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Proposal for Azerbaijan Election Law Reform

Introduction

The National Democratic Institute for International Affairs (NDI), For the Sake of Civil Society (FSCS), The Organization for the Protection of Women's Rights (OPWR), and the Election Monitoring Center (EMC), in consultation with the major political parties, offer the following comments and recommendations for improving Azerbaijan's electoral laws and processes.

Recommendations

- **Form Impartial and Effective Election Commissions**

It is important that election authorities at all levels be impartial and effective and that they are *perceived* to be so by the electoral contestants as well as the public.

There are a number of suggestions voiced by Azerbaijani political parties, NGOs, as well as the international NGOs and intergovernmental organizations. All suggestions center on the issue of having politically balanced election commissions, where opposing forces would balance each other to ensure the fairness of the vote count. One way of achieving such a balance is by having a preliminary CEC (during all the elections) and DEC (during the parliamentary and municipal elections) until the candidates for those elections are identified and then set up the election commissions with the equal representation of the candidates or parties.

This approach can and does work effectively in countries where it is difficult to identify politically neutral individuals who also are competent to effectively discharge the responsibilities of election commissions. In previous commentaries concerning Azerbaijan's election laws, NDI has noted the approach described above and alternative approaches to selection of election commission members; OSCE/ODIHR and others have also done so. Any approach adopted for selecting members of election commissions must ensure their impartiality and effectiveness; it must also secure confidence of the political contestants and the public in the members and the selection process.

Experience around the world demonstrates that gaining consensus of the political contestants about each person to be selected for the Central Election Commission is central to gaining the requisite confidence. There are a number of ways to achieve such a consensus. When all of the significant political parties are represented in parliament, a supermajority vote, requiring broad support for approving members of the CEC, may be sufficient. When significant political parties or candidates are not in parliament, an ad hoc arrangement bringing together their representatives to agree on CEC member nominations may be needed;

parliament can then act on their appointment or ratification. Even in countries where the executive branch is given the power of nomination or appointment of CEC members, a political agreement can bring together the parties to agree on CEC members with a pledge from the executive to make those nominations or appointments. If a party declines to participate or boycotts the CEC member appointment process, a provision can be made that the process will proceed upon consensus or supermajority vote of the participants.

A consensus method also should be used for the selection and appointment of the Chair of the CEC. In the alternative, once the CEC members are appointed according to a method like the one described above, the members should select their Chair themselves based on a consensus or supermajority process, which ensures wide confidence in the Chair.

Selection of DEC and PECs can be made in the same manner. Where conditions make this impractical, the CEC could appoint DEC members from a list of consensus candidates submitted by the parties/candidates. Selection of members of Precinct Election Commissions also could be made by each DEC from lists of consensus candidates.

- **Allow Citizens to Sign Petitions of More than One Candidate**

Azerbaijan's law currently allows each citizen to sign only one candidate's or party's registration petition. This restriction should be abolished so that each citizen may provide his or her signature in support of the registration of more than one candidate and more than one party. Citizens should be free to express support for political pluralism and be protected from being pressured into supporting a candidate or party – or revealing in the face of possible retribution that they support another. Parties and candidates also would benefit from lifting this restriction because they would not be penalized for gathering signatures of citizens who refused to disclose that they previously signed on behalf of another candidate.

- **Register Candidates Consistently with International Obligations**

NDI has noted many complaints by opposition parties and candidates that the proposed candidacies of persons perceived as “unwelcome” by the government are denied registration by the election administration, based on unclear or arbitrary grounds. During the parliamentary elections in the year 2000, more than half of the opposition candidates faced that situation. NDI suggests clarifying and simplifying the candidate registration process so that the criteria for a candidate's registration are specifically delineated, that timely rulings are required on acceptance or denial of candidate registration, that any denial be promptly explained in writing with an appropriate amount of time to cure deficiencies and that there be a right to appeal denials to an impartial body that has authority to provide effective and timely remedies should prospective a candidate's rights be violated or procedures not be implemented properly. This would ensure that voters are presented with a full and fair choice of candidates during elections and that the right of all qualified citizens to stand for office is respected. These rights are protected by obligations contained in Paragraph 7 of the OSCE's Copenhagen Document and interpretation by the UN Human Rights Committee of Article 25 of the International Covenant on Civil and Political Rights to which Azerbaijan is a party.

- **Publish Detailed Election Results and Allow Monitors Unhindered Access to Results**

Public confidence in election processes requires transparency, including public knowledge about the consolidation of election results. This, in turn, requires detailed accounting of the

process of tabulating results from the polling stations to the CEC. The CEC therefore should publish immediately the results at the District and CEC levels on a polling-station-by-polling-station basis, as well as report immediately the unofficial accumulated results. In this way, political parties and candidates, and the public at large, will be able to compare their records of election results with official documents and confirm the validity of the records and the tabulation process.

Making sure that the votes have been counted and tabulated in a fair, accurate and transparent manner is crucial to the integrity of any election. Without fair, accurate and transparent vote tabulation procedures, public confidence in the election process cannot be established. Therefore, we suggest that:

- The right of all party/candidate agents and nonpartisan NGO election monitors (both national and international) to be present during voting and the vote count be provided for by law and that the law be fully and properly implemented in accordance with international standards and obligations;
- Certified copies of the election protocol at precinct and district election commissions be provided to every party/candidate agent and national nonpartisan NGO monitor who asks for one;
- Precinct and district election results be posted at the entrance to the polling stations and district vote tabulation centers in a visible place immediately after finishing the vote count, and steps be taken to ensure that the posted document remains posted there for several days;
- Official election results be published immediately at the polling stations by Precinct Election Commissions and at the District vote consolidation centers by the District Election Commissions by posting copies of the protocols and providing copies to party/candidate agents, unofficial election results be made immediately available by the CEC on a polling-station-by-polling-station and accumulated basis, and official election results be published by the CEC on a precinct-by-precinct basis and in the accumulated totals not later than 15 days after the elections.

- **Allow Domestic Polling Station Observers without Unreasonable Restrictions**

Every democratic society should encourage its citizens to monitor and evaluate government practices – including election processes – as part of exercising their right to take part in the public affairs of the country. This principle is embedded in the OSCE’s Copenhagen Document, particularly embraced by the obligations of OSCE participating states created in Paragraphs 8 and 10 of the Document. The presence of domestic election monitors, particularly those from nongovernmental organizations, is often the single biggest factor in increasing public confidence in the election process.

The current Law on Public Organizations (Funds) contains inappropriately restrictive provisions (Article 2.4) prohibiting NGOs from monitoring the elections if they receive funding from the foreign sources. These provisions obstruct the monitoring of the elections by NGOs, many of which act upon international grants. The provision violates freedom of association between organizations and violates the right of citizens to participate in public affairs. The abolishment of this inappropriate restrictive provision is important in order to allow Azerbaijani NGOs a genuine opportunity to monitor the election process.

Conclusion

In order to restore and promote public confidence in the political process, prompt and comprehensive political reforms are required. Immediate and open political dialogue must take place among all Azerbaijani political parties. It is vital for opposition parties to participate constructively in the political process. At the same time, pro-government forces must be willing to engage the opposition in an open and fair manner. Political legitimacy is established through genuine, transparent, democratic elections.

June 28, 2002