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**Conference**

**«2015 Local Elections in Ukraine: Lessons Learned and Recommendations»**

**Final recommendations**

February 15, 2016

On December 16-17, 2015, the International Foundation of Electoral Systems (IFES), the Organization for Security and Co-operation in Europe (OSCE) Project Co-ordinator in Ukraine, and the Council of Europe jointly with the Central Election Commission (CEC) of Ukraine, hosted a conference titled, “2015 Local Elections in Ukraine: Lessons Learned and Recommendations.”

Conference participants engaged in a dialogue on the local election results, key problems, and ways forward for Ukraine and its electoral stakeholders. The conference brought together representatives of election management bodies, election experts, academia, and representatives of the government, Parliament and judiciary, as well as members of those international and domestic election observation missions that observed the 2015 local elections.

Conference participants worked via plenary sessions and four working groups to discuss the following topics:

1. Electoral system for local elections and its implications;
2. Political actors and observers: statuses and roles;
3. Election administration: election commissions for local elections, their structure and composition; and
4. Voter participation in elections: electoral rights, voter awareness and deliberate choice.

Discussions in each working group were moderated by a national election expert. This document summarizes the findings and recommendations of the conference, drafted based on the conclusions developed by each national election expert.

**Key findings and recommendations**

1. The Local Election Law № 595-VIII of July 14, 2015, was adopted too late, just two months before the start of the election process in the local elections. The last-minute adoption of the Law did not allow political parties and prospective candidates to properly prepare for the upcoming elections and hampered the work of the election commissions. Conference participants reiterated the fact that changes to the electoral legal framework should be consistent with international standards, in particular, those recommending that any significant changes to the electoral legal framework should be made no later than one year prior to elections. The adoption of an Election Code that would harmonize the legal framework governing the parliamentary, presidential and local elections could be an effective solution to that problem. It would allow the electoral contestants to know “the rules of the game” well in advance of the elections and to be properly prepared. Adoption of such a code could also facilitate the improved administration of elections, ensure greater fairness and transparency, and increase the level of voters’ confidence in the election results.

**Recommendation 1:** To convince lawmakers to adopt an electoral code.

1. The proportional electoral system used for electoral contests in oblast, rayon, city and city district councils proved to be complicating and unclear (as to the consequences of its application) for parties, candidates, election administrators, and voters.

This electoral system also ignored the constitutional provisions requiring that common interests of local communities must be equally represented in the oblast and rayon councils. While this system mathematically ensured a proportional distribution of seats in the local councils among the parties participating in the elections, it also produced highly irrational results. Specifically, some sub-districts (districts within a multi-mandate district) remained without any representation in their respective local councils (for instance, nearly 20 percent of the sub-districts in the oblast council elections failed to receive any representation), while some sub-districts were overrepresented by two or more councillors (e.g. 15 percent of all sub-districts in the oblast council elections are overrepresented). In some sub-districts, candidates from parties with the lowest level of support received seats, while the winners did not receive mandates. Moreover, some candidates with no votes were elected.

**Recommendation 2:** To restrain from using the same or similar systems in subsequent elections, and to urge the authorities to ensure that any electoral system(s) that is/are proposed for national or local elections is/are subject to public discussion among stakeholders. Consideration could be given to the single non-transferable vote electoral system (SNTV) with small districts as an option for oblast, rayon, village and settlement council elections, as well as for the elections in amalgamated communities. Furthermore, the right to nominate candidates for local council elections should be given to the organized local groups of citizens.

1. The use of a two-round electoral system for mayoral elections in cities with at least 90,000 voters proved to be justified.

**Recommendation 3:** To consider the possibility of using the two-round electoral system at further mayoral elections in all cities.

1. A number of problems that emerged during the last local elections were rooted in unintentional errors made by election commissioners while approving ballot paper texts, and while compiling the final vote counting protocols at the election precincts. Such problems could have been avoided or their scale could have been decreased if IT technologies would have been used more extensively by the Territorial Election Commissions (TECs) and Precinct Election Commissions (PECs).

**Recommendation 4:** To consider using the IT system *Vybory* administered by the CEC (alternatively, for the local elections a separate IT system could be created) for the preparation of electronic ballot paper templates, IDs for observers, and for compiling electronic copies of PEC vote counting protocols. Such an approach facilitate the compilation of electronic vote counting protocols in accordance with the Law, and verify the integrity and correctness of the populated data via the IT system. This will help to eliminate the risk of mathematical errors and to prevent unauthorized changes to the protocols. Such an approach could also facilitate an increase in the overall quality of the protocols and preclude the need for compiling additional, updated protocols. Consideration could also be given to the possibility of using IT technologies for other purposes, such as scanning the ballots by readers to count the votes. The scope of use of IT systems for election-related purposes can be a subject to further expert discussions.

1. Under the Local Election Law, TECs have the status of permanent collective decision-making bodies. However, in practice their funding stops once the official election results are published, even though the TECs are legally required to work after official publication of the election results. For instance, they are obliged to participate in the preparations for the opening of the first session of newly elected councils, as well as to compile reports on the use of budgetary funds and to deliver sensitive election documents to the archives. The TECs are also in charge of preparations to by-elections, but usually are not provided with any budget allocations for this purpose.

**Recommendation 5:** To consider the allocation of budgetary funds to TECs on a permanent basis. They should be given permanent premises for operations. The possibility of paying a monthly salary to at least one TEC commissioner should be also carefully considered.

1. The local elections are organized by more than 10,000 TECs and almost 30,000 PECs. Given that the electoral legal framework is frequently reviewed, election commissioners are frequently faced new challenges. To address these challenges, election commissioners need ongoing consultative support from the CEC. However, the number of employees of the CEC Secretariat is insufficient to provide competent and – even more important – timely assistance to the lower-level commissions. Timeliness of such consultative support becomes an issue of a crucial importance during the elections, as the timelines for many election procedures are extremely short.

**Recommendation 6:** To consider the possibility of creating the CEC offices in the regions. Such offices can be tasked with providing full-scale consultative support to all the TECs established in the regions. The Law on the Central Election Commission authorizes the CEC to establish such offices (CEC regional branches), but they have never been established.

1. The participants highlighted the need for more extensive training of the election commissioners on electoral matters. The political parties and candidates do not pay much attention to selecting well-prepared candidates for membership on the election commissions. At the same time, short timelines for the electoral preparation do not allow the CEC (even with the support provided by the international organizations) to effectively train all the election commissioners. Also, frequent replacements of the commission members after they have received training undermine the efforts made to ensure a better level of awareness of the commission members on electoral matters, as only some of the trained election officials retain their positions by Election Day, something that has a negative impact on overall organization of the elections.

**Recommendation 7:** To create a special training center under the CEC in order to conduct training for election commissioners or for those who decide to be members of the commissions in future elections and in between the election periods. The trained persons should pass an exam at the end of the training and receive certification. The certified individual who completed trainings should then be registered in a special database. The legislation should require that parties and local branches nominate election commissioners only from among those who are registered in that database.

1. Several surveys and focus groups held by the OSCE Project Co-ordinator in Ukraine and IFES revealed that Ukrainian citizens remained by large unaware of the details in the new electoral legislation, especially regarding the new electoral system for local elections. This lack of awareness was believed to result in a low voter turnout on Election Day and to affect overall voter and candidate confidence in the election results. Therefore, the CEC with IFES’ and OSCE Project Co-ordinator’s support, released a series of videos that were officially recognized as social advertising. However, under the current legislation, private broadcasters are not required to air public service announcements, which are widely believed to be the most effective voter awareness instrument. As a result, significant numbers of voters were not able to watch the videos and, accordingly, to raise the level of their awareness of the new election legislation.

**Recommendation 8:** To introduce amendments to the legal framework that would impose an obligation on private broadcasters to air public service announcements that were produced or approved by the CEC during the elections (free of charge).

**Other findings and recommendations**

1. One of the issues of concern among the experts was election district boundary delimitation and the problem of gerrymandering aimed at structuring district boundaries in a way that would concentrate the electorate of one candidate/party in one district or to split the electorate of political contestants among different districts. The Local Election Law does not provide for clear requirements on the delimitation of election district boundaries for local elections. While the Law makes it clear that election districts must be established with approximately equal numbers of voters in each constituency, it however fails to provide for the maximum deviation in the number of voters between different districts. Also, the Local Election Law does not require the contiguity of election sub-districts under the proportional system. This resulted in many sub-districts created with non-contiguous boundaries and with significant disproportions in the numbers of voters in different constituencies, which in some cases varied up to 700 percent of the average number of voters in districts. According to OPORA Civic Network, in almost half of the sub-districts established for the oblast council elections, differences in the number of voters were as high as 15 percent of the average number of voters, *i.e.* equal to the maximum percentage recommended by the Venice Commission’s Code of Good Practice in Electoral Matters.

**Recommendation 9:** The legislation should require that election districts be established with contiguous boundaries, with due consideration of the administrative boundaries and with maximum deviation in the number of voters in a district not exceeding 15 percent of the average number of voters in all districts that are established for specific elections. To reduce the risks associated with gerrymandering, it was recommended to establish the boundaries of the districts well in advance of the elections, for instance, at least 180 days before the Election Day. Experts also stressed the need for a more extensive use of GIS systems to increase fairness of and transparency in election districting.

1. Under the Local Election Law, technical errors and typos in the vote counting and tabulation protocols serve as grounds for sending the protocols for updates (*i.e.* for compiling new updated protocols) to the respective election commissions. In practice, while updating the protocols, the election commissions corrected not only technical errors and typos, but also data related to election outcomes, including the number of votes for parties/candidates. Such unjustified changes in some cases undermined the genuine will of the voters.

**Recommendation 10:** To introduce changes to the election legislation that would require that all technical errors and typos are changed by a territorial election commission that identified them at its meeting, and that the mistakes identified are properly documented in the minutes of the TEC meeting at which they were identified. Such a change would eliminate the need in sending the protocols to the lower-level commissions for updates.

1. The election results in many cases were affected by vote recounts.

**Recommendation 11:** To clearly specify the grounds for vote recounts, and to include into the electoral legislation more details as to how the votes should be recounted.

1. Due to ambiguous interpretation of the provisions in the Local Election Law pertaining to registration of the election observers, TECs in some cases refused to register observers for unjustified reasons. In many cases, official observers were not able to observe all the preparations to the elections, as their observation was limited to only observing the meetings of the election commissions.

**Recommendation 12:** To specify the procedures for observer registration in order to exclude arbitrary decisions on registration/refusal of registration, as well as to clarify the status of observers, in particular, by making it clear that the observers can observe not only the commission meetings, but also registration/receipt of the documents by designated commission members and other election-related activities carried out in the premises of the election commissions, etc.

1. The introduction of the gender quota without any specific enforcement mechanisms seemed to be well intended, but not a real step to ensure balanced gender representation in elected offices. Currently, the equal opportunities of men and women in politics are enshrined in three laws, namely, the Law on Equal Rights and Opportunities of Women and Men, the Law on Political Parties in Ukraine, and Local Election Law. None of these laws provide for enforceable gender quotas for national or local elections. In particular, a party’s failure to include a gender quota provision in its charter as well as to enforce the respective provision in the charter if it was included, does not constitute grounds for rejection for the registration of a candidate list. Under the Local Election Law, non-compliance with the quota requirement does not result in the refusal of registration of a party list.

**Recommendation 13:** Regardless of the electoral systems used for parliamentary or local elections, the election legislation should seek to ensure a greater representation of women in elected office at both the national and local levels. The legislation should also provide for enforcement mechanisms linked to requirements for greater gender equity.

1. The Local Election Law fails to provide a clear list of grounds for refusing the registration of local council and mayoral candidates. In practice, this results in ambiguous interpretations and arbitrary enforcement of the respective legal provisions.

**Recommendation 14:** The Law should provide a clear and exhaustive list of grounds for the refusal of a candidate/list registration. Such a list should not contain broad or unclear terms that can be interpreted in a different way to reduce the risks of illegal/unjustified refusals of registration.

1. Flaws in the legal definitions of “election campaigning” and “political advertising” resulted in abuses of the right to election campaigning by parties and candidates. In particular, many contestants campaigned during prohibited periods or used illegal funds (*i.e.*, funds other than those from the election fund bank accounts) to cover their campaign expenses.

**Recommendation 15:** Sanctions should be more severe for campaigning during prohibited periods and for distribution of election campaign materials without all legally required data (such as overall circulation, information on printer etc.). Mandatory independent auditing of campaign finance reports should be introduced. Sanctions for placing/airing political advertising not identified as such (hidden political advertising) should be effective, proportionate and dissuasive.

1. Lack of any effective supervision of campaign finances resulted in the illegal funding of campaigns from sources other than the official electoral bank account funds.

**Recommendation 16:** Independent public supervision of campaign financing should be considered. That could facilitate, among other things, the timely identification of campaign finance violations and to increase the accountability of those who violate the provisions.

1. In most cases, the Local Election Law imposes sanctions for violations of the election campaign provisions only on parties and candidates. This results in the active engagement of persons who are not electoral subjects in election campaigning.

**Recommendation 17:** Sanctions for violations of the provisions governing election campaigning should cover not only parties and candidates but all persons directly or indirectly engaged in election campaigning, including advertising agencies, intermediaries, commissioners, vendors and other parties engaged in the distribution of election campaign materials.

1. The Local Election Law fails to clearly define the term “election document.” In particular, it is unclear from the Law whether a submission of candidates for election commissioners, application for registration of official observer, written consent to be a candidate for elections, written consent to exercise the duties of the chair, deputy chair, secretary of the election commissions, consent to be an election observer, as well as decisions of the election commission can be considered as “election document.” This loophole in the legal framework is important given that Article 158 of the Criminal Code of Ukraine provides for the criminal liability for forgery of election documents.

**Recommendation 18:** The term “election document” should be expressly defined in the electoral legislation.

1. The Local Election Law does not require that all documents submitted for candidate registration to the respective election commissions be filed in electronic format. In practice, election commissions face difficulties while performing their duties pertaining to the publication of certain documents. In particular, technical and time constraints, in many cases, result in a failure to make public the asset, income, expenses and financial obligation declarations that are filed by candidates.

**Recommendation 19:** The electoral legislation should mandate that all documents required for candidate registration are submitted in paper and electronic formats.

1. Under the Local Election Law, the voting premises must be equipped with a sufficient number of polling booths. Such booths must be provided by local authorities and self-government bodies. However, due to legal flaws, such booths are produced anew for each election, resulting in the inefficient use of budgetary funds.

**Recommendation 20:** Consideration should be given to using simple and low-cost carton hurdles fixed/set-up in a way that ensures secrecy of the vote and convenience of voting.

1. According to the data of the UN High Commissioner for Refugees as of September 2015 the number of internally displaced persons (IDPs) in Ukraine reached 1.43 million persons. Many IDPs were not able to exercise their right to vote on Election Day as the Local Election Law does not provide for changing the place of voting without changing the voters’ address.

**Recommendation 21:** Consideration should be given to clarifying the notion of “membership of the territorial community” as well as to listing the criteria based on which a citizen can be considered a “member of the local community.” In particular, a person might be considered a member of a local community if he/she pays taxes to respective local budget/is employed in the territory of the community/has been residing on the territory of the community over a certain period of time. Also, there is a need for measures to ensure the voting rights of migrant workers and other citizens residing in the respective territory for extended period of time**.** These measures, however, should be weighed against the risk of potential fraud and so-called “electoral tourism.”

1. During recent local elections, voters with disabilities had limited opportunities for exercising their right to vote in elections. In particular, most of the polling stations are not properly equipped to serve the needs of wheelchair users, while election, education and voter awareness materials remain inaccessible for blind and low vision voters.

**Recommendation 22:** The authorities should be urged to take measures to increase the level of participation of voters with disabilities in electoral processes. In particular, the location of the polling stations inaccessible to voters with disabilities is suggested to be changed to places where such voters can exercise their right to vote without serious constraints. The websites of the state bodies, where key election-related information is posted should be adapted to the needs of blind and low vision voters as provided for by the Decree No 730 issued by the Cabinet of Ministers of Ukraine on September 26, 2013.

The contents of this document and the recommendations contained therein were developed through a collaborative process and do not necessarily reflect the views of event organizers and supporters.