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However, the English text is the only official version.*

## **INTERNATIONAL ELECTION OBSERVATION MISSION 2004 MUNICIPAL ELECTIONS – BOSNIA AND HERZEGOVINA**

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### **STATEMENT OF PRELIMINARY FINDINGS AND CONCLUSIONS**

**Sarajevo, 3 October 2004** – The OSCE’s Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the Congress of Local and Regional Authorities of Europe deployed an International Election Observation Mission (IEOM) for the 2 October municipal elections in response to an invitation from the Election Commission of Bosnia and Herzegovina. The IEOM observed the electoral process to assess its compliance with principles for democratic elections, including commitments and standards of the OSCE and the Council of Europe, as well as its compliance with domestic legislation.

This statement of preliminary findings and conclusions is issued before the completion of the counting process, the announcement of election results and before all complaints and appeals have been addressed by the electoral and judicial authorities. The final assessment of the elections will depend on the manner in which these important procedures are completed.

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### **PRELIMINARY CONCLUSIONS**

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The 2 October 2004 municipal elections in Bosnia and Herzegovina (BiH) were administered in line with international standards, taking into account the country’s unique, post-war political arrangements. The successful conduct of the elections marked further progress towards the consolidation of democracy and rule of law under domestic control.

The elections were especially significant as the first funded entirely from BiH sources; the first in which mayors were directly elected; the first under an electoral regime that unifies the City of Mostar; the first elections for Brcko District Assembly; and the first held under several new amendments to the Election Law. In a particularly positive development, the direct election of mayors was adopted through regular parliamentary procedures by both of BiH’s entities, Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (FBiH).

Despite progress, however, these remained essentially transitional elections. Under the unique constitutional context of BiH, ultimate authority still rests with the international community. Although this arrangement is in keeping with the international community’s mandate to pursue peace in BiH, and is in compliance with international law as set out in binding resolutions of the UN Security Council and other international bodies, the result is an electoral process that is sometimes irregular, or even undemocratic, in terms of international election standards. For example, the removal of elected officials and barring individuals from candidacy without due process protections were once again concerns during this election.

The elections were noteworthy for the following accomplishments:

- A generally calm and peaceful election campaign, with few reports of intimidation;

- Respect for freedom of movement, association, and expression;
- Notable increases in cross-entity politicking in which a number of parties sought to appeal to voters of more than one ethnic group;
- Further normalization of the electoral process through adoption of legislation at State and entity level through parliamentary procedures;
- A national Election Commission (ECBiH) which maintained high levels of trust among political parties and worked in a consensual manner;
- A revised method of selecting members of Polling Station Committees (PSC) that increased transparency and received broad support from political parties;
- A relatively benign media environment and significant, though dull, coverage of the election by the two entity broadcasters.

At the same time, some shortcomings were apparent, including:

- The continuing primacy of ethnicity as the central underlying issue in politics in BiH and in this election campaign;
- A tendency among major political parties to criticize the integrity of the electoral system, best demonstrated by their continuing concerns over electoral fraud, despite the lack of convincing evidence of such fraud;
- An unduly complex electoral system that few voters understand and that includes lengthy counting procedures that can reduce confidence in the results;
- A failure by authorities, and in particular by some municipal councils and assemblies, to ensure timely funding for the elections;
- The need for continuing international community involvement in aspects of the electoral process, in the most substantial instances brought on by the failure of public officials to fulfill their responsibilities under the General Framework Agreement for Peace in BiH, or the failure of political parties to reach timely agreement on legislation.

Election day was peaceful and well-ordered. Voter turnout was 46%. Observers assessed the voting process positively for an overwhelming number (93%) of polling stations visited. The main problems noted were voters unable to find their names on voter registers, group voting and unauthorized persons in polling stations. Police responded to a few isolated incidents on election day. Observers evaluated the vote count as 'weak' or 'very weak' in 20% of cases, although this reflected poor procedures rather than manipulation.

The institutions represented in the IEOM are prepared to assist the authorities and civil society of Bosnia and Herzegovina in continuing to improve its electoral process.

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## PRELIMINARY FINDINGS

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### Background

The 2 October 2004 municipal elections will award four-year mandates for the 142 municipal councils/assemblies throughout Bosnia and Herzegovina. Over 26,600 candidates sought 3,145 positions in municipal councils and assemblies, and there were 809 candidates for mayor. A total of 70 political parties, 18 coalitions, 180 independent candidates and 6 joint lists of independent candidates were certified for the elections, providing a genuine choice for the voters. Mayors are being directly elected for the first time in all municipalities except the City of Mostar and the Brcko District, representing a significant step forward for direct democracy at the local level.

Following the last general elections in 2002, three separate coalitions have governed at the entity and State levels. The parties involved in these coalitions chose not to run jointly in these municipal elections, although in some municipalities they supported the same candidates for mayor. The elections represent a test of strength for the major ruling parties at the mid-point of their four-year mandates.

### Legislative Framework

The various State and entity laws relating to electoral matters provide the basis for a democratic election process. In particular, the Election Law of BiH (the Election Law), enacted in 2001, provides a generally sound framework for elections.

In addition to the Election Law, separate laws were adopted in 2004 by RS and the FBiH on direct election of mayors. Importantly, these were adopted through regular parliamentary procedures, rather than imposed. The Brcko District Assembly adopted its own law on elections in the Brcko District. A separate amendment to the Election Law of BiH set out the system for municipal elections in Mostar. As a result, the legal framework for municipal elections is unusually complex, establishing an amalgam of different electoral systems and procedures:

- A proportional system for the election of municipal councils;
- A plurality system for the direct election of mayors in RS;
- A shortened preferential system for the direct election of mayors in the FBiH;
- In the Brcko District, a proportional system for electing members of the Assembly, with minimum representation for BiH's three "constituent peoples" and "others", with a subsequent indirect election of mayor by the Assembly;
- In Mostar, a proportional system with both constituency and "at large" seats, minimum and maximum representation for BiH's three "constituent peoples" and "others", with a subsequent indirect election of mayor.

The complexity of the system led to some confusion among political parties and voters.

The new electoral framework uniting Mostar represents a compromise designed to ensure a political balance among the three constituent peoples. The new system caused some political controversy, although it now seems to be largely accepted by the principal parties. However, some elements of the complex electoral formula are problematic: most residents of the city can cast two votes for councilors, but residents of one section of the city receive only one vote. The

populations of the six constituencies making up the city vary greatly, but each has been allocated the same number of seats. There is a maximum limit on the number of seats one constituent people can hold on the Council, regardless of its share of the population.

These were the first elections for the Brcko District Assembly. Unlike in other parts of the country, the electoral framework is also governed by the Final Award of the International Tribunal, which gave an international Supervisor ultimate responsibility over the District, including for the electoral process, resulting in a somewhat diminished perception of local control over the elections.

The municipal elections were held before the adoption of legislation on local self-government in RS and the FBiH. As a result, voters went to the polls without knowing the precise powers of the offices they were electing.

Under the unique legislative framework of BiH, the constitution is part of the General Framework Agreement for Peace. The Peace Agreement is supplemented by binding UN Security Council resolutions and Peace Implementation Council decisions that give extraordinary powers to the High Representative and other international actors, including specifically over elections. This situation has a profound effect on the election process. In particular, in the years since the Peace Agreement, several hundred persons have been removed from office by international authorities, rendering them ineligible to be candidates in elections. The procedure applied does not provide due process protections such as a public hearing or judicial review. Most recently, on 30 June, 2004, the High Representative removed 59 persons from office and/or political party positions, almost all of them from the Serb Democratic Party (SDS), for various reasons. Earlier, the SDS and another major party, the Croatian Democratic Community (HDZ), were sanctioned financially by the High Representative for various offenses, also without the benefit of due process. In a separate action, the amendment to the Election Law providing a unified election system for the city of Mostar (Article 19) was imposed by a decision of the High Representative after the main political parties failed to reach an agreement in extended negotiations. The international Supervisor of Brcko suspended one candidate from public office late in the campaign, although this action did not affect his status as a candidate. While such actions by international community representatives are in line with their mandates to promote peace and in compliance with UN Security Council resolutions, they are at least irregular, and even undemocratic, by international election standards. It is regrettable that the situation in BiH remains at a point where such measures are still deemed necessary.

There were relatively few official complaints filed with the ECBiH or the Election Complainants and Appeals Council (ECAC). In the most serious cases, an independent candidate in Brcko was decertified two days before the election and a mayoral candidate in Banja Luka was decertified immediately after the polls closed, in both cases for inciting hatred. As of election day, only a handful of cases had been appealed to the State Court, which has handled them expeditiously. The small number of complaints may reflect a general satisfaction with the election administration. However, it may also be due in part to the complexity of the complaint procedure, which may deter some interested people from filing official complaints. Some political party activists also expressed a lack of confidence that the complaints procedure could remedy their grievances. The ODIHR EOM was initially refused access to the meetings of the ECAC, but was later admitted to observe its proceedings.

## **Election Administration**

The ECBiH functioned efficiently and retained a high level of confidence amongst most political parties. Almost all ECBiH decisions were taken by consensus. ECBiH meetings were open and transparent. Most of the rules and regulations necessary to supplement the Election Law were adopted in good time. The Municipal Election Commissions (MECs) also generally operated professionally, although some enjoyed less public confidence. There were slightly over 4,000 polling stations for the election.

The voting system in BiH is excessively complex. In addition to the preference vote for mayors in FBiH, voters use an open list system in the municipal council elections for both entities. Separate types of polling stations operate for different categories of voters: tendered ballot, absentee, and “regular”. Tendered and absentee ballots are counted at the Sarajevo Counting Centre, together with by-mail ballots from out-of-country and ballots collected by mobile teams. In addition, the preference votes beyond the first preference for mayors in FBiH are counted in Sarajevo. This results in a lengthy counting process in Sarajevo, which can last over a week and which can change the preliminary outcomes announced by MECs. Overall, this procedure can reduce public confidence in the count and the results.

The implementation of the new lottery system for appointment of PSC members from among all candidates and parties was an issue of some controversy. The system failed to meet the very complex requirements established in the Election Law. Specifically, the Instruction issued by the ECBiH setting up the lottery, did not guarantee fulfillment of the requirements in the Law for multi-ethnicity, for representation of “opposition” political parties, and that there be no more than one member of a political party on a PSC. Moreover, the Instruction was not applied in a consistent manner by all MECs. In a number of municipalities political parties filed complaints with the MEC and with the ECBiH. In response, several MECs exchanged the positions of some PSC presidents and members. The ECBiH upheld a number of appeals that reached its level. In one case, Siroki Brijeg, it held a new lottery. In two other municipalities it decided two days before the election to change the composition of PSCs. Despite these problems, political parties in general seemed satisfied with the lottery system, although large parties felt that it gave an unfair advantage to small parties. There was also concern that some PSC members did not have the experience necessary to administer the elections, and that some might not show up on election day since they were assigned to polling stations far from their homes.

The ECBiH took the view that it would review the composition and chairpersons of PSCs only if it received a formal, founded appeal. Such a passive position does not appear to be in full compliance with the Election Law.

In most municipalities, MECs arranged for good and timely training of PSC members.

Funding of the elections was a matter of substantial concern, especially since these were the first elections to be fully funded by the BiH authorities. Contributions by the municipalities for the expenses of the ECBiH (e.g., printing ballots, the counting centre in Sarajevo, and other central costs) had by 28 September reached 86.6% of the required figure. However, there were substantial disparities in funds available to MECs, and several MECs reported they did not have

adequate funds to cover their own direct costs, the most important of which were salaries of PSC members. The ECBiH made extensive efforts to encourage the relevant authorities to fill the funding gap; three days before the election it was able to secure commitments from the entity and cantonal governments that the remaining gaps in direct and indirect costs would be covered.

Voter registration closed on 17 June. The overall number of registered voters fell marginally from 2002, to just over 2.3 million, although the number of by-mail voters dropped much more substantially. The ECBiH and local officials made considerable efforts to update the voter lists. Still, most large political parties and many MECs asserted the lists were inaccurate and that in some instances had worsened since the last election. There were significant mistakes in several municipalities, notably Kakanj, where over 1,000 citizens who registered to vote did not appear on the voter lists. While the ECBiH made arrangements to enable them to vote, some individuals were prevented from running for office or serving on PSCs.

Three international representatives continue to sit on the seven-member ECBiH. However, national members guided the work of the election administration. The declining role of the international members augers well for a sustainable, fully national State institution. Many political parties consider that while the international presence on the ECBiH might be phased down, it is not yet time to end the international presence completely.

### **The Campaign**

The election campaign took place in a generally open and peaceful environment. Overall, political parties and candidates reported no serious impediments to their campaigns. Few cases of political intimidation or obstructionism were reported. There were very few instances of hate speech. There were, however, a number of incidents that appeared to be election-related. The most serious were a bomb thrown into the compound of a prominent candidate for mayor of Zvornik and at the business premises of the father of a candidate in Cazin municipality; in each case there was some damage but no injuries. In Banja Luka, a journalist working for a popular radio station owned by a candidate for Mayor was assaulted. The Bosniak President of the Bratunac (RS) Municipal Assembly threatened with assault. Three reported break-ins may have been politically motivated.

Civil and political rights were generally respected by the authorities at all levels. The resolution over the past two years of most property return issues represented a major step forward, and removed a previously contentious issue from the election. Displaced persons were free to return to their pre-war municipalities both to register and to vote. Freedom of assembly and expression were observed. Candidates and political parties could campaign freely throughout the country.

The campaign was relatively quiet. Parties held few rallies. Election posters were common but less so than in previous elections. In most municipalities there was little meaningful debate on substantive issues. While some parties made genuine attempts to address local issues in their campaigns, national concerns such as unemployment and pensions tended to predominate over local issues. At the State and entity levels, the campaign prompted mutual attacks by prominent political figures.

Voter interest in the campaign appeared limited, especially among young people.

Nationalism remained the principal underlying issue in the campaign. Several major parties used slogans or symbols that were thinly veiled appeals to ethnic nationalism. Many television advertisements unabashedly sought the votes of a single ethnic group. There were numerous instances of involvement of religious figures in the election campaign. In Stolac, flags of the former war-time “Croatian Republic of Herceg-Bosna” were burnt. In Livno, hostile anti-Bosniak graffiti was painted on buildings. In Bijelina, a defeated candidate from the recent Serbian Presidential elections allegedly made an inflammatory speech advocating a “Greater Serbia” including the RS. In Brcko, a party leader made comments suggesting that Serbs should return to Serbia. In Samac, a former war criminal who served six years in the Hague for ethnic cleansing was a candidate for mayor. At the State level, many party leaders offered provocative comments or proposals that contributed to a generalized atmosphere of ethnic identification and, in some cases, antagonism.

BiH’s 16 minorities – as distinct from the three constituent peoples – played only a marginal role in the election. In particular, the sizable Roma population was not well represented on party lists and appeared to take little part in the elections.

As in the last general elections, numerous parties based in one entity fielded candidates in municipalities in the other entity. In a positive development, it appears that such campaigning was not necessarily directed primarily at minority return communities.

Twenty-five NGOs registered a total of 433 domestic non-partisan observers for the municipal elections, less than 10% of the 2002 number. The main group undertaking that activity in the past essentially withdrew, citing a lack of funds. In contrast, a number of political parties deployed substantial numbers of poll-watchers.

## **The Media**

BiH enjoys a free press and electronic media. There are a broad variety of print and electronic outlets, providing a range of political views. The media as a whole provided sufficient information about candidates and political platforms to enable voters who sought it out to make an informed choice.

In general, the electronic media presented the campaign in an uninteresting and lacklustre manner, with broadcasters apparently more keen to conform to regulations and avoid possible sanctions than to produce attractive programmes. In the print media, on the other hand, a broad variety of outlets provided a diversity of political views; the lack of legal restrictions on print coverage enabled the press to be partisan and lively.

The principle of equal presentation in the electronic media was generally respected. In particular, the two entity public television broadcasters, Federation TV and RT RS complied with the regulations, providing candidates with the opportunity of free airtime. The new national television BHT did not transmit any election information except voter education clips produced by the ECBiH. Under a new regulation all electronic media had to provide coverage of the election campaign, including even private broadcasters that do not normally transmit news. Their coverage, however, consisted largely of monotonous surveys of political party press releases.

Under a new amendment to the Election Law, paid political advertisements on the electronic media were permitted for the first time, and several parties took advantage of them. Broadcasters generally complied with the spirit of the regulations on political advertisements.

The Communication Regulatory Agency heard 15 complaints about the conduct of the media, a number similar to previous elections. These mainly concerned unequal treatment of political subjects. Many are still being adjudicated.

Two newspapers violated the Election Law by publishing the results of opinion polls within the 72-hour silence period, and three violated the prohibition on publishing campaign material within 24 hours of election day.

Media organizations denounced pressure by some politicians and parties against the media.

### **Gender Issues**

The Election Law requires that every candidate list include at least one-third women and one-third men, and stipulates a detailed order to ensure balance throughout the lists. The party lists for the elections were in line with this provision: a total of 9,554 women, or 36%, were registered as candidates for municipal councils and assemblies. However, open list voting has reduced the percentage of women elected in past elections, and was expected to do so again.

The entity election laws providing for direct election of mayors appear to be in conflict with the Law on Gender Equality in BiH, adopted by the BiH Parliament in May 2003. The Gender Law requires that the percentage of the sexes in government bodies at all levels, including the judiciary, legislature and executive, shall as a rule reflect equal gender representation. Although it is not clear exactly how the laws on direct elections of mayors could have harmonized with the Gender Law, it appears that no official consideration was given to this issue. Just 32 women were among the 809 candidates for mayor.

Women are represented in greater numbers in the election administration.

Women's presence and visibility in party hierarchies remains low. Issues of special concern to women were rarely dealt with during the campaign and women voters were rarely targeted in party platforms or campaign messages.

### **Election Day & Vote Count**

Election day was peaceful and orderly. Very few allegations of significant irregularities were reported by observers. According to the ECBiH, a total of 14 incidents at polling stations, none serious, were investigated by police on election day. Voter turnout was 46%.

Polling stations, with few exceptions, opened on time and polling station officials reported to work, despite fears that their salaries would not be paid.



Of the nearly 1,100 polling stations visited by observers, in only 7% did observers assess the conduct of the polling process as 'weak' or 'very weak'. The largest problem was voters unable to find their names on the voter registers in 58% of observed polling stations. In many instances it appears that this was because voters went to the wrong polling station or had failed to register. Other problems included group voting in 20% of observations, and unauthorized persons in polling stations in 9% of observations.

Otherwise, the voting process was orderly in an overwhelming proportion of polling stations visited. Unusual tension in polling stations was noted in only 3% of the visits, and campaign activity was noted in only 2 polling stations. Campaign material was seen within 50 meters of polling stations in just 6% of the visits. Very few cases were reported of undue influence on voters or polling station committee members.

In terms of measures to safeguard the integrity of the polling process, voters presented photo IDs in 98% of observations, each voter signed the voter register in 98% of cases, and voters marked their ballots in secret in 95%.

Political party domestic observers were noted during 98% of visits to polling stations. However, non-partisan civil society representatives were identified in only 5% of those locations. The latter statistic is a dramatic decrease on the last election.

Observers evaluated the vote count less positively than the voting process; 20% of the counts observed were rated as 'weak' or 'very weak'. Although PSC members' understanding of the counting procedures was regarded as either 'weak' or 'very weak' in 32% of the cases, this reflected poor administration rather than manipulation. Other notable problems included unauthorized persons present during the count (19% of counts observed) and failure to publicly post the results of the count (39% of observations).

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### **MISSION INFORMATION & ACKNOWLEDGMENTS**

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Mr. Peter Eicher headed the OSCE/ODIHR Election Observation Mission. Mr. Stanislav Bernat led the delegation from the Council of Europe's Congress of Local and Regional Authorities of Europe.

The OSCE/ODIHR Election Observation Mission (EOM) was established in Sarajevo on 30 August and shortly thereafter started monitoring the electoral process, with 11 Long-term Observers located in seven cities throughout the country.

On election day, the International Election Observation Mission deployed some 200 observers from 28 OSCE participating States, including the 6-member delegation from the Congress of Local and Regional Authorities of Europe. Representatives of embassies of OSCE participating States and Partners for Co-operation in Sarajevo and of international organizations also contributed short-term observers to the IEOM. The IEOM acknowledges their assistance. On election day, observers paid some 1,300 visits to about 1,100 polling stations out of the approximately 4,000 throughout the country.

The OSCE/ODIHR will issue a comprehensive report on these elections approximately one month after the completion of the process.

The IEOM wishes to thank the Ministry of Foreign Affairs, the Election Commission, and other national and local authorities for their assistance and co-operation during the course of the observation. The IEOM also wishes to express appreciation to the OSCE Mission to Bosnia and Herzegovina, the Office of the High

Representative and the Council of Europe Office in Sarajevo, as well as other international organizations and embassies accredited in Sarajevo for their support throughout the duration of the mission.

**For further information, please contact:**

- Ms. Urdur Gunnarsdottir, ODIHR Spokesperson, in Warsaw (+48 22 520 0600); or Mr. Vadim Zhdanovich, Election Adviser, OSCE/ODIHR, in Warsaw (+48 22 520 0600);
- Ms. Caroline Helene Martin, Congress Secretariat, Congress of Local and Regional Authorities of Europe, in Strasbourg (+33-3-88-47-30-18).

**OSCE/ODIHR EOM Address:**

Aleja Bosne Srebrene bb  
71 000 Sarajevo, Bosnia and Herzegovina  
tel.: +387 33 760 700, +387 33 760 710; fax: +387 33 752 715  
e-mail: [office@odihrbih.org](mailto:office@odihrbih.org)  
OSCE/ODIHR website: [www.osce.org/odihr](http://www.osce.org/odihr)