



IDPs' Electoral Participation Gap

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Abstract

Sustainable Development Goal 16 is concerned with peaceful and inclusive societies, access to justice for all, and effective and accountable institutions. Yet, this is a distant reality for many internally displaced persons (IDPs), some of whom lack access to their most basic of democratic entitlements. IDPs' electoral participation is crucial for preventing marginalization, promoting reconciliation, and for making governments more responsive and accountable, including in respect to solutions for IDPs. Securing IDPs' electoral rights in their area of origin or in their current location is a key component of a durable IDP settlement solution. This article explores the international standards for IDP electoral participation, and the multiple operational challenges involved. It looks in detail at the case study of Ukraine, where despite extensive advocacy efforts, IDPs still do not have the right to vote either in local elections or for half of the members of parliament. The study examines the current legal, practical and political barriers to IDP electoral participation in Ukraine, and reviews how the persistence of the Soviet-era residence registration system is a major obstacle for inclusive elections. The study critically analyses arguments against granting IDPs full franchise in Ukraine and explains a draft law that addresses public concerns about the integrity of the IDP vote. If adopted, this draft law will remove some of the existing barriers to electoral participation faced by IDPs, as well as internal migrants and other transient citizens, all of whom are negatively affected by the current permission-based residence registration system in Ukraine.

Keywords

Internally displaced persons (IDPs), Sustainable Development Goals, democracy, right to vote, Ukraine

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Introduction

Sustainable Development Goal (SDG) 16 is concerned with the promotion of peaceful and inclusive societies, access to justice for all, and effective and accountable institutions at all levels. Yet, this is a distant reality for many IDPs, some of whom lack access to their most basic of democratic entitlements, including the right to vote and to stand as a candidate. This article explores the nature of IDP electoral participation by considering international standards and operational challenges. In particular, it examines in detail the situation in Ukraine, where more than 1.36 million citizens have been displaced as a consequence of the occupation of the country's eastern-most provinces by Kremlin-backed separatists and the unlawful annexation of the Crimean Peninsula by the Russian Federation in 2014.¹

Since the outbreak of the 2014 conflict, Ukraine has seen three electoral events – early presidential elections and parliamentary elections in 2014, followed by the election of mayors and councillors of local self-government bodies in 2015. As will be outlined in this article, these election events revealed the existence of legal and practical obstacles to full electoral participation experienced by those citizens displaced because of the conflict with Russia. First and foremost, amongst these is the persistence of the permission-based residence registration system, colloquially known as the *propiska*, which has remained essentially unreformed since Soviet times. The effects and implications of the *propiska* system for IDPs in Ukraine will be discussed, as will examples of best practices from other post-Soviet countries that are aimed at overcoming its negative consequences.

The *propiska* system has, since the breakup of the Soviet Union in 1991, proved to be a very real barrier to electoral participation for Ukraine's sizeable community of internal migrants and other transient communities, such as student youth. This article argues that the displacement crisis brought to the forefront the underlying problems caused by the *propiska* system for the franchise of these citizens. In particular, the lack of opportunity for IDPs to exercise their constitutionally-guaranteed right to vote in the 2015 local elections, and thereby influence the composition of the self-government bodies in their new communities, mobilized Ukraine's disenfranchised IDP voters in an effort to make their voice heard. However, despite extensive domestic advocacy efforts and numerous recommendations by regional and international election and human rights monitoring bodies since 2015, Ukrainian lawmakers have so far failed to close the electoral gap for the country's IDPs. The possible explanations for this lack of action will be explored through an analysis of Ukrainian public and political discourse on the issue of IDP electoral participation in the period from 2015-2018.

Ukraine is currently preparing for its next electoral cycle – parliamentary elections in 2019 and local elections in 2020 – and the window for legislative action to fully enfranchise the IDP population in these forthcoming election events is closing.² A possible way to fill the existing electoral gap is available in the form of a draft law that was developed with the support of the International Foundation for Electoral Systems (IFES) following broad consultations with key national stakeholders, including civic organizations rooted in the IDP community. The draft law was registered in the Ukrainian parliament, the Verkhovna Rada, in 2017, with the support

¹ As of 4 March 2019, some 1.36 million Ukrainian citizens were official registered as IDPs by the Ministry of Social Policy of Ukraine. The UN Office for the Coordination of Humanitarian Affairs (OCHA) estimates that some 800 000 IDPs currently live in government-controlled areas of Ukraine. See *Global Report on Internal Displacement*. (2018). IDMC, p. 77.

² In 2016, Ukraine began implementing decentralization reforms of its local level governance structure. These reforms have resulted in waves of first elections to local self-government bodies in newly amalgamated communities across the country. The next such elections are expected in 99 territorial units of Ukraine on 30 June 2019. Under the current legal framework, IDPs are excluded from taking part in these local election events at their place of current stay.

of reform-minded members of parliament (MPs) from across the party-political landscape. If adopted, the draft law would provide a remedy to overcome the barriers to IDP enfranchisement created by the residence registration system, as well as similarly benefitting internal migrants and other transient communities in Ukraine. It also addresses public concerns for the integrity of the IDP vote voiced in the Ukrainian domestic discourse. Experience from other post-Soviet countries, such as Georgia, indicates that these concerns do not materialize in practice when IDPs are granted full franchise.

This article will both present the draft law and assess its compliance with international standards for elections, as well as offer best practice examples. It will also explore if the current international legal and political instruments governing IDP electoral participation can be further strengthened and refined considering the findings of the Ukraine case study.

The Government of Ukraine will be absent when, in 2019, the United Nations (UN) takes stock of progress made towards fulfilment of the 2030 SDGs. The question that must be asked is whether the IDP voice will also be absent? The theme of the 2019 High Level Political Forum, held under the auspices of the UN Economic and Social Council, will be ‘empowering people and ensuring inclusiveness and equality’. Among others, SDG 16 will be under review. As stated, Ukraine, as well as some other countries with high numbers of IDPs, will not be among the 51 countries presenting their voluntary national reviews to the Forum in July 2019. Yet, IDP rights need to be part of the SDG 16 review. As this article explores, IDPs are often not *de facto* included electorally, thereby weakening their voice and their chance to have a say in their future. This potentially compromises the inclusivity and accountability of institutions, and as a consequence, is detrimental to any likelihood of robust sustainable development for IDPs and the wider society. This article argues that the issue of IDP electoral participation needs more attention from international standard-setting bodies and election observation organizations, and that better guidance should be available to governments in countries like Ukraine that face challenges associated with forced population displacement.

Moreover, internationally, this is now a pertinent time to be examining IDP electoral participation. This is because, first, there has been a substantial increase in the number of IDPs globally, and second, 2018 marked 20 years since the publication of the UN Guiding Principles on Internal Displacement. The Guiding Principles contain two provisions that are directly related to IDP electoral participation. It is therefore fair to say that these issues are not new. Since its establishment in 1987, IFES has worked in more than 145 countries promoting electoral integrity and supporting citizen participation in elections. Several of these countries have had large IDP communities. In September 2016, IFES issued a white paper on IDP electoral participation with the intention of drawing greater attention to this under-addressed issue.³ The paper’s key findings and recommendations are presented at the end of this article.

Literature Review

Studies dealing with IDP electoral participation in a global comparative context are a relatively new phenomenon.⁴ The existing literature predominantly consists of country or regional studies, often aimed at highlighting the importance of IDPs’ political participation for the purposes of inclusive peacebuilding and reconciliation processes in post-conflict contexts.⁵ Important studies on global and regional legal and political instruments governing internal displacement, the legal and practical obstacles to IDP electoral participation, and best practice cases, have been commissioned by the Representative of the UN Secretary-General on the

³ Shujaat, A., Roberts, H. & Erben, P. (2016). *Internally Displaced Persons and Electoral Participation. A Brief Overview. IFES white paper.*

⁴ The 2016 IFES white paper provides a comprehensive resource guide for literature on IDP electoral participation with full references (hyperlinks), see Shujaat, A., Roberts, H. & Erben, P. (2016), 20-24.

⁵ Grace, J. & Mooney, E. (2009). Peacebuilding Through the Electoral Participation of Displaced Populations, 2009. *Refugee Survey Quarterly*, Vol. 28 (1), 95–121.

Human Rights of Internally Displaced Persons or organizations such as the Organization for Co-operation and Security in Europe (OSCE).⁶ Most recently, the Council of Europe's Congress of Local and Regional Authorities commissioned an expert report analyzing the current state of affairs with respect to local level voting rights of IDPs, internal migrants and foreign citizens throughout Council of Europe Member States, including Ukraine.⁷ Following approval of the report at its 35th Plenary Session on 6 November 2018 in Strasbourg, the Congress adopted a resolution calling upon Ukraine, as a Council of Europe Member State, to uphold voting rights for its IDPs in time for the 2020 local elections.⁸

UN agencies and other international and regional organizations present in Ukraine have issued several reports since 2014 that focus on different aspects of the country's internal displacement crisis.⁹ While most reports are devoted to the humanitarian and socio-economic aspects of displacement, several do highlight the need to extend full voting rights to IDPs in general and local elections, and emphasize the importance of this for successful integration. However, not all international reports provide a sufficiently in-depth analysis of the challenges associated with IDP electoral participation.¹⁰ The OSCE Office for Democratic Institutions and Human Rights (ODIHR) has observed all election events in Ukraine since the 2014 crisis, doing so alongside the Congress during the 2015 local elections. Both organizations monitored the elections for their compliance with OSCE commitments, and with Council of Europe and other international standards for elections and proposed concrete recommendations to stakeholders aimed at improving the legal and regulatory framework for IDP electoral participation. International observer findings and recommendations since 2014 will be addressed below. Findings of domestic civil society organizations, including in election monitoring reports issued by observer organizations such as the Civil Network OPORA, as well as analyses undertaken by civil society organizations working on IDP rights protection, such as the NGOs Group of Influence and Right to Protection, will also be discussed below. Ukrainian studies of the complex barriers to IDP integration are few, with one notable exception. A 2016 study published by the National Academy of Science of Ukraine analyses the legal and social barriers to successful IDP integration, with a focus on prospects for the socioeconomic development of

⁶ Grace, J. & Mooney, E. (2007). Political Participation Rights, in Particular the Right to Vote and to Be Elected. *Studies in Transnational Legal Policy*, No. 41, 507-550; Mooney, E. & Jarrar, B. (2005). Displaced and Disenfranchised: Internally Displaced Persons and Elections in the OSCE Region, *Ethnopolitics*, Vol. 4, No. 1, 29-48.

⁷ The Council of Europe Congress of Local and Regional Authorities Report is available at rm.coe.int/voting-rights-at-local-level-as-an-element-of-successful-long-term-int/16808e49f4. IFES Ukraine presented its comments on the draft report and was invited to give its expert opinion at the presentation and adoption of the report at the 35th Plenary Session of the Congress on 6 November 2018 in Strasbourg.

⁸ The Council of Europe calls on Ukraine to uphold voting rights for IDPs. *Resolution of the Council of Europe's Congress of Local and Regional Authorities*. 6 November 2018. Retrieved from www.ukrinform.net/rubric-politics/2574683-council-of-europe-calls-on-ukraine-to-uphold-voting-rights-of-idps.html.

⁹ The Office of the High Commissioner for Human Rights (OHCHR) issues quarterly monitoring reports on the human rights situation in Ukraine; these are available at www.ohchr.org/en/countries/enacaregion/pages/uareports.aspx. The International Organization for Migration (IOM) provides quarterly National Monitoring System Reports on the situation of IDPs; these are available at www.iom.org.ua/en/publications. Both agencies devote sections of their reporting to IDP electoral participation. The Internal Displacement Monitoring Centre (IDMC) issues global monitoring reports annually and maintains a database on internal displacement; these are available at www.internal-displacement.org. International Crisis Group (ICG) issued, in 2018, a report analyzing the humanitarian crisis and prospects for peaceful integration of east Ukraine; this is available at www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine/252-nobody-wants-us-alienated-civilians-eastern-ukraine.

¹⁰ See, for example, Enhancing the National Legal Framework in Ukraine for Protection of the Human Rights of Internally Displaced Persons (2006). *Council of Europe Report*. This report was prepared within the framework of a 2015-2017 Council of Europe Project, and subsequently presented as a baseline study in its field. The chapter devoted to IDP electoral rights provides an important outline of the main international and Council of Europe standards governing electoral registration and participation of IDPs, followed by an overview of existing barriers to IDP voting in Ukraine, with recommendations. The overview, however, overlooks the fact that registration of a temporary voting address (which currently is the only option available for IDPs to vote at their current place of stay) is not carried over, i.e. IDPs must register anew before a potential second round in presidential elections; and that the temporary registration procedure excludes Ukrainian IDPs from voting in the majoritarian component of parliamentary elections. This reduces the usefulness of the report's recommendations, which primarily address issues related to IDP participation in local elections.

Ukraine's Donbas region.¹¹ The study frequently applies the term 'discriminatory' when describing the general human rights situation for IDPs in Donbas, including in respect to IDP electoral participation.¹²

The available regional studies that provide comparative analyses of the *propiska* system and its consequences for the electoral participation of IDPs and transient populations in the countries that emerged from the former Soviet Union dates back from the early 2000s.¹³ At that time, Ukraine had just begun its transition away from the *propiska* system so was therefore devoted less attention. The Soviet-era residence registration system was formally abolished in Ukraine in 2001 and the new Law on Freedom of Movement and Free Choice of Place of Residence Registration in Ukraine was adopted in 2003. Since then, there have been several international and domestic studies on the current system. Among them is a report based on findings drawn from a May 2018 consultative roundtable held by OSCE ODIHR and the State Migration Service of Ukraine, with participation from domestic civil society organizations, which was aimed at reforming the residence registration system.¹⁴ The report found that 'the reform process is not yet fully completed, and a designated inter-ministerial workgroup is currently exploring possibilities for the introduction of a declarative approach to registration of place of residence'.¹⁵ It also highlighted the negative effects of the current permission-based residence system on the freedom of movement for the country's Roma and on the electoral participation of IDPs, of which some 600 000 remain unregistered at their current address.¹⁶ Also important is a 2017 report published by the Centre for Sociological Research (CEDOS). This report followed the completion of a research project mapping the effects of the current residence registration system for Ukraine's IDP population and an estimated 1.6 million internal (inter-regional) migrants.¹⁷ The study found, *inter alia*, that the decentralized administration of the current residence registration system in Ukraine creates opportunities for corrupt practices at the local level.¹⁸

The present article will, to a lesser extent, also draw upon yet unpublished material. Such material includes papers presented by IFES at two international events held on 18 October 2018, namely the Internal Displacement Monitoring Centre (IDMC) conference, Getting to 2030: Internal Displacement and Sustainable Development, held in Geneva, Switzerland; and the roundtable event, Internally Displaced Persons and Electoral Participation of IDPs, organized jointly by the UN Global Protection Cluster and the Carter Center, held in Amman, Jordan.¹⁹ In addition, the authors have been generously granted access to case material in a

¹¹ Новікова О.Ф., Амоша О.І., Антонюк В.П. та ін: *Внутрішньо переміщені особи: від подолання перешкод до стратегії успіху*, НАН України, Ін-т економіки пром-сті. – Київ, 2016 [= Novikova, O. F., Amosha, O. I., Antoniuk V. P., et al. (2016). *Internally Displaced Persons: From Overcoming Barriers to a Strategy for Success*, Institute for Industrial Economy of the National Academy of Science of Ukraine, Kyiv].

¹² *ibid*, p. 16ff.

¹³ In 2001, a Council of Europe report analyzed the negative effects of the *propiska* system on migrants, asylum seekers and refugees in Council of Europe Member States. See *The Propiska-System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies*. (2001). *Parliamentary Assembly of the Council of Europe Report*.

¹⁴ *Facilitation of Registration of Place of Residence while Preventing its Misuse*. (2018). *OSCE/ODIHR Report on Roundtable held in Kyiv, Ukraine, 28 March 2018*.

¹⁵ *ibid*, p. 3.

¹⁶ The 2018 OSCE ODIHR report recommended that 'the Ukrainian authorities should intensify their work on the facilitation of registration of Roma and IDPs (...)'. (*ibid*, p. 5).

¹⁷ See *Реєстрація місця проживання: виклики для держави та наслідки для суспільства*. — Київ: Аналітичний центр «CEDOS», 2017 р. [= *Registering Place of Residence: Challenges for the State and Implications for Society*. (2017). CEDOS].

¹⁸ "Інститут прописки несучасний і потенційно корупційний — експерти". *Презентація результатів якісного соціологічного дослідження CEDOS, яке окреслює масштаб проблеми з місцем реєстрації проживання*. 11 листопада 2016 р. [= "The institution of the *propiska* is outdated and potentially corrupt – according to experts". *Presentation of the results of a qualitative sociological study by CEDOS*. This reveals the magnitude of the problems associated with registration of place of residence. (11 November 2016). Available in Ukrainian at pravo.org.ua/ua/news/20871714-institut-propiski-nesuchasniy-i-potentsiyno-koruptsiyniy--eksperti.

¹⁹ See www.ifes.org/news/promoting-electoral-participation-internally-displaced-persons.

pending principal case before the European Court of Human Rights (ECtHR) in Strasbourg. This case has been brought by three Ukrainian IDPs who were denied access to register to vote in the 2015 local elections.²⁰ A forthcoming analysis of the political debate on IDP electoral rights in Ukraine 2015–2018, which was authored by leading civil society activists with the support of IFES Ukraine, will form the basis of a discussion of public concerns and frequently voiced arguments against granting full voting rights to IDPs in Ukraine. Surveys conducted since 2015 among Ukraine’s displaced population present a set of important findings that map perceptions about electoral participation with knowledge of electoral rights and registration procedures among IDPs. As will be discussed, these findings indicate that IDP integration in current communities is high, but that full integration may be negatively affected by current legal and practical obstacles, including lack of access to equal voting rights.

Methodology

This study approaches the issue of IDP electoral participation by reviewing the existing international and domestic literature on the subject. It notably draws upon findings and conclusions from the 2016 IFES white paper on IDP Electoral Participation that was mentioned above. It also employs a comparative case study approach, drawing upon the cases of Ukraine and Georgia. Findings are drawn from domestic political debates in Ukraine, with these compared with insights from previous surveys conducted among IDPs in Government-controlled areas (GCA) of Ukraine.²¹ The surveys quoted in this study have been commissioned by IFES Ukraine and have been conducted on an annual basis since 2016. The most recent national survey referenced in this study was conducted for IFES by GfK Ukraine between 16 January and 13 February 2018. This study surveyed 2 048 IDPs in Ukraine. For the purposes of this survey, IDPs were defined as residents of Donetsk, Luhansk or Crimea who have been forced to move to other parts of Ukraine on account of conflict and/or occupation. Due to the absence of reliable population data for IDPs in Ukraine, a variety of data sources were used to develop the survey sample. Data from the Ukraine Ministry of Social Policy (MoSP) and the UN Office for the Coordination of Humanitarian Affairs (OCHA) on the distribution of IDPs by *oblast* was used to proportionally distribute interviews for the household sample. The 2 048 survey participants were interviewed face-to-face in their homes at their current place of residence. Due to the difficulty of locating IDPs in their place of residence, a random plus snowball sampling method was used to select participants for interview. This provided an effective approach to surveying IDPs in Ukraine given the lack of reliable information concerning Ukraine’s IDP population. However, it must of course be borne in mind that, given this sampling approach, the data from this survey should not be considered representative of the entire IDP population, but rather it should be seen as indicative of IDP opinions and experiences. Findings from other surveys, including IOM’s most recent survey of IDP households in Ukraine, were also consulted for reference purposes, conscious that such data are not fully comparable to the IFES surveys due to differences in scope, sampling method, geographical coverage and timing.²²

²⁰ Selygenenko and Others v. Ukraine. Application No. 24919/16. Reply to Government Observation. Text prepared by lawyers from the European Human Rights Advocacy Centre (EHRAC) (London) and the Regional Centre for Human Rights (RCHR) (Kyiv), October 2018. The authors of this article would like to thank the drafters for granting permission to access the Reply document.

²¹ IFES Ukraine does not conduct surveys among Ukrainian IDPs living in non-government-controlled areas of Ukraine (often referred to as “returnees”) since the focus of its work is to inform and improve the electoral and legislative reform processes in government-controlled areas of Ukraine.

²² *National Monitoring System Reports on the Situation of IDPs in Ukraine*. (2017-2019). International Organization for Migration (IOM), Kyiv. Retrieved from www.iom.org.ua/en/publications. The most recent IOM survey was conducted in July–September 2018 using both face-to-face and phone interviews with IDPs and some 800 recent returnees to non-government-controlled areas. Retrieved from www.iom.org.ua/sites/default/files/nms_round_11_eng_press.pdf.

Findings

International Standards for IDP Electoral Participation

As citizens of the country in which they are displaced, IDPs have electoral participation rights as generally provided for in international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). ICCPR Article 25 refers to ‘the right and the opportunity’ to vote and to stand as a candidate, thus there is an emphasis not just on legal provisions, but also on the practical realization of rights. The ICCPR also contains general obligations related to non-discrimination.²³ The ICCPR treaty body, the UN Human Rights Committee, emphasizes that ‘States must take effective measures to ensure that all persons entitled to vote are able to exercise that right’.²⁴ The Committee notes 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’.²⁵ It may therefore be understood that there is an onus on the State to take extra measures to enable participation by IDPs who face the specific difficulty of being forced to live away from their home locations.

While reasonable restrictions to electoral rights are permitted, these should only be for a legitimate reason, be proportionate, and must be compatible with the obligations of the rule of law and other treaty provisions. Unless IDP participation genuinely threatens the integrity of the electoral process overall, then it can be assumed that special efforts should be made to provide for *de facto* IDP participation. Jurisprudence and commentary from the Human Rights Committee and the Human Rights Council indicates the importance of States Parties providing for the fulfillment of ICCPR Article 25 in respect to IDPs.²⁶ However, there is a current lack of explicit reference to IDPs in international treaties and in authoritative interpretations by treaty bodies.²⁷

Positively, at the regional level, the African Union (AU) has established treaty obligations for IDP electoral participation. The Convention for the Protection and Assistance of Internally Displaced Persons in Africa (commonly known as the Kampala Convention) came into force in December 2012 and has currently been ratified or acceded to by 27 of the AU’s 52 Member States (and has been signed by 40). In April 2017, a ministerial conference of States Parties to the treaty adopted the first action plan for the implementation of the Kampala Convention. The treaty binds States Parties to ‘take necessary measures to ensure that internally displaced persons who are citizens in their country of nationality can enjoy their civic and political rights, particularly public participation, the right to vote and to be elected to public office’.²⁸

Aside from the Kampala Convention, various other instruments do explicitly refer to IDPs’ electoral rights, even if these are not legally-binding. Most notable among these are the UN

²³ ICCPR Article 26 states that ‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status’.

²⁴ UN Human Rights Committee, *General Comment 25* (1996), paragraph 11.

²⁵ *ibid*, paragraph 12.

²⁶ For example, in a 2004 Concluding Observation on Colombia, the UN Human Rights Committee expressed its ‘concern regarding the difficulties experienced by internally displaced persons in exercising their civic rights, especially the right to vote. The State party should... take the necessary steps to ensure that displaced persons are able to exercise the rights guaranteed in article 25’. *Concluding Observations: Colombia*. (2004), point 19. Similarly, a UN Human Rights Committee report on Congo in 2009 noted that ‘The national election commission, in cooperation with Monuc and other partners, should ensure registration of the displaced as voters and be supported to find ways to ensure (e.g. through provisions on absentee voting) that the displaced can in fact exercise their political rights’. UN Human Rights Committee/10/59 (Combined Report on technical assistance and capacity building, 2009), paragraph 108.

²⁷ One exception is the UN Committee on the Elimination of Racial Discrimination (CERD), which, in 1996, referred to IDP voting rights in the context of return, see *General recommendation XXII* on Article 5 of the Convention on Refugees and Displaced Persons, Committee on the Elimination of Racial Discrimination, 1996.

²⁸ *Kampala Convention* (2009), Article 9(2)l.

Guiding Principles of Internal Displacement. The Guiding Principles, which were published in 1998 and endorsed by the UN World Summit in 2005, constitute the primary international agreement on internal displacement. Principle 22(1)(d) states that ‘Internally displaced persons, whether or not they are living in camps, shall not be discriminated against as a result of their displacement in the enjoyment of the following rights: ... (d) the right to vote and to participate in governmental and public affairs, including the right to have access to the means necessary to exercise this right’. Principle 29(1) then goes on to state that ‘Internally displaced persons who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services’.²⁹

At the European level, in 2006, the Council of Europe Committee of Ministers noted 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’.³⁰ In 2009, the Parliamentary Assembly of the Council of Europe recommended that the Committee of Ministers ‘ensure that IDPs can exercise their right to participate in public affairs at all levels, including their right to vote or stand for election, which may require special measures such as IDP voter registration drives, or absentee ballots’.³¹ More recently, in November 2018, the Council of Europe Congress of Local and Regional Authorities published a report stating that ‘In particular, the existence of a “genuine link” between IDPs and the place where they cast a ballot at local level is of critical importance with respect to voting rights as a successful element of their integration’.³²

Finally, election observers also look at whether a country is fulfilling the obligations and commitments it has in relation to elections, which importantly includes IDP rights. The OSCE has recommended ‘Ensuring 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 their right to political participation’.³³ Moreover, the Handbook for the EU Election Observation notes that ‘As citizens, IDPs should still retain all of their political rights, including the right to participate in the country’s electoral process. Measures need to be taken to ensure that IDPs enjoy these rights, which may be affected by their forced change of residence or loss of documentation’.³⁴

Operational Challenges

The international standards referred to above give States a wide margin in respect to how they address the specific electoral participation difficulties IDPs face and what special measures they may undertake. Such special measures may include easier mechanisms for changing constituency, absentee polling arrangements, and a wider range of permitted identification documentation. Such arrangements may be agreed specifically for IDPs, or for a wider

²⁹ *Guiding Principles on Internal Displacement*. (1998). UN High Commissioner for Refugees. Retrieved from www.refworld.org/docid/3c3da07f7.html.

³⁰ *Council of Europe Recommendation Rec(2006)6 of the Committee of Ministers to member states on internally displaced persons*. (2006), paragraph 5. Retrieved from rm.coe.int/16806b5aaf.

³¹ *Europe’s Forgotten People: Protecting the Human Rights of Long-term Displaced Persons* (2009). *Parliamentary Assembly of the Council of Europe Recommendation 1877* (2009). Retrieved from assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17759&lang=en.

³² See link to the report of the Congress in footnote 7 above. The quote here is from recommendation 2 of that report.

³³ *Internally Displaced Persons*. (2004). *OSCE Supplementary Human Dimension Meeting Final Report*. Retrieved from www.osce.org/odihr/38887?download=true.

³⁴ *Handbook for European Union Election Observation* (2016) (3rd ed.). Election Observation and Democratic Support, Brussels. Retrieved from ceas.europa.eu/topics/election-observation-missions-eucoms_en/45962/Handbook%20for%20EU%20Election%20Observation%20-%203rd%20Edition%202016.

population, but must at all times be balanced with the need to protect the overall integrity of the election process. Such special measures therefore need to be carefully formed on a country-by-country basis and be subject to review.

In elections that are not constituency-based (e.g. a first-past-the-post presidential election or a proportional representation system), IDPs should be able to easily move their polling location so they can vote in their current location should they wish. Without this, there is a risk of *de facto* disenfranchisement because journeys to places of origin (from where IDPs have fled) may be impractical.

In constituency-based elections, it can be argued that fully meaningful enfranchisement requires IDPs to each individually have a choice over whether their ballot is for their constituency of origin (from where they have fled) or for their current location. Both options have advantages and disadvantages that need to be individually considered. For IFES, IDPs should be able to make their own decision as for which constituency their vote will count, without any consequences for their IDP status or their access to humanitarian assistance.³⁵ Moreover, voting in one's current place of residence should not preclude the right to subsequently return to a home district.³⁶ Such a choice over constituency helps promote political engagement and therefore the possibility of durable solutions. However, such choices can have significant political implications, with different forms of pressure being put on IDPs to cast their vote in one constituency or another.

Allowing IDPs to register, vote and run for office in their current constituency of residence encourages IDP involvement in their new locations, thereby promoting engagement and integration. However, this option risks validating displacement, which is often a sensitive issue, particularly in situations of conflict. There can also be a backlash from other citizens in the area who may see IDPs as "taking over", particularly if IDPs become a majority population.

When IDPs vote in their constituencies of origin (from where they have fled), they are able to maintain a connection, plus representatives elected to the area are typically more likely to actively address IDP needs. However, it can be practically difficult to travel to constituencies of origin. In addition to the time and financial costs involved, there can also be security problems and political sensitivities related to returning. This is made more problematic if voters are required to return more than once, for example, to register, to collect a registration card, and then to vote. Therefore, absentee voting arrangements are usually necessary for enhancing participation.

With absentee voting arrangements, people are allowed to vote at a location other than the one where they are registered and where their vote will count, i.e. IDPs could physically cast their ballots in their current constituencies but the ballot be counted for their constituency of origin. These measures extend the franchise but are more administratively complex for the election management body, requiring more lead-time and financial resources, and can increase the risk of manipulation. Such absentee voting can take various forms, including going in person to a pre-arranged polling station that has ballot papers for the identified home constituency, or casting a postal ballot. Dedicated absentee IDP polling stations may be established in camps and/or in the community, or mobile voting services may be used. Such absentee arrangements require knowledge of where IDPs are currently living and for which

³⁵ Mooney, E. & Jarrah, B. (2004). The Voting Rights of Internally Displaced Persons: the OSCE Region. *The Brookings Institution – John Hopkins School of Advanced International Studies Project on Internal Migration Occasional Paper*. Retrieved from www.brookings.edu/fp/projects/idp/20041105_osce.pdf. Also see Grace, J. & Mooney, E. (2007). Political Participation Rights, in Particular the Right to Vote and to Be Elected. *Studies in Transnational Legal Policy*, No. 41, 507-550. Furthermore, the Venice Commission notes that 'If persons, in exceptional cases, have been displaced against their will, they should, provisionally, have the possibility of being considered as resident at their former place of residence'. *The Venice Commission's Code of Good Practice in Electoral Matters*. (2002 revised), p. 15.

³⁶ Bagshaw, S. (2000). "Internally Displaced Persons and Political Participation: The OSCE Region". *The Brookings Institution Project on Internal Displacement*.

constituencies they wish to vote, and therefore generally necessitate some form of registration process in advance. With postal voting, secrecy of the ballot is a particular challenge. The UN Human Rights Committee has noted that ‘States should take measures to guarantee the requirement of the secrecy of the vote during elections, including absentee voting, where such a system exists’.³⁷ Similarly, the Venice Commission has said that ‘postal voting should be allowed only where the postal service is safe and reliable... fraud and intimidation must not be possible’.³⁸

Electoral participation typically requires that citizens prove their eligibility and identity through documentary evidence. However, such proof is often extremely difficult for IDPs because their documents may have been destroyed, confiscated or lost during displacement. This leaves lawmakers and election management bodies with a dilemma, as while documentation requirements reduce the opportunity for election fraud, strict requirements can make it harder for IDPs to participate. This thereby risks elections being non-inclusive. Ideally, new civil and/or voter registration documentation is provided promptly to IDPs, or alternative solutions are offered such as affidavits, or a combination of documents is allowed. Guiding Principle 20 recognizes the need for IDPs to have access to various types of documentation without unreasonable conditions, for example, requiring IDPs to return to their habitual residences to retrieve such documentation.³⁹ It can therefore be argued that IDPs should have access to electoral documentation without having to return to their areas of origin.

The UN Human Rights Committee has noted that ‘Voter education and registration campaigns are necessary to ensure the effective exercise of article 25 rights by an informed community’.⁴⁰ IDPs have particular information needs given that they are away from their location of origin, and special electoral arrangements may be put in place for them. Displacement can also make it difficult for IDPs to access information that is available through regular methods. Furthermore, IDPs may have higher levels of political disillusionment and can be subject to intimidation, meaning that greater efforts may be needed to promote their engagement. There is therefore an onus on election management bodies to make special arrangements to reach out to displaced voters.

Language barriers and low literacy rates also impede IDP participation in elections. These can be intentionally exploited to isolate and marginalize displaced voters. The UN Human Rights Committee has stated that ‘Positive measures should be taken to overcome specific difficulties, such as ... illiteracy ... language barriers ... which prevent persons entitled to vote from exercising their rights effectively. Information and materials about voting should be available in minority languages. Specific methods, such as photographs and symbols, should be adopted to ensure that illiterate voters have adequate information on which to base their choice’.⁴¹ In addition, it is important to note that IDPs are also disproportionately affected by existing barriers to electoral participation, as marginalized groups, such as women, the elderly, and persons with disabilities, are commonly overrepresented in IDP populations. This calls for special measures during registration, candidate nomination and polling to promote *de facto* participation.

³⁷ UN Human Rights Committee, *General Comment 25* (1996), paragraph 20.

³⁸ *The Venice Commission’s Code of Good Practice in Electoral Matters*. (2002 revised), 3.2.III and 3.2.2.1.

³⁹ Guiding Principle 20(2) states that ‘To give effect to this right for internally displaced persons, the authorities concerned shall issue to them all documents necessary for the enjoyment and exercise of their legal rights, such as passports, personal identification documents, birth certificates and marriage certificates. In particular, the authorities shall facilitate the issuance of new documents or the replacement of documents lost in the course of displacement, without imposing unreasonable conditions, such as requiring the return to one’s area of habitual residence in order to obtain these or other required documents’.

⁴⁰ UN Human Rights Committee, *General Comment 25* (1996), paragraph 11.

⁴¹ *ibid*, paragraph 12.

IDPs as Candidates

IDPs wanting to run for office can face additional challenges. In particular, in constituency-based elections it can be challenging for IDPs to run in their constituencies of origin when they are not physically there. Campaigning can be especially difficult if IDPs from a constituency are spread widely across a country. Such dispersal can also make scrutiny of the election process by agents particularly challenging for candidates and parties. In respect to IDPs running as candidates in their current constituencies, this can be equally difficult as they may not know the area well and may not have established party structures to assist them. Above all, IDPs typically have fewer financial resources and therefore running a campaign in any constituency is a challenge. Extra measures can be taken by election management bodies and others. Such measures might include providing more electronic and written platforms for campaign information, State media giving additional coverage to IDP candidates and campaigns, and higher campaign spending limits for IDP candidates. The lack of scrutiny can in some ways be mitigated by maximum transparency and increased oversight by civil society.

Ukraine Detailed Case Study

Background to the Conflict and the Forced Displacement Context

In Ukraine, forced displacement exists primarily as a result of armed conflict in east Ukraine and the internationally unrecognized annexation of the Crimean Peninsula in 2014 by the Russian Federation. In the official discourse, the non-government-controlled areas (NGCA) are referred to as ‘temporarily occupied territories’.⁴² These territories are administratively the eastern-most parts of the Luhansk and Donetsk *oblasts*, the Autonomous Republic of Crimea and the city of Sevastopol. The temporarily occupied territories include parts of Donbas – the historical industrial heartland of Ukraine centered around the cities of Donetsk and Luhansk – as well as the Crimean Peninsula (or Crimea), which is home to the indigenous Crimean Tatar national minority. In the east, the *de facto* authorities of the temporarily occupied territories have established two self-declared republics, the Donetsk People’s Republic (DPR) and the Luhansk People’s Republic (LPR), with the political, financial and military support of the Russian Federation. The temporarily occupied territories are separated from mainland Ukraine by an administrative boundary line known as the contact line. This has a number of checkpoints that allow for limited civilian movement in and out of the territories not controlled by the Ukraine Government. Following extensive tripartite talks in Minsk between representatives of Ukraine, the Russian Federation, and the DPR and the LPR, a ceasefire agreement was signed in September 2014 under the auspices of the OSCE. In 2014, the OSCE deployed a Special Monitoring Mission (SMM) on the Ukrainian-controlled side of the contact line to monitor the Minsk ceasefire agreement and report on the humanitarian situation. The OSCE SMM has reported daily violations of the ceasefire agreement by both sides to the conflict.⁴³ Although the UN Office of the High Commissioner for Human Rights (OHCHR) has noted a decrease in the number of civilian casualties over time, the resident population continues to suffer from attacks on civilian infrastructure, including shelling and light arms crossfire, carried out by both parties.⁴⁴

⁴² The term ‘temporarily occupied territories’ (*тимчасово окуповані території*) was coined in a law passed by the Parliament of Ukraine on 17 March 2015.

⁴³ Between 15 and 28 October 2018, the OSCE SMM recorded 18 000 violations of the ceasefire agreement. See OSCE SMM Status Report as of 28 October 2018. Retrieved from www.osce.org/special-monitoring-mission-to-ukraine/402149?download=true.

⁴⁴ UN OHCHR, *Report on the Human Rights Situation in Ukraine*, covering the period 16 May to 15 August 2018. Retrieved from www.ohchr.org/Documents/Countries/UA/ReportUkraineMay-August2018_EN.pdf. In the period covered in the report, seven civilians were killed and 46 were injured (four and 38, respectively, in territory controlled by armed groups and attributable to the Ukrainian Government; and three and eight, respectively, in territory controlled by the Ukrainian Government and attributable to armed groups). *ibid*, p. 5.

According to the Ukraine MoSP, as of 12 November 2018, there were a total of 1 364 578 IDPs registered in Ukraine.⁴⁵ The latest available official figure for the number of IDPs from Crimea is 28 654, although the OHCHR estimates that between 50 000 and 60 000 former Crimean residents might be displaced in mainland Ukraine (based on information provided by Ukrainian non-governmental organizations).⁴⁶

Participation of Internally Displaced Persons in Elections in Ukraine since 2014

The 25 May 2014 early presidential election in Ukraine was called after former President, Viktor Yanukovich, had been voted out of office by the Ukraine Parliament. He had ceased performing his duties following the Maidan events that started in November 2013 and which escalated into violence in February 2014. The electoral authorities made genuine efforts to conduct voting throughout the country despite continued unrest and violence in the east, where anti-government forces controlled some areas and the acting government was undertaking counter-insurgency operations. The election did not take place on the Crimean Peninsula, with citizens residing there facing serious difficulties in participating in the election. In the Donetsk and Luhansk *oblasts*, the Central Election Commission (CEC) could only distribute voter lists to some 32 and 35 percent of polling stations, respectively, thereby *de facto* cancelling the election in the remaining polling stations.⁴⁷

The presidential election in May 2014 was held amidst the beginning of the population displacement crisis, thus IDPs at that time had not received any official status as such. The authorities responded swiftly to the potential disenfranchisement by enabling voter registration at a temporary voting address. Following a CEC resolution adopted on 29 April 2014, all Ukrainian voters, including those affected by the inability of the authorities to distribute voter lists to their resident polling station, could register a temporary voting address without changing their official residency registration. With the exception of residents of the Autonomous Republic of Crimea and the city of Sevastopol, voters had to provide justification for their request. However, international observers reported that the provisions were inconsistently applied. Furthermore, a late surge in requests for change of voting address overloaded the capacity of voter registration management bodies, and, according to the OSCE ODIHR Election Observation Mission (EOM), voter education efforts were insufficient.⁴⁸ Only some 177 000 registered voters applied for temporary changes of their voting address, including some 6 000 residents of Crimea. Some 1 800 000 voters residing in Crimea were permitted to register to vote at locations outside the peninsula but faced serious practical difficulties and cumbersome legal requirements. As a result, very few voters took the opportunity to register a temporary voting address.

The 26 October 2014 early parliamentary elections were held after the Minsk Agreement in September, but despite the ceasefire, fighting continued. Although authorities made resolute efforts to conduct elections throughout the country, they could not be held in substantial parts of the eastern oblasts of Donetsk and Luhansk, or in Crimea. IDPs and other voters from these areas could temporarily transfer their voting address under a simplified procedure. Only a limited number of these voters availed themselves of this opportunity, since this entailed travel, expense and risk.⁴⁹

⁴⁵ The website of the Ministry for Social Policy provides regular updates on the number of internally displaced persons in Ukraine, see www.msp.gov.ua/news/16775.html.

⁴⁶ UN OHCHR, *Situation of Human Rights in the temporarily occupied Autonomous Republic of Crimea and the city of Sevastopol (Ukraine), covering the period 22 February 2014 to 12 September 2017*, p. 7. Retrieved from www.ohchr.org/Documents/Countries/UA/Crimea2014_2017_EN.pdf.

⁴⁷ The OSCE ODIHR Election Observation Mission (EOM) *Final Report of the 25 May 2014 Presidential Election in Ukraine*. Retrieved from www.osce.org/odihr/elections/ukraine/120549?download=true.

⁴⁸ *ibid*, p. 14.

⁴⁹ OSCE ODIHR EOM, *Final Report of the 26 October 2014 Parliamentary Elections in Ukraine*. Retrieved from www.osce.org/odihr/elections/ukraine/120549?download=true.

The 450 members of the Ukrainian Parliament (MPs) are elected in a parallel proportional-majoritarian electoral system. One half of the Parliament is elected on the basis of a proportional representation system with closed party lists in a single nationwide constituency, and the other half is elected in single-mandate constituencies (election districts) under a plurality system (first-past-the-post). Under parliamentary election law, all eligible voters are allowed to change, on a temporary basis, their voting address. However, voters who transfer their voting address outside their resident single-mandate constituency are only entitled to the proportional ballot. The provision effectively bars IDPs from voting for candidates in the majoritarian component of parliamentary elections where they currently reside. While the CEC adopted procedures to facilitate the participation of voters from the Donetsk and Luhansk *oblasts*, and further simplified the procedures to allow voters from the Crimean Peninsula to temporarily transfer their voting address, these efforts only entitled them to receive a proportional ballot. By the 20 October 2014 deadline, some 190 200 voters had requested to temporarily change their voting address, including 25 000 military personnel, 3 600 voters from Crimea, and some 32 800 voters from the Donetsk and Luhansk *oblasts*.⁵⁰ Similar to the 2014 presidential election, voter information was insufficient and voter education spots were almost entirely absent from national broadcast media. In the view of the ODIHR EOM, a targeted nationwide voter awareness campaign on the simplified procedure for registration could have helped increase participation of hundreds of thousands of IDPs.⁵¹

The 25 October 2015 and 15 November 2015 local elections in Ukraine were held according to a law adopted less than four months prior to the election, and without public consultation, thereby contrary to OSCE commitments and good international practice.⁵² The new local election law, which enjoyed broad support from the ruling coalition, does not provide for the right of IDPs to vote.⁵³ Non-citizens are also barred from voting, irrespective of their length of residency. Both of these exclusions were criticized by international observers. The recommendations of the ODIHR EOM called upon Ukrainian lawmakers to adopt special measures ‘to ensure equal suffrage and provide the right to vote in local elections to different groups of citizens, including IDPs, as well as non-citizens after a certain period of residence’.⁵⁴ The Council of Europe’s Congress followed suit, inviting ‘the Ukrainian authorities to address the issue of the right to vote of internally displaced persons sufficiently in advance of the next local elections’.⁵⁵

Under the law, nationwide local elections are due in October 2020. However, decentralization is being consecutively rolled out, with local communities amalgamating and holding their first local elections in these merged communities. On 23 December 2018, half a million Ukrainian voters were able to go to the polls to elect members to new local councils created pursuant to the decentralization reform, but not IDPs, who live, work and pay taxes in these communities.

A peculiarity of the Ukrainian case is that IDPs are able to stand in all elections, both at the national and the local level. In line with good international practice, there are no requirements for a candidate to be a resident of the community in which they wish to stand for election. Although exact data is not available, it is known that a number of candidates with IDP status ran in the 2015 local elections, and that a few were elected to district, city or village councils.

⁵⁰ *ibid*, p. 13.

⁵¹ *ibid*.

⁵² The OSCE ODIHR EOM, *Final Report on the 25 October and 15 November Local Elections in Ukraine*. Retrieved from www.osce.org/odihr/elections/ukraine/223641?download=true.

⁵³ When the local elections law was adopted, a number of draft laws (bills) were registered with the Parliament that included provisions for IDP voting rights. However, despite strong public demand, these were not adopted.

⁵⁴ The OSCE ODIHR EOM, *Final Report on the 25 October and 15 November Local Elections in Ukraine*, p. 34.

⁵⁵ Observation of Local Election in Ukraine 25 October 2015. *Council of Europe’s Congress of Local and Regional Authorities Recommendation 386 (2016)*.

Court Petitions Submitted by Ukrainian IDPs over Loss of Voting Rights

Ukrainian courts considered 48 complaints from IDPs who sought to be included in the 2015 local election voter lists. In the majority of cases, the courts concluded that proof of residency of a Ukrainian citizen at any given location in the country is taken to be the registration officially entered in the internal passport of a Ukrainian citizen, in other words, the *propiska*. However, in nine instances, local courts were satisfied that an IDP certificate constituted proof of residency registration, with the court's ruling that the respective polling station election commissions include the applicants in the voter list at their current location, as indicated on their IDP certificate. These court orders thereby permitted these nine IDPs to register and vote, albeit the orders only applied to the first-round election day on 25 October.⁵⁶ Some of the complainants exhausted the available national legal remedies, and after their claims had been dismissed by national courts, subsequently filed applications with the ECtHR in Strasbourg.⁵⁷

Before the ECtHR, three IDPs submitted a claim for discrimination in the enjoyment of their constitutional right to vote in local elections in breach of Article 1 of Protocol 12 to the European Convention on Human Rights (ECHR). Article 1 of Protocol 12 states that 'the enjoyment of any right set forth by law shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status'.⁵⁸ The applicants are IDPs from Crimea who moved to Kyiv following the Russian occupation of the peninsula in 2014. They have all been able to find work in their professions in Kyiv and consider themselves well-integrated into their new settings. Prior to the 2015 local elections, they individually applied to the local voter registration management body in Kyiv to be permitted to vote in the elections, but all were refused. Their appeal to a Kyiv district court was dismissed on the basis that they were recorded as Crimean residents on their passports. The Ukrainian Government raised no objections to the admissibility of their applications to the ECtHR; the judgment of the ECtHR is pending.

One explanation for why in 2015 some Ukrainian courts permitted IDPs to vote on the basis of the address information contained on their IDP certificate is that the law on residency registration (in operation for a little more than a year but covering the period of the 2015 local elections), included a provision that made no distinction between the address information entered on an IDP certificate and a citizen's passport.⁵⁹ In practice, this meant that, during this period of time, address information on an IDP certificate had to be considered as equivalent to that included on a citizen's passport for the purpose of voter registration. Today, however, although an IDP certificate is considered proof of current residence in nearly all significant aspects of daily life, for instance, when opening a bank account, when registering for military service, and when enrolling children in local schools, it is not considered as such when registering to vote.⁶⁰ An authoritative ruling by the Supreme Court of Ukraine on 25 July 2018 rejected a claim made by a Ukrainian IDP who had sought to be registered to vote in 2015, thereby confirming this disenfranchisement arrangement.⁶¹ The Supreme Court ruling excludes

⁵⁶ *ibid*, p. 12. At the time of issuing these orders, the courts did not know if there would be second rounds. Run-offs were only conducted in mayoral races and only where no candidate obtained more than 50 percent of the vote in the first round. No information is available on IDP voters applying for registration to vote in the run-offs in the 2015 local elections.

⁵⁷ Selygenenko and Others v. Ukraine. Application No. 24919/16. Reply to Government Observation.

⁵⁸ *The European Convention on Human Rights* (1950). Retrieved from www.echr.coe.int/Documents/Convention_ENG.pdf. Ukraine ratified the Convention in September 1997.

⁵⁹ The said amendment to Article 3.9 of the Law of Ukraine 'On Freedom of Movement and Free Choice of Residence in Ukraine' was in force between 22 November 2014 and 13 January 2016 (having been removed by Law No. 888-VIII of 10 December 2015).

⁶⁰ Selygenenko and Others v. Ukraine. Application No. 24919/16. Reply to Government Observation, p. 9.

⁶¹ Верховний Суд України. Постанова 25 липня 2018 року, у справі №161/16573/16-а (адміністративне провадження №К/9901/17330/18). [= Supreme Court of Ukraine Resolution of 25 July 2018, in case No. 161/16573/16-a (administrative consideration No. K/9901/17330/18)]. Retrieved from www.reyestr.court.gov.ua/Review/75544764. See also www.unian.info/politics/10234560-idps-shall-not-vote-in-local-elections-ukraine-s-supreme-court.html.

the possibility, under the existing legal framework, of IDPs registering to vote in future local elections at their address of current stay. The *propiska* stamp in a citizen's passport is considered the only proof of residence for voting in local elections. IDPs, as a rule, hold *propiska* in the temporarily occupied territories, and therefore currently face insurmountable practical and legal barriers should they seek to permanently change their residency record. These barriers will now be explored in greater detail.

Barriers Faced by Ukrainian IDPs when Changing their Official Place of Residence

In 2001, the Constitutional Court of Ukraine declared unconstitutional the *propiska* system on account of it breaching constitutional rights, including citizens' right to freedom of movement.⁶² In 2003, subsequent to residency registration in its contemporary form having been abolished, the law titled 'On the freedom of movement and the free choice of place of residence in Ukraine' was adopted. The 2003 law was expected to mark the transition from a permission-based system to a declaration-based system of residency registration, but the transition has never been accomplished.⁶³ Thus, the Soviet-era residency registration system has continued *de facto* since Ukraine's independence. According to national law, Ukrainian citizens who move from one community to another must formally prove their right to live in a dwelling by providing proof of property ownership or rental of property. Registration is routinely denied if a citizen is unable to provide this documentation or obtain the assistance of the property owner. The owners of rental property are indeed often reluctant to provide a formal lease contract or give their consent as required by tenants for registration purposes. This is a relic of the *propiska* system, which, in Soviet times, was used to determine a person's legal right to property.⁶⁴ This Soviet mentality affects IDPs and others who wish to register at their place of current residence and is a very real barrier to electoral participation.⁶⁵

IDPs may be disinclined to alter their residency registration as to do so would risk losing their IDP status, and therefore their access to IDP benefits and entitlements. Such instances of a loss of IDP status and associated benefits due to a change in registration are well documented in the practice of national courts and in witness statements.⁶⁶ Another disincentive is that to relinquish their residency registration at their place of origin would result in difficulties when trying to cross the contact line into the temporarily occupied territories.⁶⁷ IDPs do not need to explain their reason for visiting an occupied territory, either to the Russian, Ukrainian or *de facto* authorities at checkpoints, if they have a *propiska* stamp in their passport from that territory. If they have such a stamp, there is therefore a lesser chance of being refused entry or exit when they visit family and relatives, or when maintaining the graves of loved ones, in the temporarily occupied territories. Similarly, IDPs may wish to remain registered in the occupied territories in order to maintain ties with their community of origin, which for many is their

⁶² Constitutional Court of Ukraine. Decision No. 15-rp/2001 (in the case on *propiska*) of 14 November 2001. Retrieved in Ukrainian from www.ccu.gov.ua/docs/438.

⁶³ In the Soviet planned economy, the *propiska* system played an important role in the production planning by controlling the allocation of the workforce. See *Residence Registration: Problems and Reform Strategies*, CEDOS Policy Brief, 1 March 2017. Retrieved from cedos.org.ua/en/articles/revestratsiya-mistsya-prozhyvannya-v-ukrayini-problemy-ta-stratehii-reformuvannia.

⁶⁴ *ibid.*

⁶⁵ Results of Focus Group Discussions Conducted in the Framework of the Project "Enhanced Level of Awareness about Elections and Political Participation in Ukraine. NGO Civic Holding "Group of Influence" Report. (n.d.). Retrieved from issuu.com/grupa.vplyvu/docs/results_of_focus_group_idps_voting.

⁶⁶ See *Selygenenko and Others v. Ukraine*. Application No. 24919/16. Annex 1 states that 'There is a court procedure for reinstatement of entitlement to social benefits such as pension for IDPs who manage to register residence in GCA, but the procedure is cumbersome, expensive and time-consuming'.

⁶⁷ The OSCE SMM monitors the protection of civilian's freedom of movement in the temporarily occupied territories and has issued thematic reports alongside their findings; see *Protection of Civilians and their Freedom of Movement in the Donetsk and Luhansk Regions and Freedom of Movement Across the Administrative Boundary Line with Crimea*. (2015). Retrieved from www.osce.org/ukraine-smm/165691?download=true and www.osce.org/ukraine-smm/156791.

birthplace and historical homeland, and thus of strong symbolic importance. This is particularly the case in Crimea, where the Russian annexation of the peninsula, in breach of international law, left older members of the Crimean Tatar community displaced for the second time in their lives. Furthermore, the agreements negotiated in Minsk to end the conflict in east Ukraine provide for local elections to be held in the occupied territories as a step towards transition to civilian rule. The ability to vote and stand in these elections, and thus to be actively involved in a future settlement of the conflict, is an incentive for some IDPs from these territories not to give up their *propiska* in the temporarily occupied territories. Moreover, international law refers to citizens having the right and opportunity to take part in elections without unreasonable restrictions. IDPs should have a choice about where they want to exercise their voting rights, both now and after a peaceful settlement to the conflict, either at their constituency of origin or at their current location.

The Debate Surrounding Full Access for IDPs to Vote in All Elections

Advocacy for the voting rights of IDPs in Ukraine began on the eve of the 2015 local elections, when attempts were made to pass an election law that envisaged the right of IDPs to register to vote for mayors and council members in local self-government bodies.⁶⁸ The draft law, which had been subject to public discussion and had enjoyed broad consultation, was registered in the Ukraine Parliament with the support of individual members from most political party groupings. However, a parliamentary majority of MPs from the ruling coalition then submitted and passed an alternative local election law that omitted voting rights for IDPs. Attempts were made to amend the law to include provisions for IDP voting, but these efforts were unsuccessful.⁶⁹ Later in 2015, three further legislative attempts to enfranchise IDPs in local elections were made, again without success.⁷⁰

In these, and subsequent discussions, several MPs spoke against granting IDPs full voting rights. Some of the arguments appeared to be based on principle, while others seemed to be politically motivated.⁷¹ The Ukrainian Parliament's failure to grant IDPs full voting rights is testimony to the strength of opposition among current MPs, especially within the ruling coalition led by the incumbent President's party, the Petro Poroshenko Bloc. The most commonly voiced objection has been that IDPs represent a political force that lies in opposition to the current government. From this perspective, granting full voting rights to IDPs could alter the outlook of election constituencies, especially in those areas close to the contact line where, in some cases, IDPs outnumber the local population. The fear is that current officeholders in these areas will be voted out, or constituency borders and their electorates will substantially change.

The current political preferences of the IDP population are difficult to measure, but there are no data available to substantiate the perception that IDPs will vote *en bloc* against the current ruling coalition. What can, however, be measured is IDPs' level of integration in their new communities and their opinions towards electoral participation. Since 2016, and most recently in early 2018, IFES has conducted surveys to examine IDPs' level of knowledge and attitudes towards the political and electoral process, as well as their intended electoral

⁶⁸ Draft Law 2831-2 of 28 May 2015. Retrieved from w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55376.

⁶⁹ Draft Law 2832-2 of 3 June 2015. Retrieved from w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=55377.

⁷⁰ Draft Laws 2501a, 2501a-1, 2501a-2; all from August 2015.

⁷¹ Experts from the NGO Group of Influence and Civil Network OPORA have with the support of IFES Ukraine analyzed the political discourse in Ukraine with respect to IDP electoral participation during the 2015-2017 period. See chapter six of Kliuzhev, O. & Durnyeva, T. (2019, forthcoming). *Electoral Rights of IDPs in Ukraine: Urgency of the Issue, Ways to a Solution, Political Discussions, Myths and Prejudices*, IFES Ukraine, Kyiv. (Available in Ukrainian only) – this subchapter draws extensively on its findings.

participation.⁷² The annual survey findings indicate a particular trend that is common to displaced populations, namely that IDPs are more likely to participate in their current communities for local elections than they are in national elections. A relatively high level of apathy towards politics and electoral participation was also recorded, with just less than half of IDPs surveyed (46 percent) believing it to be important that IDPs vote in local elections, and 24 percent having no intention of participating in local elections or changing registration to enable such a possibility. Only 18 percent of those who believe they are well integrated into their current community state they are very likely to vote in any election, compared to 12 percent among those who state they are partly integrated in their new community. Among those who are very likely to vote in elections, 76 percent of respondents say they would prefer to vote in their current community, with only 15 percent preferring to vote in their original community if given the choice. Moreover, IDPs' attitudes towards, and knowledge of, Ukrainian political leaders shows a fairly similar pattern to that of the general population.⁷³ Therefore, overall, the findings confirm that IDPs are becoming integrated into their new communities.⁷⁴ In its 2018 survey, the IOM found that, if given the possibility, IDPs would prefer to vote in local elections at their current location. The share of IOM survey respondents who reported that they had integrated into their local community amounted to 43 percent, while 36 percent of surveyed IDPs stated that they had partly integrated. The IOM reported a slight drop in the overall number of respondents that reported some level of integration, from 80 percent in 2017 to 79 percent in 2018, with more respondents in the 2017 survey stating that they were only partially integrated, and less stating that they were fully integrated.⁷⁵ The general trend in the IOM survey data since 2017 is a statistically significant decrease in the overall percentage of respondents reporting some level of integration in their current community.⁷⁶ September-October 2018 was in fact the first time this number dropped below 80 percent. One factor contributing to this drop in perceived integration among IDPs may be their lack of full voting rights.

Some MPs have argued that there was an initial lack of control in the issuing of IDP certificates, with this resulting in the registration of people who are inhabitants of the temporarily occupied territories. These MPs claim that large numbers of people registered as IDPs only in order to access the associated benefits. In their view, these IDPs constitute a potential 'fifth column' loyal to the *de facto* authorities and may act to manipulate or obfuscate Ukrainian elections locally if granted voting rights. Arguably, the status of the Ukrainian population caught behind the contact line was uncertain in the tumultuous first year of the conflict. Subsequently, the Ukrainian Government tightened screening procedures for obtaining IDP status, and also discontinued payments of pensions and other social benefits to Ukrainian citizens who were considered *de facto* residents of the so-called DPR and LPR. As a recent International Crisis Group report has noted, current policies towards conflict-affected

⁷² Internally Displaced Persons Survey: Key Findings. (2018). *IFES Ukraine Analytical Report*, Kyiv, pp. 4-5. Retrieved from gallery.mailchimp.com/8a39d40b8b64140d1e69644f5/files/fdd105de-b177-48c4-8942-2b1cff4d75d9/IFES_IDP_Survey_Key_Findings_analytical_report_10_02_2018_v1_Eng.pdf.

⁷³ For similar survey findings, see Opportunities and Challenges Facing Ukraine's Democratic Transition. (2018). *Nationwide Survey with Seven Oversamples and May 2018 Focus Group Discussions*. National Democratic Institute Ukraine, Kyiv.

⁷⁴ As reported by IFES, 'The percentage wishing to vote in their current community has increased six percentage points [from 40 to 46 percent] from the last survey [June 2018], indicating that IDPs are becoming more integrated in their community', IFES Ukraine, *Internally Displaced Persons Survey: Key Findings*. (2018), p. 3.

⁷⁵ IOM National Monitoring System Report on the Situation of Internally Displaced Persons. (September 2018), p. 46. Retrieved from www.iom.org.ua/sites/default/files/nms_round_11_eng_press.pdf.

⁷⁶ IOM National Monitoring System Reports 2017-2018 can be retrieved from www.iom.org.ua/en/publications.

citizens on both sides of the contact line, including IDPs, risk alienating such groups from the Ukrainian Government.⁷⁷

Arguments have also been put forward by some MPs against special measures for IDP voting on the basis of equality. Essentially, they argue that the same set of rules should apply to all citizens of Ukraine. This position assumes that under current legal provisions IDPs are treated equally to the country's approximately 1.4 million internal economic migrants and other persons who live permanently away from their place of official registration. While there are certain similarities in the obstacles that IDPs and internal migrants face when attempting to change their *propiska* to their current location, labor migrants have the option to travel back to their home constituency on election day and vote at their place of official registration. Thus, this position overlooks the fact that return is typically not an option available to IDPs. It is now open to the ECtHR to decide whether this form of unequal treatment constitutes discrimination by the Ukrainian Government against its IDP population in the sense of Article 1 of Protocol 12 to the ECHR.

Some MPs hold the belief that IDPs cannot belong to two local communities at the same time; in other words, IDPs must choose where their loyalty lies. Linked to this is the frequently voiced opinion that the issue of IDP voting is exaggerated since IDPs can simply apply for residency registration (i.e. *propiska*) at their current place of stay and their electoral participation problems will be instantly resolved. Yet such arguments evidently downplay the complexity of the legal, practical and psychological barriers associated with IDP voting, as have already been discussed.

A further argument against enfranchising IDPs concerns the integrity of the electoral process. It has been argued that allowing registration to vote at a person's place of current residence would enable 'electoral tourism', that is, a tactical change of voting constituency with the aim of influencing the outcome of the vote in that constituency. The belief is that this could be exploited by the *de facto* authorities to influence the outcome of elections in government-controlled areas of Donbas, the fear being that IDPs who are residents of the temporarily occupied territories will, by way of incentives or coercion, vote in a way instructed by the *de facto* authorities. It is difficult to assess just how widespread the perception is that 'electoral tourism' is a real risk should IDPs gain full voting rights, but it is currently among the most frequently voiced arguments in favor of maintaining the status quo. It is important to note that 'electoral tourism' may potentially occur in any electoral system that operates with constituencies below the national level, which, in the Ukrainian context, means local elections and parliamentary majoritarian constituencies. Therefore, measures to safeguard the electoral process against 'electoral tourism' need to be considered in a broader context than just IDPs, and any measures that are introduced must not create barriers for the electoral participation of IDPs, internal migrants and other transient voters.

In this respect, it is useful to consider the experiences of other former Soviet Union countries with large numbers of displaced persons, for example, Georgia. Georgia is also a useful comparator given that it, like Ukraine, inherited the Soviet *propiska* system. The Georgian experience of introducing measures to safeguard against 'electoral tourism', yet respecting the principle of universal and equal suffrage for all eligible voters, will now be discussed in greater detail.

The Georgian Experience: Monitoring and transparency of voting address transfer

Georgia's recent history is similar to that of Ukraine. Georgia has faced a protracted IDP crisis as a consequence of armed conflict with the self-declared republics in Abkhazia and the South

⁷⁷ "Nobody Wants Us": The Alienated Civilians of Eastern Ukraine. (2018). *International Crisis Group Report no. 252*. See also "We carry our tragedy inside". Participatory Assessment Report for refugees, asylum seekers, and internally displaced persons in Ukraine. (2017). *United Nations High Commissioner for Refugees Report*.

Ossetia region in the earlier 1990s, and then again after the 2008 international armed conflict with the Russian Federation. Although Georgia formally abolished the inherited *propiska* system in 1996, a system of residency registration on territory controlled by the Georgian Government continued to be mandatory for participation in local elections until the early 2000s. Georgia reinstated full voting rights to IDPs in national and local elections by amending its electoral legislation in 2001 and 2003. However, in practice, IDPs and regular voters were still differentiated until 2017 when Georgia removed the requirement obliging voters to present an IDP card for voter identification purposes.⁷⁸ In their observation reports following the 2017 local elections, both the ODIHR and the Council of Europe's Congress welcomed the removal of this difference in treatment between IDPs and regular voters, and concluded that, overall, Georgia has taken adequate legal and administrative steps to integrate and enfranchise its large IDP population, including in local elections.⁷⁹

However, despite receiving such praise, most Georgian IDPs continue to be registered with temporary residence at their current location. Temporary registration of IDPs is not in line with Council of Europe standards. The Council of Europe's Congress recommends permanent residency registration in the territory of a given election constituency for participation in local elections, for reasons including as a safeguard against arbitrary change of voting address for tactical reasons, in other words, 'electoral tourism'. In the context of the 2017 election, the Congress therefore welcomed local level initiatives by the Georgian authorities that enabled IDPs to obtain permanent residency at their current location without implications for their IDP status.⁸⁰

The Georgian CEC closely monitors last-minute change requests to voting addresses. It has in fact publicly stated that since reform of the voter registration system in 2011, there have been no recorded incidences of 'electoral tourism' in any national or local elections.⁸¹ The Georgian CEC, together with State bodies responsible for voter and citizen registration, continue to monitor any changes of voting address prior to an election, looking for unusual voter behavior such as mass scale transfer of voting addresses to particular election constituencies. As a transparency measure, the Georgian CEC releases detailed data on the number of voters who have changed residency or voting address from one constituency to another prior to an election event. In the Georgian context, openness and data-sharing also act to build public confidence in the accuracy of the voter register, and as a deterrent against attempts of manipulation for purposes such as 'electoral tourism'. The fact that increasing numbers of Georgian IDPs have obtained permanent residency registration also acts as a safeguard against 'electoral tourism' by ensuring voter registration stability.

A further measure that can be taken to counter potential abuse of voter registration for tactical reasons is the legal prohibition against change of voting address between the first and second rounds in a two-round election. Only voters who turn 18 prior to or on the day of run-off (second round) elections, and thus become eligible to vote, are added to the voter list for the run-offs. No other changes, apart from correcting a misspelling of a name, are permitted prior to the day of the run-off election. In Georgia, run-offs are used in mayoral elections when

⁷⁸ Georgia: IDPs in Georgia Still Need Attention. A Profile of the Internal Displacement Situation (2009). *IDMC report*. Retrieved from www.refworld.org/pdfid/4a55fa5d2.pdf.

⁷⁹ *Information Report on the Municipal Elections in Georgia (21 October 2017)*. (1 March 2018). The Council of Europe's Congress of Local and Regional Authorities, Strasbourg; and the OSCE ODIHR Election Observation Mission Final Report on the 21 October and 12 November 2017 Local Elections. According to official data, some 200 000 Georgian citizens with IDP status were on the voter lists for the 21 October 2017 municipal elections in Georgia. Since 2007, Georgian IDPs must present a national passport for voter identification, just like any other regular voter. The Congress commended the authorities for taking adequate steps to ensure that the IDP population was issued with national passports prior to the elections.

⁸⁰ See *Information Report on the Municipal Elections in Georgia (21 October 2017)*. (1 March 2018), Article 30.

⁸¹ Communication by the Chairperson of the Georgian CEC at the Conference of the Council of Europe's Congress 'Voting Rights of Internally Displaced Persons at Local Level in Ukraine: Strengthening Integration and Grassroot Democracy', on 27 February 2019, in Kyiv.

no single candidate gains more than half of the valid votes cast in the constituency in the first round. Having a deadline for voter list changes that is prior to the first round excludes voters with electoral registration elsewhere from tactically transferring their voting address to a new constituency before the second round of voting.

A similar legal safeguard is in place in Ukraine. However, the legal provisions that give IDPs and others access to registering a temporary voting address different from their official registration do not operate with a cut-off date prior to the first round of voting. On the contrary, Ukrainian IDPs and others need to repeat the procedure for registering a temporary voter address prior to a potential second round in order to participate in the run-offs. While this procedure does in theory create the potential for the tactical transfer of registration to another constituency, in practice, this procedure is currently only used in national elections, for which the entire country constitutes a single electoral constituency and thereby tactical change of voting address has no effect. It would nonetheless be an extremely good idea to follow the Georgian example, that is by setting a final cut-off date for the registration of all categories of voters prior to first-round election day, when Ukraine considers practical solutions for the participation of IDPs, internal migrants and other transient citizens in elections that involve sub-national constituencies (in other words, local elections and the majoritarian component of parliamentary elections). Such a provision would prevent ‘electoral tourism’ between the rounds in a two-round election involving sub-national constituencies. Indeed, the Georgian example underscores the general need for the electoral legal framework to ensure greater stability of voter registration, including by facilitating access to permanent residency registration for IDPs at their place of current residence, as recommended by the Council of Europe, as a safeguard to boost the integrity of elections at the sub-national levels.

Negative Experiences of Absentee Voting in Ukraine

Absentee voting has the relative advantage of giving IDPs the choice of whether their vote counts for their constituency of origin or their constituency of current residence. Moreover, this is consistent with Guiding Principle 29(1), which states that IDPs ‘who have returned to their homes or places of habitual residence or who have resettled in another part of the country shall not be discriminated against as a result of their having been displaced. They shall have the right to participate fully and equally in public affairs at all levels and have equal access to public services’.

In the regional context, forms of absentee voting are often recommended as a durable solution for enfranchising IDP voters.⁸² However, as noted above, absentee voting, either in the form of absentee balloting or postal voting, poses a potential risk to the integrity of the vote and should be given careful consideration. Negative experiences of absentee voting scheme manipulation in Ukraine’s recent election history is not always taken into account when international organizations turn their attention to the IDP electoral gap in Ukraine.⁸³ Indeed, the reluctance in Ukraine to consider absentee voting schemes comes as a result of past bad experience. Most notably, in the first round of the 2004 presidential election, serious irregularities in the use of absentee voting certificates (AVC) were noted by international observers.⁸⁴ ODIHR observers then reported that public employees were being coerced into

⁸² Europe’s Forgotten People: Protecting the Human Rights of Long-term Displaced Persons (2009). *Parliamentary Assembly of the Council of Europe Recommendation 1877* (2009) calls upon relevant Council of Europe Member States to develop durable solutions together with IDPs. Paragraph 15.3.12 states the importance of ensuring that IDPs can exercise their right to participate in public affairs at all levels, including their right to vote and stand for election, which may require special measures such as IDP voter registration drives or absentee ballots. Retrieved from assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=17759&lang=en.

⁸³ Enhancing the National Legal Framework in Ukraine for Protection of the Human Rights of Internally Displaced Persons. (2016). *Council of Europe Report*, pp. 90-94. The report recommends absentee ballots as a way to enfranchise IDPs.

⁸⁴ OSCE ODIHR EOM, Final Report of the 31 October, 21 November and 26 December 2004 Presidential Election in Ukraine. (2004), p. 11-12. Retrieved from www.osce.org/odihr/elections/ukraine/14673?download=true.

applying for AVCs and then pressured to hand these blank to their work supervisors, thereby depriving them of the ability to vote. After the December 2004 Orange Revolution, the Verkhovna Rada removed the provision for absentee voting from the electoral legislation. Given these and other past examples of abuse of the absentee balloting system, Ukraine is not yet prepared to consider forms of absentee voting as a viable solution to enfranchise IDPs. Currently, IDP absentee voting is being considered as an option only for the first local elections due to be held in Donbas after the end of the armed conflict, as negotiated under the Minsk II Agreement.⁸⁵

Draft Law No. 6240 Introducing the Right to Register to Vote at the Place of Current Residence Since 2015, there have been a range of initiatives aimed at raising awareness of IDPs' lack of full voting rights. Such initiatives have included conferences, roundtable discussions, seminars, IDP surveys and focus group discussions conducted by domestic NGOs, think tanks and international organizations. These monitoring and advocacy efforts informed numerous reports, recommendations and resolutions calling upon Ukrainian lawmakers to enfranchise IDPs, internal migrants and others who are negatively affected by existing barriers to electoral participation. In March 2017, a group of 24 MPs, from all but one of the Parliament's party factions, tabled Draft Law No. 6240.⁸⁶

Draft Law No. 6240 was the result of a concerted effort by experts from the NGOs Civic Network OPORA and Group of Influence, IFES and MPs; with valuable input from representatives of the NGOs Donbas SOS, Center for Information on Human Rights, Crimea SOS, and the charitable organizations, Right to Protection and *Vostok-SOS*. Comments on the Draft Law were also provided by a cross-departmental working group for improving legislation to protect the human rights of IDPs, which included UNHCR and Council of Europe representatives, under the auspices of the Ministry for Temporarily Occupied Territories and IDPs.⁸⁷

The intention of the Draft Law is to provide internally transient citizens with the possibility of exercising their constitutional right to vote in all elections, and to strengthen the integration of IDPs and labor migrants in their new communities. It further aims to ease access to registering a different voting address. The Draft Law envisages amendments to a number of laws, including on the State Register of Voters, on local elections and on the protection of IDP rights and freedoms. Under the amended laws, any voter, IDPs as well as other internally transient citizens, will be entitled to apply to the voter register management body (RMB) at their place of intended voting to register to vote at an address different to that included on their *propiska*. Voters will have to initiate their application with the RMB, and registration will be granted if the individual:

- holds a valid IDP certificate,
- rents or owns their accommodation (dwelling), or
- can provide a private entrepreneur certificate (proving that he/she has a business and is paying taxes in the locality).

Voters will also be eligible to register at an address where they provide care for a citizen (a relative) who is duly registered (i.e. has *propiska*) at that address, or if they live with a spouse or a relative who is duly registered at that address. These provisions would make it possible for

⁸⁵ The Minsk II Agreement of 12 February 2015. Retrieved from www.osce.org/ru/cio/140221?download=true.

⁸⁶ Draft Law No. 6240. Retrieved from w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61425. Its drafting came after consultations with relevant stakeholders, and subsequent to consideration of many of the suggestions and concerns that had been raised during the protracted debate on IDP enfranchisement.

⁸⁷ Explanatory Note to Draft Law No. 6240. Retrieved from w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=61425.

IDPs (and other eligible citizens) to circumvent the current barriers created by the permission-based *propiska* system. Importantly, these provisions do not require IDPs to give up their *propiska* at their place of origin in the temporarily occupied territories.

To mitigate against some of the potential integrity concerns, several measures have been introduced into the Draft Law to counter attempts at ‘electoral tourism’. The Draft Law foresees an early deadline for any application to change voting address. Eligible voters are required to apply to the RMB for a change of voting address no later than five days after the start of an election period. This deadline has been set before the start of candidate registration in an effort to minimize tactical transfer of voting address to the constituency of a specific candidate. Thus, eligible voters will be able to apply for a change of address at any time before the election period, but the window for registration closes before the names of the candidates standing in the election are known. Importantly, the Draft Law restricts eligible voters from requesting any subsequent change of voting address until 180 days after their last change of voting address. This proposed moratorium on temporary voting address change is intended as a safeguard and a strong deterrent against ‘electoral tourism’. There is only one exception to the 180-day moratorium foreseen in the Draft Law, which is that voters who obtain permanent residence will be entitled to vote at their new address at any time after it has acquired legal force.

A positive consequence of the Draft Law is that it will remove the need for IDPs, as well as internal migrants and other transient voters, to register a temporary address prior to each electoral event – once they have registered a temporary voting address, this will apply to all future election events. It will then be the duty of the RMB to ensure that the voter who has transferred voting address under the new provisions is entered onto the voter list in all future elections. Thus, the Draft Law will remove the discriminatory requirement that *de facto* introduced the principle of ‘active’ voter registration for IDPs (and other citizens living away from their place of official residency registration) and reinstate the principle of ‘passive’ registration once a person in this category has registered a temporary voting address.

In sum, the adoption of Draft Law No. 6240 will remove several of the legal and practical barriers that currently prevent large segments of the Ukrainian population, including IDPs, from being able to register to vote in local elections and the majoritarian component of parliamentary elections. The safeguards introduced to address public concerns about the integrity of the vote seem reasonable and justified in the current context. If adopted, the Draft Law puts the onus on election management bodies and observer organizations to monitor implementation of its provisions as intended, and without creating new obstacles for IDPs and other voters when exercising their constitutionally guaranteed suffrage rights. In addition, Ukraine’s election management bodies would need to ensure that constituency boundaries for local and parliamentary elections are reviewed and adjusted so as to cater for the additional number of enfranchised citizens under the new provisions. This could inevitably result in a need to redraw constituency boundaries in areas where IDPs and internal migrants register in large numbers. Adequate time is therefore needed for the election administration to accomplish the constituency boundary review and adjust boundaries in accordance with the established principle of voter equality. Moreover, further time is required to inform electoral stakeholders, including IDPs, about how the changes to registration procedures and constituency arrangements will affect them. Time is therefore limited if this is to be fully accomplished well in advance of the next parliamentary and local elections in Ukraine.

There is one final point to make regarding developments since Draft Law No. 6240 was registered in Parliament. In January 2019, some 22 months after the Draft Law had been submitted to the Verkhovna Rada, the Parliamentary Committee on Legal Policy and the Judiciary considered the Draft Law and forwarded it to the plenary of the Parliament with a recommendation to adopt it at its first reading. This is a positive step, however, the Speaker of Parliament has yet to put the Draft Law onto the session agenda to be voted on. The Draft Law

will only be adopted if 226 out of the current 423 MPs vote in favor of it and the President subsequently signs it. A number of city councils around Ukraine have petitioned the Parliament to enable IDPs in their local communities to vote in the next local elections. When doing so, they have explicitly petitioned the Rada to adopt the Draft Bill into law, albeit so far to no avail. It is therefore expected that advocacy efforts supporting full voting rights for Ukrainian IDPs will need to continue for some time yet.

Conclusion

If adopted, Draft Law No. 6240 will enable a significant number of Ukrainian citizens, including IDP voters, to circumvent most of the existing barriers they face in respect to electoral participation. However, in the long-term, a fundamental reform of the *propiska* system is needed in order to address the root causes of IDP disenfranchisement. Reform of the residency registration system has also been recommended by several international monitoring and standard setting bodies, such as the Council of Europe.⁸⁸ Despite occasional domestic press reports about imminent reform or replacement of the *propiska* system, Ukraine continues to require its citizens to obtain a State permit to change their place of residence, in a process that is cumbersome and often open to corruption. The IDP crisis in Ukraine has exposed the blatant inadequacy of the residency registration system in its current form. The system effectively enables the Ukrainian State to decide a citizen's legal place of residence and, by implication, act as a gatekeeper in determining which rights associated with *de jure* place of residence should be extended to its citizens. The persistence of the Stalin-era residency registration system effectively allows the Ukrainian Government to deprive certain citizens, such as IDPs, of their fundamental democratic, civil and political rights, in a manner similar to the Soviet past.

As this article has demonstrated, domestic arguments against the removal of existing legal and practical obstacles that prevent Ukraine's IDPs, internal migrants and other transient citizens from fully exercising their electoral rights, are often ill-informed and neglect the basic human rights principles to which Ukraine has committed itself under international legal and political frameworks. The ICCPR obliges Ukraine to provide to all eligible citizens, including IDPs, both the right to vote and the opportunity to exercise that right in practice. The Guiding Principles call upon governments to take special measures to ensure that IDPs are not discriminated against, including when voting, and that they are given the choice of voting in their constituency of origin or their constituency of current residence. Ukraine has not extended full voting rights to its IDPs and it has not taken special measures to ensure that IDPs can vote in all elections. The adoption of Draft Law No. 6240 into law will constitute a special measure, as called for in the Guiding Principles and in Council of Europe recommendations, with positive implications not only for IDPs but also for many internal migrants and other transient citizens in Ukraine.

The concern of some MPs, that extending full voting rights to IDPs in their current place of residence poses a risk to the integrity of the election and may foster 'election tourism', is a valid concern that needs to be explored and adequately addressed by all relevant stakeholders. However, the right to vote is a universal human right and any restrictions of it need to be reasonably justified and objective. The question remains as to whether the concerns currently voiced in respect to the integrity of the vote are the reason for Ukrainian lawmakers to restrict

⁸⁸ The Propiska-System Applied to Migrants, Asylum Seekers and Refugees in Council of Europe Member States: Effects and Remedies. (2001). *Parliamentary Assembly of the Council of Europe Report*. This report notes, for instance, that 'Forced migrants as well as asylum seekers and refugees are more than other groups of the population suffering from the vestiges of propiska in different areas of life...' and they risk facing 'deprivation of... social, economic and political rights' (Article 3 and 5). It recommends to 'accelerate the implementation of new residence registration systems which would serve only information purposes (...)' (Article 7.d).

the electoral rights of IDPs, or whether such concerns are a façade, and the real concern is uncertainty amongst the current political establishment as to IDPs' political preferences.

As this article has shown, there are solutions available to adequately address the integrity concerns that have been voiced. Georgia, for example, has removed all barriers to IDP voting, including in constituency-based elections, and has not experienced any attempts at 'electoral tourism'. As seen, in Georgia, it is the close monitoring of all voter movements between constituencies and public scrutiny of voter registration data that contributes towards the successful deterrence of 'electoral tourism'. Thus, coordinated action between authorities and a high degree of transparency in the work of the election administration provides a potential way forward for Ukraine. There are signs that the Ukrainian CEC, which was almost fully renewed in September 2018 and with an entirely new management team, and the State Voter Register (SVR) have shifted policy towards greater transparency of voter registration data. Since January 2019, the SVR has begun to release detailed information about voters who have registered a temporary voting address for the 31 March presidential election. In contrast to previous elections, registration data is now made publicly available on the SVR website, in disaggregated form by *oblast*, and new information from across the country is uploaded on a daily basis.⁸⁹ Although the statistical data does not differentiate between IDPs and other categories of voters who temporarily transfer their voting address, the available data allows the election management bodies to track and detect any anomalies and signs of 'electoral tourism'. Civil society organizations that have reviewed the released data have found no anomalies, yet 'electoral tourism' is unlikely to feature in presidential elections given that there are no sub-national constituencies. A better indication of whether such concerns materialize will therefore be provided by the parliamentary elections in October 2019 and the local elections in October 2020.

Whether the current Ukrainian policy to bar IDPs from voting in local elections will be deemed discriminatory by the ECtHR remains to be seen, namely in its judgment in *Selygenenko and Others v. Ukraine* (No. 24919/16), which is expected in late-2019. There are also grounds for examining other potentially discriminatory current practices, such as the policy of requiring Ukrainian IDPs to temporarily change their voting address prior to each election event, and again before a second round in a two-round election, in order to vote at their current residency location. Does it constitute unequal treatment to *de facto* demand active registration for every single election event from certain categories of citizens when the principle of passive registration applies in general? Moreover, can elderly, bedridden or disabled voters among the IDP population obtain the status of a homebound voter on a permanent basis like other citizens when Ukrainian IDPs are only permitted to transfer their voting address on a temporary basis? Does this also constitute discrimination? These and other questions emphasize that there is still a way to go in terms of securing comprehensive guidance as to what constitutes international best practice in electoral matters for IDPs. The Ukrainian case study can hopefully inspire international monitoring and standard setting bodies to review their existing guidelines and provide better tools for the protection of IDP electoral rights. Lawmakers and election management bodies would benefit from having access to such tools when drafting new legislation and electoral procedures that regulate IDP electoral participation, as would election observers.

⁸⁹ See www.dr.gov.ua/ords/portal/cm_core.cm_index?option=ext_num_voters&pdt=6&pmn_id=127. The table contains summary information about *oblast* of origin and *oblast* of destination for voters who register a temporary voting address different from their electoral address. More detailed data of changes in voting address, disaggregated by voter category (e.g. IDPs, internal migrants), is not provided on the official SVR website. Based on official information provided by the SVR, the NGO Group of Influence provided data and analysis on IDPs registering a temporary voting address in the 2019 presidential election. See www.vplyv.org.ua/archives/3136 (in respect to the first round) and www.vplyv.org.ua/archives/3160 (in respect to the second round).

As discussed above, the majority of available international instruments for the protection of IDP rights are only politically, and not legally, binding. This scarcity of legally binding international instruments on internal displacement has been explained by the fact that IDPs are displaced citizens within their own country, and that some see international regulation of IDP electoral rights as potential interference in a country's internal affairs.⁹⁰ The adoption of legally binding instruments for the protection of IDP rights, including the right to vote and the right to stand in elections, must nonetheless remain on the agenda of the international community, especially during the review of SDG 16. Indeed, it is clear that concerted efforts are needed, now more than ever, to close the IDP electoral gap.

Annex 1

IFES Key Findings and Recommendations for Improving IDP Enfranchisement

The key findings and recommendations offered below follow from a detailed study undertaken by IFES in 2016 that was presented as a white paper on IDPs and electoral participation. The recommendations are based on international laws, best practices and lessons learned, and are also drawn from the considerable experience that IFES has in working to promote IDP electoral rights in various countries.

IFES argues that IDP electoral participation is crucial for preventing marginalization and for promoting reconciliation. The political voice of IDPs is needed to make governments more responsive and accountable, including in respect to legal provisions, services and solutions for IDPs. Securing IDPs' electoral rights in their area of origin or current location is a key component of a durable solution for IDP settlement. IFES argues that IDPs' voices need to be heard at the ballot box and in elected positions. However, realizing such rights in practice can be difficult given the often politically-sensitive nature of displacement and the operational complexities typically involved.

There is a lack of data and research on IDP electoral participation. Without disaggregated data, the scale of the problem can go unrecognized, meaning it is more likely to remain unaddressed. Data could be collected by IDP tracking mechanisms, election management bodies and researchers. What limited information is available shows under-participation that can last for protracted periods of time.⁹¹ Given that IDPs often have other pressing needs, electoral rights are commonly under-prioritized, with the existing research gap perpetuating this problem.

IDP electoral participation can be extremely politically sensitive, especially given that it can change constituency electorates and therefore potentially alter election outcomes. IDPs are often perceived as predominantly representing the interests of one party, resulting in a political disincentive to other parties to enable IDP electoral participation. Without IDP electoral rights being explicitly secured in law, there is a greater risk of non-fulfillment.

Development of policies and laws should be undertaken well in advance of an election. This allows time for research, consultation, consideration of different implementation options, consensus-building, and the introduction of changes. Time is especially important given that a voter registration exercise is typically required before the election process begins. It is good practice to consult with broad, representative groups in the development of policies and laws related to the electoral participation of vulnerable groups. Without political agreement and an explicit legislative mandate, there can be an excessive burden on the election management

⁹⁰ Kälin, W. (2008). The Future of the Guiding Principles, *Forced Migration Review*. December 2008, 38-39. Retrieved from www.fmreview.org/GuidingPrinciples10/kalin.

⁹¹ See, for example, Ferris, E., Mooney, E. & Stark, C. (2011). From Responsibility to Response: Assessing National Approaches to Internal Displacement. *The Brookings Institution – London School of Economics Project on Internal Displacement*.

body, which may itself already be under pressure, particularly if an election is taking place in a divided society faced with challenging security conditions.

Special provisions for IDPs may increase the franchise but can risk the integrity of the overall electoral process. Such special provisions therefore need to be carefully and inclusively devised according to the specific circumstances of a particular country. Additional integrity measures can be undertaken, such as increased transparency and scrutiny, effective electoral dispute resolution, and enforcement of electoral offense penalties, to enhance confidence in the electoral process.

The following recommendations are offered by IFES for promoting IDP electoral participation:

1. International human rights bodies should further address the issue of IDP electoral participation systematically in country reporting and comments, in order to emphasize the importance of the issue and to strengthen good practice. This is especially relevant given the growing number of IDPs worldwide.
2. Decisions on provisions for IDP participation should be worked out well in advance of an election or referendum, with time allowed for consideration of the typically sensitive and complex political, legal and technical issues. Time should also be given for operational implementation.
3. Cross-party consensus-based parliamentary agreement should be sought, with provisions for IDP electoral participation secured in law and/or political agreement where possible. IDPs and the election management body should be actively involved in the legislative development process. Due consideration should be given to international law, political agreements, evidence and data, as well as practical realities. Legal processes should be transparent and inclusive.
4. Given that IDP and general electoral circumstances change, a regular review of provisions for IDP participation should be undertaken between elections.
5. The legislature and the election management body should consult with groups representative of IDPs, as well as other stakeholders, and actively involve them in developing legislation, regulations and policies, and in practical implementation.
6. Further research should be conducted internationally to look specifically at respective IDP participation arrangements and *de facto* participation rates. IDP numbers and electoral participation rates should be recorded and made publicly and promptly available in order to identify any problems and good practices.
7. Studies should be undertaken, with the involvement of IDP groups, into different possible modalities for IDP voting, identifying any security concerns or potential risks to the integrity of the process, as well as possible mitigating measures.
8. Additional financial resources should be made available, as needed, to facilitate IDP electoral participation.
9. Special measures should be undertaken, as required, to facilitate equality of opportunity and representation. Such special measures may include different residency requirements,

alternative documentation provisions, additional opportunities for registration, absentee voting, availability of materials in additional languages, and others.

10. IDPs should individually be given the choice of whether to vote in their constituencies of origin or in their current constituencies, without any consequences for their IDP status or access to humanitarian assistance.
11. Delimitation of electoral boundaries should be undertaken, as required, after constituency allocation of IDPs, with this being completed well in advance of an election.
12. An IDP focal point or unit should be established within the election management body to promote communication and consultation on IDP issues, with IDP needs being addressed by different departments of the administration.
13. Specialized voter information should be provided to IDPs about voting and running for office, including on special arrangements that have been made, and on complaints and appeals mechanisms. Such information should be available in a language readily understood by IDPs.
14. Publicly owned media should provide additional information on IDP electoral participation, such as specialized voter education and campaign information, and undertake reporting from areas where IDPs are voting or running as candidates.
15. It should be permissible to lodge complaints and appeals in alternative locations so as to make it unnecessary for an IDP to have to return to a constituency of origin (where their vote may be counted, and they may be running).
16. Citizen observer groups should recruit IDPs and organize observers in IDP locations with the aim of increasing scrutiny; they should also include IDP participation in their reporting. Citizen observer groups should enquire into and advocate for IDP electoral participation before, during and after elections.
17. Political parties should recruit agents and observers to work in IDP locations so as to increase election scrutiny.

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