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AZERBAIJANI PRESIDENTIAL ELECTION LAW COMMENTARY **June 19, 1998**

On June 9, 1998, the Azerbaijani Parliament passed a law on presidential elections. The National Democratic Institute for International Affairs (NDI) convened an international advisory group of constitutional and election law experts to review the law. NDI offers this commentary on the election law in the hopes that it will assist those in Azerbaijan working to advance the democratic process by improving Azerbaijan's election system. These comments recognize strengths in the Azerbaijani election law, but highlight significant weaknesses, including the need: to alter the composition of the election commissions in order to ensure impartiality; to take steps to ensure fair and adequate media coverage of those competing in the elections; to eliminate important examples of vagueness and ambiguity in the law; and to hold election authorities accountable through the participation of domestic and international election observers.

The Institute will continue to monitor the process leading to the October 1998 poll and may issue further commentary on it.

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I OVERVIEW

At the request of political parties and nongovernmental groups in Azerbaijan, the National Democratic Institute for International Affairs (NDI) has convened an international advisory group of constitutional and election law experts to review the draft law on presidential elections, passed by Parliament on June 9, 1998. This review sought to assess the law in relation to internationally established criteria for free and fair elections, and in light of Azerbaijan's specific requirements for ensuring public trust in the electoral process.

The election law review group included Alexander Longolius, former Deputy Speaker of the Berlin House of Representatives; Scott Sinder, an election law expert with the Washington, D.C. law firm of Jenner and Block; and Antonio Vitorino, former Defense Minister and Deputy Prime Minister and a former member of Portugal's Constitutional Court. Each member of the group has contributed his time freely and in his individual capacity. NDI is grateful for this valuable assistance, which demonstrates the international community's interest in supporting efforts to build democracy in Azerbaijan. NDI staff knowledgeable about the Azerbaijani political situation and about election processes also contributed to this review.

II INTRODUCTION

The National Democratic Institute is a nongovernmental, nonpartisan organization working to strengthen democratic institutions and processes worldwide. Calling on a global network of volunteer experts, NDI provides practical assistance to political and civic leaders who are working to advance democratic values, practices and institutions. NDI seeks to help democratic leaders and activists to build political and civic organizations, safeguard elections and promote citizen participation, openness and accountability in government and the political process.

As part of its mandate, NDI conducts election programs that focus on constitutional and law reform efforts, pre-election assessments and international and domestic nonpartisan election monitoring. In the past year, NDI has conducted 55 election-related programs around the world and has provided election law commentary in Bosnia-Herzegovina, the Former Yugoslav Republic of Macedonia, Serbia-Montenegro and the Slovak Republic. The comments in this report are offered in the spirit of international cooperation, in the hope that they can advance the democratic process by improving Azerbaijan's electoral system.

NDI has conducted democratic development activities in Azerbaijan since early 1993, and has had an office in Baku since 1995. NDI's programming in Azerbaijan is designed to promote pluralism

in Azerbaijan by strengthening the capacity of civic groups to contribute to the development of active and educated citizenry, and by helping political parties build their organizations, attract public support and compete in the political process.

III THE NEW AZERBAIJANI ELECTION LAW

Many aspects of the new Azerbaijani presidential election law reflect international standards for electoral processes. The new law purports to grant candidates the right to campaign openly and fairly, requires the use of a secret ballot and invites international scrutiny of the process. The Parliament has also incorporated changes to the draft election law suggested by outside organizations, for instance clarification concerning the role of international monitors and a reduction of the turnout requirement to validate an election result. The 1998 presidential election law does not, however, address many of the serious problems experienced in the November 1995 parliamentary elections. In countries like Azerbaijan where there has been only a brief history of elections or where previous elections have been seriously flawed, extraordinary steps are required to establish confidence in election processes. NDI suggests that additional changes be made in four areas: a) alter the composition of the election commissions; b) ensure fair and adequate media coverage; c) eliminate the vagueness in parts of the law; and d) hold election administrative authorities accountable at every step of the process. A description of each area and our recommendations follow.

IV RECOMMENDATIONS

1. Electoral Commissions. Under the supplementary law on the Central Election Commission (CEC), the President and the Parliament, which is dominated by the President's party, appoint the members of the CEC. As was the case in 1995, this presidential election law preserves the government's control over the vital institutions charged with administering the electoral process. Given previous electoral experiences in Azerbaijan, this naturally raises concerns regarding the impartiality and independence of the CEC and its subordinate commissions. Moreover, the perception of fairness and impartiality, even beyond the letter of the law, is necessary to establish the integrity of the process.

A number of measures may be taken to achieve political balance and contribute to impartiality in the composition and conduct of the election commissions. At a minimum, NDI suggests: 1) members of the CEC should not be able to be removed by the President alone; 2) membership of each electoral commission should comprise representatives of the parties whose candidates qualify for the ballot, not to exceed one representative per party, or, alternatively, one half of the members should be from the ruling party, and one half from the opposition; and 3) the size of the CEC should be reduced by the Parliament. General experience indicates that a smaller tribunal is a more effective institution. In addition, all requirements concerning the composition and functions of the CEC should be included in the text of the election law itself.

2. Media Coverage. In accordance with international standards, such as those contained in the European Convention for the Protection of Human Rights and Freedoms, the media should be free to convey to the electorate information it needs to make informed choices. The presidential election law is imprecise on the allocation of media time to candidates. The law is also unclear regarding the rights of the media to cover election-related activities and its obligation to report on the election process in an unbiased manner. This ambiguity creates uncertainty where assurances of evenhandedness and openness are imperative. It is important to note that censorship is an ongoing problem of political life in Azerbaijan, and remains a barrier to the proper functioning of the media during elections.

The election law should permit open coverage of the election campaign. The law should also establish the amount of television and radio time that is to be allocated to presidential candidates. Such measures could help to address problems associated with the 1995 parliamentary elections and to overcome long-standing restrictions on press freedom.

3. Legal Vagueness. The law fails to specify provisions that would help to ensure fair treatment of candidates and parties and an impartial electoral environment. It is imprecise on the period of time the CEC is given to handle election-related complaints. These complaints should be handled expeditiously.

The law also allows for the application of other laws in a manner that could undermine the political rights established by international norms and the Azerbaijan Constitution. For example, the presidential election law places some administrative tasks, such as granting permission to conduct campaign rallies, in the hands of local officials who are the political appointees of the government in Baku. Without established criteria for how these requests may be granted, these officials appear to have powers that could be applied arbitrarily.

The law is also silent on the role and the proper function of government officials and police during elections. NDI recommends that police and representatives of regional executive authorities be prohibited from polling stations except to vote.

4. Public Accountability. The principle that political processes should be open and subject to public scrutiny is intrinsic to the concept and practice of democracy, and indispensable to elections if they are to be accepted as a genuine expression of the electorate's will. The law lacks sufficient guarantees of transparency, in particular by failing to provide for the presence of nonpartisan Azerbaijani monitors at each step of the election process. This omission runs counter to Azerbaijan's commitment to invite observers from appropriate organizations, both foreign and domestic, as provided in the Organization for Security and Cooperation in Europe's 1990 Copenhagen Document.

The transparency of the elections can be strengthened by providing domestic and international monitors full access to the electoral process, including attending meetings of the election commissions, access to the voter registration process and preparation and posting of voter lists,

access to the polls on election day, and the right to watch the vote count. NDI strongly recommends that the government act expeditiously to ensure that Azerbaijani civic groups obtain the legal status necessary to deploy nonpartisan monitors and implement these rights.

V CONCLUSION

In conclusion, the NDI-sponsored election law review group finds that while conformity with international criteria is important for conducting successful elections, the government's first obligation and challenge is to promote public consensus on the rules that should govern the electoral process. Only an electoral law that enjoys broad public support will promote trust in the political process and acceptance of the election's results.

This is an initial statement by NDI which will be supplemented by further commentary on the 1998 presidential election law and on preparations for the upcoming polls. The Institute will continue to follow electoral developments and support efforts by Azerbaijanis across the political spectrum who are working to promote and sustain democratic values, institutions and processes.