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Gender Analysis

of the Election

Law

in BiH

Nada Ler Sofronić, Ph.D.

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"Precondition for the success of democracy is true partnership between men and women in performing duties in a social community where they equally work and enrich mutual experiences through their differences"

"Universal Declaration on Democracy", paragraph
"Principles of Democracy", Cairo, 1997.

"The concept of democracy will only have a true and dynamic meaning when in politics and national legislative the decisions are brought both by men and women with mutual respect for the interests and skills of the both halves of population"

Statement of the Inter-parliamentary Union, Jaunda, 1992

INSTEAD OF INTRODUCTION

There are several stereotypes concerning the legal reforms that would contribute to the improvement of women's status.

1. It is usually regarded that from the standpoint of women's human rights only particular laws, exclusively referring to women, such as the Family Law, the Law on Job Placement (because of the well known discrimination in the work sphere), Criminal Law (because of widespread and endemic violence against women, rapes, trafficking) etc. have to be reformed.

There is a general opinion that other laws are universal by being "objective" and that to have a gender neutral approach is enough to provide equal rights for women and men. The example of gender analysis of the Election Law that you have in front of yourself, and probably the same applies to many other laws, will prove that this opinion is wrong. "Gender neutral" approach can appear to be very discriminatory towards women.

2. On the other hand, some of those who recommend legal reforms and who are aware that laws, their spirit and regulations can obstruct as well as to support the democratization between both genders, are being misled in their opinion that legal reforms are by themselves the guarantee of progress and that they will be enough to prevent gender-based discrimination.

Women's experiences, however, show that legal reforms are not by themselves enough measures to prevent sexual subordination, or violence against women, or to enable rights to abortion and contraception, or to prevent discrimination in job placements, discrimination in the sphere of political power and decision-making, etc. That is why advanced female movements all over the world advocate that legal reforms must be followed by progressive political and socio-cultural reforms led by strong, visible and recognized female initiatives and movements.

From the psychological and socio-political point of view, it is necessary in society the presence of awareness and political will for establishing the gender equality in public and political life.

However, it has to be emphasized again that the existence of good laws is a key, the first and basic precondition for democratization in general and in gender relations as well. First of all, such laws in some way make the problems visible, especially the problem of discrimination, making it publicly and socially acknowledged, regardless of one's personal opinions. Secondly, these laws include the sanctions for the discriminators and prevent a discrimination in practice, although, of course they cannot prevent the prejudices and conservative and discriminatory mental structures. Thirdly, these laws represent to the marginalized groups the main weapon for defending personal and collective human rights. With such a laws the demands of discriminated groups and persons has to be treated as legitimate and justified even if their revindications generally are not very welcome.

3. Finally, there is a customary opinion that dealing with law is strictly a matter of "objective and neutral" legal experts.

New tendencies in women's movement show that there is a need to observe the legislative issues, law reforms and judiciary system

a) Through specific gender perspective
b) From the prospective of philosophy, social-psychology, psychoanalysis, political theory, discourse analysis etc., because the laws are only one segment of a wider socio-cultural context and analysis of their impact request an interdisciplinary approach.

The text in front of you follows the logic of this approach to the analysis of the existing laws and legislature.

KEY CONCEPTS FOR THE ANALYSIS

GENDER is a set of characteristics and behavior expected from the culture to be connected with individuals depending on whether they were born as women or as men. It understands a set of rules and practices that determine the relations between women and men. Gender is, therefore, the result of the way a society, a culture shapes an individual depending on whether this individual was born as a woman or man and represents in fact a social relation between the sexes. This relation is first of all power relationship, where the power is generally at the men's side. Gender relationships are always a part of general socio-cultural and socio-political context, and the balance, or rather disbalance in power distribution, is essentially influencing, among other things, the quality, quantity and the proportion of female and male participation in a public and political sphere.

GENDER ANALYSIS is a kind of approach to various social practices, programs, documents, projects etc., that serves to show how much and in what way are women and men involved and in what way these differences influence women or men, and therefore the society and development in general.

GENDER (dis-)balance is a relation of significant social inequalities in power distribution between men and women. Gender disbalance produces in the last instances essential social inequalities between men and women. (Example of gender disbalance in the field of world resources: According to the UN statistics, women carry out 2/3 of all human work; they earn 1/10 of all salaries; they represent 2/3 of all the illiterate; they own less than 1% of all private properties etc.)

GENDER NEUTRAL APPROACH

Most frequently we find it in the attitude that it is not important in what way in a certain social process, institution, language practice etc. women and men participate, because both women and men are simply human beings without any specific status, specific history and specific social treatment regarding their sex.

GENDER SENSITIVE APPROACH

That approach is aware of dramatically large areas of discrimination based on gender/sex in our civilization and in narrower socio-cultural and socio-political environment. This approach uses analytical means for detection, awareness and protection against discrimination based on gender/sex in social processes, institutions, political practice, language practice etc. That approach finds the gender issues of crucial importance for democratization and human rights as well.

ELECTION LAW AND GENDER EQUALITY IN THE POLITICAL AND PUBLIC LIFE

Women's human rights in the political and public sphere are at the international level, first of all, regulated by the *Decree on political participation of women* that is an integral part (article 7) of the *OUN Convention on elimination of all kinds of discrimination against women (CEDAW)*, 1967, that says:

"Member states shall undertake all necessary measures to eliminate discrimination against women in the political and public life of a country and shall especially enable women to have equal rights with men in following:

- a) voting on all elections and public referendums and to enable women to be elected in all public and election bodies
- b) to participate in functioning of governmental politics and its implementation, as well as to hold public functions at all governmental levels
- c) to participate in non-governmental organizations and associations that are an integral part of public and political life in the country"

At the national plan, women have the right to be elected as well as to elect under same conditions as men, which is regulated by the Constitution of BiH and Constitutions of the Entities. Election law in BiH should at the state level provide women not only with these rights but also with the equal participation in legislative and executive power at all levels.

Globally speaking, all gender analysis show that systematic dis-balance in terms of participation of men ad women in politics places women in disadvantageous position. For example:

- In executive and legislative power all over the world there are only approximately 10% of women.
- In International organizations, including OUN and European Community there are only 5% of women in leading positions.
- In the main global financial institutions the participation of women is extremely low. For example, in leading bodies of MMF there are only 2.2% of women, and in the Executive Board there is not a single woman out of 24 members, that means, 0%.
- In the whole world, today there are only 3-4% of women Ministers.
- Globally speaking, women politicians holding high political positions have many more academic qualifications and political experience than men in the similar positions



ELECTION LAW IN BIH

As it was mentioned before, permanent Election Law in BiH directly regulates the political participation of women at the national level.

After six years of direct management of all election activities, OSCE handed over the immediate administration of election process to the local governmental bodies by adopting Election Law in August 2001 and by appointment of Election Commission of BiH and its Secretariat in November 2001.

The Parliamentary Assembly in BiH adopted this Election Law on the Session of the Representative House, held on 21.08.2001 year, published in the Official Gazette in BiH no. 23/01 on 19 September 2001. The Law was based on the decisions of the High Representative no. 139 dated 28.03.2002, no. 148 dated 18.04.2002, and no. 151 dated 19.04.2002.

As it is well known, according to the mandate of the Dayton Peace Agreement from 1995, one of the main responsibilities of the OSCE Mission in BiH is to prepare, carry out and supervise postwar elections until the permanent Election Law is adopted. This included General Elections in 1996, 1998, and 2000 year, Municipal Elections in 1997 and 2000, as well as off-season elections in 1997 for the National Assembly of the Republic of Srpska.

At the same time, as a part of its mandate in establishing democratic institutions and civil society in BiH, the OSCE Mission was involved in providing conditions for men and women elected in democratic manner at all levels to perform their duties efficiently.

For the purpose of gender analysis of these procedures, it needs to be emphasized that the OSCE Department for Implementation of Election Results, first of all, was taking care that there was equal representation of constituent nations (nationality key) at all administration levels, and the primary democratic criteria in the election process was national, or ethnical background of a candidate. It was a natural consequence of the post Dayton political constitutions in BiH.

By the way, priority of the national over the rights of citizens today is the basic characteristic of all our state documents, not only the Election Law. However, by the gender analysis of the Election Law, we could see how the priority of the national criteria over civil and gender identity, indirectly, but with the defeating consequences, reflect to the position of women in public and political sphere of our social life.

What is more or less known, in the last elections, just for the purpose of more appropriate gender balance, OSCE has applied the institute of positive discrimination demanding about 30% of women on the lists of candidates (Rule 7.50 of the Temporary Election Commission). In practice, the Internationals have always had the main role in introducing of principles and practices of gender equality into political life in more or less all countries in transition, which was the case in BiH. Namely, after the collapse of socialism and after the first democratic elections, the number of women in politics has drastically fallen down in our country as well as in other post-socialistic countries.

Although we are aware of the ambiguity and controversies regarding the status of women under the communism, we have just to keep in mind that the equal participation of women in political structures of the socialist systems had been a strategic goal, and not just a normative ideal of the socialist revolution. In 1946 in BiH women received general and equal voting rights, and before that time, during the Anti-Fascistic fight ZAVNOBIH it had been announced:

"National democratic authorities of Bosnia and Herzegovina guarantee equal rights for women and men, in a political life of a country, as well as in the all segments of social activities",

Declaration of the Anti-Fascistic Council of People's Liberation in Bosnia and Herzegovina on the civil rights in Bosnia and Herzegovina, 1944



It is the meter of the special analysis how could it happen that the women from the front lines of revolution had become marginalized and excluded from the centers of political power and decision making during the "socialist transformation in the society", and how did it happen that women's organizations had become a transmission of the communistic party biocracy decisions as well how and women's roles were "re-traditionalized" and turned into object position, merchant, "reserve army of labor force", birth giving machine, over-exploited and most pauperized social group in spite of numbers and percents of women in public sphere. In here I am just expressing an attitude that the comparison of numbers before and after "day after" is analytically less valuable, because it does not reflect the actual political power of women in the periods obeying compared.

Actually, the first multi-party elections showed what was and what is today the real role of the woman in politics and what is the quality of her political power. After the first multi-party elections in BiH we have had: in the House of Representatives in Federation BiH - 2,38% women, in the House of Representatives in Federation BiH - 5% women, in the RS National Assembly - 1,89% women etc. Figuratively speaking, women enjoyed the same power when there were even 33% women in the former system.

But let us return to the latest Election Law and it's consequences. This Law regulates the election of:



Members and delegates in the Parliamentary Assembly in BiH
36:6!



Government of the Republic of Srpska
1+16:0!



Members of the Presidency in BiH
3:0!



Council of Ministers
Determines the principles that are ruling at all governmental levels in BiH
6:2!



Government of the Federation in BiH
1+15:1!

WHAT SHOULD THE GENDER SENSITIVE ELECTION LAW BE LIKE?

1. Gender sensitive Election Law should protect the real gender equality in election procedure and prevent direct and indirect discrimination of women. This discrimination could be expressed by the overall context and language and by specific "gender regulations" which were problematic from the standpoint of their efficacy even before implementation what can be clearly seen from the article 4.2 of the Chapter in Law¹.

2. Gender sensitive Election Law should avoid (apparently) gender neutral formulations like the "candidates of any underrepresented sex", because this formulation hides what is the sex which is usually underrepresented, what gives a false picture that both sexes have the same possibility to be underrepresented what is of course not the case in our culture and social and political life. In this way, consciously or unconsciously, the formulation gives the opportunity to the hidden discrimination.

Indirect gender based discrimination exist when an apparently neutral legal norm brings into a disadvantageous position a person of one sex in comparison with the other sex.

3. Gender sensitive election law should prevent every obstacles to political promotion of women, and should enable the gender balanced representation at all governmental levels.

4. Regarding the existing marginalization and exclusion of women from the political decision-making sphere, gender sensitive election should use special regulations in order to improve gender balance in the governmental bodies at all levels.

5. Gender sensitive election law should imply a normative ideal in which a parity representation of genders in political sphere is 50%:50%, regardless the practice that is far

1. Each list of candidates includes the candidates of male and female sex. The candidates of the sex in minority are being placed on the lists of candidates as follows: at least one (1) candidate of the sex in minority out of the first two (2) candidates, two (2) candidates of the sex in minority out of the first five (5) candidates and three (3) candidates of the sex in minority out of the first eight (8) candidates, etc. The number of candidates of the sex in minority must be at least equal to the total number of candidates on the list divided by three (3), rounded to the first lower number



away from that ideal. At least half of the female population in public and political sphere should be represented, because the election body mainly consists of the half of female and half male population.

Although, of course, I do not argue that the election results have been exclusively the consequence of the new Election Law's, as well as its implementation, we need to seriously analyze its "gender results" because of the fact that such a Law is one of the main tools in promoting the gender balanced political representation. Here follows some items requiring our attention²

WOMEN AND ELECTIONS 2002

General Elections 2002 - Participation of Women

On October 5 the citizens of Bosnia and Herzegovina voted for the fourth time since the Dayton Agreement has been signed. They voted for representatives to the BiH Presidency, the House of Representatives of the BiH Parliamentary Assembly, the President and the Vice President of Republic of Srpska, the National Assembly of Republic of Srpska, the House of Representatives of the Parliament of the Federation BiH, and the Cantonal Assembly for the Municipal Council of Žepče. It is necessary to stress that these elections were carried out in accordance with the Permanent Election Law, that they were organized by the institutions of BiH, with the Permanent Election Commission and with a four-year mandate. The intention³ of the following data is to show not only quantitative indicators, but also to attempt to perceive what we have achieved and, if possible, to investigate directions for further activity.

General Elections in Numbers:⁴

- Number of verified candidates on all levels of authority: 7,537 (2,640 women - around 35%);

2 Lidija Živanović, WOMEN AND ELECTIONS 2002

3 The Election Commission, Elections 2002, (www.izbori.ba)

4 Data by the NGO Women to Women, Sarajevo

- Number of political parties which participated in the elections: 57, coalitions: 9, independent candidates: 3;

- Number of voters: 2,343.075 (2,284.126 registered in BiH and 58,948 abroad)

- The regularity of the elections was monitored by 6,909 monitors from NGOs and 514 international monitors, and 68 monitors from political parties monitored the Election Commission and the Head Center for Votes' Counting;

- Turn-out of voters at the level of BiH: 1,298.827 (53,94% - in Federation BiH 54,23%; 50,13% in Republic of Srpska).

For the **BiH Presidency** (one Bosniak, Croat and Serb member), only two women, from 35 candidates in total, were on the candidate lists, and only one received 0,5% of the votes. Of course, men were elected.

For the position of the **RS President** only two women were on the candidate lists (they received 0,2% of the votes each).

The House of Representatives of the BiH Parliamentary Assembly

The BiH Parliamentary Assembly is composed of the House of Representatives with 42 representatives directly elected, and the House of Peoples with 15 deputies elected by the FBiH House of Peoples and the RS National Assembly. The BiH House of Representatives has 14 members from RS and 28 from FBiH. At this level of authority, six women were elected, four from the FBiH election unit (from the Party for BiH, 3, from the SDA, 1), and two from RS (from the SDS and the PDP).

Graph 1. House of Representatives of the BiH Parliamentary Assembly - on the grounds of gender



5 Data by the NGO Women to Women, Sarajevo

Table 1. Participation of women in the House of Representatives of the BiH Parliamentary assembly 1996 – 2002

| General Elections | 1996 | 1998 | 2000 | 2002 |
|-----------------------------------|------|------|-------|--------|
| Participation of women in numbers | 1 | 11 | 2 | 6 (42) |
| Participation of women in % | 2% | 26% | 4.76% | 14.3% |

The RS National Assembly

Of the total number of 83 representatives, 14 women were elected to the RS National Assembly. In 1996 only two women (2,4%) were elected. At that time the regulations on minority gender participation were not in effect. After the 1998 elections, when such regulations were in effect (among the first ten on the candidates lists, at least three must be women), 19 women were elected, which was 23% of the total number of representatives. The new election rules (open lists) and regulations have not brought any progress. From 23% in 1998, the percentage of women's participation decreased to 19% in 2000, and now to 16,9% with a note that only one woman has gained a deputy position in the Parliament.

Table 2. Participation of Women in the RS National Assembly 1996 – 2002

| General Elections | 1996 | 1998 | 2000 | 2002 |
|-----------------------------------|---------|---------|---------|---------|
| Participation of women in numbers | 2 (106) | 19 (83) | 15 (83) | 15 (83) |
| Participation of women in % | 1,89% | 22,6% | 18% | 18% |

Graph 2. The RS National Assembly 2002 – on the grounds of gender

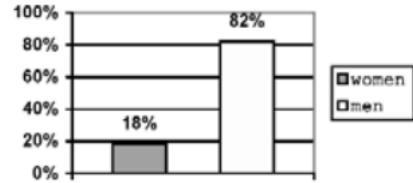


Table 3. Political party membership of women representatives to the RS National Assembly

| Political Party | SDS | SN SD | PDP | SDA | S BiH |
|---------------------------|-----|-------|-----|-----|-------|
| Number of representatives | 26 | 19 | 9 | 6 | 4 |
| Women- representatives | 6 | 6 | 1 | 1 | 1 |
| Percentage | 23% | 31,6% | 11% | 17% | 25% |

House of Representatives of the Federation of BiH

The FBiH Parliament consists of the House of Representatives (98 mandates) and the House of Peoples (52 mandates). The representatives to the House of Representatives are elected directly, and the representatives to the House of Peoples indirectly, from deputies of the cantonal assemblies.

Of a total number of 98 representatives to the FBiH House of Representatives, 20 women were elected. In comparison with the 1998 elections, the number of women has increased. Instead of 17% deputies from 2000, after the 2002 elections 20,4% women have been elected to the House of Representatives.

Table 4. Participation of women in the FBiH House of Representatives 1998 - 2002

| General Elections | 1996 | 1998 | 2000 | 2002 |
|-----------------------------------|------|------|-------|---------|
| Participation of women in numbers | | | | 20 (93) |
| Participation of women in % | 5% | 15% | 17.4% | 20.4% |

Graph 3. FBiH House of Representatives - on the grounds of gender

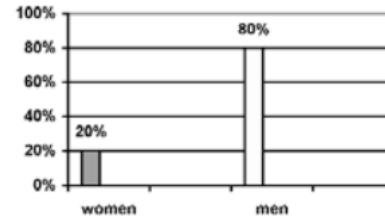


Table 5. Political party membership of women - representatives to the FBiH House of Representatives (2002 General Elections)

| Political Party | Number of women | Total number of representatives | % of women |
|---------------------------------------|-----------------|---------------------------------|------------|
| SDA | 7 | 32 | 22 |
| Coalition (HDZ, HNZ, Demo-Christians) | 4 | 16 | 25 |
| SBiH | 2 | 15 | 13 |
| SDP BiH | 1 | 15 | 7 |
| BOSS | 1 | 3 | 33.3 |
| LDS BiH | 1 | 1 | 100 |
| DNZ BiH | 1 | 2 | 50 |
| Ec. Block HDU - for Prosperity | 1 | 2 | 50 |
| NHI | 1 | 2 | 50 |
| Pensioners' Party | 1 | 2 | 50 |

Cantonal Authorities

In the general elections in October 2002, in the Federation of Bosnia and Herzegovina, which has ten cantons, representatives to cantonal assemblies were elected. The number of women-representatives varies from 9,5% in the Posavina Canton to 34,3% in the Sarajevo Canton. In average, 22% women have been elected to the cantonal authorities.

Graph 4. Cantonal Assemblies - on the grounds of gender

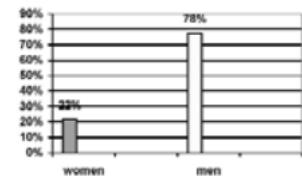


Table 6. Cantonal Assemblies

| Canton | Number of representatives in 2002 | Number of women 2002 | % participation of women 2002 | % participation of women 2000 | Comparative difference % |
|------------------------|-----------------------------------|----------------------|-------------------------------|-------------------------------|--------------------------|
| 1. Una-Sana | 30 | 3 | 10 | 17 | -7 |
| 2. Posavina | 21 | 2 | 9.5 | 16 | -6.5 |
| 3. Tuzla | 35 | 7 | 20 | 23 | -3 |
| 4. Zenica-Doboj | 35 | 8 | 22.9 | 31 | -8.1 |
| 5. Goražde | 25 | 8 | 32 | 24 | +8 |
| 6. Central-Bosnian | 30 | 6 | 20 | 11 | +9 |
| 7. Herzegovina-Neretva | 30 | 8 | 26.7 | 14 | +12.7 |
| 8. Western Herzegovina | 23 | 6 | 26.1 | 19 | +7.1 |
| 9. Sarajevo | 35 | 11 | 31.4 | 28.5 | +2.9 |
| 10. Livno | 25 | 5 | 20 | 13 | +7 |
| TOTAL | 289 | 64 | 22.2 | 20 | +2.2 |

* Una-Sana Canton: out of 14 SDA representatives, one is a woman, out of seven DNZ BiH representatives one is a woman, and out of five S BiH representatives one is a woman.

* Posavina Canton: out of 10 representatives of the Coalition (HDZ, HNZ, Demo-Christians) two are women.

* Tuzla Canton: out of 16 SDA representatives three are women, out of 11 SDP representatives one is a woman, out of six S BiH representatives two are women and out of two BOSS representatives one is a woman.

* Zenica-Doboj Canton: out of 20 SDA representatives four are women, out of six SDP representatives two are women, out of six S BiH representatives one is a woman, and from the Pensioner's Party one woman is a representative.

* Goražde Canton: mandates have been divided between the SDA (12), the SDP (5) and the S BiH (8). The SDA and the S BiH have three women representatives each, and the SDP two.

* The Central Bosnian Canton: out of 10 Coalition (HDZ, Demo-Christians, HNZ) representatives three are women, out of 10 SDA representatives three are women, and out of three SDP represen-

tatives one is a woman.

* Herzegovina-Neretva Canton: out of 15 Coalition (HDZ, Demo-Christians, HNZ) representatives six are women, out of seven SDA representatives one is a woman, and out of five S BiH representatives two are women.

* Western Herzegovina Canton: out of 18 Coalition (HDZ, Demo-Christians, HNZ) representatives five are women, out of two People's Party "Prosperity by Work" representatives one is a woman.

* Sarajevo Canton: mandates have been shared between the SDA (15), the SDP (10) and the S BiH (10). There are four SDA female representatives, four SDA female representatives and three SDP female representatives.

* Livno Canton: out of 13 Coalition (HDZ, Demo-Christians, HNZ) representatives four are women, and out of three SNSD representatives one is a woman,

Recapitulation of the 2002 General Election results

| Level of Authority | Total number of representatives | Total number of women representatives | % of women representatives |
|----------------------------------|---------------------------------|---------------------------------------|----------------------------|
| BiH Presidency | 3 | 0 | 0 |
| RS President and Vice Presidents | 3 | 0 | 0 |
| BiH House of Representatives | 42 | 6 | 14.3 |
| RS National Assembly | 83 | 14 | 16.9 |
| FBiH House of Representatives | 98 | 20 | 20.6 |
| Cantonal authorities | 289 | 64 | 22.2 |

It can be clearly seen that the level of women's representation is smaller when the governmental level is higher (from 22,2 % - 0%). That means that the voters are more ready to support women whose responsibility is "smaller" and usually that is at entity and cantonal levels.

If we add to this number that on these elections we had 2640 women candidates (35%) out of 7537 candidates in total, and only 104 women have been elected, than we can not be satisfied with results.

In our country, as it can be seen from the analysis of election results, gender dis-balance is especially present in the following spheres of the political and public life:

1. Disproportional small number of women in the Parliamentary Assembly in Bosnia and Herzegovina with a tendency to fall down since the last elections;
2. There are no women in the Presidency of Bosnia and Herzegovina;
3. Only one woman has been elected to the Council of Ministers;
4. At all governmental levels in Bosnia and Herzegovina there are a gender dis-balance. However, as you go higher in governmental levels the number of women falls down dramatically.⁶

Of course, a wider patriarchal socio-cultural context is responsible for this phenomena of women's pushing out of the public sphere especially from those positions of power where important decision are being made regarding society and quality of our daily lives. The laws are just a part of this overall socio-political and socio-cultural context and they, as it was mentioned before, are not the only nor the most important reason of the various collectivities status and of the general democratic development.

If women will have the access to education or not, if the gender socialization will be in accordance to the patriarchal or in accordance to the progressive values, what will be the using of free time and the way women organize their family lives, what will be their associations and kind of their public speeches, what will be the nature of political systems, what access to information and media women will have, what will be the relation of tradition and the contemporary culture all these factors will decide upon women's participation in public and political sphere. In this context the role of the Election law in democratic societies have to give to women the opportunity to be elected proportionally to their number in election body.

Election laws in democratic societies are the most direct means to protect the most basic rights of female and male citizens. Let us see what is going on with the female citizens.

⁶ Note the table: General recapitulation of the elections in 2002

IMPLICIT AND EXPLICIT STATEMENTS IN THE ELECTION LAW - GENDER PERSPECTIVE

Since the Election Law is, besides other things, a reflection of a political system's terms of democracy, we were interested to find out how does such a system represent a gender dimension of political equality and democracy.

Although the Election Law should, first of all, provide the individual and collective rights to all female and male citizens to vote and to be elected, this law implicitly states:

- a) which collectivities or identities will be given the priority - undoubtedly it is given to ethnicities, or rather nationalities of the majority peoples in BiH;
- b) what is the position of the gender identity as a political subjectivity in this Law - undoubtedly comparing to ethnic and national, gender is the "second order" identity- none of these Law mechanisms does provide a parity representation of genders at all governmental levels;

In accordance with the Universal Charter on Human Rights, the Law should protect the rights to proportional representation of all collective identities known to be exposed to various kinds of discriminations, and that in the global frame of reference their rights are not adequately presented in the public and political arena. Undoubtedly, the women belong to the most discriminated groups what has been taken in consideration through numerous declarations, conventions, regulations adopted at the international level, usually through OUN mechanisms.

Since our Election Law decides upon the elections and determines the principles effecting all governmental levels in Bosnia and Herzegovina we have been interested to find out about its visible and invisible gender (in) sensitivity what could contribute to existing gender dis-balance (which is unfortunately completely transparent after the last elections), or on the other hand could contribute to the improvement of gender balance in our country.

An old phrase that "our laws are mostly good, but we only have some problems to apply them in practice" today sounds rather anachronistic. Reexamining the existing laws, especially the Election Law we have noticed:

- a) various kinds of insensitivity towards so called vulnerable social groups, or rather groups that are more or less deprived from social power - this includes all minority groups in the state of BiH especially after division by the Dayton Peace Agreement.
- b) the anachronistic, gender insensitive or rather politically gender incorrect language in -namely, all political subjects are grammatically named in the male gender;
- c) Mostly "neutral approach" towards the groups that have diminished amount of social power, concerning women as well, contributes to their further marginal position and exclusion. This is especially the case with the grammar of the language and discourse used in writing of the Law.

GENDER DISCOURSE OF THE ELECTION LAW

Discourse could be simply defined as a language practice that consciously or unconsciously reflects the relations in a social reality. This language practice is not, however, only a mirror of current relations, but it reproduces and empower them.

From the point of view of "gender analysis" there is an example that we use a grammatical male gender for some professions even if performing by women, or presumably could be performed by women. This language practice shows that all-important social positions are linguistically in the male gender, because of the social practice that mainly men hold these positions and that linguistically the male gender is the norm. Due to this social and linguistic practice it is difficult for the language to be changed. For example, we hardly can adjust ourselves to say and hear words such as a "chairwoman", "spokeswoman", etc. We avoid using the terms in the female gender for some (manly socially high positioned) occupations that we do have in our language.

Among the most invisible socio-psychological mechanisms responsible of the growing gender dis-balance in various life spheres is the language itself, the colloquial one, but also the written language of the documents that regulate our social life. That is why I pay a particular attention in my analysis by discussing the language used in this Law.

In the first reading of our Election Law, as it was mentioned before, we have noticed the domination of (grammatical) male gender for all the categories of political subjects in this Law.

For example:

Article 1.1, Paragraph 1

This Law determines the election of members and delegates of the Parliamentary Assembly of Bosnia and Herzegovina and members of the Presidency in Bosnia and Herzegovina, then decides upon the principles effecting all elections at all the governmental levels in Bosnia and Herzegovina

Note: All bolded words in the text are in male gender in our language, although we have the same words in the female gender. In English language there are no separate words for these occupations in male and female gender. The same applies in the text that follows.

Or:

Article 1.4, Paragraph 1

Each citizen of Bosnia and Herzegovina when he turns eighteen (18) years of age has the right to vote and the right to be elected (in the following text: election body), in accordance with the regulations of this Law.

In order to obtain his voting rights, the citizen (he) must be registered as a voter, in accordance with this Law.

Or:

... Article 1.8, Paragraph 1

Judges of the district and constitutional courts, prosecutors and their deputies, defenders and their deputies performing the public functions, ombudsmen and their deputies, members of the courts/houses/councils for human rights, members of police and military forces, including but not limited to the members of financial police, judicial police, custom officers, safety and information services, as well as diplomatic and consular representatives of BiH in foreign countries, may run for the public election function only if they resign from their current positions.

Note: All bolded words are in the male gender in our language.

Or:

.... Article 1.8, Paragraph 1, item 4

Under the executive function, in terms of this article, is referred to ... the President and Vice Presidents of the Federation of Bosnia and Herzegovina, the President and Vice Presidents of the Republic of Srpska... including the Prime Minister, the Government of the Republic of Srpska, including the President of the Government, the Government of the Brcko District, the President of the Canton... mayor, deputy mayor ... municipal chairmen and his deputy, employees in charge - appointed by the municipal chairmen, and other functions determined by this Law.

Note: All bolded words are in the male gender in our language.

Or:

Article 1.9, Paragraph 1

The mandate belongs to the elected bearer of the mandate, and not to the political party, coalition or the list of independent candidates that nominated him on the list of candidates ...

Or:

Article 1.11, Paragraph 1

Candidates of all political parties, as well as independent candidates and other participants in election process, have the complete freedom to perform election activities on the whole territory of Bosnia and Herzegovina during the election campaign...

Note: All bolded words are in the male gender in our language.

Or:

CHAPTER 8

PRESIDENCY OF BOSNIA AND HERZEGOVINA

Article 8.1

Members of the Presidency of Bosnia and Herzegovina, that are directly elected from the territory of the Federation of Bosnia and Herzegovina - a Bosniak and a Croat (male gender), are elected by the registered voters in the Federation of Bosnia and Herzegovina. A voter, registered to vote in the Federation, may vote for either a Bosniak or a Croat, but not for the both. A Bosniak's or Croatian candidate (male gender) is elected when he receives the majority of votes from his constitutive people. The registered voters elect the member of the Presidency of Bosnia and Herzegovina, directly elected from the territory of the Republic of Srpska - a Serb, in the Republic of Srpska. The candidate is elected when he receives the majority of votes.

Etc. etc.

In the language of this Law there are no female members* of the Parliamentary Assembly nor there are female members* in the Presidency of BiH (and there are no women there in the reality), however there are no female citizens* of BiH, there are no female judges* and female prosecutors*, and their female deputies*, no female Prime Ministers*, no female leaders*, no female defenders* and their female deputies*, no female police officers*, no female diplomatic and consular representatives*, no female candidates* of political parties, no female participants* in election procedure, no female representatives* of political parties; the term ombudsman is in use, although that person could be a woman and not just a "man". When it comes to the election for the Presidency in BiH, based on the nationality key, there is no "a female Bosniak*", or "a female Croat*", or "a female Serb*" which already implies that men of certain nationality will perform those duties. If somebody has been suspicious

of this matter's importance and prediction, the reality (the election results) has shown that the predictions have come true.

Note: All bolded and italicized words are in the female grammatical gender in our language. In the English language there are no separate versions of these words in the female and male gender.

In the language of our Election Law there is no female grammatical gender. Female gender is nonexistent, invisible both in the terms of grammar and in the terms of subjectivity and identity. The absolute domination of the male grammatical gender prevails and that, of course, implicitly suggests that the female gender in politics, as it has been mentioned many times, represents an incident. Such Election Law addresses men and not without reason it is written for men. Even more, not any kind of men, but men of the national or ethnic majorities in BH.

GENDER ANALYSIS OF THE STRUCTURE OF ELECTION COMMISSIONS

Election Commission of Bosnia and Herzegovina



6:1!

Već prvi pogled na gender strukturu Izborne komisije BiH pokazuje da se ona sastoji od 6 muškaraca i 1 žene. At first sight on the gender structure of the Election Commission of BiH it can be noticed that it consists of six men and only one woman. Frankly speaking, this woman had a leadership role and had been the central and most visible figure related to elections during the whole election campaign and election process in the year 2002. Maybe that was the reason why the absolute gender dis-balance was not clearly recognized, and why it was no reactions on this anachronism, at least not from the so called women's NGO scene.

However, it had not been easy to form different, better gender-balanced structure of this Election Commission, because the articles of the Election Law regulating of establishment and functioning of Election Commission, were totally gender insensitive. These regulations had given the priority to the national, or rather ethnical identity of the candidates in addition writing the Law in the male gender.

Article 2.5, Paragraph 2

Besides the case regulated in the Article 18.1 of this Article, the Election Commission of Bosnia and Herzegovina consists of seven (7) members: two (2) Croats, two (2) Bosniaks, two (2) Serbs and one (1) representing the other minorities.



Regulation that determines the structure of the Municipal Election Commission states:

Article 2.14, Paragraph 2

The structure of the Commission or Election Board must be multiethnic, to include representation of the constitutive people, including the others, in the election unit for which this body, in charge of implementation of election results, has been established, taking into consideration the last registration of the population at the state level.

As it can be seen, the need for balanced gender representation in the Commission structure has not been mentioned, whereas the "national key" was the dominant issue.

MECHANISM FOR ESTABLISHMENT OF GENDER BALANCE

The only regulation of this Election Law that explicitly mentions the gender identity is the following one:

Article 4.19, Paragraph 4

...Each list of candidates includes the male and female candidates. Candidates of the underrepresented sex are positioned on the list of candidates in the following way: at least one (1) candidate of the underrepresented sex in the first two (2) positions, two (2) candidates of the underrepresented sex in the first five (5) positions, and three (3) candidates of the underrepresented sex in the first eight (8) positions, etc. The number of candidates of the underrepresented sex must be equal to the total number of candidates on the list divided by three (3), rounded to the first lower number...

It is interesting to make a comparison with the already mentioned OSCE's request in the framework of Temporary Election Law that explicitly requested not less than 30% of women in this regulation.

Having tested the "ordinary" female and male citizens about their understanding of this regulation (12 women and 12 men) we have learned that only a single person has had a vaguely relative understanding of this article and what would be the result of such mathematics especially within the system of open lists. The rest of the group has found this regulation very complicated and they have not had a will or capacity to get involved into such formulation.

Besides the hardly comprehensive language and complicated "mathematical gymnastics" contained in this regulation, the gender neutral formulation: "candidates of the sex in minority" is being used too.

In this context, it had been very well known that the "sex in minority" was obviously female, and that the system of open lists would contain the mechanism, which will neutralize such a regulation in order to provide the gender balance.

The results of the elections in the year 2002 presented in pages 14 - 19 have unambiguously shown that prescribed mechanism apparently has not been of any use in establishment of such a balance.

Curriculum Vitae

Nada Ler- Sofronic, Ph.D.

Sarajevo, Bosnia and Herzegovina

Nada was born in Sarajevo. For a long time was the lecturer on Social Psychology at the Faculty of Political Science in Sarajevo.

Belongs to the first feminist scholars in former Yugoslavia. Since 1978 has the active and leading roll in the "second wave" women's movement in the region. She was a conceptual creator of the First East/West International Feminist Conference in Eastern Europe at the Students Cultural Center in Belgrade 1978, which was a turning point of the treatment of "womens question" in ex/Yugoslavia's "really existing socialism".

Her dissertation (1982) on Women's Liberation Theories is considered the first feminist Ph.D. in former Yugoslavia, (partially published in the book Neofeminism and Socialist Alternative, 1985)

The main topic in her theoretical essays, articles, public lectures, and media presentations are gender power-relationships in various social systems. Her analysis is currently focused on post-socialist countries.

Nada was a lecturer at Womens Studies Center in Belgrade, one of the founders and lecturers at Women Studies Center in Novi Sad, Senior Visiting Fellow at Central European University at the GenderCulture Department.(1997)

Nada is Consultant on Gender/Womens Issues at various Programs and Projects and Womens Program Coordinator at Open Society Institute Sarajevo BiH.

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Be seen, be heard

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