STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE
PRE-ELECTION DELEGATION TO UKRAINE
Kyiv, Ukraine, April 11, 2014

This statement is offered by an international delegation organized by the National Democratic Institute (NDI). The delegation’s purpose was to accurately and impartially assess electoral preparations in advance of the May 25 presidential, parliamentary and local elections; review the broader political environment within which the election will take place; examine factors that could affect the integrity of the electoral process; and offer recommendations to support increased dialogue and consensus-building toward peaceful, credible elections and public confidence in the process.

SUMMARY

Ukraine has turned the corner onto a decidedly democratic path. The Euromaidan experience launched a resurgence of civic pride, political engagement and respect for honorable public service in Ukraine. Euromaidan’s courageous activists inspired democrats around the world. The country now has the opportunity to translate the energy of this watershed moment into a sustainable democratic trajectory.

In eight short weeks since coming to office, the new government and the parliament have enacted an impressive set of reforms. Civil society organizations are holding politicians accountable and helping to shape the reform agenda. All leading political parties, including the former ruling party, have committed to a presidential election on May 25.

At the same time, the country is facing an extraordinary set of challenges, some new and some longstanding. The economy is in crisis. Citizen patience is limited. The Russian military has occupied Crimea and is threatening further aggression. Relentless Russian government and propaganda attacks on the new government are underway. The government needs a resounding and inclusive public mandate to address these serious problems.

The legal framework, administrative capacity and political will currently in place appear conducive to a democratic process on May 25. Yet more will be required for the election to meet Ukraine’s needs.

There are additional steps that Ukrainians can take to improve prospects for a democratic process in the areas of enfranchisement for Crimeans, electoral security, and constructive
campaigning. Over the medium- to long-term, reforms related to the media, women’s participation, and campaign and party financing are warranted. At the same time, it is incumbent upon all members of the international community to devote their fullest capacities to supporting Ukraine’s democratic aspirations and unambiguously rejecting external efforts to thwart the process -- through the May elections and well beyond.

ABOUT THE DELEGATION

The delegation was led by Lloyd Axworthy, president and vice-chancellor of the University of Winnipeg and former Canadian minister of foreign affairs and Edward “Ted” Kaufman, former U.S. senator from Delaware. Other members of the delegation included Mátyás Eőrsi, former member of parliament from Hungary and former member of the Parliamentary Assembly of the Council of Europe; Nadia Diuk, vice president of programs for Europe, Eurasia, Africa, and Latin America and the Caribbean for the National Endowment for Democracy; Andrew Bruce, executive director of Electoral Reform International Services; Bill Balan, vice president of finance and administration and chief administrative officer at the University of Winnipeg; Laura Jewett, NDI regional director for Eurasia; and Catherine Cecil, resident director for NDI in Ukraine.

From April 7-11, the delegation held meetings in Kyiv, Dnipropetrovsk and Lviv with candidates, parties and campaigns participating in the presidential and concurrent local elections from across the political spectrum; members of the Central Election Commission; domestic and international observer groups; members of parliament; journalists; the international and diplomatic communities; and civic groups. The delegation conducted its activities in accordance with the laws of Ukraine and international standards outlined in the Declaration of Principles for International Election Observation, which was launched in 2005 at the United Nations. NDI is one of more than 40 intergovernmental and international nongovernmental organizations that have endorsed the Declaration.

NDI does not seek to interfere in Ukraine’s election process, nor does it intend to, nor could it, render a final assessment of the election process. The Institute 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’s findings are also informed by the long-term observation efforts of Opora, the largest independent citizen monitoring group in Ukraine, the Committee of Voters of Ukraine (CVU) and the Organization for Security and Co-operation in Europe’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR). The Institute will coordinate closely with the European Network of Election Monitoring Organizations (ENEMO), a network of 21 leading citizen election monitoring groups from 18 countries in Eurasia and Europe. NDI analysts will follow up on the pre-election mission’s findings and recommendations and monitor procedures through election

1 The Declaration is available at ndi.org/files/DoP-ENG.pdf.
day and the post-election period. In close cooperation with the International Republican Institute (IRI), NDI also will conduct a short-term international observation mission for the May 25 elections.

The delegation wishes to express its appreciation to the United States Agency for International Development (USAID), which has funded the work of this delegation and supports NDI democracy assistance programs in Ukraine, as do the National Endowment for Democracy, the U.S. Department of State, and the Swedish International Development Agency. The delegation is also grateful to all those who contributed valuable time to share their views freely. Their perspectives have made possible the work of the delegation. NDI stands ready to continue to assist Ukrainian efforts to build and sustain democratic practices, institutions and values.

POLITICAL CONTEXT

May 25 will mark the most important elections in Ukraine since independence. The country’s democracy, integrity and sovereignty are at stake. A credible process could help build confidence in political institutions, promote national reconciliation, and reinforce the legitimacy of the interim government as it seeks to resolve domestic crises and resist grave security threats.

Euromaidan has become a symbol around the world of the democratic power of courageous, committed citizens. The demonstrations that began in November 2013 fundamentally changed the political landscape in Ukraine. Most tangibly, they led to the collapse of the government of then-President Viktor Yanukovych, its replacement by a reformist interim government, a shift in the balance of power from the presidency to the parliament, the release from prison of a major political leader, and the scheduling of an early presidential election. Less visibly, they introduced accountability to citizens as a requirement of governance, for perhaps the first time in Ukraine’s history. Euromaidan was sparked by anger over the government’s abrupt refusal to sign the EU-Ukraine Association Agreement, but it was sustained for three months by a more basic demand for dignity and respect from government. In the wake of Euromaidan, Ukrainians’ democratic expectations are higher than ever before.

Three sets of elections will be held on May 25: the presidential vote, one single-mandate parliamentary race, and a series of local polls (more than 40 mayors, including Kyiv; 27 settlement executives; 200 village executives; two city councils, including Kyiv; and three village councils). The delegation’s primary focus was on the presidential election. However, the parliamentary and local elections were also considered given their significance to the overall political environment.

Ukraine has proven that it can conduct genuine elections. Nationwide votes in 2004, 2006, 2007 and 2010 met international standards, according to credible international and domestic observer groups, even though these were followed by elections that failed to do so. The legal framework and administrative capacity for the May 25 elections, despite the compressed timeline, provide the basis for a democratic process. Government and election officials seem genuinely committed to fair and transparent procedures. The delegation’s findings were consistent with IRI
polling data showing that large majorities of Ukrainians support the call to early elections and intend to vote. Moreover, confidence in the integrity of the election is trending upward, a welcome departure from dismally low trust in elections in recent years. By all ordinary criteria, there are reasons to be optimistic about these elections.

However, the Russian military invasion and occupation of Crimea in February, the massing of troops along Russia’s border with Ukraine, and the early April attempts to overthrow oblast governments in the East could destabilize the political situation. Russian media are waging a campaign of disinformation.

A common assumption among those with whom the delegation met is that the Russian government is actively seeking to disrupt the polls. Under Ukrainian law, for example, the imposition of a state of war or a state of emergency would prohibit holding the elections.

It is widely understood that ensuring the enfranchisement of most Crimeans will be impossible, given the Russian occupation of the peninsula. The delegation heard fears that residents of other oblasts in the East could also be denied their right to vote due to instability or disruptions, as illustrated by takeovers of oblast administration buildings on April 6. These potential developments could serve as pretexts to dispute the legitimacy of the results. It will take concerted efforts from all Ukrainians involved in the elections to address these obstacles and provide for maximum, feasible participation.

Exceptional and immediate financial and political support from the international community is also required to help ensure the successful and democratic administration of these elections.

Despite the challenges, a broad range of parties, including the former ruling party, is engaging actively in the elections. The Euromaidan demonstrations highlighted Ukrainians’ demands for change, including more transparent, accountable and uncorrupted political practices as well as respect for basic civil and political rights. The task ahead for parties and candidates will be adjusting to the new environment by credibly embracing those values.

The interim government has taken steps toward returning to the 2004 constitution, removing some powers from the presidential office and enhancing the authority of parliament. This shift represents an opportunity for Ukrainian leaders to embrace a more pluralistic and collaborative approach to politics. The task for the new president and the parliament will be to pursue consultative and participatory governing practices that incorporate the interests of all Ukrainians. Indeed, given the scope of transition already underway in Ukraine, they should take meaningful steps to engage extra-parliamentary parties and civil society representatives in their deliberations.

By governing in an open, consultative and responsive manner, and by taking into account the views from all of Ukraine’s regions, the next president will be best equipped to help lead the country successfully through the security, reconciliation and economic challenges that lie ahead.
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 could reasonably be undertaken in advance of the May 25 elections, while other proposals are intended for consideration before future elections.

Electoral Framework

Observer groups are in broad agreement that March 2014 amendments to the presidential election law brought the framework into compliance with international standards and responded to previous recommendations from domestic and international observers. An International Foundation for Electoral Systems (IFES) assessment concluded that they “significantly improved” the law and will make the process “more transparent and less susceptible to fraud and abuse.” Opora and CVU have also commended the changes. In addition, proposed changes to the criminal code would help to curtail a culture of impunity for election violations. The changes would introduce or strengthen sanctions for vote-buying, bribery and multiple voting. They would also give law enforcement officers more tools to prosecute offenses.

Recommendations:

- The parliament should approve the pending amendments to the criminal code.
- The CEC, political parties and NGOs should conduct extensive civic and voter education efforts, especially for first-time voters, so that citizens understand their rights and responsibilities under the new laws.
- Election administrators at all levels should receive comprehensive, consistent guidelines and training so they may fulfill their responsibilities competently and fairly.
- All reports about election law violations should be fully, transparently and objectively investigated and violations should be penalized to the full extent of the law.
- After May 25, renewed consideration should be given to adopting a unified election code that would govern elections at all levels, to discourage frequent revisions and reduce uncertainty before each election.

Enfranchisement and Electoral Security

Because of the Russian occupation, probably only a small percentage of Crimea’s 1.8 million voters (5 percent of the Ukrainian total) will be able to vote. To provide the opportunity to vote to as many Crimeans as possible, government and election authorities, as well as NGOs, are actively considering possible solutions. One option already available under current legislation is for Crimean voters to apply to temporarily change their designated precincts to locations outside of Crimea. Another option under discussion is for the CEC to set up special polling stations for Crimeans in neighboring Kherson oblast.
Beyond Crimea, the security threats posed by Russian troops on Ukraine’s Eastern border and by armed groups inside Ukraine are significant. Attacks on administration buildings in some Eastern oblasts during the delegation’s visit raised questions about local law enforcement services’ ability to manage these threats. Security concerns can potentially affect every aspect of the electoral process – including the placement of polling centers, the recruitment of election workers, the ability of candidates to campaign freely, voter turnout, the presence of election monitors and party proxies and, ultimately, the perception of the election’s legitimacy. Fraud is more easily perpetrated in insecure areas. Polling stations that are beyond the scrutiny of observers are vulnerable to electoral wrongdoing. This highlights the importance of an effective electoral security plan.

All Ukrainians should feel confident of their safety when participating in the election, whether as candidates, activists, election administrators, journalists, observers or voters. Some party representatives stressed the need for increased security around campaign events and on election day. Special steps should be taken in areas prone to disruption to minimize intimidation and fear.

The delegation noted with interest an initiative by the authorities in Dnipropetrovsk to establish dialogue among political and civic actors, which interlocutors in the city viewed favorably, concluding that it had reduced tensions and helped to deter the types of violence evident in neighboring oblasts. This could serve as an example of a conflict prevention strategy that could be adapted to other locations.

Recommendations:

● Voting procedures for Crimeans should be clarified as quickly as possible.
● The CEC and NGOs should conduct an information campaign to educate Crimean voters, especially those who have been displaced to other parts of Ukraine, about their registration and voting options.
● Government officials at all levels, election administrators, parties, NGOs and law enforcement services should consider convening dialogue forums to share information, address concerns as they arise, and build confidence.
● Law enforcement personnel should be trained in electoral security best practices and deployed to high-risk areas to deter or quickly de-escalate disruptions and build confidence.
● The roles and responsibilities of these authorities should be clearly defined and communicated so that their presence does not in itself interfere with electoral processes or generate unnecessary anxiety among voters.
● NGOs should consider monitoring and mapping violence in the campaign period as a way of assessing patterns, dispelling rumors and helping to prevent incidents.
● The government should consider forming one or more temporary working groups of relevant government agencies, parties, NGOs and/or other stakeholders -- including possibly an international contact group -- as mechanisms for election coordination and rapid responses to disruptions or incidents of violence.
Campaigns and Candidates

The CEC has registered 23 presidential candidates. Domestic monitoring groups reported that the registration process was conducted according to the law. The official campaign period began on April 5. Some campaigns outlined strategies that include raising funding from small donors rather than oligarchs, relying on earned rather than paid media, voluntarily disclosing financial information, conducting door-to-door campaigns, coordinating with NGOs, mobilizing volunteers, and reaching out to disaffected Ukrainians in the East. These approaches seem particularly well-suited to voters’ post-Maidan expectations that leaders embrace new ways of conducting politics.

Polling shows that addressing corruption is the highest concern for Ukrainians in all regions of the country. The delegation noted with appreciation that most campaigns feature anti-corruption measures as high priorities on their policy agendas.

A group of NGOs has developed a “social charter” of reform policies and is asking candidates to pledge their support to the package if they are elected. In the current climate, campaigns that respond positively to constructive civic initiatives such as these are likely to garner greater public support.

The improper use of administrative resources has been a persistent problem in previous Ukrainian elections. No evidence of abuse of administrative resources or vote buying was shared with the delegation. However, election monitoring NGOs and political parties warned that monitoring for these violations, for purposes of both deterrence and prosecution, would be critical.

At the time of the NDI mission, various public opinion polls showed that the election is still competitive. Effective, issue-based campaigning can make a difference. It will be incumbent upon all candidates in the short time remaining to reach out proactively to voters in all parts of the country, particularly the East and South, to understand the issues they care most about and to offer realistic and constructive solutions.

Recommendations:

- Parties should engage the public through electoral appeals based on issues important to citizens and avoid unnecessarily exacerbating regional divisions in the country.
- Parties should seek out opportunities to participate in debates and dialogue focused on policy issues.
- Political parties should consider developing and agreeing to a shared code of conduct outlining acceptable campaign practices and using the code to enforce compliance by party activists.

Media Environment

Since former President Yanukovych’s departure, the conditions for free speech have generally improved in much of the country. Journalists reported to the delegation that direct censorship has declined and a pluralism of editorial perspectives is returning. However, media monitors reported that attacks on journalists in Crimea and Eastern oblasts have increased in frequency and brutality since the Crimean crisis. Another concern raised by media monitors, journalists
and NGOs is that ownership of most media outlets is concentrated in the hands of a few wealthy individuals, most with connections to political parties. This limits the reliability and impartiality of the news and interferes with candidates’ ability to deliver their messages and voters’ ability to make informed electoral choices. Another issue of concern is the disinformation campaign from abroad.

Recommendations:

- Allegations of intimidation or harassment of journalists or interference with their rights should be fully and expeditiously investigated and violations should be prosecuted to the full extent of the law.
- The media should provide fair coverage to all political parties, candidates and campaigns.
- In the longer-term, consideration should be given to developing and rigorously enforcing rules governing media ownership, including promotion of transparency, prevention of offshore holdings, and prohibition of monopolies. Perceived conflicts of interest should be avoided by restricting ownership of media holdings by public officials, members of parliament and representatives of political parties.
- The transformation of the state broadcaster into a public service broadcaster should be pursued, following international standards outlined by the OSCE and the Council of Europe, among others. The process should be inclusive and transparent, and guided by the overarching goals of editorial independence, financial security and a sound legal framework.

Women’s Participation

Women represent 54 percent of the Ukrainian population, but they are underrepresented in politics as leaders. Ukraine is falling short of fulfilling its Millennium Development Goal commitment of women filling 30 percent of top leadership positions by 2015. Of 23 registered presidential candidates, only three are women. Approximately 10 percent of MPs are women. The current cabinet of ministers includes only one woman. The delegation did not see strong evidence that presidential or Kyiv mayoral campaigns are systematically promoting women as campaigners, poll workers or poll-watchers, nor systematically targeting support from women voters. NGOs focused on women’s participation noted that campaigns have not sought strategic input on promoting or targeting women and expressed concern that the issue of gender equality is getting lost amid the enormous reform agenda.

Elections present critical opportunities for women to participate and lead, which is central to realizing universal and equal suffrage and democratic governance. Moreover, public opinion research by NDI in Ukraine showed that women are perceived as more credible than men on tackling corruption, a major campaign issue in this election. By virtue of their underrepresentation, they would also meet the demand for “new faces” in politics. This election season presents a unique opportunity to leverage the strengths that women leaders bring to the political process.
The parliament recently held a hearing on a bill that would establish a 30 percent quota for women on party lists. The draft legislation lacks provisions for single-mandate seats, specifications on the order of female candidates on party lists, and strong compliance mechanisms, but it nonetheless represents a positive step.

Recommendations

- Before the next parliamentary elections, MPs, NGOs and the government should work toward passage of effective quota legislation until other barriers to women’s entry into politics are reduced.
- Funds should be dedicated to training women candidates in such skills as fundraising, message development, media relations and communicating with voters.
- Parties should nominate more women on party lists as well as candidates in districts where their parties are competitive.

Campaign Financing

The delegation noted that the corrosive role of money in politics is a major area of concern that has not yet been adequately addressed in legislation or practice. The amendments to the presidential election law do little to control or bring transparency to campaign finances. According to an IFES analysis, reporting requirements are vague and limited; there are no penalties for noncompliance; there are no spending limits; the maximum donation amount is one of the highest in the region, at 400 minimum monthly wages (approximately $40,000); and there are no limits on contributions from the candidate’s or party’s own funds. Furthermore, the CEC is not authorized to investigate violations.

The Venice Commission of the Council of Europe recommends public funding of political parties as a means of preventing corruption, supporting parties, and reducing undue reliance on private donors. Ukraine has no provisions for direct state funding of parties.

Another issue of concern is the high deposit requirement of 2.5 million hryvnia (close to $200,000) for registration of a presidential candidate, with a return provided only to the top two finishers. This serves as a steep disincentive to all but the most well-financed candidates.

The delegation heard from many sources, including parties, NGOs, government officials and election administrators, that the lack of transparency and regulation of campaign and party financing inhibits the emergence of new parties, penalizes serious but unsuccessful candidates, distorts electoral and political outcomes and divorces parties and elected officials from the citizens they are meant to represent. These have been longstanding concerns in Ukraine.

Recommendations:

- Campaigns should voluntarily and immediately disclose on their websites the sources and amounts of their donations and their expenditures.
● For future elections, candidate registration fees should be set at levels that do not discourage serious new entrants. Consideration should be given to using signature collection as an alternative qualification standard.

● Over time, more rigorous limits on campaign contributions and expenditures should be developed. Mechanisms for requiring greater transparency about campaign finances should be considered.

● Consideration should be given to introducing public funding of parties and/or campaigns, using eligibility criteria and allocation formulas that ensure that the support favors political pluralism without promoting fragmentation and does not reinforce inequities.

Election Observation

The pre-election assessment mission noted with appreciation changes to the presidential election law giving nonpartisan domestic organizations rights to monitor election procedures and submit complaints. Observers can now be present at election commission meetings at all levels. On election day, observers can be present during the examination and sealing of ballot boxes, the voting process and the counting process. They can take pictures and films. They are entitled to receive copies of protocols from PECs and DECs. They may use the legal system to address violations. Ukrainian civil society organizations are actively engaged in the electoral process as monitors, advocates and voter education activists. For example, Opora and CVU have deployed long term observers and between them will have thousands of STOs in precincts throughout the country. Opora will conduct a parallel vote tabulation (PVT) of the presidential and Kyiv mayoral elections.

The government and election authorities have made concerted efforts to encourage international observation and to welcome such delegations. Indeed, in virtually every meeting, the delegation heard that robust and comprehensive international observation campaigns would be vital to the process. In addition to the NDI and IRI short-term observation delegations, ENEMO will deploy LTOs and STOs. The OSCE/ODIHR has 100 LTOs in place and anticipates a large delegation of STOs. Other international delegations from Canada and Europe are also expected.

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, respectively.

● Consideration should be given to expanding the scope of planned domestic and international observation efforts.