

2020 Local Elections in Ukraine: Post-Election Report

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Executive Summary

The 2020 local elections were the first nationwide elections held under the new Election Code adopted in December 2019. They marked completion of the decentralization reform process merging cities, settlements and villages into larger sustainable communities across Ukraine and significantly reducing the number of rayons. Elections were administered in a challenging environment marred by the COVID-19 pandemic which affected many aspects of the election process.

No local elections took place in nongovernment-controlled areas of Donbas and in Crimea, or for the Donetsk and Luhansk Oblast councils. The Central Election Commission (CEC) was forced to cancel first elections to village, settlement and city councils in 18 newly amalgamated territorial communities in government-controlled areas of the Donbas. Civilian-military administrations (CMAs) insisted the security and socio-political situation along the contact line precluded the safe administration of local elections in these 18 communities. The opinions of CMAs were widely criticized for being biased and politically motivated because, in 2019, national elections were conducted in these areas.

The Election Code was amended on July 16, just six weeks before the official start of the process for the October 25 local elections. The amendments extended application of the open list proportional system to oblast, rayon councils and councils of local communities with at least 10,000 voters, while limiting application of the single non-transferable vote system (SNTV) to the remaining communities. The two-round electoral system for electing mayors and community heads was also modified and now apply in all cities with at least 75,000 voters. International observers criticized these late amendments as contrary to the principle of stability of electoral law. They also noted that the legal framework, despite some improvements, requires further refinement to address remaining shortcomings.

Late adoption of fundamental changes to the legal framework gave election administrators, voters and other stakeholders little time to prepare and adjust and negatively impacted the preparation for and conduct of the elections. The Verkhovna Rada failed to satisfy an urgent request for minor technical amendments to close gaps in the legal framework and left it to the CEC to regulate several important issues, including setting clear criteria for ballot validation. The Cabinet of Ministers set polling station accessibility requirements at such late date that they were impossible to implement.

Both electoral systems used for electing councilors operate with multi-member election districts, or constituencies. The Election Code gives wide discretions to Territorial Election Commissions (TECs) in forming constituencies and fails to ensure compliance with the principle of equality of the vote. Contrary to international standards and Organization for Security and Cooperation in Europe (OSCE) commitments, independent candidates can run for mayor and a council seat in smaller communities, but they are currently barred from contesting a seat in all oblast or rayon councils and city councils in cities with more than 10,000 voters.

Under the election code, gender quotas applied to all political party lists contesting local council seats. The open list proportional system has a strong and enforceable two-in-five gender quota with a zipper provision while party lists under the SNTV system must have at least 30 percent women without a placing requirement. A record 44.6 percent of candidates on party lists were women. Some party lists were able to register despite having fewer women than required due to inconsistent interpretation of gender quota requirements by TECs and courts. Regrettably, more women than men candidates dropped out of the race after registration. Every sixth candidate for mayor was a woman, a slight increase over the 2015 local elections.

The election management structure for local elections is complex and decentralized. It consists of the CEC, 1,642 TECs corresponding to the new territorial-administrative divisions and 29,084 Precinct Election Commissions (PECs). All lower-level commissions are composed of political appointees and formed ad hoc. Five parliamentary political parties and two MP groups with formalized links to a political party are given preferential treatment when forming TECs and PECs. These seven parties nominated 68 percent of all commission members. Nominating subjects may replace their commission members at will. More than 60 percent of TEC members, including over 300 in executive positions, and 70 percent of PEC members were replaced. This undermines efforts of the CEC to professionalize the election administration and the training of commission members at all levels on new procedures.

Supported by international partners including IFES, the CEC undertook a complex voter education program. The CEC training center conducted online trainings – webinars – and produced tutorials, manuals and a poll worker guide for territorial and precinct election commissions.

Citizens 18 years of age by election day are eligible to vote. Contrary to Ukraine’s obligations under the United Nations Convention of the Rights of Persons with Disabilities (UNCRPD), citizens with psycho-social and intellectual disabilities may be barred from voting if there has been a court ruling stripping them of their enfranchisement rights. Voter registration is passive and continuous; 28,713,874 citizens were registered on voter lists. Election day registration is not permitted. For the first time, millions of voters living at a different address than their civil registration could change electoral address permanently to vote in their current communities. The CEC simplified the procedure for electoral address change – de facto introducing the internationally recognized declarative principle for address registration in elections. Some 100,000 internally displaced and migrant workers took advantage of this procedure before the September 10 deadline.

All observers found that fundamental freedoms of expression and assembly were generally respected in the campaign and contestants able to campaign freely. Due to the COVID-19 pandemic and quarantine measures, contestants were limited in their ability to conduct large-scale campaign events. Cases of abuse of state resources and allegations of vote-buying, including under the disguise of charity, remain a concern. Seventy political parties began their campaign early. Early campaigning distorts the level playing field and increases the risk of shadow funding and underreporting of actual campaign expenditures. An opinion poll on Election Day at the initiative of the President was largely regarded as an abuse of office aimed at creating political advantage for the ruling party in the elections.

The national media landscape is diverse but characterized by a high concentration of politically vested ownership and major networks lack editorial independence. There was a boom in the use of social media, messaging applications and online platforms in this campaign. Many candidates and parties made extensive use of online advertising with some relying entirely on social media and apps to share their programs and political messages. Online campaign advertisement is in need of regulation. Although the Election Code better defines what constitutes illegal campaigning, hidden political advertising in broadcast and print media was frequently noted by observers. Oversight of media coverage was largely ineffective; the media regulator, the National Council on Television and Broadcasting, is widely perceived as lacking independence. Internews reported that 80 percent of respondents in a national survey had been exposed to disinformation about the pandemic.

Observers assessed the legal and regulatory framework for campaign finance as inadequate to ensure transparency and accountability. Contestants are not obliged to open a campaign fund; those that do

open a fund often do not report income and expenditures. Campaign finance reports were either not made available or available only on hard-to-find websites, lessening transparency. Most contestants relied exclusively on their own funds. Since political parties are exempt from submitting quarterly finance reports during the quarantine, the public had no information about the origin of campaign



Election day simulation in Odesa conducted by the CEC together with CVU and IFES before local elections on October 25, 2020.

funding. The analysis of reports by TECs was of little value in terms of detecting violations or increasing voter awareness. This reduced the possibility of voters to make an informed choice.

Voting on October 25 election day took place in 29,804 polling stations across Ukraine. Several of the 928 special polling stations established in in-patient medical institutions did not open due to lack of quorum or failure to form a PEC. Overall, observers reported that election day commenced without systematic violations that could affect the results. Violations of the secrecy of the vote

by voters taking a photograph of marked ballots or not presenting an identification document were among the most frequent irregularities observed in polling stations. Instances of illegal campaigning in violation of campaign silence rules and voters being transported to polling stations by candidates were also noted. Serious irregularities including cases of vote-buying and attempts to abuse the procedure for electoral address change were subject of police investigations.

First round turnout was reported at a historically low 36.88 percent; it was particularly low among citizens voting at home and in hospitals. Problems with misprints and incorrect information on ballots resulted in cancellation of elections at several precincts. The vote count and the result reporting process was time-consuming due to a complex counting procedure and fatigue among commissioners. Several PECs had difficulties reconciling the results protocol. TECs ordered PECs to resubmit corrected protocols due to technical errors or satisfied requests for recounts. Several TECs did not announce results within the 12-day deadline. Delays were reflected in slow uploading of results to the CEC results website. The CEC intervened in various ways, including by sending its representatives to assist in the field, cancelling TEC decisions or ordering TECs to take certain action. The CEC dismissed and replaced several TECs over misconduct and failure to implement court decisions.

Run-offs in mayoral elections were administered in 19 larger cities where no candidate had received more than 50 percent of the vote in the first round and in one city where the lead candidates obtained an equal number of votes. Elections were repeated for more than 90 council seats and for mayor in four cities. Runoffs and reruns were conducted in a staggered manner, with election events held nearly every Sunday between mid-November and late January. Similar patterns of irregularities as in the first round were noted during run-off campaigns and on second round Election Days. Debates between second round contenders for mayor were televised in Lviv and Dnipro, enabling second round voters to make a better-informed choice.

Although steps were taken to make polling stations more accessible to voters with disabilities, most voting premises were not conducive for independent access and voting of citizens with disabilities, particularly those with physical or visual disabilities. PECs in many instances designated the enlarged

voting booth intended for voters with physical disabilities for voting by voters with symptoms of COVID which voters with disabilities perceived as discriminatory towards them. On a positive note, information about electoral contestants and correct voting procedures was made available for the first time to voters in Ukrainian sign language and audio format accessible through QR-codes printed on posters displayed in polling stations. The new complex ballot format was particularly difficult to access for voters with visual and intellectual disabilities.

Citizen observer organizations could, for the first-time, register observers to follow proceedings at the CEC level during local elections. Party agents, candidate representatives and citizen observers were present in polling stations on election day. Civil Network OPORA and Committee of Voters of Ukraine both engaged in long-term observation and issued statements after each electoral event. OPORA conducted parallel turnout tabulation on election day and parallel vote tabulation for select run-offs in major cities. Parallel tabulation outcomes confirmed the official announced information.



COVID-19 information poster and hand-sanitizer available for use at a polling station on election day October 25, 2020.

The Election Code devolved more powers in election dispute resolution to local courts, where the filing of complaints includes paying a court fee. While many election commissions continued the practice of rejecting complaints over formal deficiencies, the CEC, in a welcome development, changed practice and proactively passed on evidence presented in such complaints to police for investigation. Despite courts generally demonstrated professionalism, they often dismissed complaints due to insufficient evidence. Inconsistent court practices led to disenfranchisement of candidates who were not provided an opportunity to correct mistakes in their candidacy papers and register party lists because of not meeting gender quota requirements.

The National Police received 998 notifications about criminal offenses, 1,519 notifications of administrative offenses and 14,543 notifications of other matters during elections. The most common criminal offenses included delivery of false data to Voter Register Maintenance Bodies, obstruction of the election process, vote buying and photographing ballots. The Ministry of Interior made data about investigations available on an interactive online platform; unfortunately, potential court proceedings and rulings in these cases were not included. This was a missed opportunity for building public trust in prosecution and lessened the transparency of election dispute resolution.

OPORA Civil Network, with IFES support, delivered online training on election procedures, offenses and investigation techniques to 61,514 police officers across Ukraine. The National Police received generally positive assessments through observer reports.

Preliminary analysis of results indicates that independent candidates and political parties with localized or regional platforms continue to play an important role in local elections in Ukraine. Parliamentary parties received 45.71 percent of all local council seats and 26.85 percent of mayors or heads of local communities. Forty percent of all new members of oblast, rayon and city councils in larger cities were elected thanks to voters who cast an individual vote for them.

The new gender quotas were effective in paving the way for a much larger representation of women in local government. Thirty-six percent women candidates were elected to local office. This is a major achievement. Women obtained 28.4 percent and 33.8 percent of seats in oblast and rayon councils, respectively. At the community level, between 33.3 and 41.7 percent of the new local council members are women. Women were less successful in mayoral elections, winning only 16.8 percent of such seats. Less than 10 percent of Ukrainian cities will have a female mayor.

This report and its recommendations should be read in conjunction with long the standing recommendations contained in IFES Ukraine reports on the 2019 [presidential](#) and early [parliamentary](#) elections. A special IFES report on the 2020 Ukrainian Local Elections and COVID-19 is attached to this report. IFES Ukraine has also issued separate reports devoted to campaign finance and analysis of the 2020 local election results. While it is encouraging to note that several risks and vulnerabilities to Ukrainian elections identified by IFES Ukraine prior to the 2019 electoral cycle have since been mitigated, this study points to areas which still deserve attention when electoral reform resumes.

IFES Ukraine recommends the Verkhovna Rada of Ukraine, as a priority, requests a joint opinion on the new Election Code from the European Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights (ODIHR) to inform the future electoral legal reform process.

Background to the 2020 Local Elections

New Territorial-Administrative Structure and New Election Code

Ukraine's administrative structure includes:

- A regional level including the Autonomous Republic of Crimea; 24 oblasts and two cities with special status (Kyiv and Sevastopol);
- A rayon level consisting of 136 newly enlarged rayons, 118 city rayons and 178 cities subordinated to oblasts; and, a
- A local level consisting of villages, settlements, and cities subordinated to rayons.

At each layer of administrative structure, local self-governance is administered by the respective council and, in the cities, villages and settlements, by an elected mayor. No local elections were held in the temporarily occupied territories of Donbas and Crimea – the Autonomous Republic of Crimea and the city of Sevastopol – and the oblast councils in Donetsk and Luhansk.

The Constitution of Ukraine requires that regular elections of village, settlement, city, rayon and oblast councils as well village, settlement and city mayors take place once in five years. This provision ensures the terms of elected local office holders are synchronized, and their powers renewed across the country at regular intervals. The Constitution requires local elections are held on the last Sunday of October of the fifth year of the term of office of councilmembers and mayors.

The Verkhovna Rada scheduled local elections for Sunday, October 25, 2020, on July 16 in line with constitutional requirements.

The 2020 local elections also signified completion of governmental decentralization reform. In 2015, Ukraine undertook comprehensive decentralization reform that resulted in amalgamation of cities, settlements and villages into larger sustainable communities across Ukraine and in a significant

reduction in the number of rayons from 490 to 136 – 119 of which are located in government-controlled areas of Ukraine.

All territorial communities that had not formally amalgamated by July 2020, and newly created rayons conducted first elections on October 25. While it is up to the Rada to call regular local elections, it is the CEC's prerogative to schedule first local elections.

The CEC called first elections in territorial communities on August 8 and first elections to rayon councils in the newly enlarged rayons on August 14 in line with legal requirements. For the October 25 local elections, the election process began on September 5, 50 days before Election Day.

The first and regular local elections were the first nationwide local elections after election of incumbent President Volodymyr Zelenskyy in 2019 and the early parliamentary elections later that year that provided his Servant of the People party a majority in the Verkhovna Rada. Noteworthy is these local elections were the first to be held under electoral systems authorized by new electoral legislation.

Ukraine now utilizes an open list proportional system to elect oblast, rayon councils and councils of the local communities (that is, villages, settlements and cities) with no less than 10,000 voters and a single non-transferable vote system (SNTV) to elect local councilors in communities with less than 10,000 voters. Both election systems operate with election of council members in multi-member election districts, or constituencies, to ensure territorial representation.

The election systems are the result of the new Election Code adopted in December 2019 and amended in July 2020. As recommended by the Council of Europe's Commission for Democracy through Law (Venice Commission) and the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR), the new Election Code replaced three separate election laws which previously governed presidential, parliamentary and local elections (the Presidential Election Law, the Parliamentary Election Law and the Local Election Law).

The 2020 local elections were held in a challenging environment, marred by the outbreak of the COVID-19 pandemic caused by the SARS-CoV-2 virus. This pandemic significantly influenced almost every aspect of daily life worldwide with elections being no exception. In Ukraine, the COVID-19 crisis was challenging for all electoral stakeholders as it affected many aspects of the elections beginning with the convention of political party congresses for candidate nomination, election campaigning, election commission operations and Election Day when the number of COVID-19 cases in Ukraine reached an all-time high.



Voters are separated from election commissioners by a plastic screen, everyone is wearing masks during election day on October 25, 2020.

Legal Framework

Elections in Ukraine are governed by the following laws:

- Election Code (adopted on December 19, 2019);
- Law on the Central Election Commission (June 30, 2004);
- Law on the State Register of Voters (February 22, 2007);
- Law on Political Parties in Ukraine (April 5, 2001);
- Law on Local Self-Governance in Ukraine (May 21, 1997);
- Law on the Status of Local Councilors (July 11, 2002);
- Code of Administrative Adjudication (July 6, 2005);
- Criminal Code of Ukraine (adopted on April 5, 2001); and,
- Code of Administrative Offense (adopted on December 7, 1984).

In December 2019, the new unified Election Code replaced significant parts of the previous electoral legislation and harmonized most election procedures, meeting a long-standing recommendation of the OSCE/ODIHR and the Venice Commission dating back to the early 2000s.¹

The work on the Code began in 2010 and included several iterations before a draft was finally introduced in the Rada in 2015. The Code passed its first parliamentary hearing in 2017 and was adopted into law in mid-2019 by the outgoing Rada. Consultations and discussion of the draft code with election experts and civil society were sporadic and the Central Election Commission was not consulted in the process. The new code suffered from significant flaws and was vetoed by President Zelenskyy in September 2019.

The President's proposals were discussed with key stakeholders and many suggestions by the CEC, civil society and election experts were considered. The final version of the new Election Code was mostly written behind closed doors and reflected the outcome of political deals between political party factions and groups in the new Rada.

The amended Election Code was signed and published into law in late December 2019 and became effective on January 1, 2020. The Code introduced new electoral systems for parliamentary and local elections, fully enfranchised persons living in internal displacement and set mandatory gender quotas for political party lists in parliamentary and local elections. While this version addressed and fixed a number of previous flaws, lack of fully transparent consultations resulted in a series of a new problems that needed to be corrected.

In February 2020, the Rada Committee on State Building, Local Governance, Regional and Urban Development tasked a working group established in September 2019 to draft a new set of amendments to the Election Code throughout the spring of 2020. Though the working group met a number of times, key amendments related to local elections were agreed upon behind closed doors between party factions and groups. New amendments to the code were adopted into Law on July 16, 2020, just one month and a half before the official start of the October 25 local elections process.

¹ The 2007 Law on State Register of Voters and the 2004 Law on Central Election Commission remained as separate laws since they regulate the work of the respective institutions during both elections and referendums.

On September 18 – two weeks after the launch of the local election process – MPs made a last attempt to amend the Election Code by introducing Draft Law Number 4117. This legislation appeared in response to the CEC’s call to adopt special legislation regulating elections during a pandemic and to correct technical gaps in the legal framework for local elections. The draft law, however, was rejected by the Rada.

Subsequently, the Rada adopted a law lifting the Election Code provision requiring candidates to submit proof of absence of a criminal record when applying for registration of candidacy. This happened after the beginning of the candidate registration process.

The Limited Election Observation Mission of the Organization for Security and Cooperation in Europe’s (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) concluded in its assessment that “(t)he elections were conducted under a substantially revised legal framework which, despite some improvements, requires further refinement to address remaining shortcomings”.²

The Verkhovna Rada should further harmonize and improve the current legal framework governing elections and referendums in Ukraine through open and inclusive public consultations based on lessons learned and outstanding observer recommendations from all recent elections. The Verkhovna Rada should consider inviting the Venice Commission and ODIHR to provide their authoritative opinion on the new Electoral Code well in advance of the next regular nationwide elections to allow sufficient time for lawmakers and the election administration to bring Ukraine’s electoral framework in line with international standards and OSCE commitments.

In line with earlier recommendations by the Venice Commission, ODIHR and IFES, key amendments to the electoral law, in particular those related to the electoral system, election district boundary delimitation and electoral administration membership, should be introduced no later than one year prior to the next major election event.

Electoral Systems

The Election Code abandoned the so-called St. Petersburg election system introduced in 2015 to elect most local councils. This system was uncommon for European countries and produced irrational results for political parties, candidates and voters. The amended 2019 Election Code introduced these four electoral systems:

- The open list proportional representation (open list PR) system to elect oblast, rayon councils and community (that is, villages, settlements and cities) councils of communities with 10,000 or more voters;
- The single non-transferable vote system (SNTV) to elect local councils in the communities with less than 10,000 voters;



A stack of ballots, including the ones designed for the use under new open list PR system.

² ODIHR Limited Election Observation Mission to the October 25 Local Elections in Ukraine, Statement of [Preliminary Findings and Conclusions](#), October 26.

- The two-round system (TRS) to elect mayors of cities with at least 75,000 voters; and,
- The first-past-the-post (FPTP) system for mayoral elections in communities with less than 75,000 voters.

The Open List Proportional Representation System

Under the open list proportional system, the entire territory of the race is divided into territorial election districts. Political branches nominate two types of candidate lists:

- one candidate list for each election district (of 5 to 12 candidates); and
- one “unified” list comprising all candidates from district lists within the territory of the race.

All election districts are multi-member constituencies. A party branch must nominate candidates in all election districts within the territory of the race to participate. Only parties may nominate candidates; independent candidates are not allowed to run under the open list proportional system.

To be entitled to seats on the council, a political party branch must receive no less than five percent of valid votes cast in the race. In each unified list, there is one reserved seat for the top candidate. If the party meets the five percent voter threshold, that candidate is automatically elected. The remaining seats are distributed to candidates according to the unified party list. Voters can influence the order of candidates on the list by casting a preferential votes; candidates who obtain sufficient preferential votes move up the list.

The voter receives a ballot according to the election district in which he or she is registered to vote. The top candidate will not appear on the ballot. Each voter can vote for one district list and, optionally, for one candidate on that list. To move up the district list, a candidate must receive no less than 25 percent of the electoral quota. The electoral quota is also referred to as the “average price” of a seat in the election, that is, votes required for a candidate to obtain one seat. The quota is calculated by dividing the total number of votes cast for the parties that passed the electoral threshold by the number of vacant seats in the local council.

All political parties that receive at least five percent of the valid votes take part in seat distribution. Seats are distributed between eligible parties in proportion to the number of votes received in the territory of the race, by dividing the number of votes received by the party by the electoral quota. The rounded whole number resulting from this division indicates how many seats each party has won. If the party is entitled only to one seat that seat will always go to the top candidate on the list.

The largest remainder method is used to fill the remainder of seats. The number of seats received by the political party in each territorial district is established by dividing the number of votes cast for the district list by electoral quota. The remainder of the seats not distributed in the districts goes to the unified list of each eligible party and these seats are filled with the sequence of candidates on that list approved by the political party. Candidates on that unified list who were elected in the territorial districts are omitted and the seats are given to those were not elected in the districts.

The open list system for local elections contains a number of serious flaws:

- Seats are not allocated to the territorial election districts in proportion to the number of registered voters; but, based on election day voter turnout in the district. That means districts with higher turnout receive more seats while districts with lower turnout receive

less. This can affect decision-making in future local councils as elected councilors would likely favor districts with better representation at the expense of less represented districts when distributing responsibilities among councilors.

- Although voters influence who gets elected, the open list system maintains many features of a closed list system.
 - o First, only candidates on district lists who receive 25 percent of the electoral quota move to the top of the district list. To make the open list system more “open”, the current 25 percent threshold should decrease to five or 10 percent (see Election Results Section).
 - o Second, not all seats are allocated according to voter choice. The top candidate on the unified list is always given priority in getting elected and remaining seats not distributed in districts are filled according to the closed unified list where the order of candidates is determined by the local party branch.
 - o Third, the open list system is complex and more complicated to administer in terms of vote count and tabulation, ballot validation and voter awareness compared to the closed list system.
- In violation of the 1990 OSCE Copenhagen Document, the open list proportional system, as currently published in the Election Code, does not address independent candidates. While exclusion of independent candidates from parliamentary elections has certain political advantages (such as a lowering the level of political fragmentation of the legislature and stability of government) and is not uncommon in the European electoral context, it is questionable to exclude candidates from running independently in local elections given that local self-governance deals with local issues with no or little party politics;
- Given that any proportional system leads to politicization of the body elected through the system, the use of an open list system in smaller communities with as few as 10,000 voters may have an adverse effect on performance of local councils in future. Furthermore, the problems with administering the complex vote count and tabulation were usually observed in such smaller communities.

Parliament should consider modifying the open list proportional system to increase political competition and voter influence on allocating seats between the candidates by:

- 1) Enabling independent candidates to register and run on independent lists of candidates;**
- 2) Decreasing the electoral threshold which candidates need to pass to move to the top of the list from the current 25 percent to 5-10 percent as previously recommended by IFES and Civil Network OPORA. Such a decrease would allow more candidates to get elected based on voters’ preferences rather than according to their position on party lists;**
- 3) Repealing the provision for a reserved seat to the top candidate on each unified list in both parliamentary and local elections;**
- 4) Consider either to distribute all seats to multi-member election districts by removing the unified closed list element or modify the distribution so that other factors are considered such as the availability of vacant seats in a constituency and votes received by the candidate in the district to which he or she is assigned;**

- 5) **Ensuring that each district is represented in the local council in proportion to the number of registered voters rather in proportion to voter turnout in the district on election day; and**
- 6) **Applying the open list system only to larger communities with 90,000-100,000 or more voters.**

The Single Non-Transferrable Vote System (SNTV)

The SNTV system is used to elect local councils in communities with less than 10,000 voters. The territory of the community is divided into several multi-mandate constituencies with two to four councilors being elected in each constituency. In each multi-mandate constituency, a voter cast votes for only one candidate. The candidates who receive the most votes in the constituency win the seats. Candidates can be nominated by branches of political parties or run as independents through self-nomination. If any seat for any reason remains vacant, the relevant Territorial Election Commission must schedule a by-election to fill that seat.

The SNTV system is not widely used globally due to its fundamental flaws. The SNTV system sometimes produces irrational results for political parties, candidates and voters. For example, a party that enjoys support of the majority of the electorate in the community may not receive any seats or receive fewer seats than it reasonably expects, while minor parties with no or little support can receive a majority on the council. This scenario may happen if some candidates receive less votes than needed to get elected. As with any plurality system, the SNTV system is prone to abuse of communal and state resources and creates an advantage for those who can influence and control electorate. This has been demonstrated in Japan and Afghanistan where the SNTV system has been used or is still used in parliamentary elections.

Ukrainian electoral stakeholders should carefully analyze and evaluate the experience with the SNTV system in the 2020 local elections. Its vulnerability to fraud, its effectiveness in ensuring representation of local communities and impact on performance of the new local councils should be carefully considered when evaluating the SNTV system.

Electoral Systems Used for Electing Mayors

There are two electoral systems to elect mayors in Ukraine:

- A first-past-the-post (FPTP) system is used in local communities with less than 75,000 voters where the candidate needs to obtain a simple majority of valid votes to get elected; and
- A two-round system (TRS) is used in local communities with at least 75,000 voters where a candidate needs to obtain more than 50 percent of valid votes to get elected; if no candidate obtains a majority of votes in the first round, a second round, or run-off election, is called between the two candidates who received the most votes in the first round.

There is no requirement for voter participation in any of the two electoral systems for mayor. The election is valid regardless of voter turnout.

The FPTP and the TRS have similar advantages and disadvantages; the difference between the two systems is the TRS potentially demands mobilization of additional resources in the event of a second round.

- Candidates' needs to secure funds to run a longer election campaign;
- Local authorities must allocate additional budget funds for renting election premises, printing of additional ballots and material transportation;
- State budgets must pay out additional remuneration to election commissioners; and
- Election commissions continue to work for more than a month after the first round in their original composition.

There is a widespread argument that the TRS adds to the legitimacy of the elections. It provides unsuccessful political parties or candidates with the possibility to form alliances behind the two candidates competing in the second round and allows the winners of the mayoral race to claim a majority of voters supported their candidacy.

However, the legitimacy of those elected during the run-off under the TRS is doubtful as voter turnout is usually lower than in the first round. Voters whose favorite candidate dropped out of the race in many cases do not vote during the second round. During the 11 mayoral run-offs on November 22, the voter turnout was – on average – 29 percent and, in eight instances, the frontrunner from the first round also won the second round. This favors other solutions; for example, a modified TRS where the obligation to hold a second round is removed if the margin between the first and second candidate in the first round is significant; for example, 20 percentage points. While this would save resources, it may bring into question the public perception of the elected mayor's legitimacy.

Based on results of the 2020 mayoral elections, the Verkhovna Rada should consider if the advantages of the TRS outweigh its disadvantages, whether this system should potentially be modified to allow the frontrunner to be elected in the first round with a simple majority of votes if the margin over the second candidate is significant.

Election Constituencies

The CEC's role in administering local elections is limited and does not extend to delineation of election constituency boundaries. The mandate to form constituencies for local council elections is vested in the Territorial Election Commission (TEC) in charge of administering the race.

For local council elections, the territory of each council is divided into a number of multi-member constituencies. Their territory should be contiguous; in line with international best practice, constituencies cannot be formed from territories that do not share a common border. The number of multi-member constituencies for council elections depends on two factors: The number of members elected to the council and the number of territorial communities, or administrative units, that form part of its territory.

The number of members of a local council ranges from 22 members in communities with less than 10,000 voters, 26 members in communities with between 10,000 and 30,000 voters; and, gradually increasing up to 120 council members in communities with two million or more voters. The full list of council membership can be found in Article 197.3 of the Election Code. It follows that all councils under the SNTV system will, as a rule, have 22 members.

The number of members of a council can be adjusted upwards to provide all administrative units – villages, settlements or cities – on the council territory an opportunity to be represented by one member on the council.

The approximate number of multi-member constituencies for each council is determined by dividing the total number of council members by three for communities below 10,000 voters; or by 10 for communities with 10,000 voters or more. The number of multi-member constituencies equals the nearest whole figure following this division. Thus, elections to councils with 26 members will on average operate with three multi-member constituencies.

The Election Code allows discretion to the TECs to take local circumstances into account when drawing up constituency boundaries.

In communities below 10,000 voters, under the SNTV system, the deviation from the average number of multi-member constituencies must not exceed one constituency. They should be of approximately the same size. Deviation from the average number of registered voters should, as a rule, not exceed 15 percent.

This means that the principle of equality of the vote is not necessarily followed when drawing up multi-member constituencies. TECs can form constituencies with a deviation that exceeds the internationally recommended maximum 10 percent in voter population size (15 percent deviation from the average size is only permitted if the interests of national minorities are at stake).

ODIHR has repeatedly stated that Ukraine must respect the principle of one voter – one vote and bring its provisions for drawing electoral boundaries in line with international standards and best practices. This recommendation will be reinforced by international observers after the 2020 local elections.

In communities of 10,000 or more voters, under the open list proportional representation system, the maximum deviation from the average number of multimember constituencies allowed is two constituencies. The Election Code gives preference to respecting existing boundaries of the territorial-administrative units within the territory of the council when boundaries of multi-member constituencies are drawn. It is, in principle, not allowed to form constituencies that split several administrative units; it is, though, allowed to split an administrative unit, for example a rayon, into two constituencies.

There is no explicit reference to a legal requirement that constituencies be of the same size in terms registered voters. The turnout-out based allocation of seats means the number of seats per constituency is not known in advance but only becomes clear when the entire result of the race is established. A low turnout in a constituency will result in fewer seats for candidates running in that constituency.

The ODIHR Election Observation Mission for the 2020 local elections noted controversy over boundary delimitation in Kyiv.³ The controversy in the capital city was partly a result of one of the late amendments to the Election Code adopted in July 2020 allowing for special rules when forming multi-member constituencies in cities such as Kyiv with more than two million voters.

The Kyiv TEC decision on multimember constituencies seems in breach the spirit of the law enshrined in Article 201.5 of the Election Code stipulating that «When forming territorial election districts for the elections of members of the city council of a city with a rayon division, territorial election districts shall be formed, if possible, within the limits of the respective rayons in city.»⁴ As Kyiv has 10 city districts

³ ODIHR LEOM Statement of Preliminary Findings and Conclusions, October 26.

⁴ Civil Network OPORA [Report](#): Kyiv City TEC violated the terms for establishing constituencies, September 7.

and 120 members of its city council nothing prevented the TEC from forming 10 multi-member constituencies with 12 members each. Instead, the Kyiv city TEC decided to split three city districts and altogether form 13 multi-member constituencies.

For the election of a mayor of a city or village, the territory of the city or village form a single election district. Their boundaries follow those of the territorial-administrative unit and do not require a decision of a TEC for their establishment. In total 1,421 single election districts were created for the purpose of 2020 local elections out of which 370 were created for the election of the mayor and of 1,051 for the election of the village and settlement mayor.

Some 9,034 multi-member constituencies were formed for administering the 2020 local elections. The vast majority – 6,601 multi-member constituencies – were created for village and settlement councils; 1,553 for city councils, 631 for rayon councils, 188 for oblast councils and 61 for city district councils.

The Central Election Commission could initiate an analysis of the districting for the 2020 local elections and draft a concrete solution to resolve the lingering over and underrepresentation of voters in some election districts under the SNTV system. The Election Code should be reviewed in an open and inclusive process to ensure equality of the vote in future district delimitation in line with OSCE commitments and other international obligations for democratic elections. One consideration is tasking future regional offices of the CEC with a role in district delimitation within their respective territory.

Election Security

The October local elections took place in the context of an ongoing armed conflict and other hostilities in the east of the country and the illegal annexation of the Crimean Peninsula by Russia. By decision of the Rada, no local elections were held in nongovernment-controlled areas of the Crimean Peninsula and in the Donetsk and Luhansk oblasts and no elections were conducted for oblast councils in the government-controlled parts of Donetsk and Luhansk oblasts.

Elections Near the Contact Line

On August 8, 2020, the CEC adopted resolutions declaring that it was impossible to hold local elections in 10 territorial communities of the Donetsk oblast and eight territorial communities of the Luhansk oblast. The resolutions were based on conclusions made by the civil-military administrations (CMAs) in the government-controlled areas of Donetsk and Luhansk oblasts and pointed to the unstable security and socio-economic situation in these areas as reasons not to conduct local elections. Given the public attention to this issue, the CEC came under strong criticism, despite its lack of statutory powers or practical ability to verify or overturn the conclusions of a CMA.

Civil Network OPORA noted that the CEC resolutions not to administer elections in these 18 communities deprived 475,000 voters of their constitutional electoral rights.⁵ The largest among them are Lysychansk city (91,000 voters), Severodonetsk (84,612), Toretsk (50,351), Volnovakha (29,716), Maryinka (26,865), Avdiivka (25,751), Vugledar (22,000), Popasna (21,000) and Stanytsia Luhanska (20,686). The population in the 18 communities is more than 22 percent of the population of Donetsk and Luhansk oblasts.

⁵ Civil Network OPORA [First Observation Report](#), September 4.

Criticism of the decision to annul elections considers that both presidential and early parliamentary elections took place in all 18 communities in 2019 – with the exception of certain election precincts – and that local elections were conducted in four of these communities – Severodonetsk, Lysychansk, Vugledar and Sartana – back in 2015. Concerns have been raised that it is currently possible to deprive voters of their constitutional rights by an administrative decision not based on clear and objective criteria or subject to independent review. Under the Constitution of Ukraine, only introduction of martial law or a state of emergency would have such wide-ranging legal consequences as disenfranchising significant voter populations.

A peculiarity is that while cancelling elections to village, settlement and city councils, the CEC argued that they did not have authority to cancel elections to the new rayon councils of which these communities are a part.⁶ This created the situation where the local party organizations in these 18 communities could nominate candidates to political party lists for rayon councils; but, voters living in these communities did not have an opportunity to vote for their future representatives at the rayon council level since no polling stations would operate in these areas. The relevant rayon TECs determined the rayon council results based on the voting in precincts located outside the 18 communities.

New rayon councils in Donetsk and Luhansk oblasts were formed without accounting for votes of the territorial communities where first local elections were not organized. It is not clear if the elected members of these rayon councils should not change in case first elections are held in the near future in those communities that could not vote on October 25, 2020

IFES believes administering rayon council elections without ensuring the possibility for all communities to cast their vote and have a say contradicts the justification used by the Rada in July when it cancelled elections to the oblast councils in the government-controlled areas of Donetsk and Luhansk oblast with a reference to Article 140 of the Constitution.

The Verkhovna Rada should amend the legislation and establish clear and objective legal criteria governing the CMA's conclusions about the feasibility to hold elections in communities near the contact line. Conclusions should be subject to independent scrutiny and review because they can deprive citizens of constitutionally-guaranteed rights to vote in local elections. The CMAs and the CEC must take all necessary measures to hold first local elections in the 18 communities that did not elect their new mayors and councils at the first possibility (for example, March 2021).

The National Police

The role of the National Police in protecting public order during the local election period received a positive assessment from domestic and international election observers across the board. The Ministry of Interior cooperated closely with IFES partner Civil Network OPORA to deliver technical support through a series of regional training webinars for patrolling and investigating police on their role in the electoral process. The webinars were designed to explain key election procedures and possible election day scenarios to police investigators and how the police must react to them.

⁶ CEC [Resolution No. 176](#) of August 14 “On calling first elections of deputies to rayon councils on October 25, 2020.”

Overall, 61,514 policemen attended the webinars and received participation certificates. Police officers deployed to protect public order at the polling stations received a handbook which covered the most common problems and types of violations and provided clear explanations on how to respond. IFES produced and distributed 80,000 copies of the police handbook to officers which is a similar circulation as in both 2019 national 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 implemented in close cooperation with the CEC.

Police played an active role in investigating complaints of electoral violations carrying administrative and criminal liability. The police regularly reported about the number and nature of election related cases under police investigation and the action taken at different stages of the election process, including during the campaign and on Election Day. See the Complaints and Appeals Section below.

Despite external and internal security concerns ahead of the 2020 local elections, these did not materialize on a large scale and those that did had little influence on the election. A case of disinformation was reported by Civil Network OPORA on October 9 and concerned a written appeal dated October 1, allegedly sent from the Main Directorate of the Security Services in Donetsk and Luhansk oblasts to the opposition European Solidarity party.⁷

The Main Directorate requested the party to share its lists of candidates for local council and mayor in Donetsk and Luhansk oblasts along with their biographies and information about their campaign expenses. OPORA assessed such demands as excessive and illegal. There were indications that the letter was fake; but, sent from the domain of the Security Services of Ukraine, or the SBU. The SBU denied any knowledge or ownership to the letter. On OPORA's request, two independent organizations provided an opinion and determined that the letter containing the illegal demands originated from Russia.

The Security Services of Ukraine should examine such cases in detail to prevent them from potentially influencing the elections in the future.

Election Administration

Central Election Commission

The election management structure for local elections is complex and decentralized. The CEC functions as an upper-level election commission for all lower-level election commissions in local elections; but, unlike

in the presidential or Verkhovna Rada elections, the CEC's involvement in local election preparations is limited. Instead, Territorial Election Commissions (TECs) created at each level of self-governance are directly responsible for local elections in their respective area, but does not oversee the work of



The CEC Chair Oleh Didenko with G7 Countries Ambassadors. September 14, 2020.

⁷ Civil Network OPORA [Report](#): Is Russia Interfering in Ukrainian Elections? October 19.

other TECs within their area. The absence of a hierarchical structure of the election administration for local elections puts an additional work load on the CEC and emphasizes the need for the launch of permanent CEC regional and local branches.

TECs at the lower-level form and oversee the work of Precinct Election Commissions (PECs). PECs are responsible for preparing and managing polling stations on Election Day. They administer and supervise voting, conduct the vote count in polling stations and send result protocols to TECs for tabulation. The local elections were administered by the CEC, 1,642 TECs corresponding to the new territorial-administrative division and 29,084 PECs.

All international election observation missions (including ODIHR and the European Network of Election Monitoring Organizations, or ENEMO) and national observers assessed that the CEC performed its work in an effective and transparent manner despite challenges posed by the COVID-19 pandemic. Most CEC decisions were posted on its website, enhancing transparency. CEC sessions were streamed on the commission's website and later uploaded to its YouTube channel.

Supported by international partners, including IFES, the CEC undertook a complex voter education program. The CEC training center conducted online trainings (webinars) and produced tutorials, manuals and a poll worker guide for TECs and PECs. OPORA commended the CEC for being unprecedentedly proactive in its voter education and training efforts in the lead up to Election Day and for communicating with the public in an understandable language using a variety of platforms, including social media.⁸ The CEC was also commended for actively preventing a lack of regulation when the Rada failed to amend the legal framework with purely technical amendments.

Election administration faced several challenges, including the implementation of a new and complex electoral system and a reformed territorial-administrative system a few months before the elections. The government created uncertainty about the financing of local elections by cutting the budget envisaged by the CEC for their planning and conduct in half and only restored the full budget a few months before the calling of the elections. Due to financial constraints, planned establishment of CEC regional and local offices did not take place prior to the elections.

As a consequence of the late changes to the Election Code, the CEC had no time to ensure that the software of its Vybory information system was updated to accommodate for the new complex electoral system. The Vybory system could not be used for tabulation and transmission of results as in previous elections.⁹ A computer program hastily developed by the OSCE Project Coordinator in Ukraine was offered to TECs to ease results tabulation. The use of this program was voluntary.

Observers noted that over the course of the election, the CEC provided clarifications and guidelines to election stakeholders as well as manuals to clarify procedures related to the processes of voting, counting and transmission of results.

Compensation for working on election commissions is not provided to all commissioners. Widespread reports indicated that election commissioners frequently received unofficial payments from the political party or candidate that nominated them and that smaller political parties at times traded membership positions on commissions to bigger parties or more established candidates. This practice

⁸ Civil Network OPORA [Preliminary Statement](#), October 26.

⁹ ODIHR LEOM Statement of Preliminary Findings and Conclusions, October 26.

undermines the intended checks and balances between the political forces on election commissions and brings in question the independence of the lower-level election administration.

To ensure independent and impartial performance of the election administration the law should prohibit payments from candidates and parties to commissioners; remuneration of election commissioners should be commensurate to the workload. Authorities need to take necessary measures to adequately fund the organization of elections.

Territorial Election Commissions

The CEC establishes the upper- and mid-level TECs at oblast, rayon, and city levels. These TECs form the lower-level territorial election commissions at the village, settlement, city and city district levels. All TECs for local elections are formed on an ad hoc basis and consist of between 9 and 18 members who are nominated by political parties.

The CEC formed 22 oblast, 119 rayon and 381 city election commissions before the August 10 deadline. Rayon election commissions formed 625 village and 433 settlement election commissions before the August 25 deadline. TECs in cities with city district divisions formed 70 city district election commissions in the cities. In total 1,660 TECs were formed.

Three types of election subjects may nominate candidates to TECs:

- 1) A local organization of a political party represented with a faction in the current Rada; they have the right to delegate two candidates to each election commission;
- 2) A local organization of a political party that has concluded a formal agreement on political cooperation in local elections with an MP group in the current Rada; they have the right to nominate one candidate to each commission;
- 3) A local party organization registered pursuant to the law in the respective territorial-administrative unit; they have the right to nominate one candidate to each commission.

Nominees of the first two nominating organizations are guaranteed seats on election commissions while those representing other nominating subjects – extra-parliamentary political forces – are selected by a lottery regulated by a special CEC resolution. As a result, 12 of 18 seats in each TEC are reserved for nominees from the five political party factions and two MP groups in the Rada, while the remaining six seats are contested by other parties, including some represented in the Rada.¹⁰

It is not the first time that MP factions enjoy a priority right to take seats on TECs during local elections. Political parties with parliamentary factions could nominate two candidates to each TEC in the 2015 local elections and three candidates in the 2010 local elections. It is, however, a new development that the Election Code grants MP groups a similar right. MP groups are not electoral subjects per se as they cannot nominate candidates for local elections. MP groups will cease to exist in the next Rada which will be elected solely according to party lists. So, this new feature may be seen as a one-off measure dictated by political reality in the current Rada and the need to secure enough votes for adoption of the Election Code.

¹⁰ Civil Network OPORA [First Observation Report](#) September 4, 2020.

In this election, the parliamentary group Dovira (Trust) concluded an agreement on political cooperation with the Solidarity of Women of Ukraine party, while the parliamentary group, For Future, made a similar agreement with their namesake – the For Future political party.

Parties should be entitled only to nominate one member per election commission in local elections. Allowing a guaranteed seat on all election commissions for nominees of parties with links to a parliamentary group is not a welcome practice. It may lead to further politicization of the work of election commissions and should be abolished.

Civil Network OPORA analyzed TECs formations and found that local organizations of parliamentary parties occupied two in three seats (68 percent) on these commissions with the remaining 32 percent of seats going to 198 political parties.

According to OPORA, the Servant of the People, Batkivshchyna and European Solidarity political parties each obtained 13 percent of TEC appointments; the Opposition Platform – For Life – 12 percent; Holos – eight percent; For Future – seven percent; and, Solidarity of Women of Ukraine – four percent. All Rada parties in several instances had more than two nominees appointed to a TEC. The Servant of the People party was represented with three members on 151 or 28 percent of TECs and the remaining Rada parties had three members on 25 percent of TECs except for the Holos party, which had three members on five percent of TECs. Holos focused on nominating more than two members only to upper-level TECs; 29 percent of these TECs had three members from Holos.

The 1,596 positions as chair, deputy chair and secretary on the TECs (532 for each position) were distributed equally among political parties in proportion to the number of nominees proposed by the party. Servant of the People occupied 20.2 percent, or 323 executive positions; Batkivshchyna qualified for 14.3 percent or 229 executive positions; while European Solidarity occupied 13.9 percent or 222 executive positions. Servant of the People held most positions as TEC chair with 139 such positions. Batkivshchyna had 86 TEC chairs; European Solidarity – 76; and, Opposition Platform – For Life – 66.

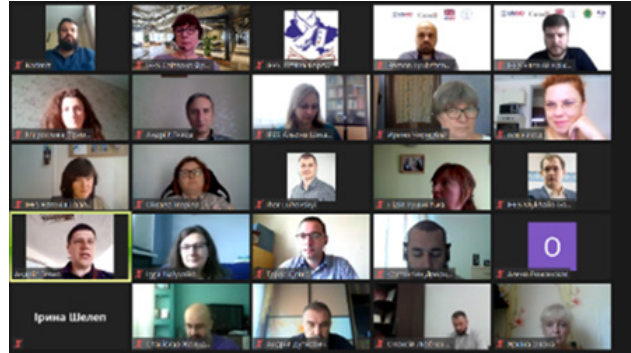
The Election Code gives nominating subjects wide discretion to replace their members on a lower-level election commission before and after Election Day. Members may resign or have their nomination revoked by a nominating subject. The ODIHR Limited Election Observation Mission found that more than 60 percent of TEC membership, including over 300 members in executive positions, were replaced late in the process mostly at the request of the nominating party. Such frequent and unrestricted replacements negatively affect the independence and impartiality of the election commission and continuity of its operations. 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 having a negative impact on the level of professionalism of the election commissions and undermining the effect of the training provided to lower-level election commissions.

A legal deadline should be set in law well ahead of Election Day by which political parties and candidates can no longer replace their nominees on commissions without objective reasons to ensure stability of the election administration.

The CEC, with IFES' technical assistance and through the CEC Training Center, organized training of TEC and PEC members to ensure they could effectively exercise their duties and were aware of election procedures. Due to COVID-19 risks, these training exercises were conducted online. While it increased the potential of commissioners from remote towns and villages to participate in these events, it

negatively influenced the overall level of engagement. It also led to training manuals not being printed which could be of assistance for commission members during Election Day counting procedures.

Moreover, that political parties can appoint untrained commissioners to serve on election commissions and their frequent and unrestricted replacement poses a significant risk to the professionalism and performance of election commissions.



Screenshot from the second part of the ToT ahead of trainings on election procedures for PECs

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 Code. This training should be held in-person and accompanied by distribution of printed training manuals. Political parties should only be permitted to nominate members to serve on commissions from a pool of pre-trained persons certified by the CEC Training Center.

According to Civil Network OPORA, 71 percent of the appointed TEC members were women. Women also dominate among members in executive positions – 75 percent of which are women. Women have a disproportionately higher share of the positions as TEC secretary (80 percent) compared to other executive positions on the commissions. Women’s share of the commission chair position is lowest on election commissions where women account for less than 32 percent.

Parties participating in elections should continue their efforts aimed at ensuring balanced representation of women and men on election commissions and ensure that women are proportionally represented in decision-making positions on election commissions.

Precinct Election Commissions

PECs are formed by TECs at lowest-level that supervise their work. PECs are responsible for displaying voter lists and distributing invitations to voters and preparing and managing polling process on Election Day. They administer and supervise voting, conduct the vote count in polling stations and send result protocols to the TECs. The number of PEC members depends on the number of voters assigned to the election precinct and ranges from 10 to 18 members.

PEC formation for local elections generally follows the same principle as the formation of TECs. The right to nominate members to PECs belong to registered local branches of the seven political parties addressed above under formation of TECs. Contestants in the relevant territorial district including self-nominated, or independent, candidates for council membership or for mayor, political parties that nominate local candidates have the right to nominate PEC members. Executive positions on PECs must be staffed with nominees of different nominating parties or independent candidates. In total, 29,084 PECs were formed.

Parties and candidates have wide discretion to replace their PEC members at any time prior to and after Election Day. As with TECs, the Election Code does not envisage mandatory training for PEC members or require previous experience for being appointed to a PEC. This feature has been repeatedly criticized by all domestic and international election observers.

PECs experienced problems similar to those faced by TECs in the October 2020 local elections. PEC members were frequently replaced at the request of a political party or candidate. In some election districts, TECs approved the replacement of almost 70 percent of the PEC membership; in many cases, they were replaced by new members with little or no election experience after the delivery of the PEC training.

Given the similarities in procedures for establishing PECs and TECs, the recommendations outlined above for improving the formation and operation of TECs also apply to PECs.

Voter Registration

Voter registration in Ukraine is passive and continuous. The State Register of Voters (SRV) is a database updated on a monthly basis which contains election-related personal data of all registered voters. It is unified for the entire country and administered by the CEC at the central level, by oblast administrators at the regional level and by State Voter Register maintenance bodies, or RMBs, at local level.

Preliminary voter lists are delivered to polling stations and displayed for voters to check and verify that their information and if not correct, file an application for a change. It is also possible to check and request changes online through the voter's cabinet at the CEC website. Modifications to the voter lists, including following a court decision, is not possible on Election Day. The deadline for amending the voter list is the last Saturday prior to Election Day.

Citizens 18 years of age by election day are eligible to vote, unless declared mentally incapacitated by a court decision. In spite of the international obligations under the United Nations Convention on the Rights of Persons with Disabilities, citizens with psycho-social and intellectual disabilities are barred from voting in Ukraine. Citizens who turn 18 after the first round are included in the voter list for a second round of the election. A total of 28,713,874 citizen were registered on voter lists.

In local elections, the right to vote is restricted to citizens who are members of the relevant territorial community as determined by their registered (de jure) place of residence. The Election Code has opened a new opportunity for internally displaced persons (IDPs) and other Ukrainian citizens to register to vote at their actual (de facto) residence, including in local elections.

Voters can apply for a change of electoral address and register to vote where they actually live in person or online using an electronic signature. On July 24, the CEC lifted the requirement for voters to present additional proof to back their change of electoral address application.¹¹

As a safeguard against illicit electoral address change, voters must apply to change their electoral address within five days after commencement of the election process, before the beginning of candidate registration and cannot renew their electoral address within one year after the previous change. Persons without any registered place of residence can register an electoral address where they de facto reside, thereby allowing them to vote in local elections.

The change of electoral address is valid indefinitely for all future elections. The existing procedure for temporary change of place of voting with a deadline five days before election day remains in place but applies only to presidential and parliamentary elections.

¹¹ CEC [Resolution No. 145](#) of July 24.

By the September 10 deadline, the CEC reported that 101,000 citizens had successfully changed their electoral address for the October 25 local election. Fifty-three percent of voters filed their application on paper and 47 percent online. Most changes were recorded in Kyiv city and Kyiv, Odesa, Lviv and Dnipropetrovsk oblasts. Just over 53,000 voters filed paper applications to the State Voter Register Maintenance bodies. More than 5,000 applications were rejected.¹²

In a few cases, an unusually high number of requests for electoral address change was recorded with signs of attempts to manipulate the system. The CEC published a list where the applications exceeded 15 percent of the total number of voters in specific precincts and called on observers and political parties to closely monitor the election process in these areas. Concurrently, the CEC appealed to law enforcement bodies to investigate instances in three communities in Bilhorod-Dnistrovskiyi rayon of the Odesa oblast where a high number of applications had been filed electronically using identical IP addresses and changing the electoral address to a few households. After police investigation had detected mischief, the SRV cancelled more than 500 electoral address changes in Odesa oblast.

Citizen observers reported suspicious instances of electoral address changes in small communities in four oblasts and suspected that is part of a voter bribery scheme organized by candidates or political parties. On Election Day, citizen observers reported voters being transported in buses to precincts in several of these communities. All observed cases were reported to the police that, in some instances, intercepted the buses and opened investigations.

There have been sporadic calls by some citizen observers to revise the legal framework and restrict access to electoral address change after cases of abuse – often colloquially referred to as “electoral tourism”. The CEC and the SVR has responded, stating they consider manipulations with electoral address change an issue that should be dealt with through openness and publicity on potential cases of abuse of the procedure, involvement of law enforcement and bringing perpetrators to justice.

IFES agrees with this position since it should be the voter who decides where he or she votes. IFES reminded that what is now achieved in the field of elections should eventually be extended to civil registration in Ukraine as well. International organizations, such as the OSCE and Council of Europe, have for many years called on Ukraine to dismantle remnants of the Soviet era “propiska” in its civil registration system which is at odds with international best practices.

Candidate Nomination and Registration

Any Ukrainian citizen with the right to vote in Verkhovna Rada elections can be nominated as a candidate for mayor or for member of a local council. If a person has an active criminal record for committing a grave, election or corruption-related crime, this person cannot run in local elections. In line with international standards, residency requirements do not apply to candidacy. IDPs can stand for election regardless if they changed their electoral address.

The candidate nomination process began on September 14 and concluded on September 24. TECs registered 278,859 candidates for councils – 227,943 on proportional lists and 50,916 under the SNTV system – and 2,936 mayoral candidates. The CEC reported that 828 candidates from proportional council lists and 27 mayoral candidates subsequently withdrew or were deregistered. Women candidates were disproportionately represented among those who withdrew from the political party

¹² Civil Network OPORA [Report on Electoral Address Change](#), October 1.

lists after the list had been registered. According to ODIHR's Limited Observation Election Mission, a significant number of candidates did not meet the gender quota requirement on Election Day. Resignation of candidate-elects continued after Election Day.

Registration of "technical" candidates whose name is identical to that of a more prominent local candidate resurfaced again in these elections. This tactic is used by some contestants to deliberately confuse voters and dilute the vote at the expense of the more prominent candidate. This posed a challenge for TECs that addressed these cases. The TECs, in some cases, involved the police. The ODIHR Limited Election Observation Mission said law-enforcement bodies initiated criminal proceedings against 11 potential "technical" candidates.¹³

While clone candidates in Ukrainian elections is a sign of low political culture, some legal steps can be taken to minimize the effect of such attempts to confuse voters, including obliging candidates who recently changed their names to include this information in their nomination papers and authorize election commissions to make this information available to voters.

Party organizations at the village, settlement and city, rayon and oblast levels are empowered to nominate candidates to elected positions. Abolition of the old rayon structures and creation of new larger rayons came just weeks before the beginning of candidate registration and in many cases did not provide political parties with sufficient time to rearrange their local representations or update jurisdiction of their old rayon party organizations. This may have affected their ability to nominate candidates in line with legal requirements, as not all parties – including the governing Servant of the People – have representation at all lower levels of self-governance.

The Election Code empowers oblast level political party organizations to nominate candidates for all local elections within their region and if an oblast and city organization both submit a candidate list for city council, the Election Code prescribes the oblast level party list for city council prevails. IFES believes this provision goes against the decentralized nature of local self-government and introduces an element of central control. One can argue against the Election Code regulating this issue which seems a matter of internal coordination in the political party.

IFES suggests the provision contained in the last paragraph of Article 217.5 be excluded from the Election Code; in case a Territorial Election Commission receives more than one application from different organizations of a political party for registration of candidates for local councils, both applications should be returned to the party for clarification and internal coordination.

In elections held under the open list proportional representation system, only local party branches have the right to nominate candidates; self-nominated candidacy is not permitted. Independent candidates may run only in mayoral elections and in elections for membership of village, settlement or city councils in territorial communities with less than 10,000 voters. Independent candidates can only contest a seat on a council in communities with more than 10,000 voters if they are accepted on the list of a political party. The Election Code does not require party membership of candidates on party lists. Independent candidates will face similar restrictions in parliamentary elections.

Restrictions on passive suffrage rights for independent candidates is at odds with Ukraine's international obligations and commitments as an OSCE participating country that states Ukraine

¹³ ODIHR LEOM Statement of Preliminary Findings and Conclusions, October 26.

must ensure non-party affiliated candidates can participate in elections. A way should be found to accommodate independent candidates in all electoral systems.

Party candidates for local elections must be officially nominated at a local conference or nominating gathering of the political party which then must notify the TEC and the public in advance. Observers noted problems of access for journalists and observers to nomination events of local party branches. In some instances, the party branch provided no information to the TEC or the public about the time and place for the event as required by law. Some conferences were conducted hastily without participants given a possibility to learn more about the candidates or hold discussions about issues of local importance. This indicates low motivation of political parties to ensure transparency and openness of events and a need to strengthen internal party democracy.

Developing a new Political Party Law should look for ways to strengthen internal party democracy and require openness and transparency of party conferences including those to nominate candidates for local elections.

Parties nominating candidates and independent candidates must pay electoral deposits. The July 2020 amendment to the Election Code significantly reduced the size of the electoral deposit for most offices so that it now constitutes 10 percent of what was initially proposed. Under previous regulations, in Kyiv city for instance, the electoral deposit for a mayoral candidate would have been higher than that of a candidate for President of Ukraine. The lowering of candidate deposits is a positive development, as more will be able to register and compete as candidates in local communities. The July 2020 amendments introduced an electoral deposit in elections in smaller communities where both candidates for council and mayor now pay a symbolic deposit. No deposit was required before.

Over the course of candidate registration, observers reported several cases of violation of the procedures for cash deposit payments. This referred to payments made by a central office of a political party instead of the local organization of the party that formally nominated the candidate. Per the Election Code in local elections, the electoral deposit is paid by a local party organization that nominates the candidates or a higher-level party organization. This is Article 225 of the Election Code).

According to CEC Resolution Number 193 approved on September 21, 2020 titled «On the Procedures for Paying, Returning and Transferring the Cash Deposit in the Local Elections», the list of party organizations allowed to pay the deposit does not include the political party's central organization. Payment of the deposit by a party instead of its local organization that nominated the candidates or its local higher-level organization was regarded by TECs as grounds for registration refusal for both candidates and electoral lists.

OPORA noted that TECs denied registration of candidates' party lists on this basis in a number of cases, including the Radical Party of Oleh Lyashko in Ternopil City Council elections; the Agrarian Party for the Khust City Council elections in Zakarpattia Oblast; Razom Syls, Or Together Strong, in the Uzhhorod Rayon Council elections; and, the Demokratychna Sokyra, or Democratic Axe, in Kyiv City Council elections. OPORA observers documented two cases of selective application of refusing candidate registration – the Demokratychna Sokyra party list for Kyiv city council elections and a mayoral candidate from the Radical Party of Oleh Lyashko in Kyiv.¹⁴

¹⁴ Civil Network OPORA [Interim Report](#), October 2.

In most cases, local party organizations appealed TEC decisions to refuse registration of their candidates and the courts satisfied their claims.

The Election Code should be amended to allow a central organization of a political party to pay the electoral deposit for candidate registration on behalf of its local branch in local elections.

Political parties may include their members and independent candidates in their party list. The Election Code states that a person can be included in the electoral list of a local organization of only one political party. While these provisions did not become an issue during Verkhovna Rada elections, they proved to be problematic for TECs to check and verify in the 2020 local elections. A TEC does not and cannot check the membership status of a person in any party organization because registers are not publicly available. Only the political parties have this information. This can become an issue if a candidate nominee for one party is member of another party.

Koziatyn TEC in Vinnytsia Oblast refused registration of the incumbent mayor Oleksandr Puzyr of the Servant of the People party on the basis of an application from Batkivshchyna.¹⁵

During candidate registration, cases were revealed when one person was included in electoral lists of different political parties. For example, in the elections for Volnovakha Rayon Council, four candidates were included in the electoral lists of both the Opposition Platform — For Life and the Nash Krai party. Representatives of Opposition Platform — For Life claimed their political rivals had forged the documents. The incident was investigated by the National Police.

There is a need for clarification and legal regulation of the procedure a TEC must follow to verify a candidate's current affiliation with a political party or its registered branch.

The amended Code gives candidates the right to stand for multiple elections:

- A candidate can run simultaneously for membership to different councils under the SNTV system (but only at two different levels of local self-governance);
- A mayoral candidate in a community with less than 75,000 voters is allowed to run for a seat on the oblast council and/or the village, settlement or city council where he or she is running for mayor (the same person may contest up to three seats);
- Mayoral candidates in cities with at least 75,000 voters are allowed to run for a seat on the city council in the same city.

The possibility that the same person can be nominated as a candidate in multiple races favors political parties with limited human, organizational and financial resources. If the same candidate is elected to two seats at a time, he or she will have to give up one of them. This poses the risk that certain seats on the local councils will remain unfilled. If the relinquished seat is in a council elected under the SNTV system, the election administration will need to call and conduct supplementary elections for this seat, which is a costly and time-consuming exercise. No information was made available about the number of candidates contesting or winning multiple seats.

The provision that allows the same candidate to contest multiple seats should be reviewed. Consideration should be given to exclude the possibility to contest a seat on councils elected under the SNTV system concurrently with other elected local offices.

¹⁵ Same.

A recurring problem in Ukraine is uneven application of the law because of errors and omissions detected in registration documents. Often TECs took an excessively formal approach when considering such omissions or errors. The law provides the candidate or nominating political party should be given an opportunity to correct the mistake; but, some TECs rejected applications with errors rather than returning the documents for correction. Denial of candidate registration resulted in complex election disputes. For example, in Uman City where the TEC denied registration of a mayoral candidate of the Proposition Party and in Odesa oblast, where the Karolino-Buhaz TEC denied registration to a Servant of the People Party candidate over failure to submit his biography in electronic form.

Election commissions should take further action to ensure that errors and omissions in documents filed by the candidates cannot be grounds for denying registration of the candidate if they do not prevent understanding of the content of the information provided.

Women's Participation

Women continue to be underrepresented in public and political life in Ukraine. Introduction of more efficient temporary special measures for women in politics were part of the achievements of electoral legal reform in 2019. The new Election Code now establishes mandatory gender quotas for local elections. There are two gender quotas:

- One applies to political party lists nominated under the open list proportional system in most council elections except for communities with less than 10,000 voters; and,
- One applies to candidates nominated for council elections in small communities where the elections will be held under the single non-transferable vote (SNTV) system.

The first gender quota requires that a political party includes at least two women in each group of five candidates on each type of list – the unified party list of candidates for the entire territory of the election and the specific list for each multi-member constituency. The second gender quota requires political parties to include at least 30 percent women on their party lists of candidates to all other councils. In contrast to the first gender quota, the second gender quota comes without any «zipper» requirement. In other words, the party is not obliged to place women in winnable positions on their party lists of candidates for councils in cities, settlements and villages with less than 10,000 voters.

Failure of the list to comply with the gender quota at the time of its submission should lead to the rejection of the entire candidate list for the relevant council. However, local party organizations do not always comply with the requirement to include at least two women in each group of five candidates on the proportional list or 30 percent of women on the SNTV list when applying for registration.

As noted by observers, TECs treated the party list that failed to meet the gender criteria in quite different ways. Some TECs rejected the entire list while other sent the list back to the local party organization for correction.

The letter of the Election Code does not explicitly state that candidate lists must meet the gender quota requirement on Election Day. Since candidates can withdraw their candidacy after the registration of a electoral list and because women candidate did so more often than men, a number of lists subsequently fell short of meeting the gender requirements on Election Day.

According to data provided by the CEC, approximately 17 percent – 1,354 out of 7,943 – of the political party lists registered for the 792 local councils elected under the proportional system were not compliant with the spirit of the quotas.¹⁶



Participants of Women's March in Kyiv, International Women's Day 2020.

The Election Code should be amended to require enforcement of the gender quota requirement on party lists at all times, including following candidate withdrawal after the initial registration of the list. It should set a procedure for replacement of candidates so party lists on Election Day comply with the gender quota requirement.

In the 2015 local elections, representation of women, on average, was low. They received only 18 percent of seats on city councils in regional centers and 15 percent of seats on oblast councils.

Some 102,263 women, 44.6 percent of candidates on party lists, were registered in the proportional contest in October 2020, which constitutes a significant increase over the 2015 local elections, when their share was 35 percent of candidates on party lists. According to OPORA's gender analysis of candidate lists for proportional elections, women led 22 percent of party lists in unified multi-member constituencies and 30.5 percent of party lists in territorial constituencies. They were less represented in leading positions on party lists than suggested by their share of candidates overall, which may have affected their ability to be elected.¹⁷

Women made up approximately 16 percent of mayoral candidates which represents a slight increase over 2015. Their share was higher in the 38 major cities that are either oblast centers or have more than 75,000 registered voters. Only two major cities had no female mayoral candidate, compared to nine such cities in 2015.

Sexism against women candidates was an issue in local elections. According to the National Democratic Institute, activists and female candidates submitted at least 50 reports of incidents of sexism in the campaign through the organization's chatbot and hotline operating in 10 of Ukraine's 24 oblasts.¹⁸ Approximately one third of women candidates in monitored oblasts were subject to violence such as verbal threats; bullying on social media; so-called «black PR», or personal and professional attacks in the news media; and defacing campaign material.¹⁹ The European Network of Election Monitoring Organizations (ENEMO) also reported black PR and misogynistic messages against women candidates.²⁰ As reported by NDI Watch, hate speech targeting the LGBT community was also an issue.

All election stakeholders should continue to raise public awareness of sexism and violence against women candidates and candidates belonging to the LGBT community in elections, and work diligently to reduce gender-based harassment and violence.

¹⁶ NDI [Ukraine Election Watch – Final Bulletin](#), October 30.

¹⁷ Civil Network OPORA Interim Report, October 2.

¹⁸ NDI Ukraine Election Watch – Final Bulletin, p. 9.

¹⁹ Ukraine Women's Fund: [Second Statement](#) on the Interim Results of Gender Monitoring, October.

²⁰ ENEMO [Statement of Preliminary Findings and Conclusions](#), October 27.

Campaign and Media

The election campaign does not begin on a specific day; a party or candidate may begin campaigning on the next day following the decision to register the party list of candidates, or the candidate. The campaign ends by midnight on the last Friday before Sunday, Election Day.

Campaigning takes many forms: Rallies, voters' meetings, canvassing, public debates, leafleting, placement of posters or billboards, advertising through the print and broadcast media and social media posts and advertising. Due to pandemic restrictions and social distancing requirements, political parties and candidates refrained from holding mass campaign events and rallies. Although the Election Code better defines what constitutes illegal campaigning, hidden political advertising – jeansa – in print and broadcast media was frequently noted by observers. The Code strengthened requirements in publishing opinion polls, including on the Internet and televised talk programs.

Observers noted that candidates were able to campaign freely; but, cases of abuse of state resources and widespread allegations of vote-buying were of concern. They also noted that the national media landscape is diverse but characterized by a high concentration of ownership and lack of editorial independence from the major networks.²¹

Observers reported that the public broadcaster generally provided balanced coverage of the elections and contestants. In a welcome move, several regional branches of public television arranged debates between the main contenders during the second round of mayoral elections in major cities. Although ratings have improved over the past years, the Ukrainian public broadcaster continues to have too low a penetration to balance that of the major private networks. The 2021 State budget is encouraging in providing increased funding for the public broadcaster, which, as NDI has pointed out, should be maintained also in the years to come.²²

The editorial and financial autonomy of the Ukrainian public broadcaster needs to be further enhanced for it to become a reliable alternative news source for the Ukrainian public.

Both domestic and international observers reported that billboards and campaign materials were visible in nearly all regions before the official start of the campaign period and, in some cases, even before the start of the election process itself. OPORA reported 70 political parties started campaigning as early as July under the guise of public outreach. Early campaigning distorts the level playing field and increases the risk of shadow funding of the election campaign and underreporting of actual campaign expenditures.

To level the playing field and increase transparency of money raised and spent for campaigning, the Election Code could be amended to allow electoral contestants to engage in campaigning activities and open their election accounts before the official start of the registration process. Importantly, the sources of these funds should be disclosed in financial reports submitted by political party organizations and candidates.

Limited instances of direct or indirect campaigning during the campaign silence period including on election day were noted by ODIHR Limited Election Observation Mission.²³ Local authorities tasked

²¹ ODIHR LEOM Statement of Preliminary Findings and Conclusions, p. 1.

²² NDI Ukraine Election Watch – Final Bulletin, pp. 22-24.

²³ ODIHR LEOM Statement of Preliminary Findings and Conclusions, p. 23.

with controlling removal of campaign material before campaign silence did not always fulfil their task diligently. ENEMO reported cases of selective removal of campaign material during the mayoral run-offs, especially in cities where incumbent mayors were running for reelection.

Observers found that fundamental freedoms of expression and assembly were generally respected during the campaign and candidates were able to campaign freely. Due to the COVID-19 pandemic and quarantine measures, contestants were limited in their ability to conduct large-scale campaign events.²⁴ The volume and nature of campaign activities varied from region to region but intensified closer to Election Day. Distribution of party newspapers and leaflets, street tents and small-scale meetings with voters were deployed over other means of traditional campaigning.

Domestic and international observers reported several instances of abuse of local government or state resources with state and local executive officials endorsing certain candidates.

On October 13, President Zelenskyy addressed Ukrainians in a video statement, where he announced plans to conduct a national survey on the October 25 Election Day. He promised citizens to «pose five questions at polling stations.» The initiative was promoted by the President's Servant of the People political party.

Organization of a national poll on Election Day was heavily criticized by civil society and political parties. Opponents challenged the President's initiative in the courts for being in breach of the Election Code and for falling outside the scope of his authority (see Complaints and Appeals). The ODIHR Limited Election Observation Mission found that «its implementation appeared to create an unfair political advantage on Election Day and blurred the separation of state and party.»²⁵

Observers noted and verified several allegations of vote-buying, including distribution of food packages or providing free COVID-19 tests by candidates and parties, or through charities established by or affiliated with them. On Election Day in both the first and second rounds, vote buying schemes involving voters photographing their completed ballot were noted in specific regions. Several cases of organized transportation of voters on Election Day were noted by observers.²⁶ The cases were, in most instances, reported to the police and investigations opened (see Complaints and Appeals).

All alleged breaches of campaign provisions must be adequately investigated and the responsible person sanctioned. A public commitment by political parties and candidates not to resort to any form of vote-buying could be made. To combat the misuse of administrative resources and public office for campaign purposes, state bodies should issue clear instructions to public officials and other employees setting standards for their behavior during an election process.

The National Council of Television and Radio Broadcasting of Ukraine (NCTRB) must license Ukrainian broadcasters. The NCTRB is the body mandated to oversee media compliance with legal requirements and adjudicating media related complaints. The Council established a working group to monitor implementation of election legislation by broadcasters during the local election campaign. The working group considers appeals and complaints from legal entities and individuals regarding violations of local election provisions by broadcast media and may also proactively sanction media outlets based on results of their in-house media monitoring.

²⁴ ENEMO Statement of Preliminary Findings and Conclusions, p. 10.

²⁵ ODIHR LEOM Statement of Preliminary Findings and Conclusions, p. 14

²⁶ ODIHR LEOM Statement of Preliminary Findings and Conclusions, p. 14

The current legal framework does not sufficiently enable the NCTRB to adequately respond to and prevent media violations in the campaign period due to deficiencies in the sanctioning mechanism. NCTRB recorded a number of violations such as hidden campaigning and placement or dissemination of campaign materials not marked as such.²⁷ Some media complaints were filed with local courts and to the NCTRB. Although the NCTRB inspected some of the broadcast media channels the violations seemed to continue. Observers have previously noted concerns over perceived bias of the NTRBC and called for strengthening its independence.

The Rada should take legal steps to strengthen the independence of the NCTRB to become an effective media regulatory body. It should consider expanding the oversight mandate of the NCTRB and introduce effective, proportionate and dissuasive sanctions for media violations. Consideration should be given to establishing an independent media council in charge of providing recommendations and guidance to media as to how to cover election campaign events.

Due to the limitations on public gatherings during the pandemic, electoral contestants stepped up their use of social media, messaging applications and online platforms for their campaigns.²⁸ Many contestants made extensive use of online advertising and reached out to their electorate through Facebook, YouTube and Instagram. Some relied entirely on social media and messaging applications (such as Viber and Telegram) to share their programs and political messages. Voters who are not active users of digital platforms may have received less information compared to previous elections which could have limited their ability to make an informed electoral choice.

In view of the increasing use of new technologies in public life and in elections, the Verkhovna Rada should, in consultation with civil society, media experts and service providers, consider ways to effectively regulate election campaigning online through social media networks and via messaging applications.

NDI observers reported that disinformation remained a threat to the integrity of the information environment during the electoral period with the most serious and sustained threats coming from pro-Russia disinformation narratives.²⁹ The narratives seek to undermine the legitimacy of the Ukrainian state and Government; weaken ties between Ukraine and its partners in the West; and promote the image of the Russian Government. Civil society organizations, Detektor Media and StopFake, reported that major political parties often trafficked pro-Russia narratives or amplified disinformation themes.³⁰ COVID-19 disinformation was rampant. Internews reported that 80 percent of respondents in a nationally representative survey had been exposed to disinformation about the pandemic.³¹

The Rada should conceptualize and execute an exhaustive arrangement to react to disinformation dangers. Civil society, the donor community and the Government should team up to expand subsidize and program around observing and countering disinformation and putting resources into long-term media literacy and instruction about disinformation.

²⁷ Same, p. 14

²⁸ Same, p. 2

²⁹ NDI Ukraine Election Watch – Final Bulletin, p.12.

³⁰ Independent Monitoring of Coverage of the Local Election Campaign in Ukraine in Online Media and Social Network Facebook [First Interim Report](#) (Sept. 5 – 15). [Presentation of monitoring](#) (Sept. 26 – Oct. 9).

³¹ USAID Internews 2020 Media Consumption [Survey](#), August 2020.

Campaign Finance

The Election Code provides for some degree of transparency and accountability of campaign finance in local elections. All parties and candidates that have opened a campaign account must submit interim and final campaign finance reports on income and expenditure to TECs. The reports are to be published on the websites of the relevant TEC or local council and on the websites of the local political party organization submitting the report. However, a number of recommendations for improvement of transparency and campaign oversight have not been implemented in the legal and regulatory framework for campaign finance.

The Rada should significantly enhance transparency and oversight in campaign finance in line with existing Group of States against Corruption (GRECO), OSCE/ODIHR and IFES recommendations.

Candidates and parties are not obliged to open a campaign fund if they do not plan to receive donations or use money for campaigning. This provision is problematic as it may encourage the use of shadow funding of the campaign in local elections. All political parties should be legally required to open a campaign fund and report income and expenditures.

Many parties and candidates experienced delays caused by bank managers who were unfamiliar with the rules and procedures for opening dedicated banking accounts for campaign transactions.

The Rada should consider obliging all political party organizations and candidates to open dedicated campaign accounts, whether they intend to spend money for campaigning or not and submit financial reports. To avoid delays in opening dedicated bank accounts for campaign purposes, the CEC should communicate rules and establish coordination with the National Bank of Ukraine in advance of an election.

Rules for campaign finance exclude businesses and other legal persons from making donations in local elections while they are permitted to do so in national elections.

The Rada should harmonize the rules for donations in all types of elections by establishing a single list of forbidden donors.

The interim campaign finance report covers the period of the official start of the political party or candidate's campaign up until 10 days prior to Election Day. Submission and publication of interim financial reports are key elements in holding election participants accountable to the public and enabling voters to make an informed choice on Election Day.

Publication of financial reports online is a new requirement set by the Election Code and a step forward in terms of transparency of local election campaign finance. Due to the decentralized publication and a lack of experience from TECs in publishing reports online, only a tiny share of reports was made available to the public. Available reports were published in a disorganized manner and difficult to find due to low user-friendliness of the TEC and local council websites. Financial reports continue to be published in a non-machine-readable scanned PDF format that discourages stakeholders from meaningfully analyzing reports.

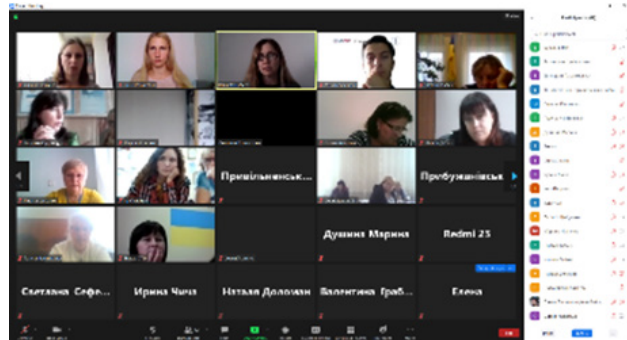
There is a clear need to establish a centralized electronic register for uploading financial reports from contestants in local elections which will be easy to access for all interested stakeholders.

According to the Civil Movement CHESNO and the Syla Pravdy, or Power of Truth, Center for Journalistic Investigations, the major political party organizations and party-nominated candidates almost exclusively relied on their party's or their own funds for their campaign activities.³² Contestants rarely reported receiving donations to their campaign accounts from individual supporters. This casts doubt about the ability of contestants to effectively represent the interests of their constituents in on future local councils. The absence of individual donations to campaign accounts may also be explained by the cumbersome procedure that obliges a donor to visit a bank in person to contribute money to a political party or a candidate. In all other elections than local, donations can also be made online.

The Verkhovna Rada should allow donations to campaign accounts in local elections through online banking tools that allow for proper identification of donors.

Because organizations and candidates relied on party money for their campaigns, it is not possible to see who funded their campaign activities. The original funding source would be disclosed only after political parties have submitted their regular financial reports for the third and fourth quarter of 2020 to the National Agency on Corruption Prevention, or NACP. However, legal requirement to submit and publish these reports was temporarily lifted in March 2020.

On April 2, the Rada passed an amendment to the Law on Political Parties exempting political parties from submitting their quarterly financial reports “until 40 days after the end of the quarantine period”. This amendment is highly problematic, especially in an election year, since the quarterly reports on income and expenditures are the only sources that provide voters credible information about the origins of money spent by parties and their candidates in the 2020 local elections.



Screenshot from IFES training for TECs on campaign finance oversight conducted via Zoom.

Depriving the general public of access to this information effectively prevented voters from making a fully informed choice in local elections. Argumentation used for the exemption – “due to the ongoing quarantine caused by the COVID-19 pandemic” – does not seem justified.

While some parties continue to submit quarterly finance reports to the NACP, including the third quarterly report which was due on November 10, most parliamentary parties have ceased reporting on their income and expenditures. According to the NACP website, the ruling Servant of the People party has not submitted any quarterly finance reports for the year 2020.

To address the issue of concealing original funding sources through using party money for campaigning, the Verkhovna Rada should consider introducing continuous reporting of donations to party and campaign accounts. The deferral of regular party financial reporting should be lifted as soon as possible because it lacks objective justification.

Political advertisement on TV and billboards, especially in larger constituencies, has gained importance as a campaign tool. The amount of money spent on these two types of campaigning far outweigh all other campaign expenses, driving up the costs of campaigning and distorting the equal playing field. In

³² [IFES info-mail](#): Contestants’ Pre-Election Campaign Finance Reports, Preliminary Findings, October 23.

a positive development, the CEC updated the reporting form by adding a separate spending item that covers expenses on Internet campaigning. Available financial reports of both party organizations and candidates show that online political advertising is becoming an increasingly important, but costly type of campaigning

Online political advertising on the Internet is not regulated by law. CHESNO's monitoring indicate that Facebook Ukraine's disclosure of information on purchase of political advertising online stimulate contestants to honestly report their expenses.

It is recommended to set a ceiling on costly types of campaigning, such as TV and outdoor advertisement, to mitigate advantage of wealthier political parties and candidates and facilitate more meaningful types of campaigning including public debates between contestants.

The Rada should regulate online political advertisement requiring proper disclosure of expenses by political parties and candidates.

Many electoral contestants de facto used third parties to fund their campaigns. Observers noted third party donations in form of media support, office rent, or payments for campaign-related materials and utilities. They also noted widespread use of non-governmental organizations and charitable foundations affiliated with a party or candidate for raising and spending campaign-related funds. When the activities of these affiliated organizations came under attack for being direct or in direct vote-buying, the contestants could distance themselves from such accusations.

Third party funding and in-kind donations to election campaigns should be regulated by law. Full information about such funds and donations should be disclosed before Election Day.

The Election Code mandates that TECs analyze all received financial reports but does not set deadlines for the completion of the analysis and publication of findings. Meanwhile, TECs that were created for local elections generally lack necessary experience and capacity to undertake meaningful analysis and verification of the data indicated in financial reports. As practice from the 2015 local elections shows, the analysis of TEC reports is usually formalistic and of little value in terms of detecting violations or increasing voters' awareness.

IFES recommends vesting the campaign finance oversight mandate for the next local elections in permanent regional offices of the CEC while providing these offices with the necessary resources and authority.

The procedure and substance of the analysis of electoral contestants' financial reports in local elections should be clearly defined in the Election Code. There should be required publication of an analysis statement within clearly defined timelines.

Abuse of state resources occurred in the 2020 local elections; but to a lesser degree than before. OPORA classified 70 out of 1,424 electoral violations as abuse of state resources. Abuse of state resources continues to negatively affect the fairness of the campaign and the ability of voters to develop an informed choice. Often, incumbent office holders claimed credit for social and infrastructure projects that was actually paid from the government budget, involved civil servants and communal enterprise workers in campaigning or received positively biased coverage in state- and communal-owned media.

Ukrainian legislation lacks a definition of abuse of state resources; legal provisions that can be applied to cases of abuse are currently scattered across different laws. No state institution has an explicit legal mandate to prevent, identify, and investigate abuse of state resources during elections and neither the CEC and other election commissions; nor the NACP have been proactive.

It is important that abuse of state resources is explicitly defined and properly regulated in Ukrainian legislation. A state institution with sufficient mandate, resources and capacities should be endowed with oversight and response functions related to abuse of state resources.

The July 2020 changes to the Election Code barely addressed criminal or administrative liability for campaign finance violations; minor amendments were made to some types of criminal sanctions and the grounds for applying criminal liability were redefined. Sanctions for campaign finance violations remain inadequate and in need of reform.

Administrative and criminal sanctions for campaign violations in local and other elections should be revised to make them more dissuasive, proportionate and harmonized with each other.

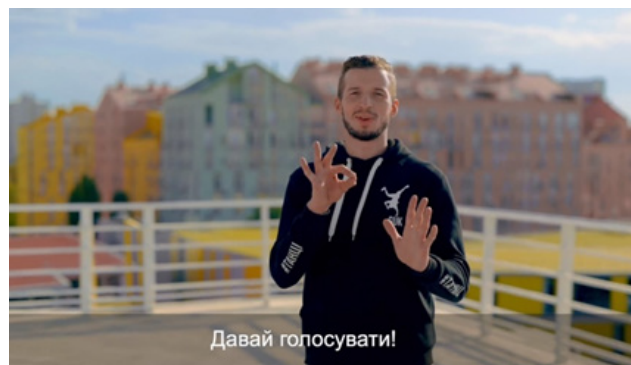
Even if violations are identified, it is hard to apply sanctions. The NACP may compile administrative protocols; but alleged perpetrators must agree to sign the protocol before it can be submitted to court and accepted; otherwise, the case is rejected. Despite recent amendments, the statute of limitations is relatively short. Many political parties and candidates use these legal gaps to avoid responsibility and accountability.

The 2019 elections showed the police to be highly ineffective in investigating criminal cases of alleged campaign violations brought to them by oversight institutions. Only two cases have reached the courts since 2019. The National Police's capacity to investigate campaign finance violations is slow for a number of reasons. Regular police investigators are unfamiliar with the specific nature of campaign violations, there are institutional bottlenecks in internal police structures and many criminal cases related to political parties and candidates in elections are political sensitive.

The parliament should remove bottlenecks in applying sanctions for political finance violations and combine the powers in one institution to identify administrative violations and respond to them (NACP). The ability of the National Police to investigate criminal violations of campaign finance rules should be strengthened.

Accessibility and Inclusion

The Election Code introduced number of measures to make the election process more accessible for voters with disabilities. Voters with disabilities now have the right to be provided reasonable accommodation in accordance with individual requirements to ensure their unimpeded participation in the election process. In 2019, the CEC created a working group on ensuring electoral rights of persons with disabilities jointly with participation of disabled persons'



Screenshot from voter education PSA for people with disabilities filmed by NGO "Fight for Right". "Let's vote!".

organizations (DPOs). This working group met regularly basis ahead of the 2020 local elections to comment on CEC draft regulations supplementing the new provisions of the Code as well as on information campaigns, website accessibility, and joint DPO/CEC efforts to improve accessibility. It proved to be an effective forum for all stakeholders.

Prior to Election Day, each PEC assigned duties to members of the commission to ensure the right to vote for voters with disabilities as well as other voters with low mobility. Information was included in cascaded trainings as well as PEC/TEC manuals on the rights of voters with disabilities.

Despite these efforts, election accessibility remains a significant issue in Ukraine. All observers highlighted that polling stations, information on the electoral and political process, candidate information and campaign materials were not sufficiently accessible for persons with disabilities.

The Election Code mandated the Cabinet of Ministers approve accessibility requirements and conduct accessibility audits of existing polling premises by a June 2020 deadline. This could potentially have resulted in more polling stations with independent access in the 2020 local elections. However, the Cabinet of Ministers approved the accessibility requirements only on October 9 in the form of a resolution on accessibility for persons with disabilities and other low-mobility groups such as the elderly and pregnant women to polling premises. This left no time for this resolution to be implemented prior to the election and DPOs were only given a few hours to comment on the draft resolution before it was published. The nationwide audit has not yet been administered.

The Election Code states that local authorities must ensure accessibility of all voting premises across Ukraine by June 1, 2025. No funding or resources have been appropriated to local authorities from the state budget to support these efforts.

Many voting premises and the physical layout of many polling stations remain unsuitable for independent access by persons with disabilities. Local self-governments have oftentimes allocated premises located on the second or third floor of buildings without elevators, premises with stairs and without ramps or premises located in narrow corridors. Polling stations often lack accessible toilets or adequate seating space. Furthermore, some of the allocated premises did not allow for a layout of the polling stations in line with social distance requirements adopted by the Cabinet of Ministers, which has an even greater impact on those who are immunocompromised and therefore more susceptible to the virus.. This was aggravated by the fact that PECs in many instances designated the large voting booth intended for voters with physical disabilities for voting by voters with symptoms of COVID. This was observed also in the run-offs despite a CEC instruction to discontinue such discriminatory practice.

As for informational access for voters with disabilities, the CEC determined that all information posters produced by election commissions on correct voting procedures and biographies of candidates should contain a matrix two-dimensional QR-code placed in the lower right corner of the poster. Scanning of the QR-code with a mobile device enabled transition of the information displayed on the poster into formats for people with disabilities. The information was translated into Ukrainian sign language, reproduced in audio format as well as in a digital text format for persons with visual disabilities. DPOs and observers praised these innovative measures.³³

³³ ENEMO Statement of Preliminary Findings and Conclusions, p. 16

The ballot design proved inaccessible for voters with disabilities. ODIHR Limited Election Observation Mission interlocutors noted the complexity of the new proportional electoral system and the associated ballot created barriers for voters with visual, physical and intellectual disabilities.

To improve access to the electoral process for persons with disabilities and bring it closer to meeting international standards, the Rada should introduce legislative amendments to adjust national norms and standards to requirements of universal design. The Cabinet of Ministers should ensure that resources are allocated to local authorities to introduce practical measures for improving the physical accessibility of voting premises. The audit of polling stations should take place as soon as possible in partnership and with the guidance of DPOs, and be published publicly.

The CEC, in consultation with disabled persons organizations, should continue to explore enhancing accessibility and inclusion of persons with disabilities within its existing mandate. As improvements are made, these should be made public (e.g. on the CEC website) so that voters and electoral actors can see if their polling premises are accessible.

To reduce the high number of invalid ballots in the open list proportional system contests and to make the ballot paper accessible for independent voting by voters with disabilities, the CEC should undertake a fundamental review and propose a simplified ballot design.

National Minorities

The Constitution guarantees equality of all citizens under law regardless of their origin, race, social status, place of residence and background; provides for 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. No special measures promote national minority representation in political life other than a legal requirement to respect the rights of national minorities in delimiting election constituencies.

To improve the legal framework for protecting political participation rights of national minorities, the 1992 Law on National Minorities should be reviewed in consultation with national minority representatives to comply with international standards and best practices in this field, including for the use of minority languages in the electoral process.

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

The law titled «On Ensuring the Functioning of the Ukrainian Language as a State language» makes Ukrainian the only language for election administration. All official election materials – for example, ballot papers – are produced in the Ukrainian language. ENEMO observers noted protests organized against this law, including calls to partially boycott the election from members of the Romanian-speaking community.³⁴

To guarantee an inclusion of national minorities, the lawmakers may consider making official informational materials available in minority languages.

³⁴ Same, p. 15.

In a positive development, candidates with a national minority background, including from the Roma community, were included on the list of national political parties in areas where minorities are concentrated. The ODIHR Limited Election Observation Mission reported that some political parties representing national minorities who live compactly in small communities raised concerns about the recent enlargement of rayons, as the new territorial-administrative boundaries may challenge their ability to win seats on local councils. At the same time, the formation of territorial communities enabled some minority groups to achieve a better representation in areas of their compact settlement.³⁵

In October, the Hungarian Secretary of State, Árpád János Potápi, visited the Zakarpattia oblast and campaigned in support of the Hungarian minority political party. The visit was criticized by the Ministry of Foreign Affairs and civil society organizations in breach of an Election Code provision banning foreign citizens from participating in the campaign.

Observation

The Election Code provides for national and international election observation. National observers can be partisan (representing political parties or candidates) and nonpartisan (representing civil society organizations that list election observation as an activity in their charter). International observation can be bilateral (representing a foreign country) or multilateral (representing an international organization). Citizen observers are granted considerable rights, including the right to file complaints and lawsuits against decisions, actions or inaction of election commissions; to photograph and video to records; and, attend meetings of election commissions without prior invitation or consent.

Civil society organizations, or CSOs, and international organizations register with the CEC to deploy observers nationwide; CSO members are registered as observers by TECs in their area of observation; and, international observers can be registered only by the CEC. There had been no legal provision that allowed citizen observation of local elections at the CEC level. Now, the Election Code provides for the right of CSOs to register two observers per organization at the national level; but, does not clearly articulate their precise entitlements. All aspects of an election process should be open to scrutiny by independent observers, according to international standards.

By law, Russian nationals are banned from observing Ukrainian elections even if proposed as observers on behalf of an international organization such as ODIHR. This violates the 1990 OSCE Copenhagen Document. It is questionable to bar citizens of certain countries from observing elections as members of a multilateral election observation effort representing an international organization that has Ukraine as a member. These citizens do not represent their country; but, the international organization and are bound by the code of conduct of that organization.

Members of multilateral election observation missions representing 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 the organization.

The CEC accredited 310 international observers nominated by nine organizations and six foreign countries. International observation of the 2020 local elections was limited due to the COVID-19

³⁵ ODIHR LEOM, Statement of Preliminary Findings and Conclusions, p. 14.

pandemic with some organizations deploying remote missions that conducted their election assessment virtually.

Political parties and candidates can register observers, political party agents and candidate representatives with the the relevant TEC or PEC. The number of partisan observers in the 2020 local elections is not known.

The CEC registered 116 CSOs, 85 with a national observation mandate and 31 with a regional one. Among the registered CSOs were recognized organizations such as Civil Network OPORA or the Committee of Voters of Ukraine (CVU) who monitored all stages of the electoral process and published their findings on a regular basis. The ODIHR Limited Election Observation Mission assessed that at least 100 of the 116 registered CSOs appeared to be linked to a political party or a candidate.

This practice is contrary to the principle of nonpartisan citizen election observation. It can negatively impact the perception of impartiality of citizen observers and undermine their role in the electoral process.³⁶

Political parties and candidates should refrain from deploying citizen observers. It should be a requirement that CSOs applying for observer accreditation have been registered for at least one year preceding the election.

It should be considered a requirement for CSOs applying for observer accreditation in nationwide elections must be signatories to the Global Principles for NonPartisan Election Observation and Monitoring by Citizen Organizations and/or be a member of the Global Network of Domestic Election Monitors. Exceptions from this rule should be granted only to domestic nongovernmental organizations with a documented record of protecting rights of women and specific groups of citizens – such as people with disabilities and prisoners.

Generally speaking, observers were given the opportunity to observe all stages of the election. There were a few reports of observers being obstructed in their work with some election commissions using social distance requirements or other COVID-19 measures as reasons for denying observer access.

October 25 Election Day

Election Ballots

The CEC determines the format of ballots used in local elections while the relevant TEC approves the text and security features of its ballots. The ballot is printed on a single sheet of paper and only contains text on the front. The transfer of ballot papers from the printing house to election commissions is subject to strict reporting. Ballot papers arrive at polling stations stacked in booklets. A unique serial number is printed on the ballot counterfoil. The voter and the ballot issuing officer must both sign the counterfoil which must state the number and location of the election precinct. The counterfoil is separated from the ballot paper by the PEC member who issues the ballot to the voter.

There were several reports of mistakes discovered on printed ballot papers. At least in eight reported cases, the TEC discovered errors in time before Election Day and ordered a reprint of ballot papers. In other instances, errors were discovered too late for the TEC to take remedial action. In most cases, mistakes were committed by TECs that approved an erroneous ballot text or violated the approved

³⁶ ODIHR LEOM, Statement of Preliminary Findings and Conclusions, pp. 22-23

ballot form. In Brovary in the Kyiv oblast, the mayoral election was repeated because the TEC had included the serial number of the ballot on the counterfoil and the ballot. On appeal, a court found the secrecy of the ballot was violated and ordered the Brovary city TEC to cancel the election. The re-run of the elections in Brovary took place in January 2021.



A voter studying his ballot after receiving it from election commission member during local elections on October 25, 2020.

The unfamiliar design of the open list proportional ballot proved a challenge for TECs when approving the ballot text. In some instances, candidates' names were missing from ballots or assigned to the wrong election district; or appeared on the ballot of more than one election district. In Uzhhorod oblast, TECs wrongfully included the name of the top candidate from each party list on the proportional ballot. When the mistake was discovered on Election Day, the TECs, after consulting the CEC, instructed PECs to count individual votes cast for these candidates as votes cast for the entire electoral list.

Ballot papers for different electoral races issued to voters varied in number from two to five ballots. In some polling stations voters had to mark – and election commissions to count and tabulate – three ballots with preferential votes for a candidate.

The CEC administered voter education and training on the new ballot format. These efforts were often amplified by local initiatives. Still, the late adoption of changes to the electoral system and the proportional ballot design prevented these measures from being fully effective. On Election Day, observers noted instances of voters spending considerable time seeking information on how to correctly mark their ballot. To guide voters and election commissions, the CEC issued comprehensive instructions on what constitutes a valid and an invalid ballot to supplement and clarify the imperfect provisions on ballot validation in the Election Code.

These observations underscore the earlier point that late introduction of new electoral systems and ballot formats creates significant problems for voters and the election administration. It leads to human errors and procedural mistakes which complicate and delay counting and tabulation. Eventually, considerable additional human and financial resources had to be invested in remedying these mistakes.

Voting and Counting in Polling Stations

On October 25, voting occurred in 29,084 polling stations across Ukraine, including 28,156 regular and 928 special polling stations established in medical in-patient institutions.³⁷ In addition, home-bound voting was available for more than 465,000 citizens marked as «permanently incapable of moving independently» on voters list as well as anyone with a valid medical certificate confirming temporary immobility due to illness (including COVID-19) or self-isolation. The CEC accredited 116 domestic observer organizations to monitor voting and tabulation across the country.

³⁷ On October 25, a parliamentary by-election took place in single mandate constituency 208 in Chernihiv oblast.

While no international election observation missions deployed short-term observers to conduct systematic observation of Election Day procedures due to the pandemic, national observers, such as CVU and OPORA, did. Their observers commended the local elections for their competitive nature and assessed them generally to be in compliance with Ukrainian legislation.



Voters inside voting booths at a polling station during Ukrainian local elections on October 25, 2020.

Turnout is traditionally lower in local elections than in national elections, not only in Ukraine. In the 2015 Ukrainian local elections, participation reached 46.61 percent. Many stakeholders anticipated a low turnout due to the COVID-19 pandemic, especially since cases of Ukrainians testing positive for the COVID-19 virus were significantly on the rise in the last weeks before Election Day. Turnout was particularly low among citizens voting at their homes and in hospitals.

The CEC reported voter turnout at the close of polling stations on October 25 at 36.88 percent. Out of 28,713,874 eligible voters, 10,556,621 voted. As has historically been the case in Ukraine, the highest turnout was recorded in Western Ukraine. It reached 44.68 percent in Ternopil oblast, followed by Lviv and Volyn oblasts at 43.82 percent and 41.89 percent, respectively. The lowest turnout was recorded in Donetsk oblast – 31.67 percent. The result of OPORA's parallel turnout tabulation in a sample of polling stations across Ukraine showed a 35.94 percent average turnout (with a 1.4 percent margin of error), thus confirming the preliminarily reported official turnout.

The CEC noted that polling stations of special election precincts had not been set up in more than a dozen hospitals, including at wards where voters with COVID-19 undergo treatment. Reportedly, the responsible health authorities had not taken action to form PECs at these special election precincts although they are permanent.³⁸ Before the second round, the CEC called on the Minister of Health to take additional measures to ensure that hospitalized voters, including those undergoing treatment for COVID-19, were able to vote.

Election stakeholders should ensure necessary safety measures are in place and communicated to through comprehensive voter awareness campaigns.

OPORA stated that irregularities and violations noted during the campaign and on Election Day were not systemic; but, were localized and did not significantly influence the outcome. OPORA observers documented 514 incidents of irregularities and passed them on to election commissions and police.

The main irregularity noted by OPORA was voters obtaining a ballot without showing identification and attempts at voting on behalf of another person, or proxy voting.³⁹ Instances of open voting – voters completing the ballot outside the ballot booth or displaying the content of their ballot to others were also frequently observed. PEC members did not always intervene in these illegal actions.

³⁸ Special PECs were not formed in four hospitals in Ismail rayon, Odesa oblast. Similar problems occurred at hospitals in Rivne, Zaporizhzhia and Kharkiv oblasts.

³⁹ Civil Network OPORA, Preliminary Statement, October 26.

A recurrent violation of vote secrecy was voters not folding their marked ballot paper. After voters deposited their ballot in the transparent ballot box, the content of their ballot was often visible to bystanders, especially to observers who, as a rule, are placed near the ballot box. The problem was especially profound in the run-off elections where ballots were of much smaller size. ODIHR has previously recommended to address the issue by requiring voters to fold their ballot.

To enhance the secrecy of vote, election laws should be amended to require that the ballot issuing officer pre-fold the ballot paper and instruct voters to fold their marked ballot paper before leaving the booth. Introduction of this new procedure should be accompanied by a comprehensive information campaign and training officials on protection of vote secrecy.

The Election Code tolerates a certain level of fraud by stating that precinct results can be invalidated only if the amount of fraud (such as ballot box stuffing and multiple or proxy voting) 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 votes in an election precinct in line with international standards, the vote result should 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 be based on objective criteria and clear procedures that should be spelled out in the Election Code.

PECs did not always follow basic ballot reconciliation procedures during the vote count and often skipped the sequence of steps prescribed for completing results protocols. Some PECs refused to issue certified copies of the vote counting protocols to domestic observers. Despite the Election Code now establishing administrative liability for commissioners that pre-sign empty protocol forms, this potential serious violation was noted by observers in a few polling stations.

The CEC should reinforce efforts to train election commissioners on Election Day procedures, including procedures for the vote count and completion of the precinct results protocol.

Tabulation and Announcement of First Round Results

After completion of the vote count in the polling station, members of the PEC transported the results protocol and ballot material from each local election to the relevant TEC. Due to protracted vote counts, many PECs reported results to the TEC late in the morning on Monday October 26, often after having waited in line for several hours at the TECs.

In some cities, TECs co-located the place for receiving protocols and ballot material from different races to minimize the time spent by PECs on transporting and reporting results. Some TECs installed projection screens to allow observers, political party representatives and candidate agents to better follow the result tabulation process in compliance with COVID-19 and social distancing requirements. This measure provided a high degree of transparency in tabulating PEC protocols at these TECs and contributed to building trust among stakeholders in an honest and fair reporting of results. At other TECs, citizen observers reported a less transparent and, at times, chaotic process.

As the CEC was not allocated sufficient funds to update its Vybory informational-analytical system to reflect the new and late amended electoral systems, the OSCE Project Coordination in Ukraine supported the process with creation of an Electronic Cabinet for TECs. This web resource was available

online as an aid for TECs to complete a number of their tasks including drawing up results protocols.⁴⁰ The CEC recommended its use; but, it was not obligatory for TECs. Initial overload and access problems with the Electronic Cabinet were quickly solved; but, may have discouraged TECs from using it.⁴¹ Other tools and web resources to aid balancing PEC were also available thanks to civil society initiatives.

Problems with the unfamiliar proportional ballot design surfaced again during the vote count and tabulation and caused significant delays completing results protocols at both the PEC and TEC levels. As election commissioners tired, mistakes and procedural digressions became more frequent, often causing contestants to file formal complaints requesting recounts or cancellation of results.

Delays at lower-level TECs caused by mistakes in results protocols that had to be corrected and resubmitted, recounting ballots, processing complaints and appeals and implementation of court decisions spread to upper-level TECs and was ultimately reflected in the way results were reported to the CEC. When the 12-day deadline for TECs to announce the election outcome expired on November 6, less than half of election results were uploaded on the CEC website.

Although TECs, in general, seemed to act in a professional and competent manner, a number of TECs were politicized and showed bias in their decisions and actions. The CEC became increasingly involved and used several of its oversight instruments to move the vote results process forward. Following warnings, the CEC dismissed and replaced the membership of several TECs found to have engaged in gross negligence or other electoral violations – including at least one instance of TEC involvement in destroying a PEC voter list and several instances of failure to implement court decisions.

In Karolino-Bugaz in Odesa oblast, the TEC was dismissed and replaced for, among other reasons, failure to include a candidate on the ballot whose candidacy had been reinstated by a final court decision⁴² The new TEC violated legal provisions and ultimately had to be replaced by the CEC.

In other cases, the CEC sent its representative to the field to ensure an orderly process. This occurred in Chernivtsi where the CEC annulled a decision of the TEC to satisfy recounts in violation of legal deadlines and ordered the TEC to promptly establish the election results for mayor and city council. CEC representatives also paid field visits to TECs in Kyiv oblast.

Delaying official election results led the National Security and Defense Council (NSDC) to draft a letter addressed to the CEC Chair expressing concern with the increased tensions in society due to the delays.⁴³ The NSDC called on the CEC to use the new Election Code to ensure timely publication of all results. Commenting on the NSDC letter, Civil Network OPORA's Olha Aivazovska said the problems were caused at the local rather than the central level of election administration and the CEC had taken appropriate action in nearly all instances of significant delays in reporting election results.⁴⁴

By November 17, final results of the October 25 Election Day were still missing from 106 of 1,577 local council races and 14 of 1,421 mayoral races. TECs began scheduling second rounds (see below) and repeat elections in communities where the first round election results were cancelled.

⁴⁰ Available at www.cabinet.tvk2020.org.

⁴¹ The OSCE PCU estimated that 59 percent of all TECs took advantage of the E-cabinet in establishing results.

⁴² In the same area – Karolino-Bugaz TEC in Bilhorod-Dnistrovskyy rayon, Odesa oblast – the CEC prior to election day annulled over 500 suspicious changes of electoral address following police investigation.

⁴³ NSDC [letter](#) of November 11.

⁴⁴ Civil Network OPORA, [Statement](#) on the Eve of Second Rounds, November 13.

Following the death of the leading candidate from complications related to the COVID-19 virus, repeat mayoral elections in Boryspil in the Kyiv oblast, Novhorod-Siverskyi in the Chernihiv oblast and Konotop in the Sumy oblast were scheduled. The initial TEC decisions setting dates for the repeat elections in two cases violated the Election Code. The CEC then ordered the Boryspil and Novhorod-Siverskyi TECs to set new dates in line with legal requirements. These repeat elections are now scheduled for mid-January 2021.

Repeat elections for local councils have also been scheduled where violations led to cancellation of the elections in, as referenced, Odesa and Kyiv oblasts. Ninety-one council seats will be filled through repeat elections in late December 2020 and January 2021.

Consideration should be given to simplifying the closing, counting and tabulation procedures. Computer facilitated protocol preparation should be mandatory, thereby reducing the number of returned protocols, while consideration may be given to creating a protected electronic results tabulation system. CEC should conduct a thorough review of best practices in organizing and administering results tabulation with the objective of institutionalizing these practices in the local election legal and regulatory framework.

Second Rounds

Mayoral run-offs are required in cities with more than 75,000 voters when no candidate in the first round earns a majority of votes. This phenomenon occurred in 20 Ukrainian cities on October 25. Run-offs are required in mayoral elections in cities with less than 75,000 voters under the two-round electoral system and in the event when two leading candidates obtain an equal number of votes as happened in the city of Ukrainka in the Kyiv oblast.



Observers behind ballot boxes during election day on October 25, 2020.

Second rounds are also required in council elections under the SNTV system if two candidates competing for the last seat to be filled in the multi-member district obtain an equal number of votes. This happened more than 60 times on October 25. Second rounds for filling a council seat were scheduled to be held on November 8 and four consecutive Sundays in November and December 2020.

Prior to the first second round election, the CEC appealed to the Government and local governments to ensure a safe second round of local elections.⁴⁵ The CEC called for minimum standards for personal protective equipment (PPE) and disinfectants and for timely delivery to election commissions of PPE, non-contact thermometers, detergents and disinfectants. The CEC repeated that all polling stations should be equipped with a separate booth and ballot box for voters with a temperature above 37.2 degrees Celsius or with respiratory disease symptoms.

⁴⁵ [CEC resolution No. 640](#) of November 6.

In a welcome move, the CEC amended the text of the invitation to voters after Election Day to include a reminder to wear a mask and bring their own writing pens when voting. It also reminded voters on the procedure and deadline for requesting to vote at home.

Mayoral run-offs were scheduled for four consecutive Sundays starting November 15. The first seven run-offs were held in the cities of Lutsk, Kramatorsk, Odesa, Sumy, Kherson, Kamianets-Podilsk and Ukrainka in the Kyiv oblast. More than 1.6 million voters were eligible to vote in these run-offs. The CEC reported voter turnout at 24 percent. The highest turnout, 34.29 percent, was reported in Kamianets-Podilsk, while the lowest turnout, 19.02 percent, was in Sumy.

On November 22, mayoral run-offs were held in the cities of Dnipro, Nikopol (in the Dnipropetrovsk oblast), Sloviansk (in the Donetsk oblast), Uzhhorod, Berdiansk (in the Zaporizhia oblast), Lviv, Drohobych (in the Lviv oblast), and Mykolaiv. More than 2.75 million voters were eligible to vote in these second round elections. The CEC reported voter turnout at 29.53 percent.⁴⁶ This was a welcome increase over the November 15 run-offs and can be partially explained by more competitive races. The highest turnout, 39.23 percent, was reported in Berdiansk, with Lviv closely following at 38.94 percent.

In some cities, creative voter mobilizing activities were launched. For example, voters were asked to take photos of themselves at or near their polling station and post it on social media using specific hashtags with a possibility to win prizes. These initiatives explicitly warned voters against taking a photo of their ballot at the polling station. No candidates took direct responsibility for these initiatives to increase the turnout that do not constitute a violation of legal campaign silence.

Mayoral run-offs were scheduled in Chernivtsi on November 29 and in Kryvyi Rih on December 6. In Kryvyi Rih, the incumbent mayor and heavy favorite, Yuri Vilkul withdrew his candidacy after the first round, reportedly due to health problems.

The decision not to have a single date for all run-offs meant that voters were often not aware of the Election Day for run-offs. The run-offs often coincided with a spike in the COVID-19 pandemic and introduction of weekend lockdowns of restaurants and bars, reduction in public transportation and other restrictions. Some incumbent mayors signaled opposition to these unpopular measures in their campaign messages before the run-offs.

In Lviv and Dnipro, a debate televised on the local public broadcaster between the mayoral candidates in the run-off was arranged before the second round Election Day. The debate provided voters with the possibility to make better-informed choices.

The Election Code could be amended to require second rounds of mayoral contests are conducted on the same day across the country to provide run-off candidates equal campaign opportunities. To give voters a better choice, there should be a legal requirement for second round mayoral candidates to participate in a televised debate on the local public broadcasting station.

Civil Network OPORA noted that while the November 15 run-offs received little attention, the highly competitive November 22 run-offs were well-covered in national media and engaged politicians at the national level.⁴⁷ Heated campaigns occurred in Dnipro, Lviv and Sloviansk where candidates engaged in negative campaigning on social media. The campaigns also revealed a number of irregularities.

⁴⁶ [CEC information](#), November 22.

⁴⁷ Civil Network OPORA [Statement of Preliminary Findings of the Mayoral Run-Offs on September 15](#).

OPORA's observers reported 275 incidents, ranging from minor breaches to vote secrecy and allowing citizens to vote without proper identification to potential vote buying. OPORA assessed the observed irregularities were not systemic or impacted the result. The exception was in Dnipro where OPORA verified cases of voters taking a photograph of their marked ballots and vote buying schemes.⁴⁸

National Police received 407 complaints before and on the November 22 Election Day. The majority of incidents took place in Dnipro (207) and Lviv (46). Photographing of ballots accounted for most incidents reported to police (177 reports).

Law enforcement should carefully investigate all reported cases of breaches to vote secrecy, including controlled voting and voters photographing their marked ballot for links to vote buying schemes. The design of the voting booths could be reconsidered to enable officials and observers to observe potentially fraudulent actions of voters, while still protecting secrecy of the ballot.

Citizens violating vote secrecy by not folding their ballot before casting it in the transparent ballot box occurred more frequently in the second round of elections due to a smaller-sized ballot. Another problem noted by observers in the second round was PECs slowing down the pace of the count in order to finish late and sign the results protocol past midnight which would trigger another day of remuneration. There were also observed instances of PECs post-dating protocols for the purpose of obtaining an extra day of pay.

Remuneration of PEC members should be organized so that it discourages the delay of the counting process.

Election Dispute Resolution

The Election Code significantly restricted election commissions' authority to consider complaints against election-related violations. It provides that the CEC is entitled to consider complaints only against inaction of TECs related to establishment of election results. TECs in charge of establishing election results in a territorial district can consider complaints only against decisions, actions or inaction of lower-level TECs and PECs and their members. Other election-related complaints, including those filed over violations committed by public authorities and officials; political parties; candidates; candidate proxies and agents; official observers; journalists; and, TEC decisions and actions can only be considered by courts.

Restricting election commissions in election dispute resolution is a positive development, given that the Venice Commission and ODIHR have repeatedly criticized venues for considering election complaints such as courts or election commissions. This arrangement has potentially led to parallel consideration of the same electoral complaint by different agencies.

Domestic election experts have questioned the ability and professionalism of election commissions to effectively handle election dispute resolution claiming they play an inferior role in ensuring the right to an effective remedy. There is another side to this point of view.

First court proceedings are far more complicated compared to those in election commissions. Filing lawsuits usually require engagement of an attorney or, at least, a person with legal background to prepare the lawsuit, collect acceptable evidence and represent the complainant during court hearings.

⁴⁸ Civil Network OPORA [Statement of Preliminary Findings of the Mayoral Run-Offs on September 22](#)

Complaints filed with a court involve paying a court fee while no such fee is foreseen for filing complaints with election commissions.

Second, there is inconsistency in delineating jurisdiction between courts and election commissions when it comes to challenging violations committed by an election commission or its members. Complaints against actions and decisions of TECs and actions and inactions of their members can only be filed with the courts, while complaints against inaction of TECs can also be filed to the CEC. Because all complaints are of a similar nature and affect the same institutions, they should be considered by the same agency.

The Election Code should provide for a consistent approach when establishing the jurisdiction of courts and election commissions over consideration of complaints against election commissions and their members. If election commissions are not allowed to consider complaints against decisions and actions of a lower-level commission or its members, they should not have jurisdiction to consider complaints against inaction of the same commission. To ensure access of justice and more effective enforcement of the right to legal remedy, the legal framework should exempt plaintiffs from the obligation to pay a court fee in certain cases, especially when a lawsuit is filed by a voter.

Article 62 of the Election Code provides that the election complaint must be filed with the relevant election commission in two days after the alleged violation was committed and the commission must consider the complaint within three days after the day the complaint was lodged. While some CEC members believe that a two-day deadline for filing a complaint is sufficient, IFES, the Venice Commission and ODIHR have previously stated that this narrow deadline can be challenging in complicated cases when complainants need to collect evidence and prepare their complaints.

Given that under the Code of Administrative Adjudication election-related lawsuits can be filed within five days after the date when the alleged violation was committed, the deadline for filing election complaints to election commissions should similarly be extended to five days.

Like the previous election law, the new Election Code sets a lengthy and complex list of formal requirements for a complaint. Failure to comply with the requirements could result in rejection of the complaint without it being considered on its merits. This provision has been repeatedly criticized by international observers and Ukrainian election experts as it allowed commissions to abuse the right to reject deficient complaints, thus lessening effectiveness of electoral right protection. In previous elections, almost 60 percent of complaints were rejected by lower-level election commissions over failure to comply with the formal requirements to filing a complaint. No statistics on how lower-level election commissions handled complaints are yet available from the 2020 local elections.

The Election Code should make clear that even if a complaint does not meet formal legal requirements, but; the evidence and other data allow establishment of a violation with an accompanying investigation, a complaint should be deemed admissible and considered on its merits by the relevant election commission.

The Election Code does not require election commissions to forward decisions on election complaints to the CEC for publication on the CEC website, nor does it require the CEC to analyze these decisions and issue guidance and recommendations on how to resolve specific types of violations. In the absence of the forwarding requirement, TEC decisions on complaints are dispersed across thousands

of different websites that makes it nearly impossible to analyze and assess the overall effectiveness of election dispute resolution by TECs.

The Election Code should be amended to require TECs at the oblast and rayon level and in larger cities to submit decisions on complaints via the informational-analytical system Vybory for publication on the CEC website. To enhance effectiveness of election dispute resolution, the CEC should be required to analyze decisions resolving election disputes after each national election and issue guidance to election commissions on responding to more complex cases.

In the 2020 local elections, courts had the primary role in resolving election-related disputes. Some TECs, judging from their websites, did not receive a single complaint.⁴⁹ One of the explanations is that the categories of complaints that can be filed with TECs are limited to complaints against lower-level TECs and PECs. In contrast, the CEC reviewed a high number of complaints about TECs. Most of the complaints alleged inaction by the TEC.

In the period through November, the CEC reviewed 55 complaints against TECs. Thirty-seven were rejected without consideration on merits, either because the CEC did not have jurisdiction (the CEC can only consider complaints over the TECs it formed) or because of deadline expired for filing a complaint.

It should be noted as a positive development that the CEC looked into the merits of the complaints that were rejected on technical grounds. In several cases, the CEC instructed a TEC to take action – for example, accept or reconsider candidate registration documents, form lower-level TECs that were not formed in time or formed in violation of legal procedures and reconsider illegal decisions – or terminated their powers for gross or systematic violation of law. There were also instances where the CEC rejected a complaint but handed over the case matter and the evidence presented by the complainant to the police to investigate.

The CEC has, in this welcome change of practice, set new standards for more effective enforcement of the right to a legal remedy – a practice that should be copied by lower-level election commissions when handling election disputes.

IFES, the National School of Judges and the USAID New Justice Sector Reform Program jointly delivered a comprehensive online training program to almost 300 judges ahead of the 2020 local elections, which contributed to effective election dispute resolution by courts. In addition, IFES and its counterparts developed judge handbooks covering the new provisions of the Election Code, election-related international standards and best practices, examples of previous court practice and complex cases that were likely to emerge from the 2020 elections.⁵⁰

According to Civil Network OPORA, courts generally dealt with election-related complaints in a timely and efficient manner; but noted instances where courts took formalistic decisions or ruled inconsistently in similar cases. Despite the courts generally demonstrated a high level of professionalism and effectiveness in dealing with election disputes, in some cases claims were dismissed due to insufficient evidence presented by plaintiffs. These cases included allegations of rules violations for campaigning on the Internet or social networks, abuse of government resources, vote buying in the form of distribution of goods and services to voters and illegal campaign funding.

⁴⁹ Based on review of the websites of Ivano-Frankivsk city TEC, Dnipropetrovsk oblast TEC, Ternopil city TEC, Mykolaiv oblast TEC, and Lviv oblast TEC.

⁵⁰ IFES [info-mail](#), October 21, 2020.

Other court decisions lacked consistency in enforcing legal procedures. The most controversial related to enforcement of the gender quota provisions. Courts in some cases upheld a complaint against a TEC decision to reject a political party list of candidates that did not comply with the gender quota requirement, and in other cases, overturned the rejections. Accordingly, a relatively high number of party lists were accepted despite failure to comply with gender requirements. Similar cases of courts coming to different conclusions related to payment of the electoral deposit. Some courts allowed the local political party branch to pay the deposit while others correctly required nominated candidates to pay the deposit.

The lack of uniform enforcement of legal procedures also led to disfranchising candidates. Some courts ruled that it was okay for a TEC to reject a candidacy over minor or technical mistakes in the candidate submission documents. In other cases, courts overturned the TEC decision to reject a candidate with the argument that the TEC had not provided the candidate with the opportunity to correct the mistake.

The National School of Judges should consider lessons learned from the 2020 local elections, continue efforts at ensuring uniform enforcement of legal norms by courts and strengthening the professionalism of judges specializing in election dispute resolution. Training programs for judges should be prioritized and implemented by the National School of Judges on a regular basis in the period between elections.

Election Code amendments introduced in July 2020 significantly strengthened the system of sanctions for election-related criminal and administrative offenses. Some violations that were not punishable previously – vote buying in the form of distribution of goods and services to citizens or submission of forged documents to election commissions – are now covered in the Election Code. The July amendments also introduced stronger penalties for other serious offenses that were not subject to effective, proportionate and dissuasive sanctions.

Strengthening the system of sanctions for election-related offenses is a positive development. However, it is now equally important to ensure that new provisions of the Criminal Code and Code of Administrative Offenses are effectively enforced by law enforcement agencies and courts.

Police Investigation and Prosecution of Electoral Offenses

Ahead of the 2020 local elections, the Ministry of Interior launched an online Vybory platform that provides the public with up-to-date information on election-related matters brought to the attention of National Police. It contains notifications of potential electoral violations or matters that may impact the orderly preparation and conduct of elections as well as details about the criminal and administrative investigations launched by the police.⁵¹ In the period until December 16, the National Police has received 998 notifications about criminal offenses, 1,519 notifications of election-related administrative offenses and 14,543 notifications of other matters that could impact an orderly election process.

The most common administrative offense relates to violation of campaign rules (1,519 notifications). These violations include distribution of campaign material without the legally required information (756 cases) and campaigning in prohibited places (340 cases). Regarding notifications of criminal offenses (998 cases), the most common crimes included delivery of false data to Voter Register

⁵¹ <https://vybory.mvs.gov.ua>

Maintenance Bodies (192 cases), obstruction of the election process (170 cases), vote buying (112 cases) and illegal use of ballots (48 cases).

The Ministry of Interior's database provides comprehensive information on reported violations; but, could be more user-friendly. The information is comprehensive when it comes to the place and time of violations, paragraphs violated, the police unit following up and the status of measures taken by police – for example, launching criminal proceedings against the perpetrator and geographical distribution of this information on an interactive map.

However, important factual and statistical information on actions taken by courts is missing. There is no information about how many offenses were considered by courts, what ruling the court delivered, the sanction imposed and the number of cases dismissed. The site would benefit from a search function and a more detailed description of the nature of the offense than a reference to the legal paragraph that has been violated.

It is crucial to building public trust in effectiveness of police investigations and prosecution of electoral violations that National Police and the courts make comprehensive information about the whole “life-cycle” of electoral offenses reported to the police available to the public.

According to Civil Network OPORA, by November 27, the police opened 1,190 criminal cases related to electoral crimes, 134 persons were officially charged, in 36 cases a pre-trial investigation was completed and cases were forwarded to courts.⁵²

The National Police and the courts should ensure that all those guilty of committing electoral offenses are brought to justice and that new sanctions foreseen by the July amendments to the Criminal Code and Code of Administrative Offences are effectively enforced.

Civil Network OPORA developed an election-related training program targeting police officers that was delivered online to 61,514 police officers across Ukraine ahead of the 2020 local elections.⁵³ The program was initially planned to train 5,000 police officers. Police officers were trained on the new provisions of the Election Code, new violations punishable under the law and sanctions introduced in July 2020. The comprehensive training effort undertaken by OPORA with IFES technical assistance contributed to the increase in professionalism of police officers across Ukraine in detecting and investigating election-related offenses. No serious allegations against the police and its role in elections were reported during the 2020 local elections.

Domestic civil society organizations and international donors should continue training members of the National Police on election procedures, offenses and investigation techniques. The training program should be expanded to cover police, prosecutors and judges who deal with criminal and administrative cases related to elections.

Election Results

Preliminary analysis of results indicates that independent candidates and political parties with localized or regional platforms continue to play an important role in local elections in Ukraine. Every sixth member of the new local councils and nearly half of the elected mayors ran as self-nominated, or

⁵² Civil Network OPORA [Report on Police Training, December 1, 2020](#).

⁵³ Same as above.

independent, candidates. In comparison, parliamentary political parties received 45.71 percent of all local council seats and 26.85 percent of all positions as mayor or head of local community. In cities that are oblast centers, only two candidates from parliamentary parties were elected mayor – Oleksandr Lysenko in Sumy (Batkivshchyna) and Oleksandr Tretiak in Rivne (European Solidarity). The Servant of the People party did not win a mayor’s seat in any major city, including Kyiv.

Candidates for oblast and rayon council and for councils in the larger cities where elections were conducted under the open list proportional representation system could obtain a seat either directly by receiving enough votes to overcome the threshold of 25 percent of the electoral quota in their multi-member territorial district or indirectly, if they were placed sufficiently high on the party list in the unified electoral district.

Results of Election for Local Self-government Councils

Subject of Nomination	Elected Council Members	Percentage
Self-nomination (independent)	6,640	15.67
Servant of The People	6,360	15.01
Batkivshchyna (Fatherland)	4,445	10.49
Opposition Platform – For Life	4,187	9.88
Za Maibutnie (For the Future)	4,046	9.55
European Solidarity	3,869	9.13
Nash Krai (Our Land)	1,883	4.45
Svoboda (Freedom)	891	2.10
Ukrainian Hroisman’s Strategy	680	1.61
Oleh Liashko’s Radical Party	580	1.37
Proposition	574	1.35
Syla i Chest (Power and Honor)	565	1.33
Dovira (Trust)	459	1.08
Ridnyi Dim (Native House)	441	1.04
Kernes Block – Successful Kharkiv	433	1.02
Other political parties	6,309	14.92
Total	42,362	100.00

* Based on preliminary CEC data as of December 18, 2020.

Result of Elections for Mayor and Head of Local Community

Political party or Self-nominated Candidates**	Elected Mayors	Percentage
Self-nomination (independent)	661	47.45
Servant of The People	226	16.22
Za Maibutnie (For the Future)	92	6.60
Batkivshchyna (Fatherland)	53	3.80
Opposition Platform – For Life	53	3.80
Nash Krai (Our Land)	44	3.16
European Solidarity	41	2.94
Ukrainian Hrovsman’s Strategy	28	2.01
Dovira (Trust)	23	1.65
Ridnyi Dim (Native House)	19	1.36
Svoboda	18	1.29
Proposition	18	1.29
Other political parties	117	8.39
Total	1,393	100.00

** Based on preliminary CEC data as of December 18, 2020.

Based on preliminary results, Civil Network OPORA calculated the number of more than 23,000 new council members elected under the open list system, elected directly in their constituency and elected on unified party lists.⁵⁴ The preliminary analysis shows that 40 percent of all new council members were elected in their constituency and 60 percent were elected on party lists. This indicates that Ukrainian voters, by casting a preferential to some degree, were able to influence who was elected. If we look at the results of the oblast councils, 54 percent of all new council members were elected in the territorial constituency. The larger the number of voters in a district, the better chance of sufficient votes getting elected in that district.

OPORA also looked at the breakdown of preferential votes cast in support of the elected councilors. The result of this analysis indicates that 52.6 percent of all elected councilors obtained 25 percent or more of the electoral quota in preferential votes; 40.4 percent received between five and 25 percent of the quota; and, seven percent received less than 5 percent of the electoral quota. Around 50 elected candidates (two tenths of one percent of elected councilors) did not receive a single vote in support of their candidacy but managed to get elected thanks to their high position on the unified party list.

As indicated above, 60 percent of the new councilors won their seats thanks to their position on the unified party list. Only representatives of the Opposition Platform – For Life party were more often elected in a territorial district than through party lists – 52.6 percent of its candidates. This party also had the highest number of candidates who overcame the 25 percent threshold to win a seat directly – 63.4 percent – indicating the party’s electorate was most inclined to use the option to cast a preferential vote. By comparison, 53.6 percent of candidates from European Solidarity met the 25 percent threshold. For the Servant of the People party, 53.3 percent of candidates met the 25 percent threshold and 51.3 percent of candidates from Nash Krai equaled the threshold.

⁵⁴ Civil Network OPORA [Express Review of Local Election Results: Party Affiliation and Gender Component](#), November 24.

Gender analysis of preliminary election results indicate that 64 percent of the newly elected local officials are men and 36 percent are women. Compared to the number of candidates contesting the elections – 55.5 percent men and 44.2 percent women – fewer women were elected to local self-government than ran. Still, the high number of women elected – 36 percent – is a major achievement. For comparison, in the 2015 local elections, 35 percent of women candidates contested the elections while only 4.7 percent women were elected to local office. The new gender quotas were effective in paving the way for a much larger representation of women in local government.

Election results indicate that women account for 28.4 percent of newly elected oblast council members and 33.8 percent of newly elected members to rayon councils. The new local councils in communities with more than 10,000 voters have 33.3 percent female membership while the percentage of women councilors in communities with less than 10,000 voters is 41.7 percent.

Women are less represented among new mayors and community heads with only 16.8 percent of all these government executive positions. Women are better represented among new heads of villages (21.1 percent) and heads of settlements (16.5 percent). Only 9.3 percent of Ukrainian cities will have a new female mayor.

Like in 2015, OPORA conducted a verification of the allocation of seats to parties in all oblast and rayon councils in the 2020 local elections based on the available results protocols and information published on the CEC website. According to this partial analysis of the local election results, discrepancies in the calculation of seats were detected in 18 cases in 14 regions (oblasts and the city of Kyiv).⁵⁵ Whether due to arithmetical mistakes, misinterpretation of legal provisions or deliberate manipulation by the TECs in question, any allegation of discrepancies in the allocation of seats to contestants is a serious violation of the electoral legislation.

Any alleged discrepancy between the number of seats received based on the vote and those allocated to election contestants should be duly investigated by the CEC. The CEC should take steps to enhance results management in local elections. The CEC should be legal mandated to ensure the upload of scanned copies of local election results protocols to its website and the publication of full results data in machine readable format

More detailed IFES analysis of the election results will be provided in a forthcoming separate report.

⁵⁵ Civil Network OPORA Report [Lost Mandates](#), December 9, 2020.

ANNEX 1

IFES Recommendations following the 2020 Local Elections in Ukraine

The below IFES recommendations on the October 2020 local elections are offered to all Ukrainian election stakeholders with the aim to improve the country's legislative, regulatory and administrative framework for local elections. It is indicated where an IFES recommendation fully or partially repeats an outstanding recommendation made by ODIHR following local elections in 2015.⁵⁶

Recommendations on the preparation and conduct of local elections during the COVID-19 pandemic and quarantine restrictions can be found in the special IFES report annexed to this Final Report.

With a view on future comprehensive reform of the entire legal framework for elections in Ukraine, the below recommendations should be read in conjunction with outstanding recommendations contained in previous IFES reports on the 2019 presidential and early parliamentary elections as well as those made by national citizen observers and international observer missions following the 2020 local and previous national elections in Ukraine.⁵⁷

Priority Recommendation

IFES Ukraine recommends that the Verkhovna Rada consider inviting the Venice Commission and ODIHR to provide their authoritative opinion on the new Electoral Code well in advance of the next regular nationwide elections to allow sufficient time for lawmakers and the election administration to bring Ukraine's electoral framework in line with international standards and OSCE commitments.

Legislative Framework

1. The Verkhovna Rada should further harmonize and improve the current legal framework governing elections and referendums in Ukraine through open and inclusive public consultations based on lessons learned and outstanding observer recommendations from all recent elections.
2. In line with earlier recommendations by the Venice Commission, ODIHR and IFES, key amendments to the electoral law, in particular those related to the electoral system, election district boundary delimitation and electoral administration membership, should be introduced no later than one year prior to the next major election event.⁵⁸

Electoral Systems

Open List Proportional Representation

3. Parliament should consider modifying the open list proportional system to increase political competition and voter influence on allocating seats between the candidates by:

⁵⁶ The OSCE/ODIHR electoral recommendations database can be accessed [here](#). It contains a compilation of all ODIHR recommendations in Ukrainian elections since 2014 as well as the status of their implementation.

⁵⁷ At the time of this report, Final Reports of the two main international observer missions present in Ukraine during the 2020 local elections, the OSCE/ODIHR Limited Election Observation Mission and the Observation Mission of the European Network of Election Monitoring Organizations (ENEMO), are still pending. NDI issued its [Ukraine Election Watch – Final Bulletin](#) containing 19 important recommendations on the legal framework, campaign finance, gender and inclusion, and the information environment for the 2020 local elections.

⁵⁸ ODIHR 2015 Priority Recommendation 1.

- Enabling independent candidates to register on independent lists of candidates⁵⁹;
- Decreasing the electoral threshold which candidates need to pass to move to the top of the list from the current 25 percent to 5-10 percent as previously recommended by IFES and Civil Network OPORA. Such a decrease would allow more candidates to get elected based on voters' preferences rather than according to their position on party lists;
- Repealing the provision for a reserved seat to the top candidate on each unified list in both parliamentary and local elections;
- Consider either to distribute all seats to multi-member election districts by removing the unified closed list element or modify the distribution so that other factors are considered such as the availability of vacant seats in a constituency and votes received by the candidate in the district to which he or she is assigned;
- Ensuring that each district is represented in local council in proportion to the number of registered voters rather than in proportion to voter turnout in the district on election day;
- Applying the open list system only to larger communities with 90-100,000 or more voters.

Single Non-Transferrable Vote System

4. Ukrainian electoral stakeholders should carefully analyze and evaluate the experience with the SNTV system in the 2020 local elections. Its vulnerability to fraud, its effectiveness in ensuring representation of local communities and impact on performance of the new local councils should be carefully considered when evaluating the SNTV system.

Electoral Systems for Mayors

5. Based on results of the 2020 mayoral elections, the Verkhovna Rada should consider if the advantages of the TRS outweigh its disadvantages, whether this system should potentially be modified to allow the frontrunner to be elected in the first round with a simple majority of votes if the margin over the second candidate is significant.

Election Constituencies

6. The Central Election Commission could initiate an analysis of the districting for the 2020 local elections and draft a concrete solution to resolve the lingering over and underrepresentation of voters in some election districts under the SNTV system. The Election Code should be reviewed in an open and inclusive process to ensure equality of the vote in future district delimitation in line with OSCE commitments and other international obligations for democratic elections.⁶⁰ One consideration is tasking future regional offices of the CEC with a role in district delimitation within their respective territory.

Election Security and Elections near the Contact Line

7. The Verkhovna Rada should amend the legislation and establish clear and objective legal criteria governing the CMA's conclusions about the feasibility to hold elections in communities near the contact line. Conclusions should be subject to independent scrutiny and review because they can deprive citizens of constitutionally-guaranteed rights to vote in local elections. The CMAs and the CEC must take all necessary measures to hold first local elections in the 18 communities

⁵⁹ ODIHR 2015 Priority Recommendation 6.

⁶⁰ ODIHR 2015 Priority Recommendation 2.

that did not elect their new mayors and councils at the first possibility (for example, March 2021).

8. 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 implemented in close cooperation with the CEC.

Election Administration

9. To ensure independent and impartial performance of the election administration the law should prohibit payments from candidates and parties to commissioners; remuneration of election commissioners should be commensurate to the workload. Authorities need to take necessary measures to adequately fund the organization of elections.⁶¹
10. Parties should be entitled only to nominate one member per election commission in local elections. Allowing a guaranteed seat on all election commissions for nominees of parties with links to a parliamentary group is not a welcome practice. It may lead to further politicization of the work of election commissions and should be abolished.⁶²
11. A legal deadline should be set in law well ahead of Election Day by which political parties and candidates can no longer replace their nominees on commissions without objective reasons to ensure stability of the election administration.⁶³
12. 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 Code. This training should be held in-person and accompanied by distribution of printed training manuals. Political parties should only be permitted to nominate members to serve on commissions from a pool of pre-trained persons certified by the CEC Training Center.
13. Parties participating in elections should continue their efforts aimed at ensuring balanced representation of women and men on election commissions and ensure that women are proportionally represented in decision-making positions on election commissions.

Candidate Nomination and Registration

14. While clone candidates in Ukrainian elections is a sign of low political culture, some legal steps can be taken to minimize the effect of such attempts to confuse voters, including obliging candidates who recently changed their names to include this information in their nomination papers and authorize election commissions to make this information available to voters.
15. IFES suggests the provision contained in the last paragraph of Article 217.5 be excluded from the Election Code; in case a Territorial Election Commission receives more than one application from different organizations of a political party for registration of candidates for local councils, both applications should be returned to the party for clarification and internal coordination.

⁶¹ ODIHR 2015 Priority Recommendation 4.

⁶² ODIHR 2015 Recommendation 10

⁶³ ODIHR 2015 Priority Recommendation 3.

16. Restrictions on passive suffrage rights for independent candidates is at odds with Ukraine's international obligations and commitments as an OSCE participating country that states Ukraine must ensure non-party affiliated candidates can participate in elections. A way should be found to accommodate independent candidates in all electoral systems.⁶⁴
17. Developing a new Political Party Law should look for ways to strengthen internal party democracy and require openness and transparency of party conferences including those to nominate candidates for local elections.
18. The Election Code should be amended to allow a central organization of a political party to pay the electoral deposit for candidate registration on behalf of its local branch in local elections.
19. There is a need for clarification and legal regulation of the procedure a TEC must follow to verify a candidate's current affiliation with a political party or its registered branch.¹⁹
20. The provision that allows the same candidate to contest multiple seats should be reviewed. Consideration should be given to exclude the possibility to contest a seat on councils elected under the SNTV system concurrently with other elected local offices.
21. Election commissions should take further action to ensure that errors and omissions in documents filed by the candidates cannot be grounds for denying registration of the candidate if they do not prevent understanding of the content of the information provided.

Women's Participation

22. The Election Code should be amended to require that enforcement of the gender quota requirement to party lists at all times, including following candidate withdrawal after the initial registration of the list. It should set a procedure for replacement of candidates so party lists on Election Day comply with the gender quota requirement.⁶⁶
23. All election stakeholders should continue to raise public awareness of sexism and violence against women candidates and candidates belonging to the LGBT community in elections, and work diligently to reduce gender-based harassment and violence.

Campaign and Media

24. To level the playing field and increase transparency of money raised and spent for campaigning, the Election Code could be amended to allow electoral contestants to engage in campaigning activities and open their election accounts before the official start of the registration process. Importantly, the sources of these funds should be disclosed in financial reports submitted by political party organizations and candidates.
25. All alleged breaches of campaign provisions must be adequately investigated and the responsible person sanctioned. A public commitment by political parties and candidates not to resort to any form of vote-buying could be made.⁶⁷ To combat the misuse of administrative

⁶⁴ ODIHR 2015 Priority Recommendation 6.

⁶⁵ ODIHR 2015 Recommendation 14.

⁶⁶ ODIHR 2015 Priority Recommendation 9.

⁶⁷ ODIHR 2015 Priority Recommendation 7.

resources and public office for campaign purposes, state bodies should issue clear instructions to public officials and other employees setting standards for their behavior during an election process.

26. The editorial and financial autonomy of the Ukrainian public broadcaster needs to be further enhanced for it to become an alternative and reliable news source for the Ukrainian public.⁶⁸
27. The Rada should take legal steps to strengthen the independence of the NCTRB to become an effective media regulatory body. It should consider expanding the oversight mandate of the NCTRB and introduce effective, proportionate and dissuasive sanctions for media violations. Consideration should be given to establishing an independent media council in charge of providing recommendations and guidance to media as to how to cover election campaign events.⁶⁹
28. In view of the increasing use of new technologies in public life and in elections, the Verkhovna Rada should, in consultation with civil society, media experts and service providers, consider ways to effectively regulate election campaigning online through social media networks and via messaging applications.
29. The Rada should conceptualize and execute an exhaustive arrangement to react to disinformation dangers. Civil society, the donor community and the Government should team up to expand subsidize and program around observing and countering disinformation and putting resources into long-term media literacy and instruction about disinformation.

Campaign Finance

30. The Rada should significantly enhance transparency and oversight in campaign finance in line with the existing COE's Group of States against Corruption (GRECO), OSCE/ODIHR and IFES recommendations.
31. The Rada should consider obliging all political party organizations and candidates to open dedicated campaign accounts and to submit financial reports. The CEC should communicate rules and establish coordination with the National Bank of Ukraine in advance of an election to avoid delays.
32. The Rada should harmonize the rules for donations in all types of elections by establishing a single list of forbidden donors.
33. There is a clear need to establish a centralized electronic register for uploading financial reports from contestants in local elections which will be easy to access for all interested stakeholders.
34. The Verkhovna Rada should allow donations to campaign accounts in local elections through online banking tools that allow for proper identification of donors.
35. To address the issue of concealing original funding sources through using party money for campaigning, the Verkhovna Rada should consider introducing continuous reporting of

⁶⁸ ODIHR 2015 Priority Recommendation 8.

⁶⁹ ODIHR 2015 Recommendation 20.

donations to party and campaign accounts. The deferral of regular party financial reporting should be lifted as soon as possible because it lacks objective justification.⁷⁰

36. It is recommended to set a ceiling on costly types of campaigning, such as TV and outdoor advertisement, to mitigate advantage of wealthier political parties and candidates and facilitate more meaningful types of campaigning including public debates.⁷¹
37. The Rada should regulate online political advertisement requiring proper disclosure of expenses by political parties and candidates.
38. Third party funding and in-kind donations to election campaigns should be regulated by law. Full information about such funds and donations should be disclosed before Election Day.
39. IFES recommends vesting the campaign finance oversight mandate for the next local elections in permanent regional offices of the CEC while providing these offices with the necessary resources and authority.
40. The procedure and substance of the analysis of electoral contestants' financial reports in local elections should be clearly defined in the Election Code. There should be required publication of an analysis statement within clearly defined timelines.⁷²
41. It is important that abuse of state resources is explicitly defined and properly regulated in Ukrainian legislation. A state institution with sufficient mandate, resources and capacities should be endowed with oversight and response functions related to abuse of state resources.
42. Administrative and criminal sanctions for campaign violations in local and other elections should be revised to make them more dissuasive, proportionate and harmonized with each other.
43. The parliament should remove bottlenecks in applying sanctions for political finance violations and combine the powers in one institution to identify administrative violations and respond to them (NACP). The ability of the National Police to investigate criminal violations of campaign finance rules should be strengthened.

Accessibility and Inclusion

44. To improve access to the electoral process for persons with disabilities and bring it closer to meeting international standards, the Rada should introduce legislative amendments to adjust national norms and standards to requirements of universal design. The Cabinet of Ministers should ensure that resources are allocated to local authorities to introduce practical measures for improving the physical accessibility of voting premises. The audit of polling stations should take place as soon as possible in partnership and with the guidance of DPOs, and be published publicly.⁷³
45. The CEC, in consultation with disabled persons organizations, should continue to explore enhancing accessibility and inclusion of persons with disabilities within its existing mandate. As

⁷⁰ ODIHR 2015 Recommendation 17.

⁷¹ ODIHR 2015 Recommendation 17.

⁷² ODIHR 2015 Recommendation 18.

⁷³ ODIHR 2015 Recommendation 25.

improvements are made, these should be made public (e.g. on the CEC website) so that voters and electoral actors can see if their polling premises are accessible.

46. To reduce the high number of invalid ballots in the open list proportional system contests and to make the ballot paper accessible for independent voting by voters with disabilities, the CEC should undertake a fundamental review and propose a simplified ballot design.

National Minorities

47. To improve the legal framework for protecting political participation rights of national minorities, the 1992 Law on National Minorities and the Law on Political Parties should be reviewed in consultation with national minority representatives to comply with international standards and best practices in this field. It could be considered to lift the ban on establishing national minority political parties and make some election information material available in minority languages.

Observation

48. Members of multilateral election observation missions representing 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 the organization.
49. Political parties and candidates should refrain from deploying citizen observers. It should be a requirement that CSOs applying for observer accreditation have been registered for at least one year preceding the election.
50. It should be considered a requirement for CSOs applying for observer accreditation in nationwide elections must be signatories to the Global Principles for NonPartisan Election Observation and Monitoring by Citizen Organizations and/or be a member of the Global Network of Domestic Election Monitors. Exceptions from this rule should be granted only to domestic nongovernmental organizations with a documented record of protecting rights of women and specific groups of citizens – such as people with disabilities and prisoners.

Election Day

51. Election stakeholders should ensure necessary safety measures are in place and communicated to through comprehensive voter awareness campaigns.
52. To enhance the secrecy of vote, election laws should be amended to require that the ballot issuing officer pre-fold the ballot paper and instruct voters to fold their marked ballot paper before leaving the booth. Introduction of this new procedure should be accompanied by a comprehensive information campaign and training officials on protection of vote secrecy.⁷⁵
53. To bring the provision for invalidation of votes in an election precinct in line with international standards, the vote result should 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

⁷⁴ ODIHR 2015 Recommendation 21 and 22.

⁷⁵ ODIHR 2015 Recommendation 26.

ted to an arbitrary percentage of abuse but be based on objective criteria and clear procedures that should be spelled out in the Election Code.⁷⁶

54. The CEC should reinforce efforts to train election commissioners on Election Day procedures, including procedures for the vote count and completion of the precinct results protocol.
55. Consideration should be given to simplifying the closing, counting and tabulation procedures. Computer facilitated protocol preparation should be mandatory, thereby reducing the number of returned protocols, while consideration may be given to creating a protected electronic results tabulation system. CEC should conduct a thorough review of best practices in organizing and administering results tabulation with the objective of institutionalizing these practices in the local election legal and regulatory framework.
56. The Election Code could be amended to require second rounds of mayoral contests are conducted on the same day across the country to provide run-off candidates equal campaign opportunities. To give voters a better choice, there should be a legal requirement for second round mayoral candidates to participate in a televised debate on the local public broadcasting station.
57. Law enforcement should carefully investigate all reported cases of breaches to vote secrecy, including controlled voting and voters photographing their marked ballot for links to vote buying schemes. The design of the voting booths could be reconsidered to enable officials and observers to observe potentially fraudulent actions of voters, while still protecting secrecy of the ballot.
58. Remuneration of PEC members should be organized so that it discourages the delay of the counting process.

Election Dispute Resolution

59. The Election Code should provide for a consistent approach when establishing the jurisdiction of courts and election commissions over consideration of complaints against election commissions and their members. If election commissions are not allowed to consider complaints against decisions and actions of a lower-level commission or its members, they should not have jurisdiction to consider complaints against inaction of the same commission. To ensure access of justice and more effective enforcement of the right to legal remedy, the legal framework should exempt plaintiffs from the obligation to pay a court fee in certain cases, especially when a lawsuit is filed by a voter.⁷⁷
60. Given that under the Code of Administrative Adjudication election-related lawsuits can be filed within five days after the date when the alleged violation was committed, the deadline for filing election complaints to election commissions should similarly be extended to five days.
61. The Election Code should make clear that even if a complaint does not meet formal legal requirements, but; the evidence and other data allow establishment of a violation with an

⁷⁶ ODIHR 2015 Priority Recommendation 5.

⁷⁷ ODIHR 2015 Recommendation 23.

⁷⁸ ODIHR 2015 Recommendation 24.

accompanying investigation, a complaint should be deemed admissible and considered on its merits by the relevant election commission.⁷⁸

62. The Election Code should be amended to require TECs at the oblast and rayon level and in larger cities to submit decisions on complaints via the informational-analytical system Vybory for publication on the CEC website. To enhance effectiveness of election dispute resolution, the CEC should be required to analyze decisions resolving election disputes after each national election and issue guidance to election commissions on responding to more complex cases.
63. The National School of Judges should consider lessons learned from the 2020 local elections, continue efforts at ensuring uniform enforcement of legal norms by courts and strengthening the professionalism of judges specializing in election dispute resolution. Training programs for judges should be prioritized and implemented by the National School of Judges on a regular basis in the period between elections.
64. It is crucial to building public trust in effectiveness of police investigations and prosecution of electoral violations that National Police and the courts make comprehensive information about the whole “life-cycle” of electoral offenses reported to the police available to the public.
65. The National Police and the courts should ensure that all those guilty of committing electoral offenses are brought to justice and that new sanctions foreseen by the July amendments to the Criminal Code and Code of Administrative Offences are effectively enforced.
66. Domestic civil society organizations and international donors should continue training members of the National Police on election procedures, offenses and investigation techniques. The training program should be expanded to cover police, prosecutors and judges who deal with criminal and administrative cases related to elections.

Election Results

67. Any alleged discrepancy between the number of seats received based on the vote and those allocated to election contestants should be duly investigated by the CEC. The CEC should take steps to enhance results management in local elections. The CEC should be legal mandated to ensure the upload of scanned copies of local election results protocols to its website and the publication of full election results data from each local election race in machine-readable format.



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