



**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE
PRE-ELECTION DELEGATION TO UKRAINE**

Kyiv, Ukraine, September 17, 2012

This statement is offered by an international delegation organized by the National Democratic Institute (NDI or the Institute). The delegation included Christine Todd Whitman, former Governor of New Jersey and 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's purposes were to accurately and impartially assess the electoral preparedness in advance of the October 28 parliamentary elections; review the broader political environment; examine factors that could affect the integrity of the electoral process; and offer recommendations that could increase the prospect for credible elections and promote public confidence in the process.

The delegation held meetings with candidates and representatives of parties participating in the election, both in government and opposition; central and district election commissions; the Presidential Administration; the Ministry of Foreign Affairs; domestic and international observer groups; journalists; the international and diplomatic communities; and civic groups. The delegation conducted its activities in accordance with the laws of Ukraine and international standards outlined in the *Declaration of Principles for International Election Observation*, which has been recognized with appreciation by the United Nations General Assembly. NDI does not seek to interfere in Ukraine's election process, nor does it intend to, nor could it, render a final assessment of the election process. The Institute recognizes that, ultimately, it will be the people of Ukraine who will determine the credibility of their elections and the country's democratic development. The delegation therefore offers this pre-election statement in the spirit of supporting and strengthening democratic institutions and processes in Ukraine.

In addition to direct observations, the delegation's findings are informed by NDI's ongoing work in Ukraine and that of other credible sources, such as: the long-term observation efforts 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 efforts of the OSCE/ODIHR. The Institute is supporting the efforts of both Opora and ENEMO. NDI has deployed a team of long-term analysts, which will remain in Ukraine to follow up on the delegation's findings and recommendations and monitor procedures through election day and the post-election period. The Institute is coordinating closely with the International Foundation for Electoral Systems (IFES),

which will conduct a technical assessment of the legislative framework in late September and early October, and the International Republican Institute (IRI), which will organize an international observer delegation for election day.

The delegation wishes to express its appreciation to the United States Agency for International Development (USAID), which has funded the work of this delegation 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). The delegation is also grateful to all those who contributed valuable time to share their views freely. Their perspectives have informed this statement and made possible the work of the delegation. NDI stands ready to continue to assist Ukrainian efforts to build and sustain democratic practices, institutions and values.

SUMMARY

Ukraine has experienced a number of impressive democratic achievements over the past decade. However, public confidence in political institutions, including elections, is now disturbingly low. Immediate and concerted measures are needed to address problems, real and perceived, that together threaten to undermine the integrity of the October 28, 2012 parliamentary elections. These issues relate to the legal framework, district boundaries, election commissions, the voter registry, intimidation of voters, abuse of administrative resources, procedures for complaints and adjudication, web cameras in polling stations, the media and campaign environments, women's participation and election observation. In light of the issue of selective prosecutions, these concerns take on greater significance.

Overcoming these challenges will require political will and extraordinary efforts. Significant improvements should be undertaken in the coming days and weeks, in time to positively impact the October balloting. Several such points are noted below. Other changes that are warranted will require further deliberation and should be pursued as soon as possible thereafter.

POLITICAL CONTEXT

Ukraine enjoys a vibrant political system with parties expressing a broad diversity of political views. Ukrainian citizens have shared aspirations for a better future, and high expectations for their elected officials and political institutions.

The pre-election delegation noted with appreciation changes to the election law giving nonpartisan domestic organizations rights to monitor election procedures and, for the first time, submit complaints. The government and election authorities have made concerted efforts to encourage international observation and to welcome such missions. Domestic and international groups report that the Central Election Commission (CEC) has provided greater access to both observers and the media to its meetings. The campaign has been largely peaceful to date. These are laudable achievements.

Ukraine has demonstrated that it can conduct genuine elections. Nationwide votes in December 2004, 2006, 2007 and most recently in January 2010, when President Yanukovich won the presidency, were deemed credible by a wide range of observers. On numerous occasions President Yanukovich has publicly expressed a commitment to a genuine parliamentary election process. In July, he said that “the election must be perfect, in full accordance with international standards.” In August, he pledged that the elections would be “transparent, fair, meet all democratic rules and be held at [a] high organizational level.” These statements set a positive tone and are welcomed. Regrettably, the only nationwide elections conducted during the Yanukovich presidency, local polls in October 2010, failed to meet international standards according to nonpartisan observers. Ukrainians have the skills and capacity to meet the goals expressed by the President, but the October 2010 experience suggests that extraordinary political will and efforts will be required to return to elections that are seen to reflect the will of the voters.

Recent public opinion research shows that a majority of Ukrainians think that these elections will not meet the democratic standards invoked by the President. Further, the 2011 prosecution and imprisonment of former Prime Minister Yulia Tymoshenko and former Internal Affairs Minister Yuri Lutsenko have raised grave concerns in Ukraine and abroad that the government is selectively prosecuting its political opponents and has contributed to declining confidence in political institutions. Under these conditions, Ukrainian authorities face a high threshold for regaining public trust. When serious doubts are raised about the fairness of an election, additional safeguards must be introduced, even if the law meets an otherwise acceptable standard.

Much is at stake in these elections. If the citizens accept the results as reflecting their will, the legitimacy of the parliament and government would be enhanced in the eyes of Ukrainians and the international community. This would in turn reinforce Ukraine’s sovereignty and facilitate international cooperation on multiple levels. It would enhance Ukraine’s leadership as it prepares to chair the OSCE in 2013. It would also help Ukraine tackle the domestic issues that its citizens care most about, including economic reforms and anti-corruption efforts. Further, these elections will set the stage for a presidential election in 2015, which will generate even greater scrutiny.

OBSERVATIONS AND RECOMMENDATIONS

Following are the pre-election delegation’s observations about existing challenges, along with recommendations on how to address them in advance of the October 28 elections, while other proposals are intended for consideration after the parliamentary polls but well in advance of the 2015 balloting.

Legal Framework

The framework of an election system should be designed to assure that the election is credibly implemented and that the public has confidence that the results reflect the voters’ choice. The need for building public trust in turn requires that perceptions be taken into account in assessing the appropriateness of legal provisions, and that the law leaves no room for inconsistent interpretation.

The Ukrainian election law was revised in late 2011. Major revisions included the return from a purely party-list to a mixed system, in which half of the 450 seats are allocated through proportional voting and the other half through single mandate districts; an increase in the proportional threshold from 3 to 5 percent; a ban on electoral blocs; and changes to the powers of election commissions, the formation of voter lists, the nomination and registration of candidates, campaigning rules, vote tabulation and electoral complaints.

The law provides a generally adequate framework for organizing democratic elections. However, changes to the local election law in 2010 and the parliamentary election law in 2011 were conducted through processes that were not sufficiently transparent, inclusive or deliberative. Moreover, the law is vague in some key areas, allowing room for confusion and inconsistent application. In April 2012, the Constitutional Court invalidated several provisions, injecting more uncertainty and requiring parties and candidates once again to realign their campaign strategies. As a result, Ukrainian and international groups alike have raised questions about the political motivations underlying some of the provisions, even though they may otherwise fall within the parameters of international democratic norms. This has created a perception among some parties that their competitors are benefiting from disproportionate advantages. This has eroded overall confidence in the impartiality of the processes.

The delegation also noted that the frequent rewriting of election legislation, and the relatively short timeframe from adoption of this law to its implementation, have placed a burden on election authorities with limited resources. Representatives of civic groups and election commissions noted that training for commissioners was expected to be inadequate and inconsistent. The frequent changes and compressed timelines have also made it difficult for citizens to understand their rights and responsibilities. Indeed, the Democratic Initiatives Foundation released poll results in early September showing that only 48 percent of Ukrainians understand that half of the seats in the parliamentary election will be determined in single-mandate districts.

The delegation heard charges that a number of parties were established solely for the purpose of supporting the interests of existing parties. The large number of contestants that resulted placed additional burdens on the electoral system, including the need for a lottery system to select among election commissioner nominees in a short period of time.

Governments, including election authorities, have obligations to ensure that all who seek office have a genuine opportunity to do so, and to ensure that frivolous contestants and those who seek to confuse voters by clouding meaningful choices are prevented from subverting genuine competition for office and meaningful decisions by the electorate. The sudden proliferation of new political parties in Ukraine, with scant demonstration of either popular support or chance of winning office, indicates that the legal framework is out of balance and measures are needed to restore it.

Recommendations

Before the Parliamentary Elections

- Election administrators at all levels should receive comprehensive, consistent guidelines and training so they may fulfill their responsibilities competently and fairly.
- 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.
- Election authorities should administer the elections fairly, consistently and in accordance with the law and international standards.

After the Parliamentary Elections

- Renewed consideration should be given to adopting a unified election code that would govern elections at all levels. This would discourage frequent revisions and reduce uncertainty before each election.
- Any future revisions of electoral legislation should be genuinely consultative, transparent and inclusive of citizens and all groups that have a stake in the process. No key provisions should be pre-determined or decided behind closed doors.
- Any future changes to election legislation should be adopted well in advance of one year before the next election to which they would apply.
- Election legislation should provide as much specificity as possible to minimize confusion and facilitate consistent implementation.
- Consider requiring entities seeking legal recognition as political parties to submit a number of signatures of voters that is significant enough to deter frivolous attempts at registering as a party, while not impeding genuine initiatives to launch new political parties that demonstrate the potential to win offices. The number of signatures and procedures for reviewing them can only be established through dialogue and broad agreement among those concerned.

District Boundaries

Periodic adjustment of electoral district boundaries is necessary in single-mandate systems to account for population changes. The terms of the redistricting should be determined in a transparent and inclusive manner and should aim to support the principle that every vote should have approximately equal value. Districts should not be drawn solely with the purpose of predetermining the outcome and should, to the extent possible, avoid unnecessarily dividing communities of interest.

In response to the reintroduction of single-mandate constituencies, the CEC was charged, in a short period of time, with redrawing district boundaries that were 10 years old. The redrawing process appears to have conformed to the letter of the law, which requires a deviation of no more than 12 percent from the average number of voters in each district.

However, many of the delegation's interlocutors from political parties and NGOs noted that some instances of the redistricting raised concerns. In its May 1, 2012 report analyzing the redrawing, Opora cites examples of new districts that are unusually large or long, which may cause problems or

delays in transporting election documents; division of otherwise coherent communities or ethnolinguistic minorities into two or more districts without apparent cause, which could negatively impact the representation of those communities in the parliament; multiple unexplained non-contiguous districts; and apparent advance knowledge of district boundaries by certain candidates.

Throughout Ukraine, according to an IFES report, almost one in five districts (19 percent) are non-contiguous and in four oblasts, half or more of the districts are non-contiguous: Lugansk, 64 percent; Dnipropetrovsk, 53 percent; Donetsk, 52 percent; and the city of Sevastopol, 50 percent.

In the absence of clear and compelling justifications, these unusual delineations have created a perception that they were drawn to establish or protect a political advantage for specific parties and candidates.

Recommendations

Before the Parliamentary Elections

- Extra efforts should be made to educate voters about their single mandate districts, especially where boundaries have changed since 2002.

After the Parliamentary Elections

- The development of criteria and the redistricting itself should be conducted through inclusive and transparent processes.
- In future district delimitations, every effort should be made to ensure that districts are not drawn solely with the purpose of predetermining electoral outcomes.
- Detailed, fair and reasonable criteria for district formation should be established and publicized.

Election Commissions

Democratic elections require effective, professional and impartial election administration, transparent organization, accurate, honest reporting of election results, expeditious resolution of electoral complaints and provision of effective remedies where warranted. Balanced, representative composition of election commissions at all levels is thus important.

Ukraine's parliamentary election administration consists of three levels, headed by the Central Election Commission (CEC), with 225 district election commissions (DECs) and 33,549 precinct election commissions (PECs). The CEC consists of 15 members with seven-year terms. Eight of the current members were nominated by the ruling parliamentary coalition and six by the parliamentary opposition. One seat is vacant.

DECs were appointed on August 24. Each DEC reserves one seat for representatives of each of the five parliamentary parties, and between seven and 13 additional seats for representatives selected by lottery. By law, any party that had registered at least one candidate was eligible to participate in the lottery, potentially giving them representation in all 225 DECs. The CEC had responsibility for

establishing lottery procedures. Facing time constraints, the CEC held a single lottery rather than individual lotteries in each of the 225 districts. Eighty-one parties participated. As a result of the lottery, many parties planning to support only one or two single mandate candidates did receive representation on all or most DEC's, while several parties with nationwide organizations and viable chances of passing the 5 percent threshold in the proportional races were left with no representation on any DEC. While the selection process was consistent with electoral legislation and responsive to pressing deadlines, the disproportionate outcome highlights the inadequacy of the system for ensuring balanced representation. Furthermore, many of the smaller parties that received seats on the DEC's have already replaced their candidates or declined their seats altogether. The delegation could not verify these claims, but one Ukrainian civic group, Tsyfra, concluded that 43 percent of DEC members had been replaced by September 5, and the small parties accounted for three-quarters of these replacements.

Given that parties are not required to nominate commissioners for all districts, the volume of replacements raises questions about the motivations behind participating in the lottery in the first place and concerns about the possibility for manipulation. Moreover, several interlocutors have alleged that some smaller parties have sold the DEC seats they won in the lottery to other parties through the replacement process. ENEMO documented a discussion on Facebook from July and August, where an individual stated that he controls six of the smaller parties who won DEC seats and intimated that they were sold to "customers with big money."

PECs must be formed by September 26. The delegation was told by representatives of the CEC that the DEC's would form PECs through individual lotteries for each of the 33,549 precincts. This is a system that, while time- and labor-intensive, would lower the risk that any one party would be shut out of PECs in any given district. On September 13, the CEC passed a resolution addressing this issue. The delegation researched the resolution carefully and consulted with numerous interlocutors on its interpretation, concluding that the process by which it was passed was less than transparent and its wording ambiguous.

The delegation heard credible reports from party representatives, which ENEMO has corroborated, that on most important matters CEC decisions have been unanimous, raising concerns that discussions on these issues are taking place outside the framework of open, public meetings. This has led to confusion and second-guessing about motivations behind the decisions.

Recommendations

Before the Parliamentary Elections

- 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.
- 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.

- 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.

After the Parliamentary Elections

- Once legislation is enacted to rationalize the qualification of parties as described above, the election law should also be revised to ensure that all qualified parties get representation on election commissions.

Voter Lists and Registration

The universal right to take part in government is directly affected by the issue of eligibility and voter registration. The system used to register voters should guarantee the “one person, one vote” principle by preventing people from voting more than once or from voting in the wrong location.

In Ukraine, voter lists are developed and maintained by State Voter Registration maintenance bodies. By law, the lists must be posted in polling stations and voters have until October 23 to submit applications to correct information. PECs can amend the corrected lists only based on a court judgment or, before election day, on a notification from the appropriate maintenance body.

Representatives of political parties, civil society organizations and the government raised concerns with the delegation about provisions in the election law allowing voters to change their electoral addresses. It is reasonable and desirable for electoral systems to accommodate citizens who will be away from their districts at the time of an election but still want to cast their ballots. The Ukrainian law, however, makes it possible to change one’s electoral address up to five days before the election through a simple application that does not require substantiation of the grounds for the change. This provides an opportunity for parties or candidates to transfer large numbers of voters to electorally strategic districts in a practice known as “stacking votes.” Widespread problems have not been reported to date. However, in the city of Irpin, nearly 600 requests to change electoral addresses had been submitted by early September. Opora noted that this was significantly higher than the 10 to 30 requests that had been made across other districts during the month of August.

The CEC issued a resolution (#893) in recent days requiring voters to provide documents demonstrating the necessity for changing their voting location. While this will not in itself eliminate opportunities for abuse, it is a welcome action.

Recommendations

After the Parliamentary Elections

- 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.

Media Environment

The media should be able to gather and impart news free from interference or intimidation; parties and candidates should have equitable access to the media; political coverage of parties and candidates should be fair and balanced, particularly on state-run media, and voters should have adequate information to make responsible choices. State-run media outlets have a special responsibility to raise public awareness of the election process and citizens' rights.

The Ukrainian election law corresponds to these principles. It guarantees the media unrestricted access to all public events related to the election, as well as to meetings of election commissions at all levels, including the premises of election precincts on the day of voting. Media representatives are entitled to participate in meetings of the central, district or precinct election commissions without any permission or invitation. The law requires the media to abide by certain principles to ensure unbiased, unprejudiced, balanced, reliable, complete and accurate reporting of information on the election. It requires mass media to provide balanced coverage of comments made by all parties and MP candidates at election-related events and to have consistent pricing for all parties and candidates participating in the election, regardless of whether the outlet is private or state-owned.

As recently as 2010, Ukraine boasted a robust, pluralist media sector. Since that time, however, the media situation has deteriorated. Freedom House, the World Association of Newspapers and News Publishers (WAN-IFRA), Article 19, the Open Society Foundations (OSF), and the Ukraine Association of Press Publishers issued a joint report in April 2012 on Ukraine's media environment. The authors express growing concerns about developments over the past two years, citing a culture of corruption, declining pluralism, a concentration of ownership among a few companies close to the current government, biased reporting, little or no progress toward privatization of state-owned outlets, declining journalistic standards, and a growing prevalence of "sponsored" information or "hidden advertising." The Volyn Press Club issued a report on September 10 about the prevalence and nature of paid news. The 2012 IREX Media Sustainability Index concludes that in 2011, media professionalism sank – especially among television outlets, with journalists and media managers succumbing to self-censorship and a desire to appear loyal to the government.

Similarly, NGOs and parties have reported repeatedly on the widespread practice of parties and candidates paying for favorable news stories in all media outlets, including those that are state-funded, and of prices for those stories rising during the campaign. They note that intimidation of journalists and violations of their rights have increased since the beginning of the electoral campaign. The criminal code prohibits interference with, or intimidation of journalists. However, journalists and media monitors reported to the delegation that instances of intimidation are rising but perpetrators of intimidation are rarely prosecuted. These trends interfere with citizens' ability to receive impartial information about their electoral choices, as well as candidates' and parties' ability to communicate with voters.

In early 2012, an IRI survey showed that 95 percent of Ukrainians get information about politics from television. In light of this statistic, the delegation noted with concern that one of the few remaining pro-opposition channels, TVi, has lost half of its viewership and two-thirds of its audience

in Kyiv since the start of the campaign. More than 85 cable providers dropped TVi altogether, and Ukraine's largest cable operator moved TVi, unannounced, from a basic package to its most expensive offering. In addition, on September 13 TVi was charged with \$375,000 in alleged tax arrears. In 2011, TVi was denied a digital broadcasting license, forcing it to rely on cable networks instead. The penalty followed a raid on the station. The confluence of these developments and their timing in the pre-election period raise questions about possible political motivations.

Recommendations

Before the Parliamentary Elections

- 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.
- 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.

After the Parliamentary Elections

- Rules requiring television, radio and print media to provide a flat rate for political advertising during the campaign period, with equal access to all candidates and parties provided on a rotating basis, should be further elaborated and enforced. The rates and terms should be widely publicized.
- Consider developing and rigorously enforcing rules governing media ownership – including promotion of transparency, prevention of off-shore holdings, and prohibition of monopolies.
- Pursue the transformation of the state broadcaster into a public service broadcaster following international standards outlined by the OSCE and the Council of Europe, among others. The process should be inclusive and transparent, and guided by the overarching goals of editorial independence, financial security and a sound legal framework.

Efforts to Bribe, Intimidate and Confuse Voters

While healthy competition among parties and candidates is essential to a democratic election campaign, voters must perceive that they have the freedom to choose and express, independent of anyone else's wishes and in full secrecy, their preference at the ballot box. They must also have a clear understanding of their ballot choices.

The election law prohibits violence, threats, bribery, fraud or any other actions interfering with the free formation and expression of the voter's will. Specifically, article 74 forbids distribution of money, commodities, services or assets to voters, except for campaign materials that bear the images or symbols of the party or candidate and do not exceed 3 percent of the minimum salary (33.54 Ukrainian hryvnia, or about \$4.20), in connection with appeals to vote or not vote for a specific candidate or party.

However, ENEMO reports receiving numerous allegations about voter bribery from a range of political parties and candidates. While ENEMO has not been able to independently verify these claims, the volume of complaints is in itself cause for concern. Opora recorded 103 cases of voter bribery in August: 63 attributed to the Party of Regions, 30 to “self-nominated” single-mandate candidates, four to the Communist Party of Ukraine, three to the United Opposition and three to other parties. Although vote buying is considered a criminal offense, ENEMO reports that only one case, in Odessa, has been prosecuted to date.

In June 2012, with support from the national budget, local governments began an initiative to hire 12,000 temporary social workers to improve social services for vulnerable populations. The timing of this hiring and duration of the contract (through October 28) generated sharp criticism from observers and political contestants. The delegation received numerous reports from observers and others that the social workers are engaged in door-to-door canvassing activities promoting government achievements and, in some cases, allegedly campaigning on behalf of the Party of Regions. The delegation was told about, but did not see, a video of one such social worker stating that he is proud to be conducting campaign activities for the ruling party.

Also, Opora has recorded 44 cases in 31 districts in which candidates with the same or a similar name as prominent politicians are registered in the same single-mandate district. Although there are no laws regulating this phenomenon, the prevalence of cases creates the appearance that it may be a deliberate tactic to confuse voters and interfere with legitimate candidates’ campaigns.

Recommendations

Before the Parliamentary Elections

- Government officials, party leaders and activists, and candidates should be educated about the definition of, and consequences, for voter bribery.
- Parties should take effective measures to prevent their representatives from attempting to buy votes and sanction any who commit infractions.
- 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

Government property and civil servants’ salaries should not be used for partisan purposes. Moreover, government officials directly involved in administering elections have a special obligation to maintain impartiality. Politically-motivated selective prosecution is not acceptable under any circumstance.

The Ukrainian election law forbids the use of administrative resources by candidates and parties on behalf of campaigns. Campaigning is prohibited for executive authorities at all levels, law enforcement agencies, courts, public officials during working hours and election commission members.

In spite of these regulations, ENEMO has received multiple reports in which publicly funded projects and events, as well as government buildings and vehicles, were used to promote selected parties and candidates. ENEMO has also received several reports of tax inspections being launched against opposition or independent candidates. Opora recorded 109 cases of abuse of administrative resources in August: 95 attributed to the Party of Regions, 11 to self-nominated single-mandate candidates, and three to other parties. These took place in 76 districts of 25 oblasts.

Recommendations

Before the Parliamentary Elections

- 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.
- 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.

After the Parliamentary Elections

- Future election revisions should seek to eliminate confusion about the division between legitimate government service and campaigning.

Complaints and Adjudication

The due process of law and equal protection of the law must be available to provide appropriate, immediate and effective remedies for citizens and electoral contestants in order to guarantee the integrity of the electoral process and the peaceful resolution of complaints.

The Ukrainian election law allows parties, candidates, their proxies, election commissioners, domestic observers and voters to submit complaints to challenge decisions or actions. Complaints may be brought to the relevant election commission or to administrative courts. In general, interlocutors repeatedly raised concerns that the judiciary is not sufficiently independent of the executive branch.

ENEMO received information about 77 cases of official complaints to the CEC and various courts. The majority of complaints concerned violations related to campaigning, abuse of administrative resources, voter bribery and candidate registration. According to ENEMO's analysis, of the 77 complaints, only about a dozen were resolved in favor of the complainant. This ratio may discourage future attempts to pursue complaints through the available avenues.

Recommendations

Before the Parliamentary Elections

- The CEC, DEC and courts should ensure expeditious, transparent and impartial review of electoral complaints.

- The CEC should create and make available a centralized, regularly updated registry of complaints to allow tracking and evaluation of the complaint adjudication process.
- 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.

After the Parliamentary Elections

- Strengthen the independence of the judiciary to advance the rule of law and create greater public confidence in the court system.

Web Cameras in Polling Stations

In early August, President Yanukovich signed a law that requires the installation of web cameras in all polling stations on election day. The footage will be streamed on a website created for this purpose (<http://vybory2012.ua>), although some interlocutors expressed concern that not all precincts have internet access.

Proponents of web cameras argue that they will increase transparency and deter fraud. At the same time, critics question their value for deterrence and raise concerns about their use by candidates or parties to intimidate or coerce voters, precinct commission members and election monitors. Even if these concerns do not materialize, the existence of cameras could have a chilling effect on citizens' willingness to vote their conscience. The OSCE/ODIHR in its final report on the March 2012 Russian presidential election noted that web cameras are not a substitute for observation, saying, "There are inherent limitations as to what web cameras can and cannot capture, and therefore from an outset they cannot be regarded as an ultimate safeguard against any possible manipulations."

The delegation noted that whatever transparency may be gained from installation of web cameras in polling stations may be outweighed by the concerns raised about ballot secrecy, voter intimidation, and lack of clarity about access to their recordings.

Recommendations

Before the Parliamentary Elections

- Regulations requiring webcams to be positioned in a way that ensures secrecy of the ballot should be strictly enforced.
- 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.
- 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.
- If transparency is the goal, ensure that counting and tabulation are filmed, as well as voting.
- 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.

- Ensure that the video records are available immediately and as long as necessary to resolve legal complaints.
- 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.
- Consult with parties, candidates, civil society and voters in developing these regulations to ensure that concerns are adequately addressed.

Campaign Environment

During the campaign period, political parties and candidates need to have the ability to communicate their programs to voters freely and effectively. The right of assembly is an important part of an open campaign.

The official parliamentary campaign period began on July 30. ENEMO reports that the Party of Regions, United Opposition - Batkivshchyna, the Communist Party of Ukraine, Ukraine Forward, UDAR and Svoboda have been the most active campaigners.

While protest activity in Ukraine has doubled over the last year with 13 peaceful assemblies organized on average per day, so have repressions with every fifth protest being stopped by the authorities.

Recommendations

Before the Parliamentary Elections

- Parties should engage the public through electoral appeals based on issues important to citizens.
- While a legal framework for freedom of assembly is further debated, authorities should refrain from limiting peaceful assembly in Ukraine.
- No new legislation related to Freedom of Assembly should be passed during the campaign period and until the input and perspective of civic organizations are incorporated.

Women's Participation

Women represent nearly 65 percent of all Ukrainian voters, but only 8 percent of MPs. NDI's public opinion research shows that women are frustrated by corruption in politics and economic failure. They are angry at the existing political order and with politicians generally. Their level of frustration is such that they are eager for new ideas and leaders.

Ukrainian political parties registered 303 women as candidates, which represents 16 percent of lists and 10 percent of single-mandate candidacies. Women candidates would have to win 100 percent of their seats in order to increase their representation in parliament by 5 percent (to 13 percent). Complaints were also raised about the barriers to women presented by the single mandate system, in

which women typically have less access to the resources required for building and conducting campaigns.

Concern was expressed that Ukraine is not making progress on its commitment under the UN Millennium Development Goals to achieve a minimum of 30 percent gender representation in both legislative and executive bodies by 2015. Past experience in Ukraine has shown that when debate on election legislation is genuinely open and inclusive, there is strong interest in features that promote more balanced gender representation.

Recommendations

Before the Parliamentary Elections

- All voter education messages, including those about ballot secrecy and other issues, should encourage full participation of women of all ages.
- Voter data, broken down by gender, should be collected.

After the Parliamentary Elections

- Ukraine's election legislation should move Ukraine in the direction of more balanced gender representation in political institutions.
- Quotas within the election law as well as internal party quotas should be explored as a temporary measure to compensate for past discrimination until other barriers for women's entry into politics are removed.
- Special funds should be dedicated to training women candidates in such skills as fundraising, message development, media relations and communicating with voters.
- Parties should establish internal funds and mechanisms, such as women's wings, to support women candidates.
- Parties should nominate more women in proportional races and place them higher on the party lists, and nominate more women to run in districts where their parties are competitive.

Campaign Financing

Corruption related to political party financing poses a grave threat to democratic development worldwide. Covert party funding streams, influence peddling, and leveraging state resources for party purposes all compromise the single greatest asset of democracy: the faith and support of ordinary citizens in the political process.

Under the Ukrainian election law, donations are allowed only from the party's or candidate's own funds and from citizens. Donations from corporations are banned. The limit on donations to political parties is roughly equivalent to \$50,000 and to single mandate candidates, \$2,500. There are no limits on contributions from the candidate's or party's own funds. There are no limits on expenditures. The Venice Commission of the Council of Europe recommends public funding of political parties as a means of preventing corruption, supporting parties, and reducing undue reliance on private donors, but there are no provisions for direct state funding of parties in Ukraine.

It was repeatedly brought to the attention of the delegation that money has played a particularly corrosive role in political processes, including elections, in Ukraine. There have been long-standing concerns about the distortions caused by the intermingling of political and business interests, and the lack of transparency and regulation.

Recommendations

Before the Parliamentary Elections

- Government authorities and election officials should monitor and ensure transparent, equal and reasonable application of existing campaign finance laws.
- Parties should refrain from illegally raising and spending campaign funds. They should inform and instruct party activists about campaign finance regulations.

After the Parliamentary Elections

- More rigorous limits on campaign contributions and expenditures should be developed. Mechanisms for providing greater transparency about campaign finances should be considered.
- Consider introducing public funding of parties and/or campaigns, using eligibility criteria and allocation formulas that ensure that the support favors political pluralism without promoting fragmentation and does not reinforce inequities.
- Use inclusive and transparent processes for discussing these reforms.

Election Observation

In an uncertain electoral environment, a credible monitoring operation improves prospects for a fair election in which the public and the contestants accept the legitimacy of the results.

The Ukrainian election law gives rights to domestic observers representing political parties, single-mandate candidates and accredited Ukrainian civic groups. (Previous election laws had not provided such rights to nonpartisan domestic groups.) Observers can be present at election commission meetings at all levels. On election day, observers can be present during the examination and sealing of ballot boxes, the voting process and the counting process. They can take pictures and films. They are entitled to receive a copy of protocols from PECs and DEC. They may use the legal system to address violations. International observers have the same rights as domestic observers with the exception of initiating legal proceedings.

The law also states that election commissions may remove observers if they illegally hinder the conduct of the meeting. The provision is written in a way that allows wide discretion for commissions to define what constitutes a hindrance. It has been used in the past to unreasonably prevent observers from exercising their rights and carry out their responsibilities. In recent Ukrainian elections, it was used to prevent NDI and other observers from viewing the counting process.

Recommendations

Before the Parliamentary Elections

- Guidelines should be issued to PECs and DECAs guaranteeing observers the opportunity to see ballots as they are being counted.
- All international and domestic observers should operate in accordance with the *Declaration of Principles for International Election Observation* and the *Declaration of Global Principles for Nonpartisan Election Observation and Monitoring by Citizen Organizations*, respectively.

NDI is a nonpartisan, nongovernmental organization that supports and strengthens democratic institutions worldwide through citizen participation, openness and accountability in government. For more information about NDI and the International Leaders Forum, please visit our website, www.ndi.org.