



Ukraine's 2014 Elections

Monitoring Public Participation of National Minorities Summary

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Abstract

In 2014 Ukraine conducted two national elections against a backdrop of political upheaval and a separatist conflict in which national minority concerns were voiced by some parties. In the context of the election process, reports by international observers did not reflect discrimination against national minorities as voters or candidates. However, a dearth of candidates campaigning as national minorities or including national minority issues in their platforms was observed, and can be traced to peculiarities of the legal framework that disadvantage smaller and compact political forces. It was observed that candidates of various national minority backgrounds may campaign and win elections, but few declare themselves to be representing the interest of a national minority. This was true for both the proportional and simple majority races during the parliamentary elections, in which only five candidates campaigning as national minority representatives were elected to parliament. Ultimately the main issue for national minorities in Ukraine's political process is not one of discrimination, but the realistic opportunity for robust representation and advocacy of their communities' concerns at the national level.

Keywords

Ukraine – parliamentary elections – presidential elections – national minorities – Crimean Tatars – Hungarians

More than at any other time, the election period reveals the state of a country's institutions, its level of political culture, and the process of its democratic development. As many would expect, an election campaign often tests legislation, exposes media bias and puts administration bodies under scrutiny. In addition, if properly observed, it can also serve as a window into national minority relations and the state's progress toward meeting its international obligations in the realm of promoting minority participation.¹

The early presidential and early parliamentary elections in Ukraine this year provided two such opportunities, complicated by the context of postrevolutionary political upheaval, the annexation of Crimea and an ongoing armed conflict in the eastern regions of the country. Both elections were observed by large Election Observation Missions (EOMS) of the OSCE/ODIHR, with a full-time national minority analyst seconded by the OSCE HCNM.² One hundred long-term international observers were deployed throughout the country for a period of eight weeks before the presidential election on 25 May, while 80 long-term observers were deployed four weeks prior to the parliamentary elections on 26 October. Cumulatively, both EOMS interviewed 108 representatives from 17 ethnic minority groups and 8 religious communities across the country, as well as 7 consultative bodies representing minorities. The EOMS also interviewed 14 candidates from national minority backgrounds, mostly during the parliamentary election period.³

Observations

1 In addition to OSCE commitments to protect minority rights in the 1975 CSCE Helsinki Final Act, the 1990 Copenhagen Document and the 1992 Helsinki Concluding Document, among others, Ukraine has also ratified the Council of Europe Framework Convention on National Minorities (FCNM) and an array of fundamental human rights treaties.

2 The OSCE/ODIHR EOM Final Report of the early presidential election and the Preliminary Statement of Findings of the early parliamentary election can be found at <http://www.OSCE.org/ODIHR/elections/ukraine/120549?download=true> and <http://www.OSCE.org/ODIHR/elections/ukraine/126043>, respectively.

3 No observation was conducted in the Autonomous Republic of Crimea (arc) and parts of the Donetsk and Luhansk oblasts under the control of illegal armed groups. During the parliamentary elections only very limited observation took place in the districts of Donetsk and Luhansk where the elections took place.

Taking this election-time survey as a starting point, interviews with interlocutors from national minority communities and as well as other observations during the campaign generally indicate where problems may lie for national minorities in Ukraine and, just as significantly, where they appear not to.

Even while acknowledging a general instability and uncertainty in the country, most national minority representatives interviewed by the EOM continued to assess Ukraine as a society of high inter-ethnic tolerance and reported no harassment or discrimination.⁴ They anticipated full enjoyment of their electoral rights to vote and register as candidates, and felt represented on the election administration bodies in their areas.⁵ Moreover, many noted that right-wing rhetoric no longer featured xenophobic speech as in the past, even while it could be nationalistic in tone. Many dismissed some media coverage on Russian television channels insinuating repeated and systemic violations of national minorities' rights in Ukraine as politically motivated propaganda.⁶

However, while national minority representatives throughout the regions of the country reported no obstacles to their participation, they were also observed to be disengaged from electoral or political processes. Communities and organizations often emphasized to observers that their activities were not political in nature and that they took no special interest in elections. Although most interlocutors indicated that their communities would probably vote, some expressed a lack of faith in the electoral process altogether, while others stated explicitly that political involvement was too risky for national minorities. They sought to resolve problems at the local level instead, as they did not feel that their specific concerns were represented in parliament, except occasionally in the area of language policy. Improved access to mother-tongue education and property issues were among some of the chronic problems named.⁷ This disengagement from national politics was clearly reflected in the low number of candidates running explicitly as national minority representatives. Nationwide, only four candidates on major party lists and two single mandate candidates campaigned as candidates representing the interests of a national minority, even though many other candidates hailed from minority backgrounds. Several of these other candidates, when interviewed by observers, indicated that they did not run explicitly as a candidate representing minority interests because, among other reasons, this could alienate the Ukrainian voters in their district. While some candidates did publish campaign materials in minority languages or conducted campaign events in areas with heavy minority populations, observers reported that platforms and campaign events rarely included a mention of issues, such as language policy or education, concerning minority communities. In the proportional contests only one major party included national minority concerns, and specifically that of the Crimean Tatar minority, in its platform.⁸

Ultimately, only five candidates campaigning as national minority representatives won seats in parliament this year, slightly more than six representatives in the outgoing parliament.

4 Some isolated cases of vandalism and violence were reported against Jews and Roma during the presidential election period. Some representatives of the Russian community also expressed fear and uncertainty about the environment.

5 The Roma community is an exception to this. As indicated in both EOM 2014 reports, Roma representatives reported exclusion from the election process due to illiteracy and a lack of identity documentation. Very few were observed anywhere in the election process, including on election commissions.

6 During its ad hoc visit to Ukraine in March 2014, the Advisory Committee on the FCNM took special note of the potential vulnerability and harm to minorities that could arise due to certain media coverage.

7 Perceptions about representation in parliament and concerns of national minority communities regarding education and language policy are well documented in the OSCE HCNM and OSCE/ODIHR Human Right Assessment Mission (HRAM) Report to Ukraine, pp. 98–102 and 104–106. The Mission overlapped in part with the presidential election period. See: <http://www.OSCE.org/ODIHR/118476?download=true>.

8 The Petro Poroshenko Bloc (ppb) included the promotion of national minority interests as the third point in its party platform.

Altogether, fieldwork during both election periods yielded the conclusion that most national minorities generally did not encounter discrimination as either voters or candidates,⁹ but that very few candidates claimed to represent national minority interests or include minority-related issues in their campaign. While some interlocutors interpreted this lack of engagement to mean that national minorities had no problems or interests compelling their more active organization or representation, analysis of the electoral and political framework from the minority-participation perspective suggests otherwise.

Analysis : The Electoral Framework

According to the 2011 election law, half of the 450 members of Ukraine's Verkhovna Rada (the parliament) are elected on the basis of a proportional system in a nationwide election district under election lists of MP candidates from political parties, and half are elected on the basis of a simple majority system in single-mandate election districts. Despite calls for the reform of the election system into a fully proportional system with open lists, a new law was not passed before President Poroshenko dissolved parliament on 27 August, and early parliamentary elections were held under the 2011 law, adopted under former president Yanukovich. A major criticism of the law was that it retained single-mandate contests, largely seen to favor incumbents and foster corruption in the election process.

An evaluation of the electoral framework from the point of view of minority representation requires an adjusted lens, however, from its assessment overall. Of great assistance in this regard is the *Handbook on Observing and Promoting the Participation of National Minorities in Electoral Processes*, recently released by the OSCE HCNM and OSCE/ODIHR (Handbook). The handbook describes different electoral systems through their impact on national minority participation in great detail, as well as special measures for promoting national minority participation and states' international obligations in this regard. With this lens even the proportional system, as constituted in Ukraine, is problematic when considering national minority participation.¹⁰

First, the high threshold for party lists (at 5%), in combination with the lack of legal provisions allowing for political parties to run candidates as electoral blocs, make it practically impossible for minority parties to be able to run candidates on their own party list with a chance of entering parliament. Therefore, according to interlocutors, national minority representatives must negotiate a position on the lists of major parties. If the potential national-minority candidate does not have enough name recognition or his or her community does not reliably vote as a bloc, then the chances of appearing on the lists are diminished. Even those who do manage to gain a place on a major party list may not have the independence to advocate their community's interests in cases where they do not fully align with the party's. One former MP observed that, historically, national minority representatives who enter parliament as single-mandate candidates have been perceived as more independent.

An interesting exception to this is the case of the Crimean Tatar minority. Crimean Tatar leaders, who have both name recognition and whose community has reliably voted as a bloc in the past, have elected strong, independent representatives to parliament on party lists. According to the current head of the Mejlis of the Crimean Tatar People, the Tatars did not fall prey to weak representation like other minorities because they did not allow the

9 Exceptions to this include the Crimean Tatar minority, which primarily lives on the Crimean peninsula where elections could not be organized, as well as the Roma, some of whom encounter difficulties when voting due to illiteracy, language barriers, and the lack of identity documents.

10 Similar conclusions have been drawn by the Advisory Committee on the Framework Convention on National Minorities (FCNM) in its 3rd Opinion on Ukraine, 22 March 2012, ii(133-4), as well as the Venice Commission and the OSCE/ODIHR in their Joint Opinion on the Draft Amendments to the Laws on Election of People's Deputies of Ukraine, June 2013.

party to select their candidate but insisted that the Kurultay do so.¹¹ The Crimean Tatars' particular historical position in Ukrainian society and their cohesive voting patterns have provided them with a stronger position to negotiate with political parties than other minorities that were less politically organized. However, the Crimean Tatar vote was radically diminished last year due to the annexation of the Crimean peninsula and the inability of Ukrainian authorities to organize elections there, and it follows that the position of the community with regard to Ukrainian electoral politics was somewhat weakened. Although two Crimean Tatar leaders appeared on a major party list, only one, Mustafa Dzhemilev, was placed high enough on the list to enter parliament, right after elections.¹²

Given the impediments that proportional contests present for national minority representatives in Ukraine, single mandate contests theoretically should prove more advantageous, or even provide sufficient representation, at least for those minorities who are concentrated territorially. This can only be true, however, if the geographic boundaries of electoral districts facilitate the equitable representation of national minorities by being formed in such a way as to ensure that voters belonging to a national minority constitute the majority of voters in an election district where the minority is concentrated territorially, so long as standards of equal suffrage are respected.¹³ In Ukraine, unfortunately, this appears not to have been the practice in recent years.

Electoral districts were redrawn before the 2012 parliamentary election in a process that the OSCE/ODIHR EOM called lacking transparency.¹⁴ At that time the 2011 election law had reinstated single mandate contests after the country returned from a fully proportional system, but provided no clear criteria for the delimitation of electoral districts. As a result electoral districts were redrawn in some areas of the country on no clear basis without consultation, contrary to recommended practice that procedures for delimiting electoral districts and redistricting should be spelled out in legislation so that rules regulating the process are uniformly applied.¹⁵ During the redistricting process electoral district no. 72 in Zakarpattia oblast, a predominantly Hungarian district that elected Hungarian candidates to parliament throughout the 1990s and in 2002, was divided among four electoral districts. Hungarian organizations unsuccessfully protested this move, stating that the division of their historical district was done to prevent them from electing a majoritarian MP.

In November 2013 amendments to the 2011 election law were adopted to incorporate international recommendations on several issues, including the criteria for the delimitation of electoral districts.¹⁶ National minority representatives were particularly encouraged by the fact that Article 18 of the election law was changed to require that "Neighboring administrative territorial units with dense population of certain national minorities shall belong to the same election district."

11 The Mejlis of the Crimean Tatar People is a permanent executive body consisting of 33 delegates, elected from among members of the Kurultay (Grand Council). The Kurultay is a body elected in a general election by all adult Crimean Tatars, consists of 200 members and convenes at least every second year.

12 "Crimean Tatars: Disappointment at Limited Representation in the Ukrainian Parliament", UNPO, 29 October 2014, <http://unpo.org/article/17653>.

13 Handbook, p. 44–46. See: <http://www.OSCE.org/ODIHR/elections/124067>.

14 OSCE/ODIHR Election Observation Mission Final Report, Ukraine Parliamentary elections, 28 October 2012, p. 7. <http://www.OSCE.org/ODIHR/elections/98578?download=true>.

15 Handbook, p. 45.

16 OSCE/ODIHR and Venice Commission Joint Opinion on the Draft Amendments to the Laws on Election of People's Deputies of Ukraine, June 2013, iii(A)19.

In anticipation that early parliamentary elections would be called, Hungarian representatives contacted the Central Election Commission (CEC) on 8 August this year to inquire about the implementation of Article 18 in Zakarpattia and attached suggestions as to the delimitations of new districts. The CEC responded to Hungarian representatives on 27 August, the day President Poroshenko dissolved parliament, that such a request could be considered per the law. However, the CEC finalized electoral districts the following day, 28 August, with no changes. When Hungarian representatives filed an election complaint with the CEC a few days later, the CEC advised that it had not received updated population data in time to review the boundaries of election districts and, per another provision of Article 18 of the election law, such boundaries could not be changed once the election process had already begun (28 August). Hungarian representatives also filed a complaint to the court that did not meet the strict 5-day deadline for election complaints, and was dismissed as untimely. Hungarian representatives stated that they would file a claim with the European Court of Human Rights.

Romanian representatives also wrote to the CEC in August regarding the delimitation of electoral districts in Chernivtsi oblast. The CEC also responded that changing the boundaries of electoral districts required updated population data that had not been received before the election process began. Therefore, no changes could occur.

This example illustrates the structural obstacles national minorities encounter in single mandate contests that could facilitate the representation especially of smaller, territorially compact minorities if administered correctly. It also illustrates just how difficult the realization of rights and protections already afforded to national minorities under law can also be. Despite complaints from the last election cycle, recommendations in international reports and opinions, amended legislation, and the active advocacy of national minority representatives throughout the process, electoral districts in Zakarpattia and Chernivtsi were not reviewed for these parliamentary elections, even though Article 18 had been amended eight months before the election process started. The result is unsurprising: in Chernivtsi and Zakarpattia oblasts, both populated with high numbers of national minorities, no candidate campaigning as a national minority representative was elected in single mandate contests for parliament in 2014.

Aside from the electoral framework, national minorities also face an obstacle in the political system in the form of requirements for party formation and registration. The Law on Political Parties (the Law), adopted in 2002 but never amended, requires initiative groups applying for political party registration to produce ten thousand signatures from two-thirds of the country's oblasts (17 of 27) in order to prove a nationwide base. According to interlocutors, such a requirement is unreasonable and even impossible for national minorities concentrated in specific areas. Even though the law may comply with basic standards of freedom of association by allowing for the establishment of parties based on communal identity,¹⁷ its registration requirements nonetheless dampen the ability of such parties to form. This was confirmed by a representative from a political party representing a minority,¹⁸ who described a burdensome registration process and also complained that the inability to form electoral blocs prevented it from running candidates for parliament.

Conclusions

Observations from the field indicate a lack of interest and political organization among national minorities and a dearth of candidates who campaign as national minority representatives. Analysis of electoral legislation and

17 In line with Lund Recommendation #8.

18 The Party of Hungarians in Ukraine and Political Party Solidarity, representing the Polish minority.


its implementation from the perspective of promoting national minority participation provides some reasons for this, revealing that certain aspects of proportional and single-mandate contests impede the election of national minority representatives. This is further reflected in the low numbers of self-declared national minority MPs in the outgoing and incoming parliaments. Neither major party lists nor single mandate district boundaries reward candidates for campaigning as national minority representatives; candidates from minority backgrounds, however, campaign and enter parliament as regular politicians. The issue clearly is not discrimination, but representation.

Much-discussed election reform that reinstates a fully proportional system with open lists may improve the representation of national minorities in parliament, but only if new election legislation is drafted with sensitivity to the elements that impact national minority representation, including, but not limited to, the threshold for party lists, the ability to form electoral blocs, and the formation requirements for political parties. Unfortunately neither the public, civil society or the political elite appear ready to consider additional special measures to enhance minority participation, such as reserved seats or dual voting. The topic alone provoked emotional reactions from interlocutors, who interpreted special accommodations for national minorities in the context of the separatist conflict in the east as likely to lead only to the further disintegration of the country. Therefore, election legislation in Ukraine, if it is changed, will most likely only be able to enhance national minority representation through the calibration of traditional electoral elements to facilitate it, or at least not impede it.

Whatever form it takes, the election system in Ukraine needs to produce more strong, independent MPs representing national minority interests in order to have an inclusive parliament capable of raising and resolving minority issues. The disappointment of national minority representatives with consultative bodies within the government speaks to the fact that such bodies cannot replace effective and active national minority MPs. The more the election system allows for truly representative national minority candidates to become MPs, the more Ukraine and its national minorities will benefit.

About the Author

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