



PRE-ELECTION ASSESSMENT TO KOSOVO

STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE (NDI)

Pristina, October 15, 2009

I. Executive Summary

This statement is presented by a delegation organized by the National Democratic Institute for International Affairs (NDI) to support the election process in Kosovo. From October 11 through October 15, 2009, the delegation assessed the political environment and administrative preparations in advance of the Republic of Kosovo's November 15, 2009 municipal and mayoral elections. The delegation conducted a series of meetings with a broad spectrum of Kosovar political leaders, civic activists, and electoral authorities, as well as with representatives of the international community. Meetings were held in Pristina, Mitrovica, Gjilan, and Gracanica.

The delegation included: Karan English, a former United States Congresswoman; Matthew Frumin, a NDI elections expert and elected official in Washington, D.C.; and Carlo Binda, NDI/Kosovo Senior Resident Director. The members of the delegation collectively have participated in many electoral and political assessments around the world, including several in Central and Eastern Europe. The delegation's work was supported by the NDI offices in Kosovo. NDI has conducted democracy programs in Kosovo since 1999.

The purposes of this assessment are to demonstrate the interest of the international community in the development of democratic electoral and political processes in Kosovo, and to present an accurate and impartial assessment of the electoral environment and its implications for democratic development. The delegation conducted its activities according to the Declaration of Principles for International Election Observation, comparative electoral practices and Kosovar law. NDI does not seek to interfere in Kosovo's election process. The Institute recognizes that it is the people of Kosovo who will determine the credibility of their elections and the country's democratic development.

Kosovo's local elections represent an important opportunity to strengthen democratic institutions, advance the empowerment of minority communities through decentralization, and continue Kosovo's transition to a democratic political system. These elections are Kosovo's first as an independent country and its first elections presided over by a domestic election body. As such, they represent both a test and an opportunity for Kosovo's democratic institutions.

The delegation found that the election framework and administrative preparations, along with the general political environment, are basically sound, albeit with legal and technical improvements that will need to occur following this election cycle. The key, therefore, to conducting successful elections will be for electoral actors to comply fully with the legal framework, including the political party/candidate code of conduct.

NDI will continue, through its support to domestic monitoring and regional observation missions, and other programs, to support the upcoming elections process.

II. Background

The 2009 municipal elections are the fifth elections to be held in Kosovo since 1999. Up until the independence declaration in February 2008, the Organization for Security and Cooperation in Europe (OSCE) chaired the election body responsible for administering the election process in Kosovo. Now the Central Election Commission (CEC) of the Republic of Kosovo is mandated to organize, administer, and supervise the election process.

Through these several cycles of elections, Kosovar capacity and institutional ability to administer and effect elections has been developed, as have the abilities of parties to contest elections and civil society to monitor the election process. In the post-independence period the CEC, its Secretariat, the Municipal Elections Commissions (MECs), and the Election Complaints and Appeals Commission (ECAC) will be fully mandated by law to administer and adjudicate the elections. Civil society, political parties, and the public will have a role in supporting the legal authority resident in these bodies.

Political parties began to contest elections in a post-conflict environment, often focusing on the project of establishing independence. Over time, the parties have gained electoral political experience over several election cycles and have increasingly focused on other critical policy issues of the day. New parties have emerged to add to the competitive nature of electoral politics, including some representing Kosovar Serb communities.

While Kosovo's political landscape has included parties representing minority communities (Ashkali, Bosniaks, Egyptian, Gorani, Roma and Turks), Kosovar Serbs had not participated fully in the electoral process nor the institutions of government prior to the 2007 elections. In the national and municipal assembly elections of 2007, a small number of Kosovar Serb parties did participate in elections and were included in the subsequent coalition government.

With the declaration of independence in 2008, Kosovar Serb parties faced critical choices to remain in Kosovo's political life or to leave the institutions to which they were elected. Ultimately, most of the Kosovar Serb representatives remained in Kosovar institutions. This important decision and their work within the institutions to develop their communities will be an important factor in 2009.

As part of its commitment to adhere to the principles outlined in the the “Comprehensive proposal for the Kosovo Status Settlement” (known as the Ahtisaari plan), the government of Kosovo proceeded with a decentralization program, transferring authorities and competencies from the central government to municipalities. This decentralization plan also included the creation of new municipalities with concentrated Kosovar Serb populations. Three new municipalities (bringing the total number of municipalities in which the elections will be contested to 36) were established, and the boundaries of a fourth were expanded in September of 2009, each with majority Kosovar Serb populations.

These new municipalities offer the opportunity for Kosovar Serbs to participate in electoral politics at a municipal level with the same enhanced powers and authorities of all other local governments. The right and ability to participate in elections in these communities will be balanced against the call by Serbian authorities to boycott the Kosovo elections.

Nevertheless, some 20 Kosovar Serb political entities (parties, citizen’s initiatives, and independent candidates) have been certified to contest elections throughout Kosovo. Competitive elections may have the effect of increasing interest among this community’s citizens.

III. Observations

Election Framework

The November 2009 municipal and mayoral elections are being conducted under an election law enacted in 2008, which replaced the body of regulations applied by the United Nations Mission in Kosovo (UNMIK) under United Nations (UN) Security Council Resolution 1244. The law provides that members of municipal assemblies will be elected based on votes cast for parties and candidates on open lists. Mayors will be elected by a majority system. If no candidate wins fifty percent plus one in the November 15 elections, there will be runoff elections between the two highest vote earners in that municipality on December 13. None of the political actors or commentators with whom the delegation met challenged the fairness or adequacy of the terms of the governing law.

The election law provides that the CEC is to administer the elections process. The CEC has 11 members, or commissioners. Ten are members representing parties holding seats in the Parliament, including Kosovar Serb (one) and non-Serb minority parties (three). The CEC chair is appointed by the President and is the final member. The CEC has a Secretariat of professional civil servants which supports its work. The CEC receives and certifies applications to participate as political entities and to stand as candidates. It oversees the voter registration process; local courts decide individual challenges to the lists. The CEC leads voter education efforts.

MECs consist of representatives of parties seated in the Kosovo Assembly, and are charged with election administration at the municipal level. The MECs are also supported

by a Secretariat. The MECs are charged with recruiting and training election administrators for polling stations in the municipalities.

Under the governing law, election disputes are referred to a separate body – the ECAC – consisting of five judges. Given the approach taken for the election commissions (political balance as opposed to neutrality of all members), a separate body to resolve disputes, including disputes relating to individual party activities, is sensible.

Notwithstanding the provisions of Article 37 of the election law which appear to compel parties to accept the results of the elections without reservation, the election law framework taken as a whole clearly contemplates that parties have the right to challenge election results through the ECAC and further appeals.

Election Administration

While the CEC and MECs are made up of representatives of registered political parties and have largely met all deadlines to date, political party representatives believe that the CEC and MECs must prove their institutional competence and impartiality in the coming period. To date, as far as the delegation could discern, the election commissions have shown impartiality.

Election administrators have registered dozens of political entities and held a ballot lottery to ensure fairness in campaigning and ballot placement. The CEC conducted a voter education campaign during the confirmation and challenge period regarding the voter lists which has now been completed. The CEC has prepared a voter education campaign regarding the elections themselves which will commence with the start of the campaign period on October 15.

The delegation met with representatives of the CEC and the MECs for Gjilan, Mitrovica, and Pristina to evaluate the readiness of the commissions to administer the elections in their areas. While the commissions had all met the relevant deadlines to date, the representatives candidly acknowledged that an enormous amount of work remained to be finished in recruiting and training polling station officials, conducting thorough voter education, and resolving remaining logistical issues.

In some instances, particularly surrounding the new municipalities designed to give Serbs greater control over local governance in areas in which they have majorities, the challenges are the greatest. The boundaries for the new municipalities were not announced until the final day that candidate applications were due. That meant that, in a few cases, candidates claimed they were unable to qualify for the ballot because they did not know from which communities to seek signatures to qualify for the ballot. On the other hand, many candidates and political entities were able to complete applications given the fact that the notional boundaries of the planned districts were known in advance. At the same time, however, the late formation of the districts exacerbate the challenges of educating voters in those areas regarding the election process and putting in place fully trained election administrators.

Election Complaints and Appeals Commission (ECAC)

The ECAC plays an important role as arbiter of election disputes in the electoral process. It had not been provided with the resources to become fully operational until days before the start of the campaign period and after at least four complaints had been submitted to it. Representatives of the ECAC and most political parties were frustrated by the delay in providing the ECAC with the resources and mandate necessary to do its work. While some political parties were unhappy with decisions the ECAC had made in the past, none challenged its impartiality or the importance of the role it can and should play.

Early Campaigning

One of the pending issues before the ECAC is the question of whether campaigning prior to the official 30-day campaign period, which begins October 15, is in violation of the election law. Candidates from at least two parties engaged in such campaigning, including airing television and radio advertisements and holding election events prior to the start of the campaign period. The ECAC is charged with ruling on whether such activity technically violates the election law. It is clear, however, that early campaigning has been controversial with many political actors, including representatives of parties in which individual candidates engaged in such activity, and was at least seen by many as inconsistent with the spirit of “fair play.”

Voter Lists

The voter lists are derived from the Central Civil Registry. Names are not removed from that registry when people on the registry die or leave the country, and it takes an affirmative act to remove a name. Moreover, there are incentives to keep names on the registry since families may receive pensions or other benefits in the name of a person shown on the registry, even if that person is no longer living or in the country. As a consequence, it is acknowledged that there are many names on the registry of people who are no longer living or are living outside of the country and unlikely to return to vote. In theory, Kosovar citizens living outside of the country have the opportunity to apply for an out-of-country ballot. As a practical matter, given the number of Kosovars living abroad and the limitations of the records relating to their current residency, for the vast majority of Kosovars in the diaspora that option is not practical.

The fact that there are many extra names on voter lists has raised concerns in the minds of many that ballots will be cast in the names of persons who obviously could not have voted themselves. Those concerns about the integrity of the voter lists underscore the importance of protecting against fraud on election day and making the voting procedure and ballot counting process transparent, including fully enforcing requirements relating to the presentation of a valid, current identification, and use of ink sprayed on fingers after a person casts a ballot. These procedures provide checks against an individual casting more than one ballot.

The extra names on the voter lists and resulting inflated number of reported registered voters has a second significance in these elections. Many observers believe that the level of voter participation will be an important measure of the progress towards establishing democracy. However, if the number of registered voters is inaccurately inflated, the calculated percentage of voter participation using that inflated denominator will be lower than was actually the case. In the unique setting of these elections, actual numbers of votes cast compared to the number of votes cast in previous elections is likely to be a more realistic reflection of relative voter turnout.

Fixing the problems related to the voter lists cannot be done in advance of these elections. For these elections, the problems with the voter lists need to be managed through reliance on the protections against fraud on election day. Over the longer term, it will be important to do a full cleaning of the voter lists and to conduct a long overdue census, which will be the basis for new and accurate voter lists.

Transparency of the Voting Process and Counting of the Ballots

Representatives of a number of political parties claimed that there were problems in the voting procedure and counting of ballots in the 2007 parliamentary elections. The parties that complained about such instances of alleged cheating or unfairness in 2007 stated that they chose not to pursue complaints at that time because they did not want to risk compromising the broader goal of achieving independence for Kosovo by challenging the outcomes of important and symbolic elections. Those parties, however, were emphatic that if they perceived similar issues in these elections, they would press complaints through established mechanisms.

One important way to deter fraud and wrongful allegations of fraud is to ensure a fully transparent process with free access by party poll monitors and nonpartisan domestic and international observers from the opening of the polls to the counting of votes, and to make public the results from each polling station so that the summary results are fully transparent to all. The CEC assured the delegation that, consistent with the law, there will be full access to electoral proceedings by party pollwatchers and nonpartisan domestic and international observers, and that polling station results will be provided to party poll monitors and published, including on the internet.

Kosovar Serb Participation

Efforts are being made to ensure that Kosovar Serbs are able to participate in this democratic process, and a wide spectrum of stakeholders we met with expressed their hope that this opportunity is taken. The assessment team learned that there is widespread optimism toward the principle behind and the execution of the new municipalities through the process of decentralization. The process offers real opportunities to include and empower Kosovar Serb communities. As these changes are implemented, it will be important to do sufficient voter education to make sure that voters in those areas can easily access information about the process, including how and where to vote.

The choice to participate belongs to Kosovar Serbs. Two factors, however, should be borne in mind. First, the creation of new Serb-majority municipalities and efforts undertaken by Kosovar authorities and institutions to encourage Kosovar participation offer a genuine opportunity for Serbs to play a central role in their governance at the local level. Second, just as there should be no coercion on Serbs to participate, there should be no coercion to prevent them from participating.

Time will tell whether Kosovar Serbs choose to participate in larger numbers in these elections than in past elections. The level of participation may differ in different areas. Based on reports to the delegation from Serb politicians and civil society actors, it is clear that, in many areas, more Serbs have come forward to run as candidates and serve as election officials than in the past and that more are actively encouraging members of their community to participate in these elections than in past elections.

Participation of Non-Serb Minority Communities and Women

The election law provides for inclusion of non-Serb minorities. The law provides that a Deputy Mayor in each municipality shall be a representative of the largest minority group in that municipality. The delegation met with representatives of the Ashkali, Egyptian, Roma, and Turkish communities. Each community is seeking greater representation in elected municipal bodies and is vigorously and confidently preparing to compete in the elections. Most non-Serb minority parties have representation in some if not all of the election bodies.

The election law includes a quota – 30 percent of candidates – for women, as well as a mechanism in the allocation of seats to give women candidates 30 percent of the seats won by a party. There are, in these municipal elections, more women candidates for mayor than in the last elections. In addition, women are participating in each of the election administration authorities visited by the delegation. The chair of the CEC is a woman.

Adherence to the Code of Conduct

As a way of kicking off the official campaign, representatives of nearly all of the political parties participated in a high profile signing ceremony, at which they publicly affirmed their commitment to adhere to a detailed code of conduct, which is prescribed in the Law on General Elections. The code of conduct prohibits explicit actions and speech that impair a full and democratic exercise of the voting franchise. All candidates and political entities are required to submit a signed copy with their application to be certified by the CEC to contest elections.

These elections are likely to witness vigorous political competition with real choices offered to voters in all municipalities. Such political competition can and should strengthen democratic institutions. Many interlocutors stressed the need to ensure that party competition abide by the letter and spirit of the election law, including the Code of Conduct. The fact that political parties participated in a public ceremony pledging to

abide by the code represents a positive step toward building public confidence in the election process.

Voter Education

The CEC has plans for extensive voter education. The voter education process, however, has not yet begun in earnest, and it is too early to evaluate whether or not it will be effective. It is essential that it provide voters with full and clear guidance on where, when and how to vote. As described above, such voter education efforts will be particularly important in newly formed municipalities. Given the focus on the level of voter turnout as an indication of democratic engagement, it will be equally important to provide voter education on why it is important to vote in these elections.

It is anticipated that there will be candidate debates and fair access to the media for political parties and candidates. Indeed, given the extensive coverage of the political process to date, there is likely to be extensive coverage of the campaigns reflecting very different, if not always neutral, perspectives.

IV. Recommendations

The following recommendations are based on the central premise that the election framework and administrative preparations, along with the general political environment, are basically sound, albeit with legal and technical improvements that will need to occur following this election cycle. The delegation's principal recommendation is that electoral actors ensure their compliance with the legal framework, particularly with respect to the political party/candidate code of conduct.

- **Central Election Commission (CEC):** The CEC and its subordinate bodies should continue to take greater ownership of the process with ongoing support of the international community. In doing so, they should show scrupulous impartiality. Extensive training should be provided to election officials on such matters as access to polls for accredited poll watchers and nonpartisan observers. A thorough voter education program is late in starting and should be accelerated in the 30 days before the elections to minimize the risk of confusion on election day.
- **Electoral Complaints and Appeals Commission (ECAC):** On the eve of the campaign period, the ECAC as a permanent body established in law was provided with facilities to undertake its important work to provide confidence in Kosovo's election process. The ECAC should be given full support going forward to fulfill its important mandate and should do so impartially and with a full appreciation of the importance of its role. The ECAC should describe its role to the public as a means to build public confidence in its impartial authority, and review complaints in a timely and transparent manner.
- **Party/Candidate Campaign Conduct:** Political parties should follow through on their pledges to adhere to the Code of Conduct and pursue their campaigns within

both the letter and spirit of the law. Outside actors should refrain from taking any action that could intimidate voters from participating in the election or change the way they vote. Credible instances of misconduct should be publicly repudiated by political parties, and appropriate internal measures taken, particularly by those parties allegedly tied to such conduct.

- **Minority Community Participation:** Targeted voter outreach and education by the CEC and other relevant actors should occur for minority communities. Government, civil society and political party representatives should actively encourage Serb and non-Serb minorities to participate in the election process.
- **Transparency of Voting/Ballot Counting Procedures:** Election officials should follow through on their pledges, consistent with the law, to guarantee that the voting process is transparent to party and candidate poll monitors and observers from the opening of the polls to the counting of ballots, including by publicizing the final results by polling station.

Following the election cycle, longer term steps should be taken to strengthen institutions in advance of the next elections. Specifically, the ECAC and the CEC should continue to be supported in the post-election period so that the experience of planning and establishing infrastructure close to the time of the elections need not be repeated. Steps should also be taken to resolve the issues relating to the voter lists, whether that is through a census, a new method for establishing voter lists, or removing extra names from the Central Civil Registry.