



IFES Comment

Overcrowded Election Commissions: Risks and Mitigation Actions

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Background

In previous nationwide elections, both domestic and international observers noted isolated cases of long voter queues at the polling stations at certain times on election day. This was, in part, due to the fact that some premises allocated to precinct election commissions could hardly accommodate all the authorized persons (in addition to Precinct Election Commission (PEC) members this include: candidate proxies, official observers from parties and candidates, and domestic and internal observers, journalists and members of upper-level commissioners).

Both the Venice Commission and the Office for Democratic Institutions and Human rights of the Organizations for Security and Cooperation in Europe (OSCE/ODIHR) recommend decreasing the maximum number of voters per polling station from 2,500 to 1,500 as well as a decrease in the number of election commissioners to match the tasks that they need to accomplish (in presidential election there is no upper ceiling on the number of PEC members, while in parliamentary elections, at large election precincts, max 18 members can be appointed to the PEC). Also, the premises of District Election Commissions (DECs) were criticized for not being adequate.

The 2019 presidential election can prove even more problematic. All 39 registered candidates have the right to be equally represented on the PECs and DECs (i.e., each presidential candidate can nominate one commissioner for each PEC and DEC), as well as to delegate up to two official observers and their proxy in the respective election district to be present at PEC and DEC commission meetings and on election day during voting, the vote count in the polling station and during transfer and the vote tabulation at the DEC. The same right is granted to observers from the 139 domestic NGOs, of which 132 with the right to field observers nationwide and 7 in specific election districts (2 observers from one NGO per PEC/DEC), international observers (with no limitations on the number of observers who can be present) and journalists (2 per DEC/PEC). Based on the initially registered 44 candidates and their nominations of members to DEC, OPORA analyzed the data and found that on average a DEC has 34 members, an unusually high number stemming from the provisions in the Presidential Election Law allowing all the competing candidates to nominate one commissioner for each DEC and/or PEC. DEC members also have the right to be present at PEC meetings and in the polling station during election day. As of March 16, the DECs have appointed 440,580 PEC commissioners to 29,788 PEC which translates into an average number of 15 PEC members per PEC.

The data above suggests that it would be challenging for the DECs and PECs to accommodate all the persons entitled to be present at the respective commissions' meetings or during election day in polling stations. High numbers of individuals present at a time in the PEC and DEC premises poses a number of other risks. This document assesses those risks and suggests mitigation actions that can be taken to minimize the risks.

Risks associated with overcrowding of the election commissions

A presence of high number of individuals inside the voting premises could lessen the secrecy of votes, as many voters would likely vote outside the polling booths (open voting). It may also prevent effective observation of election day procedures and lessen the transparency: the ballot boxes and polling booths could be out of sight of the commissioners and observers due to crowds of voters. It might further be difficult for the observers to monitor whether the ID check and issuance of ballot papers are done in line with legal requirements. Given the limited space and seats (chairs etc.), observers would likely move around in the premises which may stir tensions between them and the commissioners or voters. Persons authorized to be present during voting and the vote count may not be admitted to the premises due to the limited physical space.

Overcrowding at polling stations may also open the door to various violations of procedures and it will be more difficult for commissioners to take timely remedial action to prevent the violation due to lack of transparency. Photo taking of the marked ballot papers in the polling booths may be one such example. It therefore becomes crucial that all commissioners know the rules and are positioned strategically to overlook each their part of the process since the chair or other holding senior positions may not be able to intervene to stop such violations otherwise. If tensions grow it may cause disruption or even destruction of the ballot boxes to affect the voting results.

The risk of electoral disorder, and potentially violence, during voting and the vote count should not be underestimated too. This is compounded by the fact that NGOs accredited to observe the election are allegedly affiliated with presidential candidates or paramilitary groups. Experience from the 2012 parliamentary elections suggest that presence of fake journalists affiliated with certain candidates is a likely scenario too. It should be noted in this connection that poor administration of the DEC vote tabulation and interference of so-called “journalists”, “supporter groups” and “observers” into the vote tabulation in the 2012 parliamentary election led to de-facto invalidation of election results in a number of single-mandate constituencies (SMCs): due to multiple repeat vote counts, corrections to protocols, and stolen sensitive documents it was impossible for the Central Election Commission (CEC) to establish the final results in the respective SMCs. While the Presidential Election Law makes it clear that the district results cannot be invalidated, a narrow difference in votes between the leading candidates (especially in a possible second round vote) combined with poor management of the process caused by overcrowded polling or vote tabulation premises and interference of “observers” and “journalists” with the counting and tabulation processes may cast a serious doubt about the legitimacy and transparency of the election outcome.

The Presidential Election Law provides that the candidate proxies, observers and other persons present at PEC/DEC meetings have the right to sign some sensitive documents (control sheets, discrepancy acts etc.). In case when the number of those who are present at the commission meeting is high, signing the respective documents might be a lengthy process that might slow down opening procedures as well as the voting and/or vote counting process. All observers, journalists, candidate proxies and other who are entitled to be present on election day in PECs and DECs without the respective commission's consent or invitation must be registered and sign the PEC/DEC journal. This takes time. Later, they are all entitled to receive a copy of the protocol, which needs to be issued in hand and signed by all commissioners.

Ongoing mitigation actions

The Presidential Election Law provides that before election day each PEC must hold a meeting to divide responsibilities between its members and determine those election commissioners who would be in charge of ensuring order during voting. These responsibilities, among other things, can include queue management and admission to the voting premises, verification of the journalist/observer documents and other measures that might reduce the risk of overcrowd. The

upper-level election commissions must ensure unified enforcement of the electoral legislation by the lower-level commissions and are entitled to provide the lower-level commissions with guidance and necessary assistance. This aspect of the mandate can include issuing recommendations to the lower-level commissions as to how to effectively manage the queues, prevent violence, tensions and obstruction. The mitigation actions taken so far by the CEC and lower-level commissions remain limited.

IFES partnered with the CEC, OPORA, Ministry of Interior and the National Police to mitigate the risks through the training provided to 70,000 DEC and PEC commissioners, as well as law enforcement representatives on election day procedures/operations. This included the dissemination of 64,000 copies of a police handbook on electoral operations targeting police officers who will be deployed at the polling stations on the election day. This handbook, in particular, explains how the police should communicate with the election commissioners, voters and other stakeholders, as well as provides guidance how to act in problematic situations that may occur, for instance, in the case of violence, voter intimidation and other offences.

Short- and long-term mitigation actions

As Ukraine is days from election day and the potential for PEC/DEC overcrowding is high, the following actions can to be taken without delays to mitigate those risks:

- the DECs and PECs should clearly divide the tasks and responsibilities between their members for the election day to ensure properly managed queue control at their respective premises and to avoid the DECs and the polling stations from being overcrowded;
- the CEC should consider issuing recommendations to the PECs and DECs as to how to manage the queues at the PECs and DECs and so that the premises of the lower-level commissions are not overcrowded and how the result protocols, ballot material and other sensitive documents should be transferred from the PEC to the DEC on election day;
- the DECs should promptly react on misconduct of the election observers and de-register those of them who obstruct voting, intimidate voters or commit other offenses;
- Election commissions need to communicate effectively between each other to promptly detect the possible risks/threats/issues and to address/mitigate those risks;
- Election commissions need to closely cooperate with the National Police to identify and mitigate security risks during election day and subsequent days (in case the DEC orders recount etc.);
- Election commissions should improve transparency/communications with OPORA ombudspersons in the regions, media and established domestic/international observer missions to reveal the challenges, spotlight them and raise public awareness.
- the National Police should allocate additional police force to protect public order outside at those polling stations that would prove to be problematic during the election day or in advance of the election; and
- the police should properly respond to the cases of intimidation of voters/election commissioners, violence, fraud and other similar actions (documenting, detention, investigation of the crimes and offenses) if they are notified by the PEC members of the issues/violations.

Long-term mitigation measures should include, among other things, the creation of more manageable (i.e. with less number of the commissioners) PECs and DECs with a clear correlation between the number of voters and the number of commission members needed to manage that number of voters instead of creating the commissions in which all the registered

candidates get represented; introducing a ceiling on the number of voters per polling station to 1,500 as recommended, change the procedure for appointing DEC/PEC members in a presidential election (i.e. introducing the procedure similar to that used in the parliamentary elections, whereby parties represented in Parliament are granted seats on commissions, while the remaining parties receive representation based on the lotteries), ensure that all DEC/PEC members have received training (incl. removing the possibility for their replacement at will), imposing stricter qualification criteria for NGOs who wish to be accredited to observe the elections.

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