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Wartime Democracy on the Road to the EU

Olha Aivazovska

The Economist Democracy Index¹ reveals that just 7.8 percent of the world's population lives in full democracies. This marks a 1 percent decrease since 2022, indicating that hundreds of millions of people cannot fully engage in their country's governance, either directly or through legitimately elected representatives. The deteriorating situation is partly attributed to the COVID-19 pandemic and continuing armed conflicts, including Russia's war in Ukraine.

Although the Index did not classify Ukraine as a fully developed electoral democracy prior to the full-scale invasion, its authors acknowledged that Ukrainian authorities are "struggling to improve the state of democracy." In terms of the electoral process and political participation, Ukraine was even rated higher than some countries labelled as "flawed democracies." This status bolsters Ukraine's efforts to secure military and political support from Western countries.

The martial law² declared by the President of Ukraine,³ restricts certain rights and freedoms to strengthen the country's defence capabilities. This move constituted a deviation from the Convention for the Protection of Human Rights and Fundamental Freedoms, a fact formally communicated to the Secretary General of the Council of Europe.

1 Age of conflict <https://pages.eiu.com/rs/753-RIQ-438/images/Democracy-Index-2023-Final-report.pdf?version=0>.

2 <https://zakon.rada.gov.ua/laws/show/389-19#Text>.

3 <https://zakon.rada.gov.ua/laws/show/64/2022#n2>.

Notably, until the special legal regime ends, the law prohibits constitutional changes, bans elections at all levels and referendums, and restricts peaceful assemblies. These restrictions impede electoral representative democracy and indefinitely suspend the political process in Ukraine.

Nonetheless, Ukraine continues to offer a democratic space that remains largely absent in many regional states, particularly in post-Soviet societies. As a nation at war, it must still comply with European Union (EU) accession requirements and advance reforms in the rule of law, judicial integrity, democracy, and human rights.

There is likely no global precedent for an electoral democracy like Ukraine facing such simultaneous existential challenges – striving to uphold standards for potential post-war elections while implementing a broad set of fundamental reforms essential for EU accession. No other country has navigated this unique path under comparable circumstances, making Ukraine's experience particularly significant on a global scale.

Post-War Election Preparations Indicate Democratic Advancement

In October 2023, 81 percent⁴ of Ukrainian citizens disapproved of holding elections during the ongoing war – a figure that decreased to 74 percent by May 2024. Only 24 percent⁵ of the population supports conducting elections during the “active phase” of the war.⁶ Additionally, over 200 civil society organisations signed a collective statement in September 2023 opposing election plans amid the conflict, outlining several key concerns:

- **Authenticity of elections:** Elections must be genuine rather than merely ceremonial, which requires the restoration of the full range of human rights and freedoms that have been significantly restricted under martial law.
- **Legal and political risks:** Current law prohibits elections, and electoral competition risks politicising the actions of defence forces and military leaders – potentially endangering Ukraine's status as a sovereign state.
- **Security challenges and legitimacy concerns:** Ukraine faces significant security threats and lacks sufficient guarantees to ensure safe elections. These challenges could hinder campaigning efforts, depress voter turnout, and undermine the legitimacy of the election outcome.
- **Voter exclusion and social tensions:** Excluding key voter groups – such as millions of internally displaced persons, Ukrainians under temporary protection abroad, and military personnel – would not only distort representation but also heighten social tensions, ultimately calling into question the legitimacy of the government.

In November 2023, at the ninth Jean Monnet Dialogue meeting,⁷ Ukrainian lawmakers agreed to hold elections within six months of the end of martial law, using the existing electoral system. This decision reflects a shared understanding among citizens, experts, and officials that conducting genuine elections during the ongoing hostilities is not feasible.

4 <https://www.kiis.com.ua/?lang=ukr&cat=reports&id=1309&page=1>.

5 https://www.kiis.com.ua/materials/pr/20240801_n/May%202024%20Opportunities%20and%20Challenges%20Facing%20Ukraine's%20Democratic%20Transition%20%28Ukrainian%29.pdf.

6 <https://www.oporaua.org/vybory/gromads-ki-organizaciyi-proti-provedennya-viboriv-v-ukrayini-pid-chas-viyni-24904>.

7 <https://www.rada.gov.ua/news/Top-novyna/243634.html>.

As Russia's full-scale invasion of Ukraine has evolved into a lengthy war of attrition, trust has waned in political institutions, including parliament. Consequently, it is crucial to outline immediate actions to enable the swift restoration of Ukraine's electoral system once the security situation stabilises.

The first post-war elections must prioritise identifying key organisational and political risks, safeguarding the political process from Russian interference, drafting effective legislation, and conducting extensive outreach both within Ukraine and in host countries accommodating the largest groups of Ukrainians under temporary protection status.

The Constitution of Ukraine guarantees citizens the right to free expression – a particularly challenging principle to uphold in the post-war period. As such, transitional elections marking the shift from war to peace must be carefully planned.

The Constitutional Court of Ukraine⁸ has emphasised that the principle of free elections relies on several key components: the freedom of voters to form and express their opinions; the objective and accurate official determination of election results, free from fraud; and the recognition of these results, alongside respect for the democratic choices of Ukrainian citizens.

Therefore, beyond the constitutional requirements for the electoral process and the interpretations provided by the Constitutional Court of Ukraine – in line with international standards – post-war elections will present one of the most significant challenges for the qualitative restoration of political life. This challenge stems not only from organisational complexities but also from society's high expectations regarding electoral democracy.

For 67 percent of citizens, it is considered “very important” that Ukraine becomes a full democracy, while another 26 percent view it as “important.”⁹ Thus, in 2024, over 95 percent of Ukrainians expressed support for this direction of state development.

To ensure Ukraine's continued progress, its parliament must move beyond the stereotypical view of the pre-election process – specifically, the notion that any consideration of reform signals preparations for imminent elections. In reality, neither the Central Election Commission of Ukraine nor any political institutions or parties have ever successfully navigated such a challenge.

When the cost of error can be exceedingly high, investing in the country's institutional capacity and potential electoral participants should be treated as a systematic priority.

The Verkhovna Rada of Ukraine should enact a special law to regulate the organisation of the first post-war elections, taking into account new challenges such as ensuring the security of participants and countering Russian interference. Regardless of the situation at the front, the likelihood of Russian interference in political processes remains at 100 percent.

To address these challenges, it is essential to create conditions that enable all citizens to participate in the electoral process, regardless of their location. When the post-war parliamentary elections take place, representativeness cannot be fully guaranteed without substantial voter participation in the

8 АБз. 10 пп. 2.4 п. 2 мотивувальної частини Рішення від 21 грудня 2017 року, № 3-п/2017, <https://zakon.rada.gov.ua/laws/show/v003p710-17#Text>.

9 https://www.kiis.com.ua/materials/pr/20240801_n/May%202024%20Opportunities%20and%20Challenges%20Facing%20Ukraine's%20Democratic%20Transition%20%28Ukrainian%29.pdf.

foreign electoral district. Currently, around 20 percent of the Ukrainian electorate resides outside Ukraine.

Therefore, the challenge lies not only in opening a proportional number of polling districts or stations but also in implementing a comprehensive outreach, education, and mobilisation campaign. In this context, it is crucial to secure understanding and support from the countries that have welcomed the largest number of Ukrainians under temporary protection status, particularly in facilitating voting and ensuring their backing rather than opposition to the electoral process.

Key Outstanding Challenges

- **Open-list proportional representation**

A key component of Ukraine's 10-year electoral reform for parliamentary elections, may face scrutiny from politicians regarding its application in post-war elections due to the complexity of procedural issues.

- **Voter accessibility and electoral legitimacy**

Exercising the right to vote must consider the significant internal migration within Ukraine, as well as the millions of voters residing abroad. Expanding opportunities for participation in the voting process will strengthen the legitimacy of electoral bodies and help mitigate the risks associated with Russian interference in the political process.

- **Residency requirements and the right to be elected**

The right to be elected must be protected and adapted to post-war realities. For instance, Ukrainian citizens who left the country at the onset of the full-scale invasion and later returned would, under current law, be ineligible to run for parliamentary or presidential elections due to the violation of residency requirements – five years for parliamentary elections and ten years for presidential elections.

- **Implementation of OSCE/ODIHR recommendations**

Applying the recommendations from OSCE/ODIHR missions conducted between 2014 and 2020 will signal political will and a commitment to align Ukraine's electoral processes with the Copenhagen criteria, a fundamental step towards EU accession.

- **Security and safeguarding electoral integrity**

Legislative regulation of security challenges – including physical security, cybersecurity and data protection, political security, and efforts to counter Russian disinformation and propaganda – must be paired with practical solutions. These include the development of infrastructure, training, provision of equipment, and the creation of bylaws and clear guidelines for organisers and participants. Even for post-war elections, the voting infrastructure must account for heightened threat levels in regions near the demarcation line or the Russian border. A ceasefire alone cannot fully protect elections from potential disruptions caused by planned and systematic attacks.

- **Community security and the military-to-civilian transition**

Establishing a legal framework to evaluate community security during the transition from military to civilian administration is essential to prevent the politicisation of electoral decisions at the regional level. Given Ukraine's diverse security landscape, an impartial assessment scale is critical to mitigate political manipulation and interference.

- **Election infrastructure and post-war recovery**

Election infrastructure must be made more accessible to all citizens and prioritised in post-war recovery and reconstruction efforts, ensuring that electoral processes remain resilient and inclusive.

Whenever post-war elections are held, Ukraine must be prepared to align its practices and procedures with EU legislation and the Copenhagen criteria in real time. The demand from Ukrainian society for high-standard elections remains vital. Achieving this requires the implementation of OSCE/ODIHR recommendations and the development of legislative frameworks and practical measures for conducting post-war elections under extremely challenging security conditions.

Ukraine must also focus on strengthening the capacity of democratic institutions, particularly at the local level and within public consultations, to ensure inclusive and resilient governance.

A comprehensive revision of Ukraine's political party legislation – untouched for two decades – will be essential for EU integration. Although a new draft law has been under development in parliament for five years, it has yet to be adopted. Its approval has been repeatedly postponed, largely due to existing conditions that benefit most political players.

While parties retain a monopoly on nominating candidates for parliamentary and local elections in major cities and regions, they are not required to uphold democratic internal practices. This gap in accountability presents a significant obstacle to aligning Ukraine's political system with EU standards.

Consequently, the key players in the political landscape may, in fact, be the least democratic. Without the implementation of effective governance procedures within political parties, post-war elections could face even greater challenges in ensuring the quality and legitimacy of political representation.

In addition to the aforementioned points, further changes must be addressed promptly to ensure legal certainty for future election participants. These proposals, along with others, have been outlined in the collaborative Roadmap for Reforms developed by the Civil Network OPORA and the International Foundation for Electoral Systems (IFES).¹⁰

Civic Engagement Tools During Times of War

Despite the absence of elections and the protracted conflict, Ukraine maintains a structured system for civic engagement in governance. Although often overshadowed by military threats, this system plays a crucial role in preventing any political figure from consolidating authoritarian power.

Shifts in public discourse, along with instances of criticism and conflict between civil society, the government, and its institutions, reflect that both military and political leaders remain attentive to public opinion. Moreover, non-governmental organisations and the media are gradually moving beyond the military's self-censorship, increasingly critiquing government actions and officials.

This also pertains to the timeframe for restoring political processes in Ukraine, which remains highly adaptable and depends entirely on battlefield conditions, the scale of international support and military aid, shifts in the political landscapes of key partner nations, and prospects for peace talks.

10 <https://www.oporaua.org/vybory/dorozhnya-karta-viborchoyi-reformi-v-ukrayini-2023-v-umovah-voyennogo-chasu-24959>.

Evolving rhetoric from the Kremlin, Ukraine's allies, and Kyiv itself frequently shapes this dynamic. As a result, the country's political leadership often navigates the political landscape through an electoral context paradigm, despite the absence of formal elections.

Since 2019, citizens have submitted 51,000 e-petitions to President Volodymyr Zelenskyy. In 2023, a record number of these petitions surpassed the required threshold of 25,000 signatures, prompting the president to issue responses on 105 occasions.¹¹ The subjects of these appeals vary widely, from requests to posthumously award the title of Hero of Ukraine to fallen soldiers to calls for the president to veto legislation passed by parliament. Importantly, when petitions receive the required support from verified users, the authorities are legally obliged to address them in accordance with the Law of Ukraine on Citizens' Appeals.

While users may not always be satisfied with how their concerns are addressed, this tool has proven effective even under martial law. Petitions frequently bolster advocacy campaigns, such as one urging the president to veto a legislative bill that barred the disclosure of officials' property declarations.¹² Within just a few days, the petition's author and various anti-corruption NGOs collected nearly 84,000 signatures – far exceeding the required 25,000 – prompting the president to veto the bill and reinstate e-declarations.

A petition urging the president to prohibit electronic casinos – viewed as a harmful addiction for both military personnel and civilians during the war – gained significant traction and received the necessary support. Tragically, the petition's author, soldier Petro Petrychenko, lost his life in action. Nonetheless, his initiative continues to elicit responses from various officials, including the president.

The advocates behind the petition have notably influenced political discourse by creating the electronic petition and raising public awareness about the issue, drawing attention to material or corrupt interests.

The mass media play a crucial role in shaping the quality of politics. Despite the ongoing war, the government has not imposed significant military censorship. Although the *United News* telethon faces strong criticism from the opposition and civil society organisations, alternative perspectives on war, peace, and public administration continue to find space in public discourse.

As most citizens now obtain news from the internet, any systemic restrictions are unlikely to be effective.

At the onset of the full-scale invasion, investigative journalists primarily focused on documenting war crimes committed by the Russian military and addressing related security concerns. Since the autumn of 2023, a growing number of articles centred on anti-corruption investigations have emerged in the public sphere, particularly from media outlets such as Bihus.info, Nashi Hroshi, Skhemy, Slidstvo.info, and others.

¹¹ <https://ms.detector.media/internet/post/34048/2024-01-24-2023-rik-stav-rekordnym-za-kilkistyu-petytsiy-do-prezydenta-yaki-nabraly-neobkhidni-golosy-ruk-h-chesno/>.

¹² <https://petition.president.gov.ua/petition/204906>.

Ukrainian society often receives these journalistic works with considerable distress. Nevertheless, they serve as a crucial safeguard against actions that could undermine the efforts of both the military and civilians in their struggle for the state's future survival.

On June 20, 2024, the Verkhovna Rada of Ukraine adopted the Law of Ukraine on Public Consultations in its second reading and as a whole. This process was both lengthy and inclusive. The law establishes the core principles of public consultations for developing and implementing public policy and addressing local issues.

However, the law does not apply to members of parliament (MPs) or the president, though it does cover central and local governments. The legislation will come into effect twelve months after the end of martial law.

This law formalised a non-binding practice shaped by the influence of certain heads of central authorities or local self-government bodies, as defined in the hromada (community) charter. For instance, the inclusive approach of developing any draft law with stakeholder involvement already fosters a positive reputation for the initiative in Ukraine, particularly when referenced by the Venice Commission or ODIHR in their conclusions on draft laws.

Even amidst the protracted war of attrition that Russia has waged against Ukraine in retaliation for its independence, Ukraine has the opportunity to strengthen its democratic practices without a formal election process. The negotiation of Ukraine's EU membership can reinforce structural reforms within democratic institutions and promote the country's progress during wartime.

Moreover, steady, professional, and balanced preparations for future elections will signal to the public that Ukraine's democratic practices are resilient and not solely dependent on the current leadership.

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Olha Aivazovska – is the Chair of the Board of the Civil Network OPORA, an expert in electoral law and political processes. She is a graduate of the Draper Hills Summer Fellowship on Democracy and Development at Stanford University and the Ukrainian School of Political Studies. She is an initiator of electoral law reform campaigns and has led extensive, impartial election monitoring efforts in Ukraine. Since 2016, she has served as an expert representing the Ukrainian side in the political working group of the Trilateral Contact Group during the Minsk negotiations on resolving the conflict in Donbas. Since 2018, she has chaired the board of the International Renaissance Foundation. She has repeatedly been listed among the most influential women in Ukraine.

Stefan Batory Foundation

Sapieżyńska 10a
00-215 Warszawa
tel. +48 22 536 02 00
fax +48 22 536 02 20
batory@batory.org.pl
www.batory.org.pl

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