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**CASE STUDY:  
ELECTIONS ASSISTANCE IN UKRAINE**

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## Preface

This paper documents the manner in which the USAID Mission in Kyiv, Ukraine, reacted to delicate political situations, targeted certain key problems in the areas of election law and election administration in Ukraine, and then marshaled resources to attempt to address these problems. In doing so, the instituted interventions assisted in the development of democracy in Ukraine, attained certain strategic objectives outlined by USAID, and did so in conformance with United States strategic interests in the area.

It is hoped that the examination of the contextual factors in place in Ukraine and the manner in which the Mission reacted under these conditions will provide valuable lessons learned for Democracy and Governance Field Officers confronted in the future with similar situations in other geographic areas. In addition, it is hoped that the lessons learned will assist in the decision-making process of Field Officers by outlining the variety of resources available to them and offering possible scenarios in which such resources may be properly applied with maximum results.

## POLITICAL CONDITIONS IN UKRAINE

On March 30, 1994, Ukraine conducted what were described as its first post-Soviet, democratic parliamentary elections. The elections were generally declared by the Conference on Security and Cooperation in Europe (CSCE) and other international election observation groups to be basically free and fair and lacking in any systematic attempt to alter the results via voter fraud, or other violations of the law. However, the results of the election were very troubling to democratic advocacy groups and the USAID Mission in Kyiv for a variety of reasons.

The most immediate problem facing the USAID Mission was the disenfranchisement of voters. Of the 450 seats up for election in the Verkhovna Rada, the Ukrainian unicameral legislature, only 337 were filled on Election Day, leaving roughly one quarter of the citizens of Ukraine in a total of 113 districts without direct political representation. This disturbing situation was the direct result of a legal mechanism of Ukraine's fledgling democracy--its Soviet-era election law. This law, under which all 450 deputies were to be elected in single-mandate districts, suffered from a number of technical and drafting weaknesses. First and foremost was the requirement that 50 percent of the voters in a given district must turn out to vote in order for the elections to have been legally conducted. In addition, the law stated that in order to be elected, a candidate must receive at least 50 percent of the votes cast in the district, and that number must consist of at least 25 percent of the registered votes in the district. In districts failing to meet the turnout standard, repeat elections were required to be conducted, in which the entire electoral

process was to be repeated, including the nomination and registration of new candidates,<sup>1</sup> a new campaign period as well as new voting and tabulation procedures. The turnout standard applied to these elections as well.

In districts meeting the turnout threshold, but in which no candidate received at least 50 percent of the votes cast, runoff elections were to be conducted within 14 days between the two candidates receiving the most votes, again repeating the process of voting and tabulation. Unfortunately, these processes would ultimately prove to be inadequate, as the repeat and runoff elections, while resulting in great expense, filled only about one half of the vacant seats, since turnout was frequently below 50 percent and candidates continued to receive less than the threshold required pursuant to the law.<sup>2</sup> The result of these provisions was that parliamentary seats remained vacant, making even more difficult the daunting task of adopting important legislation related to Ukraine's democratic political and economic development.

In addition to the disenfranchisement issue, the Mission was confronted with other problems stemming from the election law. Because certain provisions in the law made the nomination and registration of political party candidates much more demanding than by independent candidacies, most candidates chose to run as "independents." As a result, many of the newly-elected deputies were not affiliated with any particular political party or association, which in turn caused most of the campaigns to be run on local issues, as opposed to many of the key national reform-oriented issues facing the new Rada. These included such crucial policies as privatization, legal and constitutional reform, relations with the

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<sup>1</sup> The law prevented candidates from the previous election to be nominated for Repeat Elections. See Article 44, Law on Election of People's Deputies.

<sup>2</sup> Ultimately, a total of 34 seats remained vacant for the four-year period between elections.

Russian Republic and stabilization of the national currency As a result, there was great uncertainty as to the relative emphasis that would be given these issues, and even greater uncertainty as to the true political orientation of the large number of non-affiliated Deputies This, in turn, had the potential of leading to the failure of this “independent” chamber to organize coalitions, with the ultimate consequence being “gridlock” on key issues before it Finally, the uneven regulations concerning nomination of candidates further limited the ability of an already beleaguered political party movement to gain momentum in establishing a multi-party system of elections in Ukraine

The election law suffered from other weaknesses Its campaign finance provisions limited the amount that a candidate could raise and spend However, there were no real enforcement measures that would allow these provisions to be enforced As a result, many candidates ignored the spending limits Ambiguities in the law regarding adjudication of complaints of fraud and other violations as well as unclear standards for filing complaints resulted in general confusion among voters, candidates, and even among the courts as to the proper procedure for resolving electoral-related disputes

It is also important to note other contextual factors incorporated by DG officers at the USAID Mission as they began to formulate plans for electoral assistance for the four-year period leading up to the next Rada elections in 1998 First, the conduct and aftermath of the 1994 elections left a legacy of raised citizen expectations regarding the future conduct of democratic elections in Ukraine Citizens expected more professionalized electoral management that would increase their confidence in the electoral system Second, elections assistance programs had been in place since January 1994, including the traditional range of short-term assistance programs provided by USAID--domestic and international observation,

technical assistance, and election-related commodities. These programs were implemented by the International Foundation for Election Systems (IFES), the International Republican Institute (IRI), and the National Democratic Institute for International Affairs (NDI).

Third, Ukraine had become the third largest recipient of assistance from the United States, with \$225 million budgeted for FY1997. As a result, much attention was directed toward the importance of the US-Ukraine relationship by policy makers and the international press. With substantial assistance from the United States, Ukraine had already begun the process of eliminating its nuclear arsenal, heretofore the fourth-largest in the world, and had entered into an agreement forming the Gore-Kuchma Commission, designed to facilitate good working relationships between the governments of the two countries at the highest levels. President Leonid Kuchma had made known his desire to establish good relations with the West, indicating his administration's wish to seek membership in the Council of Europe, and an increasingly formal relationship with NATO. All of these events underscored the desire of mutual engagement between the United States and Ukraine. This sense of importance attributed to the relationship was reflected in the size of the Mission in Kyiv and the extensive amount of elections assistance the United States Government was prepared to provide to assist in the preparation and conduct of the 1998 elections.

#### NEEDS ASSESSMENT

Given the historical and contextual issues outlined above, The Kyiv Mission quickly ascertained the following areas of need in election administration assistance:

1. The election law required either extensive revision or the promulgation of an entirely new law, and
2. The professionalism and level of competence of the Central Election

Commission needed to be dramatically improved in order for any new or amended law to be properly implemented

In addition, the Mission began to outline what it considered to be the appropriate resources to allocate in order to address the identified electoral needs of Ukraine

- 1 Legal experts with requisite expertise to assist in the drafting of electoral legislation and experience in legal and judicial reform in Eastern Europe and the former Soviet Union, and
- 2 Election administration experts to provide training and expertise to the Central Election Commission

Finally, it was important for the Mission to evaluate the likelihood of success of the agreed-upon interventions. In order to do so, the Mission needed to take into consideration the political and cultural factors existent in Ukraine that were affecting the interactions of the newly elected deputies of the Rada. Due to the divided and unknown political composition of the Rada, there was no clear consensus among the various factions<sup>3</sup> that radical change in the existing election law was, in fact, necessary. And, even if such consensus did exist, it was unlikely that election law reform would be pursued until after the adoption of a new constitution by the Rada.<sup>4</sup> From an implementation perspective, there was no formal mechanism in place to provide legal assistance to any effort by the Rada to amend the election law.

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<sup>3</sup> Political parties and unaffiliated deputies in the Rada organize themselves into ad hoc coalitions known in Ukraine as Factions

<sup>4</sup> Ukraine at the time was operating under what was termed a 'Constitutional Agreement' or 'Small Constitution,' which attempted to resolve temporarily the separation of powers conflict between the Executive and Legislative Branches and which also required the Rada to adopt a comprehensive constitution within a certain time frame

## LEGISLATIVE DRAFTING ASSISTANCE

Taking into account these and other factors, the Mission made the decision that the recommended interventions were the correct ones to pursue and that the need for the intervention outweighed difficulties presented by the potential political obstacles within the Rada. Furthermore, if properly implemented, the interventions had some likelihood of success. Working through IFES, the Mission authorized the organization of a team of legal experts, which included a federal Judge and a practicing attorney from the United States.<sup>5</sup> The Legal Team began an analysis of the election law, based upon a combination of a comprehensive review of its provisions and actual election observation.<sup>6</sup> Upon completion of the review and analysis, the Legal Team prepared a formalized list of recommendations<sup>7</sup> on changes in the election law.

The recommendations presented by the IFES Team did not “merely list the problems plaguing Ukraine’s elections, but proposed concrete solutions in the form of specific statutory language to be included in the law.”<sup>8</sup> Among the most significant proposals were the following eight recommendations:

- 1 Elimination of the 50 percent turnout requirement,
- 2 Elimination of vote total requirements for candidates,
- 3 Amendment of the nomination and registration provisions of the law to ensure equal treatment for party candidates and independent candidates,
- 4 Strengthening of the campaign finance provisions to allow for better

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<sup>5</sup> The Honorable Bohdan Futey, United States Court of Federal Claims and Stephen B. Nix, Esquire, Baker & Hostetler, Attorneys at Law.

<sup>6</sup> The Legal Team had served as international election observers in the 1994 elections as well as subsequent repeat voting and repeat elections.

<sup>7</sup> IFES, *Proposals Regarding the Parliamentary Election Law of Ukraine*, 1994.

<sup>8</sup> *Elections Today Magazine*, Vol. 6, No. 2, 1996.

- enforcement of contribution limits,
- 5 Elimination of "Negative" voting (i.e., crossing out the names of candidates the voter does not support) in favor of "Positive" voting (i.e., marking the ballot for the candidate of choice),
  - 6 Provision for resolution of electoral disputes by both election commissions and courts of general jurisdiction,
  - 7 Formation of a larger, more centralized Central Election Commission independent from the legislative and executive branches of government, and
  - 8 Movement away from the 450 seat single mandate electoral system

#### Survey Research as a Political/Analytical Tool

Having targeted the areas of law requiring the most extensive reform, IFES then conducted a national survey of Ukrainian citizens to ascertain public opinion regarding the election process in general and the election law in particular.<sup>9</sup> Respondents were asked a series of questions designed to elicit information on whether the public felt the elections had been conducted fairly, whether the public supported change in the election law, and the type of changes, if any, that were advocated. The results of the survey clearly demonstrated that voters felt there were problems with the existing law and felt that it should be changed. In particular, the survey results showed that the public was strongly in favor of amending the law to eliminate the need for continuous elections (see Table 1). In other words, the turnout and vote total standards should be eliminated.

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<sup>9</sup> Socis/Gallup nationwide survey of 1,200 respondents in Ukraine, March 1995.

## Table 1 Public Opinion on Elections and Voting

(data to follow)

Armed with this national public opinion survey data, the Legal Team was able to present the findings to political elites in Ukraine and to make persuasive arguments for the need to change the law. The political elites who were briefed on the survey data included Rada Deputy Volodymyr Stretovych, Chairman of the Committee on Law Policy and Legal Reform, his committee had jurisdiction over legislation related to elections in Ukraine. The Legal Team also met with key members of this committee, other Deputies in the Rada, President Kuchma's legal advisor<sup>10</sup> and other prominent players in the presidential administration, as well as key members of the judicial branch<sup>11</sup>.

The survey data served as a powerful instrument for building consensus among leaders of the various branches of government. Shortly after the survey findings were shared with these key political actors, Chairman Stretovych publicly announced that election law reform would be a priority of his committee, along with constitutional reform. At about this time, Stretovych and his committee approached IFES about the possibility of formalizing an arrangement under which the Legal Team would assist in the drafting of election legislation. IFES entered into negotiations with the committee and

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<sup>10</sup> Counsel to the President, Leonid Pidpalov

<sup>11</sup> Chief Justice of the Supreme Court Vitaliy Boyko and Deputy Chief Justice Stefaniuk

ultimately executed an Agreement under which the Legal Team agreed to serve as Outside Counsel to the Committee on Law Policy and Legal Reform for the purpose of assisting with the following draft laws and other legislation

- 1 A New Constitution for Ukraine,
- 2 A New Law on Parliamentary Elections,
- 3 A New Law on Presidential Elections, and
- 4 A New Law on Local Elections

The Agreement granted the Legal Team access to all committee meetings related to the legislation referenced above, which the Legal Team began attending. In addition, Chairman Stretovych created a working group to begin drafting a new parliamentary election law, which included two members of his committee<sup>12</sup>, the Chairman and Secretary of the Central Election Commission,<sup>13</sup> and the two members of the Legal Team. During the summer of 1995, the working group completed a draft, which included nearly all of the proposed amendments contained in IFES' Proposals. At that point, the Stretovych Committee began refining the draft, with the assistance of its IFES Outside Counsel.

These efforts culminated with the presentation of a draft law by Chairman Stretovych to the Rada on October 12, 1995. In voice votes recorded on October 18, 1995, the Rada adopted certain articles in their first reading, including the elimination of the turnout standard, implementation of positive voting, and the implementation of some form of a "mixed" system of elections.<sup>14</sup> The entire law was scheduled for a second vote, and perhaps final reading on March 11, 1996. However, the Presidium of the Rada decided to table the

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<sup>12</sup> Deputies Oleksander Lavrynovych and Igor Kolushko

<sup>13</sup> Chairman Ivan Yemets and Secretary Igor Tseluiko

<sup>14</sup> A combination of single-mandate seats and seats filled through proportional representation using party lists

vote to allow for a new Constitution to be passed first. The rationale provided by Speaker Oleksander Moroz and accepted by a majority of the deputies was that legislators wanted to be certain that provisions of any new election law did not contradict the wording of the constitution <sup>15</sup>

After adoption of the new Constitution, to be discussed below, the Rada ultimately adopted a new election law, following the deliberations of a special committee formed within the Rada to make final changes in the draft law. While the Legal Team did not contribute to the final draft of the special committee, most of the major proposals supported by the team were included. Among the highlights of the new law were the following provisions:

1. A mixed electoral system in which half of the seats in the Rada (225) would be contested on a proportional basis through party lists and half of the seats would be contested in single mandate candidate elections.
2. The institution of positive voting,
3. Elimination of all turnout and vote total standards,
4. The right to file electoral disputes in courts of law,
5. Greater rights for domestic election observers, and
6. A permanent Central Election Commission,

#### LESSONS LEARNED

The USAID Mission facilitated extensive reform of the electoral process by assisting in the legislative process through the work of IFES. There were several key factors in the success of this aspect of election administration assistance. First, the Mission was able to weigh important political and other contextual factors in deciding upon intervention in the

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<sup>15</sup> *Elections Today* at page 20

legislative process. Second, qualified personnel and necessary resources were identified and brought to Kyiv by IFES. Third, the Mission approved the agreements to provide necessary assistance and personnel to the Rada. Fourth, the Mission was able to monitor and adjust assistance to meet the situational demands and the political requirements of advising a host government on legislative matters.

### CONSTITUTIONAL REFORM

At approximately the same time that the Mission was grappling with the issues related to the new system of elections, a movement was initiated in Ukraine to draft a new constitution, as required by the interim agreement between the President and the Rada. This effort was important to the electoral reform assistance as it was anticipated that the new constitution would outline certain basic electoral rights. These rights included, among others, the right to vote, the right to be a candidate for office, and the right to associate fully in political parties, blocs, and other electoral-related associations.<sup>16</sup> In addition, the new constitution would likely set forth the timing of elections, the length of parliamentary terms of office, and other important guidelines related to the election of the legislative branch of Ukraine.

The Mission authorized IFES and the Legal Team to carry out two activities regarding the constitutional drafting process. First, the Legal Team conducted extensive analysis of the initial draft Constitution, as prepared by the Presidential/ Parliamentary Commission,<sup>17</sup> and made numerous recommendations regarding specific constitutional language. Their proposals included limiting the number of “positive rights” guaranteed

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<sup>16</sup> These rights are set forth in Articles 36, 70 and 71 of the Constitution of Ukraine.

<sup>17</sup> This Commission was formed pursuant to an Agreement between President Kuchma and Parliament. Both the legislative and executive branches had an equal number of representatives as drafters.

under the constitution, the codification of an independent judicial branch of government, and inclusion of separation of powers and judicial oversight language. Many of the recommendations were included in the draft prepared by a subsequent commission created to refine the initial draft<sup>18</sup> and survived this final scrutiny. The final draft was ultimately adopted by the Rada, as previously mentioned.

#### Additional Survey Research

Second, IFES undertook another national survey, which contained a number of questions designed to elicit public opinion concerning the constitutional process, as well as the proposed substance of the new constitution.<sup>19</sup> The survey findings identified clear majorities among citizens who expressed opinions in support of a new constitution and that the citizens of Ukraine were ready to participate in a national constitutional referendum, rather than have either the President or the Rada make the final decision on a new constitution (see Table 2).

Table 2 Public Opinion on Constitutional Reform  
(SOCIS/Gallup May 12-19, 1996, N=1660)

As you are aware, Parliament has been debating the proposed Draft Constitution over the last few weeks. In your opinion, should Ukraine adopt a new Constitution or should it continue to operate according to the current Constitution?

Adopt a new Constitution	67%
Continue to operate as is	12%
Don't Know	21%

If a constitutional referendum were held tomorrow, would you definitely participate, probably participate, probably not participate, or definitely not

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<sup>18</sup> Parliamentary Special Temporary Commission formed to prepare a draft for discussion and debate in parliament

<sup>19</sup> SOCIS/Gallup survey of 1 660 respondents, conducted May 12 19 1996

participate?

Definitely would participate	38%
Probably would participate	32%
Probably not participate	10%
Definitely not participate	13%
Don't Know	7%

Who should have the final decision on the adoption of the new Constitution the President, the Supreme Rada, a specially elected Constitutional Assembly, or the public in a national referendum?

President	12%
Supreme Rada	17%
Constitutional Assembly	11%
National Referendum	48%
Don't Know	12%

At about this time, several political issues arose with regard to the new constitution. Ukraine was under pressure from its own self-imposed deadline for adoption of a new constitution, and from the West, as Ukraine was the only remaining former Republic not to have adopted a new constitution. The draft prepared by the Parliamentary Commission appeared to be bogged down in the Rada due to disagreement over such issues as the official language and the status of Crimea. In response, President Kuchma had issued vaguely worded threats to the Rada that he would call for a referendum on the constitution and allow the voters to voice their preferences. There were varying opinions concerning the seriousness of this threat.

On June 25, 1996, a member of the Legal Team<sup>20</sup> met with President Kuchma and briefed him and members of his staff on the survey findings, the President also received a copy of the full survey report. Exactly two days later, President Kuchma appeared on national television and announced that his intention to call a national referendum on the constitution, to be conducted within 90 days. In support of his call for a national

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<sup>20</sup> Judge Bohdan Futey met with President Kuchma

referendum, President Kuchma cited the inability of the Rada to adopt a new constitution. Significantly, the presidential-called referendum was to be held on an earlier draft version of the constitution,<sup>21</sup> not the draft being debated at the time in the Rada. Within twenty hours after the President's announcement, following an all-night session, the Rada adopted Ukraine's new constitution.

While there has never been any official recognition on the part of the administration as to the effect of the survey results on President Kuchma's actions, it has been confirmed by sources within the administration that the public opinion survey results were instrumental in the President's decision to call for a referendum. This action, in retrospect, appeared to have forced the hand of the Rada and resulted in the adoption of the constitution.

### LESSONS LEARNED

These events demonstrate the potentially powerful effect that accurate survey research data can have on building consensus among political elites with regard to democratic reform. They also demonstrate that in order to maximize the effectiveness of survey data, it is imperative that the findings are presented to the appropriate political actors within the host country in an appropriately readable format. Accordingly, it is not sufficient for the Mission to be in possession of such data. Rather, the Mission must take steps to ensure that the survey research is provided to political elites with the institutional political ability to enact desired reforms.

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<sup>21</sup> The referendum was to be conducted on the draft of the Presidential/Parliamentary Commission which granted far more power to the executive branch than later drafts.

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## ELECTION ADMINISTRATION ASSISTANCE

Another problem facing the USAID Mission DG officers in their attempt to target resources for the 1998 elections was the actual administration of the electoral process in Ukraine. This task was the province of the Central Election Commission (CEC), a relic of the Ukrainian Socialist Republic of the Soviet Union. Pursuant to the election law, the CEC was formed by the Rada based upon the nomination of the Speaker of the Parliament<sup>22</sup> and was responsible for organizing and conducting parliamentary elections and implementing the election law throughout the territory of Ukraine.<sup>23</sup> Despite these seemingly vast powers, the CEC was a relatively weak body for a number of reasons.

First, the law made the CEC accountable to the legislative branch and, as a result, dependent upon the Rada for funding and for political approval of its decisions. This made the CEC a hesitant and uncertain bureaucracy, hardly the independent, neutral implementer and arbiter of a very political process that international observers, including USAID, hoped it would be. Second, although nominally empowered to enforce the law, the CEC did not have real authority to do so. Its enforcement powers were worded so ambiguously in the law that, in reality, it was very difficult to enforce its legal powers and political will upon the lower level electoral commissions,<sup>24</sup> as well as upon candidates, political parties, and other participants in the process. The CEC was not even empowered to interpret the law, as the election law required the CEC to “apply to the parliament for interpretations of this law.”<sup>25</sup>

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<sup>22</sup> See Article 14(2), Law on Election of Peoples’ Deputies of Ukraine

<sup>23</sup> Id. at Paragraphs 7(1) (2)

<sup>24</sup> Constituency Commissions were formed in each of Ukraine’s 450 constituencies and polling station commissions were created for each of Ukraine’s roughly 32,000 polling stations

<sup>25</sup> Id. at (3)

Third, election administration was largely decentralized in Ukraine, with the law conferring significant authority to constituency election commissions and polling station commissions to implement the law within their respective jurisdictions. On the other hand, local commissions were confused and uncertain at times with respect to the proper application of the law. This was due again to poor draftsmanship in the law, thereby making certain applications unclear. These commissions often turned to the CEC for direction when the election law did not provide sufficient guidance. In many cases, they were informed that responsibility for resolution of such issues lay on the local level commissions and, therefore, were not provided with the requested information and guidance.<sup>26</sup>

#### NEEDS ASSESSMENT

Many of the problems identified above were outlined in IFES' Recommendations of the Parliamentary Election Law, along with specific recommendations on how to address them through amendment of the election law. In particular, it was recommended that the law should be amended to create an independent CEC, with more centralized and formalized authority and responsibility in the administration of elections. In addition, it was recommended that the CEC be vested with clearly delineated powers to implement and enforce all aspects of the election law, in conjunction with the lower commissions, where appropriate. One of the bases for the argument to centralize control at the CEC was the fact that local commissions were implementing the law in an extremely capricious and inconsistent manner. As a result, provisions in the law prohibiting the issuance of multiple ballots to one family representative and group voting, for example, were enforced in some polling stations and utterly ignored in others. It was felt by IFES' Legal Team that

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<sup>26</sup> See IFES Proposals Regarding the Parliamentary Election Law of Ukraine

consistent application of the law was an important factor in free and fair elections and that this could best be served by allowing the CEC to have more central and direct authority over the lower commissions

As a result of IFES' input and their own evaluation of the electoral process in Ukraine, the USAID mission made the decision, discussed earlier, that the current levels of professionalism and competence manifest in the CEC required dramatic improvement. This was true in a general sense, but was equally important to the successful implementation of a new or extensively amended election law, which USAID had already made a substantive and budgetary priority for intervention. In effect then, the Mission was taking steps to implement a second intervention (raising the level of competence of the body charged with election administration) while facilitating and complementing the implementation of the earlier intervention (election law revision)

Consistent with its decision to allocate resources in order to address the identified electoral needs of Ukraine, USAID sought to provide training and expertise to the CEC. IFES, having already established working relationships with the CEC, was also selected to provide these services and expertise. USAID had previously invested in considerable commodities assistance to the CEC in the form of 27 computers and a number of fax machines in early 1994. Several of the computers were assigned to the CEC while the remainder were sent to oblast (state) government offices where they were to be used by constituency election commissions. The objective of the assistance was to increase communication capabilities between the CEC and local commission officers, to facilitate the reporting of election results to the CEC and to provide information to the public on candidates, political parties, election results and turnout figures. Based upon this rather sizable original investment, it was

decided that continuity in such assistance to the CEC was a requirement for the CEC to develop professionally, as desired by USAID

In 1995 and 1996, USAID approved several training programs for the members of the CEC and their staff. The first training program was aimed at maximizing the use of the existing IFES-supplied computers in the upcoming election process. Several seminars on the use of the computer systems were jointly organized by IFES and the CEC, providing additional training for actual operators of the computer systems. These seminars were held in Kyiv. In the meantime, IFES personnel traveled to all of Ukraine's 24 oblasts in order to make periodic assessments of the condition and utilization of the computer equipment.

Concurrently, additional programs were developed to expose members and staff of the CEC to new educational and training opportunities. These efforts included sending a CEC delegation to the United States to confer with their American counterparts on the organization and implementation of elections and the use of computers in election administration. The trip culminated with CEC officials observing local and congressional elections in Maryland, Virginia, and the District of Columbia. The Chairman of the CEC later participated in a similar IFES program in the United Kingdom.

Perhaps the most significant events in the attempt to make the CEC more independent and professional came in the legislative area. The new Law on the Election of People's Deputies of Ukraine, described above, contained more comprehensive powers for the CEC and set forth its legal responsibilities more clearly than in the previous law. For example, the law required that the CEC "lead the system of election commissions" and to "direct their activity,"<sup>27</sup> thus giving the CEC full authority over lower commissions. The new

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<sup>27</sup> Article 11 Section 2 Law on Election of People's Deputies of Ukraine

law also eliminated the requirement that the CEC certify questions regarding the law to the Rada for their consideration and interpretation, thus curtailing legislative control over how the new law was to be interpreted

In addition to the new election law, the Rada also adopted the Law of Ukraine on the Central Election Commission, which states that the CEC is "an independent state body which shall exercise its authority independently of other branches of government"<sup>28</sup> and is granted the power to administer parliamentary, presidential and local elections in Ukraine <sup>29</sup> The new authority assists in the institutional development of the CEC by granting it legal power over all election, including referenda In addition, the law states that decisions of the CEC are binding and are required to be enforced by the appropriate government body <sup>30</sup> The new law increases the likelihood that decisions of the CEC will be respected and implemented, thereby bolstering the confidence of the Commission and providing it with critical statutory encouragement to make difficult decisions on highly politicized issues Finally, the law grants the right to the CEC to submit petitions, when necessary, to the Constitutional Court of Ukraine, asking the Court to interpret the parliamentary and other election laws <sup>31</sup> This right, accorded only to the parliament and the president on other issues, was hailed as limiting the interpretation of the law to the CEC and the Court, and again demonstrating the independence of the CEC from the executive and legislative branches

#### VOTER EDUCATION AND MONITORING

With the adoption of the new election law and the law on the Central Election Commission, respectively, USAID had assisted in the establishment of a legal framework for

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<sup>28</sup> Article 3 paragraph 1, Law of Ukraine on the Central Election Commission

<sup>29</sup> Id at Article 1

<sup>30</sup> Id at Article 12, paragraph 1

<sup>31</sup> Id at Article 14 paragraph 4

democratic elections, thus achieving a key strategic objective. However, in the aftermath of the new legislation, the Mission faced a new set of challenges in assisting with the conduct of free, fair and open elections in Ukraine.

The new law required the conduct of elections under an entirely new system of voting (the mixed system), which required a new system of multiple ballots (party list and single mandate ballots) and a new procedure for selecting candidates/parties (positive voting). All of these concepts were alien to a voting populace previously accustomed to voting under the Soviet system of elections for as many as 70 years. There was concern expressed by the USAID Mission as well as other international observers that these factors would combine to confuse voters and affect turnout, which had been over 70 percent nationally.

#### NEEDS ASSESSMENT

USAID quickly identified the need for a voter education program, designed to raise public awareness of the new system of voting and to make voters more at ease with the prospect of casting ballots under entirely new procedures. This intervention was deemed necessary in order to address these issues and because it was felt that the CEC, also a new entity, was not in a position to undertake such a program unilaterally.

Once the decision on the intervention was made, the USAID Mission assigned responsibility of informing the public to IFES and NDI. Based upon IFES survey research data that identified television as the most widely consumed medium of communication,<sup>32</sup> the decision was made to concentrate on television as the primary means of conducting voter

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<sup>32</sup> IFES May 1996 survey indicated that most of the population relied on television for information on the new constitution. Consequently, it was felt that television was the optimum medium for educating the public. Another SOGIS/Gallup survey conducted in July 1997 confirmed the earlier findings as 62 percent of respondents (N=1,200) reported daily television news viewing, an additional 27 percent reported viewing television news several times a week (combined 89 percent). Neither newspaper reading (combined 41 percent) nor radio news listening (combined 65 percent) matched the breadth of coverage of television in Ukraine.

education programming Working with local television production firms while coordinating scripts with the CEC, IFES produced a total of eight television Public Service Announcements These PSAs dealt with the technical aspects of the upcoming elections, including

- 1 An explanation of the new mixed voting system,
- 2 An explanation of new ballot forms (two types), and
- 3 Instruction on the correct method of completing ballots (positive voting)

NDI also produced a technical-oriented PSA for television and also produced a Get-Out-the-Vote PSA, both implemented by the Committee of Voters of Ukraine (CVU), a domestic, non-partisan, election watchdog NGO funded by NDI

#### Voter Education through PSAs

Due to the fact that USAID had adopted a policy not to purchase air time for the PSAs,<sup>33</sup> IFES and NDI obtained free air time on state and private television stations This was accomplished through a series of negotiations between the USAID Mission, IFES, and NDI and the CEC, the Ukrainian Ministry of Information, and the Verkhovna Rada In order to complement its television time, IFES succeeded in having the audio tape from its PSAs played on state radio stations throughout Ukraine, also without charge

The television and radio PSAs lasting from 30 seconds to five minutes, were aired in the three weeks leading up to the elections and were designed to raise public awareness during that time frame On election eve, a 45-minute block of prime time television programming was allocated for last minute voter education, several of the longer 5-minute

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<sup>33</sup> USAID's decision not to fund air time was due to the prohibitive cost of advertising on state and private television as explained in an Interview with David Black, USAID/Kyiv March 25 1998

PSAs produced by IFES were linked together to form the bulk of the program. The Central Election Commission also aired a 5-minute infomercial that included some of the shorter IFES PSAs. These television and radio PSAs were run free of charge on both state-owned and commercial television and radio stations throughout the country.

### Voter Education through Informational Posters

It was also decided that it would be desirable to attempt to communicate with voters on Election Day as well. In order to do so, it was decided that posters explaining the new ballots and new regulations were to be printed by IFES and distributed to all 32,500 polling stations nationwide. In all, more than 100,000 posters were printed and distributed. A smaller, black-and-white version of the 16 1/2" x 23" five color poster is included as an appendix. These posters appeared in the vast majority of polling stations in Ukraine on election day, according to reporting by the International Election Observation Mission of the OSCE. In the polling stations visited by the authors as well as by members of the US Embassy and USAID staffs, these posters were found prominently displayed for all interested voters to read. In many cases, each voting booth had a poster displayed directly above the area upon which voters would fill out their ballots. The generic ballots presented on the poster were colored to match the actual party list and single mandate ballots and included explicit directions regarding the correct procedures for filling out the ballots properly.<sup>34</sup>

In addition to these election day posters, IFES also produced and disseminated more than 100,000 additional educational posters that informed citizens of the proper

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<sup>34</sup>Regarding the ballots used in the 1998 elections, IFES played an instrumental role in convincing the CEC to shorten the length of each ballot. The Ukrainian single mandate ballots included the names and party affiliations (if any) of candidates, but also included additional information such as age and occupation. The original draft ballots were as long as two meters, with long descriptive paragraphs accompanying each candidate. IFES staff convinced the CEC to limit the amount of material submitted by each candidate. The final ballots were 61 centimeters long or less than 24 inches.

documentation necessary in order to receive election ballots, the new positive voting format, and the different types of ballots that voters would encounter on election day

The last educational element undertaken by IFES was the production of pollworker training manuals for polling station commissioners managing the 32,500 polling sites across the country. These manuals were designed to assist members of polling station commissions in implementing the new law. While the posters and pollworker manuals were generally described as informative and effective, distribution, which was coordinated with the CEC, did not go as planned, particularly with respect to the manuals.<sup>35</sup> The result was that these materials did not always reach their intended destinations. International observers who visited polling stations on Election Day confirmed the absence of pollworker manuals in many polling stations.<sup>36</sup>

#### Domestic Monitoring

The election work by NDI with the Committee of Voters of Ukraine (CVU) was not limited to the production of television PSAs. The CVU, with the technical assistance and financial support of NDI, organized and trained more than 17,000 Ukrainians as domestic election monitors throughout Ukraine. At their press conference on the morning after the elections, the leaders of the CVU declared, "The elections in Ukraine were in general fair, open, and free. The general tendency is that citizens elected those parties and candidates for whom they really voted." But, they also identified violations of secret voting including reported voting outside of the voting booths and group voting. The widespread participation of CVU pollwatcher volunteers served to legitimize further the election administration.

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<sup>35</sup> Interview with IFES Project Director Andre Bouchard, April 1, 1998.

<sup>36</sup> Computer reports of the Organization on Security and Cooperation in Europe on election observation in Ukraine, reports of U.S. observers organized by the U.S. Embassy and USAID.

process in Ukraine According to analysis of OSCE monitor reports, domestic non-party pollwatchers were identified in just under half of the 1091 polling stations visited by OSCE observers (49.22 percent) By far, the most widely identified pollwatcher group was the CVU, with observer identification in roughly 15 percent of the polling stations that had domestic pollwatchers present <sup>37</sup>

If one uses voter turnout as an indicator, the results of all of these interventions were quite impressive According to the CEC, national turnout was over 70 percent <sup>38</sup> While this was slightly below the turnout for the 1994 elections, it places Ukraine in the mainstream of Central and Eastern European standards for voter turnout In addition, if voter comprehension and understanding are used as indicators, informal post-election surveys<sup>39</sup> provide evidence that voters were not confused by the new law, the new methods of voting, or the new ballot forms

### LESSONS LEARNED

The USAID Mission found that interventions designed to educate the public can be successful Key factors in the success in Ukraine were 1) the ability to come up with themes that would stress the points intended, 2) the ability to target the most effective means of delivering that message, which in this case was television, and 3) the ability of USAID, IFES, and NDI to secure through negotiations with government bodies, air time for the planned PSAs The fact that the programs could be aired without charge was critical in the

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<sup>37</sup>The International Republican Institute (IRI) was also active in the 1998 elections in Ukraine but its work was focused exclusively on political party building activities as well as the training of party-affiliated pollwatchers This training program included the production of 15,000 party pollwatcher manuals

<sup>38</sup> Official Election Results of the Parliamentary Elections compiled by the Central Election Commission of Ukraine

<sup>39</sup> A Ukrainian Company funded by the Canadian Agency for International Development conducted personal interviews at random on the evening of March 29, 1998

success of the entire program. The work of NDI, through the CVU, also served to legitimize the election administration process through the mobilization of thousands of Ukrainians as domestic election monitors.

The actions of the USAID Mission and the implementing partners were not without shortcomings, however. While IFES and the Mission had made significant progress in continuing a dialogue with the CEC during the four years between parliamentary elections in implementing the voter education programs, there were breakdowns in communications with the CEC on other election administration reform issues. IFES had provided the CEC with a comprehensive list of recommendations regarding the computerization of the reporting process for the 1998 elections. The CEC, however, did not respond to the advice offered by IFES. In retrospect, IFES had identified exactly the problem areas in the reporting process more than two months prior to the elections. The conduct of the CEC in the days and weeks following the elections proved IFES correct. Unfortunately, remedies for difficulties encountered by IFES in maintaining communications with governmental entities are difficult to identify, but nonetheless constitute an important lesson learned regarding the interactions between USAID-funded implementers and host governments. Neither the Mission, the Embassy, nor IFES, NDI, or IRI is in a position to dictate policy to host government entities. However frustrating it may be for the Mission or the implementers, the correct role for the international donor community is an advisory one.

The actions of NDI and its domestic NGO, the Committee of Voters of Ukraine, also highlight another lesson learned in the context of the 1998 elections in Ukraine. In this instance, systematic reporting of monitoring activities was lacking. It is important that

USAID-funded NGO activities include more systematic documentation. The post-election claims by the CVU leaders of 17,356 monitors at polling stations across Ukraine was not substantiated by the NGO through reporting by individual monitors. While the communications system in Ukraine virtually prohibited immediate responses from the field from 17,000 monitors within hours of the polling station closings, written logs from each CVU monitor could have been collected and analyzed in Kyiv in the days and weeks following the election. In addition, CVU monitors should have been instructed to register formally with the polling station commission by signing the commission registries. Without such systematic information, NDI and the CVU are left to rely on the OSCE sample data. The OSCE findings, generously interpreted, set the number of polling stations with documented CVU monitors at approximately 4,000.

#### BEST PRACTICES

The main interventions undertaken by the Kyiv Mission, as described above, have clearly been a success. First, it can be said with a great deal of certainty that the legislative assistance provided to the Rada was a major factor in the achievement of USAID's objective of new electoral legislation in Ukraine. The type of assistance provided and the type of agreement under which it was rendered should serve as models for USAID missions facing similar situations requiring interventions in the legislative arena. Uniformly, our interviews with Deputies of the Rada, members of the Central Election Commission, as well as judges serving on the Constitutional Court indicated that the assistance provided by USAID through IFES was crucial to the successful adoption and implementation of the electoral law of Ukraine.

Second, the facts show that survey research was an extremely important tool for

building consent for both reform of the election law, and for the adoption of a new constitution. There is no doubt that possessing reliable data can assist the Mission and its designated implementing partners in making articulate arguments in favor of reforms which are strongly supported by the public. Furthermore, the Kyiv Mission has made ample use of survey data in implementing its results framework through the R4 reporting process.

Third, the results of the election in terms of public participation demonstrate that interventions designed to educate the public can be effective. Careful thought must be given to the delivery system for public educational efforts. In the case of electronic media delivery systems, it is vital that broadcast time be secured in advance of any such undertaking. In the case of print educational efforts, special care must be taken to secure a reliable host country partner to facilitate distribution of materials to ensure that the desired intervention falls short because of shortcomings in the delivery system.

Finally, the Mission deserves high marks for donor coordination. Beginning in May of 1997, an election donor coordination group was formed. In addition to all of the activities outlined above conducted through USAID, numerous other governments, international foundations, and a variety of NGOs were all attempting to provide electoral assistance to Ukraine, leading up to the 1998 parliamentary elections. The USAID mission was instrumental in maintaining coordination among the more than twenty donor entities involved in the elections as the group met regularly in the months leading up to the March 1998 elections. At these meetings, donor entities discussed activities and, at times, joined forces with other organizations in order to implement programs more effectively and efficiently. It is not enough to coordinate simply the entities affiliated with USAID, the Mission also has the responsibility of making sure that USAID-funded activities are not

duplicating other assistance efforts While some of the organization leaders in the group complained that the number of participating groups was too large (see Table 3), it remained important that clear lines of communication were open and that all organizations were aware of the activities of their allied donors

Table 3 Election Donor Coordination Participants

Adenauer Foundation	British Know How Fund
Canadian Embassy	Eurasia Foundation
Embassy of Japan	Embassy of Netherlands
European Commission	Friedrich Ebert Foundation
Hans Sidel Foundation	IFES
Int Renaissance Foundation	IREX ProMedia
IRI	NDI
OSCE	Parliamentary Development Project
US Embassy	Internews-Ukraine
USAID	USIS
EIM	OSCE-Office of Democratic
Ukrainian Congress Committee of America	Institutions and Human Rights