



Office for Democratic Institutions and Human Rights

BOSNIA AND HERZEGOVINA

**ASSESSMENT OF THE ELECTION LAW
FOR THE 5 OCTOBER 2002 ELECTIONS**



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1. INTRODUCTION

This assessment reviews and comments on the Election Law of Bosnia and Herzegovina, as amended by the High Representative by Decisions of 28 March and 18 and 19 April 2002.¹

The High Representative has issued written Decisions amending the Election Law of Bosnia and Herzegovina and amending the respective constitutions of the two Entities that form Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina and the Republika Srpska.

Article 1.1 of the Election Law provides that, in addition to regulating elections on the State level, the law “shall stipulate the principles governing the elections at all levels of authority in Bosnia and Herzegovina.” Thus, principles stated in the Election Law are considered to have supremacy over conflicting law of the Entities.

These comments are based on international standards and OSCE commitments. It should be noted that Article II of the Constitution of Bosnia and Herzegovina specifically incorporates the standards by which the Election Law has been assessed.

The unique legal framework for Bosnia and Herzegovina contains provisions that, on their face, would violate international standards, but are acceptable under international standards due to the context of Bosnia and Herzegovina.² This assessment recognizes the unique legal framework and the context within which it must be applied.

This assessment is limited to review and comment on provisions of the Election Law applicable to the 5 October 2002 elections in Bosnia and Herzegovina.³ Due to the unique legal framework for Bosnia and Herzegovina, and due to its transitory state of governance that includes substantial international involvement, it would be unwise to measure the current legal framework under unknown future conditions.

¹ Herein “the Election Law”.

² As an example, the legal framework provides that one has to be either a Bosniac, Bosnian Croat, or Bosnian Serb to stand as a candidate for the Presidency of Bosnia and Herzegovina. This provision is clearly discriminatory. However, this provision is acceptable within the context of Bosnia and Herzegovina.

³ This assessment attempts to provide a thorough summary of relevant provisions of the Election Law for use by ODIHR as a reference source during observation of the 5 October 2002 elections.

This assessment is based on an unofficial English translation prepared by the OSCE Mission to Bosnia and Herzegovina, Election/Implementation Department. The assessment does not warrant the accuracy of the translations reviewed. Any legal review based on translated laws may be affected by issues of interpretation resulting from translation.

II. EXECUTIVE SUMMARY

Generally, the Election Law provides the necessary framework for the conduct and administration of democratic elections in Bosnia and Herzegovina for the 5 October 2002 elections.

The Election Law contains some limitations on the right to be elected and these limitations should be reconsidered in order to ensure that they comply with international standards.

The alternative allocation formula for compensatory mandates, which applies under certain circumstances to allocate ethnically reserved mandates, should be improved in order to ensure fair treatment of independent candidates and to maximize proportionality.

The procedures for accreditation of observers should be improved to facilitate observation of all election processes at all levels of elections.

The Election Law could be improved in the area of election complaints and appeals. Recommendations have accordingly been made in this area.

There are other provisions in the Election Law that could be clarified. Comments and recommendations on these provisions have accordingly been made.

III. COMMENTS/RECOMMENDATIONS ON THE ELECTION LAW

A. THE RIGHT TO ELECT

Article 1.4 of the Election Law provides that a citizen of Bosnia and Herzegovina, who has reached the age of 18 years, has the right to vote. However, a citizen must register as a voter in order to exercise the right. A citizen is registered to vote in the Central Voters Register. A citizen can be registered to vote for only one municipality.⁴

Article 1.5 provides that a citizen who has the right to vote shall have the right to register and vote in person in the municipality where the citizen has permanent residence. Articles 19.4 and 19.8, which are transitional articles applicable to the 2002 elections, expand registration options to permit displaced persons and refugees to register for absentee or in person voting for the 1991 municipality of permanent residence. These articles also permit registration changes based on a change in permanent

⁴ Due to the large numbers of displaced persons and refugees, a voter votes “for” a municipality, as the current physical location of many voters is not their municipality of permanent residence. Each municipality has “absentee” polling stations where voters cast ballots “for” other municipalities and the respective higher level of elections of that municipality.

residence, provided the change in permanent residence occurred no later than six months before the elections. Article 1.5 also provides for registration of a citizen who temporarily resides abroad, and permits a citizen holding dual citizenship to register to vote if Bosnia and Herzegovina is the country of the citizen's permanent residence. In sum, these articles ensure that all citizens are granted the fullest opportunity to register to vote.⁵

Article 1.6 provides that “No person who is serving a sentence imposed by the International Tribunal for the former Yugoslavia, and no person who is under indictment by the Tribunal and who has failed to comply with an order to appear before the Tribunal, may register to vote or stand as a candidate (the candidate for the purpose of this Law refers to persons of both genders) or hold any appointive, elective or other public office in the territory of Bosnia and Herzegovina.”

As the right to stand and elect is an important civic right which cannot be withdrawn without just cause, withdrawing this right because of an indictment might appear to call into question the presumption of innocence. The second category of Article 1.6 could therefore be problematic as under international standards there is a presumption of innocence and the right to elect is an important civic right. However, in this instance Article 1.6 can be justified because of a judgement of the European Court of Human Rights, in the Case of Labita v. Italy, 6 April 2000. The Court found that although the rights to vote and stand for office are important, they are not absolute. The Court further opined that persons who are subject to special Police supervision are automatically struck off the electoral register as they forfeit their civil rights because they represent “a danger to society” or, as in the instant case, are “suspected of belonging to the Mafia”. The Court had no doubt that temporarily suspending the voting rights of persons against whom there is evidence of Mafia membership pursues a legitimate aim. Persons under indictment for crimes against humanity and persons who have failed to co-operate with ICTY are equally “a danger to society” and therefore restrictions on their civil rights are equally justified.

The last sentence of Article 1.6 provides that “as long as any political party or coalition maintains such a person in a political party position or function as established in the previous paragraph, that party or coalition shall be deemed ineligible to participate in the elections”. The opinion expressed above about the “failure to appear” category could also apply to the last sentence of Article 1.6.

Article 1.7 is similar to Article 1.6 with the following differences: (1) Article 1.7 applies to a sentence imposed by or “failure to appear” before a Court of Bosnia and Herzegovina, a Court of the Republika Srpska, a Court of the Federation of Bosnia and Herzegovina, or a Court of the Brcko District, (2) Article 1.7 applies to “serious violations of humanitarian law”, and (3) Article 1.7 requires that “the International Criminal Tribunal for the Former Yugoslavia has reviewed the file prior to arrest and found that it meets international legal standards.” The opinion expressed about the “failure to appear” category could also apply to Article 1.7.

B. THE RIGHT TO BE ELECTED

Article 1.4 of the Election Law provides that a citizen of Bosnia and Herzegovina, who has reached the age of 18 years, has the right to be elected. Articles 1.6 and 1.7, which limit the right to vote, also limit

⁵ Specific municipality registration and voting options are discussed fully at pages 14-16 of this assessment.

the right to be elected for the reasons discussed above. The opinion expressed above about the Article 1.6 and 1.7 limitations on the right to elect also applies to the Article 1.6 and Article 1.7 limitations on the right to be elected.

Article 18.9A of the Election Law provides that none of the following persons can be a candidate: (1) a person who has been removed by the Provisional Election Commission or the Election Appeals Sub-Commission, for having personally obstructed the implementation of the General Framework Agreement for Peace or violated the Provisional Election Commission *Rules and Regulations*, (2) a person who has been removed from public office by the High Representative, (3) a military officer or former military officer who has been removed from service pursuant to Chapter 14 of the *Instructions to the Parties* issued by COMSFOR under Article VI Paragraph 5 of Annex 1A to the General Framework Agreement for Peace, (4) a person who has been de-authorized or de-certified by the IPTF Commissioner for having obstructed the implementation of the General Framework Agreement for Peace.

Article 18.9B requires the Election Commission of Bosnia and Herzegovina⁶ to ensure that Article 18.9A is enforced during the process of certifying political parties and candidates. Article 18.9B provides that a political party shall not be certified for the elections should a person identified in Article 18.9A hold a central party position.

This assessment does not comment on any rule, regulation, instruction, or decision by the Provisional Election Commission, Election Appeals Sub-Commission, High Representative, COMSFOR, or the IPTF Commissioner that has resulted in the imposition of any of the sanctions referenced in Article 18.9A. This assessment assumes that no such sanction occurred without providing fair procedural and substantive legal process to the person sanctioned.⁷

Article 19.9 prohibits the candidacy of a person who fails to vacate real estate property or to leave an apartment where the property or apartment is owned by or subject to the occupancy right of a refugee or displaced person, provided this issue has been adjudicated by an administrative, enforcement, or court decision. This same prohibition applies to a person who refuses to vacate or leave within 120 days of the filing with a competent administrative body of a request to enforce a certificate issued by the Commission for Real Property Claims of Displaced Persons and Refugees (CRPC).

C. POLITICAL CONTESTANTS FOR THE VARIOUS LEVELS OF ELECTIONS

Article 9.5 of the Election Law provides that certification (registration) for elections on the State level is possible for political parties, coalitions, and independent candidates. This includes the elections for the Presidency of Bosnia and Herzegovina and the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina.

⁶ Herein “the Election Commission of BiH”.

⁷ The right of suffrage is a fundamental human right. As the Article 18.9A forfeiture of this fundamental human right is premised on a sanction listed in the article, the sanction should not have been imposed without providing fair and substantive legal process. Otherwise, the sanction should not be a basis for the forfeiture of the fundamental human right of suffrage. *See, e.g., Podkolzina v. Latvia*, European Court of Human Rights, 9 April 2002.

Articles 10.3 and 11.3 provide that certification for elections on the Entity level is possible for political parties, coalitions, and independent candidates. This includes the elections for the Presidency of the Republika Srpska, National Assembly of the Republika Srpska, and the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina.

Article 13.4 provides that certification for elections on the local level is possible for political parties, coalitions, independent candidates, and “lists of independent candidates”. This includes the elections for the cantonal assemblies in the Federation and municipal councils/assemblies in both Entities.

Every independent candidate, at each level of elections, must run with a deputy on a single ticket. The deputy has no authority or power except where the deputy succeeds to the mandate of the elected independent candidate due to the elected independent candidate’s resignation, death, imprisonment, incompetence, assumption of an incompatible office, loss of voter registration within the constituency, or some other reason provided by law.

D. CERTIFICATION AND CANDIDACY FOR THE ELECTIONS

Chapter 4 of the Election Law regulates certification and candidacy for the elections. This chapter sets forth the requirements a political party, coalition, independent candidate, and list of independent candidates must satisfy in order to be certified (registered) for the elections.

Article 4.3 establishes that a political party must be registered with the competent authority in either Entity before it can seek to be certified to participate in the elections.

Articles 4.4 and 4.8 set forth the signature requirements for the various levels of elections. Articles 4.6 and 4.10 set forth the deadlines for submission of applications for certification and corrections of deficiencies in applications. These deadlines have already expired for the 5 October 2002 elections. Article 4.12 establishes the deadline for certification of coalitions, which has also expired for the 5 October 2002 elections. Article 4.15 establishes the deadline for certification of lists of independent candidates in cantonal assembly and municipal council/assembly elections, which has also expired for the 5 October 2002 elections.

E. CANDIDATES LISTS

Article 4.18 of the Election Law provides that candidates lists for State level elections are submitted to the Election Commission of BiH. Candidates lists for all other levels of elections are submitted to the competent election commission in the electoral unit where the political party, coalition or list of independent candidates is certified to participate in the elections. After the competent election commission verifies that the candidates list was submitted in accordance with law, the election commission submits the candidates list to the Election Commission of BiH for certification.

Article 4.21 sets forth the deadlines for submission of candidates lists and for corrections of deficiencies in the lists.

Article 4.23 requires approved lists of candidates to be published in the official gazettes no later than forty-five (45) days before Election Day.

Article 4.24 requires each political party and coalition certified for elections for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, and National Assembly of the Republika Srpska to submit a list of candidates for compensatory mandates to the Election Commission of BiH. Article 4.24 does not state the date by which the list must be submitted.

***Recommendation:* It is recommended that Article 4.24 state the deadline for submission of this list.**

The risk of unallocated mandates is possible as Article 4.19 limits the number of candidates on a candidates list at the State and Entity levels to “two higher than the number of mandates that are to be allocated in that multi-member constituency”, and Article 4.24 states that “the list of candidates for compensatory mandates shall include only the names of candidates already included on the regular candidates lists submitted by the political party or coalition for one or more multi-member constituencies”.⁸ For example, a political party in the elections for the National Assembly of the Republika Srpska is limited to a total of 74 candidates (62 multi-member constituency candidates plus two “surplus” candidates for each of the six multi-member constituencies). As this pool of 74 will be reduced by ethnicity and gender requirements, and by simple attrition due to death and resignation, the possibility of vacancies does exist.⁹

***Recommendation:* It is recommended that the number of candidates permitted on a multi-member constituency list be increased, or Article 4.24 be amended to permit non-constituency candidates to be on a candidates list for compensatory mandates, but at the bottom of the list.**

F. GENDER OF CANDIDATES

Article 4.19 of the Election Law provides that “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.”

Comment: Article 4.19 is intended to increase the number of women candidates at the top of every candidates list and, thereby, increase the number of women elected. This goal may be hindered by open list voting (Articles 9.9, 10.7, 11.7, and 13.5), as open list voting allows voters to ignore candidates high on the list.

⁸ Limiting the number of candidates on a multi-member constituency list is understandable, as Article 5.15 requires the names of all candidates to be printed on the constituency ballot for the purpose of open list voting. There is a limit to the amount of ink a ballot can hold.

⁹ Theoretically, this could also occur in the House of Representatives of the Parliament of the Federation, but is less likely because the number of multi-member constituencies increases the potential candidate pool on a compensatory list by 12 (six additional constituencies times two additional candidates per constituency).

G. DIRECTLY ELECTED INSTITUTIONS

Presidency of Bosnia and Herzegovina

Article 8.1 of the Election Law and Article V of the Constitution provide that two members of the Presidency of Bosnia and Herzegovina are directly elected from the territory of the Federation of Bosnia and Herzegovina – one Bosniac and one Croat. These members are elected by voters registered to vote for the Federation of Bosnia and Herzegovina. A voter registered to vote in the Federation may vote for either the Bosniac or Croat member of the Presidency, but not for both. The Bosniac and Croat candidates that get the highest number of votes among candidates from the same constituent people are elected.

The member of the Presidency of Bosnia and Herzegovina that is directly elected from the territory of the Republika Srpska is one Serb, who is elected by voters registered to vote for the Republika Srpska. The candidate who gets the highest number of votes is elected. The mandate for the members of the Presidency of Bosnia and Herzegovina is four years.

Article 8.2 suggests that each candidate stands for election with a deputy candidate, as the article states “the ‘ticket’, for the purposes of this chapter, shall consist of the name of the candidate for the member of the Presidency”. However, “ticket” does not appear elsewhere in Chapter 8. Articles 8.4 through 8.8 provide for a member’s “replacement” due to death, resignation, or incapacity. Thus, it is assumed that the “replacement” is part of the “ticket” for Presidency. This assumption is supported by Chapters 10 and 11, which provide for “tickets” for independent candidates in the legislative elections regulated by those chapters. A ticket is necessary to fill a vacancy since there is not a candidates list to supply a replacement in the event of resignation, death, or incapacity.

House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina

Chapter 9 of the Election Law and Article IV of the Constitution regulate elections for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina.

The House of Representatives of the Parliamentary Assembly consists of forty-two members. Twenty-eight members are directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina. Fourteen members are directly elected by voters registered to vote for the territory of the Republika Srpska. The mandate of members is four years.

Of the twenty-eight members directly elected by voters registered to vote for the territory of the Federation of Bosnia and Herzegovina, twenty-one are elected from multi-member constituencies under the proportional representation formula set forth in Article 9.6. Seven mandates are compensatory mandates elected from the territory of the Federation as a whole according to Article 9.7.

Of the fourteen members directly elected by voters registered to vote for the territory of the Republika Srpska, nine are elected from multi-member constituencies under the proportional representation formula set forth in Article 9.6. Five mandates are compensatory mandates elected from the territory of the Republika Srpska as a whole according to Article 9.7.

A voter is given one ballot, which is for the proportional representation mandates in the multi-member constituency for which the voter is registered. This ballot also counts for the allocation of compensatory mandates.

Article 9.3 lists the cantons that are included in each multi-member constituency in the Federation, and the number of mandates for each multi-member constituency, which ranges from 3 to 6, for a total of 21 constituency mandates. Voters in the Brcko District who have the right to vote for Federation elections are included in Constituency 5.

Article 9.4 lists the municipalities that are included in each multi-member constituency in the Republika Srpska. Each multi-member constituency elects three mandates, for a total of nine constituency mandates. Voters in the Brcko District who have the right to vote for Republika Srpska elections are included in Constituency 2.

Article 9.6 of the Election Law provides that mandates are allocated under the formula commonly known as the *St. Lague* formula. This formula divides the number of valid votes received by each political party and coalition by a series of odd numbered integers (1, 3, 5, 7, *et seq.*) to arrive at a number of quotients equal to the number of mandates to be allocated within the constituency. The total number of valid votes for an independent candidate is the quotient for the independent candidate. Mandates are distributed, in order, to the highest quotients until all the constituency mandates have been distributed. No political party, coalition, or independent candidate can participate in the allocation of mandates unless it wins more than 3% of the total number of valid ballots in the constituency.¹⁰

Article 9.7 regulates the allocation of compensatory mandates. Only political parties and coalitions may take part in the distribution of compensatory mandates. First, the total number of mandates for the legislative body to be allocated for the territory of the respective Entity, reduced by the number of mandates won by independent candidates, is distributed according to the formula set forth in Article 9.6. From the number of mandates a list of a political party or coalition has won according to this procedure, the number of constituency mandates won by the same party or coalition is deducted. The remaining number is the number of compensatory mandates the list wins.¹¹ Compensatory mandates won by a political party or coalition are allocated to unelected candidates on the political party or coalition's list of candidates for compensatory mandates.

¹⁰ The 3% legal threshold will be less significant for those constituencies and legislative bodies with a small number of mandates. The effective (mathematical) threshold (determined by the total number of valid votes and number of mandates in the constituency) will in some instances exceed 3%. Most electoral contestants, who cross the effective threshold, will likely cross the 3% threshold. It is assumed, although Articles 9.7, 10.4, 10.5, 11.4, 11.5, and 13.5 are not absolutely clear on the point, that the 3% threshold applies to all constituencies at all levels of elections and to allocation of compensatory mandates at all levels of elections.

¹¹ If a political party or coalition receives a negative number of mandates according to this procedure, the political party or coalition keeps the mandates won in the constituencies, but does not receive any compensatory mandates. In case one or more lists get a negative number of mandates, the number of compensatory mandates to be distributed is decreased correspondingly to preserve the correct number of mandates in the House of Representatives of the Parliamentary Assembly elected from the territory of the respective Entity.

Mandates won by a list, both constituency and compensatory mandates, are distributed first amongst candidates on the list who individually received at least five percent (5%) of the total number of valid votes received by that list, these mandates being awarded in the order of the highest number of votes to the lowest number of votes. If there are still mandates to be distributed to a list and the candidates remaining are those who received less than five percent (5%) of the total valid votes received by that list, then distribution of the mandates among the remaining candidates from the list is done according to their order on the list.

If a political party or coalition does not have enough eligible candidates on a constituency list to fill mandates allocated to it, then the mandate shall be transferred to the party or coalition's list in another constituency according to the procedure set forth in Article 9.8 (allocation of mandates to candidates on the compensatory list). If there are no more candidates remaining on any list for the political party or coalition, then the mandate shall remain vacant until the next regularly scheduled elections.

Article 9.12 requires that the constituencies and the number of mandates allocated to each constituency be reviewed every four years by the Parliamentary Assembly of Bosnia and Herzegovina.

House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina

Article 10.1 of the Election Law provides that there are 98 members in the House of Representatives of the Parliament of the Federation.¹² Article 10.1 provides that a member's mandate is for four years. Members of the House of Representatives are elected by voters registered to vote for the territory of the Federation.

Article 10.1 requires the House of Representatives of the Parliament to establish multi-member constituencies. Mandates are allocated under the proportional representation formula set forth in Article 9.6 and a certain number of mandates must be compensatory mandates allocated in accordance with the principles of Article 9.7. Article 10.1 further requires that a "minimum number of four members of each constituent people shall be represented in the Federation House of Representatives".

A voter is given one ballot, which is for the proportional representation mandates in the multi-member constituency for which the voter is registered. This ballot also counts for the allocation of compensatory mandates.

Article 10.2 sets forth guidelines that must be followed by the House of Representatives in determining the boundaries and number of mandates for multi-member constituencies. Of the 98 mandates, between 23% and 27% must be compensatory mandates. There must be a minimum of ten multi-member constituencies. A multi-member constituency may have between three and fifteen members. Registered voters in the Brcko District who have the right to vote in Federation elections must be allocated to one of the multi-member constituencies. Article 10.2 states the formula for determining the number of mandates for a constituency, which is based on the population of registered voters in the constituency.

¹² The Parliament of the Federation consists of the House of Representatives and the House of Peoples. Members of the House of Peoples are indirectly elected by cantonal assemblies in the Federation.

Article 19.13 lists the cantons that are included in each multi-member constituency for the 5 October 2002 elections.¹³ There will be 73 multi-member constituency mandates and 25 compensatory mandates for the 5 October 2002 elections.

Mandates are allocated in each multi-member constituency under the same principles regulating the distribution of mandates for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. The allocation formula of Article 9.6 applies.

Compensatory mandates are allocated under the same principles regulating the distribution of compensatory mandates for the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. The allocation formula of Article 9.7 applies.

Mandates won by a list are distributed among candidates on the list under the same principles regulating the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, including the open list provisions that change the order of distribution for candidates on the list receiving at least 5% of the valid votes cast for the list.

Article 10.9 requires that the constituencies and the number of mandates allocated to each constituency be reviewed every four years by the Parliament of the Federation of Bosnia and Herzegovina.

Presidency and Vice Presidency of the Republika Srpska

Chapter 12 of the Election Law regulates election of the Presidency and Vice Presidency of the Republika Srpska. The President and two Vice Presidents are directly elected from the territory of the Republika Srpska by voters registered to vote for Republika Srpska elections. Candidates stand for the Presidency. A voter is able to cast one vote for one candidate only. Article 12.3 provides that “the candidate from each constituent people receiving the highest number of votes shall be elected. Among these three candidates, one from each constituent people, the candidate receiving the highest number of votes shall be elected President, and the two candidates receiving the second and third highest number of votes shall be elected Vice President.” The mandate for the President and Vice Presidents is for four years.

National Assembly of the Republika Srpska

Chapter 13 of the Election Law regulates election of members of the National Assembly of the Republika Srpska. The electoral formula and open list voting principles, which are discussed above for the elections for the House of Representatives of the Federation, are also applicable to the elections for the National Assembly of the Republika Srpska.

Of the 83 mandates in the National Assembly, between 23% and 27% must be compensatory mandates. There must be a minimum of six multi-member constituencies. A multi-member constituency may have between four and fifteen members. Registered voters in the Brcko District, who have the right to vote in the election, must be allocated to one of the multi-member constituencies.

¹³ Voters in the Brcko District who have the right to vote for Federation elections are included in Constituency 2.

Article 19.13 lists the municipalities for each multi-member constituency for the 5 October 2002 elections.¹⁴ There will be 62 multi-member constituency mandates and 21 compensatory mandates for the 5 October 2002 elections. A member's mandate is for four years.

Cantonal Assemblies of the Federation of Bosnia and Herzegovina

Article 13.3 of the Election Law provides that the number of members to be elected to a cantonal assembly shall be between 20 and 35, depending on the number of registered voters for the canton. Article 13.11 of the Election Law provides that the mandate for a member of a cantonal assembly is four years.

Article 13.4 provides that political parties, coalitions, independent candidates, and lists of independent candidates can compete in the elections for cantonal assemblies. Articles 13.1 and 13.5 establish that mandates are allocated under the *St. Lague* formula set forth in Article 9.6. Article 13.5 allows open list voting and changing of the order of candidates for candidates on a list receiving more than 5% of the valid votes cast for the list.

Municipal Councils/Assemblies

Article 13.2 of the Election Law provides that the number of members to be elected to a municipal council/assembly shall be between 11 and 31, depending on the number of registered voters for the municipality. Article 13.11 provides that the mandate for a member of a municipal council/assembly is four years.

Article 13.4 provides that political parties, coalitions, independent candidates, and lists of independent candidates can compete in the elections for municipal councils/assemblies. Articles 13.1 and 13.5 establish that mandates are allocated under the *St. Lague* formula set forth in Article 9.6. Article 13.5 allows open list voting and changing of the order of candidates for candidates on a list receiving more than 5% of the valid votes cast for the list.

Brcko District

Chapter 18 of the Election Law regulates the Brcko District. Article 18.1 grants citizens registered in the Brcko District the same voting rights and registration options granted to other citizens of Bosnia and Herzegovina. A citizen registered for the Brcko District also has the right to vote in elections for the Brcko District Assembly.

Article 18.2 creates the Brcko District Election Commission, which has the same functions, duties, and responsibilities as a Municipal Election Commission. Article 18.6 provides that elections for the Brcko District Assembly are conducted in accordance with the provisions regulating the elections of municipal councils/assemblies.

¹⁴ Voters in the Brcko District, who have the right to vote for Republika Srpska elections, are included in Constituency 4.

H. RESERVED MANDATES FOR CONSTITUENT PEOPLES

Article 4.19 of the Election Law provides that “the candidates lists for the House of Representatives of the Federation of Bosnia and Herzegovina, the President and Vice Presidents of Republika Srpska, and the National Assembly of Republika Srpska shall indicate to which constituent people, or the group of Others, the candidates declare to belong.”¹⁵ Articles 10.6 (House of Representatives of the Federation) and 11.6 (National Assembly of the Republika Srpska) further provide that “unless each constituent people receives a minimum of four mandates, the later compensatory mandate(s) shall be given to the candidate(s) of the relevant constituent people(s) from the compensatory list of the political party or coalition having received the highest number of votes and having eligible candidates of the relevant constituent people left on the list. If a political party or coalition does not have enough eligible candidates of the relevant constituent people on its compensatory list to fill the seats allocated to it, the mandate shall be transferred to the party or coalition’s list having received the highest number of votes and having such candidates left on its compensatory list(s). If no candidate from the relevant constituent people(s) can be found on any compensatory lists, the seat(s) shall be transferred to the party or coalition’s list having received the highest number of votes and having such candidates left on another list(s) in accordance with Article 9.9, paragraph 2 of this law.” Similarly, under Articles 10.8 and 11.8, when an independent candidate’s mandate terminates and the independent candidate’s deputy is not from the same constituent people, then the mandate is filled “from the political party or coalition having received the highest number of votes in the same constituency and having eligible candidates of the relevant constituent people left on its list in accordance with Article 9.9, paragraph 2 of this law.”

The concept stated in Articles 4.19, 10.6, 10.8, 11.6, and 11.8 is acceptable. However, the alternative allocation formula stated for allocating these reserved mandates (1) discriminates against independent candidates, and (2) is contrary to the *St. Lague* allocation principles used for the multi-member constituency mandates and compensatory mandates in Chapters 10 and 11.

The alternative allocation formula discriminates against independent candidates, as only a political party or coalition is able to take advantage of a situation where the alternative allocation formula applies. This discriminatory allocation would apply even where an independent candidate was of the correct constituent people and had the 99th highest quotient in elections to the House of Representatives of the Parliament of the Federation (or the 84th highest quotient in elections to the National Assembly of the Republika Srpska).

The alternative allocation formula is contrary to the *St. Lague* allocation principles used for the multi-member constituency mandates and compensatory mandates. The *St. Lague* allocation formula of Article 9.6 allocates, proportionally in ranking order, mandates to the highest *quotients* resulting from a series of divisions of the total valid votes received by an electoral contestant. Contrary to this principle, the alternative allocation formula allocates the undistributed reserved mandates to “the party or coalition having received the highest number of votes and having eligible candidates of the relevant constituent people on the list”.

¹⁵ The constituent peoples are Bosniac, Bosnian Croat, and Bosnian Serb.

The alternative allocation formula could be stated in language that accomplishes the goal of Articles 4.19, 10.6, 10.8, 11.6, and 11.8, while at the same time treating independent candidates in a non-discriminatory manner and adhering to the *St. Lague* principles.

***Recommendation:* It is recommended that the alternative allocation formula be revised to permit independent candidates to participate in the alternative allocation and to ensure adherence to the *St. Lague* principles of proportionality.**

It should also be noted that the alternative allocation formula does not clearly state which list must give up (“transfer”) a non-constituent people mandate to a list that has a candidate of the required constituent people. As an example, assume that all ethnically reserved mandates have been filled but eight, and that the only remaining candidates of the required ethnicity are on a compensatory list that has not won a mandate. This list will supply the eight candidates of the required ethnicity. But, of the lists which won mandates and do not have candidates of the required ethnicity, which list or lists have to give up mandates to be “transferred” to the compensatory list that has the candidates of the required ethnicity? The alternative allocation formula should address this.

I. DOMESTIC AND INTERNATIONAL OBSERVERS

Chapter 17 of the Election Law regulates election observers. Article 17.3 provides that the Election Commission of BiH shall establish regulations to “determine the criteria and the application process for the accreditation of international observers”. Article 17.4 grants the same authority to the Election Commission of BiH for accreditation of observers of associations of citizens. Article 17.5 requires all other observers (political party, coalition, independent candidate, list of independent candidates) to make multiple stops for accreditation: (1) Election Commission of BiH if observing the Election Commission of BiH and Central Counting Centres, (2) Entity and Cantonal Election Commission if observing at that level, and (3) Municipal Election Commission if observing at that level, or at a Voter Registration Centre, Polling Station, or “any other relevant location in its jurisdiction”. Chapter 17 establishes multiple regimes governing the process of observer accreditation. The only observers who can avail themselves of one accreditation process are observers of international organisations and associations of citizens. An observer of a political party presenting a candidate for the BiH Presidency is required to make multiple accreditation stops in order to observe election activities at all levels. This hampers effective observation.

***Recommendation:* It is recommended that the Election Law be amended to provide for a uniform accreditation process that allows for one stop for an application for accreditation. The one stop should be the election commission of the highest level at which the observer will be observing. Although subordinate election commissions must be notified of such accreditation, there is no reason for requiring an observer to go through another accreditation process. The process of accreditation should be uniform and designed with the idea of facilitating and not hindering accreditation as an observer.**

Article 17.8 provides that an observer who has been denied accreditation by a Municipal, Cantonal, or Entity Election Commission may submit a complaint to the Election Commission of BiH. However, the absence of any uniform accreditation procedures, coupled with the fact that the only Chapter 17 deadline authority of the Election Commission of BiH is for submission and not *disposition* of

applications, allows one of the three subordinate election commissions to “sit on” an application, which is not a denial. This would effectively deny the right to appeal. It certainly could delay an appeal, thereby delaying observation of many electoral processes.

***Recommendation:* It is recommended that the Election Law be amended to establish deadlines for the approval or rejection of an application for accreditation.**

Article 17.1 states that observers “shall have access to relevant documents and public election commission meetings”. However, the language of this article, coupled with the public posting provisions of Articles 5.22, 5.26, 5.27 and 5.29, suggests that observers have no right to obtain copies of central counting centre results (5.22), polling station report of results (5.26), Municipal Election Commission consolidated summary of results (Article 5.27), or detailed tabulations of the Election Commission of BiH (Article 5.29), at the time that they are completed.

***Recommendation:* It is recommended that the Election Law be amended to clarify the rights of observers, so that is clear that observers have the right to obtain copies of voting results, reports, tabulations, summaries, and protocols at all levels, at the time when they are completed.**

J. VOTERS REGISTER AND VOTER REGISTRATION OPTIONS

Article 3.1 provides that a person, to be eligible to vote, must be (1) a citizen of Bosnia and Herzegovina, (2) eighteen (18) years or older, and (3) registered to vote in the Central Voters Register. This article also provides that a person must register personally and no person may apply for registration on behalf of another person. Article 3.1 regulates the content of information on voters that must be contained in the Central Voters Register and establishes that the Election Commission of BiH is responsible for management of the Central Voters Register. Based on the data contained in the Central Voters Register, the Election Commission of BiH shall establish a Municipal Voters Register for each municipality for all voters who have registered to vote for that municipality in person or by absentee ballot. This article also permits the Election Commission of BiH to establish voter registers for other electoral units for which specific elections are conducted, provided the registers are based on data contained in the Central Voters Register. Article 3.1 further provides that municipal authorities are responsible for the proper registration of voters residing within the municipality and for the accuracy and validity of data provided for changes in the Central Voters Register. The Election Commission of BiH is responsible for the accuracy and validity of data provided for changes in the Central Voters Register on voters outside of the territory of Bosnia and Herzegovina. The Central Voters Register, Municipal Voters Register, and other voter registers are public documents.

Article 3.3 provides, for voter registration purposes, that “permanent residence is either the citizen’s residence according to the most recent national Census, or the municipality where a citizen is registered as a permanent resident in accordance with law”.

Article 3.4 provides that “a citizen of Bosnia and Herzegovina, who has the right to vote, shall register for the municipality in which he or she has a permanent place of residence, except as otherwise permitted under this law.” This article establishes permanent place of residence as the default registration option unless the citizen chooses to exercise one of the registration options provided by Article 19.8. A citizen

who is temporarily residing abroad and has the right to vote, must register for the municipality of the citizen's permanent residence prior to departure for abroad, provided that the citizen is registered as a permanent resident in the municipality at the time of the application for registration as a voter.

Article 19.8 provides special voter registration options and voting options for displaced persons and refugees. A displaced person has three registration options: (1) permanent residence according to the last national Census (1991), (2) permanent residence at the time the person acquired the status of a displaced person, subject to proof of the same, or (3) current residence if established at least six months prior to Election Day, subject to proof of the same. A displaced person, who exercises one of the first two registration options, can vote either (1) in person in the appropriate polling station within the municipality of permanent residence or (2) in the appropriate absentee polling station within the municipality of current residence. Similarly, a refugee has the first two registration options (current residence is obviously not applicable). A refugee can vote by mail from out of country, or return on Election Day and vote a tendered ballot.

Article 19.8 also provides that a "citizen of Bosnia and Herzegovina who is occupying a house or an apartment for which s/he does not have an ownership or occupancy right, while an enforcement document is issued by a competent court or administrative authority on the restitution of a house or an apartment, or CRPC decision, has no right to vote in the place of current domicile, until s/he abandons real-estate property owned by other, and may register to vote only in the municipality where s/he had the permanent residence in accordance to the last Census in Bosnia and Herzegovina (sic)."

Article 3.5 provides that the data entered into the Central Voters Register shall include for each voter: last and first name, date of birth, national identification number, name of the municipality and settlement of permanent or current residence, the name of the municipality where registered as a voter, and serial number under which the voter is registered.

Article 3.6 authorizes the Election Commission of BiH to regulate the procedures by which municipal authorities determine the accuracy of municipal data for the Central Voters Register. This article also authorizes the Election Commission to take corrective action when there is reason to question the accuracy or validity of information on a voter.

Article 3.7 provides that no person shall forfeit any right or entitlement due to the fact that he or she has registered as a voter, or due to his or her registration to vote for a municipality other than the one in which he or she currently resides. This article also provides that no person shall be required to present any document issued relative to registration or voting for any other purpose except as is necessary for the purpose of voter registration, confirmation of registration, or voting. The purpose of this article is to prevent the conditioning or forfeiture of rights based on the municipality registration option exercised by a voter. This provision is especially applicable to displaced persons and refugees.

Article 3.9 establishes the registration and voting options available to military personnel, and the procedures for changing an option. A member of the military is permitted to vote where stationed, in an Absentee Polling Station, for the electoral unit(s) for which the member has permanent residence.

Article 3.10 permits a person to file a complaint with the Municipal Election Commission contesting the accuracy of specific entries on the Central Voters Register. This article also permits a person who is

omitted from the Central Voters Register to file a complaint requesting inclusion. This article also provides that any citizen has the right to inspect the Central Voters Register and submit a complaint about invalid or inaccurate entries, in accordance with the procedures of Chapter 6.

Article 3.13 establishes the right of refugees and citizens abroad to register and vote by mail. This article provides that the Election Commission of BiH shall establish forms, instructions to citizens, deadlines, and procedures for registering and voting by mail.

K. ELECTION ADMINISTRATION BODIES

Article 2.1 of the Election Law establishes that elections are administered by “election commissions and Polling Station Committees”. Members must be persons eligible to vote and have appropriate expertise and experience in the administration of elections. Article 2.3 provides that no person can be a member who: (1) is disqualified as a candidate due to either Articles 1.6 or 1.7, (2) is a member of the highest executive political body of a political party or coalition, (3) holds an elected mandate or is a member of an executive body of authority except as provided for in Article 2.12, (4) stands as a candidate for the elections at any level of authority, or (5) has been sanctioned, within the previous four years, for a serious violation of the electoral laws or regulations, for which violation the person was found to be personally responsible.

Article 2.2 sets forth the general qualifications for members of election commissions and Polling Station Committees, which include eligibility to vote and elections administration experience. Article 2.3 lists disqualifying factors for service on an election commission or Polling Station Committee. Article 2.4 establishes a term of five years for members of election commissions. Members of Polling Station Committees are appointed for each election.

Two regimes govern the membership of the Election Commission of BiH, which is the State level election commission.

Article 19.1 of the Election Law provides that, until the High Representative’s mandate terminates or he or she decides otherwise, the Election Commission of BiH shall consist of one Bosniac, one Bosnian Croat, one Bosnian Serb, one Other, and three international members. The international members are appointed by the High Representative. The national members are jointly nominated by the Commission for the Appointment of Judges of the Court of Bosnia and Herzegovina and the Election Commission of BiH. Nominations have to be approved by the High Representative. Members are elected from approved nominations by the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina. If initial members are not appointed by 15 September 2001, then the High Representative appoints the members. On 27 September 2001, the High Representative issued a decision appointing the three international members. On 16 November 2001, the High Representative issued a decision appointing the four national members.

When the High Representative’s mandate terminates or he or she decides, Article 2.5 will govern the appointment of members to the Election Commission of BiH. Article 2.5 provides that the commission shall consist of two Bosniacs, two Bosnian Croats, two Bosnian Serbs, and one Other. Members must be legal experts with experience in the administration of elections or as electoral experts. The nomination

process is similar to the process described in the preceding paragraph, except that nominees do not require prior approval of the High Representative.

Article 2.6 establishes a rotating position of President on the Election Commission of BiH, which rotates every 15 months among a Bosniac, Bosnian Croat, Bosnian Serb, and Other.

Article 2.12 provides that a Municipal Election Commission shall consist of “between three or five members”. “Between” should probably be “either”. The Election Commission of BiH determines whether there should be three or five members, based on the number of registered voters, the size of the municipality, and “other criteria”. Members, including the position of President, are appointed by the Municipal Council/Assembly, subject to the approval of the Election Commission of BiH. The duties and responsibilities of the Municipal Election Commission are set forth in Article 2.13.

Article 2.14 provides that “the composition of an election commission or Polling Station Committee should be multiethnic, reflecting the population of the constituent peoples including others bearing in mind the most recent national Census at the electoral unit for which it is formed.” If the election commission or Polling Station Committee is not established according to this requirement, then the Election Commission of BiH annuls the appointment of the members and informs the appointing body. The appointing body has seven (7) days to reappoint the body. If the election commission or Polling Station Committee is not properly constituted again, then Election Commission of BiH appoints the members of the election commission or Polling Station Committee in accordance with the multi-ethnicity requirement of Article 2.14.

Article 2.17 provides that, except as established by Regulations of the Election Commission of BiH, all election commission meetings are public.

***Recommendation:* It is recommended that these exceptions be specifically stated in the Election Law as transparency is a critical cornerstone for free and fair democratic elections. These exceptions will be few, and can be stated in advance in the law.**

Article 2.19 provides that a Polling Station Committee shall consist of the President and either two or four members. Members are appointed by the Municipal Election Commission, no later than 15 days prior to the election.

Article 2.21 provides that Entity election commissions shall be created by Entity law “in accordance with this law”. Article 2.21 also provides that the competencies of Entity election commissions are determined by the Election Commission of BiH “in accordance with this law”. The manner of election and the composition of all other election commissions is determined by Entity law and “in accordance with the provisions” of the Election Law.

L. VOTING PROCESS

Article 5.12 of the Election Law requires that a voter provide a valid identification document to the Polling Station Committee in order to vote, which can be any of the following: identification card, passport, driver’s license, military identification card, valid identification document issued by a host country, or a refugee card issued by a host government or other international agency. Although it is

clear who the issuing authority must be for the last two types of identification documents, it is not clear who must be the issuing authority for the first four types of documents. It is not clear whether an identification card issued by any governmental authority, at any level of government, is acceptable for identification purposes if it includes a photograph.

Recommendation: It is recommended that Article 5.12 clearly specify which authority or authorities must issue these documents.

Article 5.14 requires that all candidates be listed on the ballot, as voters have the opportunity to vote for individual candidates within a list of a political party, coalition, or independent candidates. Article 5.15 requires additional information be printed on the ballot. The information required by these two articles is substantial.

Recommendation: Consideration should be given to amending these articles to make the ballot easier to read for voters.

Article 5.18 allows a voter, who was registered to vote out of country but returns to Bosnia and Herzegovina on Election Day, to vote a tendered ballot. The tendered ballot is placed in a special envelope on which is written information from which the voter's right to vote can be verified. The Polling Station Committee forwards these tendered ballots to the Municipal Election Commission, which forwards the tendered ballots to the Election Commission of BiH. The Election Commission of BiH confirms that the voter is registered to vote out of country before the envelope is opened and the ballot counted. However, Article 5.18 does not require that the Election Commission of BiH verify that the voter has not also voted by mail. A citizen residing in and registered to vote by mail from a neighbouring country could vote by mail prior to Election Day, and then travel to Bosnia and Herzegovina and vote a tendered ballot.¹⁶

Recommendation: Article 5.18 should also require that the Election Commission of BiH verify that a voter submitting a tendered ballot envelope has not already voted by mail from out of country.

M. SPECIAL VOTING

Article 5.21 of the Election Law requires the Election Commission of BiH to establish regulations for voting by persons who are "homebound due to old age, illness, or disability, or are prisoners or confined to institutions".

Recommendation: Pursuant to the requirements of Article 5.21, it is recommended that the administrative regulations promulgated by the Election Commission of BiH for special voting include the following safeguards:

- The voter should submit a written application to the Polling Station Committee, by a stated deadline sufficiently in advance of Election Day, explaining why the voter cannot attend a polling station.

¹⁶ Article 5.28 provides that a by mail ballot has to be postmarked by Election Day.

- **The application must be approved or rejected by the Polling Station Committee by a stated deadline.**
- **Observers of all categories, or their representatives where numbers must be restricted for practical reasons, should be permitted to accompany the mobile ballot box.**
- **The number of ballot papers taken out for mobile use and the number later returned should be formally recorded.**
- **The number of ballot papers taken out should accord with the number of requests approved, plus a specified small number of extra ballots to allow for voters who may spoil their ballot paper.**

N. COUNTING OF VOTES/DETERMINATION OF RESULTS

Articles 5.22, 5.26, 5.27, and 5.29 require public posting of results. However, these articles do not require that copies of results be given to observers.

***Recommendation:* It is recommended that the law require that copies of all results be given to observers at the time of public posting.**

Article 5.25, in the English translation provided, has a gap. Article 5.25 recognizes two possible scenarios at a polling station. In one scenario, all of the ballots are to be counted at the polling station. Article 5.25 states what information should be recorded on Polling Station Committee forms under this first scenario. In the second scenario, some of the ballots are to be counted at a central counting centre. Article 5.25 does not state what information is to be recorded on Polling Station Committee forms under the second scenario. The article only states that the information that would be recorded under scenario one is not recorded under scenario two.

***Recommendation:* Article 5.25 should state what information is to be recorded on Polling Station Committee forms under scenario two.**

Article 5.28 requires that a by mail ballot be postmarked by Election Day in order to be counted. However, the article is not clear whether the postmark is the postmark of the country from which the ballot has been mailed. This should be clarified.

O. CAMPAIGN FINANCE

Article 15.1 requires that all electoral contestants, at all levels of elections, must file a financial report with the Election Commission of BiH (1) at the time of submission of the application for certification to participate in the elections, and (2) no later than 30 days after the Election Commission of BiH publishes the election results. Article 15.1 sets forth the specific information that must be contained in a financial report. This report is in addition to any other reports that may be required by laws regulating political party financing. Article 15.2 provides that the reports shall be made available to the public.

Article 15.6 grants the Election Commission of BiH investigative and enforcement powers for the purpose of requiring electoral contestants to comply with Chapter 15.

In addition to the requirements of Article 15.1, individual candidates at the State and Entity levels of elections must submit to the Election Commission of BiH, no later than 15 days from the date of acceptance of candidacy, a personal financial report form. Article 15.7 sets forth the specific information that must be contained in this form for individual candidates. Article 15.8 requires that all *elected* candidates at levels below the State and Entity levels must file the Article 15.7 form within 30 days of verification of the candidate's mandate. These forms are to be made available to the public.

Article 15.10 establishes limitations on campaign expenditures, based on the number of registered voters announced by the Election Commission of BiH 90 days before Election Day. No political party, coalition, list of independent candidates or independent candidate shall, based on the number of voters announced by the Election Commission of BiH, spend more than one convertible mark per voter in each electoral race for the purposes of the election campaign. For the purpose of applying this limitation, each of the following is an electoral race: municipality election, canton election, election for a multi-member constituency of the National Assembly of the Republika Srpska, election for the President and Vice President of the Republika Srpska, election for a multi-member constituency of the House of Representatives of the Parliament of the Federation of Bosnia and Herzegovina, election for a multi-member constituency of the House of Representatives of the Parliamentary Assembly of Bosnia and Herzegovina, and election for the members of the Presidency of Bosnia and Herzegovina from each Entity.

P. MEDIA ISSUES

Article 16.2 of the Election Law requires that public broadcast media provide free broadcast time for electoral contestants. The Election Commission of BiH is responsible for promulgating rules for determining how this free broadcast time is to be allocated among electoral contestants.

Article 16.3 requires that "all broadcast media" broadcast statements and information by the Election Commission of BiH "free of charge". The Election Commission of BiH should be cautious in its use of this provision to require private broadcast media to broadcast state messages free of charge. Although such public service messages have a legitimate purpose, misuse or excessive use could violate the right of private media to use private property without undue state interference.¹⁷

Article 16.4 prohibits all paid political advertisements on broadcast media.

Article 16.5 establishes a campaign silence period beginning 24 hours before the opening of polling stations and until the close of polling stations.

Article 16.6 bans the release of public opinion research related to the voting and the elections during the period beginning 72 hours before the opening of polling stations and until the close of polling stations.

¹⁷ See Articles 17 and 19 of the Universal Declaration of Human Rights; Article 10 and Article 1 to Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 16.7 provides that the competent media regulatory body that is responsible for the implementation of laws and regulations concerning the media shall have jurisdiction over all election related media violations provided for in the Election Law or any other media regulatory law. The media regulatory body may refer a matter to the Election Complaints and Appeals Council when it is alleged that there has been a violation of Chapter 16 of the Election Law.

Q. ELECTION COMPLAINTS AND APPEALS

Chapter 6 of the Election Law identifies the following as potential tribunals for the filing of either a complaint or appeal, depending on the particular provision in the Election Law that is violated: Municipal Election Commission, Election Complaints and Appeals Council, Election Commission of BiH, and the Appellate Division of the Court of Bosnia and Herzegovina.

Ordinarily, a complaint, which must be filed within three days of the alleged violation, is first filed with the Municipal Election Commission (Article 6.4). However, a complaint alleging a violation of Chapters 7 or 16 of the Election Law is first filed with the Election Complaints and Appeals Council (Article 6.6). But, a Chapter 7 complaint that alleges that the violation occurred “at the polling station” is first presented to an election commission (Municipal Election Commission), and then appealed to the Election Complaints and Appeals Council (Article 6.7). Electoral participants may be confused and would benefit from a clear and simple path for all potential violations. Further, appeals on such complaints are filed via two paths, either to the Election Commission of BiH or the Election Complaints and Appeals Council, depending on whether the foundational violation occurred “at the polling station” or was a violation of either Chapters 7 or 15 (Articles 6.6, 6.7, and 6.12).

The dichotomy created by the Election Law could be confusing to voters. The average voter may find it difficult to know the specific place to file a complaint arising from a specific fact situation.

***Recommendation:* It is recommended that the Election Law be amended to simplify and streamline the complaints and appeals process. Consideration should be given to establishing a single complaint process and a single appeal process, regardless of whether the underlying violation is a violation of a specific provision in the Election Law.**

There is no right to a public hearing under the Election Law. Under Article 6.3, a public hearing may be held if the Municipal Election Commission or Election Complaints and Appeals Council decides that a hearing is necessary.

Arguably, the right to present evidence is a component of the right to file a complaint. However, it is apparent from Article 6.3 that a truly meaningful right to present evidence is limited to those occasions where the Municipal Election Commission or Election Complaints and Appeals Council deems that a public hearing is necessary. Thus, there is no meaningful right to present evidence and a complainant is limited to the “evidence” presented in the complaint. The complainant is told to provide a “brief description” in the complaint (Article 6.3), while at the same time having no guarantee of the right to present evidence in support of the complaint at a public hearing. This puts a complainant in a difficult position.

It is of concern that there is no right to a public hearing. It is also of concern that there is no meaningful right to present evidence in support of a complaint. Protection of the right of suffrage requires that procedural and substantive legal rights are available to a citizen, including the right to a public hearing and the right to present evidence.¹⁸

Recommendation: It is recommended that the Election Law be amended to ensure that complainants have the right to a public hearing and the right to present evidence at the hearing. Affording these rights to complainants would not be an administrative burden. Nor do costs and time considerations justify ignoring these rights. It should be a relatively easy matter for a Municipal Election Commission and the Election Complaints and Appeals Council to set aside a slot of time, on a daily basis, for complainants to have their “say” about their complaints in a public hearing and to present evidence in support of their complaints.

IV. CONCLUSION

The Election Law provides the necessary framework for the administration of democratic elections in Bosnia and Herzegovina for the 5 October 2002 elections. However, it does contain some provisions that should be improved to ensure compliance with international standards and OSCE commitments.

Other provisions in the Election Law could be clarified or improved. It is suggested that consideration be given to the comments and recommendations stated in this assessment for such provisions.

¹⁸ See Articles 8 and 10 of the Universal Declaration of Human Rights; Paragraph 13.9 of the OSCE 1989 Vienna Document, Paragraphs 5.9 through 5.12 of the OSCE 1990 Copenhagen Document, and Paragraphs 18 through 21 of the OSCE 1991 Moscow Document.

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 in 1990 as the Office for Free Elections under the Charter of Paris. In 1992, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. 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.