

# **60th Report of the High Representative for Implementation of the Peace Agreement on Bosnia and Herzegovina to the Secretary-General of the United Nations**

## *Summary*

This report covers the period from 16 April through 15 October 2021.

As of the writing of this report, Bosnia and Herzegovina (BiH) faces the greatest existential threat of the postwar period. Persistent, grave challenges to the fundamentals of the General Framework Agreement for Peace (GFAP) by the Republika Srpska (RS) entity authorities, led by the biggest RS party, the Alliance for Independent Social Democrats (SNSD) headed by BiH Presidency member Milorad Dodik, endanger not only the peace and stability of the country and the region, but – if unanswered by the international community – could lead to the undoing of the Agreement itself.

In the climax to an escalating series of crises throughout 2021, Mr. Dodik – the de facto leader of the RS, although the entity has an elected president – has called for the entity’s unilateral withdrawal from agreements reached long ago on the transfer of entity competences to the State in the areas of defense, indirect taxes and the High Judicial and Prosecutorial Council (HJPC), and for the entity to “reclaim” what he asserts were usurped constitutional competences in the fields of the State judiciary, law enforcement and intelligence.<sup>[i]</sup> He further announced the drafting of a new RS Constitution and a rejection of *all* “illegally imposed decisions and laws by High Representatives.”

According to announced plans, this would mean the withdrawal of the members of the BiH Armed Forces (AFBiH) who reside in the RS, the takeover of AFBiH facilities on RS territory, and the reestablishment of the RS Army ostensibly from personnel withdrawing from the AFBiH, a move that would turn back the clock 15 years in the field of defense reform alone and even further in terms of confidence- and security-building. This would also mean the withdrawal of the entity from the State-level Indirect Taxation Authority (ITA), the HJPC, the State Investigation and Protection Agency (SIPA) and the Intelligence-Security Agency (OSA), and measures to prevent those institutions from operating in RS territory.

Mr. Dodik refers to this undertaking as a return to “original Dayton,”<sup>[ii]</sup> which is a political misnomer based on erroneous interpretations of the BiH Constitution. In practice, the policy aims to undo many of the hard-won reforms of the last 26 years, not in order to strictly adhere to the letter of the GFAP but rather to revert to the situation that existed on the ground *prior to Dayton implementation*. In short, Mr. Dodik seeks to withdraw the RS from constitutional order established under Annex 4 of the GFAP and to opt out of civilian implementation of the Agreement set forth under Annex 10.

This is tantamount to secession without proclaiming it. The unilateral withdrawal of either entity from the established State institutions, which is not legally possible under the current constitutional framework, would lead to the collapse of those institutions, and ultimately undermine the State’s ability to function and carry out its constitutional responsibilities. Shortly before the completion of this report, Mr. Dodik revealed his goal as an independent RS “within the Dayton BiH.”<sup>[iii]</sup> As RS opposition parties have noted, this is a dangerous path not only for BiH but for the RS, having in mind that entities exist legally only by virtue of the BiH Constitution, and have no right to secede from BiH.

The State institutions were already paralyzed since July, when Mr. Dodik in agreement with the RS opposition parties announced the withdrawal of RS representatives from the decision-making process in the institutions, ostensibly in response to the 22 July decision of my predecessor as High Representative, Valentin Inzko, enacting amendments to the BiH Criminal Code to criminalize genocide and war crimes denial and the glorification of war criminals,<sup>[iv]</sup> demanding annulment of the decision.

As part of the orchestrated response, the RS authorities adopted the *Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the BiH Criminal Code*,<sup>[v]</sup> which entered into force in early October. This Law rejects the High Representative’s 22 July decision and prescribes that State-level

legislation shall not be applicable in the RS and obliges the RS authorities not to cooperate with BiH institutions attempting to implement State-level law. This constitutes concrete violations of Annex 4 and Annex 10 of the GFAP.

Although Mr. Dodik has recently stated his actions are not aimed at inciting conflict, he has also warned that any attempt by State-level judicial institutions or law enforcement agencies to intercede would be met with force, further adding, unprovoked, that if NATO were to intervene the RS would seek assistance from unnamed “friends” who he claims have given assurances of their readiness in this regard.<sup>[vi]</sup>

As the final interpreter of the GFAP, my considered assessment is that the RS authorities are already in grave violation of the Agreement and are poised to violate it further, potentially causing irreparable damage. If they succeed unchallenged in this undertaking, the RS authorities would establish a new constitutional and legal framework removing the RS from the Dayton architecture, particularly from the constitutional order of BiH, which is synonymous with secession. Ignoring or downplaying this state of affairs could have perilous implications for the region and beyond.

Which is not to suggest that only the RS is problematic. Three full years since the 2018 General Elections, a new Federation Government has not been appointed and the Government from the 2014-2018 mandate remains in place, while the BiH institutions have been utterly stagnant, with the poorest legislative output from the BiH Council of Ministers and the BiH Parliamentary Assembly than in any previous mandate. Agreement on much-needed electoral reforms also remains elusive.

## **I. Introduction**

1. This is my first report to the United Nations (UN) Security Council since my appointment in May by the Peace Implementation Council Steering Board (PIC SB) (minus the Russian Federation) as High Representative for BiH and assuming my mandate in August. While many reported developments occurred prior to mandate, owing to the institutional memory of my staff I can provide facts on these developments with citations where relevant, and an impartial assessment of the degree of implementation of the GFAP in those areas within my responsibility for upholding the civilian aspects thereof.
2. It is my duty to fulfill my mandate in accordance with Annex 10 to the GFAP and relevant UN Security Council resolutions. While I continue to urge the BiH authorities to achieve progress on the five objectives and two conditions set in 2008 as the agenda to bring the mandate of the High Representative and Dayton oversight to a close after having successfully fulfilled this framework of objectives and conditions, the facts as reported herein clearly illustrate that progress to date in this regard has been hampered by persistent political crises and even open rejection of several of the objectives themselves, while progress in the near term is questionable at best. The 5+2 Agenda entails full compliance with the GFAP, which is regrettably not the status quo. I have meanwhile launched an initiative to involve all stakeholders in the objectives to resume work on progress in this regard. If I see the need to readjust certain objectives, I will make proposals in due time.
3. While it is my hope that the authorities will fully comply with the GFAP and achieve progress on BiH’s path towards European Union (EU) integration, which remains a foreign policy goal as defined in numerous decisions adopted by the BiH institutions, should peace and stability be further endangered the use of my executive mandate in concert with additional efforts of the international community to safeguard the GFAP must not be out of the question.

Note: Additional details on 5+2 progress and other matters are provided in the Annex to this report.

## **II. Political update**

### **A. General political environment**

4. The ongoing political crisis began during the previous reporting period, as early as February this year when the RS National Assembly reacted to reports of my predecessor's imminent departure and my appointment as High Representative by adopting a conclusion calling on international community representatives to prevent the appointment of a new High Representative. This was followed in March by the RS National Assembly's adoption of conclusions calling for Federation political actors to engage with the RS to discuss the future of BiH, warning that should such talks not materialize, "talks on peaceful dissolution should be launched." On 19 April, SNSD launched an online video campaign promoting and attempting to normalize the concept of the "peaceful dissolution" of BiH.<sup>[vii]</sup>
5. Soon thereafter, SNSD submitted to the RSNA its *Initiative for talks and dialogue between the RS and FBiH, as well as three constituent peoples of Serbs, Croats and Bosniaks on a possible solution for BiH*, and announced the formation of a negotiating team in this regard. The initiative imposed the party's erroneous interpretations of the GFAP, including the assertion that BiH "was created with the consent of the RS and the Federation and the three constituent peoples and it is only with the consent of both Entities and constituent peoples that it can and does exist" and that the State of BiH "has limited and derived sovereignty" reflected in its foreign relations. The initiative "demanded" that the Federation institutions and other two constituent peoples engage in political discussions on a "return to the fundamental principles of the Dayton Peace Agreement," making it clear that if the demand were ignored or the outcome is not to the RS authorities' satisfaction, the RS "reserves the right to finally decide on its future status."
6. On 26 April, the PIC SB (minus the Russian Federation) issued a statement condemning "political discourse centered around the so-called 'peaceful dissolution' of BiH, not least the concrete steps by RS representatives and State-level officeholders towards dissolution negotiations, including establishing negotiating teams and advocating for the breakup of the country via an online advertising campaign." The PIC SB also reiterated its commitment to BiH's territorial integrity and fundamental structure, correctly underlining that under the GFAP "the entities have no right to secede from BiH and exist legally only by virtue of the BiH Constitution."<sup>[viii]</sup>
7. Nonetheless, in May the RSNA adopted the SNSD initiative and rejected the earlier call from my predecessor for the RSNA to revoke decorations it awarded in 2016 to convicted war criminals, including wartime RS leader Radovan Karadžić. The RSNA further concluded that it rejects the Bonn Powers, claiming the High Representative has no mandate to use them or to dictate what the RS should do.
8. The situation escalated just prior to my arrival, with the RS response to the 22 July decision of my predecessor amending the BiH Criminal Code to sanction the denial of genocide and war crimes and the glorification of war criminals. This decision was deemed necessary in part due to the RS authorities' increasingly vocal denial of the Srebrenica genocide and the glorification of convicted war criminals. This includes openly praising former RS military commander Ratko Mladić as a hero following the 8 June confirmation of the verdict against him for genocide, crimes against humanity and violations of the laws or customs of war, and the release of an RS Government-sponsored commission report denying the Srebrenica genocide, having repealed in 2018 the 2004 RS Government report that at least acknowledged the scope of that tragic event.
9. RS officials rejected the decision and announced they would not participate in decision-making in key State-level institutions until it is annulled. Subsequently, RS political party leaders, including the opposition, met and signed conclusions rejecting *all* decisions imposed by the High Representative, also claiming that my appointment as High Representative did not follow the necessary procedure and rejecting any cooperation with me. Finally, they concluded that there

were no conditions for the further work of RS representatives in the BiH Presidency, the BiH Parliamentary Assembly and BiH Council of Ministers.

10. Soon thereafter, on 30 July, the RSNA endorsed the conclusions signed by the party leaders and amended the RS Criminal Code to sanction acts that disparage the name or reputation of the RS or the Serb people. The RSNA also adopted the *Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendment to the BiH Criminal Code*, rejecting my predecessor's decision, determining that State-level legislation shall not be applicable on RS territory and obliging the RS authorities not to cooperate with the competent BiH authorities attempting to implement amended BiH Criminal Code.
11. The adoption of this Law represents not only a challenge by the RS authorities to the authority and powers of the High Representative under the GFAP, but also a rejection of the application of State-level legislation on RS territory, overstepping entity competence to directly challenge the authority and sovereignty of the State and its institutions. In this light, I recall the September 2015 *Special Report of the High Representative to the Secretary General of the UN on the Implementation of the GFAP in BiH*<sup>[ix]</sup> submitted by my predecessor following adoption by the RS National Assembly of a decision to conduct a referendum in the RS on the validity of the legislation on the BiH Court and BiH Prosecutor's Office, the applicability of decisions of those institutions on RS territory, and on the authorities and decisions of the High Representative. Although such a referendum was averted, many issues raised in that report concerning the gravity of violations of RS obligations and commitments under Annex 4 and Annex 10 to the GFAP apply to the current situation.
12. On 31 July, the PIC SB (minus the Russian Federation) condemned the escalation of tensions, including "steps taken by the RS National Assembly that would undermine stability and impede effective government." The PIC SB also underlined that "revisionism, glorification of convicted war criminals, and denial of well-documented and established facts about war-time events including genocide is unacceptable" and contradicts the most basic European values and undermines the stability of the country and the welfare and prosperity of BiH's citizens."<sup>[x]</sup>
13. Nonetheless, following the RSNA's endorsement of the conclusions of the RS party leaders on non-participation in State-level decision-making, the strategy evolved from non-participation to actively blocking decisions, particularly by Mr. Dodik in the BiH Presidency. Among other things, key appointments to vital institutions such as the BiH Central Bank – crucial to maintaining monetary and fiscal stability in BiH – were blocked. That particular crisis could have been addressed through an extension of the mandate of the outgoing Central Bank Governing Board, the members of which fortunately determined among themselves to continue working until replaced in accordance with the principle of continuity of office. My office fully and publicly supported this pragmatic approach. In August, Mr. Dodik even prevented the BiH Presidency from engaging the BiH Armed Forces to assist in firefighting efforts in the southern part of the country. In the BiH Parliamentary Assembly, adoption of the 2021 Budget of the BiH Institutions and International Obligations remains stalled.
14. Only in late September was there a brief respite from the blockade, when ministers in the BiH Council of Ministers from the RS participated in an urgent session to adopt, in lieu of an adopted budget, the decision on temporary financing of the BiH institutions and international obligations for Q4 2021. Prior to this, I had sent a letter to the Chair and Deputy Chairs of the BiH Council of Ministers urging them to act on that matter. Mr. Dodik had previously stated that the RS would assume salary payments for Serbs from the RS in the BiH institutions, indicating an intention to block temporary financing. Such a step would have been incompatible with the existing constitutional and legal framework.

15. In the same period, following a decision of the BiH Constitutional Court assessing certain provisions of the RS *Law on Forests* as incompatible with the BiH Constitution, Mr. Dodik announced that the RS would withdraw from existing transfer agreements on the BiH Armed Forces, the BiH Indirect Taxation Authority (ITA) and the BiH High Judicial and Prosecutorial Council (HJPC), reestablish its own army and VAT collection, bar the BiH judicial institutions from acting on RS territory, and reject all High Representative decisions. Mr. Dodik said the aim is a return to the so-called “original Dayton” or to otherwise declare independence “within six months.”<sup>[xi]</sup> Following a meeting of RS ruling coalition partners in early October, Mr. Dodik announced that the RSNA would hold a session to discuss these issues by early November at the latest.
16. On 8 October, Mr. Dodik announced that teams of experts would draft a new RS Constitution and define new entity structures for defense, justice, and financial matters. This would be a rejection of all “illegally imposed decisions and laws of the High Representative,” with Dodik claiming approximately 140 decisions imposed by High Representative, including the establishment of the RS Council of Peoples – an institution established specifically to protect the vital national interests of the constituent peoples in RS – the State Investigation and Protection Agency (SIPA) and the Intelligence-Security Agency (OSA). Mr. Dodik reiterated that the RSNA would withdraw previous RS consent to the formation of the BiH Armed Forces, the ITA and the HJPC, and adopt regulations and conclusions related to address the legal vacuums created by the withdrawal. He asserted that the 2022 RS budget would cover the salaries for all Serbs who withdraw from the BiH institutions.
17. If followed through, such actions would establish a new RS constitutional and legal framework legally binding for the RS authorities and RS citizens, with the RS essentially opting out of the BiH constitutional order and from the Dayton framework. This would have the practical effect of RS secession without the entity formally proclaiming independence. This is a severe attack on the GFAP and undermines the prospects for lasting peace and reconciliation.
18. This situation could be particularly dangerous in the State law enforcement sector, which could be called upon to assert State jurisdiction, which could result in clashes with RS law enforcement. The BiH Criminal Code envisages the criminalization of the offenses of “Illegal Creation of Military Forces” (Article 162a) and “Attack on the Constitutional Order” (Article 156). Article 162a prescribes criminal responsibility for anyone who violates the BiH Law on Defense or the BiH Law on Service in the Armed Forces by organizing or mobilizing a military force on the territory of BiH. It is also a crime to join such forces.
19. The return of competences allegedly usurped by the State has been a longstanding claim by the RS authorities, who assert that all competencies transferred to or assumed by the State institutions were so achieved through High Representative decisions, BiH Constitutional Court decisions, and other decisions of the State-level institutions. This claim follows the RS authorities’ unilateral interpretation of the BiH constitutional framework based on the so-called “original Dayton” in which the State institutions should return most competences they assumed, even though it was within their constitutional prerogative to do so.
20. Contrary to this claim, the BiH Constitution foresaw a dynamic process, offering constitutional modalities for “additional responsibilities to be assumed by the State and additional institutions” to be established by the State. For example, Article III.5. of Annex 4 of the “Original Dayton” provides several modalities for “additional state responsibilities” and provides that “additional institutions may be established to carry out such responsibilities.”<sup>[xii]</sup> The fact that the institutions created are at the center of the discussions on integration with the EU (HJPC, Transco, ITA) and NATO (defense) highlights the importance of the establishment of these institutions and their functionality.

21. The State has also assumed additional responsibilities, such as those necessary to preserve the sovereignty, territorial integrity, political independence and international character of BiH, including the State Border Service, OSA, the State Court and the Prosecutor's Office. Again, these assumptions are fully in line with article III,5,(a) of the Constitution.
22. Many of the contested competencies – including statistics, procurement, the HJPC, the Border Service, electricity transmission, judicial institutions (the State Court and Prosecutor's Office) – have been subject to RS challenges before the BiH Constitutional Court, which determined that they are constitutional. Each decision highlights the fact that the Court does not adhere to the assertion that the competencies listed in article III,1 are the only State competences.
23. The RS authorities and Mr. Dodik particularly also use the phrase “original Dayton” as the basis for rejecting the decisions and authority of the High Representative, final and binding decisions of the BiH Constitutional Court. However, having in mind that the GFAP as initialed in Dayton and signed in Paris in 1995 entails the BiH Constitutional Court in its current composition and stipulates that its decisions are final and binding, includes an agreement on the need for a High Representative as the final authority in theater regarding interpretation of civilian implementation of the GFAP and calls for full cooperation with the High Representative, Mr. Dodik gives the impression that he intends to substitute the real Dayton GFAP – with its constitutional structure of BiH as a single sovereign state comprising two entities – with an empty shell incapable of acting and lacking any competences, and call into question the legitimacy of BiH as a subject of international law. Intensive work is necessary to come to a discussion and common understanding of the Dayton framework.
24. While the RS authorities frame their stances as reactions to what they claim are injustices against the RS, these developments are in fact part of a longstanding policy aimed at undermining the functionality of the State-level institutions to establish the self-fulfilling prophecy that BiH is dysfunctional. This gives them license, they believe, to assert the need to reclaim competences from the State – in line with adopted RS policies dating to 2016 and specifically 2019 when the RSNA adopted an action plan for the return of transferred constitutional responsibilities to the RS – and, failing that, to declare independence. It is a never-ending story well-documented in numerous previous reports. Unfortunately, Mr. Dodik has so far not responded to any invitation to discuss the subject. I extend this invitation to all other elected actors.
25. Since late September, a developing corruption scandal allegedly in which COVID-19 patients were reportedly treated with industrial oxygen rather than medical oxygen has shocked the public in the RS. The filing of criminal charges against government and public health officials and a large public protest in the de facto RS capital of Banja Luka[xiii] [xiv] accompanied the most recent developments, including the escalation in rhetoric and an acceleration of efforts to block the State and constitutional, legislative, and administrative actions in the RS aimed at weakening the State of BiH.
26. Although the RS opposition parties have frequently gone along with the ruling coalition on matters framed as being in the national interests of Serbs and the RS, they have on occasion warned that certain undertakings – such as the proposed talks on “peaceful dissolution” and the current course of actions aimed at withdrawing from transfer agreements – endanger the GFAP and thus all achievements of the RS to date. Having in mind that the RS authorities base their positions on willful misinterpretations of the GFAP, such an assessment is prudent. As the entities exist only by virtue of the BiH Constitution, such political adventurism aimed at destabilizing or undoing BiH – even if it is only rhetoric – is therefore as dangerous to the RS as much as it is to everyone else.

27. The withdrawal of the RS from the BiH constitutional order would have several immediate implications, not least on the Brčko District – presently the sole area of progress under the 5+2 Agenda – having in mind that the District is held in condominium between the RS and the Federation and operates within the constitutional order under the BiH institutions, including those from which the RS has announced its withdrawal, not least the ITA on which the District relies for revenues. Under these circumstances, the Arbitral Tribunal for Dispute over the Inter-Entity Boundary in Brčko Area would have to assess whether such actions by the RS constitute serious non-compliance with the terms of the Final Award.
28. As a reminder, in the only comparable crisis since Dayton, in 2001 the Croat National Assembly, an umbrella organization of Croat political parties, attempted to declare self-rule in Croat-majority areas of the Federation, and were only prevented from doing so by a decisive response from the international community. A lack of response to the current situation would endanger the GFAP, while instability in BiH would have wider regional implications. I am prepared to fulfill my responsibilities as part of such a response.
29. While we hear frequent statements that Mr. Dodik is not interested in conflict and that nothing is worth the blood of Serbs, Bosniaks, and Croats, I would be remiss if I did not express my concern over reports of attempts to establish and upgrade the military capabilities of the RS. While it remains to be seen, I would like to be able to take the aforementioned statements as more than just oratory.
30. On 14 October, the PIC SB (minus the Russian Federation) issued a statement reaffirming the importance of functional institutions, including the BiH Armed Forces, rejecting destabilizing and divisive rhetoric and calling for a cessation of threats of secession. The PIC SB underlined its support for the sovereignty, territorial integrity and constitutional order of BiH.
31. The prospects for further division and conflict are very real. I strongly encourage the Secretary General and the members of the Security Council to take notice.
32. The RS policies have borne fruit, as the key BiH institutions were effectively paralyzed well before the announced blockade in the summer. This is evident from the lack of an adopted 2021 State-level budget by Q4 2021 and the lowest level of legislative output by the BiH Council of Ministers and the BiH Parliamentary Assembly than during any previous mandate of those institutions.
33. In the Federation, the Government from the 2014-2018 mandate remains in place, with no new Government appointed following the 2018 General Elections. The Government is also reduced from 16 to 13 ministers, due to the deaths of two and the resignation of another. There is no agreement on appointing the new Government or the missing ministers due to the stated position of the main Croat party, the Croatian Democratic Union of BiH (HDZ BiH), not to approve any appointments until an agreement on electoral reform primarily between the party and the main Bosniak party, Party of Democratic Action (SDA) is reached. In any democracy, implementing the will of the electorate by forming the authorities should be a priority.
34. The divergent positions of the two parties have not changed since the previous report. In June, in an open letter to HDZ President Dragan Čović, SDA President Bakir Izetbegović said that the negotiation process between their respective parties had been exhausted and called on other Federation parties and the IC to contribute to the process.<sup>[xv]</sup> In July, Čović, who on numerous occasions had stated that an agreement on electoral reform was imminent, warned that without changes to the Election Law the 2022 General Elections could not be held, implying a possible boycott.<sup>[xvi]</sup>
35. In the context of electoral reform, following a lengthy dispute over in the BiH Parliamentary

Assembly over the composition of the Inter-Agency Working Group (IAWG) for electoral reform – mainly due to SNSD and HDZ BiH's opposition to the participation of the BiH Central Election Commission (CEC) – the IAWG was finally constituted in May. It consists of 14 members: eight appointed from the BiH House of Representatives, three from the BiH House of Peoples, and three from the BiH Council of Ministers (Council of Ministers). The IAWG held eight sessions, the latest on 23 July, thus far without concrete results.

36. Even on the crucial issue of technical improvements to restore integrity and public trust in the electoral process – including those recommended by Office of Democratic Institutions and Human Rights (ODIHR) following the 2018 General Elections and earlier recommendations of the Council of Europe's Venice Commission and the Group of States against Corruption (GRECO) – there are disagreements over the composition of electoral boards, the introduction of new technologies, closed versus open lists, preferential quotas, voter registration, early voting, mail voting, and a host of other issues.
37. In parallel, the BiH CEC launched its own process of public consultations over its draft initiative of amendments to the Election Law, after which in mid-September it submitted a consolidated proposal to the BiH Parliamentary Assembly and other relevant stakeholders, including the IC.
38. Limited constitutional and electoral reforms are necessary to implement the Sejdić/Finci and other election related judgements of the European Court of Human Rights (ECtHR), which remain unimplemented, some for more than a decade. In the process of electoral reform, it would be necessary to take into account decisions of the BiH Constitutional Court, the OSCE/ODIHR, GRECO and Venice Commission recommendations on election integrity. Authorities should refrain from taking legislative or political steps that would make the implementation of the ECtHR judgements more challenging or lead to further divisions. To achieve this will require continued dialogue and a greater deal of flexibility on the part of all parties engaged on the issue, rather than the usual all or nothing approach.
39. There have been a few positive developments. On 5 June, RS authorities removed the Orthodox church constructed on the property of Bosniak returnee Fata Orlović's family home in the village of Konjević Polje, near Bratunac. The demolition of the church marks the end of a decades-long legal battle undertaken by the Orlović family and others, which culminated in the October 2019 with the European Court of Human Rights' decision ordering the removal of the church from the private property within 6 months.
40. Mutual visits among several recently elected mayors in BiH were also encouraging. In May, City of Sarajevo Mayor Benjamina Karić-Londrc (Others, Social Democratic Party-SDP) visited her counterpart in Mostar, Mayor Mario Kordić (Croat, HDZ BiH). In June, she paid an official visit to Banja Luka Mayor Draško Stanivuković (Serb, Party of Democratic Progress), the first visit of a Sarajevo mayor to Banja Luka in the postwar period. Subsequently, Stanivuković visited Tuzla and met with Mayor Jasmin Imamović (Bosniak, SDP). Despite significant political disparities, the message from all visits emphasized "turning a new page," underlining that cooperation and support among local communities are possible while setting aside political or ethnic differences to the benefit of all citizens and for a better future for BiH.
41. In August, the Herzegovina-Neretva Canton (HNC) Assembly adopted long-outstanding amendments to the HNC Constitution affirming the constituent status of Serb people, Serbian and Bosnian as official languages, and Cyrillic as an official script in the canton. This represents a first step to implement the 2018 judgment of the Federation Constitutional Court, which found that several provisions of the constitutions of HNC, Posavina Canton and West Herzegovina cantons did not conform to the Federation Constitution in that regard and ordered the assemblies to amend them accordingly. While no doubt a positive development, the



amendments adopted in HNC do not incorporate all aspects of the Constitutional Court judgment, and the authorities should work towards full implementation. Necessary changes remain pending in the other two cantons.

## **B. Decisions of the High Representative during the reporting period**

42. On 22 July, High Representative Valentin Inzko issued the *Decision Enacting the Law on Amendment to the Criminal Code of Bosnia and Herzegovina*. The Decision is published in the BiH Official Gazette on 27 July and entered into force on 28 July.
43. Notwithstanding the circumstances of the decision or reactions to it, the decision aims to protect all peoples and communities in BiH and all victims and survivors of genocide and war crime and is not limited to genocide and war crimes committed during the war in BiH. The amendments to the Criminal Code apply to any genocide or war crime finally adjudicated pursuant to the Charter of the International Military Tribunal appended to the London Agreement of 8 August 1945, the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Court, or by a court in Bosnia and Herzegovina.
44. Moreover, the amendments to the Criminal Code are in line with the European Union Council's 28 November 2008 *Framework decision on combating certain forms and expressions of racism and xenophobia by means of criminal law* (2008/913/JHA) obliging EU member states to criminalize such behavior. All Western Balkan countries adopted legislation in line with the framework decision, except for BiH, which most urgently needed it.
45. There have been many misinterpretations and misleading comments concerning the amendments that suggest they apply only to single specific crime, or that they accuse or otherwise target one specific peoples, which is absolutely not the case. I encourage the BiH Parliament to organize public discussion and debate on these amendments in cooperation with civil society and consider further amendments if necessary. A broad and open dialogue on the past and perspectives in civil society is also essential for reconciliation.

## **C. Challenges to the General Framework Agreement for Peace**

46. As noted, there have constant challenges to the GFAP throughout the reporting period, with numerous threats to BiH's territorial integrity either via secession or dissolution, most frequently from Serb member of the BiH Presidency/SNSD President Milorad Dodik,[xvii] [xviii] [xix] [xx] [xxi] who also continued to deny the Srebrenica genocide[xxii] [xxiii] and glorify convicted war criminals.[xxiv] Dodik's party SNSD launched an online advertising campaign promoting "peaceful dissolution." [xxv] Such rhetoric is destabilizing as it seeps into society and poisons relations between communities.

*The RS Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendments to the BiH Criminal Code*

47. The *Law on Non-Applicability of the Decision of the High Representative Enacting the Law on Amendments to the BiH Criminal Code* specifically targets the entire decision in question, without formally linking to past or future decisions of the High Representative. However, the explanation appended to the Law makes it clear that the rationale behind it goes beyond this specific decision to generally question the mandate and authority of the High Representative to enact legislation, again reflecting longstanding policies of the RS, in this case challenging the mandate and the authority of the High Representative stemming from Annex 10 to the GFAP and relevant resolutions of the UN Security Council. The status and powers of the High Representative are matters arising under the GFAP and international law, and therefore do not fall within the purview of the entities. The entities cannot adopt legal acts on these matters.

Concretely, the RSNA's adoption of the Law constitutes a violation of the entity's commitments and obligations arising from Annex 10 to the GFAP and UNSC Resolutions under Chapter VII.

48. Moreover, in stipulating that the competent bodies of the RS shall not cooperate with the competent bodies of BiH, the Law seeks to prevent the application of the Amendments to the BiH Criminal Code themselves within the territory of RS. The BiH Criminal Code as amended by the High Representative decision is applicable on the entire territory of BiH and an entity may not adopt legal acts aimed at preventing the application of State-level legislation in its territory. Such measures do not fall under the purview of the entities but rather within the responsibilities of the BiH Parliamentary Assembly, and any dispute concerning the compatibility of the Amendments with the BiH Constitution is exclusively the jurisdiction of the BiH Constitutional Court. The adopted RS Law demonstrates the intention to attack the constitutional order and sovereignty of the State of BiH. Under the BiH Constitution, the entities are required to fully comply with the BiH Constitution and decisions of the BiH institutions, including State laws and decisions of the State judicial institutions, which are applicable on the entire territory of BiH.
49. Although the Bosniak Caucus in the RS Council of Peoples initiated the request for the protection of vital national interest of Bosniak people over the adoption of the Law, in late September the RS Constitutional Court rejected the appeal and the Law has entered into force.

### **III. European Union military mission in Bosnia and Herzegovina**

50. The present turbulent environment in BiH highlights EUFOR-ALTHEA's vital role in safeguarding peace and security, which enables my office and other international organizations to fulfill our respective mandates. EUFOR's high visibility is also a reassurance to many citizens who, now more than ever, feel safer with an international military presence.
51. While EUFOR's non-executive mandate (Supporting the Armed Forces of BiH collective and combined training) is vital, it is equally important that EUFOR retain its executive mandate and the capacity to deploy troops at short notice if the situation were to dictate it. It must be noted that the international military presence has reduced over the years from tens of thousands of soldiers to under one thousand in EUFOR today in no small part due to the defense reforms and establishment of a single Armed Forces of BiH that enabled the country to assume the lead role in preserving peace and security. Should the Armed Force of BiH splinter into two or more armies, the level of international military presence would require reassessment.

### **IV. Future of the Office of the High Representative**

52. The Office of the High Representative's (OHR) total budget amount has been "frozen" at the same level since 2017. The term "frozen budget" is misleading, as it does not account for annually increasing costs, which in turn reduce available revenues each year. There are also the issues of nonpayers and those donors that have reduced their contributions. As a result, operating revenues reduce year by year by approximately 7 percent.
53. While the organization has faced substantial reductions to budgets and staff over time, the remaining tasks have not decreased proportionally. As the budgets decrease, it becomes exponentially more difficult to further reduce costs without cutting essential expertise. Staff reductions pose a greater risk for an organization such as OHR, which relies on its human capital, institutional memory, expertise, and longstanding contact networks.
54. Moreover, given the current dynamic and the challenges ahead, the OHR must retain effective capacity to move the country forward and eventually graduate from international supervision. To achieve this, resources must follow the mandate and the organization must be supported politically and financially, with policy considerations regarding BiH being the basis for assessing

the future resource requirements of the OHR. To achieve the goals of the organization, consideration should be given to a temporary increase in the budget. Under ideal circumstances beyond the present crisis, the OHR must execute its ad-hoc mission and be able to act to meet the demands of a more proactive approach in fulfilling the 5+2 Agenda in due course.

## V. Reporting schedule

55. I hereby submit this report in accordance with the requirement in UN Security Council Resolution 1031 (1995) for the High Representative to submit regular reports to the Secretary-General for transmission to the Security Council. Should the Secretary-General or any member of the Council require further information, I am at their disposal. The next regular report is scheduled for April 2022.

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### Notes:

[i] "By the end of this month, in the first week of next month at the latest, we will come with an extensive agenda that will lead to the withdrawal of consent from the army, indirect taxes that according to the BiH Constitution belong to Republika Srpska, even borders, – that is, border management on the territory of Republika Srpska belongs to the RS, not BiH....Then we will repeal and ban the work of SIPA in the Republika Srpska, the work of the OSA in the RS " *Milorad Dodik press conference, 7 October 2021*

Link:

<https://www.klix.ba/vijesti/bih/dodik-do-kraja-mjeseca-u-skupstini-o-povlacenju-saglasnosti-za-oruzane-snage-bih-granice-poreze/211007133>

[ii] "I will demand that all decisions imposed by the High Representative be rejected, that we return to the original Dayton and, if that is not the case, return to the [RS National] Assembly in the next six months and declare independence." *Milorad Dodik press conference, 25 September 2021*

Link:

<https://avaz.ba/vijesti/bih/684135/dodik-ako-se-ne-vratimo-na-izvorni-dejton-za-sest-mjeseci-proglasit-cemo-nezavisnost-rs>

[iii] "We promoted a program called 'Independent Srpska within the Dayton BiH.'" *Milorad Dodik press conference, 12 October 2021*

Link:

<https://balkans.aljazeera.net/news/balkan/2021/10/12/dodik-opet-protiv-bih-sud-i-tuzilastvo-sipa-i-osa-bice-zabranjeni-u-rs-u>

[iv]

<https://www.ohr.int/hrs-decision-on-enacting-the-law-on-amendment-to-the-criminal-code-of-bosnia-and-herzegovina/>

[v]

<https://www.narodnaskupstinars.net/?q=la/akti/usvojeni-zakoni/zakon-o-neprijemljenju-odluke-visokog-predstavnik-kojom-se-donosi-zakon-o-dopuni-krivi%C4%8Dnog-zakona-bosne-i-hercegovine>

[vi] "If necessary, we will defend ourselves with our forces. If they come to say that NATO will intervene, we will ask for the help of our friends who told us clearly and loudly that they never let their friends down." *Milorad Dodik press conference, 14 October 2021*

Link: [https://www.b92.net/eng/news/region.php?yyyy=2021&mm=10&dd=14&nav\\_id=111979](https://www.b92.net/eng/news/region.php?yyyy=2021&mm=10&dd=14&nav_id=111979)

[vii] "Dodik on the Peaceful Dissolution of BiH" *SNSD YouTube page, 15 April 2021*

Link: <https://www.youtube.com/watch?v=Shyao7TZ-DQ>

[viii] <https://www.ohr.int/statement-by-the-peace-implementation-council-steering-board-2/>

[ix]

<https://www.ohr.int/special-report-of-the-high-representative-to-the-secretary-general-of-the-un-on-the-implementation-of-the-gfap-in-bih/>

[x] <https://www.ohr.int/statement-by-the-peace-implementation-council-steering-board-3/>

[xi] "I will demand that all decisions imposed by the High Representatives are revoked, that we return to the original Dayton, and if that does not happen, to go to the (RS) National Assembly in six months and declare independence." *Milorad Dodik press conference, 25 October 2021*

<https://ba.n1info.com/english/news/bosniak-presidency-member-calls-serb-counterpart-to-go-back-to-constructive-work/>

[xii] Article III,5 of the BiH Constitution:

### **Additional Responsibilities**

a. Bosnia and Herzegovina shall assume responsibility for such other matters as are agreed by the Entities; are provided for in Annexes 5 through 8 to the General Framework Agreement; or are necessary to preserve the sovereignty, territorial integrity, political independence, and international personality of Bosnia and Herzegovina, in accordance with the division of responsibilities between the institutions of Bosnia and Herzegovina. Additional institutions may be established as necessary to carry out such responsibilities.

b. Within six months of the entry into force of this Constitution, the Entities shall begin negotiations with a view to including in the responsibilities of the institutions of Bosnia and Herzegovina other matters, including utilization of energy resources and cooperative economic projects.

[xiii] "Thousands Protest Corruption in Bosnia's Serbian Entity" *Radio Free Europe/Radio Liberty, 2 October 2021*

Link: <https://www.rferl.org/a/bosnia-serb-corruption-covid-/31489647.html>

[xiv] "Protesters go against Dodik after COVID-19 patients treated with industrial oxygen" *Euractiv, 4 October 2021*

[https://www.euractiv.com/section/politics/short\\_news/protesters-go-against-dodik-after-covid-19-patients-treated-with-industrial-oxygen/](https://www.euractiv.com/section/politics/short_news/protesters-go-against-dodik-after-covid-19-patients-treated-with-industrial-oxygen/)

[xv] "Izetbegović wrote to Čović" *Klix, 18 June 2021*

Link:

<https://www.klix.ba/vijesti/bih/izetbegovic-pisao-covicu-pregovaracki-format-izmedju-sda-i-hdz-a-je-iscrpio-svoje-mogucnosti/210618150>

[xvi] "Existing discrimination in our system must finally be eliminated, and equality ensured and protected. This is a critical component of holding the 2022 elections." *HDZ BiH President Dragan Čović open letter, 15 September 2021*

Link: <https://vijesti.ba/clanak/546375/dragan-covic-uputio-pismo-diplomatskim-predstavnicima-u-bih>

[xvii] "And I think that RS should be determined, after all this that has been announced, that they tried to impose, to resolutely stick to its path to independence." *Milorad Dodik press conference, 23 July 2021*

Link:

<https://www.index.hr/vijesti/clanak/dodik-zaprijetio-odcjepljenjem-republike-srpske-od-bih-inzko-je-srbomrzac/2292537.aspx>

[xviii] "We must finally say that it is not possible to live together, that we must separate and simply find a way to exist as separate subjectivities that would live in peace. I think that the only solution is for us to separate, create three independent states there in Bosnia and Herzegovina and exist within the international law. And that means higher degree of peace guarantee if we are separate states than this way. This is an unclear situation which

accumulates certain dissatisfaction and thereby eventually generates some activities." *Milorad Dodik, Prva TV Interview, 4 August 2021*

Link: <https://www.youtube.com/watch?v=3Labf8uFbsA>

[xix] "I think that peaceful dissolution is the best thing that can happen here. To create separate independent states and prevent those states by international law and international obligations from going to war against each other. I will not abandon this idea, because I have been in it from the start. So, I have believed the RS should be an independent state since 9 January. *Milorad Dodik, RTRS "Pecat," 9 September 2021*

Link: <https://www.youtube.com/watch?v=W5KGKzK5L5c>

[xx] "I will demand that all decisions imposed by the High Representative be rejected, that we return to the original Dayton and, if that is not the case, return to the [RS National] Assembly in the next six months and let us declare independence." *Milorad Dodik, press conference in Kozarska Dubica, 25 September 2021*

Link:

<https://www.klix.ba/vijesti/bih/dodik-ako-ne-bude-povratka-na-izvorni-dejton-za-sest-mjeseci-proglasit-cemo-nezavisnost-rs-a/210925057>

[xxi] "I think we should reject this [High Representative decision], ban the activities of the BiH Court and Prosecutor's Office in the territory of Republika Srpska, reject its jurisdiction, defend Republika Srpska through our security system, from attempts by anyone to act here. Reject SIPA's activities in the territory of Republika Srpska, reject any possibility of anyone being prosecuted by the authorities of Bosnia-Herzegovina, and separate the RS judiciary from the system that has existed so far. And I think that RS should be determined, after all this that has been announced, that they tried to impose, to resolutely stick to its path to independence." *Milorad Dodik press conference, 23 July 2021*

Link:

<https://www.index.hr/vijesti/clanak/dodik-zaprijetio-odcjepljenjem-republike-srpske-od-bih-inzko-je-srbomrzac/2292537.aspx>

[xxii] The report that I have already received, and read – consisting of 1.200 pages, says one thing without a doubt, and it is that the word genocide may not be put before Srebrenica, because it never happened. *Milorad Dodik, RTRS, 22 July 2021*

Link: <https://www.youtube.com/watch?v=-cXfZfcy2R4>

[xxiii] "I would absolutely choose to go to prison rather than admit something that did not happen, and that is the alleged genocide in Srebrenica." *Milorad Dodik, Vijesti.ba, 12 August 2021*

Link: <https://vijesti.ba/clanak/543185/dodik-opet-negirao-genocid-prije-bih-u-zatvor-nego-priznao>

[xxiv] "I think General Mladić only entered directly into legend, because the Serbian people know that without his command and his spirit that he kept in the army, there would be much more suffering of our people." *Milorad Dodik press conference, 8 June 2021*

Link: [https://www.youtube.com/watch?v=\\_OUiNscJKnM&t=46s](https://www.youtube.com/watch?v=_OUiNscJKnM&t=46s)

[xxv] "SNSD Launches Advertising Campaign on Peaceful Dissolution in BiH" *Oslobodjenje, 19 April 2021*

Link:

<https://www.oslobodjenje.ba/vijesti/bih/video-snsd-pokrenuo-kampanju-o-mirnom-razlaza-u-bih-ova-drzava-je-nemo-guca-to-vidi-i-eu-649197>

## **I. Five objectives and two conditions for the closure of the Office of the High Representative**

### **1. Progress on objectives**

1. When the PIC SB in 2008 established the five objectives and two conditions necessary the closure of my office, it was expected that the leaders of BiH would assume responsibility for fulfilling the “5+2 Agenda” as a demonstration of their political maturity and commitment to moving BiH forward towards its self-declared objective of Euro-Atlantic integration. As well-documented in previous reports, this has not been the case, and it is time to consider the greater involvement of the IC, including my Office, in moving the agenda forward. For now, apart from continued progress in the Brčko District, the authorities have made no effort to implement the 5+2 Agenda and, in many cases, have actively worked against it. In line with the developments described in the main part of this report, the prospects for further progress soon are grim.

### **2. State and defense property**

2. My Office continues to monitor significant developments related to the issue of State and Defense Property, and to call for the adoption of comprehensive State-level legislation on State Property. Such legislation should be fully in compliance with the legal principles established by the BiH Constitution and the relevant decisions of the BiH Constitutional Court. Unfortunately, no substantial progress towards the “Acceptable and Sustainable Resolution” of this issue, as defined by the 5+2 Agenda, was achieved during the reporting period.
3. Instead, there have been numerous developments and media reports related to the issue of the planned and ongoing “joint infrastructural projects” between the RS and Serbia, including the construction of hydropower plants on the Drina River and the construction of an airport near the town of Trebinje. As elaborated in the previous report to the UNSC, these projects are linked to the issue of State Property, as the relevant public property and natural resources may be subject to the ban on the disposal of State Property.
4. The BiH Constitutional Court has issued several decisions explicitly clarifying that the State of BiH, specifically the BiH Parliamentary Assembly, has the exclusive competence to regulate the issue of State Property, which includes assets of the former Socialist Federal Republic of Yugoslavia and the former Socialist Republic of BiH, but also agricultural land and public goods such as rivers and lakes.
5. In May, on the occasion of the announced ceremony to lay the cornerstone for the construction of the first of three planned hydropower plants, then High Representative Inzko wrote to the Prime Ministers of the RS and Serbia reiterating that – notwithstanding the undeniable benefits of foreign direct investment – the pending constitutional dispute must be taken into account prior to proceeding, and all undertaken or planned activities must be fully consistent with the BiH Constitution and decisions of the BiH Constitutional Court. In principle, clarifying and resolving relevant legal issues must be the precondition for proper planning and implementation of capital investments and infrastructural projects. The rule of law obliges all parties and stakeholders to respect and implement all laws in force in BiH, as well as rulings of the BiH Constitutional Court. Despite this correspondence, as well as concerns expressed by experts, politicians and civil society, the cornerstone ceremony proceeded as announced.
6. In July, the BiH Constitutional Court issued a partial Decision on Admissibility and Merits in a case related to the construction of the three hydropower plants (Case No. U-16/20). The application was submitted by 24 members of the BiH House of Representatives, and asserts – based on the existing jurisprudence of the BiH Constitutional Court – that the RS violated the constitutional competences of the State of BiH, since the concession decisions and related

contracts issued and concluded by the RS Government constitute acts of disposal of State Property. In its decision, the Court recognized the existence of a constitutional dispute and ordered the BiH Concession Commission, in its capacity as the Joint Concessions Commission, to resolve the disputes between BiH and the RS arising in connection with the award of concessions, no later than three months from the date of delivery of the decision.

7. In addition to the decisions concerning State Property, on 23 September the BiH Constitutional Court rendered another ruling in a case reviewing the constitutionality of specific provisions of the RS *Law on Forests*. The Court established that the contested provisions that read “owned by the Republic” are not in conformity with the BiH Constitution, as forests and forestland represent public goods as defined under State Property belonging to the State of BiH and exclusively within the jurisdiction of the BiH Parliamentary Assembly. To avoid calling into question application of the entire Law, potentially jeopardizing the management and care of forests as public goods and important natural resources, the decision did not repeal the unconstitutional provisions. Instead, the Court ordered the RS National Assembly to harmonize the relevant provisions with the BiH Constitution within six months from the delivery of the decision.

### **3. Brčko District**

8. The Brčko District Supervisor and the OHR continued to promote in the District good governance, anti-corruption measures, infrastructure development, and private sector growth to advance BiH’s uniquely integrated, multi-ethnic community towards achieving the objectives of the Final Award.
9. Acknowledgement of the need for positive changes was demonstrated by the District through implementation of reform-related laws: the Law on Associations and Foundations, intended to ensure transparent, equitable and merit-based support to the NGO sector; and the Law on the Protection of Rights of National Minorities, which harmonizes the Brčko District’s legislative framework with EU standards, and follows the recent establishment of the Brčko District Council of National Minorities.
10. The Brčko District Assembly also established the Office for Prevention of Corruption and Coordination of Activities in Combating Corruption (Anti-Corruption Office) foreseen in legislation adopted in 2018. As the precursor for its efficient and international standards-based operations, in September the Brčko District Government signed a memorandum of understanding on anti-corruption cooperation with the US Embassy’s Bureau of International Narcotics and Law Enforcement Affairs. Correspondingly, the Brčko District Assembly passed the internal organization guidelines for the commission overseeing the implementation of the Law on Prevention of Conflict of Interest with the commission becoming operational in mid-October.
11. Encouraged by the Supervisor’s continuous support, in April the Brčko District Assembly revoked amendments to Law on Police adopted last year, which are viewed as political interference in professional policing. Moreover, the prior practice of Assembly delegates adopting legislation in urgent procedure, thus forgoing any transparency, which in fact led to the latter problem, was discontinued by the new Assembly that took office in December 2020. Transparency of the legislative practice was further strengthened by the appointment this spring of opposition delegates to the Assembly’s commission.
12. In September, the District Financial Directorate took on the task to improve financial oversight of State-owned enterprises through an IMF technical assistance program launched with political backing from OHR. This initiative compliments the principles of fiscal discipline and

transparency embedded in the new Law on Budget that was applied to the 2022 draft budget that was put in to process by the Assembly on 6 October. This will allow for the budget to be adopted before the end of the year, a deadline not met for a decade.

13. The District authorities also completed the legal documentations to transfer the District's ownership rights over the electricity transmission facilities to the BiH Electricity Transmission Company in compliance with the State-level law. This will also ensure the continued maintenance and upgrade of this key electricity transmission infrastructure by the State and thus contribute to the security of electricity supply in Brčko. In October, the Assembly initiated the process to adopt a new electricity law for Brčko, which will align the District's law fully with the State law as well as create the framework for laws on renewable energy and energy efficiency to be brought online in the District in 2022.
14. Transportation infrastructure projects have been prioritized by the District authorities as a stimulus to business development. In June, the Brčko District leadership hosted a meeting between BiH Minister of Communication and Transport and the Croatian Minister of Maritime Affairs, Transport, and Infrastructure, in which short and long-term solutions for the vital Brčko-Gunja Bridge connecting Brčko District with Gunja in Croatia, were agreed. In the short term, the existing bridge will be refurbished, with work to begin in the spring of 2022, while long-term plans foresee the construction of a new bridge by the end of the decade that would alleviate heavy traffic in the Brčko town center.
15. In the same month, Brčko established a working group to finalize by mid-December routes of highways that will run east-west and north-south and intersect in the District. And in August, the implementation of the Brčko Port modernization project was launched. The collective result of these connectivity initiatives is that in the next few years Brčko District will become a regional transportation hub for BiH to access the Western Balkan and EU markets.
16. The pull of the infrastructure development augmented by Brčko's public-private initiatives to improve the business environment is already generating results. In May, the Assembly approved the disposal of the District property through a special agreement with the "Studen Global SEE" Limited, a branch of the Austrian-based "Studen Group," for the construction of an economic business zone expected to result in 220 jobs over a period of five years, and an investment of Euro 10 million. The economic business zone will facilitate turn-key investment thus compressing the startup time of new private sector initiatives in the District.
17. While the blockade of the State-level institutions by RS representatives did not heavily impact the performance of the executive and legislative authority in the Brčko District, the requirement of the BiH Council of Ministers to approve international financial components of two infrastructure projects means launch dates set for Q4 2021 and Q2 2022 may be delayed.
18. Brčko District was excluded from receiving an allocation of financial assistance through the International Monetary Fund's distribution in August of Special Drawing Rights (SDR) to BiH, aimed at mitigating the economic consequences of COVID-19 pandemic, as this would have required a decision by State-level institutions. In September, the Brčko District Assembly adopted a resolution calling for, among other things, the establishment of a systematic mechanism for the District to always be included along with the entities in budget support assistance provided by international financial institutions, which would be in keeping with the entities' requirements to comply with the Final Award.
19. While progress is being made towards reforms, the Brčko District Supervisor's continued engagement, and the support of OHR expert assistance in cooperation with the international community remain crucial to seeing the reforms through to achieve the sustainable status mandated by the Final Award.



#### 4. Fiscal sustainability

20. My office continued to follow, analyze, and report on developments and legislative actions relevant to fiscal sustainability, including monitoring and reporting to the PIC SB on the activities of the Governing Board of the BiH ITA, in which a member of my staff is the only international community representative, and the BiH Fiscal Council. The trends in both institutions continue to raise concerns over the ability of governments at all levels, particularly the State level, to ensure the unimpeded functioning of institutions and the discharge of their constitutional and legal obligations.
21. The BiH Fiscal Council held only one session. The fact that the Global Framework of Fiscal Balance and Policies for 2022-2024 is still pending puts timely preparation and adoption of a State budget for 2022 at risk. The BiH Fiscal Council is not only affected by the RS blockade but has also become an instrument of the RS policy of undermining the functionality of the State by depriving the State institutions of funds needed to fully discharge their constitutional and legal responsibilities. Tactics include, among others, delaying the budget process at the State level, capping the financing of the State institutions disproportionately low compared to their obligations, and depriving the State of a share in international financial assistance to BiH.
22. My office continued to follow developments related to the single indirect tax system and its institutional structure, including activities of the ITA Governing Board. The Board held three regular and two telephone sessions, resulting in the adoption of the quarterly indirect tax revenue allocation coefficients until the end of the year and the inter-entity debt settlement for the first half of 2021. Despite this higher degree of compliance with Board regulations, other longstanding issues remained unresolved. One example is the outstanding BAM 30 million debt of the ITA to the RS based on a 2015 BiH Court decision.
23. The attempted debt enforcement by the RS from ITA public revenue accounts caused financial damage to all indirect tax revenue beneficiaries, including both entities and Brčko District as well as recipients of value-added tax refunds and customs insurance depositors, prompting the BiH Court to suspend it until June 2022 to allow time to identify an alternative enforcement source. No solution has been identified thus far. Another longstanding dispute concerns the manner of distribution of the accumulated road toll revenue reserves (over BAM 150 million) intended for highway and road construction.
24. The failure to address those and similar issues affects the unimpeded functioning of and confidence in the single indirect tax system and its State-level institutional structure. By extension, this provides a pretext for the RS to challenge the State's competence for indirect taxation and advocate the return of this competence to the entities. If pursued, such action would roll back one of the most important reforms of the last 25 years, which safeguards the macroeconomic and thus the overall political stability of BiH.
25. My office continued to follow other developments relevant to the fiscal stability of BiH, including those related to the BiH Central Bank, the guardian of BiH's monetary and financial sector stability.
26. For the first time since the establishment of the BiH Central Bank in 1997, the BiH Presidency failed to appoint new members of the BiH Central Bank Governing Council before the expiration of the current members' mandates on 11 August. On 10 August, the outgoing Council unanimously opined on the necessity to ensure the unimpeded ability of the BiH Central Bank to discharge its legal role, duties and functions pending the appointment of a new composition of the Council. The position of the Council is based on the legal principle of continuity of office embedded in BiH legislation. On 31 August, BiH Presidency Chair Zeljko Komšić (DF) called a session of the BiH Presidency to address the pending appointment. However, as BiH Presidency

member Milorad Dodik – acting pursuant to the RSNA conclusions of 30 July – voted against the proposed appointment decision, there was no requisite consensus for its adoption.

27. I continue to inform international partners of all developments on this matter. I have also publicly commended the BiH Central Bank for carrying out its constitutional and legal obligations in the best interests of the entire country and underlined that preserving its continuity and independence from politics is vital to BiH's overall stability and development.

## **5. Issues related to the rule of law**

28. The rule of law, and the perception thereof, cannot be improved without fundamental changes in the way the integrity of judicial functionaries is maintained. In this regard, in June the BiH Council of Ministers adopted amendments to the Law on the BiH HJPC, which aim to address issues of conflict of interest, disciplinary responsibility, and the legality and transparency of decisions on appointments. The amendments are pending consideration by the BiH Parliamentary Assembly.
29. In July, the HJPC Disciplinary Panel pronounced a sanction of demotion against the BiH Chief Prosecutor for failing to implement the HJPC decision introducing a random allocation system for cases, and for failing to ensure staff vetting as envisaged by law. In September, the second instance panel confirmed the sanction, which can still be appealed to the full HJPC. Meanwhile, the BiH Chief Prosecutor remains in the position.
30. In August, the HJPC's Disciplinary Panel pronounced a public admonition as a sanction against the BiH State Court President for social contact with the BiH Intelligence-Security Agency Director while the Director was on trial before the same court, and for providing false information in applying for his position. In October, he was found not guilty on the appeal in October.
31. The Federation legislation establishing a special prosecutor and court department for fighting corruption and organized crime, adopted in 2014, remains unimplemented.

## *War crimes cases*

32. On 8 June, the Appeals Chamber of the International Residual Mechanism for International Tribunals (IRMCT) confirmed the earlier Trial Judgement of the International Criminal Tribunal for the former Yugoslavia (ICTY) against former RS military commander Ratko Mladić for genocide, crimes against humanity and violations of the laws or customs of war, including terrorizing the civilian population of Sarajevo for nearly four years and killing more than 8,000 Muslim men and boys in Srebrenica in 1995. The Chamber also reaffirmed the previously imposed sentence of imprisonment for life. Shortly thereafter, a commission established by the RS Government issued a report claiming that crimes committed by RS forces in Srebrenica did not amount to genocide.
33. On 30 June, following the ICTY Appeals Chamber order for retrial, the IRMCT convicted former head of the State Security Service of the Republic of Serbia Jovica Stanišić and his subordinate Franko Simatović for aiding and abetting murder as a violation of the laws or customs of war and a crime against humanity, and crimes of deportation, forcible transfer, and persecution, as crimes against humanity, committed by Serb forces following the takeover of the town of Bosanski Šamac in April 1992, and sentenced each to 12 years of imprisonment. The ruling marks the first conviction of state officials of neighboring Serbia for crimes committed on BiH territory. In September, both the prosecution and the defense filed appeals.
34. Highlighting the need to closely monitor war crimes prosecutions, the Banja Luka District

Prosecutor's Office earlier this year suspended several cases related to the destruction of six mosques in the city in 1993. The cases had been transferred from the BiH Prosecutor's Office to the RS, in accordance with the BiH War Crimes Strategy. However, instead of proceeding more efficiently, which is the aim of such transfers, the cases were suspended citing expiration of the 15-year statute of limitations under the Criminal Code of the Socialist Federal Republic of Yugoslavia, the law in force as of 1993. In July, the State-level judiciary took the cases back for processing by the BiH Prosecutor's Office and the BiH State Court.

35. In August, former RS military regiment commander and head of the RS Veterans' Association Milomir Savčić, indicted by the BiH Prosecutor's Office for genocide in Srebrenica and ordered into custody until the end of his trial, escaped BiH jurisdiction, illustrating the need for international cooperation in prosecuting war crimes. Such cases usually concern suspects absconding to a neighboring state – in this case, likely to Serbia, although Serbian officials have denied this – where the suspect also has citizenship, and which will not extradite its citizens for war crimes cases. While agreements exist that should ensure prosecution by such states, there have been no legal consequences in several known cases in recent years.
36. Soon afterwards, in September, a former senior Federation police official was arrested in Serbia, accused of war crimes against prisoners of war allegedly committed from 1993 to 1994 in Goražde in BiH. As the latest of a string of arrests of BiH nationals by Serbia for crimes allegedly committed in BiH, the BiH Ministry of Foreign Affairs issued a recommendation for people in the BiH defense from 1992 to 1995 not to travel to Serbia.

#### *Denial of war crimes*

37. On 28 July, the amendments to the BiH Criminal Code criminalizing denial of genocide and all other violations of international humanitarian law that were adjudicated by international tribunals or courts in BiH entered into force. The amendments also criminalize the glorification of adjudicated war criminals. Both genocide denial and the glorification of convicted war criminals have become all too frequent in BiH in recent years, with devastating effects on society. The amendments were enacted by former High Representative Inzko as a countermeasure to this unfortunate trend, after unsuccessful attempts by the BiH Parliamentary Assembly to adopt similar legislation. The amendments are in line with the 2008 EU Framework Decision (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia.

## **II. State-level institutions of Bosnia and Herzegovina**

#### *BiH Presidency*

38. The current political crisis in BiH is most visible in the BiH Presidency, which resembles anything but a collective head of state. The divergent positions of the member of the BiH Presidency Milorad Dodik on one side and two other members Željko Komšić (Democratic Front-DF) and Šefik Džaferović (SDA) on the other persist on all State-level matters and have intensified following High Representative Inzko's decision enacting amendments to the BiH Criminal Code. Since then, Dodik has blocked the work and/or decision-making of the Presidency either by not attending sessions or by attending and voting against all agenda items.
39. Tensions increased following the address of Komšić in his capacity as BiH Presidency Chair (which he assumed from Dodik in July as part of the regular rotation) before the UN General Assembly (UNGA) in September. In his address, Komšić focused on the political crises in BiH as he saw them, as well as what he claimed are poor neighborly relations with Serbia and Croatia, instability caused by threats to territorial integrity, and electoral reforms aimed at promoting ethnic rather than civic principles and called on the UN to protect human rights in BiH. Dodik had attempted to prevent Komšić from attending and addressing the UNGA, claiming his

appearance could only be in a private capacity as it was not approved by the BiH Presidency. Dodik not only accused Komšić of abusing his position to present a false narrative of the situation in BiH; he also blamed the UN Secretary General (UN SG) and accused him of laying the foundation for the dissolution of BiH by allowing Komšić to appear.[i]

40. Dodik similarly criticized the participation of BiH Ambassador to the UN Sven Alkalaj's remarks in a session of the UN Security Council in May and the participation of BiH Minister of Foreign Affairs Bisera Turković (SDA) in a Council session in June. Following Ambassador Alkalaj's remarks, in which he congratulated the work of the IRMCT and criticized Serbia for harboring convicted war criminals, Dodik instructed all BiH Ambassadors of Serb ethnicity to coordinate their activities solely with the Serb member of the BiH Presidency and to ignore instructions of the BiH Ministry of Foreign Affairs.
41. Unsurprisingly, the BiH Presidency held only two regular sessions, one in July and the second in late August, while there were several unreported urgent and extraordinary sessions. Even throughout the political crisis the Presidency maintained regular protocol activities, receiving official diplomatic delegations, and making some official visits abroad.
42. In June, the Presidency adopted the 2021 Budget of the BiH Institutions and International Obligations, with a conclusion requesting the BiH Parliamentary Assembly to allocate funds for salary increases for members of State-level police agencies and the BiH Armed Forces. However, the budget remains stalled in the BiH Parliamentary Assembly. There is also no indication regarding the preparation and submission of the 2022 Budget, which should be adopted by the end of the year.

#### *BiH Council of Ministers*

43. Until the end of July, the BiH Council of Ministers had met regularly, holding nine regular and nine extraordinary sessions during the reporting period. However, no ordinary sessions have been held since 22 July, making the Council of Ministers hostage to RS policy of non-attendance and non-participation in State-level decision-making. The Council of Ministers adopted only one new law and amendments to the Law on the HJPC, the latter a requirement stemming from the EU Commission's "Opinion on Bosnia and Herzegovina's EU membership application".
44. The Council of Ministers reached no agreement on launching the procedure for the selection of the new BiH ITA Director, also reaching no agreement on decisions concerning the protection of domestic products, visa requirements, and other issues. While previous convocation of the Council of Ministers adopted decisions declaring 11 July – the anniversary of the 1995 Srebrenica genocide – as a Day of Mourning in BiH, the Council of Ministers could not agree and issued no such declaration.
45. In June, in the absence of a 2021 State-level budget, the Council of Ministers adopted the decision on temporary financing for Q3 2021. With that decision expiring on 30 September and indications that the RS would take over payments for Serbs from the RS in the BiH institutions combined with continuous blockade of the Council of Ministers, on 24 September I addressed a letter to the Chair and Deputy Chairs of the Council of Ministers and urged them to adopt a decision for Q4 2021 without delay. In an urgent session on 28 September, the Council of Ministers unanimously adopted that decision, ensuring uninterrupted financing of the BiH institutions through the end of the year.
46. In October, BiH Minister of Defense Sifet Podžić (Bosniak, DF) postponed a joint military exercise between the BiH and Serbian Armed Forces shortly before it was scheduled to commence at Manjača Mountain near Banja Luka. In postponing the exercise, Podžić cited as justification the recent surge in COVID-19 cases and the low vaccination rate in the BiH Armed Forces, and the

non-adoption of the 2021 BiH Budget and corresponding Defense Budget and resulting lack of funds for the exercise.

47. BiH Presidency member Milorad Dodik criticized the move and claimed only the BiH Presidency could postpone an exercise it had authorized and called for Podžić's removal. The same day, BiH Council of Ministers Chair Zoran Tegeltija (SNSD) issued a decision on Podžić's removal. Such a decision must be approved by both houses of the BiH Parliamentary Assembly, which is extremely unlikely.
48. At the request of the BiH Armed Forces Joint Staff Commander, Podžić postponed the exercise but did not cancel it, which is in line with the BiH Presidency decision to organize such a joint exercise "in 2021" if it is rescheduled this year.

#### *BiH Parliamentary Assembly*

49. The BiH Parliamentary Assembly has been most affected by the consecutive political crises in the country since its inauguration following the 2018 General Elections. This is reflected in its poor functionality and inability to exercise its legislative functions, one of the most important competences envisaged in the BiH Constitution. The situation has been greatly exacerbated by the ongoing boycott or blockade of decision-making in the State institutions pursued by the RS-based parties.
50. During the reporting period, the BiH House of Representatives held only five regular sessions, the latest on 20 September, without the participation of RS-based representatives. The BiH House of Peoples held only three regular sessions, the latest in early July. Legislative output remains poor, with only one new law and two amendments to existing laws adopted. The BiH House of Peoples rejected three laws previously adopted by the BiH House of Representatives and the House of Representatives rejected five laws proposed by party representatives.
51. Agendas in both houses were largely taken up by legislative initiatives from various representatives with little chance for adoption, in part an effort to fill the void left by a lack of legislative proposals from the BiH Council of Ministers. In late April, this led to a motion of non-confidence in the Council of Ministers proposed by opposition parties, which the BiH House of Representatives rejected.
52. In April, the House of Representatives reappointed Vlado Rogić as a Croat member to the BiH CEC. In July, the BiH House of Representatives adopted the 2021 State-level budget proposed by the BiH Presidency but has to date not taken it up in the second reading. The BiH House of Peoples has yet to consider the issue.

### **III. Federation of Bosnia and Herzegovina**

53. The Federation Government from the 2014-2018 mandate remains in place, in a caretaker capacity, with no new Government appointed following the 2018 General Elections. Since last year, Federation Prime Minister Fadil Novalić (SDA) and Deputy Prime Minister/Minister of Finance Jelka Miličević (HDZ BiH) have been under criminal indictment for their role in the controversial procurement of 100 ventilators early in the COVID-19 pandemic. Novalić is accused of abuse of power, influence peddling, money laundering and document forgery, while Miličević is accused of negligence. Both have pleaded not guilty.
54. Nevertheless, the Federation Government meets regularly, holding 22 regular sessions. Both houses of the Federation Parliament met infrequently, with the House of Representatives holding just five regular sessions and the House of Peoples only three. In terms of legislative output, only three new laws and three amendments to existing laws were adopted.

55. The Collegiums of both houses remain incomplete, with the House of Representatives having failed to appoint a new deputy speaker from the ranks of the Serb people following a reshuffling of the parliamentary majority in June 2019, while the House of Peoples has not appointed the deputy speaker from the ranks of the Serb people since its inaugural session following the 2018 General Elections.

*Appointment of members of Federation Securities Commission*

56. In July and September, respectively, the Federation House of Representatives and House of Peoples adopted the decision on appointment of members to the Federation Securities Commission, which is responsible for regulating capital markets in the Federation, thus finalizing the appointments. Federation President Marinko Čavara (HDZ BiH), with the consent of Vice Presidents Milan Dunović (DF) and Melika Mahmutbegović (SDA) submitted the proposal to the Federation Parliament in late May.
57. Due to the expiration of members' mandates and retirements, the Securities Commission functioned with only three of five members since 2018, and since November 2019 with only two members, leaving the Commission with no quorum for decision-making. The House of Peoples rejected an earlier proposal on appointments in early May. When the House of Peoples adopted the proposal in September, SDP delegates criticized the proposed candidates as not meeting the required professional qualifications and being politically affiliated.

*Federation Constitutional Court Appointments Still Outstanding*

58. The continued failure of the Federation President in agreement with the Vice Presidents to appoint four missing judges to the Federation Constitutional Court severely hampers the ability of the Court and its Vital National Interest (VNI) Panel to exercise its constitutional responsibilities. The Court operates with only five sitting judges out of nine required under the Federation Constitution. All five sitting judges must be present for quorum to exist, and the adoption of decisions requires unanimity. The situation means that the VNI Panel is completely unable to function, as it presently has only four sitting judges, which is insufficient for quorum.
59. The process of filling the vacant positions in the Court has been ongoing since the retirement of two judges in 2015 and 2016, and the retirement of another two in June 2019. In October 2019, the HJPC submitted to the Federation President and Vice Presidents candidates for three missing judges, pursuant to the vacancy published in February 2019, and submitted proposed candidates for the fourth position in February 2021. Federation President Marinko Čavara (HDZ BiH) has refused to proceed with the nominations and this process remains stalled. Should the Federation President and Vice Presidents finally decide to forward the nominations to the Federation Parliament, all four judges could be appointed, and the Federation Constitutional Court returned to full functionality.

*Failure to adopt Law on Forestry*

60. No progress was made in adopting the Federation *Law on Forestry*, which the Federation has been without since 2009. At the time, the Federation Government attempted to address the issue through a decree, but in 2010 the Federation Constitutional Court determined that the Government had no constitutional or legal basis to regulate the field of forestry by decree.
61. In September, the Federation Government urged the Federation Parliament to discuss the draft *Law on Forestry* adopted by the Government in 2017. The draft was on the agenda of a session of the Federation House of Representatives in late September but withdrawn.

**IV. Republika Srpska**

62. SNSD continues to lead the ruling coalition in the RS. While opposition parties have increased their numbers and seats in the RS National Assembly, they are hardly able to mount a coordinated defense against decisions or policies they oppose and are most often forced to abstain or agree on issues framed by the ruling coalition as matters of Serb national unity.
63. During the reporting period, the RS Government held 24 sessions and the RSNA held three regular and four special sessions.
64. In May, Serb member of the BiH Presidency Milorad Dodik used the commemoration of Serb, Jewish and Roma victims of the WWII concentration camp at Jasenovac in Croatia to directly attack me, implying a link between the Nazis of WWII and myself.<sup>[ii]</sup> Dodik also continued attacks against critical voices in the RS, including in civil society. He again used negative stereotypes of Germans to attack a researcher working in Banja Luka for a chapter of the Friedrich Ebert Stiftung, calling her a “quisling” and a spy for the German Federal Intelligence Service.<sup>[iii]</sup> Such comments could provoke violence against her, members of the international community, NGOs, independent media, and opposition leaders.
65. The RS authorities continued their policy of harmonization with the legislative and educational system of neighboring Serbia, thereby further disengaging from BiH legal system. On 15 September a new joint holiday, the Day of National Unity and Flag, was introduced with the declared aim to preserve the Serb identity and demonstrate unity.
66. The same day, the RSNA and the Serbian Parliament simultaneously adopted similar form of the Law on Protection, Preservation and Use of Language of the Serb People and the Cyrillic Script, which foresees the language of the Serb People and the Cyrillic script as intangible cultural heritage that provides a sense of identity and continuity of the Serb people. The Law provides the possibility of establishing tax and other administrative relief for economic and other entities that use the Cyrillic script in their business. Additionally, the Law provides that cultural and other events financed by public funds must have their logo and name indicated in Cyrillic script or, if they already use Latin script, they are obliged to add Cyrillic.
67. Both Bosniak and Croat caucuses in the RSNA raised vital national interest, claiming that the Law is discriminatory and contrary to the BiH and the RS Constitution. Following the failure of the Joint Commission of the RS Council of Peoples and the RS National Assembly to reach agreement over the Law, it would belong to the Vital Interest Panel of the RS Constitutional Court to decide on the admissibility and/or merits of the vital national interest.
68. According to the jurisprudence of the BiH Constitutional Court, the collective equality of constituent peoples prohibits providing any special privilege for one or two out of three constituent peoples. Furthermore, the Court has consistently pointed out that all constituent peoples and Others must be granted equal rights emphasizing that principle of collective equality of constituent peoples imposes an obligation on the entities not to discriminate, primarily, against those constituent peoples who are a minority in that particular entity. There is not only a clear constitutional obligation not to violate individual rights in a discriminatory manner, but also a constitutional obligation of non-discrimination in terms of a group right.

#### *Srebrenica*

69. Following the rejection of their appeals during the repeated local elections in Srebrenica in February, Bosniak political representatives of the coalition “My Address Srebrenica” accepted the mandates won and agreed to participate in authority formation. Although the boycott of the partly repeated elections resulted in the weakened Bosniak position in the municipal assembly, the Serb majority initially agreed to form the authorities through an even balance of ethnic representation.

70. However, the agreement did not last long, with Mr. Dodik's open call for the Serb majority in Srebrenica to remove the appointed Bosniak Speaker Ćamil Duraković for his public engagement on the reporting of a case of genocide denial in the RS under the new provisions of the BiH Criminal Code, which the majority did in September. Though another Bosniak agreed to be appointed as Speaker, all other Bosniak representatives left the session in protest. The balance of ethnic representation in Srebrenica, established as a practice in the previous period, continues to be challenged by the local Serb representatives.

## **V. Public security and law enforcement, including intelligence reform**

71. The practice of improper political interference in operational policing has not diminished during the reporting period.
72. In April, the Brčko District Assembly repealed the damaging October 2020 changes to the Brčko District police legislation assessed, inter alia, not to be in line with the Brčko District Statute and undermining the principles of transparency, professionalization, and open and merit-based appointments for the police chief, deputy police chief, and members of the independent board. However, the appointments of the police chief and deputy police chief remain in effect pending further legal procedure that will test the commitment of the Brčko District authorities to the rule of law. It also appears that the problematic appointments of independent board members are in effect. A Brčko District working group has substantially completed major revisions to the District police legislation.
73. In June, the Zenica-Doboj Canton Assembly adopted changes to the Law on Internal Affairs, assessed in March by my predecessor and the U.S. Ambassador to inappropriately circumvent the existing protocols and regulations and assert direct political control over the Zenica-Doboj police system. On 12 May, my predecessor further warned the Zenica-Doboj Canton Minister of Interior that related administrative actions represent unacceptable political interference in professional policing and the disrespect for the law. The adoption in June of the changes to the Law sparked widespread condemnation from the security establishment in the Federation and saw significant civil society opposition on social media. The Zenica-Doboj Canton Government appointed a new police commissioner on 16 September.
74. In June and September, respectively, West Herzegovina Canton adopted changes to the Law on Internal Affairs and the Law on Police Officials. On 14 September, Tuzla Canton adopted changes to the Law on Police Officials.
75. In September, the Tuzla Canton Assembly dismissed all serving members of the Independent Board in charge of the selection and dismissal of the police director and overseeing performance. Opposition political parties in the Tuzla Canton Assembly claimed the Law on Internal Affairs only foresees the dismissal of individual members under the provisions listed in the Law. Subsequently, the Tuzla Canton Assembly issued a public vacancy announcement for members of the new Independent Board.
76. In May, a Herzegovina-Neretva Canton Assembly working body issued a vacancy announcement for members of a new Independent Board. In August, the Assembly body conducting the vacancy procedure interviewed qualifying candidates. The process has meanwhile stalled. Herzegovina-Neretva Canton has not had a functioning Independent Board since March 2017 and has not had a duly appointed police commissioner since October 2018.
77. In July, the Federation Government, serving in technical mandate since 2018, decided not to appoint a new Federation Police Director based on the list of proposed candidates prepared by the Independent Board in April 2019. The mandate of the previous director expired in January 2019. The deputy police director, appointed in February 2019, has been replacing the police



director in the interim.

78. The Posavina Canton authorities failed to insert a required provision in the relevant police law required by the letter of the President of the Security Council of 2007 on police denied certification by the former United Nations International Police Task Force, despite repeated assurances from canton authorities.

#### *Intelligence*

79. The BiH Council of Ministers has not yet appointed the next Director-General of the Intelligence-Security Agency of BiH. The mandate of the current Director-General, who continues to serve in technical mandate, expired in November 2019.

## **VI. Economy**

#### *Economic trends*

80. Available economic indicators for BiH are mostly positive when compared to last year. Still, they do not necessarily reflect the level of economic and social development in the country as there are areas in which statistical progress is due to last year's low base for comparison or external factors.
81. The IMF projects BiH's 2021 economic growth at 3.5 percent, while the World Bank's projection 2.8 percent, the lowest in the region. Compared to the corresponding period last year, industrial production in Q1 increased by 7.3 percent, while exports and imports in the period January-July increased by 31.1 percent and 20.4 percent, respectively. Foreign direct investments in Q1 increased by 14.6 percent, amounting to BAM 271.8 million. In June, there were 393,781 unemployed persons (down by 6.5 percent) and 820,979 employed persons (up by 2.1 percent). The registered unemployment rate was 32.4 percent. The number of pensioners was 696,276 persons, showing a continued increase. The banking sector is assessed as generally stable and liquid. Its cumulative profit in the first half of 2021 was BAM 215 million, a 50.8 percent increase, indicating the recovery of the banks after the outbreak of the COVID-19 pandemic. At the end of August, Moody's and Standard & Poor's affirmed their credit ratings for BiH and their stable outlook.
82. The average net salary of BAM 997 and average pension of BAM 421 remain significantly below the average price of the basket of goods of over BAM 2,000 for a four-member family, suggesting that even those with steady incomes struggle to make ends meet. Pensioners, a majority of whom receive the minimum pensions (BAM 207 in the RS and BAM 382 in the Federation), are particularly vulnerable.
83. In August, the *European price comparison program* noted that BiH's GDP per capita last year was 33 percent of the EU average. The UNICEF and UNDP survey on "Social Impacts of COVID-19 in BiH" shows that 48.5 percent of households saw declines in their financial situation, with 12 percent experiencing significant difficulties. This situation has forced 20 percent of households with children and 23 percent of families from vulnerable groups to borrow to meet basic needs. The Foundation for Social Inclusion in BiH calculated that 800,000-900,000 people in BiH live at the absolute poverty line, with every sixth citizen being in the extreme poverty category.
84. The economic situation and its discouraging outlook are likely to accelerate the already worrisome population outflow. According to research by BiH experts on the Impact of the COVID-19 Pandemic on Population Migration, the 2019 data show that ca. 450,000 BiH citizens reside in EU countries and that the exodus of youth along with the increased number of

pensioners further complicates the economic situation in BiH. Of all EU countries, BiH diaspora is most numerous in Germany, with 53,880 BiH emigrating there in the last seven years. In April, the German Bureau of Statistics noted that the number of BiH citizens residing in Germany at the end of 2020 was 211,335.

#### *Fiscal issues*

85. There were no delays in debt servicing and regular monthly budget payments in the reporting period. This was foremost due to the continued growth of indirect tax revenue, which accounts for most budget revenue for all levels of government, as well as continued borrowing and international financial disbursements, including the IMF Special Drawing Rights (SDR) allocation and the EU Macro-Financial Assistance (MFA).
86. On 2 August, the IMF Board of Directors approved a general SDR allocation to its member states equivalent to USD 650 billion, intended to support their ability to mitigate the consequences of the COVID-19 pandemic. The IMF transferred BiH's share of BAM 602.5 million to the BiH Central Bank on 23 August, but in-country distribution was stalled until 27 August, when the BiH Central Bank received the payment instructions from the BiH and entity ministers of finance to distribute in line with the June 2016 Memorandum of Understanding concluded by the relevant authorities in BiH in connection with the then Extended Fund Facility program with the IMF. Accordingly, the Federation received two-thirds and the RS one-third of the total, with neither the State nor Brčko District receiving a share.
87. On 8 October, BiH received the first tranche of its EUR 250 million share in the EU MFA intended for 10 enlargement and neighborhood countries in the context of the COVID-19 pandemic. EUR 125 million was distributed within the country, with 61.5 percent to the Federation, 37.5 percent to the RS and 1 percent to Brčko District. Again, the State did not benefit from this assistance.
88. The RS blockage stalled the parliamentary approval of the 2021 State-level budget and the adoption of a decision by the BiH Council of Ministers on temporary financing for Q4 2021. The BiH Fiscal Council has thus far failed to adopt the Global Framework of Fiscal Balance and Policies for 2022-2024 as the basis for the budget process at the State level. These circumstances risk the uninterrupted financing – and, by extension, the unimpeded functioning – of 75 State institutions, including the Armed Forces, law enforcement agencies, tax authorities, and the judiciary.
89. The State institutions regularly face uncertain financing, which is contrary to the obligation in the BiH Constitution for the responsible authorities to ensure financing of the State institutions so they may fulfill their constitutional responsibilities uninterrupted. This compounds the systemic unreliability and inadequacy of financing of the State institutions, directly undermining the functionality of the State and its key functions, with widespread consequences. Extending temporary financing is only a stop-gap measure, which restricts the amount of funds available to the State institutions and their scope of operations. It also makes them vulnerable to political calculations. Thus, the problem of financing of the State institutions requires a sustainable solution.
90. The Federation maintained its budget stability during the reporting period. Moreover, the *Consolidated Budget Execution Report for the Period January – June 2021* notes a positive financial result of BAM 328.5 million in total for all levels of government in the Federation. This is attributable to the sustained growth of indirect tax revenues, continued domestic borrowing and the recent IMF SDR disbursement.
91. Conversely, the RS continues to operate in a fragile financial environment, financing almost one quarter of its regular budgetary needs through borrowing. In April 2021, due to the financial

crisis and lack of a new arrangement between BiH and the IMF, the RS Government decided to raise money to finance repayment of its previous debt and budget deficit through the sale of five-year bonds on the London Stock Exchange. According to the RS Ministry of Finance, as of March the RS debt was BAM 5.85 billion, 50.4 percent of the RS GDP.

*Additional developments relevant to the GFAP*

92. BiH took no action to rectify its non-compliance with the EU requirements in the energy sector, due to which the country has been subject to sanctions by the Ministerial Council of the Energy Community – an international organization comprised of the EU and the neighboring countries from Southeast Europe – since 2015.
93. The uninterrupted financing of the BiH Public Railways Corporation in 2021 is mostly due to the Federation meeting its payment obligations towards the Corporation, although only since April. The RS financial transfers to the Corporation in the first eight months were symbolic. The uncertainty of financing arising from the dependence on entity financial transfers poses a risk to the sustainability of the Corporation, which is the only State-level corporation established under Annex 9 of the GFAP. It also jeopardizes the only mechanism for a harmonized approach to the reconstruction of railway routes, which would benefit the railway companies of both entities, all citizens of BiH, and the country's economy.
94. Although the mandates of all members of the management and the management board of the BiH Electricity Transmission Company (TRANSCO) expired more than three years ago, the appointment of new members remains stalled as the RS has taken no action to elect and nominate its members. The Federation Government nominated its members to the TRANSCO management board in December of last year, but the BiH Council of Ministers subsequently decided not to proceed with the appointments until the RS submits its nominees. Further delaying these appointments could complicate decision-making on issues of relevance for the Company and electricity transmission in general. It could also provide a pretext for renewed challenges to the Company, which was established by the BiH Law Establishing the Electricity Transmission Company adopted by the BiH Parliamentary Assembly in 2004, following the June 2003 agreement of the entities on the establishment of a transmission company and independent system operator, concluded based on Article III (5) (b) of the BiH Constitution.
95. On a positive side, another challenge to TRANSCO – which stemmed from a lawsuit by the Mostar-based power company claiming compensation for the transmission facilities invested in TRANSCO at the time of its establishment in 2006 – was dismissed by the 16 August decision of the Higher Commercial Court of Banja Luka in TRANSCO's favor. The lawsuit posed a financial threat to TRANSCO as well as a threat to the structure of its capital and the entity shares. The lawsuit if successful, would also have opened the door to challenging other State institutions established on a similar basis.

**VII. Return of refugees and displaced persons**

96. The appearance of a 20-meter-long mural of former RS military commander and convicted war criminal Ratko Mladić saluting passersby in Foca in April is among a string of concerning developments in Foca and elsewhere in eastern RS that has put Bosniak returnee communities on edge. The Mladić mural joins an earlier mural of WWII Chetnik leader Draža Mihailović, whom several Serb paramilitary units in the 1992-1995 war in BiH emulated. A third mural appeared, of the late Milorad Pelemiš, wartime commander of the RS 10<sup>th</sup> Sabotage Detachment, known for its involvement in the execution of war prisoners during the July 1995 Srebrenica genocide. In the same vein, the Bijeljina Town Assembly supported the erection of a bust of Mihailović at one of the smaller central town squares.

97. In the period before the Srebrenica genocide commemoration, the Serb nationalist association Eastern Alternative announced they would mark 11 July as the day of the liberation of Srebrenica under the slogan “Hail Krivaja,” a reference to the codename of the RS Army’s offensive to take Srebrenica.
98. On 23 June, the BiH Constitutional Court passed a decision accepting the appeal from a group of Bosniak parents from the community of Konjević Polje, supporting their claim that Bosniak students were discriminated in the RS education system regarding the use of Bosnian language in the school administration. This decision nullifies an earlier decision by the RS Supreme Court, which dismissed the claims of discrimination. The parents initiated the legal battle in 2013, after which several other returnee communities protested over the same issue.
99. The 23 June decision is yet to be implemented, and the start of the new school year brought the same issue to the surface in another Bosniak returnee community of Liplje near Zvornik, where parents resorted to protest as there had been no changes in the meantime. Although students are taught the national group of subjects (mother tongue, religious classes, geography, and history) according to the curriculum in the Federation, the RS Ministry of Education continues to refer to the RS Constitution as the grounds for their refusal to use the term “Bosnian” in official school records and will only use the term “language of the Bosniak people.” The BiH Constitutional Court has previously ruled that constituent peoples are entitled to call their language the name of their choosing.
100. In Glamoč municipality in the Federation Canton 10, Serb students are not offered the national group of subjects. Students in two other municipalities with significant Serb returnee populations in Canton 10 are offered the national group of subjects, with books in Cyrillic script provided by the RS Ministry of Education, several requests from parents to introduce the national group of subjects in Glamoč have been rejected due to an “insufficient” number of students, although one-third of primary students are of Serb nationality.
101. Political leaders throughout BiH must recall their existing obligations under Annex 7 of the GFAP to “undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”

## **VIII. Media developments**

102. The media landscape in BiH remains burdened by political influence, biased reporting, poor implementation of media-related legislation, and non-transparent ownership and financing. During the reporting period covered, the BiH Union of Journalists’ free media helpline registered 34 cases of violations of journalists’ rights, including several death threats. Most cases were characterized as defamation, political pressure and verbal threats.

### *Digitalization*

103. The process of broadcast digitalization in BiH began in 2009 with the adoption of the relevant strategy by the BiH Council of Ministers. Based on the Law on Communications, BiH’s international obligations and the adopted Strategy for Transition to DVB-T2, the Communication Regulatory Agency (CRA) has prepared a radio spectrum and migration plan that theoretically allows digital broadcasting of programs for all licensed stations (ca. 230). The plan allows for the construction of six multiplex digital platform networks. According to international agreements and the BiH Law on Communications, the CRA is obliged to rectify interference affecting neighboring countries due to the operation of transmitters in BiH.
104. On this basis, the Croatian regulator has requested BiH to shut down 175 of 743 transmitters in

BiH, and the CRA expects similar requests from Serbia and Montenegro, as both neighboring countries plan the introduction of 5G. According to the CRA's estimate, a complete shutdown of analog transmitters by the end of 2021 would result in 58 percent of BiH households with no television reception, while 42 percent would still have reception via cable providers.

105. Although the Public Broadcasting System, which consists of the three public broadcasting services – the State-level Bosnia and Herzegovina Radio-Television (BHRT), Radio Television Federation (RTF BiH), and Radio-Television RS (RTRS) – is a license holder for two digital platform networks, only the infrastructure for experimental broadcasting has been installed. The establishment of these two platforms was halted due to RTRS conditioning the procurement of equipment necessary for digitalization with transfer of ownership rights over the equipment to itself.

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#### Notes:

[i] "So my message is, if Mr. Secretary-General allows (Komšić's) address, then he will also be driving one of the nails into the coffin of this BiH, because he gave the opportunity to only one side, illegally, without presence and without constitutional procedures conducted here in BiH, to talk as a private person, offended by his personal position, his desire to ignore everything and to trick and deceive even the world's highest institution such as the UN General Assembly." *Milorad Dodik press conference in Banja Luka, RTRS, 20 September 2001*

Link: <https://lat.rtrs.tv/vijesti/vijest.php?id=446194>

[ii] "We, the Serbs here in the RS are carrying a difficult political battle for the right we got by the international agreement, which the very same international community violated...because [the ICJ] gets used to tell Serbs what they should do. Of all the High Representatives, we had two Austrians and one German here and as far as I see, they intend to appoint another German. Why do we need another High Representative?" *Milorad Dodik address at Jasenovac, 8 May 2021*

Link: [https://www.youtube.com/watch?v=Jq5RGI\\_tIQM](https://www.youtube.com/watch?v=Jq5RGI_tIQM)

[iii] "Bosnia-Herzegovina: Politician Milorad Dodik attacks yet another journalist" *European Federation of Journalists, 27 May 2021*

<https://europeanjournalists.org/blog/2021/05/27/bosnia-herzegovina-politician-milorad-dodik-attacks-yet-another-journalist/>