



STATEMENT OF THE NDI PRE-ELECTION DELEGATION TO GEORGIA'S 2008 PARLIAMENTARY ELECTIONS

Tbilisi, May 2, 2008

This statement is offered by an international pre-election delegation organized by the National Democratic Institute (NDI). The delegation visited Tbilisi from April 28 to May 2, 2008, to assess preparations for the May 21, 2008, parliamentary elections.

The delegation was comprised of Sam Gejdenson (U.S.), former member of the U.S. House of Representatives and current member of the NDI Board of Directors; Shlomo Avineri (Israel), former director-general of the Ministry of Foreign Affairs of Israel and director of the Institute for European Studies at the Hebrew University of Jerusalem; Peter Eicher (U.S.), former deputy director of the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR); Laura Jewett (U.S.), NDI regional director for Eurasia; and Mary O'Hagan (U.K.), NDI senior resident director in Georgia.

The delegation's purpose was to demonstrate the international community's continued support for democratic processes in Georgia, to make an accurate and impartial assessment of the election environment and its implications for democratic development, and to offer recommendations for enhancing confidence and participation in the process.

The NDI pre-election delegation met with Georgian political and civic leaders including parliamentary candidates, campaign representatives, senior government and parliamentary officials, election authorities, non-governmental organizations, domestic election groups, and representatives of the media and the international community in Tbilisi. The delegation conducted its activities in accordance with the laws of Georgia and the international standards outlined in the *Declaration of Principles for International Election Observation*. NDI does not seek to interfere in Georgia's election process, nor does it intend to, or could it, render a final assessment of the election process. NDI recognizes that, ultimately, it will be the people of Georgia who will determine the credibility of their elections and the country's democratic development. The delegation offers this pre-election statement in the spirit of supporting and strengthening democratic institutions and processes in Georgia.

No election can be viewed in isolation of the context in which it takes place. The pre-election period, including electoral preparations and the political environment, must be given weight when evaluating the democratic nature of elections. An accurate assessment of any election must take into account all aspects of the electoral process. These include: 1) conditions set up by the legal framework for the elections; 2) the pre-election period before and during the campaign; 3) the voting process; 4) the casting of ballots; 5) the tabulation of results; 6) the investigation and resolution of complaints; and 7) the conditions surrounding the formation of a new government.

The delegation wishes to express its thanks to the United States Agency for International Development, which has funded the work of this delegation and has supported other NDI democracy assistance programs in Georgia. This delegation is also grateful to all those who gave up valuable time to share their views freely. Their perspectives have informed this statement and made possible the work of the delegation. NDI stands ready to continue to assist Georgian efforts to build and sustain democratic practices, institutions and values.

I. DELEGATION OBSERVATIONS

The upcoming parliamentary elections in Georgia are crucial for the stability, democratic development and progress of the country. The levels of internal political friction appear to be lower than during the presidential election, although political polarization remains troubling. The delegation acknowledges a number of positive steps since January but remains deeply concerned that urgent efforts need to be made to significantly enhance public confidence in the integrity of the electoral process.

Political Context

Like all former Soviet republics and countries under communist rule, Georgia has had to overcome the totalitarian legacy imposed upon it. But the tradition of fierce independence that has always characterized Georgian society protected it from many aspects of the all-pervasive nature of totalitarianism. It is this proud legacy that also informs Georgian society today, and it has given the nation a visible advantage as it traverses the rocky road to democracy. On the other hand, this occasionally contentious heritage of individual independence and self-reliance does sometimes stand in the way of consolidation of democratic institutions, willingness to compromise, and ability to sustain coalitions while overcoming personal conflicts, all of which are equally important aspects of the democratic process.

Compared with the atmosphere surrounding the January 5 presidential election, the level of internal political friction appears to be lower as the parliamentary elections approach. In particular, fewer reports of intimidation of election observers and political activists have been received. At the same time, the level of external tension is much higher. Since January, there have been numerous efforts to promote dialogue between the governing party and the opposition. The Chairman of the Parliament was pivotal in these attempts but regrettably, they proved inconclusive. The breakdown in these discussions took place in an atmosphere of threats and protests rather than constructive pursuit of the public interest.

The emergence of new political parties and new electoral blocs since January is testament to the relative openness of the political environment and implies a healthy responsiveness to shifting political views among the electorate. Some parties and blocs have demonstrated a willingness to employ constructive campaign strategies that are based on concrete issues that voters care about rather than abstract procedural questions of more

interest to political parties and candidates than the people they seek to represent. These are positive signs.

Despite some visible steps by the government and parliament to reform aspects of the legal and administrative environment, public confidence in the conduct of elections appears to be falling, according to recent public opinion research. It has suffered from, among other causes, the failure to prosecute violations committed during the January election, the collapse of dialogue among the parties, political polarization, and the failure to date to create an environment that is seen as level for all participants and free from intimidation. What is lacking is sufficient political will on all sides to place the wider public good before political self-interest.

Legal Context

A number of changes have been made to the Unified Election Code of Georgia that broadly conform with recommendations made by OSCE/ODIHR, NDI and other international and domestic election observers. These include:

- Lowering the threshold from 7 percent to 5 percent for party representation in the parliament;
- Abolishing voter registration on election day;
- Introducing party representatives at the district level of the election administration;
- Clarifying the complaints process;
- Extending the time available for parties and voters to check the voters list;
- Improving procedures for the registration of domestic election observers; and
- Further enabling rapid transmission of preliminary election results from precinct election commissions (PECs) directly to the Central Election Commission.

However, other aspects of these changes are a source of concern.

- Major changes to the electoral system were adopted only two months prior to the election in the absence of consensus among the political parties or sufficient time for consultation with civil society;
- Because of large disparities in population among districts, the 75 single mandate districts fail to ensure that each vote has broadly similar weight in determining the outcome of the elections;
- The limits on the participation of public officials in the campaign were inadequately defined;
- Important logical checks were removed from the summary protocol;
- Public access to election precinct video recordings was limited; and
- Restrictions on the participation of certain public employees in the election administration were lifted.

The Electoral Campaign

This statement is being made within one week of the registration of candidates. It is therefore too early to draw any firm conclusions. Compared with the period prior to the January 5 presidential election, the campaign appears lower key. Trust among the parties remains very low. The integrity of the electoral process is still a source of controversy not only among the parties but also within society at large. This can be seen as a direct result of unresolved disputes about the conduct and outcome of the presidential election and the absence of political consensus about the legislative environment within which these elections are taking place.

Opposition and civil society representatives expressed several concerns and made allegations about specific aspects of the campaign, including the names of large numbers of absent and deceased citizens on the voters list, various attempts at vote buying by candidates prior to their registration, blurring of the distinction between the ruling party and the state, intimidation of businesses to contribute to the governing party, unbalanced media coverage, the high price of political advertising, lack of space for opposition billboards, and pressure on landlords to refuse space to opposition campaigns.

There are opposition politicians who declare that the election is already fatally flawed. For its part, the governing party has raised complaints about irresponsible campaigning on the part of some opposition parties, combined with deliberate efforts to misrepresent government actions and undermine confidence in the elections. The delegation wishes to underline the responsibilities of both sides. The government bears the largest share of the responsibility for creating an enabling environment for campaigning and the conduct of a credible election. The opposition bears responsibility for the part it plays in political discourse. Both sides should meet these responsibilities in a manner that commands public confidence.

NDI's experience worldwide has found that confidence in an electoral system and a perception of fairness are as important as the letter of the law. Genuine democratic elections require that the public, including political contestants, have confidence that the results of the elections will reflect accurately the free choice of the voters and that the outcome will be respected. Therefore, when concerns are raised about the fairness of an electoral system, additional safeguards, as added measures of transparency, should be introduced, even if the law meets otherwise acceptable standards. This is particularly true in countries where a history of fair political competition has yet to be established.

Among broader concerns about a lack of pluralism in the media following the closure of Imedi TV, two specific cases were raised with the delegation. The first concerns coverage of the United Opposition by Rustavi 2, the channel with the largest audience share for news and current affairs. The delegation welcomes the statement made by Rustavi 2 that it would resume coverage of the United Opposition and hopes that this will help to redress concerns about media imbalance. It also hopes that both sides will be able to resolve their remaining differences and maintain cooperation for the longer term. The second concerns an application for a license to broadcast news by the entertainment

channel, Maestro. The delegation hopes that a dispute about technical aspects of licensing will not stand in the way of the broader goal of enabling broad and diverse political discussion during the campaign and beyond.

On April 11, NDI published a Code of Conduct for Political Parties that has been signed by nine political parties. Under the Code, the parties agreed to take responsibility for the conduct of their leaders, candidates, members of the election administration, election observers and activists. NDI has been monitoring the code and has received 20 complaints from six parties. These complaints concern the following types of misconduct:

- Difficulty in opening and maintaining offices;
- Misuse of administrative resources;
- Intimidation of candidates;
- Intimidation and assault of party activists; and
- Use of inflammatory language.

NDI will discuss verifiable reports with the parties concerned and urge them to take immediate and concrete steps to enforce the code. The Institute will issue periodic public reports on compliance with the code during the remainder of the campaign.

NDI appreciates the active participation of the signatory parties in the process of raising and considering complaints. Although all signatories have agreed to disseminate the code, it has yet to be distributed widely enough within all the parties. The delegation expects that signatories will comply with the provisions of the code concerning enforcement within parties.

Election Administration

The District Election Commissions (DECs) have been reconstituted to include party representatives, and efforts have been made by the Central Election Commission (CEC), United Nations Development Programme (UNDP) and IFES to improve the training of election officials. The CEC has expanded the number of polling stations to implement a limit of 1,500 registered voters for each polling station. Efforts are being made to ensure that most polling stations can transmit summary protocols by fax to the CEC as soon as the count has been completed.

The delegation welcomes the efforts made by the CEC to reach out to domestic election monitoring NGOs. This has included granting the International Society for Fair Elections and Democracy (ISFED) access to the full voters list, providing the voters list to NGOs prior to the legal deadline, and signing a memorandum of understanding with ISFED, the Georgian Young Lawyers Association (GYLA), Transparency International (TI) and New Generation New Initiative (nGnI) on interpretation of the law relating to the use of administrative resources. However, complaints have been received that the voters list was not available at several precincts prior to the deadline.

The Central Election Commission reported to the delegation that its public information campaign will include reassurance for voters that their vote will be secret and that house calls are not being made on behalf of the election administration.

In spite of these advances, the Central Election Commission does not enjoy the trust of the opposition parties and, according to public opinion research, a significant section of the electorate. A controversy surrounding the submission of the United National Movement's candidate list on April 21 was not resolved swiftly and transparently. As a result, confidence that election procedures will be applied and enforced equally was undermined rather than restored. Trust in the election commissions at all levels will not increase unless their decisions are seen to be both transparent and impartial.

II. DELEGATION RECOMMENDATIONS

In the spirit of international cooperation, the NDI delegation offers the following recommendations:

Political Parties and Campaigns

- All parties and candidates have a responsibility to act in accordance with the letter and spirit of the election law in order to restore confidence in the election process.
- All parties and candidates should participate constructively in the election process, avoiding irresponsible or inflammatory statements, threats or intimidation.
- Parties that have signed the Political Party Code of Conduct should adhere strictly to the code's provisions, including particularly its provisions relating to intimidation, vote buying and enforcement within parties. Greater efforts are needed by political parties to publicize the code among their members. Parties that have not signed remain free to do so.

Government

- In order to help restore public confidence in the elections, the highest levels of government should make clear that any misconduct by public officials surrounding the elections will not be tolerated and that they will be held strictly accountable for any infringements of election laws or procedures.
- The Prosecutor's office should speedily bring to trial cases arising from election irregularities at the last election in order to demonstrate a commitment to enforcing the election laws and holding officials accountable for their actions.
- The government and the Prosecutor's office should make clear publicly that CEC members will not risk prosecution for voting their conscience on any issue coming before the CEC.

- The government should take all necessary steps to ensure a level playing field and an enabling environment for free elections. For example, the government should prevent law enforcement agencies from assuming an inappropriate role in the campaign, and social workers from combining political canvassing with redefining the poverty line. Public employees need reassurance that their job does not depend on the way that they vote. Parties and candidates should not be obstructed from campaigning freely, purchasing billboard space or establishing their offices throughout the country.
- The election administration and the courts should do all they can to ensure that election complaints are decided on their merits, that all evidence is fully examined and that judgments are based on a reasonable reading of the law.
- Public resources should not be used to benefit the campaign of any candidate or party.
- The Inter-Agency Task Force has made efforts in a number of directions, particularly improvement of the voters list. The addition of impartiality as a principle by which it operates is welcome, but it will need to demonstrate this through its actions if it is to fulfill its task of raising confidence in the elections. The Task Force should respond to all claims of misconduct immediately, especially on the part of police or other public employees.

Election Administration

- The CEC and lower level election commissions must endeavor to operate in a spirit of constructive dialogue and consensus.
- The CEC should expedite the publication of the forthcoming guidelines for public officials and take the opportunity to publicize the guidelines widely when they are published.
- The CEC must improve the voters list despite the limited time remaining before they are closed. It should make a consistent and transparent effort to respond to all questions and concerns about the list. It should consider extending by one week the deadline for making changes to the list.
- While welcome progress has been made to ensure that many PECs can transmit their election results directly to the CEC, further steps need to be taken before the election to equip PECs with the capability of communicating results directly to the CEC.
- The CEC's effort to post detailed election results promptly on its website is an important contribution to the transparency of the tabulation process. The CEC

should ensure during the upcoming elections that that results are posted as quickly as possible and in the order in which they are received.

- In order to remedy a problem that arose during the presidential election, the CEC should take early decisions to ensure that judgments on the validity of individual ballots are consistently applied and to protect full enfranchisement.

Media

- Broadcast media should be balanced in their coverage of the parties and candidates in order to ensure that voters can make informed choices based on access to diverse and sufficient sources of news.
- Television broadcasters should expeditiously grant free air time to any party that exceeds the minimum threshold necessary for an “unqualified” subject.

Longer Term Recommendations

The following recommendations cannot be implemented before the elections but should be considered in the post election period:

- The election law should be reviewed and revised through an open and transparent process of consultation, aiming at the broadest possible consensus.
 - In order to avoid the perception of vote buying, candidates should be prohibited from distributing goods or vouchers to voters from the moment they submit their nomination as candidates, rather than from the time they are formally registered.
 - In order to remedy one of the most glaring problems with the voters list, citizens’ registration to vote should be reviewed when their ID cards expire every 10 years, and those not renewing their ID cards should be removed from the list.
 - A provision should be adopted to ensure equitable distribution of leadership positions with the PECs and DEC members of all political parties eligible for PEC and DEC membership.
 - A provision should be included in the law to ensure that CEC members will not face prosecution or any other type of sanction for voting their conscience on issues coming before the CEC.
 - A provision should ensure that the price charged by television broadcasters for paid political advertising is in line with normal commercial rates.

- The current demarcation of electoral single-mandate constituencies should be reviewed and revised through a transparent and broadly agreed process to bring Georgia's election system into line with international standards, by ensuring that each constituency is of approximately equal size and each citizen's vote thus carries equal weight.
- In order to build confidence in the election administration, the political parties should revisit the issue of selecting a CEC chairman by consensus.

All of these recommendations are offered on the understanding that legal and technical improvements to the electoral system cannot in themselves reestablish confidence in Georgia's electoral process. This will require a strong demonstration of political will by all participants, particularly by the government and those administering the election.