UKRAINE

LOCAL ELECTIONS
25 October 2015

OSCE/ODIHR NEEDS ASSESSMENT MISSION REPORT

5-7 August 2015

Warsaw
18 August 2015
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I. INTRODUCTION

Following an invitation from the Ministry of Foreign Affairs of Ukraine to observe the upcoming 25 October 2015 local elections, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to Ukraine from 5 to 7 August 2015. The NAM included Beata Martin-Rozumilowicz, Head of the OSCE/ODIHR Election Department, Lusine Badalyan, OSCE/ODIHR Election Adviser, and Robert Podgorelec, OSCE/ODIHR Logistics and Security Officer.

The purpose of the mission was to assess the pre-election environment and the preparations for the local elections. Based on this assessment, the NAM was to recommend whether to deploy an OSCE/ODIHR election-related activity for the forthcoming elections, and if so, what type of activity best meets the identified needs. Meetings were held with officials from state institutions, the election administration, as well as with representatives of political parties, civil society, and international community. A list of meetings is annexed to this report.

The OSCE/ODIHR would like to thank the Ministry of Foreign Affairs for their assistance and cooperation in organizing the visit. The OSCE/ODIHR would also like to thank the OSCE Project Coordinator in Ukraine for the assistance provided during the NAM. The OSCE/ODIHR is grateful to all interlocutors met with during the mission.

II. EXECUTIVE SUMMARY

On 17 July 2015, the Ukrainian parliament (Verkhovna Rada) appointed local elections for 25 October 2015. Local elections will not be held in the Autonomous Republic of Crimea, the city of Sevastopol and in parts of Donetsk and Luhansk regions (oblasts) where “there is no possibility to ensure the conduct of elections in line with OSCE standards.” The Central Election Commission (CEC) can declare holding elections not possible in other parts of the country.

The 2015 local elections follow the May and October 2014 presidential and parliamentary elections, when Ukraine had made considerable progress towards meeting OSCE commitments for democratic elections, and are widely viewed as a barometer of the current authorities’ intentions to maintain the standards achieved in the last year. The elections are conducted under particularly difficult political, security and economic circumstances. Many OSCE/ODIHR Needs Assessment Mission (NAM) interlocutors expressed concerns over possible vote-buying.

On 14 July 2015, the parliament adopted the Law on Local Elections that some OSCE/ODIHR NAM interlocutors described as a political compromise and opined that the process lacked transparency and was not inclusive. Some of the legal provisions were of concern for certain stakeholders, among others the introduction of recall procedures, lack of clear criteria or a deadline for the CEC to decide on where local elections cannot be held, and lack of possibility for internally displaced persons to vote.

The current parliamentary coalition included electoral reform as part of its coalition agreement, promising among other things to introduce an open list proportional system. The law introduces three
electoral systems for the local elections. Mayors, settlement and village councils are directly elected under a majoritarian system; by a first-past-the-post system in villages, settlements and cities with less than 90,000 voters and a two-round system for mayoral elections in cities with 90,000 and more voters. All other councils are elected under a multi-member constituency proportional electoral system that Ukrainian lawmakers refer to as an “open list” system. Under this system, a single candidate list should be submitted for council elections by political parties, who may decide to assign one candidate to each territorial district. However, voters are not given the possibility to choose among different candidates, which is a feature of open list systems.

Many OSCE/ODIHR NAM interlocutors expressed concerns that the newly introduced system may complicate the tabulation process and it would be difficult for voters to understand how their votes translate into seats. An extensive voter education and information campaign would be needed for voters to understand the system in use.

The election administration for local elections operates at three levels: the CEC, about 18,000 Territorial Election Commissions (TECs) and some 33,000 Precinct Election Commissions (PECs). Compared with national elections, the structure of the election administration is complex, since elections are held at different levels of local administration. Political parties represented by a parliamentary faction have two guaranteed members in TECs and PECs. The remaining seats are filled by lottery, from among nominees of candidates and parties eligible to nominate members. Political parties nominating TEC and PEC members can replace them at any time; this practice had a negative impact on the performance of commissions and raised concerns regarding the independence and impartiality of the election administration during previous elections. Most OSCE/ODIHR NAM interlocutors expressed a lack of trust in the impartiality and performance of the election administration; many mentioned the counting and the tabulation of votes as a particular concern.

The OSCE/ODIHR commended the efforts made to improve the quality of voter lists in its assessment on the recent elections. OSCE/ODIHR NAM interlocutors did not express any particular concerns regarding the accuracy of voter lists.

Candidate lists and candidates are nominated by local branches of political parties and by self-nomination for mayoral and village and council elections. Independent candidates are allowed only at settlement and village levels. Candidate nomination should be accompanied by a monetary deposit of approximately UAH 5,000 for each 100,000 voter in the relevant election.

The law does not provide for sufficient disclosure measures to enhance the transparency of campaign finance. The source of funds is limited to a party’s or candidate’s own resources and private donations from individuals that should not be more than 10 minimum salaries. Interim and final financial reports should be submitted by political parties and candidates to the respective TECs. However, the law does not specify how to make reports public and that the reports should be published in full.

Ukrainian media is dominated by private television. The media environment is generally affected by the lack of autonomy of the media from political or corporate interests, which restricts independent reporting, both at the national and regional level. A number of OSCE/ODIHR NAM interlocutors reported about the re-appearance of malpractice of paid-for news items, known as ‘jeansa’. Additionally, concerns were raised that media outlets are concentrated in the hands of a small number of businesspeople, who tend to influence politics at national and local levels. Unlike national elections, the law does not provide for free airtime.

The law provides access for observers to all stages of the electoral process. Nevertheless, the law requires citizen observer groups to be registered at national level, which is overly restrictive for local elections.
All interlocutors met with during the OSCE/ODIHR NAM underscored the need for the deployment of an OSCE/ODIHR election observation activity for the local elections. Most interlocutors encouraged the deployment of a sizable full-scale observation mission. In considering an observation activity, the OSCE/ODIHR NAM has taken into account the various findings outlined in this report and the concerns expressed by stakeholders. These include issues related to the implementation of the legal framework, the role of the media, potential issues in administering the election, and voting, counting and tabulation of results.

On this basis, the OSCE/ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to Ukraine to assess the 25 October local elections for its compliance with OSCE commitments, other international obligations and standards, and domestic legislation. This recommendation also takes into account OSCE/ODIHR’s previous engagement with Ukraine on electoral issues. In addition to a core team of experts, considering the complexity of local elections and importance of observing the pre-electoral stages of the process, the OSCE/ODIHR NAM recommends that 100 long-term observers be seconded by participating States. Furthermore, the secondment of 600 short-term observers will be requested from participating States to ensure a wide and balanced geographic coverage of the country for the observation of election day proceedings. The OSCE/ODIHR will observe the local elections in the territories where they are organized under Ukrainian legislation. Once a decision is taken on administrative-territorial units where elections will not be held, the OSCE/ODIHR will adjust its deployment plan accordingly.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

The 2015 local elections are conducted under particularly difficult political, security and economic circumstances. Challenges to Ukraine’s territorial integrity that started in 2014 culminated with the loss of government control over some parts of Donetsk and Luhansk regions (oblasts). After several months of heavy fighting, a nominal ceasefire has been in effect since the signing of the Minsk Protocol. The February 2015 ‘Package of Measures for the Implementation of the Minsk Agreements’ provides for “holding elections in accordance with Ukrainian legislation” and OSCE/ODIHR’s involvement in connection with local elections, stipulating that “elections will be held in accordance with relevant OSCE standards and monitored by the OSCE/ODIHR.”

On 17 July 2015, the Ukrainian parliament (Verkhovna Rada) adopted a resolution “On regular election of deputies to city councils and election of village, small town and city heads”, according to which the elections of deputies to local councils and election of village, small town and city heads (hereinafter, local elections) will be held on 25 October 2015. According to the resolution, local elections will not be held in the Autonomous Republic of Crimea, the city of Sevastopol and in parts of Donetsk and Luhansk oblasts under the control of the Ukrainian authorities.1 The CEC decision is then submitted for the parliament’s consideration.

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1 On 10 August, the CEC adopted a statement requesting the parliament to urgently determine the list of administrative-territorial units where the 25 October local elections will not be held. The decision is taken in line with point 4 of transitional provisions of the Law on Local Elections, according to which these units should be decided by the parliament together with the resolution on appointing the date of elections. However, the resolution of 17 July on setting the local elections’ date did not include such a list.
The current parliamentary coalition included electoral reform as part of its coalition agreement, promising among other things to introduce an open list proportional system and to reduce the size of local councils. At the beginning of 2015, a working group composed of civil society representatives and members of the parliament (MPs) was set up to draft amendments to the local election law. However, the draft prepared by this working group was rejected in the first reading and a new law on local elections was suggested by a number of MPs that was voted and adopted. Many OSCE/ODIHR Needs Assessment Mission (NAM) interlocutors opined that the process lacked transparency and was not inclusive, with many of the suggested amendments rejected. On 14 July 2015, the parliament adopted the law, which some OSCE/ODIHR NAM interlocutors described as a political compromise.

Ukraine is divided into 24 regions (oblasts) and the Autonomous Republic of Crimea, as well as the cities of Kyiv and Sevastopol. Regions are composed of districts (rayons), and the major cities are divided into city districts. Local councils are formed through elections in the regions, districts, cities, city districts, settlements and villages. Heads of local state administration at the levels of cities, villages and settlements are directly elected.

The composition of councils at each level varies depending on the number of voters, with minimum 12 councillors in locations with up to 1,000 voters and 120 councillors in locations with over 2 million voters.

The 25 October local elections follow the May and October 2014 presidential and parliamentary elections, when Ukraine had made considerable progress towards meeting OSCE commitments for democratic elections, although some important issues remained to be addressed. The local elections are widely viewed as a barometer of the current authorities’ intentions to maintain the standards achieved in recent elections. However, following by-elections in the Chernihiv oblast, all OSCE/ODIHR interlocutors expressed concerns regarding potential vote-buying or use of charity organizations or social funds to deliver food or money to voters.

B. LEGISLATIVE FRAMEWORK AND ELECTORAL SYSTEM

Local elections in Ukraine are primarily governed by the Constitution and the Law on Local Elections. Certain aspects are regulated by the Law on the CEC, Law on State Voter Register, other laws and regulations of the CEC.

The Law on Local Elections was passed by the parliament on 14 July 2015 and was signed by the president on 6 August. At the time of the OSCE/ODIHR NAM, the law was not publicly available and OSCE/ODIHR NAM interlocutors were not always ready to comment on its details. The major revision of election legislation without open discussion shortly before an election is not in accordance with good international practice. In addition, late promulgation of the law in the opinion of some stakeholders might undermine the confidence in the process and result in difficulties for election administration and political parties to prepare for the elections.

The law introduces three electoral systems for the local elections. Mayors, settlement and village councils are directly elected under a majoritarian system; by a first-past-the-post system in villages.

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2 The OSCE/ODIHR Election Observation Mission (EOM) Final Report on the 26 October 2014 parliamentary elections concluded that the elections “marked an important step in Ukraine’s aspirations to consolidate democratic elections in line with its international commitments.” All OSCE/ODIHR election observation reports on Ukraine can be found at: http://www.osce.org/odihr/elections/ukraine.

3 The Code of Good Practice in Electoral Matters of the Venice Commission of the Council of Europe states that “the fundamental elements of electoral law, in particular the electoral system, membership of electoral commissions and the drawing of constituency boundaries, should not be open to amendments less than one year before an election”; see point II.2.b.
settlements and cities with less than 90,000 voters and a two-round system for mayoral elections in cities with 90,000 and more voters. Region, district, city, city district councils are elected under a multi-member constituency proportional electoral system that Ukrainian law-makers refer to as an “open list” system. The territory of the community electing the council is divided into districts equal to the number of seats in the council. A single candidate list should be submitted for council elections by political parties, who may decide to assign one candidate to each territorial district.

Voters cast their ballot for a party list and if a political party decided to nominate a candidate in a territorial district, this vote is counted for this candidate. Political parties that receive 5 per cent of valid votes cast for council elections, participate in the distribution of mandates. This electoral system cannot be considered an open list system, since voters are not given the possibility to choose among different candidates, which is a feature of open list systems. Many OSCE/ODIHR NAM interlocutors expressed concerns that, on one hand, a newly introduced system would complicate the tabulation process and, on the other hand, it would be difficult for voters to understand how their votes translate into seats. An extensive voter education and information campaign would be needed for voters to understand the system in use.

OSCE/ODIHR NAM interlocutors expressed concerns with some other provisions of the new law, such as:

- The law does not establish a maximum permissible deviation in the number of voters between districts, leaving it to the CEC to decide what should be an approximate equality.
- The law introduces recall procedures, by which elected mayors and council members can be recalled by a petition initiated by voters.
- The law does not contain clear criteria and or a deadline for the CEC to decide on where local elections cannot be held.
- The law does not allow for internally displaced persons (IDPs) to vote.

In a positive development, the local election law introduces the requirement of at least 30 per cent representation of the alternate gender on a party list. However, the law does not provide for any sanctions for political parties that fail to comply with this rule.

Some OSCE/ODIHR NAM interlocutors expressed the opinion that additional pieces of legislation would need to be adopted before the election day, in particular laws regulating IDP voting and provisions for stricter sanctioning of vote-buying.

C. Election Administration

The election administration consists of the CEC, Territorial Election Commissions (TECs) and Precinct Election Commissions (PECs). However, compared with national elections the structure of the election administration is complex, since elections are held at different levels of local administration. The CEC is a permanent body, while lower-level election commissions are temporary bodies established ahead of elections.

The composition of the CEC has not changed since the 2014 parliamentary elections. Most of the current CEC members’ seven-year term expired, but under the 2014 March amendments to the Law on the CEC, they continue in office as parliament did not appoint replacements. Some OSCE/ODIHR NAM interlocutors mentioned lack of trust in the CEC, but at the same time indicated that it was already late to change the CEC composition.
According to the CEC, approximately 18,000 TECs at different levels should be formed for the upcoming elections. By 6 September, the CEC should form TECs in regions, districts, cities and city districts, which in turn form TECs at the level of villages and settlements. TECs comprise from 9 to 18 members, based on nominations from political parties. Parties represented by a faction in the parliament have two guaranteed members in TECs. The remaining seats are filled by lottery, from among nominees of parties eligible to nominate TEC members.

Some 33,000 PECs are formed based on nominations from political parties that have their faction in the parliament, parties that participate in local elections and from candidates that run in single member districts.

The Law on Local Elections allows political parties nominating TEC and PEC members to replace them at any time. The OSCE/ODIHR EOMs for the 2014 presidential and parliamentary elections assessed that incessant and high turnover of commission members had “a negative impact on the performance of commissions and raised concerns regarding the independence and impartiality of the election administration.”

Most OSCE/ODIHR NAM interlocutors expressed a lack of trust in the impartiality and performance of the election administration; many mentioned the counting and the tabulation of votes as a particular concern. Concerns were also expressed by some interlocutors about the existing danger for the reappearance of so-called ‘technical candidates’, nominated with the sole purpose of gaining members on and influencing commissions.

The OSCE/ODIHR in its final report on the recent elections commended the efforts made to improve the quality of voter lists. OSCE/ODIHR NAM interlocutors did not express any particular concerns regarding the accuracy of voter lists. The law does not provide for specific provisions for voting of IDPs, and many OSCE/ODIHR NAM interlocutors expressed concerns mentioning that voting rights of these people should be respected and ensured.

D. **REGISTRATION OF CANDIDATE LISTS AND CANDIDATES**

Candidate lists and candidates are nominated by local branches of political parties and by self-nomination for mayoral and village and council elections. Candidate nomination should be accompanied by a monetary deposit of 4 minimum monthly salaries, approximately UAH 5,000, for each 100,000 voter in the relevant election. Mayoral candidates who win the elections and political parties that pass the 5 per cent threshold are entitled to a refund of their electoral deposit.

The law does not allow for independent candidacy at all levels of local authority (it is allowed only at settlement and village level). Independent candidacy is particularly important for local government, where party affiliation may be of less relevance than for national elections.

E. **CAMPAIGN FINANCE**

The law stipulates that parties and candidates establish electoral funds from which all campaign expenses must be paid. The source of funds is limited to a party’s or candidate’s own resources and private donations from individuals that should not be more than 10 minimum salaries. Donations from anonymous sources or foreign citizens are not permitted.

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4 Paragraph 7.5 of the OSCE Copenhagen Document (1990) states, “The participating States will... respect the right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination.”
According to the law, interim and final financial reports on the income and expenditure of funds must be submitted by political parties and candidates to the respective TECs, which should make disclosure information public within five days of receiving it. However, the law does not specify how to make reports public and that the reports should be published in full.

A number of previous OSCE/ODIHR recommendations regarding campaign finance are still to be addressed. The 2014 Council of Europe’s Group of States against Corruption (GRECO) report on the transparency of party funding concluded that Ukraine has satisfactorily implemented only 3 of the 16 recommendations contained in the Third Round Evaluation Report. The absence of public financing for political parties or election campaigns, insufficient measures to enhance transparency, as well as a lack of enforcement mechanisms remain reasons why wealthy donor and business interests continue to wield disproportionate influence over the campaign process.

F. MEDIA

Ukrainian media is dominated by private television. The media environment is generally affected by the lack of autonomy of the media from political or corporate interests, which restricts independent reporting, both at the national and regional level. A number of OSCE/ODIHR NAM interlocutors reported about the re-appearance of malpractice of paid-for news items, known as ‘jeansa’. Additionally, concerns were raised that media outlets are concentrated in the hands of a small number of businesspeople, who tend to influence politics at national and local levels.

The Law on Local Elections stipulates that the mass media should provide balanced coverage to all participants of the electoral process. It also requires covering the election process in news programmes, interviews, debates and the like on the basis of “objective, unbiased and balanced information”. Unlike national elections, the local election law does not provide for free airtime.

The National Television and Radio Broadcasting Council oversees the electronic media during elections. However, the Council is not empowered to impose sanctions in cases of violations. Rather, they provide their input to the CEC, which deals with all media-related issues and complaints.

State-owned television and radio, which includes national, regional and municipal channels, is currently undergoing a transformation to a public service broadcaster, which according to the OSCE/ODIHR NAM interlocutors should be concluded within a year.

G. ELECTION OBSERVATION

The legal framework provides for the observation of elections by ‘official observers’ from parties, candidates, non-governmental organisations (NGOs), foreign states and international organizations. Nevertheless, the law requires citizen observer groups to be registered at the national level, which is overly restrictive for local elections. There are a number of citizen observer organizations that have significant experience with election observation. The main citizen observer groups informed the OSCE/ODIHR NAM that they intend to deploy observers and to focus on both long-term and short-term observation. Observers from foreign states and international organisations are accredited by the CEC no later than 10 days prior to election day.

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IV. CONCLUSION AND RECOMMENDATION

All interlocutors met with during the OSCE/ODIHR NAM underscored the need for the deployment of an OSCE/ODIHR election observation activity for the local elections. Most interlocutors encouraged the deployment of a sizable full-scale observation mission. In considering an observation activity, the OSCE/ODIHR NAM has taken into account the various findings outlined in this report and the concerns expressed by stakeholders. These include issues related to the implementation of the legal framework, the role of the media, potential issues in administering the election, and voting, counting and tabulation of results.

On this basis, the OSCE/ODIHR NAM recommends the deployment of an Election Observation Mission (EOM) to Ukraine to assess the 25 October local elections for its compliance with OSCE commitments, other international obligations and standards, and domestic legislation. This recommendation also takes into account OSCE/ODIHR’s previous engagement with Ukraine on electoral issues. In addition to a core team of experts, considering the complexity of local elections and importance of observing the pre-electoral stages of the process, the OSCE/ODIHR NAM recommends that 100 long-term observers be seconded by participating States. Furthermore, the secondment of 600 short-term observers will be requested from participating States to ensure a wide and balanced geographic coverage of the country for the observation of election day proceedings. The OSCE/ODIHR will observe the local elections in the territories where they are organized under Ukrainian legislation. Once a decision is taken on administrative-territorial units where elections will not be held, the OSCE/ODIHR will adjust its deployment plan accordingly.
ANNEX: LIST OF MEETINGS

State and Election Authorities

Ministry of Foreign Affairs
Andryi Beshta, Acting Director-General, Directorate General for International Organizations
Cristina Hayovshyn, Head of the OSCE Unit, Directorate General for International Organizations
Kira Spyrydonova, Attaché, Directorate General for the Secretariat of the Minister
Svitlana Horbovska, Counsellor of Visa Section, Directorate General for Consular Service

Ministry of Interior
Igor Baubich, First Deputy Head of the Department of Public Safety
Igor Shashkin, Head of the Division of the Department of Public Safety

Ministry of Justice
Sergiy Petukhov, Deputy Minister of Justice on Issues of European Integration
Roman Usenko, Director, Directorate for Constitutional, Administrative and Social Legislation
Liudmyla Sugak, Head of Division for Legal Cooperation with International Organizations, Directorate for Legal Expertise of International Treaties and International Cooperation

Presidential Administration
Andriy Ivanets, Head of Division for Temporary Occupied Territories and Social Inclusion
Vitalii Plukar, Head of Division on Monitoring of Local Authorities Activities and Support of their Law-making Initiatives, Department for Local Government and Decentralization
Stanislav Kraschenko, Chief Adviser, Department for Regional Policy
Oleksiy Svyatun, Chief Adviser, Department for Foreign Policy and European Integration
Alyona Studenetska, Chief Adviser, Department for Temporary Occupied territories and Social Inclusion

Central Election Commission
Zhanna Usenko-Chorna, Deputy Chairperson
Serhii Dubrovyk, Deputy Head of the Secretariat
Oleksandr Stelmakh, Head of the National Voter Register Administration
Yurii Mazur, Head of the Organizational and Methodical Department
Volodymyr Andrienko, Chief of the International Department

Committee on Legal Policy and Justice of the Parliament
Vadym Denysenko, Member of the Parliament
Andrii Illienko, Member of the Parliament

National Television and Radio Broadcasting Council
Volodymyr Pashchuk, Chief Administrative Officer
Oleksandr Svistula, Deputy Head of Representatives of Council Department
Roman Kiflyuk, Head of Department of Control and Analysis of the TV and Radio Companies
Andrii Lozhechnikov, Chief Expert of Monitoring and Analysis Division
Anna Chumachenko, Deputy Head of Legal Department
Valentyna Pogorilets, Chief Expert of Division of Communications with NGO and Public Broadcasting
Tetyana Farmahei, Chief of International Relations Department

Dnipropetrovsk Oblast Council Representatives
Anatoliy Adamsky, First Deputy of the Head of Oblast Council
Volodymyr Peregyudov, Deputy Chairperson of the Regional Council, Head of the Department for Strategic Planning
Denys Grechko, Head of Project Management

Political Parties

Batkivschyna
Olexandra Kuzhel, Member of the Parliament
Serhiy Podgorny, Head of the Human Resources Department
Serhiy Kondratyuk, Head of the Analytical Department

Self-Reliance
Iegor Soboliev, Member of the Parliament

Solidarnist, Petro Poroshenko Bloc
Maria Ionova, Member of the Parliament
Maksym Savrasov, Chief of Secretariat
Serhiy Taran, Deputy Chief of Secretariat
Borys Siklitskyi, Head of Legal Department
Virginia Dronova, International Secretary

Civil Society
Oleksandr Kliuzhev, Civic Network OPORA
Natalia Lynnyk, Committee of Voters of Ukraine, Deputy Director General, Program Director
Sergiy Tkachenko, Committee of Voters of Ukraine, Chief of the Board
Tetyana Durnyeva, Committee of Voters of Ukraine, Head of Advocacy Department
Kateryna Pernata, Civil Initiative Support Centre, Executive Director
Svitlana Barbeliuk, Democratic Initiatives Foundation, Executive Director
Oleksiy Sydorchuk, Democratic Initiatives Foundation, Project Co-ordinator
Svitlana Kononchuk, Ukrainian Center of Independent Political Research
Liliya Kolisetska, Election Law Institute

International Organizations
David Ennis, IFES, Chief of Party
Michael Druckman, IRI, Resident Country Director
Jeffrey Meyers, USAID, Deputy Director
Michael Getto, Strategic Communications and Business Consulting

Diplomatic Community

Representatives of Embassies of OSCE Participating States

The OSCE/ODIHR NAM requested meetings with representatives of all parliamentary factions.