

# PRELIMINARY OBSERVATION REPORT, SECOND ROUND

## CANADA UKRAINE FOUNDATION OBSERVER MISSION FOR UKRAINE'S PRESIDENTIAL ELECTIONS RUNOFF FEBRUARY 7, 2010



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UKRAINIAN CANADIAN CONGRESS

CONGRÈS DES UKRAINIEN-CANADIENS

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**February 9, 2010**  
**Kyiv, Ukraine**

*Kyiv, February 9, 2010* – Ukraine’s electoral law encourages and permits interested international Non Governmental Organizations (NGOs) to observe the country’s elections.

The **Canada-Ukraine Foundation (CUF)** is a Canadian charitable foundation established by the *Ukrainian Canadian Congress* to coordinate, develop, organize and deliver assistance projects generated by Canadians and directed to Ukraine. CUF has organized and lead several internationally-acclaimed election observation missions to Ukraine, earning the highest award available to a Canadian civic organization – the Certificate of Commendation – bestowed by the Governor General of Canada in 2005.

The **Ukrainian Canadian Congress (UCC)** brings together under one umbrella all the national, provincial and local Ukrainian Canadian organization throughout Canada. Together with its member organizations, the UCC has been leading, coordinating and representing the interests of one of Canada’s largest ethnic communities (1.2 million) for almost 70 years.

CUF, in association with UCC, established its 2010 Election Observation Mission (EOM) in August 2009 and reviewed and commented at the request of the Prime Minister of Ukraine on *the Law on the Election of the President of Ukraine* (“*the Election Law*”) to the Speaker of Parliament, the President’s Administration and the Cabinet of Ministers. The Verkhovna Rada chose not to make any changes based on the 22 Recommendations made by the CUF/UCC expert panel on *the Election Law*.

On January 3, 2010 CUF deployed 65 experienced and trained Canadian election observers in 6 oblasts (regionals) for the First Round of the Presidential Elections. On February 1<sup>st</sup>, CUF deployed a further 50 observers, in 6 oblasts which were chosen in cooperation with the CANADEM Observer Group, so that 24 of the 25 oblasts, plus Kyiv and Sevastopol, were covered by Canadian international observers. In addition, a substantial number of experienced CUF observers were part of the 200 person CANADEM observer delegation.

The EOM worked in cooperation with international observers from numerous other election observation groups, including the *Organization for Security and Cooperation in Europe* (OSCE), *CANADEM*, *Ukrainian Congress Committee of America* (UCCA) and the *World Congress of Ukrainians* (WCU).

The EOM assessed compliance of the electoral process with domestic legislation and international standards for democratic elections. This statement of preliminary findings and conclusions is issued prior to the final certification of election results. The EOM will publish a comprehensive Final Report after its completion of a more extensive review process to include more specific details of its observations. CUF and UCC are committed to assisting the authorities and civil society of Ukraine in meeting its democratic electoral commitments in order for its citizens to enjoy the basic rights and freedoms to which they are entitled.

## **Our January 18<sup>th</sup> 1<sup>st</sup> Round Report and intervening period to February 7<sup>th</sup>, 2010**

The Report of the EOM on the 1<sup>st</sup> Round was presented and published on January 18<sup>th</sup>, 2010. It set out positive aspects of the electoral process, but it also set out some serious shortcomings. It contained a number of short term and long term recommendations (see Report of January 18<sup>th</sup> attached).

One key observation and short term recommendation stated:

*“1. It is not clear why the large contingent of international observers from Georgia were not accredited for the first round and we look forward to either being provided with the reasoning for this decision or a confirmation that they will be allowed to serve as observers for the second round.”*

It is disappointing to find that the CEC did not register or accredit a single observer from Georgia for the Second Round, despite various attempts by the Georgian EOM to register their observers, including a final reduced group of 239 observers. The CEC apparently failed to get a majority of its members to approve the resolution to accredit these international observers. If the CEC saw fit to register and accredit two groups of Russian/CIS observers in the range of 400 of observers each, then it should have allowed the Georgian EOM to be accredited as well. The same fate almost befell the additional observers from the Ukrainian Congress Committee of America, who also could not be accredited on two separate meetings of the CEC for lack of a majority vote, although there were enough CEC members present at the meeting to approve such an accreditation.

The CEC would do well to note that allowing international observers to monitor an election, particularly one as important as a presidential ballot, is a fundamental hallmark of free and confident democracies.

It is also very disappointing that the Verkhovna Rada (Parliament) of Ukraine, in passing the *Law on the Election of the President of Ukraine* (“*the Election Law*”), chose not to allow its citizen groups the right to observe the election process of the President of Ukraine, although civil society organizations have such a right to monitor parliamentary elections in the much clearer and more comprehensive *Law of Ukraine on Election of People's Deputies of Ukraine*. CUF underscored this in its Report of September 8<sup>th</sup>, 2010 on *the Presidential Election Law* delivered to the Speaker of the VR, to the Presidential Secretariat, and to the Cabinet of Ministers, as did the Venice Commission of the Council of Europe. If one wished to build a strong civil society, and strong and durable democratic institutions that have the respect of the citizenry, it would have been very important to maintain the right of civil society organizations to monitor presidential elections as an important safeguard for the transparency of the election process.

### **The February 3<sup>rd</sup> election Law Amendments concerning “quorum” and the replacement of election commissioners.**

On February 3<sup>rd</sup>, 2010 Parliament, in a special session passed amendments to *the Election Law* to (1) remove the 2/3 quorum requirement for precinct and district election commissions; (2) to allow for the removal from office of election commissioners for being absent at meetings (“neyavky”); and (3) to fill vacancies on the recommendation of city, village and raion (county) heads. On February 5<sup>th</sup>, the President of Ukraine enacted these amendments. The amended Law “changed the rules” of the election at a critical juncture a mere three days before the runoff voting day. All CUF field teams

observed that the end-stage amendments disrupted the election process by sowing confusion and apprehension in all election commissions.

Removing the quorum requirement for legally mandated election bodies, i.e. election commissions, in haste and without providing any minimum quorum substitute, is far distant from democratic jurisprudence. CUF observers, members of election commissions, and constitutional experts throughout Ukraine expressed concern that two election commissions could operate in the same polling precinct. While the day of voting did not confirm these fears, this particular set of amendments sowed particular uncertainty in the minds of many election commissions, who as ordinary citizens performing a critical civic function, deserved better from their Parliament.

CUF observation of the impact of these amendments upon the election process confirmed yet again that election administration in Ukraine is far too partisan. Indeed, the Presidential Election Law requires 50/50 political party candidate appointments at the precinct and district level for runoff elections, while the *Law on the Central Election Commission* provides each Parliament faction with representation on the CEC, in effect presuming that the nation's supreme and only permanent election administration body is a priori a politicized institution.

Our 1<sup>st</sup> Round Report recommended the “creation of a permanent election civil service at the district and local election committee level”. It is our recommendation that Ukraine reform its election laws and process, and address the partisan nature of the election commissions at the national, district and local levels. The selection of commissioners based strictly on their partisan affiliations at all three levels, is not appropriate and causes the tensions and concerns that we witnessed and which led to the removal of the commission quorum requirements.

Ukraine should adopt the election practices of other democratic countries. The Central Election Commission and the District and local Election Commissions should be transformed into a respected, non-partisan, and independent professional civil service. They must be given the legislative authority to intercede with the local Election Commissions to ensure fair and transparent voting processes. Commissioners must be able to act to protect democracy rather than partisan interests. Party observers must be able to scrutinize the election and be diligent in their representation of their candidate; however they must be restricted and must not engage in the intimidation of commissioners and voters.

An additional item of electoral reform must be the financing of elections. It is commonly known that the current Presidential elections cost each side over \$500 million. As recommended by some members of the European Parliament, Ukraine should bring forward a set of legislative amendments to limit the amount of spending by any candidates to a predetermined, more modest maximum level.

## **Field Observation Summary**

As noted, CUF field teams conducted observation in seven administrative entities: Kharkiv, Kirovohrad, Kherson, Mykolayiv, Zakarpattia and Kyiv oblasts as well as Kyiv City. The field teams observed and reported via a standard set of forms that allowed for investigation and evaluation of all phases of the voting and vote tabulation process and related aspects. During their deployments the CUF field teams visited and observed the work of 29 district election commissions

("DEC"s) and 454 precinct election commissions ("PEC"s). Highlights on voting day observation follow:

Opening of voting facilities – In the large majority of PECs investigated, the morning preparatory meetings were conducted largely in accordance with the Law and relevant CEC regulations.

- In a number of PECs, commission chairs opened the safe before the formal start of the meeting, however typically with all commissioners already present.
- At some polling stations, there was open access to both the preparatory meetings as well as to offices with the safes containing ballots et. al at various times before and on the morning of voting day.
- Nearly all polling stations observed in the 2nd Round opened on time, although some were pressed for time given the mere 45 minutes provided by the Law for preparatory meetings.
- In an encouraging departure from the Bila Tserkva DEC 91 incident of the first Round (where some 25 PECs failed to open their doors until early afternoon), no such calculated late openings were observed during the second round of voting.

PEC Commissioners – Despite the potentially dangerous amendments to the Law concerning abolition of a commission meeting quorum requirement and simplified commissioner replacement procedures, voting day practice showed that nearly all PECs observed had full complements of (16) commissioners, and that parity of candidate representation was largely abided by in the areas observed by CUF.

- In several PECs, 1 or 2 commissioners were absent without cause (i.e. not carrying the mobile ballot box etc.) during the polling station visit.
- In several PECs observed the day before and during voting day, a commission member had been dismissed following a verbal complaint to the DEC. The DEC, when contacted, could not satisfactorily explain the grounds for dismissal. This situation gives cause to some concern as the Law requires all decisions concerning filling of commission positions to be justified and documented.

Secret ballot – Although the large majority of polling stations observed before and during voting exhibited sufficient numbers of voting booths placed in such a way that protected the secrecy of the voting process, in some polling stations the cloth curtains of these booths were of materially sufficiently translucent, or inappropriately mounted, to allow for calculated spying on voters by those with malicious intent.

- More serious, however, were a considerable number of occasions where crowding at polling stations and lines led to voters milling about near voting booths, or between voting booths and ballot boxes, holding ballots that could be observed by third parties.
- Only one voting carousel circumstance was directly observed by a CUF observer, although there were several second hand reports of voters attempting to leave polling stations with ballot papers, and some second hand reports of camera flashes being set off in voting booths. In the one direct case the CUF observer's vigilance and purely coincidental shift of physical position to effectively stand between the polling station door and the suspect, caused the suspect to stand down, turn around, walk and cast his ballot, and then leave the polling station without further ado.

Voter lists & mobile voting – The operational rollout of a State Voter Registry in time for this election was of great assistance in assuring some minimal consistency in voter list quality. While in the first round of the election on January 17 there were some serious deficiencies at some PECs in voter list quality, it is clear that the newly established Voter Registry Office system had taken

account of most voter list inclusions made after the first round of the election. The continued operation of this VRO system will inevitably lead to better and more accurate voter lists at following elections. Nonetheless, there were still serious problems with voter lists, due to the contradictions in the Law, which does not clearly establish how voter additions can be made by PECs proper, and by a series of contradictory CEC resolutions on voter list matters, which in some instances clearly went beyond the letter of the Law, (something that is strictly forbidden by Article 19 of the Constitution of Ukraine).

- CUF observers saw a range of varying voter list addition practices in the lead up to and during voting day at the second round.
- A very few PECs added voters on voting day only via court decisions, many also allowed additions to voters appearing with the relevant local VRO certificates, and a nearly equal number added voters to lists by their own decision, often undertaken without calling a proper meeting, and rarely properly documented.
- Hence, the second round was marked by a plethora of legal and semi-legal practices that in their totality opened the door to essentially unlimited voter list inclusions, should the decision to commit systemic fraud have been taken.
- The issue of mobile voting, though cited as an area of grave concern before the first and second rounds of voting at this election, did not prove as serious as CUF observers anticipated. At the large majority of PECs visited, the number of voters slated to vote via mobile ballot box was within a number that any well equipped and well oriented PEC mobile ballot box team could reach.
- At some PECs, marginally high numbers of 70 or more mobile vote slots were encountered, and in a very few the number exceeded 90, the approximate limit for manageable and legitimate mobile voting in an urban environment on a clear day.
- A last minute CEC resolution on voting day morning mandating that two, rather than three PEC commissioners accompany each mobile ballot box, was unevenly implemented as most DEC did not timely inform their subordinate PECs of the change, which among others, was in direct contradiction of the Law.

Voting – Turnout at most PECs observed was similar to that of the first round, though somewhat higher at some PECs than others. Voting was generally conducted calmly, crowds at most PECs observed were not overly large at peak times, with some exceptions.

- At most PECs, voters were properly identified and voted by their internal passports or other acceptable identification (in rare cases).
- However in some PECs in the Zakarpattia and other regions, voters appeared to have received ballots without clear adherence to voter identification procedures. When these issues were further investigated, no election official could be found willing to be video or otherwise recorded as corroborating such and similar appearances and allegations.

Poll closing, PEC tabulation and DEC delivery – The majority of poll closings observed during the second round were conducted in close, though not always strict, compliance, with the provisions of the Law. In some cases PECs sought to unjustifiably rush through the tabulation procedure.

- At one poll in the Zakarpattia region, there was evidence of a calculated attempt by some PEC members to leave the door open to ballot and count manipulation. The mechanism of choice was to leave the voter lists unpacked and unsealed (in one case the CUF observers were told the lists were "packed up and in the safe for security purposes", and upon further videotaped enquiries the PEC management opened the safe and quickly packed the voter lists inside, claiming they had mistakenly "forgotten" this key task).

- The DEC and locality (Berehovo county) were marked by other irregularities before and during voting day.
- Transfer of ballots to DEC's took place without event in all observations, although some PEC members were forced to wait long hours for their packages to be reviewed and accepted at the DEC's. CUF observer presence appeared to facilitate this process at some DEC's, particularly when observer teams commenced video recording at the DEC's following delivery.

DEC performance – DEC performance in the majority of DEC's investigated was satisfactory.

- Most DEC commissioners were reasonably oriented in the law, including the last minute changes regarding abolition of quorum requirements and commissioner substitution.
- Fortunately, there were only odd cases of commissioner substitutions recorded at or by DEC's while observed by COF teams before voting day.
- DEC commissioner absenteeism was minimal, however some DEC's were permeated with unease that a candidate representative might choose to make substitutions.
- Some DEC's did not properly support the PEC's in their area.
- In Zakarpattya, in particular, CUF observers noted a number of PEC's that had changed addresses and locations, but did not have the requisite signage, causing problems with turnout on voting day, as some voters simply could not find the polling stations at their new locations.
- In some cases DEC's could have done a better job to ensure that PEC's were outfitted with the requisite number of ballot boxes and other election paraphernalia in working condition.

Observer access – For the most part CUF observers were given adequate access to PEC and DEC facilities, commission meetings, and electoral documentation. In some cases, however, PEC's attempted to ignore observer questions, especially on issues concerning voter list additions, mobile voting (it was almost as if some PEC's were waiting for some undefined event that might quickly increase the quantity of such applications or voters in the two days before voting day...), and in many cases access to voter lists was restricted to voters, and when CUF observers inquired about this problem, could not get a proper response.

- One case of grievous interference with the work of CUF observers occurred in Kharkiv City: in DEC 173, several days before voting day, a CUF observer team was accosted immediately upon entering the facility, and manhandled by two DEC commissioners with an apparent staff lawyer. The observers duly registered at the DEC thereafter, but were prevented from addressing questions to the DEC, which appeared to be holding a meeting. The DEC chairperson, delegated by candidate Tymoshenko, appeared to be in a state of fear. One of the other members of the DEC moved to exclude the CUF team, and on the third vote, the DEC decided to do so. The police were summoned and the team were led out. The entire case was videotaped by CUF. The following day the CUF Kharkiv Team Leader visited DEC 173 and was also manhandled by the same DEC commissioners who had instigated the incident the prior day. A criminal complaint was filed with the Kharkiv Police the following day and is pending, although the investigator in charge has avoided the CUF team since the complaint was filed and he watched the videotape.
- Other instances were limited in number and consisted primarily of stonewalling rather than aggressive action.

## **Final Comments:**

We would like to give credit to the thousands of local Ukrainian citizens who worked so hard in Round 2 to ensure transparent, well run elections. Not all were perfect, but we saw many that proved that Ukrainians can put aside their political views to try to ensure a fair grassroots election.

CUF wishes to note that we did observe a marked improvement in the administration of both PECs and DEC's during the second round 2010 presidential elections in comparison to the first round. And of course in comparison to the 2004 presidential elections, voting irregularities experienced then were not reported to have occurred on a large scale during the voting process on Election Day 2010.

On balance, in the oblasts under observation, there was an adequate attempt to meet internationally accepted standards for free and fair elections. However there remains an overriding concern that the institutionalization of free and fair elections requires a greater exercise of political will at the highest levels.

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