



STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO MEXICO'S JULY 2, 2006 PRESIDENTIAL ELECTIONS

Mexico City, June 3, 2006

This statement is offered by an international pre-election delegation organized by the National Democratic Institute (NDI). From May 30 to June 3, 2006, the delegation assessed the political environment in Mexico in advance of the July 2 presidential and legislative elections. This is the second NDI pre-election delegation to the 2006 federal elections. Among its activities, this second delegation conducted a series of intensive meetings with a broad spectrum of Mexican political party and civic leaders, electoral authorities, media and representatives of the international community. The delegation conducted its activities in accordance with Mexican law and the *Declaration of Principles for International Election Observation*, which embraces the principles of non-interference, impartiality and professionalism for international election observers. NDI recognizes that, ultimately it will be the people of Mexico who will determine the legitimacy of the elections and the resulting government.

SUMMARY OF OBSERVATIONS

As affirmed in our previous statement, the upcoming presidential elections are likely to be the most competitive in Mexican history. Given these conditions, it is understood that there will be additional pressures placed on electoral authorities as well as an increasingly tense environment surrounding the campaign.

To ensure that the gains made in building public confidence and trust in Mexico's electoral process continue and are fully consolidated, political will is essential to implement second-generation electoral reforms that consider the "levelness" of the electoral playing field, particularly for campaign finance and media access. Otherwise, Mexico faces the possibility of eroding citizen confidence in the state's democratic institutions.

Impressive advances have been made in the last fifteen years in Mexico to establish a more open, competitive and fair electoral process. These improvements include the creation of a professional and impartial election commission and electoral court; a Specialized Prosecutor for Electoral Crimes; and the development of legislation regulating campaign finance and the promotion of election observation that have substantially improved the conditions of equitable electoral competition.

Nonetheless, there remains a significant element of public distrust in Mexican politics. While the delegation is encouraged by IFE's commitment to promoting a transparent and level electoral environment, there remains significant public skepticism that within the existing legal framework, the enforcement mechanisms are effective at curbing excessive campaign spending. In particular in this fiercely competitive race, the delegation was impressed by the strong desire expressed by all the parties with which the delegation met for continued engagement by international observers who can play a critical role in contributing to the legitimacy of the electoral process.

ELECTORAL CONTEXT

NDI has had the privilege of witnessing Mexico's federal elections in 1994, 1997 and 2000. NDI delegations, Mexican citizens and political contestants alike have noted that these elections were democratic and well-administered. These elections represent a notable achievement in Mexico's transition toward an increasingly competitive democratic system after seven decades of de facto single-party rule.

Toward the end of 70 years of political dominance, the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI) was increasingly accused of manipulating electoral results in its favor. Widespread allegations of fraud committed by the ruling party in the 1988 presidential contest served as a catalyst for reforms begun in 1991 and accelerated in 1994 that ensured a credible electoral contest that helped usher-in a more competitive and open political system. In particular, the establishment of a genuinely independent election authority, the Federal Electoral Institute (*Instituto Federal Electoral*, IFE), and the efforts and resources committed to developing confidence in the impartiality and effectiveness of the IFE proved to be an indispensable investment in advancing the democratic process.

After additional electoral reforms, Mexico held its first elections under a fully autonomous IFE in 1997. Opposition and civic groups applauded the change and expressed confidence in IFE's objectivity and technical ability to manage the elections. Opposition parties won key victories, including the post of mayor of Mexico City - won by Cuauhtémoc Cárdenas, the 1988 and 1994 Party of the Democratic Revolution (*Partido de la Revolución Democrática*, PRD) presidential candidate - and, for the first time, a majority of seats in the Chamber of Deputies.

The 2000 elections marked a watershed moment in contemporary Mexican political history. The impressive advances that had been made in previous years to establish a more open, competitive and fair electoral process were tested in a fiercely contested campaign. The victory of National Action Party (*Partido Acción Nacional*, PAN) presidential candidate Vicente Fox signified the first peaceful presidential transition of one party to another since the nineteenth century. The promise of a transition from a system of one-party rule generated high levels of citizen participation, resulting in 60 percent turnout on election day. Despite its historic loss of the presidency, the PRI successfully maintained its structure and representation in legislatures at the state and federal levels of government.

The 2003 mid-term and subsequent state elections saw the PRD nearly double its presence in the congress and the PRI win back several legislative seats and retain control of key states. The PAN, unable to deliver on its electoral promises, lost ground in the federal congress, although the party maintained its position as the second largest political force at the congressional and state levels.

Presidential and congressional elections are scheduled to take place on July 2, 2006. State elections will also be held during 2006 in Campeche, Colima, the Federal District of Mexico City (*Distrito Federal*), Guanajuato, Jalisco, Morelos, Nuevo Leon, Queretaro, San Luis Potosi, Sonora, Chiapas and Tabasco.

The 2006 presidential contest is expected to be the most competitive in Mexican history, with recent polls showing the three major political forces in a virtual tie. Despite success in institutionalizing safeguards designed to guarantee freedom and transparency for voters on election day, new challenges have emerged that may hamper the legitimacy of the 2006 elections. Concerns have arisen about the equity in the conditions of competition prior to and during the campaign period. Among others these concerns include parties' and candidates' equitable access to the mass media, adherence to campaign finance limits, the use of government social programs to influence the vote, and deficiencies in the regulatory framework governing the pre-campaign period and the role of the president of the republic.

Mindful of the progress that has been made in Mexico's electoral process and of the strong desire of Mexicans for genuine democratic elections, the delegation offers below its observations as well as recommendations.

OBSERVATIONS

In studying the political history of Mexico, the delegation recognizes the considerable maturation of its democracy in establishing what have been denominated "first generation" electoral reforms. These reforms have established the foundation for democratic consolidation. At the same time, based on the opinions expressed by the diverse political actors, the delegation found widespread concern about potential abuses of incumbency and inequitable conditions and broad support for a second set of reforms that attend to the establishment of a "level playing field." In particular, reforms in the areas of campaign finance and access to the mass media.

Furthermore, the delegation recognizes that over the past year there have been multiple public discussions of these potential reforms which have allowed for the development of diverse, viable proposals for the achievement of these "second generation" reforms. It will be the responsibility of members of the new legislature to assume responsibility for this remaining task and ensure that consensus is reached on these issues of vital importance for the future of Mexican democracy.

Federal Electoral Institute (Instituto Federal Electoral, IFE)

Consistent with the findings of the first pre-election assessment, the delegation was impressed by the

uniform confidence that political parties and civil society groups expressed in the IFE's ability to organize efficient and transparent federal elections. The delegation shares this confidence in the IFE's technical capacity and state of administrative preparedness for the organization of the 2006 elections. Operating within a legal framework of unclear authority, the IFE's efforts to monitor press coverage of all candidates and campaign spending demonstrate the IFE's commitment to ensuring equitable conditions for the electoral competition. The delegation also recognizes the steps the IFE has taken to demonstrate openness to increased collaboration with civic groups in different areas, including civic education and election day observation.

During this electoral process, which has been characterized by its historic competitiveness and increased concern about equitable campaign conditions, the IFE -- in particular the General Council (appointed in 2003) -- has been confronted with the challenge of playing an arbiter role. New issues faced by this Council include the role of the president in the electoral process and the content of campaign advertisements, among others. Recognizing the ambiguity of the electoral code with respect to these subjects, there remains a perception among those with whom the delegation met that the IFE has lacked firmness and timeliness in its responses.

Federal Electoral Tribunal (Tribunal Federal Electoral, TEPJF)

This delegation strongly reaffirms the findings of the previous delegation of the important role played by the *Tribunal* in the administration of electoral processes. The *Tribunal* has increasingly played the role of arbiter of last resort in resolving intra-party disputes concerning adherence to party statutes. The delegation recognizes their contributions to strengthening the internal democracy and structures of Mexican political parties.

Specialized Prosecutor for Electoral Crimes (Fiscalía Especializada para Atención a Delitos Electorales, FEPADE)

The FEPADE is the government agency charged with the prosecution of electoral crimes and is a specialized branch of the Office of the Attorney General. Founded more than a decade ago, the FEPADE is headed by the Specialized Prosecutor, who is the only government official designated directly by the President for an indefinite term. This lack of independence as part of the Attorney General's office has played a role in eroding public confidence in the impartiality of the FEPADE's work as it was perceived as unable to contradict the wishes of the President. Although its legal status has not changed, in practice, the FEPADE has been given greater autonomy in recent years to perform its functions.

The delegation was pleased to learn of the efforts made by current leadership of the FEPADE to guarantee the application of the law as it pertains to electoral crimes. In particular, the FEPADE has conducted campaigns to promote a culture of civic responsibility in denouncing electoral crimes, has streamlined internal procedures to facilitate rapid response to accusations, and is working in coordination with the penal courts to train judges on subjects related to electoral crime. Those with whom the delegation met praised the prosecutor's office for its close collaboration with civic organizations on the development of a proposal presented to Congress that would give the FEPADE more autonomy and tools to be more efficient in their work.

However, shortcomings in the legal framework hamper the efficiency and effectiveness of the office in prosecuting electoral offenses. The legal code that governs the FEPADE's work is based on a limited number of crime "types". These deficiencies often create obstacles to, or are inadequate tools for the prosecution of increasingly sophisticated transgressions.

Vote Count and Results

The highly contested nature of the 2006 presidential race has heightened interest in the vote count and post-electoral dispute process. The delegation has learned that the IFE is planning to conduct rapid reporting of electoral results from a national statistical sample of polling stations and is considering the publication of the projections of election outcomes based on the sample.

Election authorities sometimes conduct such an exercise as a safeguard that can detect problems or attempts to manipulate results as they are tabulated beyond the polling stations. Authorities also may want to have such projections in order to evaluate the accuracy of "quick counts" conducted by civil society organizations, news media and/or political parties. International experience confirms that election authorities do conduct this type of statistical projections. Because the role of election authorities is to release actual tabulations, rather than statistical projections, releasing such projections not only would present an apparent conflict of interest, but also could lessen public confidence should the exercise produce less than a perfect match with the final official results.

Campaign Finance Regulations

Campaign finance in Mexico is based on a "mixed" system. Parties receive a significant amount of public financing for campaign activities and are also allowed to raise limited private funds. The high level of public funding was intended to limit the influence private money and special interests have over elected officials and political parties, while also reducing economic inequities between parties, and, thereby, "leveling" the electoral playing field. While electoral officials have authority to regulate the expenditure of public funds, they lack appropriate legal mechanisms to monitor private contributions. The lack of public accountability surrounding the sources, quantity and use of these private monies was of concern to many with whom the delegation met.

Nonetheless, the IFE continues to monitor campaign spending and plans to publish the results of its second pre-election audit in June. While the delegation is encouraged by IFE's commitment to promoting a transparent and level electoral environment, there remains significant public skepticism as to whether this exercise is effective at curbing excessive campaign spending. As noted in NDI's first pre-election statement as well as the 2000 election statements, almost all with whom the delegation met reiterated the opinion that the current law provides insufficient mechanisms for enforcing the rules. The post-election sanctions and monetary penalties have proven ineffective at preventing political parties from exceeding the set spending limits and many feel that the audits, while a step in the right direction, will have little impact on the parties' behavior.

Insufficiently regulated private funding and weak enforcement rules, along with the inability of parties to articulate concrete policy platforms, have led to an increased public frustration with the political parties. Similarly, there is a broad public perception that the large sums of public money provided to the parties yields very few results. Many of the groups consulted in this assessment complained that

the current length of the campaign period produces excessive spending and voter fatigue.

Role of the President

Until recently, Mexican political history is marked by the tradition of the president designating his successor. This practice has been effectively eliminated as current candidates, including that of the president's political party, were selected according to the bylaws of each party. Despite these advances, there was almost uniform concern expressed that the current president has overstepped his role as Chief of State by playing a partisan role in this campaign process, while promoting his government's public works in the media.

In February 2006, the IFE, with the consent of the political parties, passed a non-binding agreement that asked federal, state, and municipal governments to refrain from publicly promoting public works projects within 40 days of the election. To date, this agreement has been respected. In addition, the agreement asked these same officials to refrain from expressing partisanship in public. Despite this decision, recent comments by President Fox have raised concerns about the use of presidential power to influence voters in favor of his party's candidate.

In elections that are decided by a close margin, the president plays a critical role in maintaining political stability in the hours or days before a definitive winner has been declared. Given the possibility that the upcoming presidential elections will be decided by a small percentage of votes, President Fox's ability to bolster public confidence in the accuracy of the results could be diminished by partisan behavior demonstrated during the campaign.

Use of Government Social Programs for Electoral Advantage

For elections to be meaningful, the electorate must believe that their vote will be secret, and that there will be effective safeguards against post-election retribution for their choice at the ballot box. Several domestic monitoring organizations reported that citizens believe that state and government officials will condition individuals' benefits from existing social programs based on their vote.

The delegation was pleased to learn of a new and unprecedented project called the "Protection of Federal Social Programs in the Context of the 2006 Elections" (*Protección de Programas Sociales Federales en el Contexto de las Elecciones de 2006*), developed by the United Nations Development Programme (UNDP) and financed by the Mexican government.

The initial work of UNDP team consisted in the development of a diagnostic tool to identify vulnerabilities in the administration of social programs that could be utilized to co-opt voters. The findings of this analysis were published and presented publicly in March 2006, along with recommendations to state and federal government authorities identifying mechanisms that could safeguard these programs from electoral abuses. In an attempt to create buy-in and commit government officials to the application of several of its recommendations, the team has presented the project to representatives of 15 state governments. The establishment of an advisory board composed of distinguished civic leaders will help to continue to bring public attention to this issue.

This program has raised awareness among both government officials and the public about these

potential abuses. In the long term, the project hopes to serve as a tool for future legislators in considering measures to eliminate these vulnerabilities in the application of social programs.

Mass Media and Elections

For an election to be truly democratic, the political contestants must have a fair opportunity to reach the voters and win their support. In establishing rules for equitable media access, it is important to note that the IFE recognizes differences between the various political parties based on past national votes and consequently their representation in legislative bodies.

During this campaign period, the IFE is implementing a media monitoring project that systematically records the number of appearances and qualitative treatment of each candidate in media coverage (negative, positive, or neutral). Among those with whom they met, the delegation noted unanimous support and approval for this project. In particular, these groups applauded the IFE's efforts to make this data accessible to the public via the Internet, and the quality of its classification of candidates' treatment, among others. Furthermore, the delegation was encouraged by reports of equitable coverage of all candidates in the mass media.

The IFE has also collaborated with media companies to publish a catalogue based on market value listing price ceilings of particular time slots. This initiative was under taken to address allegations that the lack of competition in the mass media has given rise to arbitrary or preferential pricing of air-time for parties and candidates. There was significant concern that these ceilings have no practical meaning since air time is often sold at a much reduced, negotiated price to campaigns. Without further regulation, these groups fear that the dominant media companies could alter the equity of campaign conditions through preferential contracts, in effect acting as "in kind" donations which are prohibited by law.

In addition, the delegation noted concern among political actors and analysts about the increasing use of electoral polls by political parties and their allies as a tool to shape political preferences. Many consider that these polls have been converted into instruments of political propaganda and have diminished in their value as objective instruments for the measurement of public opinion.

Debates

Debates provide candidates the opportunity to articulate their positions on matters of national interest. A positive development in Mexico's democratic development is the growing public appreciation for presidential debates as a means by which to learn about candidates' political platforms. However, the practice has not become a traditional part of the campaign period.

The first of two debates among the presidential candidates took place on Tuesday, April 25, and all of the presidential candidates, with the exception of Andres Manuel López Obrador, participated. According to many political analysts, members of the press and academics, the debate was characterized by insults and accusations among the candidates; a lack of an effective dialogue and critique by the candidates on their opponents policy options; the presentation of proposals without any specifics on how they would be implemented; and the lack of spontaneity in the speeches and reactions of candidates.

The upcoming June 6 debate will be the only debate during the 2006 electoral process to include all five candidates, and high expectations are being placed on these debates as a forum for the discussion of concrete policy platforms.

Domestic and International Electoral Observation

Mexico benefits from the presence of non-partisan domestic observers who are monitoring the campaign period and election day. These civic organizations play an important role in increasing confidence and participation in the electoral process. During the campaign period, these groups are monitoring candidate's access to media, the work of electoral authorities, and the use of social programs to buy votes or coerce voters. In addition, they conduct civic education campaigns and promote participation.

On election day, these groups will monitor the voting process with a network of thousands of volunteers. There is some concern regarding the difficulties that these organizations have faced in the recruitment of volunteers, but, at the same time, the delegation recognizes the IFE's offer to streamline the accreditation process in order to aid the groups in this area.

As in the first NDI statement published in April, the delegation noted the interest of many of those interviewed in having international observers and the contribution of international observation toward strengthening the electoral process. Both the European Union and the Organization of American States (OAS) have been invited to organize international election day observer missions. To date, there has been no public confirmation that these missions will take place.

RECOMMENDATIONS

With these factors in mind and in the spirit of international cooperation, the delegation respectfully offers the following recommendations, which it believes could help promote confidence and participation in the upcoming elections.

- For the month that remains in the 2006 campaign, the political candidates should self-regulate the contents of their political messages to ensure that concrete platforms and policy preferences supersede negative campaign tactics and inflammatory rhetoric.
- To increase confidence in the results of the 2006 electoral process, the IFE should not publish the results of its quick count, and should investigate mechanisms or processes that could make its Preliminary Electoral Results Program (PREP) more efficient. In most electoral processes in the world, publicized quick counts are the provenance of civil society organizations, campaigns, and the media, and electoral bodies concern themselves with the efficient reporting of official results. IFE, however, could play a role in encouraging citizen organizations to share the results of their quick count findings to encourage confidence in the process.

- To create incentives for greater compliance with existing finance regulations, and to promote a more transparent process, IFE should incorporate as a permanent practice its efforts to monitor campaign spending prior to election day and establish the mechanisms to disseminate as widely and promptly as possible the results of this analysis.
- For the duration of the campaign period, official state air time should be dedicated to television and radio programs that guarantee the dissemination of candidates' platforms and proposed public policies.

In the longer term, we recommend consideration be given to reforms such as:

- To generate increased public confidence and ensure equitable conditions for electoral competition, the current and future legislatures should consider reforms to increase the IFE's legal authority to monitor and regulate spending of private and public funding during the pre-campaign and campaign periods.
- Following the example of the recent legislation requiring transparency in public procurement, the Mexican legislature should consider empowering voters by ensuring full disclosure of transactions (receipts, contracts, etc.) linked to campaign spending.
- In order to reduce the cost of elections and voter fatigue, current and future legislators should commit to considering electoral reforms such as shortening the campaign period and synchronizing the federal and state electoral calendars.
- In order to encourage FEPADEs institutional strengthening and ensure the continued consolidation of its autonomy, the Mexican legislature should consider modernizing of the legal framework that governs the work of the FEPADE.
- The UNDP project concerning the protection of federal social programs should be expanded to include state and municipal social programs, by which the project would transcend its focus on federal electoral processes and become a more permanent mechanism.
- Reforms should be considered that would allow the IFE to act as an intermediary between media and political parties by contracting and purchasing the air time for campaign spots.

THE DELEGATION AND ITS WORK

The objectives of this second of two delegations are to demonstrate the support of the international community for a transparent and genuine electoral process and to offer an accurate and impartial assessment of the political environment ahead of the upcoming elections. The first pre-election delegation occurred from April 4 to 9 and examined more closely issues surrounding electoral infrastructure and conditions of electoral competition.

The delegation was led by Félix Ulloa, NDI Haiti Director and former Magistrate of the Superior Electoral Tribunal of El Salvador, and included Luis Alberto Cordero, Executive Director of the Arias Foundation for Peace and Human Progress (*Fundación Arias para la Paz y el Progreso Humano*), and former Vice-Minister of the Presidency during the first administration of Costa Rican President Oscar Arias; Harriet “Hattie” Babbitt, Senior Vice President of Hunt Alternatives Fund, former US Ambassador to the Organization of American States and member of the NDI Board of Directors; and Mirtha Correa, Executive Director of the Peruvian civic group CALANDRIA Association of Social Communicators (*Asociación de Comunicadores Sociales CALANDRIA*). The delegation was joined by NDI Mexico Resident Director Julian Quibell and, NDI Mexico Program Officer Keila González.

While in Mexico City, the delegation met with representatives from: the Electoral Tribunal of the Judiciary Power of the Federation (*Tribunal Electoral del Poder Judicial de la Federación*, TERJF); the Federal Electoral Institute (*Instituto Federal Electoral*, IFE); the Specialized Prosecutor for Electoral Crimes (*Fiscalía Especializada para Atención a Delitos Electorales*, FEPADE); the campaign of Felipe Calderón from the National Action Party (*Partido Acción Nacional*, PAN); the campaign of Andres Manuel López Obrador from the Party of the Democratic Revolution (*Partido de la Revolución Democrática*, PRD) and the “Coalition for the Good of All” (“*Coalición por el Bien de Todos*”); the campaign of Roberto Madrazo from the Institutional Revolutionary Party (*Partido de la Revolución Institucional*, PRI) and “Alliance for México” (“*Alianza por México*”) coalition; the campaign of Roberto Campa from the New Alliance Party (*Partido Nueva Alianza*, PANAL); the campaign of Patricia Mercado from the Social-Democrat and Farmer Alternative Party (*Partido Alternativa Socialdemócrata y Campesino*, PASC); Citizens United for Election Observation (*Ciudadanos Unidos para la Observación Electoral*, CUOE); media conglomerate Televisa; and the international community. The delegation would like to express its deep appreciation to all of those who took the time to share their views.