



# NEW LOCAL ELECTION LAW: A MISSED REFORM OPPORTUNITY<sup>1</sup>

## EXECUTIVE SUMMARY

Ukraine's parliament missed an opportunity for a real reform of democratic accountability through elections, when it amended the local election law in a manner that was not consultative and inclusive, resulting in a law that brings few improvements to its earlier versions.

In June an official consultative process to amend the local election law was cut short when parliament rapidly adopted an amendment proposal that had never been presented or discussed publicly. The law serves the parties' interest by maintaining a strong degree of party control of candidates and by upholding toothless regulations of campaign financing that will do little to prevent corruption.

The electoral system, described by some MPs as an 'open list' system, is in reality a hybrid system which neither allows voters to have a choice on which candidate of a particular party is being elected, nor to be sure that their local district is actually represented at all in a council. Internally Displaced Ukrainians will not be able to vote at the places of their current residence, if they are not registered there.

The law marks some progress on women representation by introducing a 30% gender quota per party list, but its effect will be limited by the overall problems with the electoral system.

The shortcomings of the law cannot be addressed before the 25 October elections, but it is recommended to embark on an overhaul of Ukraine's entire electoral legislation to bring it in line with long-standing recommendations of Ukrainian civil society groups and the OSCE/ODIHR and the Venice Commission.

In the wider context of decentralisation, elections for mayors and councils of newly merged territories are planned for 2017. Comprehensive election reforms should be completed before that date, so no time should be lost after these upcoming polls to achieve real progress in this area.

## BACKGROUND

DRI monitors, analyses and reports on political reforms in Ukraine. This Briefing Paper follows on an earlier Briefing Paper on local elections in Ukraine, published in May.<sup>2</sup>

The early presidential and parliamentary elections held in 2014 were considered by international observers to be important steps in the consolidation of democratic elections in line with international commitments. However, the OSCE/ODIHR observation missions recommended a number of improvements in the electoral legal framework and reiterated calls for comprehensive electoral reform.<sup>3</sup>

<sup>2</sup> See <http://democracy-reporting.org/publications/country-reports/ukraine/briefing-paper-55-may-2015.html>

<sup>3</sup> See Ukraine. Early Parliamentary Elections 26 October 2014. OSCE/ODIHR Election Observation Mission Final Report, pp. 31-34. <http://www.osce.org/odihr/elections/ukraine/132556?download=true>; Ukraine. Early Presidential Election 25 May 2014. OSCE/ODIHR Election Observation Mission Final Report, pp. 30-33; <http://www.osce.org/odihr/elections/ukraine/120549?download=true>.

<sup>1</sup> This briefing paper was written by Olena Chebanenko, Election Law Expert of the Reanimation Package of Reforms (Ukraine) and Meaghan Fitzgerald, International Election Law Expert.

Five of the six parties in the newly formed Ukrainian parliament (Verkhovna Rada) signed a Coalition Agreement committing to key reforms as demanded by Maidan protesters and European partners. Along with promises of constitutional and rule of law reform, the Agreement included a commitment to electoral reform starting in the first half of 2015. It stipulated the introduction of open list proportional systems for both parliamentary and local elections, that mayors of large cities be elected by absolute majority, and that the overall number of local councillors elected to councils at both local and regional level would be reduced.<sup>4</sup>

As part of the post-Maidan promises, the Government also launched constitutional reforms aimed at giving more powers to local self-government bodies and aligning the legal framework, including the respective constitutional provisions, with European standards. Within the framework of this reform, village, settlement and city communities can be united into larger communities, and local self-government bodies elected in those united communities will receive broader powers and increased resources to effectively exercise these powers. The constitutional amendments will become law once passed by a two-thirds majority in a second reading and signed by the president. President Poroshenko indicated that a second reading will take place after local elections, preferably by the end of 2015.<sup>5</sup>

In accordance with the Constitution, local elections will be held on October 25, 2015.<sup>6</sup> They will be held on the basis of a new law which was adopted in July 2015. This Law states that no elections will be held in the temporarily occupied territories of Crimea and Sevastopol, and in the areas outside government control in Donetsk and Luhansk oblasts. In addition, the Law gives the Central Election Commission (CEC) the authority to cancel local elections in areas adjacent to the areas outside government control, if so requested by the regional administrations based on security considerations. At the end of August 2015, the CEC passed a series of resolutions clarifying where there will be no elections on 25 October.<sup>7</sup>

Despite the tight timeframe for reform, the newly elected parliament was slow to open discussions on the law on local elections, and the new law was adopted less than one month before the start of the election process. The manner in which the law was adopted was not consistent with democratic decision-making. The Law also did not contribute to further harmonisation of election legislation in Ukraine as it introduces a number of new procedures. The need for

harmonisation has been repeatedly highlighted by the OSCE/ODIHR, Venice Commission, and others.

In 2014, the legal framework for elections was significantly amended shortly prior to both the early presidential and early parliamentary elections. Despite the amendments, it is widely understood that substantial reform of all election legislation is necessary before future elections are held, in particular in advance of the next parliamentary elections.

Following constitutional reforms that include decentralisation, special local elections will need to be held in 2017 for the newly formed administrative divisions.<sup>8</sup> This presents an opportunity for parliament to address the lessons learned from the 2014 national elections and the upcoming 2015 local elections and amendments should be considered in an open and inclusive manner. Additionally, under the Minsk II agreement, local elections need to be organised in the areas of Donetsk and Luhansk that are currently outside government control; this is a separate process from the 25 October elections.

## A FLAWED PROCESS: THE ADOPTION OF THE LOCAL ELECTION LAW

Civil society organisations participating in the Election Group under the banner of the Reanimation Package of Reforms (OPORA Civic Network, Committee of Voters of Ukraine (CVU), Internews-Ukraine and others) started advocating for changes in local election legislation in the end of 2014, but it was not until April 2015 that parliament took serious steps to address election law reform.

In February 2015, the Speaker of the Verkhovna Rada, Volodymyr Groysman, established an expert council to address the Coalition Agreement commitment to reform legislation for local elections in the first half of 2015. The expert council included members of parliament representing various fractions, election law experts, representatives of civil society organisations working on election issues and international governmental and non-governmental organisations advising on elections in Ukraine. By April the expert council had only been convened twice and in the second meeting a smaller expert drafting group of 11 experts was formed. This group met several times and developed a draft in consultations with interested members of parliament, the CEC and other stakeholders. The draft was presented to the larger expert council and registered in the parliament by the First Vice Speaker Andriy Parubiy and 18 other members of parliament representing the Petro Poroshenko Bloc, People's Front, and Samopomich.

<sup>4</sup> See a description of the Ukrainian Coalition Agreement, available at: <http://www.osw.waw.pl/en/publikacje/analyses/2014-11-26/ukrainian-coalition-agreement>.

<sup>5</sup> See statement of President at: <http://www.pravda.com.ua/news/2015/09/6/7080352/> [accessed October 20, 2015].

<sup>6</sup> Art. 141 of the Constitution of Ukraine.

<sup>7</sup> CEC Resolutions Nos 189, 190, dated August 28, 2015, and CEC Resolutions Nos 208 and 209, dated August 29, 2015. For updates on the electoral process, see the OSCE/ODIHR: <http://www.osce.org/odihr/elections/ukraine/177906>

<sup>8</sup> Draft Law on Amendments to the Constitution of Ukraine related to decentralisation of powers in Ukraine (reg. No 2217a, dated July 1, 2015), initially adopted on August 31, 2015; [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=55812](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55812) [accessed October 6, 2015].

Altogether four draft laws were submitted,<sup>9</sup> however, none of the other drafts were presented to the public or openly discussed. On June 18, 2015, the legislature considered all four drafts and chose to approve in the first reading the draft law on local elections that was registered in the Verkhovna Rada on May 28, 2015, by the Members of Parliament Vadym Denysenko, Serhii Aleksyeyev (Petro Poroshenko Bloc), Ihor Popov, Yuriy Chyzhmar (Oleh Liashko's Radical Party) and Olena Ledovskih (People's Front). The other drafts, including the expert council's draft, did not receive the required 226 votes necessary for further consideration.

After the first reading, amendments were submitted for the Committee on Legal Policy and Judiciary's consideration. Disappointed by the emergence of this undisclosed draft, civil society chose not to propose any amendments. The draft was adopted under accelerated provisions on 14 July, 26 days after the first reading and just over one month before the start of the election period. Proposed amendments were not discussed and the debate on the draft lasted for only about 40 minutes.<sup>10</sup> The final version of the adopted text was only made available to the public being signed by the President (on 7 August 2015). The delay in publishing the draft, contrary to regular procedures raised suspicions about its contents.<sup>11</sup> Overall, the process of drafting the new local election law proved to be opaque and non-inclusive.

## NEW LOCAL ELECTION LAW: ANALYSIS OF KEY PROVISIONS

### 1. ELECTORAL SYSTEMS FOR LOCAL ELECTIONS

Prior to the adoption of the new law, a variety of proportional systems were considered. Proposals included open party lists, partially closed party lists and essentially closed list systems that do not offer voters a choice of their preferred candidate within the party list.<sup>12</sup> Mayors, settlement and village councils are directly elected under a majoritarian system; by a first-past-the post system in villages, settlements and cities with less than 90,000 voters and a two-round system for mayoral elections in cities with 90,000 and more voters. All other councils are elected under a multi-member constituency proportional electoral system that Ukrainian lawmakers refer to as an "open list" system. Under this system, a single candidate list should be submitted for council elections by political parties.

The new law introduces three electoral systems:

- Mayors in cities with less than 90,000 voters, as well as for village and settlement councils are elected in first-past-the-post system in one round;
- Mayors in cities with 90,000 or more voters in two-round majoritarian elections (one round if a candidate garners more than 50% of the votes immediately; if not the two highest scoring candidates go to the second round);
- All other councils are elected in a proportional multi-member proportional electoral system.

It is the third multi-member system, that has been most criticised. Under this system political parties propose lists and candidates from the list are assigned by the political party to territorial districts (one candidate per district) that sub-divide the overall electoral district. The first candidate on each party list is not assigned to any territorial district and is guaranteed a seat if the party passes the 5 per cent threshold of votes to participate in the allocation of mandates for that council. The overall number of candidates on a party list must not exceed the number of council seats for the respective council plus one. Members of parliament who sponsored the bill call it an "open list proportional" system, but this is misnomer. The system does not offer voters a choice of their preferred candidate within a party list; essentially it functions as a closed list.

For each territorial district, voters are given a ballot that has the name of each party that nominated candidates for the respective elections, the party number (established by drawing lots), the name of the candidate not assigned to any territorial district and the name of the candidate assigned to the voters' district (if any). Parties are not required to nominate candidates in all sub-districts created for the elections in question. Moreover, the law does not set a minimum number of candidates that a party must nominate. Voters vote for the political party by marking the box next to the party number.

The results are determined on the basis of votes received by party in the entire electoral district of the respective council (encompassing all territorial districts). To participate in the allocation of seats a political party must receive no less than 5 per cent of all the votes cast for that council. The number of seats allocated to a party is established by dividing the number of votes received by the party by the electoral quota. The electoral quota is established by dividing the number of votes for all party lists entitled to mandates, by the number of seats in the respective council. Undistributed mandates are allocated based on the largest remainder method. Following the allocation of seats, the Territorial Election Commission (TEC) compiles the final list of elected candidates: the first seat is given to the candidate first on the list who was not assigned to any district and remaining seats are given to the candidates assigned to territorial districts based on the percentage of votes the party receives in the overall entire electoral district of the respective council.

9 Draft local election laws 2831, 2831-1, 2831-2 ("Expert Group Draft") and 2831-3.

10 Shorthand report of the plenary session of the parliament held on 18 June 2015, available in Ukrainian at: <http://portal.rada.gov.ua/meeting/stenogr/show/5925.html>

11 See: <http://cifragroup.org/?p=1586> [accessed October 6, 2015].

12 For further information on the proposed systems, see DRI's earlier Briefing Paper on local election in Ukraine from May 2015: <http://democracy-reporting.org/publications/country-reports/ukraine/briefing-paper-55-may-2015.html>

This system lacks the essential component of an open list system: Voters have no impact on the order of candidates on the party lists. The basic idea of a real open list is that voters can choose from the list of the party's candidates; the one with most votes will be the first on the party list. Such an arrangement reduces the party's control over who is elected. Under the new law's model of an "open list" proportional system a vote is cast for a party and simultaneously for that party's candidate assigned to the territorial election district (if any). This system, in fact, combines certain features of the first-past-the-post and proportional systems, but by no means can be considered an "open list" system. This system has never been used in the national or local elections in Ukraine and introducing this system is inconsistent with the Coalition Agreement.

Although on party lists candidates must be assigned to specific districts there is no requirement that there be a council member from each district. Essentially the council members represent the entire administrative division and not the area in which they were a candidate. That means that from some territorial districts nobody may be elected (because none of the candidates there received a significant number of votes). CSOs (including OPORA, CIFRA Analytical Group and Ukrainian Centre for Social Data) confirmed this by testing the system using results from the 2010 local or 2014 elections to the Kyiv city council. In some territorial districts nobody would have been elected, in others two or more councillors would be elected. In some territorial districts a candidate from a party that received fewer votes might be given a seat, while a candidate with more votes in that territorial district may not get a seat because his/her party list overall did not receive much support.

The call for an open-list proportional system was largely motivated by the desire to limit the vulnerability to the misuse of state resources and vote buying. However, the new system remains vulnerable to these practices.

The new law also introduces an absolute majority requirement for mayoral races in cities with more than 90,000 voters. Under the new system, a mayor candidate must receive more than half of the votes cast to be elected otherwise a second round between the two best candidates is held, and the candidate who receives the most votes is elected. For mayoral races both political party nominated and independent candidates are eligible.

## 2. ELECTION DISTRICTS

The new law contains relatively few details on how the boundaries of the election districts must be drawn. The law states that the election district boundaries must be drawn with "approximately" equal number of voters, that the district boundaries must respect administrative boundaries, that election precincts (with few exceptions) cannot be divided between the districts, and that the boundaries of the districts must be contiguous.

However, the law does not define the permissible deviation in the number of voters between the territorial districts, thus increasing the risk that the principle of the equal voting power will be violated while drawing up the districts. The Law does not require any public consultations on constituency delimitation, which might lead to political manipulation of the process, gerrymandering. According to civil society observation reports,<sup>13</sup> in many administrative divisions districts were created by the TECs with unequal numbers of voters, with non-contiguous boundaries and/or with the polling stations responsible for administering elections for several constituencies at the same time.

The opportunity to challenge the TECs decisions in administrative courts is limited since some electoral subjects (parties and candidates) who are allowed to appeal TEC decisions were not registered at the time decisions were taken. The deadline for filing the appeal under the Code of Administrative Adjudication is five days. To challenge the TEC decisions on establishment of the election districts, a voter must present evidence that his/her rights were infringed by the respective TEC decision, which might be an uneasy task in many cases.<sup>14</sup>

## 3. CANDIDATE NOMINATION AND REGISTRATION

Under the new proportional system for local councils candidates can only be nominated by registered local political party branches, independent candidates are not eligible to run in most of the elections (except for the mayoral elections and elections of the village and settlement councils), and there is no provision for a list of independent candidates. This is contrary to the Paragraph 7.5 of the OSCE Copenhagen Document that recommends enabling independent candidates to run in the elections.<sup>15</sup>

The new law also increases the risk that some seats in the local councils would remain vacant as it fails to establish the minimum number of candidates to be nominated by a party for a specific election.

On a positive note, the Law restricts the grounds for cancellation of a candidate's registration: while in previous local elections candidates could be deregistered for violations of the electoral legislation, and TECs often abused this power to deregister candidates, the local election law provides that candidate's registration can be cancelled only if he/she has lost the right to vote/be elected.

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13 OPORA Interim Election Observation Report; <http://www.oporaua.org/vybory/zvity/article/8543-promizhnyj-zvit-opory-za-veresen-po-rezultatamy-sposterezhennja-na-miscevyh-vyborah-25-zhovtnja-2015-roku> [accessed October 6, 2015]; CVU Interim Election Observation Report; <http://www.cvu.org.ua/nodes/view/type:news/slug:1-5-28> [accessed October 6, 2015].

14 Art. 172 of the Code of Administrative Adjudication.

15 <http://www.osce.org/odihr/elections/14304?download=true> [accessed October 6, 2015].

The new law also introduces a gender quota for party lists, the number of candidates of the same sex on the list must not exceed two-thirds of the overall number of candidates on that list. On 23 September, the CEC issued Resolution No 362, whereby failure to implement the gender quota requirement cannot be considered grounds for refusing the registration of a candidate list. This resolution has been challenged with the Kyiv administrative court of appeals and the court overturned it. However, by the time the court decision came into force the candidate registration by the TECs was already completed. In practice, the enforcement of the quota varied by TEC: in some cases failure to comply with the quota resulted in the rejection of candidate lists, while other TECs registered the lists even though they failed to ensure the balanced representation of sexes.<sup>16</sup> The impact of the gender quota will depend on the election results and due to the system introduced may not be as effective as gender quotas used in other proportional systems.

#### 4. CAMPAIGN FINANCE

The rules governing campaign finance laid down in the new law are generally similar to those in the Parliamentary Election Law and remain weak. In particular, the law fails to provide for any limits on campaign expenditure for candidates and parties, thus creating conditions for constant increases in spending amounts and strengthening the dependence of parties and candidates on private funding. While the expert group draft proposed to ban outdoor political advertising and TV/radio advertising in order to significantly reduce overall party and candidate campaign expenses, the new law provides no such restrictions. Restrictions on certain types of election campaigning would have encouraged contestants to spend less on their campaigns and to make campaigns more meaningful, door-to-door oriented.

Candidates are not obliged to open a single bank account for campaign finances. This seriously undermines the transparency and accountability of campaign funding.

The new law require pre- and post-election campaign finance reporting by both political parties and single-member district mayoral candidates. The reports are submitted to TECs, analysed by them and made public. However, the law is silent on whether the reports must be published in full and whether donors must be disclosed in the published reports. The scope of analysis of the submitted reports by the TECs also remains unclear. More importantly, there are no legal sanctions in place for failure to submit pre-election and post-election reports, the submission of incomplete/incorrect reports or for late submissions.

TECs, especially villages and settlement TECs, do not have the capacity, resources or power to effectively scrutinise the reports and campaign finances in general. Overall, campaign finance regulation in the local election law is as weak as in other election laws, and more legislative action is needed to align it with Recommendation 2003(4) of the Committee of Ministers of the Council of Europe to member states on Common rules against corruption in the funding of political parties and election campaigns, the key regional instrument setting the standards for political funding. In particular, consideration should be given to regulating donations in-kind, to introducing effective, proportionate and dissuasive sanctions for violating campaign disclosure rules, to ensuring that provisions in the law on local elections are not circumvented and that the funding of election campaigns is a subject to independent and effective monitoring.

#### 5. ELECTORAL ADMINISTRATION & VOTING, VOTE COUNTING AND TABULATION PROCEDURES

Following the early parliamentary elections in 2014, OSCE/ODIHR made a number of recommendations on how the administration of elections can be improved. In particular, they recommended that to ensure the independence of the election administration from political influence, consideration should be given to introducing deadlines for the replacement of the election commissioners, to developing the institutional capacity, impartiality, professionalism and stability of DECAs and PECs by strengthening recruitment, hiring and training methods.<sup>17</sup> Previously, OSCE/ODIHR also recommended consideration of mechanisms to prevent so-called “technical candidates” registered for the purpose of increasing an allied party’s representation on election commissions. Other recommendations include removing provisions that allow the establishment of election results regardless of the number of polling stations where the elections were invalidated, as well as the provisions establishing thresholds for tolerance to fraud during voting.<sup>18</sup> Given that the provisions in the local election law are generally similar, the OSCE/ODIHR recommendations are applicable to the legal framework governing the local elections.

While the expert group draft addressed some of those recommendations (in particular, cancellation of election results if affected by wide-scale violations of the electoral law), the new law does not incorporate the respective proposals. In particular, the law allows the replacement of election commissioners upon the initiative of the parties and candidates who nominated them at any time for whatever

<sup>16</sup> See: <http://www.oporaua.org/news/8708-zastosuvannja-gendernoji-kvoty-na-miscevyh-vyborah-operatyvni-dani> [accessed October 6, 2015].

<sup>17</sup> Ukraine. Early Parliamentary Elections 26 October 2014. OSCE/ODIHR Election Observation Mission Final Report, pp. 31-32; <http://www.osce.org/odihr/elections/ukraine/132556?download=true> [accessed October 6, 2015].

<sup>18</sup> Ukraine. Parliamentary Elections 28 October 2012. OSCE/ODIHR Election Observation Mission Final Report, pp. 35; <http://www.osce.org/odihr/elections/98578?download=true> [accessed October 6, 2015].

reason, while the vote counting and tabulation provisions (including those connected to invalidation of the precinct results and invalidation of the elections in general) remain the same as in the parliamentary election law. No effort has been undertaken to introduce mandatory trainings of all commissioners on procedures or to otherwise enhance the professionalism of commission members.

## 6. LIABILITY FOR ELECTION-RELATED OFFENCES

In 2014, the Criminal Code of Ukraine was amended to introduce severe sanctions for election-offences and to supplement the existing administrative sanctions. However, the amendments to the Criminal Code failed to criminalise distribution of goods and services to voters, widely referred to as “indirect vote buying”. Currently, indirect vote buying can only result in a warning, a sanction that cannot be considered effective to prevent future violations. Moderate administrative fines for many election-related offences, including campaigning during prohibited times, in prohibited places or by prohibited means, violation of campaign finance rules, or failure to implement decision of the election commission appear to be insufficient to dissuade these practices.

Overall, provision on election-related offences and the enforcement of the law should be further reviewed to provide that all violations of election laws are subject to effective and proportionate sanctions, and that the sanctions are actually imposed on those who committed offenses.

## 7. VOTING FOR INTERNALLY DISPLACED PERSONS (IDPS)

DRI’s previous Briefing Paper on local elections in Ukraine covered discussions that were taking place to ensure the voting rights of about 1.5 million citizens of Ukraine that are currently displaced.

To vote in the local elections, a voter have his/her residence registered within a specific territory in which the elections are held. This also means that the voter is entitled to exercise his/her right to vote on election day only at the election precinct in the area of his/her civil registration. Discussions have focused on how to facilitate a change of voting address without requiring that internally displaced persons (IDPs) change their civil registrations, as not all IDPs are interested in changing their civil registrations and the process can be cumbersome.

International instruments (such as UN Guiding Principles on Internal Displacement;<sup>19</sup> Parliamentary Assembly of the Council of Europe (PACE) Recommendation 1877(2009) “Europe’s forgotten people: protecting the human rights of

long-term displaced persons”,<sup>20</sup> and Recommendation Rec(2006) of the Committee of Ministers of the Council of Europe to member states on internally displaced persons<sup>21</sup>) explicitly prohibit any discrimination of IDPs as a result of their displacement in enjoyment of the right to vote in both national and local elections. In 2014, the OSCE/ODIHR called on Ukrainian authorities to take effective measures to alleviate impediments/obstacles for the temporary re-registration of voters from the Crimean peninsular in order to further facilitate the participation and exercise of the constitutional rights of these voters.<sup>22</sup> This recommendation is applicable to IDPs in general.

In parallel to discussion on reform of the law on local elections, civil society organised a number of public fora aimed at finding ways of simplifying the procedures for IDPs voting in local elections.<sup>23</sup> Members of parliament registered four draft laws proposing mechanisms to ensure that IDPs will be able to exercise their voting rights in the 2015 local elections.<sup>24</sup> One of those drafts (No 2501-a-1) was prepared by OPORA based on the results of a number of public discussions devoted to IDP voting rights, in collaboration with members of parliament from Donetsk and Luhansk representing different factions.

However, adoption of any of the registered drafts before the 2015 elections seems to be unlikely for several reasons. First, the time remaining until election day is insufficient to ensure that any of the drafts, even if adopted, can be implemented during the upcoming elections. Second, critics allege that some parties of the ruling coalition are not eager to enfranchise IDPs from the East who may be more likely to vote for opposition parties.

Even if no special provisions are put in place for the 2015 local elections, as part of future electoral reform parliament should still consider ways to ensure that IDPs are not disenfranchised in national and local elections. The respective changes might also contribute to better political participation and representation of other vulnerable groups, such as homeless persons or migrant workers who currently face similar obstacles in terms of changing their voting addresses.

## LOCAL ELECTIONS AND DECENTRALISATION

<sup>20</sup> <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17759&lang=en> [accessed October 6, 2015].

<sup>21</sup> <https://wcd.coe.int/ViewDoc.jsp?id=987573&Site=CM> [accessed October 6, 2015].

<sup>22</sup> Ukraine. Early Parliamentary Elections 26 October 2014. OSCE/ODIHR Election Observation Mission Final Report, p. 32.

<sup>23</sup> See, for instance: <http://cvu.dn.ua/news/vr-proignoruvala-viborchi-prava-pereselenciv-donecke-kvu-ta-opora-pishut-zakonoproekt-dlya>; <http://hromadskeradio.org/prava-lyudyny/ne-vsi-pereselenci-cherniveckoyi-oblasti-hochut-golosuvaty-na-miscevyh-vyborah>; <http://ar.volyn.ua/20150923-u-lutsku-zaproponuvaly-zminy-do-zakonu-pro-pereselentsiv/> [all accessed October 6, 2015].

<sup>24</sup> Draft Laws No 2501-a (submitted on August 12, 2015), No 2501-a-1 (submitted on August 21, 2015), and No 2501-a-2 (submitted on August 26, 2015).

<sup>19</sup> <http://www.ifrc.org/Docs/idrl/I266EN.pdf> [accessed October 6, 2015].

Even though the amendments aimed to create the constitutional basis for decentralisation in Ukraine have yet to be adopted into law, decentralisation reform is ongoing and will result in the establishment of 130-150 large rayons (compared to the current 490) and roughly 1500 communities instead of more than 10,000 villages, settlements and smaller cities.<sup>25</sup>

Some villages and settlements have already united into larger communities before the official start of the election process, and the first elections for these local councils and mayors will be held in the upcoming 25 October elections. The process of merging villages, settlements and smaller cities into larger communities will continue after the elections (the deadlines will be established by schedules approved by the Cabinet of Ministers for each region) and will result in the need for local elections in the newly merged communities.

Draft constitutional amendments propose local elections in the enlarged communities and rayons be held in 2017 simultaneously throughout the country. Prior to the elections serious consideration should be given to changing the electoral system, particularly because the new communities will be given more local and regional autonomy in policymaking and resource allocation. If the elections are scheduled for 2017, the reform process should begin immediately to make sure that the electoral system and other important aspects of the electoral legal framework are changed no later than one year before the elections, as recommended by the Venice Commission. Changes in the local election law should also address the lessons that have already been learned from the 2014 elections, as well as issues that arise during preparations for and holding of the October 2015 local elections. Further, this would be an opportunity for harmonising the entire legal framework governing elections in the country and considering the introduction of a single electoral code.

## RECOMMENDATIONS

Given that international best practice discourages changes to electoral legislation shortly before an election, to avoid confusion and lack of uniformity in the application of the law, no significant changes to the current legal framework are recommended in the days before the election.

**However the overall process of the election law reform** in Ukraine should restart well in advance of the next elections, preferably immediately after the 2015 local elections. Any significant changes to electoral legal framework should be drafted in an open and inclusive manner well and subject to public debate amongst key stakeholders, where all voices can

be heard and duly considered. The Venice Commission and the OSCE/ODIHR should have an opportunity to review and comment on the proposed legal changes. The draft legislation, once being registered in parliament, should be properly and meaningfully discussed by members of parliament from various factions, and their proposals, both for the first and second reading, should be carefully elaborated by the leading committee and parliament as a whole. A proper deliberative process is likely to produce a law of much higher technical quality that is better accepted by the public.

**For future elections**, in particular those which may be held in 2017, parliament should consider improvements to electoral legislation. The legislature should address the following **priority recommendations**:

- Reconsider the electoral system with the aim of giving voters more say in the choice of candidates and meeting commitments and public demands for a genuine open list proportional system for local and parliamentary elections;
- Establish clear criteria for constituency delimitation and a process that is transparent and inclusive, enabling the key stakeholders to provide their comments/feedback;
- Bring campaign finance regulations in line with international standards, in particular with Recommendation 2003 (4) on Common rules against corruption in the funding of political parties and electoral campaigns;
- Consider establishing campaign spending limits and expert group proposals on limiting paid campaign advertising on TV/radio and/or outdoor advertising during the election period to reduce the overall expense of election campaigns;
- Consider introducing procedures that would enable IDPs to participate in future elections;
- Introduce mandatory trainings for election commissioners, as well as consider restricting the right to replace commissioners at any time for any reason;
- Introduce effective and proportional sanctions for all violations of the electoral legislation, including administrative fines and criminal penalties and the enforcement of the provisions;
- Consider allowing independent candidates or lists of independents to run in all the local elections held in the country;
- Introduce mechanisms enabling the voters to receive complete, correct and timely information on the candidates and parties, electoral system, voting procedures, election results and other important issues connected to local elections; and
- Provide that election results can be invalidated for serious offences affecting the election results.

The **laws governing both national and local elections** should be harmonised with each other, ideally, codified into a single electoral code. The Venice Commission and the OSCE/ODIHR repeated recommendations should be carefully considered while harmonising all electoral legislation.

<sup>25</sup> See, for instance: [http://texty.org.ua/pg/news/textynewseditor/read/60093/Novyj\\_administratyvny\\_j\\_ustrij\\_v\\_Ukrajini\\_zjavlatsja\\_gromady](http://texty.org.ua/pg/news/textynewseditor/read/60093/Novyj_administratyvny_j_ustrij_v_Ukrajini_zjavlatsja_gromady) [accessed October 6, 2015].

## ABOUT DEMOCRACY REPORTING INTERNATIONAL

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Reanimation Package of Reforms is a civic platform that unites leading NGOs and experts from all over Ukraine and serves as a coordination centre of development and implementation of key reforms in Ukraine. RPR's mission is to unite for advocacy of reforms that would allow development of independent, democratic, law-governed, strong, and prestigious state with wealthy population and equal opportunities for everyone. RPR's strategic goal is to implement key reforms that would strengthen open society, government's accountability, new relations between a citizen and the state, security and prosperity of Ukrainian people.

<http://rpr.org.ua/en>

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