

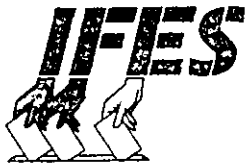
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**Pre-election Technical Assessment  
Ukraine**

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## **Executive Summary**

In February of 1993 a four-member IFES team was invited to Ukraine by the Central Election Commission of Ukraine to examine that country's developing electoral process. IFES responded to this request and assembled a team of election experts and administrators from the United States and Canada.

Over the course of ten days the team consulted with key legislators, officials, political party leaders, and civic activists in Kiev, Chernigiv, Zhitomir and Kharkiv. The purpose of the pre-election assessment was to analyze the political environment in Ukraine with the objective of assessing strengths and weaknesses in the electoral system. Among the elements of the process the team examined were: current and draft election laws, the role of the Central Election Commission, ballot security and design, election official duties and training, the act of voting, role of domestic and international election observers, voter registration and non-governmental and official civic education initiatives.

Parliamentary elections were not scheduled until 1995 at the time of the IFES team's visit though it now appears that elections may be held within the next several months. These first post-Soviet parliamentary elections will present several difficulties for election administrators in Ukraine. Political parties, which are now relatively small, will grow in membership, organizational strength and political clout prior to new elections. The advent of competitive parties, each intent on exploiting the system for maximum electoral advantage, will be a complicating factor in the administration of elections.

The findings and recommendations of the IFES team are contained in this assessment report, outlining the transition of the former multi-candidate system to a true multi-party process. Some recommendations are made primarily to the Government, parliament and Central Election Commission of Ukraine regarding changes that could improve the electoral process and encourage a smooth transition to a multi-party system. This report may also be useful to the international observers who may be monitoring upcoming elections in Ukraine.

## I. Introduction

In February 1993, IFES sent a four-member team with expertise in regional studies, technical assistance, and electoral processes to assess the political environment and election process in Ukraine. The IFES election assessment team was met with open arms and great interest and was fortunate to take full advantage of the organizational support of both the Central Election Commission staff and the in-country representative of the National Democratic Institute for International Affairs (NDI). Members of the Central Election Commission were very helpful in organizing key meetings in Kiev, Brovari, Kharkiv, Zhitomir and Chernigiv.

The IFES project team consisted of the following members:

### Team Leader:

Christopher S. Siddall, IFES Senior Program Officer for East-Central Europe and former Soviet Union. As an IFES staff member, Mr. Siddall has implemented civic education and technical assistance projects throughout the former Soviet Union and Eastern Europe. Mr. Siddall also has served as a consultant on former Soviet Union issues to the W.K. Kellogg Foundation and World Learning. He speaks Russian.

### Team Members:

Richard D. Balasko, Chief Electoral Officer of Manitoba, Canada and Steering Committee Member of the Council on Government Ethics Laws. Mr. Balasko has broad experience in election administration and international election observation. Since 1987, he has observed the conduct of elections in five countries: Georgia, CSFR, Nepal, Haiti and El Salvador.

Linda Edgeworth, independent election consultant, formerly of the Office of the Governor of Alaska, Division of Elections. Over the past two years, Ms. Edgeworth has served on four IFES pre-election teams: Sierra Leone, Mali, Kenya, and Kyrgyzstan. She has provided direct election assistance as an on-site technical advisor to the national election commissions of Albania and Yemen.

Donald J. Slobodzian, Former Returning Officer, Electoral Division of Swan River, Manitoba, Canada. Mr. Slobodzian has experience in election administration, entrepreneurial activity and education. He also has a working knowledge of Ukrainian.



## **Project Background**

A referendum for September 26, 1993 has been called to determine whether new elections should be held in Ukraine. It took the pressure of coal miners in eastern Ukraine to convince the government to consider such a referendum. Several months before, the major opposition party, Rukh, failed in its campaign to gather three million signatures to force a referendum on new elections. Despite the lack of a firm date for new elections, the choice of election systems and the proper management have been of great interest to the Central Election Commission (CEC), President Kravchuk's staff and members of parliament working on the new election law and constitution.

In 1992, IFES proposed an initial exchange of experience and information to CEC Chairman Boiko to take place well before the parliamentary elections, then scheduled for 1995. After several months of correspondence with Chairman Boiko, IFES learned in early January 1993, that he had been named Ukrainian Ambassador to Moldova. CEC Vice Chairman Oleksander Lavrynovich, who is affiliated with Rukh, assumed the position of Acting Chairman.

In late January 1993, IFES staff met with Mr. Lavrynovich during his visit to Washington, D.C. to outline IFES capabilities and objectives of the proposed project. Mr. Lavrynovich indicated that IFES technical assistance would be especially important to Ukraine as the country moves from a Soviet-style multi-candidate election system to a multi-party process. Soon after, IFES received a request to send a technical election team to meet with the Central Election Commission and other key persons in the electoral process to produce a technical assessment of the process.

The IFES team arrived in Kiev on February 14, 1993, for meetings with Central Election Commission Members, CEC staff, political party representatives, civic leaders, members of parliament and advisors to President Kravchuk. On February 16, 1993, the team's second working day in Ukraine, President Kravchuk called for a new constitution and new parliamentary and presidential elections if the people desired them. According to the UKRINFORM news service, the President stated:

It is necessary to adopt a new constitution and, according to the new main law, hold new elections, including presidential elections, if the people wish so. What people say will determine our policy.

On February 17, two of the team members travelled to Kharkiv for two days of meetings with members of the Kharkiv Oblast and city councils, the Mayor of Kharkiv, professors involved in the drafting of the election law and constitution from the Kharkiv Academy of Law, representatives of President Kravchuk and Kharkiv city, and Lenin District election commission members and council representatives. During this time, the other two team members travelled to Chernigiv and Zhitomir to consult with local authorities and election commission members



preparing for by-elections to fill vacant parliamentary seats.

The team reconvened on February 21, 1993, to review initial findings and to determine additional areas of emphasis for the remaining time in Ukraine. The next day meetings were held on the draft election law with representatives of President Kravchuk and political party representatives. Meetings were also held with Serhiy Holovaty, member of parliament and Chairman of the Ukrainian Legal Foundation, and with CEC Chairman Oleksander Lavrynovich. On the team's last day in Ukraine, the team debriefed the Counsellor of the Embassy of Canada, USAID/Kiev staff and Vassyl V. Durdinets, First Deputy Chairman of the parliament of Ukraine.

## **II. Internal Political Climate**

### **Overview of Current Political Situation**

Ukraine, unlike many of the other former Soviet republics, has a well-defined national consciousness and historic support for some degree of independence from Moscow, at least among ethnic Ukrainians. The bitterness resulting from the brutal Soviet purges and forced collectivization of the 1930s led to armed resistance against Soviet rule during World War Two and for several years later. Ukraine's status as a U.N.-recognized nation, though hardly independent from Moscow's direct influence, probably also served to increase awareness of the separate identity of Ukraine.

Though there has been a continuing feeling of national identity among many Ukrainians (especially in western Ukraine), during the conservative years of Leonid Brezhnev, such "bourgeois nationalism" was suppressed. Renewed feelings of Ukrainian independence began to crystalize after the Chernobyl disaster in April 1986. Many in Ukraine saw Chernobyl as a failure of the Soviet system. That disaster led to the formation of many "informal groups" or non-governmental organizations, which focused their energies on Ukrainian cultural issues and favored some degree of autonomy from Moscow.

The Popular Movement of Ukraine for Perestroika, or "Rukh", appeared in the fall of 1988. Ukrainian Communist Party Chairman Scherbitsky rightly judged the new group as a potential threat and worked to discredit it. Rukh prospered after Scherbitsky left office at the end of 1989. By February 1990, the group had become legally registered in Ukraine. Many of Rukh's leaders were at the time reformist members of the Communist Party of Ukraine.

The March 1990 elections of the Ukrainian Supreme Soviet were held after a period of contention about whether the Communist Party, Communist Youth League, and other such "public organizations" should be guaranteed seats in the Supreme Soviet through the quota system that had been in place over the years. The Soviet principle of reserving seats for these

officially sanctioned groups was excluded from the Ukrainian election law.

Radio Free Europe/Radio Liberty termed the 1990 elections "relatively free . . . in spite of widespread voting irregularities." Democratic Bloc candidates took approximately one-quarter of the 450 seats in the Supreme Soviet and coalesced into the "People's Council." The Communist majority, the so-called Group of 239, supported Volodymyr Ivashko, Scherbitsky's successor as Communist Party Secretary, for Chairman of the Ukrainian Supreme Soviet.

Ivashko was elected though democratic forces boycotted the vote. The next month Ivashko misjudged the political mood of the parliament and refused to return to Kiev during the debate on Ukrainian independence. He then resigned from his position in Ukraine. Soon Gorbachev named him to a position in Moscow as deputy general secretary of the Communist Party of the Soviet Union. Leonid Kravchuk was to call the acceptance of this position by Scherbitsky a "defection."

Ivashko's decision to go to Moscow greatly affected his former colleagues who overwhelmingly voted for independence on July 16, 1990. Yeltsin's visit to sign a bi-lateral treaty between the Russian Federation and Ukraine later that year served to further legitimize Ukrainian independence as well as undermine the cohesiveness of the Soviet Union.

In 1991, tension mounted in Ukraine as opposition parties and student groups rallied public support in favor of several demands including a call for new elections. Their demands were answered in part by the parliament which declared that a 1991 referendum would be held on the question of new elections. Gorbachev had decided to hold the referendum on preservation of the Soviet Union on March 17, 1991 with a question supporting a "renewed federation." The democratic opposition argued that the Soviet referendum would be illegal because none of the republics had been consulted regarding its conduct. As a compromise, Leonid Kravchuk, proposed that parliament draft a question on Ukrainian sovereignty. The parliament approved the following question for inclusion on the ballot along with the Soviet Union question on preservation of the Soviet Union:

Do you want Ukraine to be an independent state that independently decides all questions of domestic and foreign policy and ensures equal rights for citizens irrespective of their ethnic or religious affiliation?

This March 17 referendum question posed by Moscow was supported by 70.2% of the voters. More than 80% supported the Ukrainian ballot question. Though open to interpretation since the two questions seemed to contradict each other, Kravchuk used the result as proof of a mandate for pursuing independence from Moscow.

After the vote, Kravchuk was named as Ivashko's successor. Though he was not the favorite of anti-independence communists, Kravchuk was also greeted with great suspicion by the





opposition as he had been head of party ideology under Brezhnev and had been outspokenly critical of Rukh. However, Kravchuk immediately took on the role of a political pragmatist as Chairman of the Supreme Soviet from July 1991 onward.

After the August 1991 coup attempt in Moscow, Ukraine was on a faster track to independence. A joint Russian-Ukrainian government statement declared that the Soviet Union was no more. On August 24, 1991, Ukraine called for a referendum on independence to be held on December 1, 1991. The presidential election was held on the same day. Kravchuk won the Presidency with nearly 62% of votes cast. More than 90% voted in favor of Ukraine's total independence. This vote spelled doom for any attempt to recreate the former Soviet Union. Importantly, the majority of 11 million ethnic Russians in Ukraine also voted to support independence from Moscow.

The United States did not seem to anticipate the rapidity of Ukraine's move to independence. Only a few months before, President George Bush's administration caused considerable consternation after warning the Ukrainians against independence. After the vote, the United States was among the last to recognize the new nation. Ironically, the Russian Federated Socialist Republic was one of the first.

Over the next months, Ukraine benefitted from its international recognition and also a broad popular mandate for independence not only from ethnic Ukrainians but Russians and other ethnic minorities. This mandate served as a source of confidence in Ukraine's dealings with Russia over several issues.

Ukraine alarmed Moscow by its actions to hold onto the Black Sea Fleet, which Russia considered to be its property as the successor to the Soviet Union. Most important of the current issues has been the disposition of Kiev's nuclear weaponry.

Conflict also arose over the ownership of the strategically important Crimea. Many in Russia, with Yeltsin as an important exception, have represented the transfer of Crimea to Ukraine as illegal since Crimea belonged to Russia and was transferred by the former Soviet government. This issue was made even more controversial by the referendum conducted in Crimea concerning its independence from Ukraine.

By May 1992, more than one-half million signatures were collected for a referendum on independence, far in excess of the 180,000 required by law. President Kravchuk strongly warned that he would never consider a change in Ukraine's borders that would result from the secession of Crimea from Ukraine. However, Crimea has been granted a form of autonomy from Ukraine by the Supreme Soviet of Ukraine. The Crimean Oblast Soviet is now functioning as a kind of parliament for the region.

Ukraine's desire to be independent is not met with enthusiasm by many in the Russian parliament and other key governmental institutions. Of course, this point of view gives rise to considerable concern in Ukraine. In their own defense, Ukrainians point to the fact that most of the 11.3 million ethnic Russians of voting age on Ukrainian territory voted for Ukrainian independence alongside the great majority of citizens at large. This issue has been further complicated by the decree of the Russian parliament that Sevastopol, home of the Black Sea Fleet in the Crimea, must be considered to be a Russian city.

### III. Legal Framework for Transition to a Multi-party Democracy

#### Status of the Constitution

If there is a single barrier to Ukraine's smooth and efficient transition to a democratic multi-party election system and preparation for the next elections, it is the fact that Ukraine has not yet formalized its legal identity as a state. Ukraine is functioning without a new constitution. While there have been modifications enacted in the former Soviet Constitution or "Basic Law" the major portion of the existing body of law guiding the functions of the government and its administrative structures, including elections, still relies heavily on old laws adopted under the former Soviet Union.

A current copy of the constitutional draft was not available at the time of the team's visit. Therefore, the comments provided in this report reflect only general conclusions based on input from officials and observers who shared their observations, expertise and perspectives with members of the team.

It is significant that throughout its meetings with lawmakers, election administrators, local government officials, political parties and civic organizations alike, the team was consistently left with the impression that it was very unlikely that a constitution could be adopted in the near future. Indeed, a question was presented to the team on more than one occasion as to whether the existing parliament should be responsible for enacting a new constitution at all. Several issues were raised in this regard.

1. The members of the existing parliament were elected prior to the adoption of laws modified to allow a multi-party system, and the subsequent banning of the Communist Party. Many members sitting in the current parliament are widely perceived as former Communist Party members who realigned themselves with new parties or as independents after the election and enactment of the Communist Party ban. As a practical matter, many of them are perceived to be members of a bloc called the "Group of 239" which, while admittedly showing signs of diversity, continues to dominate the parliament of 450 members. There was widespread concern expressed as to whether, under these circumstances, the

existing parliament is the legitimate body to formulate and ratify the new constitution. Many individuals with whom the team spoke believe that a new parliament elected under a new multi-party system would be a more appropriate body to carry forward that responsibility.

2. Concern was also expressed that while the number of newly registered political parties has increased, they are still quite weak, and their representation in the current parliament is somewhat limited. Party ideologies have been clarified, but there appears to have been insufficient time for definitive party platforms and party discipline to develop in order to sustain party unity on crucial policy issues. As a result many parties have subsequently splintered, and it has become increasingly difficult for the diverse blocks within parliament to reach a consensus on significant issues.
3. The team was also advised that at least one-half of the members of parliament have little or no prior political or government experience. Throughout the process, it has become evident to some officials that even fundamental election concepts such as majority or proportional representation systems are not widely understood. Although efforts have been made to overcome this obstacle, the lack of common understanding continues to complicate evaluation of the various proposals and effective debate of their merits or potential deficiencies over the long term.

Even under the best of circumstances, it would be impossible to overstate the enormity of the task being undertaken and the complexity of the issues to be resolved. Following its most recent period of domination spanning three or four generations and its relatively sudden independence from Soviet Union and Communist Party control Ukraine is facing the overwhelming challenge of redefining itself as a democratic sovereign state. Officials assigned the task of formulating a constitutional draft have drawn from their research of the constitutions and legal structures of other countries including France, Germany, Great Britain, Italy, United States, Canada and others. Drawing heavily on themes from these various sources, drafters have attempted to modify and adapt a variety of concepts to suit the unique needs of Ukraine and develop compromises which will satisfy the divergent forces currently forging the country's future.

A parliamentary Constitutional Commission was set in place in the first half of 1991 to develop the "concept" for the foundation law. The wave set in motion by their work is indicative of a desire to create a new law-based state that would uphold basic democratic values and the rights of the individual. But the apparent trend was forged through heated debate and political conflict. One of the major emphases of the debate was the not yet banned Communist Party of Ukraine's interests in ensuring that a new constitution reflects a "socialist choice." Another significant issue reflected controversy over the question of presidential powers. Influenced significantly by

Kravchuk's personal political skills and his independent stance, compromises were reached. The conceptual document finally approved in June 1991 emphasized that the new constitution was to be "permeated with the ideals of a law-based state." One section of the document concentrated on the relationship between citizens and the state and specified that the new constitution must recognize the "superiority of civil society over the state."

Another compromise related to the concept of "socialist choice." The communist parliamentary majority was successful in seeing that the idea of "socialist choice" was reflected in the conceptual document. However, with regard to the name of the republic, its emblems and form of administration, it was decided that the question would ultimately be subject to a referendum. The conceptual document also proposed a compromise between a parliamentary and presidential form of government, and appears to have paved the way for a balanced division of state powers between the executive and legislative branches and the independence of a judiciary.

While the conceptual document was approved in June of 1991, work on the actual draft continues. According to one deputy with whom the team spoke, there have been literally thousands of proposals submitted for consideration. The most prominent working draft has recently had some 48 articles removed, and 33 new provisions added. And the debates over fundamental issues still persist. No deadline has been established for submitting a final version to a vote, and the method of ratification has not been defined. However, most officials with whom the team spoke believe that parliament will ultimately have the authority to enact the constitution without the document being subject to a referendum.

The fact that a new constitution has not been adopted does not mean that the country is at a legal standstill. On the contrary, faced with overwhelming issues left in the wake of the declaration of sovereignty, independence from Russia and the break-up of the Soviet Union, Ukrainian lawmakers have enacted scores of laws deemed necessary to accommodate the dramatic changes. Many of these laws may have set the tone for the constitution itself. Some of these laws, the team was advised, have actually been incorporated into the working draft.

Certainly, issues relating to human rights, the status of nuclear arms, conversion of a military-industrial complex including the Black Sea Fleet, and the Soviet debt obligations have been significant in positioning Ukraine as a sovereign state in the eyes of the world. The resolution of domestic issues related to currency, economic reforms, privatization, and the restructuring of territorial and administrative institutions should be added to these considerations. Even before the themes of the draft constitution were formalized, parliament was acting on legislative proposals and laws which would set the foundation for the changes ahead.

To safeguard its anticipated sovereignty, parliament and the government created a national army even while preparations for the referendum on independence and the election of the president were underway. The ruble was abandoned and a temporary Ukrainian currency was circulated. In early 1991, metallurgical and coal industries were transferred to republican ownership. An

overall law on ownership, property rights and bankruptcy was adopted, and in June of 1991, a resolution was passed by parliament to transfer all-Union state enterprises and organizations to Ukrainian jurisdiction. Following the favorable vote on independence during the referendum, parliament voted to nullify the 1922 treaty creating the USSR and all constitutional acts by the USSR that had followed. During the early part of 1992, a number of critical economic laws were passed that, unless overturned, may close the door on Soviet-style socialism in Ukraine. They included laws on privatization of large and small enterprises, documents and securities, foreign investment, and even a land code dealing with the distribution of land. Individual freedoms were confirmed in April of 1991, ratified in laws guaranteeing freedom of conscience and religion, also setting the framework for rehabilitation of victims of political repression. The team was advised that these rights are reaffirmed in the draft constitution. Clearly, a tone was being set for Ukraine's transition to a democratic system.

### Issues Still Subject to Debate

In spite of the work that has already been accomplished, many issues are still being hotly contested between hard-line hold-overs from the former Communist Party bloc and democratic forces in parliament.

1. Citizenship: Perhaps a prime example which illustrates the fundamental nature of the issues being addressed in the formulation of the Constitution relates to the language of the country and the definition of citizenship. Over the years, there seems to have been a very real, although unwritten policy of "Russification" with entire periods and aspects of Ukrainian history and culture officially labelled as "ideologically harmful" or "nationalist" under the Soviet Union. In coming to terms with its identity as an sovereign nation, consideration has been focused on the ethnic and cultural diversities of its 128 national minorities, and in particular the 11.3 million Russians living within its borders. The centrifugal tendencies, especially in the eastern and southern regions of the country, where populations are predominantly Russian and Russian speaking, cannot be ignored. The June 1993 coal miners' strike in Donetsk underlined this point.

In direct response to these concerns, the Committee on Nationalities Affairs was formed in July of 1991. In the fall of that year a Declaration of the Rights of Nationalities of Ukraine was adopted by the Supreme Soviet which granted citizenship to everyone residing in Ukraine at the time. A provision granting universal rights to citizenship for residents of Ukraine regardless of their nationality has since been passed.

2. Official Language: With the emergence of Glasnost, Perestroika and the sign of a growing national assertiveness which eventually lead to independence, a new Law On Languages in the Ukrainian SSR was passed in November of 1986, which made Ukrainian the state language in the Republic. However, the question of the official language has continued to be a subject of deliberation. Significantly, the Declaration of

the Rights of Nationalities of Ukraine also granted official language status to the mother-tongue of any national group that is "compactly" settled in an administrative territorial unit of Ukraine. This policy would appear to be a departure from that contained in the 1989 Law on Languages. This multi-lingual approach is duplicated in the May 27, 1993 draft of the Constitution. However, even this provision does not appear to be universally popular among lawmakers and may be subject to further debate and amendment during future parliamentary deliberations.

Many other issues facing heated debate relate specifically to the election process, manner of nomination of candidates, form of representation, and the kind of government which will ultimately be set in place. Brief discussions about a few of these issues follow.

1. Power of the Presidency: One of the most controversial issues relates to the demarcation between the powers of the executive and the parliament. President Kravchuk had clearly demonstrated his political skills and leadership strengths throughout the period leading to the successful referendum on Ukrainian independence and his own election to the presidency. Having formerly been a primary player in the communist party and the party's front line strategist in the campaign against the democratic opposition forces being organized under Rukh, his outspoken support of Ukrainian independence became the hallmark of change in his political agenda. Embracing the consolidation of Ukrainian independence as his top priority, he aligned himself not only with the 90.3% of the voters who voted favorably on the issue in the referendum, but also with many of his former antagonists in the democratic bloc. He has also been successful in gaining sufficient parliamentary support to strengthen the power of his own office, in spite of formidable resistance by opponents who viewed the powers being placed in the hands of the president as excessive.

Immediately upon his election, the president submitted his proposals for the expansion of his power and restructuring of the executive branch. Armed with the results of the election and a public opinion survey that showed that more than 50% of the respondents supported fundamental changes in executive and local government structures, Kravchuk asked parliament to approve amendments to the hold-over constitution which would define the separation of powers between the executive and parliamentary branches of government. He also asked that he be given temporary expanded powers to issue decrees that would have the force of law, especially in the interests of implementing economic reforms. Additionally, his proposal would grant him expanded rights to reorganize the executive branch independently, and to appoint certain ministers and heads of state committees directly. These proposals were ultimately adopted into law.

While most of these mandates are labelled as temporary, it is clear that the expanded powers of the presidency granted by parliament may have set the trend for what is to be incorporated into the constitution. The team was advised that the current draft proposes

a combination of a presidential system and a bi-cameral legislature with the definite emphasis placed on the presidency.

2. Central vs. Local Authority: President Kravchuk also proposed a plan for installing presidential representatives in each region, arguing that local officials had been unresponsive or slow to react to new demands for change. This "vertical" scheme for presidential authority at the local level is to be temporary until a constitution is adopted.

Ultimately, this proposal was also enacted. However, the controversy is far from over. There is a continuing contention between local elected officials and councils and the presidential representatives over their scope of authority and distinction between their roles. One of the key issues of their conflicts relates to how their roles will affect decisions about the privatization, distribution and use of property and land within the boundaries of the local jurisdiction. The team learned that some state property has been transferred to the jurisdictions of local governments. Concern was expressed, however, that the transfer was not made to the authority of local councils, but to local executive structures. As one local official put it, "Power without property is not power." In addition, some individuals with whom the team met expressed a concern that the imposition of presidential authority on local governments might be a preview to the restoration of a centralist Soviet-style structure and ultimately even a revival of Communist Party organization. One critic even went so far as to compare the move to Hitler's virtual destruction of self-government in city authorities. These obviously reflect the most alarmist views. However, one theme that seemed quite common was the view that current law was simply too vague. For the purpose of clarification, for example, a recent act of parliament states that local councils are the "juridical subject of communal property." However, no one with whom the team met seemed to have a clear understanding of its meaning. In practical terms, the viability of the working relationships between local officials and presidential representatives seems in effect to rely heavily on interpersonal skills and ability to negotiate, rather than on clearly defined dictums.

With regard to the conflicts between central authority and local jurisdictions, the team was led to understand that the constitutional draft emphasizes that the territory of Ukraine is unitarian, and that its structures are based on territorial integrity. In addition, a key feature is that the draft apparently includes language specifying that every territory will include a basis for economic development. The extent to which autonomous authority over local issues will be decentralized was not clear.

3. Manner of Representation: There is no question that one of the biggest stumbling blocks is the resolution of the controversy over the manner of representation which should be adopted for the organization of parliament. The first area of debate centers around choosing between a majority or proportional representation system. Clear lines

have been drawn between those who favor the majority system, and democratic blocs who favor a proportional system. A final resolution is not expected in the immediate future. However, most authorities with whom the team met agree that a compromise will ultimately be reached in which a mixed system will be adopted.

But the controversy over the type of representation does not end with the choice of a majority, proportional or mixed system. Extensive debate is ongoing as to who may be a candidate and the manner in which they may be nominated. The trend is to allow independent candidates to run for seats, although some would argue that only parties should field candidates.

Another area of controversy surrounds the question whether work collectives and social organizations should be allowed to field candidates as they have in the past. Opponents express concern that these types of nominations would tend to perpetuate Soviet-style structures, and impede the movement toward democracy and professionalism in the legislative body. Proponents recognize the difficulty of abandoning basic institutions and structures totally when nothing has replaced them.

These issues raise other questions regarding the possibility of set-aside seats. Proposals have been debated which would call for a certain number or percentage of the seats in parliament to be reserved for various types of candidates. For example, some party leaders endorse proposals which advocate set-aside seats for party candidates. The issue that underscores these types of alternatives, of course, is how the number of seats should be equitably allotted to the various categories.

At the time of the team's visit, a resolution had not been agreed upon and the debate was still continuing. However, the most likely alternative being discussed calls for a mixed system with one-half of the seats elected by a majority system, while the other half would be based on proportional representation and votes cast by party ballot. It was implied that the proposal for a bi-cameral legislature appearing in the current draft of the constitution might be designed to accommodate the mixed system by providing for one house being elected by majority and the other by proportional representation.

### The Work Continues

The preliminary efforts of the drafters appear to be characterized by both an awareness of the practical obstacles in dismantling or overhauling long standing institutions and socialist structures and at the same time a recognition of the complexities of the current political atmosphere. However, the situation is compounded by growing unrest from a seemingly disillusioned public experiencing declining faith in the current parliament, and struggling under the burdens of an unstable economic climate. With no end of the constitutional debate foreseeable in the immediate future, there is a legitimate concern that the progress made so far could deteriorate



unless lawmakers are able to define a path which both relieves the immediate social, economic and political crisis, and serves to promote stability, productivity, and freedom of the country for the long term.

#### IV. LAWS RELATED TO ELECTIONS

In lieu of an adopted constitution, the legal foundation for elections including the requisite administrative preparations, is based on a combination of existing laws focusing on the election process. It was pointed out to the team that while there is a legislative foundation for elections, it still rests on a Soviet base. Indeed, some of the relevant laws were originally enacted before the demise of Soviet Union. They have been cursorily modified to accommodate changes demanded by Ukrainian independence and change to a multi-party system. Others have been adopted more recently and reflect trends for the future. Basically, there are four laws that work together to underpin the election process: a Referendum law, the Presidential Election Law, the Law on Elections of the Peoples' Deputies of the Ukrainian SSR, and the Law on Associations and Civic Organizations.

##### The Current Referendum Law

The terms of the current members of parliament are not due to expire until 1995. Because the lawmakers in the current parliament were elected prior to independence, the banning of the Communist Party and the official move to a multi-party system, many believe that it is important to hold new elections before the normal expiration period. Within the context of the hold-over constitution there is no legal basis which allows for a dissolution of parliament. Therefore, the team was advised that the only viable means of forcing the call for new elections is through a people's initiative. Rukh has consistently been a forerunner in working toward this end. Their recent attempt at organizing a petition drive to garner the 3 million signatures required to force the issue to the ballot failed. However, their efforts accomplished several of their objectives. They managed to gather 1.5 million signatures, and in doing so attracted attention to the issue and to their identity as a political entity. At the time of team's visit, there seemed little question that they were ready to tackle a referendum drive again with a new strategy designed to overcome the restrictions of the law. In early June 1993, coal miners from the Donetsk region in eastern Ukraine finally forced the issue and convinced the government to hold a referendum on confidence in the parliament and President Kravchuk.

The team acknowledges that referendum laws in most democracies place an extensive burden on the petitioners in order to prevent frivolous causes from being forced to the ballot. However, the team also noted that the procedures required in the law on referenda in Ukraine are lengthy, restrictive and contain a number of potential pitfalls which might not have been contemplated when the law was originally conceived.



The first stumbling block for legitimate petitioners is the requirement that 3 million signatures be acquired. This figure represents nearly ten% of the estimated total number of eligible voters in the country. In many democracies this level of subscriber support in and of itself might be found to be too restrictive to provide adequate ballot access to the citizenry. Levels between .5% and 5% are not uncommon.

The actual procedures which must be followed under Ukrainian law include some nuances which, while not totally unreasonable, make it difficult for sponsoring groups to succeed. First, the law contemplates that petitions are to be sponsored only by groups of people, and not by political parties. A group that wants to start a referendum petition is required to apply to local authorities advising them of their intent to hold a public meeting to organize an initiative committee. The meeting must be held within ten days, and not less than 200 people must be present. Each person in attendance must "register" by signing his or her name and address. At this initial meeting a vote must be taken to hold the referendum, to specify the language of the question to be put on the ballot, and to elect at least twenty individuals who will be eligible to circulate the petition and gather signatures.

A protocol certifying the actions taken at the meeting, together with a list identifying the circulating sponsors by name, telephone number, address and employment and their oaths to uphold the referendum law, are submitted to the regional council for review. Upon completion of their review to ensure that the basic requirements have been fulfilled, the regional council forwards the package to the Central Election Commission (CEC) for their examination and official registration of the initiative group. Within three days of their registration, the CEC issues the appropriate certificates to each eligible circulator, and to the group sponsoring the initiative. The CEC also sends the official sample of the form to be used in the circulation process, including the ballot proposition. Under Ukrainian law, initiatives are recognized as a people's process. Therefore, all costs related to the printing of petition documents, transportation and funding for circulation must be borne by the sponsoring group.

From the date that the initiative committee is officially registered, they have 90 days to garner the required number of signatures. The time period is final and there is no supplemental period allowable should the group come close but fall short of the requisite number of signers.

Subscriber signatures are legitimate only if the person has a valid passport. The voter signs the petition and dates the signature. Upon review of the passport, the circulator must write in the person's date of birth and address. It is interesting to note that the passport number is not entered, even though it could be assumed that its inclusion would make subsequent verification of their eligibility easier.

Some restrictions placed on the circulators deserve comment. First, once their names have been submitted, no other names can be added to the eligible list of circulators. The law stipulates that they can only gather signatures within the boundaries of the district where their group is



registered. In view of the signature requirements, the team surmised that an organization initiating a petition must carefully plan to have separate groups submit applications, hold organization meetings, acquire their own registration number from the CEC, and circulate petitions simultaneously. The coordinating group must ensure that the wording on the initiative be exactly the same for each district's drive. Any variations in the wording could ultimately cause an individual district's working unit to be ruled a separate referendum drive, rather than part of the overall organization.

Within ten days of the circulation deadline, each district unit's petition pages must be submitted to their local council. Another nuance in the law requires that each signature page must include the signatures of two members of the organizing group. During the last referendum drive, some pages were stamped rather than manually signed, leading to controversy over their validity. Upon submission of the documents, the local council is responsible to certify that it was received in time and in the proper order. The official stamp of the local council acknowledges its date of receipt, and the stamped documents are returned to the sponsoring organization.

Within one week, the sponsoring group must create a protocol identifying the number of the lists and number of signatures received on the petition. The petition and the protocol are submitted to the CEC, which has one month to check the validity of the signatures. The CEC has the option of delegating tasks related to the verification to local councils. The verification process appears to involve only a random sampling of signatures. If the CEC determines that the petitions are legitimate, the results are submitted to the Presidium of parliament.

It is at this stage that the law provides a loophole which could delay action on the referendum indefinitely. The Presidium has the right to re-verify the validity of the signatures contained in the petition and perform their own review. However, the law does not set a time-table for their deliberations. Nor, apparently, does it stipulate the scope of the review. Instead, the clock only starts ticking again once the Presidium has completed its review.

Within two weeks after they have completed their review the Presidium is required to submit the initiative to parliament for their consideration. As part of its review, parliament has the final authority to determine the actual language which will appear on the ballot. Parliament is allowed 30 days for review. By resolution an election must be called not less than three months or more than four months.

One issue that was not confirmed by the team during its visit was a clear understanding of what would be voted on once the election was called. Most commonly, a referendum puts a measure on the ballot which, if approved by the people, has the effect of law or causes some action to take place. In the instance of a referendum related to a call for a new parliamentary election, the team could not determine whether the resulting election called would be to put the question of new elections to the voters for approval, or if the election called would be for the purpose of actually electing new members to the parliament. If indeed the resulting outcome of a



successful referendum drive is not universally understood or if it is open to such a question of interpretation, it is important that the law be clarified. In addition, it might be helpful for the circulating documents not only to include the proposed question but also what action would result if the petition was ultimately validated.

In addition, the impact of the loophole created by the failure of the law to stipulate a deadline for a review of the initiative by the Presidium could have a significant impact on a referendum such as that which was being contemplated by Rukh before the miners' strike and calling of a referendum. Under the best of circumstances, the registration, circulation and certification period cover almost a six-month stretch of time. Should such an initiative for new elections prior to 1995 ultimately have been successful, sponsors could have found their efforts virtually nullified if inordinate delays and open-ended review by the Presidium extended the call for an election by several months. The call for new elections becomes less meaningful the closer it gets to the regularly scheduled date for elections in 1995. The loophole in this section of the law could have proven fertile ground for abuse and political manipulation.

It was not clear to the team on what other grounds would an initiative be invalidated. Certainly, the number and validity of the required signatures and timeliness are factors. If, however, there are other criteria which the CEC, Presidium or the parliament might use to justify nullifying an otherwise valid petition, care should be taken to see that they are clarified in law. For example, are certain kinds of subjects restricted from the initiative process? Would the wording for the ballot question proposed by the initiative constitute a violation of other existing laws?

Finally, the team notes that the language of the question which will ultimately appear on the ballot is subject to alteration at several junctures. The sponsoring committee must include the question in their submission to the CEC at the time of registration. The CEC stipulates the language as it must appear on the circulating documents. Ultimately, parliament is responsible for the question as it will actually appear on the ballot. The concern arises as to what provisions exist to ensure that the final language accurately reflects the intent of the sponsoring organization.

#### Recommendations:

1. The parliament and the Central Election Commission might wish to consider simplifying signature collection procedures as well as lowering the number of signatures required for a sufficient effort to call a referendum. A lower threshold to call referenda may allow a good forum for the people of Ukraine to voice their concerns via the ballot box rather than through events such as the recent miners' strike.
2. A reasonable deadline should be set in place and the scope of Presidium review of initiatives certified by the CEC should be defined in law, in order to close

opportunities for unreasonable delays and potential manipulation.

3. If necessary, the law on referenda should be reviewed to see if clarification is needed in determining if the nature of the question to appear on the ballot is subject to interpretation. A specific example was posed earlier in this section relating to a potential initiative calling for new elections, and what people would be voting on if the election were called.
4. In a similar context, consideration might be given to defining in law what kinds of issues are allowable subjects in the initiative process, and what kinds of measures are restricted. For example, should fiscal appropriations be eligible subjects for a people's initiatives? The May 27 draft constitution prohibits referenda on a variety of such important issues.
5. Parameters should be defined in the law to ensure that the ballot language approved by parliament adheres to the intent and purpose of the initiative to which the citizens have subscribed.
6. It would also be helpful to ensure that the law provided organizing committees the opportunity to have some kind of legal review and conference on legal technicalities and procedural requirements with authorities prior to circulating the petition. Such a provision would help ensure that an otherwise valid petition would not be rejected after all the work was completed and costs were incurred based on an adversarial legal decision after the fact.

#### Law on Elections of the Peoples' Deputies of the Ukrainian SSR

In attempting to comment on the election law governing the election of deputies to the parliament, it is important to note that the law as it exists may not be in place at the time of the next elections. Considerable work is being done to develop a new law which reflects the new political climate, the move toward democracy and multi-party system, and new directions in the overhaul of basic institutions and administrative structures of government. Many of the controversial issues identified in the constitutional debates will have significant impact on the emerging election law. In view of these circumstances, observations and comparisons offered in this report are only meant to provide a very general overview of what exists at the current time, and to identify trends which are suggested in the predominant working draft drawn up by the commission headed by People's Deputy Oleksander Yemets.

As it currently exists, the law provides the basic structure for the conduct of elections, sets in place a network of electoral commissions charged with responsibility for their administration, and generally describes the process for delimitation and registration of voters. The law also sets guidelines for the designation of polling sites and procedures at the polls, counting and recording

of vote totals, and the manner in which candidates are nominated. Ukraine is not inexperienced in performing the fundamental exercises required in carrying out an election because the basic infrastructure already exists.

### Democratic Character of the Law

A cursory review of the existing law suggests that, for the most part, its overall tone would measure up favorably in meeting commonly accepted international standards for democratic elections. A number of provisions speak directly to the democratic nature of the law and there is little question that the substance of most these elements will be carried forward in the new law that emerges. Several features illustrate the point.

1. The law provides for the universal right of all citizens over the age of 18 to vote and be elected to office. It further guarantees voting rights regardless of a person's birth, social or property status, race, nationality, sex, education, language, religious orientation, length of residence or occupation.
2. Provisions guarantee the "one voter, one vote" principle.
3. The law stipulates that voters vote in secret and that their exercise of free will in casting a vote is not to be controlled or abridged.
4. It is significant that the law directly stipulates that preparation and conduct of the election is to be an open and public process. On its face the law provides a solid foundation for candidate representatives and civic observers to be present during virtually all aspects of the process including the counting of ballots and reporting of results, registration of candidates, and at meetings of the election commissions. The same privileges are guaranteed to the mass media.
5. The law calls for nationwide public disclosure of important information related to the elections through the mass media. It further stipulates that the information will be published in Ukrainian, Russian, and "other languages spoken by the population." There appears to be a broad mandate to see that information about locations of polling sites, election commission members at all levels, candidates, and dates of the elections are published nationwide.
6. Provisions are included to allow the establishment of polling sites at hospitals, institutions, on ships at sea, and as necessary for citizens voting abroad.

With regard to the universal suffrage provisions, it is interesting to note that the Yemets draft maintains the general substance, but changes the age for eligibility to be elected to 21. While it maintains the voting and candidacy rights of individuals regardless of national affiliation, it



adds a provision that to be elected to office a person must have resided in the territory of Ukraine for not less than five years.

The May 27, 1993 draft constitution stipulates an age of 25 to be elected to the bicameral National Council. To be elected President in the draft one must be at least 35 years of age.

### A Multi-party System and the Soviet Structure

The legislative foundation which currently exists for the conduct of elections to deputies to the parliament is integrally tied to the Soviet-based system. Basic modifications have been made to the existing parliamentary election law to accommodate the most obvious changes demanded by Ukraine's new sovereignty and separation from the former Soviet Union. For example, the team notes that references to the Communist Party of Ukraine are absent from the law. As far as the team could tell based on a review of the text made available, no references to political parties have been added to the working parliamentary election law at all. In fact, certain sections still remain unamended which could be interpreted as direct contradictions to multi-party participation.

Heavy reliance on the Soviet structure is clearly evident in those sections of the law which repeatedly refer to the regional and city councils or their presidiums, work collectives, public organizations, educational collectives, district residential and military soviets, and state public organizations as the only sources of nominations for members on election commissions and election observers. More significantly, the working law reserves the right to nominate candidates exclusively to "labor collectives, public associations, collectives of vocational training schools, secondary schools and higher educational institutions in the given electoral voting districts."

The deletion or omission of references to the parties has only generally paved the way to accommodate the move toward a multi-party system. At present, support for the accommodation of parties is provided only when the working electoral law is taken into consideration in tandem with the Law on Associations and Civic Organizations. It is in this law that a new section has been added which specifically relates to the registration and participation of political parties. If a new law is not adopted prior to the next election, legal advisors and lawmakers should at least amend the existing laws to ensure that they are consistent with one another.

It is evident that the working draft of the new law being considered represents a dramatic move away from Soviet structures as they relate to the election process. In addition, the draft provides for the registration of political parties, specifies the manner in which their candidates are registered, and thoroughly integrates the rights of political parties into its legislative scheme. Two features serve as examples:

1. The draft specifies that the membership of the CEC includes a mix of appointees with

the chairman, six members appointed by the President and seven members appointed by parliament. Additionally, it provides that each political party registered with the CEC has the right to appoint one member to the committee if the president or parliament has not already appointed its representative. At the regional level the draft contemplates a mix of members appointed by the CEC, the corresponding regional soviets and the parties, with a similar scenario being carried down through the polling commission level.

2. It provides that candidates for parliament may be nominated only by parties, electoral blocs or groups of voters, but eliminates the nomination of candidates by collectives, district residential and military commissions, and state public organizations.

It is interesting to note that the laws on the election of the President paved the way for the nomination of independent candidates through a petition process for the first time.

### Representation and the Absolute Majority System

Under the existing parliamentary election law, there are 450 electoral districts (Okrugs), with one People's Deputy elected from each district. A dual standard is applied in determining that the election within the district is valid, and that a candidate has won a seat in parliament. First, to be valid an absolute majority of the voters must have actually voted in the election. Second, a candidate must achieve an absolute majority of the votes cast to be considered the winner of the election. If either of these conditions is not met, the election in the district is invalid, and the parliamentary seat remains vacant until a run-off or by-election is held. Unfortunately, the same standards apply to the resulting by-election.

Virtually all election officials with whom the team met expressed their concern with regard to these very strict standards. Many even went on to suggest that if the standard is not repealed, the next parliamentary election may prove to be an exercise in futility in many districts. Their concern, which the team shared, may have merit in view of the increasing apathy and growing disillusionment that are evident among general public. To illustrate the difficulties being experienced, elections in approximately 30 districts were invalidated during the last election because of voter turnout and failure of the candidate to achieve an absolute majority. In the second round of elections, nearly one-half had to be invalidated again for the same reasons. As a result some districts are still not represented in parliament.

In April of 1993, another round of by-elections was conducted to elect members to the vacant seats. In twelve districts, the 50% threshold was not met for the second time. In May of 1993, the parliament decided to change Article 55 of the election law to allow for a year-long break before any new by-elections in those districts without deputies. Now that elections will probably be held within the year, no further by-elections will be held according to Article 56 of the law.

There is considerable debate over whether the turnout standard and absolute majority



requirement should be eliminated in favor of a simple relative majority system. Opponents of a change argue that without the standards, the public mandate or will of the people cannot really be known. Proponents of moving to a relative majority system point to some western democracies to illustrate the stability which a change to a relative majority system could promote.

The team would endorse a consideration of a removal of the restrictions. The significant question is how the citizens are served if they have no voice in parliament at all. In addition, it is important to point out that the absolute majority standard will make it virtually impossible for a candidate to achieve a victory as the number of parties and candidates increases. Formerly, the number of candidates appearing on the ballot has been relatively small. For the next elections that will probably not be the case. With more candidates and parties appearing on the ballot, it will be more and more difficult for a single candidate to garner enough votes to validate the election. Election administrators in established democracies traditionally experience a turnout that is lower in by-elections and run-offs than in the regular election. There is valid concern that Ukraine could experience an exaggerated drop in turnout as voters who participate become frustrated that invalidation of the election makes their voting fruitless.

#### Mixed Representation Proposed in the Working Draft

The draft by the Oleksander Yemets team eliminates the absolute majority and mandatory turnout requirements. However, the debate over the merits of those provisions will no doubt continue during deliberations regarding new laws being proposed. Regardless of the outcome of those debates, the system of representation under the proposed law is significantly different from that mandated by the existing parliamentary election law. The key feature of the draft is that it provides for a mixed system of representation whereby half of the 450 seats are filled by candidates in single-mandate districts, while the rest are filled by proportional representation within 26 multi-mandate districts. Each voter would be issued a ballot for the single-mandate district, and a separate ballot or ballots for the corresponding multi-mandate district. Significantly, the candidates for the 225 single-mandate seats would be elected by a relative majority. The candidate "first past the post" would automatically be declared the winner.

The system proposed for the 26 multi-mandate districts results in proportional representation among the parties participating in each district. Each party could field a slate of candidates equal in number to the number of mandates determined viable for the district based on approximately equal representation principles. An interesting feature of the proposal is that voters would be allowed to choose one of two ways of voting their ballots for the multi-mandate races. They could vote by party, or by candidate within a specific party's slate. This option not only allows the voters to select the party they prefer, but also allows them to influence which individuals from the party's slate will be elected.

The draft stipulates a detailed and complex formula by which the number of seats won by a

party can be determined within the district. In addition, the formula provides the basis on which the preferential votes cast for a party's individual candidates can be weighted in relation to the votes cast for the party slate as a whole.

The scheme proposed provides a valid method by which proportional representation can be achieved. However, it is not a simple process. First, the scheme requires that preliminary calculations be completed as part of the counting procedures conducted on the district level. The mathematical process would involve several steps to be repeated for each party and candidate. Election workers serving on the commissions on the multi-mandate district level would have to be thoroughly trained to accomplish their part of the process with efficiency.

On the district level, the mathematical equations for determining the combined and weighted results at the polling site level will result in totals representing whole numbers and their remainders. However, only the whole numbers are used at this preliminary level and the remainders are only recorded.

The sum total of all the remainders could be sufficient to warrant a mandate if they had represented a number of whole votes cast for a single candidate. Therefore, based only on the whole numbers, a district may have a list of definitive, clear winners, which is lower than the number of mandates allotted to the district. The result is that there could be a certain number of mandates left unfilled.

The resolution of this factor is the division of mandates by an amalgamation of multi-mandate districts, based on additional mathematical calculations completed after preliminary results are summarized. At this point, the draft law contemplates that parties that fail to garner at least 3% of the votes cast, and the number of votes they received are excluded from further calculations. The rest of the parties are eligible to receive the remainder of unfilled seats based on a formula which is designed to ensure a basis for proportional representation.

The draft law also eliminates the need for successor elections in the event of the death or resignation of an elected deputy. As part of the registration of the election results with the parliament, the CEC would also identify the next highest vote getter in each race. The draft law stipulates that the successor to a deputy in a single-mandate district is the candidate that received the next highest number of votes in the election. In a multi-mandate district the successor would be the next candidate on the party slate. Some might argue that this approach defeats the concept of the clear popular mandate and they would prefer to see a by-election take place. Proponents of the idea view it favorably for its efficiency, the fact that there is full disclosure of the rules, the potential successors are identified in advance, and that it eliminates the financial burden of conducting new elections. This provision also appears to have widespread support among the officials consulted by the team.

## Campaign Financing

The working parliamentary election law provides that the costs for elections are borne solely by the state, and includes articles which stipulate that candidates "do not bear expenses connected with the preparation and conduct of elections." The draft of the proposed law also provides for the allotment of funds from a centralized fund and extends the provisions to cover political parties. Neither, however, provides any formalized legal guidance with regard to the fair division of funds among those qualified to receive them. The question must be asked whether every party, bloc or nominating group gets an equal share, a pro-rated share based on a set formula, or whether the allotment distributed to each eligible entity is arbitrary. While the draft proposal implies that the CEC would be responsible for controlling the allotments, in the absence of delineated guidelines stipulated in law, decisions left to the discretion of the CEC could embroil the members in ongoing controversies and allegations and erode the public perception of the Commission as a non-political and neutral body.

The draft parliamentary election law would also allow parties to conduct fund raising beyond what they receive in state support. This reflects the new allowances for non-state funding sources which were an innovation in the laws for the election of the President. The draft further contemplates the imposition of limitations in decentralized funding which may be raised and used by parties in their campaigns equal to no more than three times the amount allotted by the state. Additional limitations would be imposed precluding contributions from foreign sources. However, the draft omits any references to the manner in which contributions of materials or commodities would be treated in the overall scheme.

There is another issue with regard to the proposed campaign financing guidelines which may need clarification if the proposed draft is ultimately adopted. It relates to the disbursement of centralized funds to individual parties which ultimately merge into an electoral block. If the law were to be adopted as it now stands, there is no clarification as to how the centralized funding would be treated under the law in these circumstances. If, for example, three parties each received their allotment from the centralized fund and then merged into a block, the resulting party would have the equivalent of three times that allotted to other parties that did not undergo a merger. Carrying the theme a step farther, potentially the new merged party would also be eligible to triple its fund raising from decentralized sources. Would the new party entity which results be eligible for its own share of the decentralized fund? Should its smaller components be required to refund their original allotments or could they contribute them to the pool of the block? Resolution of these kinds of questions deserve consideration if the playing field is to remain level, and if the door is to be closed on manipulation of the law to gain financial advantage.

## General Considerations

1. Enforceability: It will be important that provisions of any election law which is ultimately



enacted be enforceable. The team suggests that drafters take advantage of opportunities to review various provisions with special consideration given to the degree to which they can be enforced. They may determine that some of sections need clarification, while others may need to be expanded to identify the enforcing agency, the methods of remedy, and consequences of violations.

For example, with regard to the five-year residency requirement for candidates being proposed, drafters may want to consider the basis upon which the length of a candidate's residency will be verifiable. As written, the law does not specify a term of reference from which the five-year residency can be measured. Must the candidate have resided in Ukraine five consecutive years or accumulated years? Must the residency have been immediately prior to the date he or she registers as a candidate (or the date of the election) or could it have been during any period of the person's lifetime? In another example, the proposed draft provides that lawfulness of the use of election funds is to be controlled by the central, regional and district election committees. However, the manner in which these activities will be monitored, and the manner in which violations will be treated is not indicated.

2. Time Lines: Certain aspects of the time table prescribed may make it difficult for election administrators to meet legal deadlines as Ukraine moves toward a multi-party system. A few examples come to mind.

In the current law the elections of the deputies of parliament must be called no later than 120 days before their terms expire. The law also sets the deadline by which regions, local councils or their presidiums consider the proposals for CEC membership from collectives, public organizations, district and military congresses, etc. at 120 days before the elections.

Based on their review of suggested nominees from civic organizations, the councils or presidiums then submit their recommendations to parliament which makes the final appointments. The law goes on to stipulate that the list of electoral districts, their borders, their designations and numbers of voters must be published by the Central Election Commission no later than ten days after the election is called. It is difficult to imagine that even under the best scenario ten days could allow sufficient time for councils to submit their nominees to the parliament to review and approve appointments, the CEC to be pulled together and organized, and for the new CEC to form the election districts, determine the numbers of voters within each one and accomplish the publication of the list as required by law.

The proposed law poses similar time frame inconsistencies. As specified in the current law, the draft would require that the date of the election be fixed not later than 120 days before the terms of deputies are due to expire. Within ten days of the fixing of the

election, parties must submit their applications for participating in the election to the CEC. The working draft also charges the CEC with responsibility for establishing election districts, and further requires the CEC to publish the list of multi-mandate and single-mandate districts within ten and twenty days, respectively, after the election is fixed. respectively. However, the deadline by which the CEC must be established falls only 90 days before the election is called, potentially ten days after the list of single-mandate electoral districts is published, and the deadline by which parties must apply for registration to participate in the elections. The draft also provides a time period of only ten days from the final deadline for their organization and for the CEC to make their appointments to the district election commissions. These kinds of constraints trickle down through the lower levels of commission organization.

Nor does the draft appear to establish definitive deadlines by which parties, groups of voters, etc. must submit their nominations for participation on various commissions reflecting the dates by which they must each be organized. These omissions could result in conflicts alleging political manipulation and denial of participation rights. It would be helpful for Central Election Commission or other appropriate officials to map out an administrative calendar with every deadline established in the existing or draft law to see if the time tables are reasonable and administratively feasible.

3. Burdensome Restrictions: It is obvious that the drafters of the proposed law have been very conscientious in developing a comprehensive and thoughtful framework for elections. Occasionally, however, the team noted that some provisions may have been more restrictive than warranted. An example relates to the method of registration of candidates in single-mandate districts. Even in single-mandate districts, parties would be eligible to nominate candidates, as would any group of voters fulfilling the registration requirements. Parties or blocks must precede their nominating a candidate with a meeting during which the party votes on its candidates. As contemplated by the draft law, the meeting must be attended by two-thirds of the entire membership of the party belonging to the regional branch. To qualify as a branch, there must be at least 100 members. At this level of membership, two-thirds of the members may not seem to be a restrictive figure. However, as parties grow it is possible that there could be thousands of members in a branch at some point in the future. If a party developed a membership of 10,000 members for example, would a requirement that 6,666 members be present at a meeting still be reasonable?

To fulfill the requirements for nomination of a candidate, his or her application for registration must include a subscription list with the signatures of at least 500 supporters. The draft law prohibits voters from signing more than one candidate's or party's subscription list. The provision which seems inordinately restrictive is that if someone does sign more than one list, every signature affixed to the petition following that person's is automatically invalidated. The problem inherent in such a restrictive

approach is that in order to ensure that the law is uniformly applied and that every candidate is treated equally, every signature on every petition would have to be verified and all lists compared. It is unlikely that such an exercise is practical. Additionally, there is no way for a circulator of a petition to know whether or not an individual voter has signed more than one petition. The negative results are two-fold. First, through no fault of his or her own, a candidate could be precluded from registration because of the fault or ill will of one individual even though his petition contained more than 500 valid signatures. Second, all the voters who signed the petition in good faith would be disenfranchised for reasons beyond their control.

Ideally, any law that is imposed should be evaluated to weigh its advantages against its potential disadvantages to parties, candidates and voters alike. Unless there is a compelling public interest served by the imposition of such a significant and harsh restriction, any provision that arbitrarily hinders an otherwise eligible candidate's access to ballot or impedes the voter's exercise of his franchise should be carefully scrutinized.

Obviously, the observations expressed in the report are not intended as an in-depth analysis but rather to provide only the most general overview and a look at possible trends. There is no way of knowing what the ultimate results of the constitutional and legislative debates will be. However, even under the most cursory review, it is clear that those officials and lawmakers working on the development of a new election law have full appreciation of the complexities and broad scope of demands deserving their consideration. It is also clear that the draft is comprehensive and reflects a need to find workable compromises that integrate the interests of both centrist and democratic forces. Finally, it provides a thoughtful vision as to how the existing infrastructures can be molded to meet the vision of change that democratization will require.

If a comprehensive law cannot be agreed upon soon enough, the basic tenets of the working law would be adequate to see officials through the next parliamentary elections. However, with the introduction of a multi-party system the stakes have been raised considerably. The main concern is that while the general provisions could hold the process together sufficiently, the absence of critical modifications and details, lapses in compliance or failure of implementation could undermine the actual or perceived integrity of the election and the public's ultimate acceptance of the results.

#### Recommendations:

1. The mandatory turnout requirement and absolute majority system should be rescinded in order for elections not to be needlessly invalidated. It is important that voters who participate not be disenfranchised, and that voters who do not vote have the opportunity to see that voting is meaningful. Amending this

provision would be particularly beneficial during this crucial time when voter apathy is quite pervasive.

2. If a new law is not adopted prior to the next parliamentary elections, the existing laws which work together to provide the legal foundation for the election should be reviewed to determine whether or not they are consistent. If necessary they should be amended to bring them into conformity with one another.
3. Whatever form the prevailing election law takes, it should be evaluated in terms of clarifying legislative intent where the language of the law is vague or subject to interpretation. Amendments should be considered which would remove potential loopholes where opportunities for misuse could diminish the equity and effectiveness of the law.
4. It would be helpful for drafters to solicit the cooperation of experienced election administrators to review technical provisions, time lines and enforcement requirements to evaluate the degree to which they can be administered effectively, uniformly and accurately.

## V. The Central Election Commission

At the current time, there is no permanent government agency charged with the responsibility of conducting elections in Ukraine. Instead, responsibility for organization and supervision of referendums, presidential and parliamentary elections and registration of voters is vested in a hierarchy of appointed electoral commissions whose efforts are supported by an administrative staff.

At the top of the hierarchy is the Central Election Commission (CEC), organized to oversee overall compliance with the electoral law, provide technical and procedural guidance and supervise the activities of regional commissions in carrying out the administrative responsibilities in each of the electoral districts. The regional commissions register candidates within their respective electoral districts, arrange for the acquisition of approved ballots and commodities, and recruit, train and supervise the activities of polling site commissions. It is the polling site committees that compile the voter lists, set up polling sites, process voters at the polls and complete the count of ballots on election day.

Under provisions of the current parliamentary election law the basic organization of the three-tiered electoral commissions follows existing Soviet structures. The members of the CEC are appointed by parliament based on recommendations of the regions, Kiev and Sevastopol city councils or their presidiums. The recommendations submitted to parliament, according to the current law, are based on proposals from worker collectives, public organizations, district residential collectives, etc. Its membership includes an appointee representing each region, Kiev

and Sevastopol, a chairman, two vice-chairmen and a secretary for a total of 31 members in all. Presently, there are no restrictions prohibiting members of parliament or other elected officials from serving on election commissions or committees, although the working draft of proposed laws would establish such restrictions. At the time of the team's visit the CEC was supported by an administrative staff of six people. For the most part, the staff is composed of professional lawyers.

Notwithstanding the appointment rules remaining in the working law which relies heavily on Soviet structures, the new political climate has forced a change in the face of the electoral commission system. The CEC now includes party representation based on the Law on Associations and Civic Organizations, with special provisions added to allow the registration of political parties and establish certain party rights of participation in the electoral process. The team was advised that following the banning of the Communist Party, several Party members lost their posts and were replaced with representatives from newly formed political groups. Significantly, the current acting chairman of the CEC is associated with the opposition party Rukh.

CEC members are appointed for terms of five years which coincide with the terms of deputies of parliament. During their five-year term, the CEC members conduct by-elections required by the strict turnout and absolute majority standards, as well as elections required to fill parliamentary seats vacated by incumbents who are recalled, die or resign. Recently, the CEC has also been charged with responsibility for the conduct of referendums, although the team was advised that at its discretion, parliament may organize an ad hoc committee to conduct a referendum election. The grounds on which such a decision might be made were not clear.

Interestingly, the current working law provides that the CEC is to be organized no later than four months before an election. In essence that means that barring unusual circumstances, every major, regularly scheduled parliamentary election will be conducted by a new Central Election Commission in the earliest months of its term. If the current system is maintained, there will be little opportunity for continuity and institutional memory upon which future Commissions can continue to build. Significantly, the draft law being considered envisions a CEC which would only serve for the period of four months prior to a specific election when the newly elected deputies are officially registered.

The terms of regional election commissions begin 90 days before an election and end when the authority of the newly elected deputies to take office is certified. Similar provisions cover polling committees. Under the current law appointments to these lower level committees follow similar general guidelines as those prescribed for the CEC.

#### Duties of the CEC

Generally speaking, the CEC serves as the central policy-making arm for the electoral



administrative structure. Among its primary duties are the following:

1. preliminary planning and preparation for nation-wide elections including the appointment of members of regional commissions;
2. supervisory control over the execution and uniform application of the electoral laws and direction of the activities of regional and district election commissions;
3. formation of the electoral districts;
4. preparation of the nation-wide election budget;
5. design and approval of all forms and commodities used in the election process including ballots, protocols, ballot boxes, voter lists, registration and subscriber documents, seals of election committees, etc.;
6. nation-wide summarization, validation and reporting of election results, and confirmation of elected deputies' authority to take office; and,
7. final authority to arbitrate disputes or complaints about election violations including overturning or suspending decisions or actions of subordinate election committees.

A few comments are warranted with regard to some of these functions. The first relates to their authority regarding the formation of electoral districts. The team believes that the CEC's autonomy in defining electoral district boundaries is, in practical terms, quite limited. To illustrate this point, the existing law on electoral districts provides that the formation of districts by the CEC is based on the requests of regional, Kiev and Sevastopol councils or their presidiums. The law requires that the borders of the electoral districts are to be based on territorial and administrative structures. Further, the procedures for the formation of the districts are determined by parliament for each election. The specific role that the CEC plays in evaluating regional and city council requests or carrying out the procedures set out by parliament is not entirely clear. However, given this legal scenario the CEC may only be responsible for simply formalizing the boundaries and publishing their descriptions after boundary decisions are made.

With regard to budgetary considerations and the distribution of election funds, the team learned that the CEC is responsible for identifying all election expenses and formulating them into a comprehensive budget document. However, contrary to the mandate suggested in the current law, in practice the CEC does not distribute funds independently. Rather, the CEC submits the draft budget to parliament. Based on the deliberations of members of parliament an appropriation is made which is then administered, accounted for and distributed directly by the

Finance Ministry to regional committees for administration of elections within their boundaries, and to candidates for their campaigns.

It is important to note that the CEC members and staff collect their pay from parliament, underlining the fact that the Commission is not allocated its own funds to administer elections independently. With regard to payment for their services most of the members of various committees are not paid, especially at the local levels. At the regional level accommodations are made to allow them to receive their normal pay from their regular employment. At the polling site level only the chairperson is paid, while most others serving at the polling place are volunteers nominated by former Soviet-sanctioned public organizations.

With regard to ballots, forms, and commodities used for the election, the acquisition process is completely decentralized. The role of the CEC is to provide procedural guidelines and samples of the forms which they have designed, but actual printing and distribution is the responsibility of regional commissions. For example, samples of the ballot style and wording are provided to each regional commission by the CEC. The regional commission must arrange for printing and local distribution of ballots and all forms necessary for the election within its boundaries. Upon approval by the CEC the regional commission may make changes to the ballot sample to accommodate more or fewer candidates. But the CEC plays no role in the acquisition, or distribution of materials. Nor is there a uniform master list prepared of supplies needed to carry out the election. The team learned that the purchase and acquisition of most election day supplies is decentralized further with each polling committee responsible to determine its own needs and make its own arrangements for purchasing what it believes is required.

The CEC is responsible for providing legal and technical guidance to all levels of election committees. For example, the CEC provides a comprehensive administrative calendar to electoral committees which indicates legal and functional deadlines. Procedural and regulatory documents are also prepared by the CEC and distributed to election officials at the regional levels. In addition, CEC members provide legal advice regarding the interpretation and technicalities of the law, relying on counsel from the legal affairs committee of parliament when necessary.

#### Expanded Duties in the Draft Election Law:

Most of the fundamental responsibilities of the CEC are duplicated in the working draft law being considered. However, some proposed features would significantly expand the authority of the CEC.

1. Under the draft, the CEC would be responsible for the registration of political parties. Under the current scheme, parties are registered by the Ministry of Justice and the CEC has no role in the process. The CEC would also be responsible for allocation of state funds for campaigning parties and candidates,

and in the monitoring of fund raising and campaign expenditures. Since the law contemplates that the CEC would be organized only for the period of time required to organize a specific election (approximately 5 months), it is not clear how the registration of parties, fund raising or party outreach oversight would be handled between elections. Clearly, a number of questions regarding the status of parties would need to be resolved under this scenario.

2. The CEC would play a significantly greater role in formation of district boundaries if the current draft law were to be adopted. The formation of single-mandate districts would follow the same general guidelines which currently exist. However, the proposal clearly places responsibility for multi-mandate districts with the CEC and even sets out the formula by which their decisions would be made. Further, the CEC would be given total authority for the creation of the amalgamation of multi-mandate electoral districts to accommodate left-over seats resulting from the rules governing the mathematical calculations carried out at the polls.

### The CEC and Local Elections

Except as advisors regarding technicalities and legal interpretations of law, the Central Election Commission has no authority or involvement in elections for local councils. Instead, an alternative structure is created to accommodate the administration of local elections modelled after the commission structure organized for nation-wide elections. A regional election commission (operating in a manner similar to the CEC) is created for a specific election period in each region. The region-level election commission has overall responsibility for all regional and local city elections within the boundaries of its territories. Below them are committees organized for each election district established for dividing local mandates. Polling committees are appointed for polling day activity.

According to information offered by election officials, the team understands that traditionally parliamentary and local elections have been held on the same day. The vertical lines of authority governing the administration of the two separate elections are virtually unrelated to one another. However, they converge at the level of the polling committees. At the polling stations, a single committee handles voter lists, ballots, and ballot counting for both the national and local elections.

Holding the two types of elections simultaneously helps reduce the overall costs of elections. However, the introduction of multi-party elections will have a dramatic impact on the number of candidates and the number of individual ballots which will be required. In addition, the counting of ballots will be more time-consuming and complicated. This will be especially true if a system of representation as described in the draft law is introduced. The team was assured



that the laws and procedures guiding national and local election procedures are uniform. As the parliamentary election system evolves in response to greater demands imposed by the multi-party system, and as accountability standards become more stringent, it may be necessary to reevaluate whether simultaneous parliamentary and local elections continue to be feasible with the current apparatus in place.

### Adjudication of Grievances

Of key importance in any democratic election system is the process whereby grievances and allegations about election violations may be adjudicated fairly and uniformly. It is in this area that the team noted weaknesses which deserve consideration as lawmakers pursue new options. It was also obvious that election officials and lawmakers alike were interested in information and suggestions in this area.

Under the current scheme grievances or alleged election violations are intended to be resolved within the framework and jurisdiction of the electoral commissions themselves. Violations are brought to the attention of the individual election committee responsible for the specific element of the election process involved. Each higher level electoral commission authority may subsequently be called upon to review actions taken by a lower commission and uphold, overturn or suspend their actions. An appeal of a district committee's decision may be made to the CEC if the plaintiff bringing the charge is not satisfied with the response. Decisions made by each committee involved are formalized through a written resolution that, with a written copy of the complaint, is made a part of the permanent record. Under the law, the CEC's ruling is supposed to be final.

For example, if an observer or candidate representative at a polling site believes that voters are being improperly denied ballots, their grievance is reported to the chairman of the polling committee. That committee may agree and immediately correct the worker making the error. However, if that committee fails to act to the satisfaction of the person or group bringing the allegation forward, they may appeal to the district committee for intervention. If actions taken by the district committee still fail to resolve the issue to the plaintiff's satisfaction, the CEC can be called in to adjudicate.

One of the main concerns focused on the fact that there are insufficient guidelines to ensure that election committees deliberating alleged violations treat them fairly, consistently and uniformly throughout the country. While the law stipulates what constitutes the more significant violations, it does not stipulate remedies or penalties which may be imposed. The individual commissions are given a broad latitude to determine what form of relief is appropriate. In extreme cases, it was suggested that the Supreme Court may be called upon to review the CEC's final ruling. However, officials acknowledged that the role of the courts in election issues has not really been tested and that there is no precedent on which to rely.

Of major concern to the team is the fact that the commissions have the option to invalidate an election altogether, at least in a precinct or district. It was suggested that under some circumstances an election committee could even cancel an election or suspend election activities at a given precinct. These are options that the team believes should be curtailed. It is of utmost importance that the absolute neutrality of both the CEC and its subordinate committees be sustained and protected. It is critical that they not become embroiled in the exercise of decisions which disenfranchise legitimate voters and candidates, and which could potentially alter the outcome of an election altogether.

In most democracies no election can be invalidated without a formal and binding decision by an independent court of law. Even under the strictest judicial review, courts are reluctant to overturn or invalidate an election if any other relief or remedy is possible. One of the key questions always considered is whether or not the alleged or proven violations were sufficient to alter the outcome of the election. Often the answer to this question relates to the margin of victory by which a certain candidate won. If the magnitude of the violation potentially affected 30 voters, for example, but the winning candidate won by a margin of 100 votes, it is unlikely that a court would rule that the election was invalid, even if penalties were imposed on the person or persons committing the violation. Courts generally recognize that elections exist at a moment in time. They cannot be duplicated and if a new election is called the playing field is unalterably changed.

Unfortunately, while the way has been paved for the introduction of an independent judiciary, most officials agreed that no substantive steps have been taken to create a separate and independent court system. The court system currently in place is based on old Soviet institutions, and courts are viewed merely as agencies or extensions of administrative government structures. Obviously, creating an independent judiciary will be a major issue facing lawmakers in a much broader context than just elections. And the road toward that goal will undoubtedly be a long one. In the meantime, it would be most helpful if detailed guidelines could be established which:

1. distinguish between solutions to technical errors and treatment of intentional criminal violations;
2. define specific penalties which will be imposed for each kind of violation;
3. define the exact method by which complaints will be processed;
4. develop remedies which might be applied in lieu of invalidating an election if, in spite of acknowledged violations, the intent and outcome of the voters can be determined; and,
5. separate the interests of resolving election irregularities with a suitable

administrative remedy from the issue of prosecuting individuals engaging in illegal election activities.

Recommendations:

1. An issue that deserves some discussion relates to the temporary status of the Central Election Commission. The five-year terms of the CEC are almost concurrent with the terms of the parliament. It is quite likely that each Commission will only experience one nation-wide parliamentary election during its term.

Most experienced election administrators would agree that a key factor that ensures the uniform, efficient and accountable conduct of elections is continuity. There is no doubt that the election system in Ukraine will continue to evolve. With each new election, and as the election laws of Ukraine continue to change, valuable lessons will be learned. Whether they relate to legal issues, administrative and procedural technicalities, logistics or treatment of election irregularities, nothing teaches like experience. However, Ukraine is not affording itself the benefit of such experience. Instead, each new Commission will have to "reinvent the wheel" facing many of the same policy questions and administrative difficulties without the benefit of institutional memory.

The creation of a permanent civil service election division may be worthy of consideration. There are many viable alternatives such as a small full-time depoliticized staff augmented by temporary political appointments during peak election periods. Another option could be a staff of political appointees from different parties serving rotating terms, or a combination of the two. The most important element is that development of a professional election administrative entity would provide the continuity and expertise needed to maintain an efficient, accountable and consistent election system on an on-going basis.

2. In a related issue, the team is concerned that the size of the election commission may prove unwieldy. As the number of parties grow, the mandate that each party be represented may result in a commission that is just too big to function efficiently. Eventually, it may be necessary to settle on a formula which reduces the size of the commission but maintains an adequate system of party representation. Several options could be considered. One example might call for representation on the Commission based on the percentage of votes the party garnered in the last election.
3. Even if the temporary terms of the CEC were to be maintained, it might be helpful to consider staggering their terms. The rotation of terms would provide a basis for continuity in the Commission which would span transitions in government. At any given time, only some Commissioners would be subject to appointment while remaining members would be available to carry forward the institutional memory and experience

contributing to the efficiency of future election management.

4. In order to allow the Central Election Commission to communicate effectively with the regional electoral authorities, a network of telefax machines should be made available for the campaign period, election day, and for several weeks after the election. This network could be set up on the regional level to minimize the amount of equipment required for effective communication.
5. Reporting of election results would be accomplished with greater speed if the Central Election Commission were to have access to data processing equipment and additional trained staff at the time of the election.

## **VI. The Ballot and Other Election Commodities**

The responsibility for provision of election commodities is outlined in Article 13 of the existing election law of Ukraine. Financing available for any commodities or equipment from the central fund appears limited. Reliance on other sources of financing is significant. There appears to be considerable reliance on those resources that are immediately available to polling sites and districts. There are 450 electoral districts throughout Ukraine with varied resource capabilities. One can therefore assume that election commodities and equipment reflect the varied resources of each locale.

Central Election Commission involvement is limited to provision of sample ballots and forms and final approval of the finished ballot. Responsibility for the design of the ballot papers used in the elections also rests with the Central Election Commission. Printed samples are prepared which are then provided to district election commissions who arrange for the ballots to be printed and distributed within the boundaries of the constituency for which they are responsible.

Under the current law, district commissions are responsible for the registration of candidates whose names will appear on their ballots. However, a list of the registered candidates and their supporting documents are forwarded to the CEC for approval of the ballot slate. The CEC reviews the documents of the candidates and the protocols regarding the meetings at which the candidates were nominated in order to verify their eligibility. When asked to give an example of a major problem that consistently arose during the last parliamentary elections, one CEC member mentioned that regional commissions would sometimes send in candidate documents that did not have the sufficient number of attendees at the nominating meeting or that documents contained other deficiencies which would cause the candidate to be rejected or require that the necessary documents be resubmitted.

At the time that the CEC approves the slate of candidates to be printed on the electoral district's ballot, the regional election commission responsible for a parliamentary constituency can also

seek approval to modify the size of the ballot design to accommodate fewer or more candidates. However, the basic information, layout and text must be retained uniformly in all constituencies.

The team was given the opportunity to review actual samples used in previous elections and noted several key features.

1. The ballot provides spaces for printing the title and date of the election and the race for which the candidates are competing. There is also space to enter the number of the constituency.
2. On the left hand side of the ballot are printed the candidates' names. On the right hand side opposite a candidate's name is listed his or her place of residence and his or her occupation.
3. Instructions are printed on the ballot telling voter to cast a vote by crossing out the names of the undesired candidates, leaving unmarked the preferred candidate. Instructions also alert the voter to the fact that if more than one candidate is left unmarked, the ballot will be invalidated.

On a single election day voters may be casting votes for parliament, as well as regional, district, and city or rural council elections simultaneously. Judging from the samples shown to the team, it appeared that a different colored paper was used to differentiate the separate ballots, although the general format and layout were the same on all types. For simultaneous elections, the regional election commission under the auspices of the CEC is responsible for printing and distribution of ballots to the polling sites in the constituency for parliamentary elections. At the same time, for regional and local council elections, the district election commission responsible for the elections in the administrative territory arranges for the printing of ballots to be used in the local elections. Each of these commissions is also responsible for arranging for storage, security and distribution of their respective ballots to the polling committees who will be issuing and counting the ballots for both types of elections at the same time.

The policy is that ballots are printed in sufficient quantity to accommodate every registered voter with a 5% overage built in to make up for printing irregularities, damage or other circumstances. The team notes that with 37.8 million voters the potential number of extra ballots nationwide exceeds 1.8 million. Aside from the significant extra costs, the potential for misuse is certainly an issue that should be reconsidered. This circumstance alone requires that strict ballot accountability procedures be enforced. The audit trail of ballot papers should start at the printing level and continue through the polling and the verification at the count.

### Security Measures

While the ballots contain all the necessary ingredients for the orderly casting of votes, the team



notes that they do not incorporate some of the standard security features that might commonly be expected. With the introduction of a multi-party system and increased competition among candidates, there will be greater demands on election officials' accountability. As the new system evolves, officials will be under greater scrutiny, and the integrity of the election process will be measured in terms of the documentation maintained to verify the accuracy and accountability of election results. Ballot security will be a prime ingredient.

Officials advised the team of certain security measures which are being implemented to safeguard the ballots prior to the opening of the polls and throughout the day on election day. For example, the team was advised that throughout the printing process an administrative staff member of the regional election commission is charged with specific responsibility to oversee the printing and packaging for distribution. A protocol is maintained which documents the counting of ballots in sufficient quantity to meet the needs of each polling site based on the number of voters on the registration list for that location. The packages are stored in secured areas under police or militia guard until they are received by polling station committees who must acknowledge their receipt of the ballots with their signature.

According to officials, the polling chairman recounts the ballots received prior to the opening of the polls to verify that the quantity reported as contained in the package is accurate. The protocols used at the polling site on election day also provide space to record the number of ballots issued to the site and the number of ballots issued to individual voters. The number of damaged or unreadable ballots due to imperfect printing are also recorded as are the number of valid ballots left unused.

The team was advised that all election workers are trained to stamp their special seal or affix their signature to each ballot that is issued to a voter. The evidence of the seal or signature of the election official is intended to serve as proof that the ballot is an authentic ballot properly issued by the authorized official. However, the ballot samples themselves did not contain a signature line or special place for the stamp to be affixed. Presumably, unused ballots are not signed or stamped, and ballots in the ballot box which do not contain the official seal are considered invalid. However, the team found that this practice was not uniformly applied, thus defeating the safeguards that the procedures were intended to provide. For example, in some precincts officials failed to perform this step at all. In other instances, the team learned that officials signed or stamped every ballot prior to the opening of the polls. Since every ballot contained the official's signature or stamp, there was no differentiation between validly issued ballots and others which may have been put in the ballot box fraudulently.

Accordingly, security of the ballots is not as thorough as it should be. There are a number of other measures which could be adopted to enhance the security of the official ballot papers.

## Recommendations:

1. The paper used in ballot printing is of average quality which could easily be duplicated. To inhibit the potential for fraudulent reproductions, the CEC may consider using paper which includes an exclusive watermark. As an alternative, a faint special ink screen could be applied as background for the text at the same time printing is accomplished. Some techniques would allow the security screen and the ballot text to be applied with one pass through by the printing house so that the cost would not be significantly increased.
2. The ballots are not padded or bound but are currently printed and trimmed so that the ballot papers are loose. Stacks of loose papers are counted manually and packaged for distribution to the various polling sites. Election officials should consider arranging for the ballots to be bound or padded in uniform quantities to provide greater ease in packaging for distribution purposes. Standard packages would also provide officials with better control over the ballots under their supervision.
3. The team would strongly suggest that each ballot in each pad or book be attached to sequentially numbered stubs or counterfoils from which an unnumbered ballot could be separated at a perforation. The sequential numbering would allow the regional election commission to maintain a centralized accountability record which documents not only the number of ballots provided to each voting station, but also the numeric range assigned to each site. As an additional measure the list of ranges assigned to each site can remain secure until the ballots are actually distributed. The protocols used in accounting for the ballots used throughout the polling day could provide space to identify the sequence of numbers used, individual numbers of ballots which were damaged or otherwise unusable, and the sequence of numbers of the ballot counterfoils left on the pads unused. The numbered stubs of issued ballots would remain part of the formal documentation of activity at each of the polling stations in support of the overall results.

In some countries both the ballot and the counterfoil are numbered. a concern expressed by opponents of having the duplicated number appear on the ballot as well as the counterfoil is that an observer or official could potentially keep track of exactly which voter received a particular ballot number. During the counting process the official could determine how the voter voted. Because of these concerns, the team would recommend that the counterfoil or stub alone be numbered.

Some of these security measures described above would result in greater cost, but the benefits should by far outweigh the fiscal outlays. In addition, there may be some ways to contain the costs which are not currently being utilized. The decentralized process by which ballots are printed at the regional level has merit in view of the quantity of ballots which are necessary for the number of voters and the number of elections potentially being carried out simultaneously.



However, certain cost and accountability advantages of centralized purchasing could be enjoyed in the future. For example, it might be possible for all the security paper used for printing the parliamentary ballots to be purchased at the CEC level to take advantage of discounts often associated with volume. Aside from the security factors, the centralized purchase of authorized ballot paper would guarantee the uniformity of all ballots used in the election and a greater degree of control at the CEC level.

The team believes that security of ballots would also be enhanced by the use of uniform packaging and sealing commodities. Apparently, election officials have no uniform materials to use for packaging or transport of ballots to and from the voting stations, or after the counting of ballots is completed at the end of the polling day. Each site is responsible for finding its own materials. It would be beneficial if officials had sturdy, uniform sized envelopes or packing boxes to secure their ballots. Envelopes with self-adhesive flaps such as TYVEK envelopes would provide greater security for the ballots enclosed. In addition, these envelopes could be pre-printed to provide space to write the identity of the polling district and polling site, the number of the ballots enclosed, and the names of individuals responsible for packing the contents. Similar envelopes could be used for the packing of all protocols and election documents submitted. Uniform packaging would also make it easier for the archiving the materials after the elections were over.

Another commodity which might be considered would be a self-adhesive, sticker-like, tamper-proof seal that could be used universally to seal ballot boxes, packages of ballots and other envelopes containing accountability documents. These could also be pre-printed with spaces for election officials to indicate the district and polling site number, and lines on which the officials responsible for the materials enclosed could affix their signatures.

Use of appropriate election commodities would provide a new look for Ukrainian elections in general. Changing the complexion of elections at the polling place level may well go a long way in overcoming voter apathy and encouraging a greater acceptance of the democratic process.

### Impact of Multiple Parties

It was difficult for the team to ascertain to what degree the CEC had started to make plans for the design of a new ballot style to accommodate the introduction of the multi-party system. Local officials advised the team that in the past there were relatively few candidates appearing on the ballot, so a single ballot paper printed only on one side could easily accommodate a particular race. However, in view of the increasing number of parties that will have access to the ballot for the next elections, it is likely that a single ballot paper will no longer suffice. During the team's visit in February, there were twenty registered parties. With the name of each candidate and party affiliation added to the residency and occupation information listed for each candidate, changes in the ballot size and printing on both sides may be necessary. In fact, officials may find that several ballot papers will be needed in some constituencies, especially if

parties are allowed to field more than one candidate.

The changes in the style of the ballot will be even more dramatic if the proposed multi-mandate proportional representation system is ultimately adopted as described in the draft law. Under this law there would automatically be two ballot types for each constituency. Of one color would be the ballot for the single-mandate district; of another color would be the ballot for the multi-mandate district. Each voter would be allowed to vote in both mandates. However, the proposed law creates options for voters voting in the multi-mandate district. They could vote by the party block as a whole, or they could vote for up to three individuals among the party's full slate of candidates.

With many parties and the optional methods of voting the party ballot, officials would be faced with a serious dilemma in developing a ballot design to accommodate the complex voting and counting procedure. As a general example, based on an average of 225 seats divided among 26 multi-mandate districts, each party could field approximately 12 candidates. Potentially, with twenty parties participating, the ballots in a specific multi-mandate district would have to accommodate voting for the party slate as a whole for all twenty parties, and also for preferential candidate voting for a total of 240 candidates.

The instructions to the voters would have to be very clear regarding the fact that only one party could be selected, and that once selected only one option could be exercised. The team would anticipate that during their first experience, voters would make mistakes which would invalidate their ballots such as marking the party slate option and selecting among the party's candidates.

#### Impact on Counting Methods

Regardless of what election law is eventually adopted, the introduction of a multi-party system will also affect the counting methods employed by election officials responsible for the count at the polls.

In the past, officials have counted ballots using a "stack" method whereby the ballots are read while they are placed on an appropriate stack identified for each of the candidates appearing on the ballot. Any ballot withdrawn from the ballot box for which the voter's intent cannot be determined, or on which more than one candidate is left unmarked, is put aside. Once all ballots have been reviewed, the poll workers set about hand counting the number of ballots in each stack. The resulting totals for each candidate are entered on the protocol.

In this method there is no actual "tallying" as each vote is read. The main advantage of this method is its simplicity. It only requires one document for recording the results. No separate tallying sheets are required, resulting in a cost savings. In addition, its simplicity also results in easier training of officials.

There are a few disadvantages to this counting system which deserve comment. First, except for the ballots themselves, there is no backup verification document that supports the totals reported on the protocol. More importantly, the stack method may not be efficient if a system of voting as envisioned by the draft election law is ultimately adopted. The options of voting the party slate or three individuals within the party's slate would require a restacking of ballots over and over again to determine the votes for each candidate on the ballot.

An alternative method, commonly used in established democracies, calls for the actual creation of a record of a written tally for each vote cast, recorded on a prepared document designed for that purpose. The tallying sheets can be pre-printed with candidates or party names in the order in which they appear on the ballot.

This method can be implemented in many configurations. However, one approach might be especially useful if the multi-mandate voting system is adopted. As they are removed from the ballot box, the multi-mandate ballots could be sorted by party. For each party separately, the tallying method could then begin to determine the numbers of votes cast for the party slate and the preferential candidates simultaneously.

Poll workers could be divided into counting teams made up of four members, with two members on each side of the counting table. The assignment of duties among the election board members for the tallying of ballots could include:

1. a pair of "readers" on one side of the table, one who reads the ballot aloud, while the partner confirms that the reader has announced the vote correctly; and,
2. two clerks on the other side of the table who record the tally strokes as each vote is called. One clerk tallies in the original tally sheets, while the partner makes the same tally marks in the duplicate set.

The counting would be accomplished for each party's stack of ballots separately. To improve the speed and efficiency of the tallying process certain preparatory steps are helpful. Other members of the bureau may be assigned to count out the stack of a specific party's ballots in groups of 25. By counting ballots in groups of 25, it would be easier for talliers to verify their work along the way, and to isolate errors to smaller increments.

In the actual tallying of the ballots, each time a vote is called for the party slate or an individual candidate, a downward stroke would be made in the original tally sheets next to the party's or candidate's name, and simultaneously by the second clerk, in the duplicate tally sheets. Every fifth vote for a single candidate or party slate is marked with a diagonal stroke across the four downward strokes already marked. Each time the two tallying clerks mark a diagonal stroke they can say "tally" to ensure that they have both made the same number of stroke marks.



An additional helpful tool in streamlining this process is using two different colored pens with a switch in color of pen made between each group of 25 ballots. At the end of each group of 25, a comparison of the two tally sheets can point out any discrepancy in the total votes recorded. If at any time the two sets of tally sheets show different totals for any candidate or party slate, the error will be found in the last group of 25 ballots tallied, and can be corrected immediately.

When all tallying for the party has been completed, the results would be written in the space provided on the tally sheet for the party slate and the individual candidates. These totals would then be entered onto the protocol. The process would be repeated until the counts of the stacks for all parties' votes have been counted.

The advantage of this method of manual counting is that there is a set of back up documents which validates the total votes reported for each candidate or party on the protocol. And, the count could be completed in a reasonable amount of time.

Recommendation:

Vote counting schemes should be considered to reflect the new reality of participation of multiple political parties in the election process.

**VII. Role and Duties of Poll Workers**

The existing election law in Ukraine provides a system of preparing for and conducting elections. The electorate is familiar with the system and thus familiar with polling stations and poll workers. The law provides for twenty to 3,000 electors to be registered at individual polling stations across the nation. There were over 34,000 polling sites during the last election.

There is evidence to suggest that polling site selection has been carefully addressed by local district election commissions. Attention has been paid to establishing centrally located, convenient, familiar and spacious sites that are capable of efficiently handling the number of voters at any given poll.

The existing election law allows for citizen representation and participation in the election process. The 5-19 members of local district election commissions are nominated from work collectives, public organizations, housing committees and others as provided for by Article 25 of the election law. Poll chairmen and poll workers are nominated by and from these local district election committees. These district commissions are responsible for the preparation and conduct of elections.

Article 26 of the existing law identifies the duties of the election committees. Specific job descriptions of poll chairmen, poll secretaries and poll workers are not identified. In lieu of

specific job descriptions, adherence to the election laws, in general, dictates the conduct of election officials at this level. Officials at this level appear to conduct the election process by relying heavily on their own interpretation of the election law. Individual officials with diverse backgrounds, initiatives, commitments and agendas, create a system lacking standard procedures. There is also evidence to suggest that available resources may vary from poll to poll, adding to this apparent lack of uniformity. The focus of the current role of poll officials appears to be an accurate and timely reporting to regional, and ultimately central election commission levels. Little or no emphasis appears to be given to procedures and instructions for poll official use.

A great deal of responsibility is placed on the shoulders of local district election commissions to conduct elections accurately and effectively. Given that many parties will be fielding candidates in the next election, many queries will surface questioning the validity and accuracy of the entire election process. Local polling officials must be certain that they can account for all aspects of the election process, from the time they open polling stations and begin assembling voters' lists to the closing of polls after election day. A more active role will need to be assumed. Poll officials must be aware that they will be required to respond to the scrutiny of political parties and other competitive interests. In the future, all aspects of poll activity will be carefully monitored by the political parties and eventually by the citizens of Ukraine as they align themselves behind political parties.

As this fledgling, emergent democracy begins to develop and adopt democratic principles, an entire new dimension presents itself in the preparation and conduct of elections. Poll officials will experience added pressures from the newly created political parties. With the advent of political parties, the focus on accountability for polling officials will begin to shift from being accountable to commissions at higher levels to becoming increasingly accountable directly to the electorate. To avoid confusion and uncertainties, which will be most evident at poll levels, provisions for accommodating political parties need to be urgently addressed.

In the next election, political parties, with or without a newly adopted electoral law, will have areas of concern directly affecting local polling officials. Should no new electoral law exist prior to the next election, political parties will request provisions for representation on election committees at the local level. In addressing this situation, consideration will have to be given to simplifying the system and process of commission representation to allow for a balanced, workable body to prepare and conduct the election.

Examination of the concept of election committees at the local level may also be a priority. Entrusting fewer individuals with greater responsibilities and authority, answerable directly to the parliament may be a solution to simplifying this process. Inevitably, as accommodations are made for the new reality of political parties, direction and support for local election officials becomes paramount.

Political parties will insist on a verification and validation of the entire election process. The

burden of these demands may well be placed on local officials. When results are contested, as could be the case in the next election, pressures may overwhelm local officials and subsequently paralyze this emerging democracy. Support for the local level from the Central Election Commission is vital and should become a priority of both the Commission and parliament.

At this moment in Ukraine's movement toward a democratic system, insistence on a complete and foolproof system protecting all concerned may be counterproductive. Changes in election procedures and responsibilities of election officials at the local level need to be approached with caution, simplicity and sensitivity to past Ukrainian experiences and realities. Local officials are critical to the conduct of free and fair elections. The training of these officials was accomplished under the Soviet system. Many of the intricacies of multi-party elections will present new challenges. While new training may be required, it is essential to tread carefully in order to protect and preserve the progress made on the local level to date.

The actual work of poll workers for the next election may not be substantially different from the work done in the past. What will be different is the added responsibilities and demands made not only by politicians, but also by the media and others. Additional financial incentives may be required to account for extra time that will accompany increased demands. The development of a basic support system is crucial to assist in the preparation for and conduct of the next election.

Recommendation:

The development of a procedural manual for poll workers at the polling station level would have considerable merit. This manual could contain descriptions of roles and responsibilities of chairmen, secretaries, etc., along with all aspects of preparation and conduct of elections. Interpretation and acceptance of new democratic processes will vary from region to region throughout Ukraine. Standardization of procedures covering the entire election process would provide invaluable support to local election officials. Should an election be called in the near future, the nominated election officials will have only past experiences to fall back on, necessitating considerable immediate support for the conduct of elections which will be forced to adapt to a multi-party system.

**VIII. Act of Voting**

The electorate of Ukraine is familiar with the voting process and evidence suggests that most have exercised their right to vote. Records in some districts reveal a large percentage turnout, which in part may result from an organized campaign by the authorities to have their local turnout as close to 100% as possible. Today, as the Party apparatus that turned out the vote has broken down to a degree, there is a substantial concern about levels of turnout.



A standardized system of the act of voting exists throughout Ukraine, appearing to be the same from poll to poll. The team concluded that the existing system is sound. The process of negative voting was consistent throughout and appeared acceptable to all. Ample time for voting was provided from 7 a.m. to 8 p.m.

Election laws provided for secret balloting, although voting in secret may not have been of prime concern to each voter. With the appearance of a plurality of political parties, and consequently a wider choice of candidates and platforms, voters may wish that their choices remain more private. At present, the physical system in place allows for complete secrecy.

If existing election laws of the former Ukrainian S.S.R. are followed, citizens of the Ukraine can be assured that their voting rights will be protected in the next election. Citizens who are 18 years of age would have the right to vote as stipulated in Article 2. Articles 1, 3, 4, 5 and 6 ensure voting by secret ballot, equal and direct suffrage, and extending to the citizens of other former Union Republics the same voting rights as the citizens of Ukraine. Liberal procedures and guarantees exist for voters without proper identification, voters omitted from lists and voters visiting from other areas to allow participation in the voting process.

Consideration is given to voters at polls for smooth, efficient conduct of the act of voting. Procedures of voter identification, receiving ballots and actual voting appear to be relatively simple and direct. Lines are relatively short and the length of time required to exercise one's vote does not appear to be a problem. There are indications that the majority of the voting takes place before noon, with a slight rush to polls as people complete work for the day.

New electoral laws, or amendments to the existing laws, prior to the next parliamentary election need to address the reality of a multi-party system. Political parties will inevitably insist on clearer and more definitive regulations governing the actual voting process. Some areas of concern requiring consideration may be as follows:

- 1) restricting voter eligibility to citizens of Ukraine;
- 2) restricting voters to selecting only among the candidates of the electoral district of the voters residence;
- 3) restricting and specifying who may assist a voter in the voting booth;
- 4) requiring the voted ballot to be deposited into the ballot box only, not carried out as was a previously allowable practice;
- 5) stamping ballots by poll officials at the time of issuance to each individual voter;
- 6) displaying clear and accurate directions for voting;
- 7) forbidding more than one person in a voting booth;
- 8) advance and "travelling", or mobile ballot boxes.

"Travelling", or mobile ballot boxes, providing opportunities for those of the electorate who may

be physically unable to attend on polling day, are a familiar part of Soviet and recent post-Soviet elections. This is an area most vulnerable to potential violations, discrepancies and corruption. Establishment of specific regulations and procedures are essential to ensure a uniform, verifiable voting process. Protection from overzealous political parties or politicians in this area, and other areas of the voting process, will need to be guaranteed by law. This part of the process has been identified as quite vulnerable to manipulation, especially when up to seven mobile ballot boxes, as in the past, were made available at any one time and all sent out at once to collect ballots in a door-to-door canvass.

## **IX. Training of Election Officials**

There is no comprehensive system in place for training election officials for preparation and conduct of elections at any level. The various individuals interviewed interpreted training as adherence to the election laws. There was no evidence of training manuals and materials that could be used for this purpose. At one regional office a folder containing blank forms and other samples of protocol was described as a training manual. "Training" often meant the most basic instruction in proper completion and submission of this protocol to higher authorities. Absolutely critical to conducting a free and fair election across the nation is the development of a training program that would reach and assist all levels of election administration.

A most difficult dilemma arises when considering the establishment of a training program for all election officials. First, there is presently no new electoral law. Nor is it certain that a new law will be adopted prior to new elections. The question arises whether Ukraine should establish a training program based on existing election laws, taking into account the existence of several parties. If this option is adopted, the team may suggest that this program be established as an interim measure simply providing some direction and support to election officials, who for the first time have to deal with several parties in a national parliamentary election. If a new electoral law is adopted by parliament prior to the next election, the training program may initially reflect the immediate priorities while laying the foundation for an eventual permanent and complete program.

Second, the question of who is trained should be asked. Regional and district election commissions established for the conduct of national elections currently do not exist. By law they are disbanded once "parliament acknowledges the full authority of the newly elected people's deputies." Although the Central Election Commission with its executive and staff of six trained workers exists, members of this central body may have to have supplementary training as well as have their ranks strengthened with additional workers. Parliament may also consider appointing full-time individuals in each of the districts to receive training to assist in the conduct of the next election.

Focusing at least some training energies and resources at the local level is consistent with the

argument that local elections officials are key to the successful conduct of an election. To train and familiarize local election officials with current realities may have some residual effect on the electors that would be served by these local officials. This may be the opportunity whereby local election officials can become the vehicle by which the democratic process is conveyed to the general population.

Recommendation:

As former or current election officials, most of the team members sense a feeling of urgency in addressing this issue of training election officials. Decisions regarding appropriate programs need to be arrived at soon, in order for some preparatory work to be undertaken regardless of which election laws control the next election. Multiple parties are a reality. They will be making demands and the election mechanisms currently in place are not equipped to accommodate these forces.

## X. Role of Election Observers

There are several other opportunities for persons to observe the electoral process. Members of the local commissions, domestic political observers and the media all have a role to play. The presence of international observers may also be considered.

The composition and authority of local commissions is addressed elsewhere in this report. In addition to their specific responsibilities, members of local commissions observe polling and serve as a check on each other where there is a range of political interests represented on the commission. According to article 8 of the Law of the Ukrainian SSR: On Election of Peoples' Deputies of the Ukrainian SSR, representatives of labor collectives, public associations, collectives of vocational training schools, secondary schools and higher education institutes, assemblies of voters based on their place of residence, and military servicemen according to their units, government bodies and candidate agents, all have the right to be present at election board meetings, such meetings which include registration of candidates, tallying election results in polling places, announcement of election results in voting districts, and general election results.

The team was informed that domestic observers may be present at a polling place throughout the day but only at the one where he or she is registered. Candidate agents, on the other hand, may visit multiple polls.

According to the law, not later than two days before the elections, the observer must present the appropriate documentation to the corresponding election commission. The team notes some confusion about this deadline, as most political parties and electoral authorities indicated a deadline of not two but three days prior to the election for filing documents.

The procedures should be clearly set out in written materials in a manner consistent with the law and should be widely distributed. In the case of observing the conduct of the poll and the court, the documentation in a form prescribed by the Central Election Commission and signed by the agency sponsoring the observer is filed with the chairman of the local election commission. The team was also advised in meetings with election commissions that the decision to accept all accredited domestic observers rests with the local commission and is determined on the basis of available space. As significant power is vested in the local commissions, a timely appeal process to a higher level commission is required to ensure equitable access of observers to the polls.

Subsequent to the present law, the emergence of political parties has opened another source of domestic observers. The Presidential Election law provides for the presence of political party representatives at the poll. By resolution of the parliament, observers from opposing political forces were permitted to attend the polls at the last referendum and previous election. In the parliamentary elections, political party representatives plan to have observers at polls, especially where they are unable to have representatives on local commissions, by way of nomination through the present channels (i.e. working collectives, public organizations, public committees, technical schools, district residential meetings, etc.).

Existing institutional entities have entrenched access to the appointment of domestic observers. Political parties are at a distinct disadvantage in appointing observers because they must use an indirect route to secure access to the polls. Beyond this discriminatory legal hurdle is the fact that political parties in their early stage of development do not seem to have the organizational capability to appoint observers to all or the majority of polls. Observers must not attend more than the one poll to which they are assigned. There are about 34,000 polls throughout Ukraine. Recognition in law of registered political parties' right to appoint observers on a par with the existing entitled organizations would be very beneficial to encouraging political party and public confidence in the operation of polls and the counting of ballots. Entitling the representatives of registered political parties to observe at multiple polls, as is the case with candidate agents, would further respond to the problem of the immense organizational task. Consideration should also be given to entitling political parties and other entities to appoint observers who may attend any polling place in the country, and not just in the place of local registration. This would allow political parties and other organizations to be represented even in parts of the country where they are not strong.

Recognizing the existing law, the enormity of the task and the great value of domestic election observers, it would also be very beneficial for domestic non-governmental associations independent of political parties or other existing political institutions to be active in observing elections. Some such entities would be entitled to do so under the existing presidential election law. Nations in transition to democracy have found the active involvement of non-partisan, non-governmental domestic observer groups to have been very beneficial. At least one non-governmental association of professionals has expressed an interest in participating as domestic observers in future referendums and elections.

The role of the domestic mass media as election observers is also worthy of careful scrutiny. The existing law guarantees unrestricted media access to the polls. Although a good deal of mass media is controlled by state authorities, the team also understands that political parties and other organizations print newspapers and that there is some evolution to expanding at least television beyond the state monopoly. Of course, many independent-minded journalists can be found in mass media. The combination of access without prior authorization to the polls, election assemblies and meetings, together with the means of communicating observations on a mass scale is a potentially strong addition to the core of domestic observers. Efforts to promote and expand such initiatives among the members of the mass media should be encouraged.

The opportunity exists to strengthen and expand the role of domestic observers in the next parliamentary election, thereby providing greater assurance of proper conduct at the poll and greater credibility to the process. Domestic observation of the electoral process similarly need not be restricted to polling day. The flexibility of on-site domestic observers also makes observation, commentary on the election campaign, candidate nominations, party registrations, and voter registration much more practical. To facilitate the activities of domestic observers it is appropriate to ensure that documentation requirements are fair and straightforward and that the role is clearly defined. The team was informed that the entity endorsing the observer advises the corresponding election commission at least two days prior to the event.

On polling day, the observers present their endorsement to the local election commission. On a few occasions persons claimed that in recent elections their properly filed document was mysteriously missing on polling day and were prevented from observing at the poll. While the team cannot verify these allegations it does seem reasonable to endorse the idea put forth by one organization that the documentation for observers should be a form with two copies, one to be filed with the election commission and the other retained by the observer.

The existing law makes it clear that interference by observers with the work of elections commissions is not permitted. In the best interests of all concerned, it remains prudent to clarify in writing which activities constitute interference and which do not. The team was advised by a member of the Central Election Commission that such guidelines have been written. The team would encourage their wide distribution to both election officials and observers.

In the event that a domestic observer wishes to register a complaint, the practice seems to be for the observer to address the chairman or deputy chairman of the local commission and seek a resolution of the apparent difficulty. Should the observer be dissatisfied with the response of the local commission, some observers have been trained to document the alleged voting irregularity in writing and if possible to collect the signatures of at least two witnesses. Others who had participated as observers were unaware what to do in the event they observed a possible improper action at the poll. The procedures for registering complaints at the poll are currently not included in the law, but in the future proper procedures should be detailed in the law or in procedures drafted by the Central Election Commission.

Following the election, the district election commission reviews complaints received at the poll and adopts resolutions. If serious violations are substantiated which upset the outcome of the election, the district election commission can rule that the election is invalid. Minor problems may be reported that do not affect the outcome of the elections. The resolutions related to such matters are attached to the district protocol. The Central Election Commission can override decisions at the district level and an affected candidate can appeal the issue to a court in the jurisdiction of the commission.

Recommendation:

In discussions with presidential representatives, parliamentarians, political party representatives and election officials the involvement of international observers in future parliamentary elections was very strongly and clearly endorsed. The credibility of outside observers in addition to their legal freedom of movement and access to the polls were considered to be of value. The presence of international observers at the next election is highly recommended. Numerous international observers were present at the last presidential election and their legacy, experience and reports have been valuable assets to build upon.

Observation of the electoral process constitutes a very positive contribution both to the likelihood and perception of free and fair elections. It is strongly recommended that the requirements for both domestic and international observation be developed and distributed as widely as possible.

## **XI. Voter Registration**

The system of universal voter registration is an apparent strength of the electoral process. However, aspects of the process could be reviewed to ensure common application and to recognize the previously non-existent role of multiple political parties.

Citizens of Ukraine over 18 have the right to vote. Any direct or indirect restrictions of the right to vote based on birth, social or property status, race, nationality, sex, education, language, religious orientation, period of residence in a given locality and type of occupation are expressly prohibited by law (article 2). The voting rights of citizens of other Union Republics residing in the territory of the Ukraine are guaranteed in article 6 of the present law, yet the dissolution of the Soviet Union would appear to make it unlikely that such voting rights would continue. Revisions to the election law should clarify this issue.

Article 31 of the present law states that all citizens of Ukraine who are 18 years old by the date of elections, reside in a given electoral district when the voters list is compiled, and are not mentally incompetent or convicted of a crime, are included in the voters list. Voters shall be

included only in one electoral district list; those who reside in a given electoral district and for some reason are absent from the voters list may be included in the list by decision of the local election commission. In the last electoral event there were approximately 37.8 million names on voters lists throughout Ukraine.

The main organizational responsibility for compiling the voters lists rests with the election commission at each polling site. The lists, once prepared, are approved by the chairman and secretary of the polling site commission. Article 30 requires that administrative commissions of municipal, city district, town and village councils provide information to local election commissions regarding the voters residing in their area. These so-called "residency offices" serve as a data base while the state continues to assign housing, and citizen movement is recorded. These offices also base their information on data from internal passports. The same document is required at the poll for voting.

Some authorities reported that the list from the residency office may be verified at the discretion of local election commissions by a door-to-door canvass. Other authorities informed team members that such a door-to-door canvass takes place to verify all the names on the list. These two approaches result from decentralized responsibility for the voters lists being vested with local election commissions. In either case, it would be valuable for the purpose of voter list accuracy to ensure a uniform approach or at least to prescribe the circumstances under which the local election commission may decide to verify select information, as opposed to those circumstances where the entire list is verified. Initiative in this regard should be vested in the Central Election Commission.

Voters lists are prepared separately for military units and family members on the basis of information provided by military commanders. Directors of hospitals and captains of ships at sea are also required to provide information for lists of voters. Article 30 of the existing law also requires directors of Ukrainian representative establishments abroad to provide information for voters lists. In the course of meetings the team members did not receive any information concerning voting from abroad. It is expected, however, that this will be conducted through Ukrainian embassies and consulates.

Article 30 stipulates that the surnames of voters be included in voters lists so that they may be organized alphabetically. This is consistent with the information received from electoral officials that voters lists are largely compiled in alphabetical order. The list may also be compiled geographically by residence if the local election commission decides to do so.

There may be some advantage to political parties and other nominating organizations to have the voters lists prepared by residence rather than by surname. For the purpose of campaigning it would seem to be more convenient to have the voters list by residence so that the number of voters and names of voters at each residence may be readily attained. In urban areas where there are many voters, a voters list by residence may be advantageous, and in rural areas the

most reasonable format may be by alphabet. In an effort to facilitate campaigning, the Central Election Commission might decide the criteria by which all local commissions shall prepare the voters list either by residence or alphabet. It would be of considerable value for candidates to be entitled to receive at least one complete copy of the voters list for their district. Other nominating agencies and political parties would similarly benefit if they received at least one copy of the voters list for all districts in which they are campaigning or nominating candidates.

A second reason for political parties, other nominating bodies, and candidates to receive a copy of voters lists is to ensure the accuracy of the lists. These groups will verify the accuracy of the voters lists as each searches to ensure that their partisans are on the voters list and that no other names appear erroneously or suspiciously. This check should be added to other safeguards that already exist.

Under the law, citizens are guaranteed the right to acquaint themselves with voters lists and to check them for errors (article 32). Twenty days prior to polling day, the voters list is posted by the local election commission at the polling place. Again, the team would note that although both twenty and ten days were referred to in interviews with those directly involved in the election process, the Act in fact refers to 15 days prior to the election. Such inconsistencies or misperceptions by key players in the electoral process should be addressed. "Invitation cards" are sent to the voters on the list informing them that they may come to the polling place to inspect and verify the lists. The invitation card includes the voter's consecutive number from the voters list, the location of the polling place, and facilitates voting at the poll on election day. Whatever the past experience, it seems very doubtful, given voter apathy and less institutional pressure to vote, that the majority of voters will check the list. However, the public posting of the list for inspection combined with the delivery of invitation cards appears to be a success. As advocated earlier, the provision of list to nominating bodies, candidates and political parties would further ensure the veracity of the list and inform voters.

Article 32 states that every citizen has the right to file complaints regarding any omission, erroneous addition or other errors in the voters list. Formal complaints concerning errors in the list must be resolved immediately by the local election commission either by correcting the problem or by issuing a formal letter explaining why the complaint was denied. Complaints may be received up to two days prior to election day and the law prescribes that the local commission has two days to consider the complaints. Any decision may be appealed no later than five days before the election to the city district courts which must decide the issue within three days. Decisions of the court are final and orders to include someone on the voters list are to be carried out immediately by the local election committee. The team was also informed that a voter whose name is not on the voters list may be added to the list so he may vote on election day upon presentation of a valid passport at the poll. Because of this apparent provision for voter registration at the poll, the composition of the local election commission and the place of observers becomes even more important as a safeguard.





During meetings with campaign managers and other representatives of political parties, the team heard no complaints concerning the accuracy of the voters list. This is not surprising since the objective of the voters list was to include as many voters as possible to ensure the highest turnout. In this respect the existing law and procedures provide a reasonable basis to move forward, but it is important that the new role of political parties be recognized in law and practice, and that the period for inspection and revision of the voters list be scrutinized to ensure its ongoing comprehensiveness. To this point there has been stability in voter residence and extensive administrative records. If either factor changes considerably, then the preparation and revision of the voters list should similarly be reviewed.

## **XII. Civic Education and Training**

In the transition from a one-party political system to a multi-party system there is a need for public information to explain and consolidate democratization. In Ukraine a great deal has changed in a relatively short period of time. In the space of a few years Ukraine has become independent from the former Soviet Union and has elected a President in an open electoral competition. This change in the political environment and momentum toward democracy appear ideally suited to public information initiatives, but at the same time the environmental constraints extant in Ukraine today should be considered carefully.

Even in an emerging multi-party political system the term "political party" strikes a note of apparent discord with much of the public, including political representatives and electoral authorities. Similarly, the term "civic education and training" evokes reminders of a very recent past where both the Communist Party and the state used public education, information and training to enforce an orthodox view of politics and a way of life. Added to this historical baggage are the realities of a difficult economic time, broad apathy among the voters, and an uncertain constitutional division of authorities and the electoral system.

The team members were told repeatedly that in the hierarchy of immediate economic difficulties, public needs and interests, information about the electoral system is simply not a top priority. The team members also heard that in the minds of many, "democracy" has failed to deliver a quick fix resulting in an improved standard of living. Day-to-day survival has become even more difficult since independence, elections and the proliferation of political parties. The political system itself is indeed in a state of flux and uncertainty, with considerable confusion surrounding the division of powers between the President, parliament, and local authorities.

In the midst of such inherent mistrust, skepticism, harsh reality, and uncertainty, political parties struggle to establish their organizations and acknowledge their fledgling but growing stature. While political parties can and no doubt will be an important source of public information concerning the evolution of a multiparty democracy, their limited resources are being consumed by party building. The state and media both have a role to play, although there exists public

skepticism about officially sanctioned messages in some quarters. The Central Election Commission and credible domestic and international non-governmental organizations do, however, appear reasonably well placed to play an important role in public information assisting the efforts of political parties and elected representatives.

The recognition of these constraints and the limited range of actors and resources does not trivialize the need for public information initiatives related to democratization, free and fair elections, and the multi-party system. It is undeniable that significant political change has occurred on a scale unthinkable even five years ago. Ukraine is an independent state with a President popularly elected in the post-independence period, the parliament includes members representing substantially different political opinions and visions, and a truer multiparty political system is emerging. To sustain such democratization in the longer term, the public will need to be educated about the impact and meaning of these changes and their role and responsibilities in such a system. Many nations around the world, including emerging and more stable multiparty political systems, recognize the value of public education concerning democratic and electoral issues.

The team heard from parliamentarians, political party representative, presidential representatives, local authorities and electoral authorities, all of whom advocate public education initiatives despite constraints such efforts will encounter. The challenge is clear but the stakes are high.

Because of likely voter disinterest in information explaining the mechanics of voting and suspicion of mass media training and education, it is recommended that public information initiatives focus on "concepts" relative to democratization and multiparty politics, and to the extent possible, the message be delivered on a decentralized basis by a network of experienced trainers in coordination with the NGO. The message and delivery program might also first be tested in a pilot project before activating a network of training.

The mechanics of voting under the existing electoral law are well known to voters who in the past operated under de facto compulsory voting. Yet today voter apathy is high as witnessed by the by-election voter turnouts which were so low that elections have been halted until new national elections can be held. Nor is it certain what, if any, changes will be made to the electoral law and procedures between now and the next parliamentary elections. A more conceptual-based education program delivered on a local level is intended to reinforce the underlying reasons behind voting, rather than simply trumpeting a call to vote, especially in view of the constraints.

One common opinion that emerged from many interviews in relation to voter education was that voters required a reason to vote and that in difficult times they doubted whether their vote would make any difference. The commitment to democracy is believed to be strong, and support for multi-party politics growing, but the voters need fundamental reassurances. Positioning and reinforcement of concepts such as freedom of choice, secrecy and voter initiative, combined with

an explanation of the new relationship between voters, their elected representatives and political parties in a multi-party system, can make a substantial contribution to the process of democratization and party-building.

In the event of important changes to the constitution, electoral law and procedures, or in the event of an imminent election, more specific factual information would be necessary. The Central Election is well placed organizationally to disseminate information to the most local level and may increasingly represent a credible source of public information.

At least one professional and non-governmental organization with which the team met also indicated its intention to undertake a mass media public legal education campaign at the next election. The particular organization has limited access to television and considerably more access to a weekly gazette published by the Ministry of Education primarily circulated among teachers. The Ministry of Education also could be involved, given its access to students and the indirect exposure of parents. For example, in other countries, a non-partisan election simulation in the schools is used to educate and reinforce the proper conduct of elections and the roles played by candidates and election officials.

Recommendation:

Civic education initiatives specifically related to the elections and democratic transition should be explored by both official bodies as well as the non-governmental community in Ukraine.

Washington, D.C.  
July 1993

## SUMMARY OF RECOMMENDATIONS

### On Laws Related to Elections

1. The parliament and the Central Election Commission might wish to consider simplifying signature collection procedures as well as lowering the number of signatures required for a sufficient effort to call a referendum. A lower threshold to call referenda may allow a good forum for the people of Ukraine to voice their concerns via the ballot box rather than through events such as the recent miners' strike.
2. A reasonable deadline should be set in place and the scope of Presidium review of initiatives certified by the CEC should be defined in law, in order to close opportunities for unreasonable delays and potential manipulation.
3. If necessary, the law on referendums should be reviewed to see if clarification is needed in determining if the nature of the question to appear on the ballot is subject to interpretation. A specific example was posed earlier in this section relating to a potential initiative calling for new elections, and what people would be voting on if the election were called.
4. In a similar context, consideration might be given to defining in law what kinds of issues are allowable subjects in the initiative process, and what kinds of measures are restricted. For example, should fiscal appropriations be eligible subjects for a people's initiatives? The May 27 draft Constitution prohibits referenda on a variety of such important issues.
5. Parameters should be defined in the law to ensure that the ballot language approved by parliament adheres to the intent and purpose of the initiative to which the citizens have subscribed.
6. It would also be helpful to ensure that the law provided organizing committees the opportunity to have some kind of legal review and conference on legal technicalities and procedural requirements with authorities prior to circulating the petition. Such a provision would help ensure that an otherwise valid petition would not be rejected after all the work was completed and costs were incurred based on an adversarial legal decision after the fact.
7. The mandatory turnout requirement and absolute majority system should be rescinded in order for elections not to be needlessly invalidated. It is important

that voters who participate not be disenfranchised, and that voters who do not vote have the opportunity to see that voting is meaningful. Amending this provision would be particularly beneficial during this crucial time when the voter apathy is quite pervasive.

8. If a new law is not adopted prior to the next parliamentary elections, the existing laws which work together to provide the legal foundation for the election should be reviewed to determine whether or not they are consistent. If necessary they should be amended to bring them into conformity with one another.
9. Whatever form the prevailing election law takes, it should be evaluated in terms of clarifying legislative intent where the language of the law is vague or subject to interpretation. Amendments should be considered which would remove potential loopholes where opportunities for misuse could diminish the equity and effectiveness of the law.
10. It would be helpful for drafters to solicit the cooperation of experienced election administrators to review technical provisions, time lines and enforcement requirements to evaluate the degree to which they can be administered effectively, uniformly and accurately.

#### **On the Central Electoral Commission**

1. An issue that deserves some discussion relates to the temporary status of the Central Election Commission. The five-year terms of the CEC are almost concurrent with the terms of the parliament. It is quite likely that each Commission will only experience one nation-wide parliamentary election during its term.

Most experienced election administrators would agree that a key factor that ensures the uniform, efficient and accountable conduct of elections is continuity. There is no doubt that the election system in Ukraine will continue to evolve. With each new election, and as the election laws of Ukraine continue to change, valuable lessons will be learned. Whether they relate to legal issues, administrative and procedural technicalities, logistics or treatment of election irregularities, nothing teaches like experience. However, Ukraine is not affording itself the benefit of such experience. Instead, each new Commission will have to "reinvent the wheel" facing many of the same policy questions and administrative difficulties without the benefit of institutional memory.

The creation of a permanent civil service election division may be worthy of consideration. There are many viable alternatives such as a small full-time

depoliticized staff augmented by temporary political appointments during peak election periods. Another option could be a staff of political appointees from different parties serving rotating terms, or a combination of the two. The most important element is that development of a professional election administrative entity would provide the continuity and expertise needed to maintain an efficient, accountable and consistent election system on an on-going basis.

2. In a related issue, the team is concerned that the size of the election commission may prove unwieldy. As the number of parties grow, the mandate that each party be represented may result in a commission that is just too big to function efficiently. Eventually, it may be necessary to settle on a formula which reduces the size of the commission but maintains an adequate system of party representation. Several options could be considered. One example might call for representation on the Commission based on the percentage of votes the party garnered in the last election.
3. Even if the temporary terms of the CEC were to be maintained, it might be helpful to consider staggering their terms. The rotation of terms would provide a basis for continuity in the Commission which would span transitions in government. At any given time, only some Commissioners would be subject to appointment while remaining members would be available to carry forward the institutional memory and experience contributing to the efficiency of future election management.
4. In order to allow the Central Election Commission to communicate effectively with the regional electoral authorities, a network of telefax machines should be made available for the campaign period, election day, and for several weeks after the election. This network could be set up on the regional level to minimize the amount of equipment required for effective communication.
5. Reporting of election results would be accomplished with greater speed if the Central Election Commission were to have access to data processing equipment and additional trained staff at the time of the election.

#### **On the Ballot and Election Commodities**

1. The paper used in ballot printing is of average quality which could easily be duplicated. To inhibit the potential for fraudulent reproductions, the CEC may consider using paper which includes an exclusive watermark. As an alternative, a faint special ink screen could be applied as background for the text at the same time printing is accomplished. Some techniques would allow the security screen and the ballot text to be applied with one pass through by the printing house so

that the cost would not be significantly increased.

2. The ballots are not padded or bound but are currently printed and trimmed so that the ballot papers are loose. Stacks of loose papers are counted manually and packaged for distribution to the various polling sites. Election officials should consider arranging for the ballots to be bound or padded in uniform quantities to provide greater ease in packaging for distribution purposes. Standard packages would also provide officials with better control over the ballots under their supervision.
3. The team would strongly suggest that each ballot in each pad or book be attached to sequentially numbered stubs or counterfoils from which an unnumbered ballot could be separated at a perforation. The sequential numbering would allow the regional election commission to maintain a centralized accountability record which documents not only the number of ballots provided to each voting station, but also the numeric range assigned to each site. As an additional measure the list of ranges assigned to each site can remain secure as well until the ballots are actually distributed. The protocols used in accounting for the ballots used throughout the polling day could provide space to identify the sequence of numbers used, individual numbers of ballots which were damaged or otherwise unusable, and the sequence of numbers of the ballot counterfoils left on the pads unused. The numbered stubs of issued ballots would remain part of the formal documentation of activity at each of the polling stations in support of the overall results.

Though in some countries both the ballot and the counterfoil are numbered, a concern expressed by opponents of having the duplicated number appear on the ballot as well as the counterfoil is that an observer or official could potentially keep track of exactly which voter received a particular ballot number. During the counting process the official could determine how the voter voted. Because of these concerns, the team would recommend that the counterfoil or stub alone be numbered.

4. Vote counting schemes should be considered to reflect the new reality of participation of multiple political parties in the election process.

#### **On the Role and Duties of Poll Workers**

1. The development of a procedural manual for poll workers at the polling station level would have considerable merit. This manual could contain descriptions of roles and responsibilities of chairmen, secretaries, etc., along with all aspects of preparation and conduct of elections. Interpretation and acceptance of new



democratic processes will vary from region to region throughout Ukraine. Standardization of procedures covering the entire election process would provide invaluable support to local election officials. Should an election be called in the near future, the nominated election officials will have only past experiences to fall back on, necessitating considerable immediate support for the conduct of elections which will be forced to adapt to a multi-party system.

### **On Training of Election Officials**

1. As former or current election officials, most of the team members sense a feeling of urgency in addressing this issue of training election officials. Decisions regarding appropriate programs need to be arrived at soon, in order for some preparatory work to be undertaken regardless of which election laws control the next election. Multiple parties are a reality. They will be making demands and the election mechanisms currently in place are not equipped to accommodate these forces.

### **On the Role of Election Observers**

1. In discussions with presidential representatives, parliamentarians, political party representatives and election officials the involvement of international observers in future parliamentary elections was very strongly and clearly endorsed. The credibility of outside observers in addition to their legal freedom of movement and access to the polls were considered to be of value. The presence of international observers at the next election is highly recommended. Numerous international observers were present at the last presidential election and their legacy, experience and reports have been valuable assets to build upon.

Observation of the electoral process constitutes a very positive contribution both to the likelihood and perception of free and fair elections. It is strongly recommended that the requirements for both domestic and international observation be developed and distributed as widely as possible.

### **On Civic Education and Training**

1. Civic education initiatives specifically related to the elections and democratic transition should be explored by both official bodies as well as the non-governmental community in Ukraine.



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