

STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE (NDI) INTERNATIONAL PRE-ELECTION DELEGATION TO AZERBAIJAN

Baku, August 10 , 2000

- I. Observations and Recommendations
- II. Additional Considerations
- III. Conclusion
- IV. The Delegation and Its Work

This statement is offered by an international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Azerbaijan from August 5-10, 2000. The purposes of the delegation were to express the international community's interest in and support for a democratic election process in Azerbaijan, to assess electoral conditions and the political environment in which the upcoming parliamentary elections are taking place and to offer an accurate and impartial report on the pre-election situation.

NDI will organize additional delegations for Azerbaijan's November 5 elections. This delegation concentrated upon an analysis of the political context and the legal framework for the elections and especially upon the controversies presently surrounding that framework. Later delegations will examine more closely the campaign conditions, election day procedures and post-election developments.

I. OBSERVATIONS AND RECOMMENDATIONS

Azerbaijan now has achieved, after years of war and turmoil, the capacity to honor the right of its citizenry to democratic elections, in accordance with international standards and Azerbaijan's international commitments. On the shoulders of the country's leadership therefore rests the heavy responsibility of deciding whether or not Azerbaijan will continue on the road to integration with the international community of democratic nations.

Unfortunately, Azerbaijan's political process is at an impasse over the legal framework for November's parliamentary elections. It is crucial that this impasse be overcome immediately. Every day that goes by represents a critical opportunity that is lost. Soon the process will have proceeded too far to achieve genuine democratic elections by November. All political parties therefore share responsibility to work constructively to find a way to move forward to organize elections that will enjoy the confidence of the people of Azerbaijan. This effort is particularly important because elections in 1995, 1998 and 1999 did not meet international standards.

The Milli Mejlis (parliament) passed the parliamentary election law on July 5. The law included a number of improvements over the prior law and addressed favorably recommendations offered by the international community, including comments from NDI and numerous recommendations negotiated between the government and the OSCE's Office for Democratic Institutions and Human Rights (ODIHR). President Heydar Aliyev sent letters to parliament urging that the law include several additional critical recommendations. Unfortunately, parliament ignored this urging, and the parliamentary election law was adopted with serious flaws. ODIHR issued press releases on July 7 deploring shortcomings in the law and on July 21

to attend the first three meetings of the Central Election Commission (CEC). Parliament refused to address the demands of the opposition and concerns expressed by the President and the international community. Rather, on July 21 parliament amended the CEC law, removing the super-majority provisions for the CEC and territorial election commissions (TECs), thus negating a carefully negotiated agreement with the opposition that required cooperation between the governing and opposition parties. This precipitated a political crisis and a threatened opposition boycott of the elections.

Several points must be addressed to overcome the impasse. The points include:

1. Accreditation and Access for Domestic NGO Election Monitors.

The final version of the parliamentary election law omitted an explicit provision stating that election monitors from domestic nongovernmental organizations will be provided access to all aspects of the election process. Such a provision was included in an earlier draft of the law and has been included in prior election laws. Domestic monitoring of elections by NGOs allows citizens to exercise their rights to participate in public affairs and helps build confidence in election processes. Azerbaijan has a commitment under the OSCE's Copenhagen Document to provide for such election observation. Legal provisions should be made - either by changing the election law or by CEC order - so that domestic NGOs are provided access to monitor all aspects of the election process, including access to the polling stations to observe voting and counting and access to the TECs and the CEC to observe the consolidation of election results.

2. Allowing Citizens' Signatures for More than One Party.

The legal framework now limits citizens to providing their signature in support of the candidacy of only one political party's qualification for the elections. This unnecessarily restricts the citizen's freedom to express support for political pluralism. It also sets conditions under which citizens could be coerced into being associated with one political party and which undermine confidence in secrecy of the ballot. It also undermines parties from qualifying for elections because when they collect a signature they have no way of knowing whether the person has already signed for another party. Legal provisions should be changed – either by modifying the law or by action of the Constitutional Court – to allow citizens to sign petitions in support of the candidatures of as many political parties and persons as each citizen chooses.

3. Removing the Six-Month Requirement for Parties.

The law provides that to participate in the elections a political party must have been registered at least six months prior to the announcement of the elections. This requirement was applied retroactively, which disqualified certain parties. Three principles should be applied: a) time restrictions on participating in elections should be only as long as is reasonably needed for administrative purposes; b) restrictions should not be imposed on the basis of political affiliation or in other ways prohibited by international human rights obligations; and c) restrictions should not be applied retroactively. The present six-month registration requirement violates each of these principles. The requirement therefore should be

actions of the Milli Mejlis or perhaps by the Constitutional Court.

4. Applying the Super-Majority Formula to the CEC, TECs and PECs.

The Milli Mejlis adopted the law on the CEC on June 9, 2000. The CEC law contained provisions for the ruling party, opposition parties and independents to each select one-third of the CEC's members, with the government and the opposition to each approve one of the independent members. CEC decisions were to be by two-thirds majority, thereby giving the government and the opposition a veto power, while a two-thirds quorum requirement also provided each side with the ability to hold the CEC from reaching decisions. This formula was the product of extended negotiations conducted under the auspices of ODIHR. The agreement represented a major breakthrough in Azerbaijan's political process. The TECs were to be based on this same formula.

The opposition refused to attend the first three meetings of the CEC, and on July 21 the Milli Mejlis amended the CEC law, negating the super-majority provisions. This has led to an opposition threat to boycott the elections.

Dialogue therefore is required to re-establish an agreement for cooperation among the governing and opposition parties in administering the elections. The original provisions of the CEC law concerning composition, voting and quorums for the CEC and TECs should be restored, because they represent a balance of political forces necessary to ensure confidence in and the integrity of the election process. Experience demonstrates that such agreements should be extended to require cooperation among opposition and governing parties in the precinct election commissions (PECs) as well. This would help ensure political participation and increase needed transparency.

5. Further Discussion of Increased Proportional Representation.

One of the OSCE's recommendations concerned increasing the number of parliamentary seats determined by proportional representation. Increasing proportional representation can provide the basis for a stronger multi-party system. The matter of increased proportional representation has become a significant issue in Azerbaijan's political context. The delegation therefore recommends that the Milli Majlis further discuss expanding the number of parliamentary seats determined by proportional representation.

6. Immediate and Continuing Dialogue.

An immediate and continuing dialogue is needed to address these and other important issues so that the present impasse can be resolved and a potential boycott avoided. Government representatives as well as leaders of all political parties must conduct the dialogue constructively and in good faith. Moreover, through good faith efforts a consensual approach could be achieved for implementing the legal framework for elections.

II. ADDITIONAL CONSIDERATIONS

election process complies with Azerbaijani law and international standards. The parliamentary election law and the CEC law do not address all of the issues in sufficient detail to meet this challenge.

While the delegation concentrated largely on matters discussed above, a number of additional issues came to its attention. Several were addressed in NDI's June 7th comments on the election law and more will be addressed by NDI in the weeks ahead. The Institute also looks forward to the recommendations of other organizations concerned with Azerbaijan's election process. The delegation nonetheless noted the following additional considerations:

Verification of Voter Registration Lists.

Azerbaijan's voter registry has not been verified in recent years. It will be important for the CEC to address ways to ensure the integrity of voter lists, including broad voter education efforts so that prospective voters take advantage of the opportunity to check and make corrections to the lists. Political parties should obtain copies of the voter lists and devise ways of verifying that their supporters appear properly and that other problems are identified and corrected. Civic organizations (NGOs or public associations) also should devise ways to verify the voter lists as part of election monitoring activities. The international community should assist the efforts as appropriate.

Numbering of Ballots.

In the past, there have been significant problems with ballot box stuffing in Azerbaijan. One important way to control ballots so that they do not illegally enter ballot boxes or the tabulation of results is to number the ballots and keep careful records of their movement. Azerbaijan obtained machines for numbering ballots but has not yet required that they be numbered. The CEC should take immediate action to ensure that this is done and that effective ballot control mechanisms are implemented.

Public Recording of Protocols at TEC's.

An important problem in Azerbaijan's past elections has been an inability to verify that vote counts from polling stations are accurately consolidated during the tabulation of election results. Providing certified copies of PEC protocols to political party and candidate agents and to observers, in accordance with the law, will help to address this problem. Additional steps also are necessary, such as announcing publicly the results recorded on PEC protocols once they are presented to the TECs. This can be done by reading the protocols aloud - in the presence of political party and candidate agents and observers - as they are recorded on TEC protocols, so that party and candidate agents can compare the numbers read to copies of protocols they received at the PECs. The agents could then agree or object to the numbers and record them before they are reported to the CEC. The results from each PEC could also be entered onto a large chart that is available for public inspection on election night as the results are received. These measures will add transparency and increase confidence among parties, candidates, observers and – most importantly – the public.

Adequate Resources for the CEC and Subordinate Election Commissions.

Conducting elections is expensive both in providing adequate human resources and material. As the CEC develops its workplan and budget, adequate resources should be made available so that the CEC and its subordinate election commissions can properly accomplish their tasks. Both the government and the international

voters require adequate accurate information about the parties and candidates in order to make an informed and free choice at the ballot box. Parties and candidates therefore should be provided adequate access to the mass media, especially television. News coverage of parties and candidates should be accurate. In addition, media rights should be respected. Regional television stations should not be forced to cease broadcasting during the election period as has been the case in the past. Newspapers and periodicals should be able to obtain sufficient quantities of newsprint at normal international market prices without interference by regulatory agencies.

III. CONCLUSION

From NDI's experience around the world, it is clear that public confidence in an election process and the perception of fairness are as important as the letter of the law. Where a non-democratic legacy exists, as in the case of Azerbaijan, the government has a special responsibility not only to ensure that the election process meets minimum legal standards and is administratively correct, but that the process is free from the perception of partisanship. This is particularly true where the ruling party has an overwhelmingly predominant position in parliament. In such circumstances, extraordinary steps are required to build confidence in the process so that the public feels free to exercise rights required for democratic elections. At the same time, all political parties and political leaders have to accept the challenge to work in the longer-term national interests as they seek to win the best position through elections. The weeks and months ahead will present large challenges in this respect if the current impasse is resolved. NDI will continue to monitor developments and offer assistance to those working to advance Azerbaijan's democratic process.

IV. THE DELEGATION AND ITS WORK

The present delegation included: Professor Shlomo Avineri, Director of the Institute for European Studies at the Hebrew University of Jerusalem and former Director-General of Israel's Ministry of Foreign Affairs; Alex Grigorievs, former deputy to Latvia's parliament; Mjusa Sever, Advisor to the President of the National Assembly of Slovenia; and Patrick Merloe, NDI Senior Associate and Director of NDI Programs on Election and Political Processes. The delegation was joined by Peter Van Praagh, NDI Program Director for Azerbaijan, and Joe Hall, NDI civic trainer. It was assisted by Timothy Fairbank, NDI Program Officer.

The delegation met with: the Chairman and members of the Central Election Commission; President Heydar Aliyev's chief of staff and legal advisors; leaders of the ruling and opposition political parties; members of parliament; candidates; representatives of the news media; leaders of civic organizations concerned with the election process; representatives of the diplomatic corps and the international community, including the Organization for Security and Cooperation in Europe (OSCE); and others who are concerned with the process leading to the elections. In the course of its work, part of the delegation traveled to Khachmaz to meet with local representatives of the government, electoral authorities, political parties and civic groups.

Copyright © National Democratic Institute for International Affairs (NDI). All rights reserved. Portions of this work may be reproduced and/or translated for non-commercial purposes provided that NDI is acknowledged as the source of the material and is sent copies of any translation.