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**IFES Technical Assessment of**  
Election System Performance  
Parliamentary and Municipal Elections  
in the Republic of Montenegro, FRY

31 May 1998

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**I.INTRODUCTION**

This analysis of election system performance reflects the cumulative findings of IFES' assessment and technical teams,

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the first of which visited the Republic of Montenegro in November 1997. It is based on their observations of the system in practice, a review of original source documents and consultations with the full range of participants in campaigns and elections. The analysis also reflects IFES' mandate as a technical assistance provider, which must be understood as being distinct from the observer missions also active in Montenegro for parliamentary and municipal elections. It focuses primarily on areas where IFES' project directly intersected with the electoral process, among them: election official and poll worker training, voter education, candidate information and outreach, voter registration, and legal reform. As such, the analysis has been designed not so much as a statement on the "freeness" and "fairness" of the election, but as a set of options for strengthening and enhancing Montenegro's electoral system and political process. It is presented as a reference tool for those tasked with pertinent legal, institutional, and procedural reforms.

It should be acknowledged that the 31 May 1998 parliamentary and municipal elections in the Republic of Montenegro further advanced the democratization and professionalization of the electoral process in Montenegro. They constituted a positive step toward the ultimate realization of the "Agreement on Minimum Principles for Development of a Democratic Infrastructure", signed in the Fall of 1997. That no complaints were filed with polling boards by any authorized party representative on election day, and that polling, the vote count, and the convocation of a new Republican Assembly were conducted without incident, are significant achievements given the broader political context. **Observers and election officials alike were somewhat surprised to declare that polling had proved uneventful.**<sup>1</sup> In light of these achievements, members of the parliamentary working group on electoral reform, election administrators, campaign participants, and the Montenegrin people should be congratulated.

At the same time, the preliminary statement of the OSCE delegation aptly noted that: "fierce competition and a high degree of distrust between the main contesting parties . . . resulted in a negative campaign and tense atmosphere. The lack of trust in the integrity of the electoral process expressed by some parties during the course of the campaign was unjustified." It may have also proven destructive to the evolution of public confidence so crucial to stability and democracy in Montenegro. And, despite noteworthy advancements made since the conduct of presidential elections in 1997, questions about voter eligibility and registration, ballot security, abuse of public office for overt campaign purposes, potential misuse of police and security forces for political purposes, the lack of responsiveness of the adjudication of grievances process and insufficiency of enforcement mechanisms, and the independence of responsible municipal authorities and agency bureaucrats - if not election commissions - continued to color the election campaign.

A unique opportunity currently exists to assess recent electoral events and adopt changes aimed at further strengthening the legal framework for campaigns and elections while eliminating on-going institutional and administrative weaknesses of the electoral system. It should be understood that previous reforms proposed by the multi-party working group and adopted by the Republican Assembly, while a significant and positive step, were incomplete. A number of factors have limited the scope of legal and regulatory reform, to date:

The politically unstable and highly polarized environment in which recent electoral reforms took place;

Extreme pressure to pass new legislation and conduct new elections as soon as possible;

Failure to engage practitioners, among them election administrators, in the legislative review, debate, and drafting process; and

The absence of public notification on proposed changes, thus precluding a period of public airing and debate.

More generally, Montenegrin lawmakers need to understand that election systems are evolutionary rather than finite and require refinements to safeguard voters' rights and maintain the efficiency, transparency, and integrity of the process over time. To minimize the degree to which politics surrounds electoral reform in Montenegro, and as a necessary and important means of building public confidence in the electoral system, this process should be initiated well in advance of the calling of new elections, practitioners at various levels must be brought into the dialogue, and proposed amendments must be subject to public notification and debate. This assessment of election system performance presents a number of technical suggestions and options for reform and is offered by fellow election practitioners in the spirit of co-operation and support.

IFES Montenegro wishes to acknowledge the immeasurable benefit received from the insights of the representatives of the executive, legislative, and judicial branches; the full spectrum of political parties; non-governmental organizations; minority groups; media outlets; and election bodies which participated in IFES consultations as well as its information, education, and training programs. Every effort has been made to incorporate the most practical and feasible proposals voiced by IFES contacts and co-operating partners into this assessment. Special thanks are due to former Deputy Prime Minister and current Counselor to the President for Legal Questions Miodrag Vukovic, as well as to Republican Election Commission Chairman Stevan Damjanovic. Recognition is also due to the US Agency for International Development, which provided funding for this important and constructive undertaking.

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<sup>1</sup> For a copy of IFES' Preliminary Report on Election Day Observations, please see Attachment I.

II. ELECTORAL REFORM AND THE LEGAL FRAMEWORK GOVERNING ELECTIONS

A. OVERVIEW

In February 1998, the Republican Assembly passed, and President Milo Djukanovic signed into law, new legislation governing the election of municipal and republican assemblies, voter registration, and public information. A new law governing political financing went into force earlier in the year. This package of legislation derived from the extraordinary results of a special working group on election law reform established by the Republican Assembly to help implement the multi-party "Agreement on the Minimum Principles for the Development of a Democratic Infrastructure in Montenegro" adopted in the Fall of 1997. The multi-party agreement was aimed at expediting democratic political reforms in the country and committed the signatories to initiate "preparations for free, fair, and democratic parliamentary elections... [to] be held at the latest by the end of May 1998." It also contained a set of specific objectives toward these ends, in particular "upgrading the Law on Election of Councilors and Representatives, the Law on Public Information, the Law on Financing of Political Parties, and the Law on the Register of Electors."

At the time of its assessment in the Fall of 1997, an IFES team noted that, "While the existence of such a multi-party forum brings a positive and necessary diversification of views to the electoral reform process, the absence of practitioners limits the quality of its proposals... election officials, judges, and journalists had not been involved [in the electoral reform process] nor ha[ve] they been given copies of the revised drafts of legislation... The lack of independent counsel [also] suggests that the process of electoral reform has become politicized, ie. with political interests rather than technical and legal considerations driving the reform process." As a result, some aspects of the election laws have been drafted in a way that is very difficult to implement and equally hard to adjudicate. Not surprisingly, novice election officials, journalists, and judges involved in the recent election campaign lodged similar complaints to those of their seasoned counterparts about the administrative sufficiency of the legislation governing the campaigns and elections process.

With respect to the development of election and related legislation, there has also been a tendency to try to work out contentious election issues through direct agreement among parliamentary parties. This method of establishing public policy and procedures on elections was occasionally followed rather than the more traditional approach of adopting comprehensive legislation and delegating rule-making to the competent body, in particular the Republican Election Commission. To a considerable degree, this tendency appears to have arisen due to the high level of tension and suspicion connected with the most recent elections. In some ways, what was agreeable to the parties involved in the election process tended to prevail, since failure to follow this course would increase the level of confrontation and could even precipitate a crisis. At the same time, responsible officials were often unwilling to risk taking steps that deviated in any way from the letter of the law which could open them to criticism. As a result of this unfortunate dynamic, it became very difficult for participants in the election process to address issues in a regular and orderly way.

1. ELECTION OF LEGISLATIVE BODIES

The Law on Election of Councilors and Representatives governs elections to legislative assemblies at the republican and municipal levels.<sup>2</sup> Mandates at both levels are awarded through proportional representation using the d'Hondt method of allocation. Consistent with the multi-party program for democratization, the entire republic constitutes a single constituency for the purposes of election to the Republican Assembly – except as modified by a special system to promote the representation of ethnic Albanian communities in Montenegro. Each of the 21 municipalities of the republic also constitutes a single district for election to the relevant municipal assembly. The basic model of election administration and organization contained in the Law on Election of Councilors and Representatives is similar to that followed in the other republic of the current Federal Republic of Yugoslavia (FRY) as well as those of former Yugoslavia. A three-tiered system of election administrative bodies is employed with election commissions operating on a permanent basis, ie. appointed for four year terms. During the election campaign period, election commissions operate in their core and expanded membership<sup>3</sup>.

2. SYSTEM OF VOTER REGISTRATION

In the Republic of Montenegro, as in many other formerly socialist countries, there is no autonomous voter registration system. Instead, eligible voters are identified for inclusion in the voter registry based on information contained in official files which are maintained for other purposes, such as internal security, law enforcement, and maintenance of vital statistics on the population. Based on information which is not directly election-related, the Register of Electors is assembled by non-election agencies at the municipal and republican levels. The results are subsequently made available to election administration authorities to be used by them as the basis for identifying eligible voters. So that voters may ensure the fulfillment of their electoral rights, the proposed voter registry is made available to the public for inspection for a certain period of time prior to the election. Voters are permitted by law to see if their names are properly included, and to appeal to the responsible authorities and, if necessary, the courts in the event they are not. Political parties with certified candidate lists are also permitted to obtain copies of the voter registry on computer diskette.

3. SYSTEM OF POLITICAL FINANCING

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<sup>2</sup> Providing for both types of legislative elections, ie. both republican and municipal, on a single statutory vehicle creates many ambiguities, as well as gaps, redundancies, and conflicts in the language of various provisions. Consolidation of the provisions related to all legislative elections would be desirable since it could, at some point, become the basis of a more comprehensive electoral code. But, as currently drafted, the combination might result in considerable confusion as to which provisions apply to what kind of elections and which bodies are being referred to at any particular point.

<sup>3</sup> For more information on the election commission structure, please refer to Chapter III of this assessment.

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The system of political financing and control in Montenegro is established under the Law on Financing of Political Parties, except for a few provisions of the Law on Election of Councilors and Representatives (articles 113-114 thereof), which relate to financial and other support to candidates and nominating entities. The former envisions two methods for financing political parties. The first is state subsidies, which are distributed in three tranches: prior to the election campaign to those parties represented in the relevant assembly and intending to participate in the elections; during the election campaign to those parties which have certified candidate lists; and after the election to those parties that have achieved representation. The second tranche includes private contributions. There are no requirements for periodic reporting and disclosure on contributions and expenditures.

4. *PUBLIC INFORMATION*

The Law on Public Information is intended to provide a comprehensive legislative framework for the establishment, licensing, operation, and supervision of a variety of public media in Montenegro. It applies both to state-owned and private media companies. Of particular interest with respect to campaigns and elections: Article 24 stipulates that the editorial policy of a public information medium must not be directed at the forceful destruction of the constitutional system, violation of the territorial integrity of either the Republic or the Federal Republic of Yugoslavia, to the infringement of the statutory human and citizens rights and freedoms, or rousing national, racial, or religious intolerance or hatred; Article 25 requires state media outlets to provide informational programming in minority language. The law also provides for fairness and accountability of news coverage and deals with the objectivity and fairness in reporting on parliamentary proceedings and the activities of political parties.

Specifically, Article 32 states in its entirety: "A public information medium founded by the Republic or by a local authority is obliged to report impartially on viewpoints and activities of parliamentary parties within its program activities, in conformity with the rules set forth by its editorial board, and to provide direct coverage of the sessions of the Republican and municipal assemblies in compliance with their respective decisions . . . Fulfillment of political parties' rights in public media during the pre-election campaign shall be defined by means of separate regulations that are prescribed and adopted by the competent assembly. Its enactment shall be controlled by editorial boards of public media . . . The editorial policy of public media referred to in paragraph (1) herein shall observe the standards of honest and impartial policy."

5. *ENFORCEMENT MECHANISMS*

In many of the provisions dealing with enforcement against violations of elections, such as Chapter XIII of the Law On Election of Councilors and Representatives and related legislation, including laws on voter registration, campaign financing, and public information, the precise nature of the violation – i.e., civil or criminal – and the identity of the enforcing agency are not specified. A host of problems surfaced during recent elections as a result of poorly developed enforcement mechanisms. For example, questions about ultimate institutional responsibility for enforcement of campaign finance legislation and adjudication of pertinent grievances greatly frustrated the efforts of those parties whose right to state subsidies were violated. Similarly, the tendency for complaints regarding inaccuracies in the voter registry to be bounced back and forth between various responsible state agencies and municipal authorities and the Supreme Court contributed to the inefficiency of the adjudication of grievances and, in some cases, made enforcement difficult when decisions were forthcoming.

B. *ISSUES FOR CONSIDERATION*

At this time it would appear that further efforts should go into working through the detailed provisions of the Law on Election of Councilors and Representatives to eliminate the problems caused by combining in a single law provisions applicable to republican and municipal elections. In addition, consideration should be given to creating two entirely separate sections, or even entire bills, which could nonetheless share a common legal and administrative basis. In the longer term, however, the current approach could provide a basis for the development of a more comprehensive electoral code.

Montenegrin election and related laws do not contain any hierarchy of rights which might permit a better interpretation and application of the laws during an election period. In this connection, it might be useful to consider enacting legislation that would establish a basis for fundamental aspects of the electoral process, such as safeguarding voter's rights.<sup>4</sup>

More clarity and detail is required through legislation governing campaigns and elections to ensure their correct and consistent interpretation, efficient and uniform administration, and equitable adjudication of grievances.

Every effort should be made to include practitioners, among them election officials, in the process of reforming legislation on elections, voter registries, campaign financing, and public information.

In the aftermath of the election campaign, an exhaustive review of the presidential, parliamentary, and municipal election experience should be undertaken with the intent of further refining the legislation governing campaigns and elections and continuing institutional, regulatory, and procedural reforms. Such an exercise, combined with election law reform in the immediate future, would eliminate the need for 11th hour amendments to legislation as occurred during the most recent election campaign.

The practice of determining fundamental aspects of the electoral process by means of multi-party agreements, whether formal or informal, at the start or even in the midst of an election campaign rather than through law should be abandoned. Consideration may be given to incorporating worthy language from previous agreements into new legislation governing elections.

A definition of terms or glossary section needs to be added either to the Law On Election of Councilors and Representative, or - if adopted - to a fundamental law on voter's rights, which identifies and defines all legal terms used in the Law, such as "campaign period" and "nominating entity," and which are to be consistently applied throughout all other legislation governing components of the election process.

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<sup>4</sup> The adoption of stand alone legislation on voting rights in the Russian Federation, for example, has been a major contributor to successful electoral reform in that country.

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Decision-makers must thoroughly review whether the penalty and enforcement provisions of election and related legislation are fully enforceable. Future efforts aimed at improving the legislative framework for political and electoral processes need to place a greater emphasis on encouraging compliance and providing for enforcement. As part of this exercise, law-makers will also need to consider available budgetary resources.

In the future, the role of any agency providing support to the REC in the computerized tabulation and reporting of election results should be clearly stipulated in and governed by the Law on Election of Councilors and Representatives.III.

#### ELECTION ADMINISTRATIVE STRUCTURES

##### A. OVERVIEW

Elections in Montenegro are administered according to a three-tiered system of election bodies which consists of a Republican Election Commission (REC), 21 municipal election commissions (MECs), and polling boards. During the presidential election cycle, there were 879 polling boards. Difficulties in processing a high volume of voters during the hours prescribed and the introduction of new polling place procedures, however, led to an increase in the number of polling boards for parliamentary and municipal elections. The maximum number of voters to be processed at any one site was reduced from 2,500 to 1,000 and resulted in the creation of 1,087 polling boards. In accordance with the law, election commissions and polling boards operated according to a system of core and expanded membership. Core members of election commissions were appointed to concurrent terms by republican and municipal assemblies. MECs were subsequently responsible for appointing the core membership of polling boards within their jurisdiction at the time of elections. Persons ineligible for suffrage in the Republic of Montenegro or nominated as candidates for councilor or representative were barred from serving on the core or expanded membership of election commissions. In every instance, the leadership of election administrative bodies was appointed rather than elected. Decisions of all election administrative bodies are made by a majority of members, and their work is made public.

##### 1. APPOINTMENT PROCESS

Although the tradition of making direct appointments to election commissions by the relevant legislative assembly is consistent with the practice of most formerly socialist countries, it may contradict with the separation of powers doctrine enshrined in the Montenegrin Constitution. In many other constitutional systems founded upon this doctrine, it is interpreted to prevent the legislative branch from taking actions of an executive character. This would include most actions that cannot be addressed through the enactment of legislation. Appointment of officials to state bodies is usually considered to fall within the class of particular actions reserved for the executive branch of Government, although the legislative branch may legitimately play some role in the appointment process, either by nominating candidates or confirming their selection. The failure to follow the separation of powers principle in the appointment of the REC and MECs could contribute to the perception that the REC and MECs are unduly subject to the influence of political parties represented in parliament, particularly the ruling party or parties. It may therefore be preferable to find some alternative to the current appointment mechanism that is politically acceptable but more consistent with the principle of separation of powers.

##### 2. MULTI-PARTY REPRESENTATION ON CORE MEMBERSHIP

During the process by which the current legislation was adopted, considerable discussion revolved around whether or not the independence of election commissions and polling boards, in their core membership, was best guaranteed by multi-party or non-partisan representation. In established democracies, membership or association with a political party is not a disqualifying factor for service in election administration, but it is expected that such membership will not influence the work of the individual in question. Ultimately, the law remained silent on this issue. However, a "gentlemen's agreement" was struck between the parliamentary parties which provided for multi-party representation, particularly with respect to the two main rivals, on the core membership of all election administrative bodies. On the basis of this agreement between the parties, the Republican Assembly issued a recommendation that election bodies, in particular municipal election commissions, be formed on a multi-party basis. The recommendation, however, was not legally binding. Not surprisingly, allegations readily surfaced that this informal arrangement was not being adhered to by either side and that a significant number of MECs, and consequently polling boards within their jurisdiction, were under the control of one or the other party.

##### 3. EXPANDED MEMBERSHIP

The expanded membership of election commissions and polling boards was constituted upon the certification of nominating entities forwarding a slate of candidates for elections to the Republican or municipal assemblies. Political parties, coalitions, and citizens' groups which met the requirements for ballot access were entitled to nominate authorized representatives to serve on election administrative bodies. Authorized persons were not permitted to take up their duties upon appointment, but were to assume their positions on election commissions beginning 15 days prior to election day, and in the case of polling boards 5 days prior to election day. Although the election law stipulates that authorized representatives appointed to election commissions and polling boards are full participating members, practice during the previous election varied from polling board to polling board. In some polling sites, expanded members assisted in the preparation of the polling site, processing of voters, and vote count, while in others these duties were relegated to the core membership only, if not the Chairman himself. In such instances, authorized representatives tended to function more as partisan observers than actual election administrators.

##### 4. RESPONSIBILITIES OF ELECTION COMMISSIONS

According to the law, the Republican Election Commission is responsible for: the legal conduct of elections and uniform application of the law; monitoring of and advising on the implementation of the law; coordinating the work of MECs, providing them with instructions, and supervising their work; establishing standards for election materials; developing administrative forms; deciding the manner for certification of candidate lists; creating procedures for handling and storing election materials; determining the validity of nomination applications for the election of representatives; rendering decisions on the certification of candidate lists; announcing the total number of voters in the country as well as per municipality and polling site; establishing the results of the election of representatives and determining the number of seats to be allocated to each candidate list; announcing general election results and the outcome of voting at each polling station; submitting a report to the Republican Assembly on the election of representatives; certification of elected representatives; provision of statistical data on the election of representatives to responsible state entities; and other activities provided for under the law. The REC is also legally mandated to promulgate all administrative regulations in support of the law within 20 days of its appointment. Absent from this enumeration of duties is any responsibility for the registration of voters, regulation of campaign financing, provision of official voter education or candidate information services, or conduct of training programs for election officials and poll workers.

Municipal Election Commissions are charged with: the legal conduct of elections; carrying out logistical preparations for elections; identifying polling stations; appointing the core membership and leadership of polling boards; determining the number of ballot papers to be issued to each polling site, stamping them, and delivering them along with a verified extract of the register of electors; and a written record to each polling board; determining the validity of nomination applications for election of councilors; rendering a decision on the certification of a candidate list; publicizing the number of voters in the municipality and per polling station; establishing the results of the election of councilors and determining the number of seats to be allocated to each candidate list; determining the number of votes cast for each candidate list in the municipality for election of representatives; certification of elected councilors; preparation of a report on the results of the election of councilors in the municipality and

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per individual polling site for submission to the REC; publication of the results of the election of councilors; preparation of a report on the election of councilors for submission to the Municipal Assembly; submission of statistical data on the election of councilors to responsible state entities; and the performance of other duties in support of the law.

Republican and municipal election commissions in Montenegro operate on a "permanent" basis in the sense that they are appointed for four year terms to coincide with the mandates of respective legislatures rather than being disbanded after a specific elections. In practice, however, the law works contrary to the existence of a full-time, professional election commission structure. Specifically: it enumerates virtually no responsibilities between electoral events; requires that the leadership and core membership be drawn from graduate lawyers, many of whom have other professional obligations to the State and who must return to their posts once elections are over; and disbands existing commissions, in their full membership, once new elections are called. The lack of adequate resources, including finances, personnel, and equipment further perpetuates election commission dependence on other state entities and contributes to the dissipation, and thus inefficiency, of election administrative duties. This approach also results in the delegation of key tasks to entities that do not clearly operate within the scope of the election law, such as is the case with the Register of Voters in which several government agencies are responsible for various aspects of updating, maintaining, and settling disputes on the registry.

B. Issues for Consideration

The inefficient diffusion of election administrative duties previously cited by IFES and the OSCE persists. Legal and institutional reforms will be necessary to consolidate all responsibilities pertaining to the preparation and conduct of national elections under the Republican Election Commission (REC). A distinction between election administration and executive/logistical operations is required.

Toward this end, a set of functions aimed at the improvement of election administration in Montenegro, to be conducted by the REC and MECs on a continuous basis, should be established through law. Recommended duties of the REC include: preparation of reports on election system performance for submission to the president, parliament, and the public; routine assessment of election practices and problems in Montenegro accompanied by periodic reporting to the Republican Assembly; provision of recommendations to the Republican Assembly to aid in the modification of election-related legislation; promulgation of regulations as required to improve election and related procedures within its jurisdiction at any time; enforcement of campaign finance laws and regulations; design and implementation of official voter education programs; preparation and conduct of election official training programs; provision of all election and voter information at the republican level; and other duties associated with the overall management of electoral system.

At this time, legal authority might also be provided to the REC and to MECs, under the supervision of the REC, to monitor the activities and compliance of other official entities responsible for the compilation and correction of the Register of Electors. In the longer term, serious consideration should be given to bringing direct responsibility for the maintenance of the voter registry within the jurisdiction of election commission structures, to better insulate it from other state functions.

In addition, MECs should be directed, through law: to act in accordance with regulations and directives of the REC; assist in the development and implementation of voter education programs; analyze and report on election system performance; implement poll worker training programs; and act as providers of all election and voter information at the municipal level.

Necessary financial, infrastructure, and human resources must be allocated to election commissions to allow them to perform these duties adequately. It may also be necessary to reconsider the recommended qualifications of REC and MEC members, in light of the increased administrative and managerial burdens of operating a commission with increased programmatic responsibilities.

Provisions of the law dealing with the independence and impartiality of election structures need to be elaborated upon. First and foremost, the law should specifically address whether the core membership of election administrative bodies is to be multi-party or non-partisan. Leadership of commissions should be determined on the basis of secret ballot among the core members, and criteria for the removal of election commissions members, i.e. on the basis of criminal malfeasance or neglect, need to be built into the law to safeguard against the removal of members for political reasons.

If a decision is made to mandate multi-party representation on the core membership of the REC, prospective members should be nominated by political parties and should reflect the political composition of the parliament. The list of nominations might then be made subject to public notification prior to appointment and confirmation of members. To maintain the separation of powers envisioned in the Constitution of Montenegro, commission members should be appointed by the President with the consent of the Republican Assembly. Similar procedures should be followed by political parties, authorities, and assemblies at the municipal level with respect to the formation of MECs.

Staggered terms for core members also need to be introduced as a means of maintaining the institutional memory of election commissions. At the end of the current term of the REC, transitional legal provisions should be in place to constitute a new REC, to which four members will be appointed for two-year terms and five members appointed to four-year terms. Upon the expiration of the terms of the former, all subsequent appointments will be made for a period of four years, with the exception of those required to fill vacancies. An appointment made to fill a vacancy should be for the remainder of the term of the departing commissioner. A similar approach can be followed with respect to the appointment of MECs.

It is also recommended that all REC, MECs, and polling board members, upon appointment, be administered a legally required oath to uphold, to the best of their ability, the laws and regulations of the Republic of Montenegro and to conduct their duties in accordance with the four standards of conduct of election administration: integrity, neutrality, transparency, and accuracy.

The end of the term of the expanded membership of election commissions needs to be clearly defined in law and coincide with the certification of mandates of those elected.

Expanded members should be permitted to assume the duties of election commissions and polling boards immediately upon their nomination and subsequent approval by the responsible election authority.

The operating quorum and working majority of election commissions also needs to be defined. A quorum can be defined as a majority of the membership of the entire election commission, while a working majority can be defined as over one half of those members present and voting during a session.

Public notice of all commission sessions should be provided at least 48 hours in advance.

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The law also needs to clarify the specific duties of core and expanded members of election commissions and polling boards, particularly on election day.

Also, unrealistic timetables persist within legislation for with respect to the campaign, election, and judicial processes. As such, the campaign period needs to be elongated to provide more time for election commissions to adequately prepare for elections.

IV. VOTER ELIGIBILITY AND REGISTRATION

A. Overview

The new Law on the Register of Electors retains most of the elements of the previous law, but also incorporates several important new provisions that lay a foundation for improvements in the voter registration process. Article 2, for example, appears to create the basis for a more current and continuous voter registration program by requiring the register to be “regularly updated,” in addition to being obligatorily revised in election years.

Authority for compilation of the voter registry continues to be assigned to municipal governments. The law does not, however, specify which executive agency – at the republican or municipal level – is responsible for maintaining the registry. This situation may be explained by variations in practice at the local level and by attempts to retain flexibility and leave room for governmental reorganization at the republican level. If it was not prepared to make a specific assignment of responsibility for administering the registration process at the time it adopted this legislation, it might have been preferable from the standpoint of Separation of Powers for the Republican Assembly to, at the very least, formally delegate this authority to the President. This authority could be subject to the condition that he inform the parliament of his decision and report periodically on the actions being taken by the agencies he selected to perform these duties.

Under Article 2, and also Article 6 of the Law, agencies administering the voter registry are supposed to act *ex officio*, or in the performance of their official duty. Article 6 further describes the duty of agencies administering the Registry by specifying that inclusion or deletion of information about voters from the Registry is “done *ex officio* on the basis of information from vital statistics, other official records, public documents, and direct investigation”

In order to protect their voting rights, voters are provided with an opportunity to inspect the registry to determine whether they are included and whether their entries are accurate. During an election period, responsible agencies must, under Article 9, inform citizens within seven days following the calling of election, of their right to inspect the register and request changes. In accordance with Article 9, responsible agencies receiving requests for changes must render a decision within 48 hours and communicate it immediately to the requestor. Denial of requests for changes to the registry are appealable to the Supreme Court of Montenegro, provided the appeal is filed within 48 hours. Such appeals are actually received by the responsible agencies and must be forwarded to the Court within a day. In practice, however, the forwarding of appeals can be somewhat delayed while municipal authorities look into the underlying complaint.

Under Article 10, the Register of Electors is “closed” not later than 20 days prior to election day. For the recent elections this deadline occurred on the 11th of May. Article 11 stipulates that once the Register has been “closed,” changes can be made only by order of the Supreme Court based on the bringing of a judicial action. But no changes at all may be made later than five days prior to the election, i.e. May 26th. After this date, the authorities finalize the register and prepare extracts for delivery to polling stations so that eligible voters can be identified on election day. Representatives of political parties which have submitted candidate lists have the right under Article 12 to receive a copy, on computer diskette, of the final registry. Under Article 13, they have the right to inspect the official records which were the basis for entering or changing entries in the registry.

In an effort to improve the accuracy of the registry, which became the subject of controversy in connection with the presidential elections of 1997, the new Law on the Register of Electors requires inclusion with each entry of the appropriate personal number and/or national identity (ID) card number. Based on the practice in the former Yugoslav system, all citizens of the Republic of Montenegro are assigned personal numbers which reflect their date and place of birth, gender, and other vital statistics. Upon reaching the age of 18, citizens also obtain a national ID card, which carries its own numbers. These two separate numbers are the “personal” and “national ID” numbers referred to herein. Article 7(1) of the Law requires inclusion of voters’ personal numbers, but also provides that “In special cases, if the citizen does not have [a] personal number, the Register will record [his] identification card number.”

The provisions of the new Law On Election of Councilors and Representatives on voter identification were drafted in connection with revisions to the Law on the Register of Electors. Under Article 80 of the former, voters are required to prove their identities at the polling station prior to receiving ballots. They must do so by producing “either [a national] ID [card] or some other means of identification with a photograph and a personal identification or ID number on it.” Also under that article, a voter may not cast a vote without producing proof of identity. After he/she does so, the chairman of the polling board circles the ordinal number before the voter’s name in the extract from the register. Under Article 83, however, “No alterations to the extracts from the Register of Electors may be made on polling day.”

Voters’ rights are also defended in the Voter Registration Law by the creation of criminal and civil penalties against officials who wrongfully prevent registration, as well as other individuals who commit fraudulent acts with respect to it. Article 15 makes persons subject to imprisonment for one year if they fail to enter a voter in the registry, delete an entry with the intention of making it impossible for a person to vote, or provide false information about residence data and voting rights. Article 16 imposes substantial fines for lesser violations, including failure to maintain related records adequately.

1. Administrative Implementation

As mentioned previously, the Law on the Register of Electors does not create a clear line of authority at the republican level for supervision of the voter registration process. Under Article 4, voter registers created by municipal authorities are merely “complied in a single (central) Register of Electors kept by a government authority in charge.” However, the Law does envision the establishment of broader supervisory functions at the republican level. Article 7(2) provides: “The Ministry in charge of administrative affairs shall govern in more detail the manner of keeping, correcting, supplying, concluding, copying, and publicizing the Register of Electors and other matters needed for maintaining complete, accurate, and up-to-date registers and shall supervise the compliance of [sic] the regulations governing the maintenance of the Register of Electors.”

It appears that not all the functions laid out in this paragraph have been fully implemented at this time. In order to help coordinate the preparation of the voter registry for the upcoming elections, however, the Montenegrin government designated the Secretariat of Development as the responsible agency at the republican level. In order to execute these functions, a special sub-division was established within the Secretariat for this purpose. In connection with the Secretariat of Development’s efforts to improve the quality of the voter registry through technical means, the Republican Assembly created through resolution a multi-party expert working group on voter registration. The group, which was comprised approximately half each of information specialists and lawyers, included representatives of all the parties in the Assembly

as well as a professional staff. The group acted on the basis of consensus and its final report generally endorsed the registration exercise. In preparing for the recent election, the Secretariat emphasized the improvement of its basic role to compile registers prepared at the municipal level into a central registry, and provide a means for the correction of the register at the initiative of government, individuals, and political parties. This process was made more challenging by virtue of two innovations contained in the new law - the requirement to include national as well as personal identification (ID) numbers, and to enter all information in the register in computerized form. By April 1998, work on the central registry had developed to the point where the municipal authorities' computerized voter registers were successfully centralized.

In addition to the normally high levels of error associated with a voter registry assembled from other government files, these two factors led to large numbers of inaccuracies, particularly in earlier versions. Estimates of the error rate in these editions ran as high as 100,000, or 15-20% of the total entries. Such estimates mainly referred to errors that were evident on the face of the draft register, such as missing or duplicate information, which were relatively easily determined through cross-checking of files. They did not include the unknown number of instances in which entries in the register may have corresponded to persons ineligible to vote as a result of having moved or being deceased, or those which did not correspond to any real person. Software programs included roll cleansing and de-duping exercises were utilized to cull the obvious errors and duplications. These exercises, run following the transfer of data from the 21 municipal authorities to the central database, resulted in approximately 190,000 transactions

In light of these problems, the Secretariat of Development undertook a number of actions aimed at improving the quality of the voter register. These were highlighted in an open letter from the Secretariat in response to communications on this subject by the main opposition party: computer equipment was acquired and installed at the Secretariat and in the 21 municipalities. It was programmed with purpose-made software, including systems to detect and resolve discrepancies, and with electronic communication capabilities; systems support was made available through the Secretariat; and correction of the registry was ultimately placed on a "real time," ie. continuously updated basis.

In terms of voter access, arrangements were made for special telephone lines for voters to inquire about their status and offer corrections, as well as the posting of the updated registry on the Internet. The level of calls to the telephone inquiry service alone was in the order of 1,500 to 2,000 per day. Many corrections resulted from the telephone inquiries, duplications making up the bulk of the changes (8,000+). Static information centers were established to provide for public inspection of the voter lists and to service requests for changes. Mobile teams, equipped with computers, were fielded to enable voters in remote areas to check their registration. A public information campaign was also carried out through the media, and several appeals were made for voters to check the register specifically since a large number of existing entries were incomplete. As a result of these and other measures involving directing checking at municipal offices, some 120,000 inspections of the register were made by individuals by mid-May. In accordance with Article 12 of the new Law on the Register of Electors, political parties were able to request copies of the registry on computer diskette and have their request filled within 48 hours. The Secretariat indicated that the main opposition party had received eight complete computerized data sets by the time the final voter registry was prepared. The Liberal Alliance and the Serbian Radical Party were also provided with copies upon request.

According to information provided by the Secretariat of Development, these measures, combined with other efforts, reduced the number of inaccuracies in the voter registry by 70% as of the time the registry was "closed" on May 10. Although the single largest category of errors in the database were those records without a place of birth or with incomplete date of birth, the most contentious issue remained the approximately 35,000 entries which lacked personal or national ID numbers. In the context of an election and the legal restriction on removal of records, it was not possible to act on these records.<sup>5</sup> As a result, an extraordinary decision was made to publish a list of incomplete entries in hopes that voters would respond and request correction. This list was published as a special supplement to the state newspaper, *Pobjeda*, on 14 May. Some 20,000 copies were printed. Despite these extensive efforts by the Secretariat, and the instructions communicated by the republican government to municipal authorities, the error rate in the final voter registry remained significant. Of the total 457,633 entries in the registry, 33,796 entries still lacked a personal or national ID number. The number of duplicate entries within single municipalities ("duplicates"), however, was reduced from 8,075 to only 32. The number of entries registered in multiple municipalities ("multiples") was brought down from 8,581 to 836.

As a result of the administrative and technical measures described above, great progress was made toward improving the quality of the Register of Electors. Now that measures have been established for this purpose, it would be highly desirable to institutionalize them after the election. For example, means should be found so that errors in the registry corrected for this round of elections do not recur in future registries, since information for the registry continues to be derived primarily from information contained in other official files.

## *2. ADJUDICATION OF REGISTRATION-RELATED GRIEVANCES*

Under the Law on the Register of Electors, the Supreme Court is the exclusive judicial authority for pre-election appeals concerning voter registration. In anticipation of its role in adjudicating such appeals, the Court organized itself to handle them efficiently through a special panel of five judges headed by the president of the administrative division. Based on past experience, the Supreme Court expected 10,000 or more appeals concentrated at the end of the registration period. During last year's presidential elections, the Court was confronted by some 14,000 individual cases. In fact, by the time the voter registry was finalized, the Court had decided 36,755 appeals concerning a total of 50,921 entries in the register. Of the total number of appeals, 32,618 were brought in a coordinated action by the Liberal Alliance, which submitted separate appeals to strike each entry then in the register without personal or national ID number.

The Supreme Court allows political parties, as well as affected individuals, to make complaints to the authorities concerning voter registration and to pursue related appeals before it. In addition, the Court is prepared to hear such appeals regardless of whether complaints were filed prior to the closure of the voter registry or afterwards. Appeals to the Court in these two instances are governed by two separate articles of the Law on the Register of Electors, Articles 9 and 11. Perhaps the Court should have attempted to distinguish between them, and permit a broader scope of review, including the consideration of factual matters in cases submitted prior to the closing of the registry. But, as a practical matter, it would still have been difficult for the Court to examine such evidence in the amount of time available. The Court takes a very restrictive approach concerning what evidence is required in order to prove on appeal that an entry in the register should be corrected. The Court reads the phrase "ex officio" in the statute to limit acceptable evidence to that which is contained in official files.<sup>6</sup> Under this doctrine, parties and even individuals wishing to appeal an

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<sup>5</sup> The Law was silent on how to handle incomplete entries which existed within the register.

<sup>6</sup> Despite applying this general doctrine, the Court sometimes accepts written evidence from other sources, such as death notices from newspapers, or attested statements by family members.

entry in the register are highly unlikely to prevail in court, regardless of the merits of their claim, unless they first secure the cooperation of municipal authorities.<sup>7</sup>

In the past, the Supreme Court applied a similar approach to voter registration appeals. Last year, the Court speedily rejected the thousands of appeals filed primarily by the losing faction led by then-president Momir Bulatovic. This time, however, the Court did accept an early appeal filed by the successor to the same faction of the former ruling party. While the Court refused to order correction of the record based on non-official evidence submitted by the party, it did instruct municipal authorities to address such issues as part of their normal responsibilities. The response of the municipalities, however, was inconsistent. Both the ruling Democratic Party of Socialists (DPS) and the opposition Socialist People's Party (SNP) separately alleged that the defects in the registry were due to malfeasance by officials at the republican and/or municipal levels, who were thought to be under the influence of the other party.

The evidentiary approach followed by the Supreme Court caused it to reject the great majority of requests for deletions from the registry. All the appeals submitted by the Liberal Alliance, concerning the over 30,000 entries without personal or national ID numbers, were denied. In addition, only 2,326 of 14,729 other requests for individual deletions were accepted.<sup>8</sup> The Court accepted a much higher ratio of appeals that involved additions to the registry or modifications of items already there. Of 1,258 requests for addition, 1,201 were accepted; of 2,336 requests for modifications 2,217 were accepted. Presumably, these cases largely resulted from inspection of the registry by individuals. After finalization of the Register of Electors on 11 May, and as the judicially determined deadline for making changes (26 May) approached, the primary issue about the registry concerned the large number of entries without any personal or national ID number. Some of the opposition parties threatened to boycott the election, the SNP going so far as to suggest it would make disturbances at the polls, if persons corresponding to those entries were permitted to vote.

The Government, acting through the Secretariat of Development, attempted to see if it would be possible to remove the names without numbers from the registry, which at that time would require a Supreme Court action. Since no decision had yet been made to exclude these potential voters from obtaining ballots, however, the Court felt that its doctrines prevented it from approving such a step. Because the Court did approve the removal of numerous duplicate entries by municipal authorities, it now appears that some real voters were inadvertently removed from the registry as a result. Finally, on 29 May, the REC – with the enthusiastic approval of all political party representatives present – determined to exclude from voting all persons who did not have a personal or national ID number included in the voter registry. As a result, an undetermined number of eligible persons were not permitted to exercise their right to vote. It is not known how many such cases occurred on election day, however, since records were not always kept by polling boards on this issues. Observers generally reported being told at individual polling stations that anywhere between a small number, ie. fewer than ten, and higher numbers, ie. in the range of 20, persons had been turned away from the polls for this reason. According to its final report, the OSCE indicated that 51.6% of its observers did note electors being refused the right to vote, more than half for reasons of missing personal or national ID number or other information within their entry in the extract of the Register of Electors.<sup>9</sup>

#### B. Issues for Consideration<sup>10</sup>

The voter registration database and the Register of Electors should be compiled from individual claims and not by “ex officio” means and should be maintained exclusively for elections.

The voter registration database should include only information required to identify electors for election purposes.

The voter registration database should be easily accessible, but must also protect the privacy of the elector's information.

The voter registration database should be updated on an on-going basis. The database needs to be generally available for inspection and the lodging of claims, and should be updated through regular database cleansing exercises. Individuals should be able to inspect their entries in the registry, as well as the registration data of their immediate family and persons residing on their property. Political parties should also be able to obtain updated voter registration information outside the immediate election period.

Some thought should be given to instructing municipal authorities to inform citizens of their ability to check and, if necessary, correct their voter registration, whenever they come into municipal offices for other reasons.

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<sup>7</sup> The explanation is as follows: *Ex hypothesi*, a person who appeals an unfavorable determination by a government body concerning registration must either challenge the internal consistency of the register, ie. With respect to duplicate registration or the like, or external factual matters, eg. whether a voter has moved, died, or otherwise been rendered ineligible to vote, which may not be accurately reflected in official records. In the former case, the appellant cannot prevail since it is impossible to prove a negative; even in the case of a completely false entry, it would be impossible to find a record that shows that such an entry should not be included. In the latter case there is unlikely to be an issue since the presence of official records on such factual matters should presumably already have caused the administering agency to take action to correct the relevant entry in the register.

<sup>8</sup> With respect to requests for deletions, the Supreme Court has taken the position that they cannot be accepted without official evidence, of a conclusive nature, that the entry in questions does not represent a real voter. This approach, while commendable in terms of respecting voter rights would have been difficult to justify if it were already known that such individuals were not going to be permitted to vote anyway. While it appeared likely in the weeks leading into the elections that persons without personal or national ID numbers would in all probability not be allowed to obtain ballots, that decisions was not formally made by the REC until 29 May after the voter registry was already finalized.

<sup>9</sup> See, OSCE “Republic of Montenegro, Parliamentary Elections, 31 May 1998,” pg. 16.

<sup>10</sup> For a more detailed guidelines on improving Montenegro's Register of Electors and the components of a good voter's list, please refer to Attachment II of this assessment.

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The Law on the Register of Electors needs to include a provision for registration and voting by electors temporarily abroad.

The Law on the Register of Electors should include a provision for permanent residency as a condition for registration.

The Law on the Register of Electors also needs to be modified to grant specific regulatory authority to a republican government body to supervise the preparation of the voter registry, issue instructions to municipal authorities, and undertake other central operations, such as prescribing the format of data. Serious consideration should be given to bringing direct responsibility for maintenance of the voter registry within the jurisdiction of election commission structures in order to better insulate it from other state functions.

The Law may also be modified to permit individuals to submit complaints and, if necessary, file appeals between election periods with respect to their registration and that of immediate family members or persons residing in property owned by them. It might also instruct municipal authorities to submit to the Supreme Court appeals based on unresolved complaints received from voters between election periods, on a periodic basis, for adjudication.

Consideration may also be given to instructing the REC to issue regulations which elaborate upon the circumstances under which a voter whose registration is defective may nevertheless be permitted to vote. Under such circumstances, "supplemental list" and "challenged ballot" procedures should be instituted to deal with voters who are permitted to vote in accordance with the previous recommendation.

Polling board chairmen should also be directed to include in the official record of the work of the polling board every instance in which a person requesting a ballot is denied, and the precise circumstances under which this occurred.

## SYSTEM OF REPRESENTATION

### A. OVERVIEW

Under the multi-party program for democratization, elections to the Republican Assembly were to be based on the "establishment of a proportional voting system, with Montenegro constituting one electoral unit, modified so as to ensure adequate representation of the Albanian minority in Montenegro." Prior to 1996, Albanians had no representation at all in the Republican Assembly through ethnically-based political parties. In that year, however, Albanians achieved significant representation corresponding to their proportion of the total population. This is because the 1996 parliamentary elections were based on multiple districts, two of which had a high concentration of ethnic-Albanian residents. Originally, the parliamentary working group tasked with drafting the new Law on Election of Councilors and Representatives, proposed that a second small district be formed to include areas with a concentration of Albanian voters. When it appeared that the Republican Assembly would not support this approach, an ingenious alternative schema was adopted. The objective of the provisions on minority representation in the new Law was to provide an opportunity to the Albanian minority to achieve parliamentary representation approximately equivalent to their proportion within the population. With nearly 7% of the total population of Montenegro, ethnic Albanian parties could obtain as many as five of the 78 seats in the Republican Assembly.

### I. LEGISLATIVE FRAMEWORK

The provisions of the Law on Election of Councilors and Representations are found in the last Chapter (XIV) titled "Transitional and Final Provisions," and specifically in Article 118 thereof. The language of that article (in paragraph 1), which makes it clear that the current basis for parliamentary representation in the Republican Assembly applied only to the May 1998 elections, also outlines the system for special minority representation: "The next election of representatives to the Assembly of the Republic of Montenegro shall be conducted in the Republic as a single constituency in which five representatives, out of the total number of representations, shall be elected in polling stations determined by a special decision of the Republican Assembly." Thus, the system for ensuring minority representation is based on the collection of votes in specially designated polling stations. While both Albanian parties favored the creation of a second district, they appeared to be relatively satisfied with the alternate arrangement. For the 31 May elections, the Republican Assembly designated 59 such stations, including 31 in Ulcinj, the main municipality with a concentration of Albanian voters, and other sites in the municipalities of Bar, Rozaje, and Plav and in the communities of Malesija and Tuzi in the capitol of Podgorica.

Article 118 further stipulates that:

Any party which has a confirmed candidate list may compete for votes in the specially-designated polling stations;

To be awarded mandates in the Republican Assembly based on votes obtained from the specially-designated stations, a party must win at least 3% of the total number of votes cast there. It apparently does not have to achieve the similar percentage of votes republic-wide, which are otherwise required to achieve parliamentary representation.

A party which is eligible to receive mandates based on votes obtained at the specially-designated polling stations may also apply voters there which it obtains elsewhere. This provision would permit an ethnically-based party to collect votes from its supporters, presumably mainly Albanian, who live outside of the special sub-districts, and apply votes

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toward winning the mandates that would be awarded on the basis of votes obtained in the specially-designated stations.<sup>11</sup>

A party which fails to win mandates based on votes at the specially-designated polling stations may transfer those votes elsewhere, ie. to its republic-wide total, provided that it is eligible to receive mandates based on the votes it has received elsewhere. This would enable a non-ethnically-based party to shift the votes it received in the specially-designated polling stations to the republic-wide contest, assuming it had votes left over after the award of mandates based on votes cast within the special sub-districts, or fails to win any mandates there.<sup>12</sup>

2. *RESULTS OF THE MINORITY REPRESENTATION SCHEME*

In actuality, the minority representation scheme contained in the Law resulted in only two Republican Assembly mandates being won by ethnic-Albanian parties, one each by the Democratic League in Montenegro and the Democratic Union of Albanians. While this is far short of the percentage of Albanians in the total population, neither ethnic Albanian party would have achieved any representation in the Republican Assembly under the current proportional system without some method to provide for minority representation. The Democratic League obtained some 5,424 votes republic-wide, or 1.58% of the total number of votes cast. The Democratic Union received 3,529 voters, or 1.03%. Without the minority representation scheme, neither would have passed the republic-wide threshold for representation, which is set at 3% of all votes cast. It should be noted, however, that while the ethnic Albanian parties received only two seats in the Assembly, several ethnic Albanians were seated as part of the coalition "To Live Better".

In view of the relatively poor showing of the ethnic Albanian parties, it was not necessary to implement in detail the provisions of Article 118 that related to vote transfers between the special sub-districts and republic-wide elections. The two parties were able to win only a single seat each using all the votes they had obtained in the special polling stations and all other polling sites throughout the republic. Most of the votes cast for other parties in the specially-designated polling sites went to the ruling coalition "To Live Better – Milo Djukanovic" which includes the DPS, People's Party, and the Social Democratic Party (SDP). The coalition won three of the remaining mandates (as noted above) outright, so that it did not matter whether those votes were considered as applying within the specially-designated polling sites or republic-wide.

In the context of the recent election, representatives of the ethnic Albanian parties expressed a number of concerns. First, the Albanian parties have claimed that the ruling DPS party and government officials under its control made aggressive efforts to secure votes in Albanian areas. It was well known, and entirely understandable, that the DPS hoped to lure voters from other parties, including those which could potentially enter into partnership with it after the election. But, Albanian politicians complained that DPS activists toured Albanian areas offering benefits, such as employment and improvement of the local infrastructure, if Albanian voters in those areas would support the coalition in the elections. If in fact the votes of ethnic Albanians in Montenegro were obtained through unjustified and unwarranted promises of government benefits and not merely through a more general effort by the government to improve its image with voters during the campaign, that should be regarded as inappropriate and impermissible.

While no formal complaints were filed at these sites, claims were made that the mobile voting process was abused in a number of the specially-designated polling sites in Tuzi by polling board members loyal to the DPS. In particular, it was suggested that ballots were cast on behalf of persons not currently in Montenegro, and that it was on the basis of this allegedly fraudulent voting that the DPS was able to win the third seat through voting at specially-designated polling sites. Despite these allegations, exhaustive efforts by IFES failed to turn up any tangible evidence or statistical data to support them. Finally, the Albanian parties had also hoped to secure a method of enhancing their voting power at the municipal level, perhaps through extending the same minority representation scheme to the election of councilors. They did not achieve this objective, however, and as a result believe that the influence of their constituency at the municipal level is not adequately reflected.

At the same time, it appears that a large number of Albanian voters opted not to vote on the basis of ethnicity, ie. they genuinely decided to vote for the coalition. This may have been a rational calculation by these voters that their interests lay in supporting the coalition, which has a reformist economic and political orientation and is considerably more sympathetic to minority concerns than the primary opposition. And, in the tense atmosphere surrounding the election, Albanian voters probably concluded that the coalition "To Live Better" was in the best position to protect their interests and safeguard their security against attacks by federal authorities and by unsympathetic opposition parties in Montenegro.

B. *ISSUES FOR CONSIDERATION*

The introduction of a mixed system of representation, whereby a portion of the Republican Assembly is elected according to proportional representation on the basis of candidate lists and the remaining seats are selected through a majoritarian system in which individual candidates compete for mandates in regional constituencies, would have a variety of benefits. Among them are: reinforcement of the multi-party system in Montenegro; improved representation of minorities and regional interests; and the establishment of some direct relationship between constituents and their national legislators. The introduction of a mixed system would preclude the need for special voting arrangements.

Consideration should also be given to re-instating the municipality status of Tuzi, so that its Albanian population can better achieve local political representation.

From the standpoint of public administration, it may also be advisable to provide for greater representation of ethnic Albanians within the state bureaucracy at the republican and municipal levels, police forces, and the court system, particularly in those communities with a high concentration of Albanians.

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<sup>11</sup> The last clause of 118(4) appears to prevent a party from doing so if it wins seats based on voting at other polling stations. Thus a party could transfer votes to the total it received at the specially-designated polling stations only if it failed to win outright seats elsewhere or failed to pass the republic-wide threshold of representation.

<sup>12</sup> The last clause of Article 118(5) also appears to require that to do so, a party would first have to gain parliamentary representation outside the special sub-districts, viz. by winning seats based on votes cast elsewhere, and also obtaining the 3% of voters republic-wide that is the threshold for parliamentary representation.

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VI. NOMINATION PROCESS/QUALIFICATION OF CANDIDATE LISTS

A. Overview

The Law on Election of Councilors and Representatives establishes the system for nomination of candidates to legislative office by political parties, coalitions, and citizen's groups. This system, which requires nominating entities to collect a substantial number of signatures in support of their candidate list is a departure from the previous law. This number is set at one percent of the total number of registered voters in the jurisdiction at the time of the last election and is at the low end of the prevailing international scale. Unlike many other electoral systems which tie the number of signatures required to forward a candidate slate to the type of nominating entity, Montenegro's does not apply a variable requirement. As such, political parties must collect the same number of signatures as coalitions of parties and as citizen's groups. The only exception to this rule is applied to ethnic Albanian parties which need only 1,000 signatures to forward a candidate list in the national constituency and 200 signatures in municipal constituencies.

*1. CRITERIA FOR REVIEW OF NOMINATION APPLICATIONS*

The provisions of the law which pertain to the scrutiny and evaluation of signature petitions by competent election authorities are, unfortunately, rather sketchy. At the time of its first mission to Montenegro in the fall of 1997, an IFES team recommended that more specific and effective procedures and standards be applied to the signature collection and petition review process. At that time, it forwarded a proposal for the application of a double threshold requirement, which would establish the required number of valid signatures and an acceptable level of errors. The advantage of this proposal is that it would focus, from an administrative point of view, on whether or not a sufficient number of valid signatures have been submitted and a good faith effort has been undertaken by the nominating entity to collect them. Ultimately, a double threshold was not applied, and virtually no guidance was provided within the law on how, and to what extent, competent election commissions were to review nomination applications, including signature petitions. For example, Article 48 speaks only in terms of the relevant election commission finding "faults" in a petition.

*2. TIMETABLE FOR SUBMISSION OF NOMINATION APPLICATIONS*

Moreover, the timeframe in which the candidate slate must be certified or rejected relative to the submission of the nomination application allows for little more than the most superficial review by the competent election authority. In accordance with Article 46 of the Law on Election of Councilors and Representatives, nomination applications can be submitted as late as 20 days prior to the election. And, under Article 47, the commission has only 48 hours to make its initial determination concerning the sufficiency of the signature petition. While this is twice as long as originally proposed, it is still insufficient to allow for a thorough evaluation of and reliable determination on the sufficiency and validity of signature petitions. Election officials confirm that they had neither the time nor the resources to closely scrutinize nomination applications, which may be evidenced by the fact that all 17 political parties and coalitions that submitted nomination applications for participation in elections to the Republican Assembly had their candidate slates certified by the REC. Given that this was more than twice the number of expected contestants, and that 10 of 17 attained nowhere near as many votes as required signatures, it is a distinct possibility that some fraudulent lists successfully passed through the review process.

*3. Control of the Signature Collection Process*

There also exists a substantial lack of control with respect to the signature collection process. First and foremost, the eligibility and identity of persons charged with collecting signatures is not included in the petition. There currently exist no prohibitions on where and how signatures are collected. For example, signature collectors are not restricted from approaching voters in places of employment, government offices, or centers for the distribution of salaries and benefits. They are also not explicitly prevented from offering voters financial or material incentives in exchange for their signature, or threatening the loss of some privilege or benefit as a result of the failure to sign a petition.

*4. ASSIGNMENT OF MANDATES BY POLITICAL PARTIES*

One peculiar practice with respect to the development of candidate slates and, presuming a positive electoral performance, the assignment of mandates, also deserves mention. Montenegrin election law gives political parties the right to assign 50% of the mandates they have won at their own discretion from among names on their candidate list, regardless of ordinal ranking. This post-election exercise of power by nominating entities is not particularly democratic or transparent, and one may question whether or not this legal allowance is in full accordance with the voting rights of the Montenegrin people as indicated in Article 32 of the Constitution. Particular attention should be paid to clause (4) which states that "elections shall be free and direct . . ." (emphasis added). The Organization for Security and Cooperation in Europe, in its preliminary statement, noted that this practice is "contrary to commonly accepted standards."<sup>13</sup>

B. *ISSUES FOR CONSIDERATION*

The law should clearly define procedures by which nomination applications, including signature petitions, will be evaluated, and dictate the specific grounds on which they may be rejected. Without specific legal guidelines, administrative steps in the review of petitions will remain potentially subjective. As a means of facilitating the development of these criteria, it may also be useful to consistently refer to valid and invalid entries (just as the law refers to valid and invalid ballots).

Some thought should also be given to establishing a double threshold requirement. For instance, it could be determined that signature petitions must contain valid signatures equivalent to a percentage of the total number of voters in the constituency (currently set at 1%) and that errors or invalid signatures in excess of a legally

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<sup>13</sup> See, OSCE, Election Observation Mission, Republic of Montenegro May 1998, Preliminary Statement issued on 1 July 1998, p. 3.

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established threshold will cause the petition to be declared null and void.

Consideration may be given to establishing a variable signature requirement for citizens' groups, political parties, and coalitions of political parties, the lowest of which should not be less than 1% of the total number of eligible voters as of the last election.

To improve the scrutiny and evaluation of nomination applications and certification of candidate lists, the period of time prior to an election during which a nomination application may be submitted to the competent election authority should be lengthened, ie. the submission deadline should be moved to an earlier date prior to the election. Concurrently, the amount of time provided for review by the competent election authority must be increased.

At the same time, the necessary human resources and technical means will need to be made available to election commissions to ensure a thorough review of all nomination applications, including signature petitions.

The law should include prohibitions on places where signatures in support of candidate lists can be collected. Places of employment, government offices, and distribution centers for salaries or benefits should be restricted to protect against undue influence or outright coercion of voters.

Similarly, providing financial or material incentives in return for signatures should be strictly prohibited.

Provisions might also be built into the law which would require that each page of the signature petition include an attestation identifying the person who collected the signatures, stating that all signatures were personally collected by him/her and that he/she also confirmed the information put down by each elector. Signature collectors should also be held responsible for forging or knowingly submitting a fraudulent signature petition.

Required documents to be included as part of a nomination application may be expanded to include a certified copy of the minutes of the meeting or convention at which the party officially adopted its candidate list and a copy of the statutes, ie. by-laws, of the party that govern such actions.

To better facilitate the review of signature petitions and to encourage the accuracy of their entries, it may be advisable to stipulate that the number of signatures not exceed a certain percentage of total valid signatures required.

The practice of allowing political parties and other nominating entities to assign half of the mandates awarded to candidates on their list, regardless of their ordinal ranking on the list, should be disallowed.

Responsible election commissions should be authorized to undertake an investigation if there is reason to believe that fraud was committed in connection with the collection of signatures in support of a candidate list, and reject or annul the certification of such a list if it finds that there was deliberate and substantial fraud.

Nominating entities may be permitted to re-assign a mandate which they have won in an election if the candidate who was awarded that mandate can no longer exercise his/her duties due to poor health, or if the mandate was withdrawn by the relevant legislative or election authority due to actions by the individual candidate that are incompatible with the performance of his/her duties as a parliamentarian, with the exception of election fraud.

## CAMPAIGN FINANCE

### A. *OVERVIEW*

The system of political financing and control in Montenegro is established under the Law on Financing of Political Parties. A few provisions of the Law on Election of Councilors and Representatives (articles 113-114 thereof) also relate to financial and other support to candidates and nominating entities. The former envisions two methods for financing of political parties. The first is through state subsidies, which are distributed in three tranches: prior to the election campaign to those parties represented in the relevant assembly and intending to participate in the elections, during the election campaign to those parties which have certified candidate lists, and after the election to those parties that have achieved representation. At the time of the recent elections, each tranche equaled 750,000 dinars. The first was to be divided among the seven political parties represented in parliament, all of which were contending in the elections, and the second to the 17 nominating entities certified by the REC. The Law also addresses private contributions. Both sources of funding are discussed in greater detail below.

#### *1. PUBLIC FUNDING*

With respect to state funding, subsidies to established political parties could have the benefit of consolidating the multi-party system in Montenegro and of stabilizing the overall political environment. It may, nevertheless, be undesirable to fund parties outside the election campaign period. The assurance of such funding could deter established parties from concentrating on and increasing their grassroots support, subsequently leading to public apathy or resentment. Such a system also works to the relative disadvantage of new political parties and citizens' groups, both of which are entitled to forward candidates for elections and to make a contribution to the political life of the country.

At the same time, the two leading political parties in Montenegro, the DPS and the SNP, have, for various reasons, enormous financial advantages over other parties, thereby tilting the political playing field. Other parties may, for the time being, need state support in order to be competitive during election cycles and to maintain their organizational structures in the interim. And, given the damage to Montenegro's formal economy as a result of economic sanctions and Yugoslavia's continued international isolation, it may be difficult to raise funds from legitimate sources, either individual or commercial, at this time. If political parties were stripped of their state subsidies and were unable to solicit legal contributions, one can assume that it would be very difficult for them to survive using legal and proper means.

With respect to state subsidies received during the campaign period, it appears that these funds had relatively limited value and probably led to many negative side effects. First and foremost, discussions with political parties suggest that not all received their state subsidies. Given the absence of required reporting and public disclosure, it is difficult to reliably ascertain which political parties received what sum of money. To the extent that any failure to provide state subsidies tended to affect opposition political parties or those otherwise unaffiliated with the coalition "To Live Better – Milo Djukanovic" is of particular concern. The democratically-oriented opposition party, Liberal Alliance, had not received neither the first nor the second tranche of money as of the writing of this report, and did not appear to be on the verge of receiving these funds, despite repeated inquiries addressed to the Ministry of Finance. Ethnic Albanian parties, as well as the People's Party and Social Democratic Party, did receive the first tranche of money but not until the last week of May, and were still awaiting campaign period funds as of early August. In these cases, however, the former appeared more keenly affected by the delay than their coalition counterparts.

Although subsidized funding may not have fully materialized during the election campaign, the promise of such funds may have contributed to a situation whereby a number of minor, largely unrepresentative political parties submitted candidate lists in order to obtain state financing and related benefits, particularly free air-time, during the campaign period. Certification of candidate lists enabled smaller parties to get their message out in a manner that would not normally be available to them. There is some speculation that such incentives may have been so great, in fact, that some smaller parties submitted fraudulent signature petitions in order to obtain them.<sup>14</sup> Ultimately, 17 parties, nearly twice as many as expected, participated in the election. Of those, 10 received significantly fewer votes than signatures required (one-percent of eligible voters in the national constituency as of the last elections) for certification of their candidate lists. Some concern was also expressed that an inordinately high number of political parties participating in the election would deplete the overall amount of money available for state-subsidized campaign financing. Even if one were to envision a scenario with a smaller number of contestants, the amount of subsidized financing that political parties could have expected to receive from the State for campaign purposes was relatively small. As such, it could not realistically support campaign activities, particularly if they involved radio or television advertising.

#### *2. PRIVATE FUNDING*

Private funds available to a political party may, under Article 8 of the Law On Financing of Political Parties, be used both for campaigning and for other pre-election activities. Paragraph 2 specifies that only after a nominating entity has successfully met ballot access requirements and has had its candidate list certified, can it collect private contributions. The manner of collection is stipulated under paragraph (3) of that article. The article does not, however, expressly state that contributions may not be solicited or accepted in other locales such as places of business, employment, or disbursement of state benefits. Paragraph (4) does state that "contributions to individual candidates or to candidate lists can be made by individual citizens," but it does not place any restrictions on other legal entities, in particular businesses. It also fails to address both in-kind contributions and the practice of "bundling" separate, ostensibly legal contributions from individuals at the initiative of another individual or legal entity.

It would appear that there should be some limitations on contributions from any one source and on the permissibility of certain sources. While the Law establishes a ceiling on total expenditures by a party, it might also be advisable to reduce the dependency of parties on large contributions by a single or small group of private contributors. It should be noted that while public disclosure on large, single source or small group contributions might well affect the image of the party, that prospect alone is probably not sufficient to deter it from accepting such donations during the heat of the election campaign.

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<sup>14</sup> One theory suggests that such groups may have been inadvertently aided in their efforts to develop fraudulent signature petitions, by the official web-site created by the Secretariat of Development for the purposes of checking voter registration data.

It is also noteworthy that the Law on Financing of Political Parties does not contain any prohibition on political contributions from foreign or external sources, in this case outside Montenegro but within the FRY. Such provisions are extremely common in most other national jurisdictions. Again, the effect of sanctions against Yugoslavia and its formal isolation may have exacerbated political party dependence on outside monetary support given the limited opportunities to raise funds at home, including the ability of the state to provide legally mandated subsidies. It is also entirely plausible that certain political parties sought the support of like-minded entities or benefactors abroad to neutralize the impact of allegedly large cash flows from neighboring Serbia in support of pro-Milosevic political parties and organizations in Montenegro. Although not illegal under current legislation, such practices tended to evoke strong reactions from competing parties, in particular allegations of inappropriate and unfair campaign finance activities, and led to further polarization in an already tense political environment.

### *3. LIMITATIONS ON CAMPAIGN SPENDING*

Article 9(2) of the Law on Financing of Political Parties establishes an overall ceiling on the total campaign expenses of a political party, which is equal to 250 net average salaries paid for the previous month in the Republic of Montenegro, as officially published. Aside from the difficulty in determining that figure<sup>15</sup> and applying it during the campaign period, the expenses in question are only those of the types specified in paragraph (1) of that article, which include various kinds of political advertising, but do not include operating and other general expenses. That is to say, the ceiling established for the expenditure of funds by a party applies to only a portion of its expenses during an election campaign. There is no direct limitation on the amount of money a party can receive, either during the campaign or at any other time. At the same time, the limit on campaign spending on political advertising is unrealistically low, and therefore encourages non-compliance, in the current market place. Longtime activists and observers suggest that campaign activities could not be carried out within the existing ceiling, particularly if they involved radio or television advertising. The going rate for television advertisements was YUD 80 – 400 (approximately USD 8 – 40) per second at the time of the election campaign.

### *4. CONTROL, REPORTING, AND OVERSIGHT*

To the extent to which reporting and oversight requirements exist within the Law, they are not specific about the extent of disclosure on sources, amounts, and purposes of funding and how this disclosure is to be carried out. The main method of control established with respect to compliance with limitations on campaign expenditures is, according to the Law, to be determined by agreement of the political parties in Parliament. According to Article 10, parties which have representatives in the Assembly shall enter, within 15 days of the date of calling of elections, into a special agreement ensuring compliance with the limits set for campaign expenses. It further specifies that this agreement shall establish the manner of controlling funds spent for the election campaign, and the results of this control shall be published in the news media. Given that the parliamentary parties failed to enter into such an agreement for the parliamentary and municipal elections, just as they failed to do during the previous presidential elections, it is clear that the parties cannot be relied upon to police their own fundraising and spending activities.

The issue must also be raised as to whether or not bestowing such important authority on a group of non-governmental entities, namely political parties, is an unconstitutional delegation of legislative and regulatory, ie. quasi-executive, power under the Separation of Powers and other constitutional doctrines. While it would be desirable to bring the parties together to discuss the modalities of regulating campaign expenditures, that would be better done on a universal basis, ie. including all parties which have successfully put forward candidates for election. It would also be preferable for such an inter-party agreement to be made on the basis of regulations and procedures developed by competent government bodies.

Not only does the Law on Financing of Political Parties fail to establish precise record-keeping rules, but it also does not provide for standard, regular, and periodic disclosure of party fundraising or a comprehensive post-election report on contributions and expenditures. Beyond the virtual absence of reporting and disclosure requirements, the Law fails to specifically identify the institution responsible for campaign finance regulation, thereby increasing the likelihood of non-compliance and contributing to the non-transparent nature of Montenegro's campaign finance system.<sup>16</sup> The removal of the Republican Election Commission from the administration of public financing of campaigns and the implementation and enforcement of a campaign finance regulatory system was ill-advised if not politically motivated.<sup>17</sup> The limited access to and transparency of the Ministry of Finance, not to mention its questionable efficiency and responsiveness given a broader institutional mandate, made it extremely difficult for parties and observers to precisely and reliably identify the amount of money available to subsidize the campaign activities of qualifying political parties, the division of available funds among those parties, or the timing of transfer of funds. Beyond the questionable role of the Ministry of Finance in administering and enforcing the Law on Financing of Political Parties, it was clearly not equipped to redress the pertinent grievances and to provide administrative remedies.

### *B. ISSUES FOR CONSIDERATION*

Throughout the process of improving Montenegro's campaign finance regulatory system, primary emphasis should be placed on encouraging compliance and public disclosure as well as limiting excesses, rather than discouraging political activity.

Responsibility for the administration of public financing of campaign activities of political parties and for the implementation and enforcement of the campaign finance regulatory system should be returned to the REC and the MECs and clearly established both within the Law on Election of Councilors and Representatives and in the

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<sup>15</sup> Repeated inquiries by IFES to various responsible persons within the Ministry of Finance, for example, proved futile in determining this amount and discussions with political parties revealed differing impressions of the applicable figure. The Republican Election Commission was not in a position to provide any information on this subject as, under new legislation, it was excluded from playing any role in campaign financing, beyond determining those nominating entities qualified to receive state subsidies.

<sup>16</sup> Specifically, the Article 11 of the law requires parties to "keep records of the revenues and expenditures" and stipulates that they are "subject to control." It does not however, require pro-active and periodic reporting, according to a standard format or timetable, nor does it identify the competent authority or grant it rule-making authority.

<sup>17</sup> Under previous legislation, the REC was responsible for administering state subsidies for campaign purposes and the overall campaign finance regulatory system. Under current legislation, the Ministry of Finance is directly tasked with the execution of existing legal provisions on campaign financing.

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Law on Financing of Political Parties.

A timetable for the transfer of state subsidies, in three tranches, to qualifying political parties and nominating entities, should be established in law.

In accordance with this responsibility, the REC and MECs will, within their jurisdictions, promulgate regulations on campaign financing, develop standardized reporting forms, and provide for periodic public disclosure - according to a pre-established schedule - during the campaign and after the election.

In addition to proactive public disclosure, the REC and MECs will also be advised to make arrangements for public access to and inspection of campaign finance reports and, if possible, provide for duplication of those reports for a reasonable fee, not to exceed the customary copying rate.

If a fully proportional system is to be retained, it may be advisable to identify political parties or nominating entities as the sole recipients of campaign contributions. The ability of individual candidates to also receive contributions under a proportional system makes control more difficult. If Montenegro moves to a mixed system, whereby political parties would compete on the basis of candidate lists and through individual candidates forwarded in regional constituencies, contributions directly to the latter would be appropriate. Nonetheless, if provisions allowing for contributions to either political parties and individual candidates under the current system are to be retained, mechanisms for reporting and disclosing each type of funding and expenditure will need to be developed.

In the interests of compliance and enforcement, language should be incorporated into the appropriate laws and regulations which provides for the establishment of special bank accounts through which political party financial operations, as well as those of individual candidates, must be conducted.

The responsibility of political parties to periodically - according to a pre-established schedule - provide campaign finance reports to the REC or responsible MEC should be established in the law. It may also be advisable to require concurrent reporting by the responsible financial institution on the activities of the special bank accounts as a means of checking data included in the financial reports submitted by political parties.

Upon the certification of their candidate lists, nominating entities might be required to name a treasurer who will be responsible for signing all financial documents and reports, serve as the primary point of contact for all the financial matters of the political party, and be held liable for failure to submit campaign finance reports in accordance with required norms and deadlines and for the provision of falsified reports.

If some entity other than the REC is to be responsible for the administration of state subsidies in support of political party activities outside of the election campaign, ie. the third tranche of state funding, it should be clearly identified in law and tasked with promulgating regulations, developing standardized reporting forms, and providing for periodic public disclosure between electoral events.

The mechanism for control of the campaign finance regulatory system by means of an agreement of parliamentary parties should be struck from the law.

The law needs to provide greater detail and clarity with respect to allowances, limitations, and prohibitions. In particular, the issues of foreign and external funding; large, sole-source or small group funding; the right of legal entities, including businesses, to contribute to campaigns; bundling of contributions; and in-kind contributions, require further consideration and elaboration. Limitations on the amount of money an individual or legal entity may contribute to a given campaign should be established in law.

Similarly, the law should identify locales where it may be inappropriate to solicit funds, such as places of employment, distribution of benefits, and government offices, where - at the very least - the perception may arise that financial support is expected in return for job security, continued benefits, or other incentives.

The experience of recent campaigns and elections also suggests that limitations on the use of public office and resources for overtly political purposes, to be understood as a phenomenon distinct from the natural benefits of incumbency, need to be elaborated upon within the law and strictly enforced.

All printed and electronic campaign materials should include a notice naming the individuals or legal entities which paid for the advertisement and provide information on the bank account from which the funds were paid. MASS MEDIA AND THE ELECTION CAMPAIGN

A. *OVERVIEW*

The Law on Public Information is intended to provide a comprehensive legislative framework for the establishment, licensing, operation, and supervision of a variety of public media in Montenegro. It applies both to state-owned and to private media companies. Of particular interest with respect to campaigns and elections: Article 24 stipulates that the editorial policy of a public information medium must not be directed at the forceful destruction of the constitutional system, violation of the territorial integrity of either the Republic of Montenegro or the Federal Republic of Yugoslavia, to the infringement of the statutory human and citizens rights and freedoms, or rousing national, racial, or religious intolerance or hatred. Article 25 requires state media outlets to provide informational programming in minority languages. The law also provides for fairness and accountability in news coverage, and deals with the objectivity and fairness in reporting on parliamentary proceedings and the activities of political parties.

Specifically, Article 32 states in its entirety: "A public information medium founded by the Republic or by a local authority is obliged to report impartially on viewpoints and activities of parliamentary parties within its program activities, in conformity with the rules set forth by its editorial board, and to provide direct coverage of the sessions of the Republican and municipal assemblies in compliance with their respective decisions . . . Fulfillment of political parties' rights in public media during the pre-election campaign shall be defined by means of separate regulations that are prescribed and adopted by the competent assembly. Its enactment shall be controlled by editorial boards of public media . . . The editorial policy of public media referred to in paragraph (1) herein shall observe the standards of honest and impartial policy."

In addition to the provisions of this law, Chapter VII of the Law on Election of Councilors and Representatives also contains several provisions, in particular articles 51-59, regarding the coverage of the election campaign by both state and private media outlets. With respect to state media, these provisions require broadcasting of equal informational segments regarding the various parties in the format prescribed by the State. For their part, private media are also required to report fairly and objectively on the programs and activities of different parties. In addition, Article 57 (2) calls for the media and political parties to consult after the various electoral lists have been registered, in order to develop more detailed rules on fair coverage. A similar approach proved unworkable during last year's presidential election (see OSCE 1997, pp. 20-21). For the May election, in accordance with the Law on Public Information, the Republican Assembly adopted a detailed, although somewhat convoluted, resolution on this subject. This resolution details the rights and responsibilities of nominating entities and state media outlets during the course of the election campaign as well as establishing the parameters for public statements, press conferences, the announcement and coverage of election rallies, special programming, the presentation of party platforms, and advertising.

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I. *MEDIA COVERAGE*

The consensus of the political parties, as voiced to IFES, appeared to be that the government-sponsored official programming, *Izbori '98*, carried by state radio, television, and print media, generally afforded fair and equitable access to participants in the campaign process. The main problem was that the large number of registered parties (17) meant that the time or space allotted to each one was necessarily very limited. The need to publish the views of so many political parties also required the state media to devote a considerable segment of their programming to this endeavor, particularly in the later stages of the campaign. This led to a situation whereby many consumers felt that they had been overexposed to these programs. In addition to the high level of saturation, particularly with respect to television, the style of presentation was formal and tedious. As a result, such programming largely failed to attract and retain the attention of voters, thus ultimately limiting its informational and educational value.

This level of objectivity was, however, said to be lacking with respect to reporting on campaign and other political developments by press organizations. In its preliminary statement of findings, issued on 1 June 1998, the OSCE concluded that, "In state television, programs outside of *Izbori '98*, such as the news, have been clearly in favor of the ruling party, and state affairs are reported on in a neutral or positive way without any critical comments." The OSCE also found that the greatest share of air time on the state television news program went to the government and ruling party and was overwhelmingly positive, while coverage of the main opposition party was considerably less, and was substantially negative in tone. It also noted that a similar editorial policy prevailed within the print media, both state and independent. Opposition parties complained regularly that they were being unfairly portrayed by both the public and private media. At the same time, however, the Government and the DPS counter-argued, not without justification, that state radio and television programming broadcast into parts of Montenegro by the Republic of Serbia were even more unbalanced in their coverage of the Montenegrin political situation and the election campaign. Serbian violations of Montenegro's Law on Public Information were not limited to television broadcasts, but also include print media, a number of which violated both restrictions on the publication of polling data<sup>18</sup> in the immediate pre-election day period and the 48 hour black-out on campaign activities.

2. *CONTROL OF THE MASS MEDIA*

As noted elsewhere in this report, many of the problems surfacing during recent elections resulted from poorly developed enforcement mechanisms. With respect to the media, Chapter VI of the Law on Public Information stipulates that a Council for the Protection of Public Information Freedom is to be established and charged with monitoring the activities of the press, broadcasting media, movie production, and news services, and with making proposals on measures to be taken to ensure freedom of public information and the fulfillment of public interest. Proposals forwarded by the Council are to be considered and adjudicated by the parliament and competent state or local authorities.

The Council is authorized to consider and adjudicate:

Objections made by citizens and legal entities to any information publicized by a public information media;  
Objections made by journalists and publishers pertaining to actions of either state or local authorities which restrict the freedom of public information;

Objections made by journalists with respect to any action by state or local authorities acting as the source of information; and,

Objections made by journalists, editors and professional associations regarding actions of the founder or publisher/broadcaster of a public information media with respect to the freedom of expression;

As a result, it is likely that it could receive complaints pertaining to the public media's coverage of the election campaign or treatment of participants in the campaign. For example, an editor-in-chief of a public information medium is liable if the outlet fails to publicize the viewpoints and activities of political parties in accordance with Article 32 of the Law on Public Information. As of the time of elections, more than 4 months after the adoption of new legislation on public information, the Council had yet to be formed. Given that the Constitutional Court does not consider questions about the broader election campaign to be within its jurisdiction, it is not clear where an aggrieved party could go to file a formal complaint.

B. *Issues for Consideration*

In order to comply with the Law on Public Information<sup>19</sup>, the Republican Assembly must act immediately to ensure the formation of the Council for the Protection of Public Information Freedom. The charter and operations of the Council should be strengthened. In particular, it should specifically be responsible for adjudicating disputes with respect to the coverage provided by state media outlets of the Government and political parties during an election campaign, and it should be presenting regular reports on its findings to the Republican Assembly.

The Law on Public Information also needs to specify which government agency has enforcement power with respect to fair coverage regulations, as specified in the Law, or practices which are discovered by the Council.

The Montenegrin delegation to the upper house of the Federal Assembly is encouraged to propose legislation requiring each of Yugoslavia's constituent republics to refrain from unfair political coverage in their state media, which often violated the Montenegrin Law on Public Information during the May elections, specifically concerning elections being conducted in the other republic. In order to ensure that the law is respected and that there is a forum for disputes to be aired and settled, a similar review panel, with equitable membership from each republic, would need to be formed at the federal level.

It may also be necessary to better recognize and distinguish between the technical capabilities of various media with respect to the drafting of future regulations governing state-subsidized media. For example, more comprehensive coverage might be required by the print media, while allowing the broadcast media to highlight campaign statements and events.

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<sup>18</sup> In at least one instance, it would also appear that Radio Television Montenegro also violated the legal provision barring the release of polling data within 5 days of the election.

<sup>19</sup> IFES does not necessarily endorse every aspect of this law, but a thorough analysis of its provisions is beyond the scope of this report.

## ADJUDICATION OF GRIEVANCES PROCESS

### A. OVERVIEW

The main provisions regarding the resolution of complaints related to election administration are contained in Part XI on "Protection of Suffrage," of the Law on Election of Councilors and Representatives. Under these provisions, appeals regarding the actions and decisions of polling boards and election commissions are heard by the superior commission or, in the case of the REC, by the Constitutional Court. The only exception to this involves complaints regarding voter registration, which are under the exclusive judicial authority of the Supreme Court, as granted under the Law on the Register of Electors.<sup>20</sup> Under Article 107 of the Law on Election of Councilors and Representatives, "[e]very elector, candidate, and nominating entity" may complain to the relevant commission. Grievances are to be filed within 72 hours of the alleged violation. The actual rules governing appeals and their consideration, in a procedural sense, are not fully specified except through the provision in Article 111, which states that, "All the procedures with regard to the delivery of decisions, conclusions, and other records, documents, means of identification, petitions, and the like shall be regulated in accordance with the rules on administrative procedure, unless otherwise prescribed by this Law."

The absence of detailed complaint procedures in the election laws of neighboring Serbia, combined with references, such as the one above, to other legislation, together created a chaotic situation in the aftermath of the hotly-contested municipal elections in the Fall of 1996. The former Federal Republic of Yugoslavia and its constituent republics had a highly developed civil law system, including detailed procedures for judicial appeals which are still present in the laws of the current FRY and separate republics. In increasingly competitive political situations, these systems can prove vexatious if relied upon by antagonists to contest electoral outcomes. As such, it may be well advised for Montenegrin authorities to inquire further into this matter and to draft an election-specific set of complaint procedures, if necessary.

#### 1. INTERPRETING JURISDICTION OF THE CONSTITUTIONAL COURT

For its part, the Constitutional Court largely sees its role in considering the validity of an election as limited to an examination of the circumstances at individual polling sites. In part, this is because the explicit grounds for invalidation of results are specified in the law primarily with respect to violations at polling sites. Within the sphere of irregularities at a polling site, the Court would be free to examine all the facts and fashion an appropriate remedy, but only in those circumstances in which the law does not require a specific remedy, eg. invalidation of results or repeat voting at a polling site. Even with respect to specific factual circumstances, the Court takes a very cautious approach to its jurisdiction. For example, the Court believes it would probably not have any jurisdiction over a case of multiple voting by an individual elector. Instead, this would be considered a criminal matter, to be heard by another court. The Constitutional Court might only become involved if it was shown that such wrongful voting was permitted by an election authority, or if it influenced the outcome of an election, the results of which were certified by an election commission.

The Court takes a similarly conservative approach to its jurisdiction over alleged irregularities by an election commission. Regarding the actions of a municipal election commission, the tabulation of the results of an election for example, the Court could intervene, but would do so only with respect to that particular voting process. That is to say, the Court could halt or annul some part of the tabulation conducted by an MEC. In the case of the Republican Election Commission, the role of the Court is primarily seen by its members as limited to legal issues pertaining to decisions of the REC. This form of appeal is expeditious, with only 24 hours available to the aggrieved party to bring an appeal, and 48 hours for the Court to issue a decision.

The approach of the Constitutional Court, which is based on the review of the actions or decisions of election administrative bodies, and even then in a very limited manner, may make it difficult or impossible for the Court to address broader questions of electoral fairness. This would include matters concerning the overall environment in which elections are conducted, or their specific. In particular, the Court does not consider the media environment or actions by state authorities other than election officials, ie. those who may be responsible for voter registration or other support or the electoral process, as being within its jurisdiction.<sup>21</sup>

Additional factors pertinent to the approach of the Constitutional Court toward its jurisdiction over the electoral process follow:

The authority of the Constitutional Court over elections is specifically based on Article 113(8) of the Montenegrin Constitution;

The Law on the Constitutional Court also gives it power to decide on relevant procedures. The Court interprets this to mean that it has the right to formulate norms to govern the adjudication of election-related cases.

The Court believes it has the power to adjust relevant procedures to the nature of the electoral process. This is said to be based on its authority under articles 111-116 of the Montenegrin Constitution, which establish the Court and define its jurisdiction and powers. Thus, the Court feels justified in requiring that election-related appeals be personally delivered to it within the time period specified.

The timelines indicated above derive from the Court's own rulemaking. Most of the statutory timelines regarding appeals to the Constitutional Court were deleted prior to the enactment of the new Law on Election of Councilors and Representatives. This appears to have led to some confusion for participants in recent elections, who filed appeals to the Court in an untimely manner, apparently believing that the 48 hour time limit previously contained in the law continued to apply, or assuming that the 72 hour deadline for submission of complaints to a superior election commission also applied to the Court.

#### 2. VOTER REGISTRATION AND THE QUESTION OF JURISDICTION

In connection with recent elections, members of the Constitutional Court expressed their opinion that new voter identification procedures created under the Law on the Register of Electors actually infringed upon the Constitutional right to vote, especially in the case of those persons who were deprived of the right to vote due to faulty registration by the State. This is a reference to persons whose registration lacked personal or national identification numbers. The members of the Court believe that the right to vote, which is grounded in the Constitution, is self-enforcing. At the same time, they appeared to believe that any decision to change the rules governing the

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<sup>20</sup> The jurisdiction of the Supreme Court is presented in greater detail in Chapter IV on the voter registration process.

<sup>21</sup> The latter is of particular concern as election administration duties are highly dispersed within the Republic of Montenegro, as noted elsewhere in this report.

current election process would require an action of the Republican Assembly. It was difficult for them to imagine how a case on the infringement of voters' rights stemming from the registration process and administrative rules established through election law and regulations could be within their jurisdiction.

With respect to voter registration itself, the Constitutional Court does not have jurisdiction. The Supreme Court is identified in law as the court of jurisdiction responsible for appeals of voter registration decisions.<sup>22</sup> The Constitutional Court does not have jurisdiction over Supreme Court decisions. Instead, the jurisdiction of the Constitutional Court over electoral matters primarily applies to appeals of decisions by election administrative bodies, in the final instance the REC. In a more general way, the members of the Constitutional Court conceive of voter registration as a state function which should be kept entirely distinct and separate from election administration. The division of voter registration from other election administration procedures is said to be necessary to protect the independence of electoral bodies. This approach is somewhat unusual from the perspective of Western countries, where many, if not most jurisdictions, try to insulate voter registration from other state functions – often by assigning it to autonomous election commissions.

The Constitutional Court does, as mentioned, hear appeals from election administration bodies. If an individual who is denied his right to vote were to make a complaint to such a body, originally to the polling board and then to superior commissions, the Court could, nonetheless, receive an appeal of their decisions. Such an appeal could be brought by an individual citizen or perhaps a nominating entity. Such a case would be given full consideration, even with respect to its factual aspects, but it is unclear what evidentiary standard would be applied.

### *3. AUTOMATIC NULLIFICATION OF ELECTION RESULTS AT POLLING SITES*

Another problematic component of election systems in the FRY is the presence of legal provisions which allow for the automatic invalidation of election results in polling stations where certain violations are found to have occurred. In the case of the Serbian municipal elections, these provisions tend to lead to provocations by political parties which are losing in certain areas and whose leadership or activists wish to create reasons to challenge the results and, if possible, to nullify them. Moreover, strict rules on ballot accounting may also provide an opportunity for unscrupulous officials to add ballots into the ballot stream in order to create a violation. The language in Article 69 of Montenegro's Law on Election of Councilors and Representatives requires the invalidation of election results at polling stations under certain circumstances. Some of these involve discrepancies in the ballot count, and other technical violations at a polling station.

In the case of Serbian municipal elections, a large number of the violations that were reported – which usually ended in the nullification of results – were probably provocations or overreactions. For example, challenges were entered against polling stations near which campaign propaganda was observed, even though it could not be shown that these materials were actually present during polling hours or had influenced voters. In Montenegro, results in two polling sites<sup>23</sup> were nullified as a result of allegations raised by the main opposition party despite the fact that its authorized representative in each site had actually signed the official record of the work of the polling board which signaled their concurrence with the normality of the voting process and integrity of the results. The case worked its way through the complaint process and repeat voting was conducted in both locales, despite the fact that the results would not affect either the outcome of the election or the distribution of mandates. What the action did succeed in doing was to delay the finalization of results, the convocation of the new Republican Assembly, and – likely the ultimate goal – parliamentary debate on a measure intended to modify the composition of Montenegro's delegation to the upper house of the Federal Parliament.

As a result, it seems unwise to retain legal provisions that call strictly for the invalidation of results as a result of specific events that may occur at a polling site. Instead, general standards should be established through statute. In particular, the results of balloting should be nullified only when it can be proven that malfeasance actually affected the election outcome. Relevant election commissions and the courts should also be granted the discretion of applying appropriate remedies based on a set of graduated penalties, which take into account the actual seriousness and impact of the violation.

### *B. ISSUES FOR CONSIDERATION*

Re-insert definite timetables for bringing an appeal to the Court into the Law on Election of Councilors and Representatives, thereby preventing confusion arising as a result of the Court's adopting its own regulations on this subject that may not be known to potential appellants. Toward this end, timetables for bringing an appeal to the Court might also be made consistent with those for filing a complaint with election administration bodies.

Enable the appellate court – viz., the Constitutional Court – to address the overall conditions under which an election occurs, not only the technical and administrative aspects of operations at individual polling sites. In such cases, the Constitutional Court should be empowered to fashion an appropriate remedy if it concludes that the fairness of an election was in some way compromised by the circumstances under which it was conducted.

To the greatest extent possible, all relevant appeal procedures should be delineated in the Law on Election of Councilors and Representatives and should not be left to other republican or federal statutes.

The requirement that certain actions at polling sites should automatically lead to annulment of election results there and that repeat voting must then be conducted should be eliminated and replaced with a directive to the Court to fashion an appropriate remedy, based on a set of graduated penalties. The Court should be permitted to allow election results to stand if there is no evidence that they were substantially affected by the irregularity in question.

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<sup>22</sup> For a more detailed discussion of the Supreme Court's approach toward the adjudication of such complaints, please refer to the chapter on voter eligibility and registration in this assessment.

<sup>23</sup> The results of balloting were nullified in one polling site in Zabljak and another in Herceg Novi.

X. BALLOT SECURITY AND ACCOUNTABILITY

A. OVERVIEW

In the aftermath of the presidential election in Montenegro, international commentators (IFES, 1998; OSCE; 1997) noted the absence of ballot stamping or other validation procedures at polling stations. The issue quickly resurfaced as one of the most hotly contested issues during the lead-in to the parliamentary and municipal elections. Questions were posed by participating parties about the total number of ballots to be printed and the number to be distributed to individual polling sites. Suspicions were also raised that, if there were excess ballots, the opportunity existed to introduce fraudulently marked ballots into ballot boxes or the counting stream.

At the same time, there was also a possibility that excess ballots might have been introduced into the count as a provocation, ie. with the specific intent of nullifying election results at polling sites.<sup>24</sup> As such concerns pre-dated the election campaign and political parties were directly involved in electoral reforms, it is not entirely clear why such an important issue was not addressed more thoroughly during the debates on and the drafting of new election legislation. Such an oversight contributed to the crisis atmosphere in the final days of the election campaign and overall political instability.

Consequently, the new Law on Election of Councilors and Representatives contained relatively sparse language on ballot security and accountability. Article 69 of the Law stipulates that ballot papers must be verified in order to be valid. The role of municipal election commissions in stamping ballots is specifically authorized under Article 27. The law remains silent on verification of ballots at polling sites, although competent election commissions are charged with the responsibility of determining the procedures for verification and distribution of ballots, as well as the procedures for the form and layout of ballots, control of printing, and prevention of disruption and destruction of printing plates (see Article 74). In accordance with Article 75, election materials are to be delivered no later than 48 hours prior to election day, but there are no specifications on the secure storage of these materials until the opening of the polls.

*I. PRACTICAL CONSIDERATIONS*

Consistent with previous elections in Montenegro, the Republican Election Commission had planned to have ballot papers pre-verified as part of the printing process. When it became apparent that there was strong opposition among participating parties to this procedure, a subsequent decision was made by the REC leadership to have the ballots stamped at the REC premises in the presence of the entire core membership. On the 12th of May, less than three weeks before election day, all but one of the parliamentary parties petitioned the REC to adopt an additional set of ballot verification measures, including: printing on the back of the ballot the municipality and polling station name to which it was destined, and providing a line on which the polling site number was to be entered; stamping of the back of the ballots by the MECs; filling in the number of the polling site by its board, and; signing of the ballot by the polling board president and two representative members. The REC resisted this proposal on the grounds that, according to its interpretation of the various legal provisions, the additional ballot security measures were not authorized by the law. Given the extremely polarized and intensely scrutinized environment under which the election campaign was proceeding, the REC may also have been unwilling to adopt any measures that strayed from traditional practice and that were not expressly provided for under the law. Concerns may also have existed about controlling the verification process once it was decentralized.

2. Introduction of Amendments

The inability of the REC and participating parties to bring this issue to closure resulted in the convocation of a special session of Parliament. On 19 May, well within the period during which printing and packaging of ballots was proceeding on an expeditious basis, the Republican Assembly adopted amendments to the Law on Election

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<sup>24</sup> Montenegrin election law requires that every single ballot received and cast must be accounted for.

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of Councilors and Representatives that provided for some of the additional ballot verification measures sought by the parties. These amendments provided for: printing on the back of the ballots the name of the municipality and polling site to which it was destined, plus a space for entering the polling site number; stamping both on the front and back sides by the REC for republican elections and the MECs for the municipal elections, and; stamping by the polling boards. The REC also opted to proceed with its prior decision to preside over stamping of all ballots for republican and municipal elections.

Although 11th hour changes to election legislation should be strongly discouraged in the future, the measures undertaken by the Republican Assembly did represent an important means of assuring ballot security and the integrity of the count, and eliminated much of the controversy surrounding this particular election. This is because, in general, ballot verification procedures become more effective with greater redundancy, proximity to the site of voting, and closeness in time to the issuance of ballots to voters. Some of the intended security provided by the amendments may have been undermined, however, as a result of polling board practices. The validation of ballots is intended as a means by which to recognize officially issued ballots from any others put into the ballot box fraudulently. This security mechanism is effective, however, only if those ballots issued are validated. If ballots are validated in advance or if unissued ballots are also validated, the intended security factor is nullified. Thus, the highest level of security is provided by affixing the final stamp to the ballot as it is issued to the voter. Limitations in human resources, time, and space may limit the feasibility of this approach. One acceptable alternative is to pre-stamp a limited number of ballots several times on election day. While some polling boards used this method in the recent election, most validated all the ballots prior to the opening of the polls. Ironically, at least one polling board chairman validated ballots in stages throughout the day, but felt obliged to validate all unused ballots at the end of the day so that he could enter them into the minutes as "valid ballots that had not been cast."

B. Issues for Consideration

The more detail that can be built into the law on ballot security and accountability the better, as this will reduce uncertainty. Recent innovations to provide for the validation of ballots at the polling site should be retained. The introduction of any additional verification measures should be handled as part of the on-going electoral reform process and not left until the next election campaign.

Polling site procedures need to be modified in order to realize the level of security intended by verification measures. Options include the validation of ballots at the time they are issued or in limited numbers throughout the day. Any unused, validated ballots left at the closing of the polls should be invalidated prior to initiating the count. Any requirement in law, regulation, or procedures which mandates the verification of ballots well in excess of those that are actually needed for issuance to voters should be eliminated.

Consideration may be given to using a special stamp which is not only unique to the polling site but also the election, ie. containing a specific marking. One innovative and cost-effective proposal voiced by a local party is to actually mark the stamp<sup>25</sup> at the polling site on the morning of the election in the presence of all core and expanded members and observers. The stamp would first be used on the control sheet placed in the ballot box, once inspected by the first voter. Any stamp used for a specific election should be destroyed upon closing of the polls.

Legal requirements for double stamping, ie. both front and back, by the REC can be dropped, as they are time-consuming, labor intensive, and do not serve to significantly enhance ballot security.

Official records of the work of the REC and MECs should be modified to include the detailed numbers of each type of ballot printed, transferred from the printer, shipped to the MECs, received by the MECs, and delivered to polling stations.

The law should be modified to provide for multi-party receipt of ballot paper upon delivery to the designated point of contact in Montenegro and to the printing house, as well as the use of watermarked paper, multi-party escort of printed ballots to the REC, and multi-party escort of ballots from the REC to MECs.

The amount of time between delivery of ballots to polling board officials should be reduced from 48 to 24 hours prior to opening of the polls and specify what security measures should be applied during this period.

The polling board chairman and a core member representing an opposition party should pick up ballots and other election materials from the MEC and deliver them to a secure site, to be stored until pre-voting procedures begin.

Add the categories of challenged and spoiled ballots to the official record of the work of the polling board, MECs, and REC.

The law should also provide for the secure storage of all sensitive election materials between elections, preferably with election commissions.

Language should be added to the law which provides for voters to receive a new ballot in the event that he/she spoils the first one and returns it to the chairman of the polling board. In these cases, a special notation on spoiled ballots should be entered into the record of the work of the polling board and the spoiled ballot should be immediately invalidated.

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<sup>25</sup> The suggestion is to mark the stamp with a knife, pen, or flame.

## POLLING PLACE PROCEDURE

### A. *OVERVIEW*

Polling boards are responsible for the following tasks: the direct administration of voting at the polling site and outside the polling site, as provided for by law; ensuring the regularity and secrecy of voting; maintaining order at the polling site; keeping accurate records of all information called for in the record of the work of the polling board; determining the results of voting at the polling station; and performing other duties provided for by the law. More detailed rules on the activities of polling boards with respect to pre-voting activities, opening of the polls, processing of voters, maintaining order at the polling site, vote counting and determination of results, completion of the official report of the work of the polling board, and provision of election materials to relevant MECs are established by the REC.

Current polling place procedures in Montenegro are generally adequate to ensure free and fair elections. In general, observers found polling sites to be managed strictly, following the letter of the law, providing for maximum transparency, and placing an emphasis on consensual decision-making and diffusion of potential conflicts. If anything, there may have been an overabundance of security measures employed in the process due to the contentious nature of the elections. Voters were inked, required to produce picture identification, their names and ordinal numbers were checked in the extract, and they were asked to sign a special extract verifying that they had received a ballot. Copies of the extract of the register of voters were also brought by some authorized representatives to check the eligibility of voters and keep a tally of voters who had cast ballots. Polling booths were placed to face the polling board and observers were present to deter any possibility of chain-voting. For a more detailed account of IFES' election day observations of polling site procedures, please refer to Attachment I of this Assessment.

### B. *Issues For Consideration*

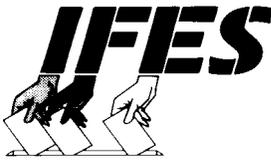
In the future, the rules on the work of the polling board should seek to maximize the efficiency of polling site operations by providing for a greater division of labor between the chairman, core and expanded members.

To ensure that polling sites are not out of communication at any time on election day, some thought may be given to modifying the provisions that prohibit the use of mobile phones in polling sites. In particular, in polling sites where no land line is available, the chairman of the polling board or a specially designated board member should be permitted to use mobile phones as necessary to consult with municipal election authorities.

All provisions within the law which provide for the nullification of voting based on technical violations should be removed. It is possible that minor technicalities may be breached as a result of mistakes rather than malfeasance. Moreover, the ease with which polling stations can be dissolved and voting nullified is open to purposeful manipulation by political participants. The invalidation of election results should be based only upon fraudulent acts which can be proven in a court of law to have affected the actual outcome of the elections. Technical violations should be dealt with through a graduated penalty system.

Currently, no language exists within the law for dealing with spoiled ballots. Language should be incorporated which would allow polling site boards to issue a new ballot if a voter incorrectly marks his/her ballot at the polling site, provided a proper audit trail is kept and the spoiled ballot is immediately invalidated.

The introduction of a special list of voters and a challenged voter procedure at the polling site level might also serve to minimize the number of voters disenfranchised due to administrative errors, while discouraging illegal voting, and ultimately improving the accuracy of the voter registry. Specifically, voters whose names do not appear on the extract or whose data is incomplete could be provided with a special ballot upon provision of a picture ID and proof of residence. All information typically recorded in the extract should be entered by the chairman of the polling board on a special list of voters. Voters for whom no data appears on the extract should be required to state the reason or reasons why he/she should be permitted to cast a special ballot. Reasons for the issuance of a special ballot and all pertinent information should be thoroughly documented in the official report of the work of the polling board. All such specially cast ballots should be held out of the count until the voter's records can be researched and data confirmed by the responsible MEC and counted or disqualified based on its findings and prior to the certification of results. Responsible municipal



authorities should then be required to update the accuracy of their voting records based on these findings.

Also, voters suspected of voting illegally could be subject to challenge. The challenger must state a specific reason or reasons that a voter should not be allowed to cast a ballot. The voter suspected of attempting to illegally cast a ballot would then be required to mark a special ballot and sign a written statement of the reason or reasons he/she should be allowed to vote. All such specially cast ballots should be held out of the count until the voter's records can be researched and data confirmed by the responsible MEC and counted or disqualified based on its findings prior to the certification of results. Responsible municipal authorities should then be required to update the accuracy of their voting records based on these findings.

Among the criteria for determining a ballot invalid, the following should be included: ballots of non-standard form, ie. those which are not of the official format and stock approved by the REC and which have not been validated by the responsible election administration body.

Legal requirements that a written application to vote by letter, ie. outside of the polling site premises, be received by the polling board by noon on election day require improved enforcement. Clarification is needed, however, on what sort of documentation is necessary in order to vote via this mechanism. Requiring a notice from a medical practitioner may not be entirely feasible, especially in cases where voters are frail and elderly rather than ill or injured. A signed statement including the reason for voting outside the polling site premises might be deemed sufficient.

Legal provisions which require voting by letter to be administered by two members of a polling board representing different parties must be strictly enforced.

With respect to the efficiency of the vote count, the provision contained in the election law which requires sorting of invalid ballots from valid ones prior to counting votes cast for each candidate list can be removed. This requirement is unrealistic and unworkable in practice.

Further improvements to the Register of Electors and the continuation of recently adopted ballot and polling site security measures may ultimately eliminate the need for using indelible ink and optical scanners. If the use of these commodities is still deemed necessary in the nearer term, legal provisions governing their use should provide the REC with greater flexibility with respect to commodities selection. For example, the use of "spray" ink, mandated by law, led to greater purchase and shipping costs. More efficient and cost effective forms of indelible ink are available. If indelible ink and optical scanners are retained as a means of controlling the election process, further instruction on their proper use will be required for polling board members.

At a minimum, two hours of legally mandated training should be provided to all polling board members by municipal election commissions prior to each election. The REC should provide training plans and reference materials, paying particular attention to modifications in election law, regulations, and practice since the last election cycle. The law should authorize the REC, by means of regulation, to provide additional training for first time polling board members and when new procedures are to be introduced.

Language from the REC's regulations governing the rights and responsibilities of domestic monitors and international observers needs to be incorporated into the Law on Election of Councilors and Representatives to provide a clear legal basis for control of the election process.

Absentee and/ or early voting procedures also need to be built into the Law to guarantee the voting rights of those persons who will not be in their constituency or will be abroad on election day.

Attachments

IFES Preliminary Report of Election Day Observations

Guidelines for the Enhancement of the Register of Electors in the Republic of Montenegro

#### ATTACHMENT I:

IFES PRELIMINARY REPORT OF ELECTION DAY OBSERVATIONS  
International Foundation for Election Systems  
1101 15th Street, N.W., 3rd Floor Washington, D.C. 20005  
PHONE (202) 828-8507 FAX (202) 452-0804

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### IFES PRELIMINARY REPORT ON ELECTION DAY OBSERVATIONS Republic of Montenegro

31 MAY 1998

Based on anecdotal evidence collected during observations in Podgorica, Tuzi, Danilovgrad, Niksic, Pluzine, and Plav, with a total of 33 polling sites visited, and supplemented by discussions with municipal and republican election authorities.

The International Foundation for Election Systems (IFES) deployed its technical assistance team to observe voting for parliamentary and municipal elections in select locations throughout the Republic of Montenegro. This preliminary report reflects the consensus of the team's members and developments as of 2 June 1998.

Opening of the Polls

IFES did observe some delay in the opening of the polls stemming from procedural steps added to the preparatory process as a result of 11th hour amendments to the

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election law. These amendments were adopted on May 19th and was intended to provide for additional ballot security controls. At the polling sites, this entailed stamping of ballots previously verified at both the republican and municipal levels. Delays at sites visited ranged from five to 25 minutes. One station reported that it had not received all election materials in a timely manner. Also in one instance, the first voter had been allowed to cast her ballots prior to confirmation that the ballot boxes were empty.

#### Polling Place Procedures/Processing of Voters

In general, polling sites were managed in a stringent fashion, following the letter of the law, providing for maximum transparency, and deterring any possibilities for disturbances on the polling site premises. In some instances, provisions in the law requiring that the Chairman of the polling board be responsible for virtually all administrative steps at the polling site, despite the presence of two additional core members, deputies, and the expanded membership, tended either to slow the processing of voters or led to delegation of tasks that proved to be more efficient, but not technically in compliance with current legislation.

Voters were either eager to vote or were influenced by threats of street demonstrations late on election day, as lines began forming prior to 7:00 a.m. and were witnessed throughout the morning. IFES did receive some reports of persons waiting up to 2.5 hours to cast their ballots. By early afternoon, polling sites visited by IFES representatives were reporting anywhere from 40% to 50% turnout. The number of voters casting ballots by letter (mobile voting off the premises) was relatively low and did not appear to be abused either by voters or polling board members. In all instances where voting by letter was undertaken, at least two members of different political parties administered this process.

In some stations, inexperience with the use of invisible ink led to liberal application of ink, which doused not only the voter but also the table at which the board members were seated and the election materials on it. IFES representatives witnessed one voter who had not yet cast his ballot, mark himself with ink simply by resting his hand on a damp table top and was subsequently denied the right to vote. In a couple of other incidences, voters were sprayed prior to their ordinal number being located on the extract of the Register of Electors. This proved problematic if the voter had come to the wrong polling site. In at least one case, a polling board chairman accompanied such a voter to a neighboring site to testify that the voter had not yet cast his ballot. Consistent with IFES recommendations, a polling board member tasked with applying ink in a site in Niksic was wearing a plastic glove. IFES was also informed of one site in Niksic where polling board members had failed to place batteries properly in the optical scanner. By and large, however, the ink was applied correctly, provided an important safeguard, and was accepted by voters.

#### Voter Registration, Eligibility, and Identification

At every site visited, representatives of the opposition Socialist People's Party (SNP) brought replicas of the extract of the Register of Electors generated from the computer diskette made available to participating parties by the Secretariat of Development. These were used by the SNP representatives to record each voter announced by the Chairman of the Polling Board. In some cases, representatives of other Serb oriented parties also had copies of the extract, most likely generated by the SNP. Other party representatives, including those of the DPS, did not have such elaborate preparations, but did make notations on sheets containing ordinal numbers of voters assigned to each site.

In no polling station visited was any voter challenged by party representatives on the basis of ineligibility. Even at polling stations with large numbers of persons listed on the extract of the Register of Electors, generally only a small number were turned away as a result of not having valid personal or national ID number listed. The fact that such a small number of voters without complete or confirmed personal or national ID numbers were turned away by election authorities on election day tends to neutralize the issue as a basis for intervention by federal authorities, especially the federal courts based on supposed concern for human rights. It may also lessen any chance of post-election appeals to the republican Constitutional Court on this issue.

The fact that so few voters without complete or confirmed personal or national ID numbers attempted to cast ballots may reveal the root of on-going registration problems, which persisted despite the government's repeated appeals to the public to check their entries. It would appear that the vast majority of people failing to correct their registration did not intend to vote. This factor tends to reduce the significance of voter registration issues, especially since international practice supports denial of voting privileges to persons who fail to complete required registration formalities.

At the same time, there did not appear to be any official recording by polling board members of the number or identities of those persons who were turned away because they lacked a complete or confirmed personal or national ID number. It would have been advisable to make a notation to this effect in the official record of the work of the polling board.

#### Reorganization of Polling Site Locations

Due to the number of administrative procedures added to the processing of voters, from checking them with optical scanners and applying invisible ink to having them sign the Book of Voters, the maximum number of voters at polling sites was reduced from 2000 to 1000 in order to guarantee that voters could cast their ballots within the hours stipulated. This had proved a significant problem in the previous presidential elections. The reorganization of polling site locations, increasing the total number of sites, greatly facilitated the timely processing of voters. At the same time, there was clearly confusion among voters about the location of the site where they were to vote. IFES observed a considerable number of people who came to the traditional location of their polling site only to be informed that they had to go somewhere else. This was despite efforts by municipal authorities, including the invitation to vote, to inform people of their polling site location.

#### Transparency/Control of the Election Process

A high level of transparency was realized through open floor plans (in most but not all cases), limitations on the number of voters permitted to enter polling sites at any one time (this was tied to the number of secrecy booths available), and public announcement of the voter's name and ordinal number. SNP representatives insisted that secrecy booths be positioned so that voters' backs were to the polling board membership. While this might have somewhat compromised secrecy of the ballot, it was requested as a means of controlling for polling chain voting, ie, replacing an unmarked ballot with one previously marked outside the polling site premises. No instances of chain voting or violation of voter secrecy were witnessed, however. The number of party representatives on the expanded membership of polling boards was significant and the make-up diverse. IFES observed representatives from the DPS, SNP, Liberal Alliance, Serbian Radical Party, JUL, Party of Savings, and the Serbian People's Party. Domestic monitors from the Helsinki Commission of Montenegro and the Center for Democracy and Human Rights (CEDEM) were also either spotted or reported at most of the sites visited by IFES observers with the exception of Pluzine. Nearly 100 domestic observers were reportedly drawn from the Helsinki Commission of Montenegro, CEDEM, and the Center for Election Systems and Democracy of Serbia (CESID). An additional 150 multinational observers were fielded by the OSCE.

#### Election Day Inquiries and Complaints

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While no formal complaints were lodged with the REC on election day (nor have any been filed as of noon on 2 June 1998), the Commission did receive inquiries from the municipalities concerning the handling of mis-spelled entries on extracts of the Register of Electors, transposition of figures in some identification numbers listed on the extract of the register of electors, and the required form of identification at military polling sites. Voters whose names had been misspelled and persons whose identification numbers contained a mistake in the last five numerals (residency code) were permitted to vote, while those with mistakes in the first seven numerals (personal code) were not permitted to vote. In accordance with special regulations on military voting, soldiers were required to present their military IDs in order to cast their ballots. At the polling site level, IFES observed no formal complaints either by voters or members of the core or expanded members of the polling boards. In several sites, however, there was considerable discussion as to what type of documentation was required in order to vote by letter (mobile voting off premises).

#### Closing of the Polls

IFES teams observed disparities between polling sites in the efficiency of the balloting counting and reporting process. In each case observed, the Chairman of the polling board assumed sole responsibility for announcing/counting ballots, while core and expanded members were relegated to the role of observers. In every instance, the counting process was extremely transparent. The efficiency with which votes were counted and reports completed, however, varied considerably. In one polling site, the Chairman felt the need to review provisions of the law with respect to the counting process for the membership and to discuss and debate each point of the official report of the work of the polling board in order to establish a consensus. In this particular site, ballot boxes were not opened until 10:30 p.m., fully 2.5 hours after closing of the polls. Determination of results for elections to the Republican Assembly were not determined until 1:00 a.m. and the polling site was still engaged in determination of results for municipal elections as of 3:00 a.m. At other sites visited, the entire process was completed by about 10:30 p.m.

#### Interaction with the Media and Observers

Members of the IFES team were readily received by the membership of polling boards. Access to superior level commissions on election day was not a problem, and all questions were answered and requests fulfilled. The Chairman of the REC made himself available to IFES personnel several times throughout the day to exchange information. Press conferences were also held every several hours to provide reporters and representatives of international and domestic monitoring groups with information on voter turn-out by municipality and to answer questions. As statistics were announced, Secretariat of Development personnel pulled up municipal maps and pertinent data on a large screen in the front of the hall. Journalists were permitted to remain in the hall to work on their computers and place phone calls in between statements and interviews.

#### Security Incidents

IFES teams did not encounter any disturbances at the polling sites visited, nor had any incidents been reported to the Republican Election Commission as of 7:00 p.m. on election night. IFES teams sensed that DPS representatives on the core and expanded membership of polling boards had received clear instructions about non-confrontation with the SNP and some training in conflict-resolution skills. Unlike during the campaign period, differences of opinion in sites visited appeared to be adequately resolved and tensions diffused. In no instances observed by IFES were police personnel required on the polling site premises. The IFES Office did receive a complaint from the Socialist People's Party (SNP) late on election night that all access to and from the SNP's office, including Vezirov Bridge, had been cut off by police forces. An IFES team was deployed to the area and found that observers were being allowed to pass, but other cars were not. Following discussions between the Organization for Security and Cooperation in Europe (OSCE) and the Ministry of Interior, police forces were pulled back to allow for greater freedom of movement. The Deputy Minister of Police subsequently informed IFES that the police deployment was solely to prevent obstruction of the road and that there was no provision in the law for the conduct of rallies on election day.

#### Preliminary Reporting of Results

The following information on voter turn-out and preliminary results was provided at an REC press conference at 7:00 p.m. on 1 June 1998, based on information reported by municipal election commissions. This is inclusive of balloting in 1091 of 1093 polling stations or 99.724% of votes cast. Voter turn-out was 75.866% of the total number of voters appearing on the Register of Electors.

FIELDNAMES(Liberal Alliance;  
6.308%  
)ENDRECORD

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Serbian Radical Party **ENDFIELD**  
1.182% **ENDFIELD**  
**ENDRECORD**

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Coalition for the Serbs **ENDFIELD**  
0.378% **ENDFIELD**  
**ENDRECORD**

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Serbian People's Radical Party: Ceko Dacevic **ENDFIELD**  
0.222% **ENDFIELD**  
**ENDRECORD**

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Yugoslav United Left (JUL)ENDFIELD  
0.101%ENDFIELD  
ENDRECORD

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Democratic League: Mehmed Bardhi **ENDFIELD**  
1.583% **ENDFIELD**  
**ENDRECORD**

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United List of Bosnians-Muslims **ENDFIELD**  
0.122% **ENDFIELD**  
**ENDRECORD**

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Party of Natural Law **ENDFIELD**  
0.178% **ENDFIELD**  
**ENDRECORD**

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Socialist People's Party: Momir Bulatovic (SNP)ENDFIELD  
36.075%ENDFIELD  
ENDRECORD

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Serbian People's Party: Bozidar Bojovic (SNS) **ENDFIELD**  
1.924% **ENDFIELD**  
**ENDRECORD**

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Party of Savings **ENDFIELD**  
0.058% **ENDFIELD**  
**ENDRECORD**

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Communist Party ENDFIELD  
0.550% ENDFIELD  
ENDRECORD

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Coalition "For a Better Life;" Milo Djukanovic  
49.542%  
ENDRECORD

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Party of Foreign Currency Savings ENDFIELD  
0.108% ENDFIELD  
ENDRECORD

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Party of Democratic Action (SDA) **ENDFIELD**  
0.583% **ENDFIELD**  
**ENDRECORD**

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Democratic Union of Albanians (DUA) **ENDFIELD**  
1.030% **ENDFIELD**  
**ENDRECORD**

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Republic of Montenegro*

Human Way Party **ENDFIELD**  
0.057% **ENDFIELD**  
**ENDRECORD**

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Of the 17 political parties/coalitions participating in the election, 10 did not receive as many votes as signatures required to qualify for ballot access. Elections will be repeated at one polling station each in Zabljak and Herceg Novi on Wednesday 3 June 1998. Based on the vote totals currently known, the following distribution of mandates is anticipated:

FIELDNAMES(Coalition "To Live Better:" Milo Djukanovic;  
42 seats  
)ENDRECORD

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Socialist People's Party (SNP) **ENDFIELD**  
29 seats **ENDFIELD**  
**ENDRECORD**

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Liberal Alliance **ENDFIELD**  
5 seats **ENDFIELD**  
**ENDRECORD**

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Democratic Union of Albanians **ENDFIELD**  
1 seat **ENDFIELD**  
**ENDRECORD**

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Democratic League in Montenegro **ENDFIELD**  
1 seat **ENDFIELD**  
**ENDRECORD**

While a total of 5 seats were allotted for voting in specially designated polling sites in areas densely populated by Albanians, the Albanian community turned out heavily in favor of Milo Djukanovic's coalition "To Live Better" in elections to the Republican Assembly, thus denying ethnically-based parties the maximum number of mandates.

Reach of IFES Programming

Throughout the day, IFES-developed polling site manuals were clearly visible in the possession of both the core and expanded (party) membership of polling boards at 27 of 33 sites visited. On several occasions, the members of the polling boards were seen referring to the manuals in order to clarify procedural issues or resolve disputes. IFES voter mobilization posters were also seen in the localities visited.

## ATTACHMENT II:

### GUIDELINES FOR THE ENHANCEMENT OF THE REGISTER OF ELECTORS IN THE REPUBLIC OF MONTENEGRO

#### GUIDELINES FOR THE ENHANCEMENT OF THE REGISTER OF ELECTORS

IN THE REPUBLIC OF MONTENEGRO

*Prepared by Chedomir Flego*

#### I. Responsibility for Registration

Elector registration can be done in one of two ways: governments can be responsible for the compilation and maintenance of the voter's list, or the individual elector can be held responsible for his/her own registration while the local government authorities are held responsible for maintaining the voter's list.

There are problems with both approaches. In Montenegro the government has added too much detail to the voter registration database which is compiled from 'ex officio' records. This has created an opportunity for a debate on the validity of the register. The compilation of a voter's list from information collected from individual electors would inevitably result in a slow update, as authorities will find electors do not advise change of address or other information to election administrations as regularly.

The first option leads to an overly detailed and cumbersome record-keeping, with inevitably inaccurate data and challenges to the voter's list. The second option will depend on innovation from the election administration to maintain up to date data.

In Montenegro, the Register of Electors will continue to be a cause of concern to political parties if in the future it were to be compiled in the same way as it was for the May 1998 election. Local government authorities were unclear what procedures would be adopted after the election to update the database. If they were to update the registry by cross-referencing to records of other government departments as they did before the last election by 'ex officio' means, they would face the same problems of inaccuracy and duplications. There is no reason to believe the records they would be depending on would not again be as inaccurate, since the primary reason of other departments for maintaining records is not for the purpose of electoral rolls but for their own needs.

The electoral database established for elections needs to be maintained as a separate electoral program, updated with information obtained from individual electors and corrected by local authorities from election-specific programs. Changes in legislation should make the individual responsible to advise on changes of information, to inspect the voter's list, and to be able to lodge objections. A restriction must be in place, making electors eligible to be enrolled only once, and only for their permanent place of living.

#### II. What constitutes a good voter's list?

A good voter's list will:

- be a snapshot of electors at election time; electors enrolled where they live and vote;
- be responsive to elector changes of address and other details;
- be accurate and inclusive;
- be an elector specific database; only elections data and available only for elections;
- be simple and understandable; and
- be open to the public but protect privacy of data.

A Snapshot

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A voter's list must be a snapshot of all eligible electors showing where they live and vote at election time.

In proportional representation systems, it could be argued that being enrolled at your permanent address is less important than some other factors. But, since the voter's list is maintained at the local level, it remains an important objective as a guard against duplications and fraud.

In Montenegro, the Register of Electors was compiled 'ex officio' with data extracted from the records held by other government departments, such as the police, the registrars of births, deaths and marriages, as well as local council records.

The Montenegrin Register of Electors was not an 'elections' snapshot, as much as a compilation of records from other government departments. Some of these records were up to date, but many were not. The centralization of the roll highlighted approximately 100,000 defective records (approximately 20% of the total records). The Secretariat of Development made significant attempts to clean up the defects:

they advertised the Register of Electors in the press;

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placed the Register of Electors on the Internet;

sent local authorities out to the villages with a copy of their list; and

called on the electors in public campaigns to inspect their record and make corrections where necessary.

This program was successful to the extent that at election time only one third of those defective records were still unresolved. The Supreme Court dealt with the bulk of the remaining records, those with incorrect or missing personal number, by ruling them out of the voter's list. This action left the question of those elector's right to vote under the constitution versus their rights under the election procedural laws, unresolved.

The Montenegrin voter's list was a snapshot of official records corrected by individuals and legal adjudication.

RECOMMENDATION: The Voter Registration database and the voter's list should be compiled from individual claims and not 'ex officio'.

Responsiveness to Elector Changes

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The voter's list must be responsive to elector changes of address and other information.

In Montenegro, the Register of Electors was published in newspapers, in local government office windows, and on the Internet, and was taken to villages for inspection. Electors were able to inspect the voter registry and complete a form to advise corrections.

Of the approximately 35,000 entries not corrected in this program the bulk were records without personal number. The Socialist People's Party (SNP) claimed that at least some of these were "phantom" voters. As they had been compiled 'ex officio', the SNP had good reason to suspect that officials had the opportunity to manipulate the data. In past elections, it was common practice to stack the Register of Electors. On this occasion the SNP may not have been entirely correct in their assessment. It is just as likely that records were on the Register of Electors because they were put on the computer database after the introduction of the electronic format for the voter's list in 1992. Local authorities advised that their biggest problem in computerizing the Register of Electors was the poor condition of the records, in addition to mistakes made by the operators working with computers for the first time. The local authorities must keep the registry for its unique purpose. To be responsive to electoral changes, the Register of Electors must be open to electors lodging change of address requests at any time. Appropriate forms would be available through local authorities and post offices.

In addition, the local authority must make efforts on a regular basis to 'cleanse' the Register of Electors. Local authorities could use a combination of programs, including sending letters to electors verifying missing or unclear data on the database, conducting a door-to-door census type check of electors, sending out a form annually asking the householder to list all persons over 18 years who are permanently living at that address, with rate notices or other government notices, (such as gas, water, electrical bills). These programs would be used to keep the electoral database up to date.

RECOMMENDATION: The voter registration database should be updated on an on-going basis. The database needs to be generally available for inspection, the lodgment of claims and be updated by regular database cleansing exercises.

An Accurate and Inclusive Voter List

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The Register of Electors must be an accurate and inclusive voter list.

In Montenegro, the Register of Electors compiled from the 'ex officio' records left many questions about the accuracy of the data and the accuracy of the names that should or should not have been on the registry.

The Register of Electors must be accurate in the data it holds. It must contain the records of all eligible (and only eligible) electors. Allowing eligible electors to update the data records is the quickest, cheapest, and best way to achieve accuracy and inclusiveness.

Individual electors must be able to provide information about themselves and other electors in their neighborhood. An elector must be able to lodge an 'objection' to the inclusion of another elector in their neighborhood (or designated electoral area) on the grounds of non-residency. This procedure, in conjunction with the local authority 'database updating' programs, will assist in maintaining a more accurate and inclusive registry. The registrar would be required to investigate each objection lodged. Official records, as well as a personal check, could be made in deciding the validity of the objection. A letter should be sent to the elector concerned to give an opportunity to verify address or place of living.

An inclusive registry would also make provision for electors temporarily absent from the Republic. A provision to include registration and voting for electors temporarily abroad should be adopted. Postal voting for overseas electors through embassies should be a procedure adopted for future elections.

RECOMMENDATION: The Voter Registration database should be available for inspection and the lodgment of objections. The Voter Registration law needs to include a provision for registration and voting for electors temporarily abroad.

An Elector-Specific Database

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The voter's list needs to be an elector-specific database to be used exclusively for elections.

In an elector-specific database the electors can only be recorded once, and only for their current permanent place of living.

Legislative changes may be required to include a provision ensuring that current permanent residence is a qualification for registration eligibility. This provision is necessary to ensure an elector specific database. In Montenegro, the Register of Electors was compiled from various government sources leaving it open to many problems.

The registry needs to be a unique database maintained separately from other government functions and used solely and exclusively for election purposes. The local authorities must have an ongoing program for updating and maintaining the elector database, which can be centralized to compile a registry at relatively short notice. The database will be able to form the registry for federal, republic, or local elections.

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RECOMMENDATION: The Voter Registration law should include a provision requiring residency as a condition for registration. The database needs to be compiled from individual claims and must be maintained exclusively for elections.

Be Simple and Understandable

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The voter's list must be simple and understandable both for the authorities to maintain and for the electors to inspect and correct.

In Montenegro, the database of records contains more detail than normally necessary for election purposes adding to the difficulty of maintenance and accuracy. These details include national and personal numbers. The voter list database needs to have only as much detail as is necessary to identify electors for the purpose of ensuring that each elector is recorded accurately and votes only once.

RECOMMENDATION: The Voter Registration database should include only information required to identify electors for election purposes.

Be Open to the Public and Protect Privacy

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The Voter's List must be open to the public but at the same time must protect private information.

In Montenegro, the Secretariat of Development made great attempts to have electors check their records and update any discrepancies in their individual records. In an effort to correct their database, the Secretariat of Development placed the voter list on the Internet.

The administrators charged with maintaining the Register of Electors must also take steps to protect any personal information about electors, such as date of birth, place of birth, etc. They also need to limit the availability of other information, such as names and addresses of electors, to their local area (or a designated electoral area) to protect non election use of the registry.

Electors can only lodge information and objections about records on the ground of non-residency, and this information can only be relevant in a designated electoral area. For privacy reasons, there is no need to publish the registry on a republic-wide level. The publication of the Register of Electors was seen in Montenegro as a need because it had been compiled 'ex officio', and it was known that electors' addresses were not up to date. The registry was published in full on the Internet and local authorities published and displayed the municipal voter's lists.

If electors were responsible for their own enrollment and had ongoing access to their records, there would be less or no need to publish the Register of Electors.

Records of the registry made available to the political parties would continue to be an exception to restrictions on distribution. The political parties would continue to receive the full voter's list for election purposes.

RECOMMENDATION: The Voter Registration database should be easily available to the public but also protect the privacy of the elector's information.