# Conference
## "2019 Presidential and Parliamentary Elections: Lessons Learned and Recommendations"

On November 13-14, the Central Election Commission (CEC) jointly with the International Foundation for Electoral Systems (IFES), the Council of Europe Office in Ukraine and the Organization for Security and Co-operation in Europe (OSCE) Project Coordinator in Ukraine, hosted a national conference "2019 Presidential and Parliamentary Elections: Lessons Learned and Recommendations."

The event provided a platform for national and international electoral stakeholders to engage in an open and constructive dialogue about the shortcomings and successes of the 2019 Presidential and Parliamentary elections as well as to discuss recommendations for the further improvement of the electoral process and environment. The conference provided an opportunity to develop key recommendations that will inform electoral stakeholders and lawmakers. The participants included representatives of election commissions from all levels, State Register of Voters (SRV), government, political parties, civil society, international organizations and media.

Available observer reports with preliminary findings and recommendations were shared with participants. The conference then broke into groups to discuss and compile in-depth recommendations to improve the legal and administrative framework of future elections in line with international standards and best practices. These groups included:

1) Election Administration;
2) Voter Registration;
3) Campaigning; Political Finance;
4) Election Observation;
5) Voting, Counting and Tabulation;
6) Inclusion and Accessibility;
7) Cybersecurity, Disinformation and New Voting Technologies, and,
8) Election Dispute Resolution and Electoral Violations.

Discussions in each working group were moderated by a national election expert. The recommendations of each working group were presented in plenary and other participants were given an opportunity to comment and add further recommendations. This document summarizes the findings and recommendations of the conference, drafted based on the conclusions developed by each group and discussions in the plenary.

# Key Findings and Recommendations

## Election administration

The **formation of election commissions** was identified as problematic as the current mechanism for appointment of commissioners by political parties and candidates does not ensure members have sufficient training due to their frequent replacement, especially at district election commission (DEC) level, the lack of a deadline after which nominating subjects cannot replaced election commissioners, and the voluntary nature of their training. The trading of positions was also identified as an issue. It was discussed but no consensus reached whether **civil servants should be barred** from election commission membership. Participants also raised concerns with the complicated procedure for **terminating the status as a legal person** of DECs.

*Recommendation 1: The creation of a pool of certified potential election commissioners, who need to prove that they have received training – in-person or online – and a deadline after which nominating subjects cannot replace their appointed election commission members, and then only with nominees from the pool. It could be considered to raise the remunerations for commission work. Training material should be made easily accessible including on the CEC website. It should be easier to terminate the legal person status of DECs.*

There is room for improvement regarding **transparency of the work of election management bodies**. The failure to forward DEC minutes and decisions to the CEC for central publication should be sanctioned. Participants called for better trained commission secretaries and considered they idea to give CEC **decentralized representation in the regions** in the form of a secretary on the DECs who is a professional – with or without advisory voting rights.

*Recommendation 2: If regional bodies of the CEC are created, regional bodies should provide a professional representative of the CEC as secretaries of DECs in the regions, who would be in charge of providing methodological assistance to the politically appointed commissioners and ensure that DEC decisions are well drafted and immediately forwarded to the CEC for publication. DECs should have their own pages on the CEC website.*

The **registration of candidates** who are 'technical,' e.g. for the sake of artificially boosting the representation on election commissions of another candidate, or clones, e.g. with a name similar to that of an opponent, were identified as unwelcome practices. It should also be possible to **correct technical mistakes in candidate nomination papers** in an interactive exchange with the CEC. The **residency requirement** for both presidential and parliamentary candidature is not in line with international standards, but the participants could not agree whether it should be lifted.

*Recommendation 3: Introduce legal measures (sanctions) against nominating subjects for fielding **technical or name-sake candidates**, CEC should cease the practice of rejecting candidacy over minor mistakes or omissions in candidate nominating papers, and the law should allow for correcting mistakes.*

In elections with smaller ballots, there is a problem with maintaining the secrecy of voting since ballots are not folded and there is no guideline stipulating that members of the PEC must pre-fold or that voters must be instructed to fold their ballot before leaving the booth for secret voting. The problem

is exacerbated by the transparent ballot boxes, which at times make it possible for observers to see the markings on the un-folded ballots after they are dropped in the ballot box. Group/family voting – while not a frequent phenomenon – did take place and was often not prevented by members of the commission.

Participants noted that the time-consuming procedures for the vote count could be simplified without compromising its integrity with the assistance of electronic/modern technical means and the introduction of electronically processed protocols at PEC level. The copying of protocols in hand often led PECs to take shortcuts and pre-prepare protocol copies, although knowing it is not permitted and they could be held liable.

*Recommendation 4: There should be more effort from the side of members of polling to prevent instances of group and open voting. The ballot papers should be pre-folded and the poll clerks should give instructions to voters that they should fold their marked ballots inside the ballot booth.*

*Recommendation 5: Training should focus on the completion of the PEC results protocol; the protocol could be simplified; electronic processing of protocol data could be considered as well as preparing THE printed version of the protocol rather than completing numerous hard copies by hand. A person within local self-government bodies should be responsible for the availability of such equipment.*

*Recommendation 6: The CEC should prioritize communication, among others, to refute disinformation in the media about aspects of the election. CEC could place more voter information in the media, for instance in connection with the free airtime slots given to contestants.*

## Voter registration

The **supply of updated personal data** from the administrations of local self-government bodies and from the State Migration Service (SMS) was identified as an issue that negatively affects the accuracy of voter lists and may cause disenfranchisement. It particularly affects newly-wed **women voters who have changed their surname**. The SRV lacks legal powers to check voter data against data in civil status registers. The approach to entering last minute changes to the voter lists on election day based on court decision differs for parliamentary and presidential elections.

*Recommendation 7: Register management bodies should keep a register for all citizens who are 18 years and above based on data transferred automatically from the SMS; it must put in place a mechanism whereby personal data changes within the civil status register are automatically shared with the SRV. The procedure for keeping citizen registers up-to-date in local communities should be standardized and subject of effective control. Voters should be able to file applications for corrections online. Entry of changes to voter lists on election day based on court decisions should be harmonized to allow such changes being made during voting hours.*

A review of the experience with the **temporary change of place of voting without changing electoral address** crucial for **internally displaced persons (IDPs)** and others living or serving away from the place of their residence registration suggests that the procedure was particularly cumbersome **for first time voters among IDPs** who are without any registration at all. They were routinely turned away and requested to establish their address through the courts. It also created problems for **members of election commissions serving away from their place of registration**, who only had a narrow time frame for the procedure. The procedure was **not conducive for persons with disabilities**. **Exterritorial**

**applications** are currently not possible which acts as a barrier especially for the **election registration and participation of labor migrants**. There is no alternative procedure for being legally recognized as member of a local community for IDPs, labor migrants, etc., unless they register residence in their new community. This is a barrier for participation in local elections and majoritarian component of parliament elections (i.e. in sub-national constituencies).

*Recommendation 8: Ensure that voters without residence registration have the possibility to change their place of voting. Make the application process more inclusive by removing existing practical barriers for registration of persons with disabilities and labor migrants. There should be a separate procedure – not linked to residence registration – for becoming a member of a territorial community.*

In parliamentary elections, large segments of the population (**students, military conscripts, voters abroad**) under the current electoral system do not have the right to a ballot in sub-national constituencies (single-member election districts). **Military servicemen** on duty in the East are reluctant to hand out their personal data and register to vote at regular polling stations near the contact line. Also, others on election day duty (**police, firemen, doctors and nurses**) risk losing their ability to vote due to service obligations.

*Recommendation 9: Introduce a legal possibility to create special polling stations in exceptional cases or consider absentee voting. Require that commanders and heads of state institution are legally obliged in a timely manner, within 10 days prior to election day, to inform their subordinates about their place of service on election day.*

## Campaign and Campaign Finance

The **legal framework for campaign finance is imperfect**; **oversight bodies** lack **legal instruments** to exercise effective control. The current **DECs lack expertise** to analyze and check campaign finance reports. The CEC and the National Agency for Prevention of Corruption (NAPC) lack **access to registers, data and account statements**. **Timeframes for oversight control** are too short and **sanctions** (warnings) are **ineffective**.

*Recommendation 10: There is a need for harmonization of the legal framework for campaign finance to ensure the same legal provisions apply to all elections. The oversight at DEC level with financial reports of contestants should be done by professionals (either by another body or experts in a future regional structure of CEC). Oversight bodies should have operational access to verify accounts. The time frame for analysis of financial reports should be extended and sanctions for failure to submit financial reports and for submission of false information should be strengthened.*

The legal framework for campaign finance places **excessive restrictions** on contestants and potential donors. Parties should be able to pay **activists and campaigners** as well **members of election commission** for their work. Transparency of expenditure for political advertising **in online media and social networks** and ways to ensure disclosure were discussed; participants acknowledged it will be difficult to regulate as parties and candidates may place it **not on their official websites** but in public pages and deny responsibility for it.

*Recommendation 11: Lift restrictions on donations from persons with debts and those who bid in state tenders and simplify the procedure for making donations by allowing bank transfers. Legalize contestants' payments to campaign staff (with limitations on the number of such persons to prevent*

*vote buying). The legal framework should clearly define what constitutes political advertising and decriminalize political ads in social media. The activity of organizations and charity funds should be better regulated in law; their charters should explicitly state their statutory activities and if they can make political donations; systematic violations should lead to deregistration.*

### Election Observation

Both 2019 elections saw a record high number of applications for registration of civil society observers. However, many such groups did not field a single observer while other groups were clearly linked with contestants and thus did not carry out an independent scrutiny of the process. When discussing possible measures, restricting the right of domestic observer groups to register did not find support among conference participants. Also, media representatives at times appeared linked to contestants. Currently, civil society observers do not have a legal **right to observe the entire electoral process at national level** including at the CEC. **Electronic registration** of observers was considered a good idea that would simplify the process. The procedure for registration of **international organizations that are not inter-governmental or representing several countries** such as international NGOs is not sufficiently clearly regulated and create artificial obstacles for them.

*Recommendation 12: Domestic observer groups should have possibility to register a limited number of observers at national level, including at sessions of the CEC, from the very beginning of the election process. Electronic application for registration of observers should be introduced. International organizations that are not inter-governmental or representing several countries should enjoy the same right as multilateral international organizations but some additional requirements for their registration such as existence of the organization for a certain period of years could be imposed. The rights and obligations of observers and media should be reviewed with the aim of ensuring they do not interfere or hinder the work of election commissions. It could be considered to introduce centrally issued certificates for media access to cover the elections including in polling station.*

### Inclusivity and accessibility – gender

The participants acknowledged a general absence of effective measures to ensure broader representation of women and national minorities in elected positions including as MPs, in government and as candidates. Women are underrepresented in executive bodies and leadership positions at local level. There is no budget for gender inclusiveness. Parties have a low level of internal democracy, and candidate nomination procedures lack transparency and disfavors women. Gender rules are not enforced unless parties are sanctioned. Women are facing sexism and ageism; the party leadership, as a rule allocates less campaign resources to women candidates. Hate speech, sexism and gender stereotypes appeared in both election campaigns. Media tend to depict women as objects (including sexual) or victims and do not devote enough time to issues of interest for women. Women MPs often become target of hate-storms and violence in online media.

*Recommendation 13: Ensure effective sanctions for non-compliance with gender quotas; explore combining the system of sanctions with financial incentives. Ensure that the principle of equal financial opportunities of men and women candidates are normatively regulated.*

## Cybersecurity in the election administration

Ukraine has a history of cyberattacks in elections, mostly in the form of Distributed Denial of Service (DDoS) attacks and attempts to install malicious software. The aim is often to spread false information about the elections and depict Ukraine as an extremist and unstable country. **Cybersecurity and measures to counter disinformation have become major features in the work of the CEC.** The serious security concerns ahead of the 2019 election cycle never materialized, although **the authorities thwarted several attempted cyber-attacks**. Installment of new equipment for the CEC, as well as cybersecurity trainings of CEC secretariat staff and at DEC level contributed to preventing any serious external interference in the voter registers and results management system administered by the CEC.

Around-the-clock **monitoring of sensitive processes and information exchange**, **coordination** among institutions and services involved in identifying and countering cyber-attacks as well as internal and external **crisis communication in the event of cyber-attacks** have been identified as areas in need of improvement. Particularly vulnerable is the election administration which at sub-national currently is created ad-hoc for each election event and may lack basic cyber knowledge.

by the lower-level commissions Blind trust in and uncritical reliance on all information in traditional media and on the Internet are among the challenges for **fostering adequate cyber behavior among election stakeholders.**

*Recommendation 14: The CEC should continue its efforts aimed to ensure an appropriate level of cybersecurity protection of its electronic systems. Policies and guidelines on cybersecure behavior should be developed for all levels of the election administration accompanied by monitoring and training efforts. A cross-institutional working group should be created to monitor, exchange and analyze information on cyber threats in the election process. A rapid reaction mechanism and crisis communication plan need to be in place for the event of cyberattacks, and simulated attacks should be conducted to check the state of preparedness of all stakeholders.*

## Disinformation in traditional and social media

Participants identified interference by a foreign adversary in the national information space spreading false or misleading information about the election process as a main threat. They noted the absence of coordination and dispersion of efforts among different state institutions as a problem in countering disinformation and fake news, which risks lowering public trust in elections. Media carry a responsibility, but often disregard campaign rules due to lack of editorial independence from their ownership and ineffective oversight from the media regulator's side. Often the partisan sources of information about the election process are not disclosed by media outlets. Social networks are a big potential source of manipulation due to bots, botnets and trolls, and unmarked political advertising ("*jeansa*").

*Recommendation 15: The National Security and Defense Council should develop a national strategy to combat various forms of information penetration. Electoral stakeholders, media and media NGOs should form a coordination center to counter disinformation and expose fake news. The public broadcaster should receive adequate funding and support. The media regulator should be rebooted and its mandate expanded to ensure a more effectively regulation of broadcast media and that violations are being sanctioned, without restricting media freedoms. It could be considered to set up a*

*self-regulatory body to raise the journalistic standards and ethics. The public broadcaster could potentially provide an alternative and set higher standards, but it has too low viewership. The legal framework should oblige disclosure of the origins of campaign information and more clearly define liability for spreading misinformation. State and business should combine efforts to ensure transparency of political advertising online. Internet-based outlets should be subject of legal regulation as traditional media.*

The communication efforts of the CEC were seen as insufficient, with too complex and not well-timed messaging.

*Recommendation 16: The CEC should engage professional communicators, jointly with them, to formulate their messaging (including for crisis management) and more proactively communicate with target groups and influencers. New techniques such as visuals, infographics and interactive materials should be used more widely in countering fake news.*

### New voting technologies

Even before the change of government, the issue of digitalizing Ukrainian elections became a subject of public discussion formulated popularly under slogans such as "elections through the smartphone." While new technologies should in general be explored in elections, world experience tells that **there is still some way to go before voting through the Internet is sufficiently safe**. Integrity concerns, not least due to the ongoing hybrid warfare, prevail in discussions among the world's leading experts on this topic.

One of the main challenges to Internet voting is **to adequately identify the system user** to prevent manipulation and to **secure the chosen systems against external interference**. Another challenge is to build and maintain **public trust in the technology** and the accuracy of the reported results. This requires time and money. Time is needed to conduct broad consultations and undertake **independent feasibility studies** including to the assess cost effectiveness of the technology. Participants suggested that a first step in introducing new technology in elections could be to test optical ballot scanners and/or electronic voting machines on a pilot basis.

*Recommendation 17: The legal and regulatory framework should be amended to allow the CEC to run pilots and test new voting technology both in secured environments and during real election events. The introduction of new technology in elections should be subject of broad consultations and accompanied by information campaigns. Independent feasibility studies should precede any introduction of new voting technology.*

### Election Dispute Resolution

**Campaign related complaints are difficult to handle** for election commissioners as the problems often stem from **insufficient definitions of the respective violation** in the legal framework, e.g. what constitutes direct and indirect vote buying. Furthermore, it is at times difficult for judges and investigators to distinguish between what constitutes 'election campaigning,' 'political advertisements,' and 'providing information about the elections.' The rules regarding **participation of civil servants in campaign activities** and **for standing in an election** are not sufficiently clear.

*Recommendation 18:* *Update the definition of political advertisement in the Law of Ukraine "On Advertisement," specify the criteria that allows arbiters to distinguish between the different terms and harmonize terminology throughout the electoral legal framework. Direct and indirect vote buying should be clearly defined and the latter should further be criminalized. Participation of foreigners, election commissioners and civil servants in executive bodies and other unauthorized persons in campaign activities should a criminal offence. The law should specify that civil servants must resign or take leave of absence in order to stand in elections.*

The regulations for **allocating places for visual campaign material** are currently not unified in different electoral laws, and the severity of punishment for violating them does not contribute to the **dissuading illegal uses**.

*Recommendation 19: It should be considered to harmonize the regulations considering outdoor campaigning in various laws. Such law should authorize a civil servant in the respective local self-government body to be responsible for allocation of public spaces for outdoor campaign material. It should list the places (buildings, cultural monuments, public transportation means etc.) where campaign posters are not permitted.*

The **legal deadlines for filing complaints** are not fully harmonized with the **timetable for certain election administration procedures** (i.e. conduct of lottery to determining ballot order of parties). In complex cases complaint deadlines risk derailing the electoral calendar. There is a legal loophole regarding complaints filed from 22:00 to 24:00 on the day before election day.

*Recommendation 20: Remove the legal loophole with regards to complaints filed in the last two hours of the day before election day and bring the general timetable for filing complaints in line with electoral deadlines;*

The **dual system for filing election related complaints** – either with a court or with an election commission at the next level of the election administration – should be revisited with a view of consolidating the handling of electoral disputes in one institution and thereby minimizing the risk of forum-shopping or two institutions considering the same complaints in parallel.

*Recommendation 21: Gradually transfer the entire responsibility for election dispute resolution to the court system. At the same time, these changes should be implemented only after testing during the trial period, in order to identify indicators of the effectiveness of electoral disputes and to protect the rights of the subjects of the electoral process.*

With the view on the existing problems related to the election commissions representation in court and the potential appointment of expert or professional members of election commission at intermediate (DEC) level on a permanent basis, the question regarding **who can represent the election commission** – which according to law is a collective body – becomes relevant. This should be seen as a first step towards establishing a secretariat function to ensure professional representation of election commissions at that level.

*Recommendation 22: The Supreme Court could summarize the practice of representation of election commissions in court based on the 2019 elections. This would allow to see which form should be used – either the chairman is authorized to represent the commission or the commission is authorized collectively.*

This event is organized by the Central Election Commission of Ukraine (CEC) the International Foundation for Electoral Systems (IFES), OSCE Project Co-ordinator in Ukraine and the Council of Europe with the support of the United States Agency for International Development (USAID), Global Affairs Canada, and UK aid. The opinions expressed during the event are those of the participants and do not necessarily reflect the views of the CEC, IFES, OSCE, Council of Europe and USAID, nor the governments of the United States, Canada, or the UK.

The "2019 Presidential and Parliamentary Elections: Lessons Learned and Recommendations" conference is part of IFES', OSCE and Council of Europe's broader efforts to support the CEC in safeguarding Ukraine's electoral democracy and implementing critical electoral reform based on good practice and international standards.