

INTERIM REPORT No.1
26 August – 13 September 2010

21 September 2010

I. EXECUTIVE SUMMARY

- General elections are scheduled for 3 October 2010. All voters are to elect 42 deputies to the State House of Representatives (HoR). As Bosnia and Herzegovina (BiH) consists of two entities, voters from the Federation (FBiH) will elect 98 deputies to the FBiH HoR and two representatives (one Bosniak, one Croat) to the tripartite BiH state presidency and ten cantonal assemblies. Voters from Republika Srpska (RS) will elect 83 deputies to the RS National Assembly and one representative (Serb) to the BiH state presidency, one RS president and two RS vice-presidents. The OSCE/ODIHR Election Observation mission (EOM) will comment upon the canton-level elections only to the extent that they impact on the other electoral races.
- As set forth in the BiH constitution (Dayton Agreement), these elections will be conducted with ethnicity and residence-based limitations to suffrage. While the European Court of Human Rights ruled on 22 December 2009 that such limitations are incompatible with the European Convention for the Protection of Human Rights and Fundamental Freedoms, consensus to amend the constitution could not be reached prior to these general elections.
- The election law is comprehensive and generally provides a sound basis for the conduct of democratic elections. Since its adoption in 2001, it has most recently been amended in 2010. Changes include shortened deadlines for electoral complaints and provision for out-of-country voting at diplomatic representations.
- The Central Election Commission (CEC) certified 47 political parties, 11 coalitions and 13 independent candidates to contest the upcoming elections. 3,900 candidates will stand in the elections on 562 separate lists (excluding cantonal elections).
- The campaign environment is competitive, but generally calm. Concerns over lack of campaign finance transparency, potential abuse of administrative resources, allegations of media bias and possible ballot manipulation during counting were raised by representatives of political parties, non-governmental organizations (NGOs) and international organizations.
- The CEC and Municipal Election Commissions are actively preparing for election day, in respect of legal deadlines. The CEC appears to enjoy a high level of confidence among electoral stakeholders. Polling Station Commissions have been appointed from candidates nominated by political subjects and their training is underway.
- Unlike in previous elections, there is no organized NGO network of domestic observers and such observation will be of limited scale; electoral oversight remains largely the purview of political party representatives.
- Public media broadcast election programs, including debates, and provide candidates with free airtime as legally required. Preliminary OSCE/ODIHR EOM media monitoring data of public media news indicates extensive coverage of government officials who are candidates.

II. INTRODUCTION

The CEC announced on 5 May 2010 that general elections will be held on 3 October. Following an invitation from the CEC, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) established an Election Observation Mission (EOM) on 26 August. The OSCE/ODIHR EOM is headed by Ambassador Daan Everts and consists of a 13-member core team based in Sarajevo and 20 long-term observers based in 9 locations throughout the country. The OSCE/ODIHR EOM is drawn from 20 OSCE participating States. The OSCE/ODIHR has requested participating States to second 300 short-term observers to observe voting, counting, and tabulation on election day.

The OSCE/ODIHR has observed seven electoral processes in BiH since 1996.¹ The 2006 general elections were assessed as being generally in line with international standards for democratic elections. They were, however, also characterized by constitutionally imposed ethnicity-based limitations to suffrage, sharp nationalist rhetoric and certain procedural irregularities during counting.

III. LEGAL FRAMEWORK

The legal framework in BiH is rather complex, reflecting the unique constitutional arrangements in the country. The BiH constitution is an annex to the 1995 *General Framework Agreement for Peace* (Dayton Agreement). As per the terms of the Dayton Agreement, BiH is divided into two separate entities: the Federation of BiH (FBiH) and Republika Srpska (RS). In addition, Brčko district functions under a decentralized system of local government. Three ‘constituent peoples’ are recognized by the terms of this constitution (Bosniak, Croat, and Serb). The constitution grants limited powers to the BiH state, while vesting most authority in the two entities.

The Dayton Agreement grants considerable powers to the international community and established the Office of the High Representative. Since 1997, the High Representative (HR) has been granted powers to impose decisions and remove officials.

The *Election Law of BiH* is comprehensive and generally provides a sound basis for the conduct of democratic elections. Since its adoption in 2001, the law has undergone substantial changes, with the most recent amendments enacted in 2010. The most important are shortened deadlines for electoral complaints² and provision for out-of-country voting at diplomatic representations.³ In addition to other national and entity-level legislation that also govern elections,⁴ the CEC has regulated certain aspects via by-laws, rule books, decisions, directives and instructions.

The current legal framework continues to enshrine ethnicity-based restrictions to both active and passive suffrage rights. Citizens who do not identify themselves as Bosniak, Croat or Serb are effectively barred from standing for the FBiH or RS presidencies. On 22 December 2009, the European Court of Human Rights (ECtHR) issued a decision stating that ethnicity-based ineligibility is “...incompatible with the general principles of the European Convention for the Protection of Human Rights and Fundamental Freedoms”.⁵ The ECtHR explicitly referred to the

¹ OSCE/ODIHR reports on previous elections in Bosnia and Herzegovina are available at: <http://www.osce.org/odihr-elections/14354.html>.

² The 2010 amendment shortened the deadline for submission of complaints from 48 hours to 24 hours during electoral period.

³ Previously, voters residing outside of BiH could vote only by postal ballot. This system is retained.

⁴ These include the Law on Citizenship, the Law on Permanent and Temporary Residence of Citizens and the Law on Central Register and Exchange of Information. In addition, RS and Brčko district have adopted their own election laws.

⁵ Complaint lodged by two applicants of respectively Roma and Jewish origins: “Sejdić and Finci versus Bosnia and Herzegovina”, 22 December 2009, ECtHR.

resolutions of the Parliamentary Assembly of Council of Europe which urged BiH to amend its constitution and the election law before October 2010.⁶ The BiH HoR established a working group on this issue early in 2010, but could not establish a majority to amend the legislation by this deadline.

Active and passive suffrage is also limited on the basis of residence. RS voters can only vote for a Serb candidate for the BiH state presidency, while voters in the FBiH may only vote for either a Bosniak or Croat candidate. Likewise, a Serb registered in the FBiH or a Bosniak or Croat registered in the RS cannot stand for the BiH state presidency.

IV. ELECTORAL SYSTEM

Six distinct contests will take place during the 2010 general elections: voters from FBiH will elect 28 of the 42 members of the State House of Representative (HoR),⁷ 98 deputies of the FBiH HoR⁸ and two members of the tripartite BiH state presidency (one Bosniak, one Croat). Republika Srpska (RS) voters elect 14 of the 42 BiH HoR deputies,⁹ 83 RS National Assembly deputies and one representative (Serb) to the BiH state presidency, one RS president and two RS vice-presidents (one from each constituent people). Although cantonal elections will also be taking place in the FBiH, the OSCE/ODIHR EOM will only observe them to the extent that they impact on the presidential and parliamentary elections.

The 28 FBiH HoR deputies of FBiH will be elected in five multi-mandate constituencies, while the 14 BiH HoR deputies of RS will be elected in three multi-mandate constituencies. The 98 FBiH HoR deputies and the 83 RS National Assembly deputies will be elected in 12 and 6 multi-mandate constituencies, respectively, based on proportional representation.

V. ELECTION ADMINISTRATION

The general elections are administered by a three-tiered structure consisting of the CEC, 142 Municipal Election Commissions (MECs), which include commissions for the cities of Banja Luka, Mostar and Brčko district, and 5,273 Polling Station Committees (PSCs).

The CEC is a permanent body of seven members¹⁰ with a seven-year mandate: two Bosniaks, two Croats, two Serbs and one “other”.¹¹ Its chairperson is elected from among the members, with a rotating mandate of 21 months. Although state authorities are responsible for the election administration since 2006, the OSCE Mission and the Office of the High Representative (OHR) still hold advisory roles on the CEC.¹²

The CEC is actively preparing for election day. In line with its broad authority, the CEC has issued numerous regulations that have been published on its website. Decisions on complaints and appeals are not posted and are only provided upon request. CEC sessions are public and, in general, the CEC appears responsive to stakeholders and enjoys a high degree of confidence.

⁶ ECtHR Decision, Paragraph 21.

⁷ Seven of these are compensatory seats allocated by proportional representation with a three per cent threshold.

⁸ The FBiH HoR indirectly elects the FBiH presidency

⁹ Including nine seats in three multi-member constituencies and five as compensatory seats.

¹⁰ CEC members are appointed by the Commission for Selection and Nomination and comprised of two members of the High Judicial and Prosecution Council, three from the administrative commission of the BiH HoR and two from members of the current CEC.

¹¹ i.e., any other national not belonging to Bosniaks, Serbs or Croats.

¹² The advisors may participate at CEC sessions, but do not have voting rights.

MECs are permanent structures appointed for seven-year terms by municipal authorities and approved by the CEC. The appointments respect the ethnic representation quota, as per the last census conducted in 1991. The MECs visited by OSCE/ODIHR EOM observers were generally well organized and staffed with experienced personnel. They are generally satisfied with the support and training sessions organized by the CEC. However, some MEC chairpersons stated that a number of important CEC by-laws were adopted or amended late, therefore protracting the time for their implementation.

MECs appointed PSC members by the 3 September deadline. All political subjects¹³ competing in a particular constituency had the right to nominate one candidate per PSC. Some smaller political parties could not nominate a sufficient number of candidates for PSC positions. In such cases, MECs appointed citizens with previous election experience. A training program for PSC staff is ongoing since legally all PSC members must be trained and certified by the MECs.¹⁴

Some OSCE/ODIHR EOM interlocutors, including CEC and MEC representatives, noted the practice of swapping positions in the PSCs among political parties, in order to ensure representation in particular polling stations. This practice entails risk of trading in PSC positions which can lead to political imbalance and potentially biased decision making.

This year the IT infrastructure of CEC and MECs was completely modernized, including the tabulation and transmission of election results.

VI. VOTER REGISTRATION

The CEC maintains a Central Voter Register (CVR), based on the Citizens Identification Protection System (CIPS) of the Ministry of Civil Affairs. Voters are automatically included in the CVR when they apply for an ID card, obligatory for all citizens above the age of 18.

Citizens could check their data in the CVR until 19 August 2010, when the register closed. In total, 3,126,599 citizens have been registered to vote. Citizens who applied for IDs after this date will be able to cast a tendered ballot.¹⁵ OSCE/ODIHR EOM interlocutors generally expressed confidence in the quality of the CVR. In urban areas, MECs experienced some problems with assigning voters to polling stations due to changes in the address system or duplicate street names.¹⁶

Voters who wish to vote out-of-country, including refugees, had to register with the CEC by 19 July 2010. For the first time, a total of 1,067 BiH voters registered¹⁷ to cast their ballots in the BiH embassies or consular departments, while an additional 36,649 voters registered to vote by postal ballot from abroad. Some interlocutors, including members of the CEC, expressed their dissatisfaction with the active registration of voters abroad, arguing that a passive registration system could have increased voter turnout abroad.

Internally displaced persons (IDPs) living in BiH may opt to vote either at the place of their temporary residence, or in their constituency at the time of the 1991 census. According to the

¹³ This term includes political parties, coalitions, independent candidates and lists of independent candidates.

¹⁴ Article 2.19 of the Election Law.

¹⁵ Tendered ballots are cast in special polling stations (one per municipality). These ballots will be counted in the Main Counting Centre in Sarajevo after cross checking information in the CVR to avoid potential double voting.

¹⁶ Voter who can produce an ID proof of residence but are not on the voter list of a specific polling station will have a possibility to vote by a tendered ballot.

¹⁷ A polling station abroad can be set-up if a minimum 50 voters apply to vote in person in that area. If this number is not met, the voters may vote by postal ballot. Polling stations were established in Vienna, Oslo, Copenhagen and four cities in Germany.

CEC, there are 22,473 IDPs registered to vote according to their 1991 residence, either absentee or in-person.

VII. CANDIDATE REGISTRATION

In order to be certified, political subjects must either be represented in a HoR or submit support signatures to the CEC (for the BiH state presidency, support signatures are mandatory).¹⁸ Following the complaints and appeals process, 47 political parties, 11 coalitions and 13 independent candidates were certified in what was described by OSCE/ODIHR EOM interlocutors as an inclusive process.¹⁹ A total of 3,900 candidates will stand in the general elections (excluding cantonal) on 562 separate candidate lists. This includes 19 candidates standing for the BiH state presidency (9 Bosniaks, 7 Croats and 3 Serbs). One political party and two independent candidates were denied registration due to incomplete applications and lack of support signatures. The CEC did not certify 324 list candidates due to various reasons, including incomplete applications and candidates not meeting legal requirements.²⁰

VIII. THE CAMPAIGN ENVIRONMENT

The political landscape remains fragmented and divided along ethnic lines. Thus, the Alliance of Independent Social Democrats (SNSD), the Serb Democratic Party (SDS) and the Party of Democratic Progress (PDP) compete for the Serb vote, while the Party of Democratic Action (SDA) and the Party for BiH (SBiH) contend mostly for Bosniak votes. The Croat political scene remains divided between the Croatian Democratic Union of BiH (HDZ BiH) and the HDZ-1990. The Social Democratic Party (SDP) is trying to appeal to a multi-ethnic electorate but its main support base remains Bosniak. Some new political subjects have emerged and are attempting to reach out to the electorate on principles of multi-ethnicity with a focus on economic and social reforms. New political parties include the Democratic Party (DP), the New Socialist Party (NSP), the Union for a Better Future (SBB) and 'Our Party' (*Naša Stranka*).

Although campaigning got underway some months before, it has noticeably picked up after the official campaign start on 3 September. The campaign is visible throughout the country, especially in cities. Most parties, coalitions and candidates use traditional means of campaigning including rallies, billboards and posters, leaflet distribution, door-to-door canvassing, as well as print and electronic media, including the Internet. Unemployment, alleged corruption, health care and education reforms are among the main issues in the campaign. Constitutional reform issues that underlie ethnic divisions are also addressed.

The campaign environment is competitive, but generally calm. Concerns over lack of campaign finance transparency, potential abuse of administrative resources, allegations of media bias and possible ballot manipulation during counting were raised by representatives of political parties, NGOs and international organizations.

IX. THE MEDIA

The media landscape is diverse and complex, including some 200 licensed broadcast media and 100 print media. There are three public broadcasters (each with a TV and radio station), one operating on the state and two on the entity level. In addition, numerous public broadcast media

¹⁸ To run for the BiH state presidency 3,000 signatures are required. Political subjects not represented in the BiH HoR need to collect 3,000 signatures to stand for the BiH HoR and 2,000 for the entity HoR (for independent candidates, half the quantity is required).

¹⁹ Of these, three coalitions, five parties and six independent candidates will contest only cantonal elections.

²⁰ This included issues such as not being registered as a voter in the constituency where the candidate intends to run. No complaints were lodged in this regard.

exist at the local level. TV is the main media source for political information. OBN and TV Pink BiH are private TV channels with the widest territorial coverage. Daily newspaper *Dnevni Avaz* has the highest circulation rate with some 50,000 copies. Several interlocutors expressed concerns about possible ties between media outlets and members of the political elite; they feel that these may impact editorial independence.

The election law, as supplemented by CEC regulations, provides a comprehensive legal framework for the media coverage of elections.²¹ Broadcast media are required to observe principles of balance, fairness and impartiality in their reporting about elections. Public broadcast media must provide contestants with free airtime on an equal basis. During the official campaign period, the contestants can purchase advertising time.²²

The Communications Regulatory Agency (CRA) is responsible for broadcast regulation and adjudication of related complaints.²³ So far, the CRA has not been active in monitoring broadcasters' campaign activities and their compliance with the law. Complaints related to print media coverage are to be dealt with by the BiH Press Council, a self-regulatory body for the print media with no legal powers or enforcement mechanisms.

The OSCE/ODIHR EOM is monitoring the election and campaign coverage of primetime broadcasts on seven TV stations and in five newspapers.²⁴ Since the start of the campaign, election programs presenting campaign developments and various debates are available to voters, especially on public broadcast media. Initial results of public TV monitoring show that their news casts provide extensive coverage of government officials who are candidates.

X. COMPLAINTS AND APPEALS

As per the election law, first instance complaints are heard by either an MEC or the CEC, depending on the nature of the complaint. CEC decisions can be appealed to the Appellate Division of the Court of BiH. Currently, 20 complaints have been lodged directly with the CEC. Of those, 12 related to alleged violations of paid advertisement regulations. The CEC dismissed one as being “without grounds” and requested further information on the others. Another five related to out-of-country voting rights; all were rejected by the CEC and by the court on appeal as without grounds. Three complaints related to candidate list registration: two were rejected by the CEC²⁵ and the third, involving fraudulent voter registration data for out-of-country postal voting, was forwarded to the prosecutor's office for further investigation. Some 20 complaints have also been filed with MECs over the nomination of PSC members. All but one was rejected without legal grounds. Two of these decisions were appealed to the CEC and upheld.

XI. PARTICIPATION OF WOMEN AND NATIONAL MINORITIES

While the election law provides a quota for gender representation on the candidate lists,²⁶ women remain under-represented in elected bodies. In an attempt to remedy the situation, a country-wide campaign to raise awareness and increase women's participation in elections is being

²¹ Article 16 of BiH Election Law and CEC Rulebook on Media Representation of Political Subjects in the Period from the Announcement of Elections to the Day of Holding the Elections (27 April 2010).

²² A maximum of 30 minutes in public and 60 minutes in private broadcast media, per week.

²³ CRA can sanction through warning, fine, temporary suspension of broadcasts and license withdrawal.

²⁴ Since the start of the election campaign on 3 September, the OSCE/ODIHR EOM has been monitoring prime time broadcasts of three public TV channels: BHT1, FTV and TV RTRS; and four private channels: OBN, NTV Hayat Sarajevo, TV1 and BN. News programs of TV Pink BiH are also being monitored. Monitored newspapers: *Dnevni Avaz*, *Oslobodjenje*, *Nezavisne Novine*, *Dnevni List*, and *Glas Srpske*.

²⁵ Complainants requesting to have their nickname on the candidate list.

²⁶ Article 4.19 requires that approximately one third of each party list be from the alternate gender (one among the first two positions, two among the first five, three among the first eight etc).

implemented by a group of NGOs.²⁷ There are 1,470 female candidates (37.7 per cent) standing in the elections being observed by the OSCE/ODIHR EOM. Two women are competing for the BiH state presidency and one for the RS presidency from among the 19 registered candidates. Within the election administration, only the CEC chairperson is female. Women occupy 198 of 515 positions (38.45 per cent) in the 142 MECs, chairing 42 of them.

The constitution draws a distinction between “constituent peoples” and “others”. There are 17 officially recognized national minorities in BiH.²⁸ Overall, the election campaign has been free of intolerant rhetoric so far. Some OSCE/ODIHR EOM interlocutors, however, have raised concerns about possible vote-buying in some Roma communities.

XII. DOMESTIC OBSERVERS

These general elections will be primarily monitored by political party observers. The number of NGO observers will be limited; some 20 organizations have applied for accreditation, with the largest being the NGO *Don* with 225 observers. The total number of domestic observers currently accredited is 740, five times less than in 2006; this appears to be due to decreased funding for such activities. Some NGO representatives opined that this lower number of domestic observers may reduce the transparency of the process.

XIII. OSCE/ODIHR EOM ACTIVITIES

The OSCE/ODIHR EOM opened its office in Sarajevo on 26 August 2010. The Head of the OSCE/ODIHR EOM (HoM), Ambassador Daan Everts, has met with the Ministry of Foreign Affairs (MFA) and the Chairperson of the CEC. The HoM has also met with the OSCE Mission to BiH, diplomatic representations of OSCE participating States and international organizations active in BiH. The OSCE/ODIHR EOM has established working contacts with the MFA, the CEC, political parties, civil society and the media. The 20 long-term observers are meeting electoral stakeholders in the regions.

The OSCE Parliamentary Assembly, the Parliamentary Assembly of the Council of Europe, and the North Atlantic Treaty Organization Parliamentary Assembly are planning to deploy observer delegations for these elections. The OSCE Chairperson-in-Office has appointed Mr. Roberto Battelli as Special Coordinator to lead the OSCE short-term observer mission.

²⁷ This involves some 13 NGOs, including TPO Foundation, Infohouse and Cure Foundation.

²⁸ The State Law on the Protection of the Rights of Persons Belonging to National Minorities lists Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Romas, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks and Ukrainians.