SUPPORTING UKRAINE'S DEMOCRACY AFTER THE WAR

Key Issues, Comparative Experience and Best Practices

EXECUTIVE SUMMARY

Russia's war of choice has wrought enormous infrastructural and human damage across Ukraine. The international community broadly accepts the necessity of providing significant financial and technical assistance for reconstruction in Ukraine. But equally vital is the provision of concomitant support for Ukraine's work to preserve and reconstruct its democracy and democratic institutions on its own terms. Grounded in the political history of independent Ukraine, international comparative experience, and expert input from Ukrainian partners and other specialists, this *GSoD In Focus* lays out the key questions Ukrainians will face as they restart the regular work of their democratic institutions in the aftermath of the war—or, depending on future circumstances, a significant stepdown of hostilities—taking into account the country's European Union Candidate Status.

For international partners who are seeking to support Ukraine, the core points are:

- All support must be provided via real partnerships, where Ukrainians are either driving or equal partners in all decision-making processes.
- Ukraine has robust democratic institutions, and a key task is assisting in their preservation.
- In some areas, including the conduct of the next election, international support is likely to be a necessity.
- Ukrainian civil society, as an efficient driver of national progress in human rights and other democratic fields, should be involved in decision-making, subject-matter expertise and service delivery questions.

Ukraine has been a democracy since 1994, although its democratic performance has varied greatly over time. The two most intense periods of reforms in Ukraine's democratic history began with the Orange Revolution (2004–2005) and the Revolution of Dignity or 'Maidan Revolution' (February 2014), respectively. From 2009 to 2015, Ukraine suffered an episode of

democratic backsliding under President Viktor Yanukovych. The most recent period of reform, which has included major decentralization and direction of resources to the regions, has coincided with a significantly larger share of Ukrainians agreeing that democracy is the preferable form of government in public opinion surveys.

The Ukrainian Parliament, the Verkhovna Rada, reflects the vitality and complexity of Ukrainian democratic politics. A consistent site of vibrant debate, it has not been historically free from the influence of overt and covert special interests. However, committed internal and external reformers have led it to become more transparent and responsive. Since 2014, European integration has been a driving force for reform, and the Verkhovna Rada has developed a close relationship with the European Parliament (EP). Future international support and peer-to-peer dialogues will be greatly appreciated.

Although Russia and Ukraine are not currently in active negotiations to end the war, a negotiated end of hostilities is an ever-present possibility in any armed conflict. Thus, if a negotiation were to take place, the constitutional implications of any type of settlement need to be considered. Should an outcome of the war, including an unambiguous Russian defeat or a peace agreement, require considering changes to Ukraine's Constitution, all of Ukraine's established procedural requirements and constraints must be properly considered. Ukraine may consider a purely consultative referendum on any peace deal or settlement in line with its constitutional provisions, the risks and advantages of which should be carefully weighed in line with comparative experience.

The next Ukrainian election, whenever it may be held, will be critical for the nation's democratic trajectory. The movement of people and the aftermath of war will have massive logistical, institutional and legal implications for administering elections. Out-of-country and internally displaced people (IDPs) voting will demand special voting arrangements (SVAs) at an unprecedented scale, which in turn will have medium- and long-term implications for the financing and structuring of electoral processes. Protecting Ukraine's cyber and information environment around elections will require cooperation across multiple agencies and stakeholders. The international community's assistance to elections in Ukraine should seek to support requests from electoral authorities in a sustainable manner and with a long-term perspective.

The defence of human rights is critical for any democracy. The Ukrainian judiciary still requires significant reform in order to ensure access to justice, and international cooperation and institutional support will likely be required to credibly adjudicate war crimes and crimes against humanity. In terms of media and civil liberties, balancing the protection of freedom of expression and protection against harmful propaganda will be a key challenge for post-war Ukraine. Ukrainian civil society will also likely require significant assistance in order to return to its pre-war efficacy. Given the decimation of the Ukrainian economy by the war, protecting existing labour rights and ensuring Ukraine meets international standards will be key to returning economic life to the

country. Vulnerable minority groups, most notably Roma and LGBT+ people, could be at risk of seeing recent human rights gains erased without concerted support and attention.

This *GSoD In Focus* highlights some of the critical issues that the post-war economic, social and political recovery in Ukraine should consider regarding the future of its democracy. The daunting task of addressing the consequences of the aggression, rebuilding physical infrastructure, and restoring basic services should place such issues at the core of the reconstruction effort.

INTRODUCTION

It is no overstatement to say that Russia's full-scale invasion of Ukraine has triggered a paradigmatic shift in geopolitics and Ukraine has provided a historic object lesson in the strength and vitality of democracy itself. Although the conflict did not begin in 2022, it marked an escalation of military hostilities unseen in Europe since the World War II. The Russian military was, on paper, one of the most powerful in the world, but has seen more than one of its grand strategic plans for the war unravel in the face of the Ukrainian people's determined and ferocious response. In October 2022, much uncertainty remains, but the sovereign survival of Ukraine as a country is all but guaranteed. International observers have described the last eight months as a remarkable turnaround, but many Ukrainians are quick to point out they were never in doubt. The invasion has accelerated Ukraine's European integration; in June 2022, the European Union (EU) granted Candidate Status to Ukraine, which is expected to spur a profound set of reforms, including on key aspects of democracy.

The conflict is not only about sovereignty, but also democracy. The survival of a robust democracy in Ukraine is part and parcel to the territorial defence of the country. Russia's war of aggression is an attack on a political system—democracy—that securely places the destiny of the country in the hands of Ukrainians and out of the reach of Russia. The coming process of reconstruction and recovery from the devastation wrought by the invasion, therefore, needs to place democracy at the centre. The outcome of this institutional process will be relevant far beyond Ukraine and poses historical tests for both the global democratic community and for Europe in particular.

Grounded in the political history of independent Ukraine, international comparative experience, and expert input from Ukrainian partners and other specialists, this paper lays out the key questions Ukrainians will face as they restart the regular work of their democratic institutions in the aftermath of the war—or, depending on future circumstances, a significant stepdown of hostilities—taking into account its EU Candidate Status. In the early stages

of the war, peace negotiations included discussions on topics that would require constitutional reforms, including the status of Crimea and the Donbas, as well as political neutrality, and Ukrainian President Volodymyr Zelenskyy raised the possibility of a referendum to approve any potential peace agreement. As the war has advanced, Russia instead opted to press forward with illegal, illegitimate and internationally condemned 'referendums', putting into question whether these proposals were ever seriously considered by the Russian leadership. As each day brings reports of newly reclaimed Ukrainian territory, these past situations which instigated significant public debate now sound obsolete. Aspects of these past discussions are reflected in this paper where they might provide insights into possible future political questions, but nowhere does this paper attempt to speculate authoritatively on possible end states of the war. Questions around addressing human rights violations, the possible electoral process reforms, and the key role of parliament will also likely need to be considered as part of strengthening and protecting democracy in Ukraine.

This paper is structured as follows: Section 1 presents an overview of the history of democracy in Ukraine, based on the Global State of Democracy Indices. Section 2 presents the likely challenges to strengthening and supporting democracy, including: Parliament and political participation (Section 2.2); Constitutional and legal issues (Section 2.3); Electoral processes (Section 2.4); and Human rights and democracy (Section 2.5). A conclusion is offered in Section 3.

# 1. UKRAINIAN DEMOCRACY BEFORE THE 2022 WAR OF AGGRESSION

Box 1. **Key takeaways**

- Ukraine has been a democracy since 1994, although its democratic performance has varied greatly over time.
- The two most intense periods of reforms in Ukraine's democratic history began with the Orange Revolution (2004–2005) and the Revolution of Dignity or 'Maidan Revolution' (February 2014), respectively.
- From 2009 to 2015, under President Viktor Yanukovych, Ukraine suffered an episode of democratic backsliding.
- Since the Revolution of Dignity, Ukraine's democratic performance has steadily improved, although structural weaknesses remain.

Since the referendum of 1991, in which Ukrainians overwhelmingly approved the Act of Declaration of Independence, democracy in the country has been tumultuous yet resilient. According to International IDEA's Global State of Democracy Indices, Ukraine is a democracy and has been one uninterruptedly since 1994. Ukraine has transited through different stages, with notable improvements throughout the years in Representative Government and Checks on Government. At the same time, the country has struggled to make similar progress in Fundamental Rights and Impartial Administration, although these two attributes have—for the most part—remained in line with averages for Eastern Europe.[1] The years immediately prior to the popular uprisings of 2004 and 2014 reflected the country's lowest democratic performance, while the years immediately after those revolutions marked democratic highpoints. This section provides brief contextual snapshots of the state of democracy in Ukraine before Russia's February 2022 full-scale invasion.

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[1]   In the Global State of Democracy Indices, Eastern Europe comprises Armenia, Azerbaijan, Belarus, Georgia, Russia and Ukraine.

Figure 1. **Social Group Equality and Absence of Corruption in Ukraine**
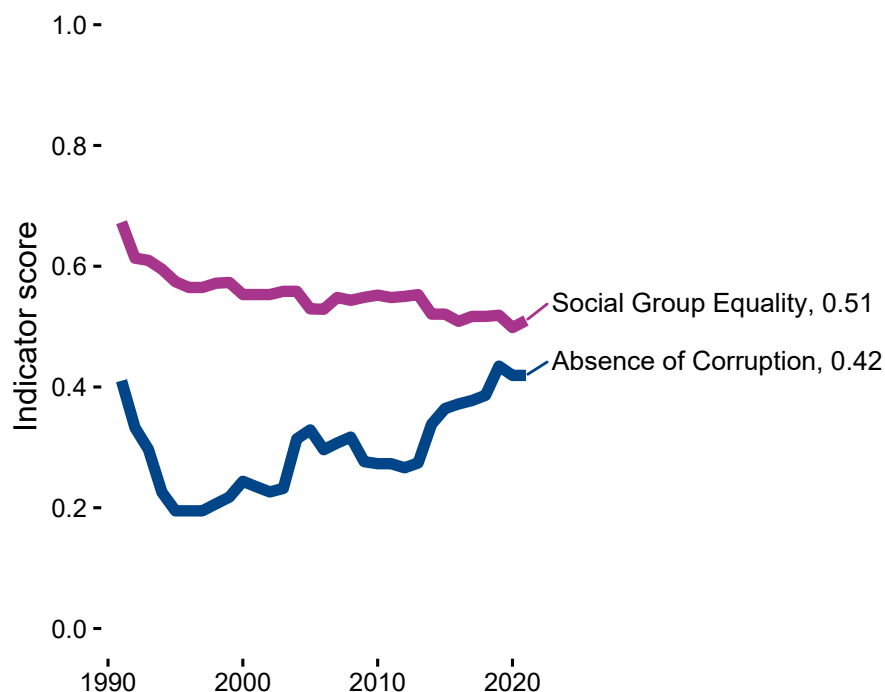
Source: International IDEA, The Global State of Democracy Indices V.6, 2022,
<https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

FROM THE REFERENDUM TO THE ORANGE REVOLUTION (1991–2004)

The first years of Ukraine's independence and democratic evolution were
marked by two parallel processes. First, the country suffered a profound
economic crisis, due to a transition out of communism that gave rise to an
unequal distribution of economic power, oligarchic tendencies and corruption
(R. S. Kravchuk 2002). In the first six years of independence, Ukraine struggled
with hyperinflation and a steady decline in productivity. Through a series of
privatization reforms, as in many post-Soviet economies, members of the
former bureaucratic and political elite captured a significant share of Ukraine's
economic resources at artificially low prices, producing oligarchic rather than
competitive dynamics (Åslund 2014). At the same time, there was a significant
increase in poverty rates and a reduction in life expectancy as the quality of
social goods declined (Gorodnichenko 2022). As shown in Figure 1, Social
Group Equality suffered a notable decline in the 1990s as a consequence.
With the rise of competing oligarchs, grand corruption became entrenched in
the country, reaching some of the highest levels in the Eastern Europe region.
These oligarchs have been key actors in the politics of the country, eroding
fair political competition and capturing many parts of the state apparatus for
personal financial gain (Åslund 2014).

Figure 2. **Clean Elections in Ukraine**
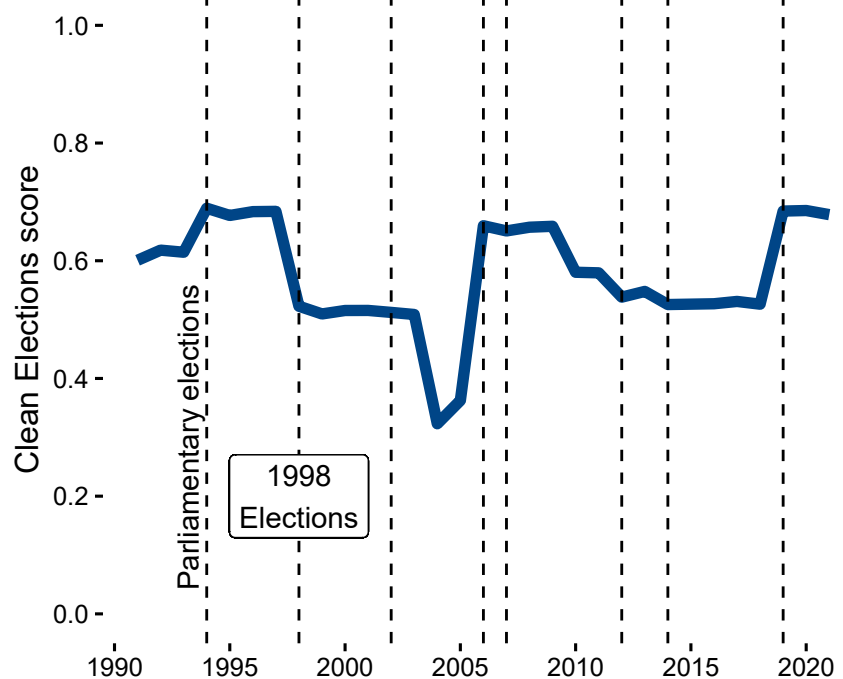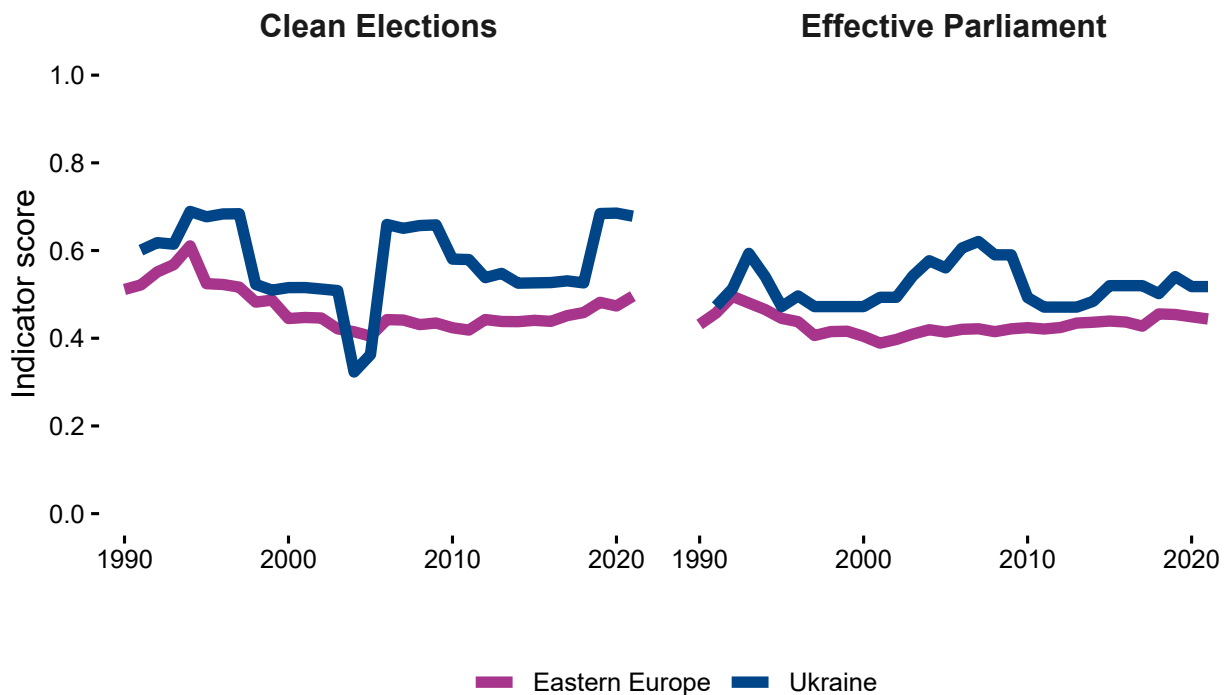

Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

Second, the initial years of independence were characterized by a political struggle to establish functioning democratic institutions. Ukraine achieved some success, conducting relatively competitive elections in 1994, but—as demonstrated in Figure 2—the Clean Elections score began to suffer gradual deterioration beginning with the 1998 parliamentary elections and lasting through 2004, when the Orange Revolution marked the beginning of improvements.

From 1994 to 2004, the country also saw the rise and decline of the Ukrainian Communist Party in parliament; the party lost its parliamentary majority for the first time in 2002, partly due to its questioning of Ukrainian statehood (Kuzio 2005). During this time, Ukraine also built a political system with, on paper, competitive elections and democratic institutions. However, these were seriously affected by the strong powers of the presidency, the growing power of oligarchs, and the impunity and corruption of law enforcement agencies. Even with these challenges, the performance levels in Clean Elections and Effective Parliament remained above the regional average (see Figure 3). At the same time, the growing influence of oligarchs seriously compromised the quality of Ukraine's democracy (Way 2005). This was especially evident in the 1998 parliamentary elections, in which oligarchic actors either took direct control or created a plethora of new 'centrist' parties void of much ideological

substrate (Kuzio 2005). These parties ended up supporting then President Leonid Kuchma's government, becoming a target of the forthcoming 2004 Orange Revolution.

Figure 3. **Clean Elections and Effective Parliament, Ukraine versus eastern Europe average**

Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

## THE ORANGE REVOLUTION AND THE YANUKOVYCH YEARS (2004–2014)

Starting in 2004, Ukraine's democratic performance improved in some key aspects (Figure 4) as a direct consequence of the reforms ushered in by the Orange Revolution.

The Orange Revolution was anchored in growing discontent with the Kuchma administration, which had become increasingly authoritarian. 'Kuchmagate', a political scandal in which the President was allegedly implicated in the assassination of a journalist (Levin 2001), marked a turning point. Former Prime Minister Viktor Yushchenko united the opposition for the 2004 presidential election against Viktor Yanukovych, his successor as Prime Minister, Kuchma's dauphin (Dickinson 2020), and the Kremlin's favoured presidential candidate (Kuzio 2005). The election was marred by irregularities and claims of electoral fraud arose when Viktor Yanukovych was declared

the winner of the second round (Kuzio 2005). The discontent that had been brewing in Ukrainian civil society for years boiled over in a popular uprising known as the Orange Revolution. The movement's demands included that the elections be held again, and Ukraine's democracy be comprehensively revamped, including constitutional changes. The revolution brought the country to a political standstill that was resolved only after the Supreme Court nullified the second round of elections and a re-run of the election led Viktor Yushchenko to power (BBC 2004). In addition, the revolution brought in the first of several constitutional changes in the country, giving more power to the parliament through the introduction of the premier-presidential system (Choudhry et al. 2018).

After the revolution, Ukraine's democratic performance improved (see Figure 4), including in Clean Elections and Civil Liberties, reaching some of its highest points in the Free Political Parties and Media Integrity subattributes. Yet the country remained bogged down with instability and political infighting, most

Figure 4. **Democratic expansion in Ukraine (2004–2009)**
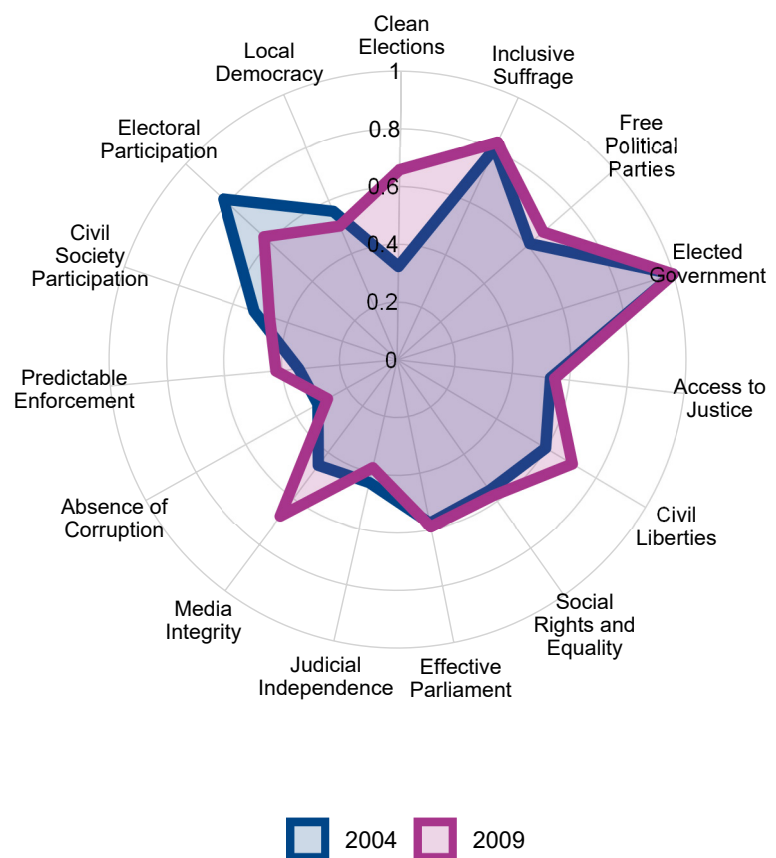
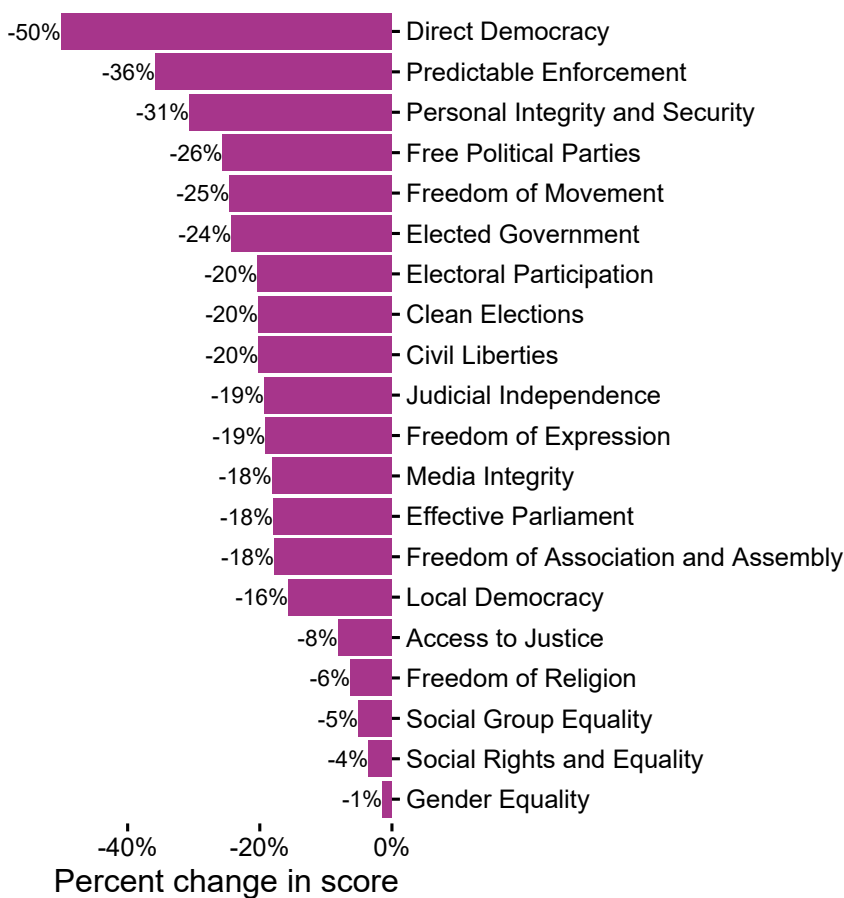
Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

notably between President Yushchenko and Prime Minister Yulia Tymoshenko (BBC 2005; Kudelia 2014). The economy also took a significant hit from the 2008 Global Financial Crisis (BBC 2009), and it was against this backdrop that Viktor Yanukovych won the 2010 presidential election.

Leveraging the *ressentiment* of 'imagined communities' (specifically, an agrarian, Ukrainian-speaking West or an industrial, Russian-speaking East) has long been a significant factor in national politics (Anderson 2016). In 2007, Yanukovych and the Party of Regions, with the backing of powerful economic elites, propagated discourse of a supposed Russian-speaking community in peril. The Donetsk-based oligarch, Rinat Akhmetov, was especially active and helped Yanukovych claim electoral victory (Minakov and Rojansky 2018; Kudelia 2014; Minakov 2011). From 2010 to the Revolution of Dignity (or 'Maidan Revolution') in 2014, Ukraine suffered democratic backsliding, with significant declines in Clean Elections, Free Political Parties, Effective Parliament, Media Integrity, Civil Liberties and Predictable Enforcement (see Figure 5).

Figure 5. **Change in democratic performance in Ukraine (2009−2014)**

Percent change in score

Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

In its first year in office, the Yanukovych administration returned the country to a stronger presidential system and gave Yanukovych overarching authority to extend his grip on power (Minakov and Rojansky 2018; Choudhry et al. 2018). The changes also paved the way for business elites to increase their control of politics. Media was coerced and repressed, the rule of law was severely diminished—with opposition leaders, including former Prime Minister Yulia Tymoshenko, imprisoned on flimsy charges—and linguistic and regional divisions accentuated even further (Kudelia 2014).

## REVOLUTION OF DIGNITY AND THE RESURGENCE OF UKRAINIAN DEMOCRACY (2014–2022)

Growing popular discontent and civil society activism—a key strength of Ukraine's democracy—started to gather against the increasingly authoritarian government of Viktor Yanukovych (Sandul 2022). The tipping point was his administration's decision not to sign the European Union Association Agreement, signalling a move in the direction of closer relations with Russia as opposed to the EU (Fisher 2014). Eventually, security forces attempted to violently disperse peaceful protesters, culminating in an open exchange of fire between radicalized protesters and police, with more than 100 deaths. An agreement between the President and opposition leaders was signed under the auspices of European diplomats but, soon after signing, Yanukovych and much of his government fled to Russia. The Verkhovna Rada (parliament) stripped him of his presidential power and appointed an acting government.

The Russian government claimed Yanukovych's ouster was an illegal coup d'état and authorized the deployment of Russian troops in Ukraine, taking over Crimea and supporting pro-Russian protests in the east and south of the country (BBC 2014). These protests ultimately led to an armed insurgency by separatist forces—with initial covert Russian support, turning into direct Russian military participation—in the eastern Donetsk and Luhansk regions (Luhn and Roberts 2014). An agreement on ending the ensuing war, the second Minsk agreement ('Minsk II'), was signed in 2015 by the separatist leaders, Russia and Ukraine, but it failed to lead to a complete cessation of hostilities (OSCE 2015).

The Revolution of Dignity and the resulting conflict in the Donbas have had a significant impact on Ukraine's democratic performance. In 2014, Ukraine elected a new President, Petro Poroshenko, and a new Verkhovna Rada that embarked on a notable spate of reforms, including the restoration of the 2004 Constitution and a return to the premier-presidential system (Pifer 2019; Choudhry et al. 2018). From 2014 to date, Ukraine experienced an improvement across many subattributes, with the most notable advances taking place in Predictable Enforcement, Clean Elections, Personal Integrity and Security, Judicial Independence and Absence of Corruption (see Figures 6 and 7).

However, the years after the Revolution of Dignity were not free of challenges. In addition to the low-intensity armed conflict in Donetsk and Luhansk, Ukraine's initial push for reforms, although partially successful in addressing endemic corruption, eventually slowed (Pifer 2020). In 2019, Volodymyr Zelenskyy, a comedian-turned-politician, ran on a platform of anti-corruption and renewal, and won the presidency in a landslide. Remarkably, he obtained his electoral victory with a plurality of votes from all over the country, signalling a potential sea change in Ukraine's political cleavages. A few months later, his party secured the country's first absolute majority in parliament. Zelenskyy's government, like those of Yushchenko and Poroshenko, started with a strong reform agenda that gradually dimmed and became entangled in various political battles and scandals, but was also seriously affected by the limitations and shocks imposed by the Covid-19 pandemic (Minakov 2021). Even with these limitations, Ukraine's democratic performance maintained a steady path of improvement before 2022.

Figure 6. **Ukrainian democratic performance (2014–2021)**
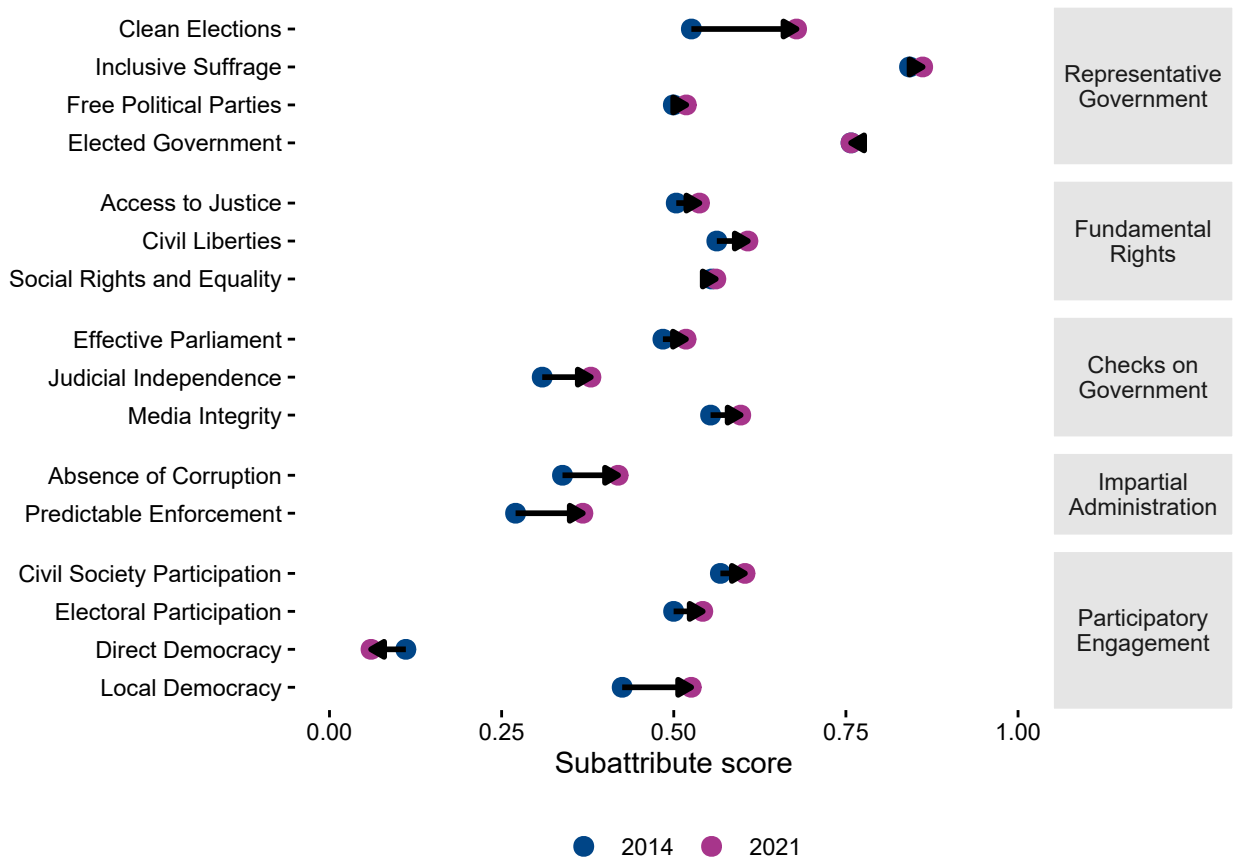
Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

Figure 7. **Change in Ukrainian democratic performance (2014−2021)**

Category	Percent change in score
Predictable Enforcement	36%
Personal Integrity and Security	34%
Clean Elections	29%
Absence of Corruption	24%
Local Democracy	24%
Judicial Independence	23%
Freedom of Association and Assembly	14%
Electoral Participation	8%
Civil Liberties	8%
Media Integrity	8%
Effective Parliament	7%
Freedom of Movement	7%
Access to Justice	7%
Civil Society Participation	6%
Gender Equality	5%
Free Political Parties	4%
Inclusive Suffrage	2%
Freedom of Expression	2%
Social Rights and Equality	1%

Percent change in score

Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

2. CHALLENGES AND OPPORTUNITIES FOR DEMOCRACY PROTECTION AND STRENGTHENING AFTER THE WAR

2.1. INTRODUCTION

The following sections introduce the key challenges that Ukraine's democracy will likely face in the aftermath of the war, taking into account the development of the war as of October 2022 and the different possible scenarios. The sections do not claim to provide solutions; they instead highlight contentious questions that will be central to protecting and strengthening democratic institutions and processes in Ukraine. The content is a combination of International IDEA's expertise, comparative analysis, and several interviews (and rounds of review) with Ukrainian counterparts and experts.

Section 2.2 addresses the parliament of Ukraine, focusing on the importance of including different views in the post-war scenario, parliament's role in any peace settlement or agreement, and its partnerships with external actors such as the EU. Section 2.3 studies in more detail the challenges that any potential constitutional process might face, as well as the framework that the Constitution provides for possible changes. Linked to this issue is that of peace agreements or referendums, which is also addressed in this section.

Section 2.4 focuses on understanding the challenges to Ukrainian elections introduced by the war and the role of well-executed electoral processes in strengthening democracy. Section 2.5 explores the different human rights-related challenges that are likely to arise in the post-war scenario, including the role of women's leadership in the functioning of democratic processes.

2.2. **PARLIAMENT AND POLITICAL PARTICIPATION**

Box 2. **Key takeaways**

- The Ukrainian Parliament, the Verkhovna Rada, has consistently been a site of vibrant debate, but the quality of its decision-making has been affected by overt and covert lobbying for specific interests.
- With impetus from internal reformers and external pressure from civil society, the VRU has become more transparent and responsive, although clientelistic relationships between citizens and elected officials persist.
- The prospect of European integration has been a driving force for VRU reform since 2014 and the VRU has developed a close supportive relationship with the European Parliament and several European national parliaments.
- The VRU will undoubtedly continue to welcome international support in its continuing development, and peer-to-peer dialogue and opportunities for mutual learning will be particularly appreciated.

The Constitutional role and powers of the VRU

The Ukrainian Parliament—the Verkhovna Rada of Ukraine (VRU)—was formed out of the Verkhovna Rada of the Ukrainian Soviet Socialist Republic upon independence, with the first post-communist convocation elected in 1994. The VRU is a unicameral legislature with 450 members ('peoples' deputies') elected based on equal and direct universal suffrage through a secret ballot with a term of office of five years. In the current VRU, half of the members were elected according to a model of proportional representation with closed party lists and a 5 per cent threshold, and half through first-past-the-post (FPTP) elections in single-member constituencies. Changes to the Electoral Code in 2019 mean that the next election will introduce a proportional-only system with limited preference voting.

From 1991 to 2022, there have been nine convocations of the VRU. Although under the Constitution (Ukraine 1996) the VRU has 450 seats, the current parliament numbers only 423 members of parliament (MPs), as elections could not be held in the constituencies of Crimea and Sevastopol, which were illegally annexed by the Russian Federation in 2014, nor in parts of the Donetsk and Luhansk regions controlled by Russian-backed separatists since 2014 (the so-called Donetsk and Luhansk People's Republics).

The powers of the VRU are defined in the Constitution of Ukraine and in other key legislation governing the functioning of the VRU.[2]

According to the Ukrainian Constitution, the VRU determines the principles of domestic and foreign policy; introduces amendments to the Constitution of Ukraine; adopts laws, approves the state budget; schedules regular and

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[2]   These laws include the Law on the status of the People's Deputy of Ukraine, the Law on Rules of Procedure of the Verkhovna Rada of Ukraine (Ukraine 2010), and the Law on the Committees of the Verkhovna Rada of Ukraine.

early elections; has the power to impeach the president, and to declare war and peace; appoints the prime minister; appoints or approves certain officials; appoints one third of the constitutional court; ratifies, amends or denounces international treaties; and exercises executive oversight (Ukraine 1996: articles 75 to 101).

The VRU and the politics of Ukraine

Ukraine has held regular, competitive, multi-party parliamentary elections in the 30 years since independence. Political parties are relatively weakly institutionalized, with most larger parties closely associated with a leading political figure. Although parties are loosely associated with different ideological perspectives, affiliations tend to be fungible, and many political figures have been associated with several different parties during their careers. A more salient and continuing cleavage point within the VRU and Ukrainian politics more broadly is geopolitical orientation; specifically, whether a pro-Western or a pro-Russian approach is favoured. Over several elections, this orientation has become increasingly conflated with the comparative status of the Russian and Ukrainian languages and competing interpretations of the country's cultural history, with Ukrainian nationalists and European integrationists tending to be strongest in the West and centre of the country, and pro-Moscow political figures more popular in the East and the South. It is important to note, however, that the current President and his Servant of the People party performed strongly across Ukraine in the 2019 elections.

The trajectory of parliamentary reform in Ukraine

The Verkhovna Rada has been undergoing a transformation from the Soviet-era institution inherited at Ukraine's independence in 1991, with the goal of becoming a transparent and effective institution in the traditions of European democratic parliaments. The process of parliamentary reform hastened after the Maidan Revolution of 2014, after which Ukraine decisively chose the path of European and Euro-Atlantic integration. While the parliament continues to suffer from various dysfunctions, including cumbersome internal rules and administrative procedures, non-transparent lobbying and influence-peddling, and periodic political blockages, important progress has been made, with a positive overall reform trajectory.

Reform at the Verkhovna Rada has been driven particularly through three vectors: first, reform-minded deputies present in most of the political groups; second, continuing vigorous and coordinated pressure from civil society organizations (CSOs); and third, support and pressure from the international community.

A fundamental factor in the VRU's development has been European integration. Since 2014, parliament has consistently prioritized the passage of legislation implementing harmonization of the EU *acquis,* in line with Ukraine's Association Agreement with the EU (EU 2014). The VRU has also formally adopted a comprehensive institutional reform strategy, developed in collaboration with the EP (2016). Apart from Russian-allied groupings and individuals who have made up around 15 per cent of MPs in the two elections since Maidan, all

the different political groups represented in the VRU support the European orientation and its institutional reform implications.

At the same time, there has often been a gap between the formal commitment of parliamentarians to European integration and institutional reform, and the practice of politics, which remains significantly impacted by kleptocratic state capture and subterranean political-financial networking. While Ukrainian civil society is vibrant, vocal and often effective, its reach within the broader non-engaged population remains limited, demonstrated by the relative lack of success of civil society-affiliated candidates in parliamentary elections. The continuing electoral success of political figures influenced by oligarchic and other covert interests, particularly within the 50 per cent of seats filled by majoritarian (FPTP) constituency elections, demonstrates the continuing prevalence of clientelist politics and the relative inability of Ukrainian society to hold political and business elites to account.

There is, therefore, a duality in Ukrainian politics reflected in the Verkhovna Rada, in which an overall trajectory towards reform and integration into the family of European democracies is to some extent counterbalanced by obscure interests' blocking and diverting of reforms. Therefore, the long-term durability of Ukrainian democracy will depend, as everywhere, on the ability (interest and capacity) of Ukrainian citizens to hold their leaders to account. However, overall, the post-conflict scenario for democratic political and parliamentary reform is likely to remain positive. The brutality of the Russian invasion has definitively destroyed any attraction to the Russian model, even—and perhaps especially—among Russian-speaking Ukrainians who have borne the brunt of Moscow's war against Ukraine.

It is important to highlight that the balance of power between the VRU and the Office of the President has long been a site of political contestation and a source of ineffective governance (Choudhry et al. 2018). Under multiple presidents, including both Poroshenko and Zelenskyy, executive support for parliamentary reforms often served the ulterior purpose of weakening the parliament and prime minister—both in terms of legal privileges and public prestige—relative to the presidency, thereby undermining their ability to check executive power or, in some cases, prevent autocratization.

The VRU, European integration and the European Parliament

Despite the different levels of response to the war of aggression from European countries, Ukraine's Western orientation, democratic path and European integration are integral to the country's battle for survival. Depending on the outcome of the war, and on the progress of Ukraine's EU accession, the VRU is highly likely to accelerate its legislative agenda in line with the conditions outlined to join the European Union. Further, it is probable that the institutional reform agenda will be renewed in parallel.

The EP has played, and continues to play, a pivotal role in supporting the institutional renewal and development of the Verkhovna Rada, and in advocating for Ukraine's integration into the EU. The diplomatic commitment

of the EP to the VRU is by far its most intensive institution-to-institution engagement at the political and administrative levels, and the EP has been and remains highly influential in EU policy towards Ukraine.

The Cox report
After pro-Western forces won the first post-Maidan elections in Ukraine in 2014, the new Speaker of the VRU requested support from the EP on parliamentary reform, as the VRU had long been seen as a corrupt and inefficient institution.[3] By agreement, former EP President Pat Cox, who had attained a high profile in Ukraine and respect from reformist forces, was appointed to head a joint initiative of the two parliaments to analyze the functioning of the VRU and recommend a roadmap for reform.

The resulting Cox Report analyzed the strengths and weaknesses of the VRU, grouped into seven thematic chapters, and outlined 52 recommendations covering all seven areas (EP 2016: 80). The report was unanimously adopted by the VRU and officially launched in 2016 in the EP, at which time a convention for continuing administrative support to Verkhovna Rada reform was signed by the Secretaries General of the European and Ukrainian Parliaments. The EU has continued to support parliamentary reform over time, including through a multi-year technical support programme as well as dialogue activities to foster confidence-building and constructive interaction between the VRU's fissiparous factions.

Renewed commitment to the Roadmap for Reform
In 2021, the VRU and the EP renewed their commitment to pursue the 2016 Roadmap for Reform of the VRU, with the following reiterated objectives (EP 2021a):
• Modernizing standards of parliamentarism, in line with European best practices, where consensus-building and dialogue are central to ensuring inclusive institutional reform and to pursuing the EU reform agenda.
• Strengthening the constitutional roles of law-making, oversight and representation of the Verkhovna Rada, thereby improving the quality of legislation and of the legislative process in Ukraine.
• Increasing the transparency, predictability, efficiency and openness of the proceedings of the Verkhovna Rada.
• Contributing to the effective implementation of the EU-Ukraine Association Agreement.

The European Parliament offered continued support inter alia in:
• Jean Monnet Dialogues for peace and democracy.
• Mentoring, study visits and exchanges of best practices between parliamentarians.
• Training, mentoring and capacity building for the Apparatus of the Verkhovna Rada of Ukraine, secretariats of the committees, parliamentary factions and groups.

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[3]   The National Democratic Institute has conducted biannual polls in Ukraine since 2015, which have consistently found trust in the VRU to have been very low (see NDI n.d).

- Parliamentary conferences, seminars and roundtables in Ukraine or in Brussels/Strasbourg.
- Other parliamentary support and capacity building projects that reinforce the overall EU approach to Ukraine.

The European Parliament and VRU after the Russian invasion

Given the longstanding partnership and effective collaboration between the VRU and the EP, as well as the importance of EU integration to Ukraine, the EP has unsurprisingly taken a lead role in rallying support to Ukraine, and to the VRU specifically, following the Russian invasion. (EP President Roberta Metsola convened an online meeting of EU national parliament Speakers on 4 March 2022 and announced a coordination structure between the EP and VRU to ensure continuing EP support to the VRU during and after the war, and urged national parliaments to support Ukraine. The EP has also taken a lead in urging tougher sanctions against Russia during the war, calling for an 'immediate full embargo on Russian oil, coal, nuclear fuel and gas' on 7 April 2022.)[4] More recently, the EP has called for an international tribunal for the crime of aggression in Ukraine (see Section 3.5 below) and called for expanded arms transfers to the Ukrainian military (EP 2022a). The political leadership of the EP is thus important to Ukraine and will ensure that the VRU privileges this relationship.

There are some limitations in terms of the capacity building support of the EP to the VRU. As a transnational parliament, the EP functions quite differently from a national parliament. For example, the EP's role in the legislative process is quite different (and less powerful) than in the VRU and European national parliaments, with further important differences in other core parliamentary functions such as the budget process and relationship to the executive. Thus, peer-to-peer support is probably more salient between national parliaments and the VRU, than between the EP and the VRU. It will be important, therefore, to supplement the parliamentary diplomacy support from the EP, with hands-on collaboration with EU (and non-EU) national parliaments.

Some challenges the VRU will face post-war

Combatting sedition while respecting divergent perspectives
One key issue that is likely to arise is the representation of divergent regional perspectives in the VRU. Until the outbreak of the war, the largest opposition party, with 10 per cent of seats (43), was the pro-Russian Opposition Platform—For Life (OPZZh). OPZZh and several smaller pro-Russian parties were suspended by the National Security and Defence Council of Ukraine on 20 March 2022 in the context of the Russian invasion for the duration of martial law (Ukrinform 2022). One of the co-leaders of OPZZh and a VRU deputy, Viktor Medvedchuk, had been arrested on suspicion of treason in 2021; he escaped house arrest on 27 February shortly after the Russian invasion, but was recaptured and held in custody from 12 April 2022. A number of deputies

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4   A comprehensive record of EU-level sanctions is available online here: <https://eu-solidarity-ukraine.ec.europa.eu/eu-sanctions-against-russia-following-invasion-ukraine_en>.

resigned from the OPZZh after the Russian invasion, while some others left the country.[5]

In April 2022, the OPZZh parliamentary faction was dissolved, and its former members established a new parliamentary group. On 3 May 2022, the VRU adopted a draft law banning pro-Russian political parties in Ukraine (Znas 2022). There is a history of comparable restrictions in Ukraine; in 2014 following Maidan, the Communist Party of Ukraine party group in the VRU (then holding 32 seats of 450) was dissolved by the Speaker. In 2015, the Communist Party of Ukraine was banned from operating under de-communization legislation. It is not difficult to envisage a similar process of 'de-Russification' occurring after the end of the current war, which might present significant challenges.

In this context, it will be important in post-war Ukraine to ensure that voices from the country's southeast continue to be heard. Points of contention, such as the use of the Russian language, may re-emerge at the national level and need to be addressed by the VRU in a way that continues to enshrine Ukrainian as the sole state language, while also protecting 'the free development, use and protection of Russian' as is the case in the current Constitution (article 10, Ukraine 2016).[6]

Maintaining freedom of speech in the context of hybrid war
A broader issue that the VRU will need to address is the balance between freedom of speech and the necessity of protecting against hybrid warfare[7] sponsored by Russia. Just as restrictions and bans on Russian media have been put in place in many Western countries, so can it be expected that existing restrictions within Ukraine on pro-Russian media vectors will be further tightened. It will be important at the same time to ensure that diverse perspectives, not aligned with or sponsored by Russia and its allies, continue to be expressed freely.

Post-war agreements
In the midst of war, it is difficult to have any clear insight into the tasks that will face the VRU at the end of the conflict; obviously much will depend upon the nature of the cessation of hostilities (whether some kind of standstill agreement, a negotiated settlement, or an outright victory). If one side or the other is fully victorious, the VRU is likely to have to approve key elements of any peace agreement that have legislative or indeed constitutional implications. While the VRU, and the Ukrainian state as a whole, will certainly assert its absolute sovereign right to make decisions concerning the future of the

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[5] These judicial processes were continuing at the time of writing.
[6] Ukraine's signature decentralization reform, a key source of regional resilience during the full-scale invasion (see: <https://www.researchgate.net/profile/Oksana-Huss/publication/362265952_What_Makes_Ukraine _Resilient_in_the_Asymmetric_War/links/62e0f9687782323cf17ecd44/What-Makes-Ukraine-Resilient-in -the-Asymmetric-War.pdf>), also provided local authorities with the space to negotiate national legislation on the use of Ukrainian and Russian in line with local needs and norms, thereby softening the more wrought Yanukovych-era national debates on their use (see: <https://www.opendemocracy.net/en/russia-ukraine -luhansk-occupy-collaborate>).
[7] A hybrid warfare strategy involves exploiting political, military, economic, social, information and infrastructure vulnerabilities, as well as considering the physical environment and time (PMESII-PT), in parallel to undermining the trust of state institutions.

country, the international community and particularly counterpart national parliaments should be ready to provide examples of parliamentary processes that have addressed post-conflict settlements in all their dimensions.

Should any settlement involve a change to the Ukrainian Constitution, the VRU and Ukrainian institutions (and society) are very likely to insist on following the established process, both to ensure the legitimacy of any changes, but also to underline the absolute continuity of the Ukrainian state in the face of foreign aggression. Constitutional issues are discussed in Section 2.3 of this document.

Potential external support to the VRU
Post-conflict, it is highly likely that significant donor support will be provided not only to rebuild the country but also to reinforce Ukrainian state institutions—including parliament—especially in the context of the anticipated acceleration of European integration processes. The legislative burden of normal-speed EU integration is itself heavy and will only be multiplied by acceleration. There are of course a number of recent accession states in Central Europe: some of which have already engaged with the VRU; many, or most, would be pleased to (further) share their experiences. Indeed, there is likely to be competition to work with the VRU given the strategic importance of Ukraine in the context of Russia's aggressive posture towards democracy in former Warsaw Pact countries.

Given the terrible impact of the war on Ukraine, which has had to defend itself alone against a much larger and nuclear-armed power, there is likely to be great sensitivity to the ways in which parliamentary strengthening support is offered and provided. Since many Ukrainians, including political elites, feel that Europe and the West have been weak in standing up to Russia, traditional development approaches in which Western experts and indeed Western parliaments attempt to unidirectionally 'share' good parliamentary practices are likely to be rejected. It is therefore likely that support will be provided through partnerships involving two-way dialogue, and in which the experience of the Ukrainian parliament in functioning through a war is listened to and respected. Finally, timing is an issue—the economic and political decline of Ukraine's oligarchs during the war presents a window of opportunity for parliamentary reform that should not be missed (Bruder 2022).

2.3. CONSTITUTIONAL AND LEGAL ISSUES

> Box 3. **Key takeaways**
>
> - Although Russia and Ukraine are not currently in active negotiations to end the war, a negotiated end of hostilities is an ever-present possibility in any armed conflict. Thus, if a negotiation were to take place, the constitutional implications of any type of settlement need to be considered.
> - Should an outcome of the war—including an unambiguous Russian defeat or a peace agreement—require considering changes to Ukraine's Constitution, all of Ukraine's established procedural requirements and constraints must be properly considered.
> - Ukraine may consider a purely consultative referendum on any peace deal or settlement in line with its constitutional provisions, the risks and advantages of which should be carefully weighed in line with comparative experience.

Introduction

The war in Ukraine, and some of the topics contemplated in the peace negotiations of March 2022, raise important considerations vis-à-vis potential constraints imposed by Ukraine's Constitution on any peace deal or post-war settlement. This section therefore analyzes potential post-war issues through the lens of Ukraine's current constitutional and legal framework. The current framework, including the process of constitutional amendment, involves certain restrictions in terms of what can be the subject of amendment and how it must be amended.

Several topics initially raised in the March 2022 peace talks, the outcomes of which may have necessitated constitutional amendments, are now moot. Russia's demand for a Ukrainian commitment to neutrality in international security (despite Ukraine's constitutional imperative to pursue NATO membership) is now obsolete, since Ukraine formally submitted its application to join NATO in September 2022. Russia's staging of illegal and illegitimate 'referendums' on accession in occupied territories in September 2022 (International IDEA 2022), overwhelmingly condemned by a resolution of the UN General Assembly on 12 October 2022, also means that negotiations on the status or borders of regions or *oblasts* are now unlikely.

Still, any future negotiated settlement between Russia and Ukraine or between Ukrainians might require constitutional amendments, and it is therefore necessary to consider the legal and constitutional issues that would likely arise. In addition to any final settlement, the EU membership candidacy of Ukraine might also involve more profound constitutional changes related to justice and the rule of law, anti-corruption, and fundamental rights (European Commission 2022).

Further, the possibility of a referendum to ratify any peace deal was raised in March 2022 by President Zelenskyy (Reuters 2022a). Especially given

the Russian decision to hold illegal and illegitimate referendums on the annexation of Ukrainian territory, it is important to clarify the constitutional and legal framework for any possible legitimate referendum and its potential consequences. It is also important to note that Ukraine has been under martial law since February 2022 (Reuters 2022b).[8] The declaration of a state of emergency and imposition of martial law automatically triggers legal and constitutional restrictions on amendments to the Constitution and the holding of referendums.

Background

In March 2022, Russia and Ukraine advanced demands to inform peace negotiations hosted by Turkey (Troianovski 2022). Russia's demands included, among others, a guarantee of Ukraine's neutrality, relinquishment of Ukraine's aspirations to join NATO, acknowledgment of Crimea as Russian territory, and recognition of Donetsk and Luhansk as independent states (Simpson 2022; Pifer 2022). Ukraine demanded that Russia withdraw its troops from Ukraine (pre-2014 borders) with international security guarantees against further aggression (Meduza 2022a). In return, Ukraine would consider withdrawing its plans to join NATO. Ukraine's proposals stipulated that any peace treaty would only enter into force after the introduction of appropriate constitutional amendments and a referendum on Ukraine's neutral status (Meduza 2022a; Reuters 2022).

At the end of March 2022, President Volodymyr Zelenskyy publicly announced his government's willingness to discuss neutral status as part of a peace deal with Russia (Han and Yelu 2022). According to reports, President Zelenskyy also indicated willingness to compromise over the status of the eastern Donbas region (Al Jazeera 2022). The President consistently stated that any potential peace deal would be contingent on passage via popular referendum, predicated on a ceasefire and withdrawal of Russian troops (Euronews 2022).

Following several months of revelations of new war crimes, targeted Russian strikes on civilian territory, successful Ukrainian counteroffensives in the east and south of the country, and Russia's staging of illegal and illegitimate referendums on annexing Ukrainian territory, President Zelenskyy announced, in late September 2022, plans to apply for NATO membership, stating that negotiations would not be possible with the current Russian President (Reuters 2022d; International IDEA 2022). Still, some type of negotiated settlement may be needed, at some point in the future, to secure peace and the survival of Ukraine's sovereignty.

Constitutional amendment process and constraints
Should the war end in an agreement which would require constitutional change, it is important to understand the constraints that the amendment process would place on such a deal coming into force.

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8   Decree No. 64/2022 introduced martial law in Ukraine for a period of 30 days from 24 February (Ukraine 2022). This was extended several times via parliamentary vote, most recently on 15 August 2022. See: <https://rm.coe.int/1680a5b03f, https://www.ukrinform.net/rubric-ato/3550820-parliament-extends-martial-law-general-mobilization-in-ukraine.html>.

Firstly, there are some express prohibitions whereby the Constitution cannot be amended: (a) with regards to certain issues; and (b) under certain circumstances.

With regards to the former, the Constitution prohibits amendments that would abolish or restrict human and citizens' rights and freedoms or that are oriented 'toward the liquidation of the independence or violation of the territorial indivisibility of Ukraine' (article 157). Similarly, under referendum law, referendums cannot be held contrary to the provisions of the Ukrainian Constitution, nor on issues aiming to undermine Ukraine's independence, violate state sovereignty and territorial integrity, or endanger state security (Ukraine 2021a: article 3(2)(3)). Any potential amendments would need to satisfy these requirements, which would be subject to the interpretation of the Constitutional Court.

With regards to procedural constraints, constitutional amendment is not possible in the current situation. The Constitution prohibits any amendment to the Constitution under a state of emergency or martial law, and therefore both would need to be lifted in order to pursue any amendments (Ukraine 1996: article 157; see also Ukraine 2015b: article 19 and Ukraine 2000: article 21).

Should these legal barriers to amendment be removed, the Ukrainian Constitution provides two processes for amendment, depending on which chapter of the Constitution is affected.

The first amendment procedure is via parliament voting over two sessions. In this method, a constitutional amendment bill[9] must pass first by absolute majority in the legislature and then by a two-thirds majority of the legislature in a subsequent session (Ukraine 1996: article 155).

The second amendment procedure requires draft amendments to pass by two-thirds of the parliament and by referendum (article 156). Proposed amendments that must be subject to referendum are those related to Chapter I (General Principles), Chapter III (Elections/Referendum) and Chapter XIII (Amendments to the Constitution of Ukraine), as well as any proposals to alter the territory of Ukraine (article 73). Such changes would also be subject to the constraints of the All-Ukrainian Referendum Law (Ukraine 2021a), detailed below. All other provisions are subject to the first amendment procedure, which takes place in the Verkhovna Rada.

Further, any draft constitutional amendment must be submitted to the Constitutional Court for its opinion on whether the draft amendment conforms with articles 157 and 158 of the Constitution, which outline the process to amend the constitution (Ukraine 1996: article 159; see also Ukraine 2010: Chapter 26).

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[9]   Under article 154, a bill is introduced by the president or by one-third of the members of the legislature (Verkhovna Rada). A constitutional amendment bill may also originate from a popular initiative petition. A popular initiative must be signed by at least 3 million citizens with at least 100,000 signatures from two-thirds of *oblasts* (article 72). The referendum procedure is further outlined in the Law on the All-Ukrainian Referendum (Act No. 1135-IX), 26 January 2021.

Consultative referendums

As a final consideration, could a purely consultative referendum be held on any post-war agreements or constitutional changes that would be part of a future peace process? Notwithstanding its non-binding nature, even consultative/ advisory referendums 'must comply with the legal system as a whole' (Venice Commission 2022). This is especially salient in Ukraine, which has experience of unconstitutional referendums (see e.g. Venice Commission 2000 and 2014; Constitutional Court of Ukraine 2014). With this in mind, a referendum on any peace deal or post-war agreement would be complicated under the legal and constitutional framework. Under neither the Constitution nor the Law on Referendums does the president have the authority to call for a referendum by himself, but only following a popular initiative or following a two-thirds vote in the Verkhovna Rada. Further, the 2021 referendum law strictly limits the issues which can be put to referendum. These clearly do include 'altering the territory of Ukraine' (within the bounds of maintaining territorial integrity), but other changes to specific constitutional provisions would likely be excluded. An advisory referendum could be held on 'nation-wide values' (Ukraine 2021a: article 3.1.2), but this would be advisory only, and it would seem that any peace deal that required an amendment of specific provisions enumerated in the Constitution would still need approval through the legislature, as per the regular constitutional amendment procedure.

While politics is 'the art of the possible', and it is likely that all of the constitutional and legal hurdles can be overcome should the securing of peace and survival of Ukraine's sovereignty so require, pursuing a referendum to ratify any peace deal should be considered carefully. While there are few, if any, cases of referendums being used to ratify a peace deal following a foreign invasion, they have become more common in peace processes following civil wars. The experience, however, is mixed. Some find that, when carefully designed and in the right circumstances, referendums can provide for popular deliberation and a more legitimate, durable peace, as was the case of Timor Leste or Bougainville (Bramble and Paffenholz 2020; Levy et al. 2018). However, other experiences show referendums can lead to more polarization and hinder post-conflict reconciliation, as in the case of Colombia in the wake of the Peace Agreement between the government and the Revolutionary Armed Forces of Colombia (FARC) (Matanock and Garcia-Sanchez 2017; Lee and MacGinty 2012). Any decision to pursue a referendum must also consider the consequences of a referendum rejecting the peace deal, as happened in Colombia, Cyprus and Guatemala.

While the dynamics of the war have moved on since President Zelenskyy raised the issue of a referendum in March 2022, both the constitutional/ legal framework and the potential consequences of such a referendum are important to understand should the possibility arise again.

2.4. ELECTORAL PROCESSES

> Box 4. **Key takeaways**
>
> - The movement of people and the aftermath of war will have massive logistical, institutional and legal implications for administering elections. Out-of-country and internally displaced people voting will demand special voting arrangements at an unprecedented scale, which has medium and long-term implications for the financing and structuring of electoral processes.
> - Protecting Ukraine's cyber and information environment around elections will require cooperation across multiple agencies and stakeholders.
> - The international community's assistance to elections in Ukraine should seek to support requests from electoral authorities in a sustainable manner and with a long-term perspective.

As the war of aggression continues, holding the first post-war elections will be a daunting challenge.[10] If martial law continues to be in place, elections will need to be postponed. But under which conditions can and should they be held?[11] What support is needed? Answering these questions, and maintaining clarity on them under changing circumstances, is critical. Democratic and well-administered elections in Ukraine can send a message of unity and commitment to democracy. If beset with irregularities or controversy, elections may have effects to the contrary.

Experiences from elections taking place in post-war countries, or those experiencing deep political crises, highlight the value of three key sets of questions in reaching well-informed decisions on future elections:

- Which process-related arrangements need to be put in place to deliver credible elections?
- When is the environment conducive to holding democratic elections?
- How can the international community support national stakeholders in strengthening the integrity of electoral processes?

The three sections that follow elaborate on these considerations concerning future elections in Ukraine.

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10   The Ukrainian electoral management body (the Central Election Commission) concept paper on necessary amendments to the legal and policy framework does not specifically refer to the 2023 October elections (see <https://act.cvk.gov.ua/acts/pro-propozitsii-shhodo-vdoskonalennya-zakonodavstva-ukraini-spryamovani-na-zabezpechennya-pidgotovki-ta-provedennya-viboriv-pislya-pripinennya-chi-skasuvannya-voiennogo-stanu-v-ukraini.html>). The focus is on how the first post-war election (and only that first one) may be held, focusing on refugee and IDP voting issues such as required documents and voting addresses. A separate concept paper discusses who should be the mandated agency to decide on the conditions that necessitate the cancellation/postponement of elections in order to avoid arbitrary decision-making by local or national agencies without the necessary legal framework. A proposed third package of amendments focuses on legal coherence for future elections. IFES Ukraine provides an excellent overview in this document: <https://ifesukraine.org/wp-content/uploads/2022/10/ifes-ukraine-brief-overview-of-cec-proposed-amendments-d2-2022-09-29-eng53.pdf>.

11   While parliamentary elections were scheduled for October 2023 and presidential and local elections for 2024 and 2025 respectively, martial law can entail a ban on holding presidential, parliamentary, or local elections and a ban on national and local referendums. See <https://www.kyivpost.com/ukraine-politics/what-martial-law-in-ukraine-could-mean-for-nation.html>. See also <https://www.usip.org/blog/2019/02/how-did-martial-law-affect-upcoming-election-ukraine>.

Process-related considerations

Infrastructural damage and the movement of people have profoundly disrupted existing electoral arrangements. Electoral logistics are not simple at the best of times; post-war elections or elections in highly volatile scenarios bring a host of additional security and logistical considerations. Decisions taken to solve immediate dilemmas may impact Ukraine's electoral systems in the long term.

Decisions on electoral processes should ensure the broadest possible participation of electoral actors (such as voters, political actors and observers) throughout different phases of the electoral cycle, while preserving the integrity of the process and the results. Learning from comparative experience, the following aspects are worthy of special consideration:

- mandate and capacity of electoral administration and other state agencies to conduct and support electoral operations;
- registration of voters, candidates and political parties;
- electoral campaigning and political party financing;
- voting operations and SVAs; and
- electoral reform.

Mandate and capacity of electoral administration and other state institutions

Many Ukrainian regional electoral offices have lost work continuity and suffered tragic human and material losses. Electoral infrastructure and facilities, such as buildings usually used as polling stations and warehouses, or companies producing and supplying electoral materials, may have suffered significant damage. Critical data may have been lost or become obsolete, even though e-governance services in Ukraine have continued to function well since the war started.

Experience from post-war elections shows that infrastructure damage, combined with shortness of time to prepare, can lead to technical and human errors that impact the conduct of the elections. That may create stress, limit participation, or undermine trust in electoral processes. These dynamics relate to the electoral management body's (EMB) capacity[12] and that of other state agencies mandated to provide security (physical and cyber-) or other forms of electoral support.

In a post-war environment, residual trauma and grievances can manifest in electoral disputes and conflicts that are different in nature from those during peacetime. Addressing such conflicts before they escalate will require a mix of mechanisms such as strong competencies in conflict resolution at all levels of the electoral management, effective complaints adjudication, and a well-resourced judiciary with a clear mandate and specialized skills.

Registration of voters, candidates and political parties

Accurate voter registration is a critical part of any credible electoral process. It ensures the sanctity of the one-person-one-vote principle, links voters to

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[12]   The CEC are to be commended for engaging early in planning and publicizing of the concept notes and draft legislation for expert review, thereby demonstrating situational awareness, preparedness, openness, and initiative.

particular constituencies, and informs the logistical planning of polling stations and production and distribution of appropriate ballot papers. Registration of political parties and candidates ensures that all eligible citizens can run for office as members of parties or independent candidates. The large and growing numbers of IDPs in Ukraine and refugees from the country pose two challenges to registration processes. The first is of an operational nature. It relates to ensuring that all eligible voters, candidates and political parties have the opportunity to register, regardless of whether they find themselves in their pre-war place of residence, if they are internally displaced, or live abroad. The second challenge is legal in nature. It will be essential to consider how current residence determines the eligibility of voters or candidates to vote and be elected, and where. These issues will not be new, as they existed in some form following the occupation and annexation of Ukrainian territory by Russia in 2014. At the 2019 early parliamentary elections, IDPs from annexed and occupied regions had the right to vote for the 50 per cent of parliamentary seats filled by nationwide closed-party lists but could not vote in a single-seat constituency.

Electoral campaigning and political party financing
A period of war will inevitably disrupt the functioning of political parties, necessitating time for rebuilding. For political parties—particularly regional parties and branches—decisions to either hold elections according to the existing calendar, or organize them quickly after the conflict ends, or delay elections until party structures are re-established and reinforced, may be existential. The electoral campaign will be a milestone that tests and displays the strength of links between the political leadership, party activists and party supporters. Therefore, issues that need early consideration should include the ability to establish a level playing field for all political parties to register and campaign. In this respect, the relative opportunities for introducing regulations on political party financing may be critical to help institutionalize political parties and increase their accountability. In addition, the precarious state of Ukraine's economy might add extra challenges to levelling the playing field, as some actors might seek an increased 'return' on influencing political campaigns if they have enough funding available.

Voting and special voting arrangements
Ukraine will likely face a situation in which many citizens will be unable to cast their ballot at a regular polling station. These may include refugees, IDPs, civilian and military service members and persons with disabilities. To ensure fulfilment of their voting rights, Ukrainians will need to examine the broad array of SVAs. In the 2019 early parliamentary elections in Ukraine, 1.7 per cent of registered voters used mobile voting (613,866 voters) (OSCE-ODIHR 2019). It is likely that SVAs will need to be significantly scaled up for the next elections. This requires consideration early on.

Lessons learned from the rapid expansion of SVAs during the Covid-19 pandemic showed that it is easier to expand existing mechanisms than to introduce previously untried methods. Online voting has been under consideration in Ukraine for several years and may be considered a convenient

solution for enfranchising IDPs and refugees. However, the introduction and implementation of credible online voting is a long-term process, not to be undertaken lightly. It is unlikely that implementation of e-voting that enjoys public trust will be feasible at short notice and in the current context of physical and cyber security threats.

The sheer number of out-of-country voters (OCV) renders unviable the current modalities that rely on Ukrainian embassies and consulates as polling places as envisaged by the current election law. The operational requirements to facilitate the votes of millions of voters abroad will likely lead to a demand for a wider range of OCV options, including internationally facilitated polling stations in designated premises by the host governments.[13] The complexity of introducing these options should not be underestimated. A range of activities would be necessary: from creating stakeholder buy-in about voting methods and eligibility criteria, to legal changes, to ensuring host country agreements and support and solving operational questions. Activities of the Organization for Security and Cooperation in Europe and the International Organization for Migration together with host countries in facilitating OCV—for voters from Bosnia and Herzegovina (1996–1999), East Timor (1999), Kosovo (2000–2001), Afghanistan (2004), Iraq (2005) and Ecuador (2006–2007)—provide comparative experiences in that voting arrangements were provided to sizable numbers of IDPs or out-of-country citizens.

Electoral reform

It is plausible that peace and normalization in Ukraine will bring a renewed discussion on electoral law reform. In this respect, it will be important to allow for an open and participative debate on whether the current electoral legal frameworks are fit-for-purpose in a profoundly changed Ukraine. While the legal framework is robust,[14] the pre-war framework may not cover all issues arising out of the war and its effects, such as voter and candidate registration, campaigning, voting and special voting.

Comparative experience from electoral law reform processes shows that broad consultation and consensus-building take time, resources and genuine engagement. While previous electoral reforms (1997, 2004, 2011 and 2019) came under some criticism - whether for serving the interests of political elites of the time, for being inconsistent or for yielding undemocratic results (see e.g. Kortukov 2020)—they nonetheless responded to popular demands for the improvement of democratic practices at that moment in time.

Context-related considerations

Broadly speaking, elections that take place in unconducive environments marked by deteriorated security, social and political exclusions, the presence of organized crime, war-related grievances or a polarized media environment, will be more vulnerable to events that can compromise the credibility of the

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[13]   CEC draft legislation for expert review, as of October 2022, suggests additional polling stations and a potential two-day voting period to meet these needs.
[14]   ODIHR 2019, <https://www.osce.org/files/f/documents/6/9/439634_0.pdf>.

process and the acceptance of the electoral results. Some of these risks are likely to mark the context in which future Ukrainian elections will take place.

Safety and security will doubtless be crucial in deciding when and how to hold the next Ukrainian election. Safety concerns may involve physical threats related to the use of facilities with structural damage, the residual presence of landmines, unexploded ordinance and access to firearms. In conventional peacekeeping operations, strengthened security is achieved by disarmament, demobilization and reintegration of former combatants, demining processes and broad public education. In many country contexts, these were considered an essential precondition for holding safe elections (Bryden and Scherrer 2012).

Even where physical security is provided, EMBs are faced with cyberattacks, a destabilized information environment, and attempts at manipulation by harmful actors. In 2014, a series of simultaneous cyber-attacks took place during Ukraine's presidential and parliamentary elections. The attacks disrupted the transmission of results by district electoral commissions, in part by launching attacks against the website that displayed the election results. A similar attack against the Central Election Commission (CEC) and candidates was launched a few weeks ahead of the 2019 presidential election. However, the 2019 cyber-attacks did not succeed in disrupting the results because the CEC had installed appropriate defence mechanisms (van der Staak and Wolf 2019). In 2022, relentless and destructive cyber-attacks are part of Russia's warfare against Ukraine, and it must be expected that future elections will also be subject to even more aggressive cyber-attacks than in previous years (Microsoft 2022).

Hybrid hostilities can continue to rage after weapons are put down; cyber and cyber-enabled information operations are frequent choices of autocratic regimes that aim to undermine democracy. Citizen trust in Ukraine will need to extend to electoral and civil defence authorities if there is to be any hope of countering cyber-attacks and disinformation campaigns designed to undermine future elections (NDI 2022). This reality accentuates the importance of ensuring that appropriate and adequate resources, skills and countermeasures are in place to protect against threats to the online security of Ukrainian elections. A high level of cooperation between relevant entities (EMBs, security agencies, state authorities, technology developers, strategic communication experts, civil society) is indispensable. In Ukraine, inter-agency collaboration on election cyber-security occurs primarily between the CEC and the Security Service (Ukraine's main body responsible for cyber-security). This cooperation began in 2010 and intensified after 2014. For the 2019 elections, the Security Service was supported by the NATO−Ukraine Trust Fund on Cybersecurity to strengthen the CEC's technical capabilities to protect it from cyber-attacks (van der Staak and Wolf 2019). Further such efforts will be required for future elections.

International assistance considerations

International electoral assistance (EA) aims to strengthen core electoral institutions and CSOs, provide conditions for meaningful political participation,

and support electoral processes that contribute to a legitimate governance system (International IDEA 2018). EA can take the form of funds to cover direct and indirect costs of implementing electoral processes, advisory support, or the provision of international electoral observation. There are several perspectives to consider when discussing the international community's potential support to Ukraine to conduct future elections. Although a full list of needs is difficult to enumerate at this stage, the international community should endeavor to support Ukrainian electoral processes through facilitation of OCV, other necessary technical support in strengthening the capacity of EMBs and national election observer groups, and international election observation, inter alia.

The long and established experience of the Ukrainian state in organizing elections provides an excellent baseline for the EA that the country might request. As already mentioned above, the facilitation of voting processes for displaced Ukrainians abroad is one opportunity for international support. Many historical examples have demonstrated that infrastructure and facilitation by the international community can be a key aspect should SVAs be required. Another potential area for assistance is support in reconstructing vital infrastructure that has been damaged or destroyed by the war. This infrastructure is not only physical spaces, but also the capacity to print ballots, machinery involved in the distribution, storage, counting and tabulation of ballots, or data infrastructure needed to carry out elections successfully.

For any given support, it is always important to be aware of comparative international experience. Reliance on the international community for EA carries some risks related to sustainability—be it technical complexity, financial cost, or political rejection (López-Pintor 2005). As experiences show, EA has to be designed with a long-term perspective, which means attending to the institutional capacity to organize financially viable, resilient, trusted, and predictable elections over multiple electoral cycles (Pearce Laanela et al. 2021).

Conclusions on electoral processes

Elections cannot be put on hold until all conditions are ideal; rather, they are a milestone towards normalization after a war. Lessons learned from global experience can guide and inform some of the critical issues, such as the security of polling, large-scale OCV or accommodating other modalities of special voting as instrumental conditions for delivering credible results. Electoral management gains greater social importance in an environment where elections can be a gateway for malicious foreign interferences aiming to weaken and disrupt democracies. Protecting electoral institutions and actors requires professionalism, thoughtfulness, and agility to prevent risks from materializing, resist shocks, and quickly overcome crises on the path back to normalcy. As the Russian invasion places Ukraine at the crossroads of global security, future elections in the country will be a test of democratic resilience that will resonate outside of Ukraine's borders. Delivering a credible process and widely accepted election results will require broad mobilization, conversations, and alliances across state agencies and civil society.

2.5. HUMAN RIGHTS AND DEMOCRACY

Box 5. **Key takeaways**

- The Ukrainian judiciary still requires significant reform in order to ensure access to justice, and international cooperation and institutional support will likely be required to credibly adjudicate war crimes and crimes against humanity.
- In terms of media and civil liberties, balancing the protection of freedom of expression and protection against harmful propaganda will be a key challenge for post-war Ukraine. Ukrainian civil society will also likely require significant assistance in order to return to its pre-war efficacy.
- Given the decimation of the Ukrainian economy by the war, protecting existing labour rights and ensuring Ukraine meets international standards will be key to returning economic life to the country.
- Vulnerable minority groups, most notably Roma and LGBT+ people, could be at risk of seeing recent human rights gains erased without concerted support and attention.

In post-conflict situations, there is a high risk of human rights violations, ranging from sexual violence to the abrogation of labour rights, to the erosion of the rights to freedom of expression and association due to weakened legal institutions. In an intermittent state of war and coping with a foreign country occupying significant parts of its territory, it is unsurprising that Ukraine has struggled to progress on some areas of human rights protection, but the country has taken significant steps forward in the past decade. A key focus of post-war support must be ensuring that hard-fought gains are not lost, but also that persistent shortcomings are not put aside.

President Zelenskyy signed a membership application for Ukraine to the EU on 22 February 2022, and on 23 June 2022, the EU granted Ukraine candidate status (European Commission 2022). While accession is a long and complex process, subject both to member state 'enlargement fatigue' and candidate state frustration with the costs and delays, the application is part of more than a decade of Ukrainian European integration backed by civil society and various administrations. Candidate status is also a powerful tool for aligning domestic Ukrainian interests towards human rights and the rule of law. The Copenhagen criteria set out the standards that all potential EU member states must meet, including the 'stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' (European Commission 2022). This section will lay out key human rights issues—both those that were unsolved before the war, and those that are likely outcomes of Russia's full-scale invasion.

However, the EU accession procedure is not a panacea, and states that joined in the 2004 and 2007 waves of enlargement have frequently regressed in the areas which were the specific focus of enlargement conditionality, most

notably with regards to anti-corruption (Papakostas 2012). In the Western Balkans, the EU has been criticized for permitting member states to progress with only partial compliance, or through exercises that exclude popular or civil society participation (Dudley 2020; Vidačak 2021). These outcomes can be avoided in Ukraine's case via thorough and democratic engagement with Ukrainian society to ensure that reforms and conditionality are properly embedded, supported and understood.

This section uses the Fundamental Rights framework of International IDEA's Global State of Democracy Indices (International IDEA n.d.) to categorize these human rights issues in a comprehensible way. However, human rights are by definition universal, indivisible and interdependent, and this presentation should not be taken to prioritize one right over, or at the expense of, any other.

Access to justice

Protecting access to justice will be a key post-war priority, as domestic reformers will need to restart initiatives put on hold during the Russian invasion, while simultaneously ensuring proper investigations of war crimes and human rights violations that occurred in areas under varying levels of Ukrainian government control.

Judicial reform

The judiciary has long been one of Ukraine's least trusted institutions and a major target for reform by domestic actors and international partners (see e.g. European Commission 2018; USAID 2021). As seen in Figure 8, Orange Revolution-era gains were soon reversed under President Yanukovych, when the level of Judicial Independence was at its lowest since Ukrainian independence. Relative gains after Maidan do not represent historical improvements, but a return to the pre-revolutionary status quo. Accordingly, reforms to date have only had piecemeal success, with judges in senior posts including the Constitutional Court and the High Court of Justice, inter alia, assumed to be captured by powerful political interests, and judges in lower administrative and criminal courts believed to be susceptible to bribery and undue pressure (Democracy Justice Reforms 2022). The Constitutional Court, in particular, has repeatedly stymied key government reform efforts (Leshchenko 2020; Minakov and Pomeranz 2021). Expanded support for civil society and government actors engaged in judicial reform, as well as ensuring that judicial procedures result in the timely application of justice, will be key to building public trust in the state's ability to provide equitable access.

Academic literature on judicial independence in post-conflict settings generally show a reversion to the pre-conflict mean, and that marked improvements are rare (Haggard and Tiede 2014). However, as comparative datasets are dependent on civil conflicts and not interstate warfare, Ukraine might not be bound to this trend.

### Investigation and adjudication of war crimes and crimes against humanity

As the war continues, evident violations of human rights law and international humanitarian law are being widely reported (see: UNHCHR 2022a; OSCE 2022;

ICRC 2022; Amnesty International 2022a). The situation is staggering in both scale and kind: Ukraine estimated it was investigating 26,000 possible war crimes cases in August 2022, and independent observers have documented crimes as various as systemic torture and the forced deportations and adoptions of Ukrainian children by Russian families (El Deeb et al. 2022, Human Rights Watch 2022). It is therefore likely that Ukraine will pursue accountability and reparations in the aftermath of the war, in addition to the measures it is currently seeking in domestic and international forums.

The International Criminal Court has begun to investigate potential war crimes and crimes against humanity (ICC 2022), and Ukraine has lodged a complaint alleging genocide before the International Court of Justice (ICJ 2022).

Neither Russia nor Ukraine are parties to the Rome Statute, although Ukraine accepted the jurisdiction of the International Criminal Court (ICC) in 2014 (Ukraine 2014a; 2014b). Successive Ukrainian governments have cited domestic constitutional obstacles as the justification for declining to ratify the Rome Statute, but all these were settled with an amendment to Article 124 of the Ukrainian constitution that entered into force in June 2019 (Coalition for the International Criminal Court 2019). However, while the ICC can therefore

Figure 8. **Judicial Independence in Ukraine**
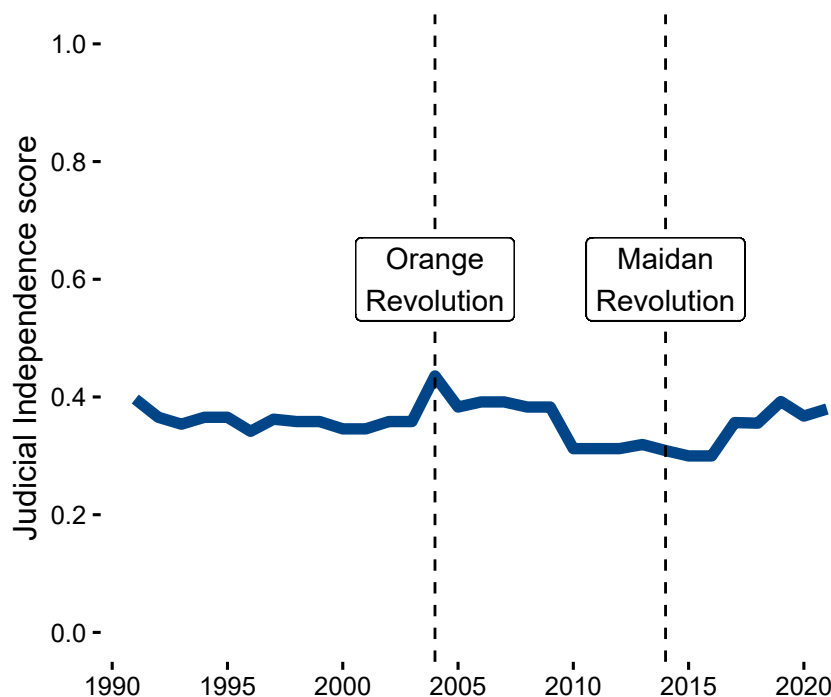
Source: International IDEA, The Global State of Democracy Indices V.6, 2022, <https://www.idea.int/gsod-indices/democracy-indices>, accessed 25 July 2022.

exercise jurisdiction over three of the four core crimes (crimes against humanity, war crimes and genocide), it has no jurisdiction in this case over the fourth core crime of aggression (Komarov and Hathaway 2022).

To this end, the Ukrainian Government, the EP and others have indicated a preference to pursue accountability for the crime of aggression via an ad-hoc international tribunal (EP 2022b; Hathaway 2022).

Ukraine's constitutional framework does not allow for the establishment of extraordinary or special courts (Ukraine 1996: article 125), but legal jurists in Ukraine interpret the relevant constitutional provision as permitting the establishment of an international (as opposed to domestic) judicial accountability mechanism, subject to previous constitutional considerations outlined by Ukraine's Constitutional Court (for a full analysis see: Komarov and Hathaway 2022). Such a mechanism could provide an additional boost for judicial reform by demonstrating that justice can be achieved through transparent and meticulous legal processes. There has been significant debate on what form such a special tribunal could take, with the Special Court for Sierra Leone as a guiding model (Crane et al. 2022). However, leading Ukrainian human rights lawyers and CSOs have argued equally pressing concerns are the ratification of the Rome Statute and alignment of domestic legislation with international human rights law (Coalition for the International Criminal Court 2022).

At the time of writing, Ukraine is pursuing war crimes and conflict-related adjudication using existing domestic courts and statutes which specifically proscribe the crime of aggression (Ukraine 2001: article 437). The ICC has reportedly been involved in the investigation stage, but neither its prosecutors nor the specialized Ukrainian Department for Supervision of Crimes Committed in Armed Conflict have reportedly been involved in trials to date. The investigation process of the first war crimes trial held in domestic courts—that of Vadim Shishimarin, a Russian soldier who was sentenced to life imprisonment on 23 May 2022—lasted roughly one month, which the Ukrainian human rights group Zmina noted was held at 'an extremely high pace, which raises concerns over the quality of evidence collected in such a short time span' (Ukrainian Legal Advisory Group 2022).

Ukrainian and international human rights organizations have argued that these difficulties stem in part from the persistent shortcomings of Ukraine's pre-war justice system, and that a significant ramping up of international technical, financial and judicial support is needed to ensure that justice for the victims of war and conflict-related crimes can be achieved. As part of a set of recommendations produced for the Ukraine Accountability Conference in July 2022, a coalition of Ukrainian and international non-governmental organizations wrote (all language from the original):

> [Since 2014] Ukrainian and international NGOs have been documenting alleged grave crimes, worked on building capacity of the domestic authorities to prosecute them effectively,

> advocated for necessary changes to the legislative framework and ratification of the Rome Statute by Ukraine. Yet Ukraine's failure to prioritise justice effectively [since 2014] resulted in the severe deterioration of the situation since the full-scale invasion by the Russian Federation. Many gaps that had existed in the legal system prior to the full-scale invasion on 24 February 2022 continue to exist at the domestic as well as international level. They put the entire justice project in Ukraine in great jeopardy (Coalition for the International Criminal Court 2022).[15]

In practical terms, such support would involve increased cooperation between Ukrainian and international prosecutors and investigators, more generous provision of technical equipment, and greater cooperation with Ukrainian human rights legal experts from civil society.[16] Given the concurrent and long-running efforts to reform the Ukrainian judiciary, international partners should consider prioritizing serious capacity-building support for Ukrainian legal institutions under the principle of complementarity.

Addressing impunity for human rights violations

Building a trustworthy and capable judiciary will be key to addressing issues of impunity for those who commit human rights violations. Local human rights organizations have documented a rise in attacks on, and criminal persecution of, human rights defenders in government-controlled Ukraine in recent years (Human Rights House 2021). Although these issues are separate from the war- and conflict-related crimes discussed above, they are determined, in part, by the same lack of judicial capacity for handling complex cases and judicial corruption. Complementary international cooperation with Ukraine on war- and conflict-related matters could reasonably be expected to have positive knock-on effects throughout the justice sector.

Whereas the majority of these involve mild or moderately serious cases, extreme cases like the unsolved high-profile murders of the Kherson activist Kateryna Handziuk and the investigative journalist Pavel Sheremet, as well as the still-unresolved cases of the deaths at Euromaidan and the Odesa Trade Union House fire, do serious damage to the justice system's credibility. It must be noted that the scale of impunity for human rights abuses in government-controlled Ukraine has been dwarfed by that in occupied Crimea and the so-called people's republics, but also that strengthening accountability in Ukrainian government institutions will be key to any future successful reintegration or peacebuilding efforts. Finally, the issue of impunity should not be understood as purely judicial, and may also reflect a lack of resources and adequate training for law enforcement bodies (Costa-Kostritsky 2018).

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[15] The coalition produced a generalized set of target areas for improving and alleviating the situation, which is available online here: <https://www.coalitionfortheicc.org/sites/default/files/cicc_documents/Conclusions%20and%20Recommendations%20from%20the%20NGO%20Workshop%20Ukraine%20Accountability%20Conference.pdf>.

[16] The mobile DNA-analysis laboratory donated to Ukraine by France was praised in research for this report as a positive example of technical support, with the reservation that it was far from adequate for the scale of evidence that Ukrainian war crimes investigators need to process: <https://lt.ambafrance.org/France-donates-a-mobile-DNA-analysis-laboratory-to-Ukraine-Joint-press-release>.

Civil Liberties

Freedom of Expression

Ukraine possesses a diverse and active independent media, including a public broadcaster with multiple national and regional television and radio outlets. However, major media outlets continue to be owned as conglomerates and operated in the interests of competing political clans, and independent monitors record hundreds of incidents of attempted political pressure, censorship, threats and violence against journalists every year (IMI 2021). In 2021, President Zelenskyy issued a decree that removed three television stations belonging to the pro-Putin oligarch Viktor Medvedchuk from the airwaves. The decision was intensely debated (Dam and Gorbunova 2021), weighing the need for Ukraine to protect itself from Russian propaganda and soft power against the decree's questionable constitutionality and the risk of setting a dangerous precedent of the executive unilaterally infringing on press freedom. Media freedom has been limited further during the full-scale invasion on national security grounds (Koshiw 2022).

Freedom of Association

Ukrainian civil society has arguably been the strongest driver of its democratic development. In response to Russia's full-scale invasion, many CSOs that focused on human rights, anti-corruption, or technocratic governmental change immediately refocused their capacities on delivering food and medical aid, investigating war crimes, and other pressing humanitarian efforts (German Marshall Fund 2022; Sushko 2022). The performance of CSOs in this regard has been remarkable, especially in contrast to better-resourced and more generously funded international institutions, which have been slow to respond and frequently absent (Humanitarian Outcomes 2022). However, combined with the death toll, mass displacement, and physical destruction of the Russian full-scale invasion, it marks an unprecedented disruption to the activities and efforts of all spheres of civil society. In addition to physical infrastructure, many human networks that were vital for the robust functioning of civil society may be irreparably damaged by the war. For the civil society space to regain its former strength and efficacy, significant financial and human capital investments directed by Ukrainian civil society itself will be required.

The regulation of political parties in post-war Ukraine will merit special attention: whether the ban on pro-Russian political parties (May 2022) will be followed up by further steps to limit the activities of, or prosecute members and activists of, the banned parties is an open question. Restrictions on TV channels owned by former President Poroshenko, as well as refusals to allow him to exit the country, may indicate future contestations of the ability of opposition political forces to organize and campaign.

Social Rights and Equality

Basic welfare

The International Monetary Fund estimates the Ukrainian economy will shrink by a third as a result of the war (Shalal et al. 2022), putting incredible stress

on welfare provision in a state that has long struggled in this area. Before the war, as much as 25 per cent of Ukraine's economically active population was engaged in legal and illegal work abroad (Milakovsky 2018). The toll of the physical destruction of the war, the damage to official welfare institutions, and the ruptures in lateral networks of mutual aid are as of yet incalculable, but certain to be historically large. In recent years, the Ukrainian government has sought to stimulate domestic economic growth through deregulatory efforts that have been heavily criticized by labour unions and rights activists, culminating in a March 2022 law that derogated major labour protections for the course of martial law (Mamo 2021; Guz 2022). Continued steps in this direction could pose challenges for Ukraine's European integration, as article 296.2 of the European Union—Ukraine Association Agreement states that:

> A Party shall not weaken or reduce the environmental or labour protection afforded by its laws to encourage trade or investment, by waiving or otherwise derogating from, or offering to waive or otherwise derogate from, its laws, regulations or standards, in a manner affecting trade or investment between the Parties.
> (EU 2014)

Social Group and Gender Equality

Discrimination on the grounds of employment has been banned in Ukraine since 2015. However, it is enforced only under significant public pressure, especially when regarding LGBT+ and minority Roma people (see A. Kravchuk 2021; Amnesty International 2019). Similarly, Ukraine has adopted a law recognizing the status of Crimean Tatars as an indigenous people of Ukraine (EP 2021b), but activists argue it has yet to be practically implemented. Respect for and protection of minorities is a key part of the Copenhagen criteria: the ability of post-war Ukrainian law enforcement and judicial authorities to protect minority rights, and especially LGBT+ rights, will likely be a high-profile issue.

Ukraine's Constitution defines marriage as between a man and a woman, and there is no recognition for same-sex couples provided in Ukrainian law. LGBT+ couples are not allowed to adopt children and are not legally considered family. Simultaneously, the LGBT+ community in Ukraine has become increasingly public in the last decade and has won a number of human rights victories, such as the ability to hold an annual pride parade in Kyiv without the overwhelming violence (Gessen 2015) that accompanied earlier attempts. Despite improvements, far-right nationalist protesters still routinely attempt to violently disrupt public LGBT+ events and activists (RFE/RL 2021). Attacks on LGBT+ community centres and activists have been increasing year-on-year (Vikhrov 2021) and have continued during the war (Lavers 2022a; 2022b). LGBT+ activists are vocal proponents of a draft bill (Ukraine 2021b) on hate crimes and combating discrimination, arguing that it would give law enforcement the necessary legal tools to combat and investigate identity-based attacks not only on LGBT+ Ukrainians, but on all social groups (LGBT Human Rights Nash Svit Center 2020).

Importantly for Ukraine's foreign partners, Ukrainian political parties opposed to European integration have attacked the LGBT+ community in the past, for instance through effectively instrumentalizing the EU's conditionality approach to promoting LGBT+ rights (Shevtsova 2020). This has had sometimes deleterious effects for the security of LGBT+ communities in the country. LGBT+ people are also targeted by right-wing Ukrainian nationalist groups. Due to the higher level of risk that LGBT+ people face in conflict and post-conflict environments, future gender mainstreaming efforts in peacebuilding, security, and rebuilding should prioritize the inclusion of LGBT+ experts and perspectives (Hagen 2016) to avoid the reproduction of violent and repressive structures (UNHCHR 2022b).

The war is disproportionately impacting women and exacerbating existing gender disparities. Since 2014, women have made up the majority of IDPs: due to restrictions on military-aged men leaving the country, 90 per cent of current Ukrainian refugees are women (UN Women 2022a). Studies show that displaced women face discrimination in attempting to access economic resources, public services and decision-making processes (Care 2022a). A recent analysis by UN Women found that before the war, women were overrepresented among those living in poverty and underrepresented in the workforce (UN Women 2022b). In parallel, 75 per cent of women had experienced gender-based violence, a dispiriting trend which has been far more acute in occupied territories (Amnesty International 2022b). Rape has also been used as a weapon in the ongoing invasion, as documented by human rights researchers and journalists (Dam and Gorbunova 2021; Meduza 2022b). More broadly, displaced women face additional challenges in accessing adequate sexual and reproductive health care (Reuters 2022c), as well as maternal, newborn and child healthcare (Care 2022b).

Women's and LGBT+ groups have played significant roles both on the frontline of the war and in humanitarian efforts, setting up mechanisms to help stranded civilians, and making up the bulk of the volunteer groups that provide food, military clothing and other supplies to those who are fighting (Melnyk 2022; Ferris-Rotman 2022). However, women have largely been excluded from ongoing peace processes, marginalized as experts in international media (Kassova and Scharff 2022), and absent from high-level decision-making processes in general (Wright 2022).

This is in line with pre-war trends, where despite an increase in the percentage of women MPs from 12 to 21 from 2014 to 2019, Ukraine remains below both the European and global average (30.4 and 26.1 per cent, respectively). Only 5 of 23 parliamentary committees are headed by women. Gender equality activists have not been successful in pushing for a national gender quota, but the country has ratified the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and, as of 20 June 2022, the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention) (European Pravda 2022).

With women generally lacking in leadership positions outside of civil society, the management of gendered mass trauma, unequal experiences of poverty, and the intersections between these challenges as faced by women and other marginalized groups, will be key issues for post-war Ukrainian society to navigate. While the ratification of the Istanbul Convention is a positive sign, that it was announced suddenly and in the context of Ukraine's application for EU membership (despite not being on the list of EU Commission conditions) raises questions about the depth of commitment to its implementation. Consistent pressure from domestic and international civil society will likely be necessary to ensure it does not remain a box-checking exercise.

The issue of diminished civil society capacity as a result of the war is most acute for organizations representing marginalized groups, as their networks are, by definition, the most fragile and exposed to physical and structural violence. In an echo of the period following the Revolution of Dignity, LGBT+ groups in particular are targets of violent attacks by far-right networks. Ukrainian activists have raised the concern that the distortionary effect of Russian propaganda—which exaggerates the size and influence of such networks in Ukraine—has led to insufficient surveillance and law enforcement against their activities.

3. CONCLUSION

At the time of writing in October 2022, the war is ongoing, and peace talks have been set aside as the Ukrainian military continues to take back occupied territory. Though it is difficult to predict the specifics of the end of the war, there are several critical issues to consider with regard to the future of Ukrainian democracy. The way in which these issues are addressed will be pivotal not just for the legitimacy of the state of Ukraine but for the credibility of the democratic model.

The issues laid out above cover some of the core questions Ukrainians will face as they mould the future of their democracy. These include the role of parliament and its relationship with the executive; the role of the Constitution in the aftermath of the war, and the degree to which citizens can continue to exercise their democratic right to vote; whether any constitutional reforms and/or referendums will take place and in what forms; and how gender equality gains can be protected, and human rights violations addressed.

These issues and questions will have to be tackled as a central aspect in the post-war economic, social, and political recovery and will also play a fundamental role in the country's EU accession reform pathway. Rebuilding physical infrastructure alone will demand astronomical resources but reconstruction will go far beyond this. It will require confronting fundamental questions of Ukrainian identity and designing systems that are inclusive, balanced, and conducive to long-term stability and freedom.

The global support that governments and communities have shown thus far bodes well, and other experiences offer many useful lessons that may inspire the hard work of post-war reconstruction. Continuing support that listens to and follows the voices and priorities of Ukrainians will assist in the successful revitalization of Ukrainian democracy in the years to come.

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Abbreviations

CEC	Central Election Commission, Ukraine
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women
EA	electoral assistance
EMB	electoral management body
EP	European Parliament
EU	European Union
FPTP	first-past-the-post
ICC	International Criminal Court
IDPs	internally displaced people
MP	member of parliament
OCV	out-of-country voter
OPZZh	Opposition Platform—For Life
SVA	special voting arrangement
VRU	Verkhovna Rada of Ukraine (Ukrainian Parliament)

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ABOUT INTERNATIONAL IDEA

The International Institute for Democracy and Electoral Assistance (International IDEA) is an intergovernmental organization with the mission to advance democracy worldwide, as a universal human aspiration and enabler of sustainable development. We do this by supporting the building, strengthening and safeguarding of democratic political institutions and processes at all levels. Our vision is a world in which democratic processes, actors and institutions are inclusive and accountable and deliver sustainable development to all.

What we do
In our work we focus on three main impact areas: electoral processes; constitution-building processes; and political participation and representation. The themes of gender and inclusion, conflict sensitivity and sustainable development are mainstreamed across all our areas of work.

International IDEA provides analyses of global and regional democratic trends; produces comparative knowledge on democratic practices; offers technical assistance and capacity building on reform to actors engaged in democratic processes; and convenes dialogue on issues relevant to the public debate on democracy and democracy building.

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Our headquarters are located in Stockholm, and we have regional and country offices in Africa, Asia and the Pacific, Europe, and Latin America and the Caribbean. International IDEA is a Permanent Observer to the United Nations and is accredited to European Union institutions.

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