



1717 Massachusetts Avenue N.W.
Fifth Floor
Washington, D.C. 20036
(202) 328-3136 Fax: (202) 939-3166
E-Mail: demos@ndi.org
Home Page: <http://www.ndi.org>

**STATEMENT OF THE NATIONAL DEMOCRATIC INSTITUTE FOR
INTERNATIONAL AFFAIRS (NDI) PRE-ELECTION DELEGATION
TO AZERBAIJAN'S 1998 PRESIDENTIAL ELECTION**

Baku, September 11, 1998

I. THE DELEGATION AND ITS WORK

This statement is offered by an international pre-election delegation organized by the National Democratic Institute for International Affairs (NDI). The delegation visited Azerbaijan from September 5-12, 1998.

The purposes of the delegation are to express the international community's interest in and support for a democratic election process in Azerbaijan, to assess electoral conditions and the political environment in which the upcoming presidential election is taking place, and to offer an accurate and impartial report on the pre-election situation. The delegation has conducted its assessment on the basis of international standards and comparative practices for democratic elections. NDI does not seek to interfere in the election process, nor does it at this point intend to render a conclusive assessment of the process, given that the election is approximately four weeks away. Ultimately, it will be the people of Azerbaijan who determine the meaning and validity of the election process.

The Institute has conducted more than 40 international election observer delegations and more than 60 pre-election delegations around the world. It has established a reputation for independence, impartiality and professionalism in conducting electoral assessments. This pre-election delegation includes election experts and political and civic leaders. The delegation members have participated in numerous election assessments and international election observer delegations around the world.

The delegation includes: Alexander Longolius (Germany), former Deputy Speaker of the Berlin House of Representatives and founder of the Partnership of Parliaments, a German-American Council of State Legislators; Cedric Thornberry (Ireland), visiting professor at London University and former Assistant Secretary-General of the United Nations; Donald Cofman (United States), Resident Advisor in Ankara for the International Executive Service Corps and retired U.S. Foreign Service Officer; Joanna Levison (United States), NDI Senior Program Officer specializing in the Caucasus and Turkey; and Patrick Merloe (United States), NDI Senior Associate and Director of NDI programs on election and political processes. The delegation is joined by Thomas Barry, NDI Project Director in Azerbaijan, and Imke Roebken, NDI Representative in Baku.



II. SUMMARY OF FINDINGS AND OBSERVATIONS

The delegation noted a significant number of positive aspects in the process leading to Azerbaijan's upcoming presidential election, particularly a stated commitment by the government to organizing free and fair elections, an improved election law, the abolition of formal censorship, some evidence of competition in the election campaign, the beginnings of dialogue among the political actors and clear intentions of citizens organizations to monitor the elections. The delegation also found political polarization that includes an election boycott by several political parties, including two leading opposition parties, apparent irregularities in the composition and functioning of at least some election commissions, obstacles to the exercise of the rights of association and assembly, and potential for a low voter turnout that reflects anxiety, intimidation, confusion and a significant lack of public confidence in the election process and in the rule of law.

In significant respects, the conditions for a democratic election do not yet exist in Azerbaijan. Human rights problems limit political expression, including interference with freedom of assembly observed by the delegation at first hand in Ganja, Azerbaijan's second largest city. Pronounced bias is evident in the government-controlled media. Also, there is a lack of consensus among major political parties on the composition of the Central Election Commission and other factors necessary to ensure the integrity of the election process.

However, a number of steps should be taken immediately that would contribute to a meaningful election process and increase public confidence. The delegation offers at the end of this Statement several recommendations to improve the process. The delegation also has urged the government and the parties boycotting the election actively to continue their dialogue to resolve outstanding issues. The delegation was impressed by the evident desire of Azerbaijan's political leaders to look to long-term national interests and to create a democratic election process. It is hoped that they will find the political will necessary to do so successfully.

The delegation made its observations and findings based upon: NDI's continuous presence in Azerbaijan since 1995; the Institute's analysis of the Constitution, election law (as amended) and the law on the Central Election Commission (CEC); review of reports by other organizations involved with the political and electoral processes in Azerbaijan; and analysis of information presented to the delegation during its meetings in the country.

In the course of its work, the delegation traveled in two teams to Ganja, Yevlakh, Lankeron, Jalilabad and Masalli, in addition to holding meetings in Baku. The delegation met with: President Heydar Aliyev; all of the other candidates for President of the Republic; leaders of political parties that are boycotting the election; Chairman and members of the Central Election Commission and members of five territorial election commissions; members of the news media; leaders of civic organizations concerned with the election process; representatives of the international community, including the Organization for Security and Cooperation in Europe (OSCE); and others who are monitoring the process leading to the presidential election.

An accurate and complete assessment of any election must take into account all aspects of the electoral process. These include: 1) conditions set up by the election law; 2) the entire pre-election period; 3) the voting process; 4) the counting process; 5) tabulation of results; 6) investigation and resolution of complaints; and 7) conditions surrounding the seating of those who are elected. This delegation therefore does not pre-judge the overall process. At the same time, no election can be viewed in isolation from the political context in which it takes place. The pre-election period, including electoral preparations and the political environment must be given considerable weight when evaluating whether or not elections are democratic.

International Standards and Best Practices. International standards require a transparent election process and a political process that enables direct and full participation for political competitors in the formation of the rules for electoral competition and in the work of electoral bodies. They require a sound legal framework and an impartial and effective election administration that conducts its activities in an open manner. They also require an electoral environment in which political parties and candidates are free to express their messages to the public, have equitable access to and treatment by the mass media to convey their messages, are free to organize peaceful assemblies and other demonstrations of public support and to move freely throughout the country to seek votes.

The mass media must be free to convey the candidates' messages and must treat them in an accurate, impartial and balanced manner. The media also must be free to cover accurately and fairly election-related issues. Citizens must be provided with adequate information about how to verify their inclusion in the voter registry and how, where and when to vote, and they should have an adequate opportunity to do so. In addition, nongovernmental citizen organizations should be free to conduct voter education and to monitor all aspects of the election process. Democratic elections need not be perfect, but the greater the failure to meet these standards the less likely it will be that an election could be considered "free and fair."

Democratic elections require that the public have confidence that the results of the election will reflect accurately their free choice and that the outcome will be respected. International experience demonstrates that once public confidence in elections is lost, extraordinary steps by a government may be needed to establish confidence in the country's political and electoral processes. Sufficient steps have not yet been taken in Azerbaijan.

III. FINDINGS AND OBSERVATIONS

A. COMMITMENT TO DEMOCRATIC ELECTIONS AND THE LEGAL FRAMEWORK FOR THE ELECTION

The government has recognized that Azerbaijan is at a critical juncture in its development as a democratic country and has stated its commitment to organizing free and fair presidential elections. This commitment is enhanced by provisions in the Constitution guaranteeing civil and political rights and an improved law on presidential elections. Several amendments were adopted after consultation with opposition parties and comments were provided by segments of the international community,

including NDI. In addition, President Heydar Aliyev issued a decree on August 8, 1998, abolishing the government's censorship body, the Department for Protection of State Secrets in the Press and other Media, which removed an important obstacle to freedom of expression.

The presidential election law includes important provisions that, if implemented, would introduce transparency into the election process. The following are among those provisions.

Political Party/Candidate Representatives and Observers at Election Commissions.

The law provides that each candidate may appoint a member to election commissions at all levels and that the candidates may also appoint observers to monitor the work of election commissions at each step of the process. The delegation found a great deal of confusion among election officials and party leaders concerning the nature and functions of these persons. These elements could add transparency and increase the confidence of political parties in the election process. It is important to act immediately to clarify the situation so that these persons can carry out their roles in the campaign period and on election day.

Domestic Nonpartisan Election Observers. The presidential election law was amended to provide for nonpartisan domestic (local) election observers. The law allows registered nongovernmental organizations to send observers to all election commissions to observe their work, to all polling stations to observe the opening, voting and counting processes and to receive an official copy of the protocols from the precinct and territorial election commissions, as well as to become acquainted with the voter list and to approach precinct election commission members with observations. The delegation noted considerable confusion at the territorial and precinct election commissions about the provisions for domestic nonpartisan observers, which needs to be addressed immediately in order that domestic nonpartisan observers can help ensure the integrity of the election process by deterring manipulation and/or reporting on it when observed.

The activities of such domestic observers have played an important part in building public confidence in numerous countries in the region and around the world. The delegation was encouraged by the clear interest of citizen organizations in enhancing the integrity of the process through election monitoring. The Azerbaijan Civic Initiative (For the Sake of Civil Society), The Democratic Elections Center, Women for Fair Elections and other civic and human rights organizations are among these groups.

Certified Copies of Protocols. Article 56 of the presidential election law provides that certified copies of election commission protocols be provided to observers (party, nonpartisan domestic and international) upon request. It does not specify who is to provide the copy. Articles 51 and 52 require public posting of protocols at the precinct and territorial election commissions. Article 49 requires that observers be noted in the protocols on transport of ballots from the printer to the CEC and from the CEC to the territorial election commissions. Copies of these protocols also should be posted publicly and certified copies given to observers on request. This would allow observers to track ballot security throughout the distribution chain, which is an important element to

ensuring the integrity of the election process. On this point as well, the delegation found confusion among election officials, political parties and domestic observers, which needs immediate clarification.

B. THE ELECTORAL ENVIRONMENT

The electoral environment includes elements of competition, with six presidential candidates, one of whom is the leader of a major political party that is not in government. Candidates have access to the state broadcast media. Election commissions appear to be set up and beginning their work. Rules and regulations are being developed to help implement the election law. At the same time, broad consensus on the integrity of the election process is lacking among the political parties, including some of those participating in the election. There appear to be confusion, anxiety and a lack of public confidence concerning the election process. In addition, there are credible allegations about irregularities in the selection of territorial and precinct election commissions. The direct experience of the delegation lent credence to allegations of a lack of freedom of assembly and association needed for electoral competition, and the delegation witnessed pronounced media bias that favored the incumbent.

Freedom of Association and Assembly. The Constitution of Azerbaijan acknowledges the right of citizens to participate, without hindrance, in the political life of the country. (Articles 54 through 56.) It also guarantees the right to conduct meetings, rallies and other peaceful assemblies upon notification to corresponding governmental bodies. (Article 49.) Similarly the freedoms of association, speech and press and freedoms from improper detention, arrest or use of force are provided in the Constitution. (Articles 26, 28, 31, 47, 50 and 58.) The delegation received credible reports that these freedoms, which are necessary for genuine elections, are often violated in practice. Leaders of several political parties have made credible allegations concerning limitations on holding political meetings and rallies.

The delegation itself witnessed interference with the right of assembly during its activities in Ganja, Azerbaijan's second largest city. There the delegation sought a meeting with two of the major parties boycotting the election, Musavat and Popular Front. Because these parties have no offices, which they assert is due to political pressures, the delegation invited them to meet at the hotel where the delegation was staying. Knowing of an incident in June 1998, when representatives of these parties and a German political party institute were detained for meeting at the same hotel without the governor's permission, the delegation informed the governor in advance of the meeting. When the delegation arrived for the meeting, it found the party leaders standing outside the hotel. The party leaders reported that a deputy governor had come to the hotel and ordered that the cafe be closed to prevent the meeting from taking place.

Only after members of the NDI delegation contacted representatives of the ruling party in Baku, a different deputy governor arrived at the hotel and ordered that the cafe be opened. The meeting took place, but toward the end three plainclothes police entered the room, listened to the discussion and threatened to arrest the attendees. The meeting concluded without further incident.

This event demonstrated the credibility of allegations by opposition party leaders in Ganja and other localities of harassment by authorities and the existence of conditions that are incompatible with genuine elections. The delegation noted that the incident may have been part of a locally isolated problem. Nonetheless, that such incidents could take place in what seemed to be a normal course of behavior raises serious questions and merits close attention to allegations of violations of political rights.

The delegation appreciated that representatives of the President's Office and President Aliyev himself took interest in this event. Members of the delegation met in Baku with the President's representatives and the Governor and Police Chief of Ganga, who apologized for the event and said that it would be investigated. The President reinforced in his meeting with the delegation that action would be taken to address the event.

Territorial and Precinct Election Commissions. The CEC is constituted for a term of nine years. Among its many important tasks is the responsibility for overseeing the formation of Territorial Election Commissions (TECs). The TECs are responsible for overseeing the formation of the Precinct Election Commissions (PECs). Both the TECs and PECs have nonparty members drawn by lot from among persons nominated by local associations, political parties and elector initiative groups. If there are not enough nominees to make up a lottery, then the CEC or TEC, respectively, is to propose the remainder.

The concept of providing an avenue for citizen associations to nominate nonparty candidates for the election commissions is within a range of possibilities for constituting democratic election authorities. In a country like Azerbaijan, however, where there was a strong tradition of a one-party state and party-controlled citizen associations, particularly where civil society organizations have not yet developed a strong role in political and governmental processes, nominees from such associations may be perceived to be partial toward the ruling party. The delegation's experiences in the five localities it visited reinforced this concern. In order to avoid the perception of partiality, it may be best at this point to include members on election commissions who are agreeable to the political parties from among their members or trusted persons. This could be done by seeking party approval of nominees in a consensus or super-majority fashion.

Media Access and Press Freedoms. The delegation was struck by bias in news and public affairs programming in favor of the incumbent and his party on state television. State television Channel 1 is the only TV broadcast channel that reaches virtually all of the country. Coverage goes well beyond the norm expected for an incumbent president. This issue was raised by almost every political party with which the delegation met. News bias practiced over a long period of time can undermine the effects provided by the allocation of free media time to candidates during the campaign period. This is particularly important when there are not strong private broadcast media to offer an alternative point of view.

The issue of coverage is mitigated to an extent by the recent initiation of free one-half hour TV time each night for presidential candidates. The time rotates until each candidate gets six hours

of broadcasting, plus an election night slot of 10 minutes. State radio is offering to candidates free time as well. This is a positive development that has the potential to raise public awareness of the election and the differences among candidates, so that voters may make informed choices.

Another important development was the abolition on August 6, 1998, of the state censorship body established in 1966 and the nullification of decrees promulgated in 1992 and 1993 on military censorship and control over dissemination of information. At the same time, it is important to note that the press has been conditioned to censorship over the years, and human rights violations that include political intimidation create a strong force for self-censorship. This is particularly true absent forceful reassurances that there will not be a return to censorship or political reprisals in the future.

Boycott. There has been dialogue among the political parties and the government that led to important modifications of the presidential election law. No changes were made to the law on the Central Election Commission. The CEC is an important institution because of its direct responsibilities in this election process, its role in setting up territorial election commissions and its term of membership for nine years, covering future local and parliamentary elections. A failure thus far to reach political consensus on a number of points, particularly on the composition of the CEC, has led several parties to boycott the election.

The boycotting parties and the government have held discussions on points needed for them to reenter the election. The dialogue apparently broke down over the number of members the boycotting opposition would be able to nominate to the CEC. Timing of the election now makes it difficult for the boycotting parties to join the election. The delegation found in its meetings with all sides that agreement might still be possible, if all concerned would engage in constructive dialogue.

Peaceful boycott is a legitimate political expression that is part of the right to participate in elections or to choose not to do so. Freedom of expression allows those who choose not to compete to tell others why they made their decision and even to urge them, by appropriate means, also to boycott. The delegation noted that in several localities, the leaders of parties that are participating in the election expressed respect for those who are boycotting, just as they expressed a desire for all to join the election.

Voter Lists and the 25 Percent Turnout Requirement. The delegation noted that any person who has moved from a locality will remain on the voter list unless that person acts to remove her or his name. Given that a large number of Azerbaijanis are presently working outside the country and apparently have not removed their names from the lists, significant problems could develop on election day. Article 53 of the presidential election law, as amended, states that the CEC must declare the election null if less than 25 percent of electors entered on the voter registry participate in the election. A low voter turnout could nullify the election, in part, because the voter registry includes a significant number of people who will not return to Azerbaijan to vote.

If turnout is low, there could be an incentive to stuff ballot boxes with extra ballots or simply forge signatures on the voter lists. This issue presents a challenge for election officials and election observers.

IV. RECOMMENDATIONS AND CONCLUSIONS

From NDI's experience in more than 50 countries in transition toward democracy, it is clear that confidence in the election process and a perception of fairness are as important as the letter of the law. Where there has been a tradition of one-party rule and a lack of confidence in the election process, as in the case of Azerbaijan, the government and ruling party have a special responsibility not only to ensure that the process is administratively correct and minimum international standards are met, but that the process is free from even the *perception* of partisanship and corrupt practices.

Moreover, implementation of legal provisions may require a political solution as well as legal remedies, especially where independence of the judiciary and due process are not well established. In such circumstances, extraordinary steps – beyond legal requirements – are often necessary to overcome skepticism and suspicion concerning the integrity of the election process.

At the same time, all parties share an obligation to respond to the challenge of entering constructive partnerships to create a democratic election process. As noted above, Azerbaijani leaders in and out of government have stated a commitment and demonstrated a desire to advance the election process. It is in this context and in the spirit of international cooperation that the delegation offers the following recommendations.

1) Dialogue Should Continue. Further dialogue among the government and political parties, both those participating in the election and those that are boycotting, is needed to resolve outstanding issues. Such dialogue is essential to promoting pluralism and public confidence in the political process.

2) Expedited Action to Guarantee Political Rights. Public assurances should be issued by the President and other authorities stating that open political activity and the exercise of election-related rights will be promoted and protected vigorously, and that the exercise of the rights of expression, speech, press, association or assembly will not be cause for reprisals. Law enforcement personnel should be encouraged to understand and protect these rights. Disciplinary action should be applied swiftly where law enforcement or security personnel violate political rights.

3) National Nonpartisan Election Observers. The Central Election Commission should issue immediately a special instruction to all election officials concerning the rights of domestic nonpartisan observers. It should publish the instruction and make copies available to nonparty organizations that choose to observe the election process. Issuing such an instruction will avoid confusion, enhance transparency and build public confidence in the process.

4) Certified Copies of Protocols. The CEC should also issue a special instruction to all election

officials and to candidates, parties and observers concerning the public posting and distribution of certified copies of protocols from the Territorial Election Commissions (TECs) and Precinct Election Commissions (PECs), under Articles 51, 52 and 56 of the presidential election law. This instruction should be made available to all observers upon request. Certified copies of the protocols concerning the secure transport of ballots from the printer to the CEC, from the CEC to the TECs and from the TECs to the PECs also should be posted publicly and made available to observers upon request. This could be accomplished by an instruction to supplement Article 49 of the law.

5) Media. The public assurances noted in recommendation number 2 will help promote the crucial role of a free media in democratic elections. Actions should be taken to ensure that state radio and television comply with internationally accepted practices for election campaign broadcasting. In addition, during the official election campaign, programming concerning the President and his party should comply with internationally accepted guidelines for non-news coverage.

The delegation offers these recommendations in the hope of contributing to the efforts of those who are working to build democracy in Azerbaijan. It is the delegation's view that, unless vigorous and sustained efforts are put forth by governmental and electoral authorities, it will be very difficult to organize an election that meets international standards. Such actions must be part of a long-term effort to build a pluralistic political process with genuine elections and respect for political rights and the rule of law.

The delegation would like to express its sincere appreciation to President Heydar Aliyev and the other candidates, party representatives, government and electoral officials, members of the media, other political and civic leaders and representatives of the international community with whom it met. Had these individuals not taken time at this important moment to meet, provide information and share their views, the delegation could not have completed its work. NDI will continue to monitor developments and is considering whether to send a delegation to the election.