

# 2019 Early Parliamentary Elections in Ukraine:

## *Post-Election Report*

August 2019





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## Executive summary

Early parliamentary elections in Ukraine were held on July 21, 2019, representing an important electoral milestone for democracy in the country despite continued problems with the legal framework and the conduct of the campaign. These elections were the second general vote held since the Central Election Commission (CEC) was renewed in September 2018. While international and domestic observers evaluated these elections as being conducted in a manner generally consistent with democratic practice, instances of fraud, malpractice, and systemic manipulation through the exploitation of weaknesses in the legal framework were noted, largely during the campaign period.<sup>1</sup>

Observers from a diverse range of international and domestic monitoring organizations noted instances of systemic manipulation and fraud during the election campaign, mainly related to contestants taking advantage of loopholes in the legal framework, abuse of state resources, and a lack of compliance with political finance regulations; however, all observers stated that election day was administered in a generally professional and smooth manner across the country. Despite some instances of malpractice by a few District Election Commissions (DECs), which resulted in irregularities during the tabulation of the vote in some single-member constituencies (notably in constituencies no 50 and 210), based on the evaluation of efforts of all levels of election administration on election day, the 2019 early parliamentary elections reflected the will of the voters.

A number of outstanding issues must nevertheless be addressed to improve future elections in Ukraine. It is critical that election stakeholders now reflect seriously on the 2019 presidential and parliamentary elections to draw on lessons learned and consider existing and forthcoming observer recommendations. The legal framework governing national and local elections requires significant review to meet international standards and best practices for democratic elections. The last-minute passage of a new, unified election code by the outgoing Parliament does not necessarily address these flaws, which, at the time of the writing of this report, had not yet been signed by the president. Only a few of the recommendations for improvement of the existing legal framework for elections by the Council of Europe's Commission for Democracy through Law (Venice Commission), the Organization for Security and Cooperation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) and international and domestic observer missions have been addressed.

The laws governing elections must be amended in order to remove conflicting language, clarify key definitions and roles of election stakeholders, and define effective sanctions for electoral offenses (both criminal malpractice and fraud) in order to bolster the democratic process and make it genuinely inclusive and transparent. The first-past-the-post (FPTP) component of the parallel electoral system again proved prone to fraud, with noted occurrences of abuse of administrative resources, vote buying (although to a lesser scale compared to the 2014 parliamentary elections), and illicit campaigning. Given the repeated calls from political actors and civil society to shift to a fully open list proportional system in future parliamentary elections, consideration should be given to eliminating the FPTP component from the electoral system. All violations related to single-member constituency races should be properly investigated by the police so that perpetrators no longer enjoy impunity for

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<sup>1</sup> For definitions of systemic manipulation, fraud and malpractice, please see IFES' [publication](#) "Assessing Electoral Fraud in New Democracies: Refining the Vocabulary," May 2012.

wrongdoings in future elections.

A number of issues pertaining to the overarching environment in which the parliamentary elections were held surfaced in domestic and international observer reports. Key areas of concern include: the centralized nature of the election administration and the perceived lack of transparency and inclusiveness of the CEC; the registration of “clone” candidates and misappropriation of the name of well-known parties in order to disperse the votes of prominent contestants and mislead voters; the frequent last minute replacement of election commissioners, including on the election day, which reduces the efficiency and professionalism of election commissions and contributes to malpractice; the lack of effective, proportionate and dissuasive sanctions for election-related offences; the cumbersome procedures for temporarily changing the place of voting without changing the electoral address and the de-facto introduction of active voter registration for certain groups of citizens; a general lack of accessibility for persons with disabilities at odds with Ukraine’s international commitments; short timelines for election dispute resolution; a large number of frivolous NGOs accredited to observe elections; persistent and inconsistent enforcement of the five-year residence requirement for candidacy; the lack of campaign finance transparency and the alleged huge role of oligarchs and shadow funding in the election campaign and media; negative campaigning and the use of hate speech; abuse of administrative resources and biased media coverage of the campaign, which contributed to an un-level playing field; and, finally, the absence of effective and enforceable measures towards better representation of women and national minorities in elected office, including in parliament.

Conversely, observers and electoral stakeholders also noted a number of significant improvements in this election and its results: better preparedness of the CEC and other authorities to combat cyber-attacks on key election infrastructure; a competitive campaign environment with respect for fundamental freedoms; lack of major instances of fraud during voting, more transparent vote counting and vote tabulation; the effective role of police in maintaining and protecting public order on election day; high-quality, wide-scale training of election commissioners provided with IFES technical assistance; and a significant increase in women’s representation in the new Rada.

This report provides analysis of key electoral issues as well as achievements from the 2019 early parliamentary elections and offers recommendations for stakeholders to improve future democratic processes in Ukraine. Recommendations appear in bold in the body text of the report. In the back of the report, there is an annex where all recommendations are collated.



## Background

Under the Constitution, the legislative powers in Ukraine are exercised by a unicameral parliament, the *Verkhovna Rada* (the Rada) of Ukraine. The Rada is made up of 450 MPs who are elected for five-year terms in general, equal and direct elections through a secret ballot. Regular elections are held on the last Sunday of October of the fifth year of the term of the parliament. The last parliamentary elections in Ukraine were held in October 2014.

The President of Ukraine has the right to dissolve the Rada and schedule early parliamentary elections based on one of three grounds: 1) if no ruling coalition has been established in the Rada within one month following termination of the previous coalition; 2) if no new Cabinet of Ministers has been appointed within 60 days following the resignation of the previous Cabinet; or 3) if within 30 days of the regular session of the Rada plenary meetings fail to commence. Article 90 of the Constitution makes it clear that dissolution of the Rada is a right rather than an obligation of the President.

The new President of Ukraine, Volodymyr Zelenskyy, was elected in the second round (run-off) of the March 31, 2019 presidential election held on April 21. Zelenskyy defeated incumbent President Petro Poroshenko, who was elected in May 2014. In the second-round vote, Zelenskyy received 73.22 percent of the votes cast while 24.45 percent went to Petro Poroshenko. Major international election observation missions as well as domestic observers acknowledged that the 2019 presidential election, despite some irregularities, was largely held in line with international standards for democratic elections and in accordance with Ukrainian laws.

The new president-elect was sworn-in on May 20 at a plenary session of the Verkhovna Rada. In his inauguration address to the Rada, President Zelenskyy announced his intention to dissolve the body, as he believed that no majority in the Rada had existed since February 2016 and that a new majority had not been legally established within the one-month deadline required by the Constitution. On May 21, the President issued a decree on the dissolution of the Rada and the scheduling of early parliamentary elections. Sixty-two MPs petitioned the Constitutional Court with a request to deem the presidential decree on dissolution of the Rada unconstitutional. However, on June 20, the Constitutional Court upheld the constitutionality of the decree, which paved the way for holding early parliamentary elections on July 21. Acting within legal requirements, the CEC initiated technical preparations for the early elections when the presidential decree came into legal force on May 24, before the court passed its decision on the constitutionality of the decree.

The July 21 early parliamentary elections were the fifth nationwide elections held since the February 2014 Euromaidan revolution. They were preceded by the 2014 early presidential and parliamentary elections, the 2015 local elections and the 2019 presidential election.

Following Euromaidan, Ukraine faced serious challenges ranging from economic downturn to the illegal annexation of the Crimean Peninsula by the Russian Federation and de facto loss of control over parts of Donetsk and Luhansk oblasts to Russian-backed separatists. Aspirations for swift reforms inspired by Euromaidan have largely not materialized. Several reform initiatives launched since 2014 such as decentralization, the fight against corruption and reform of the judiciary have never been fully or properly implemented. The CEC that organized the notoriously flawed 2012 parliamentary elections continued to exercise its powers until 2018, even though the terms in office for most of its members expired in 2014. CEC members with expired terms were replaced only in September 2018. The lead-

up to the 2019 early parliamentary elections was marked by widespread loss of public trust in the Rada and failed attempts to fundamentally change the electoral system and laws governing the elections.

## Legal framework

The preparation and conduct of parliamentary elections are regulated by the Parliamentary Election Law, which has undergone several amendments since its adoption in 2011. Significant amendments were introduced in 2013, 2014 and 2015. Other aspects of the election process are governed by the 2001 Law on Political Parties in Ukraine, the 2004 Law on the Central Election Commission, and the 2007 Law on the State Register of Voters. Sanctions for election-related offenses are set out in the 2001 Criminal Code and the 1984 Code of Administrative Offences. Election disputes are resolved by courts (local courts of general jurisdiction and administrative courts) based on the 2004 Code of Administrative Adjudication. The CEC supplements the legal framework by adopting resolutions to specify certain provisions of law (including the procedures for campaign finance oversight, observer accreditation, compilation of vote count and tabulation protocols, and for resolving electoral disputes by lower-level election commissions).

The electoral legal framework overall remains fragmented and is comprised of several laws adopted at different times, which sometimes contradict each other. ODIHR and the Venice Commission have repeatedly recommended harmonizing the electoral legal framework and ensure the same rules apply to all elections through the adoption of a consolidated Election Code.

**Electoral reform must respect the principle of the stability of the legal framework and be completed well in advance – at least one year prior to the electoral event in question. Electoral Reform should address all pending domestic and international recommendations, including those by ODIHR and the Venice Commission.**

In November 2017, the Rada adopted a draft harmonized election code in its first reading. Prior to the second reading, MPs proposed more than 4,000 amendments to the draft code, which were considered and further elaborated on by a working group established by the Rada's Committee on Legal Policy and the Judiciary (the Committee). While the working group accomplished the task of processing all amendments to the draft code in late spring 2019, and the Committee recommended the Rada to consider the draft code, the Rada repeatedly failed to adopt the draft code in the second and final reading. The Rada adopted the code into law on July 11, just 10 days before the election. The adoption potentially violated the Parliament's Rules of Procedure as the Speaker put the code up to vote 17 times during the day until it received the needed number of votes to be adopted into law. According to the adopted text of the code, it will take legal effect only in December 2023, and therefore would apply neither to the 2020 regular local elections nor to the next regular parliamentary elections expected in October 2023.

The timing of the adoption of the code calls into question political motivations for its passage. The fact that the outgoing Rada took almost two years to consider the code, that its entry into legal force is de facto postponed until the 2028 parliamentary elections, and that the outgoing Rada voted the code into the law only in the 17th attempt without serious discussion undermines the belief that the code was adopted solely for needed political reform.

Many provisions of the code still need to be improved. In addition to the problematic “open list system” with regional lists, which is neither fully open nor fully regional, the code does not remove existing barriers for election participation of IDPs and economic migrants in elections, secure women a certain level of representation in the Rada through temporary special measures, or make the elections more accessible for voters with disabilities. It also missed the opportunity to strengthen the professionalism of the election administration and did not make training of all election commissioners mandatory.

**The adoption of a single, unified election code is a welcome step towards ensuring that uniform procedures are applied to all elections, but the status of the code should be clarified. The election code should be considerably amended to be brought in line with international standards and good practices. It should ideally enter into force in time to govern the next local elections in 2020 and replace the flawed 2015 local election law.**

## Electoral system

Elections to the Rada are based on a parallel proportional-majoritarian system, whereby half of the parliament’s 450 MPs are elected on closed list party lists in a nationwide constituency with a five percent threshold for participation in seat allocation, and the remaining 225 MPs are elected in 225 single-member constituencies under a first-past-the-post (FPTP) plurality system. Due to the Russian Federation’s illegal annexation of the Autonomous Republic of Crimea and Sevastopol, and the impossibility of organizing elections in non-government-controlled areas of Donetsk and Luhansk oblasts, only 199 out of 225 single-member constituencies were created in the 2019 parliamentary elections. The remaining 26 single-member seats will remain vacant. Thus, the incoming Rada will consist of 424 MPs rather than the 450 MPs envisaged by the Constitution.

The parallel electoral system was previously used in the 1998, 2002, 2012, and 2014 parliamentary elections. A key disadvantage of the closed list proportional system includes the reduced accountability of MPs to their electorate, limited influence of voters on the composition of the party lists and a potential for political corruption and undue influence of big money on politics. It entails a greater level of complexity compared to the FPTP system in terms of the administration of the elections and the conversion of votes into seats. The FPTP plurality system also has



*Voters study their ballots behind the curtain of voting booths in Ukraine's parliamentary election in Kyiv on July 21, 2019.*

disadvantages, including higher vulnerability to vote-buying, wasted votes, and can result in an elected representative not having the support of a majority of the electorate. FPTP can also lead to an underrepresentation of women when there are significant discrepancies between men and women’s access to funding and political resources, as was demonstrated in the 2014 early parliamentary elections when only two women were elected from 198 single-member constituencies.

The FPTP component of the parallel system has also been criticized for weakening party discipline in

the Rada, with single-member seat holders frequently changing party affiliation. In previous convocations of the Rada, some MPs swapped parties up to seven times during a single parliamentary term. In Ukraine, the majoritarian contest has a history of being prone to abuse of state resources, vote-buying and similar illicit campaign practices. The FPTP system generally favors bigger or more well-established parties and is often seen as a means of ensuring stability of the government. The 2019 parliamentary elections are one such example, whereby a party that enjoyed considerable nationwide support but still won less than half of the proportional seats was able to secure an absolute majority of seats in the Rada by winning two-thirds of all SMC races.

The 26 vacant, single-member seats in the incoming Rada could impact the ability of the Rada to pass decisions. Despite that the overall number of MPs is currently 424, rather than 450, the Constitution still requires 300 MP votes for passing amendments to the Constitution or overriding a presidential veto while 338 MP votes are needed to initiate an impeachment of the President. The lower number of elected MPs might make it difficult for the Rada to pass such decisions.

**The Verkhovna Rada should phase out the first-past-the-post plurality component of the current parallel electoral system and transfer to a fully proportional electoral system in the next parliamentary elections. It is important to identify all the advantages and disadvantages of any new electoral system chosen – for parliamentary elections as well as for local elections – and carefully consider the implications of the chosen system.**

## Election constituencies

Parliamentary elections are held in one nationwide election constituency for the party list ballot and in 199 single-member constituencies (SMCs) for the majoritarian ballot. The nationwide election constituency includes the territory of Ukraine and election precincts established for the out-of-country vote at diplomatic representations and consulates of Ukraine located abroad. SMCs are only established inside the territory of Ukraine and do not include the territory covered by out-of-country election precincts. Only voters with a permanent electoral address in the territory of the respective SMC receive a ballot for the majoritarian constituency. Thus, Ukrainian voters registered to vote abroad are currently not entitled to the second ballot and cannot vote for SMC candidates. This limitation was not the case for previous parliamentary elections.

When the current Parliamentary Election Law was adopted in 2011, election precincts abroad were assigned to one of the SMCs located in the capital city of Kyiv. This provision allowed voters abroad to vote not only for a party list in the nationwide constituency, but also for an SMC candidate running in the election district in Kyiv to which all election precincts abroad had been assigned. However, the Constitutional Court in 2012 ruled that assignment of out-of-country precincts to Kyiv was unconstitutional. This decision effectively prevented voters registered abroad from voting in the FPTP component of parliamentary elections. This could be considered a disproportional restriction on the recognized principles of equal and universal suffrage for voters registered abroad.

**If technically possible, it could be considered to enable out-of-country voters to cast the same number of parliamentary ballots as voters registered to vote in country, for instance by random and even assignment of out-of-country election precincts to subnational constituencies in-country, entitling voters abroad to cast a parliamentary ballot for the**

**subnational constituency election at their last place of residence in-country or by choice of electoral system.**

The requirements for delimitation of constituency boundaries are listed in Article 18 of the Parliamentary Election Law. The CEC acts as a boundary review commission and must establish the election district boundaries no later than 175 days prior to the respective election; the law does not allow for boundary changes after the beginning of an election period. However, the law also does not establish the frequency of such boundary reviews, nor does it outline a detailed procedure for its conduct. The last boundary review was carried out in 2012.

Election constituencies should, *if possible*, comply with the following requirements: they should respect the administrative boundaries of regions (*oblasts*) and the number of voters with an electoral address in a given SMC, and must not deviate more than 12 percent from the average number of voters in all SMCs based on records in the State Register of Voters. The law further requires that the CEC considers the interests of local communities and sub-regional administrative boundaries when delineating constituency boundaries. These requirements should be respected if possible, meaning they are not necessarily mandatory for the CEC. The only mandatory requirement is that delimitation must not divide national minorities in areas where they reside compactly.

**If the chosen proportional system for parliamentary election envisages elections in subnational constituencies, the relevant law should stipulate that the boundaries of such constituencies must be delineated in keeping with the principle of the equality of the vote based on voter registration or population data and in line with international standards and best practices including for national minority protection (see below). The same principles should apply to boundary delimitation of election constituencies in local elections.**

Given that the recent parliamentary elections were scheduled early in May 2019, it was impossible for the CEC to redraw the boundaries of the SMCs in respect of the 175-day deadline, which had already expired by then. The same happened in the last parliamentary elections in 2014, which were also scheduled early. Thus, despite significant population displacement following the conflict in eastern Ukraine, a high number of internal and external economic migrants, population influx to urban centers and other demographic changes across Ukraine's regions, the boundaries of the SMCs have remained the same since the 2012 parliamentary elections.

In the 2019 early parliamentary elections, the average number of voters in the 199 constituencies was 161,140, based on data voter data from the State Register of Voters. Some constituencies deviated more than 12 percent from the average and were thus not drawn in line with the Parliamentary Election Law. According to ODIHR EOM, the actual number of registered voters in SMCs in areas excluding the Donbas region varied from 129,668 voters in SMC 207 (Chernihiv *oblast*) to 200,070 voters in SMC 95 (Kyiv *oblast*).<sup>2</sup> Even more significant deviations occurred in the conflict-affected parts of eastern Ukraine, where several constituencies had much smaller numbers of registered voters, i.e. SMCs No 45 (41,543 voters), No 51 (2,698 voters), No 52 (62,560 voters) in Donetsk *oblast* and SMCs No 105 (9,162 voters) and No 112 (64,458 voters) in Luhansk *oblast*.

Such significant deviations from the average number of voters in the SMCs in Ukraine violates the

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<sup>2</sup> International Election Observation Mission, *Ukraine, Early Parliamentary Elections, 21 July, 2019, Interim Report (11 June – 3 July, 2019)*, p. 4; <https://www.osce.org/odihr/elections/ukraine/425069?download=true>

internationally recognized principle of the equality of the vote enshrined in the International Covenant on Civil and Political Rights, to which Ukraine is party. The Venice Commission's Code of Good Practice in Electoral Matters recommends that the maximum deviation in the number of voters across election constituencies should not exceed 10 percent.<sup>3</sup> It permits up to 15 percent deviation from the average in exceptional circumstances, such as if national minority interests are at stake. The clear guidance given by international law and best practices could be better reflected in Ukrainian electoral legislation by introducing mandatory criteria for constituency size and clearer guidelines for the frequency and procedure to be followed for boundary review.

**Boundary review in advance of parliamentary and local elections should be periodic, timely and transparent, and should include a procedure and a timeframe for consultation with all relevant stakeholders and a possibility for challenging the draft delimitation.**

In the Ukrainian context, smaller constituencies have also proven more prone to illicit campaign practices and corruption, such as abuse of administrative resources and vote buying. As demonstrated in the recent parliamentary elections, it appears much easier for a wealthy candidate to win the race through illicit practices in a constituency with only 2,698 voters (as in the case of the SMC No 51) than in an SMC with larger number of registered voters. Thus, the requirement for equal size constituencies also acts as a deterrent against illicit practices.

A further factor to consider is the feasibility of using eligible citizens' electoral address in the official State Register of Voters as a basis for establishing the number of voters in a given territory when drawing single-member constituencies boundaries. As mentioned above, a significant number of voters *de facto* reside in a location different from their electoral address, as indicated by the number of voters who temporarily changed their place of voting in recent elections (reaching 325,604 voters in the presidential run-off elections). It could be considered to use all available population data, including the data of voters registered on voter lists on election day in the most recent elections, as a more accurate indication of the real number of voters in a given constituency.

The State Register of Voters currently used for boundary delimitation continues to carry over voter data from the temporarily occupied territories in Crimea and Donbas and (as of July 31, 2019) contains 34,561,301. In comparison, voter lists for the July 21 election contained the records only of some 29,973,739 registered voters in the government-controlled territory of Ukraine.<sup>4</sup> Thus, the "real" average of voters per single-member constituency is 150,621 voters, rather than 161,140. Among other impacts, using "real" voter figures as the base for boundary delimitation could mean that the number of constituencies assigned to a given oblast would have to be slightly altered. This is, for instance, the case in Kyiv *oblast*, which would qualify for 14 MP constituencies instead of the current 13 based on the demographic changes that have occurred locally since the last boundary delimitation in 2012.

**It could be considered to use recent voter list data as basis for delimitation of constituency boundaries, as they give a more realistic picture of where Ukrainians voters reside. As a transparency and confidence building measure, the CEC could after each election event involving subnational constituencies publish a constituency analysis and check for their**

<sup>3</sup> Venice Commission, *Code of Good Practice in Electoral Matters. Guidelines and Explanatory Report*, paragraph 15, p. 16; [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2002\)023rev2-cor-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2002)023rev2-cor-e)

<sup>4</sup> Data from the CEC protocol on result of the vote in the nationwide constituency.



**adherence to the principle of equality of the vote. This would indicate if constituency boundary review is required before the next election.**

## Election security

Despite serious external and internal security concerns ahead of the 2019 parliamentary election cycle, these threats never materialized. On July 16, 2019, Acting Chief of the Security Service of Ukraine Ihor Bakanov confirmed that there were no apparent attempts from the Russian Federation to affect election outcome.<sup>5</sup>

While cybersecurity attacks were an issue of concern during the 2014 and 2019 presidential elections, installment of new cybersecurity equipment procured with IFES and international donor support, as well as cybersecurity trainings delivered to CEC secretariat staff, contributed to deterring any serious external interference in the electronic databases (voter registers, results management system, etc.) administered by the CEC.

**The CEC should further continue its efforts aimed to ensure an appropriate level of cybersecurity protection of its electronic systems.**

Although a nominal ceasefire has been in effect for four years, the situation in the conflict-affected parts of eastern Ukraine remains tense and volatile and is characterized by persistent attacks on fundamental freedoms and a deteriorating humanitarian situation. Overall, the situation on the line of contact in the east between the Armed Forces of Ukraine and Russian-backed separatists remains the same as before the elections and did not affect election preparations in constituencies adjacent to non-government-controlled areas. Unlike in the 2019 presidential elections, no attempts were recorded of paramilitary groups interfering in the election process.

**The election legislation and other relevant laws need to be amended to more effectively deter interference from paramilitary groups in the preparation and holding of elections.**

The role of the police in protecting public order during the election process received a positive assessment from domestic and international election observers across the board. As before the 2019 presidential election, the Ministry of Interior cooperated closely with Civil Network OPORA and with IFES, which again delivered technical support through a series of regional training seminars for patrolling and investigating police on their role in the electoral process. The seminars were designed to explain key election procedures and possible election day issues/violations to police investigators, as well as how the police must react to them. Police officers deployed to protect public order at the polling stations received a police handbook, which covered the most common problems and violations and gave clear explanations on how to respond to them. Overall, IFES produced and distributed 60,000 copies of the police handbook (similar circulation as in the 2019 presidential election) to police officers.

**The Ministry of Interior and the National Police should ensure that police receive training on electoral procedures and investigation techniques before an election. Such trainings should be funded from the state budget and delivered in close cooperation with the CEC.**

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<sup>5</sup> <https://www.obozrevatel.com/ukr/politics/vtruchannya-rf-v-vibori-v-ukraini-v-sbu-zrobili-zayavu.htm>

## Election administration

### The Central Election Commission (CEC)



*On June 11, 2019, The Chairmen of the Electoral Commission of the United Kingdom Sir John Holmes met with the members and staff of the CEC to discuss cooperation between the commissions and how Ukraine can benefit from best British practices in election management.*

Under the Parliamentary Election Law, the parliamentary elections are administered by a three-tier system of election commissions: the Central Election Commission (CEC), District Election Commissions (DECs), and Precinct Election Commissions (PECs). For the 2019 early parliamentary elections, the CEC created 199 DECs and the DECs, in turn, established 29,783 PECs in-country. No DECs or PECs were established in the non-government-controlled areas of Donetsk and Luhansk oblasts or in Russian-annexed Crimea and Sevastopol. For out-of-country voting, the CEC established 102 PECs at diplomatic and consular representations of

Ukraine abroad. Due to security threats and based on a suggestion from the Ministry of Foreign Affairs, the CEC closed all polling stations and referred some 54,000 registered voters residing in the Russian Federation to vote at diplomatic representations of Ukraine in three neighboring states before the 2019 presidential election. This decision remained in effect for the 2019 early parliamentary elections.

Most international election observation missions (including ODIHR and ENEMO) assessed that the CEC performed its work in an overall effective and transparent manner. Domestic and international observers were able to attend all CEC sessions. Effectiveness and transparency of the CEC was maintained despite a challenging election calendar and constrained deadlines for organizing the electoral process.<sup>6</sup> According to the ODIHR EOM, the transparency of the CEC work was diminished by “the lack of information on a host of issues including on a substance of some 150 complaints and 10,000 formal requests for information, and the long standing practice of holding preparatory meetings behind the closed doors [that] left most of the sessions without substantive discussions”.<sup>7</sup> As in previous elections, the CEC did not initiate public consultations to discuss key draft resolutions with election stakeholders. Enhancing the transparency of the CEC is crucial for building public trust and strengthening the credibility and accountability of the institution.

**The CEC should consider establishing an expert council to discuss its key draft resolutions, introduce public consultations, and abstain from holding closed-door preparatory meetings.**

**To ensure that CEC decisions, voter information and other data are fully accessible, the CEC website should be modernized, and its accessibility enhanced for all voters, including voters with disabilities.**

<sup>6</sup> See, for instance, ENEMO International Election Observation Mission, *Early Parliamentary Elections, July 21<sup>st</sup>-Ukraine 2019. Interim Report (June 7th – July 8th)*; <http://enemo.eu/uploads/file-manager/FirstInterimReport-EarlyParliamentaryElectionsUkraine2019.pdf>

<sup>7</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.6; <https://www.osce.org/odihr/elections/ukraine/426257?download=true>



As a legacy from the past, the CEC remains a highly centralized institution. While the Law on the Central Election Commission allows the CEC to establish regional branches functioning on a permanent basis, these have never been established due to lack of budgetary, organizational and other resources. As in previous elections, any irregularity at the district or even precinct level requires CEC action in Kyiv. Such centralization can hardly be considered necessary, and it undermines the collegial nature of the institution, as each CEC member oversees the election process in a particular region of Ukraine and has to intervene personally once irregularities occur in a specific region/district.

**The Law on the CEC should be amended to specify the mandates, rights and obligations of CEC branches in the regions. The government should allocate the resources needed to establish such branches.**

One of the challenges for the CEC in these early elections was the extreme barriers faced when organizing the timely procurement of election-related goods and services within the timeframes established by the Public Procurement Law. The CEC tackled similar issues during the presidential election and then resolved them by delegating the right to conduct procurement below the legally established threshold to the DEC. This solution, however, could not be applied in the early parliamentary elections as the law did not permit the CEC to delegate a number of procurement procedures. The CEC raised the procurement issue with the Ministry of Economy and the Rada. In May, the Rada failed to pass draft amendments to the Public Procurement Law proposed by the President that would have simplified the procurement procedures. However, the Ministry of Economy stepped in and simplified the procurement procedures by its order and allowed the CEC to break up large purchases into smaller ones in order to bypass tender procedures. To ease its workload, the CEC transferred certain responsibilities to the DECs, of which some found the process cumbersome. These temporary solutions enabled the CEC to avoid blockages and potential delay of the election process.<sup>8</sup>

**The law on public procurement should envisage a simplified, effective and cost-optimal procurement procedure that enables the CEC and lower-level election commissions to purchase election materials within the time frames for elections established by the election laws, including if these elections are held early.**

## District Election Commissions (DECs)

The CEC formed all 199 DECs on time by the May 31, 2019 deadline. DECs were composed of 18 members, met on regular basis and overall performed their duties in a professional manner.<sup>9</sup> Election commissions for parliamentary elections are politically composed, and the individual commission's independence is ensured through a system of checks and balances between various political forces. Parties with a faction in the Rada and parties that contested the last 2014 parliamentary elections in the nationwide election district could nominate members to DECs, who are then appointed by the CEC.

Twenty-five of the 29 eligible parties exercised their right to nominate DEC members. Under law, parties with a faction in the outgoing Rada are given priority and will receive a seat on each DEC to

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<sup>8</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections, July 21<sup>st</sup>-Ukraine 2019. Interim Report (June 7<sup>th</sup> – July 8<sup>th</sup>)*; International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.6.

<sup>9</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.6.

which they nominate members. The remaining vacant seats on DEC members were filled by nominees of the 29 parties that contested the 2014 parliamentary elections through a lottery conducted by the CEC. Each nominating subject could propose only one member to each DEC, but parties with a faction in the Rada were able to be represented on some DEC members with two members, since they were also entitled to nominate members to take part in the lottery for the remaining vacant seats. Thus, European Solidarity was represented by two DEC members in 110 DEC members, Oleh Liashko's Radical Party in 108 DEC members, and the People's Front in 106 DEC members.<sup>10</sup>

**Parties should, as a rule, only be entitled to nominate one member per commission in parliamentary elections. Parties with a parliamentary faction should be entitled to representation on election commissions only if they register a party list for the election; all parties that nominated party lists for the election should be entitled to suggest nominees to the vacant seats on DEC members for the election. The number of election commission members should correspond to the needs and a maximum should be set for their numbers on all commissions.**



*Between June 20 and June 27, 2019, IFES in cooperation with the Central Election Commission (CEC) and the joint IFES-CEC Administrative Center for Training of Election Process Participants (Training Center) organized 106 regional training sessions across Ukraine. More than 2,000 district election commission (DEC) members across Ukraine attended the training sessions.*

The nomination procedure for early parliamentary elections effectively excluded new parties, including the newly-formed Servant of the People party and Holos, from being formally represented on DEC members. This could be viewed as one of the reasons for allegations in trading DEC positions among various electoral subjects – either between those already represented on a DEC, who want to informally increase their representation, or between those represented on the commission and the parties that received no representation on a DEC. According to Civil Network OPORA's analysis of the initial DEC composition, the DEC members for the early parliamentary elections

included a significant number of members who had prior experience being a member of a DEC in the recent presidential elections, but at that time were nominated by a different political party. This trading of positions effectively undermines the principle of independent, politically composed DEC members and creates the potential for illicit practices such as unrecorded remuneration of commission members by political parties, thereby contributing to the alleged general flow of unrecorded money in Ukrainian elections and politics.

**To enhance the perception of impartiality of election commissions, the law should explicitly prohibit payments to election commissioners from political parties and candidates. Nomination of commission members without their consent or through forgery of nomination documents should be subject to sanctions against the nominating entity.**

<sup>10</sup> <https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/18052-rezultati-utvorennia-okruzhnikh-viborchikh-komisii-na-parlamentskikh-viborakh-2019>

The Parliamentary Election Law fails to set a deadline for replacements of commissioners at lower-level election commissions; political parties are free to replace election commissioners appointed by them at any time, including before, during and after election day. According to the ODIHR EOM, more than 60 percent of the DEC membership, including over 300 members in executive positions, were replaced late in the process, mostly by their nominating party. Such frequent and unrestricted replacements negatively affect the independence and impartiality of the election commission, as well as the continuity of its operations.<sup>11</sup> The lack of any restriction on the right to replace members of election commissions has been repeatedly criticized by the OSCE/ODIHR, the Venice Commission, and IFES as it has a negative impact on the professionalism of the election commissions.

**A legal deadline well ahead of election day by which political parties and candidates can no longer replace their nominees on commissions should be considered as a measure to ensure stability of the election administration.**

According to Civil Network OPORA, 38 percent of the initially appointed DEC members previously served on an election commission.<sup>12</sup> The CEC, with IFES' technical assistance and through the CEC Training Center, organized a wide-scale training of DEC and PEC members to ensure that they could effectively exercise their duties and were aware of key election procedures. However, the fact that political parties could appoint untrained commissioners to serve on election commissions and their frequent and unrestricted replacement poses a significant risk and may have a negative impact on the professionalism and performance of election commissioners in future elections.

**In order to professionalize the work of lower level election commissions, a requirement for mandatory training and certification of all serving commissioners should be introduced in the election laws. Political parties should only be permitted to nominate members to serve on commissions from the pool of trained persons certified by the CEC training center.**

Gender balance was ensured during the initial appointment to the DEC: 59 percent of the appointed DEC members were women. This level of representation is a welcome step to ensure a balanced representation of women and men on the DEC.

**Parties participating in elections should continue their efforts aimed to ensure a balanced representation of women on DEC and PEC.**

Transparency of DEC operations remains an issue, as many DEC opt not to transmit the legally required data (such as copies of the its decisions) to the CEC for central publication on the CEC website. Similar cases were noted during previous nationwide elections in 2012 and 2014.

**Additional measures must be taken to ensure that lower-level election commissions transmit their decisions to the CEC in a timely manner for publication. It could be considered to require that DEC decisions must be published on the CEC website to take legal force.**

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<sup>11</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.6.

<sup>12</sup> <https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/18280-poperednia-otsinka-pochatku-viborchogo-protsesu-z-pozachergovikh-viboriv-narodnikh-deputativ-ukrayini>

## Precinct Election Commissions (PECs)

Precinct Election Commissions (PECs) conduct election day procedures at polling stations, including voting, vote counting and compiling the vote count results protocols. They also review complaints of alleged violations committed during voting. Prior to election day, they receive preliminary voter lists from the Register of Voters Maintenance Bodies, place them at the polling stations for public scrutiny and process applications for improving their accuracy.



*Members of Precinct Election Commission (PEC) place a control sheet in the ballot box at a polling station in Kyiv during Ukraine's parliamentary election on July 21, 2019.*

The size of a PEC depends on the election precinct size and varies from 10 to 14 members at small precincts with up to 500 registered voters, and from 14 to 18 members at precincts with 1,500-2,500 voters. The composition of PECs is based on political nominations but is slightly different from the composition of the DEC: the right to nominate PEC members is granted to political parties with a faction in the outgoing Rada, parties that nominated lists of candidates in the nationwide constituency, as well as to parties and candidates in the respective majoritarian

constituency. Parties with a faction in the Rada are given priority in filling the seats on the PECs, while other parties and candidates can nominate nominees to fill the vacant seats on the PEC which are filled through a lottery conducted by the DEC.

According to Civil Network OPORA, 86 percent of DEC established the PECs in their respective election district on time. Significant delays were noted in SMC No 47 (Donetsk oblast), where the DEC terminated the powers of the DEC for grave election-related offences and appointed a new DEC. The new DEC established the PECs with some delay on July 11, only ten days prior to election day.<sup>13</sup>

Parties and candidates are entitled to replace PEC members they nominated at will at any time. As with DEC, the Parliamentary Election Law does not envisage mandatory training for PEC members or require previous experience for being appointed to a PEC. This was criticized by all domestic and international election observers. International observers also noted other factors that negatively affected the PEC formation process, including “poor quality of nomination documents submitted to the DEC and names of some nominees submitted by more than one electoral contestant.”<sup>14</sup> The IEOM noted that trading of election commission membership also occurred at PEC level: some of their “interlocutors alleged that so-called ‘technical’ contestants had registered to obtain the seats in PECs in order to provide them to other contenders”.

PECs faced problems similar to those faced by DEC: PEC members were frequently replaced on the

<sup>13</sup> <https://www.oporua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/19028-zvit-za-rezultatami-sposterezhennia-opori-na-pozachergovikh-viborakh-narodnikh-deputativ-ukrayini-21-lipnia-2019-roku-tendentsiyi-lipnia-ta-poperedni-visnovki-kampaniyi>

<sup>14</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.7.

initiative of those who nominated them (in some election districts, DEC approved replacement of almost 70 percent of the PEC membership); in many cases, they were replaced by new members with little or no election experience, and after the delivery of PEC training.

Given the similarities in many procedures for establishing PECs and DECs, the recommendations outlined above for improving the formation and operation of DECs are also relevant to PECs.

## Voter registration

The procedure for voter registration is governed by the Law on State Register of Voters, while the procedures for the compilation and distribution of preliminary and updated voter lists for each election event are governed by the respective election laws.

Voter registration is passive and continuous. All eligible citizens of Ukraine are included into the State Registry of Voters (SRV) according to their place of residency ("electoral address") based on information on citizen status (birth, death, conscription, imprisonment, etc.) provided by various public authorities (the State Migration Service, Ministry of Interior, Ministry of Defense, Ministry of Justice and others). These authorities are in charge of updating citizens' data and pass the information to the SRV on a continuous basis; that is, both before and during an election period. Voter registration is centralized; the SRV is administered by the CEC while the updates and changes to SRV data are made by the voter register maintenance bodies (RMBs) at the rayon level.

Before the legally established deadline, RMBs must produce preliminary voter lists for each election precinct (the territory of a polling station) based on SRV data and deliver them to the respective PEC. PECs display the preliminary voter list in the polling station for public scrutiny. Voters are entitled to challenge inaccuracies on the preliminary voter lists to the PECs, courts and RMBs. PECs must forward each received complaint to the relevant RMB for further consideration, while the courts must obtain the relevant RMB opinion on the complaint before adopting any decision to correct the voter lists.

A voter may only be registered to vote in one election precinct. RMBs submit information to PECs on voters who have temporarily changed their place of voting or have been registered to vote abroad, and the PEC strikes the voter's record in the voter list accordingly, in keeping with this principle.

Voters can access the State Voter Register online and check their individual registration but cannot apply for corrections or challenge incorrect registrations online.

**The Law on State Register of Voters should be amended to allow voters to use online platforms when registering to temporarily change their place of voting and applying to amend their voter list data. This would enable voters to update registration data without physically visiting an RMB.**

The updated voter lists should be delivered to PECs no later than two days before the vote. The updated voter lists reflect changes to civil registration data, takes into account deceased voters as well as those who have recently turned 18 years of age, and includes corrections requested by voters. The Parliamentary Election Law allows changes to the updated voter lists on election day based on court decisions. This is a welcome provision that enables voters who receive a court decision to be included on the voter list after the opening of polls and vote on the election day. IFES has previously criticized



the absence of a similar provision in the Presidential Election Law, which only allows for corrections of misspelled names and similar technical errors on election day. While making changes to voter lists on election day should generally be avoided, the Venice Commission's Code of Good Practice in Electoral Matters allows for election day registration of voters based on court decisions.

**The existing procedure for including voters in voter lists on election day based on a court decision for parliamentary elections is sufficiently safeguarded against fraud and abuse and should be expanded to apply in all elections in Ukraine. This step would further act to harmonize provisions and establish uniform procedures across all elections.**

Domestic and international observers did not note serious issues related to the quality of the voter lists and the overall voter registration process.<sup>15</sup> An exception is the procedure for updating SRV data, which raises some concerns. The primary responsibility for registering citizens' place of residence rests with local self-governance bodies. Due to insufficient financial, human and technical resources at the local level and the modesty of sanctions for failure to follow procedures, these bodies often fail to transmit data on changes in residency registration to SRV and other state registers in a timely manner.

**To ensure that the SRV data is accurate and up-to-date, local self-government bodies should be sufficiently resourced to allow for continuous and timely transmission of data on citizens' place of residence and other information to the SRV. The system of sanctions against these bodies for failure to comply could be reviewed and reinforced.**

Voters who cannot vote at the polling station assigned to them according to their electoral address (residence registration or "*propiska*") – such as internally displaced persons (IDPs), economic migrants and others – are currently entitled to change their place of voting without changing their electoral address on a temporary basis. This procedure enables voters to vote at a polling station at their current place of residence.

To do so, a voter must file a written application to the relevant RMB no later than five days prior to the vote. This procedure is the only option available for voters whose registered residence (electoral address) is located in the non-government controlled areas of Ukraine in Crimea and Donbas, including voters who have official status as internally displaced persons. All eligible Ukrainian citizens originating from these areas (whether they have official IDP status or not) must undergo this procedure in order to exercise their constitutional right to vote. Before the legally established deadline, some 280,922 voters temporarily changed their place of voting for participation in the early parliamentary elections. This number is 44,682 voters fewer compared to the second round of the 2019 presidential election, when a record high 325,604 voters temporarily changed their place of voting. The highest number of changes were requested by voters originating in Donetsk *oblast* (34,840), the city of Kyiv (31,547), Kyiv *oblast* (18,964), and Odesa *oblast* (18,906).<sup>16</sup> Only 3,198 voters from Crimea and 19,486 voters from Luhansk *oblast* changed their place of voting before the 2019 early parliamentary elections.<sup>17</sup>

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<sup>15</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23rd, 2019, p. 11.

<sup>16</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23rd, 2019, p. 11.

<sup>17</sup> International Republican Institute, *Preliminary Statement of the IRI International Observation Mission to Ukraine*. July 21,

The CEC significantly simplified the procedure for temporarily changing one's place of voting before these elections by lifting the requirement for voters to present documentation to motivate their application for the procedure. This simplification was welcomed by all observer organizations, including ODIHR.<sup>18</sup> However, the procedure remains problematic for a number of reasons. First and foremost, IDPs and economic migrants must undergo the procedure to change their place of voting without changing their electoral address before each election event in which they want to take part. In practice, this means that the governing principle of passive voter registration does not extend to these categories of citizens, which could be interpreted as discriminatory, creating further additional requirements for their participation.

In relation to the 2019 presidential election, the IEOM stated that “the need for voters to renew ... requests [to change the place of voting without changing the electoral address] represents an unnecessary burden, especially for internally displaced persons (IDPs), voters abroad, and persons with disabilities.” This calls for immediate reform of the current voter registration system as laid out in the Law on State Register of Voters as well as, in the long-term, a fundamental reform of the residence registration system in Ukraine, which seems to be the root cause to the problem.

The voter registration system strongly depends on residence registration, which, despite attempts at reform, is still fundamentally based on the discriminatory Soviet “propiska” system. The “propiska” system is permission-based rather than declaration-based (a citizen must obtain permission from the authorities to change their place of residence). Many eligible citizens are barred from changing their registered place of residence to their actual place of residence, and thus only have the option to temporarily change their place of voting ahead of each election event in order to exercise their right to vote. Barriers to change the place of official residence are well-documented in reports of Ukrainian NGOs and especially affect voters who rent or lease their accommodation. This is due to resistance from the owners of their accommodation to grant permission or provide the documents that allow voters to officially obtain residence registration at the place where they reside.



*Voters register to receive ballots at the polling station in Kyiv during Ukraine's parliamentary election on July 21, 2019.*

**In the long term, the government should reform the system of residence registration towards a declarative approach for residency registration in line with international standards.**

In local elections and in single-member parliamentary constituencies, there is no option to temporarily

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2019 Early Parliamentary Elections, p. 4.

<sup>18</sup> See, for instance: International Republican Institute, *Preliminary Statement of the IRI International Observation Mission to Ukraine. July 21, 2019 Early Parliamentary Elections*, p. 4; ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 11; National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine's July 21, 2019 Snap Parliamentary Elections*, p.4.

change one's place of voting without changing one's electoral address. This leaves IDPs and internal migrants practically disenfranchised in these elections, unless they somehow manage to register at their place of actual residence. This may be considered discriminatory to these groups of otherwise eligible voters. The issue is addressed directly in Draft Law No 6240, which is pending in the Rada. This draft law aims to simplify the voter registration system, remove existing legal and practical barriers created by the outdated residence registration system, and enfranchise IDPs and economic migrants in all elections at the place where they reside.

**The Parliament needs to prioritize and accelerate the consideration of Draft Law No 6240 regarding enfranchisement of election participation of internally displaced persons and internally mobile citizens and adopt it into law before the 2020 local elections.**

In contrast to the presidential election, when both domestic and international observers reported long queues of voters wishing to change their place of voting near RMBs (especially in the final days before the deadline), no serious issues with changing the place of voting were reported during the 2019 early parliamentary elections, except for some isolated cases of queues and lines at RMBs.<sup>19</sup> This, however, could be explained by the lower turnout and decrease in the number of voters wishing to change their place of voting compared to the first and second rounds of the 2019 presidential election, rather than by more effective queue management by the RMBs. In many cases, RMBs were not accessible to persons with disabilities.

**If in-person registration is maintained, the CEC should encourage RMBs to introduce an effective queue management system and ensure that RMBs are accessible for all voters.**

The legal timelines for updating voter lists, changing the place of voting temporarily, and for ballot printing, are interdependent but do not appear to be harmonized in practice. While ballot papers are printed with a 0.5 percent surplus for each polling station based on SRV information about the preliminary number of voters registered in the precinct, the Parliamentary Election Law *de facto* envisages procedures that may substantially alter the final number of voters in a precinct after the printing of ballots: voters may request to temporarily change their place of voting and updates to the voter lists occur even after ballot papers have been delivered to the polling station. As in the presidential election, the July 21 elections also saw some polling stations with fewer ballots than registered voters on the updated voter lists. Even though a 100 percent turnout is uncommon, an increase in turnout combined with a large discrepancy between the final number of voters and the number of printed ballots might result in voters not being able to exercise their right to vote simply due to a shortage of ballot papers in some precincts.

**The timelines for printing the ballot papers and for updating the voter lists should be aligned so that ballot papers are printed based on updated voter list information.**

The CEC made efforts to inform voters about the election and motivate citizens to participate through voter education campaigns with public service announcements in broadcast and online media (including in sign language for people with disabilities) and posters, as noted in some observer mission

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<sup>19</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 11.



reports.<sup>20</sup> The ODIHR EOM, however, stressed the absence of a targeted nationwide information campaign to inform citizens, including IDPs, of the simplified procedure for changing one's voting address.<sup>21</sup> The mission also noted that the CEC delayed the approval of voter education materials produced by CSOs that were intended to address this issue.

**To ensure that voters are aware of key voter registration procedures and may exercise their right to vote, the Cabinet of Ministers and the Parliament consider allocating additional funding to the CEC for an effective voter education and awareness raising campaign well in advance of the next nationwide election. The CEC should implement such campaigns in close cooperation with CSOs, including those specializing on IDP enfranchisement issues.**

## Candidate nomination and registration

International observers generally found the candidate nomination process to be administered in a transparent manner but had issues with its inclusiveness. According to the IEOM, “while candidate registration resulted in an overall politically diverse field of candidates, disproportionate limitations on the right to stand, lack of clear instructions for filling in registration documents, and restrictive interpretation of candidate registration rules negatively impacted the inclusiveness of the candidate registration process.”<sup>22</sup> The Election Observation Mission of the National Democratic Institute (NDI) stated that “the process for candidate registration was generally inclusive but at times inconsistent, due to gaps and flaws in the legal framework”.<sup>23</sup>

Candidate registration commenced on May 24. The deadline for the CEC to consider candidates' registration documents expired on June 29. The CEC registered a total of 5,996 MP candidates, including 2,746 MP candidates running on party lists, and 3,220 in SMCs. The largest number of candidates were fielded by Servant of the People, Batkivshchyna, Opposition Bloc and Svoboda (over 200 candidates each). Before election day, 18 party list candidates and 136 SMC candidates were de-registered by the CEC and left the race.<sup>24</sup>

Civil Network OPORA noted that 128 nominees for candidates were rejected by the CEC. The most common grounds for refusing candidacy included violation of the five-year term of residence in Ukraine (to be eligible to stand for election, a voter must have resided in Ukraine for no less than five years before the vote), failure to pay an electoral deposit or not paying it in the prescribed manner, lack of an autobiography or a statement to terminate all the activities inconsistent with the MP mandate. The Communist Party of Ukraine was refused registration since its charter and activities were inconsistent with legislation prohibiting any forms of propaganda of the communist and national-socialist totalitarian regimes. The party list of the “Movement of New Forces of Mikheil

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<sup>20</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 11.

<sup>21</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.8.

<sup>22</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.8.

<sup>23</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine's July 21, 2019 Snap Parliamentary Elections*, p.4.

<sup>24</sup> According to the CEC website data; <https://www.cvk.gov.ua/pls/vnd2019/wp001>

Saakashvili” was initially rejected; according to the CEC, the party violated its own charter while approving the list of candidates for elections. The rejection was later overturned by the court and the party list was finally registered by the CEC.<sup>25</sup>

Both ENEMO and IEOM noted considerable challenges faced by the CEC in processing candidate registration documents.<sup>26</sup> According to the IEOM, the CEC overall had to decide on more than 6,300 registration requests within five days, with the vast majority of documents submitted three days prior to the deadline. The short timeframes, a high number of registration documents and lack of guidance for the CEC as to how to process the documents posed a risk of arbitrary decisions on candidate registration, as in some cases registration documents of specific parties and candidates could be checked more thoroughly than documents filed by other contestants.<sup>27</sup>

IEOM noted that “the CEC developed several templates for applications but did not provide clear instructions on how to complete them,” and “the CEC did not consistently notify the prospective candidates about errors or omissions in their documents to allow them to make timely corrections, leaving them at times unable to correct mistakes.”<sup>28</sup>

**To ensure a more inclusive candidate registration process, the overall deadline for registration should envisage enough time to allow contestants to correct minor mistakes in their registration documents. The CEC must take further steps to clarify the registration procedure to parties and candidates.**

Under the Constitution of Ukraine, the right to stand for the parliamentary elections is granted to any voter who has reached 21 years of age, resided in Ukraine for the five years before the election, and who does not have a (non-expunged) criminal record for an intentional crime, regardless of its severity. Under the Constitution, citizens who have been deemed “incapable” by a court are not able to vote or run for office, contrary to Ukraine’s international commitments and the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD). Enforcement of the five-year residence requirement proved to be problematic in practice. According to the preliminary statement of the International Republican Institute (IRI), “the CEC expressed concern to IRI over its ability to verify information regarding the five-year residence requirement...[...]... it also stated frustration with inconsistent court decisions over the registration or de-registration of candidates (i.e. courts would

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<sup>25</sup> Civil Network OPORA, *Findings of the Election Observation Over the First Month of Election Campaign in 2019 Early Parliamentary Elections*, July 1, 2019; [https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/zvit\\_01.07](https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/zvit_01.07)

<sup>26</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23rd, 2019, p. 10; International Election Observation Mission, Ukraine, *Early Parliamentary Elections*, 21 July 2019. *Statement of Preliminary Findings and Conclusions*, p.8.

<sup>27</sup> On February 26, 1998, the Constitutional Court of Ukraine recognized unconstitutional the provisions of the Parliamentary Election Law which provided for different terms for nomination of the SMC and party list candidates, their registration by the CEC and DEC, printing out election posters for SMC and list candidates. The Constitutional Court ruled that non-harmonized terms violate the principle of equality of all the candidates under the law, as party list candidates could start election campaigning earlier than SMC candidates as they were nominated and registered earlier than SMC candidates. See: Decision of the Constitutional Court of Ukraine No 1-pn/98 dated February 26, 1998 (in Ukrainian); <https://zakon.rada.gov.ua/laws/show/v001p710-98/print>

<sup>28</sup> International Election Observation Mission, *Ukraine, Early Parliamentary Elections*, 21 July 2019. *Statement of Preliminary Findings and Conclusions*, p.9.

inconsistently overrule the CEC decisions on candidate registration).”<sup>29</sup> The registration of Anatolii Sharii and Andriy Kliuev as candidates were initially rejected by the CEC based on information from various sources, including the media, according to which both of them had not been residing in Ukraine for the last five years. Both rejected candidates challenged the CEC refusal of candidacy with the Sixth Administrative Court of Appeals. The Court ruled in both cases that the CEC decision was not properly substantiated. The court emphasized that according to information provided by the Border Security Service, neither of them had left Ukrainian territory in the last five years. This means that *de jure* both men had never left Ukrainian territory. The CEC registered both based on the court decision. However, the CEC cancelled their registration and challenged the court decision the next day when the Security Service and Ministry of Interior submitted proof that both men had not been residing in Ukraine during the last five years before the election.

The five-year residence requirement for candidacy laid down in the Constitution and Parliamentary Election Law have been repeatedly criticized by the Venice Commission and OSCE/ODIHR for being at odds with international obligations and OSCE commitments. The five-year requirement can be considered as an excessive and unreasonable restriction on the right to stand for election under the ICCPR.<sup>30</sup> It should be up to the voters through the ballot box to decide whether they consider residence for a certain period in country essential for becoming a member of parliament. Similar considerations are expressed in the 1990 OSCE Copenhagen Document and the Code of Good Practice in Electoral Matters.<sup>31</sup>

The Venice Commission also criticized the current constitutional provisions whereby the right to stand for elections is denied to individuals with a non-expunged criminal record and recommended this restriction “be more narrowly defined to apply only to specified crimes so serious that forfeiture of suffrage rights satisfies the principle of proportionality”.

**To bring the Constitution in line with international standards, the Parliament should consider amending it to remove the residence requirement for candidacy in national elections and lift the ban on suffrage rights for persons who have been deemed “incapable” by a court decision.**

**Until the five-year residence requirement for candidacy is lifted, the Parliamentary Election Law should be amended to specify how the five-year term is to be calculated, the reasons for granting exemption, and what kind of evidence is required. State bodies and institutions must compile and provide the relevant documentation to the CEC within clear deadlines.**

Civil Network OPORA and international election observers reported extensively on the phenomenon of “clone” candidates and organizations. This takes place when a candidate or entity bears a similar or identical name as another, more prominent candidate or organization. This candidate or entity then aims to participate in the election either in the hope of benefiting from the popularity of the more

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<sup>29</sup> International Republican Institute, *Preliminary Statement of the IRI International Observation Mission to Ukraine. July 21, 2019 Early Parliamentary Elections*, p. 4.

<sup>30</sup> Venice Commission and the OSCE/ODIHR, *Joint Opinion on Draft Amendments to the Legislation on the Election of the People’s Deputies of Ukraine*, pp.11-12; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)026-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)026-e)

<sup>31</sup> Paragraph 7 of the 1990 OSCE Copenhagen Document

prominent candidate/party or in order to deceive voters and divert votes from them.<sup>32</sup> The phenomenon is not unknown in Ukrainian elections but appears to have increased in the recent parliamentary elections.

According to ENEMO and OPORA, in nearly one-third of SMCs, self-nominated candidates appeared affiliated with entities carrying variations of the name “Servant of the People,” thereby challenging the official candidate of that party in the respective SMC. Political parties subsequently filed complaints against “clone” candidates. On June 11, the CEC provided clarification that candidates who had changed their name should mention this in their registration documents and biography together with the date when they changed their name. However, the legal framework does not require that such name changes are included on the ballot. By July 21, the CEC de-registered 27 “clone” candidates, while the National Police opened 88 criminal cases against “clones” for illegal use of a registered party’s name or variations thereof. The result of the investigations in those cases are still pending. The use of “clone” candidates confuses and deceives voters and may disperse votes intended for the more popular party or candidate. OPORA found that “clones” impacted results in SMCs Nos 37, 64, 78, 119, 146, 198, and 210. In these races, the “clones” dispersed the vote for the leading candidate or candidates, who therefore consequently may have been deprived of their victory.<sup>33</sup>

**To limit the negative effects of “clone” candidates and parties and provide guidance to voters, the CEC should be legally mandated to take measures, including by providing each SMC candidate with an electoral number and require that the previous name of candidates who changed their name must appear in their official biography and on the ballot paper.**

**The use of a variation of a popular party name in autobiographies and campaign materials without the consent of the registered party should be prohibited. The National Police should properly investigate all the cases of use of “clone” candidate and party names, including those that may have affected the election outcome.**

## Women in elections

The 2001 Political Party Law requires that political parties include a 30 percent quota for either gender on their electoral party list into their party statute. However, this provision is not reflected in the Parliamentary Election Law. Therefore, violation of the quota requirement does not entail any sanctions, which in practice leaves it ineffective. The current quota provision also fails to require that women are placed in winnable positions on party lists, thus making it possible for parties to include women towards the bottom of the list, with almost zero chance of getting elected. According to the IEOM, 13 of 22 parties running in the 2019 parliamentary elections complied with this requirement, but only 16 percent of SMC candidates were women.<sup>34</sup> The highest number of women candidates

<sup>32</sup> See: Civil Network OPORA, *Findings of the Election Observation Over the First Month of Election Campaign in 2019 Early Parliamentary Elections*, July 1, 2019; [https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/zvit\\_01.07](https://www.oporaua.org/report/vybory/parlamentski-vybory/parlamentski-vybory-2019/zvit_01.07); ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23<sup>rd</sup>, 2019, p. 10; International Republican Institute, *Preliminary Statement of the IRI International Observation Mission to Ukraine. July 21, 2019 Early Parliamentary Elections*, p. 4.

<sup>33</sup> <https://www.oporaua.org/news/vybory/parlamentski-vybory/parlamentski-vybory-2019/19421-chi-spratsiuvala-tekhnologii-dviinikiv-na-pozachergovikh-viborakh-narodnikh-deputativ>

<sup>34</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.9.

were in the nationwide constituency lists of the parties “Social Justice” (44 percent), “Power of People” (43 percent) and the “Radical Party of Oleh Liashko” (41 percent). None of these parties were successful in clearing the five percent electoral threshold.

According to the final election results released by the CEC on August 7, 2019, 86 (or 20.28 percent) of the 424 newly-elected MPs will be women. Fifty-nine women were elected on five party lists in the nationwide constituency and 27 won a seat in SMCs. Successful women MPs make up 26.22 percent of the 225 MPs elected in the proportional component and 13.56 percent of the 199 MPs elected in SMCs. Two of the five parties that passed the five percent electoral threshold ensured no less than 30 percent women among their elected MPs; they, therefore, qualify for an annual public funding bonus. The Holos party will send 45 percent women to the Rada and European Solidarity will send 36 percent. Thus, the two parties are eligible to share between them the 10 percent of the total amount of annual funding that is reserved for eligible political parties who meet the gender requirements. Each of two parties will receive UAH 28.25 million or USD 1.1 million annually as a “gender bonus”.



*A young woman casts her ballots during the parliamentary election in Kyiv, Ukraine, on July 21, 2019.*

**In order to increase the number of women in elected office, the parliament should consider amendments to the election laws, including a 40 percent mandatory quota for party lists in parliamentary elections if the current parallel system is used moving forward. Regardless of the system used, effective quotas should be implemented in both national and local council elections partnered with effective sanctions for failure to comply with quota requirements, including the possibility of the CEC denying registration to party lists.**

**Parties should be legally mandated to include at least two representatives of either gender in each group of five candidates on party lists for parliamentary elections (zipper list).**

Women’s success in SMCs should, however, not be overstated. Eighty-seven percent of MPs elected in SMCs were men. International experience with the first-past-the-post electoral system indicates that this system is not necessarily as conducive for improving women’s representation in politics, particularly when economic disparities exist between genders. Women’s success in SMCs in the recent election can be attributed to the extreme popularity of the Servant of the People party rather than as a sign of systematic reform towards more gender inclusive politics across the political landscape: Servant of the People nominated a significant number of women in many SMCs, while other political parties either did not nominate a high number of women or did not win many seats.

**Political parties should further increase the number of women candidates nominated in nationwide and local elections and consider measures aimed at strengthening their internal democracy and increase the level of women’s representation in their internal governing and supervisory bodies.**

According to NDI, only five of the 22 parties which submitted party lists have included support for equality between men and women in their respective party program. Equality was not a major topic of discussion in the media during the elections. Some women candidates reported being subject to sexism and harassment, including in traditional and social media. Overall, men received 90 percent or more coverage on national television in prime time and online.<sup>35</sup>

**Political parties should include policies to promote gender equality in their election platforms and abstain from reinforcing gender stereotypes in their campaign. Media should introduce and effectively enforce standards for gender sensitivity in their coverage of contestants and the campaign.**

## Election campaigning and media coverage of elections

The Parliamentary Election Law provides for several instruments aimed at ensuring a level playing field during the election campaign: political advertising must be clearly marked; media must announce the rates for each minute/second of political advertising and provide equal conditions for all the parties and candidates when offering space for political advertising; parties and candidates can launch their election campaign only once they have been registered for the election; and there is a provision for free airtime on public TV/radio for election campaigning purposes to parties and candidates.

Overall, the IEOM reported that the contestants were able to freely convey their messages to the electorate and fundamental freedoms of expression, association and assembly were respected.<sup>36</sup> The campaign was competitive, with a range of candidates representing a wide spectrum of political opinions.

Both domestic and international observers in nearly all regions reported that billboards and campaign materials were visible before the official start of the campaign period and, in some cases, even before the start of the election process itself. Campaigning was also ongoing during campaign silence (i.e. the day preceding election day) and on election day: in some instances, contestants replaced billboards with improper information or openly campaigned on digital platforms. In isolated cases, there were signs of campaigning inside or in the vicinity of polling stations.<sup>37</sup>

**The Parliamentary Election Law should give clear guidance on what is considered informational coverage of an election, election campaigning, and the official activities of public office holders who run as candidates.**

**The Parliamentary Election Law should introduce effective measures to deter parties and candidates from election campaigning prior to their registration as contestants as well as more effective sanctions against violations of campaign silence provisions.**

Such measures could include introducing a formal registration procedure that obliges prospective

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<sup>35</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine's July 21, 2019 Snap Parliamentary Elections*, p.5.

<sup>36</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.9.

<sup>37</sup> See, for instance, ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 12.



candidates to register as nominees, combined with a prohibition to place political advertising prior to their registration as prospective candidates as well as effective, proportionate, and dissuasive sanctions for failure to comply.

Abuse of state resources was reported by domestic and international observers; however, it was not as wide scale a practice during the 2019 early parliamentary elections compared to previous elections.<sup>38</sup> Both the President and Prime Minister used public events to praise their achievements as public office holders and highlight some priorities that were clearly associated with the slogans of their respective political parties.<sup>39</sup> By election day, OPORA overall noted 44 suspected cases of abuse of administrative resources, mainly in the form of MP candidates engaging subordinate staff/public officials in their campaign and the distribution of election campaigning materials in the premises of state/local self-governance bodies. According to OPORA, abuse of state resources appeared not to be centrally organized, but rather reflecting local power dynamics in certain SMCs.

**To combat the misuse of administrative resources and public office for campaign purposes, all such cases should be adequately investigated by the police and the responsible persons sanctioned. State bodies should issue clear instructions to public officials and other employees setting standards for their behavior during the election process.**

Majoritarian contests were subject to significantly more fraud than the nationwide race. Providing material incentives to voters has been a longstanding element of Ukrainian elections. According to observers, vote buying practices were widespread during the 2019 elections and included offering charity work, free food or pharmacy packages, lottery tickets and awards, concerts, daily trips, meals, as well as cash.<sup>40</sup> Both international and domestic observers noted cases of physical assaults on candidates, disruption of campaign events and attacks on campaign tents. ENEMO raised concerns about campaign materials (billboards, leaflets) containing hate speech; such cases were noted in several *oblasts*. A considerable number of illegal campaign materials (improperly branded, often lacking information on source of funding, entity responsible for publication, etc.) were observed in most regions of Ukraine.<sup>41</sup> According to the IEOM, the tone of the campaign was polarizing and instances of inflammatory language and negative campaigning were noted.<sup>42</sup> The police launched over 125 investigations into vote buying schemes and initiated 100 investigations into hooliganism.

**To combat impunity for campaign-related administrative and criminal offences, including vote buying, all such alleged cases should be properly investigated, and perpetrators held accountable. The Rada should adopt legislation aimed at strengthening the system of sanctions for election-related offences based on draft law No 8270 sponsored by the Cabinet of Ministers and submitted to parliament for consideration in 2017.**

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<sup>38</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine's July 21, 2019 Snap Parliamentary Elections*, p.7.

<sup>39</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.10.

<sup>40</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.10.

<sup>41</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 13.

<sup>42</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.11.

Media played a dominant role in the early parliamentary elections as the contestants mainly focused their campaign on television, online media, social networks and messaging applications. Candidates spent on average more than two-thirds of their entire campaign funds on TV advertisements and paid outreach efforts through social platforms.

The overall media landscape was diverse, and voters generally had a possibility of obtaining all necessary information about contestants' campaign platforms.<sup>43</sup> However, the media landscape was marked by a lack of autonomy from political and financial interests. Five major private media groups owned by a handful of influential oligarchs jointly control an audience share of more than 70 percent of the viewers, according to the IEOM and NDI. The editorial policy and political agenda promoted by these private media outlets, both at the national and regional levels, exclusively served the economic and political interest of their owners.<sup>44</sup> The media regulatory authority National Broadcasting Council conducted media monitoring during the campaign and the monitoring results officially confirmed that the media reporting was polarized and biased.

**To prevent further concentration of media ownership in the hands of a few oligarchs and foster a more diverse media environment, existing laws on elections, media and business competition should be amended.**

**Print and broadcast private media should delineate their editorial policies from the business interests of their owners, including through self-regulation and adopting internal standards for their election coverage.**

The Ukrainian Public Broadcasting Company (UA:PBC) remains severely underfunded. Its annual budget was cut by almost 50 percent for the second year in row, contrary to legal requirements. This reduced its ability to effectively compete with private media and perform its public-service role at the national and local level as required by law. While the UA:PBC's has quality programs, it does not yet represent an alternative to the deeply politicized private media sector and its viewership is limited.<sup>45</sup> UA:PBC provided candidates with an opportunity to present their programs in special political television shows but did nearly not provide enough coverage of the election in its news and current affairs program formats, thereby failing to fulfill its public broadcasting role as a counterbalance to biased private media reporting.<sup>46</sup>

**The Ukrainian public service broadcaster should be fully funded and resourced in line with domestic law and international good practice; it should take a more active role in providing balanced and unbiased coverage of the elections and continue organizing debates.**

Media compliance with legal requirements overall remains weak. The National Broadcasting Council and observer missions noted a high number of media irregularities, such as incorrectly marked and

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<sup>43</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 17.

<sup>44</sup> International Election Observation Mission, *Ukraine. Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.13.

<sup>45</sup> International Election Observation Mission, *Ukraine. Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.14.

<sup>46</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 18.



hidden political advertising (also known in Ukraine as “jeansa”), inadequately marked public opinion polls, campaign materials during news and current affairs programs, and biased reporting. As noted by the IEOM, “contrary to the election law, a higher number of unmarked promotional material (“jeansa”) was noted in the prime-time news of most of the monitored private TV channels... (and) several journalists and hosts showed strong bias towards certain party leaders and members also by favoring particular invitees and making partisan declarations.”<sup>47</sup>

**The election laws should clearly define “hidden political advertising” (“jeansa”).**

While the primary responsibilities with regards to regulation of audiovisual media and printed outlets are vested in the National Broadcasting Council and Ministry of Justice, both regulators chose not to exercise their powers to effectively respond to media violations during the election period. Even if they had responded, the overall system of sanctions for election-related violations by the media remains weak and sanctions for media violation cannot be considered proportionate, effective and dissuasive.

**The Rada should strengthen the independence of the National Council on Television and Radio Broadcasting to become an effective media regulatory body. It should consider expanding its oversight mandate and introduce effective, proportionate and dissuasive sanctions for media violations.**

**Consideration should be given to the establishment of an independent media council in charge of providing recommendations and guidance to media as to how to cover election campaign events.**

ENEMO raised concerns with instances of issuing journalist accreditations to third parties. Misuse of the rights of journalists to access polling stations by political parties was also reported during the previous parliamentary elections in 2012 and 2014 and should be considered a de facto violation that undermines the role of media.

**The laws governing media and the status of journalists during elections should be amended to prevent misuse of journalist accreditations for politically-driven purposes.**

Safety of journalists remains an issue of concern in Ukraine, even though violence against media professionals during these elections were only reported in isolated instances. During the pre-election period, the premises of 112 TV Channel was subject to a grenade launch attack, and NDI reported a few cases of physical attacks against journalists. According to NDI, 43 percent of journalists surveyed by the Center for Human Rights Information reported receiving threats connected with their work.

**To combat impunity for violence and attacks against media and/or journalists, all such cases should be properly investigated by the National Police.**

Parties and candidates used social networks and messaging applications (Facebook, YouTube, Viber, and Telegram) far more widely in the 2019 parliamentary elections than in any previous election. Campaigning on the internet, social networks and messaging applications is not properly regulated in

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<sup>47</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.14-15.

the current electoral legal framework. This paved the way for actors to violate election campaign provisions, for widespread disinformation and shadow funding of such forms of campaigning. Internet and social media platforms were predominantly used by parties and candidates to conduct smear campaigns against their opponents, using online black PR tactics and through comments by so-called “troll farms” (paid social media campaigners).<sup>48</sup> NDI noted that “while official accounts of candidates and parties tend to stick to positive messaging, negative ads and attacks are still abundant in the posts of private individuals or third parties.”<sup>49</sup> Facebook and Instagram require advertisers to identify political ads as such, but the policy is followed inconsistently, and CSOs reported challenges in notifying platforms about ads that were not properly flagged. In particular, the political ad library was made fully searchable only 10 days prior to election day. Other platforms, such as YouTube, are even less transparent. None of these platforms have a presence in Ukraine that can address the issue of electoral disinformation at the local level.<sup>50</sup> ENEMO observers reported that contestants were actively campaigning on social platforms during the silence period.<sup>51</sup>

**In view of the increasing use of new technologies in public life and in the elections, the Parliament should carefully – in an inclusive and open discussion with stakeholders and based on international good practice – consider how to regulate and enforce rules for election campaigning online, through social media networks and via messaging applications.**

**To enhance the transparency of election campaign activities and campaign expenditures on social networks, political parties and candidates should make use of public pages rather than private profiles for campaigning purposes and place advertising from their own accounts rather on accounts owned by a third party.**

## Campaign finance

The 2015 Political Finance Reform Law introduced a number of amendments to the existing legislation governing political and campaign finance in Ukraine. While the new law increased the transparency of political and campaign finance, the Group of States Against Corruption (GRECO), ODIHR, and the Venice Commission identified a number of persistent shortcomings. They include the absence of regulation of “third-party” funding and in-kind donations, the lack of effective restrictions on excessive spending by political parties’ election campaigns, and others. These shortcomings limited the effectiveness of the new law in regulating the role of money in election campaigns.

Both domestic and international EOMs concluded that the funding of the parliamentary election campaign was not transparent and allowed for undue impact of big donors on politics, clientele-ism, patronage and excessive influence of campaign spending on the will of the voters.<sup>52</sup>

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<sup>48</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 19.

<sup>49</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine’s July 21, 2019 Snap Parliamentary Elections*, p.9.

<sup>50</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine’s July 21, 2019 Snap Parliamentary Elections*, p.9.

<sup>51</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 19.

<sup>52</sup> International Election Observation Mission, *Ukraine. Early Parliamentary Elections, 21 July 2019. Statement of Preliminary*

According to NDI, oligarchic financing remains a key driver of the political and electoral environment in Ukraine, eroding the influence of individual voters and skewing the accountability of politicians who get elected.<sup>53</sup> Ceilings on campaign expenditures remain high compared to neighboring countries, including some with more robust economies: for party-list campaigns the limit is 90,000 times the minimum monthly salary (USD 14 million) and for SMC candidates the cap is 4,000 times the minimum salary (USD 628,000). As NDI concludes, these rates incentivize heavy spending, reliance on costly types of election campaigning such as television advertising and, in turn, dependence on wealthy donors.<sup>54</sup> Research from UNDP and others also indicate that increased spending and contributions by wealthy donors can have an adverse impact on the ability of women to enter elected office: the more campaigning costs, the fewer women have the resources to compete on a level playing field with men.

**To create a more level playing field, the Rada should consider the possibility either to significantly decrease the existing campaign spending limits or impose restrictions on costly types of campaigning, such as paid advertisements in broadcast media during an election as is standard in several European countries.**

The transparency of campaign finance was diminished by several factors. These include extensive campaign activities undertaken by public associations, including charitable foundations affiliated with parties and candidates that were not reflected in the party/candidate financial reports.<sup>55</sup> A gray area exists for election campaigning conducted beyond the timeframes established by the law (for instance, before candidate registration or during the day of silence): expenses on such forms of campaigning were not adequately reflected



A voter examines official biographies of candidates running for a single-member constituency seat on July 21, 2019.

in the party/candidate financial reports.<sup>56</sup> Cash donations to campaign funds rather than wire-transfers facilitated the use of funds originating from untraceable sources for campaigns and other purposes. Hidden political advertising (“jeansa”) was, as a rule, not paid from contestants’ official campaign accounts. The same was the case with parties’ and candidates’ alleged unofficial payments to members of election commissions, observers and journalists. Finally, the abuse of administrative resources also undermined the transparency of campaign finance.

Online campaign activities and expenditures were also poorly tracked and regulated, thus adding to

*Findings and Conclusions*, p.12.

<sup>53</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine’s July 21, 2019 Snap Parliamentary Elections*, p.7.

<sup>54</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine’s July 21, 2019 Snap Parliamentary Elections*, p.8.

<sup>55</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.12.

<sup>56</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions, July 23rd, 2019*, p. 13.

the overall opaqueness of campaign finance in Ukraine. Contestants can use their own funds or the funds of the parties that nominated them up to the expenditure ceiling and without any limitations on the number of transactions. This gives affluent candidates an undue advantage over others, including self-nominated candidates, while the sources of “own” and “party” donations transferred to election funds are difficult to trace.

**The Rada should address the outstanding recommendations for improvement of the legal framework for party and campaign finance, including those proposed by the GRECO, the Venice Commission and the OSCE/ODIHR in 2015 and 2016.<sup>57</sup>**

**The Rada should strengthen the legal provisions for in-kind and third-party donations to election contestants and set a ceiling on the value of permissible donations transferred by private donors, by the candidates themselves or by the parties that nominated them.**

**The NAPC should clarify reporting requirements for in-kind donations to the campaign funds of contestants and adopt a corresponding Procedure.**

All political parties participating in the elections must submit an interim campaign financial report to the CEC and the National Agency for the Prevention of Corruption (NAPC), as well as publish them on their websites. All 18 parties that competed for seats in the Rada did so on time. The reports available on the [CEC website](#) demonstrate that parties overall raised around UAH 607 million (approx. USD 23 million) for campaigning purposes in the period up to July 10. More than 95 percent of this amount was transferred to the election fund of a party or candidate from the respective party's ordinary account. This means that the origin of most of the money spent in the parliamentary elections is unknown both to the regulators and to the public. Ukrainian voters will be able to get more detailed information only after the election. The financial reports of the parties for the second and third quarter of 2019 are only published in August and in November this year. This effectively limits the transparency of campaign finance during the parliamentary elections and prevents Ukrainian voters from making an informed choice based on credible information about financing of election contestants. In IFES' [post-election survey](#) following the presidential election, voters indicated that the financing of parties and candidates continues to be of high interest.

**To enhance transparency of party and campaign finance, including the origin and sources of donations, the Parliament should consider introducing continuous electronic reporting of donations made to both the party and campaign accounts of political parties and candidates during an election campaign period.**

Civil society and media lacked day-to-day access to information about candidates' incomes and expenditures. Earlier this year, the CEC, in relation to the presidential elections, ruled that this information falls under a bank secrecy clause. The public will be able to access this information, but only after the reports are published. This means that voters can have access only shortly before election day (the interim financial report), which leaves no time for the public to analyze the published information, or after the election (the final report) when the analysis has a limited effect on how voters

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<sup>57</sup> Venice Commission, *Joint Opinion on Draft Amendments to Some Legislative Acts Concerning Prevention and Fight Against Political Corruption of Ukraine*; [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2015\)025-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2015)025-e); Group of States Against Corruption, *Third Evaluation Round. Second Compliance Report on Ukraine*; <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806ca329>

make their electoral choice. Consequently, voters do not have the opportunity to make a fully informed choice when they go to the polls.

**To give voters the opportunity to make a more informed choice, preliminary information on donations that are subject to later publication by the CEC and NAPC should not be covered by the bank secrecy clause: the law should entitle the CEC and NAPC to provide such information to any electoral stakeholder upon request prior to the official publication.**

The CEC and respective DEC's must analyze all the pre-election and post-election reports and make public the results of analysis. The law further requires that the results of pre-election reports must be published on the CEC website no later than two days prior to election day, one day prior to the beginning of the campaign silence period. This extremely short period does not provide voters with enough time to review the results of the analyses before they go to their polling stations.

**The deadlines for publishing interim financial reports and the oversight bodies' analysis thereof should be set earlier to allow more time for public scrutiny. In a two-round election, run-off candidates/parties should include in their second interim financial report full information about incomes and expenditures on all campaign fund accounts accrued since their first interim report.**

As in the 2019 presidential election, the EOMs again noted that NAPC and CEC have overlapping responsibility for monitoring compliance with campaign finance regulations. Both institutions ensure minimum reporting compliance but lack adequate financial and human resources or sanctioning authority to do more. While the NAPC verifies the legality of donations to the election funds, and the CEC cross-checks the reported incomes and expenses against the bank statements, neither institution is required to identify unreported incomes and expenses, which does not ensure meaningful oversight. The NAPC also suffers from politicization and low confidence among the stakeholders.<sup>58</sup>

**To strengthen the ability of the NAPC to exercise its mandate in a professional and unbiased manner, the Rada should consider amending the 2014 Law on Prevention of Corruption and the 2015 Political Finance Reform Law to expand the mandate of the NAPC and clearly define the division of responsibilities between the NAPC, the Accounting Chamber, and the CEC in relation to fulfilling their oversight role in political and campaign finance.**

**To combat the flow of unreported money in the election campaign, the Rada should amend the election laws to oblige the campaign finance oversight bodies – the NAPC, supported by the CEC – to identify and take adequate measures to sanction unreported donations. The Cabinet of Ministers should ensure that the NAPC has enough human, financial and organizational resources to effectively implement its mandate in this respect.**

The current sanctions for failure to comply with the campaign finance requirements can hardly be considered proportionate, effective or dissuasive: most campaign finance violations are only subject to the issuance of a warning to the candidate or party in question or to an administrative fine ranging from UAH 5,100 – 6,800 (equivalent of USD 192-256). Furthermore, sanctions are difficult to impose due to short statutes of limitations (after this period expires, the court cannot consider the case).

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<sup>58</sup> National Democratic Institute, *Statement of the NDI Election Observation Mission to Ukraine's July 21, 2019 Snap Parliamentary Elections*, p.8.



**To ensure campaign and political finance provisions are not circumvented, the Criminal Code and the Code of Administrative Offences should be amended, and effective, proportionate and dissuasive sanctions introduced for violations of reporting requirements.**

## Election dispute resolution

Depending on its type, a complaint/lawsuit may be filed with the CEC, a DEC or a PEC, or to a local court of general jurisdiction, a District Administrative Court, the respective Administrative Court of Appeals or the Supreme Court. Most types of disputes can be filed with an election commission and/or with a court at the discretion of the complainant. Although such overlapping jurisdictions are foreseen in Constitution, which entitles anyone to challenge any irregularity at a court directly, it could cause issues if different opinions are issued. However, it did not in practice cause any significant problems in the 2019 parliamentary elections. There have been no cases in which the same complaint on the same subject matter has been heard in parallel by a court and an election commission. Despite this, overlapping jurisdictions have been repeatedly criticized by the Venice Commission and ODIHR, who jointly recommended to remove it from the legal framework.



*To support electoral justice in Ukraine during the parliamentary elections, IFES and the National School of Judges of Ukraine organized a ToT and four regional trainings (in Kharkiv, Kyiv, Lviv and Odesa) for judges, bringing together 88 judges of district administrative courts and administrative courts of appeals.*

**When introducing amendments to the Constitution, the Parliament should consider eliminating the possibility of parallel consideration of complaints by courts and election commissions.**

A complaint to an election commission must be filed within five days of the violation (with a few exceptions depending on the type of the case). Lawsuits regarding violations committed before election day must be filed within five days of the violation (except for lawsuits against inaccuracies on the voter lists), while lawsuits against violations committed on election day and afterward must be filed within two days of the violation. In almost all cases, the CEC, DEC, PEC or court are required to provide a decision within two days of receiving the complaint. The Code of Administrative Adjudication provides that all court decisions can be challenged to the respective next instance court (i.e., to an administrative court of appeals or the Supreme Court/Grand Chamber of the Supreme Court, depending on the court that considered the case in the first instance). An appeal must usually be filed within two days following the day when the first court decision was announced.

While no issues with respecting the two-day deadline for resolving disputes have been reported during the recent elections by international EOMs, such a narrow deadline may cause difficulties if the allegation is complex and/or requires considerable investigation.

**To allow courts enough time to handle complex election-related cases, the existing timelines for filing complaints and resolving disputes in such cases should be reviewed.**

A complaint/lawsuit must comply with detailed requirements set forth in the Parliamentary Election Law (if filed to an election commission) or in the Code of Administrative Adjudication (if filed in court). The list of mandatory requirements includes full contact details of all the parties to a case, the substance of the violation, motivation, evidence, precisely formulated claims and description of the decision to be adopted in the case, among other items. Failure to comply with any of these requirements may result in the lawsuit/complaint being sent back to the complainant for correction without being considered on its merits. According to ENEMO, from the beginning of campaign up to July 20, the CEC received 148 complaints, of which 97 were rejected by private letter from an individual CEC commissioner (rather than by the entire commission) for purely technical reasons (i.e. failure to meet the formal requirements to a complaint).<sup>59</sup> The practice of rejecting complaints on technical grounds has been criticized by international EOMs for years as it denies the complainant an effective remedy against administrative action, contrary to OSCE commitments and other international standards for election dispute resolution. In relation to the 2019 early parliamentary elections, international observers noted that none of the state bodies introduced a template for election related complaints/lawsuits.<sup>60</sup> Such templates could have made it easier for a complainant or plaintiff (especially those without legal background) to defend their electoral rights with election commissions or in court.

**In order to enhance dispute resolution and encourage consideration of complaints on their merits, the possibility for automatic rejection of appeals based on deficiencies in format should be removed from the law. Election commissions should act if the complaint is clear from the submitted documentation and allow the violation to be identified, investigated or verified.**

**To assist in protecting the electoral rights of voters, the CEC could consider adopting a recommended (i.e. non-binding) template for complaints and instructions on how to complete them. The Supreme Court could consider adopting a similar template for lawsuits.**

The provisions of the Parliamentary Election Law and Code of Administrative Adjudication allow for voters, by a general rule, to file a lawsuit/complaint only if their rights and legitimate interests are affected by an illegal decision, action or inaction – this was criticized by the IEOM for being “contrary to good practice.”<sup>61</sup> According to this, voters should be able to challenge some violations even if their personal voter rights/interests have not been violated.

**The Code of Administrative Adjudication and the election laws should be amended to allow voters to challenge certain irregularities even if their voter rights and legitimate interests have not been infringed by the irregularity.**

While a complaint management system has been introduced in all courts, the CEC has never installed a similar system for complaints filed to election commissions. The CEC also does not publish any statistics related to disputes they have received and/or considered before the elections.

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<sup>59</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23<sup>rd</sup>, 2019, p. 15.

<sup>60</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.16.

<sup>61</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.16.

**To increase the overall transparency of election dispute resolution, the CEC should introduce a complaint management system and regularly release statistics on election dispute resolution, e.g. at each stage of the electoral process or, at least, prior to election day.**

Both before the presidential and parliamentary elections, IFES conducted comprehensive training exercises for judges of all administrative courts (both district and administrative courts of appeals). Despite the fact that the judiciary overall managed to resolve cases related to the parliamentary elections in line with legal requirements and international standards, ENEMO noted that some court judgments lacked a sound legal basis and were inconsistent (as in the case with certain Supreme Court decisions related to candidate registration).<sup>62</sup> Such cases limit access to an effective remedy for violations of electoral rights and cast doubts on the independence of the judiciary.

**To strengthen the professionalism of the judiciary, the Supreme Court should carefully review court practice in election-related matters and, if it detects conflicting decisions in similar cases, issue official clarifications to improve court practice in future elections.**

**The government of Ukraine and the international community should continue efforts to strengthen the independence and professionalism of the judiciary.**

The current legal framework governing liability for election-related offenses remains deeply flawed. Some violations, such as the distribution of goods and services to voters in relation to election campaigning, are formally prohibited but punished only by the issuance of a warning. Falsifying signatures in nomination papers for election commission membership is not punishable at all. Many administrative fines and criminal penalties are too modest to ensure effective enforcement.

**The Cabinet of Ministers should re-register in the Rada the existing Draft Law No 8270, which aims at strengthening the system of sanctions for election-related offenses and promotes electoral justice. The Rada should adopt the law well in advance of the next local elections.**



*For the early parliamentary elections, IFES and Civil Network OPORA organized 60 trainings held across 25 regions for prevention police and national police investigators.*

The police received more than 7,300 complaints and launched 273 criminal investigations before election day in the 2019 parliamentary elections. Civil Network OPORA reported that police had some difficulties in correctly documenting administrative offenses as was also the case in the 2019 presidential election. Before election day, OPORA and IFES conducted a series of regional training exercises for police officers on the role and powers of police on election day and issued a pocket handbook for police officers on how to adequately respond in specific situations, including violations of the election laws.

<sup>62</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23rd, 2019, p. 16.



**The National Police, with assistance from international counterparts, should continue efforts to strengthen the professionalism of police in fulfilling their electoral roles. The Prosecutor General's Office should consider training for prosecutors on election-related matters. The National School of Judges should consider training for judges of local courts on criminal and administrative liability for election related offenses.**

## Voting, vote counting and vote tabulation

Under the Parliamentary Election Law, the CEC must establish the election results no later than on the 15<sup>th</sup> day following election day and publish them in one of the official gazettes within five days thereafter.

The CEC respected the legal deadlines for establishing and promulgating the final election results in all cases except for the results in election district No 50 in Donetsk *oblast* and No 210 in Chernihiv *oblast*. In both cases, this delay was caused by the failure of the respective DEC to deliver the tabulation protocols for the election district on time to the CEC. In election district No 50, the DEC failed to establish election results at all – the CEC was forced to bring the ballot material and other sensitive documents from the DEC's office in Pokrovsk to Kyiv and assume the powers of the DEC to establish the results and compile the vote tabulation protocols for the constituency.

All international and domestic observation missions concluded that the July 21 election day generally met international standards for democratic elections and the procedural irregularities observed during voting, counting and tabulation did not impact the outcome of the elections. On election day, OPORA and international election observation missions noted only isolated instances of irregularities: procedures were not always followed during the opening of polling stations, or during the count and tabulation of the votes. Breaches to the secrecy of vote occurred when voters did not fold their marked ballot paper or mark their ballots in secrecy. Some voters were allowed to vote without presenting a proper ID. In a few instances – but notably less than in the presidential election – voters were observed taking photos of their marked ballots (potentially indicating vote buying schemes). Other irregularities included the presence of unauthorized persons inside the voting premises and instances of illegal campaigning.

**To enhance the secrecy of vote, the election laws should be amended to oblige ballot issuing officers to pre-fold the ballot paper and instruct voters to fold their marked ballot paper before leaving the booth for secret voting. The introduction of these new measures should be accompanied by a comprehensive information campaign and training of officials.**

**The CEC should take further steps to raise awareness of the correct voting procedures and liability for offences.**

All election laws envisage a procedure whereby voters who spoil a ballot paper are entitled to a replacement. In practice, this procedure does not apply to voters who vote at their place of stay (homebound voters): the election laws provide that the number of ballots that are issued to the PEC members who perform homebound voting must be equal to the number of voters on the excerpt from the voter list used for homebound voting. Considering that many of the voters who vote at home have permanent disabilities (and that most polling stations are inaccessible), the likelihood of accidentally spoiling a ballot could be higher, and they are not currently allowed a replacement.

**To harmonize procedures for voting in polling stations and at voters' place of stay, the election laws should entitle PEC members who perform homebound voting to bring a reasonable small surplus of ballot papers to cater for homebound voters who accidentally spoil their ballot and require a replacement. The surplus need to be strictly accounted for.**

The number of ballot papers that accompany the mobile ballot box must be announced and entered into the PEC journal prior to the departure of the PEC members mobile ballot box.) and reconciled upon return to the PEC.

As in previous elections, despite a somewhat lower turnout, some polling stations were overcrowded on election day.

**To ensure an orderly and transparent voting process and flow of voters, the election laws should require that each PEC identify one commissioner for exercising queue control at the entrance to the polling station during voting.**

All the laws governing the elections in Ukraine tolerate a certain level of fraud by stating that the precinct results can be invalidated only if the number of documented cases of fraud (ballot stuffing, illegal issuance of a ballot to the voter, etc.) exceeds five percent of the number of voters on the voter lists. Such a threshold was repeatedly criticized by the Venice Commission and ODIHR as inconsistent with international standards and best practices.

**To bring the provision for invalidation of vote in an election precinct in line with international standards, the result of the vote should only be subject to invalidation where the level of fraud or malpractice was such that the will of voters cannot be determined. Invalidation should not be tied to an arbitrary percentage of abuse but based on objective criteria and clear procedures that need to be spelled out in the election laws.**

As in previous elections, basic reconciliation procedures during vote counting and the sequence of steps prescribed for completing vote count protocols at the polling stations were not always followed. Some PECs refused to issue certified copies of the vote counting protocols to domestic observers and pre-signed but otherwise empty protocol forms were again noted by observers in a few polling stations.

**The CEC should continue efforts to train the election commissioners on election day procedures, including vote counting and completion of the precinct results protocol.**

The tabulation at the DEC and the establishment of the election results by the CEC were properly managed overall by the respective election commissions, except for certain election districts where the DEC proved to be politicized and/or tensions between the competing SMC candidates were high. The IEOM assessed negatively the early stages of the tabulation in 37 out of 134 DEC observed, mainly due to tensions in or around the DEC premises, inadequate conditions at the intake stage, and the processing of ballot material at DEC that caused overcrowding and limited transparency.<sup>63</sup> Both domestic and international observers reported cases of PECs changing the protocol data in DEC

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<sup>63</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.18.

premises in violation of the law, obstructing observers from entering the premises where the electronic data from the vote counting protocols was entered and transmitted through the “Vybory” system to the CEC or infringing on the rights of observers.<sup>64</sup> These violations, however, were assessed as not affecting the election outcome.

**The CEC should take measures to ensure that DEC has adequate premises and that the intake and tabulation of PEC results is sufficiently transparent for all present, including official observers. Establishing an effective queue management system and use of a projector to display the results could be considered as measures enhance the transparency of the DEC vote tabulation.**

Vote tabulation procedures for DEC should be reviewed. Currently, they allow the possibility of arbitrary vote recounts and unauthorized corrections in the protocols.

**Existing international observer recommendations to simplify the format of the PEC results protocol and procedures for ballot reconciliation should be considered when amending the election laws. If corrections of figures in results protocols are required, only those figures must be subject to correction, rather than the entire protocol.**

The vote tabulation SMCs No 50 (Donetsk *oblast*) proved to be particularly problematic. On August 1, the CEC obliged DEC No 50 to conduct a vote recount based on all PEC results protocols, including those marked as “corrected” and those completed by DEC No 50 following vote recounts of PEC ballot material. The DEC failed to provide the CEC with PEC protocols from the recounts by the specified deadline. The CEC considered DEC No 50 to be inactive and assumed the powers of DEC No 50 to complete its work. On August 4, the CEC conducted a vote recount of ballot material from all 14 polling stations in election district 50 and established the election results for the constituency. Media had earlier reported about other issues surrounding tabulation process in SMC No 50, including ballot papers being thrown out from the polling stations, attacks on journalists and observers, and more.

**The police should conduct investigations of alleged electoral violations committed during vote tabulation in election district No 50 and ensure effective prosecution of the perpetrators, including DEC members who failed to exercise their powers in accordance to the law.**

## Accessibility and inclusion

Accessibility of elections remains a significant issue in Ukraine. Nearly all observer organizations highlighted that polling stations, information on the electoral and political process as well as candidate information and campaign materials were not sufficiently accessible for persons with disabilities. According to the ODIHR EOM, 62 percent of polling stations observed during the early parliamentary elections were assessed as not accessible to voters with disabilities. Domestic disabled persons’ organizations reported an even higher number: that less than five percent of polling stations in some locations are accessible. Under the current legal framework, local authorities allocate premises to PECs and DEC, but they are not obliged to allocate premises that recognize the needs and rights of voters with disabilities. The Parliamentary Election Law provides for the availability of tactile ballot

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<sup>64</sup> <https://www.oporaua.org/news/vybory/parlamentski-vybory/parlamentski-vybory-2019/19378-informatsiia-pro-porushennia-pid-chas-priimannia-protokoliv-vid-dvk-do-ovk>

guides for voters with visual disabilities at each polling station; however, tactile ballot guides have never been produced in any previous parliamentary election. The 2019 parliamentary elections were no exception to this. The law also fails to specify if commissioners with disabilities are allowed the right to bring an assistant to election commission meetings without the commission's consent or invite.



*On May 23, IFES and the National Assembly of Persons with Disabilities (NAPD) organized a conference on the electoral rights of persons with disabilities, gathering representatives of the disability community from across Ukraine.*

Concerning informational outreach and communication, the CEC website is not accessible to voters with visual or auditory disabilities. The CEC does plan, however, to launch a new website that is accessible.

Voters with disabilities are *de facto* forced to vote at home, contrary to international standards, the UN Convention on the Rights of Persons with Disabilities (CRPD) and international good practice. In addition, the Constitution does not allow citizens who have been deemed “incapable” by a court to

vote or run for office. This is not in line with the CRPD, which states that all persons, regardless of the type of their disability, are entitled to equal political rights. Access to election campaigning materials, voter information, political party platforms, and candidate posters remains limited for persons with disabilities. Many of these issues are addressed in Draft Law 5559 that was drafted in consultation with disabled persons' organizations (DPOs) and registered in the outgoing Rada.

**To improve access to the electoral process for persons with disabilities and bring it closer to meeting international standards, the Rada should prioritize the adoption of Draft Law No 5559 drafted in consultation with disabled persons' organizations (DPOs) and pass it into law before the next local elections.**

**The CEC, in consultation with DPOs, should explore possibilities for enhancing accessibility and inclusion of the electoral process within its existing mandate.**

## National minorities

The Constitution of Ukraine guarantees the equality of all citizens under law regardless of their origin, race, social status, place of residence and background, and provides for the political, civil and social rights of national minorities and for the use of national minority languages. However, the legal framework governing the status of national minorities remains fragmented and outdated. According to the assessment of the IEOM, it does not provide for special measures promoting national minority representation other than a requirement to respect the rights of national minorities in the delimitation of election constituencies.<sup>65</sup>

**To improve the general legal framework for protection of political participation rights of**

<sup>65</sup> International Election Observation Mission, Ukraine. *Early Parliamentary Elections, 21 July 2019. Statement of Preliminary Findings and Conclusions*, p.15.

**national minorities, the 1992 Law on National Minorities should be substantially reviewed to comply with international standards and best practice in this field.**

**Consideration could be given to remove the legal and constitutional barriers for national minority political participation, including lifting the ban on establishment of national minority parties and lowering the electoral threshold for such parties, in line with European practice.**

The explicit prohibition in the Political Party Law to establish regional parties, the requirement to collect 10,000 voter signatures in two thirds of the regions to register a political party, and the five percent electoral threshold under the proportional component of the parallel system for parliamentary elections act as barriers to political representation of national minorities in the Rada.

The number of national minority candidates on party lists for the parliamentary elections was limited to seven members of the Crimean Tatar minority on the electoral lists of five parties. Despite a provision in the Parliamentary Election Law that requires that a territory where a national minority resides compactly must not be divided between several election constituencies, this requirement was not respected in regard to the Hungarian national minority in Zakarpattia *oblast*.

**The legal provisions that require the CEC to consider the interests of national minorities and prohibits the splitting of areas where national minorities reside compactly when drawing constituency boundaries should be applied to all elections including local elections.**

**The CEC should consider actions to ensure that election material and information on elections, parties, candidates and key election procedures are made available to national minorities in their preferred language.**

## Election observation

The Parliamentary Election Law provides for domestic and international observation of the election process. It defines domestic observers as official observers from political parties and candidates in the election as well as from non-governmental organizations (NGOs); it defines international observers as observers from foreign states and international organizations. Domestic observer NGOs must have election observation-related provisions in their charter. They are required to apply to the CEC for obtaining the right to field observers; individual observers from NGOs are registered by the DEC. This creates a legal challenge for NGOs since DEC is formed ad-hoc for each election and only become operational within the first two weeks after the beginning of the parliamentary election period. Since the CEC acts as a DEC for out-of-country voting, it can *de facto* register domestic independent observers from the beginning of the electoral process, but it may *de jure* create problems for domestic observers from NGOs which intend to observe all stages of the electoral process (see also below). International observer organizations must also to apply to the CEC – directly or through the Ministry of Foreign Affairs – for the right to field observers. However, in contrast to domestic NGO observers, international organizations as well as foreign states apply to the CEC for issuing accreditation to their individual observers and therefore may observe all stages of the electoral process.

Domestic observers are granted broad rights, including the right to: file complaints and lawsuits against decisions, actions or inactions of election commissions; take photos or make video records; as

well as the right to be present at meetings of election commissions without prior invitation or consent.

For the early parliamentary elections, the CEC received observer requests from 163 NGOs. This is the highest number of NGOs that have indicated an intention to observe an election in the country's history. It broke the recent record from the 2019 presidential election in which 139 NGOs applied to the CEC for the right to field observers. However, only 87 of the 163 NGOs which applied to the CEC in the parliamentary elections submitted names to a DEC for issuing individual observer accreditations; the remaining 76 NGOs never requested accreditations for a single observer.

According to OPORA and IEOMs, many of the accredited NGOs were directly or indirectly affiliated with specific parties and candidates or were created just before the start of the election process. ENEMO reported that 105 accredited NGOs did not have a website or social media page. ENEMO raised concerns that a number of the accredited observer NGOs were in fact "clones" - they had names similar to those of real NGOs, and that a number of the NGOs accredited in previous elections reappeared in the parliamentary elections but now as political parties.<sup>66</sup> They also found cases in which the head of an accredited observer NGOs appeared on the election list of a political party in the election, in addition to the person also being a donor of the same party. Such a practice undermines the independent nature of election observation and discredits the overall idea of domestic NGO observation as an independent check on the election process.

**Political parties and candidate should refrain from registering their members and supporters as independent citizen election observers through public associations whereby they discredit the institution of domestic non-partisan election observation.**

A large quantity of observers may negatively impact DEC and PEC operations, especially if they appear in huge numbers in the premises of election commissions (which have finite space) or interfere in election day processes. While such fears did not materialize in these elections, measures are needed to decrease the number of frivolous and party/candidate affiliated organizations, which register as an observer NGO observer.

**In order to strengthen the institution of domestic non-partisan election observation, it should be considered to require that civil society organizations (CSOs) that apply for observer accreditation have been a registered as CSO at least one year preceding the election. It could also be considered to require that CSOs that apply for observer accreditation in nationwide elections must be signatory to the Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and/or be the member of Global Network of Domestic Election Monitors. Exceptions from this rule should be granted only to domestic NGOs with a documented record of protecting the rights of specific groups of citizens (such as political rights of women, people with disabilities, prisoners' rights groups, etc.).**

According to the CEC, some 1,719 international observers from 12 states and 21 international organizations were registered to observe the parliamentary elections. Following recent amendments to all election laws, Russian Federation nationals are banned from observing Ukrainian elections even if proposed as observers on behalf of an international organization such as ODIHR. This violates the

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<sup>66</sup> ENEMO International Election Observation Mission, *Early Parliamentary Elections – Ukraine 2019. Statement of Preliminary Findings and Conclusions*, July 23rd, 2019, p. 25.



1990 OSCE Copenhagen Document. It is questionable to bar citizens of a certain state from observing elections as members of a multilateral election observation effort from an international organization that has Ukraine as one of its members, since these citizens do not represent their country but the sending organization.

**Members of multi-lateral election observation missions of international organizations, of which Ukraine is a member, should be exempt from the current ban on election observation by persons of a certain nationality if they act under the code of conduct of such organization.**

DECs register individual domestic observers. Given that DECs are formed well after the beginning of the election process, domestic observers are *de facto* deprived the right to observe key election-related procedures such as candidate nomination and registration, the early stages of the election campaign and the formation and first sessions of the DECs.

**The procedure for accrediting CSOs and registration of their members as observers needs to be reviewed to enable CSO observation from the beginning of the election process, including at national level. Consideration could be given to entitling NGOs with a proven record of observing elections to accredit observers with the CEC on equal terms with official observers from foreign states and international organizations.**

Observers were generally given the opportunity to observe all stages of the election. There were only a few reports of observers being obstructed in their work. Observers were, in isolated cases, denied access to DEC premises by security personnel, refused the right to attend sessions of election commissions or not granted full cooperation. As a rule, these misunderstandings were solved after a call to a higher-level commission. On election day, observers reported in a few instances of PECs refusing to provide observers a copy of the vote count protocols.

## Recommendations

Below is listed the key recommendations from the IFES post-election report following the recent early parliamentary elections. They should be considered in conjunction with existing recommendations for improvement of the overall framework for elections in Ukraine contained in election observation mission final reports by international and domestic observers and joint Venice Commission and ODIHR opinions on the electoral legal framework, and those contained in the IFES post-presidential election report.

Recommendations provided below relate mainly to the legal framework and the conduct of parliamentary elections. Given that the next nationwide elections will be local elections expected in October 2020, emphasis is given to provide recommendations for legislative and administrative reform necessary to bring the elections of local self-bodies and mayors in line with international standards and best practices. Whenever changes to the legal framework amendments are suggested, they should be considered in an open and consultative process with all relevant stakeholders and drawn in line with Ukraine's commitments under international treaties and human rights instruments to which the country is signatory and its obligations as a participating State of the OSCE and as a member of the Council of Europe.

The recommendations below are informed by a comprehensive mapping of vulnerabilities identified by IFES throughout the electoral process in Ukraine – from the legal framework to cybersecurity, electoral dispute resolution and voter outreach. Findings of the study emphasize, among other things, that also international stakeholders can help mitigating the risks associated with the vulnerabilities and thereby make a valuable contribution in strengthening the electoral process in Ukraine for future elections. It is fundamental to understand that not a single stakeholder can address the risks associated with an identified vulnerability but must act in a concerted way with other stakeholders as vulnerabilities are interdependent and mitigation often requires coordinated action. E.g. too speedy reform of the legal framework for elections by the legislature may jeopardize the planning and administrative implementation of the new legal framework by the election management body and impact on the ability of voters and political parties to adjust to the new rules. This may reduce public trust in key electoral and political institutions and lead to doubts about the fairness of the electoral process.

### Legal Framework and Electoral System

- Stability of legal framework: complete electoral reform well in advance – at least one year prior to the electoral event in question – and introduce legal safeguards against last minute changes to the electoral legislation. Electoral reform should address all pending domestic and international recommendations including those by ODIHR and the Venice Commission in order to target systemic manipulation.
- The adoption of a single, unified election code is a welcome step towards ensuring that uniform procedures are applied to all elections, but the status of the code should be clarified. The election code should be considerably amended to be brought in line with international standards and good practices. It should ideally enter into force in time to govern the next local elections in 2020 and replace the flawed 2015 local election law.

- The Rada should phase out the first-past-the-post plurality component of the current parallel electoral system and transfer to a fully proportional electoral system in the next parliamentary elections to deliver on reform commitments and reduce the opportunity for fraud. It is important to identify all the advantages and disadvantages of any new electoral system chosen – for parliamentary elections as well as for local elections – and carefully consider the implications of the chosen system.
- If the chosen proportional system for parliamentary elections envisages elections in subnational constituencies, the relevant law should stipulate that the boundaries of such constituencies must be delineated in keeping with the principle of the equality of the vote based on voter registration or population data and in line with international standards and best practices including for national minority protection (see below). The same principles should apply to boundary delimitation of election constituencies in local elections.
- Boundary review in advance of parliamentary and local elections should be periodic, timely and transparent, and should include a procedure and a timeframe for consultation with all relevant stakeholders with a possibility for challenging the draft delimitation.
- It could be considered to use recent voter list data as the basis for the delimitation of constituency boundaries, as they give a more realistic picture of where Ukrainians voters reside. As a transparency and confidence building measure, the CEC could, after each election event involving subnational constituencies, publish a constituency analysis and check for adherence to the principle of equality of the vote. This will indicate if constituency boundary review is required before the next election.
- If technically possible, it could be considered to enable out-of-country voters to cast the same number of parliamentary ballots as voters registered to vote in-country, for instance by random and even assignment of out-of-country election precincts to subnational constituencies in country, entitling voters abroad to cast a parliamentary ballot for the subnational constituency election at their last place of residence in-country or by choice of electoral system.

### **Election Security**

- The CEC should further continue its efforts aimed to ensure an appropriate level of cybersecurity protection of its electronic systems.
- The election legislation and other relevant laws need to be amended to more effectively deter interference from paramilitary groups in the preparation and holding of elections.
- The Ministry of Interior and the National Police should ensure that police receive training on electoral procedures and investigation techniques before an election. Such trainings should be funded from the state budget and delivered in close cooperation with the CEC.

### **Election Administration**

- The law on public procurement should envisage a simplified, effective and cost-optimal procurement procedure that enables the CEC and lower-level election commissions to

purchase election materials within the time frames for elections established by the election laws, including if these elections are held early.

- The CEC should consider establishing an expert council to discuss its key draft resolutions, introduce public consultations, and abstain from holding closed-door preparatory meetings.
- To ensure that CEC decisions, voter information and other data are fully accessible, the CEC website should be modernized, and its accessibility enhanced for all voters, including voters with disabilities.
- The Law on the CEC should be amended to specify the mandates, rights and obligations of CEC branches in the regions. The government should allocate the resources needed to establish such branches.
- In order to professionalize the work of lower level commissions and reduce malpractice, a requirement for mandatory training and certification of all serving commissioners should be introduced in the election laws. Political parties should only be permitted to nominate members to serve on commissions from the pool of trained persons certified by the CEC training center.
- A legal deadline well ahead of election day by which political parties and candidates can no longer replace their nominees on commissions should be considered as a measure to ensure stability of the election administration.
- Parties participating in elections should continue their efforts aimed to ensure a balanced representation of women on DEC and PECs.
- The number of election commission members should correspond to needs and a maximum should be set for their numbers on all commissions. Parties should, as a rule, only be entitled to nominate one member per commission in parliamentary elections. Parties with a parliamentary faction should be entitled to representation on election commissions only if they register a party list for the election; all parties that nominated party lists for the election should be entitled to suggest nominees to the vacant seats on DEC for the election.
- To enhance the perception of impartiality of election commissions, the law should explicitly prohibit payments to election commissioners from political parties and candidates. Nomination of commission members without their consent or through forgery of nomination documents should be subject to sanctions against the nominating entity.
- Additional measures must be taken to ensure that lower-level election commissions transmit their decisions to the CEC in a timely manner for publication. It could be considered to require that DEC decisions must be published on the CEC website to take legal force.

### **Voter Registration**

- The Rada needs to prioritize and accelerate the consideration of Draft Law No 6240 regarding the election participation of internally displaced persons and internally mobile citizens and adopt it into law before the 2020 local elections. In the long term, the government should

reform the overall system of residence registration towards a declarative approach in line with international standards.

- The Law on State Register of Voters should be amended to allow voters to use online platforms when registering to temporarily change their place of voting and applying to amend their voter list data. This would enable voters to update registration data without physically visiting an RMB. If in-person registration is maintained, the CEC should encourage RMBs to introduce an effective queue management system and ensure that RMBs are accessible for all voters.
- To ensure that voters are aware of key voter registration procedures and may exercise their right to vote, the Cabinet of Ministers and the Parliament should consider allocating additional funding to the CEC for an effective voter education and awareness raising campaign well in advance of the next nationwide election. The CEC should implement such campaigns in close cooperation with CSOs, including those specializing on IDP enfranchisement issues.
- To ensure that the SRV data is accurate and up-to-date, local self-government bodies should be sufficiently resourced to allow for continuous and timely transmission of data on citizens' place of residence and other information to the SRV. The system of sanctions against these bodies for failure to comply could be reviewed and reinforced.
- The existing procedure for including voters in voter lists on election day based on a court decision for parliamentary elections is sufficiently safeguarded against fraud and abuse and should be expanded to apply in all elections in Ukraine. This step would further act to harmonize provisions and establish uniform procedures across all elections.

### **Candidate Registration**

- To bring the Constitution in line with international standards, the Parliament should consider amending it to remove the residence requirement for candidacy in national elections and lift the ban on suffrage rights for persons who have been deemed "incapable" by a court decision.
- Until the five-year residence requirement for candidacy is lifted, the Parliamentary Election Law should be amended to specify how the five-year term is to be calculated, the reasons for granting exemption, and what kind of evidence is required. State bodies and institutions must compile and provide the relevant documentation to the CEC within clear deadlines.
- To ensure a more inclusive candidate registration process, the overall deadline for registration should envisage enough time to allow contestants to correct minor mistakes in their registration documents. The CEC must take further steps to clarify the registration procedure to parties and candidates.
- To limit the negative effects of "clone" candidates and parties and provide guidance to voters, the CEC should be legally mandated to take measures, including by providing each SMC candidate with an electoral number and require that the previous name of candidates who changed their name must appear in their official biography and on the ballot paper.

### **Participation of Women**

- In order to increase the number of women in elected office, the Rada should consider amendments to the election laws, including a 40 percent mandatory quota for party lists in parliamentary elections if the current parallel system is used in the future. Regardless of the system used, effective quotas should be implemented in both national and local council elections partnered with effective sanctions for failure to comply with quota requirements, including the possibility of the CEC denying registration to party lists.
- Parties should be legally mandated to include at least two representatives of either gender in each group of five candidates on party lists for parliamentary elections (zipper list).
- Political parties should include policies to promote gender equality in their election platforms and abstain from reinforcing gender stereotypes in their campaigns.
- Political parties should further increase the number of women candidates in nationwide and local elections and consider measures aimed at strengthening their internal democracy and increase the level of women's representation in their internal governing and supervisory bodies.
- Media should introduce and effectively enforce standards for gender sensitivity in their coverage of contestants and the campaign.

### **Campaign**

- To limit the negative effects of clone candidates and parties, the use of a variation of a popular party name in autobiographies and campaign materials without the consent of the registered party should be prohibited. The National Police should properly investigate all the cases of use of "clone" candidate and party names, including those that may have affected the election outcome.
- The Parliamentary Election Law should give clear guidance on what is considered informational coverage of an election, election campaigning, and the official activities of public office holders who run as candidates.
- The Parliamentary Election Law should introduce effective measures to deter parties and candidates from election campaigning prior to their registration as contestants as well as more effective sanctions against violations of campaign silence provisions.
- To combat the misuse of administrative resources and public office for campaign purposes, all such cases should be adequately investigated by the police and the responsible persons sanctioned. State bodies should issue clear instructions to public officials and other employees setting standards for their behavior during the election process.
- To combat impunity for campaign-related administrative and criminal offences, including vote buying, all such alleged cases should be properly investigated, and perpetrators held accountable. The Rada should adopt legislation aimed at strengthening the system of sanctions for election-related offences based on draft law No 8270 sponsored by the Cabinet of Ministers and submitted to parliament for consideration in 2017.



## Media

- To prevent the further concentration of media ownership in the hands of a few oligarchs and foster a more diverse media environment, existing laws on elections, media and business competition should be amended.
- Print and broadcast private media should delineate their editorial policies from the business interests of their owners, including through self-regulation and adopting internal standards for their election coverage.
- The Ukrainian public service broadcaster should be fully funded and resourced in line with domestic law and international good practice; it should take a more active role in providing balanced and unbiased coverage of the elections and continue organizing debates.
- The Rada should strengthen the independence of the National Council on Television and Radio Broadcasting to become an effective media regulatory body. It should consider expanding its oversight mandate and introduce effective, proportionate and dissuasive sanctions for media violations.
- Consideration should be given to the establishment of an independent media council in charge of providing recommendations and guidance to media as to how to cover election campaign events.
- The election laws should clearly define “hidden political advertising” (“*jeansa*”).
- To combat impunity for violence and attacks against media and/or journalists, all such cases should be properly investigated by the National Police.
- The laws governing media and the status of journalists during elections should be amended to prevent misuse of journalist accreditations for politically-driven purposes.
- In view of the increasing use of new technologies in public life and in elections, the Rada should carefully – in an inclusive and open discussion with stakeholders and based on international good practice – consider how to regulate and enforce rules for election campaigning online, through social media networks and via messaging applications.
- To enhance the transparency of election campaign activities and campaign expenditures on social networks, political parties and candidates should make use of public pages rather than private profiles for campaigning purposes and place advertising from their own accounts rather on accounts owned by a third party.

## Campaign Finance

- The Rada should address the outstanding recommendations for improvement of the legal framework for party and campaign finance, including those proposed by the GRECO, the Venice Commission and ODIHR in 2015 and 2016.<sup>67</sup>

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<sup>67</sup> Venice Commission, *Joint Opinion on Draft Amendments to Some Legislative Acts Concerning Prevention and Fight Against*

- To strengthen the ability of the National Agency Against Corruption (NAPC) to exercise its mandate in a professional and unbiased manner, the Rada should consider amending the 2014 Law on Prevention of Corruption and the 2015 Political Finance Reform Law to expand the mandate of the NAPC and clearly define the division of responsibilities between the NAPC, the Accounting Chamber, the CEC in relation to fulfilling their oversight role in political and campaign finance.
- To combat the flow of unreported money in the election campaign, the Rada should amend the election laws to oblige the campaign finance oversight bodies – the NAPC, supported by the CEC – to identify and take adequate measures to sanction unreported donations. The Cabinet of Ministers should ensure that the NAPC has enough human, financial and organizational resources to effectively implement its mandate in this respect.
- The Rada should strengthen the legal provisions for in-kind and third-party donations to election contestants and set a ceiling on the value of permissible donations transferred by private donors, by the candidates themselves or by the parties that nominated them.
- The NAPC should clarify reporting requirements for in-kind donations to the campaign funds of contestants and adopt a corresponding Procedure.
- To enhance transparency of party and campaign finance, including the origin and sources of donations, the Rada should consider introducing continuous electronic reporting of donations made to both the party and campaign accounts of political parties and candidate during an election campaign period. To give voters the opportunity to make a more informed choice, preliminary information on donations that are subject to later publication by the CEC and NAPC should not be covered by the bank secrecy clause: the law should entitle the CEC and NAPC to provide such information to any electoral stakeholder upon request prior to the official publication.
- The deadlines for publishing interim financial reports and the oversight bodies' analysis thereof should be set earlier to allow more time for public scrutiny. In a two-round election, run-off candidates/parties should include in their second interim financial report full information about incomes and expenditures on all campaign fund accounts accrued since their first interim report.
- To create a more level playing field, the Rada should consider the possibility either to significantly decrease the existing campaign spending limits or impose restrictions on costly types of campaigning, such as paid advertisements in broadcast media during an election as is standard in several European countries.
- To ensure campaign and political finance provisions are not circumvented, the Criminal Code and the Code of Administrative Offences should be amended, and effective, proportionate and dissuasive sanctions introduced for violations of reporting requirements.

### **Election Dispute Resolution**

- The Cabinet of Ministers should re-register in the Rada the existing Draft Law No 8270, which aims at strengthening the system of sanctions for election-related offenses and promotes electoral justice. The Rada should adopt the law well in advance of the next local elections.
- The Code of Administrative Adjudication and the election laws should be amended to allow voters to challenge certain irregularities even if their voter rights and legitimate interests have not been infringed by the irregularity.
- In order to enhance dispute resolution and encourage consideration of complaints on their merits, the possibility for automatic rejection of an appeal based on deficiencies in format should be removed from the law. Election commissions should act if the complaint is clear from the submitted documentation and allow the violation to be identified, investigated or verified.
- To assist in the protection of the electoral rights of voters, the CEC could consider adopting a recommended (i.e. non-binding) template for complaints and instructions on how to complete them. The Supreme Court could consider adopting a similar template for lawsuits.
- To increase the overall transparency of election dispute resolution, the CEC should introduce a complaint management system and regularly release statistics on election dispute resolution, e.g. at each stage of the electoral process or, at least, prior to election day.
- To strengthen the professionalism of the judiciary, the Supreme Court should carefully review court practice in election-related matters and, in cases where conflicting decisions in similar cases are detected, issue official clarifications to improve court practice in future elections.
- To allow courts enough time to handle complex election-related cases, the existing timelines for filing complaints and resolving disputes in such cases should be reviewed.
- While introducing amendments to the Constitution, the Rada should consider eliminating the possibility of parallel consideration of complaints by courts and election commissions.
- The Government of Ukraine and the international community should continue efforts to strengthen the independence and professionalism of the judiciary.
- The National Police, with assistance from international counterparts, should continue efforts to strengthen the professionalism of police in fulfilling their electoral roles. The Prosecutor General's Office should consider training for prosecutors on election-related matters. The National School of Judges should consider training for judges of local courts on criminal and administrative liability for election related offenses.

### **Election Day Procedures**

- The timelines for printing the ballot papers and for updating the voter lists should be aligned so that ballot papers are printed based on updated voter list information.
- To enhance the secrecy of vote, the election laws should be amended to oblige ballot issuing

officers to pre-fold the ballot paper and instruct voters to fold their marked ballot paper before leaving the booth for secret voting. The introduction of these new measures should be accompanied by a comprehensive information campaign and training of officials.

- To ensure an orderly and transparent voting process, the election laws should require that each PEC identify one commissioner for exercising queue control at the entrance to the polling station during voting.
- To harmonize the procedure for voting in polling stations and at voters' place of stay, the election laws should entitle PEC members who perform homebound voting to bring a reasonable small surplus of ballot papers to cater for homebound voters who accidentally spoil their ballot and require a replacement. The surplus needs to be strictly accounted for.
- The CEC should take further steps to raise awareness of the correct voting procedures and liability for offences.
- To bring the provision for invalidation of vote in an election precinct in line with international standards, the result of the vote should only be subject to invalidation where the level of fraud or malpractice was such that the will of voters cannot be determined. Invalidation should not be tied to an arbitrary percentage of abuse but based on objective criteria and clear procedures that need to be spelled out in the election laws.
- Existing international observer recommendations to simplify the format of the PEC results protocol and procedures for ballot reconciliation should be considered when amending the election laws. If corrections of figures in results protocols are required, only those figures must be subject to correction, rather than the entire protocol.
- The CEC should continue efforts to train the election commissioners on election day procedures, including vote counting and completion of the precinct results protocol.
- The CEC should take measures to ensure that DEC has adequate premises and that the intake and tabulation of PEC results is sufficiently transparent for all present, including official observers. Establishing an effective queue management system and use of a projector to display the results could be considered as measures to enhance the transparency of the DEC vote tabulation.

### **Accessibility and Inclusion**

- To improve access to the electoral process for persons with disabilities and bring it closer to meeting international standards, the Rada should prioritize the adoption of Draft Law No 5559 drafted in consultation with disabled persons' organizations (DPOs) and pass it into law before the next local elections.
- The CEC, in consultation with DPOs, should explore possibilities for enhancing accessibility and inclusion of the electoral process within its existing mandate.

### **National Minorities**

- The legal provisions that require the CEC to consider the interests of national minorities and

prohibits the splitting of areas where national minorities reside compactly when drawing constituency boundaries should be applied to all elections including local elections.

- The CEC should consider actions to ensure that election material and information on elections, parties, candidates and key election procedures are made available to national minorities in their preferred language.
- To improve the general legal framework for protection of political participation rights of national minorities, the 1992 Law on National Minorities should be substantially reviewed to comply with international standards and best practice in this field.
- Consideration could be given to removing the legal and constitutional barriers for national minority political participation, including lifting the ban on establishment of national minority parties and lowering the electoral threshold for such parties, in line with European practice.

### **Domestic and International Observers**

- Political parties and candidate should refrain from registering their members and supporters as independent citizen election observers through public associations whereby they discredit the institution of domestic non-partisan election observation.
- In order to strengthen the institution of domestic non-partisan election observation, it should be considered to require that civil society organizations (CSOs) that apply for observer accreditation have been a registered as CSO at least one year preceding the election. It could be considered to also require that CSOs that apply for observer accreditation in nationwide elections must be signatory to the Global Principles for Non-Partisan Election Observation and Monitoring by Citizen Organizations and/or be member of the Global Network of Domestic Election Monitors. Exceptions to this rule should be granted only to domestic NGOs with a documented record of protecting the rights of specific groups of citizens (such as political rights of women, people with disabilities, prisoners' etc.).
- Members of multi-lateral election observation missions of international organizations, of which Ukraine is a member, should be exempt from the current ban on election observation by persons of a certain nationality if they act under the code of conduct of such organizations.
- The procedure for accrediting CSOs and registration of their members as observers needs to be reviewed to enable CSO observation from the beginning of the election process, including at national level. Consideration could be given to entitling NGOs with a proven record of observing elections to accredit observers with the CEC on equal terms with official observers from foreign states and international organizations.







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