



# VOTING RIGHTS OF INTERNALLY DISPLACED PERSONS AT LOCAL LEVEL IN UKRAINE

February 2019

## AKNOWLEDGMENTS

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This study, which provides an overview of the current situation of internally displaced persons in Ukraine, has been prepared by Adam DRNOVSKY, independent expert, within the project “Promoting local democracy in Ukraine” (2015-2017) and further updated in February 2019 under the project “Strengthening democracy and building trust at local level in Ukraine”, both implemented by the Congress of Local and Regional Authorities within the Council of Europe Action Plan for Ukraine 2018 – 2021.

*\* The content of this study is solely the responsibility of the author and does not necessarily reflect the opinion of the Congress of Local and Regional Authorities of the Council of Europe.*

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## INTRODUCTION

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Ukraine is currently one of the member states of the Council of Europe with the highest number of Internally Displaced Persons (IDPs).<sup>1</sup> This study seeks to address this issue by providing an overview of the situation of IDPs in Ukraine in the context of the report on *“Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe’s municipalities and regions”*.<sup>2</sup> In this respect, voting rights of IDPs at local level in Ukraine are of special relevance with regard to the Recommendation 386 (2016) of the Congress of Local and Regional Authorities which highlighted the issue of IDPs disenfranchisement during the 2015 local elections in Ukraine. In this Recommendation, the Congress invited the Ukrainian authorities to address the issue of the right to vote of IDPs sufficiently in advance of the next local elections.<sup>3</sup> Further, in accordance with the Recommendation 369 (2015), the Congress asked for clarification of the residence criteria applied in 2015 local elections.<sup>4</sup> In line with the mentioned documents, the present study firstly explores the current situation of IDPs and thereafter provides an overview of IDPs’ involvement in the life of communities in which they are currently residing. The focus is then put on international standards and best practices relevant for IDP voting rights in local elections with respect to Ukraine’s domestic legal framework. Finally, the study examines the prospects of voting for IDPs in the next local elections in Ukraine scheduled for 2020.

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<sup>1</sup> UNHCR, *The World in Numbers*, 2017.

<sup>2</sup> CoE, *Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe’s municipalities and regions*, 2018.

<sup>3</sup> See CoE Congress of Local and Regional Authorities, *Recommendation 386 (2016)*, 2016.

<sup>4</sup> *Ibid*; See also CoE Congress of Local and Regional Authorities, *Report on “Electoral lists and voters residing de facto abroad”*, 2015.

## I. CURRENT SITUATION OF IDPs IN UKRAINE

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As of December 2018, the security situation in eastern Ukraine remained tense and the rising number of ceasefire violations continue to affect civilians on both sides along the line of contact.<sup>5</sup> Throughout the whole period of the military operations, fighting has had devastating impacts on everyday lives of civilians residing in the temporary occupied territories of the eastern regions of Donetsk and Luhansk affected by the Russian aggression (non-government controlled areas, NGCA) as well as along the line of contact in the government-controlled areas in the east (GCA).<sup>6</sup> In addition, people's lives have been negatively affected by political changes following the formation of self-proclaimed People's Republics of Donetsk and Luhansk (DPR, LPR) and Russia's illegal annexation of Crimea which forced many to flee.<sup>7</sup> As a result of these developments, there are currently 1,5 million registered IDPs in Ukraine of whom around 20 000 fled Crimea after annexation in 2014, half of them Crimean Tatars, while the rest originates from the occupied territories of Donetsk and Luhansk.<sup>8</sup> The official number of IDPs in Ukraine thus amounts to approximately 4 per cent of the country's total population of 42,5 million.<sup>9</sup> Yet, some *de facto* IDPs, most importantly certain categories of children, people displaced within NGCA and some Roma people, are excluded from the official figures due to administrative, physical and other obstacles.<sup>10</sup>

On the other hand, up to half of all officially registered IDPs are in fact residents of NGCA who were never internally displaced but were forced to register as IDPs in order to retain their pensions and social benefits that cannot be accessed in areas outside of government's control.<sup>11</sup> These persons regularly cross the checkpoints but reside permanently in NGCA. Accordingly, the Ministry of Social Policy of Ukraine reports that 51 per cent of all registered IDPs are persons receiving pensions or other state benefits in line with the country's law on mandatory state pension insurance. The category of pensioners, which includes but is not limited to old-age pensioners, thus constitutes the largest group within the IDP population. In addition, there are 29 per cent of persons of working age, 16 per cent of children and about 3 per cent of persons with disabilities.<sup>12</sup>

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<sup>5</sup> OSCE SMM, Report Status as of 24 December 2018.

<sup>6</sup> UNHCR, Ukraine, 2019.

<sup>7</sup> OHCHR, Situation of human rights in the Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), 2017; CoE Parliamentary Assembly, Legal remedies to human rights violations on the Ukrainian territories outside the control of the Ukrainian authorities, 2016.

<sup>8</sup> UNHCR, Operational Update: Ukraine 01-31 October 2017.

<sup>9</sup> OCHA, Breaking the Impasse, Reducing Protracted Internal Displacement as A Collective Outcome, Case Study: Ukraine, 2017, p. 3.

<sup>10</sup> IDMC, Displacement figures in Ukraine fail to reflect a complex reality, 2015; [See also IDMC, Ukraine: Translating IDPs' Protection into legislative action: Prominent gaps in Ukraine's IDP law remain despite some improvements, 2016.](#)

<sup>11</sup> For the latest development in this regard see UNHCR, UNHCR notes Ukraine Supreme Court ruling on pension rights for internally displaced, 2018.

<sup>12</sup> UNHCR, Registration of Internal Displacement, 2019.

Nevertheless, it is difficult to determine precise demographic figures on IDPs since the Ministry of Social Policy aggregates figures only under the mentioned categories. There is therefore no official data on gender and only distorted data on age. In terms of age, pensioners make up a relatively broad category since Ukraine's pension system sets very early retirement ages by international standards. The pension system also allows for widespread occupational early retirement options which contributes to the large number of pensioners in Ukraine's population.<sup>13</sup> There is, however, evidence that many men stayed in the NGCA of Donetsk and Luhansk to take care of family property and continue working. Likewise, many older people and persons with limited mobility stayed in the areas due to their inability to endure long journey. As a result, mostly women, who are estimated to make up around 60 per cent of all IDPs (pensioners and working age combined) along with children (16 per cent) fled the affected areas which led to family separations.<sup>14</sup> The registered IDPs have through their recognised legal status certain rights as well as access to social benefits. Nevertheless, situation of especially IDP women and children displaced in certain areas often remains vulnerable.<sup>15</sup>

Territorially, over 50 per cent of all IDPs are concentrated in urban centres in the GCA of Donetsk and Luhansk, 9 per cent in the adjacent region of Kharkiv, and 12 per cent in the capital Kyiv. The rest of IDPs is distributed in the remaining regions, predominantly in eastern and central Ukraine.<sup>16</sup> Large number of IDPs that are displaced (or registered to be displaced) in the GCA of Donetsk and Luhansk remain close to their original homes located in NGCA in hope that they would be able to return home. They are often residing in GCA immediately surrounding the zones of ongoing military operations. Especially these IDPs, as well as *de facto* IDPs that are not registered and others, face chronic insecurity and limited access to water, electricity and medicine, and have inadequate access to livelihoods and shelter solutions.<sup>17</sup> According to statistics, there are approximately half a million people living in these conditions along the contact line and around 30 000 people, many of whom are registered IDPs, reportedly cross the line every day. People go back and forth to insecure areas,<sup>18</sup> including places where they face ongoing gunfight, landmines

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<sup>13</sup> International Monetary Fund, Selected issues: Ukraine, 2017, pp. 21-26; International Labour Organization, Universal old-age, disability and survivors' pensions in Ukraine, 2016.

<sup>14</sup> IDMC, Ukraine: Mid-year update 2017 (January - June), Patterns of displacement, 2017; International Organization for Migration, National monitoring system report on the situation of internally displaced persons, 2017, pp. 5-6; UNICEF, Ukraine Humanitarian Situation Report No. 64, 2017; UNDP, Blerta Cela: Time to promote women's rights in Ukraine is now, 2017.

<sup>15</sup> IDMC, Ukraine: Translating IDPs' Protection into legislative action: Prominent gaps in Ukraine's IDP law remain despite some improvements, 2016.

<sup>16</sup> UNHCR, Registration of Internal Displacement, 2019.

<sup>17</sup> [https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian\\_needs\\_overview\\_2017\\_eng.pdf](https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2017_eng.pdf)

<sup>18</sup> [https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian\\_needs\\_overview\\_2017\\_eng.pdf](https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2017_eng.pdf)

and little assistance, in order to visit their families, check on their homes or property, buy food and supplies or access their social benefits.<sup>19</sup>

In addition, IDPs face a variety of challenges affecting their daily lives. A particularly serious challenge is the lack of socio-economic security due to the high unemployment rate of IDPs. Although a large percentage of IDPs are registered as pensioners, the unemployment among economically active IDPs is significantly higher than among non-displaced people. Unemployment rates for working-age and economically active IDPs are estimated to be around 25 per cent (with disproportionately higher rates for women), while the national percentage was 8 per cent in July 2018.<sup>20</sup> There are various and different reasons for this. For instance, the depressed labour market, discrimination, a lack of places in kindergartens, skills mismatch, increased risk of human-trafficking and labour exploitation etc.<sup>21</sup> As a result of socio-economic vulnerability, 60 per cent of IDPs were estimated to struggle with the rising cost of rent and utilities in their current areas of residence (especially in eastern, central and southern regions). Since IDPs have limited possibilities<sup>22</sup> to resolve their housing situations on their own, some return to their houses located in NGCA, therewith risking their lives.<sup>23</sup> Besides the lack of access to adequate and affordable housing, IDPs often lack full access to their pensions and social benefits as well as healthcare. They also face restrictions on freedom of movement and lack of protection across the contact line, insufficient procedure of registering IDP children born in NGCA, as well as disenfranchisement in local and partly in national elections.<sup>24</sup> Noticeably, the lack of IDPs' voting rights (especially at local level) is symptomatic of the overall lack of action in finding durable solutions for IDPs. In this regard, the authorities need to adopt strategic approaches to foster the legal, economic, social and political integration of IDPs for the period of their displacement through, *inter alia*, the facilitation of IDPs' participation in the life of communities that enhances local reconciliation and peace-building activities.<sup>25</sup>

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<sup>19</sup> IDMC, Lives across the frontline: internal displacement in a divided Ukraine, 2017; IDMC, Ukraine Mid-year update 2017 (January - June): Priority needs and vulnerabilities, 2017; OCHA, Humanitarian Needs Overview 2018, 2017; Norwegian Refugee Council, Voices from the East: Challenges in Registration, Documentation, Property and Housing Rights of People Affected by Conflict in Eastern Ukraine, 2016.

<sup>20</sup> International Organization for Migration, National monitoring system report on the situation of internally displaced persons, 2018, pp. 15-17; Trading Economics, Ukraine Unemployment Rate, 2018.

<sup>21</sup> OSCE SMM, Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities, 2016.

<sup>22</sup> [https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian\\_needs\\_overview\\_2017\\_eng.pdf](https://www.nrc.no/news/2016/november/ukraine-life-on-the-frontline/http://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_needs_overview_2017_eng.pdf)

<sup>23</sup> OCHA, Humanitarian Needs Overview 2018, 2017, pp. 34-36.

<sup>24</sup> UNHCR, Ukraine: Key Messages on Internal Displacement, 2019; See also UNDP, Piecing together the puzzle: internal displacement affecting human rights and access to public services in Ukraine, 2018.

<sup>25</sup> Ibid.

## II. PARTICIPATION OF IDPs IN THE LIFE OF COMMUNITIES

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The influx of IDPs to Ukraine's regions has in many ways impacted native communities and exposed IDPs to further challenges in the context of their local integration. While the challenges faced by IDPs are often of a different nature to those of their "host" communities, the situations of both groups are to a large extent mutually dependent. Challenges shared by both groups involve, aside from insecurity and humanitarian needs particularly in the east, lack of employment and inadequate housing opportunities.<sup>26</sup> This often triggers strained mutual relations. Moreover, displacement and polarisation of people due to the general atmosphere in the country have been considered as greatly affecting social cohesion and family unity both for IDPs and host communities. Yet another source of tensions is the often inadequate responses to the specific needs of IDPs, for instance the unequal protection of some of their civil and political rights (such as the voting rights in local elections).<sup>27</sup> Also lacking socio-economic opportunities create barriers which hamper the future integration of IDPs.<sup>28</sup>

On the other hand, there have been multiple examples of host communities' assistance and support, welcoming IDPs with solidarity and understanding, and providing them with free accommodation, food, clothes and toys for children.<sup>29</sup> Over the time, though, with arrival of new waves of IDPs and gradually scarcer resources, expressions of solidarity and support shifted to frustration or indifference and IDPs were rather perceived as a burden on the local communities. Young and adult male IDPs particularly are lacking acceptance by local communities and are often confronted by local residents whose relatives were serving in the military or just returned from the areas under Russian aggression.<sup>30</sup> Nonetheless, despite mixed experience, about half of all IDPs reported either no intention to return home or expressed uncertainty about returning as they frequently describe their homes as "ruined".<sup>31</sup>

Against this background, IDPs are often active participants in local communities and are involved in various activities contributing to their own (socio-economic) integration and emancipation, trust-building with host communities, local reconciliation etc. For instance, almost 200 IDPs and local residents of Severodonetsk gathered every weekend for two months in the summer of 2016

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<sup>26</sup> International Organization for Migration, National monitoring system report on the situation of internally displaced persons, 2018.

<sup>27</sup> See more in OSCE SMM, Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities, 2016.

<sup>28</sup> Ibid.

<sup>29</sup> OSCE SMM, Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities, 2016, p. 8

<sup>30</sup> Ibid.

<sup>31</sup> The World Bank, Conflict in Ukraine: Socio-Economic Impacts of Internal Displacement and Veteran Return, 2017, p. 10.

to learn how to sail. The participants worked together without a thought to their difference learning to paddle a catamaran and they still meet on a regular basis, reinforcing newly-built bounds.<sup>32</sup> Further, eighteen Ukrainian universities evacuated from the conflict areas formed in 2016 a Council of Displaced Universities and began to play a role in a larger national reconciliation. One of them, the Donetsk National University re-established in Vinnytsia in central Ukraine, is maintaining contacts with the faculty and students who chose to remain behind while providing courses to both IDPs as well as locals.<sup>33</sup> In the same town, IDPs made a play for theatre about women displaced by the conflict and now living in Vinnytsia and its surrounding towns. The play had a powerful effect on local population and made a local council to raise the city budget for IDPs.<sup>34</sup> Finally, an NGO *The Force of the Future* was in 2016 visiting regions of Ukraine and presenting social promos and success stories of IDPs which contributed to an improved perception of IDPs by local communities.<sup>35</sup>

In particular, women and children engage more easily with local populations and build social connections more successfully. Women especially play a transformative role in IDPs' integration and contribute to building trust which leads to the increased acceptance of IDPs in local communities. Especially women have been viewed as important agents for peace. Their volunteer activities often enhance conflict resolution and peace-building efforts necessary for achieving security and stability in Ukraine.<sup>36</sup> An association *Civic Movement of Donbas IDPs* co-founded by IDP women cooperates with local authorities in Vorotsiv in addressing socio-economic issues such as lack of housing and recreational facilities for children. They also support local authorities with initiatives including the cleaning of the local river, the enhancement of the road system and the purchase of sports equipment for youngsters. The association works to build bridges between IDPs and their host communities in western Ukraine, where tensions have risen following the influx of people from the east.<sup>37</sup> An NGO *Unity of Mothers* establishes contacts between mothers whose sons serve in the Armed Forces of Ukraine and those mothers whose sons are members of the illegal armed groups of the self-proclaimed DPR. The organisation works to deliver legal and social support to soldiers who have returned from the Armed Forces of Ukraine and face difficulties in adjusting to civilian life. These activities help IDPs and local residents to learn the views of the other side first-hand and to talk about things that both sides have in common.<sup>38</sup> The

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<sup>32</sup> Atlantic Council, *Ukraine's Internally Displaced Persons Hold a Key to Peace*, 2017, p. 7.

<sup>33</sup> Euromaidan Press, *Displaced universities: 18 Ukrainian colleges are exiled in their own country*, 2017.

<sup>34</sup> Atlantic Council, *Ukraine's Internally Displaced Persons Hold a Key to Peace*, 2017, p. 7.

<sup>35</sup> Lidia Varbanova, *Ukraine Inclusive Civic Engagement*, 2016.

<sup>36</sup> OSCE SMM, *Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities*, 2016, p. 8.

<sup>37</sup> OSCE, *Giving women a voice in peace-building*, 2016.

<sup>38</sup> *Ibid.*

many projects pursued by IDP women are however often seen through a gender-stereotypical prism stressing the traditional role of women instead of focusing on their achievements in communal activities. This prevents women, who make up a large part of IDP population, from realising their full potential in peace-building and local reconciliation.<sup>39</sup>

Despite numerous challenges that arise during the process of local integration, IDPs have proved to be able to take an active role in coping with issues related to their displacement. Moreover, in many places, native communities along with IDPs managed to joint their forces in overcoming difficulties in their mutual relations as well as in addressing some of the problems they have in common. The abovementioned examples show an important path forward that has a potential to contribute to finding durable solutions both at the local level as well as at the level of the whole nation.<sup>40</sup> Yet, a number of issues and obstacles to the local participation of IDPs persist which puts the question of IDP local integration and the subsequent (national and local) reconciliation and peacebuilding in jeopardy.<sup>41</sup>

### III. VOTING RIGHTS OF IDPs AT LOCAL LEVEL

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Participation of IDPs in the life of local communities is an integral part of their further integration, which facilitates local reconciliation and peacebuilding in the most affected areas. Besides the various voluntary activities, which enhance the lives of IDPs and local residents and contribute to their peaceful coexistence, the participation of IDPs at local level naturally involves their participation in elections. The enfranchisement of IDPs in local elections in the constituencies of their actual residence may accordingly be viewed as a further ingredient of successful integration policies.<sup>42</sup> However, due to their disenfranchisement in 2015 local elections, IDPs were often seen by local residents (and sometimes also by themselves) as second-class citizens which hampers building of positive relations between them and local communities.<sup>43</sup> Furthermore, IDPs in Ukraine are often in vulnerable situation with respect to their access to basic needs and to having a chance to live their lifes in dignity. Without having the right to vote, IDPs' interests at political level are

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<sup>39</sup> See also OSCE SMM, *Gender Dimensions of SMM's Monitoring: One Year of Progress*, 2015.

<sup>40</sup> See also Lypiatska, *Integration of IDPs into the host communities of Ukraine in the context of representation theory and participatory communication*, 2018.

<sup>41</sup> See UNDP, *Recovery and Peacebuilding Programme: Vision for the Future*, 2017; OSCE SMM, *Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities*, 2016; Atlantic Council, *Ukraine's Internally Displaced Persons Hold a Key to Peace*, 2017.

<sup>42</sup> See CoE, *Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions*, 2018.

<sup>43</sup> The situation repeated in the 2018 local elections in 78 newly merged territorial communities held in accordance with the same rules as regular local elections of 2015.

underrepresented as local authorities have no direct incentive to consult them and to protect their rights.<sup>44</sup> Importantly, against this background, 58% of IDPs interviewed by IOM stated that they would vote in the next local elections in their current place of residence if there was such a possibility.<sup>45</sup>

Finally from the international law perspective, IDPs as full-fledged citizens have not only legitimate but also legal right to vote in local elections. Their voting rights may be derived from the international standards and commitments undertaken by Ukraine which were also incorporated into its domestic legal framework.<sup>46</sup> Regarding Ukraine's international commitments relevant for IDP voting rights at local level, Ukraine is, most importantly, a party to the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Ukraine has further ratified the Additional Protocol to the European Charter of Local Self-Government and as a state Party to the Council of Europe and the Organization for Security and Co-operation in Europe (OSCE) Ukraine is politically committed to relevant "soft law" instruments.<sup>47</sup>

#### **A. INTERNATIONAL STANDARDS**

On international level, voting rights of IDPs are guaranteed by Article 25 of the ICCPR establishing the right and opportunity of every citizen *"to vote (...) at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors."* Importantly, the Human Rights Committee (HRC) confirmed that Article 25 applies also to local election.<sup>48</sup> Regarding residence requirements the HRC stated that *"States must take effective measures to ensure that all persons entitled to vote are able to exercise that right. (...) If residence requirements apply to registration, they must be reasonable and should not be imposed in such a way as to exclude the homeless from the right to vote."*<sup>49</sup> The Committee also highlighted that *"Positive measures should be taken to overcome specific difficulties, such as (...) impediments to freedom of movement which prevent persons entitled to vote from exercising their rights effectively"*.<sup>50</sup> This puts an onus on states to adopt special measures enabling groups that face specific

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<sup>44</sup> OSCE SMM, Conflict-related Displacement in Ukraine: Increased Vulnerabilities of Affected Populations and Triggers of Tension within Communities, 2016, p. 19.

<sup>45</sup> International Organization for Migration, National monitoring system report on the situation of internally displaced persons, 2018, pp. 52-54.

<sup>46</sup> CoE, Observation of local elections in Ukraine (25 October 2015), 2016.

<sup>47</sup> See UNTC, Ukraine, 2017; CoE, Treaty Office, 2017.

<sup>48</sup> See for example HRC's decisions relating to local elections in *Debreczeny v. the Netherlands*, Communication No. 500/1992, para 28.

<sup>49</sup> UN HRC, General Comment 25, 1996, para 11; Although the term "homeless" was not used as applying to IDPs but rather to those lacking fixed residence, the Committee did not explicitly reject that this may be also relevant for this group; See Simon Bagshaw, *Internally Displaced Persons and Political Participation: The OSCE Region*, 2000, p. 4.

<sup>50</sup> UN HRC, General Comment 25, 1996, para 12.

difficulties, such as IDPs, to participate in (local) elections in the past or present place of their residence.<sup>51</sup>

Noticeably, international treaty law contains no explicit reference to IDPs, their voting rights are nonetheless protected by general provisions providing for rights for all citizens.<sup>52</sup> The lack of explicit provisions on the internationally guaranteed rights of IDPs is partly compensated in the United Nations Guiding Principles on Internal Displacement which, though not formally binding, reflect and are consistent with international law by analogy. The Guiding Principles reaffirm and set forth states' commitments concerning equal rights of all citizens and provide for a clear definition of an IDP. Importantly, the Guiding Principles understand the status of IDP on basis of the ICCPR Article 2 that prohibits discrimination on enlisted grounds including "other status" which allows to be interpreted broadly and thus, arguably, encompasses IDPs.<sup>53</sup> Principle 22(1)(d) then provides a generic protection for IDPs against overly stringent residency requirements and Principle 29(1) reaffirms the right of IDPs to vote at all levels, including local elections. Besides referring to existing rights protected by international treaties, the Guiding Principles provide guidelines and best practices on implementing full voting rights of IDPs living in both camp and non-camp situations regardless of whether they choose to return to their areas of origin, integrate locally, or resettle elsewhere in the country.<sup>54</sup>

On European level, Article 3 of the First Protocol to the ECHR commits Ukraine to "*hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature*". The case law of the European Court of Human Rights (ECtHR) has interpreted Article 3 as implying voting rights to the same extent as provided for in the ICCPR with an exception in the scope limited in Article 3 merely to voting rights in elections to legislatures.<sup>55</sup> The term "legislature" is then in accordance with ECHR interpreted as any elected authority that exercises legislative powers, i.e. enacts laws.<sup>56</sup> In general terms, the ECHR protects voting rights of IDPs in local elections (to local legislatures) on basis of the non-

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<sup>51</sup> Long, *Voting with their feet: A review of refugee participation and the role of UNHCR in country of origin elections and other political processes*, 2010, paras. 27, 144-160.

<sup>52</sup> See Kampala Convention

<sup>53</sup> See for example M. Bossuyt, *Guide to the "Travaux Préparatoires" of the International Covenant on Civil and Political Rights*, 1987, p. 486; See also Bagshaw 2000, 6-7.

<sup>54</sup> United Nations Guiding Principles on Internal Displacement, 1998, paras. 1, 22, 29.

<sup>55</sup> See for example ECtHR *Mathieu-Mohin and Clerfayt v Belgium*, 1987.

<sup>56</sup> For further reference see C. Grabenwarter, *European Convention on Human Rights, Commentary*, para. 4 (p. 402); See European Commission, *X v. United Kingdom*, 28 February 1979; ECtHR, *Molka v. Poland*, 28 June 2005 and 11 April 2006, pp. 14-15.

discrimination principle enshrined in the Article 14 of the Convention which has been multiple times applied to the rights of IDPs.<sup>57</sup>

IDP voting rights may be, however, subject to restrictions on grounds of residence requirements that are generally permissible unless arbitrary and/or unreasonable. In this regard, Article 3 of the First Protocol and pertinent case law of the ECtHR provide general parameters on determining justified residency requirements.<sup>58</sup> Generally, in this sphere states are given a wide margin of appreciation and in considering relevant aims for restrictions, they are free to rely on an aim that is compatible with the principle of the rule of law and the general objectives of the Convention. In examining compliance with Article 3 ECHR, the Court has put focus primarily on two criteria: whether there has been arbitrariness or a lack of proportionality; and whether the restriction has interfered with the free expression of the opinion of the people.<sup>59</sup> The ECtHR has made a series of decisions on the permissibility of (residency) requirements on the right to vote that nonetheless provide somewhat debatable implications for IDP voting rights in Ukraine's local elections. On the one hand, restrictions on the right to vote are generally not allowed if they impair the very essence of the right to vote by excluding certain groups or categories of the general population.<sup>60</sup> Furthermore, restrictions on the right to vote require a wider assessment of the proportionality than is the case for restrictions of the right to stand for elections which may be generally more stringent.<sup>61</sup> On the other hand, the ECtHR has also acknowledged that restrictions intended to ensure that elections reflect the will of the population are not in itself unreasonable as non-residents may be considered less directly or continuously concerned by day-to-day problems and the acts of the elected political bodies of whom they have less knowledge of.<sup>62</sup> In sum, the case law of the ECtHR indicates that IDPs should be given unrestricted access to all levels of elections on equal terms with other citizens, the lack of specific case law on IDP voting rights nonetheless does not allow to make conclusive verdicts on the particular case of IDP voting rights in Ukraine's local elections.<sup>63</sup>

Although the scope of voting rights provided for in the Article 3 of ECHR First Protocol is therewith limited to (local) legislatures, Ukraine is bound to protect citizens' right to vote generally in all local elections through its ratification of the Additional Protocol to the European Charter of Local Self-

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<sup>57</sup> Although not to the right to vote specifically; Europe's Forgotten People: Protecting the Human Rights of Long-term Displaced Persons 2009, paras. 27-28.

<sup>58</sup> CoE, Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, 2009, pp. 4-5.

<sup>59</sup> CoE, Guide on Article 3 of Protocol no. 1 to the European Convention on Human Rights: Right to Free Elections, 2017, pp. 6-7.

<sup>60</sup> ECtHR, *Aziz v. Cyprus*, 2004, para. 28.

<sup>61</sup> ECtHR, *Melnitchenko v. Ukraine*, 2004, para. 57.

<sup>62</sup> ECtHR, *Py v. France*, 2005, paras. 48, 50-51, 56.

<sup>63</sup> See ECtHR, *Shindler v. the United Kingdom*, 2013, paras. 109-115.

Government on the right to participate in the affairs of a local authority.<sup>64</sup> The limitations permissible under Article 1 Paragraph 5(1)(3) of the Additional Protocol may not be arbitrary and shall be therefore prescribed by law and be compatible with the Party's international legal obligations. The latter provision draws attention to relevant other international legal obligations, first and foremost of which are those provided for by the ECHR and pertinent case law of the ECtHR as elaborated above. In addition, any limitation of voting rights at local level *"must be necessary for the operation of an effective political democracy, for the maintenance of public safety in a democratic society or for the party to comply with the requirements of its international legal obligations."*<sup>65</sup>

Besides legally binding obligations/standards and their authoritative interpretations by institutions such as the ECtHR, there are numerous politically binding documents confirming Ukraine's international commitments and providing for further guidelines on their implementation. Of particular relevance to IDP voting rights is Council of Europe (CoE) Parliamentary Assembly's Resolution requiring states to *"grant electoral rights to all their citizens (nationals), without imposing residency requirements"*.<sup>66</sup> The Venice Commission emphasised the freedom of movement as essential/necessary condition for truly democratic elections and highlighted that *"persons (...) displaced against their will, (...) should, provisionally, have the possibility of being considered as resident at their former place of residence"*.<sup>67</sup> The CoE Committee of Ministers affirmed that *"Member states should take appropriate legal and practical measures to enable internally displaced persons to effectively exercise their right to vote in national, regional or local elections and to ensure that this right is not infringed by obstacles of a practical nature"*.<sup>68</sup> Subsequently, the CoE Parliamentary Assembly recommended to *"Ensure that IDPs can exercise their right to participate in public affairs at all levels (...) which may require special measures such as IDP voter registration drives, or absentee ballots"*.<sup>69</sup> The OSCE underscored that *"It should be a matter of special scrutiny whether IDPs can freely exercise their right to vote"*<sup>70</sup> and in 2004 recommended that the member states *"Ensure special attention to the voting rights of IDPs in the OSCE's election observation work, monitoring IDPs' ability to vote and promoting reforms to ensure the full exercise of*

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<sup>64</sup> CoE, Ukraine ratifies the Additional Protocol to the European Charter of Local Self-Government, 2014; Respect for principles contained in the Additional Protocol is ensured by the *Congress of Local and Regional Authorities of the Council of Europe*.

<sup>65</sup> CoE, Explanatory Report to the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority, 2009, pp. 4-5.

<sup>66</sup> PACE Resolution 1459(2005), Abolition of restrictions on the right to vote, 2005.

<sup>67</sup> The Venice Commission, Code of Good Practice in Electoral Matters, 2003, p. 15.

<sup>68</sup> CoE, Recommendation adopted by the Committee of Ministers on Apr. 5, 2006, para 9.

<sup>69</sup> CoE Parliamentary Assembly, Recommendation 1877, Europe's forgotten people: protecting the human rights of long-term displaced persons, 2009.

<sup>70</sup> OSCE Final Report, Supplementary Human Dimension Meeting on Migration and Internal Displacement, 2000, p. 5.

*their right to political participation*".<sup>71</sup> Finally, OSCE states committed themselves to *"Take into account the UN Guiding Principles on Internal Displacement as a useful framework for the work of the OSCE and the endeavours of participating states in dealing with internal displacement"*.<sup>72</sup>

All in all, Ukraine is bound by its international commitments (most importantly ICCPR Article 25 and Article 3 of the First Protocol to the ECHR) to guarantee voting rights for IDPs on par with other citizens. This may require adoption of positive measures such as voting through absentee ballots (if situation on the ground allows) or IDPs' choice of constituency corresponding to the places of their actual residence.<sup>73</sup> Although international human rights law contains only general provisions providing for voting rights for all citizens, subsequent "soft law" instruments detail these standards specifically for IDPs. They therewith render them concrete in their application to IDPs. Ukraine is therefore obliged to live up to the standards and commitments it undertook at international level. These standards and commitments require enactment and implementation of national laws that allow and facilitate participation of IDPs at all levels of elections held in the country.

## **B. DOMESTIC LEGAL FRAMEWORK**

There are certain provisions in Ukraine's legal framework which are of relevance for IDPs' voting rights at local level. Most importantly, under Article 69 of the Constitution of Ukraine *"The expression of the will of the people is exercised through elections (...)"* Article 71 specifies that *"Elections to bodies of state power and bodies of local self-government are free and are held on the basis of universal, equal and direct suffrage, by secret ballot."* Regarding limitations, Article 70 reserves the voting rights for citizens who attained the age of eighteen with no mention of restrictions based on location of residence. Referring specifically to local elections, members of local self-government bodies are in accordance with Article 141 elected *"by residents of a village, settlement, city, district and oblast (...)"*.<sup>74</sup> There is, however, no definition of resident provided in the text. The electoral system for local elections in Ukraine is currently a mixed parallel system based on proportional and majoritarian element. There are thus three different electoral systems for local elections. Mayors and settlement and village councils are directly elected under a majoritarian system, specifically by a first-past-the-post system in villages, settlements and cities with fewer than 90,000 voters. In cities with at least 90,000 voters, mayoral elections take place by a two-round majoritarian system. Region, district, city,

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<sup>71</sup> OSCE Supplementary Human Dimension Meeting, Final Report, Internally Displaced Persons, 2004.

<sup>72</sup> OSCE Ministerial Council, Decision No. 4/03: Tolerance and Discrimination, 2003.

<sup>73</sup> See Coe, Observation of local elections in Ukraine (25 October 2015), 2016.

<sup>74</sup> Constitution of Ukraine, 1996.

and city district councils are elected under a multi-member constituency proportional electoral system.<sup>75</sup>

Ukraine's legal framework and legislative process are peculiar in several respects. Generally, electoral law in Ukraine is subject to constant changes and amendments resulting in different electoral frameworks in almost every new election.<sup>76</sup> The changes are usually undertaken shortly before new elections are held and are accompanied by lack of transparency and consultative process among stakeholders in contradiction to international best practices which recommend that fundamental changes of electoral law should not be introduced less than one year before an election. Contrary to best practices is likewise the fact that Ukraine's legal framework for elections is not unified in a comprehensive body of electoral legislation but remains dispersed into separate legal norms. This leads to inconsistencies and gaps in electoral legislation.<sup>77</sup> As of December 2018, domestic legal framework regulating local elections and other technical aspects of electoral process has remained practically unchanged since the last local elections held in 2015. There are, however, ongoing legislative efforts to amend existing laws governing local elections which indicates that local elections scheduled for 2020 may yet again take place under a changed legislative framework.<sup>78</sup> The current electoral legislation consists mainly of the law On Local Elections setting the framework for elections. This includes, *inter alia*, determination of the electoral system which was during the last local elections in 2015 found inappropriate to electoral participation of IDPs due to its complexity.<sup>79</sup>

Nevertheless, the electoral system is not the most problematic aspect of Ukraine's legislative framework in respect to IDP voting rights in local elections. In line with provisions contained in the Law On Local Elections, address at which an individual is registered as a permanent resident is also his or her voting address within the respective constituency.<sup>80</sup> Therefore, IDPs displaced outside of the electoral district of their permanent residence need to register as permanent residents in the constituency where they are displaced in order to be able to produce certificate of permanent residency that is necessary for voter registration in the constituency. Change of permanent residence is for IDPs administratively extremely burdensome and in practical terms almost impossible. Also, it requires on the part of IDPs some additional efforts that are not required by "normal" voters. There was also a common fear among IDPs that, due to legal uncertainty, renouncing permanent residence in the places of their origin may lead to the loss of their IDP status and related social benefits. This provision is generally in contradiction to the Law on Ensuring of Rights and Freedoms of IDPs that

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<sup>75</sup> Law on Local Elections, 1998, §§ 2-6.

<sup>76</sup> European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017, p. 1.

<sup>77</sup> The Venice Commission, Code of Good Practice in Electoral Matters, 2003, pp. 10,

<sup>78</sup> See European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017.

<sup>79</sup> ENEMO, 'International Election Observation Mission: Ukraine Local Elections 2015' (2015) 8-9.

<sup>80</sup> Law on Local Elections, 1998, art. 3; See also Article 1.2 of the Central Election Commission Resolution 893.

allows IDPs in Article 8 to participate in any type of elections without changing their permanent address. According to this provision, it is sufficient for IDPs to change their place of voting by registering as IDP in the area of their actual residence upon which they obtain an IDP certificate to vote in the respective polling station. This was made impossible by relevant provisions of the law on local elections and subsequent resolutions of the Central Electoral Commission. IDPs were thus deprived of their right to vote as the law insisted on the stringent residency requirements.<sup>81</sup> This situation was found discriminatory by the national Ombudsperson of Ukraine.<sup>82</sup> However, the electoral legislation of Ukraine has so far not been changed and the exercise of IDP voting rights in local elections continues to be extremely limited if not impossible.<sup>83</sup>

Some IDPs tried to change their voter registration based on their temporary IDP certificates but their claims were denied by the Voter Register Maintenance Bodies. Some of these refusals were challenged in courts. Decisions of courts were however inconsistent; some courts recognized the IDP certificates as sufficient, while by other courts the claims were rejected.<sup>84</sup> A decision of the Lviv administrative court of appeal whereby the temporary IDP certificate has not been recognized as sufficient was reviewed by the Supreme Court of Ukraine. The Supreme Court ruled in this regard that IDPs, whose registration is by nature temporary, cannot vote in local elections that are held in territories where they only reside temporarily. The Court also found that an IDP certificate is not an appropriate document to prove actual residence and that only the national passport of a citizen voter shall be used as proof of the permanent place of residence in the disputes related to voter registration. IDPs are thus denied the right to vote in local elections at their place of current residence unless they can prove permanent registration in the constituency.<sup>85</sup> This decision has further cemented the practical and legal barriers to IDP voting rights in local elections in Ukraine.

In sum, although in the past decades Ukraine's election legislation has been in constant flux with numerous draft laws on electoral matters having been discussed only recently in the Ukrainian Parliament,<sup>86</sup> current legislation fails to provide for voting rights for IDPs in local elections. In the light of international standards, Ukraine continues to fall short of upholding its commitments in terms of allowing IDPs to vote and facilitating their voting rights through implementation of positive measures

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<sup>81</sup> Art. 3 Law On Local Elections of Ukraine; Article 1.2 of the Central Election Commission Resolution 893; Art. 2 Law On Election of the People's Deputies of Ukraine; Art. 3(5) of the Central Election Commission Resolution 240; OSCE/ODIHR Election Observation Mission Final Report, Ukraine Local Elections 25 October and 15 November 2015 (2016).

<sup>82</sup> Valeria Lutkovska, Ukraine's Ombudsperson Calls on Parliament to Allow IDPs to Vote, 2015.

<sup>83</sup> See European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017.

<sup>84</sup> OSCE/ODIHR Election Observation Mission Final Report, Local Elections, Ukraine, 25 October and 15 November 2015, p. 12.

<sup>85</sup> UNIAN Information Agency, IDPs shall not vote in local elections – Ukraine's Supreme Court, 2018, available at: <https://www.unian.info/>

<sup>86</sup> European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017; European Platform for Democratic Elections, Electoral reform in Ukraine #3, 2017.

that would help to overcome obstacles linked to the stringent residence requirements at local level. As a result, significant part of Ukraine's population was disenfranchised during local elections in 2015 and may remain so in the future elections if necessary legislation is not adopted.

#### **IV. CONCLUSION: PROSPECTS OF VOTING FOR IDPs IN UKRAINE'S LOCAL ELECTIONS IN 2020**

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The very high number of IDPs currently living in Ukraine poses fundamental challenges to state and society in terms of, most imminently, securing their basic humanitarian needs and, in longer term, managing their successful integration into local communities and achieving the goals of local reconciliation and peacebuilding. Importantly, the many activities that IDPs pursue at local level in places of their actual residence show that they want to be active members of local communities and contribute to their own local integration for the period of their displacement. However, the socio-economic conditions the country is facing coupled with shortcomings in the current legislative framework often hamper these efforts. Despite government's efforts to implement a comprehensive strategy addressing problems of IDPs, numerous issues remain unresolved. While local governments and civil society often step in to fill the gap, the overall situation seems to be unsustainable.<sup>87</sup> IDP voting rights in local elections are in this regard a challenge that, though not immediately, affects the lives of IDPs especially with regard to their local integration.

Against this background, the voting rights of IDPs are becoming an increasingly relevant topic in the Ukrainian public discourse as next local elections are scheduled for 2020. At the same time, the current state of legislation clearly requires a reform that would introduce measures providing for the electoral participation of IDPs in the upcoming local elections. This has been highlighted in a number of international recommendations addressing, *inter alia*, the shortcomings concerning IDP voting rights in the local elections held in 2015.<sup>88</sup> In line with international best practices, the necessary reform of the electoral legal framework including fundamental changes of election law should not be introduced less than one year before an election.<sup>89</sup> Therefore, now that the major inflows of IDPs from 2014 and 2015 have faded away and the arrived people settled down in the areas of their actual residence, the government should in accordance with the pertinent

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<sup>87</sup> Atlantic Council, *Ukraine's Internally Displaced Persons Hold a Key to Peace*, 2017, p. 11.

<sup>88</sup> See CoE Congress of Local and Regional Authorities, Recommendation 386 (2016), paras. 8(a)(b), 10; Also CoE Recommendation 369 (2015).

<sup>89</sup> Venice Commission, *Code of Good Practice in Electoral Matters*, 2002, p. 10.

recommendations embark on an electoral reform that would ensure compliance of its domestic legal framework with international commitments regarding voting rights of IDPs in local elections.

Nevertheless, at the time of writing, the prospects of voting for IDPs in Ukraine's local elections in 2020 remain uncertain. The currently ongoing efforts to amend existing laws have been so far rather unsuccessful due to the lack of political will. On 27 March 2017, a draft law was registered (No 6240) which aims to protect the voting rights of IDPs by granting the right to vote to those who currently do not reside in their original place of registration, *i.e.* the permanent address indicated in their passports. This law, if adopted by Parliament, would significantly alleviate the intricate bureaucratic procedure that IDPs have to go through in the process of changing the voting address for the place of their actual residence. However, the draft law No 6240 has not yet been advanced to the plenary for debate as political will is lacking.<sup>90</sup> This was criticized on 17 January 2019 by the Parliament's Committee on Legal Policy and Judiciary which recommended adoption of the draft law at the first hearing.<sup>91</sup> On November 7 parliament despite expectations surprisingly approved in the first reading a draft Electoral Code 3112-1. This draft aims to amend electoral laws with regards to electoral system as well as other general aspects of electoral process. Nevertheless, the proposed changes have no direct impact on IDP voting rights in local elections as they primarily focus on the characteristics of electoral systems.<sup>92</sup> The Parliament has however registered a high number of amendments to the draft Election Code No 3112-1, some of them jointly developed by MPs, experts of Civil Network OPORA and IFES. The proposed amendments among other things also aim to protect voting rights of IDPs in Ukraine's elections, including the local level.<sup>93</sup> It remains to be seen whether Parliament will approve the draft for the second reading and what amendments, if any, will be introduced and if these will have any potential impact on IDP voting rights in local elections.

The further developments of legislation in this area and the possible implications on voting of IDPs in local election in 2020 are difficult to predict since electoral matters in Ukraine are generally politically very sensitive issues and become easily subject of politicisation. Importantly, electoral participation of IDPs seems to be overshadowed by other issues which are of concern for the current government. By many, IDPs are perceived have certain political preferences and any discussion on their enfranchisement hence becomes a matter of controversy. Many current deputies moreover reportedly perceive any electoral reform as possibly threatening their future

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<sup>90</sup> OPORA, Experts discussed the mechanisms for prevention of electoral violations, established by draft law #6240, 2017.

<sup>91</sup> IFES, Parliament's Committee on Legal Policy and Judiciary Recommends Adopting at First Hearing Draft Law 6240 Aimed to Enfranchise IDPs in Elections, 2019.

<sup>92</sup> European Platform for Democratic Elections, Electoral reform in Ukraine #3, 2017.

<sup>93</sup> OPORA, Improvement of the system, open data, gender balance, CEC reform, electoral rights of citizens and prohibition of TV campaigning: 178 amendments to the Election Code are registered in the Parliament, 2017.

chances to retain mandates in the single-mandate districts as majority of proposed changes involves shift towards proportional systems.<sup>94</sup> There is also certain reform fatigue currently prevailing among Ukrainian politicians and law-makers drawing attention away from reforms.<sup>95</sup> This all indicates that the recent draft law may be eventually rejected by the Parliament and the electoral reform will have to be relaunched from the very beginning. Alternatively, the legislative debate on this matter may be subject to postponing with no legislative outcomes until shortly before elections.<sup>96</sup> Of special interest in this regard is the recent decision of Ukraine's Supreme Court rejecting IDPs' claim to vote in local elections. Since this decision is final and all remedies have been exhausted there is now a possibility to file a case with the ECtHR for potential violation of the constitutionally guaranteed right of all citizens of Ukraine to participate in elections. Nonetheless, the recent development as well as long term legislative trends cast significant uncertainty on the voting rights of IDPs in the upcoming local elections in 2020.

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<sup>94</sup> European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017, p. 5.

<sup>95</sup> European Platform for Democratic Elections, Electoral reform in Ukraine #1, 2017, p. 1.

<sup>96</sup> European Platform for Democratic Elections, Electoral Reform in Ukraine: Challenges and Prospects, 2017; European Parliament, The electoral reforms in three association countries of the Eastern Neighbourhood - Ukraine, Georgia and Moldova and their impact on political developments in these countries, 2017, p. 11.

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