

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

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

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

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

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

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

experts, politicians and civil society, the cornerstone ceremony proceeded as announced.

6. In July, the BiH Constitutional Court issued a partial Decision on Admissibility and Merits in a case related to the construction of the three hydropower plants (Case No. U-16/20). The application was submitted by 24 members of the BiH House of Representatives, and asserts – based on the existing jurisprudence of the BiH Constitutional Court – that the RS violated the constitutional competences of the State of BiH, since the concession decisions and related contracts issued and concluded by the RS Government constitute acts of disposal of State Property. In its decision, the Court recognized the existence of a constitutional dispute and ordered the BiH Concession Commission, in its capacity as the Joint Concessions Commission, to resolve the disputes between BiH and the RS arising in connection with the award of concessions, no later than three months from the date of delivery of the decision.
7. In addition to the decisions concerning State Property, on 23 September the BiH Constitutional Court rendered another ruling in a case reviewing the constitutionality of specific provisions of the RS *Law on Forests*. The Court established that the contested provisions that read “owned by the Republic” are not in conformity with the BiH Constitution, as forests and forestland represent public goods as defined under State Property belonging to the State of BiH and exclusively within the jurisdiction of the BiH Parliamentary Assembly. To avoid calling into question application of the entire Law, potentially jeopardizing the management and care of forests as public goods and important natural resources, the decision did not repeal the unconstitutional provisions. Instead, the Court ordered the RS National Assembly to harmonize the relevant provisions with the BiH Constitution within six months from the delivery of the decision.

### **3. Brčko District**

8. The Brčko District Supervisor and the OHR continued to promote in the District good governance, anti-corruption measures, infrastructure development, and private sector growth to advance BiH’s uniquely integrated, multi-ethnic community towards achieving the objectives of the Final Award.
9. Acknowledgement of the need for positive changes was demonstrated by the District through implementation of reform-related laws: the Law on Associations and Foundations, intended to ensure transparent, equitable and merit-based support to the NGO sector; and the Law on the Protection of Rights of National Minorities, which harmonizes the Brčko District’s legislative framework with EU standards, and follows the recent establishment of the Brčko District Council of National Minorities.
10. The Brčko District Assembly also established the Office for Prevention of Corruption and Coordination of Activities in Combating Corruption (Anti-Corruption Office) foreseen in legislation adopted in 2018. As the precursor for its efficient and international standards-based operations, in September the Brčko District Government signed a memorandum of understanding on anti-corruption cooperation with the US Embassy’s Bureau of International Narcotics and Law Enforcement Affairs. Correspondingly, the Brčko District Assembly passed the internal organization guidelines for the commission overseeing the implementation of the Law on Prevention of Conflict of Interest with the commission becoming operational in mid-October.
11. Encouraged by the Supervisor’s continuous support, in April the Brčko District Assembly revoked amendments to Law on Police adopted last year, which are viewed as political interference in professional policing. Moreover, the prior practice of Assembly delegates adopting legislation in urgent procedure, thus forgoing any transparency, which in fact led to

the latter problem, was discontinued by the new Assembly that took office in December 2020. Transparency of the legislative practice was further strengthened by the appointment this spring of opposition delegates to the Assembly's commission.

12. In September, the District Financial Directorate took on the task to improve financial oversight of State-owned enterprises through an IMF technical assistance program launched with political backing from OHR. This initiative compliments the principles of fiscal discipline and transparency embedded in the new Law on Budget that was applied to the 2022 draft budget that was put in to process by the Assembly on 6 October. This will allow for the budget to be adopted before the end of the year, a deadline not met for a decade.
13. The District authorities also completed the legal documentations to transfer the District's ownership rights over the electricity transmission facilities to the BiH Electricity Transmission Company in compliance with the State-level law. This will also ensure the continued maintenance and upgrade of this key electricity transmission infrastructure by the State and thus contribute to the security of electricity supply in Brčko. In October, the Assembly initiated the process to adopt a new electricity law for Brčko, which will align the District's law fully with the State law as well as create the framework for laws on renewable energy and energy efficiency to be brought online in the District in 2022.
14. Transportation infrastructure projects have been prioritized by the District authorities as a stimulus to business development. In June, the Brčko District leadership hosted a meeting between BiH Minister of Communication and Transport and the Croatian Minister of Maritime Affairs, Transport, and Infrastructure, in which short and long-term solutions for the vital Brčko-Gunja Bridge connecting Brčko District with Gunja in Croatia, were agreed. In the short term, the existing bridge will be refurbished, with work to begin in the spring of 2022, while long-term plans foresee the construction of a new bridge by the end of the decade that would alleviate heavy traffic in the Brčko town center.
15. In the same month, Brčko established a working group to finalize by mid-December routes of highways that will run east-west and north-south and intersect in the District. And in August, the implementation of the Brčko Port modernization project was launched. The collective result of these connectivity initiatives is that in the next few years Brčko District will become a regional transportation hub for BiH to access the Western Balkan and EU markets.
16. The pull of the infrastructure development augmented by Brčko's public-private initiatives to improve the business environment is already generating results. In May, the Assembly approved the disposal of the District property through a special agreement with the "Studen Global SEE" Limited, a branch of the Austrian-based "Studen Group," for the construction of an economic business zone expected to result in 220 jobs over a period of five years, and an investment of Euro 10 million. The economic business zone will facilitate turn-key investment thus compressing the startup time of new private sector initiatives in the District.
17. While the blockade of the State-level institutions by RS representatives did not heavily impact the performance of the executive and legislative authority in the Brčko District, the requirement of the BiH Council of Ministers to approve international financial components of two infrastructure projects means launch dates set for Q4 2021 and Q2 2022 may be delayed.
18. Brčko District was excluded from receiving an allocation of financial assistance through the International Monetary Fund's distribution in August of Special Drawing Rights (SDR) to BiH, aimed at mitigating the economic consequences of COVID-19 pandemic, as this would have required a decision by State-level institutions. In September, the Brčko District Assembly adopted a resolution calling for, among other things, the establishment of a systematic mechanism for the District to always be included along with the entities in budget support

assistance provided by international financial institutions, which would be in keeping with the entities' requirements to comply with the Final Award.

19. While progress is being made towards reforms, the Brčko District Supervisor's continued engagement, and the support of OHR expert assistance in cooperation with the international community remain crucial to seeing the reforms through to achieve the sustainable status mandated by the Final Award.

#### **4. Fiscal sustainability**

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

26. For the first time since the establishment of the BiH Central Bank in 1997, the BiH Presidency failed to appoint new members of the BiH Central Bank Governing Council before the expiration of the current members' mandates on 11 August. On 10 August, the outgoing Council unanimously opined on the necessity to ensure the unimpeded ability of the BiH Central Bank to discharge its legal role, duties and functions pending the appointment of a new composition of the Council. The position of the Council is based on the legal principle of continuity of office embedded in BiH legislation. On 31 August, BiH Presidency Chair Zeljko Komšić (DF) called a session of the BiH Presidency to address the pending appointment. However, as BiH Presidency member Milorad Dodik – acting pursuant to the RSNA conclusions of 30 July – voted against the proposed appointment decision, there was no requisite consensus for its adoption.
27. I continue to inform international partners of all developments on this matter. I have also publicly commended the BiH Central Bank for carrying out its constitutional and legal obligations in the best interests of the entire country and underlined that preserving its continuity and independence from politics is vital to BiH's overall stability and development.

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

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

#### *War crimes cases*

32. On 8 June, the Appeals Chamber of the International Residual Mechanism for International Tribunals (IRMCT) confirmed the earlier Trial Judgement of the International Criminal Tribunal for the former Yugoslavia (ICTY) against former RS military commander Ratko Mladić for genocide, crimes against humanity and violations of the laws or customs of war, including terrorizing the civilian population of Sarajevo for nearly four years and killing more than 8,000 Muslim men and boys in Srebrenica in 1995. The Chamber also reaffirmed the previously imposed sentence of imprisonment for life. Shortly thereafter, a commission established by the RS Government issued a report claiming that crimes committed by RS forces in Srebrenica did not amount to genocide.
33. On 30 June, following the ICTY Appeals Chamber order for retrial, the IRMCT convicted former head of the State Security Service of the Republic of Serbia Jovica Stanišić and his subordinate

Franko Simatović for aiding and abetting murder as a violation of the laws or customs of war and a crime against humanity, and crimes of deportation, forcible transfer, and persecution, as crimes against humanity, committed by Serb forces following the takeover of the town of Bosanski Šamac in April 1992, and sentenced each to 12 years of imprisonment. The ruling marks the first conviction of state officials of neighboring Serbia for crimes committed on BiH territory. In September, both the prosecution and the defense filed appeals.

34. Highlighting the need to closely monitor war crimes prosecutions, the Banja Luka District Prosecutor's Office earlier this year suspended several cases related to the destruction of six mosques in the city in 1993. The cases had been transferred from the BiH Prosecutor's Office to the RS, in accordance with the BiH War Crimes Strategy. However, instead of proceeding more efficiently, which is the aim of such transfers, the cases were suspended citing expiration of the 15-year statute of limitations under the Criminal Code of the Socialist Federal Republic of Yugoslavia, the law in force as of 1993. In July, the State-level judiciary took the cases back for processing by the BiH Prosecutor's Office and the BiH State Court.
35. In August, former RS military regiment commander and head of the RS Veterans' Association Milomir Savčić, indicted by the BiH Prosecutor's Office for genocide in Srebrenica and ordered into custody until the end of his trial, escaped BiH jurisdiction, illustrating the need for international cooperation in prosecuting war crimes. Such cases usually concern suspects absconding to a neighboring state - in this case, likely to Serbia, although Serbian officials have denied this - where the suspect also has citizenship, and which will not extradite its citizens for war crimes cases. While agreements exist that should ensure prosecution by such states, there have been no legal consequences in several known cases in recent years.
36. Soon afterwards, in September, a former senior Federation police official was arrested in Serbia, accused of war crimes against prisoners of war allegedly committed from 1993 to 1994 in Goražde in BiH. As the latest of a string of arrests of BiH nationals by Serbia for crimes allegedly committed in BiH, the BiH Ministry of Foreign Affairs issued a recommendation for people in the BiH defense from 1992 to 1995 not to travel to Serbia.

#### *Denial of war crimes*

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

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

#### *BiH Presidency*

38. The current political crisis in BiH is most visible in the BiH Presidency, which resembles anything but a collective head of state. The divergent positions of the member of the BiH Presidency Milorad Dodik on one side and two other members Željko Komšić (Democratic Front-DF) and Šefik Džaferović (SDA) on the other persist on all State-level matters and have intensified following High Representative Inzko's decision enacting amendments to the BiH Criminal Code. Since then, Dodik has blocked the work and/or decision-making of the Presidency either by not attending sessions or by attending and voting against all agenda items.

39. Tensions increased following the address of Komšić in his capacity as BiH Presidency Chair (which he assumed from Dodik in July as part of the regular rotation) before the UN General Assembly (UNGA) in September. In his address, Komšić focused on the political crises in BiH as he saw them, as well as what he claimed are poor neighborly relations with Serbia and Croatia, instability caused by threats to territorial integrity, and electoral reforms aimed at promoting ethnic rather than civic principles and called on the UN to protect human rights in BiH. Dodik had attempted to prevent Komšić from attending and addressing the UNGA, claiming his appearance could only be in a private capacity as it was not approved by the BiH Presidency. Dodik not only accused Komšić of abusing his position to present a false narrative of the situation in BiH; he also blamed the UN Secretary General (UN SG) and accused him of laying the foundation for the dissolution of BiH by allowing Komšić to appear.<sup>[i]</sup>
40. Dodik similarly criticized the participation of BiH Ambassador to the UN Sven Alkalaj's remarks in a session of the UN Security Council in May and the participation of BiH Minister of Foreign Affairs Bisera Turković (SDA) in a Council session in June. Following Ambassador Alkalaj's remarks, in which he congratulated the work of the IRMCT and criticized Serbia for harboring convicted war criminals, Dodik instructed all BiH Ambassadors of Serb ethnicity to coordinate their activities solely with the Serb member of the BiH Presidency and to ignore instructions of the BiH Ministry of Foreign Affairs.
41. Unsurprisingly, the BiH Presidency held only two regular sessions, one in July and the second in late August, while there were several unreported urgent and extraordinary sessions. Even throughout the political crisis the Presidency maintained regular protocol activities, receiving official diplomatic delegations, and making some official visits abroad.
42. In June, the Presidency adopted the 2021 Budget of the BiH Institutions and International Obligations, with a conclusion requesting the BiH Parliamentary Assembly to allocate funds for salary increases for members of State-level police agencies and the BiH Armed Forces. However, the budget remains stalled in the BiH Parliamentary Assembly. There is also no indication regarding the preparation and submission of the 2022 Budget, which should be adopted by the end of the year.

#### *BiH Council of Ministers*

43. Until the end of July, the BiH Council of Ministers had met regularly, holding nine regular and nine extraordinary sessions during the reporting period. However, no ordinary sessions have been held since 22 July, making the Council of Ministers hostage to RS policy of non-attendance and non-participation in State-level decision-making. The Council of Ministers adopted only one new law and amendments to the Law on the HJPC, the latter a requirement stemming from the EU Commission's "Opinion on Bosnia and Herzegovina's EU membership application".
44. The Council of Ministers reached no agreement on launching the procedure for the selection of the new BiH ITA Director, also reaching no agreement on decisions concerning the protection of domestic products, visa requirements, and other issues. While previous convocation of the Council of Ministers adopted decisions declaring 11 July – the anniversary of the 1995 Srebrenica genocide – as a Day of Mourning in BiH, the Council of Ministers could not agree and issued no such declaration.
45. In June, in the absence of a 2021 State-level budget, the Council of Ministers adopted the decision on temporary financing for Q3 2021. With that decision expiring on 30 September and indications that the RS would take over payments for Serbs from the RS in the BiH institutions combined with continuous blockade of the Council of Ministers, on 24 September I addressed a letter to the Chair and Deputy Chairs of the Council of Ministers and urged them to adopt a

decision for Q4 2021 without delay. In an urgent session on 28 September, the Council of Ministers unanimously adopted that decision, ensuring uninterrupted financing of the BiH institutions through the end of the year.

46. In October, BiH Minister of Defense Sifet Podžić (Bosniak, DF) postponed a joint military exercise between the BiH and Serbian Armed Forces shortly before it was scheduled to commence at Manjača Mountain near Banja Luka. In postponing the exercise, Podžić cited as justification the recent surge in COVID-19 cases and the low vaccination rate in the BiH Armed Forces, and the non-adoption of the 2021 BiH Budget and corresponding Defense Budget and resulting lack of funds for the exercise.
47. BiH Presidency member Milorad Dodik criticized the move and claimed only the BiH Presidency could postpone an exercise it had authorized and called for Podžić's removal. The same day, BiH Council of Ministers Chair Zoran Tegeltija (SNSD) issued a decision on Podžić's removal. Such a decision must be approved by both houses of the BiH Parliamentary Assembly, which is extremely unlikely.
48. At the request of the BiH Armed Forces Joint Staff Commander, Podžić postponed the exercise but did not cancel it, which is in line with the BiH Presidency decision to organize such a joint exercise "in 2021" if it is rescheduled this year.

#### *BiH Parliamentary Assembly*

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

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

53. The Federation Government from the 2014-2018 mandate remains in place, in a caretaker capacity, with no new Government appointed following the 2018 General Elections. Since last year, Federation Prime Minister Fadil Novalić (SDA) and Deputy Prime Minister/Minister of Finance Jelka Miličević (HDZ BiH) have been under criminal indictment for their role in the



controversial procurement of 100 ventilators early in the COVID-19 pandemic. Novalić is accused of abuse of power, influence peddling, money laundering and document forgery, while Miličević is accused of negligence. Both have pleaded not guilty.

54. Nevertheless, the Federation Government meets regularly, holding 22 regular sessions. Both houses of the Federation Parliament met infrequently, with the House of Representatives holding just five regular sessions and the House of Peoples only three. In terms of legislative output, only three new laws and three amendments to existing laws were adopted.
55. The Collegiums of both houses remain incomplete, with the House of Representatives having failed to appoint a new deputy speaker from the ranks of the Serb people following a reshuffling of the parliamentary majority in June 2019, while the House of Peoples has not appointed the deputy speaker from the ranks of the Serb people since its inaugural session following the 2018 General Elections.

#### *Appointment of members of Federation Securities Commission*

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

#### *Federation Constitutional Court Appointments Still Outstanding*

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

#### *Failure to adopt Law on Forestry*

60. No progress was made in adopting the Federation *Law on Forestry*, which the Federation has

been without since 2009. At the time, the Federation Government attempted to address the issue through a decree, but in 2010 the Federation Constitutional Court determined that the Government had no constitutional or legal basis to regulate the field of forestry by decree.

61. In September, the Federation Government urged the Federation Parliament to discuss the draft *Law on Forestry* adopted by the Government in 2017. The draft was on the agenda of a session of the Federation House of Representatives in late September but withdrawn.

#### **IV. Republika Srpska**

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

manner, but also a constitutional obligation of non-discrimination in terms of a group right.

#### *Srebrenica*

69. Following the rejection of their appeals during the repeated local elections in Srebrenica in February, Bosniak political representatives of the coalition “My Address Srebrenica” accepted the mandates won and agreed to participate in authority formation. Although the boycott of the partly repeated elections resulted in the weakened Bosniak position in the municipal assembly, the Serb majority initially agreed to form the authorities through an even balance of ethnic representation.
70. However, the agreement did not last long, with Mr. Dodik’s open call for the Serb majority in Srebrenica to remove the appointed Bosniak Speaker Ćamil Duraković for his public engagement on the reporting of a case of genocide denial in the RS under the new provisions of the BiH Criminal Code, which the majority did in September. Though another Bosniak agreed to be appointed as Speaker, all other Bosniak representatives left the session in protest. The balance of ethnic representation in Srebrenica, established as a practice in the previous period, continues to be challenged by the local Serb representatives.

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

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

76. In May, a Herzegovina-Neretva Canton Assembly working body issued a vacancy announcement for members of a new Independent Board. In August, the Assembly body conducting the vacancy procedure interviewed qualifying candidates. The process has meanwhile stalled. Herzegovina-Neretva Canton has not had a functioning Independent Board since March 2017 and has not had a duly appointed police commissioner since October 2018.
77. In July, the Federation Government, serving in technical mandate since 2018, decided not to appoint a new Federation Police Director based on the list of proposed candidates prepared by the Independent Board in April 2019. The mandate of the previous director expired in January 2019. The deputy police director, appointed in February 2019, has been replacing the police director in the interim.
78. The Posavina Canton authorities failed to insert a required provision in the relevant police law required by the letter of the President of the Security Council of 2007 on police denied certification by the former United Nations International Police Task Force, despite repeated assurances from canton authorities.

#### *Intelligence*

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

## **VI. Economy**

#### *Economic trends*

80. Available economic indicators for BiH are mostly positive when compared to last year. Still, they do not necessarily reflect the level of economic and social development in the country as there are areas in which statistical progress is due to last year's low base for comparison or external factors.
81. The IMF projects BiH's 2021 economic growth at 3.5 percent, while the World Bank's projection 2.8 percent, the lowest in the region. Compared to the corresponding period last year, industrial production in Q1 increased by 7.3 percent, while exports and imports in the period January-July increased by 31.1 percent and 20.4 percent, respectively. Foreign direct investments in Q1 increased by 14.6 percent, amounting to BAM 271.8 million. In June, there were 393,781 unemployed persons (down by 6.5 percent) and 820,979 employed persons (up by 2.1 percent). The registered unemployment rate was 32.4 percent. The number of pensioners was 696,276 persons, showing a continued increase. The banking sector is assessed as generally stable and liquid. Its cumulative profit in the first half of 2021 was BAM 215 million, a 50.8 percent increase, indicating the recovery of the banks after the outbreak of the COVID-19 pandemic. At the end of August, Moody's and Standard & Poor's affirmed their credit ratings for BiH and their stable outlook.
82. The average net salary of BAM 997 and average pension of BAM 421 remain significantly below the average price of the basket of goods of over BAM 2,000 for a four-member family, suggesting that even those with steady incomes struggle to make ends meet. Pensioners, a majority of whom receive the minimum pensions (BAM 207 in the RS and BAM 382 in the Federation), are particularly vulnerable.
83. In August, the *European price comparison program* noted that BiH's GDP per capita last year was 33 percent of the EU average. The UNICEF and UNDP survey on "Social Impacts of COVID-19 in BiH" shows that 48.5 percent of households saw declines in their financial

situation, with 12 percent experiencing significant difficulties. This situation has forced 20 percent of households with children and 23 percent of families from vulnerable groups to borrow to meet basic needs. The Foundation for Social Inclusion in BiH calculated that 800,000-900,000 people in BiH live at the absolute poverty line, with every sixth citizen being in the extreme poverty category.

84. The economic situation and its discouraging outlook are likely to accelerate the already worrisome population outflow. According to research by BiH experts on the Impact of the COVID-19 Pandemic on Population Migration, the 2019 data show that ca. 450,000 BiH citizens reside in EU countries and that the exodus of youth along with the increased number of pensioners further complicates the economic situation in BiH. Of all EU countries, BiH diaspora is most numerous in Germany, with 53,880 BiH emigrating there in the last seven years. In April, the German Bureau of Statistics noted that the number of BiH citizens residing in Germany at the end of 2020 was 211,335.

#### *Fiscal issues*

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

calculations. Thus, the problem of financing of the State institutions requires a sustainable solution.

90. The Federation maintained its budget stability during the reporting period. Moreover, the *Consolidated Budget Execution Report for the Period January – June 2021* notes a positive financial result of BAM 328.5 million in total for all levels of government in the Federation. This is attributable to the sustained growth of indirect tax revenues, continued domestic borrowing and the recent IMF SDR disbursement.
91. Conversely, the RS continues to operate in a fragile financial environment, financing almost one quarter of its regular budgetary needs through borrowing. In April 2021, due to the financial crisis and lack of a new arrangement between BiH and the IMF, the RS Government decided to raise money to finance repayment of its previous debt and budget deficit through the sale of five-year bonds on the London Stock Exchange. According to the RS Ministry of Finance, as of March the RS debt was BAM 5.85 billion, 50.4 percent of the RS GDP.

#### *Additional developments relevant to the GFAP*

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

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

96. The appearance of a 20-meter-long mural of former RS military commander and convicted war criminal Ratko Mladić saluting passersby in Foca in April is among a string of concerning developments in Foca and elsewhere in eastern RS that has put Bosniak returnee communities on edge. The Mladić mural joins an earlier mural of WWII Chetnik leader Draža Mihailović, whom several Serb paramilitary units in the 1992-1995 war in BiH emulated. A third mural appeared, of the late Milorad Pelemiš, wartime commander of the RS 10<sup>th</sup> Sabotage Detachment, known for its involvement in the execution of war prisoners during the July 1995 Srebrenica genocide. In the same vein, the Bijeljina Town Assembly supported the erection of a bust of Mihailović at one of the smaller central town squares.
97. In the period before the Srebrenica genocide commemoration, the Serb nationalist association Eastern Alternative announced they would mark 11 July as the day of the liberation of Srebrenica under the slogan “Hail Krivaja,” a reference to the codename of the RS Army’s offensive to take Srebrenica.
98. On 23 June, the BiH Constitutional Court passed a decision accepting the appeal from a group of Bosniak parents from the community of Konjević Polje, supporting their claim that Bosniak students were discriminated in the RS education system regarding the use of Bosnian language in the school administration. This decision nullifies an earlier decision by the RS Supreme Court, which dismissed the claims of discrimination. The parents initiated the legal battle in 2013, after which several other returnee communities protested over the same issue.
99. The 23 June decision is yet to be implemented, and the start of the new school year brought the same issue to the surface in another Bosniak returnee community of Liplje near Zvornik, where parents resorted to protest as there had been no changes in the meantime. Although students are taught the national group of subjects (mother tongue, religious classes, geography, and history) according to the curriculum in the Federation, the RS Ministry of Education continues to refer to the RS Constitution as the grounds for their refusal to use the term “Bosnian” in official school records and will only use the term “language of the Bosniak people.” The BiH Constitutional Court has previously ruled that constituent peoples are entitled to call their language the name of their choosing.
100. In Glamoč municipality in the Federation Canton 10, Serb students are not offered the national group of subjects. Students in two other municipalities with significant Serb returnee populations in Canton 10 are offered the national group of subjects, with books in Cyrillic script provided by the RS Ministry of Education, several requests from parents to introduce the national group of subjects in Glamoč have been rejected due to an “insufficient” number of students, although one-third of primary students are of Serb nationality.
101. Political leaders throughout BiH must recall their existing obligations under Annex 7 of the GFAP to “undertake to create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group.”

## **VIII. Media developments**

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

103. The process of broadcast digitalization in BiH began in 2009 with the adoption of the relevant strategy by the BiH Council of Ministers. Based on the Law on Communications, BiH's international obligations and the adopted Strategy for Transition to DVB-T2, the Communication Regulatory Agency (CRA) has prepared a radio spectrum and migration plan that theoretically allows digital broadcasting of programs for all licensed stations (ca. 230). The plan allows for the construction of six multiplex digital platform networks. According to international agreements and the BiH Law on Communications, the CRA is obliged to rectify interference affecting neighboring countries due to the operation of transmitters in BiH.
104. On this basis, the Croatian regulator has requested BiH to shut down 175 of 743 transmitters in BiH, and the CRA expects similar requests from Serbia and Montenegro, as both neighboring countries plan the introduction of 5G. According to the CRA's estimate, a complete shutdown of analog transmitters by the end of 2021 would result in 58 percent of BiH households with no television reception, while 42 percent would still have reception via cable providers.
105. Although the Public Broadcasting System, which consists of the three public broadcasting services - the State-level Bosnia and Herzegovina Radio-Television (BHRT), Radio Television Federation (RTF BiH), and Radio-Television RS (RTRS) - is a license holder for two digital platform networks, only the infrastructure for experimental broadcasting has been installed. The establishment of these two platforms was halted due to RTRS conditioning the procurement of equipment necessary for digitalization with transfer of ownership rights over the equipment to itself.

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#### Notes:

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

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

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

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

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

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