



INTERNATIONAL ELECTION OBSERVATION MISSION Presidential Election, Republic of Azerbaijan – 15 October 2003

STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS

Baku, 16 October 2003. The International Election Observation Mission (IEOM) for the 15 October presidential election is a joint undertaking of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), the OSCE Parliamentary Assembly (OSCE PA) and the Parliamentary Assembly of the Council of Europe (PACE).

This statement of preliminary findings and conclusions is issued before the final certification of the results, before the resolution of electoral complaints and appeals, and before a complete analysis of the observation findings. An additional statement may be issued if necessary.

PRELIMINARY CONCLUSIONS

The voting in 15 October 2003 presidential election in the Republic of Azerbaijan was generally well administered in most polling stations, but the overall election process still fell short of international standards in several respects. The international observers noted a number of irregularities in the counting and tabulation.

Although many elements of this election were of serious concern, there were some positive aspects of the process that deserve to be mentioned:

- The field of eight candidates provided for a genuine choice for the voters;
- There was an active campaign, with public participation, in which opposition candidates were able to criticize the authorities;
- A new Election Code included additional safeguards against fraud and generally provides a legal basis upon which democratic elections might be held;
- Many technical preparations for the election were completed in a satisfactory manner;
- The Central Election Commission published detailed precinct results, adding an important element of transparency to the election.

However, the election fell short of a number of international standards, including:

- Numerous instances of violence and excessive use of force by police, including on election night;

- A pattern of intimidation against opposition supporters, journalists and others, which overshadowed the political atmosphere;
- The conditions for campaigning by governing party candidates and opposition candidates were manifestly unequal;
- Prohibitive restrictions on political rallies and meetings limited the ability of opposition candidates to convey their messages effectively to the public;
- State television and independent media, apart from free airtime, was severely out of balance;
- The Central Election Commission (CEC), did not meet a number of legal requirements;
- The complaints and appeals processes did not enjoy public confidence, and did not provide an effective mechanism to guarantee effective remedies.

The final assessment of this election will depend, in part, on the completion of the counting and tabulation and, if relevant, the effectiveness of the post-election complaints procedure. The Institutions represented in the IEOM will monitor the remaining steps of the election process. They are also prepared to continue to provide assistance, in an effort to realize democratic elections in Azerbaijan. However, despite improvements in the electoral process, real progress towards the delivery of a genuine democratic process will ultimately depend, first and foremost, on the political will of the authorities of Azerbaijan.

PRELIMINARY FINDINGS

Background

This election has marked the transition of power from President Heydar Aliyev, who has led Azerbaijan since 1993. This is particularly significant due to Azerbaijan's strong presidential system of government. In addition, the election was the first since Azerbaijan joined the Council of Europe, at which time it assumed the enforceable legal obligation to uphold civil and political rights. Previous elections in Azerbaijan in recent years have also failed to meet international standards, including OSCE commitments and Council of Europe obligations.

The continued foreign occupation of a substantial portion of the territory of Azerbaijan overshadowed the political and legal context for the election. Azerbaijan bears the burden of some 800,000 displaced persons living under difficult conditions. This issue is a top public concern, with major political, economic, and humanitarian implications. Voting could not take place in the occupied territories and special arrangements had to be made for voting by internally displaced persons (IDPs).

Legislative Framework

This election took place under a new Election Code which represents an improvement over previous legislation and includes many recommendations formulated by the OSCE/ODIHR and the Council of Europe's Venice Commission. Both organizations assessed that the Code provides a comprehensive framework for the conduct of elections that appears in most respects to meet international standards and best practices.

The Code includes a number of helpful safeguards against fraud, for example, the use of transparent ballot boxes, numbered ballots and result protocols, and the use of envelopes for ballots. Importantly, the Code also requires that detailed election results, by polling station, be published within 48 hours. The CEC committed itself to post polling station results on its website immediately as they reached the CEC. It succeeded to do so, which greatly contributed to the transparency of the process.

The Code also significantly broadened the rights of observers. However, contrary to Azerbaijan's commitments under the OSCE Copenhagen Document, the "Law on Public Unions and Foundations" prohibits domestic organizations that receive more than 30% of their budget from foreign State funding from observing elections. Its application reduced both transparency and participation by civil society in the election process. In addition, at least one major foreign NGO was also denied permission to observe.

The most controversial aspect of the legal framework for the election was the composition of the CEC, which was regulated by a special law. Contrary to recommendations by the ODIHR and the Venice Commission, the balance on the CEC and lower-level commissions heavily favored the governing party and its supporters, thus undermining confidence in the election administration.

Election Administration

The election was administered by a three-tiered administration: the CEC, 124 Constituency Election Commissions (ConECs), and over 5,129 Precinct Election Commissions (PECs). All commissions were required to have opposition representation. Opposition members were generally free to express their views.

The atmosphere in the CEC and most ConECs was polarized. On controversial issues, the CEC did not operate in a spirit of consensus and collegiality, but often took decisions on a 10-5 vote, reflecting a deep political divide. Despite clear legal provisions, the opposition members were not always given the opportunity to include items on the agenda, to have their views seriously considered, or to have access to important information. In many regions, local executive authorities appeared to direct the work of the ConECs.

Across the country, technical preparations generally proceeded smoothly and efficiently. A notable exception related to the posting and distribution of voter lists, which was

delayed well beyond the legal limits. Once posted, lists did not include all of the legally required information. The CEC decided unanimously to allow names to be added by PECs up to 24 hours before the opening of the polls, a decision intended to remedy problems caused by the late posting of lists, but contrary to law. The CEC failed to meet other requirements of the law or to take actions against violations:

- The CEC took no action to guarantee equal treatment of candidates by State media and failed to act effectively for equal treatment by local executive authorities;
- Polling stations were established late in the process in military bases without the required CEC decision defining the exceptional circumstances which necessitated such a step;
- CEC did not make a serious attempt to enforce legal provisions that campaign posters must show publication information, despite widespread evidence of violations by the pro-government candidates;
- Some members of ConECs and PECs retained their State or local government positions or their political party memberships.

In addition, the candidate registration process was flawed. The CEC disqualification of at least four candidates did not meet legal requirements, thus limiting the right of citizens to stand for office, in contravention of OSCE commitments and international standards.

The CEC should be commended for its voter education program, including an impressive poster campaign, and for its considerable efforts to train election workers.

The Campaign

The uncertainty that characterized the pre-election environment was due to the lengthy illness of President Heydar Aliyev, who has been absent from the country for several months receiving medical treatment. He eventually withdrew his candidacy in favour of his son, Ilham Aliyev. Ilham officially took leave from his position as Prime Minister in order to meet the requirements of the Election Code, but he nevertheless continued to perform a variety of official duties. Two minor candidates withdrew in favor of Ilham Aliyev.

There was a lengthy but ultimately unsuccessful effort among many opposition parties to reach agreement on a single candidate. Azerbaijan Popular Front Party leader Ali Kerimli withdrew his candidacy in favour of Etibar Mammedov (National Independence Party of Azerbaijan - ANIP). Azerbaijan Democratic Party (ADP) leader Rasul Guliyev, who was not registered as a candidate, endorsed Musavat Party candidate Isa Gambar. Several other well-known personalities remained on the ballot. The field of eight candidates provided voters with a genuine choice.

The campaign grew increasingly heated and active in the weeks preceding election day. Candidates campaigned in many parts of the country, often drawing sizable crowds. The

overall tone of the campaign tended to be negative and even insulting. Three candidates asserted there were threats against their lives.

Instances of violence were a serious concern during the campaign. Most notably, violence erupted on 21 September at opposition rallies in Baku, Masalli and Lenkoran. EOM observers at each of the rallies witnessed that trouble began when police and pro-government provocateurs assaulted opposition members. The Prosecutor opened an investigation into official misconduct, but as of election day, no charges had been filed. Subsequently, the level of campaign violence declined and police were notably more restrained. However, further violence did occur at campaign events, including in Saatli and Devechi. In addition, there was a pattern of low-level violence against opposition supporters by police, local authorities and pro-government groups. Small groups of peaceful ADP demonstrators who staged regular, “unauthorized” pickets near the CEC were on several occasions beaten by police. NGO personnel conducting election and other training in Nakhchivan were physically attacked by pro-government provocateurs. Journalists and others were sometimes beaten by police.

Restrictions on political rallies compromised freedom of assembly and limited the ability of opposition candidates to convey their messages effectively. Local executive authorities routinely denied permission to opposition parties to hold rallies in central outdoor locations. Confrontations sometimes broke out when rallies went ahead without authorization or when crowds were too large for the approved locations. In the final weeks of the campaign, local authorities became notably more flexible in allowing rallies to proceed in central areas. However, no opposition events were permitted in central Baku, and some candidates continued to face restrictions in other parts of the country, including in their efforts to meet with IDPs. Roadblocks and a heavy police presence discouraged attendance at opposition campaign events.

Widespread intimidation overshadowed the campaign atmosphere and undercut political participation and free campaigning. The EOM investigated and confirmed many reports of detentions of opposition political activists. Periods of detention appeared to lessen substantially in the final weeks of the campaign – generally to hours rather than days – but the general pattern of apparently politically-motivated detentions continued. Another serious form of intimidation was the threat of dismissal – or actual dismissals - of public workers or their family members from their jobs if they supported opposition candidates. Schoolteachers in particular appeared to be under pressure in many regions. Shopkeepers were often fearful of displaying opposition posters. Many IDPs felt under pressure to support the pro-government candidates. Civil society activists and journalists also faced intimidation.

Overall, the authorities failed to create equal conditions for all candidates. Opposition candidates were denied authorization to hold campaign events at the same downtown locations in Baku and other towns where pro-government events were held. Public buildings frequently had election posters of ruling party candidates in their windows, whereas no opposition posters were to be seen. Local authorities sometimes pressured

public employees to attend pro-government campaign rallies and to stay away from opposition meetings. The EOM confirmed a substantial number of cases in which students and teachers were instructed to attend pro-government campaign events.

The Media

Media coverage of the campaign was characterized by an overwhelming tendency of State-owned and government-oriented media to exhibit an overt bias in favour of Prime Minister Ilham Aliyev. Opposition candidates were mentioned sparingly and then often in negative terms. In its news and current affairs programs, State-owned media failed comprehensively to meet its legal obligation, as set out in the Election Code, to create equal conditions for the candidates. The situation of media was exacerbated by systematic harassment and intimidation of journalists, including incidents of violence, detentions, physical and verbal attacks, life-threatening phone calls, editorial interference akin to censorship and vexatious lawsuits against opposition newspapers.

State TV complied with legal provisions on allocation of free airtime for all contestants. It also broadcast a weekly debate among the candidates or their representatives. However, its news programming overtly supported Ilham Aliyev, who received 2 hours and 36 minutes in the four weeks preceding the election, all positive or neutral in tone. Heydar Aliyev received some 46 minutes. In the same period, all other candidates received a total of only 12 seconds. The State-funded newspapers followed the same patterns.

The private broadcasters also favored Ilham Aliyev overwhelmingly. For instance, Lider TV, a broadcaster with nationwide outreach, allocated 10 hours and 51 minutes of its prime time news to Ilham Aliyev, with an overwhelmingly positive tone. In sharp contrast, two opposition front-runners received altogether less than 24 minutes of mainly negative coverage. ATV followed a similar pattern, and was irresponsibly inaccurate in its coverage of the EOM.

Four major private broadcasters entered into an unusual price-fixing agreement for paid political advertising, which set rates that were high by local standards. Of the four private broadcasters, only ANS TV aired paid broadcasts of the opposition candidates. In the last week of the campaign, however, this station increased its rate for political advertising to approximately five times the level of the previous month. In the last week of the campaign, State TV, like some private stations, declined to sell air time to candidate Isa Gambar.

Opposition party and independent newspapers were the only alternative – but not always reliable – source of political information. Some opposition press used irresponsible language in breach of basic journalistic standards. *Yeni Musavat* allocated 70% of its coverage to candidate Isa Gambar with a heavily positive slant. In contrast, Ilham Aliyev accounted for 9% of overwhelmingly negative coverage.

Complaints and Appeals

Relatively few formal complaints were filed with election commissions, courts, or prosecutors' offices, considering the clear evidence of numerous violations of the Election Code and other laws in the election context. The procedures were complex, lengthy and cumbersome, leading to a lack of understanding by many political activists and other citizens. The general mistrust of the independence and effectiveness of the election administration and the judiciary discouraged people from filing formal complaints. Overall, the election dispute resolution mechanism did not provide an effective or timely remedy to plaintiffs.

The CEC generally did not reach decisions on complaints accordingly, but instead tended to postpone resolution of complaints or to direct complaints to the Prosecutor's Office or other State bodies. The Prosecutor launched several preliminary investigations, but as of election day had not initiated any criminal prosecutions. The Prosecutor and the Ministry of Justice have so far exerted welcome restraint when considering complaints related to defamatory and/or provocative statements and "insults". Despite requests, the EOM was unable to obtain detailed information regarding the complaints filed at the CEC.

Gender

One woman, Lala Shovket, was registered as a candidate. She was generally well respected and campaigned actively throughout the country. Female political participation in the pre-election process was limited. Candidates and media did not address gender issues in any serious or concerted way. The atmosphere of intimidation and violence tended to limit female participation, especially in opposition rallies. Women were among those physically assaulted by police when attending opposition gatherings and were among the persons detained. In one particularly grave instance an opposition activist lodged a formal complaint of attempted sexual assault while in custody. The EOM also observed groups of "women provocateurs" allegedly paid or coerced by supporters of the incumbent to create disturbances at rallies and to assault opposition activists. Political parties and women's groups carried out voter education for women. Women made up 8.9% of the ConECs and less than 1% of all commission chairpersons.

Domestic Observers

The Election Code extended the rights and possibilities for domestic observation. However, since the Law on Public Unions and Foundations prohibits certain domestic organizations from observing elections, a number of interested NGOs were seriously hindered in their efforts to organize an effective observation. The start of domestic observers' registration was delayed but generally proceeded effectively. Ultimately, large numbers of domestic observers from political parties, NGOs, and individuals were accredited. On election day, over 40,000 domestic observers were deployed throughout the country. Local observers were at times denied access or thrown out of polling stations.

Election Day, Vote Count, and Tabulation

On election day, observers reported that voting was generally calm and often well administered. The atmosphere was tense but relatively peaceful. Election night, however, was marred by serious violence. The police assaulted peaceful supporters in front of the Musavat and ANIP headquarters, using excessive use of force. In addition, a number of opposition observers and supporters were detained.

Voting was assessed positively in 69% of the polling stations. Election commissioners performed well in 71%. The inaccuracy of the voter lists was evident; many names were added to the voter registers, and there were long and sometimes angry crowds outside courthouses complaining they were not on the lists. This, combined with overcrowded polling stations contributed to raising tensions. Observers reported several instances of heated disputes during voting.

The substantial presence of unauthorized persons, oftentimes directing the work of election commissions, or acting in an intimidating way created an atmosphere of coercion. In several instances (for example PEC 28 ConEC 31; PEC 8, ConEC 16; PEC 45 ConEC 84), unauthorized persons, including local executive, instructed electors how vote. The widespread presence of video cameras filming voting proceeding was intimidating to many voters.

International observers assessed the counting negatively in more than 50% of the polling stations where the count was observed. There was clear evidence of ballot box stuffing (for example, PEC 1 ConEC 100; PEC 9 ConEC 32, PEC 23 ConEC 45). Counting was discontinued in several polling stations. The large presence of unauthorized persons (30%) remained a serious concern. In ConEC 3, all PEC chairpersons stopped at the police station before delivering their protocols to the ConEC.

The tabulation of results showed an increased transparency. A large majority of observers obtained a copy of the PEC protocols. However, in 66% of the polling stations where the count was observed, the protocol was not immediately posted for public scrutiny, as required by law. On election night, the CEC started to publish polling station protocols on its website. However, serious concerns remain. In ConEC 107, 25 of 38 PEC protocols were blank but signed, and many other cases were reported; in other cases, protocols were filled in pencil and altered at the ConEC. The IEOM has observed instances of falsified protocols. Some international observers (25%) were denied access to the computer room.

MISSION INFORMATION & ACKNOWLEDGEMENT

Mr. Peter Eicher (US) headed the OSCE/ODIHR Election Observation Mission. Mr. Giovanni Kessler, Special Coordinator designated by the OSCE Chairperson-in-Office, leads the OSCE short-term observers. Mr. Guillermo Martines Casan (Spain), Rapporteur of the Parliamentary Assembly of the Council of Europe, leads the PACE delegation.

The OSCE/ODIHR Election Observation Mission (EOM) opened in Baku on 6 September with 32 experts and long-term observers deployed in the capital and 9 regional centers. The Election Analyst started monitoring the activities of the CEC on 11 July. On election day, the IEOM deployed some 600 short-term observers from 36 OSCE participating States, including 17 parliamentarians from the OSCE PA, and 24 from the Council of Europe's Parliamentary Assembly. The IEOM observed the polling and vote count in over 1,150 polling stations throughout Azerbaijan out of a total of 5,129. The IEOM was also present in all 124 constituency election commissions to observe the tabulation of results.

The OSCE/ODIHR will issue a comprehensive report on these elections approximately one month after the completion of the process.

The IEOM wishes to express appreciation to the Presidential Administration, the Ministry of Foreign Affairs, the Central Election Commission, and other national and local authorities for their assistance and cooperation during the course of the observation. The IEOM wishes to thank the OSCE Office in Baku as well as the international organizations and embassies accredited in Baku for their support throughout the duration of the mission.

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