

**INTERIM REPORT No. 1
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Executive Summary

- The campaign for the 6 November parliamentary elections began on 7 September. Political activities, including rallies and the display of posters, are visible in Baku and other parts of the country. The campaign rhetoric is often heated and negative, reflecting a polarized political atmosphere.
- To date, the Presidential Decree of 11 May appears to have improved the overall campaign environment, but problems remain, in particular regarding restrictions on the freedom of assembly.
- Candidate registration marked a significant improvement over previous elections. More than 2000 candidates have been registered, in 125 single-member constituencies. Most rejections of candidatures appear justified. Two prominent politicians, currently in exile, have been registered as candidates but face criminal charges if they return to Azerbaijan. Nine per cent of registered candidates are women.
- Long-standing recommendations from OSCE/ODIHR and the Venice Commission to improve the legislative framework for elections and introduce key safeguards to enhance public confidence have not been implemented. Although improvements in this regard remain outstanding, the current Election Code could provide a basis for the conduct of democratic elections if implemented in a fair and impartial manner.
- The Central Election Commission (CEC) appears to be proceeding with technical preparations according to its schedule. The 125 Constituency Election Commissions (ConECs) and more than 5,000 Precinct Election Commission (PECs) have started preparations for the elections. Currently, PECs are mainly engaged in distributing voter cards and updating voter lists.
- The media have started to broadcast campaign programs and candidate debates, and free airtime is being distributed as required by law. However, news coverage of the campaign suffers from a restrictive interpretation of campaign provisions.
- The EOM is following the issue of voting of internally displaced persons, which represents a specific challenge to the conduct of the elections in Azerbaijan.
- The EOM established its office in Baku on 5 September, and 30 long-term observers have been deployed in two-person teams to 15 locations throughout the country.

I. Introduction

Parliamentary elections will take place in the Republic of Azerbaijan on 6 November 2005. Following an invitation by the Government of Azerbaijan, the OSCE/ODIHR established an Election Observation Mission (EOM) on 5 September. The EOM, headed by Ambassador Geert Ahrens (Germany), consists of an 11 member core team based in Baku and 30 Long-Term Observers based in 15 locations throughout the country.

II. Electoral Framework

The 6 November 2005 parliamentary elections to the Milli Majlis of the Republic of Azerbaijan will be the first parliamentary elections conducted since the 2002 amendment to the Constitution eliminated the proportional list element of the elections. The Constitution now stipulates that deputies to the Milli Majlis are elected from 125 single-mandate constituencies. The unified Election Code was adopted on 27 May 2003 and was assessed at the time by the OSCE/ODIHR and the Venice Commission of the Council of Europe as appearing to meet international standards in most respects, but nevertheless requiring further amendments to address substantial shortcomings. Following the 2003 presidential election, the OSCE/ODIHR and the Venice Commission issued in June 2004 a further set of Joint Recommendations for improvement of the electoral process.¹

The Election Code has been amended six times, most recently on 28 June 2005. However, the recent amendments are mostly of a technical nature, and for the most part did not address longstanding recommendations from the OSCE/ODIHR and the Council of Europe's Venice Commission.² Among the remaining shortcomings in the Election Code, which could affect the conduct of the upcoming elections are the following:

- The transitional method of composition of election commissions continues to favor strongly the government and to undermine confidence in the independence of the election administration.
- The inking of voters' fingers has not been considered as a mechanism for increasing public confidence in the election process by diminishing the risk of multiple voting.
- There is ambiguity in the Election Code as to whether possession of a voting card is obligatory in order for a voter to receive a ballot on election day. According to the CEC chairman, the matter remains under discussion.

There is some inconsistency between Article 40.13 (which allows observers to attend commission meetings only up to election day) and 41.3 (which permits "observation" after election day). Officials have assured the EOM that observers will have the right to attend such meetings after election day without restriction, until all disputes are resolved. This is an

¹ See the Joint Final Assessment of the Electoral Code of the Republic of Azerbaijan, CDL 2003(54), 1 September 2003 by the OSCE/ODIHR and the Venice Commission and the Joint Recommendations on the Electoral Law and the Electoral Administration in the Republic of Azerbaijan (CDL-AD(2004)016rev), 1 June 2004, by the Venice Commission and the OSCE/ODIHR. www.osce.org/odihr-elections/13447.html

² Draft Final Opinion on Amendments to the Election Code of the Republic of Azerbaijan, CDL-AD (2005) 018, May 2005. www.osce.org/odihr-elections/13447.html

important matter because OSCE/ODIHR observers were not allowed to monitor post-election activities at the CEC before the final results of the 2003 Presidential elections.

The positive aspects of the Code include the obligation of transparency by all three tiers of election commissions, and the detailed rights and duties of officials and those participating in the process. The election commissions must implement the law “fully, equally and impartially,” and subordinate commissions are required to implement the decisions of superior commissions.³

On 11 May, the President issued a decree “On Improvement of Election Practices”, in which he acknowledged ‘mistakes and deficiencies in the sphere of elections,’ criticizing unprofessional officials and members of election commissions, and, in general, a ‘post-Soviet mentality.’ In this document, the President restated the basic principles for the conduct of democratic elections in eleven points, to be followed by all those involved. Presidential decrees are statutory acts under the Constitution and obligatory for all citizens and executive authorities.

The CEC chairman has stated publicly that misconduct by election officials will not be tolerated and that they face criminal liability for misconduct. However, although the EOM was informed by the CEC that it referred 100 cases of election fraud to the public prosecutor following the 2003 elections, the EOM is not aware of any case where an election official has been tried for violations or fraudulent conduct and convicted in court, thus potentially contributing to a culture of impunity and non-accountability for electoral violations.

III. The Election Administration

The elections will be administered by a three-tier election administration headed by the 15-member Central Election Commission (CEC). There are 125 constituency election commissions (ConECs) and more than 5,000 precinct election commissions (PECs). In early September, two new members representing the opposition took up their seats in the CEC following the registration of their predecessors as candidates. All election commissions have a 2/3 requirement for quorum and for adopting decisions.

The transitory provisions for the composition of election commissions ensure that the position as chairman in all commissions, including the CEC, is a nominee of the ruling YAP party. In addition, the method of composition of commissions ensures the pro-government parties a dominant position at all levels.

The CEC holds frequent meetings open to media and observers, and most CEC decisions are available on its website. The CEC has so far met all deadlines of the Election Code regarding the technical preparations for the elections, and is organizing training for PEC members. Reports on the ConECs visited by the EOM so far indicate that election preparations are well under way.

One of the main challenges the CEC faces in these elections is organizing the vote for approximately 800,000 internally displaced persons (IDPs), some 12 percent of the electorate, from Nagorno-Karabakh and adjacent territories occupied during the 1991 armed conflict. IDPs will vote at designated polling stations throughout the country. The majority of them

³ Art. 17.6.1 Election Code

will vote for occupied constituencies where they do not reside.⁴ Voting procedures for IDPs are dealt with by dedicated ConECs, which are located either ‘in exile’ within other regions or in areas that are partially occupied.

As of 30 May 2005, a total of 4,553,164 voters were on the voter register. The precinct voter lists are currently displayed in the PECs and on the CEC website (omitting the voter’s address). Voters have the right to check and appeal wrong entries or omissions to the PEC. After 1 October, changes to the voter lists can only be made upon court order. The EOM has started to assess the accuracy of the voter lists.

Voter cards have been introduced as a safeguard against multiple voting, although it is not clear that they will effectively serve this purpose.⁵ Several opposition parties have appealed to the President and the Parliament to institute the inking of voters’ fingers in order to deter potential multiple voting. The authorities have so far rejected inking procedures as unnecessary and unacceptable to voters.

The PECs are currently distributing voter cards to voters. Opposition parties have raised concerns that the distribution has in some cases been selective and that some voters have received more than one voter card. Potentially, this could allow these persons to vote more than once. The EOM has so far not received evidence to substantiate these allegations. The EOM has, however, observed multiple identical signatures for receipt of voter cards, indicating that PEC members have permitted a voter to pick up voter cards on behalf of another voter. The issuing of election documents to other than the person for whom it is intended raises concerns.

Preliminary assessments suggest that, on average, 85 per cent of the electorate have received a voter card. A significant number of voters, – mainly those who have taken up residency outside their home precinct or constituency – have not yet received a voter card and may face disenfranchisement if they were not to receive a voter card before election day.

In addition to the voter cards, voters have to identify themselves by an identification document (ID). Former Soviet-era IDs ceased to be valid on 31 July 2005. The authorities are actively distributing new national IDs to the adult population. The Ministry of Internal Affairs has established temporary ID issuing stations and remains optimistic that it would complete this task before the elections. The election administration appears ready to allow the use of the old Soviet passport as an exceptional measure to prevent disenfranchisement of sections of the electorate in the event that the distribution of the IDs is not completed in time for the elections.

The EOM welcomes as a positive step the intention of the CEC to make all PEC result protocol data available on its website, as soon as they have been received by the ConECs.

IV. The Campaign Environment

The campaign for the 6 November parliamentary elections began on 7 September. Candidates’ posters are on display in Baku as in most major cities, and other campaign

⁴ The remainder of the IDPs are displaced within their constituencies.

⁵ The CEC Chairman stated in a meeting with the EOM that the primary purpose of the voter cards was to improve the voter register rather than as a safeguard against multiple voting.

activities are being organized throughout the country. Campaign rhetoric is often heated and negative, reflecting a polarized political atmosphere.

The EOM has received reports about authorities in some constituencies failing to assign space for campaign posters and impeding campaign events of opposition candidates. Reports about candidates' misuse of public resources for campaign purposes and intimidation of candidates have also reached the EOM. The EOM is following the various allegations and the complaints and appeals process, and has raised its concerns with the authorities.

In practice, local executive authorities assume considerable discretion to restrict and prohibit rallies. The Law on Freedom of Assembly prescribes prior notification by rally organizers. Restrictions or bans on rallies must be 'highly needed' or a 'measure of last resort'.⁶ The Presidential Decree of 11 May ordered local authorities to adopt a permissive approach, and several rallies have been permitted, albeit under a heavy police presence. There have been allegations from the opposition that some executive authorities continue to impede participation in such events illegally. The EOM is not aware of a concluded case in which a restriction or prohibition has been successfully overturned by a court.

The candidate registration process marked a significant improvement over past elections. With more than 2000 candidates and 48 political parties and blocs contesting the 125 seats in parliament, these elections have the prospect of offering a broad choice to voters in most constituencies. Some parties, notably the ruling New Azerbaijan Party (YAP), which holds 75 of 125 seats in the current parliament, have indicated that withdrawals of candidacy are to be expected at a later stage in constituencies where candidates affiliated with the same party are running against each other. More than half of the registered candidates are self-nominated. Four parties – the ruling New Azerbaijan Party (YAP), the Liberal Party of Azerbaijan (LPA) and the recently formed opposition election blocs Freedom (Azadliq) and New Policy (YeS) – have registered candidates in more than 60 constituencies, thereby entitling them to free air-time and space in State media.

Only 9 per cent of the registered candidates are women.

Refusals to register candidates appeared, in most instances, justified, but some cases raise concerns as to the protection of the freedom of belief. The Election Code prohibits clergymen engaged in professional religious activity from being candidates, based on a constitutional provision.⁷ In this context, the candidacy of the head of the Baku European Jewish Centre, Mr. Zalmanovich, was rejected by ConEC 22 and the CEC, on the basis that he is a "professional clergyman." Mr. Zalmanovich is not a rabbi and the decision does not explain in what way he was engaged in "professional religious activity."

The Election Code permits an election bloc to nominate candidates who are not members of political parties that are included in the bloc. The "For Azerbaijan" election bloc nominated the chairman of the Islamic Party, Mr. Hacıaga Nuri, to stand as their candidate. The Islamic Party has been denied registration by the Ministry of Justice, although its exact status remains unclear. However, Mr. Nuri's membership in the Islamic Party was noted in the bloc's nomination documents which were submitted to the CEC. The CEC cancelled Mr. Nuri's registration, and the Supreme Court upheld this decision.

⁶ Art. 8.6 Law on Freedom of Assembly.

⁷ Election Code Article 14.2; Article 56.3 of the Constitution.

There are two cases before the courts involving candidates whose status is being considered under the immunity provisions in the Election Code (Art. 70.4). Mr. Rasul Guliyev, the exiled former speaker of the Milli Majlis, became a registered candidate on 27 August. Immediately afterwards, the Prosecutor General ordered the police to execute an arrest warrant issued in 2000 against Mr. Guliyev. The Prosecutor General argued that immunity does not apply to alleged criminal actions committed before the date of candidate registration. The appellant argues that he enjoys legal immunity, that the prosecutor exceeded his powers and that the equality of candidates prescribed in the law has been violated. Sabayil District Court upheld the prosecutor's decision and on 19 September, the Court of Appeal dismissed the appeal. The decision has been appealed to the Supreme Court. The Prosecutor General issued a similar order in the case of the exiled former President Ayaz Mutalibov following his registration as candidate on 5 September.⁸

On 4 August, prior to the deployment of the EOM, the leader of the Yeni Fikir (New Thought) youth organization, Mr. Ruslan Bashirli, was arrested. He is now charged with planning the overthrow of the state. On 12 and 14 September his deputies Mr. Said Nuriyev and Mr. Ramin Tagyiev were also arrested, and all 3 men remain in detention or confinement. These arrests, which were condemned as unjustified by the opposition, have taken place in a climate where the Prosecutor General and the Ministry of Interior have publicly accused the 'radical opposition' with attempting to overthrow the state and with unconstitutional activities.

V. The Media

Since the beginning of the campaign on 7 September, the EOM has been monitoring six national TV stations and five daily newspapers.⁹ As mentioned above, political parties and blocs with candidates registered in more than 60 constituencies are entitled by law to free broadcast time and print space on equal conditions in the national State-funded media. On 10 September, the CEC drew lots to allocate a total of 270 minutes per week for free campaign broadcasts and televised debates on *State TV*, *State Radio* and *Public TV*. Free airtime on television has so far been distributed in accordance with legal requirements.

Following recommendations from the Council of Europe and OSCE, a public service broadcaster was established based on the state-owned *AzTV* Channel 2. Public TV began broadcasting on 29 August and covers approximately 90 per cent of the population. The EOM is yet to analyze whether *Public TV* will provide effective and balanced coverage of the campaign.

The provisions in the Election Code that regulate financing of media campaign coverage are overly complex. Under the Election Code, the State defines the conditions for equal use of media outlets by registered candidates and political parties. CEC officials told the EOM that, given the Election Code's requirement that all candidates enjoy equal rights and conditions, candidates could not appear on political debates on *Space TV* (a private channel) unless they

⁸ In 2003, referring to the cases of Mr. Guliyev and Mr. Mutalibov who then stood as presidential candidates, the Legal and Human Rights Committee of the Parliamentary Assembly of the Council of Europe stated that threatening a 'political exile' with arrest for grave criminal charges was an unacceptable method of preventing the person from participating in a democratic election.

⁹ Television: State-funded *AzTV* and *ITV*, Private *Lider TV*, *Space*, *ATV* and *ANS*.
Newspapers: State *Azerbaijan*, *Respublika*, *Halq*, Private *Yeni Musavat*, *Zerkalo*

pay for the privilege from their election fund. The CEC's position is that the rule applies to ordinary news coverage of the campaign, because candidates would allegedly gain an advantage if they were interviewed as part of the news coverage. It is argued that if some were interviewed, then all candidates would have to be shown. This does not limit intensive coverage of the work of state officials, most notably the President of the Republic, who also chairs the YAP party.

The CEC has so far not taken action against a lengthy TV concert on 8 September (organized via the Nizami branch of the YAP party), which enthusiastically promoted and praised the ruling YAP party and its candidates.

Journalists, civil society groups and some political parties have expressed concern to the EOM over the independence of the media in Azerbaijan. In their opinion, all the main TV channels appear to favor the Government policy positions, and often provide airtime only for limited viewpoints.

The assassination, on March 2005, of Elmar Huseynov, a prominent journalist working as editor-in-chief of the *Monitor* magazine, has had a chilling effect on the media community. A number of international and domestic media organizations, including the OSCE Representative on the Freedom of the Media, called upon the authorities to move ahead promptly with a transparent investigation to reveal the motives behind the murder and those who ordered it. In a positive development, President Aliyev initiated a moratorium on criminal and civil libel suits against journalists in the aftermath of the crime.

VI. EOM Activities

The Head of Mission has held initial meetings and established regular contacts with the Foreign Ministry, the Central Election Commission, and the Presidential Administration. He was received by President Ilham Aliyev on 17 September. The EOM has conducted meetings with representatives of political parties, civil society and election commissions, and with a range of other persons and groups throughout the country. The EOM has held its first bi-weekly briefing for diplomatic missions of OSCE participating States and Partners for Cooperation. On 5 September the Head of Mission accompanied the OSCE Chairman-in-Office to a number of official meetings during his visit to Azerbaijan. He also paid a working visit to the Autonomous Republic of Nakhchivan.