



**STATEMENT OF
THE NATIONAL DEMOCRATIC INSTITUTE AND EUROPEAN PARLIAMENT
PRE-ELECTION DELEGATION TO UKRAINE**

Kyiv, Ukraine, November 17, 2018

This statement is offered by a joint international delegation organized by the National Democratic Institute (NDI) and the European Parliament. The delegation's purposes were: to accurately and impartially assess electoral preparations in advance of the 2019 presidential election; review the broader political environment; examine factors that could affect the integrity of the electoral process; and offer recommendations that could contribute to peaceful, credible elections and public confidence in the electoral process. The cooperation of NDI and the European Parliament on this mission is symbolic of the shared trans-Atlantic commitment to Ukraine's sovereign and democratic future.

SUMMARY

Since the Revolution of Dignity, the Ukrainian people have intensified their commitment to achieving a fully-functioning democracy. A presidential election on March 31, 2019, followed by parliamentary balloting later in the year, will test whether the country's institutions and leaders are keeping pace with the people's desire for change.

Russian occupation, military aggression, hybrid warfare, and a subsequent economic recession, have complicated but have not prevented the country from making significant progress in recent years. Achievements include the decentralization of power to the local level, visa-free travel to the European Union, the creation of anti-corruption institutions, reform of public procurement, and macroeconomic stabilization. In addition, the electoral framework is broadly sound. Civil society remains vibrant, influential, and vigilant, and watchdog organizations stand ready to safeguard Ukraine's democratic transition.

Nonetheless, as Ukraine approaches the presidential election, several key issues stand out. Countering Kremlin interference must be a top priority to safeguard the stability and unity of the country. Social media and digital platforms have a responsibility to help Ukrainians in this endeavor. For citizens to make informed choices, all campaigns and candidates should have equitable access to the media and the harmful effects of disinformation must be mitigated. Similarly, efforts should be taken to strengthen those bodies and organizations responsible for preventing political corruption and curbing the role of money in politics, originating both domestically and abroad. The delegates expressed concern about violence and intimidation of

politicians, journalists and civic activists. The maintenance of national cohesion will depend on campaigns that are constructive, seek to unite rather than divide, and respond to the aspirations of the Ukrainian people. Ukrainians clearly support greater equality between men and women, so the underrepresentation of women in political life is striking and should be addressed.

To address these challenges and enhance public confidence in the overall process, the delegation offered a series of recommendations, among them are the following:

- Candidates and political parties should conduct constructive, issue-based campaigns that avoid amplifying societal divisions.
- The Parliament still has time to enact the draft electoral code and in any case should expeditiously pass legislation that would enfranchise internally displaced people (IDPs) and internal migrant workers, strengthen electoral justice. establish an enforceable gender quota in the parliamentary election law, and provide the CEC with the authority and resources to effectively discharge its responsibilities and upgrade its information technology and cybersecurity.
- The Parliament should reinstate the budget proposed by the government for the National Public Broadcasting Company of Ukraine.
- The Central Election Commission (CEC) should embrace the “roadmap” for progress outlined by civil society groups,¹ including transparent open data practices for results tabulation and other key processes.
- Facebook should establish an office in Ukraine and, along with other digital platforms, partner with Ukrainian stakeholders to monitor, expose, and counter disinformation.
- The media, whether traditional or digital, should label political advertising.
- Ukrainian authorities and the international community should support civil society groups in their efforts to monitor election processes and encourage citizen engagement.

A transparent, credible election process would reinforce Ukraine’s democracy. It would also inspire those working for democracy throughout the region. A flawed process would embolden those seeking to undermine the country’s aspirations and right to determine its future, with damaging consequences far beyond Ukraine’s borders. It is therefore vital for Ukraine’s friends in Europe and the United States to stand side-by-side with all Ukrainians in supporting a process that respects the will of the voters. This will help Ukraine better secure its sovereignty and unity as well as its place in Europe and in the broader community of democracies.

ABOUT THE DELEGATION

The NDI delegates were led by Derek Mitchell, president of NDI and former U.S. ambassador to Burma (Myanmar), and William Taylor, executive vice president at the U.S. Institute of Peace and former U.S. ambassador to Ukraine. Other NDI delegates included Christina Hartman, elections expert and political consultant; Laura Jewett, director of NDI’s programs in Eurasia; Patrick Merloe, director of NDI’s electoral programs; and Mary O’Hagan, global adviser and director of NDI’s programs in Ukraine. The European Parliament delegates were led by MEP Dariusz Rosati (European People’s Party, Poland) and included MEP Rebecca Harms

¹ OPORA, the Reanimation Package of Reforms (RPR) and the International Foundation for Electoral Systems (IFES), “Roadmap of Reform for the Central Election Commission,” September 28,28 September 2018.

(Greens/EFA, Germany); and Gerrard Quille, head of unit in the European Parliament's Directorate for Democracy Support.

The delegation held meetings in Kyiv with: political parties across the political spectrum; potential presidential candidates; domestic and international observer groups; representatives of the media; government leaders; election commissioners; members of parliament; and representatives of civil society and the diplomatic community. The delegation conducted its activities in accordance with the laws of Ukraine and the *Declaration of Principles for International Election Observation*,² which was launched in 2005 at the United Nations. NDI and the European Parliament are among more than 50 intergovernmental and international nongovernmental organizations that have endorsed the Declaration. The delegation does not seek to interfere in Ukraine's election process, nor does it intend to render a final assessment of the election process at this time. The delegation recognizes that, ultimately, it will be the people of Ukraine who will determine the credibility of their elections and the country's democratic development. The delegation therefore offers this pre-election statement in the spirit of supporting and strengthening democratic institutions and processes in Ukraine.

NDI analysts will follow up on the pre-election mission's findings and recommendations and monitor procedures through election day and the post-election period. The mission's findings will also feed into the European Parliament's monitoring of developments and preparations for its expected observation of the elections in 2019. In close cooperation with the European Parliament, OSCE/ODIHR, and the International Republican Institute, NDI will conduct a short-term international observation mission for the 2019 presidential election.

The delegation expresses its appreciation to USAID, which has funded NDI's mission, and to the European Parliament. NDI's democracy assistance programs in Ukraine are currently supported by USAID, the U.S. Department of State's Bureau of Democracy, Human Rights and Labor, the National Endowment for Democracy, and the governments of the United Kingdom, Sweden, Canada and Norway. Ukraine is also a priority partner for the European Parliament's Democracy Support and Election Coordination Group, which complements overall EU efforts for the country and is supported by the EU Delegation in Ukraine. The pre-election delegation is also grateful to all those who contributed valuable time to share their views freely. Their perspectives have made this statement possible. NDI and the European Parliament stand ready to continue to assist Ukrainian efforts to build and sustain democratic practices, institutions and values.

POLITICAL CONTEXT

The presidential election on March 31, 2019 will launch the second round of national elections since the Revolution of Dignity in 2014. These elections will be shaped by a complex set of dynamics. The collapse of the Yanukovich regime, the occupation of Crimea and the onset of conflict in Ukraine's East triggered a resurgence of national unity, greater civic and political participation and demand for a fundamental change in the relationship between government and citizens. New political parties were formed and new political leaders emerged. Importantly, the 2014 elections were credible.

² ndi.org/files/DoP-ENG.pdf.

With the election of a new president and parliament, and the formation in November 2014 of a five-party ruling coalition committed to reform, the country began building a working foundation for democratic progress. Ukraine reached major milestones in the following years, including signing a Deep and Comprehensive Free Trade Agreement under its Association Agreement with the European Union (EU), achieving greater energy independence from Russia, strengthening the Ukrainian military, stabilizing the economy, reforming public procurement and administration, introducing visa-free travel with the EU, and establishing new anti-corruption agencies and a high anti-corruption court. With concerted efforts from the government, parliament and civil society, more reforms were initiated in the last four years than in the period between independence in 1991 and the 2014 parliamentary elections.

The ruling coalition fractured in February and March 2016. Three parties went into opposition, leaving only two of the original 2014 coalition parties supporting the government. Since then, major reforms to healthcare, education, pensions and the judiciary have been enacted with support from opposition parties. Early parliamentary elections were avoided and a measure of political stability was achieved in challenging circumstances.

As they approach both presidential and parliamentary elections, polls indicate Ukrainians are united in their support for the defense of Ukraine's sovereignty and the achievement of a fully functioning democracy. A majority supports membership in the European Union. Civil society remains vibrant, influential and vigilant. The media environment is pluralistic, though still controlled by a narrow oligarchic elite. An extensive process of decentralization, which provides more power and resources to local communities, is becoming increasingly popular. The decentralization process is a signature democratic achievement deserving of continuing domestic and international support. Surveys show strong demand for more balanced participation of men and women in political life. Large numbers of citizens express willingness to participate in decision-making.

The political environment is competitive. There is overwhelming demand for political parties and elected officials to represent the interests of citizens, rather than a narrow elite.

At the same time, the country has faced daunting challenges. The Kremlin has been unrelenting in the pursuit of its hybrid war against Ukraine. In addition to the occupation of Crimea and the ongoing military intervention in eastern Ukraine, this aggression includes: cyberattacks; economic and energy pressure; infiltration of civil society, media, academic, religious and party organizations; and disinformation aimed at destabilizing the country by exacerbating social, cultural, linguistic, historical and political divisions and undermining public confidence in democratic processes. Illegal "elections" held in the Russian-controlled areas in eastern Ukraine on November 11 are one recent example of the unconventional but persistent aggression the country faces.

Despite the volume of reforms undertaken, few Ukrainians have experienced tangible improvements in the quality of their day-to-day lives. As a result, many Ukrainians -- whose expectations soared following Euromaidan -- are now disappointed with the pace of change and the quality of governance. Approval of the performance of political institutions at the national level has plummeted over the past four years. This has been exacerbated by a severe recession

and concerns about pervasive corruption. The limited number of successful prosecutions related to the deaths of demonstrators on the Maidan and high-profile corruption cases have contributed to a view that the reforms enacted so far have not delivered justice. In addition, since 2014, there have been disturbing incidents of violent attacks and intimidation against activists, journalists and politicians. The death of anti-corruption activist and whistleblower Katerina Handziuk following an acid attack has been one of the more shocking and widely publicized incidents.

Although most Ukrainians desire greater equality between men and women, attacks against this fundamental democratic principle have gathered pace in the past year. Many of these originated in Russia, but they have been amplified by some Ukrainian opinion leaders. Demand for change is so strong and broad-based, however, that anti-equality messaging can backfire with Ukrainian audiences. Russia's information attacks have failed, so far, to erode Ukrainians' sense of national unity, their determination to defend Ukraine's sovereignty or their commitment to democracy. However, a combination of disinformation from Russia and a high level of political disappointment and uncertainty at home is sowing confusion, pessimism, helplessness and intolerance within some sections of Ukrainian society.

Ukraine cannot tackle these challenges alone. Nor should it. The success of Ukraine's efforts to establish a prosperous, independent and democratic future is of vital importance to global security and well-being. The international community of democracies -- with leadership from the U.S. and Europe -- owes Ukraine both moral and material support on its journey forward. Foremost among these expressions of solidarity is the assurance that the doors to EU and NATO membership remain open.

OBSERVATIONS AND RECOMMENDATIONS

Following are the pre-election assessment delegation's observations about areas for improvement, as well as recommendations on how to address them. Some of the suggestions would need to be undertaken in advance of the March 31 election, while other proposals are intended for consideration before the next parliamentary elections.

Electoral Framework and Administration

There is broad agreement that the legal framework for the presidential election is generally sound. Past observation reports from NDI, the International Republican Institute (IRI), the European Parliament and the Organization for Security and Cooperation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) have noted that the laws governing the presidential election are largely in compliance with international standards. However, some key recommended improvements in the legal framework have not yet been enacted. These include: harmonizing the presidential, parliamentary, and local election laws; streamlining procedures in all types of elections for IDPs and internal labor migrants to vote where they reside; strengthening electoral justice and ending impunity by implementing timely, effective and proportionate punishment for violations of election laws and political rights; and by

providing more effective, impartial electoral dispute resolution mechanisms.³

Major political and electoral reforms were included in the 2014 coalition agreement, incorporating several of civil society's key demands during and following the Revolution of Dignity. A pledge to replace the local electoral system was implemented in 2015, though the system selected, and other aspects of the new law, drew criticism, particularly about the way mandates are awarded. A pledge to replace the mixed parliamentary electoral system with a fully proportional system remains unfulfilled. A draft election code to that effect is still being debated in parliament.⁴ Efforts have been made to build a cross-party consensus among the major parliamentary factions on this issue.

Other major electoral reforms recommended by NDI, the European Parliament, OSCE/ODIHR and other international and domestic observers following the 2014 elections have yet to progress in parliament pending resolution of the debate on the draft election code. These include improving accountability for election law violations, limiting paid political advertising, and introducing a gender quota for parliamentary elections. Corollary recommendations have encouraged consensus-building around the legal framework for elections and making such changes far enough in advance of elections to give all stakeholders time to adjust.

Parliament must call the presidential election by December 21, 2018 and candidates must register no later than February 9, 2019. The deadline for candidates to withdraw will be March 8. The March 31 election will be administered by a three-level election management system consisting of the Central Election Commission (CEC), 225 district election commissions (DECs) and 33,546 precinct election commissions (PECs). The winner will be determined by popular vote. If no single presidential candidate secures more than 50 percent of valid votes cast, a second round of elections will occur on April 21 with the top two candidates facing each other.

Confidence in the previous CEC had been undermined by the continuation in office of many of its members long after their terms expired, as well as the associations between that commission and the much-criticized elections of 2012. In September 2018, the parliament replaced 14 commissioners and increased the overall number of seats on the commission from 15 to 17. Two incumbent commissioners, representing the Svoboda and UDAR parties, will remain in their seats as their terms do not expire until 2021. The new CEC still has one vacant seat. The Commission will broadly reflect the balance of parties in parliament if this position is filled by a candidate from the Opposition Bloc. However, Opposition Bloc leaders have argued that their numbers entitle them to two seats, rather than one, so this issue remains unresolved.

In October 2018, the new Commission elected its chairperson, Tetyana Slipachuk (People's Will) and two deputy chairs, from Samopomich and BPP-Solidarity. Most of the delegation's interlocutors characterized the new CEC as professional and well-regarded, although some civil society leaders raised concerns about insufficient transparency, outreach and inclusion in its early activities. The incoming Commissioners informed the delegation that they are working to

³OPORA, "The process of Ukraine's Implementation of Recommendations in the Area of Elections Suggested by International and National Observation Missions, International Organizations and Foreign Partner Countries," September 10, 2018.

⁴ The Verkhovna Rada of Ukraine, Draft Electoral Code No. 3112-1.

address shortcomings as quickly as possible, including demonstrating the Commission’s political independence. The delegation noted with appreciation the statements issued by the CEC on premature campaigning, its condemnation of the illegal “elections” in the Russian-controlled territories of Donetsk and Luhansk and its willingness to implement provisions of Draft Law 6240 on the enfranchisement of IDPs.

The possibility of the postponement of elections, originally scheduled for December 2018, in some amalgamated communities has highlighted the need for clarification of the CEC’s powers and presented the incoming Commission with a significant political challenge. Three respected Ukrainian and international nongovernmental organizations have offered the CEC a “roadmap” to address these questions and recommend other improvements. It will be important for the CEC to take advantage of every opportunity to build public trust as a foundation for its future effectiveness. Adopting further transparency measures, including open data practices concerning key processes, particularly for the vote tabulation process, and engaging actively with civil society and political parties should be part of those efforts.

The failure to hold accountable those responsible for election violations has been a feature of Ukrainian elections since independence and is a source of much frustration for parties, candidates and voters. These lapses are partly attributable to shortcomings in administrative and criminal codes, as well as overlapping jurisdictions or gaps in the electoral laws. Legislation drafted by the Civil Network OPORA, and submitted to the Parliament by the Cabinet of Ministers, proposes appropriate and proportional sanctions for major electoral offenses.⁵ Nonetheless, accountability can only be established if law enforcement authorities, including the CEC, other administrative bodies, police, prosecutors and courts effectively discharge their responsibilities to bring violators to justice. Law enforcement measures should also be made known to the public so that public confidence is built and the enforcers can be held accountable.

International and domestic election observers have criticized a lack of transparency in the process of compiling the State Register of Voters and creation of voters lists, which among other limitations does not allow political parties and civil society monitors to download and independently verify this critical and often controversial element of the election process. Independent voter register verifications (VRVs) are a best practice that inoculates against disinformation and builds public confidence in election processes. The OSCE/ODIHR and OPORA have noted the importance of making the voter register available in downloadable, machine readable formats for such verifications.

The system that gives parties the right to appoint members of election commissions at all levels has long been manipulated in Ukraine. Wealthier parties have, in every election, effectively bought the seats allocated to weaker ones, often taking advantage of a lack of capacity in small parties to supply commissioners.

In May 2014, the CEC’s website was hacked with the apparent intention of changing the results of the presidential election. Ukraine’s power grid, metros and airports have also been hacked in recent years. Given the Kremlin’s assaults within and beyond Ukraine, cybersecurity will be a

⁵ The Verkhovna Rada of Ukraine, Draft law 8270, “On Introducing Amendments to Certain Legislative Acts of Ukraine Aimed to Strengthen the Liability for Violation of Electoral Legislation.”

significant vulnerability for candidates, campaigns and political parties. The delegation noted with appreciation the establishment of an anti cyber warfare unit within the CEC and the provision of assistance from the United States, NATO and the EU.

Recommendations:

Prior to presidential election:

Election administrators should:

- Adopt transparency measures, including publicizing agendas, draft resolutions and decisions, and making other key election data available in a timely way and in machine readable formats to allow independent verification of the voter register and especially of election results at the polling station level.
- Adopt effective outreach to election stakeholders through regular liaison meetings with candidates, political parties, and civil society to build confidence in the impartiality of the election administration.
- Make concerted efforts to explain the Commission's decisions, including their logic and legal basis, to election stakeholders and the general public to build trust and understanding.
- Develop communications capacities to proactively inform the public of strategic and operational plans and to respond to disinformation aimed at the election process.
- Clarify the jurisdiction of, and strengthen coordination between, the different agencies responsible for the control of election related violations at local, regional, and national levels.
- Strengthen the CEC and government websites and major information technology infrastructure to withstand cyber attacks.
- Develop a strategic plan for the modernization of the election administration, taking into consideration feedback from key stakeholders and the roadmap of recommendations offered by OPORA, the Reanimation Package of Reforms, and IFES.

The Parliament should:

- Provide the CEC with the authority and resources to effectively discharge its responsibilities, upgrade its information technology, and ensure cybersecurity
- Strengthen the legal framework to deter and prosecute violations of electoral laws.
- Ensure that electoral justice, restrictions on abuse of administrative resources and vote buying, and enfranchisement of IDPs, labor migrants and other mobile groups of citizens are addressed.
- Ensure that the Central Election Commission is able to effectuate public procurement procedures in order to purchase essential equipment and supplies in time for the upcoming elections.
- Adopt a number of urgent technical changes to resolve inconsistencies in the legal framework such as submission of electronic declarations by candidates and the use of ID cards.
- Seek urgent and balanced resolution of the impasse concerning the composition of the CEC.

Prior to parliamentary elections:

Election administrators should:

- In the event that the current electoral system for parliamentary elections is retained, take urgent action to introduce an enforceable gender quota for parliamentary elections.
- In the event that the electoral system for parliamentary elections is changed, take urgent and concerted action to ensure that parties, candidates and voters are fully informed and able to adapt.
- Initiate dialogue with political parties, civil society, and parliament on the process by which commissioners are appointed to the lower levels of the election administration with a view to eliminating abuses.

The Parliament and parties should:

- Further address consensus-building on the electoral system, in particular on the draft electoral code under discussion.
- Take a final decision on the electoral system as early as possible to prevent disruption of election preparations.
- For the longer term, consider providing the Central Election Commission a right of legislative initiative and/or a mandate to provide review, comment and recommendations on electoral related legislation.

Enfranchisement and Participation

Voters in Crimea and the Russia-controlled parts of Donetsk and Luhansk oblasts will be disenfranchised. A more tractable problem is ensuring full voting rights for the estimated 1.6 million IDPs displaced by the conflict. IDPs, along with labor migrants and others living away from their officially-registered residences, can currently register and cast votes for national party lists. They will not be allowed to vote for single mandate candidates in parliamentary elections or in local elections, however. A draft law that would address the problems of IDP and labor migrant disenfranchisement was proposed in March 2017.⁶ However, this issue has been viewed through a political, rather than a human rights lens, making majority support in the parliament elusive. Similarly, internal labor migrants and young people who have recently moved away from their family homes frequently find it is difficult to re-establish their voting rights in their new locations. The delegation heard that it remains difficult for many Ukrainians living abroad to cast a ballot.

Younger people and those in Eastern and Southern Ukraine are less likely to participate than the rest of the country. Building and sustaining unity between different social groups is particularly important at times of war. Ensuring that every citizen is freely able to exercise his or her right to vote is an essential component of that agenda.

Ukrainian polling sites are relatively inaccessible to people with disabilities. There is a system for requesting at-home voting, but it has often been abused through violations of ballot secrecy and ballot stuffing beyond the reach of observers.

⁶ The Verkhovna Rada of Ukraine, Draft law 6420, “On Amendment of Some Laws of Ukraine Concerning the Voting Rights of Internally Displaced Persons and Other Internal Mobile Groups of Citizens.”

Equality of the vote depends largely upon an accurate assessment of the population and its demographics. This is important for appropriately determining electoral districts and other elements of the electoral process. It has been 18 years since the last census was conducted.

Recommendations:

- Through legislation and, where possible, regulation, the parliament and CEC should facilitate voting by IDPs, labor migrants and young people by simplifying registration and balloting procedures.
- Election administrators should provide accommodations to facilitate voting by people with disabilities and other limitations (such as vision impairment and old age), including locating polling places at ground level, permitting such voters priority placement in long lines, and providing tactile guides and ballots.
- Parliament should begin an inclusive dialogue to prepare for a comprehensive nationwide census.

Campaigning

The official campaign period is expected to launch no later than December 31, 2018, but advertising campaigns have already begun. Some potential candidates and parties have been holding public events and posting billboards for many months. The delegation noted that the CEC is urging potential candidates to comply with the law relating to the campaign period.

If past Ukrainian elections and Kremlin disinformation tactics are a guide, there is a risk that campaigns will resort to personalized and polarizing attacks. In particular, several political and civil society leaders raised concerns that campaign themes are emerging that could prove socially divisive especially at a time of war.

Some party leaders noted that negative campaigning against presumptive candidates has been underway for months, if not years. Unrestrained use of these types of tactics may harm the social fabric of the country, as has been observed in other contexts. The alleged tactics include smearing opponents with false or distorted information, politically-motivated use of the law enforcement system, harassment of party supporters and activists, and conspiracies to deny opponents access to mainstream media. However, the delegation also heard from several parties, journalists and civil society representatives that the Kremlin disinformation playbook has been replicated by political actors within Ukraine. Some parties and activists have had their legitimate social media accounts blocked or taken down for spurious reasons, while efforts to seek redress for genuine violations of the platforms' terms of service have gone unanswered.

Recommendations to political parties and eventual candidates:

- Recognize the enormous cost to the social fabric of Ukraine of divisive, negative campaigning, especially at a time of war, and engage the public through electoral appeals that do not exacerbate regional, linguistic, or historical divisions in the country.
- Seek opportunities to participate in debates and dialogues on issues of importance to

citizens and strive to encourage voter participation through dialogue focused on policy issues.

- Eschew disinformation, incitement and hate speech

Violence and Intimidation

The delegation noted with concern cases of violence and intimidation directed at activists, journalists and others. Ten activists and journalists have been murdered since 2014, among them anti-corruption activist and whistleblower Katerina Handziuk.⁷ Prominent human rights groups reported in October that more than 50 activists and human rights defenders have been attacked in 2018.⁸ Those under attack include people working to: defend the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people; protect the environment; promote gender equality; and campaign against corruption.

The delegation heard that many of these cases have taken place in the regions. They create an environment of fear that may have a chilling effect on activism throughout the country, including around elections. Several interlocutors noted that the imposition of e-declaration requirements on civil society actors represents a form of pressure upon them that should be lifted, as recommended by the European Parliament and others.

The delegation welcomed Parliament's formation of a Temporary Investigative Commission into the death of Handziuk and similar incidents, and noted that high profile discussion of these cases has resulted in the re-opening of other cases that had been closed. Although several arrests have already been made in the Handziuk case, the limited conduct of investigations into other cases has raised concerns that those responsible for these attacks may not be brought to justice.

Some political parties cited allegations of phone tapping, leaked recordings, and spurious criminal and administrative charges. In addition, some opposition candidates and journalists reported to the delegation that Ukrainian or foreign security and intelligence services were surveilling and harassing them. The journalist Pavel Sheremet died in a car bombing in Kyiv in 2016. In June 2018, in the aftermath of a controversial sting operation involving the faked murder of another journalist, the prosecutor's office shared a list of 47 additional journalists that it said were potential Russian assassination targets. Further, a website published the personal data of thousands of journalists and media representatives who reported on or from the Russian-controlled territories in the East in 2016. Two of the people named on this list were subsequently killed.

Violence and intimidation have no place in democratic political life. The government and its law enforcement agencies have a responsibility to protect all electoral participants and to create an environment that is free from fear. This should become a top priority.

Recommendations:

⁷ Oksana Grytsenko, "Getting away with murder: Law enforcement fails to identify, prosecute murderers of activists, journalists in Ukraine," *Kyiv Post*, November 9, 2018.

⁸ Freedom House, "Ukraine: Address Attacks against Activists and Human Rights Defenders," October 3, 2018.

- Civil society organizations should systematically monitor violent attacks.
- Law enforcement agencies should vigorously and in a timely manner investigate and prosecute incidents of violence and intimidation.
- Candidates and campaigns should consider agreeing on a code of conduct or declaration that makes clear they will abide by the law and that violence has no place in the electoral process and urges law enforcement bodies to investigate cases impartially and in a timely manner.

Information Environment

Ukrainians generally enjoy freedom of expression and access to a diversity of viewpoints. Freedom House reports that Ukraine’s media environment has improved since 2014.⁹ However, the ability of citizens to make fully informed electoral choices remains to be seen.

Most Ukrainians still get their news from television. It is generally accepted that ownership of most TV channels is concentrated in the hands of a few wealthy individuals, or “oligarchs,” many of whom have connections to political leaders or parties. The dependence of political leaders on oligarchs for media access and campaign financing has been a persistent barrier to the development of a political system that is more responsive to citizens.

This pattern of ownership and political partiality limits the reliability of the news, impedes citizen trust in the media, and interferes with candidates’ ability to deliver their messages. Some, but not all, campaign teams and potential candidates reported to the delegation that they have limited or no access to national commercial television channels. Also, a number of political leaders noted that some of these channels are flooded with negative coverage of them, sometimes in the form of deliberate distortions of their views and statements. Current law guarantees each presidential candidate a sum total of 30 minutes of free air time across all national channels in the course of the campaign. The National Council for Television and Radio Broadcasting could play a more effective role in helping to level the playing field.

The transition of the state broadcaster into a public broadcaster is a positive step. The Public Broadcasting Company (PBC), the only national television company not owned by an oligarch, has a mandate to provide balanced information in the public’s interest. PBC is planning to host candidate debates in a variety of formats, among other programming designed to help voters make more informed choices. Although it has worked hard to restructure its organization and develop its audience, cuts to its funding of up to 50 percent are threatening its viability. Unless reversed, these cuts will undermine one of the most important measures undertaken since 2015 to address inequities in the information environment.

A sizable and growing number of citizens are now getting their news from online sources. This expansion brings with it the advantages of accessibility, pluralism, and choice, as well as opportunities for networking and activism. At the same time, it poses risks. Commercially- and politically-motivated commentary, trolling and advertising have proliferated online, but identifying the sources and underlying agendas of this content can be difficult, if not impossible. Many Ukrainians disillusioned with traditional media have turned to non-traditional sources,

⁹ Freedom House, “Freedom in the World 2018: Ukraine,” January 18, 2018

including sites that purport to be local but are in fact heavily infected with Russian disinformation.

Ukraine has been on the front lines of the Kremlin's global campaigns of disinformation. These efforts are designed to sow confusion, division, mistrust, and disorder, with the ultimate aim of eroding democracy, sovereignty, and trans-Atlantic alliances. Public understanding and awareness of disinformation and its intended destabilizing effects remains low, despite the work of an increasing number of Ukrainian NGOs on this issue. NDI's research shows that if consumers of online news become more aware of how, why, and when they are under attack from Russian disinformation, they will become more resilient to its effects.

The delegation noted with appreciation that the Ukrainian government hosted the country's first international conference on hybrid warfare in November 2018. A number of non-governmental initiatives are underway, as well, including efforts by OPORA, Detektor Media, StopFake, Internews, IREX, and NDI. Coordination and information sharing among the broad range of groups seeking to monitor and mitigate this multifaceted challenge will be critical to maximize impact and avoid duplication. In particular, international organizations should ensure they are partnering with Ukrainian groups, which have local knowledge and capacity.

Authorities have censored some Russian news sources and digital platforms and banned individual Russian journalists from entering the country. The Parliament has petitioned the National Security Council to sanction several national television channels that are likely to create more opportunities for Russia's disinformation attacks to reach Ukrainian news consumers. Although there is an active debate within Ukraine, as elsewhere, on the need to balance safeguarding national security with maintaining the principle of freedom of expression, there is also a clear need, in the view of many electoral stakeholders, to address the security risk that the recent media purchases and disinformation efforts represent in a country that remains at war.

Online platforms such as Facebook, Twitter, Instagram, and YouTube, as well as closed platforms such as Viber, Telegram and WhatsApp, serve as venues for opinion leaders, as well as for social exchanges among millions of users. These are tools for positive mobilization and also weapons for the rapid spread of disinformation. Social media accounts operated by computer programs (bots) and troll farms, coupled with the use of artificial intelligence and large datasets on potential voters, allow disinformation to spread at lightning speed, in massive volumes and to micro-targeted audiences. The delegation heard, for example, that Russia is using the instant messaging app Telegram to directly target large numbers of citizens close to the military front line with messages designed to inflame social tensions.

Identifying online disinformation campaigns, fact-checking and debunking them, pinpointing their sources, and countering their effects requires actions by multiple sources, including from journalists, media and election monitors, civic educators, government agencies, and importantly from the social media platforms themselves. For example, Ukrainian government and civil society leaders have asked Facebook to open an office in Ukraine to join with local actors to counter disinformation campaigns in multiple languages, and to ensure counter-measures employed around the 2018 U.S. elections are adapted and applied to the Ukrainian context. These requests should be heeded. In understanding the misuse or weaponization of their

platforms, knowledge of the local political context is vital, as is the ability to respond in a timely manner. This is best achieved by having sufficient trained staff on the ground who are able to effectively enforce platform community standards and terms of service, and to allow for timely redress of potentially misapplied sanctions. In the US, Facebook has taken steps to help ensure that page administrators of pages with large audiences are who they say they are and to prevent unauthorized access; similar types of actions by Facebook and other platforms need to be considered for rapid deployment in Ukraine prior to the elections.

In such an environment, it is imperative that all media outlets and platforms ensure that information provided does not deliberately confuse or mislead citizens, particularly as they seek to exercise their democratic right to be properly informed when voting. The efforts of domestic and international organizations to monitor the integrity of the information environment will be increasingly complex and important as citizens turn to ever more diverse sources of news.

Recommendations:

- Parliament should recommit to the goal of providing citizens a public service information resource by reinstating the budget proposed by the government for the National Public Broadcasting Company of Ukraine.
- Consideration should be given to best practices such as providing sufficient free air time to electoral contestants, ensuring balanced coverage of the full range of candidates and parties on news and current affairs programs, prohibiting discrimination in sales of political advertising, limiting paid advertising, and clearly distinguishing opinion pieces from news articles.
- The Parliament should consider legislation requiring that political advertising be labeled as such, including on social media and other online platforms, and that it be paid through official party or campaign funds.
- Relevant agencies should establish monitoring, marking and traceability capacities for election-related media advertising in accordance with open data principles so that disclosure and enforcement rules can be enforced.
- The National Council for Television and Radio Broadcasting should be provided with the resources, independence and mandate to promote fair and impartial coverage of elections.
- Rules governing media ownership, including the promotion of transparency and the prohibition of private monopolies, should be considered and those already adopted should be rigorously implemented and enforced.
- Civil society groups should develop and implement systematic methods for monitoring the level, type and likely sources of disinformation attacks during the election period including on social media and closed messaging platforms.
- Facebook should establish an office in Ukraine and, along with other digital platforms, partner with Ukrainian stakeholders to monitor, expose, and counter disinformation.
- Political parties, civic groups, media outlets, the parliament and government should take steps to reinforce their cybersecurity.
- Civil society should consider awareness raising activities to assist citizens in understanding how, why, and when they may be targets of information attacks in the pre-election period. This would assist voters in exercising their responsibility to make informed choices.

- Ukrainian and international nongovernmental groups should continue to provide training to citizens on media literacy.
- Ukrainian and international stakeholders should coordinate their counter-disinformation efforts to maximize their impact.

Women’s Political Participation and Inclusion

Women comprise 54 percent of the Ukrainian population and, because they vote in large numbers, an even greater proportion of the electorate. Half of the 16 appointed central election commissioners are women, including the chairperson. Nonetheless, women’s representation at all levels of Ukrainian politics lags well behind that of most European countries. In the parliament, an increase in the percentage of women from 9.4 percent in 2012 to 12.1 percent in 2014 still puts Ukraine far below the 30 percent target to which the country committed itself when it ratified the United Nations Convention on the Elimination of All Forms of Discrimination Against Women. Real progress was made in the election of women from party lists in 2014. This reflected improved implementation of the gender quota in the law on political parties that provides for, but cannot enforce, nomination of at least 30 percent of both genders on party lists. However, at the same time, the number of women elected in majoritarian districts fell, resulting in a modest overall improvement. This left Ukraine 56 out of 57 OSCE countries in terms of gender balance in the Parliament.

Polling shows that a clear majority of Ukrainians, both women and men, want more balanced representation in political life. A number of civic groups are responding to this demand. For example, the website “Women Are 50 Percent of Ukraine’s Success” is a resource for women interested in running for public office and combating violence against women. Women aspirants are coming forward in large numbers to prepare themselves to stand in national and local elections. Progress in addressing imbalances in elected office is slow, however. Many Ukrainian leaders in political parties, civil society, and other sectors have concluded that balance will not be achieved within a reasonable timeframe unless quotas are introduced for parliamentary elections. Electoral quotas were introduced for municipal elections in 2015. The draft electoral code currently under debate has a gender quota component. If the current electoral system is retained for the parliamentary elections, however, urgent action would be required to introduce quotas in the parliamentary election law.

Aggressive sexist and homophobic discourse is on the rise in Ukraine. Anecdotal evidence suggests that women in politics face disproportionate levels of harassment, threats, intimidation and violence. Povaha, a Ukrainian civic initiative, is conducting a campaign that calls out sexist and misogynistic statements made in public discourse to increase awareness of the problem, push for retractions and apologies, and incentivize more gender-sensitive speech. More civic awareness and advocacy campaigns along these lines are needed.

Some journalists reported receiving hate speech and threats for writing about gender and LGBTI issues. In Ukraine, as in other parts of Europe, there is a concerted effort by the Kremlin to counter moves toward greater equality between men and women and tolerance for sexual minorities. These information attacks deliberately conflate gender equality with gender identity and choice. The Kremlin’s aim in Ukraine is to undermine Ukraine’s integration with Europe by

demonizing core European values, such as equality and tolerance. Local opinion leaders, whether knowingly or not, are amplifying these attacks. This is likely to be a feature of the upcoming election campaigns.

Recommendations

- The Parliament should adopt measures to ensure women’s full political participation, including an enforceable gender quota for the parliamentary elections.
- Parties should adopt concrete plans to recruit, train, nominate and support women candidates in winnable positions for the parliamentary and local elections; they should also promote and support women in leadership roles on presidential campaign teams.
- Additional public funding that is provided to those parties with at least 30 percent of both genders in their parliamentary factions should be used to ensure that parties are inclusive and recruit and support women candidates in future elections.
- Those who promulgate hate speech against candidates and those who threaten or conduct politically motivated violence against candidates, campaigners, monitors, election officials, or voters should be held criminally accountable.

Campaign Financing and Abuse of State Resources

In 2015, the Parliament passed reforms to the regulatory framework for party and campaign finance that included the introduction of direct public funding of political parties, restrictions on private donations, increased reporting requirements, and oversight by the National Agency for the Prevention of Corruption (NAPC). These are welcome initiatives, which will be tested in full for the first time during the spring 2019 presidential elections. The delegation heard from the NAPC that the new system is unfolding well, although the agency still suffers from resource constraints. However, the International Foundation for Electoral Systems (IFES) notes in its 2018 preliminary electoral integrity assessment that concerns remain about “non-compliance by parties with the rules that do exist, pervasive abuse of state resources, inconsistencies in the legal framework, and a lack of political will, expertise and resources in both the NAPC and CEC to fully enforce new regulations.”¹⁰

Most key stakeholders expressed little confidence in the impartiality of the NAPC. Unless the NAPC establishes greater trust, the effectiveness of the new legal framework, which was designed to reduce the role played by money and corruption in Ukrainian politics, will continue to be called into question. Civil society groups contend that insufficient action has been taken so far to systematically monitor and respond to the information submitted by public officials and political parties. Some actions taken have appeared partisan or had the effect of elevating trivial cases over more important ones.

The use of foreign funding for campaigns is not permitted under Ukrainian law. The NAPC has a key role in defending the electoral process from foreign financial interference. Concerns about a flood of Russian money were raised by several interlocutors. However, to date, the NAPC has identified only a small amount -- five donations totaling \$17,000 -- from foreign sources over the past two years. The delegation heard that, for the parliamentary elections, a key risk for foreign financial influence is the funding of majoritarian candidates.

¹⁰ IFES, “*Ukraine Electoral Integrity Assessment Preliminary Findings*,” July 2018.

The introduction of public funding has been welcome. But the scale of this funding is not sufficient, given the cost of campaigns in Ukraine, to offset the reliance of many candidates and parties on oligarchs for both funding and media access. Many civic activists and some parties have called for additional measures, including limiting or banning paid TV advertising, which remains one of the largest costs for political campaigns. At the very least media and digital platform owners should visibly attribute campaign advertising to its purchasers so that civil society and voters themselves can track campaign expenditures and identify paid content. Work is ongoing to prepare improvements to the law on party and campaign finance. One priority should be to develop a more enabling environment for candidates and parties that want to raise large numbers of small donations, rather than depending on small numbers of large donations.

Marked progress was made in the parliamentary elections of 2014 in limiting the abuse of state resources during the campaign. This was a significant achievement of the current president, who was newly-elected at that time. However, the delegation heard that, in addition to straightforward purchases of votes on behalf of individual candidates, abuse of administrative resources remains a serious risk in Ukraine. OPORA has analyzed the use of state financial assistance for regional development and concluded that the process is politicized, potentially with the aim of benefiting particular candidates and parties.¹¹ Some interlocutors told the delegation that they expect vote buying in the presidential election and in majoritarian districts, if they remain in the parliamentary system, on a scale that could potentially alter electoral outcomes. The delegation heard from several key stakeholders that, given sufficient political will, passage of draft law 8270, which focuses on electoral justice, is possible prior to the presidential election and would help to curb this practice.

Recommendations:

- Candidates, parties, and campaign teams should comply fully with all laws and regulations relating to party and campaign finance.
- The parliament should adopt draft law 8270 prior to the presidential election to curb vote buying.
- In consultation with all relevant stakeholders, the Parliament should improve inconsistencies in the legal framework for party and campaign finance, including enabling small donations.
- The Parliament should provide the NAPC and CEC with adequate resources to effectively fulfill their mandates to monitor and enforce laws and regulations regarding campaign financing and prohibitions on using state resources for partisan political ends.
- The NAPC, in particular, should solicit and consider feedback from parties, candidates and civil society and address their concerns about the agency's impartiality.

Election Observation

Since 2014, due to welcome changes to the presidential election law, nonpartisan citizen monitoring organizations have had broad rights to monitor election procedures and submit

¹¹ OPORA, "2017 State Subventions: How to Prevent the State Funds from Being a Campaigning Tool?" 15 May 2018.

complaints. These rights provide a foundation for greater confidence in electoral procedures. Ukrainian civil society organizations are actively engaged in the electoral process as monitors, advocates and voter education activists. For example, OPORA, which is Ukraine's largest nonpartisan citizen monitoring organization and one of the most professional such groups in the world, plans to deploy 175 long term observers and will have 1,500 short term observers in precincts throughout the country on each election day. OPORA will conduct a parallel vote tabulation¹² (PVT) with assistance from NDI. The Committee of Voters of Ukraine (CVU) plans to field 25 long term observers and 3,000 short term observers to monitor the election.

The government and election authorities have made concerted efforts to encourage international observation and to welcome such delegations. Along with NDI and the European Parliament, the OSCE, IRI, CANADEM and the European Network of Election Monitoring Organizations are expected to be among the credible organizations observing the elections.

Some interlocutors have raised concerns about bogus observation activities, including impersonation of legitimate observers and setting up fake NGOs. These activities are intended to confuse the public and undermine the credibility of legitimate monitors and analysts. This practice has been common in past elections and points to the importance of legitimate groups distinguishing themselves by adhering to international best practices for observation.

The delegation noted with appreciation that election observer groups and other civil society organizations are working with the CEC and others to develop necessary improvements in the legal framework for elections, political parties and campaign finance.

Recommendations

- All international and domestic observers should operate in accordance with the *Declaration of Principles for International Election Observation* and the *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*.
- Reputable observer groups should remain vigilant about the emergence of bogus organizations and report on their findings about them

¹² <https://www.ndi.org/pvt>