

***Brief overview on recommendations and statements of institutions of the Council of Europe and other international stakeholders that call upon Ukraine to consider the IDP voting rights, as well as relevant national legal acts and draft legislative amendments<sup>1</sup>***

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***International standards on the enjoyment of rights of internally displaced persons (IDPs)***

Guiding Principles on Internal Displacement<sup>2</sup>

**Principle 22:** "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 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:** "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."

**Recommendation Rec (2006) 6 of the Committee of Ministers of the Council of Europe to member states on internally displaced persons:**<sup>3</sup>

"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."

**Recommendation 1877 (2009) of the Parliamentary Assembly of the Council of Europe (PACE):**<sup>4</sup> "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."

**PACE Resolution "Humanitarian consequences of the war in Ukraine" 2198 (2018)** recommends Ukraine to "provide mechanisms for ensuring the voting rights of IDPs in all elections, including at local level."<sup>5</sup>

**Organization for Security and Cooperation in Europe:** "Ensure special attention to the voting rights of IDPs in OSCE's election observation work, monitoring IDPs' ability to vote and promoting reforms to ensure the full exercise of their right to political participation... Participating States should amend registration procedures and remove all administrative obstacles that hinder IDPs to access basic

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<sup>1</sup> The opinions expressed in this background paper are the responsibility of the author and do not all necessarily reflect the official policy of the Council of Europe.

<sup>2</sup> United Nations, *Guiding Principles on Internal Displacement*, UN document E/CN.4/1998/53/Add.2. (1998).

<sup>3</sup> Council of Europe, Committee of Ministers. *Recommendation Rec 6 of the Committee of Ministers of the Council of Europe to member states on internally displaced persons.* (2006): <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5ab1>

<sup>4</sup> Parliamentary Assembly of the Council of Europe (PACE). *Recommendation 1877, Europe's forgotten people: protecting the human rights of long-term displaced persons*, 24 June 2009, para. 15.3.12. (2009). <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806b5ab0>

<sup>5</sup> Parliamentary Assembly of the Council of Europe. Resolution 2198, *Humanitarian consequences of the war in Ukraine.* (2018): <https://rm.coe.int/-2198-2018-/1680785d74>

rights and services, with a view to enabling them to exert their rights, such as the right to freedom of movement and the right to vote.”<sup>6</sup>

Report of **the Congress of Local and Regional Authorities of the Council of Europe** on observation of local elections in Ukraine in 2015 provides recommendations to address the issue of the voting rights of IDPs long before the local elections of 2020<sup>7</sup>.

At 35th plenary session of 6 November 2018, the Congress of Local and Regional Authorities of the Council of Europe voted for the report "Voting rights at local level as an element of successful long-term integration of migrants and IDPs in Europe's municipalities and regions."<sup>8</sup>

### *Statements of stakeholders*

On 15 November 2017, in the joint statement in support of electoral reform in Ukraine, the G7 Ambassadors<sup>9</sup> emphasized the need "to increase political participation and representation of vulnerable and minority groups, including women and internally displaced persons."

On the first day of the ninth session of the Verkhovna Rada, the UN Refugee Agency Representative in Ukraine, **Pablo Mateu**<sup>10</sup>, expressed his hope for a rapid approval of two bills regarding IDPs, No. 6240 (electoral) and No. 6292 (pension).

A Member of the European Parliament, **Rebecca Harms**<sup>11</sup>, stated that the Verkhovna Rada of Ukraine "should fully include internally displaced persons who were forced to leave the occupied territories, as well as labour migrants, to the electoral process. This is necessary to ensure all Ukrainians have an opportunity to vote."

Section "Enfranchisement and Participation" of the official statement<sup>12</sup> of the National Democratic Institute and the European Parliament pre-election delegation to Ukraine dated 17 November 2018, in particular, states the following:

"Voters in Crimea and the Russia-controlled parts of Donetsk and Luhansk oblasts will be disenfranchised. A more tractable problem is ensuring full voting rights for the estimated 1.6 million IDPs displaced by the conflict. IDPs, along with labour migrants and others living away from their officially-registered residences, can currently register and cast votes for national party lists. They will not be allowed to vote for single mandate candidates in parliamentary elections or in local elections, however. A draft law that would address the problems of IDP and labour migrant disenfranchisement was proposed in March 2017. However, this issue has been viewed through a political, rather than a human rights lens, making majority support in the parliament elusive. Similarly, internal labour migrants and young people who have recently moved away from their family homes frequently find it is difficult to re-establish their voting rights in their new locations... Through legislation and, where possible, regulation, the parliament and CEC should facilitate voting by IDPs, labour migrants and young people by simplifying registration and balloting procedures."

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<sup>6</sup> OSCE Supplementary Human Dimension Meeting. *Internally displaced persons*, final report (2004): <https://www.osce.org/odihr/38887?download=true>.

<sup>7</sup> <https://rm.coe.int/1680719c74>

<sup>8</sup> [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=09000016808e49f4](https://search.coe.int/cm/pages/result_details.aspx?objectid=09000016808e49f4)

<sup>9</sup> <https://portal.rada.gov.ua/uploads/documents/45900.pdf>

<sup>10</sup> <https://twitter.com/MateuPablo/status/1036901766913294336>

<sup>11</sup> <https://www.unian.ua/politics/10341243-ukrajina-povinna-vklyuchiti-pereselenciv-u-viborchiy-proces-harms.html>

<sup>12</sup> <https://www.ndi.org/sites/default/files/Joint%20NDI%20EP%20PEAM%20Statement%20-%20Nov%2017%202018%20UKR%20FINAL.pdf>

## ***Ukrainian legislation in the field of ensuring the voting rights of internally displaced persons***

**Article 38 of the Constitution of Ukraine** states that the citizens shall have the right to participate in the administration of state affairs, in All-Ukrainian and local referenda, to freely elect and to be elected to the central government authorities and local government authorities.

**Article 24 of the Constitution of Ukraine** stipulates that the citizens shall have equal constitutional rights and freedoms and shall be equal before the law. There shall be no privileges or restrictions based on race, skin colour, political, religious, and other beliefs, gender, ethnic and social origin, property status, place of residence, linguistic or other characteristics.

**Article 70 of the Constitution of Ukraine** guarantees the right to vote for all citizens of Ukraine who have attained to the age of eighteen as of the day of elections or referenda, except for citizens found legally incapable by a court.

**Article 2 of the Law of Ukraine "On the Principles of Prevention and Counteraction of Discrimination in Ukraine"** consolidates the principle of non-discrimination in legislation that, irrespective of certain features, provides for: 1) ensuring equality of rights and freedoms of individuals and/or groups of individuals; 4) ensuring equal opportunities for individuals and/or groups of individuals.

**The Resolution of the Verkhovna Rada of Ukraine dated 31 March 2016** "On Recommendations of the Parliament Hearings "State of Observance of the Rights of Internally Displaced Persons and Citizens of Ukraine Residing in the Temporarily Occupied Territory of Ukraine and Temporarily Uncontrolled Territory in the Area of Anti-terrorist Operation" contains recommendation on the need to develop mechanism to enjoy the political rights of internally displaced persons which will bring the national legislation in line with international standards in the field of electoral process and politics regarding IDPs.

**Article 8 of the Law of Ukraine "On Ensuring Rights and Freedoms of Internally Displaced Persons"** determines that internally displaced person shall enjoy his/her voting right in the elections of the President of Ukraine, members of Parliament of Ukraine, local elections and referenda through changing of voting place without changing of voting address as provided in Part three of Article 7 of the Law of Ukraine "On State Register of Voters".

At the same time, provisions of Part three of Article 7 of the Law of Ukraine "On State Register of Voters" do not apply to the elections of deputies to the Verkhovna Rada of the Autonomous Republic of Crimea, local councils and village, township and city mayors, local referenda<sup>13</sup>.

According to the Law of Ukraine "**On State Register of Voters**", the voter's voting address is an address of the voter's place of residence in accordance with the Law of Ukraine "On Freedom of Movement and Free Choice of Place of Residence in Ukraine". According to the Law of Ukraine "On Local Elections", the voter's affiliation with a territorial community and his/her permanent residence in the relevant territory is exclusively determined by the registered place of residence. Voting address of internally displaced voters is located in the temporarily occupied territory according to the address of the registered, but not the actual place of residence. This makes it impossible for them to participate in local elections in the communities they moved to.

According to the estimate of the Ukrainian Parliament Commissioner for Human Rights, such situation violates the principle of non-discrimination both in terms of ensuring equality of rights and freedoms and equality of opportunities, constitutes indirect discrimination based on place of residence and belonging to IDPs and contradicts the standards of international law, the Constitution, laws of

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<sup>13</sup> Resolution of the CEC No. 893 dated 13 September 2012 "On Ensuring Temporary Change of Voting Place without Change of Voting Address" <https://zakon.rada.gov.ua/laws/show/v0893359-12>

Ukraine and obligations of Ukraine to ensure the sustainable integration of IDPs at the place of displacement<sup>14</sup>.

At the same time, on 25 July 2018, the Supreme Court disclosed a decision<sup>15</sup> according to which registration of place of residence of an internally displaced person is temporary and is not a reason to participate in local elections. Such right is only for those citizens of Ukraine "who permanently reside in the relevant territory and have registration of their permanent place of residence in the territory of the relevant village, settlement, city. As such, the place of registration in the passport of the citizen of Ukraine is of key legal importance in addressing electoral disputes regarding inclusion in the register of voters to cast vote in scheduled elections, since the voter's voting address is determined depending on the place of his/her registration."

On 19 September 2018, the Verkhovna Rada created a new inter-factional deputy association "Voting rights for IDPs" headed by People's Deputy Serhii Kaplin (member of the deputy faction of the party "Petro Poroshenko Bloc"). As of 9 November 2018, this association included 7 People's Deputies, 4 of which were co-authors of bills regarding the voting rights of IDPs (N.Veselova, N.Korolevska, Y.Pavlenko, T.Rychkova, O.Riabchyn, O.Suhonianko).

Under the Action Plan for the implementation of the Strategy for the integration of internally displaced persons and the introduction of long-term decisions regarding internal displacement for the period until 2020, it is planned to "develop and submit proposals to the Cabinet of Ministers of Ukraine regarding the introduction of amendments to the legislation on the enjoyment of the voting rights of internally displaced persons in all types of elections, including local ones, at the place of actual residence".<sup>16</sup>

Despite all the above, the issue of the participation of internally displaced persons in local elections is still one of the unfulfilled obligations of Ukraine.

#### *Legislation in the field of the voting rights of IDPs*

On 18 June 2015, the Verkhovna Rada for the first time attempted to give IDPs the right to vote in local elections (draft law "On Local Elections" No. 2831-2); however, People's Deputies voted for the alternative draft law No. 2831-3 which lacked in progressive provisions to regulate the voting problem of internally displaced persons.

On 12 August 2015, the Verkhovna Rada registered new draft law No. 2501 on introducing amendments to the Law of Ukraine "On Local Elections" (regarding ensuring the voting rights of internally displaced persons) that was submitted by People's Deputies of Ukraine V. Bondar and V. Khomutynnik. The draft law provided for the opportunity for IDPs to vote by temporarily changing the voting place without changing the voting address. Alternative draft laws 2501a-1 (S.Taruta, corporate authors) and 2501a-2 (Y. Lovochkin) provided for the enfranchisement of IDPs in local elections by changing the voting address, but in different way.

On 4 November 2015, the Verkhovna Rada Committee on Legal Policy and Justice recommended the Verkhovna Rada of Ukraine to return the three draft laws to the subject with the right of legislative initiative for finalization.

On 19 April 2016, a group of People's Deputies (O.Vilkul, O.Bilyi, N.Korolevska and others) registered Draft Law No. 4471 "On Amendments to Certain Laws of Ukraine regarding Ensuring the Voting Rights of Internally Displaced Persons", which received a number of comments from the Main Scientific and Expert Department. At the same time, on 17 January 2019, the Verkhovna Rada

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<sup>14</sup> <http://www.ombudsman.gov.ua/ua/all-news/pr/12915-nm-vidkrite-zvernennya-upovnovazhenogo-verxovnoi-radi-ukraini-z-prav-ly/>

<sup>15</sup> <http://www.reyestr.court.gov.ua/Review/75544764>

<sup>16</sup> [https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-planu-zahodiv-z-realizaciyi-strategiyi-integraciyi-vnutrishno-peremishchenih-osib-ta-vprovadzhennya-dovgostrokovih-rishen-shchodo-vnutrishnogo?fbclid=IwAR2Vc3fuTS0MKMKX85E8h3HPUX5\\_QkXhDzap2Vjx4f1J1P3wGJP1IANc-I](https://www.kmu.gov.ua/ua/npas/pro-zatverdzhennya-planu-zahodiv-z-realizaciyi-strategiyi-integraciyi-vnutrishno-peremishchenih-osib-ta-vprovadzhennya-dovgostrokovih-rishen-shchodo-vnutrishnogo?fbclid=IwAR2Vc3fuTS0MKMKX85E8h3HPUX5_QkXhDzap2Vjx4f1J1P3wGJP1IANc-I)

Committee on Legal Policy and Justice decided to recommend the Verkhovna Rada of Ukraine to take a decision on this draft law by voting.

On 20 September 2016, People's Deputy Y. Muraiev registered Draft Law No. 5184 "On Amendments to Certain Legislative Acts of Ukraine (regarding Ensuring Guaranteed Universal, Equal and Direct Voting Rights of the Citizens of Ukraine)", which the Main Scientific and Expert Department recommended to reject, and the Main Committee did not provide any opinion.

**On 27 March 2017, Draft Law No. 6240 "On Amendments to Certain Laws of Ukraine (regarding the Voting Rights of Internally Displaced Persons and Other Mobile Citizens within the Country)" was registered in the Parliament.** Legislative amendments were developed and proposed to People's Deputies by experts of non-governmental organizations that address the issues of reforming the electoral legislation, as well as of those that address the rights of internally displaced persons<sup>17</sup>. The Draft Law was signed by 24 People's Deputies of all fractions and non-affiliated deputies.

The Main Scientific and Expert Department considers that the Draft Law may be adopted in the first reading and supports the proposed approach regarding the opportunity to determine the voter's voting address according to his/her actual place of residence, since this will contribute to the enjoyment of the voting rights of a significant part of citizens (opinion dated 20 April 2017).

According to the opinion of the Committee on Human Rights, National Minorities and Interethnic Relations, "adoption of this Draft Law will not only improve the electoral system of Ukraine with due account of the current social and economic situation in Ukraine related to the aggression of the Russian Federation, but also become a real confirmation of the equality of constitutional rights of all citizens of Ukraine."

On 17 January 2019, the Verkhovna Rada Committee on Legal Policy and Justice accepted the opinion regarding this Draft Law and recommended the Verkhovna Rada of Ukraine to take a decision by voting. Draft Law No. 6240 was included to the agenda of the tenth session of the eighth Verkhovna Rada of Ukraine.

**The Draft Law provides for that the voter will have the opportunity to apply with a reasoned statement to the body that maintains the State Register of Voters regarding determining his/her new voting address, irrespective of the registered place of residence.** This opportunity will apply to other mobile citizens within the country, which will facilitate the reduction of the conflict intensity in the society and the increase of the level of citizen participation in elections at all levels.

It is proposed that a copy of the document confirming the voter's actual place of residence according to the address indicated by him/her should be attached to the voter's application for changing the voting address (rental agreement; document certifying that the voter conducts a business; document confirming the residential property ownership; certificate of registration as internally displaced person; documents certifying that the voter is a caregiver, married or in kinship with the person registered at the address that the voter asks to determine as his/her new voting address).

The Draft Law provides for **a range of restrictions aimed at preventing possible abuses.** Application for changing the voting address may be submitted to the body maintaining the Register at any time but not later than on the fifth day following the beginning of the electoral process. This will reduce the load on the body maintaining the Register under the conditions of the electoral process, allow to keep the stability of election districts and properly prepare the voter registers.

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<sup>17</sup> The Draft Law was developed by experts of the NGO "Civil Holding "GROUP OF INFLUENCE", All-Ukrainian NGO "Civil Network OPORA", the International Foundation for Electoral Systems (IFES), with the assistance of representatives of the non-governmental organizations "Donbass SOS", Human Rights Information Center, "Crimea SOS", charitable organizations "Charity Foundation "Right to Protection" and "Charity Foundation "East-SOS". Members of the interdepartmental Working Group on improvement of the legislation on the human rights protection of IDPs affiliated to the Ministry of Temporarily Occupied Territories and IDPs (including representatives of the UN Refugee Agency and the Council of Europe) were involved to the discussion of the Draft Law.

At the same time, a voter who has already changed the voting address in accordance with the procedures provided for by this Draft Law will be able to submit a new application not earlier than 180 days following the date of the last changes of his/her data in the Register of Voters.

On 7 November 2017, the Verkhovna Rada adopted the draft Electoral Code of Ukraine (No. 3112-1) in the first reading. On 18 January 2018, the Working Group on the preparation for consideration in the second reading of the draft Electoral Code at its meeting in general agreed with the need to include the provisions regarding the voting rights of IDPs reflected in Draft Law No. 6240, but no final decision was taken regarding certain amended paragraphs.

At the same time, thanks to the advocacy campaign of the NGO "Civil Holding "GROUP OF INFLUENCE", together with its regional partners, in 2018 at least eleven local councils decided to apply to the Verkhovna Rada with the request to protect the voting rights of IDPs and to consider Draft Law No. 6240 regarding the voting rights of internally displaced persons and other mobile citizens within the country. Similar decisions have already been taken in Vinnytsia, Uzhhorod, Mariupol, Kryvyi Rih, Kherson, Korosten, Dobropillia, Kharkiv, Bielhorod-Dnistrovskiy, Shostka District and Zaporizhzhia Region<sup>18</sup>.

The issue of the proper protection of the voting rights and ensuring the opportunity for internally displaced persons to exercise their voting rights remains open and requires the joining efforts of local, national and international stakeholders.

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<sup>18</sup> <https://www.vplyv.org.ua/archives/2201>