



**PROGRESS REPORT ON RECOMMENDATIONS OF THE
NATIONAL DEMOCRATIC INSTITUTE PRE-ELECTION ASSESSMENT DELEGATION
October 11, 2012**

From September 10 to 17, the National Democratic Institute (NDI) conducted an international pre-election assessment mission in Ukraine. Citing disturbingly low levels of public confidence in Ukraine's political institutions, the delegation called for immediate measures to address problems that collectively threatened to undermine the integrity of the October 28, 2012, parliamentary elections. The following report assesses progress concerning recommendations offered in the delegation's statement.

This report is based on the findings of a team of NDI electoral analysts based in Ukraine since the NDI pre-election mission, which will remain in the country through the adjudication of electoral complaints. The team has held 48 meetings with campaigns and candidates, electoral administrators, observer groups and media sources. This report has also been informed by NDI's ongoing work in Ukraine and other credible sources, including the long-term observation of Opora, the largest independent citizen monitoring group in Ukraine, which began observing the process on April 1, 2012; the European Network of Election Monitoring Organizations (ENEMO), which began its long-term observation on July 23; and the election observation mission of the Office for Democratic Institutions and Human Rights of the Organization for Security and Co-operation in Europe (OSCE/ODIHR). The Institute is supporting the efforts of both Opora and ENEMO. NDI remains committed to assisting Ukrainian efforts to build and sustain democratic practices, institutions and values and recognizes that ultimately it will be the people of Ukraine who will determine the meaning of the upcoming elections.

SUMMARY OF FINDINGS

Unfortunately, little progress has been observed concerning recommendations offered by NDI's pre-election mission. The challenges identified in the mission's statement therefore remain largely to be addressed. The Institute welcomed President Viktor Yanukovich's assertion in August that elections would be "transparent, fair, meet all democratic rules and be held at [a] high organizational level." It will require extraordinary efforts and political will in the next three weeks to fulfill this pledge.

Improvement ↑	<ul style="list-style-type: none">• Progress on the delegation's recommendations has been observed in regard to the quality of campaigning. Notably, despite widespread reports of violations and mistrust in the election process, candidates and party representatives continue to make electoral appeals on issues important to citizens.• In addition, although deep concerns persist about unfairness in the complaints adjudication process, political contestants continue to seek redress for their complaints through official channels.• Modest progress on the delegation's recommendations is also noted in voter education and training of election authorities.
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Limited or no improvement ↔	<ul style="list-style-type: none"> • Mixed results have been observed in the area of voter registration. The Central Election Commission's (CEC's) resolution limiting last minute changes of electoral addresses to other polling stations within the same single mandate district prevents attempts to transfer votes to more electorally strategic districts. However, no provision has been made for voters with legitimate needs to be away from their districts on election day, and these voters may be disenfranchised. • It is commendable that a large number of observers are engaged in monitoring the elections, but it is incumbent upon groups to be transparent about their methodologies and funding, and in these and other respects to adhere to global principles for election observation. • Of particular concern is the continued lack of media diversity. • There are insufficient safeguards on the use of web cameras in polling places, which are needed to reassure voters that they will not be used as a tool of intimidation or to violate the fundamental principle of a secret ballot. • Additionally, observers continue to report that allegations of bribery and abuse of administrative resources are not being fully investigated.
Regression ↓	<ul style="list-style-type: none"> • In recent weeks, ENEMO and party representatives have reported an increase in incidents of harassment, threats, intimidation and, in some cases, violence against candidates and their campaign staff. • The process through which precinct election commission (PEC) members were selected has resulted in a lack of political balance on commissions, replicating a problem identified by the delegation in the formation of district election commissions (DECs). • Recently passed legislation on web cameras was developed without meaningful public consultation. The unilateral decision to halt live broadcasting of web cameras during counting and tabulation undermines the transparency of these critical aspects of election day and could further erode public confidence in the overall process.

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Legal Framework and Electoral Administration

Proposed and actual changes to election-related legislation continue to raise concerns. These include a recent proposal to recriminalize libel and to impose criminal penalties for any 'positive statements' about homosexuality. Both indicate a worsening environment for freedom of speech. Although it was subsequently withdrawn, the libel law, with its potential to chill campaign-related speech, was particularly ill-timed. Moreover, legislation defining the parameters of citizens' freedom of assembly remains in parliament and could be moved forward at any time, despite serious objections raised by civic groups.

The ongoing legislative debates on fundamental freedoms, as well as a number of changes to election-related laws and regulations, have placed a burden on election authorities, who possess limited resources, and have made it difficult for citizens to understand their rights and responsibilities. Candidates and parties are also forced to reevaluate their strategies as the legal parameters around the campaign environment shift.

Training of election commissioners has begun, but at the DEC level, only chairs, deputy chairs and secretaries are being trained. This places the onus for training the remaining DEC members on parties, many of which lack the capacity to provide it. Trainings for PEC members are currently taking

place. However, large numbers of PECs continue to replace members, as very small parties that won seats in the lotteries are unable or unwilling to field commissioners. In addition, some training materials will not be available to PECs until mid-October, which makes adequate training difficult to achieve.

The CEC and a few civic groups have recently initiated civic and voter education efforts, which consist of public service announcements, internet advertising, posters and literature distribution. Questions remain about their reach and comprehensiveness, due to the extent of changes in the election process, particularly the re-introduction of single mandate districts.

	<i>Recommendation</i>
Limited or no improvement ↔	Election administrators at all levels should receive comprehensive, consistent guidelines and training so they may fulfill their responsibilities competently and fairly.
Limited improvement ↑	The CEC, political parties and non-governmental organizations (NGOs) should conduct extensive civic and voter education efforts so that citizens understand their rights and responsibilities under the new law.
Regression ↓	Election authorities should administer the elections fairly, consistently and in accordance with the law and international standards.

Media

Media outlets and individual journalists in Ukraine continue to face harassment. The range of information and opinion available to Ukrainian voters remains limited due to concentration of media ownership in the broadcast field, the main source of information on elections. Particularly troubling is the situation surrounding TVi, the only national channel that reliably covers the political opposition. TVi continues to be excluded from the cable companies' affordable packages, limiting pluralism in the media environment. Additionally, there are cases of journalists being denied access to public events and media outlets being pressured by authorities. The latest Opora report documents five cases of journalists being barred from attending candidates' public meetings with voters and PEC lottery processes. Observers note that such cases are not being fully or expeditiously investigated. This has a chilling effect on the media and further undermines citizens' confidence in their ability to seek redress for violations of their rights.

	<i>Recommendation</i>
No improvement ↔	The government should consider implementing a "must-carry" provision under which cable providers would be required to carry all television channels that have news and political programming as part of their basic packages throughout the campaign, election day, and the post-election period.
No improvement ↔	Allegations of intimidation of journalists or interference with their rights should be fully and expeditiously investigated and, where warranted, those found responsible should be prosecuted to the full extent of the law.

District Boundaries

The NDI delegation recommended additional voter education efforts on district boundaries, given that public opinion surveys in mid-August revealed that 48 percent of Ukrainian citizens understood that the election system has been changed to include single-mandate districts. An early October survey released by the same polling firm noted an increase of only seven percent on the same question. Public service announcements are now airing in Ukraine to inform voters that they will receive two ballots on election day. While this is an important step, it would be desirable to also educate voters on

the boundaries of the single-mandate districts or the justifications for their delineation. No such extra efforts have been observed.

	<i>Recommendation</i>
No improvement ↔	Extra efforts should be made to educate voters about their single mandate districts, especially where boundaries have changed since 2002.

Election Commissions

Contrary to the delegation’s recommendations, each DEC held a single lottery to select PEC members, and lottery procedures made no provisions for ensuring that allocation of members was proportional to the number of nominees submitted. This has resulted in small parties that fielded only one or two candidates gaining seats while parties that are viable nationwide are shut out. The composition of many PECs is currently shifting as the representatives of tiny or ‘technical’ parties resign and are being replaced by people who have a background working as election commissioners for larger national parties. Election authorities have received significant criticism from civil society, parties and observers for lack of public consultation about the lottery procedures. The selection process also appeared unnecessarily complicated and lacked transparency. On a positive note, the CEC has published the names and party affiliations of DEC members on its website, which allows citizens to better understand their composition. As the PEC formation process has not concluded, it remains to be seen whether this positive development will extend to disclosure of PEC members. Regrettably, agendas for CEC meetings are not being shared with interested parties in advance of meetings and debate on actionable items continues to take place outside of public sessions.

	<i>Recommendation</i>
Regression ↓	CEC Resolution 895, regarding selection of PECs, should be interpreted to allow for individual lotteries for each precinct. In general, lottery procedures should ensure that the allocation of PEC members is proportional to the number of nominees submitted by parties and candidates.
No improvement ↔	Agendas for CEC meetings should be shared well in advance of meetings and all discussion of actionable items should take place during the public sessions.
Improvement ↑	The names and political party affiliation of members of all district election commissions should be widely publicized, so that citizens and parties can better monitor the composition of these bodies.

Voter Lists and Registration

The law governing these elections had been interpreted to allow Ukrainians to change their electoral addresses within five days of election day. A recent CEC resolution now restricts this practice to transfers to other polling stations within the same single-mandate district. This is an imperfect solution. It does make it more difficult to affect outcomes in single mandate races by steering voters into a particular district. However, the change does not address some voters’ legitimate needs to vote far from their residences because of work or other obligations on election day. Moreover, the CEC took this decision quickly and without public consultation.

	<i>Recommendation</i>
Mixed ↔	A consultative process should be undertaken to identify mechanisms to ensure the right of citizens to vote, even when away from their residence, while minimizing the risk of manipulation.

Efforts to Bribe, Intimidate and Confuse Voters

Efforts to bribe, intimidate, and confuse voters undermine confidence that the election results accurately reflect the will of voters. The continuing large volume of complaints and allegations from both electoral contestants and observation groups attests to the significance of this concern. Public service announcements have begun airing on television to discourage citizens from accepting bribes and warn party activists of the legal consequences of vote buying. It is too early to determine their impact. Opora reported in September that voters are more likely to be offered free services, such as medical examinations, than goods or money. Nevertheless, Opora documented 86 cases of distribution of goods and services to citizens during the month of September. Additionally, NDI has not been made aware of any political parties' efforts to discourage buying of votes among their party representatives. Several bribery cases have been adjudicated in the courts, including a few that were determined to be violations. Opora, ENEMO and other observers continue to report that allegations of bribery and intimidation are not being fully investigated.

	<i>Recommendation</i>
Limited improvement ↑	Government officials, party leaders and activists, and candidates should be educated about the definition of, and consequences, for voter bribery.
Limited or no improvement ↔	Parties should take effective measures to prevent their representatives from attempting to buy votes and sanction any who commit infractions.
No improvement ↔	All reports about voter bribery or intimidation should be fully, transparently and objectively investigated and those responsible sanctioned to the full extent of the law as expeditiously as possible.

Abuse of Administrative Resources

The reintroduction of single-mandate districts in Ukraine has raised concerns about abuse of administrative resources, given Ukraine's experience with this issue in previous elections. Observers and political contestants continue to report widespread abuse of administrative resources, including allegations of government employees campaigning in an official capacity, campaign activities taking place on government premises, and selective prosecution of candidates and campaign staff by government agencies.

Particularly troubling are the instances of investigation or prosecution of political contestants by police, tax authorities, prosecutors and other government bodies. In addition to the high-profile prosecution of leaders of the opposition, ENEMO observers and political contestants have reported that at least 14 candidates have faced investigation by tax or law-enforcement agencies. Furthermore, Opora has published video evidence of a government-employed social worker campaigning on behalf of the Party of Regions in Chernivetska Oblast, which lends credence to the suspicions surrounding the recent government initiative to hire 12,000 temporary social workers. Regrettably, NDI has not been made aware of governmental or party-led efforts to discourage abuse of administrative resources. Opora, ENEMO and other observers continue to report that allegations of abuse of administrative resources are not being fully investigated.

	<i>Recommendation</i>
No improvement ↔	The government and parties should ensure that all public officials, at every level, are fully informed of the definitions and rules related to the use of administrative resources.

	<i>Recommendation</i>
No improvement ↔	All reports about misuse of state resources should be fully, transparently and objectively investigated and, where appropriate, the perpetrators should be prosecuted to the full extent of the law.

Complaints and Adjudication

Observers continue to report that the CEC and courts are processing and adjudicating complaints in a non-transparent and inconsistent manner. While it is positive that court decisions are available online, observers are unable to comprehensively track and evaluate the complaint adjudication process due to the continued lack of a centralized, regularly updated registry of complaints at the CEC. Despite these deficiencies and widespread concern about the lack of impartiality, it is positive that parties and candidates are actively collecting evidence of violations and pursuing redress for their complaints through official channels.

	<i>Recommendation</i>
No improvement ↔	The CEC, DEC's and courts should ensure expeditious, transparent and impartial review of electoral complaints.
No improvement ↔	The CEC should create and make available a centralized, regularly updated registry of complaints to allow tracking and evaluation of the complaint adjudication process.
Improvement ↑	Parties, candidates and observers should pursue redress for complaints through election authorities or the courts in good faith and based on the law and adequate facts.

Web Cameras in Polling Stations

There has been insufficient clarification on the procedures surrounding the use of web cameras and the footage they will capture. Few efforts have been made to increase voter confidence that web cameras will not be used as a tool of intimidation or to violate the fundamental principle of a secret ballot. Allegations persist that the citizens are being informed that web cameras will reveal how they vote. In countries where there is not well-established public confidence in ballot secrecy, it is incumbent on governmental authorities to establish that confidence to ensure a free vote, or techniques that heighten uncertainties should be abandoned. Additionally, the decision to continue recording during vote counting and tabulation, yet halt the web cameras' live broadcast during these processes, is troubling. This decision undermines the transparency of these critical aspects of election-day and could further erode public confidence in the overall process. Unfortunately, a reasonable explanation for why the live broadcast must be halted has thus far not been provided. Furthermore, procedures have yet to be developed on the crucial issues of access to footage and its use as evidence in resolving electoral complaints. Significant progress on these issues prior to election day is required to ensure that the transparency gained through the cameras is not outweighed by the concerns they raise.

	<i>Recommendation</i>
No improvement ↔	Regulations requiring webcams to be positioned in a way that ensures secrecy of the ballot should be strictly enforced.
No improvement ↔	Mount a vigorous campaign to reinforce voter belief that votes will be secret, including clear explanations about what the cameras will and will not film, and how the footage will and will not be used.

	<i>Recommendation</i>
No improvement ↔	Ensure that in cases where the PEC does not have internet access and thus cannot stream video, there are systematic and consistent procedures for storing the video.
Limited or no improvement ↔	If transparency is the goal, ensure that counting and tabulation are filmed, as well as voting.
No improvement ↔	Ensure that procedures for accessing the footage are simple and that all electoral subjects, including parties, candidates, commissions, media and observers have access to the video records.
No improvement ↔	Ensure that the video records are available immediately and as long as necessary to resolve legal complaints.
No improvement ↔	Guarantee rights and establish clear procedures for using video footage as evidence in case of electoral complaints and appeals. Ensure that video records can be used as evidence by all electoral subjects in cases of complaints.
Regression ↓	Consult with parties, candidates, civil society and voters in developing these regulations to ensure that concerns are adequately addressed.

Campaign Environment

In recent weeks, ENEMO and party representatives have reported an increase in incidents of harassment, threats, intimidation and, in some cases, violence against candidates and their campaign staff. In addition to the investigations by tax or law-enforcement agencies discussed above, observers and political contestants have reported that 22 candidates and several campaign staff members have faced harassment or violence, including two incidents where campaign staff members were stabbed. Moreover, observers have reported numerous instances of physical interference or loud counter-demonstrations to thwart attempts to hold public rallies and other meetings with voters. Authorities' responses to these instances have been insufficient to ensure citizens the right to peaceful assembly. Inaction in providing equal protection of the law and safeguarding the personal security of candidates, supporters and prospective voters subverts making a free electoral choice. Additionally, draft legislation on freedom of assembly remains in parliament and could be placed back on the agenda before election day. Despite these concerns about the campaign environment and widespread reports of violations, candidates and party representatives continue to make electoral appeals on issues important to citizens.

	<i>Recommendation</i>
Improvement ↑	Parties should engage the public through electoral appeals based on issues important to citizens.
No improvement ↔	While a legal framework for freedom of assembly is further debated, authorities should refrain from limiting peaceful assembly in Ukraine.
Limited or no improvement ↔	No new legislation related to freedom of assembly should be passed during the campaign period and until the input and perspective of civic organizations is incorporated.

Women's Participation

Women represent 13 percent of all candidates registered to contest the parliamentary elections and 56 percent of all DEC members. While the processes for candidate registration and DEC formation

have passed, and the PEC formation process is largely complete, opportunities still exist to encourage women’s participation in the election on different levels, including campaigning, voting and voter education. The collection of voter data, disaggregated by gender, would help observers to better understand women’s participation in elections. This information could be used to further encourage women’s participation in political life and help candidates and policy-makers to better address their concerns. NDI has not been made aware of efforts to collect data of this kind. Additionally, voter education efforts thus far observed have not contained specific appeals to encourage women’s participation in the election.

	<i>Recommendation</i>
No improvement ↔	All voter education messages, including those about ballot secrecy and other issues, should encourage full participation of women of all ages.
Limited or no improvement ↔	Voter data, broken down by gender, should be collected.

Campaign Financing

Observers and political contestants continue to raise concerns about the lack of transparency and clarity surrounding campaign financing laws and regulations, and the corrosive role of money in political processes in Ukraine. As disclosure of campaign financing is not required before election day, it remains difficult to assess the level of progress achieved on the delegation’s recommendations.

	<i>Recommendation</i>
Limited or no improvement ↔	Government authorities and election officials should monitor and ensure transparent, equal and reasonable application of existing campaign finance laws.
No improvement ↔	Parties should refrain from illegally raising and spending campaign funds. They should inform and instruct party activists about campaign finance regulations.

Election Observation

Credible monitoring operations improve prospects for a fair election in which the public and contestants accept the legitimacy of the results. However, this can only be accomplished if observers are provided full access to electoral processes. Regrettably, international and domestic observers continue to report an inability to fully observe the election administration, including continued CEC decision-making processes that take place outside of public sessions. Observers were also unable to fully monitor the recent PEC lottery process, which was conducted in a non-transparent manner due in part to unclear and complex procedures. Moreover, guidelines have not been issued that clarify the rights to observe all aspects of vote counting. Also troubling are increasing reports of law enforcement and security service representatives following observers and asking for unnecessary information. International standards for election observation stipulate that observers should be guaranteed unimpeded access to all stages of the election process and ensured the freedom to work without interference, threats, intimidation or fear. Lastly, while it is positive that a large number of domestic and international groups are engaged in monitoring the parliamentary elections, these groups should be transparent about their methodologies and funding sources and adhere to these and other aspects of global principles for election observation. This has not been the practice of all election observation groups operating in Ukraine.

	<i>Recommendation</i>
No improvement ↔	Guidelines should be issued to PECs and DEC's guaranteeing observers the opportunity to see ballots as they are being counted.
Mixed ↔	All international and domestic observers should operate in accordance with the <i>Declaration of Principles for International Election Observation</i> and the <i>Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations</i> , respectively.

NDI's international pre-election delegation that developed the above recommendations included Christine Todd Whitman, former governor of New Jersey and former administrator of the U.S. Environmental Protection Agency; Fuat Keyman, director of the Istanbul Policy Center; David McGuinty, Canadian member of parliament; Mátyás Eörsi, former Hungarian member of parliament; Laura Jewett, NDI regional director for Eurasia; and Kristina Wilfore, NDI Ukraine country director. The delegation issued a statement on September 17, 2012, which outlined recommendations for the pre-election period and for after the elections. The full recommendations can be viewed on NDI's website (www.ndi.org/files/2-%20NDI%20Pre-Election%20Delegation%20Statement.pdf).

Through the international delegation and its continued analytical work, NDI is coordinating closely with the International Foundation for Electoral Systems (IFES), which has conducted a technical assessment of the legislative framework, and the International Republican Institute (IRI), which will organize an international observer delegation for election day. NDI's election observation activities are conducted in accordance with the Declaration of Principles for International Election Observation.

NDI wishes to express its appreciation to the United States Agency for International Development (USAID), which has funded the work of the pre-election delegation and follow-up observation efforts, and supports NDI democracy assistance programs in Ukraine, along with the Canadian International Development Agency (CIDA), the Department of State's Bureau for Democracy, Human Rights and Labor (DRL), and the National Endowment for Democracy (NED). NDI is also grateful to those who contributed valuable time to share their views freely and whose perspectives have informed this information presented in this report.