



Office for Democratic Institutions and Human Rights

REPUBLIC OF AZERBAIJAN
PARLIAMENTARY ELECTIONS
NOVEMBER 2005

OSCE/ODIHR
NEEDS ASSESSMENT MISSION REPORT
5 – 10 June 2005



Warsaw
17 June 2005

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November 2005

OSCE/ODIHR Needs Assessment Mission Report

I. INTRODUCTION

The Organization for Security and Co-operation in Europe's Office for Democratic Institutions and Human Rights (OSCE/ODIHR) undertook a Needs Assessment Mission (NAM) to the Republic of Azerbaijan from 5 to 10 June 2005. The NAM included Mr. Gerald Mitchell, Head of the OSCE/ODIHR Election Section, Mr. Jonathan Stonestreet, OSCE/ODIHR Election Adviser, and Mr. Harald Jepsen, Election Expert. The NAM was accompanied by Ambassador Geert Ahrens, the prospective Head of an Election Observation Mission.

In view of the parliamentary elections scheduled for November 2005, the purpose of the NAM was to assess the conditions for an OSCE/ODIHR Election Observation Mission (EOM) and to advise on modalities for the potential establishment of an EOM. The NAM held meetings in Baku with representatives of the authorities, election administration, political parties, civil society, media and international community (see Annex 1).

The OSCE/ODIHR is grateful to the OSCE Office in Baku for the assistance provided during the NAM.

II. EXECUTIVE SUMMARY

The elections to the Milli Majlis (Parliament) are scheduled for November 2005, although the date has not yet been formally decreed. The last elections for the Milli Majlis took place on 5 November 2000, and the November 2005 elections will be the first parliamentary elections since the adoption of amendments to the constitution in 2002. The major amendment, in the context of this election, was the elimination of the proportional list component of parliamentary elections. All 125 deputies will now be elected from single-member constituencies in a single round.

The environment for the establishment of an Election Observation Mission is challenging. Previous OSCE/ODIHR election observation missions have concluded that elections did not meet OSCE commitments. During the last OSCE/ODIHR EOM for the 2003 presidential election, there were numerous and widespread violations during the pre-election period, on election day itself, and in the post-election period. The OSCE/ODIHR subsequently released a Final Report expressing serious concerns regarding the election process and making numerous recommendations for further

improvement. The authorities did not agree with most of the findings, and consequently few of the report's recommendations have been implemented.

In 2004, the OSCE/ODIHR, together with the Venice Commission of the Council of Europe, released the "Joint Recommendations on the Election Code and the Electoral Administration in Azerbaijan." Although the authorities have recently submitted draft amendments to the election code to the Venice Commission and the OSCE/ODIHR, these proposals do not address many of the key recommendations. During the visit of the OSCE/ODIHR NAM, a further set of draft amendments was submitted to the Venice Commission for review. Other laws affecting the election process contain provisions which are in violation of OSCE commitments and other international standards for democratic elections.

During the NAM, the authorities stated that the political will exists to ensure that significant improvements are made to the election process. They noted as examples the presidential executive order of 11 May 2005 on "Improvement of the Election Practices in the Republic of Azerbaijan," the peaceful opposition rally in Baku on 4 June 2005 and the creation of Public Television as an independent institution. The Central Election Commission (CEC) noted that the existence of a large number of Internally Displaced Persons (IDPs) would present a challenge to the organization of elections.

The NAM identified several issues which should be addressed immediately in order to strengthen public confidence and to provide the basis for an election process that makes progress towards meeting OSCE commitments. Some of these issues are as follows:

- the composition of election commissions at all levels should be reconfigured in a manner that will ensure they enjoy public confidence, and in particular the confidence of those running for office;
- election officials who committed fraudulent actions leading to invalidation of results in 694 polling stations in the 2003 presidential elections – as well as persons in charge of Constituency Election Commissions where serious violations occurred – should be prosecuted and should not be involved in administering the parliamentary elections;
- the right to be a candidate should be restored to those persons who were convicted after the 2003 post-election disturbances and who were subsequently pardoned;
- the powers given to the local authorities to restrict political gatherings should be curtailed, and freedom of assembly should be respected during the election period;
- authorities should implement previous recommendations to use inking of voters' fingers as a public confidence and transparency measure;
- provisions in the law which prohibit non-governmental organizations (NGOs) receiving more than 30 per cent of their funding from foreign State sources from observing elections should be reconsidered.

Other issues of concern expressed to the NAM include the accuracy of the voter lists and the transparency of their compilation, the ability of the media to function freely, and the large amounts required for candidate registration deposits.

Given the statements of political will, the existence of a degree of pluralism in the political party system and in the media, and the widespread support for an observation mission, the OSCE/ODIHR recommends the establishment of an EOM. The OSCE/ODIHR would have to reassess its position in the event that no significant progress over previous elections is apparent or if the EOM is restricted from observing any essential elements of the process. On 16 June, the OSCE/ODIHR received an invitation from the Government of the Republic of Azerbaijan to observe the parliamentary elections.

The OSCE/ODIHR kindly requests OSCE participating States to second to the EOM 28 Long-Term Observers (LTOs) from early September 2005 and 500 Short-Term Observers (STOs) to be deployed for the week around election day. LTOs will observe the registration of candidates and the campaign period, and STOs will observe election day procedures, including voting, counting, and tabulation of results.

III. FINDINGS

A. BACKGROUND AND POLITICAL CONTEXT

Azerbaijan is a secular republic with a strong presidential system. Broad executive power is vested in the President, and the Milli Majlis does not exercise oversight of the government's activities. According to the Constitution, the Milli Majlis is elected every five years on the first Sunday of November. The date for the parliamentary elections has not yet been formally decreed. In accordance with the constitutional amendments approved by referendum in 2002, the Milli Majlis will consist of 125 deputies, all of whom are to be elected from single-member constituencies in one round of voting. Except for by-elections, these will be the first parliamentary elections conducted under the new constitutional provisions.

The most recent OSCE/ODIHR EOM, for the 2003 presidential election, found in its Final Report that the election failed to meet OSCE commitments and other international standards for democratic elections and that the overall process reflected a lack of sufficient political commitment to implement a genuine election process.¹ The EOM identified a number of serious concerns. Among these were widespread intimidation in the pre-election period, unequal conditions for candidates, an ineffective complaints and appeals process, heavy bias in the State media, significant irregularities during voting, and widespread fraudulent counting and tabulation practices.² Following the election, a protest demonstration in Baku was broken up with use of violence, and a number of persons, including opposition political party leaders, were arrested and eventually convicted in a flawed judicial process.³ The EOM was also prevented from observing the tabulation process at the Central Election Commission in the days following the election.

¹ OSCE/ODIHR Final Report on the 2003 Presidential Elections in the Republic of Azerbaijan www.osce.org/odihr-elections/14394.html

² Additional concerns regarding the legal framework for elections are discussed below.

³ These cases are assessed in the OSCE/ODIHR Report from the Trial Monitoring Project in Azerbaijan 2003 – 2004. www.osce.org/odihr/item_11_13762.html

The Final Report made numerous recommendations for improving the election process, and the OSCE/ODIHR took the step of meeting with the authorities of Azerbaijan at the time of the release of the report in order to underscore the seriousness of the problem. The authorities did not agree with most of the findings of the EOM and have taken little action to implement the recommendations.

Nevertheless, the authorities told the NAM that the political will to make qualitative improvements to the election process does exist. They highlighted President Ilham Aliyev's executive order of 11 May 2005 on "Improvement of the Election Practices in the Republic of Azerbaijan," which sets out a series of recommendations and orders to the executive authorities and other bodies to ensure that the parliamentary elections are conducted in full compliance with the election code. The executive order is welcome and, if fully implemented, would provide the basis for significant improvement in the conduct of elections. However, many interlocutors expressed doubt that the President's decree would result in significant changes of practice by executive authorities at the central and regional levels.

The authorities also indicated that the granting of permission for an opposition rally in Baku on 4 June was a signal that freedom of assembly would be respected during the election period. The rally, which was conducted in a peaceful manner and without disruption, followed an earlier attempt to hold a protest rally on 21 May. Permission to hold the 21 May event had been denied by the executive authorities of Baku on the grounds that it would have interfered with the preparations for the ceremony marking the opening of the Baku-Tbilisi-Ceyhan oil pipeline. When the opposition tried to hold the rally, the security forces broke it up violently, severely beating a number of persons, including a journalist who was clearly identified as such.

Other interlocutors presented a sharply divergent view from that of the authorities and the majority political party and expressed numerous concerns to the NAM. They felt that few steps had been taken to overcome previous shortcomings. While most of the concerns focused on the actions of the authorities, views were expressed that some of the opposition parties may not be fully committed to a constructive role in the election process.

The election campaign does not formally begin until 60 days prior to election day. A key issue in the campaign may be the perceived transparency and fairness of the election process itself.

There is a wide variety of political parties, although the political environment is sharply polarized between the majority New Azerbaijan Party ("YAP") and several opposition parties, some of which have formed blocs in advance of the elections. The two most prominent opposition blocs appear to be Azadliq ("Freedom")⁴, formed by the Popular Front Party, Musavat, and the Azerbaijan Democratic Party; and the "YES"/New Policy bloc, formed by the Movement for National Unity, the National Independence Party of Azerbaijan, the Civil Forum for the Sake of Azerbaijan, the Azerbaijan Social Democratic Party as well as other political parties and NGOs. There are also expected to be a large number of self-nominated candidates, although these are usually perceived

⁴ At the time of the NAM, the "Freedom" bloc was named "Success".

as pro-government. The opposition, as well as interlocutors from the international community, stated that opposition activities are restricted throughout much of the country.

The elections will take place in the context of the ongoing conflict with Armenia and the occupation of approximately 20 percent of the territory of Azerbaijan. This situation has created a large number of internally displaced persons (IDPs) – approximately 800,000 according to the authorities of Azerbaijan – presenting an additional challenge for the election administration.

B. LEGAL FRAMEWORK

The Election Code was unified and amended during the course of 2002 – 2003 in consultation with the OSCE/ODIHR and the Venice Commission, and these two organizations have made several assessments and recommendations regarding the election legislation of Azerbaijan.⁵ The Unified Election Code was enacted into law in 2003 and was assessed at the time as appearing to meet international standards in most respects but requiring further amendment to meet some substantial shortcomings.⁶

In 2004, the Venice Commission and the OSCE/ODIHR issued “Joint Recommendations on the Electoral Law and Electoral Administration in Azerbaijan,” based on the OSCE/ODIHR Final Report on the 2003 presidential election and on the previous assessments of draft amendments to the Election Code. The presidential administration has recently responded to the recommendations with some draft proposals for amending the election code. While some of the proposals address the recommendations by providing for posting of the voters list on the CEC website, requiring a more timely announcement of preliminary results, and simplifying the complaints process, the majority of the recommendations remain unaddressed.⁷

The outstanding recommendations include modifications to the Election Code and to other election-related legislation, such as the Law on Freedom of Assembly and the Law on Public Unions and Foundations. One of the most significant issues related to the parliamentary elections is the composition of election commissions. The current formula for composition of the election commissions is contentious and undermines the confidence of a considerable part of the electorate in the process. There should be a renewal of dialogue with political parties and NGOs to reach a consensual solution to ensure that elections commissions enjoy public confidence, and in particular the confidence of those running for office.

Other important steps to be taken to improve the legal framework include reconsidering provisions in the law which prohibit NGOs receiving more than 30 per cent of their funding from foreign State sources from observing elections, curtailing the powers given to the local authorities to restrict political gatherings and ensuring that genuine freedom of assembly is respected during the election period.

⁵ These documents can be found at www.osce.org/odihr-elections/13447.html

⁶ Joint Final Assessment of the Electoral Code of Azerbaijan, CDL (2003) 54, September 2003.

⁷ Interim Opinion on Proposed Amendments to the Election Code of the Republic of Azerbaijan, CDL-AD(2005)018, May 2005. During the visit of the OSCE/ODIHR NAM, a further set of draft amendments was submitted to the Venice Commission for review.

Most interlocutors stated that implementation of the law would be the key test of the political will to conduct democratic elections, with the opposition political party representatives generally expressing a lack of confidence that the elections would be conducted in accordance with the law. Several interlocutors claimed that serious irregularities took place in the December 2004 municipal elections. The OSCE/ODIHR did not observe the municipal elections.

C. ELECTION ADMINISTRATION

The election administration for the parliamentary elections consists of three levels: the Central Election Commission; Constituency Election Commissions; and Precinct Election Commissions. By transitional arrangement,⁸ the CEC is appointed according to a formula which provides for multi-party representation but which ensures that pro-governmental representatives control the work of the commission. Lower level commissions are composed in a similar manner. The CEC is currently undertaking the technical preparations for the elections, which according to some interlocutors appear to be proceeding in an efficient manner.

Most interlocutors expressed concern over the accuracy of voter lists and the transparency of their compilation. Previously, opposition political parties have complained of having restricted access to voter lists and of having little ability to verify that duplicate entries are minimized. One of the proposed amendments to the election code would require that the voter lists be posted on the CEC website. This step may provide for additional transparency. There is no provision in the election code for out of country voting in parliamentary elections, and the voter lists will also contain the names of the large number of eligible voters residing abroad.

The CEC also plans to implement provisions of the code requiring distribution of voter cards to all persons on the voter lists. Under the proposed amendments, the voter card would be stamped when the voter receives a ballot. This provision is intended to increase public confidence by deterring multiple voting. However, it remains unclear whether the voter card will be obligatory or not. If so, there is a risk that voters who do not receive a voter card will be disenfranchised, and if not, the cards will have no utility as measure to prevent multiple voting. The distribution of voter cards would need to be very closely regulated in order to be both effective and transparent. In order to promote public confidence in guaranteeing universal and equal suffrage to voters, the OSCE/ODIHR recommends that the authorities reconsider using the inking of voters' fingers, as previously recommended by the Venice Commission and OSCE/ODIHR. The use of ink is a measure implemented in a number of OSCE participating States.

Several interlocutors raised the issue of candidacy rights for those persons who were arrested after the post-election disturbances in 2003, convicted in a flawed judicial process, and subsequently pardoned by the President. Despite their pardon, their sentences remain legally in force, thus preventing them from exercising their right to be a candidate. Reinstatement of the candidacy rights of these persons would be a

⁸ Law on Approval and Entry into Force of the Election Code of 2003

considerable demonstration of political will to conduct an election process more closely in line with OSCE commitments.

After the October 2003 presidential election, the CEC annulled the results in 694 polling stations, apparently on the grounds of fraudulent practice. After the December 2004 municipal election, some 50 Precinct Election Commissions were reportedly to be dissolved. It is unclear whether any of the election officials in these polling stations, as well those in the Constituency Election Commissions where criminal actions occurred, have ever been prosecuted. At the very least, the CEC should ensure that no election officials involved in fraudulent election practices are involved in administering the upcoming parliamentary elections.

In past elections, the OSCE/ODIHR has observed extensive interference by the executive authorities in the conduct of the elections. For the parliamentary elections to conform to OSCE commitments, it is important that the election administration operate effectively and impartially and that government authorities refrain from illegal interference in election administration responsibilities.

The CEC highlighted as a specific challenge the voting rights of IDPs in the context of single-mandate constituency elections. The IDPs are widely distributed throughout Azerbaijan but will retain the right to vote for the constituency from which they are displaced. This will necessitate complex logistical ballot distribution and counting and tabulation procedures for IDP voting to be conducted in a transparent manner respecting the rights of all voters.

D. MEDIA

Although limited change has been seen in the media environment since the 2003 presidential election, the access of voters to impartial or to diverse sources of information remains limited. Moreover, low professional standards appear to be the norm in Azerbaijan, making voter access to impartial and accurate information more difficult.

Television is the medium through which most of the population receive information. The nascent Public Television expects to be broadcasting by the time the campaign starts. The Director, whose appointment was opposed by the opposition and several NGOs, assured the NAM that the campaign would be covered impartially, with equal access for all candidates. However, it is unclear whether Public TV will be able to provide effective and balanced coverage of the campaign.

In past elections, State television has not provided neutral and balanced election coverage. Since 2003, State television has been transformed into a joint stock company, but interlocutors indicated that its editorial bias in favor of the authorities remains unchanged. The NAM was told that no new television stations had been able to obtain a license over the past three years, and the authorities have previously told the OSCE's Freedom of the Media Representative that no new licenses would be forthcoming prior to the elections.

Print media has a limited circulation, but newspapers and journals presenting views in opposition to those of the current authorities do exist. However, they appear to operate under pressure in some instances, including difficulties with printing, distribution, and defamation lawsuits. The recent murder of a prominent opposition journalist, Mr. Elmar Huseynov, by unknown perpetrators in March 2005 raises serious concerns about the ability of journalists to report and publish freely.

E. INTERNATIONAL AND DOMESTIC OBSERVERS

All of the NAM interlocutors welcomed the presence of an OSCE/ODIHR election observation mission for the parliamentary elections. During its stay in Baku, the NAM met with representatives of a number of international and domestic NGOs to discuss the pre-electoral environment and assess the potential for non-partisan domestic observation. Proposed amendments to the election code would expand the rights of domestic observers somewhat, explicitly enabling them to observe the entire election process. However, domestic observer groups claimed that the CEC has a very bureaucratic approach to the accreditation of observers. Also, as mentioned above, the legislation prevents NGOs which receive more than 30 per cent of their funding from foreign State sources from observing, although their members can be accredited individually. This legal provision is not consistent with OSCE commitments. The major domestic non-partisan observation organization, the Election Monitoring Centre, plans to mount an extensive effort on election day.

IV. CONCLUSIONS AND RECOMMENDATIONS

Given the statements of political will, the existence of a degree of pluralism in the political party system and in the media, and the widespread support for an observation mission, the OSCE/ODIHR recommends the establishment of an EOM to observe the forthcoming parliamentary election in Azerbaijan, despite the challenges presented to the conduct of a meaningful election observation mission. The OSCE/ODIHR would have to reassess its position in the event that no significant progress over previous elections is apparent or if the EOM is restricted from observing all essential elements of the process. On 16 June, the OSCE/ODIHR received an invitation from the Government of the Republic of Azerbaijan to observe the parliamentary elections.

The OSCE/ODIHR NAM recommends that an EOM be established by the start of the campaign period, 60 days prior to election day. The EOM will monitor the compliance of the election process against domestic law and OSCE commitments for democratic elections, in accordance with the 1990 Copenhagen Document. In addition to a core team of experts, the mission should also include 28 long-term observers, 14 teams of two observers each, to be deployed throughout Azerbaijan in early September. Given the nature of previous elections and the difficult environment for the conduct of an EOM, the secondment of 500 short-term observers to follow election day procedures is considered necessary. The OSCE/ODIHR is considering the early deployment of one or two experts to follow the process of candidate registration.

ANNEX 1: SCHEDULE OF THE OSCE/ODIHR NEEDS ASSESSMENT MISSION

The OSCE/ODIHR is grateful to the OSCE Office in Baku for its support in organizing all meetings for the Needs Assessment Mission.

Monday, 6 June

OSCE Office in Baku

Ambassador Maurizio Pavesi

Ministry of Foreign Affairs

H.E. Elmar Mammadyarov, Foreign Minister

Presidential Administration

Mr. Ramiz Mehdiyev (Meeting Cancelled)

Council of Europe

Mr. Mats Lindberg, Special Representative

Azadliq “Freedom” Political Party Bloc

Mr. Isa Gambar, Musavat

Mr. Ali Kerimli, Popular Front Party

Mr. Sardar Jalaloglu, Azerbaijan Democratic Party

Embassy of U.S.A.

Ambassador Reno L. Harnish III

Tuesday, 7 June

National Democratic Institute (NDI)

Ms Christy Quirk, Country Director

“YES”/New Policy Bloc

Mr. Avaz Temirkhan, Movement for National Unity

Mr. Etibar Mamadov, National Independence Party of Azerbaijan

Mr. Ali Aliyev, National Independence Party of Azerbaijan

Mr. Ali Masimov, Fund for Development of Democracy

Embassy of Norway

Ambassador Steinar Gil

IFES

Mr. Daniel Blessington, Country Director

Meeting with Embassies of OSCE Participating States and Partners for Co-operation

Ambassador Detlef Lingemann, Embassy of Germany
Ambassador Temistocles Dimidis, Embassy of Greece
Ambassador Margherita Costa, Embassy of Italy
Ambassador Steinar Gil, Embassy of Norway
Ambassador Ismatulla Irgashev, Embassy of Uzbekistan
Mr. Bogdan Dudyak, Embassy of Ukraine
Mr. Sylvain Guiaugué, Embassy of France
Mr. Suat Akgün, Embassy of Turkey
Mr. Jason Hyland, Embassy of U.S.A
Mr. Colin Wells, Embassy of United Kingdom
Ambassador Marcin Nawrot, Embassy of Poland
Mr. Yaacov Finkelstein, Embassy of Israel
Ms Sabina Hajili, Embassy of Japan
Mr. Mats Lindberg, Council of Europe
Ambassador Maurizio Pavesi, OSCE Office in Baku

Presidential Administration

Mr. Shahin Aliyev, Head of Legal Department

Central Election Commission

Mr. Mazahir Panahov, Chairman

Wednesday, 8 June

“YAP” (New Azerbaijan Party)

Mr. Ali Ahmadov, Deputy Chairman

International Republican Institute (IRI)

Mr. Andrew Colburn, Country Director

British Embassy

Ambassador Laurie Bristow

Domestic Election Observation Organizations

Mr. Anar Mammedli, Election Monitoring Centre
Mr. Hafiz Hasanov, Law and Development Union
Mr. Fuad Hasanov, “Against Violence” Human Rights Centre
Mr. Eldar Ismaylov, For the Sake of Civil Society
Mr. Mubariz Ahmadoglu, Centre for Political Innovation and Technology

Meeting with NGOs

Ms Saida Gojamanly, Bureau for Human Rights and Law Respect

Mr. Chingiz Ganizadeh, Committee of Democracy and Human Rights
Mr. Ramin Hajili, “Dalga” Students Movement

Mr. Nadir Adilov, Azerbaijan Young Lawyers Union
Mr. Vugar Gojayev, Human Rights House Foundation
Mr. Aslan Ismaylov, “Tolerance” Human Rights Association
Ms Novella Jafaroglu, Association for the Protection of Women’s Rights After D.
Aliyeva
Ms Rena Najafzadeh Sadaddinova and Mr. Murad Sadaddinov, Azerbaijan Foundation
for Democracy and Human Rights

Thursday, 9 June

Embassy of Germany
Ambassador Detlef Lingemann

Public Television
Ismayil Omerov, Chief Director

Milli Majlis
Mr. Murtruz Aleskerov, Speaker

Internews
Mr. Ilham Safarov, Director

Azerbaijan Press Council
Mr. Aflatun Amashov

Embassy of Russian Federation
Mr. Petr Burdykin, Charge d’Affaires

Embassy of France
Ambassador Roland Blatmann

Ministry of Justice
H.E. Fikret Mammadov, Minister of Justice

Embassy of Turkey
Mr. Suat Akgün, Charge d’Affaires

Meeting with Political Parties
Mr. Iqbal Agazadeh, Hope Party
Mr. Sabir Rustamkhanly, Civil Solidarity Party
Mr. Ilyas Ismailov, Justice Party