



Office for Democratic Institutions and Human Rights

UKRAINE

EARLY PRESIDENTIAL ELECTION

25 May 2014

**OSCE/ODIHR Election Observation Mission
Final Report**



Warsaw
30 June 2014

TABLE OF CONTENTS

I.	EXECUTIVE SUMMARY	1
II.	INTRODUCTION AND ACKNOWLEDGMENTS	4
III.	BACKGROUND AND POLITICAL CONTEXT	5
IV.	THE ELECTION SYSTEM AND LEGAL FRAMEWORK	6
V.	THE ELECTION ADMINISTRATION	8
A.	THE CENTRAL ELECTION COMMISSION.....	9
B.	DISTRICT ELECTION COMMISSIONS.....	10
C.	PRECINCT ELECTION COMMISSIONS.....	12
VI.	VOTER REGISTRATION.....	13
VII.	CANDIDATE REGISTRATION.....	15
VIII.	THE CAMPAIGN ENVIRONMENT AND CAMPAIGN FINANCE	16
A.	CAMPAIGN FINANCE.....	18
IX.	THE MEDIA	18
A.	MEDIA ENVIRONMENT.....	18
B.	THE LEGAL FRAMEWORK.....	19
C.	OSCE/ODIHR EOM MEDIA MONITORING.....	20
X.	PARTICIPATION OF NATIONAL MINORITIES	21
XI.	CITIZEN AND INTERNATIONAL OBSERVERS	22
XII.	COMPLAINTS AND APPEALS	23
XIII.	ELECTION DAY	25
A.	OPENING AND VOTING	26
B.	COUNTING.....	27
C.	TABULATION AT DECS	27
D.	ANNOUNCEMENT OF RESULTS.....	29
XIV.	POST-ELECTION DAY DEVELOPMENTS	30
XV.	RECOMMENDATIONS	30
A.	PRIORITY RECOMMENDATIONS	30
B.	OTHER RECOMMENDATIONS	31
	ANNEX – ELECTION RESULTS.....	34
	ABOUT THE OSCE/ODIHR.....	36

UKRAINE
EARLY PRESIDENTIAL ELECTION
25 May 2014

OSCE/ODIHR Election Observation Mission Final Report

I. EXECUTIVE SUMMARY

Following an invitation from the acting foreign minister of Ukraine, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 20 March 2014 for the 25 May 2014 early presidential election in Ukraine. The election was called after former president Viktor Yanukovych was voted out of office by the parliament having ceased performing his duties, following the Maidan events that started in November 2013 and which escalated into violence in February 2014. The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other obligations for democratic elections, and domestic legislation. For election day, the OSCE/ODIHR EOM joined forces with delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly to form an International Election Observation Mission (IEOM).

The Statement of Preliminary Findings and Conclusions issued by the IEOM on 26 May 2014 concluded that the election “was characterized by high voter turnout and the clear resolve of the authorities to hold what was a genuine election largely in line with international commitments and with a respect for fundamental freedoms in the vast majority of the country. This was despite the hostile security environment in two eastern regions and the increasing attempts to derail the process by armed groups in these parts of the country.”

In its statement of preliminary conclusions and findings, the IEOM noted that the election “took place in a challenging political, economic and in particular security environment. Genuine efforts were made by the electoral authorities to conduct voting throughout the country, despite continued unrest and violence in the east of Ukraine, where anti-government forces control some areas, and the acting government is conducting counter-insurgency operations. This seriously impacted the election environment and affected the general human-rights situation there, also obstructing meaningful observation. The election did not take place on the Crimean peninsula, as it is not under the control of the Ukrainian authorities, and citizens residing there faced serious difficulties to participate in the election.”

The legislative framework is generally adequate for the conduct of democratic elections, although further efforts are required to ensure stability in the election legislation and further harmonization. The entire legal framework for the election underwent several substantial changes in the three months before election day, with the last of six amendments to the presidential election law adopted in 2014 being passed just days before election day. The amendments were introduced partly in an effort to address the rapidly changing political-security environment and ensure voting for those from the affected regions, and partly as a further step in the electoral reform process. While the changes resulted in a significantly different legal framework than the one in place when the election was called, most of the recent amendments were seen as necessary by most election stakeholders.

The Central Election Commission (CEC) operated independently, impartially, collegially, and generally efficiently, and met all legal deadlines, despite the challenging environment, the limited lead time and the changeable legal framework. It also operated transparently overall, although a number of issues arose close to election day when it held unannounced sessions and stopped posting its decisions on its website. The CEC did not adequately regulate a few aspects of the election, which lessened uniformity in some parts of the election process.

The system under which members of District Election Commission (DEC) and Precinct Election Commission (PEC) are nominated by candidates, who may and did replace their nominees at will and in high numbers, affected the stability and efficiency of the election administration. However, most DEC and PECs, other than in Donetsk and Luhansk *oblasts* (regions), were able to manage the frequent changes in their composition, time constraints due to shortened deadlines for this election, and, on occasion, resource problems.

The situation in most parts of Donetsk and Luhansk *oblasts* significantly and adversely affected electoral preparations there. Serious problems in these *oblasts* included intrusion into and forced eviction and closure of DEC by illegal armed groups, intimidation of election officials, including abductions, death threats, forced entry into private homes, seizure of equipment and election materials, and the shooting of a candidate proxy. These illegal actions constituted attempts to prevent the election and deny citizens the fundamental right to freely participate and elect their chosen representative. Despite the enormous challenges they faced, election officials in these two *oblasts* made commendable efforts to continue with their work. Ultimately and despite these efforts, polling did not take place in large parts of Luhansk and Donetsk *oblasts*.

OSCE/ODIHR EOM interlocutors voiced general confidence in the accuracy of the centralized State Voter Register (SVR), which included some 34.2 million voters (without the 1.8 million voters from the Crimean peninsula). Voter lists were generally available for public scrutiny within the legal deadline. The law allows voters to temporarily transfer their voting address without changing their residence. Requests had to be justified, except for voters from the Autonomous Republic of Crimea and the city of Sevastopol. The OSCE/ODIHR EOM observed a differing and inconsistent application of the provisions for temporary transfers of voting address. Only some 6,000 voters from the Crimean peninsula applied for temporary transfers of their voting addresses to other parts of Ukraine. In parts of Donetsk and Luhansk *oblasts*, the CEC temporarily closed access to the SVR to prevent abuse, due to the so-called 11 May 'referenda' on independence. Voter lists were produced with delays, or not at all, in those two regions.

Candidate registration was largely inclusive. However, the existing ten-year residency requirement appears at odds with international obligations. The CEC received 46 applications and registered 23 candidates, two of whom subsequently withdrew within the legal deadline. The rejections were due to material errors in nominees' applications, and – in all but one case – failure to pay the required electoral deposit. The field of 21 candidates offered voters a wide choice among candidates representing diverse political views.

The election campaign was subdued and overshadowed by political and security developments. It started late and intensified only in the last two weeks in most of the regions of the country. Most candidates acknowledged that they were able to campaign freely and without restrictions, except in the two eastern regions. However, only nine candidates conducted a visible campaign throughout most regions, and only the campaign events of two candidates drew larger crowds. The OSCE/ODIHR EOM noted a number of campaign-related incidents, including cases of intimidation and attacks on party and campaign offices, as well as instances where candidates were obstructed in their campaign. Some breaches of the campaign-silence provisions were also noted. Unlike in previous elections, the OSCE/ODIHR EOM observed no cases of misuse of administrative resources, and interlocutors did not raise it as an issue of concern.

The election law does not provide adequate regulations for campaign financing, despite repeated recommendations by the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission). Transparency of campaign funding, spending and reporting should be strengthened to provide greater oversight. There are currently no limits to candidates' campaign

expenditures, or to the funds nominating parties can contribute to their campaigns. Furthermore, there is no requirement for candidates to report on campaign finances prior to election day. Moreover, the law continues to give an advantage to candidates nominated by political parties.

The media landscape is diverse and comprises a large number of outlets. However, the lack of autonomy of the media from political or corporate interests often affects their editorial independence. The adoption of a law transforming state television and radio into a public-service broadcaster, a long-standing OSCE/ODIHR recommendation, is a welcome development. Freedom of the media was severely undermined in the east, and to a lesser extent the south, where journalists and media outlets faced threats and harassment throughout the campaign period. The election law obliges state and private broadcasters to provide balanced coverage of all candidates, and state media to provide free airtime and space to contestants. The law does not clearly stipulate the body responsible for overseeing the media during an election.

OSCE/ODIHR EOM media monitoring showed that the overall political discourse in the broadcast media during the campaign period was dominated by the crisis in the southern and eastern regions. Editorial coverage of candidates was limited and focused on a few contestants. While the broadcast media's coverage of the candidates was generally neutral, in a few cases the amount of time devoted to certain candidates appeared biased. In a welcome initiative, state television organized and broadcast debates among all candidates, despite not being obliged to do so. In line with the law, state media provided all candidates with free airtime and space. Only a few candidates invested in paid advertising for their campaign.

Most national-minority communities participated freely in the election process and reported no obstacles. A major exception was the Roma community, who informed that at least half of their community was excluded from the election process, mainly due to lack of identity and registration documents. The Crimean Tatar community faced problems to participate in the election due to the occupation of the Crimean peninsula, despite steps by the Ukrainian authorities to facilitate the participation of voters from Crimea. The OSCE/ODIHR EOM noted some incidents of violence and vandalism, unrelated to the election, against certain communities. While the debate about language policy was characterized by more flexible positions than in past elections, most candidates clearly disagreed on the issue of Russian as a second state language. Unrest in parts of the country severely impacted the political participation of large numbers of the Crimean Tatar and Russian-speaking communities, who live in areas where the election could not be organized.

The legislation provides equality between women and men in public and political life. There were 2 women among the 21 presidential candidates. Five of the 15 CEC members are women; they were almost equally represented on DEC and PECs. In polling stations observed by the IEOM, 66 per cent of PEC chairpersons were women.

The election law provides sufficient opportunities for an effective remedy of electoral disputes. However, it sets out strict requirements for filing complaints and requires the rejection of complaints for minor deficiencies in format. The CEC received a limited number of complaints, both before and after election day. It did not consider any of these on their merits, due to formal deficiencies. The courts considered election-related complaints and appeals brought before them promptly and thoroughly and offered complainants sufficient opportunity to state their claim. Recent legislative changes regarding the judiciary and the call for judicial lustration impacted the work of the courts during the election period, with some judges expressing hesitation to adjudicate election-related disputes and freedom of assembly cases for fear of future repercussions. The Prosecutor General's office reported that 125 criminal investigations were opened regarding election-related incidents, including 28 that occurred on election day.

The registration and accreditation of citizen and international observers by the CEC was in general inclusive, with the Ukrainian authorities welcoming observers from all OSCE participating States and other countries. Following recent amendments, Ukrainian citizen organizations may observe presidential elections, and all observers are now entitled to receive copies of results protocols at all levels of the election administration, as previously recommended by OSCE/ODIHR and an important element for increasing the transparency of the process. However, deadlines and procedures for registration and accreditation of citizen observers to an extent limit their ability to effectively observe all stages of the election process. Two of the 10 civic organizations registered to accredit observers, OPORA and the Committee of Voters of Ukraine, accredited significant numbers of observers and conducted long-term and short-term observation.

In most of the country, election day took place peacefully. According to the CEC, 59.9 per cent of the voters registered in precincts where the election took place turned out to vote. Despite efforts of the election administration to ensure voting throughout the country, polling did not take place in large parts of Luhansk and Donetsk *oblasts*, due to systematic disruption by illegal armed groups before and on election day which deprived the majority of Ukrainian citizens residing there of their right to vote.

IEOM observers assessed opening procedures positively in the large majority of polling stations where they were observed, although some minor procedural problems and short delays in opening were noted. Voting was assessed positively in 98 per cent of polling station observed, with a somewhat less positive assessment in Kyiv and other places where local election were held on the same day. Voting was orderly and well organized in most polling stations observed and procedures were generally followed, although some procedural problems were noted, in particular regarding the secrecy of the vote. However, the high number of voters frequently resulted in overcrowding and at times delayed the start of the count, especially where local elections were held simultaneously. The vote count was assessed positively in 94 per cent of polling stations where it was observed, despite some procedural errors, including with regard to control checks intended as a safeguard against irregularities. A significant minority of PECs had problems completing the results protocol.

The tabulation process was assessed more negatively, partly because the communications network linking the DEC's to the CEC's informatics system *Vybory* not working due to a network failure, and partly due to severe congestion at DEC premises caused by inadequate premises, a large number of PECs arriving at DEC's simultaneously, inefficient legal and organizational arrangements to receive materials and process results, tension, and tiredness of election commissioners. IEOM observers noted some procedural problems during tabulation, in particular with PEC results protocols that frequently did not reconcile.

The problems with the *Vybory* system caused a major disruption to the receipt and processing of election material, prevented many DEC's from transmitting election results to the CEC, and delayed the CEC's announcement of preliminary results. Nonetheless, the CEC started posting detailed preliminary results by polling stations on its website late on election night. All DEC's submitted their tabulation protocols to the CEC within the five-day deadline, and the CEC adopted the final results protocol on 2 June. Petro Poroshenko was declared the elected president with 54.7 per cent.

II. INTRODUCTION AND ACKNOWLEDGMENTS

The *Verkhovna Rada* (parliament) of Ukraine on 22 February 2014 voted to call an early presidential election for 25 May. Following an invitation from the acting foreign minister of Ukraine, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 20 March 2014. The OSCE/ODIHR EOM was headed by Tana de Zulueta and consisted of 24 experts and 100 long-term observers (LTOs), who were based in 26

locations throughout the country. On election day, 1,025 long-term and short-term observers were deployed by the OSCE/ODIHR. Members of the OSCE/ODIHR EOM were drawn from 46 OSCE participating States and 1 Partner for Co-operation country.

For election day, the OSCE/ODIHR EOM joined forces with delegations from the OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, the European Parliament and the NATO Parliamentary Assembly to form an International Election Observation Mission (IEOM). In total, over 1,200 observers from 49 OSCE participating States were deployed by the IEOM.

The OSCE/ODIHR EOM assessed compliance of the election process with OSCE commitments and other obligations for democratic elections, and domestic legislation. This final report follows a Statement of Preliminary Findings and Conclusions, which was released at a press conference on 26 May 2014.¹

The OSCE/ODIHR EOM wishes to thank the former acting foreign minister of Ukraine for the invitation to observe the elections, the Central Election Commission (CEC) for its co-operation and for providing accreditation documents, and the Ministry of Foreign Affairs for its co-operation and assistance. The OSCE/ODIHR EOM also wishes to express its appreciation to other national and local state institutions, election authorities, candidates, political parties and civil society organizations for their co-operation, and to the OSCE Project Co-ordinator in Ukraine, the Special Monitoring Mission to Ukraine, embassies of OSCE participating States and Partners for Co-operation, and international organizations accredited in Ukraine for their co-operation and support.

III. BACKGROUND AND POLITICAL CONTEXT

The early presidential election was called after former president Viktor Yanukovich was voted out of office by parliament, following the Maidan events that started in November 2013 and which escalated into violence in February 2014. Further events unfolded after the ouster of Mr. Yanukovich, including a so-called ‘referendum’ on the Crimean peninsula² and its eventual annexation by the Russian Federation,³ as well as continued unrest and violence in the east of the country, so-called ‘referenda’ in Donetsk and Luhansk *oblasts* and counter-insurgency operations launched by the government. This challenging political and particularly security environment seriously impacted the legal framework,

¹ All OSCE/ODIHR election observation mission reports on Ukraine are available on the OSCE/ODIHR website at: <http://www.osce.org/odihr/elections/ukraine>.

² On 6 March, the parliament of the Autonomous Republic of Crimea voted in favor of joining the Russian Federation and called a so-called ‘referendum’, which was held on 16 March. The Council of Europe’s European Commission for Democracy through Law (Venice Commission) opined that the ‘referendum’ was not in line with the Ukrainian Constitution and international standards. See Venice Commission Opinion No. 762/2014, adopted on 21 March 2014. The opinion is available at: [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2014\)002-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2014)002-e).

³ The ‘referendum’ on the Crimean peninsula was followed by decisions in the two chambers of the Russian parliament to include Crimea and city of Sevastopol as federal subjects of the Russian Federation. The United Nations General Assembly on 27 March adopted a resolution on the territorial integrity of Ukraine, which was supported by 45 OSCE participating States, while 3 voted against. See the resolution and voting results available at: http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/68/262 and <https://papersmart.unmeetings.org/media2/2498292/voting-record.pdf>. See also the Council of Europe Committee of Ministers’ decision of 3 April: [https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2014\)1196/1.8&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2014)1196/1.8&Language=lanEnglish&Site=CM&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864), and the Parliamentary Assembly of the Council of Europe’s resolution 1988(2014): <http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=20873&lang=EN>.

preparations for the election, and the campaigns of candidates. It also rendered the holding of the election impossible on the Crimean peninsula and in large parts of Donetsk and Luhansk *oblasts*.

Despite the challenges posed, genuine efforts were made by the electoral authorities to conduct voting throughout the country. However, governmental structures and security forces were unable to ensure the safety of election officials, election materials and voters in the parts of the country affected by unrest and violence, despite several legislative acts being adopted to address this specific situation.

This presidential election was seen by a majority of national and international actors as an important first step in the de-escalation of a tense situation. At the same time, while the election featured in the political discourse, it was eclipsed by events in the east and the role of the Russian Federation in that part of the country.

Together with the early presidential election, over 300 local elections (for mayors and/or councils) took place, including for Kyiv city mayor and council. The OSCE/ODIHR EOM only observed the local elections to the extent that they had an impact on the presidential election.

IV. THE ELECTION SYSTEM AND LEGAL FRAMEWORK

The president of Ukraine is elected by popular vote for a five-year term. The same person may not serve as president for more than two consecutive terms. In case no candidate wins more than 50 per cent of the votes cast in the first round, a second round takes place three weeks after the first round between the two candidates who won the most votes. On 16 May, the Constitutional Court issued a clarification that the presidential term for the 25 May early presidential election is five years. The clarification was issued upon a request submitted by 101 members of parliament seeking clarification on two contradicting provisions in the Constitution: Article 103 which states that the presidential term is five years, and the transitional provisions that say the next regularly scheduled presidential election will be in March 2015.

On 21 February, parliament passed a law on restoring provisions of the Constitution that were initially introduced in amendments made in 2004 and were found to be unconstitutional on procedural grounds by the Constitutional Court in 2010.⁴ Immediately following the adoption of that law, parliament passed a resolution on the legal force of the Constitution with the 2004 amendments, with the stated aim of restoring the legitimacy of the constitutional order and setting aside the 2010 Constitutional Court decision. Neither the law nor the resolution was considered by parliament as amendments to the Constitution and therefore the special procedures for amending the Constitution were not followed. Appeals to the Constitutional Court on the constitutionality of laws adopted by the parliament can be made by the Supreme Court, a group of at least 45 members of the parliament, the ombudsman or the president. To date, the recent changes to the Constitution have not been appealed.

During the campaign period, parliament took multiple steps to continue discussions of constitutional reform. In March a special commission was appointed to draft amendments to the Constitution and in April, there was a parliamentary hearing to discuss key constitutional issues. The work of the special commission continues and proposed draft amendments, including changes to presidential powers, are widely expected.

The entire legal framework for the presidential election underwent several substantive changes in the three months prior to election day, with the last change coming just days before election day. The primary legal framework is comprised of the Constitution and the Law on Election of the President of

⁴ Decision of the Constitutional Court of Ukraine No. 20-rp/2010, dated 30 September 2010 (case No. 1–45/2010).

Ukraine (hereinafter, the election law), the Law on the CEC and the Law on the State Voter Register, all of which have been recently amended.⁵ There have also been changes to the broader legal framework, including amendments to the Code of Administrative Proceedings and the Criminal Code.

The election law alone was amended six times in 2014.⁶ Some of the amendments were to make the early election on 25 May feasible, facilitate concurrent local elections, and to react to the needs of the current context.⁷ While the CEC has some regulatory authority over the election process, its authority was not sufficient to act in reaction to the changing environment in the absence of certain amendments to law.

The March amendments, the most extensive ones adopted in 2014, were part of larger efforts for electoral reform aimed at harmonizing the law with the recently amended parliamentary election law and addressing outstanding recommendations previously made by the OSCE/ODIHR and the Council of Europe's Commission for Democracy through Law (Venice Commission). These amendments were passed in an abbreviated time frame, according to special provisions for urgent legislation. Legal and civil-society experts acknowledged the need to reflect the reform already undertaken in other election legislation and therefore considered the March amendments acceptable, even though they were adopted in such a short time frame, during an election period and with little public discussion.⁸

The resulting legal framework is generally adequate for the conduct of democratic elections. While the changes in legislation were widely accepted as necessary and welcomed by most election stakeholders, they resulted in a significantly different legal framework than the one in place when the election was called.⁹ Further, the harmonization of election legislation remains an issue and can only be properly addressed once there is stability in all related election legislation.

In order to ensure stability in the election legislation and further harmonization, efforts should be made to finalize electoral reform well in advance of next elections and to build in safeguards against changing legislation prior to an election. Consideration could also be given to further delegating regulatory authority to the CEC so that, as the principal body responsible for the implementation of the election law, it has the flexibility to promptly react to any changes in the political-security environment in order to ensure uniformity in how emergency situations are addressed.

Throughout the pre-election period, numerous proposals for additional legislation to address the conduct of the election in the changing political-security environment and to facilitate access to the polls for citizens from the Crimean peninsula were considered by parliament. On 15 April, parliament

⁵ The primary legislation is supplemented by the Law on Political Parties, some provisions of the Code of Administrative Proceedings, Code of Administrative Offenses and the Criminal Code, as well as regulations adopted by the CEC.

⁶ The election law was amended on 28 February, 13 March, 8 April, 6 May, 15 May, and 20 May 2014.

⁷ The 6 May amendments reduced the minimum number of Precinct Election Commission (PEC) members from 12 to 9, to address a shortfall in nominations by presidential candidates. These amendments were submitted and adopted immediately prior to the deadline for PEC formation. Amendments on 15 May addressed the role of executive bodies in ensuring the organization and security of the election and permit the relocation of District Election Commissions (DECs) in emergency situations. Finally, 20 May amendments prescribed the destruction of undeliverable ballots and permitted the addition of military personnel serving in Donetsk and Luhansk *oblast* to the voter list on election day.

⁸ The 2013 amendments to the law on parliamentary elections were the result of multiple roundtable discussions with legal and civil-society experts and with the involvement of the Ministry of Justice, the OSCE/ODIHR and the Venice Commission.

⁹ Previous OSCE/ODIHR reports on elections in Ukraine have criticized changes in election legislation shortly prior to an election as contrary to international good practice and potentially confusing for participants. The Venice Commission's Code of Good Practice in Electoral Matters recommends not modifying key aspects of the electoral legislation within a year prior to an election (point II.2.65). The Code is available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e).

passed the Law on Ensuring the Rights and Freedoms of Citizens and the Legal Order on the Temporary Occupied Territory of Ukraine. In addition to addressing many key legal questions, the law also stated that voting would not take place on the Crimean peninsula and relaxed procedures for citizens residing in those territories to temporarily register to vote in other parts of Ukraine. Even though procedures allowing voters from the Crimean peninsula to vote elsewhere were relaxed, they remained onerous in practice.¹⁰

As part of the broader electoral reform in Ukraine, the Ministry of Interior proposed amendments to the Criminal Code in relation to election-related criminal offenses. During the campaign period, there were two unsuccessful attempts in parliament to get the amendments on the agenda and then passed. The proposed amendments would increase criminal liability for election-related offenses, broaden the scope of those who can be held liable, and further define electoral offenses.

Prior to the next election, parliament should return to the consideration of amendments to the Criminal Code recently put forward by the Ministry of Interior which would increase liability for and further define election offenses, including addressing vote buying.

The Constitution provides for equality between women and men in public and political life. In addition, the Law on Equal Opportunities for Women and Men specifically provides for equal rights and opportunities in the election process.¹¹ In practice, however, the participation of women in political life remains low.¹²

V. THE ELECTION ADMINISTRATION

The election administration has three tiers, comprising the CEC, DEC and PECs. While the territory of Ukraine is divided into 225 election districts, for the 2014 early presidential elections only 213 DEC were formed. This was because of the impossibility of holding elections in the Autonomous Republic of Crimea and the city of Sevastopol due to the political situation that developed shortly after the early presidential election was called.¹³

For the early presidential election, 32,236 polling stations were established. Due to the insecurity that developed during the pre-election period in Donetsk and Luhansk *oblasts*, many DEC there had difficulty in forming PECs, and the number that was actually established is not known. Ultimately, on election day only 179 out of 213 DEC functioned and results were received from 29,213 PECs.

¹⁰ In order for citizens from the Crimean peninsula to request a temporary change of voting address, they were required to apply in person at a Register Maintenance Body in another part of Ukraine no later than five days before election day. This meant that they either had to already be living outside the occupied territories or travel out to request the temporary change of address and then again to vote.

¹¹ In 2013, the OSCE/ODIHR reviewed draft amendments to the Law on Equal Opportunities that aimed to introduce general measures to ensure gender balance in political appointments. See at: <http://www.legislationline.org/topics/country/52/topic/7>.

¹² The issue of low participation of women in political life has been raised by some non-governmental organizations, including the fact that the Ministry for Social Policy has for some time now had no one heading its Department of Family, Gender Policy and Fight against Trafficking in Human Beings, which in the view of interlocutors limits governmental activities in this regard. Parliament is working through the Equal Opportunity Caucus on measures that would increase participation of women in politics.

¹³ On 13 April, the CEC adopted Resolution No. 265 on the impossibility to form DEC in the 12 election districts located on the Crimean peninsula due to: the non-submission of DEC nominees by the candidates; the non-response of local government bodies established under Ukrainian law to letters sent by the CEC on resourcing DEC and proposing candidates to DEC (of 24 March and 10 April, respectively), and the social and political situation in these territories which made it impossible to uphold fundamental principles for a popular vote.

Five of the 15 CEC members are women, including one deputy chairperson and the secretary. Men and women were almost equally represented on DECs, including as chairpersons. OSCE/ODIHR EOM observers reported a higher proportion of women serving as DEC secretaries (some 68 per cent). In polling stations observed by IEOM observers, 66 per cent of PEC chairpersons were women; overall, women accounted for 71 per cent of PEC members in these polling stations.

A. THE CENTRAL ELECTION COMMISSION

The CEC is a permanent, independent state institution that should, among other requirements, operate on the basis of legality, collegiality, professionalism and openness. Its 15 members are appointed for a seven-year term by parliament, on the basis of presidential nominations. According to Article 6 of the Law on the CEC, the presidential nominations should “take into account the suggestions of the parliamentary factions and groups”. On 23 March, the Law on the CEC was amended to enable the CEC members who were appointed on 1 June 2007 to continue to fulfill their functions after the seventh year of their appointment, thereby avoiding a situation where the CEC’s mandate would end in the middle of the electoral process. On 1 April, parliament accepted the resignation, for personal reasons, of two CEC members and appointed two new commissioners.

The law on the CEC should include ‘impartiality’ as one of the CEC’s guiding principles.¹⁴ It should also elaborate the role of parliamentary factions in the selection of CEC members, so as to ensure balance and pluralism in the CEC’s composition.

Despite the challenging political environment, limited lead-time, and changeable legal framework, the CEC operated independently, impartially and collegially. While the CEC has the responsibility, among other things, to ensure the implementation and protection of citizens’ electoral rights, in practice this can only be achieved with the full co-operation of other state institutions at all levels. During April and May, the security situation in Donetsk and Luhansk *oblasts* sharply deteriorated, thereby jeopardizing the holding of elections in many election districts in these two *oblasts*.¹⁵

In May, the CEC issued two resolutions highlighting obstruction in the work of DECs, PECs and Register Maintenance Bodies (RMBs) in the two easternmost *oblasts*, as well as other actions by illegal armed groups which endangered “the life and health of the members of ... election commissions” and the continuous interference in their work and appealed to the state authorities to “take urgent measures to ensure the implementation of electoral and other constitutional rights and freedoms of the citizens residing in Donetsk and Luhansk *oblasts*.”¹⁶ However, in Resolution No. 617, the CEC cited “inaction by certain internal affairs bodies and the Security Service” to ensure the security of election commission and RMB premises.

While it is hoped that future elections in Ukraine take place in a secure environment, the government could consider establishing an operations group that brings together the electoral, security and law enforcement bodies and which functions under the coordination of the executive.

In general, the CEC was efficient and met all legal deadlines. Between the announcement of the election on 25 February and the announcement of the final election results on 2 June, the CEC adopted 739 resolutions on a wide variety of issues related to the presidential election, as well as on local

¹⁴ In accordance with paragraph 20 of General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.7) adopted by the UN Human Rights Committee, 12 July 1996.

¹⁵ The ability of OSCE/ODIHR EOM observers to directly observe the pre-election situation became increasingly restricted due to the security situation in these *oblasts*.

¹⁶ CEC Resolution 505 of 7 May and Resolution 617 of 16 May.

elections and a parliamentary by-election, which were also held on 25 May.¹⁷ Almost all CEC resolutions were adopted unanimously. However, a few aspects of the election were not adequately regulated by law or by the CEC. This reduced uniformity in the administration of the process.¹⁸ Some DEC members reported a lack of responsiveness from the CEC to their issues and queries. This may have been due to the high workload of CEC members due to their extensive responsibilities.

The CEC conducted its work in a largely transparent manner. In general, its sessions were open to candidates and their representatives, who were able to address the commission, as well as to media and accredited observers. However, late on 24 May and on election day, the CEC held some sessions without informing those with the right to attend, including the OSCE/ODIHR EOM. Some of the resolutions adopted at these sessions concerned ‘non-standard’ procedures to respond to the situation in Donetsk and Luhansk *oblasts*. While these resolutions demonstrated the CEC’s commitment to enabling citizens there to vote, some arrangements may not have been in full conformity with legal provisions.¹⁹ The CEC published all its resolutions and a wide variety of other information on its website and made a significant effort to publish thousands of DEC decisions. However, beginning on 21 May, the CEC stopped posting the text of its resolutions on its website due to technical problems (see Section XIII, Election Day).

As in previous elections, the CEC held unannounced ‘preparatory’ meetings prior to sessions. On 11 April, the CEC amended its Rules of Procedures, defining these meetings as an organizational form of its activity, and including provisions enabling invited persons to attend.²⁰

B. DISTRICT ELECTION COMMISSIONS

DECs and PECs are temporary bodies whose members are nominated by the candidates.²¹ DEC members are appointed by the CEC and PECs are appointed by DEC members. DEC members must have a minimum of 12 members. By 9 April, the legal deadline, 21 of the 23 candidates had nominated 4,164 DEC members – a number sufficient to form the commissions without requiring the CEC to nominate members.²² DEC chairpersons, deputy chairpersons and secretaries (executives) were assigned in proportion to the number of nominations, using a formula established by the CEC. This ensured an even distribution of these positions among candidates. According to data issued by the CEC, some 71 per cent of these appointees had prior election commission experience – less than in previous elections.²³

The 2014 amendments to the election law shortened the timeframe for many actions, including DEC and PEC nomination and appointment, and the lead-time for DEC members to start operations.²⁴ OSCE/ODIHR EOM observers reported that 74 of the 213 DEC members expressed concern at the limited time available to organize the election after their appointment. A significant minority of DEC members had difficulty in achieving the quorum required for their inaugural meetings, largely due to non-attendance.²⁵ 22 DEC members

¹⁷ Local elections were held in seven *oblast* capitals and various other towns and villages. The by-election was held in Ivano Frankivsk.

¹⁸ For example, the CEC did not regulate the mechanism to redistribute DEC executives among the candidates after a candidate withdrawal; the methods for DEC members to allocate executive positions in the PECs among nominees, and how appointees are identified where candidates (combined) nominate less than the legal minimum number of members on DEC members and PECs.

¹⁹ For example, Resolution 740 allowed PECs to produce result protocols (according to the CEC standard form) by their own means and stated that these would be considered as valid even if they did not bear the PEC stamp.

²⁰ CEC Resolution 260 of 11 April 2014.

²¹ In March 2014, the number of DEC and PEC each candidate could nominate was reduced from two to one.

²² At the time of their initial appointment, DEC members had between 16 and 21 members.

²³ OSCE/ODIHR EOM observers reported that 52 per cent of DEC chairpersons had previously served on a DEC.

²⁴ For example, amendments to the election law changed the deadline for forming DEC members in early elections from 70 days before election day to 40 days.

²⁵ A high proportion of the initially appointed DEC members resided far from the district of their appointment, e.g. members of DEC members in Donetsk, Lviv and Odessa *oblasts* resided in Kyiv.

were unable to convene by 16 April, the legal deadline, and a few only managed to convene several days later. A small number of DEC members continued to have problems achieving a quorum during the pre-electoral period.

The law allows candidates to replace DEC and PEC members that they nominated at any time prior to election day and without the need for justification. By 23 May, some 43 per cent of DEC members had been withdrawn or replaced, some on multiple occasions. OSCE/ODIHR observers frequently reported delays in making reappointments, and in the week before the election some DEC members still had vacant DEC executive positions.²⁶ The withdrawal of candidates Nataliya Korolevska and Oleh Tsaryov necessitated the reallocation of 56 DEC executive positions among nominees of other candidates. The CEC decided to prioritize electoral experience, and consequently some candidates had a slightly higher proportion of DEC executives than others.²⁷ Close to election day, representatives of Petro Symonenko sought to withdraw all DEC and PEC nominees in a number of election districts. The frequent changes to DEC and PEC composition increased the already heavy workload and negatively affected the efficacy of the election administration. While training of DEC and PEC members did occur, which OSCE/ODIHR observers assessed as being of good quality, the high turnover of members meant that some of the replacements were not trained.

Serious consideration should be given to revising the method of appointing DEC members to better ensure professionalism and stability in their work. This should enable training to be more effective and the institutional capacity to become more developed.

At the start of their work, a significant minority of DEC members lacked sufficient operational resources, although the situation improved over time.²⁸ A high number of DEC members expressed concern at the limited size of their financial allocation and the late transfers of funds.²⁹ In general, DEC members managed to overcome the challenges they faced and in most districts organized the process efficiently.³⁰ Seventeen DEC members, mostly in rural locations, were required to appoint and supervise over 250 PEC members each.³¹ This number of PEC members presented an additional challenge to their work and on occasions caused congestion and delays during the processing of election results. The generally high number of voters per polling station is also challenging – particularly if different elections are held simultaneously.

The number of commission members appointed at each level should correspond to the actual needs of the electoral administration rather than be the result of the unpredictable number of candidate nominations received. Consideration could be given to increasing the number of DEC members or providing that where a DEC has to manage a high number of PEC members, it may establish operation centres at district (rayon) level. Consideration could also be given to setting a reasonable maximum number of voters per polling station.

OSCE/ODIHR EOM observers reported that nearly all DEC members functioned independently, collegially,

²⁶ For example, DEC members 32, 35, 83, 85, 86, 119 and 142.

²⁷ Notably Zoryan Shkiryak, Yulia Tymoshenko, Mykhaylo Dobkin, and Petro Poroshenko, whose representation among the executives rose by between 16 to 30 per cent. Anatoliy Hrytsenko challenged the CEC's reallocation of DEC executive positions. The CEC decision was upheld; however, the courts noted that the legal obligation to ensure proportional allocation applies when filling vacated posts and not only upon formation of the DEC.

²⁸ On 18 April, OSCE/ODIHR EOM observers found problems with the resourcing of some 30 per cent of DEC members. By 7 May, some 10 per cent of DEC members still had resourcing issues. By 20 May, resourcing problems remained in election districts 131, 134, 138, 181 and 183.

²⁹ A few OSCE/ODIHR EOM observers reported that some DEC members were initially funding their operations from their private funds.

³⁰ The pre-election preparations/DEC members' organization of the process was assessed as poor in election districts 39, 80, 125, 181 and 183.

³¹ In election districts 14, 15, 20, 23, 65, 66, 67, 123, 124, 126, 128, 156, 166, 167, 168, 191 and 192.

transparently and impartially.³² Nevertheless, a general perception remains that DEC and PEC members nominated by the candidates serve these candidates' interests, and some OSCE/ODIHR EOM interlocutors commented that in practice candidates are expected to make payments to the election commissioners that they nominated.

To enhance the perception of impartiality of DECs and PECs, the law should prohibit payments from candidates to DEC and PEC members. As for the CEC, the election law should require DECs and PECs to undertake their work impartially.

Shortly after their appointment, some DECs in parts of Donetsk and Luhansk *oblasts* were targeted by illegal armed groups. Serious issues that occurred prior to the staging of so-called local 'referenda' on 11 May included the unauthorized occupation of³³ or intrusion into³⁴ election commission premises by illegal armed groups and other forms of intimidation of DEC members.³⁵ Many DECs in Donetsk and Luhansk *oblasts* were unable to form PECs at all, and where they did manage to do so, many of the appointed members resigned due to fear of serving on a PEC.

After 11 May, the frequency and intensity of incidents in which DECs and PECs were targeted increased dramatically, particularly the week before the election. Some DECs and PECs which had been functioning up to that point – albeit under difficult conditions – were prevented from continuing with their work due to eviction and closure of DECs by illegal armed groups and the seizure or destruction of equipment and/or election materials. Direct intimidation of DEC and PEC members also rose sharply and included threats to their person or their family members if they persisted in organizing the election,³⁶ the abduction of commission members,³⁷ and forced entry into a DEC chairperson's private home. Other serious incidents included the shooting of a candidate proxy.³⁸

In the run-up to the election, the CEC took various actions to try to enable polling to take place in Donetsk and Luhansk *oblasts*, including by relocating DECs.³⁹ OSCE/ODIHR EOM observers also stressed the determination of many DEC members in these *oblasts* to overcome the assaults and threats, e.g. by holding secret meetings at undisclosed locations. However, ultimately, the attacks on the election administration, general lawlessness, and the impossibility to distribute ballots and to open polling stations made the holding of the election in most election districts in Donetsk and Luhansk *oblasts* impossible. While polling did take place in some districts in these *oblasts*, some 4.09 million citizens were not able to vote.⁴⁰

C. PRECINCT ELECTION COMMISSIONS

Many of the candidates did not submit PEC nominations by the legal deadline, and OSCE/ODIHR EOM observers reported that over half of DECs faced difficulties in forming PECs with the legal

³² Although issues with respect for one or more of these principles were reported in election districts: 25, 31, 32, 144, 145, 181 and 222.

³³ For example, premises initially assigned to DECs 47, 51, 53 and 57 were illegally occupied.

³⁴ For example in DECs 42, 44, 58, 108, and 110.

³⁵ For example, on 29 April some 100 people demanding the DEC halt preparations for the early presidential election attempted to intrude into the premises of DEC 116 (Luhansk *oblast*). DECs 108 and 110 (also Luhansk *oblast*) were subject to intimidation on 7 May, which in the former included the demand for the members to resign their posts, and in the latter illegal armed people assaulting PEC members gathered for a training.

³⁶ For example, the DEC secretary in election district 44 was threatened with being shot, and PEC members in election districts 54 and 55 endured threats that their family members would be harmed.

³⁷ The DEC chairpersons of election districts 44 and 48 were abducted; the latter on two occasions.

³⁸ The incident took place on 16 May, in election district 56. The OSCE/ODIHR EOM observers were informed by the candidate's head of campaign.

³⁹ On 6 May, the CEC relocated DEC 47 from Slovyansk to Olexandrovka, an adjacent and more secure location, and on 23 May adopted a resolution to relocate DECs in Donetsk city to the airport.

⁴⁰ Some 972,000 voters had the opportunity to vote in Donetsk and Luhansk *oblasts*.

minimum of 12 members. DEC members employed various solutions to make up the shortfall, including asking local self-government bodies to suggest experienced polling staff and asking DEC members or candidate proxies for proposals. This may have influenced the pluralism of some PECs.⁴¹ Due to a lack of guidance in the law and by the CEC, DEC members used a variety of methods to allocate PEC executive positions, including lotteries; despite this lack of guidance, they achieved a proportional allocation in almost all districts.⁴² OSCE/ODIHR EOM observers reported PEC membership changes in the majority of election districts, causing DEC members and PECs additional operational difficulties.⁴³

On 6 May, the legal deadline for forming PECs, parliament amended the election law by reducing their minimum size from 12 to 9 members.⁴⁴ Subsequently, concerns were raised that the number of appointed PEC members may not be sufficient to conduct polling efficiently, and on 21 May the election law was again amended to allow DEC members to appoint additional members, up to a maximum of 18 persons. While this could have alleviated the problem of limited capacity at polling stations, the change came very late in the process and some DEC members could not respond in time.

VI. VOTER REGISTRATION

Voter registration is passive and continuous and is based on the centralized State Voter Register (SVR). The CEC oversees the SVR, which is updated monthly and maintained continuously by 27 Registration Administration Bodies (RABs) and 756 RMBs. Since 2013, voters can check their records online, thereby enhancing transparency.⁴⁵ According to the official CEC final results protocol, 34,214,652 voters were registered to vote, of whom approximately 55 per cent were women.⁴⁶ Some 666,990 homebound voters were registered to vote at their place of stay, and 472,058 voters were registered to vote at Ukrainian diplomatic and consular offices abroad. Under the amendments to the election law adopted in March 2014, voters abroad could only vote with international, diplomatic or service passports.⁴⁷

OSCE/ODIHR EOM interlocutors voiced general confidence in the accuracy of the voter register. Preliminary voter lists, invitation cards and final voter lists for each regular polling station and special stations at penitentiary institutions were extracted from the SVR and compiled separately by RMBs.⁴⁸ According to the election law, RMBs were to transfer preliminary voter lists and voter invitation cards to the respective PECs no later than 16 days before election day. This deadline was shortened to 8 days shortly prior to election day. OSCE/ODIHR EOM observers reported that almost all PECs for which handover was observed received the preliminary voter lists within or shortly after the deadline.⁴⁹ PECs made voter lists available for public scrutiny the day after they received them, in order to allow voters to verify their records and request amendments if necessary.

⁴¹ OSCE/ODIHR EOM observers reported political imbalance in PECs in districts 78, 87, 125, 127 and 210.

⁴² OSCE/ODIHR EOM observers reported a lack of proportionality in only three districts: 19, 122 and 209.

⁴³ This caused difficulties in 65 per cent of DEC members and 49 per cent of PECs.

⁴⁴ The change only became law when it was published on 7 May.

⁴⁵ Some 108,000 voters used this facility from 25 February to May 20. Voters could check their records in the SVR on the CEC's webpage.

⁴⁶ On 21 May, after the compilation of the final voter lists, the SVR office reported a total of 35,906,852 registered voters. The difference of 1,692,200 was explained by the SVR office by the deduction of the number of voters registered on the Crimean peninsula and the addition of voters who entered medical institutions after the printing of the final voter lists and thus were added to final lists by the PECs themselves, as per Articles 36.2 and 36.6 of the election law. Furthermore, after the 20 May amendments of the election law, military servicemen deployed to Donetsk and Luhansk *oblasts* were able to register and vote on election day.

⁴⁷ Previously, voters residing abroad could also vote with their national ID (passport of citizen of Ukraine).

⁴⁸ Voter lists for other special polling stations were prepared by the respective PECs, based on the list of voters submitted to them by the heads of the respective institutions.

⁴⁹ OSCE/ODIHR EOM LTOs observed the handover of voter lists to PECs at 109 RMBs.

Shortened deadlines for printing preliminary voter lists could be reconsidered to allow enough time for voters to review the voter lists and request necessary changes.

Candidates are entitled to a protected electronic copy of the voter register, which cannot be copied or printed. This raises the issue of the practicality of using the electronic register to verify millions of voter records. By 14 April, electronic copies were issued to seven candidates who had requested them.

Consideration could be given to introducing downloadable and printable voter lists for political parties, candidates and civil society to conduct a meaningful scrutiny of the voter lists and thereby enhance transparency.

Due to the situation in eastern Ukraine, in early May the CEC temporarily closed access to the SVR database for some 40 RMBs in Donetsk and Luhansk *oblasts*, to prevent abuse.⁵⁰ Consequently, the preliminary voter lists of some 1,500 PECs (out of 3,907 in these *oblasts*) were not printed and distributed within the legal deadline then in effect. Access to the SVR for all but 13 of these RMBs was restored by election day.⁵¹ According to the SVR office, lists were seized from two RMBs in the two easternmost *oblasts*.⁵² In Donetsk and Luhansk *oblasts*, the handover of voter lists could not be observed by OSCE/ODIHR EOM observers due to the security situation. Despite the challenging security situation in these *oblasts*, RMBs nevertheless managed to prepare and print voter lists for the respective PECs. The CEC reported that in Donetsk and Luhansk *oblasts*, only 32 and 25 per cent of PECs, respectively, were able to receive voter lists.

Following the March amendments to the election law, voters can no longer register on election day. The CEC sought to raise awareness of legal provisions that allow all Ukrainian voters, including those residing on the Crimean peninsula, to change their voting location on a temporary basis without changing their residence.⁵³ Requests for temporary changes of voting address had to be justified,⁵⁴ with the exception of voters whose voting address is on the Crimean peninsula, who did not need any justification apart from their ID. In practice, however, the OSCE/ODIHR observed differing and inconsistent application of this provision, as well as a late surge in the number of voters who requested temporary changes, thereby overloading the capacity of RMBs. In general, voter education appeared to be insufficient.

Since a presidential election is conducted within a single nationwide constituency, consideration could be given to waiving requirements for voters to justify their request for temporary change of their voting address and to enable them to request such changes based only on their IDs.

According to OSCE/ODIHR EOM observers, very few voters requested a temporary change of their voting address in the five RMBs adjacent to the Crimean peninsula. By the deadline of 20 May, some 171,000 voters requested to temporarily change their voting address, including some 6,000 residents of the Crimean peninsula.⁵⁵ While the approximately 1.8 million eligible voters resident in the

⁵⁰ The actual number of RMBs whose access was blocked varied from day to day.

⁵¹ Access to the SVR for these RMBs remained blocked as their premises remain occupied. These RMBs were responsible for the records of some 913,633 voters.

⁵² On 15 May, voter lists were seized by illegal armed people from Kyivski district RMB in Donetsk city and Zhovtnevyi district RMB in Luhansk city.

⁵³ According to Article 7.3 of the Law on the State Voter Register, requests for temporary changes of voting address had to be filed no later than 5 days before election day. Information was posted on the websites of the CEC http://www.cvk.gov.ua/vp_2014/zmina_adresy/ and the SVR https://www.dr.v.gov.ua/portal!/cm_core.cm_index?option=ext_static_page&ppg_id=108&pmn_id=98.

⁵⁴ However, the law does not specify what is considered a justification.

⁵⁵ On 29 April, the CEC adopted Resolution No. 415 that allows 725 RMBs in the rest of the country to enter changes to the voter registration records of residents of the Autonomous Republic of Crimea and the city of Sevastopol, where RMBs are not functioning, thus enabling these citizens to temporarily change their voting address.

Autonomous Republic of Crimea and the city of Sevastopol were permitted to register to vote at locations outside the Crimean peninsula, they faced serious difficulties caused by *de facto* obstacles, as well as cumbersome legal requirements.⁵⁶

The Ukrainian authorities should consider revising the legal arrangements related to the electoral participation of citizens resident in the Autonomous Republic of Crimea and the city of Sevastopol, with the objective of enhancing opportunities for their participation. In this respect, procedures regarding their registration and voting should be simplified to the maximum extent possible. The electoral and governmental authorities should intensify their efforts to inform residents in these territories of the means by which they can vote.

VII. CANDIDATE REGISTRATION

A Ukrainian citizen is eligible for the presidency if he or she is older than 35, has the right to vote, has resided in Ukraine for at least 10 years prior to election day, and has command of the state language.⁵⁷ The residency requirement appears at odds with international standards.⁵⁸ A provision that a presidential candidate must not have been convicted of an intentional crime has been removed from the law, in line with previous OSCE/ODIHR and Venice Commission recommendations.⁵⁹ Candidates can be nominated by a political party or through self-nomination.

Consideration should be given to removing the residency requirement for candidates, in order to bring the legislation in line with international obligations and good practice.

In order to be registered, each prospective candidate had to submit a comprehensive set of documents, together with a document certifying that a deposit of UAH 2.5 million (around EUR 178,000 at the time of registration) had been paid into a special CEC bank account. This sum is only returned to rejected nominees and the two candidates who qualify for a second round.⁶⁰ The law is silent on the return of deposits if an election is decided in the first round.

Consideration could be given to introducing a threshold of votes for a refund of the financial deposit. Furthermore, the law should be amended to explicitly state the conditions for a refund in a one-round election.

The CEC registered candidates in accordance with legal provisions and in a largely inclusive manner. It received 46 candidate applications by the legal deadline, registering 23 candidates – of whom 7 were

⁵⁶ In order to vote, residents of the Autonomous Republic of Crimea and the city of Sevastopol had to first register with an RMB outside these territories, no later than 5 days before election day. Thus, exercising the right to vote may have necessitated two trips and expenses involved with travel and possible overnight accommodation. Moreover, Crimean residents may also have faced delays involved in crossing the administrative border.

⁵⁷ The legislation does not elaborate how, if at all, a candidate's command of the state language is assessed.

⁵⁸ "Persons who are otherwise eligible to stand for election should not be excluded by unreasonable or discriminatory requirements such as education, residence or descent, or by reason of political affiliation". See Paragraph 14 of General Comment No. 25 (1996) to Article 25 of the International Covenant on Civil and Political Rights (ICCPR) by the UN Human Rights Committee. In addition, the Venice Commission's Code of Good Practice in Electoral Matters, point I 1.1 c iii-iv: iii. states that "a length of residence requirement may be imposed on nationals solely for local or regional elections; iv. the requisite period of residence should not exceed six months; a longer period may be required only to protect national minorities." See also OSCE/ODIHR and Venice Commission Joint Opinion CDL-AD(2009)040.

⁵⁹ See also judgments of the European Court of Human Rights in *Scoppola v. Italy* (No.3), 22 May 2012 and *Hirst v. the United Kingdom* (No. 2), 6 October 2005.

⁶⁰ The OSCE/ODIHR in its Final Report on the 2010 presidential election recommended: "Reducing of the financial deposit required for a candidate to register and the threshold of votes needed for a refund of that deposit should be considered."

nominated by political parties – and rejecting 23 applicants. All of the rejected candidates had material errors in their applications.⁶¹ Twenty-two had failed to pay the deposit, while the CEC decided that the other nominee's application had not complied with the documentation requirements and other provisions of the law.⁶²

Eleven of the 23 rejected registration applications were appealed to the Kyiv Administrative Court of Appeals. The Kyiv Court of Appeal and the High Administrative Court upon second-instance review upheld all CEC decisions to reject registration based on the absence of proof of deposit and deficiencies in the documentation submitted.⁶³ In the one case where the rejected applicant had paid the deposit, the appeal was withdrawn at the request of the appellant. One rejected candidate unsuccessfully challenged the CEC decision on Mr. Poroshenko's registration in court.

Two candidates withdrew from the election by the legal deadline. The 21-candidate field⁶⁴ which included two women,⁶⁵ offered voters a wide choice among candidates representing diverse political views.

VIII. THE CAMPAIGN ENVIRONMENT AND CAMPAIGN FINANCE

Under the election law, a candidate may start campaigning the day after he or she is registered. The campaign period ends at midnight of the Friday before election day (for this election, 23 May). The campaign started late, and only intensified in most of the regions in the last two weeks prior to election day. Overall, the campaign remained subdued. Ongoing political and security developments overshadowed the campaign environment and affected the election.

Candidates were able to campaign freely and without undue restrictions, except in Donetsk and Luhansk *oblasts*, as acknowledged by most candidates.⁶⁶ However, the OSCE/ODIHR EOM observed a number of campaign-related incidents across the country. In particular, campaign billboards and some candidates' posters were damaged in different regions, including one case of systematic destruction of campaign materials.⁶⁷ In addition, campaign activities of three candidates were obstructed,⁶⁸ and numerous cases of attack and threats on political party offices and campaign staff were reported by

⁶¹ In line with previous OSCE/ODIHR and Venice Commission recommendations, the amended law provides nominees with the opportunity to correct technical errors and inaccuracies in submitted documents. Ibid. CDL-AD(2013)006, para 60.

⁶² The CEC closely scrutinized the application of nominee Darth O. Vader. It decided that his supporting documents and his electoral programme did not comply with the legal requirements and referred the matter to the prosecutor regarding potentially falsified documents.

⁶³ Two cases were partially satisfied by the Kyiv Court of Appeals regarding deficiencies in the documents, but upon further review, the High Administrative Court upheld the original CEC decisions in their entirety.

⁶⁴ Olha Bohomolets, Yuriy Boyko, Andriy Hrynenko, Anatoliy Hrytsenko, Mykhailo Dobkin, Oleksandr Klymenko, Valery Konovalyuk, Renat Kuzmin, Vasil Kuybida, Oleh Lyashko, Mykola Malomuzh, Petro Poroshenko, Vadym Rabynovich, Volodymyr Saranov, Petro Symonenko, Yulia Tymoshenko, Serhiy Tihipko, Oleh Tyahnybok, Vasyl Tsushko, Zoryan Shkiryak and Dmitro Yarosh.

⁶⁵ The third female candidate, Nataliya Korolevska, decided to withdraw from the presidential election to focus on her social assistance activities.

⁶⁶ Sixteen of 21 candidates noted that the security situation in Donetsk, Luhansk and Kharkiv *oblasts* had a negative impact on their ability to campaign.

⁶⁷ The OSCE/ODIHR EOM noted systematic destruction of Mykhailo Dobkin's posters and billboards in Kyiv, Mykolaiv, Odessa, Ternopil and Sumy. It also observed that Petro Poroshenko's posters were destroyed in Ivano-Frankivsk and Anatoliy Hrytsenko's posters were destroyed in Lutsk.

⁶⁸ Mr. Dobkin in Dnipropetrovsk, Kyiv and Kherson *oblasts*; Mr. Hrytsenko in Poltava *oblast*; Mr. Tihipko in Luhansk *oblast*. Mr. Dobkin's proxy informed the OSCE/ODIHR EOM that two appeals had been submitted to the Prosecutor General over several such cases.

OSCE/ODIHR EOM observers.⁶⁹ Three candidates' tents and staff were attacked in Luhansk *oblast*.⁷⁰ One case of distribution of military uniforms by a *Svoboda* party representative was observed in Rivne *oblast*.⁷¹ Some breaches of the campaign-silence provisions were observed, including campaign leaflets from Ms. Tymoshenko being received by mail on the day before election day, and posters of several candidates not being removed.⁷² In contrast with previous elections, the OSCE/ODIHR EOM observed no cases of misuse of administrative resources, and interlocutors did not raise it as an issue of concern, with some isolated exceptions in the west.

Consideration should be given to amending the election law to provide effective, proportionate and dissuasive sanctions for violations of campaign rules, as the existing legislation does not include an effective enforcement mechanism to address such violations. Consideration could for instance be given to shortening the timeline for deciding on campaign violations.

Only nine candidates conducted a visible campaign throughout most regions. Campaign methods included media advertising, use of billboards, posters, tents, leaflets and newspapers, and to a lesser extent rallies, door-to-door canvassing and the use of social media. Candidates campaigned at *oblast* center and city levels, with only a few candidates being active themselves in rural areas. In total, the OSCE/ODIHR EOM observed 114 rallies of different scale, mainly in the west and center of the country; 100 of these rallies were held by five candidates. All rallies observed were organized in a peaceful and orderly manner. Only two prominent candidates, Petro Poroshenko and Yulia Tymoshenko, were able to hold rallies that drew several thousand people. Some candidates stated that they were conducting less prominent campaigns due to the economic situation and limited financial means. Four candidates who had limited or no campaign activities announced in the media, after the legal deadline for candidate withdrawal, that they were pulling out of the election.⁷³

The main political and security issues facing the country were reflected in candidates' campaign messages: their programmes included security, stability and unity of the country, decentralization, constitutional reform, language policy, reform of the armed forces, the fight against corruption and oligarchy, as well as relations with the European Union, NATO and the Russian Federation.

Freedom of assembly is guaranteed in the Constitution, although reasonable and sufficient notice must be given in order for local authorities to make necessary preparations.⁷⁴ According to the Constitution, any procedures for organizing public gatherings must be set out in law, and to prohibit a gathering, local authorities must seek a court order. Some local and city councils still have and are enforcing old local regulations for requesting gatherings, while others have sought court orders to prevent public gatherings due to public order concerns. OSCE/ODIHR EOM observers noted, however, that this did not directly affect the organization of any campaign events in practice during the campaign period.

Relevant authorities should ensure compliance with the constitutional requirement that the exercise of the right to assembly be governed by law and eliminate all local regulations for organizing public

⁶⁹ A disproportionately high number of Communist Party offices: in Kyiv, Rivne, Zakarpattia, Vinnytsia, Dnipropetrovsk and Ternopil *oblasts*; Party of Regions offices in Chernivtsi and Chernihiv *oblasts*. *Batkivshchyna* reported attacks or threats in Kyiv, Lviv and Odessa *oblasts*; campaign offices of Petro Poroshenko were attacked in Donetsk and Cherkassy *oblasts*.

⁷⁰ Mr. Hrytsenko, Mr. Poroshenko, and Ms. Tymoshenko, according to reports by OSCE/ODIHR EOM observers.

⁷¹ According to OSCE/ODIHR EOM observers, on 19 May, *Svoboda* member of parliament Oleh Osukhovskyy, donated 300 military uniforms to conscripts in the Rivne Regional Military Commissariat.

⁷² Letters of Ms. Tymoshenko in Chernihiv and Mykolaiv; posters of Mr. Poroshenko and Mr. Tyahnybok. Local government authorities are required to remove posters at the start of the campaign silence period.

⁷³ Zoryan Shkiryak, Petro Symonenko, Vasyl Tsusko and Oleksandr Klymenko; the latter announced that he was withdrawing in favour of Mr. Poroshenko. However, these candidates remained on the ballot paper.

⁷⁴ Article 39 of the Constitution and its interpretation from Constitutional Court of Ukraine Decision No. 4-rp/2001, dated 19 April 2001 (Case No. 1-30/2001).

gatherings that are not based on national legislation.

A. CAMPAIGN FINANCE

The election law does not provide adequate regulations for campaign financing. Recent amendments to the election law did not introduce any measures to ensure transparency of campaign funding, spending and reporting, as previously recommended by the OSCE/ODIHR.⁷⁵ Moreover, provisions in the law continue to give an advantage to candidates nominated by political parties.⁷⁶

The election law should be amended to provide equal opportunities for self-nominated and party candidates with regard to campaign finance regulations.

A campaign can be financed from candidates' private funds, individual donations, and funds from the nominating party. There is no limit to the amount a party can contribute to its candidate's campaign. Individuals can donate up to 400 minimum salaries (some UAH 490,000, around EUR 32,000) to a candidate. Donations from foreign citizens, anonymous sources and legal entities are prohibited. The election law stipulates that a presidential candidate must create two designated campaign bank accounts, for funds and expenses. There are no limits to campaign spending, and there is no requirement for candidates to report on their campaign finances prior to election day. In a welcome development, six candidates signed up to an initiative by the *Chesno* Civil Movement to disclose their campaign funds during the campaign period.⁷⁷

The election law requires that all expenditures must be made by bank transfer from the expense account. As required by law, the candidates submitted financial reports to the CEC within 15 days after election day, and the CEC published these reports in the state newspapers *Holos Ukrainy* and *Uryadovyi Kurier* on 12 June. However, the law does not provide detailed requirements regarding the financial reports published by the CEC.

Provisions regulating campaign financing should be strengthened to enhance the transparency of campaign funds. Funding and expenditure records could be made public in a timely manner before and after election day. The legal framework should provide for independent oversight and monitoring of campaign financing, including the possibility of effective, proportionate and dissuasive sanctions for violations of campaign-finance regulations.

IX. THE MEDIA

A. MEDIA ENVIRONMENT

The media landscape is diverse and comprises a large number of state and private broadcast, print and online outlets. However, the lack of autonomy of the media from political or corporate interests often affects their editorial independence. Furthermore, poor professional standards leave room for a blurring between journalism and paid-for coverage.

⁷⁵ See OSCE/ODIHR EOM Final Reports on the 2004 and 2010 presidential elections, as well as Joint Opinions provided by the OSCE/ODIHR and the Venice Commission.

⁷⁶ This is not in line with the Venice Commission's Code of Good Practice in Electoral Matters, I.2.3, available at: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2002\)023-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2002)023-e). Ibid. CDL-AD(2009)040, paras. 48–53.

⁷⁷ See: <http://chesno.org/>.

The primary source of public information in Ukraine is television, while Internet is increasing its role and importance as a source of information by offering a wide range of views.⁷⁸ The state-owned broadcast media, which includes national, regional and municipal channels, will be transformed into a public-service broadcaster by the Law on Public Television and Radio Broadcasting of Ukraine.⁷⁹ The introduction of this law was a long-standing OSCE/ODIHR recommendation. Currently, the state-owned national television *First Channel* simultaneously broadcasts different content at certain times, depending on the network used – cable or free digital terrestrial network – and does not have editorial control of externally produced content which it broadcasts. This raises questions regarding its capacity to provide a consistent public service to the citizens and to duly comply with legal provisions, especially on campaign coverage.⁸⁰

B. THE LEGAL FRAMEWORK

The Constitution guarantees freedom of speech and prohibits censorship, and the media legal framework generally provides for media freedom. In a positive development, parliament adopted amendments to a set of laws to reinforce effective access to public information.⁸¹

OSCE/ODIHR EOM media interlocutors in most parts of the country reported that media outlets' and journalists' freedom slowly grew over the pre-election period. By contrast, freedom of the media was a major concern in the east of Ukraine, and to a lesser extent in the south: journalists and media operating there faced constant and severe threats and harassment, including kidnapping and short detentions of journalists and seizure of media outlets.⁸² The Kyiv District Administrative Court, upon a request of the National Television and Radio Broadcasting Council (NTRBC), imposed a temporary ban on four Russian television (TV) channels for alleged propaganda against the Ukrainian authorities.⁸³ *De facto*, however, the ruling was not respected by several regional cable operators in Donetsk and Luhansk *oblasts*. In addition, on several occasions, the signal of some national and regional Ukrainian broadcasters was taken off the air and replaced by Russians TV channels by anti-governments forces in these two *oblasts*.

The competent authorities should take all necessary measures to protect journalists and media outlets from attacks and to ensure that all infringements of the freedom of the media are duly investigated and addressed.

The conduct of the media during the election campaign is regulated by the election law, which stipulates that both state and private media shall offer balanced coverage of the candidates. The law also requires state national media to offer free airtime and space to all contestants. The election law strictly regulates the format of TV debates among candidates, both in state and private media,

⁷⁸ According to a survey of 19 February 2013, conducted by Internews, television is the most popular source of information for 87 per cent of Ukrainians. Internet is an additional source for 42 per cent, and print media for 40 per cent. See: <http://www.umedia.kiev.ua/english/media-research/444-internews-survey-reveals-the-internet-is-a-key-source-of-news-for-nearly-half-of-ukrainians.html#.Uy6kUvmSyut>.

⁷⁹ The law was adopted by parliament on 17 April and signed by the acting president on 13 May. However, due to transitory provisions, the law is not likely to be effectively enforced until 2015.

⁸⁰ *First Channel* broadcasts an externally produced daily talk show, “Shuster Live”, and at certain times of the day rebroadcasts the online TV channel *Hromadkse.tv*, without exercising editorial control over the content of either.

⁸¹ The laws amending the Laws of Ukraine on Information and on Access to Public Information, which were adopted by parliament on 27 March and signed by the acting president on 17 April, included amendments to several existing legislative acts.

⁸² The OSCE Representative on Freedom of the Media closely followed the deterioration of the media's capacity to freely operate in the country and issued several statements calling for a restoration of the freedom of the media. See: <http://www.osce.org/fom/118990>.

⁸³ The temporary ban was imposed on 25 March by Decision No. 824/3456/14 of the Kyiv District Administrative Court and will be in force until a final ruling of the court on the merits.

potentially limiting the scope for a lively public debate.⁸⁴ Paid campaign advertising is allowed on state and private media, without limitations on the amount of paid advertising, but media outlets have to provide contestants with equal conditions and publish their fees.

The election law does not clearly stipulate the body responsible for overseeing broadcast and print media during an election. While the NTRBC, nevertheless, supervised broadcast media's compliance with existing laws during the election campaign,⁸⁵ its capacity to fully ensure compliance of the media with the law is limited by an unclear system of sanctions.⁸⁶

The election law should define a clear system of sanctions related to violations of its media-related provisions and indicate the competent body to address them. Furthermore, consideration should be given to reinforce the NTRBC as an independent regulatory body and to increase its capacity to oversee and fully ensure the broadcast media's compliance with the legislation, as well as address media-related complaints and impose sanctions for possible violations during the election campaign. Decisions of the independent regulatory body should be taken in a timely manner and made public.

C. OSCE/ODIHR EOM MEDIA MONITORING



OSCE/ODIHR EOM media monitoring showed that during the election-campaign period, the overall political discourse in the media was dominated by the crisis in the southern and eastern regions, including when candidates were directly covered.⁸⁷ Broadcast media covered the campaign in a variety of formats such as news, current affairs programmes, talk shows, debates, interviews, and paid advertising, but focused their editorial coverage on a limited number of contestants.⁸⁸ State national television and radio duly complied with their obligation by offering free airtime to all contestants, who largely availed themselves of this opportunity.⁸⁹

First Channel, in a positive initiative, organized and broadcast “National Debates” with the participation of all candidates.⁹⁰ In the context of a subdued campaign, this initiative constituted an important contribution to enable citizens to make an informed choice. In state TV's news coverage, however, the campaign was very limited. *First Channel* devoted only 11 per cent of its airtime to the candidates and 59 per cent to covering the work of state institutions. Nevertheless, state institutions refrained from actively participating in the campaign and supporting any candidate. The most popular talk show on *First Channel*, “Shuster Live”, provided Ms. Tymoshenko with 29 per cent of its coverage.⁹¹ Mr. Poroshenko was invited to participate in debates with Ms. Tymoshenko on this talk show, but he declined.

⁸⁴ Article 62 of the election law stipulates that only two candidates may participate in a televised debate and that each candidate can participate only in one debate per channel during the election campaign.

⁸⁵ According to Article 13 of the Law on the National Television and Radio Broadcasting Council.

⁸⁶ The NTRBC's election-related activities included a media-monitoring component. The NTRBC informed the OSCE/ODIHR EOM that its capacity is currently limited to issuing warnings, which it does by notifying broadcasting companies and the CEC about detected violations. A public report was published on 11 June.

⁸⁷ The OSCE/ODIHR EOM on 1 April commenced its media monitoring of seven TV channels (state-owned *First Channel* and private channels *Inter*, *5 Channel*, *ICTV*, *1+1*, *TVi*, *TRK Ukraina*), and of 2 newspapers (state-owned *Holos Ukrainy* and private *Fakty i Kommentarii*). See detailed results in the Annexes.

⁸⁸ Mr. Poroshenko and Ms. Tymoshenko each obtained 20 per cent of the overall coverage given to candidates, Mr. Dobkin 9 per cent, Mr. Tihipko 9 per cent, and Mr. Lyashko 8 per cent.

⁸⁹ Candidates were granted two slots of 15 minutes each on prime time between 22 April and 22 May on *First Channel*, and from 7 to 23 May on *Ukrainian Radio 1*.

⁹⁰ These debates on *First Channel* did not respect the provisions of the election law for candidate debates. Instead, the broadcaster produced its own format, with three candidates in each of the seven debates.

⁹¹ “Shuster Live” accounted for 70 per cent of all political coverage on *First Channel*, outside of free airtime and the “National Debates”.

The tone of coverage on private broadcasters was generally neutral, but in a few cases the amount of airtime allocated appeared biased. For instance, *5 Channel* gave 60 per cent of its editorial coverage to Mr. Poroshenko.⁹² Only a few candidates invested in paid advertising for their campaign. Four candidates purchased 82 per cent of all paid advertising in the TV channels monitored, with Mr. Poroshenko alone having purchased 33 per cent, Ms. Tymoshenko 20 per cent, Mr. Dobkin 15 per cent and Mr. Tihipko 14 per cent.

In line with the law, the state newspapers *Holos Ukrainy* and *Uryadovyi Kurier* on 30 April published special editions offering free space for the presentation of the candidates' platforms. State and private print media offered limited coverage of the campaign. Instances of articles with features of paid material not clearly marked as such were noted; such articles potentially mislead voters about the source of election-related material.

The election law should clearly define how print media should mark paid election-related material. In addition, self-regulatory bodies such as the Journalist Ethics Commission could consider reinforcing professional standards and media literacy through training programmes for journalists.

Voter education spots and messages from the CEC were broadcast by state and private TV channels only during the last two weeks of the campaign and in a limited number.

X. PARTICIPATION OF NATIONAL MINORITIES

According to the latest census, 77.8 per cent of citizens of Ukraine are ethnic Ukrainians, 17.3 per cent are ethnic Russians, and the remaining 5 per cent comprise Belarusians, Bulgarians, Crimean Tatars, Jews, Hungarians, Moldovans, Poles, Roma, Romanians, and other small minority groups. Twenty-nine per cent said that they consider Russian as their native language, and nearly half of this Russian-speaking population is comprised of other ethnic groups, including Ukrainians.⁹³

Generally, national-minority communities participated freely in the election process and reported no obstacles as voters or candidates.⁹⁴ Even though Ukrainian legislation specifies that official election materials must be produced in Ukrainian only,⁹⁵ most communities did not report that any language barrier compromised their understanding of ballot papers, other election materials, or even televised debates. OSCE/ODIHR EOM observers also did not hear reports of exclusion of national minority representatives from DEC's or PEC's, and observed minority representation on election commissions in compact settlement areas of national minorities.

A major exception to these observations, however, was the Roma community, who informed of the exclusion of at least half of their community from the voting process due to the lack of identity and registration documents and, in some areas, a language barrier.⁹⁶ OSCE/ODIHR EOM interlocutors noted that Roma continue to face excessive and contradictory bureaucracy when attempting to obtain identity documents, due to legal and procedural deficiencies, and that responsible agencies often do not implement court judgments.

⁹² *5 Channel* is owned by Mr. Poroshenko.

⁹³ The census was conducted in 2001; the next census originally scheduled for 2011, was postponed to 2016.

⁹⁴ The OSCE/ODIHR EOM interviewed 81 representatives from 17 ethnic minority groups and 7 religious communities across the country, as well as 5 consultative bodies representing minorities.

⁹⁵ Article 12 of the Law on the Foundation of State Language Policy (language law).

⁹⁶ The 2001 census reflects a population of 47,600 Roma countrywide, but the World Romani Union and local Roma organizations estimate that up to 400,000 Roma live in Ukraine.

As previously recommended in the OSCE/ODIHR final report on the 2010 presidential election, comprehensive measures should be adopted to effectively address the lack of identification and other relevant documents among Roma people. A review of relevant national legislation and local practice, specifically at regional administrative offices responsible for issuing identity documents, should be considered.

Unrest in parts of the country severely impacted the political participation of large numbers of certain communities, specifically Crimean Tatars in Crimea and the Russian-speaking community in eastern *oblasts*, who live in areas where the election could not be organized.⁹⁷ Isolated incidents of violence, vandalism and hate speech against some communities, including Jewish and Roma, also may have dampened their participation. Intolerant speech during campaigning was not observed.

Political instability in the predominantly Russian-speaking east also influenced the language debate, with some candidates shifting previous positions and expressing support for the 2012 language law or a greater status for the Russian language during the campaign, but still disagreeing on the issue of Russian as a second state language. Most candidates did not reach out to the minority vote in particular,⁹⁸ and some representatives of the Russian community informed the OSCE/ODIHR EOM that they lacked interest in the campaign due to the absence of a major candidate representing their interests.

XI. CITIZEN AND INTERNATIONAL OBSERVERS

The amended election law provides for observation of the election process by international and citizen observers, including national civic organizations. The law requires that in order to be eligible to observe the election, the charter of national civic organizations must stipulate election observation as one of the organization's activities, thereby narrowing the opportunity to observe. In addition, a 60-day deadline for civic organizations to be registered by the CEC as eligible to nominate observers might significantly limit the possibility of civic organizations to observe the election.⁹⁹ In total, ten civic organizations were registered to accredit observers. Of these, only *OPORA* and the Committee of Voters of Ukraine (CVU) accredited a significant number of observers at the DEC level, conducted long-term and short-term observation and published several reports before and after election day. Not all candidates and nominating parties were active in nominating observers.

The process of accreditation of observers from national civic organizations could be simplified in order to provide them with the possibility to observe all stages of the election process, including DEC formation and the work of the CEC from the beginning of the electoral process.

The process of accreditation of international observers by the CEC was in general inclusive, with the Ukrainian authorities welcoming observers from all OSCE participating States and from other countries. However, the CEC denied the registration of some international organizations on the grounds

⁹⁷ Based on census figures, 243,400 Crimean Tatars resided on the Crimean peninsula as of 2001. The Mejlis of the Crimean Tatar People estimates their current population to be 300,000. Only 6,000 voters total from the Crimean peninsula re-registered to vote elsewhere. Crimeans informed OSCE/ODIHR EOM observers based in Kherson *oblast*, adjacent to Crimea, that many were discouraged from registering and voting due to the time, travel, expense and potential danger involved.

⁹⁸ Petro Poroshenko signed an agreement with the Hungarian community to support minority language rights and decentralization, among other issues, in exchange for their endorsement.

⁹⁹ The registration of individual citizen and partisan observers is made by DECs, on the basis of an application signed by the head of the respective civil-society organization, a candidate proxy or a representative of the respective nominating party, which must be submitted no later than five days before the election day.

envisaged by the respective CEC resolution rather than by the election law.¹⁰⁰ The CEC accredited 3,325 observers from international organizations, and 282 from individual countries.

CEC procedural resolutions should be in line with the election law and should not create additional grounds for rejecting the registration of observers.

In line with previous OSCE/ODIHR recommendations, all observers are now granted the right to receive copies of results protocols at all levels of the election administration, which is an important element to increase transparency. Furthermore, all national observers are entitled to file complaints and apply to the courts.

XII. COMPLAINTS AND APPEALS

The right to an effective remedy is sufficiently guaranteed in the election law; however, the election law still allows for the rejection of complaints based on minor deficiencies in format.¹⁰¹ The right to appeal decisions, actions, or inactions of election commissions and other actors involved in the process is granted to all participants in the election process.¹⁰²

The election law sets out the format and required information for a complaint to be considered by an election commission. Complainants generally have 5 days from the action/inaction or decision to submit their complaint, and the election commission has 2 days to respond.¹⁰³ The CEC received 16 complaints in the pre-election period and 7 following election day but did not consider the merits of any of the complaints received.¹⁰⁴ Complaints were answered with letters explaining the formal deficiencies of the complaint in accordance with the election law. No further efforts were made by the CEC to consider the questions raised in the complaints on its own initiative.

The automatic rejection of complaints based on deficiencies in format should be removed from the election law. Election commissions should be encouraged to consider the merits of a case and take action if the issue raised in the complaint is clear from the documents submitted.

For the majority of election-related matters, complainants can file their complaint with the election administration or the courts, or with both. Within the court system, election-related complaints and appeals are heard by administrative courts, with the High Administrative Court as the court of last instance for election matters. As with election commissions, a complainant must submit a properly filled complaint within 5 days of the action/inaction or decision that is the basis for the complaint, and the courts have 2 days for reviewing the matter.

¹⁰⁰ According to clause 2.6 of the Procedure of Registration of International Observers (CEC Resolution No. 30 of 4 March 2014), an international non-governmental organization must accompany its registration request with approved copies of constituent documents (charter etc.) certifying that issues related to the election process and election observation form part of the statutory activities of this organization, as well as an approved copy of the document certifying the international status of the organization.

¹⁰¹ Article 96 of the election law states that, "A complaint executed without due regard of requirements set forth in Article 95 of this Law shall be rejected without consideration..." The requirements set in Article 95, include among others: a list of attachments to the complaint; personal details of the subject of the complaint, even if not known; multiple copies of all the documents attached; a notarized copy of authority as a proxy or candidate representative, even if the complainant is already registered as such with the CEC.

¹⁰² Presidential candidates, parties that are participating in the election process, election commissions, citizen and candidate/party observers, as well as voters whose rights were violated can file complaints and appeal decisions.

¹⁰³ Separate deadlines apply for incidents occurring in the two days before election day and on election day.

¹⁰⁴ One complaint from candidate Vadym Rabinovych about the presidential orders for state security for six of the presidential candidates was discussed in a CEC session where the decision was taken that it is not within the CEC's jurisdiction to review the actions of the president.

The OSCE/ODIHR EOM reiterates the recommendations made in the Joint Opinion of the OSCE/ODIHR and the Venice Commission that call for a simplification of the complaint procedure and encourage the development of a complaint form. Such a form should help ensure that complainants understand the required documents for filing a complaint with an election commission or the courts and instruct complainants on where to submit their complaint.

In the consideration of election-related complaints and appeals, the courts adhered to the two-day deadline for review and offered complainants a sufficient opportunity to state their claim. Additionally, courts thoroughly questioned the CEC's arguments and demanded additional documentation from the CEC when necessary to adjudicate the matter. A total of 29 cases were reviewed by the Kyiv Administrative Court of Appeals, of which 17 were subsequently appealed to the High Administrative Court.¹⁰⁵

Following the call for the election, the High Administrative Court received two appeals of the parliament's decision to appoint the acting president and schedule the election for 25 May. The court refused to hear both matters on the grounds that the appeals raised constitutional questions that are not within the court's jurisdiction. On 10 April, the Supreme Court admitted for consideration the appeal against this decision. Although the case is not considered an election dispute and therefore not subject to expedited review, the Supreme Court has not met the regular deadlines provided in the Code of Administrative Proceedings for the review of this matter.

Since the appointment of the new government, there were significant legislative developments that impacted the work of the judiciary in the election period. The parliament amended legislation to increase its role in the appointment of judges for lifetime terms. On 23 and 24 February, parliament dismissed the chief justice of the High Administrative Court and five judges of the Constitutional Court.¹⁰⁶ Appeals of parliament's decision to dismiss the judges were filed to the High Administrative Court by sitting and dismissed Constitutional Court judges. On 18 June, the High Administrative Court found in favour of the Constitutional Court Chairman Ovcharenko canceling the parliament's resolution to dismiss him; all other appeals were pending at the time of writing the report. In a similar case, on 11 April, the High Administrative Court invalidated the decision of parliament to dismiss the chief justice; an appeal is pending with the Supreme Court.

On 8 April, parliament passed a new Law on Restoring Trust in the Judiciary, requiring the re-composition of the High Council of Justice and the High Qualification Commission of Judges and the removal of all heads and deputy heads of general, administrative, commercial, and high specialized courts from these posts. The Law on Restoring Trust in the Judiciary also called for the lustration of judges who adjudicated in cases related to public gatherings since November 2013 and to the 2012 parliamentary elections. Recent legislative changes regarding the judiciary and the call for judicial lustration impacted the work of the courts during the election period. The expressed hesitation of some judges to adjudicate election-related disputes and freedom of assembly cases for fear of future repercussions raised concern, as did the political intervention in the election of a Chief Justice for the

¹⁰⁵ The 29 cases included 16 appeals of CEC decisions regarding registration of 11 candidates, 1 challenge from a rejected candidate to the registration of Petro Poroshenko, 2 complaints from a presidential candidate regarding statements in the media made by other candidates, 1 appeal of the CEC's reallocation of DEC executive positions amongst candidates following the withdrawal of 2 candidates, 3 appeals regarding a citizen's request for the CEC to provide the personal history statements of the presidential candidates, 3 from a citizen about the program of Yulia Tymoshenko, 1 request from a citizen to change the ballot type, and 2 appeals related to the accreditation of international observers. Two additional complaints were reviewed by local courts in Chernihiv and Kyiv, regarding misleading information in the media about candidates and party members.

¹⁰⁶ Resolutions of the *Verkhovna Rada* of Ukraine No. 4195, dated 23 February 2014, and No. 775–VII, dated 24 February 2014.

High Administrative Court.¹⁰⁷

The Prosecutor General's office reported that 125 criminal investigations were opened regarding incidents that occurred during the election period. Matters being investigated included attacks on presidential candidates, obstructions to the work of election administration officials and destruction of campaign materials. More than half of these incidents occurred in Donetsk and Luhansk *oblasts*. All investigations are still open and no matters have been brought to court for prosecution.

XIII. ELECTION DAY

On election day, the OSCE/ODIHR deployed 1,025 long-term and short-term observers. In total, over 1,200 observers from 49 OSCE participating States were deployed by the IEOM. Observers reported on the opening of 342 polling stations, on the voting process in 4,135 polling stations, and on the closing and the vote count in 410 polling stations. On election night and the following days, IEOM observers filed 665 reports on the tabulation process, from 174 DEC's. IEOM observers reported from all regions where the election took place, including from a limited number of polling stations in Donetsk and Luhansk *oblasts*.

In most of the country, election day took place peacefully. According to the CEC, voter turnout was 59.9 per cent.¹⁰⁸ The CEC started posting detailed preliminary election results by polling stations on its website at around 1:30 am, but faced technical problems doing so.¹⁰⁹

Despite efforts of the election administration to ensure voting throughout the country, polling did not take place in 10 of the 12 election districts in Luhansk *oblast* and 14 of the 22 election districts in Donetsk *oblast*.¹¹⁰ This was due to illegal actions by armed groups before and on election day, including death threats and intimidation of election officials, seizure and destruction of election materials, as well as the impossibility to distribute ballots to polling stations due to general insecurity caused by these groups. The majority of Ukrainian citizens resident in these *oblasts* were thus deprived of the opportunity to vote and to express their will.¹¹¹ In the 10 election districts in Donetsk and Luhansk *oblasts* where the election could be held, polling progressed without incident, although security was much in evidence and voter turnout was low. Elsewhere, only a few isolated attempts to disrupt voting were reported.

Just prior to and on election day, a number of complaints were submitted to PECs and the courts. The vast majority of the complaints were regarding the voter list and requests for changes or additions to the voter list. However, a few complaints regarding the organization of polling stations and potential violations of the campaign-silence period by presidential candidates Poroshenko and Tymoshenko were

¹⁰⁷ On 17 April, the scheduled election of the Chief Justice of the High Administrative Court was interrupted by approximately 200 protestors who demanded that two of the three judicial candidates not be considered. An agreement was reached with the Right Sector and a *Batkiivshchyna* member of parliament that the court would share the list of judges running prior to re-scheduling the election.

¹⁰⁸ This turnout figure was calculated against the total number of voters on the voter lists of precincts where the election took place. When calculated against the total number of voters registered in the 213 election districts where DEC's were established (i.e. excluding the Autonomous Republic of Crimea and the city of Sevastopol), turnout was 52.7 per cent.

¹⁰⁹ Due to these problems, the CEC had processed less than 1 per cent of PEC results protocols by 03:00 hrs. on 26 May. The processing and posting of protocols restarted at between 03:00 and 04:00 hrs.

¹¹⁰ The CEC reported that voting did take place in some 885 of the 3,908 polling stations in these *oblasts*, in election districts 47, 49, 50, 58, 59, 60, 61 and 62 in Donetsk *oblast*, and in election districts 114 and 115 in Luhansk *oblast*. However, turnout in these regions was below average, due to the insecure environment.

¹¹¹ Around 970,000 voters in these two *oblasts* had the opportunity to vote, while some 4.09 million were deprived of their voting rights.

noted by OSCE/ODIHR EOM observers. Additionally, criminal investigations have been opened regarding 28 incidents that occurred on election day.

A. OPENING AND VOTING

Opening procedures were assessed positively in all but 16 of the 342 polling stations where opening was observed; 12 of these polling stations were located in the city of Kyiv. Despite the positive overall assessment, IEOM observers noted some minor procedural problems during the opening process, including ballot boxes not being sealed properly in 16 polling stations observed and not all election material being present in 8 polling stations. IEOM observers also reported short delays in opening for voting from 64 polling stations. Candidate observers or proxies were present in all but 14 polling stations where opening was observed, and citizen observers were present in 86. In 7 polling stations, IEOM observers were turned away and not allowed to observe opening procedures. In 6 polling stations observed, unauthorized persons were present during the opening.

Voting was assessed positively in 98 per cent of polling stations observed. IEOM observers assessed the voting process somewhat less positive in polling stations where local elections were also held (94 per cent positive vs. 99 per cent), including in Kyiv (95 per cent vs. 99 per cent). Outside the capital, there were no significant regional variations. The performance of PECs, as well as PECs' and voters' understanding of procedures was assessed positively in the overwhelming majority of polling stations. However, the reduction in the minimum size of PECs from 12 to 9 members did cause operational problems, particularly where local elections were held simultaneously.

Circumstances in and around polling stations were assessed positively overall, although overcrowding was reported from 10 per cent of polling stations observed, and large groups of people waiting outside to vote in 5 per cent. IEOM observers noted organizational problems in 6 per cent of polling stations observed, mainly due to inadequate layout or poor queue control. IEOM observers also noted that cumbersome procedures, such as the requirement for PECs and voters to sign the ballot counterfoils before each ballot is issued, caused further delays in the voting process.

IEOM observers reported only a few isolated cases of tension, intimidation or obstruction. Campaign activities in and around polling stations, or campaign materials inside polling stations were only reported in very few cases. Almost one half of polling stations observed was not readily accessible for people with disabilities, and the layout of almost one quarter was not adequate for disabled voters.

Voting procedures were followed in the large majority of polling stations observed. The main problem reported by IEOM observers was that in 4 per cent of polling stations observed, not all voters marked their ballots in secret or folded them before depositing them in the transparent ballot boxes. In 3 per cent, ballot boxes were not properly sealed. Apart from group voting (4 per cent), only isolated cases of more serious procedural violations such as proxy voting (27 reports), series of seemingly identical signatures on the voter list (28 cases) and the same person assisting numerous voters (13 cases) were observed. Voter identification procedures were adhered to in almost all polling stations observed; however, in 25 per cent of polling stations observed, small numbers of voters were turned away, usually because their names could not be found on the voter lists or because they could not produce valid identity documents. IEOM observers also reported from 65 polling stations (2 per cent) that not all people who were allowed to vote had produced a valid identity document. In 5 per cent of polling stations observed, IEOM observers were informed that official complaints had been filed.

Unauthorized people were present in 9 per cent of polling stations observed, and seen interfering in or directing the process in 2 per cent. Candidate observers or proxies were present in 95 per cent of polling stations observed, mainly for candidates Poroshenko (82 per cent) and Tymoshenko (82 per cent). Citizen observers were present in 24 per cent of polling stations observed, with CVU observers

being seen in 5 per cent and *OPORA* observers in 8 per cent. Other international observers were present in 13 per cent of polling stations observed by IEOM observers.

B. COUNTING

The vote count was assessed positively in 94 per cent of the 410 polling stations where it was observed. However, the assessment was less positive in polling stations where local elections also took place (85 per cent vs. 96 per cent). PECs' understanding of counting procedures and their adherence to them were rated positively in the large majority of polling stations where the count was observed, as was PECs' performance. Very few IEOM observers reported that the process was not transparent. In 12 per cent of polling stations where the count was observed, voters were waiting in line at the end of voting hours (8:00 pm). In some cases, voting had to be extended by more than 30 minutes. Such instances were reported from Kyiv in particular.

IEOM observers reported some procedural errors and problems during the count. Before opening the ballot boxes, not all PECs followed the required procedures, such as establishing or announcing the number of signatures on the voter list (14 per cent of counts observed), the number of ballot counterfoils (9 per cent) or the number of unused ballots (4 per cent). In addition, not all PECs entered these figures in the results protocols at this stage, as required as a safeguard against possible irregularities. The problems observed at this stage of the counting process were partly due to the cumbersome and time-consuming control checks, such as checking the number of signatures on the ballot counterfoils against the number of signatures on the voter list, the wording of some entries on the results protocols, which according to IEOM observers was unclear to many PEC members, and the lack of basic tools such as a calculator.

Consideration could be given to clarifying and potentially simplifying the reconciliation procedures and control checks before the actual vote count. Training of PEC members should put more emphasis on the counting procedures and the completion of the results protocols. Furthermore, some entries on the results protocols could be rephrased in order to make them more understandable.

After opening the ballot boxes, not all PECs announced which candidate each ballot had been marked for (3 per cent) or voted on the validity of contested ballots (20 per cent). IEOM observers assessed that the validity of contested ballots was not always determined reasonably (4 per cent) or consistently (5 per cent). IEOM observers reported three cases where ballots were found in the ballot boxes in a manner that suggested that ballot box stuffing had occurred earlier.

In 17 per cent of counts, PECs had problems completing the results protocol, and 20 per cent had to revise figures established earlier. In 6 counts observed, the figures were not entered in the protocol correctly, and in 23 instances, the figures did not reconcile. IEOM observers noted 36 cases of pre-signed results protocols.

Candidate observers and proxies were present at 95 per cent of counts observed, citizen observers at 21 per cent, and other international observers at 12 per cent. Unauthorized people were present at 10 per cent of counts observed, often interfering in or directing the process. In 22 counts observed, people other than PEC members were participating in the count. IEOM reported that there were attempts to disrupt or obstruct the counting process in four polling stations where they observed.

C. TABULATION AT DECS

The tabulation process was assessed negatively in 14 percent of reports by IEOM observers. The early stages of the tabulation process were assessed somewhat more negatively. This was partly due to a failure of the communications network linking the DECS to the CEC's informatics system *Vybory* and

partly the fact that the *Vybory* system was not working following a cyber-attack on 22 May.¹¹² It was also due to severe congestion at DEC premises caused by inadequate premises, a large number of PECs arriving at DECs simultaneously, inefficient legal and organizational arrangements to receive materials and process results, tension and tiredness of election commissioners.

Consideration should be given to changing the procedures for receipt and processing of results protocols and election materials from PECs in a way which would allow for simultaneous processing of several PECs.

The problems with the *Vybory* system caused a major disruption to the receipt and processing of election material, prevented many DECs from transmitting election results to the CEC, and delayed the CEC's announcement of preliminary results. DECs responded to the problem in different ways: some manually tabulated vote totals; some entered this data into the *Vybory* system and sent screenshots to the CEC, while others temporarily suspended their activity. Suspension and data transfer problems were reported by IEOM observers from 86 DECs.

The CEC should consider a back-up system to ensure that any problems with the Vybory system do not impede communications with DECs and should also take steps to enhance the system's security.

In 11 per cent of their reports from DECs, IEOM observers noted that some packed PEC material had apparently been tampered with. IEOM observers noted frequent problems with PEC protocols. In 42 per cent of their reports, they indicated that not all protocols had been fully completed, in 61 per cent, they reported that figures in one or more PEC protocols did not reconcile, and in 13 per cent, they reported that figures in PEC protocols were changed at the DEC premises by DEC or PEC members.¹¹³ IEOM observers also reported 9 cases of what appeared to be deliberate manipulation of PEC protocols, as well as 10 cases where the data entered into the computer system were not the same as in the PEC protocol.

IEOM observers reported that premises and conditions were not adequate in many DECs, which at times affected proper observation of the entry of electoral results into the *Vybory* system. Many IEOM observers reported overcrowding (103 reports) and tension (100 reports). IEOM observers were not able to observe the data entry of election results closely enough (38 per cent of reports), and in 15 per cent of their reports, they indicated that they had not been granted access to the data processing.

DECs should be provided with premises which are adequate not only for the DECs' work before election day, but also as an operations/results processing center on election night. Consideration could be given to tasking local authorities with providing such (additional) premises.

Candidate observers or proxies were present at DECs during 87 per cent of observations by IEOM observers, mainly for candidates Poroshenko (60 per cent) and Tymoshenko (43 per cent). The presence of citizen observers was reported in 40 per cent of DEC observations, and of other international observers, in 33 per cent. The presence of unauthorized people was reported in 7 per cent of DEC observations, and their interference in the process, in 3 per cent.

¹¹² On 22 May, the CEC's informatics system *Vybory* suffered a cyber-attack. On election night, the CEC informed the OSCE/ODIHR EOM that the network linking the DECs to the *Vybory* system was not working.

¹¹³ The election law requires PECs to reconvene for a formal session in cases where the PEC results protocol contains errors and the DEC (or the CEC via the DEC) instructs the PEC to issue a corrected protocol. This caused additional delays in the data entry and tabulation of election results at DEC level.

D. ANNOUNCEMENT OF RESULTS

The CEC began posting preliminary results on its website on election night. In line with a previous OSCE/ ODIHR recommendation, the CEC posted all figures from PEC results protocols, including the number of registered voters and unused ballots, thereby giving candidates and observers the possibility to check all figures against copies of the protocols they received at polling stations. This increased transparency in the results tabulation process.

The OSCE/ODIHR EOM analyzed the results of in-country polling stations posted on the CEC's website. While most reconciliation errors in PEC protocols were rectified before the DEC's compiled their protocols, a small number of final PEC results posted on the CEC's website contained reconciliation errors.¹¹⁴ The OSCE/ODIHR EOM also verified a sample of the results posted on the CEC's website against protocol copies collected by IEOM observers in PECs and DEC's.¹¹⁵ In some 73 per cent of PEC protocols and 68 per cent of DEC protocols examined, the data was identical. Where differences were found, the large majority were caused by errors in reconciling non-vote data, e.g. the number of ballots issued or 'the number of ballots to be taken into account', rather than errors in the number of votes received by the candidates.

Of the 29,099 in-country polling station results posted on the CEC website, 215 had a turnout exceeding 90 per cent of registered voters.¹¹⁶ Petro Poroshenko won in 151 of these polling stations, and Yulia Tymoshenko in 62 – a much higher proportion than her national average.¹¹⁷ Special polling stations located in penitentiaries and hospitals¹¹⁸ showed a markedly higher turnout than the national average.¹¹⁹

All DEC's submitted their tabulation protocols to the CEC within the five-day deadline. The CEC was in permanent session from the day after election day until the announcement of official results, receiving results protocols from DEC's. CEC verification revealed errors in 40 DEC protocols, which required the DEC's concerned to make amendments. An additional 13 DEC's amended their protocols on their own initiative. The amendments were effected within the two-day deadline. Most amendments concerned technical errors made during entering the data into the *Vybory* system.

The CEC announced the final results of the election on 2 June. The results protocol was signed by all CEC members and candidate representatives present at the session.

Through amendments made in March, parliament introduced explicit language obliging the establishment of election results regardless of the number of polling stations where voting took place. Every DEC is obliged to establish results for the respective district if at least one polling station is able to open and carry out voting in accordance with the law. Furthermore, the CEC is obliged to establish results on the basis of whatever DEC results it receives.

¹¹⁴ There are three mathematical controls to ensure that the figures entered in the protocols balance correctly. The first requires that the number of ballot papers received equals the sum of unused ballots and the total number of voters who received ballots. The second requires that the number of voters who received ballots equals the sum of the number of voters who received ballots at home and the number who received ballots at a polling station. The third requires that the number of voters participating in voting should correspond to the sum of the number of ballots deemed invalid and the total number of ballots cast for all candidates. In total, the OSCE/ODIHR identified control-sum errors in 127 protocols posted on the CEC's website. In cases where a PEC is unable to reconcile the figures, it may draft an 'act' explaining why the figures do not balance.

¹¹⁵ IEOM observers received 92 DEC protocols and 345 PEC protocols.

¹¹⁶ Of these, 171 had between 500 and 1,000 registered voters and 44 had over 1,000 registered voters.

¹¹⁷ Across the county, Yulia Tymoshenko won the vote in 205 polling stations with over 500 registered voters.

¹¹⁸ IEOM observers who observed in a polling station located in a psychiatric hospital found clear evidence of ballot-box stuffing.

¹¹⁹ Of the 96 polling stations where turnout exceeded 95 per cent, 72 were located in penitentiaries.

XIV. POST-ELECTION DAY DEVELOPMENTS

Petro Poroshenko publicly announced his victory immediately after the release of exit polls at 8:00pm on election night, while voting was still ongoing in some polling stations due to long lines of voters waiting to cast their ballot.

No complaints were submitted to the courts regarding decisions taken by the CEC on election day and no DEC decisions were appealed to the CEC through the course of voting, counting and tabulation. Any decision, action, or inaction of the CEC taken during the establishment of the election results can be appealed to the High Administrative Court as court of first and last instance. Following the establishment of results by the CEC, the High Administrative Court received one complaint from a citizen. This complaint was not properly formatted and was therefore returned to the appellant to make corrections, which he chose not to make within the time permitted.

Parliament set 7 June as the date for the inauguration of Mr. Poroshenko; this was before the deadline for challenging the election results had expired at 12:00 am the same day.

XV. RECOMMENDATIONS

The following recommendations are offered for consideration by the authorities, political parties and civil society of Ukraine, in further support of their efforts to conduct elections in line with OSCE commitments and other standards for democratic elections. These recommendations should be read in conjunction with other recommendations offered previously by the OSCE/ODIHR and with recommendations contained in the joint opinions on Ukrainian election legislation of the OSCE/ODIHR and the Venice Commission. The OSCE/ODIHR stands ready to assist the authorities and civil society of Ukraine to further improve the electoral process.¹²⁰

A. PRIORITY RECOMMENDATIONS

1. In order to ensure stability in the election legislation and further harmonization, efforts should be made to finalize electoral reform well in advance of next elections and to build in safeguards against changing legislation prior to an election. Consideration could also be given to further delegating regulatory authority to the CEC so that, as the principal body responsible for the implementation of the election law, it has the flexibility to promptly react to any changes in the political-security environment in order to ensure uniformity in how emergency situations are addressed.
2. Serious consideration should be given to revising the method of appointing DEC members to better ensure professionalism and stability in their work. This should enable training to be more effective and the institutional capacity to become more developed.
3. The number of commission members appointed at each level should correspond to the actual needs of the electoral administration rather than be the result of the unpredictable number of candidate nominations received. Consideration could be given to increasing the number of DEC members or providing that where a DEC has to manage a high number of PECs, it may establish operation centres at district (rayon) level. Consideration could also be given to setting a reasonable maximum number of voters per polling station.

¹²⁰ In paragraph 24 of the 1999 OSCE Istanbul Document, OSCE participating States committed themselves “to follow up promptly the ODIHR’s election assessment and recommendations.”

4. Provisions regulating campaign financing should be strengthened to enhance the transparency of campaign funds. Funding and expenditure records could be made public in a timely manner before and after election day. The legal framework should provide for independent oversight and monitoring of campaign financing, including the possibility of effective, proportionate and dissuasive sanctions for violations of campaign-finance regulations.
5. The automatic rejection of complaints based on deficiencies in format should be removed from the election law. Election commissions should be encouraged to consider the merits of a case and take action if the issue raised in the complaint is clear from the documents submitted.
6. The Ukrainian authorities should consider revising the legal arrangements related to the electoral participation of citizens resident in the Autonomous Republic of Crimea and the city of Sevastopol, with the objective of enhancing opportunities for their participation. In this respect, procedures regarding their registration and voting should be simplified to the maximum extent possible. The electoral and governmental authorities should intensify their efforts to inform residents in these territories of the means by which they can vote.
7. Prior to the next election, parliament should return to the consideration of amendments to the Criminal Code recently put forward by the Ministry of Interior which would increase liability for and further define election offenses, including addressing vote buying.
8. The election law should define a clear system of sanctions related to violations of its media-related provisions and indicate the competent body to address them. Furthermore, consideration should be given to reinforce the NTRBC as an independent regulatory body and to increase its capacity to oversee and fully ensure the broadcast media's compliance with the legislation, as well as address media-related complaints and impose sanctions for possible violations during the election campaign. Decisions of the independent regulatory body should be taken in a timely manner and made public.

B. OTHER RECOMMENDATIONS

ELECTION ADMINISTRATION

9. The law on the CEC should include 'impartiality' as one of the CEC's guiding principles.¹²¹ It should also elaborate the role of parliamentary factions in the selection of CEC members, so as to ensure balance and pluralism in the CEC's composition.
10. While it is hoped that future elections in Ukraine take place in a secure environment, the government could consider establishing an operations group that brings together the electoral, security and law enforcement bodies and which functions under the coordination of the executive.
11. To enhance the perception of impartiality of DEC and PEC members, the law should prohibit payments from candidates to DEC and PEC members. As for the CEC, the election law should require DEC and PEC members to undertake their work impartially.

VOTER REGISTRATION

12. Shortened deadlines for printing preliminary voter lists could be reconsidered to allow enough time for voters to review the voter lists and request necessary changes.

¹²¹ In accordance with paragraph 20 of General Comment 25 on Article 25 of the International Covenant on Civil and Political Rights (CCPR/C/21/Rev.1/Add.7) adopted by the UN Human Rights Committee, 12 July 1996.

13. Since a presidential election is conducted within a single nationwide constituency, consideration could be given to waiving requirements for voters to justify their request for temporary change of their voting address and to enable them to request such changes based only on their IDs.
14. Consideration could be given to introducing downloadable and printable voter lists for political parties, candidates and civil society to conduct a meaningful scrutiny of the voter lists and thereby enhance transparency.

CANDIDATE REGISTRATION

15. Consideration should be given to removing the residency requirement for candidates, in order to bring the legislation in line with international obligations and good practice.
16. Consideration could be given to introducing a threshold of votes for a refund of the financial deposit. Furthermore, the law should be amended to explicitly state the conditions for a refund in a one-round election.

ELECTION CAMPAIGN

17. Consideration should be given to amending the election law to provide effective, proportionate and dissuasive sanctions for violations of campaign rules, as the existing legislation does not include an effective enforcement mechanism to address such violations. Consideration could for instance be given to shortening the timeline for deciding on campaign violations.
18. Relevant authorities should ensure compliance with the constitutional requirement that the exercise of the right to assembly be governed by law and eliminate all local regulations for organizing public gatherings that are not based on national legislation.

CAMPAIGN FINANCE

19. The election law should be amended to provide equal opportunities for self-nominated and party candidates with regard to campaign finance regulations.

MEDIA

20. The competent authorities should take all necessary measures to protect journalists and media outlets from attacks and to ensure that all infringements of the freedom of the media are duly investigated and addressed.
21. The election law should clearly define how print media should mark paid election-related material. In addition, self-regulatory bodies such as the Journalist Ethics Commission could consider reinforcing professional standards and media literacy through training programmes for journalists.

PARTICIPATION OF NATIONAL MINORITIES

22. As previously recommended in the OSCE/ODIHR final report on the 2010 presidential election, comprehensive measures should be adopted to effectively address the lack of identification and other relevant documents among Roma people. A review of relevant national legislation and local practice, specifically at regional administrative offices responsible for issuing identity documents, should be considered.

CITIZEN AND INTERNATIONAL OBSERVERS

23. The process of accreditation of observers from national civic organizations could be simplified in order to provide them with the possibility to observe all stages of the election process, including DEC formation and the work of the CEC from the beginning of the electoral process.
24. CEC procedural resolutions should be in line with the election law and should not create additional grounds for rejecting the registration of observers.

ADJUDICATION OF ELECTION DISPUTES

25. The OSCE/ODIHR EOM reiterates the recommendations made in the Joint Opinion of the OSCE/ODIHR and the Venice Commission that call for a simplification of the complaint procedure and encourage the development of a complaint form. Such a form should help ensure that complainants understand the required documents for filing a complaint with an election commission or the courts and instruct complainants on where to submit their complaint.

ELECTION DAY

26. Consideration could be given to clarifying and potentially simplifying the reconciliation procedures and control checks before the actual vote count. Training of PEC members should put more emphasis on the counting procedures and the completion of the results protocols. Furthermore, some entries on the results protocols could be rephrased in order to make them more understandable.
27. Consideration should be given to changing the procedures for receipt and processing of results protocols and election materials from PECs in a way which would allow for simultaneous processing of several PECs.
28. The CEC should consider a back-up system to ensure that any problems with the *Vybory* system do not impede communications with DECs and should also take steps to enhance the system's security.
29. DECs should be provided with premises which are adequate not only for the DECs' work before election day, but also as an operations/results processing center on election night. Consideration could be given to tasking local authorities with providing such (additional) premises.

ANNEX – ELECTION RESULTS

2014 Ukraine Early Presidential Election, Final Results Protocol	Total number in final protocol	Out-of-country polling stations
Number of printed ballots	34,692,976	–
Number of ballots received by DEC's	31,103,264	462,920
Number of ballots received by PEC's	30,543,704	462,840
Number of ballot papers which were not distributed to DEC's and were cancelled	3,589,712	–
Number of ballot papers which were not distributed to PEC's and were cancelled	559,444	–
Number of ballots produced as an exception by PEC's by permission of the CEC	474	0
Number of voters included in voter lists at precincts	34,214,652	–
Number of voters in the extracts for mobile voting	815,640	0
Number of voters included in voter lists at precincts where elections were conducted	30,095,028	474,046
Number of unused ballots	12,521,805	390,016
Number of voters who received ballots in the polling stations premises	17,318,937	72,821
Number of voters who received ballots for mobile voting	703,243	0
Number of voters who received ballots	18,022,236	72,824
Number of voters who took part in voting	18,019,504	72,817
Number of ballots declared invalid	244,555	579

Candidate	Number of votes	% of votes
Olha Bohomolets	345,384	1.92
Yuriy Boyko	35,928	0.20
Andriy Hrynenko	73,277	0.41
Anatoliy Hrytsenko	989,029	5.49
Mykhaylo Dobkin	546,138	3.03
Oleksandr Klymenko	10,542	0.06
Valeriy Konovalyuk	69,572	0.39
Renat Kuzmin	18,689	0.10
Vasyl Kuybida	12,391	0.07
Oleh Lyashko	1,500,377	8.33
Mykola Malomuzh	23,771	0.13
Petro Poroshenko	9,857,308	54.70
Vadym Rabinovych	406,301	2.25
Volodymyr Saranov	6,232	0.03
Petro Symonenko	272,723	1.51
Yuliya Tymoshenko	2,310,050	12.82
Serhiy Tihipko	943,430	5.24
Oleh Tyahnybok	210,476	1.17
Vasyl Tsushko	10,434	0.06
Zoryan Shkiryak	5,021	0.03
Dmytro Yarosh	127,772	0.71

Region	Registered voters in polling stations where voting was held	Number of voters who received voting ballots	Turnout
A. R. Crimea	N/A	N/A	N/A
Vinnitsa	1,277,483	895,219	70.08%
Volyn	773,608	581,796	75.21%
Dnipropetrovsk	2,637,271	1,465,139	55.56%
Donetsk	760,114	115,823	15.24%
Zhytomyr	994,519	659,335	66.30%
Zakarpattia	952,873	486,273	51.03%
Zaporizhya	1,437,341	735,764	51.19%
Ivano-Frankivsk	1,064,739	796,008	74.76%
Kyiv <i>oblast</i>	1,456,820	996,046	68.37%
Kirovohrad	772,839	467,755	60.53%
Luhansk	212,799	52,239	24.56%
Lviv	1,958,905	1,544,016	78.82%
Mykolaiv	915,013	472,522	51.65%
Odessa	1,802,795	836,659	46.42%
Poltava	1,181,692	761,748	64.47%
Rivne	865,356	614,771	71.04%
Sumy	918,014	570,645	62.16%
Ternopil	842,427	650,087	77.17%
Kharkiv	2,151,441	1,033,847	48.06%
Kherson	854,612	439,332	51.56%
Khmelnysky	1,040,800	728,864	70.03%
Cherkasy	1,027,342	673,734	65.58%
Chernivtsi	697,308	431,758	61.92%
Chernihiv	864,768	557,295	64.45%
Kyiv City	2,160,103	1,380,012	63.92%
Sevastopol City	N/A	N/A	N/A
Out of Country	474,046	72,824	15.36%
TOTAL	30,095,028	18,022,236	59.88%

[Source: CEC website; www.cvk.gov.ua]

ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (OSCE/ODIHR) is the OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

The OSCE/ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 130 staff.

The OSCE/ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE Commitments, other international standards for democratic elections and national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, the OSCE/ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. The OSCE/ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

The OSCE/ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights** and fundamental freedoms consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas including human rights in the fight against terrorism, enhancing the human rights protection of trafficked persons, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, the OSCE/ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. The OSCE/ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

The OSCE/ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website (www.osce.org/odihr).