



**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE
FOR INTERNATIONAL AFFAIRS (NDI)
PROPOSED UNIFIED ELECTION CODE (UEC)**

April 28, 2003

INTRODUCTION

This statement on the proposed Unified Election Code is offered in response to requests for comment from political parties and nongovernmental organizations in Azerbaijan. It is based on NDI's experience in Azerbaijan and around the world in supporting internationally recognized standards for democratic elections.

BACKGROUND

The Institute has organized more than 50 international election observer delegations to countries around the world and has offered over 100 commentaries on election laws in more than 40 countries. NDI has maintained an office in Azerbaijan since 1995. It has sponsored international observation delegations to Azerbaijan to observe parliamentary polls in 1995 and 2000, as well as the 1998 presidential election. NDI representatives closely followed the constitutional amendments referendum in 2002. NDI's activities in Azerbaijan are politically neutral, based on international standards for democratic elections and draw upon comparative experience.

In June 2002, NDI released a statement outlining recommendations to improve the framework for elections in Azerbaijan. These recommendations included the formation of impartial and effective election commissions, changes in the procedures for nominating and registering candidates, the publication of detailed election results, and allowing domestic polling station observers without unreasonable restrictions. Since that time, officials of the government of Azerbaijan, international organizations, political parties and nongovernmental organizations, recognizing that the current legislation is seriously flawed, have discussed various drafts, held public meetings and issued statements on ways to set up a Central Election Commission (CEC). Progress has been made, but this fundamental weakness in the administration of elections that has plagued Azerbaijani politics since independence has not yet been remedied.

CENTRAL ELECTION COMMISSION

Many elements are necessary for organizing elections that enjoy the confidence of the electorate and allow the free choice by citizens to be expressed and respected concerning who shall govern in their name and in their interest. Among these elements are: the ability of citizens to register to vote and freely cast their ballots; the ability of citizens to seek elected office without discrimination or undue restrictions; the ability of citizens to associate into political parties; and the ability of parties and candidates to gain access to news media to seek popular support and to receive accurate and unbiased news coverage.

Central to organizing genuinely democratic elections is the establishment of impartial and effective election administration. Azerbaijan, however, has consistently lacked impartial and transparent election administration that follows both the spirit and the letter of the law. This failure has undermined public confidence in elections and has led international organizations to conclude that Azerbaijan has failed to meet its international obligations and OSCE commitments.

Constituting an impartial and effective CEC and subordinate commissions will be pivotal for achieving genuine elections in 2003 and beyond in Azerbaijan. A new and concerted effort therefore must be made to assure that the members of the CEC are perceived as fair and competent by the majority of Azerbaijan's citizens, including the political competitors themselves.

While various models are used around the world to constitute credible election administration bodies, legislation under discussion in Azerbaijan has not provided the basis for impartial and effective election administration. The basic issue in Azerbaijan is the CEC itself. Attempts to constitute a CEC that would enjoy confidence of the political contestants and the public have failed due to flaws in the legal framework and due to breakdowns in political dialogue.

The consistent failure of each successive CEC to follow Azerbaijan law on the release of election returns demonstrates a disregard for transparency and for the rule of law that has fueled distrust among political contestants and the public alike. Failure to ensure against illegal voting and ballot box stuffing and failure to prosecute perpetrators of electoral offences also have contributed to a crisis of confidence in the CEC that should disqualify current CEC members from reappointment.

Under these circumstances, the criteria for CEC membership and the method of appointment must be developed and agreed by a broad spectrum of society, including a broad spectrum of political parties. It is not enough to adopt legal provisions that meet minimum criteria for democratic elections, but a broad and inclusive dialogue is necessary to address this issue without predetermination.

Given the history of past elections in Azerbaijan, the method of appointment of members of the CEC and subordinate election commissions must be transparent and sufficiently politically inclusive to establish public confidence in the members' and in the commissions' abilities to be politically impartial and administratively effective.

A number of models have been employed by various countries to achieve this, including among others appointing independent personalities with appropriate qualifications and appointing political party representatives to achieve political balance and thus impartial action. In countries that are politically polarized and marked by distrust among political parties, like Azerbaijan, experience demonstrates that it is best to adopt a method for constituting the CEC that requires agreement across a broad spectrum of political parties for the appointment of each CEC member. The exact formula for broad agreement may vary, but good faith dialogue is needed to reach agreement on the exact mechanism.

Once a broad spectrum of political parties, including both those supporting the incumbent government and those in opposition, agrees on the qualification and appointment of each CEC member, a firm basis for confidence is established in the ability of the body to function impartially and effectively. The CEC chair may be appointed in the same manner, thus ensuring confidence in the functioning of the chair. Members of subordinate electoral commissions can then be appointed by the CEC, replicating the confidence in such bodies, with them selecting polling station officials. Subordinate bodies also can be selected in a number of ways, including for example from pools of persons nominated by political parties or from a lottery of registered voters. Such lotteries must be transparent and the credibility of the procedure must be verified by parties and independent monitors.

NDI applauds efforts that have been made in Azerbaijan to create a good faith dialogue on reaching a political agreement concerning the composition of the CEC. Azerbaijani parties should enter into a concerted good faith dialogue, without preconditions, to resolve this matter. It is in the interests of all citizens of Azerbaijan that genuine elections be held and that they take place in an environment worthy of public trust. NDI is prepared to assist such a dialogue in the spirit of international cooperation.