



STATEMENT OF THE NDI
PRE-ELECTION DELEGATION TO UKRAINE'S 2007 PARLIAMENTARY
ELECTIONS
Kyiv, August 20, 2007

This statement is offered by an international pre-election delegation organized by the National Democratic Institute (NDI). The delegation visited Ukraine from August 14 to August 20 to assess preparations for the September 30, 2007 Parliamentary elections.

This delegation was composed of former Congressman and House Democratic Caucus Chair Martin Frost, elections consultant and former Deputy Director of the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) Peter Eicher, former United Nations Assistant Secretary General Cedric Thornberry, and NDI Eurasia Deputy Director Katie Fox.

The delegation's purposes were to demonstrate the interest of the international community in the development of a democratic political process and democratic governance in Ukraine, and to present an accurate and impartial assessment of the political environment and its implications for democratic development. In late September, NDI will deploy a 30-person international observer delegation that will monitor the September 30 elections and the post-election period. NDI's programs in Ukraine are funded by a grant from the U.S. Agency for International Development.

The NDI pre-election delegation met with a diverse group of Ukrainian political and civic leaders, non-governmental organizations and domestic election groups, electoral authorities, government officials, and representatives of the media and the international community in Kyiv. The delegation conducted its activities in accordance with the laws of Ukraine and the Declaration of Principles for International Election Observation. NDI does not seek to interfere in Ukraine's election process, and recognizes that, ultimately, it will be the people of Ukraine who will determine the credibility of their elections and the country's democratic development.

SUMMARY OF OBSERVATIONS:

With the September 30 elections, Ukraine is at a crossroads. It can consolidate progress from the 2006 elections, or risk slipping back to discredited, fraudulent practices. The

delegation noted few problems in the early campaign period, which is a positive sign. However, recent changes to the legal framework for elections represent a step backward. Meeting the challenges posed by these amendments will require real commitment to democratic processes by all electoral blocs. Election observation, both foreign and domestic will be important, but not sufficient to monitor all of Ukraine's nearly 34,000 polling places.

These elections offer Ukrainians a genuine choice among several political contestants waging vigorous, but peaceful campaigns that are widely reported to voters by the media. The campaign period is so far free of the most egregious problems that marred previous Ukrainian polls. Fundamental human rights are respected. State censorship and direct state interference with campaigning are no longer issues. The blatant and coercive use of state power to garner votes that has been documented in past elections does not appear to be a problem. All major electoral blocs have access to the media, although paid political advertising is often disguised as news.

New arrangements for voting at home, absentee voting and purging from the voter rolls Ukrainians who may be out of the country on election day threaten to disenfranchise some voters, as well as open the door to significant falsification of votes. In addition, more strictly partisan composition of election commissions has already stalled registration of one electoral bloc, and risks further delays and manipulation of election procedures for political advantage. The delegation noted a broad lack of confidence in the Central Election Commission (CEC) to conduct the election free from political influence, and to an even greater extent the courts to fairly resolve electoral disputes.

As election day approaches, all of Ukraine's electoral blocs must demonstrate the political will to advance the country's democratic progress.

POLITICAL AND ELECTORAL CONTEXT

The September 30 elections are pre-term elections, resulting from the political turmoil that has roiled Ukraine since 2004. Ukraine's next regularly scheduled parliamentary elections were to be held in 2011. However, in summer 2007, President Victor Yushenko dismissed the parliament and called for new elections, in response to an apparent drive by Prime Minister Viktor Yanukovich's parliamentary majority coalition to increase its numbers in parliament to 300 seats. Three hundred votes are needed to start the process of amending the constitution or begin impeachment proceedings against the president. Amid allegations of bribery, a number of members of parliament changed their loyalties. The Prime Minister's coalition challenged the dissolution of parliament as unconstitutional but when the courts failed to rule, early elections were agreed to through political compromise.

The confrontation between the President and Prime Minister dates to at least 2004. The two faced each other in a presidential election deemed fraudulent by domestic and international observers and eventually invalidated by Ukraine's Supreme Court.

Yuschenko won the resulting re-run election but was never able to hold together the coalition of parties that supported him.

More significant than the specific electoral outcome, perhaps, was the dynamics of Ukraine's Orange Revolution, in which hundreds of thousands of ordinary Ukrainians peacefully and successfully protested in support of free and fair elections. This was an exceptional demonstration of citizen mobilization in support of political and governmental accountability, through exercising citizens' right to participate in governmental and public affairs. The Prime Minister's Party of Regions (PoR), President Yuschenko's Our Ukraine/ People's Self Defense bloc (OU/PSD) and the Bloc of Yulia Tymoshenko, the former Prime Minister (BYT) are now the three main electoral contenders. Several smaller parties are also in competition.

The Ukrainian electorate goes into the campaign deeply polarized. The regional division between the OU/PSD and BYT "orange" Western Ukrainian voters on one hand and PoR's Eastern, and Southern citizens on the other is pronounced. Two and half years of public squabbling have hardened positions and bred mistrust on both sides. Current polls indicate a near tie between the pro-Yanukovich "blue" forces and the combined supporters of the Yuschenko and Tymoshenko blocs.

This summer Ukraine hastily revised its election law and procedures. The changes, which were the product of a political compromise to give the President the early elections he sought, introduce new arrangements for compiling the voter lists, voting by the homebound, and limitations on voting by those who have traveled abroad. All of these are problematic, because they open possibilities for disenfranchisement and illegal voting. Other changes established a 50 percent minimum turnout requirement and call for a CEC formed of eight representatives of the Prime Minister's parliamentary majority and seven of the opposition faction. District Election Commissions (DECs) are composed of equal numbers of representatives of the parliamentary majority and opposition. Precinct Election Commissions (PECs) contain representatives of the five blocs in the current parliament.

OBSERVATIONS:

Electoral Progress to Date:

Freer Media Environment:

The delegation found that the major blocs contesting the election have equal access to the media, in part because all have the resources to pay for it. Television is the medium by which Ukrainians overwhelmingly get their news. On most national channels coverage of candidates is equally available to all, if - and only if - it has been purchased. Importantly, this includes time on programs labeled news. This violates Ukraine's election law, which prohibits political advertising on news shows (Article 71.17). It potentially limits the media access of smaller, poorer parties and undermines the long

term credibility of the media. Despite these shortcomings, which are serious, the current media environment represents an improvement over previous elections. In 2004 and previous elections candidates were denied or limited in their access to national media leaving voters without the information needed to make well informed choices.

The delegation found no evidence of state censorship or confirmed reports of violence against journalists, both of which have figured prominently in past elections.

Freedom to Campaign:

Ukraine's campaign period officially began August 2. At this early stage, no significant interference with freedom to campaign was noted. Some of the delegation's sources referred to misuse of government resources, so-called "administrative resources," for which Ukraine was infamous in 2004. The delegation heard no specific allegations of severe abuses of state power, such as coercion of state employees or students, by either side.

In many oblasts, however, state employees, including oblast governors, are serving as campaign chairs. This does not appear to violate Ukrainian election law, as long as they do not campaign on state time or using state resources. However, the delegation recommends that local officials and national Cabinet Ministers, many of whom are also candidates, take extra care to avoid the perception that they are campaigning while performing government duties. Abuse of "administrative resources" is a red flag in Ukraine, considered to be widespread, and at the root of stolen and illegitimate elections. NDI's experience worldwide has found that confidence in an electoral system and a perception of fairness are as important as the letter of the law. When serious doubts are raised as to the fairness of an electoral provision, as with government officials who are also campaign workers or candidates, additional safeguards should be introduced even if the law meets an otherwise acceptable standard.

Matters of Continuing Concern:

Potential Abuse of Home Voting:

In 2004, the mobile ballot box became a major instrument of fraud. Under Ukrainian procedures the mobile box is physically brought to the sick and disabled at home so they can cast votes. In the 2004 elections, the number of those allegedly ill and disabled and requesting home voting was massively and fraudulently inflated, reaching one third of the total electorate in one oblast. In response, legislation passed in 2005 required voters wishing to vote at home to present evidence of their medical conditions.

Under the 2007 amendments and CEC regulations, home voting is still intended solely for the sick and disabled. However, the new rules dilute important safeguards against fraud by allowing voters to request home voting without any medical documentation, and to do so up to two days before the election. This re-opens a loophole in the law that was closed precisely to eliminate fraud. As such, it is very troubling.

Voters Traveling Abroad and Absentee Voting:

Ukrainian voter lists are in the process of compilation; most sources reported they expected some inaccuracies as in 2006. The most serious problems, however, concern new provisions for Ukrainians traveling abroad on election day. The 2007 election law amendments stipulate that three days before the election, Ukrainian border guards must compile a list of those who have left the country since August 2 and have not returned. The border authorities transmit the names to local election commissions which strike them from the list of eligible voters.

This provision is problematic for several reasons. It could disenfranchise many voters who return to Ukraine within three days of the election. Some suggested to the delegation that this system may even be abused through schemes to conceal the fact of voters' departure in order to later fraudulently cast votes in their places.

Even with good intentions this scheme will be difficult to implement. There is no central registry where departures from Ukraine's numerous border crossings are recorded. Border formalities have traditionally been few at Ukraine's borders with Russia and Belarus. The system places a large burden on the border guards, who are not trained or accustomed to playing this role in elections. It could also create an administrative nightmare, as hundreds of DEC's scramble to compile and transmit to thousands of PEC's accurate accounts of voters to be stricken from lists, all within the three day period in the law.

The 2007 amendments also abolished absentee voting procedures for Ukrainians who are within the country but away from their home precincts. This effectively disenfranchises the many voters currently resident in a place different from that of their formal registration. It affects many more traveling for business or personal reasons.

This provision may also hinder recruitment of election observers to spend election day in precincts other than their own. In the past, parties have sent their observers to regions of the country they consider hostile to their interests, the East and South for BYT and OU and the West for PoR. This was cited by many as both a deterrent to fraud and an important source of confidence in voting and counting procedures. There is provision in the election law for those serving as election commissioners to vote outside their home precincts.

Election Commissions and Courts:

Election commissions at all levels are now more partisan than in previous elections, with membership on the bodies divided between representatives of opposing electoral blocs. In the short time this CEC has existed, both the parliamentary majority and opposition members of the CEC have boycotted sessions. The CEC has split along partisan lines on such important issues as documents needed for home voting. In early August, the CEC voted along partisan lines to deny BYT registration on technical grounds. The CEC vote

delayed the start of BYT's campaign. It forced the bloc to get a court order, after which the CEC voted unanimously to register BYT.

The delegation is concerned about future problems in election administration if the CEC and other commissions cannot work collegially. Some of the delegation's interlocutors raised the possibility that partisanship might lead to unnecessary obstacles to certifying election results. This would severely undermine Ukrainians' confidence in those results.

The delegation was struck by the nearly unanimous lack of confidence in Ukraine's judicial system to arbitrate impartially election disputes. Everyone with whom the delegation spoke described the courts as beholden to one political force or another. This is very worrisome given that both the results and the conduct of voting and counting on election day are likely to be challenged in court.

RECOMMENDATIONS:

The delegation would like to thank all with whom they met. The insights provided were valuable and the warm welcome provided to the delegation was greatly appreciated. In the spirit of international cooperation the delegation respectfully offers the following recommendations in the hopes of contributing to those working to improve the election process.

For the CEC and Courts:

- The Central Election Commission should operate in a spirit of consensus. Its members should seek solutions and take decisions that bridge the political divide and build confidence and garner broad support for the electoral process. Lower level election commissions should operate in the same spirit.
- The Central Election Commission should issue regulations requiring verification that those voting at home are entitled to do so, to ensure there is no abuse of Article 84 of the Law on Election of Peoples' Deputies. Article 84, as amended, makes clear that home voting by mobile ballot box is intended only for voters who cannot move on their own due to age, disability or health conditions. Regulations and procedures should ensure that voting at a place of residence is strictly limited to persons in these categories, as required by the law.
- The Central Election Commission and the Border Guard Service should stipulate detailed procedures for the implementation of Article 102-3, paragraph 9, of the Law on the election of Peoples' Deputies, as amended, to ensure consistent application of the law throughout the territory of Ukraine. The procedures could include publicizing lists of people to be stricken from the voter lists, in time for them to correct errors, or other measures to ensure that persons returning to Ukraine within the final three days before the election are not deprived of their right to vote.

- The Central Election Commission should take steps to ensure the full transparency of election results by posting immediately at every level of tabulation and on the CEC website all results – down to the polling station level – as soon as they are received.
- The Central Election Commission should develop procedures to ensure compliance with Articles 71.17 and 102-6.14 of the Law on the Election of Peoples’ Deputies, which stipulates that election propaganda placed in the media shall contain the full title of the party or bloc which has ordered the propaganda. Neither media outlets, nor parties, nor election officials should tolerate the apparently prevalent practice of hidden, paid political advertising.
- The Central Election Commission should ensure that international and domestic non-partisan observers are registered through an inclusive, rapid, simple and effective procedure that ensures the broadest possible presence of observers on election day, as well as during the pre-election and post-election periods.
- The Central Election Commission should issue regulations ensuring that observers have full access to all aspects of the electoral process, including observing data entry at the District Election Commission level.
- The Central Election Commission, the media and non-governmental organizations should undertake a widespread public information campaign to encourage every voter to check his or her registration, to ensure the accuracy of the voter lists and to prevent any eligible voter from being turned away from the polls on election day.
- The District Election Commissions should take care to refrain from appointing to PECs any individuals associated with fraudulent practices in past elections.
- All courts adjudicating election cases should take prompt, well-reasoned decisions that comply fully with the letter and spirit of the law and with Ukraine’s international obligations to support democratic practices.

For the Media:

- The media should devote more effort to, and develop a better capacity for, analytical reporting on the election campaign.
- The media should sponsor debates among the leaders of the major parties or blocs standing in the election.

For the Political Parties:

- Political parties should ensure that they field the largest possible numbers of party agents to polling stations throughout the country, in order to help ensure the integrity of the polling process on election day.
- Political parties should seek gender balance in their nominations of polling station officials.

For the Voters and NGOs:

- Since the law does not provide for absentee voting in these early elections, voters should check to ensure that they are included on lists for their current places of residence in order not to be disenfranchised on election day. The Central Election Commission and other authorities compiling voter lists should make a maximum effort to include voters at their current places of residence.
- We encourage domestic and international organizations to field the largest possible numbers of non-partisan short and long term observers as a means of discouraging malpractice and building public confidence in the electoral process. In this regard, NDI will be sending its own team of election day observers, and has provided funding and support for other international observers.

Although it is too late for these elections, the following recommendations should be taken into account for future elections:

- The election law should be thoroughly reviewed and brought fully into line with international standards and best practices. As part of this process, Ukraine should fulfill its commitments to implement recommendations on election reforms set out by the OSCE and the Council of Europe.
- Detailed guidelines should be established on the use of so-called “administrative resources,” making absolutely clear what is and is not permitted of public officials of all levels during a campaign period.
- Political parties should adopt more open, transparent and democratic methods for establishing their candidate lists and party platforms.
- Parties should place more women on their candidate lists, in positions that ensure their election to office.
- The new parliament should develop clearer and more comprehensive rules governing campaign financing, aimed at enhancing transparency and accountability.

- Ukraine should continue to take steps to strengthen the independence of the judiciary in order to advance the rule of law and to create greater public confidence that the court system can provide an effective remedy for complaints.

CONCLUSION:

This election presents Ukrainians of all political stripes with an opportunity. The parliamentary elections of 2006 were an achievement following a long history of troubled elections. The September 30 election provides an opportunity to build on that achievement. It is a chance to demonstrate to the Ukrainian voters that despite the fractious, partisan maneuvering that led up to this election, all Ukrainian political leaders are irrevocably committed to free and fair elections, as an integral part of democratic development.

This goal is well within reach. The campaign period has so far been relatively free of problems. As election day approaches, all of Ukraine's electoral blocs must demonstrate the political will to advance Ukraine's democratic progress.

NDI METHODOLOGY:

An accurate and complete assessment of any election must take into account all aspects of the process, and no election can be viewed in isolation from the political context in which it takes place. Among the factors that must be considered are: the legal framework for the elections set by the constitution, including electoral and related laws; the ability of citizens to seek and receive sufficient and accurate information upon which to make political choices; the ability of political competitors to organize and reach out to citizens in order to win their support; the conduct of the mass media in providing coverage of parties, candidates, and issues; the freedom that citizens and political competitors have to engage in the political and electoral process without fear of intimidation, violence, or retribution for their choices; the conduct of the voter registration process and integrity of the voter register; the right to stand for election; the conduct of the voting, counting, results tabulation, transmission, and announcement of results; the handling of election complaints; and the installation to office of those duly elected. It should also be noted that no electoral framework is perfect, and all electoral and political processes experience challenges.

NDI is a nonprofit organization working to strengthen and expand democracy worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to civic and political leaders advancing democratic values, practices, and institutions. NDI has conducted over 100 impartial pre-election, election-day, and post-election observation delegations around the globe.

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