

Statement of the NDI Pre-Election Delegation to Kyrgyzstan, January 27- February 4, 2000

I. INTRODUCTION

This statement is offered by an international pre-election delegation to the Kyrgyz Republic, organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Kyrgyzstan from January 27 through February 4, 2000. NDI has supported the development of democratic processes in Kyrgyzstan since 1993 and has maintained a permanent office in Bishkek since 1996.

NDI is a politically neutral and independent nongovernmental organization that promotes democracy worldwide. The Institute has conducted more than 40 international election observer delegations and more than 60 pre-election delegations around the world. The purposes of this delegation are to express the international community's interest in and support for a democratic election process in Kyrgyzstan, to assess electoral conditions and the political environment in which the upcoming elections, scheduled for February 20, 2000, are taking place and to offer an accurate and impartial report on the pre-election situation. The delegation conducted its assessment on the basis of international standards and comparative practices for democratic elections. NDI does not seek to interfere in the election process, nor at this time does it intend to render a conclusive assessment of the process. Ultimately, it will be the people of Kyrgyzstan who determine the meaning and validity of the election process.

SUMMARY OF OBSERVATIONS

The Kyrgyz Republic is at a critical crossroads on its path toward democracy. Kyrgyzstan has achieved impressive democratic gains since independence in 1991, and the February 20th elections present an opportunity to make further important progress. A number of improvements have occurred in the electoral framework, for example the election law now ensures the right of domestic monitors to observe the process.

However, recent actions by all three branches of government compromise the fairness of the electoral process and the freedom with which Kyrgyz citizens can participate in elections. The government of Kyrgyzstan still has time to address these critical problems and make clear its commitment to a genuine election process. Otherwise, the February 20th elections will not yet meet minimum international standards for holding democratic elections, defined in the OSCE's Copenhagen Document, the International Covenant on Civil and Political Rights and other applicable agreements.

There is a significant degree of competition in the February 20th elections. Fifteen political parties are eligible to compete, separately and in blocs, on national party lists for 15 seats in the Legislative Assembly (the lower chamber of parliament), which will be determined by proportional representation. 455 candidates will

compete for the 45 seats in the Legislative Assembly and an identical number of seats in the Assembly of People's Representatives (the upper chamber), which will be decided by majoritarian elections in single-member districts. Also, it is generally agreed that the provision for electing 15 seats by proportional representation has helped to strengthen political parties. A series of actions taken by the government, parliament and the courts, however, have the effect of limiting competition and violating the letter and spirit of laws and commitments guaranteeing democratic elections.

- A restriction, added to the election law by parliament, blocks four political parties from competing in the election for the Legislative Assembly. These parties include the most popular opposition party. The four parties are excluded because the Ministry of Justice determined that their charters do not state explicitly that they foresee participating in elections for state bodies. This decision was upheld by the courts, even though the Constitution and the Law on Political Parties provide that a purpose and a right of parties is to contest elections.
- Eight additional political parties are similarly barred from competing in elections for the Legislative Assembly, because they were registered less than one year prior to the announcement of the elections. A second major opposition party as well as a major pro-government party are among these eight.
- Judicial proceedings have been brought in the immediate pre-election period against two members of parliament who are standing for reelection; one has announced his intention to run for President of the Republic later this year. Both were admitted to the hospital, where they could not be arrested. Other parliamentary candidates also claim to have been threatened with prosecution, including the leader of a large opposition party, who also has announced his intention of running for president. These actions give substance to a perception among political parties and voters that the government is trying to restrict competition.
- Three political parties that were initially approved to participate in the elections are now under investigation by the authorities to determine whether their internal nominating conventions were conducted properly.

The cumulative effect of all these actions negates the democratic substance of the elections. What was a generally sound legal framework for the elections has been shaken by these developments. Use of judicial proceedings for political purposes, denying candidates the opportunity to fully compete in the election campaign and ultimately to deprive them of the right to hold office if elected – and perhaps to be deprived of their liberty – undermines the rule of law and taints the elections.

These problems can still be resolved before the elections if the government adheres strictly to the Constitution of the Kyrgyz Republic, the election law and international norms and standards.

The pre-election period is central to democratic electoral competition. It is in this period that citizens become keenly aware of their power to select representatives who will carry their mandate to govern. Parties and candidates mobilize their supporters in a test of political pluralism, as they compete for votes.

The delegation recognized a widespread desire for genuine elections among those sectors of the population with whom it met. There is a particularly strong movement developing within civil society to promote the integrity of the election process, which is demonstrated by the efforts of the Coalition of NGOs for Democracy and Civil Society and other groups that are mobilizing large numbers of impartial Kyrgyz election monitors and conducting other activities to heighten citizen participation in the election and governmental process. The provisions in the election law recognizing the right of such domestic monitors to observe the process is quite positive, and it is important that these provisions be implemented fully.

Advances have been made in the training of electoral officials and in preparation of the technical aspects of the elections. Implementation of the legal framework for election-day processes and for tabulating and determining results presents a critical challenge to electoral officials, as does the transfer from a manual to a computerized system for producing voter lists, and tabulation of the results of parliamentary elections. Serious problems may arise, however, unless two improvements can be made to increase transparency: party agents and observers should be able to witness the entry of protocols into the computer system at the district level; and results by precinct, as entered into the computer, should be published expeditiously.

Other issues noted by the delegation included the following:

- Freedom of the press exists in Kyrgyzstan. The mass media is nonetheless under pressure. Journalists and publishers report receiving threats from the authorities for publishing information critical of the government. A broad libel law and the use of tax inspection as a form of harassment contribute to an environment in which journalists believe it necessary to censor their own writing. A major opposition newspaper, *Res Publica*, was fined for libel risking its closure during the election period.
- The election law prohibits publishing public opinion polls, election prognoses and other election-related investigations during the official campaign period. Although such restrictions are not uncommon in the days directly preceding voting as a way of providing a “cooling off period,” lengthy prohibitions as stipulated in the election law limit freedom of expression and deny voters access to information.
- Although it is too early for firm conclusions, preliminary media monitoring reports indicate that there has been notable bias in the state-controlled media. News bias can greatly influence opinions among the electorate and undermine the right to receive adequate and accurate information needed to make an informed choice at the ballot box. Media monitoring reports that are about to be released should demonstrate whether bias is a major problem in the elections.
- A 1988 decree restricting freedom of assembly was used in the period before the October 1999 local elections to prevent political meetings. Also, civic organizations were prevented from conducting voter education meetings in some regions at that time. Although many parties report that they are able to hold voter meetings in this pre-election period, a major opposition party has alleged recently that local authorities in certain areas are blocking its meetings in this pre-election period, and the Coalition of NGOs for Democracy and Civil Society reported yesterday that it was prevented from holding two

scheduled training sessions for domestic election monitors in Bishkek. These developments demonstrate a real possibility that local officials could use the law to hinder political rallies and meetings in the run-up to the February 20th elections. Although the decree has been challenged in the Constitutional Court and has been pending for more than six months, a ruling is not expected before the elections.

- Reports of impartial Kyrgyz monitors for the October 1999 elections and their recent pre-election reports noted widespread problems with local government officials interfering in election-related activities. Such officials, for example, were present at many polling stations in October, directing activities that should be controlled by election officials. The 70-year history of local officials controlling the election process in accordance with instructions to deliver a certain outcome, combined with recent problems, gives cause for concern that local officials continue to interfere in the election process.

II. THE DELEGATION AND ITS WORK

This pre-election delegation included experts on election, political and governmental processes, comparative law, human rights, and the media in transitional democracies. Delegation members have participated in more than 35 election assessments and international election observer delegations around the world, including in Central Asia and the Caucuses. The delegation included: Mjusa Sever (Slovenia), Advisor to the President of the National Assembly of Slovenia and founder of the Libre Institute; Cedric Thornberry (Ireland), former Assistant Secretary-General of the United Nations; Dr. Paula R. Newberg, expert on democratic transitions and Senior Advisor to NDI; Patrick Merloe, NDI Senior Associate and Director of NDI Programs on Election and Political Processes. The delegation was joined by Scott Kearin, NDI Resident Director in Bishkek, and Dawn Del Rio, NDI Civic and Women's Program Director in Bishkek. The delegation was assisted by Kareem Al-Bassam and Timothy Fairbank, NDI Program Officers.

The delegation made its observations and findings based upon: experience gained by NDI in Kyrgyzstan since 1993; analysis of the legal framework for the elections; review of materials on Kyrgyzstan produced by other international organizations, Kyrgyz and international press and impartial Kyrgyz election monitoring organizations; and analysis of information presented during the delegation's meetings in the country. Delegation members met with a cross-section of government and election officials, political leaders, journalists, representatives of nonpartisan election monitoring organizations, representatives of the international community and others concerned with the elections. A list of the delegation's meetings is available separately.

III. ELECTORAL CONTEXT

Contextual Factors. An accurate and complete assessment of any election must take into account all aspects of the electoral process. These include: 1) conditions set up by the legal framework for the elections; 2) the pre-election period before and during the campaign; 3) the voting process; 4) the counting process; 5) the tabulation of results; 6) the investigation and resolution of complaints; and 7) the conditions surrounding the formation of a new government. This delegation therefore does not pre-judge the overall

process. At the same time, no election can be viewed in isolation of the political context in which it takes place. The pre-election period, including electoral preparations and the political environment, must be given considerable weight when evaluating the democratic nature of elections.

Kyrgyz Context. Building a democratic Kyrgyz state represents an enormous challenge for the Kyrgyz people and their governments. Transition to a market economy and conditions of considerable economic and social dislocation are a difficult accompaniment to the intricate processes of reforming the country's politics. Recognizing these complexities, however, does not discount the necessary assessments that form the content of the delegation's observations and findings.

International Standards and Best Practices. International standards for democratic elections are based on the proposition – set forth in the Universal Declaration of Human Rights (Article 21) and in all other major human rights documents – that the authority to govern derives from the will of the people of a country, and their will must be demonstrated through genuinely democratic elections. This requires:

- a sound legal framework and an impartial and effective election administration that conducts its activities in an open manner;
- a legal process that is impartial and capable of providing effective remedies on the basis of equality before the law and due process of law;
- freedom to associate into political parties, legal recognition of parties and qualification of parties and candidates for the ballot, free from unreasonable, arbitrary or capricious restrictions and free of discrimination prohibited by international human rights instruments;
- voting by secret ballot, based on universal and equal suffrage – and a genuine opportunity to exercise this right – free from unreasonable, arbitrary or capricious restrictions and discrimination prohibited by international human rights instruments; and
- an electoral environment in which political parties and candidates are free to express their messages to the public and have an adequate opportunity to do so, including equitable access to and fair treatment by the mass media, as well as the freedom and opportunity to organize peaceful assemblies and other demonstrations of public support and to move freely throughout the country to seek votes.

In addition, the electorate must be free and able to receive adequate and accurate information upon which to make an informed political choice and be free to exercise that choice without fear, intimidation or bribery. Also, the machinery of the state must remain neutral and its resources must be used for the benefit of the electorate, rather than for the benefit or detriment of any of the political contestants.

No electoral process is perfect, but the degree to which it falls short of these standards will determine whether or not the elections are truly democratic. Genuine democratic elections also require that the public, including the political contestants (parties and candidates), have confidence that the results of the elections will reflect accurately the free choice of the voters and that the outcome will be respected.

V. RECOMMENDATIONS

International experience demonstrates that extraordinary steps by a government are often needed to establish confidence in the country's political and electoral processes. This is particularly true where a country is emerging from a history of military or one-party rule and where democratic traditions have not been firmly established. Governments in these circumstances must go beyond minimum requirements for democratic elections.

The delegation noted the strong desire of citizens, including those with whom it met, for democratic elections. With this in mind and in the spirit of international cooperation, the delegation offers the following recommendations. It is the delegation's hope that the recommendations may help those working to advance the prospects for a meaningful election process.

1) Full Participation by Political Parties. The Constitution and Political Party Law provides a clear basis for the right and opportunity for full participation in the elections of all legally registered political parties. Even in the absence of a ruling by the Constitutional Court, it should be possible for responsible governmental authorities to interpret the provisions of the Constitution, Electoral Code and Political Party Law in a manner that gives supremacy to the right of parties to compete in elections, under Kyrgyz law and in accordance with international obligations and standards for democratic elections.

2) Eliminating the Potential for Politically Motivated Judicial Proceedings. Equal protection of the law should prevent discriminatory judicial proceedings, including those aimed at hindering candidates from campaigning and/or from taking office. Even the perception of politically motivated proceedings can be extraordinarily damaging to public confidence in the electoral process and the rule of law. In the present circumstances, a moratorium on pursuing criminal proceedings against candidates in the upcoming election could do much to address the strong public perception of the politicization of the judicial process. Extra efforts may be appropriate to ensure that such candidates receive the full legal protections due every citizen before, during and after an election.

3) Enhancing Judicial Independence. Extraordinary steps should be taken to build confidence in the judicial system of Kyrgyzstan, which is perceived by many citizens to be highly politicized. Members of the judiciary and the political leadership of the country must uphold the rule of law and the independence of the judiciary as a core principle of democratic society. Training courses for members of the judiciary should address the special circumstances that arise in the electoral context. The protection of civil and political rights related to elections should also be included in training programs for prosecutors and law enforcement officers.

4) Press Freedoms. Freedom of the press is essential to ensuring a credible electoral process and building public confidence in elections. News coverage of issues of national importance requires media access to government officials and government-held information without discrimination against journalists. Strong declarations from the authorities calling on government officials to respect press freedoms, coupled with decisive action to identify and stop sources of pressure against the media, will be crucial to organizing elections that meet international standards. The government should halt judicial proceedings and tax investigations against journalists and media organizations during the electoral period. Harassment of the press, particularly in response to the substance of their reporting, is inappropriate at any time. In addition, the

provisions of Article 31, point 3 of the election law, which prohibits publication of investigations related to the elections, results of opinion polls and electoral prognosis should be amended to apply to a much shorter period of time and to exempt investigative reports.

5) Media Access and News Coverage. Kyrgyz authorities should take immediate and effective steps to guarantee accurate and balanced coverage of political parties, potential candidates and issues of importance in the political process. Clear directives should be issued by the government to state-controlled media to comply with the provisions of the election law concerning the equitable distribution of time and space to all political parties and contestants. Legal provisions for reviewing complaints concerning inaccuracies and bias in news coverage and to providing remedies – such as the right of correction and right of reply – should be implemented.

6) Protecting the Right of Assembly. Article 16, point 2 of the Constitution guarantees the right to peaceful assembly. Statutory law that is in conflict with this provision violates a right that is critical to political and electoral processes. Laws or degrees that conflict with this provision of the Constitution should be repealed.

7) Separation of Local Authorities and State Officials from the Electoral Process. Local authorities and state officials alike should comply with the provisions of the election law that prohibit interference with the election process. Public assurances should be made by the President and other high government officials in this regard, and violators should be prosecuted.

8) Full Access to Electoral Processes for Observers. The election law guarantees independent election observation. Qualified observers under the election law (which include party agents, impartial observers and journalists) should be given full access to all aspects of the election process, including meetings of election commissions at all levels, as well as access to the voter registry and the entire tabulation process leading to the announcement of results. Such observers should be allowed to witness the entry of data from protocols into the computer system at the district level. In addition, precinct election results should be published along with district election results for parliamentary elections, so that copies of precinct protocols can be compared to data entered into the computer system to verify the accuracy of the data.

9) Post-Election Review of the Legal Framework for Elections. At the conclusion of this election process there will be an opportunity to review the legal framework relating to elections and to amend provisions of the law to improve the process. The CEC, members of parliament and interested citizens would benefit from an open dialogue about ways to amend laws to advance future election processes.

The delegation offers these recommendations in the hope of contributing to the efforts of those who are working to broaden and deepen democracy in Kyrgyzstan. The delegation would like to express its appreciation to the candidates, party representatives, government and electoral officials, members of the media, other political and civic leaders and representatives of the international community with whom it met. Had these individuals not taken time at this important moment to meet, provide information and share their

views, the delegation could not have completed its work. NDI will continue to monitor developments in the election process.

Bishkek, February 4, 2000

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