



Office for Democratic Institutions and Human Rights

## BOSNIA AND HERZEGOVINA

GENERAL ELECTIONS

5 OCTOBER 2002

FINAL REPORT



Warsaw  
9 January 2003

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# BOSNIA AND HERZEGOVINA GENERAL ELECTIONS

5 October 2002

## OSCE/ODIHR Election Observation Mission Final Report<sup>1</sup>

### I. EXECUTIVE SUMMARY

The 5 October 2002 general elections in Bosnia and Herzegovina (BiH) were the first administered by the BiH authorities since the Dayton Peace Agreement. They were also the first in which all State and entity offices were elected for four-year terms.

The conduct of the elections was **largely in line with international standards** for democratic elections, when considering the country's unique legal and constitutional framework. They mark important progress toward the consolidation of democracy and rule of law under domestic control.

These were essentially **transitional elections**. Although administered by BiH authorities, they took place in a legal context in which ultimate authority still rests with the international community. As in previous elections, the international community took a number of steps affecting key aspects of the elections which, while in line with their mandate and in compliance with UN Security Council resolutions, were in some instances irregular by international standards. Such measures will hopefully be unnecessary in future elections.

A wide range of candidates and political parties provided voters a **genuine choice**. The campaign was largely free of violence and intimidation, with general respect for freedom of movement, association, and expression. Nationalism was a less overt theme than in previous elections, although it remained a significant underlying issue. A notable positive trend was substantially more cross-entity politicking than in previous elections. However, the campaign was negative and often personalized, with little meaningful debate on key issues. An active broadcast and print media provided extensive and diverse election coverage.

The adoption of an **Election Law** marked a substantial improvement over previous elections, and a further step toward national control of the election process under the rule of law. The Law provided the essential bases for democratic elections, although the system was extremely complex. Provisions of the Election Law limit voters and candidates by ethnicity for several high offices; these provisions should eventually be amended to comply with international standards.

A significant achievement was the creation of **State-level bodies responsible for the elections**, although there was continued international membership on several of these. The Election Commission (EC) operated transparently and generally maintained the trust of political parties. Some EC decisions were taken late, negatively affecting procedures at lower levels.

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<sup>1</sup> This report is also available in Bosnian, Croatian and Serbian. However, the English version remains the only official document.

**State and entity authorities** failed to reach timely agreement on a number of important electoral issues and appointments, leading to the imposition of these measures by the former High Representative. State, entity and municipal authorities failed to provide adequate financing for the elections.

Although the elections were generally well run, some political party leaders expressed a **lack of confidence** in the fairness and impartiality of important aspects of the electoral process, including the complex electoral system, the complaints procedure, the composition of Polling Station Committees, and the counting process for absentee and out-of-country ballots.

This reports includes a number of **recommendations** to address the concerns highlighted above and further detailed herein. The OSCE/ODIHR stands ready to assist the BiH authorities and civil society in continuing to improve its electoral process.

## II. INTRODUCTION AND ACKNOWLEDGEMENTS

The OSCE/ODIHR Election Observation Mission (EOM) was established in response to an invitation from the Council of Ministers of Bosnia and Herzegovina. The EOM, headed by Peter Eicher (USA), began work on 2 September 2002 and remained in Bosnia and Herzegovina through 20 October. Thirty experts and long-term observers from 15 OSCE participating States were deployed in Sarajevo and eight other cities.

On election day, the EOM was joined by the OSCE Parliamentary Assembly (OSCE PA), the Parliamentary Assembly of the Council of Europe (PACE), and the European Parliament (EP) to form the International Election Observation Mission (IEOM). Some 450 observers were deployed from 37 OSCE participating States, including 23 parliamentarians from the OSCE PA, 16 from PACE and 3 from the EP. In addition, a six member Congress of Local and Regional Authorities of Europe (CLRAE) delegation focused on the cantonal and municipal elections. On election day, observers paid some 1,300 visits to about 1,100 polling stations out of the approximately 3,900 throughout the country.

Mr. Pieter De Crem MP (Belgium) was appointed Special Coordinator of the OSCE Chairman-in-Office for the short-term Election Observation Mission. Baroness Hooper, Member of the PACE, led the Council of Europe delegation. Mrs. Doris Pack, Chairperson of the Delegation for Relations with South-East Europe of the European Parliament (EP), led the EP delegation.

The OSCE/ODIHR expresses its appreciation to the Ministry of Foreign Affairs, the Election Commission and other authorities and civil society organizations, as well as embassies and international organizations in BiH, for their assistance and co-operation during the observation.

### III. BACKGROUND

#### A. ELECTORAL SYSTEM

These elections were the first to be organized by the authorities of BiH under domestic electoral legislation. They were conducted within a unique, post-war legal framework, under which the international community still holds ultimate authority. In essence, therefore, these must be viewed as transitional elections.

The 5 October 2002 general elections were held to elect all national and entity offices, as well as ten Cantonal Assemblies and one municipal council. They were the first to award four-year mandates for national, entity and cantonal offices. Under the unusually complex governmental and electoral structures of Bosnia and Herzegovina, seven electoral races of different kinds took place. These were for:

1. *The three-member Presidency of BiH*: voters registered for the Federation of Bosnia and Herzegovina (FBiH) elected the Bosniac and Croat members of the Presidency from a single list, while voters registered for the Republika Srpska (RS), elected the Serb member of the BiH Presidency. The winner in each instance was determined by plurality, i.e., the “first past the post” rule. The ethnicity of candidates was listed on the FBiH ballot.
2. *President and Vice Presidents of RS*: voters registered for the RS elected the President and two Vice Presidents from a single list of candidates; the top vote-getter won the Presidency. The two Vice Presidencies were awarded to the top vote-getters among the other two “constituent peoples” candidates on the list. However, the ballot did not indicate the ethnicity of the candidates.
3. *The House of Representatives of the Parliamentary Assembly of BiH*: FBiH voters elected 28 members through a proportional system. Of these, 21 were from five multi-member constituencies, while seven seats were awarded as compensatory mandates, a procedure intended to achieve maximal proportional representation. In the RS, voters elected 14 members, including nine in three multi-member constituencies and five through compensatory mandates.
4. *The House of Representatives of the Parliament of the FBiH*: of the 98 seats elected, 73 were distributed among 12 multi-member constituencies, while 25 seats were awarded as compensatory mandates on an entity level. A new constitutional amendment required that at least four members from each of BiH’s three constituent peoples be elected; this could be achieved by re-allocation of compensatory seats if necessary.
5. *The National Assembly of RS*: of the 83 seats elected, 62 were distributed among six multi-member constituencies, while 21 seats were awarded as compensatory mandates. As in the FBiH, a new amendment of the Election Law required that at least four members from each of BiH’s three constituent peoples be elected.
6. *The Cantonal Assemblies in the Federation of BiH*: ten separate races were held under the proportional system in the ten cantons, with ten different ballots.
7. *The Municipal Assembly of Žepče Municipality*: there was a single, proportional race with a single ballot.

Voters in most polling stations received four ballot papers for four different races, except those in Žepče municipality who received five ballots, and those who voted for the FBiH in

Brcko District, who received three ballots. There were a total of 23 different ballot paper combinations nationwide.

An open list voting system was applied for multi-member constituency seat allocation, enabling voters to express their preferences among candidates within party lists. However, a closed list system was used for the compensatory mandates on the entity level. These closed lists were determined by the parties from among their candidates on other lists; the composition of the compensatory lists was published in the *Sluzbeni List* (Official Gazette) but did not appear on the ballot. There was a gender rule for the order of the candidates on the lists (see Section X – Gender Issues).

Although the ethnicity of candidates was an essential element in several races for determining seat allocation, it was not explicitly stated on the ballot in most of the relevant races.

In all elections except the various presidential races, seats were awarded through the pure Sainte-Lague system. The threshold was 3% for the multi-member constituencies, cantonal and municipal levels, but the threshold was not applied at the entity level. This unusual combination heavily favored very small parties and resulted in a very large number of parties being elected, in many cases with only one or two seats (see Section XIII – Election Results).

Most voters cast ballots at “regular” polling stations in their places of permanent residence. In addition, in order to accommodate displaced persons, there were special polling stations for absentee voters, meaning voters who reside in BiH but who chose to have their ballots count for their place of permanent residence according to the 1991 census. A third type of polling station was specifically for tendered ballots, which could be used only by persons who had returned permanently to their pre-war municipalities and not updated their voter registration details before the 20 June cut-off date for voter registration. BiH citizens still residing abroad could register and vote by mail.

While the ballots cast in “regular” polling stations were counted in those polling stations immediately after the close of voting, the absentee ballots, tendered ballots and out-of-country ballots were sent to Sarajevo to be counted in the central Counting Center. The votes counted in the Counting Center had an impact on the distribution of the seats in most proportional races, and determined the winners of the two RS Vice President races.

As a whole, the electoral system was so complex that very few party officials, and even fewer voters, understood its intricacies. The lack of a clear understanding of how individual votes became electoral mandates tended to reduce somewhat the level of public confidence in the electoral system.

## **B. POLITICAL BACKGROUND**

Following the last general elections in 2000, two large coalitions of political parties were formed that governed at State and entity levels. These coalitions, which cobbled together a large number of small parties into broad but weak alliances, eclipsed to some extent the political power of the three larger, ethnically-based parties that had previously held sway. Although the ethnically-based parties had garnered the plurality of votes in both entities, they could not or did not form governments at the State or entity levels.

At the State level and in the FBiH, the 10-party “Alliance for Change” was formed as a governing coalition in January 2001, as a result of substantial pressure from the international community. The two principal partners in the coalition were the Social Democratic Party (SDP) and the Party for Bosnia and Herzegovina (SBiH). The Alliance controlled the BiH Council of Ministers, the BiH House of Representatives, and the Federation House of Peoples. The Alliance made progress on a number of institutional reforms, but suffered criticism for falling short of expectations. While the Alliance did not have an absolute majority in the BiH House of Representatives, it co-operated with several RS-based parties to form a working majority. During the 2002 elections, all Alliance parties chose to run separately.

In the RS National Assembly, the 2000 elections gave the nationalist Serb Democratic Party (SDS) the most votes, but no absolute majority. Under some international pressure, the smaller Party of Democratic Progress (PDP) formed a government including “technical”, or politically undeclared, ministers. Unofficially, many were reported to have ties to the SDS. The PDP was left with a largely intractable government that handicapped its reform agenda.

The Croatian Democratic Union of BiH (HDZ) retained by far the most Croat votes in the 2000 elections, but like the other older, ethnically-based parties, it was excluded from the governments. In protest of changes in the electoral rules, the HDZ led a three-month walkout from State and Federation bodies in 2001, and called an unsanctioned Croat referendum on self-rule. In response, the former High Representative removed Ante Jelavic, Croat Member of the BiH Presidency, as well as other party leaders, in March 2001. Subsequently, the HDZ slowly reintegrated itself into State and entity structures.

These events produced trends that featured prominently in the pre-election campaign and in the electoral outcome. First, the leading smaller parties were forced to campaign on a reformist incumbency that had not met expectations. Second, the smaller reformist parties competed fiercely against each other, dividing their base of support. Third, the traditional nationalist parties, as a result of being out of government after the 2000 elections, could capitalize on voter dissatisfaction with lack of progress over the previous two years.

#### **IV. LEGAL FRAMEWORK**

The Election Law (hereafter the Law) provides the essential basis for democratic elections. Although belatedly adopted in August 2001 as a replacement for provisional rules used for elections since 1996, it greatly improved the framework for the elections and brought electoral legislation clearly under the domestic system of rule of law. As noted above, the Law established an unusually complex electoral framework.

Unlike other sovereign States, the pinnacle of the legislative framework in BiH is the General Framework Agreement for Peace in Bosnia and Herzegovina (Peace Agreement), of which the Constitution of BiH is an integral part. Moreover, the Peace Agreement is supplemented by United Nations Security Council resolutions and Peace Implementation Council decisions. This supra-national legal structure grants extraordinary powers to the international community, including authority over elections. International community officials used these powers a number of times in the months leading up to the elections, in ways that had a profound effect on the electoral framework and on potential candidates.

In April 2002, following unsuccessful attempts by entity authorities to implement a Constitutional Court decision requiring the two entities to amend their constitutions to ensure equality for BiH's three constituent peoples, the former High Representative issued decisions imposing amendments to the constitutions of the two entities affecting the electoral structure. In particular, these required a minimum level of participation of each constituent peoples in each of the entity legislatures (a minimum of four seats). In the case of the RS, the amendments also created an additional vice-presidency and required that a Serb, a Bosniac and a Croat each hold either the presidency or a vice presidency of the RS. The High Representative also amended the Election Law to align it with the new constitutional provisions.

Provisions of the new Election Law limited the eligibility of certain persons to participate in the elections based on decisions of the High Representative, the Provisional Election Commission (PEC) and other international authorities. This followed a pattern established in the provisional rules used in previous elections since 1996. Specifically, Article 19.9A of the Law excluded persons previously sanctioned by such decisions from running for election. Thus, 356 persons were ineligible to be candidates. Of these, only one attempted to register, and was refused. Article 19.9B of the Law excludes political parties from certification to run in the elections if top party positions are held by persons banned by the High Representative or by the PEC. Although no parties were refused certification for this reason, some parties, such as the Serb Radical Party (SRS) and the Croatian Democratic Union (HDZ), were forced to restructure their leaderships to ensure certification.

The basis for international community decisions to exclude individuals from running for election was not always clearly spelled out by the officials taking the decisions, and the process was not transparent. While these measures are within the scope of powers granted to international community officials by the UN Security Council, and are consistent with the international community mandate to promote peace, they would otherwise be irregular by international standards. It is of particular concern that there was no effective means of judicial redress against such administrative decisions and that the right to a fair and public hearing was not available, as required by BiH's OSCE commitments.

Another unfortunate peculiarity of the State structure is that citizens who do not identify themselves as one of the three "constituent peoples" of BiH (Bosniac, Serb or Croat) are effectively barred from the BiH and RS presidencies. This is contrary to international standards for democratic elections, in particular Article 25 of the International Covenant on Civil and Political Rights, which is incorporated as part of the Constitution of BiH. Furthermore, voters for the State presidency are limited in their electoral choice based on a combination of ethnicity and their place of residence: voters for the RS may vote only for a Serb, while voters for the Federation may vote only for a Bosniac or Croat. The restriction also applies to the candidates for the State presidency: a Serb registered to vote for the Federation cannot run for the BiH presidency, and the same is true for Bosniacs and Croats registered for the RS. Although these elements of the electoral system are part of the Constitution of BiH, they conflict with provisions on non-discrimination in Article II of the Constitution, as well as with international standards.

Article 19.8 of the Election Law links the right of displaced persons to return freely to their homes – a key element of the peace process – to the right to vote. Under the Law, persons illegally occupying a residence and subject to a restitution order should have no right to vote



in their current municipality of domicile. However, lack of clarity in Article 19.8 and difficulties of enforcement led to the application of the rule to just some 200 people out of the tens of thousands of registered voters who may be illegal occupants, raising concerns about the equitable application of the law.

## V. ELECTION ADMINISTRATION

The election administration for the 2002 general elections consisted of the Election Commission of BiH (EC), 148 Municipal Election Commissions (MEC) and 4,182 Polling Station Committees (PSC).

The Election Commission was responsible for overall conduct of the elections. It is a permanent body consisting of a President and six members. The members include four nationals (one Bosniac, one Serb, one Croat and one “other”) and three internationals. The internationals are appointed by the High Representative and included a Deputy High Representative, the Head of the OSCE Mission to BiH and a Deputy Head of the OSCE Mission. When the Parliamentary Assembly of BiH was unable to meet a deadline for the appointment of the national members of the EC, the High Representative appointed them as well, in November 2001, selected from a list prepared by the Judicial Appointment Commission of the Constitutional Court.

The four national members took the lead role in EC work and decisions. The EC met frequently and worked efficiently and professionally. Almost all EC decisions were taken by consensus. EC meetings were open and transparent, but political parties very rarely exercised their right to send observers to these meetings. The work of the EC was supported by a Secretariat, headed by a Secretary General, with several departments and a group of seven coordinators to liaise with MECs.

The EC retained a high level of confidence amongst most political parties. This was not always the case for lower level election bodies, however. In general, the EC adopted in a timely manner the extensive and detailed body of rules and regulations for the conduct of the elections and published these in the “Official Gazette” and on the EC’s Internet page. In some cases, however, the publication was delayed or did not occur before election day. Examples include the “Rulebook on procedures of verification and the manner of counting of votes at the Counting center in Sarajevo” and the “Rulebook on the announcement of preliminary results and validation of the final election results”. Delays by the EC in adopting some regulations negatively affected preparations for the elections at lower levels. For example, EC delays resulted in incomplete training for some PSC members. Late passage of regulations regarding some election day MEC activities, including vote aggregation and the composition of tendered ballot PSCs, hindered preparations for these elements of the process.

The Municipal Election Commissions oversaw the voting and counting processes in the 148 municipalities. MECs are permanent bodies consisting of a President and 2 or 4 members, depending on the number of voters in the municipality. MEC members were appointed by the Municipal Council or Municipal Assembly, and were subject to approval by the EC.

The MECs also generally operated professionally, although some experienced a severe lack of funding from municipal authorities. One of the main MEC tasks was the appointment of

PSCs. By the 20 September PSC appointment deadline, 54 MECs (about a third of the total) either had not reported to the EC or did not make PSC appointments according to the regulations. The EC delayed adoption of some regulations affecting the PSC formation, contributing to this delay.

Another challenge for MECs was the timely aggregation of the election results. Before election day, many MECs asserted they would not be able to meet the requirement to deliver MEC protocols to the Election Commission within the legally-required 24 hours deadline following the close of polling. Indeed, instead of announcing the preliminary results from the regular polling stations on the evening of 6 October, as scheduled, the EC released them at 13:00 on 8 October. Moreover, part of these results were based on unofficial information faxed from MECs to the EC, rather than on the original PSC and MEC protocols, some of which did not reach the Counting Center in Sarajevo until days later. The aggregation process in MECs was very decentralized, which could have led to inconsistent procedures for handling results.

The PSCs administered the voting and counting processes at the polling stations. The PSCs consisted of a President and of 2 or 4 members depending on the number of voters; PSC members also had deputies. The composition of each PSC was to be multiethnic, reflecting the ethnic composition of voters at each polling station, including the constituent peoples and “others”. Some controversies arose over the extent to which these requirements were met.

Unlike previous elections, political parties registered for elections in a constituency had the right to nominate a representative as a PSC member. There could be no more than one member per party in each PSC. The Election Commission decision to include political party members on PSCs was a positive step towards increasing the transparency and inclusiveness of the election process, as well as the parties’ responsibility for the process. However, the small size of the PSCs and fractionalized political party system in BiH led to far more party nominations for PSC membership than there were positions available. Many political parties thus expressed dissatisfaction with their level of representation on the PSCs.

A good training program for MECs and PSCs was provided by the Association of Election Officials of BiH, as part of a joint project with the International Foundation for Election Systems (IFES), under the supervision of the EC. It might have been even more effective had all PSC members been appointed in a more timely manner.

The PSCs generally performed very well on election day (see Section XII – Election Day and Vote Count.)

The State, entity and municipal authorities failed to appropriate sufficient funding for the elections, leaving the international community to cover 70% of the costs. The international community also continued support to the electoral process through the provision of salaries for 21 key EC staff and some logistical assistance.

The total number of applications for candidate registration was 8,799. Of these, 1,262, or approximately 14%, were denied registration. The vast majority of denials were due to the failure of parties to ensure candidates met the necessary administrative requirements, in particular being registered as a voter in the constituency of their candidacy.

Voter registration closed on 20 June. Final voter lists were established on 1 July. As a result of complaints from political parties, updating continued in some municipalities until shortly before election day. Final voter registration figures showed a small increase in in-country voters. The number of out-of-country voters decreased dramatically, to 58,987 from a previous figure of 232,739.

## VI. THE ELECTION CAMPAIGN

The elections witnessed the highest number of political parties running since the war. A total of 57 political parties, 9 coalitions and 3 independent candidates were on the various ballots. The total number of certified candidates was 7,537. Despite some initial problems in meeting signature requirements, all political parties and coalitions wishing to participate were certified by the Election Commission. Stimulated by the constitutional and Election Law amendments, cross-entity campaigns were more numerous than in previous elections: 27 Federation-based parties certified candidates in the RS, while 12 RS-based parties slated candidates in the Federation.

Campaign activity dominated the media and posters were omnipresent around the country, particularly in urban areas. The election atmosphere was generally peaceful. Although there were a number of serious security incidents in the country during the campaign period, none appeared to have been directly related to the elections. Much campaigning was highly personalized and negative. Several senior party leaders and independent commentators stated it was the dirtiest campaign yet in BiH, frequently attributing this to the new four-year mandate. There were relatively few explicit instances of hate speech or incitement to violence, but three led to formal complaints and sanctions by the EC. Various international agencies and domestic watchdog NGOs, including the "Elections 2002" NGO coalition, voiced their concern over the nature of political debate and called on the campaign actors to moderate their messages and attend to the more substantive issues that interest voters.

Nationalism played less of an overt role than in previous elections, but remained a pervasive, underlying issue. Many parties used nationalist or ethnic symbols, slogans or music. However, some nationalist parties asserted to the EOM that nationalism is no longer an attractive campaign strategy. While this appeared to be a positive indicator, many interlocutors argued that nationalist campaigning was less necessary precisely because nationalist politics remained entrenched at the local level. In the end, the three principal nationalist parties received the largest share of the vote (see Section XII – Election Results).

Nationalism did become an overt issue in some instances. The Serb Democratic Party (SDS), for example, ran a campaign encouraging voters to "Vote Serb". The Croatian Democratic Union (HDZ) campaign generally portrayed the party as the defender of the Croats. The leader of the largely Bosniac Party for Democratic Action (SDA) drew sharp criticism when he was quoted as saying that the RS would cease to exist before the next BiH elections. Hrvatski Pravaski Bloc (HBP), a small Croat-based party, was fined 5,000 KM (2,500 Euro) by the Election Commission and forced to remove its posters that included "*Za Dom Spremni*", a fascist salute used in World War II. Remarks by Yugoslav President, Vojislav Kostunica suggesting that the RS "separation" from Yugoslavia was not permanent, dominated the media at one stage of the campaign. Opinion polls suggested that nationalism

increased somewhat as a concern for voters as the polls neared, mostly among the Croat community.

Large numbers of political rallies took place in all regions. Several smaller parties led more creative campaigns that focused on entertainment as much as on political issues. In particular, *Radom Za Boljitak* distributed free food and drink at party bar-b-ques. The leader of the small *ProENS* party caused a minor controversy by his appearance in the *Miss Bosnia and Herzegovina* program broadcast on 21 September, which gave him broadcast air time outside the constraints faced by other political parties.

Yet many rallies and other elections-related events, particularly in Herzegovina, went unattended. Rallies by the Party for BiH (SBiH) and the Social Democratic Party (SDP) (including its first in Siroki Brijeg since the war), as well as various public, political roundtables organized by the OSCE Office in BiH, drew very small audiences throughout the campaign period. Political party leaders and other interlocutors complained that voter apathy was high and public interest in the campaign was low – a fact borne out on election day. Anecdotal evidence consistently indicated that young people were uninterested in the elections and in politics generally.

The increase in the formal number of cross-entity campaigns generally did not translate into real cross-ethnic overtures. Much of the cross-entity campaigning was aimed at the intra-ethnic vote of returnees. The RS-based Party of Independent Social Democrats (SNSD) and Party of Democratic Progress (PDP) held rallies largely in the Drvar area, where Serb returns have been numerous. Similarly, the FBiH-based Social Democratic Party (SDP), Party for BiH (SBiH), New Croatian Initiative (NHI) and the Party of Democratic Action (SDA) were the most visible in parts of the RS where there had been substantial numbers of returnees, largely focusing on the Dobož, Banja Luka and Prijedor areas. Most reports indicate that cross-entity campaigns stayed at the level of rhetoric and media messages, rather than rallies and direct contact. There was no report of intimidation or obstruction of cross-entity campaigns.

Despite their prominence in the media, the campaigns generally lacked substantive debate of reform, jobs, corruption and other issues of interest to voters. Most political parties advanced some limited form or image of “reform” in their campaign materials and messages. However, more substantive elaboration of reform policies and other issues was largely absent from the campaigns. Foreign policy issues did not figure prominently in the campaign; virtually all parties claimed to favor European integration for BiH.

In general, parties reported few specific cases of direct intimidation. In Mostar, the NHI alleged that the HDZ tried to prevent it from establishing an office. In Livno, Ante Colak, the Croat Peasant Party (HSS) candidate for the BiH Presidency, was prevented by police from giving a press conference in front of a Ministry of Interior building; a week earlier, he had been assaulted by a HDZ party official. In the Tuzla and eastern Republika Srpska regions, there were reports of enterprise workers terminated or threatened with termination due to political affiliation. The Herzegovina-based party *Radom za Boljitak* asserted it was not allowed to organize rallies in Mostar and Siroki Brijeg. The Peoples’ Democratic Union (DNZ) reported windows broken at its headquarters in Sarajevo. Many parties noted a climate of subtle intimidation in certain municipalities and cantons.

Campaign posters were vandalized in several regions, in some instances on a large scale, with evidence of it having been an organized activity. In the Dobož area, SDS, SRS and SDP posters were torn down in large numbers. In the Mostar and Siroki Brijeg regions, the HDZ and *Radom za Boljitak* exchanged poster vandalism. In Derвента, the national flag of BiH flown over SDP offices was torn down.

The EOM received allegations from several interlocutors – including from senior government officials – of illegal interference in the election by FBiH secret services in favour of some political parties.

There were numerous reports that some religious leaders of the three main religious communities used their pulpits to encourage voting for nationalist parties.

Political parties consistently expressed to the EOM a lack of confidence in the vote counting process, especially the process for counting out-of-country, absentee and tendered ballots at the Counting Center in Sarajevo. This broad lack of confidence contributed to a decision by the EOM to leave a significant post-election team in Sarajevo to monitor the counting process (see Section XIV – Post-Election Day Observations). Parties also voiced criticisms of the quality of the voters register.

The posture of the international authorities toward the campaign was active, but not overly partisan. The High Representative launched a concerted effort to encourage voter turnout and to urge support for reform. The week prior to the elections, he mailed 1.4 million leaflets – one to each household – encouraging citizens “to vote, and to vote for reform”. This was consistent with his earlier announcements and public statements. Throughout the campaign period, he did not, however, support any candidate or party. The increased neutrality of the international authorities in BiH was welcomed by nearly all political parties.

The U.S.-based National Democratic Institute provided training and technical assistance to several political parties, and conducted weekly opinion polls that were widely publicized and freely accessible through the internet.

## **VII. THE MEDIA**

### **A. BACKGROUND TO THE MEDIA IN BiH**

Media in BiH play an important role in shaping public opinion and political orientation. Television is most influential. The electronic media scene has undergone some changes as a result of a recent process of reallocation of licenses. Out of 257 broadcasters – radio and television channels – that applied, 183 outlets received licenses (71% of the applicants).

While the role and conduct of the media in BiH has been a concern in past elections, the situation appears to have improved in a number of ways in connection with the 2002 elections. Among these, interlocutors highlighted an almost complete absence of open hate speech, increased professionalism, a better mix of private and public broadcasters, a reduction in the number of broadcasters creating a more viable advertising market, and the creation of media and television networks. News programming is universally felt to be of higher quality.

Significantly, there has been a remarkable increase in nation-wide programming and news. The best example was the nightly State-wide Public Broadcasting Service (PBS) news program, launched on 7 May 2002. While the entity-based FBiH Television (FTV) and Radio-Television Republika Srpska (RTRS) continue to see themselves as the essential source of news for their respective communities, both have co-operated in airing the PBS broadcasts.

Due to economic problems and poor circulation, print media are facing serious problems in BiH. Journalists assert that they continue to experience political pressure and intimidation, although they consider that the extent of these problems has been decreasing over the past several years. Nevertheless, the context in which journalists operate can make it difficult to carry out their duties in a consistently professional manner.

## **B. LEGAL FRAMEWORK FOR THE MEDIA**

Responsibility for regulating electronic media conduct lies with the Communications Regulatory Agency (CRA), an independent body composed of international and national experts, formed in March 2001 by the former High Representative. The CRA did not have the resources to undertake any significant monitoring of the media during this election campaign. It did, however, receive and act on complaints from political parties, candidates and broadcasters in regard to the election.

Under Article 16.7 of the Election Law, the Communications Regulatory Agency “has jurisdiction over all election related media violations”. The CRA can seek the advice of the Election Complaints and Appeals Council (ECAC) with regard to campaign violations by the electronic media, but is not bound by the opinions of the ECAC. Furthermore, the ECAC can refer complaints received regarding the media to the CRA. This occurred in only four instances. The CRA heard approximately 20 complaints by election day and 43 by 14 October. These mainly concerned the alleged failure of some broadcasters to allot equitable time to all candidates or to report political party announcements. Of the 43 cases, 40 were closed either by agreement between the parties in question or through by CRA mediation, or were dismissed on the basis of insufficient evidence that rules and regulations were breached. The CRA made public and available the data and information related to its activities and decisions.

The Election Law and the regulations issued by the Election Commission on media coverage of political subjects during the election period sharply restrict electronic media activity during the campaign. The electronic media are obliged to provide direct access to parties and candidates in their programming, in order to present balanced and comprehensive information to the voters. In particular, during the sixty days immediately prior to election day, broadcast media must equitably and fairly present political parties and candidates and provide information about the issues related to the campaign and the electoral process. During the thirty days prior to election day, all public broadcast media must provide free broadcast time for all contestants. Candidates are also entitled to have video clips broadcast during the election period. Commercial media which do not broadcast any political programs may receive an exemption from these obligations. In addition, all broadcasters are required to air statements and information by the Election Commission of BiH free of charge in order to inform voters about the electoral process.

All paid political advertising on broadcast media is prohibited. During the election period, information on the activities of political parties may be presented on news broadcasts only if such activities are of great significance for the wider public. Information on activities of government authorities may not be used for promotion of any political subject.

The electoral silence period starts 24 hours prior to the opening of the polls and continues until they close. During that period, no media coverage of any political activity may take place. Public opinion research or polls relating to the elections may not be released during the period beginning 72 hours prior to the opening of the polls until the close of polling.

### C. MEDIA MONITORING

The EOM monitored the election campaign in the major broadcast and print media to assess the quantity and quality of the coverage of candidates and parties. Federal Television Channel 1 (FTV1), Television Republika Srpska (RTRS) and HTV Mostar were monitored for six hours daily beginning at 6:00 PM each day, during the period 12 September - 3 October. Seven daily newspapers were also monitored: *Dnevni Avaz*, *Oslobodjenje*, *Jutarnje Novine*, *Dnevni List*, *Vcernji List*, *Glas Srpski* and *Nezavisne Novine*.

In general, the spectrum of electronic and print media provided extensive coverage of the elections. National, entity and local media offered substantial information concerning the process and the campaign. Enough information was readily available to enable voters to make an informed choice. The media environment was generally more professional than in previous elections. The campaign in the media was dominated by discussions and struggles among political parties rather than focused on substantive issues. As noted above, analysts considered the campaign to be the most negative yet experienced in BiH.

Very few instances of explicit hate speech emerged during the course of the campaign, although nationalistic echoes were still evident in the propaganda of many candidates. There was only one reported instance of physical intimidation of a journalist, although, as noted above, many media representatives reported experiencing indirect pressure by political parties and authorities, as well as tax audits in the RS.

The 24-hour campaign moratorium was violated. On 4 and 5 October, the party *Radom za Boljita*k sent mobile phone text messages (SMS) to voters, soliciting support.

Public and private broadcasters generally conformed with the strict regulations guaranteeing free airtime and equitable and fair coverage to all parties. This was widely regarded as an improvement over previous elections. Nevertheless, the formats chosen to cover candidates were often dull or unimaginative, and may have reduced public interest in the campaign. In spite of the generally balanced allocation of air time, the coverage of candidates was somewhat shaped along ethnic and local lines. Croatian parties received the most coverage on Mostar-based HTV, while RTRS devoted most attention to Serb parties. A partial exception to this general trend was FTV1: while the main Bosniac-based parties received consistently high coverage, the single largest percentage of air time was devoted to the Herzegovina-based *Radom za Boljita*k.

Print media, which are subject to fewer restrictions than broadcast media, covered the campaign in a more lively, critical and aggressive fashion. The print media were, in general,

highly partisan. *Dnevni Avaz* supported the SBiH, while *Oslobodjenje* devoted very large coverage to SDP. *Večernji List* allotted most space to *Radom za Boljitak*'s campaign, while *Glas Srpski* did the same for SDS activities. *Dnevni List* and *Nezavisne Novine* were more balanced in their coverage of different candidates.

## VIII. COMPLAINTS AND APPEALS

The complaints mechanism in the Election Law allows for interested parties to complain to the appropriate level of the electoral administration (PSC, MEC, or Election Commission), the Communications Regulatory Agency (CRA) or the Election Complaints and Appeals Council (ECAC), depending on the subject matter of the complaint. Decisions on complaints to each level of the election administration can be appealed in writing to the next higher level. In November 2000, the former High Representative promulgated the Law on the State Court of BiH, creating an Appellate Division with jurisdiction over all election complaints. This has provided for judicial review of election complaints for the first time, an important step forward. The Appellate Division of the State Court can hear complaints on the decisions of the Election Commission, the ECAC or the CRA.

Although many political parties expressed a lack of confidence in the appeals process, in practice it was able to function adequately despite the lack of resources and can serve as a solid base upon which the BiH authorities can construct a reasonable, fair and effective system of redress for election complaints.

### A. THE ELECTION COMPLAINTS AND APPEALS COUNCIL

The Election Complaints and Appeals Council (ECAC) was established by the Election Law. It is the forum with jurisdiction over violations of the rules of conduct governing the election campaign and campaign financing irregularities. The Secretariat of the ECAC is provided by the Election Commission, which is also mandated by law to review all sanctions imposed by the ECAC. All other complaints regarding the administration of the elections, such as polling station committee composition and complaints regarding the results of the poll are instead addressed directly to the Election Commission.

By Law, the ECAC should consist of five members: one Croat, one Bosniac, one Serb, one "Other" and a member from the Election Commission. However, following the resignation of the "Other" member in mid-July 2002, the ECAC operated with just four members throughout the electoral period.

The ECAC has the authority to sanction a candidate with removal from the candidate list, upon determination of personal responsibility, or to de-certify a coalition, independent candidate or political party. Furthermore, the ECAC can impose fines of up to a maximum of 10,000 KM (5,000 Euros). All ECAC sanctions are subject to adjustment or approval by the EC.

The ECAC does not have the power of its precursor – the Election Appeals Sub-Commission – to remove elected officials; the ECAC's authority is strictly limited to the electoral process. This represents a normalization of the functions of the elections dispute body and brings the BiH electoral process into line with the OSCE Copenhagen Document (specifically Articles



5.10 and 7.9). In addition, the creation of a complaints body comprised entirely of BiH citizens is an important step towards a process fully controlled by domestic authorities.

The greatest obstacle faced by the ECAC was the lack of legal and administrative support. The ECAC staff consisted of a single legal adviser and one administrative assistant. Since the procedure for addressing complaints required the ECAC to solicit a response from the accused party and to investigate the allegations, this lack of resources weakened the process significantly. This was particularly striking in comparison to the resources available to its precursor, which was supported by several international lawyers and a team of investigators and support staff. While this problem was later addressed through the collaboration of three additional EC lawyers at the first ECAC session after the elections, this remedy was only a stopgap measure.

The work of the ECAC was accessible and open to observers, although there were few. However, in large part as a consequence of the scarce resources, the ECAC was unable to provide detailed and reasoned decisions in a consistent and uniform manner. Furthermore, the absence of internal rules of procedure specifying which violations can be sanctioned with which penalties or the elaboration of a precise methodology for verifying allegations could lead to inconsistencies and could allow for unwarranted discretion. Despite these obstacles, the ECAC was able to give some serious consideration to each complaint received.

## **B. PRE-ELECTION COMPLAINTS**

Until the week immediately preceding the elections, a mere 20 complaints were filed with the ECAC, all of which were decided upon. Approximately half of these decisions were appealed to the Appellate Division of the State Court, which upheld all ECAC decisions. To some extent, the small number of complaints may reflect a well-administered electoral process. However, according to a wide range of political party leaders, it also reflects their lack of confidence that the appeals procedure would provide an effective remedy for election complaints.

In the final days before the elections, however, some 40 complaints were received by the ECAC. Of the approximate total of 60 complaints received prior to the elections, over half (33) regarded the tearing down, vandalizing or covering up of campaign posters. Five complaints related to political rallies, four of them complaining that rallies were held in municipal schools. Two-thirds of the complaints were between rival political parties rather than against the authorities.

Of the 60 complaints to the ECAC, only 10 were from the RS. No other geographic pattern was discernible. Most major parties addressed complaints to the ECAC. The SDP filed the greatest number of complaints (14) prior to the elections.

In total, the ECAC ruled on one half of the complaints prior to election day and in eight cases found a violation to have occurred. In seven instances, the ECAC imposed fines ranging from 2,000-7,000 KM (1,000-3,500 Euro). In three cases, involving incitement to violence, inflammatory and offensive leaflets, and the systematic removal of another party's posters, three candidates were removed. The ECAC did not hold public hearings on the cases, although the law gives the ECAC the discretion to do so. BiH's obligations under the

European Convention for the Protection of Human Rights and Fundamental Freedoms, as well as its OSCE commitments, require a fair and public hearing before the denial of civil rights.

With regard to pre-election administrative complaints, the Election Commission received a large number of complaints concerning Polling Station Committee (PSC) composition. These were generally from parties dissatisfied at not being represented on PSCs. While, these complaints were largely resolved in a satisfactory manner, they led to delays in the finalization of the PSC composition in several cases.

### **C. ELECTION DAY COMPLAINTS**

During the 24-hour campaign silence period, the ECAC received some 100 complaints. However, because of the obstacles identified above, the ECAC was unable to hold its first session until five days after the elections.

With assistance from the legal department of the EC, the ECAC was able to decide upon approximately one third of these complaints by the time the EOM departed on 20 October. The complaints were again overwhelmingly about illegal placement of posters. However, 12 of these complaints concerned the issuance of SMS text messages to mobile phone users during the campaign silence and on election day. These complaints were grouped by the ECAC and the guilty party, *Radom za Boljitak*, fined once for 5,000 KM (2,500 Euro).

### **D. THE STATE COURT**

While the Appellate Division of the State Court was established to ensure the possibility of judicial appeal for election related complaints, the plenum of the State Court has yet to be nominated. Thus, the establishment of the State Court as a fully functional and independent State institution is far from complete. In addition, during the elections the Appellate Division operated out of the OSCE BiH Mission premises and did not have the necessary facilities. Like the ECAC, the State Court suffered from a lack of resources.

In all three cases in which the ECAC removed candidates – sanctions upheld by the EC – an appeal was filed with the Appellate Division of the State Court. In two of these cases, the Court overturned the decisions of the EC. These cases alleged offensive leaflets and the removal of another party's posters. The reasons for the Court's decision were that the evidence did not suffice to prove the violation. These decisions are significant in establishing a higher threshold of proof than previously existed when applying the severe sanction of barring candidates from running for office. The instance in which the Court upheld an ECAC decision to remove a candidate was the case involving a clear incitement to violence. This Court decision is, therefore, consistent with the aim of ensuring that election campaign freedoms are not abused, especially in a post-conflict situation. However, the Court upheld the barring of a candidate by the former High Representative on the basis that the Election Law is clear that this is within the power of the High Representative. The Court therefore declined to examine the substance of why the candidate was barred.

The Election Law does not provide for effective challenge at the State Court of the final election results by political parties, since insufficient time is allowed for complaints to be established on the basis of polling station data.

## IX. PARTICIPATION OF MINORITIES

Because of the unique construct of the BiH electoral system, candidates for certain offices must identify themselves as belonging to one of BiH's three constituent peoples, or as "others". "Others" are effectively barred from running for offices reserved for constituent peoples, such as the BiH and RS Presidencies. The Election Law does not provide any guarantees for representation for "others" in any directly elected national or entity level body. However, recent entity constitutional amendments require "others" to be proportionally represented in municipal and canton governments.

During the elections, minority groups which do not constitute one of the three constituent peoples played a marginal role. Only 169 certified candidates (2.24%) were "others".

Many Roma, the largest minority group, registered to vote in the Tuzla, Travnik, Sarajevo, Bosanska Gradiska and Mostar regions. Otherwise, however, registration of Roma voters was apparently low. There was no Roma-based political party and most communities reported receiving little attention from political parties generally, although there were a few exceptions. The EOM received reports of a small number of Roma candidates and Roma members in the SDP, SBiH, SDA and the BiH Patriotic Party (BPS). There were fewer reports of Roma observers or polling station members.

Roma voter turnout was difficult to assess. Before the elections, two Roma leaders indicated their communities would spoil ballots in protest of their marginalization. An EOM short-term observation team for Roma issues reported low Roma turnout in Zenica, Kakanj, Gorica, Buca Potok (Sarajevo) and Bosanska Gradiska. However, greater numbers of Roma voted in Visoko. There are indications that many Roma did not understand the complicated ballot or the elections system generally.

The small Jewish community slated several candidates with five Bosniak-based political parties in Federation and Cantonal races. A small number were members of Polling Station Committees.

## X. GENDER ISSUES

The Election Law contains a gender requirement. Approximately one-third of each political party candidates list must be of the minority gender, equally spaced on the list. Specifically, the Election Law states in Article 4.19 "...Every candidates list shall include candidates of male and female gender. The minority gender candidates shall be distributed on the candidates list in the following manner. At least one (1) minority gender candidate amongst the first two (2) candidates, two (2) minority gender candidates amongst the first five (5) candidates, and three (3) minority gender candidates amongst the first eight (8) candidates et seq. The number of minority gender candidates shall be at least equal to the total number of candidates on the list, divided by three (3) rounded up to the closest integer."

Although the gender requirement has greatly increased the number of women candidates, women in general do not hold positions of power in political parties and remain under-represented on parties' executives and leaderships. Women leaders assert that the open-list voting system militates against the election of women. This assertion appeared to be

supported by the election results, as in many cases open-list voting resulted in women candidates ending up in positions lower on party lists than would otherwise have been the case under the gender requirement. Furthermore, the media coverage of women candidates was extremely poor: only 3% of the airtime on television and 1% for print media space was allocated to women candidates.

Although the gender requirement is aimed at bolstering women's representation in politics and government, it worked against *Zena BiH* (Women's Party for BiH), which could not recruit men to fulfil the minority gender requirement.

Within the election administration, the President of the EC is a woman, and there were substantial numbers of women on MECs and PSCs. Sixty per cent of the EC Secretariat were women.

On election day, a number of cases of family voting were reported, including instances of husbands voting for their wives.

## **XI. DOMESTIC OBSERVERS**

The Election Law provides domestic observers with full access to all aspects of the electoral process. Two domestic non-partisan election observer groups, the Center for Civic Initiatives (CCI) and *Elections 2002* deployed 6,300 and 120 poll-watchers, respectively, on election day. Both groups co-ordinated consortiums of NGOs in their monitoring effort. CCI monitored 2,880 polling stations. *Elections 2002*, which concentrated on monitoring the pre-election period, observed approximately 500 polling stations.

Neither group reported any significant problems in deploying their observers on election day; they indicated only isolated situations in which their observers had difficulties of access.

In a welcome development, both groups co-operated with similar organizations in the Federal Republic of Yugoslavia and in Croatia. Still, both organizations reported that most, if not all, of their activities are funded by international sources. CCI indicated it was increasing its share of domestic funding, and sought to become locally sustainable. *Elections 2002* indicated it was wholly financed by foreign sources.

The conclusions reached by domestic observer groups were generally consistent with the conclusions of the EOM.

## **XII. ELECTION DAY AND VOTE COUNT**

The apparently low level of public interest in the elections during the campaign was confirmed by the relatively low voter turnout on election day. The turnout of registered voters was 55%, down substantially from previous general elections.

On election day, a substantial number of polling stations turned away prospective voters. Some of these were citizens who failed to register or re-register in the Centralized Voters Register (CVR). Other citizens claimed they were not in the CVR despite their timely

applications. Some may simply have appeared at the wrong polling station and may have been able to vote at the proper station later. An extrapolation of EOM statistics suggests that over 10,000 individuals may have been turned away from polling stations. Domestic election observation organizations estimated the number at 25,000, or about 1% of registered voters. These figures suggest a continuing need to improve the voters registers, although they show an improvement in comparison with previous elections. The names of dead persons were also reported to be included in CVR, although there was no evidence that this was a pervasive problem or that it resulted from manipulation.

EOM observers gave high marks to the PSCs regarding their administration of the voting process. From 1,300 visits paid to some 1,100 polling stations, in only 3% of cases did observers assess the conduct of the polling process as “poor”. The main problems noted were some voters unable to find their names on the voter registers in 60% of observed polling stations, group voting in 38% of observations, and unauthorized persons in polling stations in 13% of observations. Otherwise, the voting process was orderly in an overwhelming proportion of polling stations visited. Unusual tension in polling stations was noted in only 3% of the visits, dissatisfied voters were noted in 1% of the visits, and campaign activity was observed in only 2 polling stations. However, campaign material was seen within 50 meters of polling stations in 6% of the visits, but campaign activity within polling stations was limited to 1%. Remarkably, very few cases were reported of undue influence on voters or Polling Station Committee members. The few reported cases of intimidation against party observers seemed concentrated in the western Herzegovina region of the Federation of BiH.

In terms of measures to safeguard the integrity of the polling process, voters presented proper photo IDs in 97% of observations, each voter signed the voter register in 99% of cases, voters marked their ballots in secret in 95%, and proxy voting was limited to 2% of observations. Domestic observers, both political party and non-partisan, were noted during 94% of visits to polling stations. Of these, 42% were non-partisan civil society representatives.

Observers evaluated the vote count less positively (14% “poor” rating) than the voting process. The main types of problems reported with the counting procedures were: performing several counts simultaneously, completing the accounting forms incorrectly and serious problems in the open list count. In a few cases, PSC members misunderstood the open list system. Other problems included unauthorized persons present at 28% of the counts observed, active participation of some party observers in the count, and problems with the packing materials, which was a very lengthy process in many polling stations. There were a few troubling but isolated reports of PSC members invalidating ballots or marking blank ballots during the count. In general, however, many of the irregularities observed were caused by the desire to finish the job within the short timeframe allowed by the regulations, by the complexity of the electoral races or by insufficient training.

The aggregation of results at MEC level was evaluated still less positively (26% “poor” rating), with procedures not followed properly. After the vote count at polling stations, domestic non-partisan and political party observer presence at the MEC level seemed to have diminished considerably.

There was some concern prior to the elections that security might be a problem for international observers on election day. The day passed peacefully, however, with only minor, isolated incidents reported, which did not affect international observers. The

international Stabilization Force (SFOR) fulfilled its mandate to ensure a secure environment for the elections, while the local police, under the supervision of International Police Task Force, undertook any necessary police duties.

### **XIII. ELECTION RESULTS**

The election results did not reflect major changes in voting patterns from previous elections and showed a continuing fragmentation among political parties. The leading Croat, Serb and Bosniac nationalist parties, the HDZ, SDS and SDA generally preserved their percentage of the overall vote – a combined total of about 45% – with a slight increase for the SDA and a slight decrease for the SDS. The HDZ and SDS candidates easily won election to the BiH tripartite presidency. The SDA candidate won election to the BiH presidency by a narrow margin, upsetting the SBiH candidate predicted as the likely winner in leading opinion polls.

Nationwide, the total number of votes decreased for almost all parties. The notable exception was the SNSD, which more than doubled its share of votes over the 2000 elections. Conversely, the SDP saw its percentage of votes drop the most, falling from 26 to 16%. The SBiH and PDP largely held their positions. In the Federation of BiH, smaller parties absorbed the share of votes formerly enjoyed by the SDP.

The newly elected State and entity legislatures are highly fragmented. The 42-seat House of Representatives of the Parliamentary Assembly of BiH includes representatives of 14 different parties, of which seven have only one seat. The 83-seat National Assembly of RS has 15 different parties, 11 of which have no more than four seats. The 98-seat House of Representatives of the Parliament of the FBiH has 18 different parties, including 14 with no more than three seats.

As noted above (Section III – Background) these fractionalized parliaments resulted from the application of the pure Sainte-Lague proportional representation system, without a threshold at the entity level. The result was that a party needed to win only about 0.5% of the total votes in an entity to claim a seat in the respective legislature.

The open-list voting system was used extensively by voters and resulted in the election of a sizable number of candidates who would not have been elected under a system of closed lists. These included seven candidates for the House of Representatives of the Parliamentary Assembly of BiH, 18 for the House of Representatives of the Parliamentary Assembly of FBiH, and 20 for the National Assembly of the RS. In over half these cases, women lost seats to men placed lower on the party lists. In some cases, candidates who lost seats through the open-list system were nevertheless elected from compensatory lists.

### **XIV. POST-ELECTION DAY OBSERVATIONS**

The principal post-election day activity involved the counting of out-of-country, absentee, mobile and tendered ballots, as well as audit of PSC protocols at the Counting Center in Sarajevo. This counting was a complex process involving 592 workers, counting in three shifts around the clock. Nevertheless, it took 11 days to complete the process of verifying and counting the ballots of 51,846 absentee, 46,633 out-of-country and 4,112 tendered ballot

voters. The verification and counting processes were conducted in accordance with the Election Law and Election Commission instructions. They were carried out by working groups recruited according to guidelines on ethnic and gender balance.

This process was a particularly sensitive aspect of the election because of the political parties' general lack of confidence in it. However, of the 57 political parties registered to contest the elections, only 7 applied for accreditation within the time limit to observe the Counting Center process. Of that number, only 4 were present on a regular basis: HDZ, SDA, SDP and SDS. The SBiH, which publicly cast doubt on the Counting Center process after it became clear that their State Presidency candidate was trailing in a close race, did not have an accredited observer. This was due, by self-admission, to an administrative oversight in not meeting the deadline for submission of observer names for accreditation prior to the election. Civil society observers from the Center for Civic Initiatives appeared to be the sole NGO observing the count.

Party observers generally had no major objections regarding the work of the Counting Center or the quality of the personnel, however, they complained about the lack of current data on the results during the first two days of post-election counting.

#### **A. OUT-OF-COUNTRY VOTING**

Out-of-country voters were required to post by 5 October a bar-coded instruction letter, a copy of an identity document, and evidence of their voter registration with their ballot papers in a secrecy envelope. These requirements of the Law were strictly enforced at the verification stage in Sarajevo and contributed to the rejection of 11.45% of postal ballots before the counting stage.

Despite the complexity of the ballot papers, only 2.38% of postal ballots verified were found to be invalid. The invalidity rate is relatively small in comparison with the invalidity rate noted for regular or absentee voters.

#### **B. ABSENTEE BALLOTS**

The turnout at absentee ballot stations was strikingly low: 30.33% overall. Thus, internally displaced voters displayed a substantially higher abstention rate than those voting in regular polling stations.

Although the Counting Center staff members were given clear instructions on reading voter intention from the ballot paper, the invalid ballot rate, approximately 8.60% was significant.

#### **C. TENDERED BALLOTS**

All tendered ballots were processed at the Counting Center. The eligibility of individuals casting tendered ballots was verified prior to counting. The dramatic reduction in tendered ballots cast from about 90,000 in the 2000 general elections to only 4,112 this year appears to confirm the diminishing need for this facility in the Election Law. The Law itself limited the potential number of tendered ballot voters to those who were registered to vote by-mail and had returned after the end of the voter registration period. A decision by the Election Commission further extended the possible number of tendered ballot voters to include

absentee voters who had returned and not entered their changes of residence into the voters registers.

This system was a success precisely because the MECs adhered to the Law. Specifically, they largely resisted the temptation to use tendered ballots as an “emergency” measure to appease frustrated citizens other than the groups listed above who claimed the right to vote in a municipality when they did not appear on the voters register. About 10% of tendered ballot voters were rejected, mainly on the basis that they were ineligible to vote for the municipality in which they cast a ballot. Only an extremely small number of individuals appeared to have attempted to vote twice.

#### **D. AUDIT**

One of the main tasks of the Counting Center was the creation of a database with the contents of the PSC protocols. In order to ensure consistency of the data, an audit procedure was undertaken in case of any discrepancies in the protocols. The final results were calculated on the basis of the audited polling station results.

Despite the 24 hour deadline for MECs to deliver the original PSC protocols to the Counting Center, there was a considerable delay in their receipt. For a small number of protocols, the delay was greater than 5 days after the election.

The audit function was granted authority by the Election Commission to allow for or to correct errors in the protocols. There was no clear rule of what percentage variation was acceptable for the audit team to adjust; the audit team used a variation of 0.5% as a guideline. Where serious discrepancies occurred, the audit team had the authority to recommend a recount of a particular polling station to the Election Commission.

Over 1,000 protocols, (approx. 6%), showed errors of presentation, which were qualified as minor in nature. This may well be attributable to the complexity and often extraordinarily long duration of counting process. The accounting errors were in most cases with regard to a particular electoral race rather than the overall conduct of the polling station. Greater compilation errors were noted by the audit team for approximately 40 polling stations, and recounts were necessary for 15, or less than half of 1 percent of all polling stations.

#### **E. COMPLAINTS AND APPEALS**

The most important and controversial complaints concerning the election results were cases filed separately by a number of political parties charging that the Election Commission had misinterpreted the Law by not applying the 3% threshold at the entity level. The fact that all parties seeking to challenge the EC interpretation chose to utilize their right of judicial appeal is a welcome sign of increased commitment to use available legal channels to seek redress for grievances. If upheld, these complaints would have radically altered the election results. The cases were filed with the Appellate Division of the State Court, which might reasonably have ruled for or against the plaintiffs. In all cases, however, the Court rejected or dismissed the complaints, thereby allowing the EC interpretation to stand without giving a judicial opinion.

The EC made rulings on 20 sets (a number of individual complaints grouped together) of complaints prior to the release of final results. The largest set of complaints concerned claims



of valid ballots wrongly counted as invalid. Political parties requested a complete audit of polling station protocols in 12 municipalities.

As these complaints refer to the election results at the PSC and MEC level, they were the responsibility of the EC directly. These complaints were investigated by the legal division of the Secretariat of the EC and, where necessary, an audit was performed on the original PSC materials. On the basis of their recommendations, the EC made decisions on the complaints.

Despite concerns expressed by political parties in the pre-election period about the complaints adjudication process, the number of complaints was not overly large nor did they severely delay the process of releasing the final results. The Election Commission concluded that the complaints, when justified, did not materially alter the election results. What is less clear is the number and variety of complaints adjudicated at the MEC level.

## **F. ASSESSMENT OF FINAL POLLING STATISTICS**

The relatively high number of invalid ballots – over 5% – is cause for some concern since it indicates that many voters did not understand how to vote correctly. Initial observations suggest some reasons for this extent of invalid ballots:

- The twin column design of the ballot paper for the Bosniac and Croat member of the State presidency from FBiH led to a significant number of invalid ballots where voters had marked boxes for candidates in both columns;
- Voter uncertainty about the number of candidates to be elected to the Republika Srpska Presidency and Vice Presidencies may have contributed to invalid extra markings on those ballots.

According to EC data, invalid votes were in the 5%-6% range for in the races for which an open list ballot was used and slightly higher in the plurality races. The number of invalid ballots indicates the need for increased voters' education and, if possible, simplifications in the electoral system.

## **XV. RECOMMENDATIONS**

### **A. THE LEGAL AND CONSTITUTIONAL FRAMEWORK**

1. Provisions of the Constitution and of law that discriminate against individuals who identify themselves as “others” rather than as one of the three constituent peoples of BiH, including provisions that prevent an “other” from becoming President of BiH or of the RS, should be amended and brought into line with international standards.
2. Provisions of the Constitution and of law that limit citizens by ethnicity and place of residence on whether they can run for certain offices, and for which ethnic groups they may vote, should be reviewed and brought into line with international standards. Non-discriminatory means can be devised to ensure the multi-ethnic character of State and entity structures.

3. National and entity authorities should fulfill their responsibilities in regard to the elections, including by taking timely action on required legislation, appointments and funding. Key electoral matters should not be left to be imposed by the international community.
4. There should be a clear and transparent process, including a fair public hearing and a right to judicial appeal, in cases of administrative sanctions against individuals affecting their electoral rights, or against political parties.
5. The application of the pure Sainte-Lague system with no threshold at the entity level results in a proliferation of mini-parties and highly fragmented legislatures at the State and entity levels. The authorities should consider whether the establishment of a threshold at entity level would reduce political fragmentation, enhance stability within the legislatures and promote improved governance.
6. The modalities for implementing Article 19.8 of the Election Law – concerning voting by persons illegally occupying their places of residence – should be clarified well before the next election and the Law should be applied fairly, equitably and consistently.
7. The authorities should consider eliminating tendered ballots, which further complicate an already complex electoral system and are now used by only an extremely small percentage of voters. Other means could be found to ensure that the few voters still using tendered ballots are not deprived of their right to vote.

## **B. ELECTION ADMINISTRATION**

8. The process of transferring full control of the election administration to national institutions should be completed as soon as possible.
9. Any uncertainty concerning the responsibility of various authorities at State, entity and municipal level for funding all aspects of elections should be clarified well before the next elections and the appropriate authorities should provide the resources required.
10. The long process of counting votes at the Sarajevo Counting Center significantly delays the announcement of, and diminishes public confidence in, the final election results. Means should be found to increase the speed of this process substantially, or to eliminate it entirely.
11. Although the voter registers showed improvement over previous elections, the number of voters turned away from polling stations highlights the need for more attention and resources to continue updating the register.
12. In order to avoid voter confusion, the self-determined ethnicity of candidates should be shown on the ballot paper for all election races in which the ethnicity of candidates is a factor in determining the election results.
13. The Election Commission should adopt, well in advance of elections, comprehensive and definitive regulations on procedures for transferring votes to seats in proportional races.

14. A clearer, more transparent and more consistent system should be put into place for the appointment of members of Polling Station Committees.
15. The transparency of the aggregation process could be improved by a requirement to provide observers with copies of polling stations protocols and summaries of the counts at the Sarajevo Counting Center.
16. To remedy the extremely low turnout among Roma voters, the Election Commission or other authorities should consider establishing a voter education program tailored to Roma communities.

**C. MEDIA FRAMEWORK**

17. The Communications Regulatory Agency or other appropriate authorities should consider issuing clearer, and possibly less stringent, guidelines that might encourage more creative campaign coverage by reassuring broadcasters they will not be sanctioned provided their overall coverage was fair and equitable.

**D. COMPLAINTS AND APPEALS**

18. The current process of election appeals – first to the MEC, then to the ECAC, followed by confirmation by the Election Commission, then to the Appellate Branch of the State Court – is lengthy and may not always be able to provide a timely remedy for urgent electoral complaints. Some emergency procedure should be available to provide complainants the opportunity for prompt judicial review of electoral complaints, with more finality, at least in cases where these might affect their electoral rights or the outcome of an electoral race.
19. Sufficient resources and personnel should be provided to the ECAC in order to ensure its timely and effective functioning, to expedite investigations, and to guarantee proper record keeping.
20. Clear legal provisions or regulations should be established specifying which violations of electoral regulations can be sanctioned with which penalties, in order to avoid the possible inconsistencies or unwarranted discretion in application of sanctions against violators.

## ABOUT THE OSCE/ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is the OSCE's main institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Document).

The ODIHR, based in Warsaw, Poland, was created as the Office for Free Elections by the OSCE Heads of State or Government at the 1990 Paris Summit. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratisation. Today it employs over 80 staff.

The ODIHR is the lead agency in Europe in the field of **election** observation. It co-ordinates and organizes the deployment of thousands of observers every year to assess whether elections in the OSCE area are in line with national legislation and international standards. Its unique methodology provides an in-depth insight into all elements of an electoral process. Through assistance projects, the ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include the following six thematic areas: rule of law, civil society, freedom of movement, gender equality, trafficking in human beings and freedom of religion. The ODIHR implements more than 100 targeted assistance programs, seeking both to facilitate and enhance State compliance with OSCE commitments and to develop democratic structures.

The ODIHR **monitors** participating States' compliance with OSCE human dimension commitments. It also organizes several meetings every year to review the implementation of OSCE human dimension commitments by participating States.

The ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies. The Office also acts as a clearing-house for the exchange of information on Roma and Sinti issues among national and international actors.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR [website](#), which also contains a comprehensive library of reports and other documents, including all previous election reports and election law analyses published by the ODIHR.