

50th 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 to 21 October 2016. The key challenge during this period was the conduct of a referendum by Republika Srpska (RS) authorities in September against two decisions of the state Constitutional Court on the celebration of the “Day of RS”. While a referendum regarding entity holidays may be within the competence of an individual entity, any referendum must be conducted in a way that is consistent with the BiH Constitution, and cannot violate the General Framework Agreement for Peace (GFAP) or the constitutional framework of BiH.

The RS referendum conducted in September violated two final and binding decisions of the Constitutional Court: a 26 November 2015 decision which deemed the designation of 9 January as the “Day of Republika Srpska” to be unconstitutional and a 17 September 2016 decision directly ordering the RS authorities not to implement the RS National Assembly decision regarding the referendum. As such, the conduct of a referendum by the RS entity authorities represents a violation of the General Framework Agreement for Peace (GFAP), since under the Constitution, as set forth in Annex IV to the GFAP, decisions of the state Constitutional Court are “final and binding”.

In holding the referendum against a direct order of the state Constitutional Court, the RS authorities pursued activities which signal that they do not consider decisions of the state-level judiciary to apply in the RS when it does not suit them. I am concerned about the implications of these developments for peace and stability, in particular should the RS authorities proceed with a referendum on the “status” of the entity or secession, as the entity’s governing party has threatened to do in 2018. Due to the gravity of the situation surrounding the RS referendum and the serious challenges to the BiH Constitution and the GFAP that it represents, I have submitted a separate special report on the referendum and related challenges to the rule of law.

The publication of the results of the 2013 census in June, though significantly delayed, was a landmark achievement during the reporting period, given the fact that the previous census was held in 1991, before the war. However, disagreement over the statistical methodology for processing of results sparked a political dispute in which Republika Srpska authorities and their representatives sought to exclude persons working or studying abroad from resident population figures. The decision of the BiH Statistics Agency to adopt the data processing program and publish the 2013 census results, while taken in accordance with applicable legislation, was disputed by the RS, which adopted a law to unilaterally determine its own methodology for processing of data and to publish its own, competing version of the results.

The bright spot in political developments over the last six months has undoubtedly been the decision by the European Union General Affairs Council on 20 September inviting the European Commission to submit an opinion on BiH’s application for EU membership. This followed the adaptation of the Stabilization and Association Agreement on 18 July and the adoption of the EU coordination mechanism on 23 August. The EU also welcomed the progress made by the BiH authorities in implementing the reform agenda and invited them to continue their efforts to the benefit of their citizens. The agenda includes socio-economic, rule of law and public administration reforms.

Similarly, after significant delays in negotiations due to the controversy over the publication of census results, the authorities in BiH eventually agreed to a set of reform measures with the International Monetary Fund (IMF), which enabled the country to reach an arrangement with the IMF amounting to EUR 553.3 million in loans over three years.

These positive developments were overshadowed by a marked increase in divisive nationalist rhetoric fueled by the referendum, including renewed statements from officials coming from the RS challenging the sovereignty and territorial integrity of BiH and referring to the future dissolution of the country, as well as strong reactions from some Bosniak officials to the referendum, including references to the potential for a return to conflict. Under the

authority vested in me under Annex 10 of the GFAP, I use this report to reiterate that the entities have no right to secede from BiH and that the sovereignty and territorial integrity of BiH and the constitutional position of the entities are guaranteed by the GFAP.

On 2 October, citizens of Bosnia and Herzegovina voted in the country's sixth local elections since the war. In the currently polarized political environment, the main electoral victors appear to be those parties who, in their rhetoric, have emphasized the perceived interests of one of the three principal ethnic groups over more practical issues. While the conduct of elections was largely peaceful, electoral irregularities and unrest in the town of Stolac resulted in a suspension of the vote, which will need to be repeated. And in Srebrenica, the town known as the site of the genocide in 1995, disputes over the final count are ongoing. Finally, in Mostar, citizens were again unable to participate in elections due to the failure of local political parties to agree on needed changes to the Election Law. All of these areas will require close attention from the international community in the coming period to improve inter-ethnic relations on the ground.

I. Introduction

This is my sixteenth periodic report to the United Nations (UN) Secretary-General since assuming the post of High Representative for BiH in 2009. It provides a narrative description of progress made toward attaining goals outlined in previous reports, registers factual developments, logs citations relevant to the reporting period, and provides my impartial assessment of the implementation of key areas falling under my mandate. I have focused my efforts on addressing these areas, in line with my responsibility to uphold the civilian aspects of the GFAP. In this respect, I have consistently encouraged 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 have worked to preserve measures that have been undertaken previously to implement the GFAP.

My energies continue to be directed toward meeting my mandate as defined under Annex 10 of the GFAP and relevant UN Security Council Resolutions. Additionally, my Office fully supports the efforts of the EU and NATO to assist BiH in moving toward closer integration with those bodies.

II. Political Update

A. General Political Environment

The general political environment in BiH has deteriorated. While the country continues to take steps toward EU integration, as evidenced by the EU Council's acceptance in September of BiH's application for EU membership, nearly every step forward has carried a heavy political price and has often resulted in further disagreement, most frequently along ethnic lines.

In May, when the BiH Statistics Agency finally decided on a single methodology for processing data collected in the 2013 Census – after more than two years of trying to reach agreement on the methodology with the entity statistical bodies under the auspices of the BiH Central Census Bureau – RS authorities rejected the selected methodology outright. As noted above, the decision on methodology for census data processing was subsequently challenged before the BiH Constitutional Court.

On 21 June, the RS National Assembly formally rejected the BiH Statistics Agency's decision and threatened to withdraw RS institutions and personnel from the BiH Central Census Bureau. RS President Dodik and other RS politicians also conditioned entity agreement on the adaptation of the EU Stabilization and Association Agreement (SAA) and the adoption of the EU coordination mechanism – both preconditions for a positive evaluation of BiH's EU membership application – with a new agreement on the census data processing methodology.

On 13 July the RS National Assembly adopted the *RS Law on Publishing Census Results*, with the aim to publish 2013 Census data separately and unilaterally for the RS territory according to a different methodology. The law was published on 23 September and entered into force on 1 October. It conflicts with the *BiH Census Law*, according to which the RS Statistics Bureau was to have published by 1 July the unified census data according to the methodology decided by the BiH Statistics Agency in May. Moreover, the *BiH Census Law* and the BiH Statistic Agency's decision represent "decisions of the institutions of BiH" within the meaning of Article III.3.b) of the BiH Constitution, so the entities are therefore bound to comply with them. In its final assessment of the census, the International Monitoring Mission concluded that "the census results are in general considered valid and useful for economic and social planning..."

Further contributing to the rising tension was the 15 July RSNA decision to organize, on 25 September (one week before municipal elections in BiH), an RS-wide referendum on whether to support 9 January as “Day of RS.” The RS referendum was announced on an issue which had already been adjudicated by the BiH Constitutional Court and was therefore unconstitutional. Reacting negatively to criticism, RS authorities promised even more referenda, including the previously announced but abandoned RS referendum on the BiH judiciary and authority of the High Representative, on BiH’s NATO membership, and even on RS secession.

Despite two statements from the Peace Implementation Council (PIC) Steering Board (with the exception of the Russian Federation) urging the RS not to hold the referendum, as well as neighboring Croatia’s strong position against the referendum as “destabilizing” and Serbia’s lack of support, RS authorities moved forward, ultimately in direct contravention of the 17 September Constitutional Court’s interim measure suspending the RSNA referendum decision. Fortunately, there were no incidents during the conduct of the 25 September referendum, but the blatant act of rejecting the authority and the order of the state Constitutional Court has soured the political atmosphere.

In the midst of the run-up to the RS referendum, Croat member of the BiH Presidency Dragan Covic addressed a letter to the PIC Steering Board, describing his views on the supposed representational inequality faced by Croats in BiH, particularly in the Federation, and proposing models for the reorganization of BiH, including the territorial reorganization of the Federation. Five days after sending the letter, he participated in public events marking the 23rd anniversary of the founding of the wartime “Croat-Republic of Herzeg-Bosnia”.

Bosnia and Herzegovina conducted local elections on 2 October, which passed in large measure peacefully. While the final results are yet to be published at the time of this writing, as previously mentioned, the three main nationalist political parties, SDA, HDZ BiH and SNSD were the main victors. SNSD did particularly well, defeating the RS opposition and, with its coalition partners, effectively took control of nearly two-thirds of municipalities in the RS.

As noted above, citizens from the City of Mostar were unable to participate in the second local elections cycle in a row, due to the failure of the responsible political parties (primarily SDA and HDZ BiH) to implement the 2010 BiH Constitutional Court’s ruling on Mostar’s electoral system.

The local elections saw one inter-ethnic incident, in Stolac (in the Federation), where a physical confrontation between the Bosniak mayoral candidate and the Croat president of the Municipal Election Commission over alleged voting irregularities and polling station manipulation resulted in the BiH Central Election Commission suspending the elections in Stolac municipality until further notice.

Against such a backdrop, BiH’s achievements during the period, while limited, are perhaps even more remarkable. Following significant political wrangling, BiH and the EU initialed the Protocol on the Adaptation of the SAA on 18 July, and the BiH Council of Ministers adopted a decision on the EU coordination mechanism on 23 August. These two developments cleared the way for the decision of the EU General Affairs Council on 20 September inviting the European Commission to submit an opinion on BiH’s application for EU membership, giving the green light for the next step, providing BiH with the EU questionnaire.

Ruling coalitions at the State and Entity levels remained intact during the reporting period, but a rift between the SDA and HDZ BiH in the Federation halted work in both houses of the Federation Parliament until mid-October.

B. Decisions of the High Representative during the Reporting Period

Despite serious challenges to the constitutional order of BiH and the GFAP during the reporting period, I continued to refrain from using my executive powers in line with the PIC Steering Board’s policy of emphasizing “local ownership” over international decision-making.

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

Progress on Objectives

Over the last six months, the BiH authorities made limited progress toward meeting the requirements of the 5+2 agenda set by the PIC Steering Board as necessary for the closure of the OHR.

Defense Property and State Property

The term “prospective defense property” refers to a defined list of immovable assets which are needed by the BiH Armed Forces and should be registered to the BiH State in line with the Agreement on Succession Issues, the *BiH Law on Defense*, and relevant BiH Presidency decisions. In addition to being part of the conditionality for BiH’s participation in the NATO Membership Action Plan, progress on this issue is one of the outstanding objectives set as a prerequisite for OHR closure.

The process of registering prospective defense property under the ownership of the BiH State continued during the reporting period, but only in relation to defense properties located on Federation territory. To date, 24 prospective defense property locations in the Federation have been successfully registered, while almost 20 others are in the process of registration. In recent months there has been a slowdown in completing the registration of properties located in the Federation, primarily due to technical legal problems.

The registration process for prospective defense property located on the territory of Republika Srpska remains completely blocked, with several requests by the state authorities for registration of properties rejected by RS cadastral authorities due to the alleged “non-existence of a valid legal basis.” In one of these cases, a significant development occurred on 27 July, when the Appellate Division of the Court of BiH decided in the second instance that the State of BiH has the right of ownership of the prospective defense location “Veliki Zep” in Han Pijesak and ordered the RS Administration for Geodetic and Property-Related Legal Affairs to register the ownership of the property to the State of BiH. The judgment stipulates that the RS shall meet all obligations stemming from the judgment within 30 days of its receipt.

In response to this decision, the RS Attorney’s Office announced that it would request a revision of the Court of BiH decision, and file an appeal with the BiH Constitutional Court asking for the implementation of the decision be put on hold until the Court of BiH reaches a decision on the requested revision. Since the regular appeals procedures have been exhausted in this case, it is worth noting that the use of these extraordinary legal remedies, *per se*, does not stay the enforcement of a final judgment. In the meantime, RS President Milorad Dodik has said clearly in public statements that he will order the relevant authorities in the RS not to comply with this final and binding decision of the Court of BiH.¹

A resolution of the broader question of how all other publically-owned assets are to be apportioned among the levels of government (state property) remains elusive. As previously reported, in March 2016 the BiH House of Representatives adopted a conclusion requiring the BiH Council of Ministers to prepare a draft *Law on the Use and Management of State Property* for submission into parliamentary procedure no later than the end of 2016. Work continues on that legislation.

Fiscal Sustainability

The OHR continued to follow, analyze, and inform international partners on developments related to fiscal sustainability, including developments in the BiH Fiscal Council and the BiH Indirect Taxation Authority (ITA) Governing Board.

The BiH Fiscal Council met in May to adopt the *Global Framework of Fiscal Balance and Policies for 2017-2019* as the basis for 2017 budget preparations.

The ITA Governing Board met in May, July and September, during which the BiH state and entity Finance Ministers continued the practice of discussing and agreeing on agenda issues in advance, thereby bypassing other Board members and narrowing the role of the Board. This resulted in numerous issues being removed from the agenda, including the coefficients for the second quarter of 2016, long-outstanding debt settlements between the entities, and the resulting entity lawsuits against the ITA. The Board focused primarily on technical issues within its mandate, with the exception of the 11 July adoption of the *Decision on Temporary Coefficients for the Allocation of Single Account Revenue for July-September 2016*, which showed a 0.25 percent increase for the Federation and a corresponding decrease for the RS over the previously applicable coefficients.

On 12 May, the ITA Governing Board convened in its capacity as the selection committee for the appointment of the ITA director. Based on the Board recommendation, on 6 June, the BiH Council of Ministers reappointed Miro Dzakula for another four-year term as ITA director.

Brcko District

On 8 June, after nearly two years of intensive engagement by my Office, the Brcko District Assembly adopted four key pieces of financial legislation (the *Law on Fiscal Systems*, the *Law on Accounting and Auditing*, the *Law on Foreign Currency Operations*, and amendments to the *Law on Payment Transactions*). The adopted legislation will further integrate the Brcko District into the legal system of BiH, 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. Throughout this period, the OHR assisted the Brcko District legislative and executive authorities as well as the Finance Directorate and will continue to do so, at the request of the District, with a focus on implementing the adopted legislation.

On 6 July, the Brcko District Basic Court confirmed the 30 June indictment against the Head of the Department for Spatial Planning and Legal-Property Affairs of the Brcko government, who is also president of the SBB political party in Brcko. He was previously sentenced for similar offenses, and in 2007 he was removed from a Brcko District Government position (and later “rehabilitated”) by order of the Brcko District Supervisor.

Due to a protracted political crisis in the Brcko District authority, the 2016 Brcko District budget was not adopted on schedule, leaving the District institutions to operate under a temporary financing decision. Temporary financing is restrictive in both the amount and the use of revenue and thus threatened to affect the ability of the District institutions to meet their legal obligations. In early August, the Brcko District Supervisor reminded Brcko District authorities that further delay in adopting the budget could affect the ability of the District to meet certain obligations, including the allocation of budget revenues to the Brcko District Election Commission for the holding of the October local elections. After this the Brcko District Assembly finally adopted the 2016 budget.

Although the decision on *Amendments to the Decision on Protection of Civilian Victims of War* entered into force on 18 June 2015, correcting discriminatory provisions for the victims of rape and sexual abuse in Brcko, the decision has thus far not been implemented.

In August, responding to a request from the Brcko mayor, the Supervisor informed the Brcko authorities that he would not allow the 25 September referendum to be held on the territory of the District, pursuant to a 2007 Supervisory Order requiring the Supervisor’s approval for any referenda in the District.

Entrenching the Rule of Law

During the reporting period, my office continued to provide support to the BiH Ministry of Security in the implementation of the newly-adopted BiH *Law on Foreigners* and the BiH *Law on Asylum*, including assistance in the development of rulebooks necessary for implementing this legislation.

D. Challenges to the General Framework Agreement for Peace

Challenges to the Sovereignty and Territorial Integrity of Bosnia and Herzegovina

During the reporting period, there were numerous statements made which challenged the territorial integrity of BiH, primarily by officials from SNSD, the ruling party in the RS. RS President Milorad Dodik, who is also the leader of SNSD, continued to be the most frequent and vocal exponent of BiH dissolution. Dodik made various public statements in which he claimed, incorrectly, that the RS is already a state,² and that BiH is not a state.³ He called for the RS’s future independence,⁴ about which SNSD Vice President Nebojsa Radmanovic also speculated.⁵

As political tensions surrounding the RS referendum rose, the head of a small Bosniak party and former wartime general, Sefer Halilovic threatened a return to conflict should the referendum be held and secession of the RS pursued.⁶

Redrawing of Internal Boundaries

Croat leaders also revived the notion of the former Croat Republic of Herzeg-Bosnia (HRHB),⁷ a wartime para-state, and proposed as a possibility the division of the country into three or more federal units based on majority populations of each of the three constituent peoples, or the “territorial reorganization” of the Federation.⁸

RS Referendum on 9 January as the “RS Day” Holiday

As previously noted, on 15 July, the RS National Assembly (RSNA) adopted a decision to hold a referendum in the RS on 25 September concerning the support to 9 January as the “RS Day” holiday, directly challenging a final and

binding decision of the BiH state Constitutional Court, with political and legal consequences detrimental to the stability of BiH. On 25 September, the RS authorities held the referendum against a second decision of the BiH Constitutional Court, an interim measure suspending the 15 July RSNA decision and effectively ordering the referendum not to be held until the court could assess its constitutionality. For more detailed information, please refer to my *Special Report on a Referendum in Republika Srpska against the State Constitutional Court's Decisions*.

Foreign Fighters Issue

In accordance with available information during the reporting period, the BiH Court sentenced seven individuals to one year of imprisonment for joining or attempting to join the Islamic State of Iraq and Levant (ISIL). In six cases the sentences followed guilty plea agreements reached between the accused and the BiH Prosecutor's Office, by which the perpetrators admitted that they left or planned to leave BiH with the aim of joining ISIL, despite knowledge of the 30 May 2013 UN Security Council decision that declared ISIL a terrorist organization.

Inter-Ethnic Election-related Incidents

In the southern town of Stolac, electoral irregularities and unrest occurred at a number of polling stations, where the Bosniak SDA and the Croat HDZ BiH parties are vying for control of the municipality. A Bosniak mayoral candidate confronted the Croat president of the Municipal Election Commission over alleged complicity in voter fraud, which resulted in a physical altercation. While details of the incident remain unclear, it was disruptive enough for the police to intervene. The BiH Central Election Commission suspended the electoral process, which will need to be repeated.

In Srebrenica, an eastern municipality known for the genocide perpetrated against Bosniaks during the war, supporters celebrating the apparent victory of the Serb mayoral candidate came into verbal conflict with a group of supporters of the Bosniak candidate near his political headquarters. Local police intervened and prevented any serious incident. Possible irregularities concerning ballot materials in a handful of polling stations further raised tensions and sparked rumors that the election was being "fixed" in favor of the Bosniak mayoral candidate, resulting in other minor security incidents. On 4 October, upon the receipt of a report that the election material was allegedly tampered with, the RS Ministry of Interior sent a support unit to assist the local police in checking these reports. This move by the police, as well as the reports misnaming them as "special police" entering the municipal building in Srebrenica added to the raising of tensions. The SDA and Bosniak victims associations have called for the annulment of the election results.

III. State-level Institutions of Bosnia and Herzegovina

A. BiH Presidency

Larger political controversies during the reporting period surrounding the publication of the 2013 census results, agreement on an EU coordination mechanism and the RS referendum, led to political disagreements within the BiH Presidency. However, the Presidency still held six regular and one urgent session during the reporting period, and managed to adopt a number of significant decisions.

It adopted guidance for the long debated "Defense Review," a strategic document and one of the key conditions to activate the NATO Membership Action Plan, and supported the Protocol on the EU Stabilisation and Association Agreement, a precondition for advancement on the EU path. The Presidency also extended deployments of the BiH Armed Forces in peace missions in the Republic of Mali, the Democratic Republic of Congo, and the Islamic Republic of Afghanistan, and adopted decisions on the destruction of malfunctioning ammunition and explosive ordnance.

In August, Presidency Chair Izetbegovic addressed a letter to the High Representative and the Ambassadors of the Peace Implementation Council Steering Board about the then planned RS referendum on the "RS Day", calling for international action to prevent what he characterized as the further destabilization of BiH. Croat Presidency member Covic also wrote to my Office and the PIC SB ambassadors in August on a separate issue, elaborating his claim that Croats have a disadvantaged position in the institutions in BiH, particularly in the Federation, and calling for the international community's attention to that topic.

On 3 October, the Presidency adopted amendments to the *Master Plan for the EU Integration Process*, which established non-binding timelines for implementing both the European Court of Human Rights' 2009 *Sejdic-Finci*

ruling and the 2010 BiH Constitutional Court ruling on the City of Mostar's electoral system. According to the amendments, both rulings should be implemented in 2017.

B. BiH Council of Ministers

The BiH Council of Ministers (BiH CoM) met regularly during the reporting period, with EU- related and economic issues dominating the agenda. On 9 September, the BiH CoM agreed on the adaptation of the EU SAA. The protocol envisages technical adjustments of SAA provisions concerning trade. On 23 August the BiH CoM adopted the EU coordination mechanism, defining both institutional and operational coordination, as well as joint bodies within the coordination system, and their composition and competencies.

The BiH CoM adopted its midterm work plan for 2017-2019, as well as a progress report on the implementation of the action plan for measures related to the BiH Reform Agenda. The BiH CoM also adopted a salary policy focusing on limiting public spending, thereby meeting certain commitments from the BiH Reform Agenda and the IMF Letter of Intent.

C. BiH Parliamentary Assembly

Both Houses of the BiH Parliamentary Assembly (BiH PA) convened regularly during the reporting period, with BiH House of Representatives (BiH HoR) holding nine regular sessions and two urgent sessions, and BiH House of Peoples (BiH HoP) holding five regular and one urgent session. However, legislative output remained limited in quantity and in substance, even after the adoption of BiH CoM's progress report on implementing the BiH Reform Agenda. In the reporting period, only three new laws and 10 amendments to existing legislation were fully adopted, while 22 laws were rejected, seven of which were proposed by the BiH CoM, including the new *BiH Law on Ombudsman for Human Rights* and amendments on new excise taxes, which the BiH authorities had promised to adopt in their Letter of Intent to the IMF.

Amendments proposed by RS delegates to the *Law on the BiH Constitutional Court* and to the *BiH Criminal Code* were rejected on 16 June.

On 27 April, the BiH PA adopted amendments to the *BiH Election Law* in time for the BiH Central Election Commission to apply adopted changes for local elections for 2 October. The amendments were agreed in advance by an interagency working group established under the auspices of the BiH PA. However, all individual party proposals for amendments to the *BiH Election Law* to enable elections in the City of Mostar failed due to a lack of cross-party support.

During the reporting period, increasingly divisive rhetoric often brought discussions to a halt, particularly in relation to the publication of the 2013 Census results and the RS referendum on the "RS Day" holiday.

IV. Federation of Bosnia and Herzegovina

Federation Coalition Developments

On 26 July, disputes along ethnic lines in the majority SDA-HDZ BiH-SBB Federation coalition over amendments to the *Law on Lotteries* resulted in the interruption and indefinite postponement of a scheduled session of the Federation House of Representatives (Federation HoR). HDZ BiH accused Bosniak delegates of outvoting Croat delegates in adopting the draft amendments, along with two other legislative items, including the long overdue draft *Federation Law on Forests*, in an earlier Federation HoR session. These disagreements led to a halt in sessions of the Federation House of Representatives until October, when the House met again to adopt measures required to secure IMF and other international loans.

The Federation House of Peoples also halted sessions following a dispute over proposed amendments designed to restore lost benefits to some 6,000 Croat war veterans, and did not meet again until October, also to adopt necessary decisions to secure international credit for the Federation.

Despite these setbacks in parliament, the Federation Government convened regularly during the reporting period, adopting nine new laws and amendments to 15 existing laws. The Federation Parliament adopted three new laws and amendments to four existing laws.

Federation House of Peoples Appoints Deputy Serb Speaker

On 23 June, more than a year and a half after the last general elections, the Federation HoP elected a Deputy Speaker from the ranks of the Serb people, Drago Puzigaca (SNSD). Elected with the support of only two votes in the Serb Caucus, Serb Caucus head Slavisa Sucur (SDP) complained that "someone else" (i.e. Bosniaks and Croats) had chosen the representative of the Serbs.

Nonetheless, the long overdue appointment of the Serb Deputy Speaker was a welcome development, and followed months of OHR engagement to secure an appointment.

Federation Constitutional Court Suspends Application of Federation Civil Service Law Amendments

On 28 June, the Federation Constitutional Court suspended the application of amendments to the Federation *Law on Civil Service* related to appointments and dismissals of managers, whose constitutionality the Federation Vice President has asked the court to review. Such appointments and dismissals remain frozen until a decision on the merits of the case is rendered.

Mostar again without Local Elections

On 2 October, residents of the city of Mostar were denied the right to participate in local elections with the rest of the country for the second time since the Constitutional Court struck down provisions of the BiH Election Law related to Mostar in 2010, as local parties again failed to agree on amendments to fill the legal gap and allow for elections. The citizens of Mostar have not voted in local elections since 2008 and the city has been without an elected City Council since 2012.

In April, SDA President Izetbegovic and HDZ BiH President Covic tried and failed to reach an agreement on a joint proposal for Mostar, while the BiH HoR rejected four separate proposals submitted by various political groupings. On 4 May, the BiH CEC announced local elections in BiH for 2 October without City of Mostar.

In its June meeting, the PIC Steering Board Political Directors "*deplored the utter failure of the political parties over the past five-and-a-half years to meet their obligations to implement the ruling of the BiH Constitutional Court on the electoral system for Mostar, a Dayton requirement,*" and "*called upon all parties, in particular SDA and HDZ BiH, to reach a compromise by the beginning of July to allow voters in Mostar to exercise their basic right to vote for the first time in eight years.*"

V. Republika Srpska

During the reporting period, the ruling coalition led by the SNSD remained stable, with the RS Government meeting regularly. The RS National Assembly held three regular and three special sessions, and adopted nine new laws and 17 sets of amendments to existing laws.

The political situation in the RS was greatly influenced by rising tensions between Sarajevo and Banja Luka over the referendum on the 9 January "RS Day" holiday. The RS opposition parties (SDS, PDP and NDP) also supported the referendum decision, while complaining about the timing (just before municipal elections), which clearly advantaged SNSD in the polls.

On 13 July the RSNA adopted the *RS Law on Publishing Census Results*, which provided for the RS to publish separate census results in line with their own methodology. The law was published in the RS Official Gazette on 23 September and entered into force on 1 October.

In the 2 October local elections, the ruling SNSD polled strongly against the RS opposition parties, with SDS losing 22 mayoral seats, including some traditional strongholds of the party. With its coalition partners, SNSD will now effectively control two-thirds of local administrations in the RS.

Non-cooperation with the High Representative

A previously reported, I received several thousand postcards earlier this year, sponsored by the ruling SNSD party in relation to the "Day of RS", which was the subject of the 25 September referendum in violation of the GFAP. The postcards read: "High Representative, Go Home, Srpska continues to celebrate..." Some 20 of these cards included death threats and these most serious cases were forward to the BiH state Prosecutor, who has been investigating them.

The RS authorities have continued denying the High Representative 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, as well as with the international organizations and agencies. 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 claims from the RS that the entity respects the letter of the GFAP.

VI. International Criminal Tribunal for the Former Yugoslavia (ICTY) and War Crimes Prosecutions

In the reporting period, judicial authorities in Serbia began a procedure to decide on recognition of a BiH State Court war crimes judgement in the case of Novak Djukic, war-time commander in the RS Army, who was sentenced to 20 years imprisonment. In 2010, Djukic was sentenced to 25 years imprisonment for war crimes against civilians for the 1995 shelling of the town of Tuzla. In 2014, the BiH Constitutional Court vacated the verdict and the BiH Court passed a new judgement sentencing him to 20 years. Djukic fled to Serbia and BiH issued an international arrest warrant.

VII. Entrenching the Rule of Law

Draft Law on BiH Courts

The BiH Ministry of Justice prepared a new draft *Law on BiH Courts*, without working group agreement on several important issues, including the provision regulating the criminal jurisdiction of the BiH state. As previously reported, the issue of the jurisdiction of the BiH State Court has been a major point of contention between the RS and other political authorities. The draft includes provisions for the BiH state to maintain its current criminal jurisdiction on, *inter alia*, organized crime and corruption, alongside alternate provisions reflecting the RS view, which seeks restrictions on BiH state jurisdiction. I have made it clear that the state level jurisdiction must not be diminished, as it follows the division of competencies between the state of BiH and the entities under the BiH Constitution.

Non-execution of Court Judgements

The reporting period saw several very concerning challenges to the rule of law, which are covered in other sections of this report. The referendum in the RS on the BiH state Constitutional Court decision of November 2015 conducted in violation of interim measures taken by the Constitutional Court sets a dangerous precedent for BiH. The public statement by the RS President that authorities would not execute the judgement of the BiH State Court that establishes the BiH State's ownership over a prospective defense location in Han Pijesak (in the RS), and indeed the lack of its execution within the given deadline is another act of non-compliance against the BiH State judicial institutions and the rule of law in general. I have repeatedly warned about the damaging consequences of violating the legal and constitutional order of this country.

Summons of the RS President in Criminal Case Related to 25 September Referendum

On 26 September, the BiH Prosecutor's Office summoned RS President Milorad Dodik (SNSD) for questioning as a suspect, over his role in the organization and conduct of the 25 September "RS Day" referendum. Under Article 239 of the BiH Criminal Code, *Failure to Enforce Decisions of the Constitutional Court of Bosnia and Herzegovina, the Court of Bosnia and Herzegovina, the Human Rights Chamber and the European Court of Human Rights* constitutes a criminal offence, with a sanction of six months to five years of imprisonment. On 3 October, the RS President refused to appear, calling the summons a politically orchestrated farce, after which the BiH Prosecutor's Office confirmed it would send a second summons. In response, Dodik repeated that he has no intention of coming to Sarajevo for questioning, saying he would be willing to provide a statement to the prosecutor anywhere in the RS. Meanwhile, the BiH Prosecutor's Office has extended its investigation into the organization and conduct of the RS referendum to include other suspects.

Suspension of BiH Chief Prosecutor on Disciplinary Charges

On 28 September, the Disciplinary Commission of the BiH High Judicial and Prosecutorial Council suspended the BiH Chief Prosecutor while disciplinary proceedings for abuse of office are ongoing. The Office of the Disciplinary Prosecutor seeks permanent removal of the Chief Prosecutor for serious breach of duty in failing to recuse himself in cases where there was a conflict of interest, in having inappropriate contacts with judges and parties to

proceedings, in enabling unqualified individuals to perform the duties of prosecutors, in interfering with the work of judges and prosecutors with an intention to obstruct, and in general seriously undermining the public trust in the credibility of the Prosecutor's Office. The previous Deputy Chief Prosecutor for War Crimes took over as Acting Chief Prosecutor.

Entity Anti-Corruption Efforts

In May, the RS adopted a new *Law on Repressing Corruption, Organized and Most Serious Forms of Economic Crime*, introducing organizational changes within the RS prosecution.

In September, the Federation Government adopted the *Strategy to Fight Corruption for 2016- 2019*, together with an action plan for its implementation. However, 2014 legislation on a special prosecutors' department for fighting corruption and organized crime remains unimplemented. It is of special concern that while this legislation entered into force in February 2015, it still cannot be applied, due to operational prerequisites not being met. This creates legal uncertainty as to who has the competency to work on corruption and organized crime cases in the Federation. The Federation Supreme Court tried to bridge the situation with its decision that cases stay with the office(s) that were competent before the new legislation entered into force. There is a risk, however, that all investigations taken after 1 February 2015 might be found invalid, which might lead to impunity for all those cases.

VIII. Public Security and Law Enforcement, including Intelligence Reform

The practice of political interference in operational policing remains the central challenge. The January 2015 appointment of the Federation Administration Police Director remains unresolved due to an ongoing court dispute over the validity of a previously conducted selection process. The appointments of new police commissioners in West Herzegovina Canton and Canton 10 are outstanding since April and December 2014, respectively, due to attempts by local interested parties to lower the required criteria for the postings. Similarly, the appointments of independent selection boards have been delayed in Posavina Canton (2011), in Tuzla Canton (2014), and at the Federation level (2015). On 15 September, Central Bosnia Canton appointed a new police commissioner.

Una-Sana Canton adopted a new *Law on Internal Affairs* in August 2016, which is a positive development, joining Sarajevo Canton, Bosnian-Podrinje Canton, and the Federation level in enacting improved legislation that creates additional barriers to improper political influence. Tuzla Canton has delayed implementation of its new legislation due to political interference.

The Republika Srpska *Law on Police and Internal Affairs* was formally adopted and entered into force in July, following the conclusion of the relevant procedures before the Republika Srpska Constitutional Court.

OHR continues to monitor changes to police legislation and to encourage harmonization in jurisdictions throughout the country. However, attempts to disharmonize the legislative frameworks are on the increase.

IX. Economy

The relevant BiH institutions noted an increase in economic activity in BiH in the first seven months of 2016 compared to the same period in 2015. Exports increased by 1.8 percent and imports decreased by 0.8 percent. The coverage of imports over exports was 58.3 percent, and the foreign trade deficit decreased by 4.1 percent. Industrial production increased by 4 percent, while price levels fell by 1 percent. Unemployment fell by 4.2 percent in July compared to July 2015, with an administrative unemployment rate of 41.6 percent. The World Bank estimated actual unemployment at 25.4 percent and the share of youth unemployment in the total unemployment figure at 54.3 percent.

Foreign direct investments (FDI) in the first quarter increased by 114.1 percent, mostly due to investments in the production of chemicals and chemical products, charcoal and oil derivatives, as well as in the financial sector. In July, the average net salary in BiH amounted to 832 Bosnian Convertible Marks (BAM), a 0.6 percent decrease, and the average pension amounted to BAM 359, a 0.2 percent increase compared to same month in 2015. The minimal pensions amounted to BAM 174 in the RS and BAM 326 in the Federation. (One BAM is approximately equal in value to 0.5 Euros.)

On 9 September, Standard & Poor's Ratings Services affirmed BiH's credit rating at "B with stable outlook." The UN Conference on Trade and Development's 2016 World Investment Report ranked BiH as fourth out of five South East

European countries by 2015 FDI inflows. The Heritage Foundation's 2016 Index of Economic Freedom ranked BiH as 109th out of 178 countries globally (down from 97th place in 2015) and as 39th out of 43 countries in Europe (one place down from 2015). BiH also fell from 78th to 91st place out of 159 countries and territories included in the *Economic Freedom of the World 2016 Annual Report*. The World Economic Forum's *Global Competitiveness Report for 2016-2017* ranked BiH as 107th of 138 economies in terms of its competitiveness, which is four places up compared to the Report for 2015-2016.

The banking sector is assessed as generally stable and liquid. As part of BiH's commitments to the IMF, external audits are underway in nine commercial banks in BiH that were under enhanced supervision in 2015 or experienced rapid credit expansion. The consequences of the bankruptcy of two RS-based banks (Bobar Banka and Banka Srpske), which triggered concerns over the health of the banking sector, were significantly mitigated by the state-level Deposit Insurance Agency (DIA), which handled reimbursements for insured depositors competently and efficiently.

Fiscal Issues

Indirect tax revenues continued to grow, which is essential for fiscal stability at all levels of government in BiH. In the first eight months of 2016, the BiH Indirect Taxation Authority collected 2.7 percent or BAM 113 million more than in the same period in 2015.

On 7 September, the IMF approved a three-year Extended Fund Facility (EFF) with BiH in the total amount of ca. EUR 553.3 million, focusing on improving the business environment, reducing the size of government, improving the quality of spending, and safeguarding the financial sector. The IMF approval allowed for an immediate disbursement of ca. EUR 79.2 million to BiH, while the remaining 11 disbursements are subject to quarterly reviews of progress on reforms.

The Federation receives two-thirds and the RS one-third of the IMF disbursements under the EFF. The conclusion of the arrangement was initially hampered by delays in the completion of prior actions set by the IMF, as well as delays in the signing of the Letter of Intent by BiH CoM Chair Denis Zvizdic and Federation PM Fadil Novalic (both SDA), who conditioned their signatures on RS agreement on the adaptation of the EU SAA, the EU coordination mechanism, and state-level sectoral strategies.

The growth of indirect tax revenue, domestic borrowing and continued international financial assistance contributed to fiscal stability in the reporting period. Challenges in the period ahead may arise from foreign debt payment obligations. In 2017, foreign debt payments will increase by 23 percent, following a 26 percent increase in 2016.

The BiH Ministry of Finance and Treasury is in the process of finalizing the *Draft Law on the Budget of BiH Institutions and International Obligations of BiH for 2017*, which – based on the *Global Framework of Fiscal Balance and Policies for 2017-2019* – is unlikely to show an increase for state institutions. The financing of state institutions has been locked at the same level since 2012 in terms of both the total amount (BAM 950 million) and the amount of indirect tax revenue (BAM 750 million), which comprises 78.9 percent of total budget revenue. Other revenue sources for state institutions are limited. While these financial constraints do not pose a risk to the stability of the state institutions, they may hinder their ability to fully meet their obligations, especially now as BiH has taken the step of applying for EU membership.

On 25 August, the Federation Government adopted the *Consolidated Report on Budget Execution for January-June 2016*, which included the overall data for the Federation level, cantons, local self-government units, and extra-budgetary funds. Total revenues amounted to BAM 3.5 billion, which is a 4.7 percent increase over the same period last year but a 6.9 percent decrease compared to the budget plan. Total expenditures amounted to BAM 3.2 billion, which is 4.8 percent more than in 2015 but 7.6 percent less than planned. In the reporting period the Federation Government raised BAM 219.9 million from the issuance of treasury bills and bonds to meet regular budgetary needs. The first IMF tranche earmarked for the Federation was not available due to political disputes within the Federation Parliament. The total funds from domestic and international borrowing planned in the 2016 Federation budget amount to BAM 712 million. The preparation of the 2017 Federation budget is underway.

The stability of the Federation Pension Fund raises concerns, with an accumulated deficit of some BAM 200 million resulting from the gray economy, early retirement legislation, an increase in the number of pensioners, and poor collection of pension contributions. Borrowing from commercial banks was pursued as an interim solution to

address delayed pension payments to some 408,000 pensioners in the Federation.

Fiscal challenges at the cantonal level stem mainly from accumulated deficits due to unaddressed spending problems from the past, a lack of willingness for reforms, and disputable decreases in distributions from the Federation government.

On 1 September, the RS Government adopted the *Consolidated Report on Budget Execution for January-June 2016*. The Report showed that budget revenues and expenditures totaled BAM 1.2 billion, 3 percent less than planned. Financing of regular budgetary needs at the RS Government level was largely supported by domestic borrowing. Between January and mid-September, the RS Government raised BAM 408 million by issuing treasury bills and bonds. Additionally, on 12 September, the RS Government adopted the decision accepting the first IMF tranche in the amount of some BAM 52 million. Total funds from domestic and international borrowing planned in the 2016 RS Budget amounted to BAM 558.3 million.

Of concern in the RS is the situation in the health sector, as well as pensions. In 2015, the RS Health Insurance Fund registered a deficit of BAM 84.3 million, while the RS healthcare institutions accumulated debts of BAM 513 million. The RS Ministry of Health announced cooperation with the World Bank and USAID to rationalize the entity's healthcare system. The RS Pension Fund is also faced with challenges to its sustainability, resulting from, among other factors, poor revenue collection and an increased number of pensioners. The inclusion of the RS Pension Fund in the 2016 RS Budget addressed the problem of delayed pension payments to about 256,000 pensioners, but caused delays in other RS budget payments.

International Obligations

On 14 July, the BiH CoM adopted the *Framework Transport Strategy of BiH for 2016-2030* as a planning document. The adoption of the strategy opens the door to international financial support for BiH's infrastructure projects. The strategy is based on entity and Brcko District strategic documents.

On 14 October, the Energy Community Ministerial Council suspended measures taken against BiH in its 2015 session for persistent breaches of obligations arising from the Energy Community Treaty (ECT), particularly in relation to the gas sector. The suspension results from the 13 October agreement whereby the relevant state and entity ministers committed to support the adoption of a state law addressing the identified breaches. If no such law is adopted by the end of March 2017, the measures against BiH will be reintroduced automatically.

X. Return of Refugees and Displaced Persons

Upholding the right of refugees and displaced persons to return to their pre-war homes remains central to the full implementation of Annex 7 of the GFAP, which 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 referendum contributed to a general sense of unease between ethnic groups in mixed returnee communities in the RS, especially in Srebrenica, where the Bosniak mayor refused to participate in the organization of the RS referendum due to its violation of a BiH Constitutional Court interim measure.

I remain concerned by the ongoing difficulties returnees face in the education sector in several local communities, in particular in relation to the use and name of official languages. In this context, I am particularly troubled by the RS' non-compliance with the 24 May ruling of the BiH Constitutional Court on this issue.

XI. Media Developments

The BiH Public Broadcasting System (PBS) continued to face challenges in terms of financing and independence from inappropriate political influence. The temporary arrangement of financing public broadcasting through taxes collected by the three main telecom operators was extended in the summer, while a permanent financing solution has yet to be found. After considerable delays the public broadcasting services in BiH have launched a test digital terrestrial signal in three centers (Sarajevo, Banja Luka and Mostar).

In April 2016, the BiH Council of Ministers appointed Predrag Kovac as General Director of the BiH Communication Regulatory Agency for a four year terms.

XII. Defense Matters

On 27 June, the BiH Presidency agreed on guidance to the BiH Ministry of Defense regarding the Defense Review, and set a deadline of 30 November 2016 for its completion. Among other issues, the BiH Presidency agreed on a compromise solution on the number of positions in the BiH Armed Forces. The Defense Review calls for the reduction of BiH Armed Forces from the current 10,000 active duty and 5,000 reserve positions to 9,200 active duty and 4,600 reserve positions upon the long-delayed activation the NATO Membership Action Plan.

XIII. European Union Military Force

The European Union military mission in BiH (EUFOR) continues to play an important role in supporting BiH's efforts to maintain a safe and secure environment. This assists my Office and other international organizations in fulfilling their respective mandates. EUFOR's presence on the ground, including its liaison and observation teams, remains an important contributor to stability and security.

XIV. Future of the Office of the High Representative

The PIC SB Political Directors met in Sarajevo on 7-8 June 2016 to underline the progress in implementing the GFAP, as well as their unequivocal commitment to BiH's territorial integrity and sovereignty. The PIC SB also reinforced the need to complete the 5+2 agenda, which remains necessary for OHR's closure. The next meeting of the PIC SB is scheduled for 6-7 December 2016 in Sarajevo.

Since my mandate began in March 2009, the OHR's budget has been reduced by over 46 percent and my staff by over 51 percent. Given these deep cuts, it is essential that I am equipped with the budget and staff required to carry out my mandate effectively, as I am entitled to under Annex 10 of the GFAP.

XV. Reporting Schedule

In keeping with 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 sixteenth regular report. Should the UN Secretary-General or any UN Security Council member require further information at any time, I would be pleased to provide an additional written update. The next regular report to the UN Secretary-General is scheduled for April 2017.

Notes

¹ "The RS National Assembly will decide on this matter very soon and I, as the RS President, will issue an order not to register this because there are no grounds for it." RS President Milorad Dodik, *EuroBlic*, 6 September 2016.

² "Republika Srpska is a state, brought into the Dayton Agreement. I was taught in school that there are three criteria for something to be called a state: territory, effective government on the whole territory, and people who want this state. So what of this does the RS lack? Nothing." RS President Milorad Dodik, post-RS referendum rally in Pale, 25 September 2016.

³ "I agree with (Serb member of the BiH Presidency Mladen) Ivanic when he says that January 9 should be called RS Statehood Day. We will do it very quickly; we will adjust because the RS is more a state than BiH. We will find a new name – 9 January, RS Independence Day." RS President Milorad Dodik, RTRS, 20 September 2016.

⁴ "Nobody is excluding that option (of an independence referendum). Not us, not them. It is an absolutely legitimate political topic that can be discussed. It is not on the agenda now, but it is something that, in political terms and terms of principles, should not be excluded in the future." RS President Milorad Dodik, Sputniknews.com, 21 July 2016.

⁵ "The independence referendum does not have to be in 2018, as SNSD said in its (April 2015) congress, but it can be then. Many things can be changed, but it should not be hidden that the people think they should not be living in this kind of BiH. However, it is possible that meanwhile some things improve, that the High Representative departs, that all decisions that he issued go out of force. When BiH functions according to the original Dayton, there will not be a reason for the referendum." SNSD Vice President Nebojsa Radmanovic, *Nedeljnik*, 16 September 2016.

⁶ "If with this referendum... if they go forward with it and finish the story to the end and unwrap this referendum,

then he needs to know, the public needs to know that from that day Dayton Bosnia and Herzegovina does not exist and legally we return to the Republic of BiH...On the other hand, citizens need to know that on the territory of Bosnia and Herzegovina there is no longer the Yugoslav People's Army...that Serbia can't help anymore...and that the Republika Srpska in its parameters could be maintained for only 10 to 15 days in a conflict. My plea is that it is better to talk for a hundred years than to go to war for one day. If they put us in a situation that they secede from Bosnia and Herzegovina, they should know that it won't pass peacefully." Sefer Halilovic, TV1, September 19, 2016.

⁷ _ "The Croat Republic of Herzeg-Bosnia was not terminated or abandoned. Having in mind the condition of the state of BiH and everything that goes on today, both on the part of political Sarajevo and on the part of Banja Luka, Herzeg-Bosnia is of bigger importance today than it was in the last 20 years. After all, Herzeg-Bosnia still lives in many laws and public companies. Furthermore, all laws of the Croat Republic of Herzeg-Bosnia are still in force for all those areas that are not regulated at the state level." Croatian People's Assembly Main Board President Bozo Ljubic (HDZ BiH), speech in Grude, 28 August 2016.

⁸ _ "However, equality can be achieved in different ways and through different models. One is an internal territorial reorganization of the Federation of Bosnia and Herzegovina." Croat BiH Presidency member/HDZ BiH President Dragan Covic, letter to the High Representative and the PIC Steering Board, 23 August 2016.