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Introduction

This report is a summary of the lessons learned process that took place after the 2019 Presidential Election and Early Parliamentary Elections. The summary is intended to provide an overview of key recommendations following these two important electoral events. It should be read in conjunction with the international and national election observer statements and final reports on the 2019 elections.

Background and Results of the 2019 Elections

Following Euromaidan in 2014, 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 elections was marked by widespread loss of public trust in the Verkhovna Rada and failed attempts to fundamentally change the electoral system and laws governing the elections. The failure to deliver on reforms, combat corruption and end the armed conflict in Ukraine’s east gave rise to widespread dissatisfaction with the old political elites and patted the way for new forces in Ukraine’s political landscape.

The 2019 presidential election held over two rounds on March 31 and April 21 and resulted in a large margin victory to President Volodymyr Zelenskyy (Servant of the People) over his opponent, incumbent President Petro Poroshenko (independent, backed by Bloc Petro Poroshenko/European Solidarity). It marked a peaceful transition of power and sent an important signal to the surrounding world about Ukraine’s commitment to continue its democratic path towards Euro-Atlantic integration.

On May 20, in his inauguration address, President Zelenskyy announced intentions to dissolve the Verkhovna Rada of Ukraine ahead of terms (the regular parliamentary elections would have initially been scheduled for October 2019). A few days later, early parliamentary elections were scheduled for July 21. Election preparations commenced immediately, but only on June 20 did the Constitutional Court rule the presidential decree scheduling the elections to be compliant with the Constitution of Ukraine.

Parliamentary elections were held in 199 single-member election constituencies (SMCs) across the country and between 22 party lists competing for the 225 seats in the nationwide constituency for the 450-member Parliament. Elections could not be held in 26 single member constituencies located in non-government-controlled areas (NGCA) of Donetsk and Luhansk oblasts and in Crimea. The Central Election Commission (CEC) announced the results proportional vote on August 3 and the winners of the plurality races in 198 of the 199 constituencies later in August. The CEC declared the winner of the last remaining constituency on November 11, thereby concluding the 2019 parliamentary elections.

On September 29, the Verkhovna Rada’s ninth convocation was sworn in: Servant of the People 254 seats, Opposition Platform – For Life – 43, Batkivshchyna – 26, European Solidarity – 25 and Holos – 20; further 6 political parties gained 10 seats and self-nominated candidates – 46 seats. The seat in
single member constituency no. 198 was left vacant until the new CEC had conducted a court-ordered recount; the result of the vote in this district was announced only on November 5. The election results gave the ruling Servant of the People faction a comfortable majority in Parliament, with enough member votes to pass legislation on its own (226 votes required), but short of the constitutional majority (300 votes required). Some 77 percent of the new Rada had no previous parliamentary experience including all MPs of the now ruling Servant of the People and, with a few exceptions, Holos.

**Observers’ Overall Assessment of the Elections**

Observers from a diverse range of international\(^1\) and domestic\(^2\) monitoring organizations noted instances of manipulation and fraud, largely during the campaign period, in both the presidential and parliamentary elections. Contestants took advantage of loopholes in the legal framework, misused state resources, and some systematically failed to comply with political finance regulations; however, all observers stated that election day was administered in a generally professional and smooth manner across the country and that the efforts of the election administration represented a democratic achievement for all involved. Some went so far as to describe Ukraine as an electoral model for the region.

Observers generally noted that fundamental freedoms were respected throughout the process and commended the police for its effective role in maintaining and protecting public order on election day. Missions with long-term observers based in the field gave positive feedback after monitoring the high-quality wide-scale training of the election commissioners provided with IFES technical assistance. Still, the effect of these training was diminished by last minute replacements of election commissioners.

Key areas of concern noted by observers included:

- the centralized nature of the election administration and the perceived lack of transparency of the CEC;
- the cumbersome procedures for changing the place of voting temporarily;
- registration of “clone” candidates and misappropriation of the name of well-known parties;
- frivolous civil society organizations (CSOs) accredited to observe elections;
- inconsistent enforcement of the five-year residence requirement for candidacy;
- the lack of effective, proportionate and dissuasive sanctions for election-related offences and short time for consideration of certain types of complaints;
- negative campaigning and the use of hate speech;
- abuse of administrative resources and biased media coverage of the campaign;

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\(^1\) The ODIHR EOM issues interim reports and – jointly with the Council of Europe Parliamentary Assembly, OSCE Parliamentary Assembly, NATO Parliamentary Assembly and European Parliament – preliminary statements; CANADEM issued preliminary statements; ENEMO issued interim reports, preliminary statements and final reports; UWC issued preliminary statements and final reports. A link to the reports is [here](#) (presidential election) and [here](#) (parliamentary elections). The ODIHR EOM final reports with conclusions and recommendations from the March 31 presidential and the July 21 parliamentary elections issued concurrently on November 20, 2019, can be accessed [here](#).

\(^2\) Civil Network OPORA regularly published interim reports, analyses and issued preliminary statements after each election day. OPORA’s final report was released on December 2. Committee of Voters of Ukraine issued interim reports, post-election day statements and a final report. A link to the reports is [here](#).
• the lack of campaign finance transparency and the alleged huge role of oligarchs and shadow funding in the campaign and media; and, finally,
• the absence of effective and enforceable measures towards better representation of women and national minorities in elected office, including in parliament.

When it comes to protection of fundamental rights, some observers noted that Ukraine could be more inclusive elections by removing existing legal and practical barriers for election participation of internally displaced and internally mobile groups of voters such as economic migrants and by making the elections more accessible for persons with disabilities including by not outright denying suffrage rights to persons with psychosocial disabilities under guardianship.

**Legal Framework and Electoral Systems**


The CEC supplements the legal framework by adopting resolutions to specify certain provisions of the election laws. Other oversight bodies such as the National Agency for Prevention of Corruption (NAPC) has similar functions in the area of party finance.

The electoral legal framework overall remains fragmented and comprises laws adopted at different times that often contradict each other. ODIHR and the Venice Commission have repeatedly recommended to harmonize the electoral legal framework through the adoption of a consolidated Election Code governing all types of elections.

The Election Code was adopted by the outgoing Parliament on July 11, 2019. It would have entered legal force only in December 2023, i.e. after the next regular parliamentary elections to be held in October 2023 and after the 2020 local elections which would be held throughout Ukraine. Due to a number of serious flaws, the new Code was vetoed by President Zelenskyy and forwarded to the Verkhovna Rada for reconsideration. It is expected that the Code, if adopted by the new Rada and signed by President, would replace most of the laws governing nationwide and local elections, voter registration and status of the Central Election Commission.

The revision of the Election Code vetoed by the new President should address all pending domestic and international recommendations, including by ODIHR and the Venice Commission and be completed well in advance of the election event(s) in which it will be applied. It should ideally enter into force in time to govern the next local elections currently schedule for 2020 and replace the flawed 2015 Local Election Law.

The Verkhovna Rada should phase out the first-past-the-post 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 systems.
Election Constituencies

For presidential elections, there is one single nationwide constituency covering the entire territory of Ukraine and out-of-country election precincts for the out of country vote. The nationwide constituency (except for out-of-country election precincts) is divided into 225 territorial election constituencies serving the basis for operations of the district election commissions. Parliamentary elections envisage one single nationwide constituency for the closed-list proportional component of the parallel system and 225 single member constituencies (SMCs) for the plurality (majoritarian) component of the system. Only voters with a permanent electoral address in the respective SMC receive a majoritarian ballot in addition to the proportional ballot. Out of country voters, as well as all those who on Election Day cannot vote at the polling stations to which they are assigned in accordance with their voter addresses are only entitled to the proportional ballot.

The boundaries of SMCs in the parliamentary elections are subject to review, but the law does stipulate the periodicity of the review, nor are the criteria for the review mandatory. The CEC acts as boundary review commission; the last review was carried out in 2012. Election constituency boundaries should respect administrative boundaries of regions (oblasts) and be approximately equal in size based on the number of voters with an electoral address within the constituency. Deviations from the average number of voters per constituency should not exceed 12 percent. The law recommends the CEC to consider the interests of local communities and sub-regional administrative boundaries when delineating constituency boundaries, but there is only one mandatory requirement: delimitation must not divide national minorities in areas where they reside compactly.

**Boundaries of subnational constituencies for parliamentary and presidential elections should be determined by legally defined mandatory criteria and be subject to periodic review. The criteria should be set in line with international good practice, based on voter or population data. The CEC could after each election event involving sub-national constituencies check constituency boundaries for compliance with the principle of equality of the vote and publish a constituency analysis as part of its post-election report. This would indicate if a boundary review is required before the next election.**

The Central Election Commission (CEC)

According to most election observers, during both elections the CEC operated in a professional and collegial manner, generally meeting all legal deadlines. While CEC operations were assessed as transparent in general, observers criticized the practice of holding preliminary meetings behind closed doors. The CEC did not initiate public consultations to discuss key draft resolutions with election stakeholders. During the presidential election, the CEC rejected requests for sharing data on campaign expenses of presidential candidates deeming such data covered by banking secret rules despite it is subject to publication at a later stage. Enhancing the transparency of the CEC and its interaction with the public is crucial for building public trust and strengthening the credibility and accountability of the institution. Targeted communication strategy for different stakeholder audiences and countering fake news is essential.

**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. The CEC should satisfy requests for information that is public. The CEC must have a clear communication strategy**
including in social and online media, for different audiences and plan and implement a voter information campaign for each election.

The comprised timeline for the elections appeared incompatible with the timelines for procurement of goods and services established by the Public Procurement Law. After failed attempts to pass amendments to the Public Procurement Law, the Ministry of Economy stepped in with a temporary solution to bypass tender procedures. Several legal procedures were initiated against election commissioners for violating procurement rules.

The Public Procurement Law should envisage a simplified, effective, transparent and cost-optimal procurement procedure for CEC and lower-level election commissions during election periods.

The Law on CEC foresees the possibility for CEC Secretariat to have regional branches. This would potentially ease CEC administrative operations during the entire electoral cycle and take off a work burden of individual CEC members which challenges the principle of collegiality in the CEC work. Training coordination and certification of future election commission members could be another task for where it would be feasible for the CEC and its training center to have permanent staff in the regions.

The District and Precinct Election Commissions (DECs and PECs)

Members of DECs and PECs are politically appointed by contestants. For parliamentary elections the ceiling for commission membership is 18 members, for presidential elections there is no ceiling. In case of a second round of voting in a presidential election, election commissions are formed anew within short deadlines, which often cause delays in their formation and can even make it impossible to hold the second round by the legally established deadline. Run-off DECs comprise 14 members and PECs between 12 and 16 members. The formula for parliamentary election operates with reserved membership for parliamentary parties supplemented by appointees of all contestants, including parliamentary parties. This gives parliamentary parties a possibility to have up to two nominees in the same commission.

Due to a record high number of candidates and the absence of a membership ceiling and a record high number of presidential candidates, DECs for the presidential election on average included 37 members, ranging from 29 to 41 members. PECs, in turn, comprised on average 14 members. Such large membership did not contribute to effective performance, unnecessarily complicated administrative operations and at times resulted in crowding and reduced transparency of processes, especially at DEC level. In the presidential election, the timeframes for establishing the DECs and PECs for presidential run-offs are narrow and negatively impact the election administration performance.

The electoral legal framework should set a maximum membership of election commissions that equals the number of hands required to perform the tasks. Parties should, as a rule, only be entitled to nominate one member per commission in parliamentary elections. The complete re-appointment of election commissioners shortly before a potential second round should be reconsidered.

The nomination procedure for DEC membership in the early parliamentary elections effectively excluded new parties, including the Servant of the People and Holos. Analysis conducted by OPORA, however, suggests that these parties were, in fact, represented informally. This suspected trading of positions effectively undermines the principle of independent, politically composed DECs and creates
a 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. A related problem is the registration in presidential elections of “technical candidates”, who in fact are linked with the leading candidates, with the purpose thereby to boost their representation on election commissions.

Before both elections, the CEC, with IFES’ technical assistance and through the CEC Training Center, organized wide-scale trainings for DEC and PEC members across Ukraine to enable them to effectively exercise their duties and make them aware of key procedures. However, candidates and political parties are free to replace election commissioners appointed by them at any time, including before, during and after election day. This has criticized by the OSCE/ODIHR, and the Venice Commission. At DEC level, 39 percent members were replaced in the presidential election and 46 percent in the early parliamentary elections. Such large-scale replacements rendered training provided to DEC and PEC members less effective. Some members resigned immediately after their appointment claiming to be unaware that they had been nominated by a party or candidate for commission membership.

The electoral legal framework should significantly restrict the role of “technical candidates” and “technical parties” in proposing nominees to DECs and PECs and curb the trading of DEC positions and informal payments of commissioners. Nomination of commission members without their consent or through forgery of nomination documents should be subject to sanctions against the nominating entity. The law should exclude the possibility of appointing untrained DEC and PEC commissioners and provide for their mandatory certification by the CEC Training Center before their appointment.

In 2019 elections, women were largely well represented at DEC and PEC level, including in executive positions. Transparency of DEC and PEC operations remains an issue. Many DECs opt not to transmit the legally required data (such as copies of the decisions made by the DECs) for central publication on the CEC website.

Electoral legal framework should provide for measures aimed at ensuring that all DEC decisions are available on the CEC website in a timely manner. The CEC should ensure that DECs are sufficiently resourced to accomplish this task.

**Voter registration**

Domestic and international election observers did not note serious issues related to the quality of the voter lists and the overall voter registration process.

A problem remains for newly married women who have recently changed their surname. Often, local self-governance and state bodies fail to transmit these and other data on changes to the SRV and other state registers in a timely manner. For instance, information about citizens turning 18 years is not always transmitted to the SRV automatically. Currently, the SRV lacks a legal right to access citizen’s civil status acts/certificates for verification purposes.

Local self-government bodies and territorial communities should be sufficiently resourced to ensure timely transmission of data on citizens’ place of residence to the SRV. The State Migration Service should be legally mandated to ensure automatic transfer of data on eligible citizens who turn 18 years old to the SRV. Sanctions for failure of local self-government and state bodies to transfer voter information to SRV should be set and systematically enforced. SRV should have a legal right to access
citizens’ civil status acts. Voters can access the SRV and check voter list data online but cannot apply for corrections or challenge incorrect registrations online. Voters such as internally displaced persons (IDPs), economic migrants and others, may 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 current place of residence but will in case of parliamentary elections result in the loss of the right to vote for a majoritarian candidate. The procedure does not exist for local elections and thus disenfranchise citizens living in displacement from the conflict in Ukraine’s East and Crimea or the large community of economic migrants internally in the country. The right to temporarily change place of voting does not exist for the growing number of citizens who are not registered with an election address (2019, some 900,000). This is often a problem for citizens who left the temporarily occupied territories before they turned 18 years.

If future parliamentary elections will be conducted in sub-national election districts, the current system if not changed may disenfranchise all IDPs and out-of-country voters unless measures are introduced that will allow them to change their electoral or voting address and vote at current place of stay. A problem also exists for military service men on duty on election day away from their place of residence registration, including near the contact line in Ukraine’s east.

In the April 21 presidential run-offs, 325,604 voters temporarily changed their place of voting against 280,922 voters in the July 21 parliamentary elections, despite the CEC lifted the requirement for voters to present documentation to motivate their application for these elections. The requirement for voters to undergo registration anew for the second-round drew criticism. ODIHR stated that this “...represents an unnecessary burden, especially for IDPs, voters abroad, and persons with disabilities.” Long queues of voters wishing to change their place of voting formed outside register management bodies (RMBs), especially in the presidential election, and may have discouraged eligible voters from applying. The procedure was cumbersome for young first-time voters in displacement and others without an assigned electoral address, who were routinely turned away or redirected to the courts for assignment of an official address. Many citizens are barred from changing official registration to their actual place of residence, due to the permission-based residency registration system in place in Ukraine since Soviet times.

It should strongly be considered to initiate reform the permission-based system for residency registration and/or liberalize the access to register to vote at place of current stay and thereby become member of a local community.

The CEC in cooperation with CSOs and international partners ran voter education campaigns with public service announcements in broadcast/online media and posters (including in accessible formats), but observers called for more visible and largescale initiatives. There is a particular need to accompany all change of registration rules with effective and widespread information campaigns.

The deadline for entering last minute changes into final voters list on the eve of an election based on court decisions differs for presidential (cut-off is prior to e-day) and parliamentary elections (possible on e-day). This may potentially have disenfranchised eligible voters.

Legal barriers that currently disenfranchise internally displaced persons and groups of internally mobile citizens from fully exercising their right to vote, including in local elections, should be removed as proposed in draft law No. 6240 registered in the previous Parliament. This draft needs to be re-registered in the new Rada or its provisions should be incorporated into the legal framework governing
elections. The right to temporarily change place of voting should be extended to the considerable number of citizens who are not registered with an election address. All measures to prevent disenfranchisement of IDPs, out-of-country voters and military servicemen on duty, such as absentee voting or the establishment of special precincts should be considered in case the electoral system for parliamentary elections is fundamentally changed.

Voters should be allowed to use online platforms to register as voters, to change their registration data, and to submit requests for temporary change of voting place. Homebound voters should have access to file such requests without physically visiting an RMB. CEC should be better resourced to run comprehensive voter information campaigns, including in accessible formats for persons with disabilities and with messages targeting IDP and mobile groups of citizens. The different cut-off times for entering last minute changes to final voter lists based on a decision of court should be harmonized for all elections and be as inclusive as possible without challenging the integrity of the election.

**Candidate Registration**

The right to stand for president is granted to any voter who has reached 35 years of age, have resided in Ukraine for the last 10 years, and have command of the state language. Parliamentary candidates must be 21 years of age and have resided in Ukraine for the last 5 years. The Law on Political Parties stipulates that a 30 per cent quota requirement for either gender on electoral lists be written into party statutes; however, there is no enforcement mechanism. For the parliamentary elections, 13 of 22 parties complied with the requirement. Only 16 per cent of SMC candidates were women.

The prospective presidential candidate must pay an electoral deposit of UAH 2.5 million (USD 100,000). The size of the deposit was criticized by international observers for being excessive. A high deposit could have a disproportionate negative effect on people with moderate financial means people from historically excluded or under-represented groups such as women, minorities, and other identities. Of the 44 initially registered presidential candidates, only four were women.

The right to stand is denied to individuals with a non-expunged criminal record for an intentional crime, regardless of its severity and those not resident in the country for the five years prior to election day. Both restrictions have been criticized by the Venice Commission and ODIHR for being at odds with OSCE commitments and other international obligations. Venice Commission’s Code of Good Practice in Electoral Matters also does not recommend any residency requirements for the national elections. Applying these legal criteria for candidacy in a consistent manner further proved difficult to administer during the parliamentary elections, as there exists no clear guidelines for the calculation and verification of the 5-year term. The flaws in the legal framework affected the consistency in CEC’s decision-making on candidate registration and led to numerous court cases.

Civil Network OPORA noted that 128 nominees for parliamentary candidate were rejected by the CEC. The most common grounds for refusing candidacy included violation of the five-year term of residence in Ukraine, 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 legal framework currently allows CEC to take a rather formalistic approach and regard missing information in a registration document as “a missing document” and refuse registration only if, say, a name is misspelled.
In the parliamentary elections, the CEC overall had to decide on more than 6,300 registration requests within five days, with most documents submitted three days prior to the deadline. The lack of guidance for the CEC to process such huge number of documents risked arbitrary decisions and overreliance on candidates submitting correct information. The deadline for conducting the lottery for the ballot order of party lists in one case expired before a court on appeal ordered the CEC to register the party list.

The constitutional provision that the right to stand for elections is denied to individuals with a non-expunged criminal record should be more narrowly defined to apply only to specified crimes so serious that forfeiture of suffrage rights satisfies the principle of proportionality. The residency requirements for standing in parliamentary and presidential elections should be lifted, alternatively further clarified to ensure uniform enforcement. Relevant state institutions should be legally mandated to pass information about a candidate’s presence in Ukraine to the CEC within clear deadlines.

The overall deadline for registration should envisage enough time to allow contestants to correct minor mistakes in their registration documents and CEC could explore further steps to clarify registration procedures to parties and candidates. Online application and registration of all parliamentary candidates should be considered. The presidential candidate deposit should be lowered to match the general economic situation in the country. The deposit should fully or partially reimbursable also to those unsuccessful candidates who receive a certain percentage of the votes cast.

The phenomenon of “clone” candidates and entities with similar/identical name as another, more prominent candidate or party was widespread and may have deceived/confused voters and diverted votes intended for other parliamentary contestants. CEC took regulatory efforts to demand that candidates declared if they had changed their name, and by July 21 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. In some races, the “clones” dispersed the vote for the leading candidate or candidates to the extent that some may have been deprived of their victory.3

The CEC should be legally mandated to take measures to limit the negative effects of “clone” candidates and parties and provide guidance to voters.

Campaign

The election laws generally provide for a level playing field during the election campaign. International observers reported that the contestants were able to freely convey their messages to the electorate. They found that the campaign was diverse and competitive and fundamental freedoms of expression, association and assembly were respected, but also noted violations: contestants in both elections began their visual campaign early, in some cases, even before the start of the election process itself; campaign silence provisions were not respected or circumvented by contestants replacing billboards with improper information or openly campaigned on digital platforms; illegal campaign materials (improperly branded and lacking information on origin and source of funding).

Abuse of state resources was reported by domestic observers, but at lower scale than in previous parliamentary elections: key officeholders used public events to praise their achievements and

3OPORA found that “clones” impacted results in SMCs Nos 37, 64, 78, 119, 146, 198, and 210. See OPORA Findings (01.07.2019) and Did the clone candidate scheme work? (25.07.2019).
highlight priorities associated with the slogans of their parties; MP candidates engaging subordinate staff/public officials to distribute campaign materials in the premises of state/local self-governance bodies.

As seen in other elections in Ukraine, majoritarian contests were subject to significantly more fraud than the nationwide race. Observers noted widespread vote buying schemes: offering charity work, free food or pharmacy packages, lottery tickets and awards, concerts, daily trips, meals, as well as cash. The police launched over 125 investigations into vote buying and initiated 100 investigations into hooliganism during parliamentary elections. In the presidential election the Police received 3,000 complaints and launched 90 criminal investigations. Candidates and parties should be allowed to legally contract and engage (a limited number of) campaign activists without this being considered vote-buying.

The legal framework 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. Consideration should be given to allow prospective candidates to open a campaign fund and start campaigning early in the electoral process if income and expenses are declared. State bodies should issue clear instructions to public officials and other employees setting standards for their behavior during the election process. To maintain the impartiality nature of public service, public officials should be legally banned from engaging in and attending campaign activities during official working hours. There should be effective, proportionate, and dissuasive sanctions for failure to comply with campaign provisions, including online. All alleged cases of campaign violations including vote buying should be properly investigated, and perpetrators held accountable.

Media

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 media landscape is diverse, and voters generally have a possibility to obtain all necessary information about contestants’ campaign platforms. However, media lacks autonomy from political and financial interests. Five major private media groups owned by influential oligarchs jointly control an audience share of 70 percent of the viewers. These media exclusively serve the economic and political interest of their owners. The media regulatory authority, National Broadcasting Council, conducted media monitoring during the campaign and the results confirmed that media reporting was polarized and biased.

The Public Broadcasting Company of Ukraine (PBC) remains severely underfunded, which 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 PBC’s has quality programs, its viewership is limited. It ran a special political television shows but did not provide enough coverage of the election in its news programs: it failed to fulfill its public broadcasting role as a counterbalance to biased private media reporting. The strengthening of the public broadcaster would potentially also serve the purpose of countering the spreading of fake news and disinformation.
To prevent further concentration of media 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 internal standards for their election coverage. The 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. Media irregularities included incorrectly marked and hidden political advertising (jeansa), inadequately marked public opinion polls, campaign materials during news and current affairs programs, and biased reporting. Both National Broadcasting Council and Ministry of Justice as joint regulators of audiovisual media chose not to exercise their powers to effectively respond to media violations during the election period. The overall system of sanctions for media violations remains weak and sanctions are not considered proportionate, effective and dissuasive.

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. Pending cases should be effectively investigated and perpetrators brought to justice. According to NDI, 43 percent of journalists surveyed by the Center for Human Rights Information reported receiving threats connected with their work.

The election laws should clearly define ‘hidden political advertising’ (jeansa). The Rada should strengthen the independence of the National Council on Television and Radio Broadcasting to become an effective media regulatory body, by expanding its oversight mandate and introduce effective, proportionate and dissuasive sanctions for media violations.

Internet and Social Media

Campaigning on the internet, social networks and messaging applications is not properly regulated in the current electoral legal framework. This paved the way for actors to violate election campaign provisions, for widespread disinformation and shadow funding of their campaign. 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). 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.” 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 parliamentary 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. Observers reported that contestants were actively campaigning on social platforms during the silence period.

In view of the increasing use of new technologies in public life and in the elections, the Parliament should carefully consider how to regulate and enforce rules for election campaigning online, through social media networks and via messaging applications. Political parties and candidates should make
use of public pages rather than private profiles for campaigning purposes and place advertising on their own accounts rather on accounts owned by a third party.

**Campaign finance**

The 2019 elections were the first national elections held according to the new campaign finance rules introduced by the 2015 Political Finance Reform Law. IFES issued detailed reports after both the presidential and the parliamentary elections. The CEC and the NAPC jointly oversee compliance of donations made to election funds of presidential candidates; the CEC and DECs collect and publish interim and final financial reports and analyze them to identify compliance with legal requirements.

The CEC adopted or updated several important procedures on how to exercise campaign finance oversight and the corresponding templates such as the financial reporting template. Electoral contestants received, however, only a narrow timeslot to familiarize with the new requirements and to adapt to changes. The procedure unfortunately allowed the CEC and NAPC to employ a rather narrow approach towards campaign finance oversight, assuming responsibility only for checking transactions on a candidate’s bank account, rather than looking at the entire picture of income and campaign expenditures such as in-kind and cash donations, and third-party funding of the campaign.

The CEC and NAPC should improve the quality of its analysis of contestants’ financial reports by also focusing on major violations such as shadow funding and unreported expenses that may undermine the integrity of the elections, such as tampering with donation limits and non-disclosing of incurred expenses. Procedures for applying sanctions for campaign finance violations during election period should be simplified. The CEC and DECs should have the right to draw administrative protocols, bottlenecks in proceedings for administrative offences should be removed and the capacity of the police to investigate violations of campaign finance rules should be further developed.

Better oversight could be achieved if the CEC adopted a separate procedure for analyzing campaign finance reports and ensured proper training of the staff in charge of campaign finance oversight/report analysis and identification of campaign finance violations. Transparency of campaign finance would increase if information from the candidates’ bank accounts was released prior to the official publication of financial reports, and most effectively through a mandatory electronic reporting system for political parties and candidates in elections.

The IFES report on campaign finance for parliamentary elections focused on the need to close legislative gaps and improve regulations in this field, and, as a general point, recommended the Rada to address the outstanding recommendations proposed by the GRECO, the Venice Commission and the OSCE/ODIHR.\(^4\)

Campaign donations had to be made in person in a bank. IFES considers donations should be allowed through online banking or similar instruments given that proper identification of the donor is ensured. Other recommendations for improving campaign finances during parliamentary elections include:

*The Parliament should consider improving the legal regulation of payments that currently bypass election funds to bring them under effective state control. The law should also explicitly regulate if and

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how campaign activities can be financed by third parties and through in-kind donations and NAPC develop a methodology for valuation of in-kind donations. The amount candidates may contribute to their own election funds should be brought in line with the general donation limits applicable to parties as this loophole effectively undermines the ceiling on donations and unduly favors more affluent candidates.

Often contestants began campaigning early, before they establish a campaign fund. Consideration should be given to allowing electoral contestants to raise and spend money for campaign purposes before the official start of the election period, provided they are properly reflected in financial reports. The law should provide for an electronic reporting system for parties and candidates both during and outside an election period that is integrated with all necessary registers and databases.

In both elections spending on broadcast/television ads and, to a lesser degree, outdoor ads accounted for the lion’s share of candidates’ reported campaign expenses. Expenses on social media advertising did not feature prominently in the financial reports and there were clear indications that such expenses were generally underreported.

To create a more level playing field, the Rada should consider the possibility to impose restrictions on costly types of campaigning, such as paid advertisements in broadcast media during an election. The Parliament should adequately regulate the use of social networks and other online campaign tools in the legislation.

**Election Dispute Resolution**

Most types of election disputes can be filed with an election commission and/or with a court at the discretion of the complainant. Overlapping jurisdictions have been criticized by the Venice Commission and ODIHR, who jointly recommend removing it from the legal framework. However, the practice of courts to inform election commissions about ongoing cases now seems to have mitigated the problems. A complaint/lawsuit must be filed within five days of the violation (except for lawsuits against inaccuracies on the voter lists and against violations on election day), and in nearly all cases, the election commission or court are required to provide a decision within two days. The two-day deadline for resolving disputes is narrow and may cause difficulties if the allegation is complex and/or requires investigation.

The CEC received more than 130 complaints in the first round and 43 in the second round, most of which were rejected by private letter from an individual CEC commissioner (rather than by the entire commission) for technical reasons (i.e. failure to meet the formal requirements to a complaint). The practice of rejecting complaints on technical grounds has been criticized by ODIHR for years as it denies the complainant an effective remedy against administrative action, contrary to OSCE commitments.

The timelines for filing and resolving complaints and appeals should be reviewed to allow courts enough time to resolve complex cases without derailing the electoral calendar. Failure of a complaint to comply with technical requirements should not automatically be reason for its rejection if it contains the data necessary for identifying, verifying and investigating the alleged violation. To protect the electoral rights of voters, the CEC and the Supreme Court could consider adopting a recommended (i.e. non-binding) template for complaints/lawsuits and instructions on how to complete them. The CEC
should introduce a complaint management system and regularly release statistics on election dispute resolution.

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 is formally prohibited but punished only by the issuance of a warning. Many administrative fines and criminal penalties for campaign violations are too modest to ensure effective enforcement.

In relation to the 2019 presidential election, the police received more than 3,000 complaints and launched 90 criminal investigations. Before the first round, 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/violations.

The Rada should consider re-registering Draft Law No 8270 aimed at strengthening the system of sanctions for election-related offenses and adopting it. The National Police should continue efforts aimed at strengthening the professionalism of police in the sphere of elections. The Prosecutor General’s Office should consider conducting 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. All election related criminal cases should be diligently investigated and the results of the investigations made public.

Voting, vote counting and vote tabulation

Both the first and second round presidential election days were well administered and conducted without major violations. OPORA and international EOMs noted isolated incidents, including voters allowed to vote without presenting proper ID, voters taking photos of their marked ballots (potentially indicating vote buying schemes), and a few instances of PECs beginning opening procedures prior to 7:15am or not allowing observer presence at their opening session. Parliamentary election day commenced as peacefully as the presidential election days. Reports on photo taking of ballots were notably less, indicating that countermeasures to inform the public about this illicit practice had paid off. The isolated instances of electoral violations did not become a critical obstacle for citizens in exercising their voting rights.

The secrecy of vote became an issue in the presidential run-offs where the ballot was small, since voters were not formally instructed or encouraged to fold them before casting them into the transparent ballot boxes. Only voters voting in polling stations are entitled to a replacement if they spoil their ballot paper, voters voting at their place of stay (homebound) are not. The division of tasks among polling station officials do not foresee a queue controller; police offices in some cases were observed performing this task but it rightly belongs to the duty of precinct election commission (PEC).

The electoral legal framework should mandate the CEC to issue instructions that require ballot issuing officers to pre-fold ballot papers and voters to fold their marked ballots before leaving the booth to ensure the secrecy of the vote. These measures should be accompanied by a comprehensive voter information campaign. The law should entitle election commissioners performing homebound voting to bring a reasonable surplus of ballot papers to cater for homebound voters who accidentally spoil
The tasks to be divided among PEC members on election day should include one queue controller.

The election laws permit the PEC to invalidate the result of the vote in the precinct only if the level of fraud (e.g. ballot stuffing) is above a 5 percent threshold. Such ‘fraud threshold’ has repeatedly been criticized by the Venice Commission and ODIHR for being inconsistent with international standards. Isolated cases of ballot stuffing were recorded in the elections. In all instances, the stuffed ballots were intercepted and invalidated. PECs, however, faced difficulties in recording the intercepted ballots in the PEC protocol – either as ‘invalid’ or as ‘such that are not to be considered’.

The 5 percent fraud tolerance threshold should be removed and replaced by a legal provision that requires the PEC to invalidate the vote result if the violation affects the election outcome in that precinct and the genuine will of the voters cannot be reliably determined. The criteria for invalidating the vote in the precinct should be listed in the law. A PEC that intercepts stuffed ballots during the vote count should be clearly instructed on how to record them in the PEC protocol.

In both elections, the tabulation at the DEC and the establishment of the election results by the CEC were properly managed by the respective election commissions, according to most election observation missions. Overcrowding triggered by large commission membership and huge number of candidate/party observers combined with inadequate premises reduced transparency and created tension during the intake of PEC protocols. The current provisions requiring the PEC to issue a corrected result protocol in case of discrepancies opened a potential for arbitrary vote recounts and unauthorized corrections in the protocols.

The CEC should take measures to ensure that DECs have adequate premises and that the tabulation of PEC results is sufficiently transparent for all present, including official observers. Establishing an effective queue management system for the intake and projecting the tabulation result on a display screen would serve such purposes. During tabulation, only those figures that serve as the grounds for correction must be subject to correction, rather than the entire protocol. Existing ODIHR recommendations to simplify the PEC results protocol should also be considered. Electronic check of results protocol data at PS level could be considered in order to ease ballot reconciliation and minimize the number of “corrected” PEC results protocols.

### Accessibility and inclusion

Accessibility of elections in Ukraine remains a significant issue. Several aspects of the electoral process beginning with party nomination conferences, campaign and voter education material and ending with voting procedures and results publication are still not sufficiently accessible for persons with disabilities.

Disabled persons organizations (DPOs) have carried out assessments of the legal and administrative framework for elections for its compliance with Ukraine’s international obligations as signatory to the Convention on the Rights of Persons with Disabilities (CRPD). Among the key findings are: local authorities are not obliged to allocate premises to PECs and DECs on ground floors and adapted to the needs of voters with disabilities and other groups of low mobility; the CEC website is not adapted to the needs of voters with disabilities; a provision for tactile ballot guides (Braille) only exists in the parliamentary election law (though rarely implemented), not in the presidential election law; no provision allows a commissioner with disabilities to bring an assistant to commission meetings without
prior consent etc. One of the approaches that negatively affect thousands of Ukrainians is the automaticity in assigning the status of ‘not able to move independently’ to all persons with disabilities which de facto force them to vote at home contrary to international standards, the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and best practice.

The Constitution does not allow citizens who have been deemed “incapable” by a court to vote or run for office, which is not in line with the CPRD which states that all persons, regardless of type of disability, deserve equal political rights. Several countries have lifted the restrictions and extended suffrage to persons with psychosocial disabilities who are under certain forms of guardianship. Ukraine could take similar steps.

The result of the work of DPOs was the tabling of a bill to the old Parliament – draft law No. 5559 – which contains concrete recommendations for improving the legal and regulatory framework.

The Rada needs to prioritize the provisions as laid out bill No. 5559 and incorporate them into law, following consultations with disabled persons organizations (DPOs). The CEC, in consultation with DPOs, should explore possibilities within its existing mandate to improve access to the electoral process for persons with disabilities to bring it closer to meeting international standards. The CEC could explore the possibility of introducing addition remarks in the State Voter Register indicating the specific needs of persons with disabilities (for instance, for voters who vote by means of a ballot guide). The CEC should mainstream gender reporting in the election administrations.

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. Special measures promoting national minority representation are largely absent from the legal framework.

The 1992 Law on National Minorities should be substantially reviewed to comply with international standards and best practice on protection of national minority rights. Lifting the ban on establishment of national minority parties and lowering the electoral threshold for such parties, in line with European practice, would remove one such barrier in this field.

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 of Ukraine 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 in the parliamentary elections was limited to seven members of the Crimean Tatar minority on the electoral lists of five parties. Despite a legal provision that requires that a territory where a national minority resides compactly must not be divided between several election constituencies for parliamentary elections, this requirement was not respected in Zakarpattia oblast and may have disadvantaged the Hungarian national minority.

The CEC should undertake a constituency boundary review in a consultation with all stakeholders including organizations representing the interests of national minorities. The legal requirement that prohibits dividing areas where national minorities reside compactly between election constituencies
The CEC should take steps to ensure that election material and voter information are made available in the preferred language. National minorities.

**Election observation**

Election observation is internationally recognized as an important institution in democratic elections that can play an important role in promoting transparency and accountability, as well as enhancing public confidence in an electoral process. The legislation provides for national and international election observation of elections in Ukraine. National (domestic) observation can be partisan (from parties, candidates) or non-partisan (if CSOs have election observation-related provisions in their charter), and international observation can be bilateral (from a foreign state) or multilateral (from an international organization). Domestic observers are granted broad rights, including filing complaints and lawsuits against decisions, actions or inactions of election commissions, taking photos and video records, as well as the right to be present at the meetings of election commissions without prior invitation or consent.

CSOs and international organizations register with the CEC for the right to field observers nationwide; CSO members are registered by the DEC, while international observers are registered by the CEC. Hitherto, the only way for CSOs to observe at CEC level from the beginning of an electoral process (before the creation of DECs) is to register for observation in the foreign election district where CEC acts as a DEC.

The CEC and DECs accredited 320,000 national observers (122,000 in the run-offs) and 2,700 international observers for the 31 March presidential election, and 227,000 national observers and 1,719 international observers for the 21 July parliamentary elections. This amount to an average of about 10 observers per polling station in Ukraine. The interest in fielding observers for the 2019 elections broke the record several times. Where in 2010, only 10 domestic CSOs fielded observers nationwide, in 2019 these figures rose to 139 CSOs for the presidential and 163 CSOs for the parliamentary elections. However, not all CSOs fielded observers – e.g. in the presidential election only 82 of the 139 CSOs registered individuals as observers – nor were they in fact non-partisan. OPORA’s analytical report and observers’ qualitative findings revealed that a big number of CSOs had close links to or were sponsored by political parties or candidate which potentially undermines the independent nature of election observation. Media representatives have the right to be present in polling stations, but some journalists were observed to exert partisan behavior.

By amendment to the election laws, international observers from the Russian Federation were banned from election observation, including from multilateral organizations such as the OSCE/ODIHR. This potentially contradicts the 1990 OSCE Copenhagen Document that requires Ukraine to issue invitations to other OSCE participating states. Multilateral observers of Russian nationality would in such case act under the organization’s code of conduct and not represent their country but the sending organization.

International organizations, who are bilateral or non-governmental organizations often experience problems obtaining observer registration because they lack clear legal criteria for their registration. Consideration could be given to legally entitling NGOs with a proven record of observation to accredit observers with the CEC on equal terms with international observers to ensure their ability to observe the entire election process. To decrease the number of CSOs eligible to observe the election, the
election laws could impose additional requirements for CSOs, such as registration at least one year before election. Legal requirements for the registration of official observers could be amended to clarify the criteria for the registration of bilateral or non-governmental international organizations. It could be considered to introduce a centralized formal procedure for accrediting media representatives to be present in polling stations and clearer guidelines for their presence.

Cybersecurity

Ukraine has a history of cyberattacks in elections, mostly in the form of Distributed Denial of Service (DDoS) attacks and attempts to install malicious software. As was the case in the 2014 presidential election, the aim of the identified foreign adversary was to spread false information about the election result and depict Ukraine as an extremist country in internal chaos. Thus, cybersecurity and measures to counter disinformation has become major features in the work, not only of the CEC and the SVR, but also of a range of specialized government institutions.

Despite serious external and internal security concerns ahead of the 2019 election cycle, these threats never materialized in the two elections. The authorities thwarted several attempted cyber-attacks before presidential election day. Installment of new cybersecurity equipment for the CEC and the SVR procured with IFES support, as well as cybersecurity trainings delivered to the CEC secretariat staff and members of district election commissions contributed to preventing any serious external interference in the electronic databases (voter registers and results management system) administered by the CEC.

Around-the-clock monitoring of sensitive processes and information exchange, coordination among institutions and services involved in identifying and countering cyber-attacks as well as internal and external crisis communication in the event of cyber-attacks have been identified as areas in need of improvement. Particularly vulnerable is the election administration which at sub-national currently is created ad-hoc for each election event and may lack basic cyber knowledge.

The CEC should further continue its efforts aimed to ensure an appropriate level of cybersecurity protection of its electronic systems. Policies and guidelines on cybersecure behavior needs to be developed for all levels of the election administration accompanied by monitoring and training efforts. A cross-institutional working group should be created to monitor, exchange and analyze information in order to ensure cybersecurity of the election process. A rapid reaction mechanism and crisis communication plan need to be in place for the event of cyberattacks and mock attacks should be conducted to check the state of preparedness of all stakeholders.

The widespread use of unlicensed software products – even when freeware is available – and blind trust in and uncritical reliance on all information in traditional media and on the Internet are among the challenges for fostering adequate cyber behavior among election stakeholders and in the population.

New voting technologies

Even before the change of government, the issue of digitalizing Ukrainian elections became a subject of public discussion formulated popularly under slogans such as “elections through the smartphone”. While new technologies should in general be explored in elections, world experience tells that there is still way to go before voting through the Internet is sufficiently safe. Integrity concerns not least due
to the ongoing hybrid warfare currently prevail in the discussions among the world’s leading experts on this topic.

The main challenges to Internet voting are to adequately identify the system user to prevent manipulation and to secure the chosen systems against external interference. Another challenge is to build and maintain public trust in the technology and the accuracy of the reported results. This requires time and money. Time is needed to conduct broad consultations and undertake independent feasibility studies including to assess the cost effectiveness of the technology. First steps in introducing new technology in elections could be to test optical ballot scanners and/or electronic voting machines on a pilot basis.

*The legal and regulatory framework need to be amended to allow the CEC to run pilots and test new voting technology both in secured environments and during real election events. The introduction of new technology in elections should be subject of broad consultations and accompanied by information campaigns. Independent feasibility studies should precede any introduction of new voting technology.*
Conclusion

The presidential and parliamentary elections resulted in a peaceful transition of power into the hands of President Zelenskyy and his Servant of the People’s Party on an agenda to combat corruption and largescale reform. The new ruling party now enjoys a comfortable parliamentary majority and enough MP votes to pass legislation. IFES Ukraine calls upon law makers, in close consultation with all stakeholders to accomplish meaningful electoral reform well in advance of the next elections. This IFES report offers a catalogue of recommendation for improving the electoral legal framework which read in conjunct ion with domestic and international observer findings and recommendations provides a solid base for such reform.

Key conclusions from this report are:

- Legal and practical barriers to election participation of Ukrainian citizens in internal displacement or living as economic migrants should be removed and the election process should be made more inclusive for persons with disabilities and ethnic minorities;
- Harmonization and removal of discrepancies, conflicting norms and gaps in the of the electoral legal framework;
- Abolition of the majoritarian component of parliamentary elections and transfer to proportional elections with effective and enforceable measures to improve women’s political representation;
- A transparent and professional electoral administration that takes a less formalistic and more proactive and holistic approach in pursuing its mandate, including jointly with a rebooted NAPC to ensure efficient oversight of campaign finance;
- Ensure effective and well-resourced oversight of the campaign in traditional and online media that deal with issues of media bias and work towards a more level playing field for contestants;
- Enhance transparency of campaign finances to ensure that all campaign related incomes and expenditures, including those incurred by third parties and bypass electoral funds, are declared by contestants – by strengthening the legal framework and the mandate and efficiency of campaign finance oversight.
- Introduction of effective, proportionate and dissuasive sanctions for election-related offences and ensuring proper and conclusive investigation and adjudication of such offenses;
- Enhanced political culture where contestants abstain from negative campaigning and use of hate speech and focus on explaining their platforms to voters and engage in debates with opponents.