



**PRELIMINARY STATEMENT OF THE  
NATIONAL DEMOCRATIC INSTITUTE (NDI)  
INTERNATIONAL ELECTION OBSERVER DELEGATION TO  
UKRAINE'S SEPTEMBER 30, 2007  
PARLIAMENTARY ELECTION**

*Kyiv, October 1, 2007*

This preliminary statement is offered by the international election observer delegation organized by the National Democratic Institute (NDI) to Ukraine's September 30, 2007, parliamentary election. The delegation was led by: Abner Mikva, former member of the United States Congress, White House Counsel and Chief Judge of a U.S. Court of Appeal; Alexander Longolius, former President Pro Tem of the Berlin House of Representatives; and Patrick Merloe, NDI Senior Associate and Director of Electoral Programs. The delegation included present and former parliamentarians, former ambassadors, country specialists, civic leaders and human rights and election experts from Canada, Georgia, Germany, Latvia, Poland, Turkey, United Kingdom and United States.

Through this delegation, NDI joins in expressing the international community's interest in, and support for, a democratic electoral process in Ukraine, and in offering an accurate and impartial assessment of the character of the election process to date. The delegation conducted its activities in accordance with Ukrainian law and the Declaration of Principles for International Election Observation, which has been endorsed by 32 intergovernmental and nongovernmental organizations. The Institute does not seek to interfere in the electoral process and recognizes that it is the Ukrainian people who will ultimately determine the credibility and meaning of the outcome. The delegation worked in cooperation with Ukrainian nonpartisan election monitoring organizations and with international election observer missions organized by the OSCE/ODIHR, the European Network of Election Monitoring Organizations (ENEMO) and the International Republican Institute (IRI). It also drew upon the work of NDI's August 2007 pre-election delegation and the long-term analysis of NDI's Ukraine-based staff.

*The delegation wishes to emphasize that at this point NDI does not intend to render a conclusive assessment of the process, given that the tabulation of results is not complete and that any electoral challenges and complaints will require monitoring through their completion.*

## **I. SUMMARY OF OBSERVATIONS**

Ukraine's pre-term parliamentary election has been both competitive and problematic. Though there were significant shortcomings, the election in many ways met international principles for democratic elections. The political crisis that has gripped the country since at least 2004 precipitated the early election, and the crisis may be extended if the political competitors try inappropriately to make the courts an extension of their political battlefield.

The challenge for Ukraine's leaders is to move beyond winner-take-all politics of confrontation and engage constructively to address people's aspirations for democracy and better lives. Popular frustrations have grown as the expectations set by the promises of 2004 remain largely unmet, though this frustration could become a positive force for renewed progress. Whether Ukraine's leaders move to bring the election to a clear and credible result or seek to undermine electoral legitimacy in favor of elite political deals will have a substantial impact on public confidence in these leaders and the resulting government.

The tabulation of results is presently ongoing, and the possibilities for pursuing genuine judicial redress, as well as artificially extending political competition through the courts, remains to be determined in Ukraine. It is this delegation's hope that the country's political leaders will choose to reinforce electoral integrity and respect for the people's will expressed freely at the ballot box.

The apparent narrowing of differences among some of the major political competitors expressed through their campaign messages and discussions with the delegation could indicate more fertile ground for a governing parliamentary majority to engage with the opposition in the period ahead. The delegation encourages such constructive political engagement. Should this be the case, the potentials for the benefits of democratic governance in Ukraine could be better realized. NDI stands prepared to assist those working toward that end.

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The following are among the positive factors that indicate progress in Ukraine's electoral environment. Encompassing these features is an environment of reduced tension that indicates a popular desire for normal political competition.

- Voters turned out in large numbers throughout the country, exceeding the legal requirement for a valid election.
- As in 2006, intimidation of voters did not play as visible or apparently prominent a role as in the 2004 and earlier elections.
- Across Ukraine's approximately 34,000 polling places, thousands of electoral officials, political party/bloc agents, domestic nonpartisan election observers and media representatives worked diligently and for long hours on election day in pursuit of civic responsibilities, with representatives of different parties and blocs largely cooperating in respect for the law.
- Political parties and blocs conducted robust campaigns throughout the country without significant hindrances, and party agents from different forces were present in almost all polling stations observed.
- Journalists and media publishers were not subjected to censorship or violence, and the media presented a spectrum of political thought – although media ownership is not transparent, and electronic state media are not yet transformed to public broadcasting.
- The electoral contestants had access to the mass media through legally mandated time and printed space in state controlled media; multi-candidate/party debates were broadcast on a number of TV channels, and media access was available through paid political advertisements, though in some instances paid advertisements were disguised as news reports and editorials.
- Voters appeared to generally understand the choices presented to them at the ballot box by the political parties and blocs. However, electoral choices were largely presented based on personalities and regional concerns, rather than on differences in political platforms or positions, even though there was more discussion of issues than in past elections.
- Women participated in the election process in large numbers – although small numbers of women appeared in the top ten positions on the parties' lists of candidates for parliament.
- All major political parties and blocs, as well as the Central Election Commission (CEC), invited and warmly welcomed international election observers and recognized the role of domestic nonpartisan monitors; this demonstrated openness.

Nonetheless, some aspects of Ukraine's electoral process have been problematic and fell short of meeting requirements for genuine democratic elections. A number of the problems were caused or exacerbated by the short time provided (60 days) to organize this parliamentary election, and some resulted from lack of competence concerning electoral tasks and appropriate technologies. However, serious problems resulted not just from a lack of competence or even a lack of political will but from a desire to undermine electoral integrity in order to seek political goals. Among the problematic features of Ukraine's electoral processes are the following.

- The generally acceptable legal framework for the 2006 parliamentary election that was deemed to meet international commitments was modified in ways that represented a setback for electoral integrity - concerning election administration and potentials for disenfranchisement and illegal voting.
- The Central Election Commission (CEC)'s composition was politicized by inclusion only of parliamentary parties and thus polarized into an 8-7 split (majority and opposition, respectively). While such party representation on commissions is not inherently unfair, the level of polarization has undermined the credibility of the CEC.
- Other levels of election administration also were highly politicized, and polarization has in some cases hindered the work of district and precinct election commissions (DECs and PECs), particularly in the pre-election period.
- Absentee voting was eliminated, thus potentially disenfranchising large numbers of university students, especially those in their first academic year, and people working away from home.
- Border authorities were required to make lists of Ukrainian citizens who had left the country and not registered as returned by 72 hours before election day. These lists were to be forwarded to DEC's to be sorted and passed to the PECs. Individuals who appeared on the border authority list were to be struck from the voter list and prohibited from voting even if they appeared at their polling stations. This requirement disenfranchised some otherwise eligible voters who were in the country on election day. The border authority list contained the names of over 500,000 people, and although it is not possible to know how exactly many people may have been disenfranchised. NDI and other credible observers reported uneven application of the regulation, and even on election day rulings by various DECs and PECs caused confusion.
- The provisions for using mobile voting (i.e., officials taking a mobile ballot box to the homes or other locations of incapacitated voters and allowing them to vote in those locations) were revised from 2006 to allow persons to request this service when they are temporarily incapacitated, without written documentation of a disability (e.g., a doctor's note). Although few problems were witnessed concerning mobile voting in this election, this expanded availability of a process that was greatly abused in the 2004 fraudulent elections and was restricted in the 2004 re-run and 2006 elections.
- The voter lists had significant problems in their development. Requirements to merge several government databases with information pertinent to voter eligibility into the voter list database encountered incompatible data formats, which prevented proper merging of data. Up to 11 million entries had to be manually reentered, creating large scale problems in the voter lists. Those include double and multiple entries and non-entries of valid voters, problems with dates of birth and other issues. In some cases, on the other hand, the 2006 voter lists were not updated or merged with other databases, which created problems of non-entry of persons who turned 18 since 2006, moved or changed surnames. These problems with the voter lists created possibilities for disenfranchisement and opportunities for illegal voting.

- The brief period during which voters could check the voter list and make claims for correction of their personal information was not well publicized by electoral authorities, the parties or the media. As a result, voters did not have an adequate opportunity for to correct the lists before election day. This also caused a probable degree of disenfranchisement.
- Measures, such as going to a court on election day and seeking a ruling to permit voting, were limited in this election.
- The courts failed to issue rulings on a number of important electoral matters, which further complicated the electoral environment.
- Incidents of vote buying took place, including so-called carousel voting, where pre-marked ballots are placed in a ballot box by a voter who brings his/her unmarked ballot to the briber in exchange for money.
- There was confusion about procedures for vote counting and reporting results to DEC's.
- The use of state resources for electoral advantage, including campaigning by government officials on state time and using state facilities to campaign, was raised by some political forces as a major problem in the electoral process.

There seem to be multifold problems and few means for voters to seek effective remedies in Ukraine's electoral landscape. The exact magnitude and impact of such practices, and rumors about them, is difficult to ascertain. The attitude of political parties and blocs toward these problems and how to address them is crucial to public confidence in the election. Electoral contestants all postured in the pre-election period by pushing the possibilities for these problems to the fore in a seeming attempt to undermine legitimacy of the election – should they not like the electoral result. Deliberately creating doubt among the electorate as a political tool is in itself troubling.

The threat by each major political force to take large numbers of electoral challenges before the courts represents a potential attempt to shift the electoral decisions from the voters to the courts. If this results in protracted litigation and contradictory or confusing judicial rulings, the public's confidence in governance will be further eroded. Substituting such a battle in place of honoring the people's choice at the ballot box would be a major setback for democratic progress and for the authority of government.

NDI will continue to monitor electoral developments in Ukraine and will issue further statements if appropriate, including a final report on the election process.

## II. RECOMMENDATIONS

In the spirit of international cooperation, the delegation respectfully offers the following recommendations for the immediate post election-day period. Longer term recommendations will be offered in NDI's final report.

### **To the political parties and blocs:**

- Continue to reinforce to party activists the need to remain calm, not to resort to violence and respect the political rights of citizens, including political competitors.
- Gather and analyze information concerning potential electoral violations and pursue redress only in good faith by lodging complaints and challenges before electoral authorities and the courts that are based on the law and adequate facts.
- Accept credible electoral results and refrain from improperly using courts to cast doubts on the election process.

**To the election authorities:**

- Proceed with tabulation of results with maximum transparency at DEC and at the CEC, including immediately posting precinct-by-precinct results in addition to aggregated unofficial results and making PEC and DEC available protocols for inspection as consolidated official results are determined.
- Conduct complaint reviews transparently, in accordance with procedure and with political impartiality and equality of the law.
- Provide maximum access to domestic and international election observers and the media throughout all remaining phases of the election process.
- Preserve all sensitive electoral materials for potential legal challenges.

**To the courts:**

- Resolve transparently all election related complaints in a timely manner in accordance with equality before the law and provision of effective remedies.

**To the media:**

- Cover accurately immediate post-election day developments, including electoral complaints and challenges, in a manner consistent with professional media ethics.
- Provide accurate and balanced coverage of negotiations on the formation of a governing coalition.
- Refrain from practices such as disguising paid political advertising as news or editorial reports.

**To law enforcement authorities:**

- Respect civil and political rights, while maintaining peace and order in the post election period, and provide equal protection of the law to all irrespective of political opinion.
- Pursue vigorously those responsible for fraudulent electoral activity, while respecting due process of law and the need to establish accountability for criminal acts.

**To domestic and international election observers:**

- Provide accurate and impartial analysis and reports on immediate post-election day developments, including on electoral complaints and challenge processes.
- Call for full accountability of anyone who committed electoral fraud and/or violated the political rights of voters and those seeking elected office.
- Monitor developments and advocate for appropriate actions concerning observer recommendations for improving the electoral and political processes.

**To the international community:**

- Provide assistance and support for those working to advance political and governmental accountability in the electoral context and enhanced democratic governance.

**III. THE DELEGATION AND ITS WORK**

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, 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 registry; the voting, counting, results tabulation, transmission and announcement processes; and the handling of election complaints and installation to office of those duly elected. This statement is based on the NDI international election observer delegation's assessment of all of these elements.

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. NDI observation efforts for the September 30, 2007, parliamentary election included a pre-election assessment mission that visited Ukraine from August 14 to 20, 2007. NDI's programs in Ukraine are funded by a grant from the U.S. Agency for International Development.

The delegation held meetings in Kyiv with: representatives from the Party of Regions (PoR), Our Ukraine - People's Self Defense bloc (OU - PSD), and the Bloc of Yuliya Tymoshenko (BYT); the Socialist Party (SPU); People's Party (Bloc of Lytvyn); the Central Election Commission; representatives of the news media; civic leaders, including leaders of OPORA and the Committee of Voters of Ukraine (CVU); international experts working on election and rule of law programs, the heads of other international election observation missions, including the International Republican Institute (IRI), OSCE/ODIHR and the European Network of Election Monitoring Organizations (ENEMO); as well as members of the international diplomatic community who are concerned with supporting a democratic election process in Ukraine.

Delegates divided into teams and were deployed around the country for meetings with governmental, electoral, political and civic leaders in their respective localities. On election day, the teams observed the voting, counting and tabulation processes in polling stations (precinct election commissions – PECs) and district election commissions (DECs). Delegates then reconvened in Kyiv to debrief and develop this statement. The delegation expresses its gratitude to all with whom it met.