold (for example to 3%) in a proportional representation system would tend to expand the number of parties in the parliament and provide more chances for smaller parties, such as those that narrowly missed the threshold in the 2016 elections or any newly emerging parties in future.

The logic behind the PR system is that political parties winning seats in parliament will join together in a post-election coalition in order to form a government. However, in the Georgian context, it is difficult to see how this will work in practice, given the current polarisation of the political landscape. Indeed, it is for this reason that the GD originally proposed a 'bonus' – to make it more likely for the party to form a government without the need to form a coalition.

Beyond the electoral system itself, the postponement of the implementation of the PR system until 2024 is also likely to have a political impact. For the 2020 elections, the SMC seats will be maintained, which is likely to again result in the ruling party winning nearly all of these seats, possibly maintaining its constitutional majority, and with it the ability to change the constitutional framework according to its political interests and to further consolidate its power. At the same time, other parties may struggle to enter the parliament, even with the one-time 3% threshold and the potential to form electoral blocs (should this measure be re-introduced through constitutional amendments), although of course these mechanisms will slightly improve the prospects for smaller and emerging parties to enter the parliament in 2020.

⁷³ 'Statement on the Constitution of Georgia,' EU Delegation to Georgia, Tbilisi, 10 October 2017, available at eeas.europa.eu/delegations/georgia/33619/statement-constitution-georgia_en.

The new constitution also does not provide for a temporary substitute for the Senate, as Article 37(1) retains the provision postponing its establishment until Georgia regains its territorial integrity. As the Venice Commission notes, this 'deprives the country of a main potential counter-balance to a strong government with an overwhelming parliamentary majority and of the representation of local interests at national level'.⁷⁴

Perhaps the biggest implication of the constitutional reform process has been the result of a constitution that is only supported by the governing party and lacks broad credibility as a result. The constitution is likely to become a target for opposition criticism in future, and may be changed again with any changes to the political leadership, further prolonging the lack of legal stability and certainty around future parliamentary elections.

4.3 Implications of electoral reform in Moldova

The recent change to the parallel mixed system in Moldova has led to much speculation about its possible implications for the 2018 election. The biggest novelty will be the introduction of 51 SMCs (often referred to as 'uninominal seats' in Moldova), out of 101 total seats in parliament.

In theory, the introduction of SMC seats should benefit the largest parties, especially those with structures throughout the country (see simulation in Annex). Many believe therefore that the SMC seats will benefit the PSRM, as it has 30-40% in the opinion polls, and has a number of strongholds, particularly in the north of the country. Because the SMC seats are decided in one round, it would only be necessary for the PSRM to obtain the plurality of the vote, so they would not need to join forces with other parties in a second round, which might be more challenging for the party. At the same time, the governing DPM is expected to run independent candidates in the SMC seats, as the party itself has less than 4% in recent opinion polls and would do better not to associate candidates with its 'brand'. Independent candidates linked to DPM would undoubtedly benefit from the administrative resources that come from incumbency, including from mayors and local government (as has been the case in Georgia and Ukraine).

Newly emerging parties such as Maia Sandu's Party of Action and Solidarity (PAS) and Andrei Nastase's Dignity and Truth Party (DA) are not expected to do well in the SMC seats, as they have national level leaders, but lack well-known figures outside of the capital. They also lack the financial resources, equitable access to broadcast media and regional networks necessary to mount campaigns throughout the country. In addition, both parties are concerned that their activists and candidates in the regions are likely to face pressure from local political elites.⁷⁵ As mentioned above, there is also concern that nominally independent candidates may be linked to business interests, who are likely to be able to outspend other candidates in the campaign many times over, especially in a context where there is little enforcement of campaign finance rules, and where widespread poverty makes voters vulnerable to vote-buying.

If the PAS and DA agree to run candidates together in the SMCs, they may do better, as they would avoid splitting the pro-European, anti-government vote between them in the one-round simple majority contests. They would need to mount a significant field campaign at the local level in SMCs where they might be competitive. Emerging parties fear, however, that the boundary commission will split constituencies where they are popular as a form of gerrymandering to make it more difficult to win seats.

The delimitation of SMC boundaries was not included in the legislation and, at the time of writing, is currently being discussed by a government-appointed commission. The commission is expected to complete the process by 24 October, so that the parliament can approve the constituency boundaries by

⁷⁴ Venice Commission, CDL-AD(2017)023, Strasbourg, 9 October 2017.

⁷⁵ For example, PAS party leader Maia Sandu expressed her concerns about persecution of party supporters in 'Don't give up on Moldova', Opendemocracy.net, 16 October 2017.

13 months prior to the expiration of its mandate.⁷⁶

A key issue for the boundary delimitation process is the number of SMC seats that will be allocated for the extensive diaspora, and the geographic distribution of those seats. This decision has a significant political impact, as diaspora voters in Europe tend to favour the emerging parties, while those in Russia tend to favour the PSRM. Because the legislation did not include a set number of SMC seats for diaspora voters, this is a very contested issue. While there are no international standards that oblige states to provide for out-of-country voting, if provided then there should not be any arbitrary or reasonable restrictions on the right to vote.⁷⁷

It is also the case that many Moldovans abroad are still on the voter lists at their place of 'domicile' in Moldova and therefore would be also counted in those in-country SMCs for the purpose of delimitation. At the same time, many people resident in Chisinau have maintained their registration at their place of domicile in the regions. Therefore Chisinau could be underrepresented and rural areas overrepresented in the allocation of SMC seats, which would likely benefit PSRM and PDM at the expense of PAS and DA.

The allocation of SMC seats in the breakaway territory of Transnistria also poses a difficult issue for the boundary commission. To cast a ballot, voters from Transnistria must travel to the territory under Moldovan government control, and turnout is historically very low.⁷⁸ The Transnistria SMC delimitation also has a political dimension, as Transnistria voters are considered most likely to vote for the PSRM. As a result of expected very low turnout, SMC MPs from Transnistria are likely to be elected with many fewer votes than in other constituencies. Other questions regarding the modalities for candidates from Transnistria, such as how they would collect signatures to register as a candidate and arrangements for the campaign, remain unclear.

For the proportional contests, the threshold of 6% may block some parties from getting into parliament. Based on recent polling data, it is possible that only two to three parties would pass the threshold. According to the April 2017 opinion poll of the Institute for Public Policy⁷⁹, the PSRM would receive 33.6% of votes and PAS would receive 24.8%, while other parties would not reach the 6% threshold. The new Dignity and Truth platform with 4.6% and the governing PDM with 3.7% would not reach the threshold, together with the Communist Party of Moldova (PCRM) at 3.3%. Several current parliamentary parties, including the PLDM, the Liberal Party and Iurie Leanca's European People's Party of Moldova polled around 1% or less, and may therefore be unlikely to survive the election.

The net impact of the new electoral system remains a bit unclear. It would appear that the PSRM would benefit the most, leading commentators to speculate on what deal they have made with PDM leader Vladimir Plahotniuc. The PDM may struggle to pass the threshold, and therefore to maintain power would rely on its SMC seats plus however many further MPs it can attract after the election – In 2014 it received 15.8% of the vote and 19 MPs, but since then it has become the leading party with 41 MPs.

What could be expected, though, is that by dividing the number of proportional MPs in half, the SMC seats could act as a counterweight in favour of a governing party and to the disadvantage of any party that does well in the proportional seats but fails to win SMC seats, such as could be the case for PAS. In Georgia and Ukraine, the SMC seats have provided the governing party with a decisive boost, and in the case of Georgia, with a constitutional majority.

Lastly, another likely outcome of the new electoral system will be a decrease in the number of women in parliament. While the new system maintains the provision requiring 40% of candidates to be women (although they can be placed anywhere on the list), the provision will now only apply to the half of the

⁷⁶ Based on interview with Moldovan government official, 26 September 2017.

⁷⁷ Venice Commission and OSCE/ODIHR, CDL-AD(2017)012, Strasbourg/Warsaw, 19 June 2017, p.16.

⁷⁸ In the second round of the 2016 presidential elections, 16,728 voters from Transnistria participated.

⁷⁹ See Institute for Public Policy Republic of Moldova Public Opinion Barometer at <http://bop.ipp.md/en>.

parliament that is elected through PR. There are no additional special measures to encourage parties to put women forward for the SMC seats, and comparative experience shows that women tend to be much less represented in SMC contests (as noted above in the Georgia and Ukraine experiences).

4.4 Electoral reform a 'work in progress' in Ukraine

Electoral system reform in the Ukraine remains a work in progress with the Ukraine parliament having debated three draft laws on electoral system reform on 19 October 2017, but ultimately rejecting them. It is likely that a new working group will form to try to develop a proposal that can gain broader parliamentary support. Meanwhile, this study considers the implications of the electoral system that was proposed in draft law no. 1068-2, which gained more votes than other draft laws considered by parliament, but not enough to pass - a fully proportional system with open regional lists and a reduction of the threshold to 3 per cent. Civil society and opposition parties also supported this electoral system in their recent demonstration⁸⁰.

The SMCs in the Ukrainian political context have been widely criticised by both national electoral stakeholders and international experts. Rather than establishing a link between MPs and their voters, the SMCs have appeared to produce unrepresentative MPs more concerned with business interests than with the problems of their constituents. The system has also resulted in disproportionate results, for example in 2014 when only the Petro Poroshenko bloc and the People's Front won a significant number of SMC seats (69 for the Petro Poroshenko Bloc and 18 for the People's Front). At the same time, it is worth noting that the Svoboda party only entered parliament because it won 6 SMC seats, while with a proportional result of 4.71% it failed to reach the parliamentary threshold.

Moving to a PR system, on the other hand, would allow the parliamentary composition to more accurately reflect voter party preferences and would avoid potentially awarding a 'bonus' of seats to the ruling party, which may benefit from the use of administrative resources. At the same time, without the SMC seats, more parties may be required to join together to form a governing coalition. The introduction of a fully PR system would also alleviate the problem of vacant SMC seats in the conflict regions of Ukraine. Currently 27 of 225 SMC seats remain vacant, making it more difficult to reach a parliamentary quorum, which has not been adjusted to take the conflict into account.

The proposed introduction of an open list system would allow voters to express a number (one or more - to be determined) of preferences for which candidates within the list they prefer. The use of open list systems in other countries is seen as a way to encourage MPs to be accountable to voters, rather than to political party elites. While proponents of the system express hope that it would help to compensate for lack of internal democracy, in the Ukraine context it could also introduce problems into the system, as individual candidates would need to leverage resources to compete against other candidates on the same party list, which may bring similar corrupt practices to those used previously in SMC seats in Ukraine.

The introduction of regional lists could encourage some element of connection between MPs and their constituents, while at the same time not focusing geographic interests too narrowly - as may be the case currently with 225 SMCs. Regional lists should also encourage an element of geographical representation within the parliament, which is important given the size and diversity of Ukraine.

The level of parliamentary threshold will be an important determining factor in how many parties enter the parliament and to what extent newly emerging parties can pass the threshold. The current threshold of 5% may exclude emerging parties, but helps to consolidate the parties that do pass the threshold and may encourage more stability in a coalition government as a result. A lower threshold such as 3% may encourage emerging political forces and new political elites to enter politics and parliament, but may also

⁸⁰ See 'Public activists and people's deputies announced mobilisation for the All-Ukrainian Action for Political Reform' (Ukrainian), 20 September 2017 at <http://www.chesno.org/news/2544/>.

increase the fragmentation of the parliament, as more political parties would be represented. Based on the 2014 parliamentary results, a threshold of 3% would have allowed 10 parties to enter the parliament – four more than with the existing 5% threshold in the proportional seats (see annex for simulation).

Finally, a fully proportional system would almost certainly increase the number of women in the Ukrainian parliament. In the 2014 parliamentary elections, only 50 women won seats out of 450 MPs (11%) – 48 women MPs won in the proportional seats and only 2 women won in the majoritarian seats. While there was a quota for the proportional seats that each party list include 30% women, the provisions did not specify their places on the lists and there were no enforcement mechanisms in place.⁸¹ The change to a fully PR system would avoid the negative consequences of the SMC seats, while also providing an opportunity for more effective special temporary measures to be designed.

⁸¹ OSCE/ODIHR EOM final report early parliamentary elections Ukraine 2014, p.15.

5 Conclusions

The following conclusions can be drawn from this study:

Frequent changes to the electoral system and other key aspects of the election legislation do not promote stability of law

Ideally, governments should avoid frequent changes to the electoral system and other key aspects of the election framework, including the composition of the electoral administration and the method of delimitation of electoral boundaries. According to the Venice Commission, 'stability of the law is crucial to credibility of the electoral process', and rules that cover such key aspects as the electoral system should be 'protected to avoid not only manipulation to the advantage of the party in power, but even the mere semblance of manipulation'.⁸² The electoral system establishes the 'rules of the game' for the political competitors and frequent changes, or changes just prior to the elections, do not all allow political parties or candidates sufficient time to prepare their electoral strategies and party structures to compete effectively. Frequent changes also may cause confusion among voters and other stakeholders about how the system works, which can decrease public confidence in the integrity of the process.

The tendency to change key aspects of electoral systems with the apparent intention to maximise the political gains of ruling parties is a concern in all three countries in this study, especially as changes are often made within one year of the election. While changes to the election legislation sometimes correspond to election recommendations of the OSCE/ODIHR, Venice Commission and citizen observer groups, governments have at times used the demand for follow-up to recommendations as a pretext for further changes that maximise their political advantage. The international community should also bear this risk in mind when emphasising the need for follow-up to election recommendations.

The process of electoral reform matters as much as the substance

The manner in which these countries have changed their electoral systems is a further concern. Good practice calls for an inclusive, transparent process for selection of electoral systems. The advantages and disadvantages of different alternatives should be carefully considered, and the views of a broad range of political party and civil society representatives taken into account. Such a process takes time and patience, and aims to improve the system in the long-term. Instead, recent proposals to change electoral systems in Moldova and Georgia have been abruptly introduced in parliament, and passed without the support (or even the presence) of opposition parties. Changes to the electoral system in Ukraine in 2012 also lacked inclusive and transparent debate on the key aspects of the system.

In all three countries a number of parliamentary committees and working groups on electoral reform have been established with opposition party and civil society representation. However, having these structures in place does not necessarily mean that the process will be genuinely consultative and transparent. For example, a State Constitutional Committee formed by the Georgian parliament included relatively broad civil society and political party representation, giving initial hope that the widespread consensus around the need for electoral reform could result in an inclusive process and a resulting text that had broad public confidence. However, the rushed process, lack of consideration for key opposition and civil society recommendations, and remaining concerns about the final draft led to frustration with the process as a whole. Changes made to the draft prior to its swift introduction into parliament caused further frustration.

Electoral reform processes that lacks genuine inclusive debate, a consensus approach and transparency undercut any political argument that such changes are intended to make parliament more accountable to

⁸² Venice Commission, Code of Good Practice, II.2.b.

citizens. Instead such processes further the widespread public perception of electoral reform as an attempt by ruling parties to change the rules of the game to meet their own political interests, rather than considering what is in the best long-term interests of the country.

Some flaws in the election process are symptoms of deeper problems of democratic development that can only be partially addressed through electoral reform

Because elections are a moment of heightened political interest and activity, important elements of democracy come into clear focus. Follow-up to election recommendations through electoral reform seeks to remedy issues identified during elections.

While there are many issues that can be addressed in this way, it is also the case that some flaws identified during elections are symptoms of deeper weaknesses with the democratic structures of a country. These include: the lack of an independent judiciary, insufficient rule of law, non-functioning or selective use of oversight mechanisms, weak government institutions, concentration of media ownership, political corruption and misuse of state resources.

Electoral reform is unable to address such serious systemic weaknesses, which often affect how an electoral framework is implemented. Until such fundamental issues are resolved, elections in these countries will continue to have certain weaknesses that will not be easily overcome, regardless of what electoral system is in place.

Public discontent with political elites is widespread and political renewal is needed

Widespread discontent with the political class is another element that all three countries have in common. While this is true in many countries worldwide, it is acutely so in these three cases, also because of the interplay between business interests and political interests and the dominance in politics of a very few wealthy individuals. Rather than coalescing around a set of common interests, therefore, political forces are often said to coalesce around these wealthy individuals. As a result, political parties are more often based on personalities rather than on a platform or ideology. Parties are weak and often lack functioning internal structures and accountable decision-making mechanisms.

For this to change, renewal of political elites is needed. New faces are needed in the political scene who react to public concerns and represent the interests of citizens, rather than business interests. There are significant obstacles to such renewal, as politics is an expensive endeavour in these countries and young talented people may not wish to 'taint' themselves by associating with political parties. In a promising development, all three countries have seen prominent figures from civil society join politics to varying degrees in recent years, which could help to promote democratic reform and bring political renewal if they can avoid disillusionment or co-optation or by the existing elite.⁸³ However, it is not yet clear how successful they will be at promoting reforms.

While there are limits on the extent to which electoral reform can encourage such political renewal, there are some mechanisms that may favour these outcomes:

- **Proportional electoral systems** are more likely to encourage pluralism in the parliament, and to give better chances for emerging political forces. This is especially true when compared to the outcomes produced by majoritarian or parallel mixed systems, which tend to favour the ruling party, especially in a context where incumbency brings the widespread use of administrative resources. At the same time, while a low threshold will allow a greater number of political parties to be represented, there is a certain risk of over-fragmentation, if too many parties enter the

⁸³ Interview with Cristina Gherasimov, Chatham House analyst, 16 October 2017.

parliament. PR systems also usually require political parties to come together after elections into a governing coalition, which in a deeply polarised political context, such as Georgia, may be challenging.

- Promoting **women's participation** can contribute to political renewal, as most political structures in these countries have been dominated by men. Special temporary measures such as mandatory gender quotas for parliamentary elections can ensure a better representation of women. Other mechanisms include waiving of candidate fees or special campaign finance arrangements, as the costs of candidacy are a key barrier to the participation of women in elections.
- **Political and campaign finance** is another important consideration for encouraging the entry of new political forces. In all three countries, the dominance of politics by oligarchs and other business interests has made elections and campaigning very expensive, increasing barriers to participation of emerging political forces that are not aligned with business interests. While state funding of parties can help to level the playing field to a certain extent, the huge financial advantages of certain political forces provide for a significant imbalance. Campaign finance regulatory systems have been strengthened to varying degrees in all three countries, but loopholes remain and enforcement can be weak or selectively applied. Political advertising during elections increases the cost of campaigning exponentially, creating a further barrier to entry for new political forces and candidates.
- **Equitable access to media** remains crucial for newly emerging political forces in all three countries. Despite a rapid increase in internet penetration and use of social media, especially among youth, traditional broadcast media remains a key source of information for citizens, during and outside of election periods. In all three countries, recent issues related to concentration of media ownership and the decrease in the availability independent media remain causes for concern. In Moldova, for example, 4 out of 5 television stations with national reach are owned by the leader of the governing PDM party Vladimir Plahotniuc⁸⁴. Such a context puts emerging political forces at a huge disadvantage, with few available means to publicise their programmes.

⁸⁴ Freedom House, 'Moldova', in *Freedom of the Press 2017* at <https://freedomhouse.org/report/freedom-press/2017/moldova>.

6 Recommendations for the European Parliament

6.1 Recommendations for all countries in the study

- Recognising that parliament is the key institution for electoral reform, the EP should continue and expand its parliamentary support activities for these countries, in particular to further encourage consensus-building approaches, such as the Jean Monnet Dialogues conducted in Ukraine, that could also lead to more inclusive electoral reform. Specific attention should also be given to strengthen the capacities of the political parties to exercise inter-party dialogue and build consensus on key reforms.
- Identify new ways to encourage and support internal party democracy, including through increased focus by international election observation missions to this issue and enhanced EU support for party building programming, including at the local level.
- Give political weight to the recommendations of the Venice Commission and OSCE/ODIHR regarding electoral reform, emphasising the need for a genuinely inclusive and transparent process among stakeholders that should seek consensus on key issues like the change of an electoral system. Consider linking political conditionality to the implementation of priority recommendations.
- Engage more closely with the OSCE/ODIHR on follow-up in Eastern Partnership (EaP) countries, for instance by encouraging a mechanism for monitoring follow-up to recommendations similar to that recently launched for the Western Balkans.
- Ensure that promoting women's participation is an integral part of electoral reform efforts, including the implementation of temporary special measures in elections, such as mandatory gender quotas and preferential campaign finance arrangements.
- Encourage political, technical and financial support for the development of strong and accountable government institutions, including an independent judiciary, prosecutor's office, functioning regulatory authority for campaign and political finance, media oversight body and impartial election administration. Assess regularly the progress made through such assistance and the actual impact.
- Conduct regular fact-finding missions and ensure their consideration of OSCE/ODIHR recommendations as a standing practice. Such missions should look beyond laws passed or committees formed to the actual implementation of reforms, and should speak out clearly on obstacles to democratic reform.
- Ensure better coordination between the European Parliament and other EU institutions in a more systematic way to send clear messages on political and electoral reform, as was done with electoral reform and macro-financial assistance in Moldova.
- Consider conditioning participation of politicians in high-level bilateral EU meetings on issues related to genuine progress on democratic reform.
- Encourage support for civil society organisations to actively promote and monitor issues of public accountability (electoral reform, political finance monitoring, judicial reform monitoring, media monitoring) throughout the electoral cycle, including between elections. Also support funding for the development of grassroots CSOs that directly engage with citizens and encourage their active civic participation, including civic education initiatives from an early age.
- Actively monitor the environment for citizen observers and other CSOs to freely conduct democracy promotion and watchdog activities and oppose any interference in their work, including limitations on foreign funding.

- Help to protect and encourage the development of independent media outlets and an enabling media environment through strong political statements and funding. Support for investigative journalism is particularly relevant for countering political corruption.
- Encourage financing for flexible democracy assistance organisations that support renewal of political elites and help overcome barriers to entry to the political system.
- Ensure that sister parties engaging in these countries play a constructive role, encouraging their partners to engage in practices that promote consensus-building on electoral reform and other issues.

6.2 Recommendations related to Moldova

- The specific criteria for political conditionality linked to the macro-financial assistance should be more transparent and clearly explained to Moldovan stakeholders and citizens alike.
- Should the political conditionality for the macro-financial assistance not be met, the macro-financial assistance funds should not be disbursed. Such an action should be accompanied by a clear political statement on the reasons for the decision.
- Emphasise the need to pass comprehensive campaign and political finance legislation as soon as possible to promote a more level playing field for elections and encourage new emerging political actors
- Take a more sophisticated approach to responding to democratic backsliding so that a reluctance to implement reforms results in more engagement, rather than less.

6.3 Recommendations related to Georgia

- Focus on issues of political culture and internal party democracy in order to effectively address the major remaining challenges to democratic reform. Assess Georgia's progress on its own merits, rather than only comparing developments in Georgia to the rest of the EaP countries.
- Monitor whether the governing party passes constitutional amendments for the additional changes to the electoral system, as it has committed to the Venice Commission.

6.4 Recommendations related to Ukraine

- Encourage all parties to engage in an inclusive and transparent process through a consensus-based approach to develop a new draft law on electoral reform that can be considered by parliament well in advance of elections.
- Support the timely consideration by the parliament of the draft law on voting rights for IDPs, in line with international obligations and OSCE/ODIHR recommendations. Encourage the submission of the draft law to the Venice Commission for its opinion.
- Stress the need for further follow-up on a number of other priority recommendations made by the OSCE/ODIHR, including the need to replace the Central Election Commission, a full review of election legislation to provide for a unified electoral code and passing of draft amendments to implement an effective gender quota for the parliament.

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Acronyms

CEC	Central Election Commission
CSO	civil society organisation
CVU	Citizen Voters of Ukraine
DA	Dignity and Truth Party (Moldova)
EaP	Eastern Partnership
EMB	Election management body
EOM	election observation mission
EU	European Union
GD	Georgian Dream party
IDP	internally displaced person
IFES	International Foundation for Electoral Systems
IRI	International Republican Institute
ISFED	International Society for Fair Elections and Democracy
MMP	Multi-member proportional (electoral system)
MP	member of parliament
NDI	National Democratic Institute
ODIHR	Office for Democratic Institutions and Human Rights
OSCE	Organisation for Security and Cooperation in Europe
PAS	Party of Action and Solidarity
PCRM	Communist Party of Moldova
PDM	Democratic Party of Moldova
PLDM	Liberal Democratic Party of Moldova
PR	Proportional representation
PSRM	Socialist Party of Moldova
SMC	single mandate constituency
UNM	United National Movement (Georgia)

Annex: Simulations of results by electoral system

Ukraine

2014 election results (existing parallel mixed system)

Party	Votes	Votes %	Seats (PR)	SMC seats	Total seats won
Popular Front	3,488,114	22.1%	64	18	82
Petro Poroshenko Bloc	3,437,521	21.8%	63	69	132
Samopomich	1,729,271	11.0%	32	1	33
Opposition Bloc	1,486,203	9.4%	27	2	29
Radical Party	1,173,131	7.4%	22	0	22
Fatherland	894,837	5.7%	17	2	19
Svoboda	742,022	4.7%	0	6	6
Communist Party	611,923	3.9%	0	0	0
Strong Ukraine	491,471	3.1%	0	1	1
Civic Position	489,523	3.1%	0	0	0
Zastup	418,301	2.7%	0	1	1
Right Sector	284,943	1.8%	0	1	1
Volia	n/a			1	1
Independents	n/a			96	96
Total seats					423 ⁸⁵

⁸⁵ Because of the conflict in Eastern Ukraine, 27 SMC seats remain vacant.

Ukraine - Simulation of PR system with 3% threshold (2014 results) and comparison

Party		Votes %	Seats (simulation)	% of seats (simulation)	% of seats (current)	Seats (actual)
Popular Front	3,488,114	22.1%	108	24.0%	19.4%	82
Petro Poroshenko Bloc	3,437,521	21.8%	106	23.6%	31.2%	132
Samopomich	1,729,271	11.0%	54	12.0%	7.8%	33
Opposition Bloc	1,486,203	9.4%	46	10.2%	6.9%	29
Radical Party	1,173,131	7.4%	36	8.00%	5.2%	22
Fatherland	894,837	5.7%	28	6.2%	4.5%	19
Svoboda	742,022	4.7%	23	5.1%	1.4%	6
Communist Party	611,923	3.9%	19	4.2%	0	0
Strong Ukraine	491,471	3.1%	15	3.3%	.2%	1
Civic Position	489,523	3.1%	15	3.3%	0	0
Zastup	418,301	2.7%	0		.2%	1
Right Sector	284,943	1.8%	0		.2%	1
Volia	n/a		0		.2%	1
Independents	n/a		0	0	22.7%	96
Total seats			450			423

Georgia

2016 election results (parallel mixed system)

Name of Party/Bloc		Votes %	Seats (PR)	SMC seats	Total seats won
Georgian Dream	856638	48.68	44	71	115
United National Movement	477053	27.11	27	0	27
Alliance of Patriots	88097	5.01	6	0	6
Free Democrats		4.63	0	0	0
Democratic Movement		3.53	0	0	0
State for People		3.45	0	0	0
Labour Party of Georgia		3.14	0	0	0
Topadze – Industrialists, Our Fatherland	13,788			1	1
Independent – S. Zurabishvili	11,360			1	1
Total seats			77	73	150

Georgia - Simulation of PR system as adopted⁸⁶ (using 2016 election results) and comparison

Name of Party/Bloc	Votes %	Seats (simulation)	% of seats (simulation)	% of seats (current)	Seats (actual)
Georgian Dream	48.7%	91	60.1%	76.7%	115
United National Movement	27.1%	50	33.3%	18%	27
Alliance of Patriots	5.0%	9	6%	4%	6
Free Democrats	4.6%	0			0
Democratic Movement	3.5%	0			0
State for People	3.5%	0			0
Labour Party of Georgia	3.1%	0			0
Topadze – Industrialists, Our Fatherland					1
Independent – S. Zurabishvili					1
Total seats		150			150

⁸⁶ The simulation is for the PR system that is planned to be implemented in 2024 and assumes that the commitment of the governing party to remove the 'bonus' is met. Note that in 2014 party blocs were allowed, but will not be in 2024.

Moldova⁸⁷

Simulation - parallel mixed system⁸⁸ (using 2014 election results)

	Seats won - SMC	Seats won - PR	Total seats	Total seats (%)
Socialist Party	23	13	36	36.0%
Liberal Democrats	14	12	26	26.0%
Communist Party	8	10	18	18.0%
Democratic Party	4	9	13	13.0%
Liberal Party	1	6	7	7.0%

Moldova - Comparative perspective on parallel mixed outcomes (2014)

	Votes %	Seats (simulation)	% Seats (simulation)	% Seats (actual)	Seats won (actual)
Socialist Party	21.14%	36	36.0%	24.8%	25
Liberal Democrats	19.51%	26	26.0%	22.8%	23
Communist Party	18.09%	18	18.0%	20.8%	21
Democratic Party	16.12%	13	13.0%	18.8%	19
Liberal Party	9.14%	7	7.0%	12.9%	13

⁸⁷ Simulation extracted from Sorescu, A. and Bakken, M. *Electoral System Design in Moldova*, Promo-LEX Association, Chisinau, 2017, p. 62.

⁸⁸ As the simulation was made prior to decisions about Transnistria and diaspora SMC seats, the author did not take into consideration votes expressed by voters in Transnistria or the diaspora for the allocation of SMC seats. In addition, a seat was taken out of the simulation, taking into account voters from Transnistria.

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