

# **54th Report of the High Representative for Implementation of the Peace Agreement on BiH to the Secretary-General of the United Nations**

## **Summary**

This report covers the period from 22 April through 15 October 2018. Over the last six months, the run-up to the 7 October General Elections has amplified the negative trends noted in my previous report and defined the overall political dynamics in Bosnia and Herzegovina (BiH). This was reflected in continued stagnation in the pace of reform at all levels and particularly in a new level of divisive and provocative rhetoric from some senior political figures. The significant increase of migrants seeking to transit to the European Union through BiH this year has additionally tested the state's limited resources and revealed reluctance by certain lower levels of governance to assist the state level in the implementation of its competencies.

The country's aspirations for European Union (EU) integration remained firmly on the agenda despite the difficult political environment, and it is noteworthy that following the submission of initial answers to the European Commission Questionnaire during the previous reporting period, the BiH authorities are working on answers to some 650 follow-up questions received in June. A rare piece of good news in the rule of law sector came in September, when after several months of disagreement, the BiH Parliamentary Assembly, with the assistance of the wider International Community, finally adopted long-outstanding amendments to the BiH Criminal Procedure Code (CPC) in a compromise agreement acceptable to nearly all political parties.

On 7 October 2018, citizens voted in BiH's eighth General Election since the signing of the General Framework Agreement for Peace, selecting representatives to the state, entity and cantonal levels. The elections were held without any major security incident and described as "genuinely competitive" by international observers. However, international and local stakeholders raised concerns about the ethnically-divisive nature of the campaign and a number of reported irregularities, including financial threats and incentives to voters,<sup>[i]</sup> problems with polling station committees, inflated voter rolls, problems with the count and a high number of invalid ballots, reported at over half a million by the BiH Central Election Commission (CEC).

Despite clear recommendations from the OSCE Office for Democratic Institutions and Human Rights on legislative and other changes to improve the integrity of the election process, the parties did not institute these improvements ahead of the elections. The CEC is currently working to complete the counting process and to process election-related complaints, including several requests for recounts, and official certified results are expected by 6 November. While preliminary results for state, entity and cantonal parliaments are also available, much of their significance will depend on the process of coalition-building and government formation yet to come.

The fact that the parties failed to agree on electoral reform in the wake of the BiH Constitutional Court's "Ljubic" decision related to the indirect election of delegates to the Federation House of Peoples, could further complicate the formation of authorities. It is also worth mentioning that prior to the election, officials of the Croatian Democratic Union (HDZ BiH) party and others warned that if Zeljko Komsic were elected as the Croat Presidency Member it could trigger a "crisis," <sup>[ii]</sup> since now Komsic appears to have been elected.

In August, the Republika Srpska (RS) government repealed the 2004 RS Government Report on Srebrenica, which had officially acknowledged the involvement of RS military and police forces in the July 1995 events in Srebrenica. The 2004 report had not only been required for the enforcement of a final and binding decision of the Human Rights Chamber of BiH, but was also a crucial step towards reconciliation, based on the concept of individual rather than collective guilt. The RS government's decision to reject this approach highlights the extent to which the reconciliation process has deteriorated over the last several years.

I must again draw attention to an increase in divisive and destabilizing rhetoric from a number of political representatives in BiH, including a continuation of statements by the RS President denying the statehood of BiH,<sup>[iii]</sup> while advocating for the secession of the RS and a union with Serbia.<sup>[iv]</sup> Although international media reported in September that he had refrained from secessionist rhetoric in the run-up to the elections, he again threatened the dissolution of BiH in an interview published in the final days of the campaign period.<sup>[v]</sup>

In this context, under the authority vested in me under Annex 10 of the General Framework Agreement for Peace (GFAP), I reiterate that the entities have no right to secede from BiH and that the GFAP guarantees the sovereignty and territorial integrity of BiH and the internal constitutional position of the entities.

## **I. Introduction**

This is my 20<sup>th</sup> regular report to the UN Secretary-General since assuming the post of High Representative for BiH in 2009. It provides a narrative description of progress made towards goals outlined in previous reports, registers factual developments, logs relevant citations, and provides my impartial assessment of the implementation of the GFAP in key areas within my mandate. I have focused on addressing these areas in line with my responsibility to uphold the civilian aspects of the GFAP. I have thus continued to encourage the BiH authorities to make progress on the five objectives and two conditions necessary for the closure of the Office of the High Representative (OHR) and worked to preserve measures previously undertaken to implement the GFAP.

I continue to focus on fulfilling my mandate in accordance with Annex 10 of the GFAP and relevant UN Security Council Resolutions. Additionally, my Office fully supports the efforts by the EU and NATO to assist BiH in moving towards closer integration with those organizations.

## **II. Political Update**

### **A. General Political Environment**

Since the beginning of the reporting period, political parties and their officials have been operating in pre-election campaign mode, focused primarily on criticizing each other or the international community and grandstanding on divisive nationalist issues, rather than governing effectively and adopting necessary reforms.

The main Croat party, the HDZ BiH, and the main Bosniak party, the Party for Democratic Action (SDA), which are formally partners in the state-level and Federation ruling coalitions, remained at odds over amendments to the BiH Election Law. The lack of stable coalitions at both the BiH and Federation levels resulted in low legislative output.

In the RS capital Banja Luka, protesters have been holding daily demonstrations over what activists allege is a cover-up by the authorities in the suspicious death in March of a young student. In response, the RS ruling coalition has accused opposition parties of agitating the demonstrations in league with elements of the international community in BiH. On 5 October, two days before the elections, tens of thousands of citizens gathered in Banja Luka to support the father of the student in his search for the truth.

In September, the United States Government sanctioned Alliance of Independent Social Democrats (SNSD) delegate in the BiH House of Representatives/SNSD Vice President Nikola Spiric “due to his involvement in significant corruption.” It is regrettable that the judicial and police authorities in Bosnia and Herzegovina have not proven so far to be effective in tackling corruption at senior levels.

The deterioration in the rule of law is also reflected in the fact that authorities at all levels continue to disregard or reject binding decisions of the judiciary. This was evidenced in the failure mainly of the Federation-based parties to exert sincere effort in reaching a political agreement to resolve the issues stemming from the BiH Constitutional Court’s decision in the “Ljubic case”, which is discussed further in this report. Local elections in the City of Mostar have not been held since 2008 due to another unaddressed BiH Constitutional Court decision. The RS continues to refuse to adhere to judgements of the BiH Constitutional Court and the BiH State Court concerning the registration of defense property.

The outstanding obligation of a number of cantons in the Federation to amend their constitutions to harmonize them with the entity constitution and to ensure the full equality of Serbs as a constituent people is another area where I continue to urge local authorities to uphold the rule of law. In May, the Federation Constitutional Court issued a new decision requiring three cantons to amend their constitutions accordingly.

In light of the General Elections being held this year, I also must call attention to the authorities’ ongoing failure to implement European Court of Human Rights’ rulings in the “Sejdic & Finci” and related cases, leaving in place discrimination against the fundamental right of certain categories of citizens to stand for public office.

*BiH Constitutional Court Decision in the “Ljubic Case” and the General Elections*

As previously reported, following the July 2017 decision of the BiH Constitutional Court repealing provisions of the BiH Election Law related to indirect elections to the Federation House of Peoples, parties have sought to address this issue.

Although the EU and the United States Embassy in BiH have facilitated talks between political parties, with OHR support, the parties' positions have not moved substantially since negotiations began in October 2017. The Sarajevo-based parties continue to interpret the decision in the "Ljubic Case" as requiring that the electoral rules be brought into conformity with the principles contained in the Federation Constitution (which were not formally addressed by the Court), particularly the rule that requires each canton to elect at least one delegate from each constituent people if there is such a delegate in its assembly and the rule that until Annex 7 to the GFAP is implemented, 1991 census figures should apply for calculations requiring demographic data. The Croat parties (mainly HDZ BiH) continued to advocate that their delegates be elected in a manner that gives them "legitimate representation," i.e. representation primarily from those cantons where Croats constitute a majority.

Starting in June, a group of parties in the Federation has sought to address this issue through a proposed law at the Federation-level, while Croat representatives have rejected this approach. The Federation House of Representatives adopted the proposal in June, but machinations in the Federation House of Peoples saw disputes over quorum, rules governing the vital national interest procedure and attempts to remove a deputy speaker. Although still in procedure, the law is unlikely to be adopted without a political agreement.

As previously reported, this issue is further complicated by a January 2018 request submitted by the then BiH House of Representatives Chair Borjana Kristo (HDZ BiH) challenging a provision of the Federation Constitution related to one of the principles concerning the composition and selection of delegates of the Federation House of Peoples, according to which, "[i]n the House of Peoples there shall be at least one Bosniak, one Croat and one Serb from each Canton that has at least one such delegate in its legislative body." As of this report, it remains to be seen when the Court will continue to deliberate and decide on the case.

The absence of provisions regulating the election of delegates to the Federation House of Peoples could complicate the process of government formation following the 7 October General Elections. The process of forming legislative and executive authorities at state, entity and cantonal levels is a combination of direct and indirect elections beginning at the cantonal level. The formation of the upper chambers of state and entity parliaments depends on the prior election of Federation House of Peoples delegates by cantonal assemblies, whereas the election of the Federation President and Vice Presidents and the Federation Government depends on the ability of both houses of the Federation Parliament to meet.

My office continues to closely follow developments regarding the implementation of the "Ljubic Case" decision and its potential impact on the process of government formation after the 2018 General Elections.

### *Increase in Migrant Arrivals*

Since the beginning of 2018, the number of refugee and migrant arrivals detected in BiH has risen dramatically, reaching almost 18,000 as of October, in comparison with 758 last year. While most have attested that they wish to seek asylum in BiH, less than 7 percent have actually managed to do so, both because of difficulties in applying and because many wish to transit on to the EU. Estimates of the current number of migrants currently located in BiH as of 11 October are about 3,000.

Resistance to accommodate migrants persists, as most municipalities in Una-Sana Canton – which is the main destination for migrants due to its border with Croatia – have refused proposals by the BiH authorities to establish shelters, and RS authorities have taken the position that there is no capacity to accommodate migrants within that entity. Moreover, while the BiH Border Police has increased patrols on BiH's eastern borders with Serbia and Montenegro, the RS Ministry of Interior has refused to allow police agencies from the Federation to patrol its territory.

As winter approaches, aid agencies warn of thousands of persons potentially without appropriate shelter, and the BiH authorities still struggle to accommodate them because of limited resources and resistance from local authorities and communities. In May, when the BiH authorities attempted to transfer 269 migrants from Sarajevo to a designated refugee shelter in northern Mostar, Herzegovina-Neretva Cantonal Police stopped the convoy and ordered it to return to Sarajevo Canton. Fortunately, a potential standoff was deescalated and the convoy eventually passed.

## **B. Decisions of the High Representative during the Reporting Period**

Despite frequent challenges to the rule of law and the GFAP during the reporting period, I continue to refrain from using my executive powers, in accordance with the Peace Implementation Council (PIC) Steering Board's policy emphasizing "local ownership" over international decision-making.

## **C. Five Objectives and Two Conditions for Closure of the OHR**

### *Progress on Objectives*

During the reporting period, the BiH authorities made limited progress toward meeting the requirements of the 5+2 agenda established by the PIC Steering Board as necessary for the closure of the OHR.

### *State and Defense Property*

During the reporting period, the OHR continued to monitor the process of registration of prospective defense property under the ownership of the State of BiH and to provide necessary assistance and support as required. As a reminder, the term "prospective defense property" refers to a defined list of immovable assets required by the BiH Armed Forces that should be registered to the State of BiH in line with the Agreement on Succession Issues, the BiH Law on Defense and relevant decisions of the BiH Presidency. In addition to being part of the conditionality for BiH's participation in the NATO Membership Action Plan, progress on the issue is one of the outstanding objectives requisite for OHR transition.

Unfortunately, the process remains blocked with regard to properties located in the RS. As previously reported, in July 2016 the BiH Court issued a final verdict confirming the right of ownership of the State of BiH over the prospective defense location in Han Pijesak and directing the registration of ownership rights in the relevant land records by the RS Administration for Geodetic and Property-Related Legal Affairs. For over two years, the competent RS authorities have failed to enforce this final and enforceable decision of the BiH Court, contrary to the principle of the rule of law.

Concerning the wider issue of State Property, OHR continues to advocate for the adoption of comprehensive state-level legislation fully based on the principles of the 2012 BiH Constitutional Court decision as the only acceptable and sustainable resolution of this issue. Meanwhile, OHR continues to closely monitor the adoption and implementation of all relevant property-related laws and decisions, with the aim to protect the property interests of the State of BiH prior to the enactment of appropriate State Property legislation. This particularly refers to implementation of the Law on the Temporary Prohibition of Disposal of BiH State Property, violations of which represent a serious challenge to the rule of law and may produce several legal, practical and financial complications for all parties involved.

### *Fiscal Sustainability*

In accordance with my mandate, including my coordination responsibilities, the OHR continued to follow, analyze and report on developments and legislative actions related to fiscal sustainability in BiH. This included monitoring and reporting to the PIC Steering Board on the activities of the BiH Indirect Taxation Authority (ITA) Governing Board, in which the OHR is the only international community representative, and the BiH Fiscal Council.

The ITA Governing Board met three times during the reporting period. Inter-entity disputes dominated the May session. In July, the Board adopted an agreement on the temporary share of road toll revenues intended for road and highway construction, over the dissenting votes of expert board members from the BiH Council of Ministers and the Federation Government. However, on 27 July, the Federation Government rejected the Board's decision citing several reasons, including financial damage to the Federation, and announced legal action.

The BiH Fiscal Council held two sessions. In May, the Council and the International Monetary Fund (IMF) mission assessed that BiH's progress on the economic program supported by the IMF Extended Fund Facility remained on track and reached an agreement on the steps to complete the second review. However, subsequent entity-level initiatives with potentially serious fiscal implications prompted the IMF Executive Board to postpone the approval of the second review and the accompanying disbursement.

In July, the Council unanimously adopted the *Global Framework of Fiscal Balance and Policies for the Period 2019-2021*, setting the overall budget of the State Institutions in 2019 at BAM 966 million, an increase of 1.68

percent or BAM 16 million compared to the previous seven years, but kept their share in indirect tax revenue in 2019 locked at the 2012 level of BAM 750 million. The adopted Framework represents the basis for budget planning.

#### *Brcko District*

The OHR continued to provide expert assistance to the Brcko District authorities at their request in preparing by-laws and addressing other issues to implement four key pieces of financial legislation adopted in June 2016, which aim to further integrate the Brcko District with the BiH legal system, facilitate implementation of the BiH economic program negotiated with the IMF, and empower the District with instruments for increasing fiscal transparency, fighting the gray economy and generating revenues. The OHR also continued to provide expert support to the Brcko District Finance Directorate in preparing a new Law on the Budget in order to improve fiscal discipline, transparency and accountability.

The conduct of three members of the Croat Caucus in the Brcko District Assembly indicated an abuse of quorum rules through absence from sessions to prevent decision-making in the Assembly. This was mostly evident in adopting the 2018 budget. As holding the Assembly hostage to party interests directly affects the overall institutional stability of the District, the District authorities sought the engagement of the Supervisor and the OHR in identifying an appropriate solution.

#### *Entrenching the Rule of Law*

My office continues to provide support and assistance to the BiH authorities in implementing the 2015 BiH Law on Foreigners and the 2016 BiH Law on Asylum.

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

#### *Challenges to the Sovereignty and Territorial Integrity of Bosnia and Herzegovina*

As previously noted, during the reporting period, statements continued challenging the sovereignty and territorial integrity of BiH, with RS President Milorad Dodik again the most frequent exponent of such proclamations.<sup>[vi]</sup> BiH House of Peoples delegate/Croat National Assembly Main Council President Bozo Ljubic also speculated about the dissolution of the country if electoral reform issues were not resolved.<sup>[vii]</sup>

#### *Rhetoric on War Crimes*

The 27 April arrests of former Army of the Republic of BiH (ARBiH) 5<sup>th</sup> Corps Commander Atif Dudakovic and other former ARBiH personnel under suspicion of crimes against humanity and war crimes against civilians during the 1992-95 war in BiH prompted statements by senior Bosniak officials accusing the BiH judiciary of attempting to “equalize” the ethnic balance of committed war crimes. Subsequently, rallies of support for Dudakovic were organized in several towns in the Federation.

Meanwhile, some RS politicians continue to glorify convicted war criminals. In September, RS President Milorad Dodik publicly extolled convicted war criminals Radovan Karadzic and Ratko Mladic,<sup>[viii]</sup> and at a campaign rally, SDS President/candidate for RS President Vukota Govedarica told supporters that as RS President he would model himself after Karadzic.<sup>[ix]</sup>

Most egregiously, senior political figures continue to deny and belittle the genocide committed in Srebrenica, which has been confirmed by two international tribunals, and to insult the victims with outrageous conspiracy theories.<sup>[x]</sup>

It is disturbing that after more than two decades since the war in BiH ended, senior political figures and certain segments of society have failed to come to grips with the war crimes their former leaders committed and continue to deny judgements of the International Criminal Tribunal for the former Yugoslavia. Such attitudes greatly hinder the prospects for lasting reconciliation in the country.

#### *Foreign Fighters Issue*

During the reporting period, the relevant BiH authorities have not reported new departures of BiH citizens from BiH to Syria or Iraq. The BiH authorities report that approximately 50 citizens have returned to BiH from Syria or Iraq. According to the latest information, in July 2018 the BiH State Court issued a new judgement for attempting to join

Islamic State in Iraq and the Levant (ISIL), which makes a total of 24 judgements against individuals, of whom approximately 13 have already completed their sentences.

### *Radical Extremism and Potential Terrorist Threats*

In September 2018, acting on a warrant issued by the BiH Prosecutor's Office, the State Investigation and Protection Agency (SIPA), in cooperation with the Tuzla Canton Ministry of Internal Affairs, arrested a person in the area of Gradacac (near Tuzla in the Federation) on suspicion of organizing a terrorist group and illegally forming and joining foreign paramilitary or para-police formations. During a search of the premises, SIPA seized a quantity of military equipment and other evidence.

## **III. State-level Institutions of Bosnia and Herzegovina**

### **A. BiH Presidency**

The BiH Presidency met monthly during the reporting period, holding five regular sessions, and focusing mainly on activities within the EU integration process and on addressing the increased flow of migrants into BiH. Bosniak Presidency member Bakir Izetbegovic chaired the Presidency during the reporting period.

The Presidency collectively met with German Chancellor Angela Merkel, European Council President Donald Tusk, Slovene President Borut Pahor and Russian Federation Minister of Foreign Affairs Sergey Lavrov, while individual members visited neighboring states, the Former Yugoslav Republic of Macedonia, Bulgaria and Palestine. In May, Turkish President Recep Tayyip Erdoğan visited BiH and met with Presidency Chair Bakir Izetbegovic and several members of the BiH Council of Ministers.

While the Presidency was able to hold regular sessions in a cooperative atmosphere, there was also public divergence among the members on a number of issues, including the construction by neighboring Croatia of the Peljesac Bridge, which will span the Bay of Neum, BiH's only coastal territory. On two occasions, in April and July, Mr. Izetbegovic stated his emphatic opposition to the bridge and claimed it would block BiH's access to the open sea, while Croat member of the Presidency Dragan Covic opposed this view and supported the construction.

In August, the Presidency members disagreed publicly over the text of the letter of condolence that Mr. Izetbegovic sent following the death of the former UN Secretary General Kofi Annan, in which he stated that Annan had recognized the UN's mistakes that led to the Srebrenica genocide. The other two members issued a public statement distancing themselves from the letter, stating that it contained "unacceptable political qualifications."

### **B. BiH Council of Ministers**

The BiH Council of Ministers (CoM) met regularly, holding 16 regular and two urgent sessions. However, the absence of stable parliamentary majority support significantly hindered its work, limiting the number of legislative proposals it sent to the Parliament for consideration.

The CoM's main priorities remained EU-related issues and activities aimed at addressing the migrant crisis. In June, the CoM received 655 follow-up questions to the EC Questionnaire and distributed them to appropriate working groups, which did not finalize responses within the three-month deadline. Concerning the migrant crisis, the CoM coordinated activities to strengthen BiH's borders, improve cooperation with neighboring states and provide assistance for migrant registration and accommodation.

In August, the CoM adopted the BiH Framework Energy Strategy, which provides guidelines for the development of the energy sector until 2035.

On the international front, the CoM participated in the Western Balkans Summit within the Berlin Process held in London in July and secured EUR 275 million in support for its projects. Two grants for BiH worth EUR 43 million were also approved.

Without assured support in the BiH Parliament, the CoM adopted only two sets of amendments to existing laws. It also adopted the 2019-2021 Framework Budget for the BiH Institutions, setting the budget at BAM 966 million for 2019 and BAM 957 million for 2020 and 2021.

### **C. BiH Parliamentary Assembly**

Throughout the period, the BiH Parliamentary Assembly lacked a stable majority to secure support for legislation in both chambers. In May, a delegate in the BiH House of Peoples who was formerly part of the governing majority merged his new party with opposition party DNS, ending the already fragile majority that had endured through most of the current mandate.

Although a parliamentary majority coalition comprised of SDA, SBB, HDZ BiH and the RS “Alliance for Change” parties SDS, PDP and NDP continued to formally exist, it did so without support from additional delegates to guarantee the adoption of legislative proposals, most of which were proposed by individual delegates rather than the CoM.

Nonetheless, a breakthrough was achieved in September with the adoption of long-needed amendments to the BiH Criminal Procedure Code (CPC), when after months of quarreling, a compromise proposal was agreed upon and adopted in both chambers.

The BiH House of Representatives held four regular and two urgent sessions and the BiH House of Peoples held five regular sessions. In addition to important CPC amendments, the BiH Parliamentary Assembly adopted two proposals in the form of amendments to existing laws and rejected seven proposals (all amendments to existing laws).

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

##### *Federation Coalition Developments*

The Federation Government worked consistently throughout the reporting period, holding 19 regular and nine extraordinary sessions, while adopting 26 new laws and nine sets of amendments to existing legislation. With continued political disputes and pressure from frequently protesting war veterans, the Federation Parliament delivered only one new law and four sets of amendments to existing legislation.

The low legislative output reflected the stagnation in the Federation Parliament, with the House of Representatives holding just one regular session, one thematic session and four extraordinary sessions and the House of Peoples holding only two regular and two extraordinary sessions.

##### *No Agreement to Enable Local Elections in Mostar*

The responsible political parties could not reach an agreement to enact amendments to the BiH Election Law that would enable the holding of local elections in the City of Mostar, where there have been no local elections since 2008. Although the Mostar City board of nine parliamentary parties (SDA, HDZ BiH, HDZ 1990, SDP, SBB, DF, BPS, SNSD and SDS) met nine times from February to June on this issue and found agreement on some areas, they failed to reach a final agreement and held no further talks. I continue to urge the parties to find a compromise to enable the citizens of Mostar to enjoy the same democratic right to elect their local leaders as the citizens in the rest of the country enjoy.

##### *The Constitutional Status of Serbs in the Federation Cantons*

In May, the Federation Constitutional Court decided that several provisions of the constitutions of Posavina, Herzegovina-Neretva, and West Herzegovina Cantons do not conform with the Federation Constitution and ordered the assemblies of those cantons to amend their respective constitutions accordingly, particularly with respect to ensuring the full equality of Serbs as a constituent people, the Serbian and Bosnian languages, and the Cyrillic script. In September, the state-level BiH Constitutional Court rejected as inadmissible a similar complaint against five cantonal constitutions on jurisdictional grounds, considering that this issue falls under the jurisdiction of the Federation Constitutional Court.

The High Representative’s 2002 decision enacting amendments to the Federation Constitution within the wider implementation of the BiH Constitutional Court’s decision on the equality of constituent peoples determined that all three constituent peoples are equal in the Federation, that the official languages of the Federation are Bosnian, Croatian and Serbian, and that the official scripts shall be Latin and Cyrillic. Cantons remain obliged to harmonize their constitutions with the Federation Constitution.

I have repeatedly called upon the cantonal authorities to harmonize their constitutions with the Federation Constitution and publicly urged the cantonal assemblies to implement the Federation Constitutional Court’s

judgement without further delay.

### *War Veteran Protests*

In May, several hundred veterans protested in front of the Federation Parliament on the occasion of a thematic session of the Federation House of Representatives on the status of war veterans and the protection of war invalids. The House concluded with a call on the Federation Ministry for Veteran and Invalid Issues to submit the *Law on Rights of War Veterans and Their Family Members* to address the issues of a single registry of veterans and veteran allowances, and obliged itself to consider the *Law on Veterans' Associations of Significant Social Importance*. In July, both houses of the Federation Parliament adopted the *Law on Rights of War Veterans and Their Family Members* but in different texts, requiring harmonization by the joint parliamentary commission, which failed to do so in three consecutive attempts. As a result, in September several hundred veterans again protested, attempting to block traffic in the center of Sarajevo, leading to clashes with police. Four police officers were injured and two protesters were arrested, one of whom subsequently died in custody.

## **V. Republika Srpska**

During the reporting period, the RS ruling coalition, led by the SNSD in partnership with the Democratic People's Alliance (DNS) and the Socialist Party (SPRS), remained functional, with the RS Government meeting regularly. According to available information, the RS National Assembly held one regular and five special sessions, adopting 18 new laws and 19 sets of amendments to existing laws.

The period has been marked by an intensified power struggle between the ruling coalition and the opposition, increased pressure on NGOs and the media and a surge in nationalistic rhetoric.

The power struggle between the ruling coalition and the opposition intensified ahead of the 2018 General Elections, with the ruling coalition accusing the opposition of betraying entity interests and the opposition accusing the ruling coalition of corruption and nepotism.

Grass-root civic protests have also emerged in Banja Luka, lasting more than six months, as protesters demand that RS law enforcement agencies investigate the mysterious death of a 21 year-old student and bring the perpetrators to justice. Despite attempts by the authorities to portray the protests as anti-government, accusing opposition parties and the international community of agitating the situation, the case has highlighted discontent amongst citizens and their loss of trust in public institutions, particularly the police and judiciary.

The period has also been marked by pressure, intimidation and attacks against those who criticize the ruling coalition, of which the government's announced intention to pass new legislation aimed at limiting the work of the NGOs is a clear example. In June, SNSD heralded the proposal of the *RS Law on Foreign Donations*, aimed at identifying organizations that receive foreign funding. NGOs such as Civil Rights Defenders, Transparency International BiH and the Helsinki Human Rights Committee warned that provisions of the legislation would be unconstitutional and against the European Convention on Human Rights and Freedoms.

In August, a journalist reporting for BN Television, an independent broadcaster critical of the RS Government, was severely beaten by two perpetrators in Banja Luka. The journalist's injuries were severe enough for the Banja Luka Prosecutor's Office to assess the assault as attempted murder. RS Police arrested one suspect in September and subsequently issued a warrant for the second suspect. Media reports allege links between at least one of the suspects and ruling party circles.

After continuously denying and demeaning the Srebrenica genocide, in July the RS President launched an initiative to repeal the 2004 RS Government Report on Srebrenica, which the government ultimately did in August, with a supporting vote by the RS National Assembly. The 2004 RS Government Report was the only formal acknowledgement to date by RS officials of the involvement of RS military and police forces in the July 1995 events in Srebrenica, and its repeal undoes years of work towards reconciliation in BiH.

As the October elections neared, the RS President appeared to employ scare tactics as part of his campaign, threatening to take back the RS Government's one-time assistance payment from pensioners who would not vote for SNSD. He also openly said that anyone in the Gacko municipality who supported the opposition would lose their job and called on citizens to report anyone who voted against the SNSD.



## *Non-cooperation with the High Representative*

The RS Government continues to deny my office access to official information and documents as required under Annex 10 of the GFAP. Article IX of Annex 10 obliges all authorities in BiH to fully cooperate with the High Representative. Repeated calls by the PIC SB reminding the RS authorities of their obligations in this regard have had no impact. The practice of the RS Government not to provide information and documents as requested by the OHR dates to 2007 and contradicts frequent RS claims that the entity respects the letter of the GFAP.

## **VI. Entrenching the Rule of Law**

### *Amendments to the BiH Criminal Procedure Code*

Previously I reported on a June 2017 decision by the BiH Constitutional Court declaring several provisions of the BiH Criminal Procedure Code (CPC) regulating special investigative measures in criminal proceedings unconstitutional. When the deadline of six months for the implementation of the ruling passed with no progress, the Court was poised to delete those provisions from the law, which would bring to a halt the majority of criminal cases handled by the BiH Prosecutor's Office and the BiH Court. I warned of the risk to the rule of law in Bosnia and Herzegovina if the BiH parliamentary Assembly failed to adopt appropriate new amendments in line with international standards to address this issue.

I am pleased to report that in September, both houses of the BiH Parliamentary Assembly unanimously adopted necessary amendments to the law in line with international standards, although SNSD representatives in the House of Representatives did not attend the session.

Over the past several months, SDA and HDZ BiH each proposed sets of CPC amendments, with the BiH House of Representatives adopting the SDA amendments – which were deemed consistent with international standards in the fight against corruption – while in the House of Peoples, SNSD and DNS delegates sided with the Croat caucus to oppose them and support the HDZ BiH amendments – which would have significantly limited the state's ability to exercise its criminal jurisdiction. However, late in the reporting period, most of the parties responded to growing concerns about criminal processes in the country by responsibly reaching an agreement and passing the required amendments without endangering the possibility of the full exercise of state-level jurisdiction in criminal matters. The engagement of the international community, including my Office, on this issue was key to this achievement.

Since in June 2017 the Constitutional Court did not decide on the entire request for the review of constitutionality but left the provisions of the CPC on physical examination of the accused and other persons not decided upon, it put that part of the request on the agenda of its plenary session of 27 September, but postponed adopting any decision.

### *Entity Anti-Corruption Efforts*

The specific legislation in the Federation on a special prosecutor and court department for fighting corruption and organized crime, which was passed in 2014, remains unimplemented.

### *War Crimes Cases*

In April, the BiH State Investigation and Protection Agency (SIPA) arrested Atif Dudakovic, former ARBiH Commander Atif Dudakovic along with 12 other former ARBiH members, on the basis of a charge by the BiH Prosecutor's Office for crimes against humanity and war crimes against civilians, for their alleged involvement in the killing of several hundred Serb and other civilians. All were released from detention the following day, with measures prohibiting them from communicating amongst themselves or with the media.

In June, the BiH Court's Appellate Panel of Section I for War Crimes revoked the Court's October 2017 first instance acquittal of wartime commander of ARBiH forces in Srebrenica Naser Oric and fellow ARBiH member Sabahudin Muhic and ordered a retrial. The Court had acquitted the two of charges of war crimes against prisoners of war. The retrial began in September.

## **VII. Public Security and Law Enforcement, including Intelligence Reform**

Unfortunately, the longstanding practice of improper political interference in operational policing has not diminished.

In Posavina Canton, cantonal authorities have yet to heed my written guidance to remedy damaging changes to police legislation. One change deleted a provision required by the 2007 UNSC Presidential Letter on police denied certification by the former UN International Police Task Force. I will follow this development and report on whether BiH is in overall compliance with the UNSC directive. Another provision creates the possibility for former police who enter politics to later return to police service, which represents direct improper political influence.

The Una-Sana Canton (USC) Government has not met its legal obligations in the selection and appointment of a new police commissioner and the process remains stalled. The mandate of the Herzegovina-Neretva Canton Police Commissioner expired on 30 September, but the selection of a new police commissioner has not begun, due to the absence of a functioning Independent Board since March 2017. The Sarajevo Canton Independent Board is showing worrying signs of exceeding its authority and interfering with professional policing. In September, the Brcko District (BD) Independent Board launched a selection procedure for a new BD Chief of Police.

In September, the Tuzla Canton Assembly adopted new provisions to police legislation that should facilitate easier implementation of a separate police budget, and the Zenica-Doboj Canton Assembly adopted a new Law on Internal Affairs allowing for a separate police budget.

In August, the Bosnian-Podrinje Canton Assembly deleted a damaging provision from its Law on Police Officials that would have allowed politicians to return to police service and in September, the Sarajevo Canton Assembly adopted a new Law on Police Officials that, *inter alia*, excludes this possibility.

In July, the Canton 10 Assembly adopted amendments to the Law on Police Officials which, *inter alia*, allow for the employment of police officials from other police bodies in BiH.

#### *Public Security during the Influx of Migrants*

In Una-Sana Canton (USC), on the border with Croatia, where the majority of the migrants are concentrated due to their demonstrated pattern of attempting to enter the EU, police authorities have expressed increasing concern over the worsening public security situation. To date, police authorities have recorded the arrival of 10,000 migrants in USC and estimate that between 2,000 and 2,500 migrants still reside there. Police authorities also reported 47 felonies and 17 violations of public order connected to the migrant situation.

### **VIII. Economy**

BiH's economic performance in the reporting period was generally positive. In September, the BiH Council of Ministers' Directorate for Economic Planning noted 2 percent economic growth in the first quarter of 2018. Compared to the same period last year, exports, imports and industrial production increased by 11.8, 9.1 and 3.4 percent, respectively. Inflation was 1.2 percent. The administrative unemployment rate fell by 3.7 percent to an estimated 35.7 percent, while the real unemployment rate, calculated on the basis of the BiH Statistics Agency's Labor Force Survey, is 18.4 percent. The total number of registered employees as of the end of June was increased 7.8 percent over the same period last year.

BiH's credit and business ratings remain the same, the latest being the September *Standard & Poor's Ratings Services* report affirming BiH's credit rating "B" and its stable outlook. The banking sector is assessed as generally stable and liquid. According to BiH Central Bank data, 23 commercial banks in BiH registered a record profit in 2017, totaling BAM 344.35 million, a 57.5 percent increase over 2016. Foreign direct investments totaled BAM 219.7 million in the first quarter of 2018, a 28.2 percent decrease compared to the same period in 2017.

Eurostat data from June places BiH as the second poorest country in Europe. Citizen purchasing capacity is estimated at 32 percent of the EU average. The average net salary in June was BAM 872 (EUR 436), a 2.5 per cent increase compared to June 2017, while the average pension in July was BAM 387 (EUR 194), a 7.7 per cent increase compared to July 2017.

The overall political and social environment is most frequently cited as an incitement to emigrate. According to the Union for Sustainable Return and Integration in BiH, more than 169,000 people have emigrated from BiH in the last five years.

#### *Fiscal Issues*

There were no delays in debt servicing and regular monthly payments in the reporting period, primarily due to the

continued growth of indirect tax revenue, but also continued borrowing. The IMF released no funds to BiH in the reporting period.

The state institutions' budget has been locked at the same level since 2012 and the state's share in indirect tax revenue has also been locked for the last six years, while the state's revenues from its other sources – which should fill the gap – continue to decline. Consequently, funds available to the state institutions allow them to cover basic current expenditures but are insufficient to allow for their full functioning and fulfilment of their obligations, including those related to integration processes. The BiH Ministry of Defense (including the BiH Armed Forces) and the state-level security sector in general are among those most affected.

The Federation maintained budget stability during the reporting period, as reflected in the *Consolidated Budget Execution Report for January-June 2018*. However, renewed demands from war veterans for new legislation that would increase transparency and efficiency of budget spending for war veterans but also regulate their entitlements could seriously impact budget stability.

The RS continues to finance almost one-fourth of its regular budgetary needs through borrowing. Under the revised 2018 RS budget plan adopted in May, the RS Government planned BAM 540 million in long-term borrowing from various sources (IMF, World Bank, local commercial banks and bond issuance on international capital markets) in 2018. In June, the RS Government increased pensions by 2.5 percent, bringing the cumulative increase in RS over the last five years to 20 percent. In August, the RS Government approved one-time assistance payment to pensioners from BAM 30 to BAM 100, depending on the pension amount, just ahead of the General Elections. In July, the RSNA amended the labor tax legislation, increasing wages in the public sector between 9 and 12 percent. The amendments also increased the amount of tax-free minimum wage in the private sector.

A functional indirect tax system is key to budget stability at all levels of government and BiH's single indirect tax system is rightfully considered as one of the most crucial post-Dayton reforms. Nevertheless, the system has faced political challenges and attempts to weaken its institutional structure. Recently, the system was jeopardized by attempts at enforcing a 2015 BiH Court decision against the ITA by going after accounts maintained on behalf of the State, the entities and the Brcko District. In addition to raising questions about its compliance with the relevant legislation, the manner of enforcement resulted in a serious shortfall of funds intended for financing all levels of government in BiH. The ultimate risk is a loss of trust in the indirect tax system, which may serve as a pretext for further political challenges.

In September the BiH Court suspended enforcement of the 2015 Court decision until 3 December at the latest, pending its decision on the ITA proposal to enforce the debt through the state-level budget in line with relevant regulations on enforcement of executive court decisions, or on another proposal of the creditor.

### *International Obligations*

In August, the BiH CoM adopted a *BiH Framework Energy Strategy*, which provides guidelines for the development of the energy sector until 2035. The Strategy was prepared on the basis of the relevant entity strategies and is a result of a coordinated effort. Its adoption, which has been pending for almost a decade, will unlock international financial assistance to the energy sector and set the path for further reforms.

However, the adoption of the Energy Strategy is not enough for the Energy Community to lift sanctions against BiH, which were introduced in October 2015 in response to the country's persistent failure to meet its obligations under the Energy Community Treaty. In that regard, the Director of the Energy Community Secretariat welcomed the adoption but reminded BiH of its obligation to also adopt state-level laws on the electricity market and on gas.

Another development in the energy sector raised serious concerns, related to the state-level BiH Electricity Transmission Company (TRANSCO), which was established to ensure a continuous electricity supply through transmission grid management and to facilitate the creation of a single electricity market in BiH, as well as its integration into regional energy markets. Despite success in accomplishing these objectives, TRANSCO has faced numerous challenges, the most pressing of which include a legal claim against it by the Mostar-based power company, which concerns investments in electricity transmission assets and liabilities prior to their transfer to TRANSCO in 2006. If successful, the claim will have serious financial implications on the company and may open the door to challenging the entities' shares in TRANSCO as well as challenging other similarly-established state-level institutions. Further risks to TRANSCO stem from disputes over management appointments and their impact on the company's decision-making, which could provide a pretext for challenges to its sustainability as a state-

level company.

Financial cutbacks to the BiH Public Railways Corporation unilaterally introduced by the RS continue for the second consecutive year and threaten to destabilize the only corporation established thus far under Annex 9 of the GFAP that is crucial for proper coordination and harmonization of the railway sector. The cutbacks coincided with the entity government's March 2017 conclusion requesting the RS Ministry of Transport and Communications to initiate a review of the Agreement between the Federation and the RS on the Establishment of a Joint Public Railway Corporation as Part of the Transportation Corporation, concluded in 1998 under Annex 9 of the GFAP. Both the financial issue and the ongoing review could pose a serious threat to this institution.

## **IX. Return of Refugees and Displaced Persons**

The realization of the right of refugees and displaced persons to return to their pre-war homes remains central to the fulfillment of Annex 7 of the GFAP, as it requires authorities at all levels "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."

The RS Government repeal of the 2004 Srebrenica Report undoubtedly erodes many of the political and social conditions conducive to the return of refugees and displaced persons, not only to Srebrenica but to other RS communities as well.

Education remains a contentious issue in several returnee communities. The RS authorities continue to refuse to acknowledge the right of Bosniak returnee schoolchildren to refer to their language as "Bosnian," despite a 2016 decision of the BiH Constitutional Court guaranteeing this right, opting instead for the selective application of a provision of the entity constitution referring to "the language of the Bosniak people" while referring to the language of the other two constituent peoples as "Serbian" and "Croatian."

At the same time, Serb returnee students in the Federation, particularly in the Croat-majority Canton 10, continue to demand the introduction of the Serbian language in their education, without success.

## **X. Media Developments**

There have been significant threats to media freedom during the reporting period. A serious physical assault against a journalist in Banja Luka in August highlighted the issue of journalist safety in BiH.

According to the BiH Journalists' Association and its Free Media Helpline, from January until September 2018 there were 42 reported violations of journalists' rights, including five physical assaults and one death threat. Media professionals in BiH have revived an earlier initiative seeking legislation to treat an assault on a journalist the same as an attack against a public official.

There has been no progress in the functioning of the BiH Public Broadcasting System (PBS) and its independence is still compromised by problems in financing and management, and reluctance to implement the legal requirements for system integration. The method of collecting radio-television tax remains inconsistent between the RS and the State and Federation Broadcasters, as I have already reported. Problems also remain in implementing legislation calling for the registration of a joint legal entity, to enable the transfer from analogue to digital broadcasting and to streamline the activities of the three services.

Due to the inability of the public broadcasters to act outside political influence and the lack of will amongst political parties in power to allow the proper implementation of relevant legislation, the BiH PBS exists only on paper. This is unfortunate, as the current legislation represents a solid legal basis for a proper PBS that would serve the interests of BiH citizens, in accordance with generally accepted programming principles.

On a positive note, the BiH Communications Regulatory Agency is considering introducing a more consistent monitoring of current affairs programs, including those of the three public broadcasters, which could enable the full implementation of the programming principles and restrictions, thereby reducing political influence in programming content.

## **XI. European Union Military Force**

The EU military mission in BiH (EUFOR) with its continued executive mandate plays a vital role in supporting BiH's

efforts to maintain a safe and secure environment. In this context, I am very concerned over the disproportionate purchases of long-barrelled weapons by some law enforcement agencies.

With this in mind, I believe monitoring weapons and ammunition stocks from the BiH Armed Forces and the police services is an appropriate measure to ensure better situational awareness and promote confidence building across a highly fragmented law enforcement sector.

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

The PIC SB Political Directors met in Sarajevo on 5-6 June 2018 to assess progress in implementing the GFAP and once again underlined their unequivocal commitment to BiH's territorial integrity and sovereignty, and their full support to me as the High Representative in ensuring respect for the GFAP and carrying out my mandate in accordance with Annex 10 thereof, and relevant UN Security Council Resolutions. The Political Directors reinforced the need to complete the 5+2 agenda, which remains necessary for the OHR's closure. The next meeting of the PIC SB is scheduled for December 2019 in Sarajevo.

My Office continues its fiscally responsible approach to budget planning and the results are evident. Since the beginning of my mandate in March 2009, the OHR's budget has been reduced by 53 percent and my staff by over 58 percent. Given the deep and ongoing nature of the cuts, it is important to highlight that considering the realities of the situation on the ground and as entitled under Annex 10 of the GFAP, I must remain equipped with the budget and the staff required to carry out my mandate effectively.

## **XIII. Reporting Schedule**

In keeping with the practice of submitting regular reports for onward transmission to the UN Security Council as required by Security Council Resolution 1031 (1995), I herewith present my 20th regular report as High Representative. I would be pleased to provide additional information at any time, should the UN Secretary-General or any member of the UN Security Council require it. The next regular report to the UN Secretary-General is scheduled for April 2019.

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### **Notes:**

[i] "These days pensioners will receive a one-time assistance to go to the polls and vote for us. If by chance you do not vote, we will take the money back. Whoever does not want to vote for us does not get a raise." *RS President/SNSD President Milorad Dodik at campaign event in Ugljevik, BNTV, 18 September 2018.* "Whoever is employed in Gacko, do not by chance vote for Govedarica and the SDS. We will fire you. And I ask you, whoever you see vote and do that, just let me know. I will throw him out, you won't have to." *Milorad Dodik in Gacko, Oslobođenje/ReStart Srpska, 22 September 2018.*

[ii] "[The election of Komsic] could trigger a crisis of unforeseeable proportions for the state of BiH. It would entail a lot of problems in the functioning of all levels of government..." *BiH Presidency member/HDZ BiH President Dragan Covic, Klix.ba, 20 September 2018.*

[iii] "BiH has been patched together. It is not a state. It only has international recognition." *Milorad Dodik, Lecture at Belgrade Political Science Faculty, Tanjug/Face TV, 30 May 2018.*

[iv] "This is a historic moment in which we need to define our overall policy of a single national, but also administrative area. This means... Why should we not talk about it? All other peoples are allowed to talk. Muslims are talking about their own state. Albanians are talking about their state. Croats have already solved their statehood issue. Serbs are the only ones denied the right to talk about a state. Well, I want to talk. I think that Serbia and the RS will one day be, in the future, a single state." *Milorad Dodik, "Circilica" interview, TV Happy, 16 July 2018.*

[v] "From now on, BiH will face two options: existing as the Dayton structure with competencies guaranteed for the entities or going irreversibly towards a peaceful dissolution." *Milorad Dodik, EuroBlic, 05 October 2018.* "And a whole generation of people who so selflessly invested all of their ideas, wishes, and even lives in the foundations of the RS, they mustn't be betrayed. Nor can our first leaders be betrayed, from Mr. Karadzic who with the galaxy of

people he led, believed that it should be built as an independent country, because that is the pledge of our freedom", *Milorad Dodik, RTRS, 05 October 2018.*

[vi] "BiH costs us terribly and it is not in the interest of or of use to the Serb people, not now or in the long term....I am for a politics of tolerance and waiting for the moment of our final decision about uniting with Serbia." *RS President/SNSD President Milorad Dodik, RTRS, "Predsjednik govori," 01 September 2018.* "I think that BiH will not survive and that a tacit, quiet separation will occur." *Milorad Dodik, Blic, 12 August 2018.* "We Serbs need to exclusively build up our two states, Republika Srpska and Serbia, and no kind of Yugoslavia, and at the same time, I – as the President of the Republic will not create for you another historical illusion called BiH." *Milorad Dodik, Modrica, SRNA news agency, 24 June 2018.* "We must not hesitate to say that one of the things we must achieve is state unity of RS and Serbia. That is the Serb national idea of this century." *Milorad Dodik, SRNA news agency, Banja Luka, 22 May 2018.*

[vii] "The Election Law and decision of the [BiH] Constitutional Court cannot be implemented at any level other than [the BiH Parliamentary Assembly]. I'm sorry that people in BiH and the main stakeholders don't understand that. I cannot interpret that as anything other than absurd, meaningless and cannot find any logic in it except that logic which claims that persevering in the absurd is a way to arrive at its end. I am afraid of that end, you know. I am afraid that it would mean the dissolution of BiH, because I know that it couldn't be carried out peacefully." *BiH House of Peoples delegate/Croat National Assembly Main Council President Bozo Ljubic, N1, 27 June 2018.*

[viii] "A high degree of formal autonomy [for the RS], obtained through the Dayton Peace Agreement, was the result of the struggle of our people who in 1992, under the leadership of Radovan Karadzic and Ratko Mladic, fought for the freedom of the Serb people and an independent state in this region. The Dayton Agreement was a compromise in which the Serbs agreed to enter a quasi-Bosnia and Herzegovina... we on the territory of the RS dared to start creating a state and we are creating it today." *Milorad Dodik, at the opening of "Days of the RS in Serbia", Danas.rs/Faktor, 5 September 2018.*

[ix] "After our gathering tonight, I would like to ask Sonja and Ljilja (daughter and wife of wartime RS leader Radovan Karadzic), next time they speak to their father and husband and our first president, to give him my regards and tell him that the future RS President will resemble him and not the one who is currently leading the RS." *SDS President/candidate for RS President Vukota Govedarica, dnevnik.ba, 18 September 2018.*

[x] "Bosniaks planned the genocide so that the U.S. would bomb Serbs." *Milorad Dodik, RSNA Session on repeal of 2004 Srebrenica Report, 14 August 2018.* "Srebrenica is a fictitious global policy of the United States and NATO." *Milorad Dodik at campaign event in Srebrenica, Dnevni Avaz, 25 September 2018.*