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COMMENTS ON THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA'S PROPOSED LOCAL ELECTION LAW, JUNE 1996 WORKING VERSION

At the request of the Ministry of Justice, political parties and civic organizations in the Former Yugoslav Republic of Macedonia, the National Democratic Institute for International Affairs (NDI) has prepared the following comments on the June 1996 Working Version of the Ministry of Justice's proposal for the enactment of a Law on Election of Bodies of Local Government Units and of the City of Skopje (the "Proposed Local Election Law" or "Proposed Law"). In January 1994, NDI provided comments on the law used to conduct the 1990 parliamentary elections and proposed amendments to that law. Those comments were sent to ministers, members of the Republic Election Commission, leaders of the National Assembly and political parties and civic leaders.

NDI was gratified that many of the comments were incorporated into the final draft of the 1994 election law. Unfortunately, a quorum was not reached in Parliament over an extended period, and the draft election law was not enacted. NDI nonetheless was pleased that a number of the Institute's key suggestions were enacted by interpretations and orders of the Republic Election Commission. In this light NDI responded to the present requests for comments on the Proposed Local Election Law.

NDI formed a Macedonian Election Law Advisory Group to review the Proposed Local Election Law. This group is chaired by Patrick Merloe, NDI's Senior Associate for Election Processes. The group also includes the following election law experts, each of whom has participated in their individual capacity, not as representatives of their respective institutions: Thomas Carothers (USA), Senior Associate at the Carnegie Endowment for International Peace; Jonathan Gould (USA), Visiting Scholar at the University of California at Berkeley; Markus Jelitto (Germany), Election Processes Assistant at NDI; Rafael Lopez Pintor (Spain), Professor of Sociology and Political Science at the Universidad Autónoma of Madrid; Susana Lorenzo-Giguere (USA), formerly with the United States Department of Justice, Civil Rights Division, Voting Rights Section; Lawrence Nobel (USA), General Counsel at the United States Federal Election Commission; and Simon Osborn (United Kingdom), member of the British Electoral Reform Society. NDI is grateful to each member of the group for contributing their time and valuable comments. Their efforts demonstrate the international community's continuing interest in supporting the democratic process in Macedonia.

NDI analyzed the Proposed Local Election Law, reviewed comments provided by the group and developed the comments presented below. NDI's comments are offered in the spirit of international cooperation and with the recognition that no election system is perfect. The comments hopefully will assist those in Macedonia who are attempting to advance democratic development by further improving the Macedonian electoral process.



I. General Comments Regarding the Proposed Local Election Law

There are a number of ways to structure election systems, including those for choosing local governmental bodies. NDI does not take positions on the relative advantages and disadvantages of employing proportional or majoritarian voting systems for particular offices or on similar issues. The Institute addresses how the legal framework for elections complies with international standards and accepted practices for democratic elections. The Proposed Local Election Law incorporates many international standards for electoral processes, including those that call for: casting ballots in general, direct and free elections (Article 2); the use of a secret ballot (Articles 4, 29 and 31); periodic local elections (Article 7); adequate time to conduct balloting on election day (Article 33); orderly voting (Articles 33 and 24); and extending the franchise to disabled voters (Article 36), military personnel (Article 37) and to Macedonians temporarily employed or residing abroad (Article 37).

The Proposed Local Election Law also employs accepted criteria for determining voter and candidate eligibility based on age, citizenship, residence and mental competence (Preamble and Articles 3, and 17); although, a further definition of “permanent residence in the municipality” is needed. The Proposed Local Election Law incorporates several transparency provisions, including calling for political party members of Municipal Electoral Commissions (Article 9), candidate representatives at polling stations (Article 46), observers from local civic organizations (Article 60), and international election observers (Article 60). NDI notes that the explicit provision for domestic election observers from civic organizations is a significant improvement over prior Macedonian election laws. Such transparency provisions help to increase public confidence in the election process, as do provisions obliging state administrative bodies to assist election authorities (Article 13) and prohibiting members of election authorities from standing as candidates in the elections (Article 8).

Other aspects of the Proposed Election Law that incorporate confidence building measures include requiring that ballots be counted at the polling stations immediately after the close of voting (Article 40), that polling station Electoral Boards must file a report to the Municipal Electoral Commission with vote tabulations, relevant facts and circumstances of the election day voting procedures, comments and opinions of the Electoral Board members and of candidate representatives and the signatures of Election Board members (Article 46). Municipal Electoral Commissions (Electoral Commissions) must send similar reports to the National Assembly (Article 48). Moreover, if Municipal Electoral Commissions discover irregularities at polling stations that may have effected election results, new elections will be scheduled (Article 47). In addition, all candidates and voters are entitled to file complaints with the Electoral Commissions (Article 58) and are provided the opportunity to appeal Electoral Commission decisions to a municipal court (Article 59)



II. Weaknesses in the Proposed Local Election Law

In addition to its positive provisions, the Proposed Local Election Law contains a number of important ambiguities, potential contradictions and omissions. Some of the following comments concerning such elements may result from problems in the English translation of the Proposed Local Election Law and therefore may not be applicable. Similarly, the Institute understands that legislation of direct importance to local elections, such as the Law for Territorial Division that will define municipal boundaries, must still be passed.

A. Time Allocations

Perhaps the most valuable resource in preparing genuine democratic elections is time. Time is needed by election authorities to set up the electoral apparatus by: identifying sites for polling stations; recruiting and training electoral officials; reviewing candidate qualifications for the ballot; printing ballots and producing other election materials; making logistical and communications arrangements; preparing and correcting voter lists; and other critical tasks. Time is also needed by the political contestants to develop their programs, messages and campaign strategies, select candidates, recruit campaigners, raise funds, reach prospective voters through various media and numerous other tasks. The Proposed Local Election Law appears to fall short in providing adequate time for a number of these matters.

Election Timing. Article 7 provides for at least one month from the announcement of local elections to the election date and not more than two months. One month may not be adequate to accomplish all of the tasks listed above.

Qualification of Candidates. If one month is all that is allowed from announcement to the election, there would only be 10 days to collect signatures to qualify candidates for the ballot. This is because candidate lists and supporting documentation must be submitted no later than 20 days from the election (Article 21).

Ten days may not be sufficient to organize a group of at least 1,500 voters, who are permanent residents of a municipality, in order to advance candidates for the ballot (Article 14). Moreover, if an Electoral Commission discovers irregularities in supporting materials for candidates, such irregularities must be corrected within three days. Given that approximately 22 percent of the signatures submitted in support of the recent national referendum were disqualified (170,000 of 217,000 were accepted), a group of voters might need to submit substantially more than 1,500 signatures to ensure ballot qualification for their candidates.

Campaigning. The Proposed Local Election Law does not contain provisions for a specific election campaign period. It simply states that campaigning must cease 24 hours before election day (Article 27). Lists of candidates must be submitted to Electoral Commissions within 20 days of the election (Article 21), and Electoral Commissions must make a list of all



proposed candidates within eight days of that time (Article 23). Electoral Commissions are to publish the lists of candidates five days before the election date (Article 24).

Five days is not adequate for prospective voters to learn who the candidates on the list are and consider their position on the list of various candidates. This can effect a decision about voting in closed-list proportional representation systems as is the case for municipal council seats in the Proposed Local Election Law (Articles 2, 41 and 42). Five days is not sufficient time for political parties and voter groups to present adequate campaigns so that prospective voters can learn how to make an informed choice between the contestants. This inadequacy is even more pronounced when candidates for mayor are considered, because mayors are to be elected under a majoritarian election system (Articles 2, 43-45). Even if candidates, parties and voter groups advancing candidates were allowed to begin campaigning 20 days before the election, when candidacies must be submitted to the Electoral Commissions, it is not clear that enough time would be provided. Explicit provisions for a campaign period therefore should be seriously considered and the candidate qualification provisions adjusted accordingly.

Announcing Locations of Polling Stations. Electoral Commissions are to announce the location of polling stations and the places where citizens are to vote five days before the election date (Article 28). This does not appear to be sufficient time for citizens to identify their polling station and verify that they are on the voter list for that location. (See the discussion of voter lists below.) This short time also may create difficulties for planning delivery of election materials.

Setting Up Electoral Boards. Electoral Boards are to be appointed for every polling station at least three days before the election (Article 11). This does not allow sufficient time for the Electoral Board members to become acquainted with their polling station, its location, the voter list and related logistical and communications tasks, even if all Electoral Board members have previously completed training.

Electoral Complaints and Appeals. Electoral complaints (whether concerning irregularities in the candidacy procedure, signature collection or on election proceedings) must be submitted within 24 hours of the events (Article 58). The right to appeal rulings on electoral complaints by Electoral Commissions must be exercised within 48 hours (Article 59). While these provisions and the requirements for complaints and appeals to be decided within 48 hours of being lodged (Articles 58 and 59) set up an expedited process, the time needed to investigate allegations, gather sufficient evidence of relevant facts and to prepare adequate presentation of complaints and appeals often requires more than 24 hours. Extending the time for lodging electoral complaints and appeals to 48 or 72 hours could lead to a reduction in the number of complaints, because the rush to file may be replaced by more rational sorting out of incidents, and the quality of the filings may also be improved.



B. Provisions Concerning Voter Qualification

Voter Lists. The Law on Voters' Lists was passed in 1994; voter registration, however, is not adequately covered in the Proposed Local Election Law. Article 30 states that Electoral Commissions are obliged to prepare evidence on the electoral list for every polling station in their jurisdiction. It also provides that a closed envelope with a defined number of ballots noted on the envelope is to be given to each Electoral Board to be used if a citizen has been unjustly omitted from the voters lists. Article 35 states that a person not on the voter list shall be denied the right to vote unless he/she presents a certificate issued by the appropriate municipal authority verifying his/her entry onto the voter list.

The 1994 Law on Voters' Lists provides for a permanent registry of voters at municipal offices, where the lists can be corrected and amended during the year (Article 29 of that law), and for an eight day period to revise the lists before an election (Articles 33 and 34 of that law). The Proposed Local Election Law should state whether the 1994 Law on Voters' Lists applies to municipal elections, and should specifically state a date for announcing the period for revising the voters lists and the procedures citizens must follow to ensure that they are included on the appropriate voter lists. Article 35 also should explain the procedure for obtaining a certificate from a municipal authority, which will entitle a person not on the list to vote, and provide that the certificate can be obtained on election day.

Voter Identification. The provisions of Article 35 on verification of identity in order to establish the right to vote seem confusing. If a person does not receive and present an invitation to vote from the authorities, she/he must establish her/his identity by providing an identification card issued since April 1, 1994, or a valid passport. If a person does not produce such documents, her/his identity may be established based on an identification card and a certification or decision of citizenship. Establishing identity and citizenship, particularly for certain minorities, has presented problems in the past. The provisions of Article 35 may be an attempt to introduce flexibility in establishing identity, but they should be clarified and should be the subject of substantial voter education.

C. Composition of Electoral Commissions

Article 8 of the Proposed Local Election Law provides that there shall be Electoral Commissions for the municipalities and Electoral Boards for the polling stations. It states that Electoral Commissions are to be appointed by the National Assembly, but it does not define the procedure for appointment. The Proposed Law does not state what authority is to appoint members of the Electoral Boards. One of the critical elements in developing the democratic electoral process is to create impartial and competent election authorities. If this is not the case, the political competitors and the general public will not have confidence in the elections nor will they have confidence in the resulting governing bodies. The public's *perception* of true impartiality and competence of electoral authorities is vital to bolstering the legitimacy of the democratic process. The Proposed Law therefore should define procedures for selecting

members of Electoral Commissions and Electoral Boards that ensure both impartiality and the perception of impartiality as well as the competence of these authorities.

Procedures that would help build confidence might include allowing each political party in Parliament to propose names of persons in each municipality who are respected for their impartiality and competence. Each other party could review the list and challenge names of persons they find that do not meet these criteria. The remaining names from each list could then be placed into a poll and the members drawn by lottery. This would ensure confidence in the permanent members of the Electoral Commissions.

Political party representatives comprising the “changeable” component of the Electoral Commissions will help to ensure transparency in Commission proceedings. Such members will tend to look after the interests of their respective parties but should be encouraged to take on the long-term national interests and ensure competent and impartial functioning of the Electoral Commissions. In this light, the Electoral Commissions could then be vested with the responsibility of appointing the members of the Electoral Boards, using a procedure similar to their own selection.

There is no single acceptable formula for appointing impartial and competent electoral authorities. The one described above simply draws upon several elements that have been employed successfully in other countries. Similarly, there is not one acceptable method for determining the competence of potential members of electoral authorities. The Proposed Law for Local Elections requires that all members of Electoral Commissions be attorneys (Article 8). This may prove to be too stringent a requirement. There are many others in each municipality who are sufficiently well educated and capable of impartial and competent actions. It is common to require that some members of electoral authorities be attorneys but not all members.

D. Provisions for Fair Electoral Competition

Non-discrimination is a central principle in genuine democratic elections. Indeed, the ability to exercise civil and political rights free from discrimination on the basis of race, color, sex, language, religion, national or social origin, birth or other status, property or political or other opinion is an internationally recognized fundamental right. This principle provides the basis for ensuring fair electoral competition, often referred to as a “level playing field.” At the core of the level playing field concept is the degree of equity political contestants actually obtain in matters such as campaign financing, media access and coverage as well as access to material resources. The Proposed Local Election Law contains several important provisions concerning these matters, and further clarification and elaboration would strengthen it.

Media Access and Coverage. Article 25 of the Proposed Local Election Law guarantees political parties and groups of voters sponsoring candidates equal rights to inform the electorate about their programs, to present their candidates in the mass media and to organize election campaigns through rallies, posters, photos and by other appropriate means. While

further provisions could be developed in electoral regulations, Article 25 leaves considerable room for controversy among parties and candidates over media issues.

Standard international electoral practice presently calls for the electoral law to require: (1) equitable access to state controlled mass media for political contestants; (2) non-discrimination towards political contestants in private media and fairs for purchase of time or space at the same costs or less than those charged for commercial advertising; and (3) guidelines for accurate, impartial and balanced news coverage of political contestants. The latter point includes the government's obligation to ensure that the media is free to function as a conveyor of information that the public needs in order to make free and informed choices among the political contestants and to act as a watchdog of government actions, free from intimidation and both direct and indirect censorship.

Access to the electronic broadcast media by political contestants should address types of access provided, amounts of time allocated that are sufficient to convey meaningful messages to the electorate, timing of access programming that are convenient to the electorate, financing for minimum time to communicate meaningful messages to the electorate and objective criteria for allocating time. News coverage guidelines should address providing accurate information, balanced coverage that does not favor certain contestants, the need to distinguish between newsworthy government activities and campaigning by candidates who hold governmental office and other significant factors. It is necessary to provide timely remedies for legitimate electoral complaints concerning the mass media, such as use of the right to reply, and to provide for special bodies to receive such complaints.

Campaign Financing. Article 57 of the Proposed Law on Local Elections provides that funds for local elections are to be provided from municipal budgets. This could prove difficult where municipal budgets are inadequate to this task. Provision should be considered for special electoral funds to cover the expenses of local elections. In addition, Article 57 states that candidates who are elected should receive funds to cover a portion of their election expenses. Providing government funding for election campaign purposes is a widely accepted practice internationally. Providing partial reimbursement to successful candidates, however, does not address level playing field issues. It may be better to consider providing some funds to all candidates who qualify for the ballot. Ballot qualification provisions in the Proposed Law seem to adequately address concerns for preventing frivolous candidatures, and assistance to mount meaningful campaigns at a minimal threshold would help to ensure fair electoral competition.

The campaign financing structure implied in the Proposed Local Election Law calls for private financing of election campaigns. International practice highlights the importance of requiring disclosure of campaign contributions and expenditures during and following election campaigns as an important way to limit illegitimate sources of funds and illegal campaign practices. Such campaign finance disclosure requirements could be added easily to the Proposed Law and deserve consideration.



E. Vote Counting Procedures

Counting Ballots. Article 40 of the Proposed Local Election Law sets forth procedures for counting ballots. It states that all unused ballots are to be counted and sealed in an envelope before the ballot box is opened. This is an important safeguard against unused ballots being illegally marked and entered during the counting process. Next, the voter lists and special voter records are to be reviewed to determine the total number of persons who voted, and this is to be compared to the actual number of ballots cast. If the number of voters is larger than the number of ballots cast, the Article calls for canceling the vote at that station and holding a repeat election. The Article does not address the event of a larger number of ballots cast than the number of those who voted, which could indicate ballot box stuffing. Moreover, the Article should consider a *de minimis* exception. It is common for small discrepancies to develop between the record of the number of voters and the number of ballots cast.

The Proposed Law does not state criteria for determining whether a ballot cast is to be considered valid or void. This is a critical issue that should be addressed in the law. The standard international practice is that as long as the intent of the voter is clear, a ballot should be counted as valid -- even if there are stray marks or other imperfections on it. Provision could also be considered for allowing an appeal to the Electoral Commission of the Electoral Board's ruling on any ballot.

Article 46 details the contents of reports by the Electoral Boards. A clear statement of ballot reconciliation would be helpful, for example forms for tracking both ballots for council and for mayor containing: (a) total number of ballots delivered to the polling station; (b) number of unused ballots; (c) number of spoiled ballots; (d) number of void ballots; and (e) number of valid ballots ("a" should equal the sum of the other entries). The total number of voters registered and of those who actually voted is usually included, as is an account of the exact number of votes cast for each candidate for council and for mayor.

Article 46 should also provide that a signed copy of such forms be given to each candidate representative present at the close of the count and that a signed copy be posted publicly for at least 72 hours. This greatly increases public confidence, and international practice demonstrates that it decreases complaints about the counting and vote tabulation processes. In addition, the Proposed Law should provide that candidate representatives may be present at the Electoral Commissions as the vote counts from the Electoral Boards are consolidated into the municipal results and that candidate representatives be given copies of the Election Commission vote consolidation forms, showing results entered for each polling station.

Run-off Requirements for Mayoral Candidates. Articles 44 of the Proposed Local Election Law provides for a second round, run-off election for all candidates who receive a seven percent minimum of the votes cast in the first round. This creates the real possibility that no candidate will receive the required majority of votes in the second round. That would trigger the need for additional run-off elections. In addition, Article 45 requires a quorum of more than fifty



percent voter participation in the run-offs for the result to be valid, which could necessitate re-elections even if a candidate received a majority in the second round. These provisions create additional expenses for multiple run-off elections and the possibility of voter fatigue, which would reduce turnouts and created the possibility of not successfully electing some mayors.

The standard practice internationally in two-round majoritarian elections is to qualify for the second round only the candidates who finished with the largest and second largest number of votes in the first round. An alternative is to qualify for the second round all candidates who received a minimum but significant percentage of the first round votes and decide the second round on a plurality basis.

III. Conclusion

The Macedonian legal framework has provided a sound basis for genuine democratic elections in the past. The Proposed Local Election Law must be viewed in this context. The Proposed Law contains significant provisions that incorporate international standards for fair and transparent elections. The comments offered by NDI seek to address possibilities for improvements in the Proposed Law and to overcome problems where they are presented. A number of technical points are not addressed in these comments, which NDI would be pleased to cover at a later time. In our efforts to help assess and improve electoral processes in more than 60 countries throughout the world, NDI has found that elections are most successful when: the process is fully transparent; an opportunity is provided for the political contestants to have direct participation in electoral bodies and in forming the electoral framework; civic groups are allowed to monitor all aspects of the process; and appropriate periods are provided for candidate qualification, campaigning, voter education and preparation of electoral administration.

NDI hopes that these comments help elected and appointed officials as well as political and civic leaders to develop appropriate provisions for the election of local governmental offices. The Institute also hopes that the comments assist in further developing public confidence in Macedonia's electoral system. We remain available to provide further information and more detailed consultations.

