

IFES Comment

Ukraine's CEC Takes Key Steps to Further Strengthen Anticipated Elections Following Martial Law

On September 27, 2022, the Central Election Commission (CEC) adopted Resolution No 102 "On proposals for improving the legislation of Ukraine with the aim to ensure the preparation and conduct of elections after the state of martial law is suspended or terminated".

Russia's unprovoked and illegitimate war has resulted in destruction of and damage to crucial electoral infrastructure, significant population displacement within and beyond the borders of Ukraine as well as significant logistical, financial and organizational challenges for the administration of future elections. The CEC's proposals seek to address these challenges by suggesting a number of amendments to the electoral legal framework to facilitate the possible conduct of elections in the immediate post-war period. The CEC Resolution also addresses the likely situation that martial law – currently in place until November 21, 2022, – may be further extended and that elections for some time will not be possible in all government-controlled areas due to security risks.

The CEC proposals were elaborated in a consultative process with experts from civil society and the international community, including IFES Ukraine and Civil Network OPORA. They suggest three sets of amendments, namely:

- A draft special law that establishes a procedure for holding first nationwide postwar elections (Draft Special Law). This law, if adopted, would apply only once - to the first postwar parliamentary and presidential elections;
- Amendments to draft legislation which establishes the procedure for cancellation of elections due to security threats (Draft Law on Cancellation of Elections); and
- Draft amendments to the Election Code, the Code of Administrative Adjudication and related laws aimed to address specific postwar challenges (Draft Amendments of the Election Code). In contrast to the Draft Special Law, the proposed amendments would apply to all future postwar elections and address specific postwar challenges.

The Draft Special Law is aimed to set a new legal framework for the conduct of the first national postwar elections which is adjusted to the postwar challenges. It is a temporary law that if adopted will take effect the day following its promulgation and expire within a year after the suspension or termination of the state of martial law. Once this term expires, national elections will be governed by the ordinary provisions of the Election Code and other existing laws. The draft law is first and foremost designed to facilitate participation of the internally displaced population in the first postwar elections. For this purpose, it provides for the following:

- **The formation of additional election precincts in places with high density of those displaced by the war (e.g. institutions, sanatoriums, schools).** In Ukraine, the borders of the precincts will be identified by the local administrations, while additional polling stations will be opened by the CEC upon proposals from local administrations. In the out-of-country election district, the CEC may set up additional election precincts and polling stations based on proposals of the Ministry of Foreign Affairs (MFA). Polling stations may be opened at diplomatic institutions of Ukraine abroad and, if agreed by the government of the host country, at other suitable premises; and
- **Voter lists will be compiled by the respective precinct election commissions (PECs) for each additional precinct, either based on statements from voters who**

reside with the borders of the precinct or upon submissions by the heads of the respective institutions. This amendment would ensure that the voters displaced by the war are not excluded from the vote due to outdated, incorrect or missing records on the State Voter Register. The voters displaced by the war are still able to change their place of voting under the current procedures (i.e., in 5 days prior to the vote) and vote at a polling station of choice (i.e., not necessarily at the additional polling stations).

IFES Ukraine welcomes these amendments as they would ensure more effective implementation of the principles of general and equal suffrage and allow those who fled the country to vote in national elections on equal basis with other voters. However, the Cabinet of Ministers and CEC should strike a balance between opening a significant number of additional polling stations and effective use of limited budget funds for administering the elections, as well as ensure that those displaced by the war are able to freely form and express their will on election day in full compliance with international standards.

The Draft Law on Cancellation of Elections determines a procedure for calling off elections in certain locations due to security threats stemming from the war with Russia. This draft law addresses key concerns previously expressed by IFES Ukraine, Civil network OPORA, and the Council of Europe's Venice Commission in relation to the cancellation of local elections in 2020, which was done without a proper legal base and transparent criteria. The draft provides that the National Security and Defense Council (NSDC) is empowered to cancel elections:

- The NSDC may fully cancel local elections and local referendums, and partially cancel national elections and national referendums within certain territories due to security threats or the impossibility of organizing the elections in line with democratic standards within these territories;
- The NSDC is be entitled to cancel elections/referendums on its own initiative or based on proposals from the military, CEC, local civil-military administrations, or other state bodies; and
- The NSDC would be required to consider a number of threats/criteria specified in the draft law, such as intensity of shelling, risks of external interference with election/referendum processes, the state of infrastructure, cyber-security threats etc. before cancelling elections/referendums.

Overall, the draft law would significantly reduce the risks of arbitrary cancellation of elections, if adopted and properly implemented. It is an improvement compared to the current legal provisions, which gives wide discretion to local civil-military administrations while considering security risks for elections.

The Draft EC Amendments are aimed to address election-related challenges stemming from the war with Russia and the recent prohibition of the pro-Russian Ukrainian parties, and suggest the following:

- voters are allowed to use electronic IDs to receive ballot papers on election day;
- PECs can be located at temporary premises (such as tents) providing that security of the PEC operations and the vote in general is ensured;
- the CEC is entitled to establish temporary out-of-country polling stations outside diplomatic institutions subject to specific restrictions/conditions (see above), if the host country agrees;
- aggressor state(s) would not be allowed to deploy international observation missions in Ukraine; and
- citizens convicted for crimes against national security, including for collaborationism, would not be allowed to register as party agent, candidate proxy, observer or member of an election commissions. A voter with non-expunged criminal record for the same crime and any other intentional crime will not be able to run only for parliamentary elections and can stand for presidential and local elections.

In conclusion, IFES Ukraine would like to commend the CEC for these legislative proposals. Most of the suggested amendments are a timely and a welcome development, although they will still need to be broadly discussed and further elaborated with the Parliament of Ukraine and other stakeholders. Ideally, the input from the CEC could instigate a process of further refinement of the electoral legislation in a wider format given that there are other pending electoral reform recommendations made by international and national partners which also deserves consideration. In particular, emphasis should be put on creating administrative preconditions for holding postwar elections (that implies, in particular, swift transition of powers from the military to civil administration; conducting a comprehensive infrastructural audit; ensuring the election-related needs of a significant - and still rising - numbers of voters with disabilities; updating the State Voter Register); reviewing the system for parliamentary and local elections in the current context; ensuring effective enforcement of the gender quota; strengthening political party and political finance/campaign finance measures; safeguarding independence, accountability and professionalism of election administration; strengthening election dispute resolution mechanisms; and, amending the Election Code address recommendations stemming from the 2020 local elections. This could include specifying the grounds for denying candidate registration, lowering the size of election deposits, clarifying the requirements to election district boundary delimitation, and simplifying the ballot, among other recommendations.

In light of the complexity of postwar legal and infrastructural challenges faced by Ukraine, it is important to resume the work of the Parliamentary Electoral Reform Working Group as soon as possible to consider the CEC's proposals, as well as other prior recommendations, in an open and inclusive consultative process.

This analysis was developed by the International Foundation for Electoral Systems (IFES) through the support of the United States Agency for International Development (USAID), Global Affairs Canada and UK aid. The opinions expressed herein are those of the author and do not necessarily reflect the views of USAID or the Government of the United States, Global Affairs Canada or the Government of Canada, or the Government of the UK.