

NEEDS ASSESSMENT IN THE FIELD OF SUPPORT TO WITNESSES / VICTIMS IN BiH

**“A Situation and Needs Assessment of the Cantonal / District Prosecutors’ Offices and Courts
in the Field of Witness / Victim Support and Protection in War Crimes Cases in BiH”**

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Circulation

500

The report “A Situation and Needs Assessment of the Cantonal/District Prosecutors’ Offices and Courts in the Field of Witness / Victim Support and Protection in War Crimes Cases in BiH” was realised within the framework of the Project Building Capacities of Cantonal and District Prosecutors’ Offices and Courts in BiH to Process War Crimes Cases, 2008–2011 (short title: Support to Processing of War Crimes Cases in BiH – SPWCC) financed by the Government of the Kingdom of Spain.

The views expressed in this report are those of the author and as such do not necessarily reflect the views of the United Nations Development Programme (UNDP).

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Foreword

The National War Crimes Strategy sought optimal ways for the cantonal and district courts and prosecutor’s offices to even out the burden caused by the backlog of war crime cases, and to promptly ensure just treatment for victims, witnesses and the accused at the proceedings. Considering that there is so far one Witness Support Office in BiH, specifically the one within the Court of BiH, established in May 2005, it would be necessary to consider the ways of supporting and protecting witnesses in other courts in BiH, so that the testifying in the proceedings would not cause any further harm, suffering or traumatization for the witnesses. Thus the more efficient operation of the courts in BiH would be ensured, enabling the courts to be prepared to provide adequate and uniform protection and support to witnesses during the court proceedings (no matter whether they are witnesses for the prosecution or defense).

Unfortunately, the conditions rarely exist at the moment to facilitate the support and/or protection to witnesses appearing before the courts in Bosnia and Herzegovina’s entities, due to the lack of experienced personnel in the first place. The fact that the judiciary is currently not able to guarantee equal treatment before all courts of law in BiH – specifically for the persons whose cases are referred to the Cantonal and/or District courts as opposed to those processed in the International Criminal Tribunal for the Former Yugoslavia (ICTY) or the Court of BiH – constitutes a serious obstacle to the rule of law. This comes to the fore primarily bearing in mind the obligation to provide for equal treatment of witnesses before all courts of law in BiH.

Through the implementation of a project entitled Support to Processing of War Crime Cases in BiH (SPWCC), the UNDP has established a partnership relation with the High Judicial and Prosecutorial Council (HJPC) so that they would commit themselves jointly to the development of a report titled Situation and Needs Assessment in the Field of Support and Protection of Witnesses and Victims in BiH,

and with continual support of the Government of Spain provide assistance to the Cantonal and District prosecutor’s offices and courts and other relevant state institutions in laying the foundations for the creation of an adequate victims/witnesses support and protection mechanism. Therefore the report offers a detailed insight into the current situation, taking into account the activities of the prosecutor’s offices, courts and non-governmental organizations undertaken up to this point in this field.

Relying on the results of this assessment, the recommendations made in the report will aim at raising awareness about these matters, giving informed answers to the questions in the area of witness support, and providing a starting point for the establishment of a functional victim/witness support and protection mechanism in BiH. This victim/witness support and protection mechanism would ensure that the same support and protection model is put in place throughout Bosnia and Herzegovina, but would also assist the State in ensuring the implementation of legislation from this area in accordance with the European human rights protection standards.

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Acronyms

BiH
Bosnia and Herzegovina

Court of BiH
Court of Bosnia and Herzegovina

CPC
Criminal Procedure Code

DSVW
Department for Support to Victims and Witnesses in Criminal and War Crimes Proceedings within the Ministry of Justice of the Republic of Croatia

EC
European Commission

FBiH
Federation of BiH

HJPC
High Judicial and Prosecutorial Council

ICC
International Criminal Court

ICTR
International Criminal Tribunal for Rwanda

ICTY
International Criminal Tribunal for the former Yugoslavia

Law on Protection of Witnesses
Law on the Protection of Witnesses under Threat and Vulnerable Witnesses

NGO
Non-Governmental Organisation

OPCV
Office of the Public Counsel for Victims of ICC

OSCE
Organisation for Security and Cooperation in Europe

PTSD
Post-Traumatic Stress Disorder

RC
Republic of Croatia

RS
Republika Srpska, BiH

SIPA
State Investigation and Protection Agency

SPWCC
Project: Support to Processing of War Crimes Cases in BiH

Strategy
National War Crimes Strategy

TFV
Trust Fund for Victims

UNDP
United Nations Development Programme

VPRS
Victims’ Participation and Reparation Section of ICC

VWS
Victims and Witnesses Section of ICTY

VWSU
Victims and Witnesses Support Unit — War Crimes Chamber of the District Court in Belgrade, Serbia

VWU
Victims and Witnesses Unit of ICC

WSO
Witness Support Office of the Court of BiH

Introductory Remarks

As the BiH justice sector is now investigating and adjudicating war crimes cases throughout the country, at the district and cantonal level, the issue of the provision of an equal level of support and protection for witnesses and victims, wherever they are called to testify in BiH, has become increasingly pressing over recent years.

During the last quarter of 2008 the BiH State Government took an important first step through the development of its National War Crimes Strategy in BiH. One of the areas to which particular attention was paid during the development of the Strategy was the area of witness support and protection. The Strategy provides certain recommendations that relate mostly to the cantonal and district courts and prosecutors’ offices in the Federation of BiH and Republika Srpska that work on war crimes cases, where support for witnesses/victims in these proceedings to date remains largely absent. Bearing in mind specifically that the cantonal and district courts and prosecutors’ offices will have an ever increasing role in processing war crimes cases, the question of witness/victim support and protection at these levels is becoming more and more topical.

Taking into consideration the immediate and fundamental requirement for cantonal and district courts and prosecutors’ offices to develop competencies for the efficient processing of war crimes, the United Nations Development Programme in BiH (UNDP BiH) has ensured the implementation of a project titled Support to Processing War Crimes Cases in BiH (SPWCC) in cooperation with local governments and partners. One of the components of this project is the provision of initial support for

the establishment of a mechanism for the support of victims in BiH. To effect the implementation of this component of the project, in cooperation with the HJPC, the UNDP BiH started work on the development of a report titled *A Situation and Needs Assessment in the Field of Victim/Witness Support and Protection in War Crimes Cases in BiH*, which will contain strategic recommendations for this particular domain in BiH.

The UNDP BiH recruited a four-member assessment team, comprising researchers and experts in the area, that conducted a capacity and needs assessment of the BiH justice sector at the cantonal, district and Brcko District level in relation to the provision of support and protection for victims/witnesses in war crimes cases. The purpose of this assessment was to analyse, in concrete terms, the required witness support mechanism and propose short and long-term recommendations for courts and prosecutors’ offices at the cantonal and district level.

From 21 October 2009 to 12 November 2009 the assessment team visited the prosecutors and judges of 15 cantonal, district and Brcko District prosecutors’ offices and courts in Brcko District, the FBiH and RS¹. These visits were focused on determining the need and ability of these institutions to provide victim/witness support and protection before and after an indictment is issued and after the trial has been completed, as well as the need and ability of prosecutors’ offices to provide support and protection during the investigation phase. The data collection methodology was based on direct contact.

¹ See Annex 2 – Prosecutors’ Offices and Courts in Brčko District, Republika Srpska and the Federation of Bosnia and Herzegovina as sources for the collected data

During interviews with prosecutors and judges a set of uniform questions were used.² Special attention was paid to assessing the capacity of court facilities, in terms of space and presently available equipment, to implement the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses. During the research the assessment team conducted a total of 35 interviews.

In addition to the conducted interviews the findings and conclusions of this report are based on consideration of different suggestions for witness support made by international and national institutions present in the country.

On the basis of the results of this assessment, the UNDP intends to assist relevant state level institutions and partners in laying the foundation for the efficient functioning of a witness/victim support mechanism that meets European Human Rights standards and ensures the implementation of the Law on Protection of Witnesses and the implementation of the provisions of the National War Crimes Strategy.

What is Witness Protection and what is Witness Support?

Witness protection³

The High Representative enacted and then the Parliamentary Assembly of BiH adopted, in identical wording, the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses . Similarly, laws were adopted at the entity level that provided for the implementation of measures aimed, eventually, at leading up to the hearing of witnesses without fear for their own safety and the safety of their families and, at the same time, without violating the rights of the individuals against whom criminal proceedings are being conducted.

These laws prescribe procedural and physical measures of protection for witnesses under threat and vulnerable witnesses during criminal proceedings conducted before the courts in BiH.

Upon the motion of one of the parties to the proceedings, with the prior consent of the witness, the court may also order more than one measure at the same time so that the judge and trial chamber may have the opportunity to exercise appropriate control over the manner of the examination of witnesses, particularly in order to protect the witness from harassment or

³ Taken from the lecture delivered by Minka Kreho, Judge of the Court of BiH, titled “Practice of the Court of BiH with Regard to Application of Protective Measures to Witnesses” – presented at the UNDP Seminar for Judges: “Evaluation of Evidence in War Crime Trials”, 7-8 May 2009.

² See Annex 1 – Research Questionnaires

confusion and to exercise control. Effective witness protection can minimise the additional trauma and fear that is associated with participation in court trials.

Where there is fear for the personal safety and privacy of the witness and that his/her family will be endangered the following protective measures are available to the Court.

1. Protection against exposing the witness to the public:
 - Measures to provide anonymity for the witness and the award of pseudonyms (testifying behind a screen or utilising devices for electronic distortion of the voice of the witness and or the image of the witness, so that the witness’s identity remains concealed).
2. Protection against repeated traumatisatisation due to the witness being present:
 - Measures to enable the witness to testify from another room and to be examined through the use of technical means for transferring image and sound. This is also aimed at concealing the identity of the witness, but in such manner so as to permit the parties and the defence counsel to ask questions, although not in the same room as the witness.
3. Protection against revealing the identity of the witness to the accused:
 - A measure to ensure that some or all personal details of the witness remain confidential after the indictment and throughout a specific period of time.

The Witness Protection Programme Law provides for physical protection of witnesses facing a danger to life, limb, health or freedom. The Witness Protection Unit within SIPA takes all decisions independently following a careful assessment of the circumstances. When deciding which measures to select particular consideration is to be given to the gravity of the offence and the extent of the risk, the rights of the accused and the impact of the measures taken. This Law has only been adopted and implemented at the state level.

Witness support⁴

There is the significant effect of courtroom psychology, as well as any knowledge of the witness profile, before the witness testimony begins, on the very course of the trial and the efficiency of the proceedings. Knowledge of the witness profile includes the involvement of witness support sections/offices at the BiH Court level. It is taken for granted that such a section should be there to take care of the witnesses after the indictment has been confirmed. It prepares them psychologically before and, when necessary, during, but in each case after the testimony has been given when it provides them with a comprehensive follow-up or supporting organisational assistance.

⁴ Taken from the lecture delivered by Minka Kreho, judge of the Court of BiH, “Practice of the Court of BiH with Regard to Application of Protective Measures to Witnesses”, presented at the UNDP Seminar for Judges – Evaluation of Evidence in the War Crime Trials, 7-8 May 2009.

The above activities are part of the practically demonstrated support provided to witnesses/victims and to the operation of the trial chamber, which in this case, as early as during the pre-trial stage, has possession of the required information about the witness including his or her mental condition and may therefore better plan and guide the process.

Accordingly, the witnesses, particularly the witnesses in criminal cases of war crimes, are mostly victims who have experienced all sorts of wartime Golgotha, persecution, concentration camps, rape and or different forms of physical maltreatment and mental torment. Such individuals often require long-term medical treatment and are in a position where they must repeatedly confront all the events that they experienced and have to meet “face to face” with the perpetrators of these egregious crimes. Therefore, it is clear that they need expert assistance so as to be able to handle such pressures. Furthermore, it is well-known that an individual who has experienced any such traumatic event is often reluctant to talk about it. Through adequate support during the trial process the additional trauma and fear that is associated with participation in such proceedings can be minimised; issues related to a witness’ reluctance to testify and the fatigue that occurs as a result of their participation in a court trial can also be settled to a certain extent.

Executive Summary

According to the National War Crimes Strategy it is important that the High Judicial and Prosecutorial Council, in cooperation with relevant ministries and in a joint undertaking with courts and prosecutors’ offices, identify the needs of the cantonal and district courts and prosecutors’ offices, as well as making a financial assessment, in order to ensure that all top priority cases are completed within a period of 7 years and all war crimes cases within a period of 15 years.

The cantonal and district courts and prosecutors’ offices in BiH, however, are still faced with a lack of capacity for the efficient processing of war crimes cases, particularly in terms of providing psychological support to victims and witnesses. This comes particularly to the fore in the area of witness support. Generally there is no mechanism at the level of cantonal and district courts and prosecutors’ offices in BiH, which is otherwise required in order to implement all provisions of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, as well as under the recommendations from the National War Crimes Strategy, which sets the framework for the area of witness support. These problems were also analysed by the European Commission and the OSCE. Specifically, in its 2009 report the Commission refers to a lack of a witness support and protection mechanism in BiH citing the insufficient level of staffing as one of the main obstacles standing in the way of the judicial reform. Whereas, through its recommendations relating to the witness support and protection mechanism, the OSCE primarily addressed the creation of the victim/witness protection structures within courts, from the investigation phase onward and in prosecutors’ offices.

Specialised war crimes chambers only exist in a few cantonal and district courts and prosecutors’ offices in BiH. These are the District Prosecutors’ Office in Doboj and Banja Luka, the Basic Prosecutors’ Office of Brcko District, the cantonal Prosecutors’ Office of Tuzla Canton, the District Court of Banja Luka and East Sarajevo and the Basic Court of Brcko District. All other judges and prosecutors of the cantonal and district courts and prosecutors’ offices are engaged in all cases that fall within the competence of these judicial institutions. It even happens that those judges and prosecutors assigned to work solely on war crimes cases are engaged in some other cases as required. The reason for this is the fact that currently there are not many war crimes cases pending before the courts in BiH, while the Court of BiH has yet to conduct an assessment of case sensitivity, as provided for under the National War Crimes Strategy. Therefore, it remains unknown how many incoming cases will be received hereafter by each respective cantonal and district court and prosecutors’ office. For this reason the prosecutors and judges must focus on other cases. Similarly, in some instances, it even happens that prosecutors from some cantonal prosecutors’ offices are seconded as provisional assistance to municipal Prosecutors’ offices; while in some cantonal courts no war crimes cases whatsoever are being processed since they are unable to assemble a trial chamber. In all these courts and prosecutors’ offices there are insufficient numbers of prosecutorial and judicial associates who could work on war crimes cases.

In all cantonal and district courts and prosecutors’ offices there is a need to increase the number of judges and prosecutors, along with their judicial and prosecutorial associates; however, currently there are insufficient funds to be allocated for such

purposes. The latter is due to cuts in the budget and also due to previously undertaken reconstruction work on courthouses and prosecutors' office buildings. On the other hand, among some of the interviewed judges and prosecutors there exists the firm belief that the current number of judges and prosecutors is quite sufficient for the current needs of the judicial institutions. However, following a more considerable inflow of cases, particularly those associated with war crimes, there will appear a pressing need for the recruitment of a considerable number of additional experts.

Finally, all judges and prosecutors also have to struggle with inadequate technical conditions for work, the lack of office space and the like.

It is particularly important to mention the lack of capacity within prosecutors' offices in light of the fact that upon the enactment of the new Criminal Procedure Code in 2003 they also became responsible for conducting entire investigations, as with prosecutors' offices in those countries with a Common Law System. War crimes cases are highly complex and prosecutors encounter different problems during the investigation phase, such as, *inter alia*, the unavailability of witnesses and perpetrators. It is particularly difficult to establish cooperation with witnesses. Prosecutors may not have information about their place of residence, since many witnesses remain internally displaced within BiH or have taken refuge in a third country. Witnesses may be dissatisfied with the operation of prosecutors' offices and courts; while another major problem encountered by prosecutors' offices is the lack of funds required to cover basic witness related expenditures, such as travel, food, accommodation and other

associated costs. Finally, the structure of the prosecutors' office does not currently include any sections assigned to provide psychological support to traumatised individuals during the investigation phase; this results in yet another aggravating situation that affects the operation of prosecutors' offices during the investigation phase. This also applies after an indictment has been issued. During the investigation phase prosecutors make great efforts in order to gain the trust of witnesses and attempt to fill the role of a psychologist; however, they are not always able to adequately prepare witnesses psychologically for their testimony and an encounter with the perpetrator. As a result it often happens that once in the courtroom witnesses completely change their statements that were given during the investigation phase. In addition, cantonal and district prosecutors' offices do not always maintain a good level of cooperation with the State Investigation and Protection Agency (SIPA), since SIPA is not available at all times. Specifically, SIPA is responsible for carrying out war crimes investigations for the purposes of the Prosecutor's Office and the Court of Bosnia and Herzegovina; this also includes close physical protection of witnesses who come forward to testify before the Court of BiH. With the approval of the Court of BiH, SIPA establishes cooperation with cantonal and district courts and prosecutors' offices. On the other hand, cooperation with entity and cantonal law enforcement agencies (police units) is good; however, a problem exists due to the fact that these police units do not have all the required capacities that SIPA does (such as a Unit for War Crimes Investigations and the Witness Protection Department).

Finally, there is the rating system that is in place in prosecutors' offices, or more specifically a quota system for the number of indictments to be filed annually per prosecutor. In a situation where prosecutors are confronted by all of the above problems and when they are even compelled to attend exhumations or fulfil other orders of the Prosecutors' Office of BiH the prosecutors mostly choose to work on those cases most likely to result in a positive evaluation of their performance.

1. Providing Psychological Support to Victims and Witnesses before Cantonal and District Courts and Prosecutors' offices, and the Technical Capacities of the Judicial Institutions

As highlighted earlier, both the Law on the Protection of Witnesses and the National War Crimes Strategy provide the framework for the system of psycho-physical protection of witnesses in BiH.⁵ The Law provides for a number of professional and technical measures in order to establish this protection system and *inter alia* authorises the centres for social welfare to provide support to traumatised witnesses both during the investigation and after the indictment has been issued. On the other hand, the Strategy draws on the provisions of this Law, recognises problems and suggests means for their resolution: increases in the capacity of prosecutors' offices, courts and centres for social welfare aimed at the provision of psychological support to victims and

witnesses, the required inclusion of civil society organisations in the area of protection, etc.⁶

A section responsible for the provision of psychological support in BiH only exists within the Court of BiH and consequently does not exist in any of the cantonal and district courts or the Basic Court of Brcko District. Similarly, this section is not even foreseen as being incorporated into the structure of prosecutors' offices. As a consequence, cantonal and district courts and prosecutors' offices do not maintain cooperation with psychologists from the centres for social welfare or centres for mental health.

The Law on the Protection of Witnesses foresees the inclusion of the centres for social welfare into the system of protection, specifically during the investigation phase. At this stage the Prosecutors' office is obliged to inform the centre for social welfare about the level of involvement of a traumatised witness; the same applies after an indictment has been issued.⁷ However, neither the courts nor the prosecutors' offices have to inform the centres for social welfare about their legal obligations. The main reason for this, as claimed by prosecutors for example, being that witnesses generally do not indicate that they have any psychological problems, except in a few rare cases: even though prosecutors may believe that a great number of interviewed persons from whom statements were taken during the investigation phase do suffer from war trauma. Consequently, the courts do not receive any motion from the prosecutors' office to indicate that a certain witness

⁵ Some judges and prosecutors believe that the Law on the Protection of Witnesses lacks clarity and that it must be further improved. They also believe that in general there are no capacities to enable full implementation of its provisions.

⁶ More details about the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, and the National War Crimes Strategy can be found below in this document.

⁷ More information can be found below in this document.

may be suffering from trauma. Ultimately, there is a strong conviction that the centres for social welfare do not possess the capacity to deal with the problem of war trauma. Still, the courts and prosecutors' offices have pointed out that they have good cooperation with these centres in regard to some other cases, such as those within the domain of juvenile delinquency and general criminality. To that effect, judges and prosecutors have pointed out that they are able to establish cooperation on these grounds with the centres for social welfare, but only when specific opportunities arise to that effect.

However, as pointed out earlier, it is indeed important that psychologists and social workers employed within these centres undergo training in the area of war trauma or, whenever the opportunity arises to that effect, that they employ those persons that already possess the relevant experience with war traumatised individuals. Yet, both judges and prosecutors are aware of all the limiting factors, such as the lack of funds within municipal budgets that are the source of funding for the centres for social welfare.

In any event, prosecutors believe that it is extremely important that sections for psychological witness support are incorporated within the structure of the prosecutors' offices. This is based on their experience that tells them that a great number of those persons interviewed during the investigation phase suffer from war trauma. For this reason the prosecutors themselves approach witnesses with great care, so as to establish cooperation and encourage them to give a statement first and thereafter testify. However, as pointed out previously, it happens that when testifying in the courtroom witnesses tend to alter the testimony that was given initially

during the investigation phase. As noted by the prosecutors, one of the main reasons for such contradictions is that the witnesses themselves are poorly prepared psychologically for a court trial. It is also worth mentioning that prosecutors have highlighted the lack of coordinated cooperation between their offices and the courts concerning the matter of the provision of psychological support to witnesses. Virtually the only method allowed for preventing the repeated traumatising of witnesses available to cantonal and district courts is to question them in a separate room and then read their statement in the courtroom.

In order to overcome all of the above problems the Prosecutors' Office of Tuzla Canton hired a professional non-governmental organisation (NGO) with extensive experience in dealing with war traumatising: "Vive žene". This NGO provides psychological support to traumatised witnesses with whom the prosecutors' office cooperates. This form of cooperation was established prior to December 2008, when the National War Crimes Strategy was adopted: the latter recommends the inclusion of civil society organisations into the system of psychological support to witnesses.

1.1. Technical Capacities of Courts

The courts in BiH are struggling with great difficulty with regard to technical capacities and are ipso facto unable to fully comply with all of the provisions of the Law on the Protection of Witnesses, as well as the implementation of the recommendations contained within the National War Crimes Strategy. The main reason for this is a lack of financial resources. However, as required by law, some courts have

enacted their own Rules of Procedure, which ensures the appropriate utilisation of witness protection measures as provided for under the Law on the Protection of Witnesses.

With the exception of the recently renovated courthouses of the Cantonal Court in Sarajevo and the District Court in Doboj there are no other courthouses that have video equipment that enables testimonies to be taken by means of video link. Courtrooms within cantonal and district courts are mainly equipped with audio equipment. There are only a small number of courtrooms within the courts, yet this is the number that meets the current requirements regarding the number of cases currently pending before the cantonal and district courts. However, in the event of a massive inflow of incoming cases this number of courtrooms will no longer prove satisfactory. In each court there is generally one large courtroom which is used to conduct war crimes trials, as these courtrooms are also the best equipped technically.

Some courts have already started the reconstruction of their buildings. There is, nevertheless, a great problem related to the lack of separate rooms designated for witnesses, as well as separate entrances and egresses for witnesses, judges, defendants, prosecutors and audiences. It often happens that the witnesses and the accused wait in the same corridor for the start of the court session. In some courthouses there is the option to refurbish their auxiliary rooms and use them as rooms for witnesses. However, this arrangement is not an option for some courtrooms due to their architectural design and layout. In any event, finding solutions to this problem will remain highly topical for the immediate future.

2. Relations between Prosecutors' Offices/Courts and Civil Society Organisations

The prosecutors and judges interviewed expressed their dissented views about establishing partnership relations between judicial institutions and civil society organisations; this came particularly to the fore in the case of prosecutors' offices. The main obstacle is the assumption that some of these organisations are politically or ethnically biased, that they are dependant upon their programmes and doubts over their professionalism. In any case, it should be pointed out that judicial institutions can gain great benefit from these organisations, primarily in terms of establishing the facts about crimes, victims, witnesses and potential perpetrators. Some civil society organisations have the capacity to provide psychological support to victims and witnesses, others monitor war crimes trials and issue reports so that the trials might be more efficient or organise expert seminars, which are useful for both judges and prosecutors. Judges and prosecutors have emphasised that civil society organisations can make a major contribution to the processing of war crimes by educating the beneficiaries of their programmes about the procedures and the role of all persons participating in a court trial. It is believed that public mistrust towards judicial institutions often develops as a result of an insufficient level of public awareness or knowledge about the operation of these bodies. Yet it is extremely important, as stressed by the interviewed judges and prosecutors, to make the right choice regarding the organisations with which courts and prosecutors' offices will cooperate. This is particularly important in the area of providing psychological support.

1. What is *Witness Support* and what are its Origins?



1. What is Witness Support and what are its Origins?

Experience with Post-traumatic stress disorder (PTSD), identified for the first time after the Vietnam War⁸, has made clear the need to provide psychological support to traumatised witnesses. Psychological disorder can develop following a traumatic event that threatens the psychological safety or creates the emotion of helplessness, both for those who personally experienced the traumatic event and those who witnessed it. PTSD is a normal response of people to an abnormal situation; it does not always develop in the hours or days following a traumatic event, although this is most common. For some people, the symptoms of PTSD can take weeks, months or even years to develop. The most common symptoms of PTSD are avoiding activities, places, thoughts or feelings that remind the victim of the event that caused the trauma and the inability to remember important aspects of the event. In addition, persons suffering from PTSD may experience difficulty concentrating, anger and irritability, guilt, shame or self-blame, as well as feelings of mistrust and betrayal. Physical reactions can also be expected, such as headaches, stomach problems or chest pain.

It is important to stress that these reactions can emerge even in those individuals that were not directly exposed to violence but witnessed the violence, as well as in those individuals concerned about their own safety and the safety of other persons important to them.

As previously mentioned, these reactions do not have to occur immediately after a traumatic experience but can in some way be “prompted” by other various “triggers”. This largely depends on the distinctive character of the individual, the dimension

of the traumatic experience and the nature of the person’s social environment. It is important to be familiar with these aspects particularly in those cases where an individual has to go through traumatic experiences again. Therefore we can say that testifying represents a form of “retraumatisation”, having in mind that the witness must once again confront what he or she has experienced, heard and or seen.

Since the role of the witness appearing before the court is vitally important it is absolutely essential to have a well-designed witness support system: thus a great contribution is given to fair trials. Experiences have shown that entry into the courtroom itself is also extremely stressful for each individual. We can say that this is even more difficult for the witnesses in war crimes cases, considering that they are placed in a situation where they must talk about their traumatic experience. After realising this problem, in order to strive to minimise the anxiety and possible discomfort caused as a result of testifying in highly complex criminal proceedings, some courts in the region have established witness support sections with the specific task to support and assist witnesses, particularly those witnesses who testify in war crimes cases (victims, survivors, injured parties and family members of missing persons) and who fall within the group of high-risk individuals who may potentially express various psycho-physical reactions during the course of their testimony.

Since the victims are in some way given an active role in the trial it is important to show respect for their rights. Witness support sections make sure that before appearing to testify the witnesses are informed about their rights and that these rights are respected.

⁸ National Center for Posttraumatic Stress Disorder (PTSD)

Some of the most important rights of witnesses/victims include:

- a. the right to be informed (about court proceedings and events that are going to take place in the courtroom, about possible protective measures, about the kind and type of department or service they can turn to for help, etc.);
- b. the right to psychological and emotional support;
- c. the right to ensurance of safety;
- d. the right to protection of privacy;
- e. the right to free legal aid;
- f. the right to indemnity.

On the other hand, the research showed that it is essentially most important for the witnesses in court to have:

- a. a person of trust or a “familiar friendly face”;
- b. safe havens and peace zones, far from the public, where they can prepare themselves to testify and stay during the breaks;
- c. basic information about court proceedings;
- d. to be treated with dignity in the court during their testimony and prior to it (for example, to avoid inappropriately long waiting periods or adjournment of testimony);

- e. a professional male/female officer to accompany the witness to the courtroom whenever such accompaniment is required, due to the sensitivity of the witness’ mental condition;
- f. a person to talk to concerning what the witness may expect from testifying and about intrapsychical processes before, during and after giving testimony;
- g. an appropriate form of “protection” against contact with the accused and his or her family (separate entrance, separate waiting area/room and the like);
- h. protection of privacy (protection from being exposed to the media, being photographed and an opportunity to employ special methods for testifying for the purpose of protecting the witness’ identity).

Due to the existence of witness support sections in particular witnesses are now in a position to exercise their rights.

2. Experiences in the Domain of Witness Support and Protection in Court Proceedings

2. Experiences in the Domain of Witness Support and Protection in Court Proceedings

2.1. Victim and Witness Section - International Criminal Tribunal for the former Yugoslavia (ICTY)

The ICTY was the first war crimes tribunal to acknowledge the necessity of a special unit for victims/witnesses, as witness testimony is the most significant and widely used means of obtaining evidence in war crimes cases.

Established in 1994, the ICTY's Victims and Witnesses Section (VWS) introduced some of the most innovative support and protection mechanisms for witnesses under international law. The VWS was established to provide victims/witnesses with counselling, both psychological and legal, and to recommend protective measures where required.⁹

The Victims and Witnesses Section (VWS) is an independent and impartial section of the Tribunal's Registry and is responsible for ensuring the appearance of all witnesses before the Tribunal, whether called by the trial chambers, the prosecution or the defence itself.

The task of the VWS is to ensure that all witnesses can testify in full safety and security and that the experience of testifying does not result in further harm, suffering or traumatisa-tion to the witness. The VWS operates with the highest level of integrity, impartiality and confidentiality and ensures that all

witnesses are informed of their rights and entitlements and have equitable access to the services of the section.¹⁰

The VWS is faced with the everyday challenge of facilitating the appearance of witnesses before the ICTY, whether they are called by the trial chambers, the prosecution or the defence itself. The VWS consists of three units: the Operations Unit, the Protection Unit and the Support Unit.

1. The Operations Unit is responsible for arranging transportation, accommodation, travel and visa requirements and the operation of witness administration.
2. The Protection Unit coordinates responses to the security requirements and is responsible for ensuring that safety and protection measures are in place for victims and witnesses.
3. The Support Unit is responsible for the provision of social and psychological counselling and assistance to witnesses and emotional and practical 24-hour live-in-support services to victims and witnesses appearing before the Tribunal.

This Unit has therefore set up an Intensive Support Programme covering the pre-trial, the trial as well as the post-trial phase and focuses primarily on responding to the individual needs of witnesses.

⁹ ICTY's 1994 Annual Progress Report.
http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_2004_en.pdf

¹⁰ Information Booklet for ICTY Witnesses - Victims and Witnesses Section, ICTY Registry, 2007.
http://www.icty.org/x/image/ABOUTimagery/registry/witnesses/witnesses_booklet_bcs.pdf

This unit aims to be a very integrated system to ensure that witnesses can testify in safety and security. In January 2001 the ICTY's VWS established a field office in Sarajevo as an office to bridge the distance between the Tribunal and its witnesses. The Sarajevo Field Office (SFO) provides victims and witnesses from all parts of the former Yugoslavia with easier access to the protection and support services of the VWS, both before and after they testify before the ICTY. The Field Office in Sarajevo is the main actor responsible within the VWS for identifying resources in the region, establishing and maintaining a network, the mutual exchange of information and the promotion of cooperation. Whenever the needs of a witness are discovered the VWS SFO conducts an assessment and decides on which further steps are to be taken.

With regard to witness protection, the majority of witnesses who testify before the Tribunal do so in open court session. However, if they feel it is necessary to protect the witness' security or privacy the prosecution or defence can ask the court to apply protective measures. These measures¹¹ are enshrined in the Tribunal's Rules of Procedure and Evidence and allow:

- a. expunging of the witness' name and or identifying information from the Tribunal's public record;
- b. giving of testimony through use of image or voice altering devices or via closed circuit television;
- c. assigning the witness a pseudonym;

¹¹ Rule 75 and Rule 79 of the Rules of Procedure and Evidence (Rev. 43, 24 July 2009) http://www.icty.org/x/file/Legal/Library/Rules_procedure_evidence/IT032_rev43_bcs.pdf

- d. allowing the witness to testify in closed session;
- e. giving of testimony from another location by way of a video conference link.

These measures are aimed at minimising the risks posed to witness safety as a result of testifying. Although all present parties in the court know the witness' identity they are bound by the law and the judges' orders to respect the measures and protect the witness' identity accordingly. In the event that any party were to disclose the identity or any other identifying information of a protected witness this party could be held in contempt of the Tribunal and be liable to a maximum penalty of 100,000 Euros or a term of imprisonment of seven years, or both.¹²

The Victims and Witness Section operates on a 24-hour shift basis and thus their services are made available to witnesses who need psycho-social and practical assistance before, during and after their testimony. In close cooperation with the ICTY's Sarajevo Field Office, a network of health workers and NGOs was created throughout the territories of the former Yugoslavia, which can provide support to the witnesses after they return home.

Within the period from the first trial before the ICTY in 1996 to December 2009 the number of witnesses giving testimony reached 6,379.¹³

¹² <http://www.icty.org/sid/158>

¹³ Data received from the ICTY's Victims and Witness Section.

2.2. Victims and Witnesses Unit & Victims Participation and Reparation Section (VPRS) – International Criminal Court (ICC)

After tribunals like the ICTY and the International Criminal Tribunal for Rwanda (ICTR) were established to try crimes committed only within a specific time-frame and during a specific conflict, in the 1990s the international community reached a general agreement that a permanent criminal court was needed. After some time¹⁴ the first independent permanent international criminal court was established. The Court is an independent judicial institution charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern.

One of the great innovations of the ICC¹⁵ is the series of rights granted to victims. Besides the assistance to witnesses and others who are at risk on account of their testimony, with adequate psychological, protective and security measures, for the first time in history victims have the opportunity not only to testify, but also to present their views and observations before the Court.

¹⁴ ICC webpage: On 17 July 1998, the international community reached a historic milestone when 120 States adopted the Rome Statute (entered into force on 1 July 2002), as the legal basis for establishing the permanent International Criminal Court (ICC). It is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands.

¹⁵ One of the great innovations of the Statute of the ICC and its Rules of Procedure is the series of rights granted to victims. <http://www.icc-cpi.int/Menus/ICC/About+the+Court/>

2.2.1. Victims and Witnesses Unit ¹⁶ of ICC

The Victims and Witnesses Unit (VWU) has a mandate¹⁷ to provide protection, support, security arrangements and other appropriate assistance to witnesses and victims who appear before the Court.

The VWU is a neutral service provider that provides equal services to both the prosecution and defence. The unit does not identify witnesses or victims on its own, but acts on the basis of referral or request. Although protection and support services are particularly pertinent during the trial stage the services of the VWU can be requested and provided at all stages of proceedings, ranging from pre-trial/investigation to post-trial.

Protection – Is aimed at minimising and managing any risks that witnesses and victims who appear before the court may face as a result of their interaction with the Court. Through the establishment and maintenance of response and protection measures within the Court's areas of operation and through procedural protective measures ordered by Chambers further protection can be ensured. Finally, as a measure of last resort, protection can be provided through participation in the ICC Protection Programme.¹⁸

¹⁶ ICC webpage: <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Protection/Victims+and+Witness+Unit.htm>

¹⁷ Article 68 (1) of the Rome Statute provides that the Court shall take appropriate measures to protect the safety, physical and psychological well-being, dignity and privacy of victims and witnesses. http://www.icc-cpi.int/NR/rdonlyres/EA9AEFF7-5752-4F84-BE94-0A655EB30E16/0/Rome_Statute_English.pdf

¹⁸ Registrar may negotiate confidential agreements on relocation and provision of support services within the territory of a State on behalf of the Court.

Support – In order to ensure their psychological well-being, dignity and privacy the Victims and Witnesses Unit provides support services and assistance to witnesses and victims who appear before the Court when required, based on an assessment of their individual needs.

The VWU support team provides information and guidance to witnesses and victims appearing before the Court, as well as their accompanying persons. Likewise, the support team offers assistance during the transportation of victims and witnesses to the location of the hearings and provides services to them 24-hours a day and seven days a week. These services include, inter alia, the provision of psycho-social support, crisis intervention, information and debriefing before and after testimony, and access to medical care when needed.

The services are monitored regularly and tailored to meet the specific needs of victims and witnesses, taking into account their cultural, religious and social requirements. Particular attention is given to vulnerable groups, such as victims of sexual or gender violence, children, the elderly and persons with disabilities.

The multi-disciplinary support team of the VWU is experienced and trained in issues of trauma, sexual violence, security and confidentiality. The support services aim is to promote a setting in which the experience of testifying does not result in further harm, suffering or trauma.

Operations – In addition to protection and support services the VWU provides other appropriate assistance to witnesses and victims. These include logistical arrangements and immigration procedures to ensure the timely and secure appearance of witnesses and victims in court. Moreover,

the Unit provides operational and logistical support to the protection and support officers and coordinates the Unit’s activities within the Court’s areas of operation.

2.2.2. Office of Public Counsel for Victims & the Victims Participation and Reparation Section

As mentioned earlier, there are other offices and sections in ICC established in order to assist victims and witnesses. An important precedent which should enhance the system of effective participation of victims in the proceedings before the Court, by providing legal support and assistance, are the Office of Public Counsel for Victims (OPCV)¹⁹ and the Victims Participation and Reparation Section (VPRS).

The OPCV is a new step in the international criminal justice system. It seeks to ensure the effective participation of victims in all of the stages of proceedings before the Court by providing legal support and assistance to the legal representatives of victims and to the victims. Victims are required to send a written application to the Court Registrar and more precisely to the VPRS, which must submit the application to the competent Chamber that then decides on the arrangements for the victim’s participation in the proceedings. The Chamber may reject the application if it considers that the person is not a victim. Furthermore, for the first time an international court has the power to order an individual to pay reparation to another individual.

¹⁹ The office was established on 19 September, 2005 in accordance with Regulation 81 of the Regulations of the ICC.
http://www.icc-cpi.int/NR/rdonlyres/B920AD62-DF49-4010-8907-E0D8CC61E8A4/277527/Regulations_of_the_Court_170604EN.pdf

This reparation may also take the form of restitution, indemnification or rehabilitation. The Court can order this reparation to be paid through the Trust Fund for Victims (TFV)²⁰. The Court has the option to grant individual or collective reparation, concerning a whole group of victims or a community, or both.

The TFV advocates for and assists the most vulnerable victims of those crimes within the jurisdiction of the ICC, which confirms the view that justice for victims of the gravest crimes cannot be achieved without their full participation in the ICC judicial process or without their involvement in defining and implementing the most appropriate means for reparation and rehabilitation. The TFV works for victims by mobilising people, funding opportunities for the benefit of victims and implementing court-ordered reparation awards. The TFV listens to victims of genocide, crimes against humanity and war crimes and amplifies their voices in the international arena; it communicates with survivors and their communities in designing interventions that are effective, locally-relevant and will help to rebuild lives.

²⁰ Trust Fund was set up by the Assembly of States Parties in September 2002.

**2.3. Witness Support Office (WSO)
- Court of Bosnia and Herzegovina**

The establishment of a specialised War Crimes Chamber within the Court of BiH and a specialised War Crimes Department within the Office of the Prosecutor of BiH in January 2003 provided an opportunity for BiH, through its national judiciary, to deal with the punishment of past crimes committed within the territory of BiH.

One of the core functions of the Court, from the very beginning, was the work of a Witness Support Office: the establishment of which was followed by the recruitment of an ICTY staff member coming from the ICTY’s Victims and Witness Section.

The ICTY Victims and Witness Section model was adapted to the BiH context for assistance to witnesses before, during and after trial. In BiH the psychological consequences associated with testifying were alleviated in terms of not having to travel to a foreign country and a maximum testimony process of 2 days, which are more severe when having to testify against the perpetrator(s) of the war crime. When creating the rules and procedures of the Office emphasis was given to contacting witnesses at the earliest possible stage, usually during the confirmation of the indictment itself. The Witness Support Office allocates one psychologist and one assistant to each case. A preliminary meeting is held with the prosecutor in order to discuss the needs of the witnesses and to identify potentially vulnerable and sensitive witnesses. The same procedure is arranged for the defence, immediately before the start of the defence. The psychologist will then conduct a needs assessment for each witness and establish direct

contact with the witnesses by giving them a direct phone number to contact the psychologist whenever needed. The detailed needs assessment is then given to the prosecutor with recommendations for witnesses in need of specific attention. A copy is also given to the Trial Chamber in order to make its members aware of any specifics related to certain witnesses. For example, some witnesses may have health issues that require lengthy breaks and short testimony sessions; others may not be able to read the oath because of illiteracy. Some witnesses will have been under age during the armed conflict and their testimony will require a regression that needs to be taken under consideration. Finally, some witnesses will present their experiences for the first time in the courtroom and thus more acute emotional reactions can be expected from them.

When witnesses receive the date of their testimony the psychologist will contact them again in order to confirm the logistical arrangements for them to travel to the Court and to identify any change since their last contact. When coming to the Court to testify witnesses are welcomed by the psychologist and/or assistant and taken to the waiting room to prepare themselves for their testimony. Because of the expected psychological reaction when giving testimony, with the agreement of Trial Chambers, the WSO psychologist is allowed to be present with the witness during the testimony inside the courtroom so that the psychologist is able to react in a timely manner. Some witnesses request to have support inside the courtroom where they feel most exposed, which is understandable considering the specific psychological condition that they are in just prior to testifying. The role of the psychologist is to alert the judges if the witness is experiencing

a psychological reaction that would require a break. After the testimony the witness undergoes an interview with the WSO personnel and thereafter he or she leaves the court premises. Within a minimum of 15 days after their testimony witnesses are contacted by the WSO representatives in order to discuss their psychological status and possible psychological reaction caused by the testimony and more generally about whether their testifying has had an impact on their daily lives. When witnesses request it the WSO contacts them to inform them about the date when the verdict will be pronounced and if necessary arrange for them to be present. Since the pronouncement of verdicts may cause intense emotional reactions among victims, witnesses and/or family members who attend WSO personnel are always present to provide prompt support and assistance as needed.

On average the WSO contacts each witness at least 6 times prior to and following the witness' testimony. This includes contacting the witness initially to determine the witness' specific needs and to provide the witness with particular case-related information; they then contact the witness again prior to their testimony and finally during the follow up with the witness after they have given their testimony. In addition, witnesses can contact the WSO by phone during working hours as well as via official mobile phones that are active 24-hours a day.

The experience of the WSO thus far has shown that witnesses feel a considerable relief when they know that they are not alone and that they will have support during the entire trial. The WSO staff members never consider a statement as such, but instead they make every effort to enable the persons to

give their testimony in as painless a way as possible and with respect for their rights, which are guaranteed by law.

In Bosnia and Herzegovina the protection of witnesses and the procedure for ordering and implementing protection measures are regulated by a legal framework. The practice of war crimes cases thus far shows that the Court of BiH mainly orders protective measures to be applied during the proceedings (testifying via technical means for transferring image and sound), which does not come under the SIPA Witness Protection Programme. In light of this, an agreement between the WSO and the SIPA Witness Protection Unit was made in 2006 in order to involve them for witnesses with protective measures under the Law on the Protection of Witnesses. Officers of the SIPA Witness Protection Unit contact protected witnesses and assess their needs in terms of physical protection. In parallel, the WSO assesses the psychological support needs of protected witnesses, who are predominantly vulnerable witnesses²¹. When coming to testify, escorted by SIPA protection officers, witnesses are welcomed by the WSO psychologists. The cooperation between the two units has benefited many victims-witnesses who asked not to be exposed to the public or media when testifying.

Since 2005 and the first war crimes case in the Court of BiH 3,000 persons have testified.

2.3.1. Cooperation between the Court of BiH, Civil Society and NGOs

The involvement of the NGO sector in war crimes cases was important for the Registry and the Court of BiH; a Support Network of institutions, groups and organisations within Bosnian society was created in 2005. The purpose of the Support Network was to provide information to all citizens about the Court of BiH and the Prosecutor's Office of BiH, as well as to be a referral point for all issues related to testimony and judicial proceedings in war crimes cases. The Support Network involved 5 NGOs throughout the country. The Registry financed the project for one year and the project proposal was submitted to different donors for long-term funding and the expansion of the network. After one year of the Network's activities some changes took place in terms of NGO involvement: some NGOs continued to work in the field of outreach whilst others made direct contact with cantonal and district courts in their region and worked closely with the prosecutors' offices.

²¹ For more information please see below.

2.4. Department for Support to Victims and Witnesses in Criminal and War Crimes Proceedings within the Ministry of Justice of the Republic of Croatia

The Department for Support to Victims and Witnesses in Criminal and War Crimes Proceedings (hereinafter: the Department) was established by a directive of the Government of the Republic of Croatia (RC) on 20 May 2005 within the Ministry of Justice, in the Division for International Legal Assistance, Cooperation and Human Rights. The Department started to operate in February 2006. Since September 2008 this Department has been part of the Criminal Law Division.

It is the responsibility of the Department to provide legal and physical protection, psychological assistance and aid in finding, preparing departures and arranging the travel requirements of witnesses and other participants in the main trials and pre-trial investigative hearings in war crimes, criminal proceedings and other more complex criminal proceedings that are conducted before the courts in the Republic of Croatia and abroad. This Department has the following staff members: the Head of Department (female) who is a lawyer, the Expert Advisor (female) who is a professor of psychology and an (female) Administrative Officer.

Lawyer:

- coordinates all activities with regard to the provision of legal and physical protection, psychological assistance to victims and witnesses, and assistance in finding witnesses and other participants of war crimes offenses for proceedings conducted before the courts in the Republic of Croatia and abroad;
- informs the witness/injured party as to their legal status and role, rights and obligations, protective measures, other provisions of the Criminal Procedure Code, about other legislation in place for the purpose of witness protection, relevant legislative provisions and the options of testifying dependant upon the situation of the witness, as well as providing explanations about all matters of a legal nature;
- coordinates cooperation with national and international bodies involved in the procedure of providing support to victims and witnesses in criminal proceedings;
- prepares reports concerning the condition and special needs of victims and witnesses, which she then refers to the Court with a recommendation regarding the application of appropriate protective measures and forwards the psychologist's expert opinions to the court.

Psychologist:

- establishes phone contact with witnesses and injured parties for the purpose of assessing their needs and psycho-physical condition, and to encourage and motivate them to testify;
- considers the identified needs of witnesses/injured parties and refers them to qualified officials and organisations that provide psycho-social assistance;
- provides support to witnesses directly in court, where necessary;
- participates in the meetings organised for the purpose of motivating witnesses and injured parties to testify;
- establishes cooperation with institutions in the Republic of Croatia and works on creating a network for providing psycho-social assistance and support;
- cooperates with national and international bodies that are involved in the procedure of providing support to victims and witnesses in criminal proceedings as part of the activities that are in her area of responsibility;
- develops expert opinions about the condition and special needs of victims and witnesses providing recommendations to the court as to how to proceed.

Administrative Officer:

- carries out administrative and technical activities for the Department with regard to receiving clients, phone calls, e-mail messages and making copies and transcripts;
- keeps postal records and arranges the delivery and shipping of mail for the Department, carries out technical activities with regard to making arrangements for departures of victims and witnesses to pre-trial investigative hearings/main trials and makes arrangements for their accommodation;
- develops a database containing information about victims and witnesses for war crimes criminal offences and other criminal offenses and carries out other activities by order of the Head of the Division or the Head of the Department.

As far as the procedure itself is concerned, in its operations the Department receives information directly from courts (national and international) about hearings scheduled and witnesses summoned, with regard to testifying both during the pre-trial investigation stage and at the main hearings, as well as testifying upon request and via video-conference link. The Department then sends a letter to all witnesses and injured parties in which it informs them of the types of assistance provided by the Department: indicating contact details for officers, briefing them about their legal status, their rights and obligations, protective measures and other provisions of the Criminal Procedure Code and the provisions of other laws. Then, witnesses are contacted by phone in order to establish whether there are any obstacles (health-related, unavailability for the court, etc.) to their giving testimony, in order to

motivate them to testify and to indicate the importance of their testimony. Transportation, hotel accommodation and police escort arrangements are made for witnesses as necessary. In order to motivate domestic witnesses that have been summoned to testify abroad²² in war crimes cases particular effort, other than telephone contact, such as arranging meetings with them, is made to get them to testify. Witnesses who have testified abroad are contacted by the psychologist over the phone even after their testimony. Witnesses coming from abroad²³ to testify in Croatian courts are also contacted directly by phone, in cooperation with the staff members of the Victims and Witnesses Support Unit (VWSU) within the War Crimes Chamber of the District Court in Belgrade. Police escort and hotel accommodation arrangements are also made for the above witnesses as necessary. Where necessary, a notification letter is sent to the court about a witness' condition together with corresponding recommendations. A similar notification letter is also delivered to the Unit for Support to Witnesses Abroad, together with information related to the witness's arrival and the requirement to coordinate activities with regard to arranging physical protection and the provision of hotel accommodation. A notification is also submitted to the Ministry of Internal Affairs of the RC about the requirement to provide physical protection. Where necessary the psychologist of the Department provides support to witnesses in war crimes cases that are pending before the cantonal courts of Zagreb, Sisak and Karlovac.²⁴

²² In most cases witnesses testify before the War Crimes Chamber of the District Court in Belgrade.
²³ These are mostly witnesses from Serbia.
²⁴ Since 1 May 2008 witness and victim support offices have been introduced into the cantonal courts in Zagreb, Osijek, Zadar and Vukovar. The offices in the courts were established through a joint project of the Ministry of Justice and the UNDP Croatia called Support to the Development of Croatia's Witness and Victims Support System.

Within the period 1 June 2006 to 1 October 2009 the Department established contact with 1,658²⁵ witnesses, of whom 293 persons were domestic witnesses summoned to testify before various foreign courts.²⁶

2.5. Victims and Witnesses Support Unit (VWSU) – War Crimes Chamber of the District Court in Belgrade, Serbia

The Victims and Witnesses Support Unit (VWSU) of the War Crimes Chamber of the District Court in Belgrade (VWSU) was established on 9 June 2006. The purpose behind the establishment of the VWSU was to provide moral and logistic assistance and support to witnesses coming to the Court in order to give testimony.

VWSU employees contact every summoned witness in order to identify any potential personal or special needs as well as for the purpose of their motivation for the trial itself. Witnesses are also informed as to the types of assistance that the VWSU is able to provide such as: travel and accommodation arrangements for witnesses, the provision of required information in relation to the judicial proceedings and witnesses testifying before the Court, including the information that the VWSU will look after them during their stay in the courthouse. Witnesses are allowed to contact the VWSU at any time whatsoever. A VWSU

²⁵ The figure does not reflect the number of war crimes cases. It includes all witnesses.
²⁶ Ministry of Justice of the Republic of Croatia, Department for Support to Victims and Witnesses in Criminal and War Crimes Proceedings, International conference: Possible paths towards Reconciliation, November 2009, Belgrade.

representative welcomes the witness at the entrance to the court building, helps the witness undergoing the regular entry procedure and stays together with the witness in a separate room designated for witnesses until they are called to enter the courtroom by the court chamber clerk, where necessary accompanying the witness even into the courtroom. Witnesses receive practical advice in relation to testifying, they are briefed about the procedure of testifying, seating arrangements in the courtroom for easier orientation, about the rules of conduct, the sequence of questioning and the like.

The experiences of the VWSU thus far have shown that no one ever takes the decision to testify easily and witnesses are usually anxious in anticipation of the start of their testimony. To recall traumatic situations in their life and describe these events before some unknown people is extremely stressful and may create considerable strain. All this may also lead to a state of retraumatisation. This holds true particularly in regard to those who are victims-witnesses. The task of the VWSU is to enable witnesses to suppress their negative feelings so that they are able to concentrate only on giving their testimony. It is important for all witnesses to be able to testify in safety and security and that the experience of testifying does not result in further harm, suffering or traumatising to the witness. The VWSU concentrates its activities on witnesses' emotions, rather than on the facts of the events about which the witnesses are to testify. After giving their testimony the witnesses have an opportunity to provide feedback information on those moments when they could reasonably be expected to display excitement, both emotional and physical. After this break a VWSU official accompanies the witness to the exit door of the courthouse.

The VWSU provides the witnesses with emotional support and encouragement thus facilitating their efforts to testify. This contributes to the fact that during their testimony the witnesses feel safe, more comfortable and relaxed, and as a result they give higher quality testimony and thus contribute to the overall efficiency of the judicial system. There is a wide range of fears that can affect witnesses. Some witnesses are affected more and some less intensively, but the feeling that they all have in common when they take on the role of witness is anxiety (physical and emotional).

The ultimate goal is for the witness to complete his or her testimony with a feeling of achievement and fulfilment. The role of the Support Officer is proactive during all stages: starting from the first point of contact with the witness prior to testimony, during the testimony and after giving evidence.

Since its establishment the VWSU has worked with 1,018 witnesses: out of this total number 351 witnesses were not nationals of the Republic of Serbia.²⁷

²⁷ Regional Conference "Witness and Victim Support", organised under the auspices of the UNDP Croatia, October 2009, Zagreb - presentation by Slavica Peković, the District Court in Belgrade, War Crimes Chamber, Victims and Witnesses Support Unit.

3. Reports and Recommendations on Witness/Victim Support and Protection Issues from International and National Actors in BiH



3. Reports and Recommendations on Witness/Victim Support and Protection Issues from International and National Actors in BiH

3.1. Recommendations of the National War Crimes Strategy in BiH in the Area of Witness/Victim Support and Protection

The National War Crimes Strategy (hereinafter: the Strategy) has made recommendations to strengthen witness support for proceedings conducted before district and cantonal courts and prosecutors' offices. One recommendation was the creation of a network of witness and victim support bodies throughout the country. The Network will be created and developed under the coordination of the Witness Support Section of the Court of BiH, which should serve as a model. Also, this Network should utilise the resources and capacities of local non-governmental organisations that can provide psychological and social support to victims and witnesses or those that are already professionally working with victims and witnesses. Furthermore, it has been determined that regional offices for witness/victim support will be established and that the courts will appoint coordinators to work with the respective regional office. It has been recommended that staff capacities of the centres for social welfare should be improved, that is, centres for mental health, in order to allow access to psychological and social assistance and professional help²⁸.

Another recommendation was to designate a separate room for witnesses within every courthouse, where psychological support could be provided and thus avoid exposing witnesses to the public. In terms of the relevant staff, the Strategy recommends the recruitment of psychologists within the Prosecutors' Office of BiH, as well as in cantonal and district prosecutors' offices and courts.²⁹

As pointed out earlier, the Strategy recognises the role of NGOs in the process of providing support to witnesses and victims, since over the years of their operation they have developed programmes and methods aimed at strengthening traumatised persons, primarily female victims of war, as well as other categories that require support. A certain number of NGO programme beneficiaries have also testified before the ICTY and various national courts. More specifically, providing support to victims in general, victims that may be potential witnesses or that were witnesses has contributed to the effort to prevent or reduce the potential retraumatisation of witnesses when giving testimony or as a result of an encounter with the accused (perpetrator).

Also, the Strategy draws on the provisions of the currently applicable body of legislation that specifies the obligation of the centres for social welfare to provide psychological support to witnesses. However, these institutions either do not have sufficient capacities to be able to fulfil this legal obligation or they do not have the employees. If they do have them these employees usually do not possess the adequate knowledge and experience required to provide psychological support to this category of the population.

²⁸ Article 6 – Law on Vulnerable Witnesses and Witnesses Under Threat.

²⁹ National War Crimes Strategy, 4.2 – Victim and Witness Support, paragraphs 8 and 9.

To that end, as has already been pointed out, the recommendation of the Strategy is to upgrade the capacities of the centres for social welfare, as well as the capacities of the courts that are required to provide witness support and to design and ensure separate adequate rooms within the courthouses where such support would be provided.³⁰

3.2. Legislative Framework of BiH in the Area of Witness Support and Protection

In BiH the area of witness/victim protection and support is regulated by state and entity level laws and various international documents. Although the legal framework exists the entity level institutions do not have the capacity to implement the current laws. In particular, cantonal and district courts do not have adequate courtrooms, technical conditions for testimony by protected witnesses, such as the possibility to give testimony via a video-link or through electronic voice distortion. There are no specialist departments that can provide psychological support to witnesses nor are there special police units that could apply physical protection measures. Of all the judicial institutions involved in processing war crimes cases only the Court of BiH has all the required internal capacities. In addition, in order to provide witnesses with physical protection the Court of BiH utilises the capacity of SIPA; this state agency's mandate is to investigate criminal offenses within the competence of the Court and Prosecutor's Office of Bosnia and Herzegovina and provide physical protection through its Witness Protection Unit. It is actually

³⁰ Transitional Justice Guidebook for Bosnia and Herzegovina, UNDP in Bosnia and Herzegovina 2009.

the only police structure in Bosnia and Herzegovina which has a specialist unit for the protection of witnesses and is adapted to perform protection activities.

In order to solve these problems, through upgrading technical and professional capacities as well as by defining the role of all stakeholders and their responsibilities, it would be necessary to improve the applicable legislative framework. This primarily concerns the Law on the Witness Protection Programme, whose amendments were expected in 2009. To that effect the Strategy lays down a specific requirement to improve relations between Bosnia and Herzegovina and its neighbouring countries, in order to ensure a functional protection programme. However, in addition to the requirement to amend the legislative framework to upgrade the financial, technical and professional capacities the Strategy also requires some other steps towards providing psycho-physical protection to witnesses. For instance, by following the example of the Court of BiH, cantonal and district courts engaged in the processing of war crimes cases should develop their own Rules of Procedure, which would also include the implementation of witness protection legislation. The courts and prosecutors' offices should also apply the provisions on the joinder of proceedings in war crime cases that are linked in terms of facts and law. In this way they would make sure that cases are grouped in order to avoid the repeated summoning of witnesses to give evidence on identical circumstances, as has been the case thus far. This would then prevent their retraumatisation and the feeling of physical vulnerability that is associated with their testimony. Also, it would be possible to avoid summoning witnesses who have already given evidence at the ICTY, through the application of the provisions of the

legislation on cooperation with the ICTY or by looking for new witnesses capable of giving evidence about the same circumstances, or other measures.

As far as the legal framework is concerned, in addition to the said Law on the Protection of Witnesses and the Witness Protection Program Law, it would also be necessary to implement the Law on Gender Equality in BiH, and incorporate the recommendations of the Gender Action Plan in all activities in order to guarantee full gender equality and eliminate any situation that may lead to causing damage to personal dignity and any unwanted physical, verbal, suggestive or other gender-related conduct.

3.3. UNDP Report on the Capacities of Courts and Prosecutor' Offices within Bosnia and Herzegovina to Investigate, Prosecute and Try War Crimes Cases

In 2008 the UNDP produced a "report on the Capacities of Courts and Prosecutors' Offices within Bosnia and Herzegovina to Investigate, Prosecute and Try War Crimes Cases"³¹. Recommendations in the area of witness support for cantonal/district and Brcko District courts and prosecutors' offices were that all affected courts would need to modify their courthouses and courtrooms to allow for compliance with the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses.

³¹ SOLVING WAR CRIME CASES IN BOSNIA AND HERZEGOVINA – Report on the Capacities of Courts and Prosecutor Offices' within Bosnia and Herzegovina to Investigate, Prosecute and Try War Crimes Cases, UNDP 2008.

As far as the minimal capacities for prosecutors' offices are concerned the recommendations for the area of witness support and protection stated that it would be necessary to provide for sufficient resources to protect and support the victims and witnesses of war crimes during the investigative, trial and post-trial stages.

This implies in particular:

- a. that the prosecutors' office has personnel (who may or may not be prosecutors) that have been trained to address the needs of traumatised witnesses and who are in touch with services that can assist these witnesses;
- b. that the prosecutor has the resources to meet with the witnesses in a place other than the prosecutors' office when is indicated as being appropriate;
- c. that the prosecutor can provide protection for witnesses at all stages of the investigation and prosecution, as well as after the trial.

As far as the minimal capacities for the courts are concerned the recommendations for the area of witness support and protection were that the courts would have to have at their disposal sufficient resources in order to protect and to support the witnesses and victims of war crimes at all stages of the court proceedings and after their conclusion.

This implies in particular:

- a. that the court has personnel that have been trained in the needs of traumatised witnesses, who are knowledgeable about the services that can assist these witnesses and that such personnel are assigned specifically to work with witnesses;
- b. that the court has the physical resources to protect the witnesses as required by the Law on the Protection of Witnesses;
- c. that the court can assure protection for witness at all stages of the prosecution as well as after the trial;
- d. that the court has the resources to support traumatised witness;
- e. that the court has the capacity to provide alternative means for testifying when necessary.

Finally the need was accentuated to utilise and promote the services of the Witness Support Office within the Court of Bosnia and Herzegovina in order to coordinate the work of NGOs and other agencies in order to provide uniform services to victims and witnesses in Bosnia and Herzegovina.

3.4. Activities of the OSCE

At a conference organised under the auspices of the OSCE, held in Sarajevo, certain opinions were collected on the subject of supporting witnesses. The participants emphasised the importance of the treatment of witnesses in war crimes cases³²: “Witness support is often viewed more as a luxury than a necessity, although that perception is changing as the content of its remit becomes better known, as does the state’s legal obligation to organise its judicial system and criminal proceedings in order to limit infringements upon the rights of witnesses. Court personnel are increasingly cognizant of the toll that testifying in court in front of the accused and a panel of strangers takes on a witness”.

During the conference the participants also discussed certain good experiences:

- a. victim/witness support methods must be created with cognisance of the jurisdiction’s legal regime, court structure, fiscal capacity, geographic factors and caseload;
- b. in a properly functioning structure support to victims and witnesses should be offered from the investigation phase onward;
- c. a court rulebook is a helpful tool for judges involved in witness support (and possibly protection) measures, particularly when protective measures are ordered infrequently;
- d. prosecutors have had success in building trust with

³² OSCE “Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer”, September 2009.

potential witnesses by fostering good relationships with NGOs that provide victim-support, the latter acting as an intermediary until a bilateral relationship has been established.

The OSCE³³ has drafted a set of recommendations related to witness support mechanisms, primarily the creation of victim/witness support structures in courts and a functional support system for victims/witnesses from the investigation phase onward. For prosecutors the primary recommendation was to foster relationships with victim-support NGOs when approaching witnesses during the investigation phase. The witness protection subject is not addressed in the report.

In December 2009 the OSCE organised a roundtable titled “Establishing a Psycho-social Support System for Witnesses and Victims in War Crimes Cases in BiH”. Participants at this roundtable were representatives of victim associations and civil society organisations active in this area, social welfare centres, entity and cantonal ministries of Labour and Social Policy, the state Ministry of Justice and representatives of the judiciary. At the conference the participants discussed the role of civil society and the support which these civil society organisations provide in this area. Discussions also took place about the capacities of social welfare centres and the role assigned to these centres under Article 6 of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses. Under this Article the centres have the obligation to provide psychological support to witnesses.

³³ *Ibid.*

Discussions took place about the need to support prosecutors’ offices in this particular domain. Finally, it was agreed that the conclusions of this roundtable would be finalised and distributed to all of the participants and members of the Supervisory Board that monitors the implementation of the Strategy, together with the record of the roundtable containing a transcript of the roundtable discussions.

3.5. Views of the European Commission

Within its regular reports to the Council of Europe and the European Parliament, concerning the progress made by the countries of the Western Balkans region, the European Commission, in its 2009 Report³⁴, also mentioned the issue of witness support under the section referring to progress achieved in the area of judicial reform. The said report gave a positive assessment with regard to the efficiency of the War Crimes Chamber of the Court of Bosnia and Herzegovina and the Special Department for War Crimes of the Prosecutor’s Office of Bosnia and Herzegovina related to their operations that comply with internationally recognised fair trial standards. Some limited progress was registered regarding the prosecution of cases before cantonal and district courts, especially in the Federation. However, the Commission’s report also referred to the lack of witness protection capabilities and witness support in BiH, attributed to insufficient staff, as a major obstacle to the effective prosecution of war crimes at the cantonal and district level in BiH. Furthermore, the issue of clarifying the position of the

³⁴ Bosnia and Herzegovina- Annual Progress Report for 2009, the report covers the period from 1 October 2008 to mid September 2009, European Commission, Brussels 2009.

international presence (Registries of the Court and Prosecutor's Office) in State judicial institutions and the reduction of the budget of the State Court for 2009 may also call into question the efficient functioning of the WSO at the state level, which may directly affect the development and improvement of these mechanisms at the local level.

According to the report, implementation of the Justice Sector Reform Strategy and the National War Crimes Strategy has not progressed in accordance with the agreed timelines. Material conditions for the improvement of judicial capacities have remained very limited and accordingly every initiative by international actors or national governmental and non-governmental sectors in this field is welcome. From all of the above concerns it follows that an independent and apolitical approach to mobilising all existing capacities in both entities and organising a single mechanism in the field of witness support and protection throughout the country is necessary in order to resolve these issues as efficiently as possible in the future.

In summary, recommendations by international and national actors on witness/victim support focus on 2 main aspects: the involvement of NGOs and other agencies during proceedings, including the investigation phase, and the creation of regional witness support offices throughout the country. The Witness Support Office of the Court of BiH is proposed as the key main actor for training and coordinating the work of NGOs and the regional offices.

The above recommendations identify key partners that should be involved in witness support mechanisms (NGOs, other agencies and the Witness Support Office of the Court of BiH) at the cantonal and district level. However, the framework and scale of involvement of the identified partners needs to be clarified and formulated in a practical manner.

One of the segments of the interviews conducted in cantonal and district courts and prosecutors' offices examined the issue of the involvement of NGOs and other agencies during war crimes case proceedings. Judges and prosecutors were given the opportunity to share their experiences working with NGOs and to give their opinions and recommendations for a framework for cooperation.

3.6. Challenges and Obstacles in the Area of Witness/Victim Support and Protection

Today the mechanisms of the Witness Support Office operate at the court level, but not during the investigation phase. One of the reasons for having support for witnesses/ victims at the trial phase was the potential conflict during the judicial process in two aspects: the trial aspect defined by the law and the witness and victim aspect. The judicial aspect and the role of each participant in the process are defined under the Law. The witness/victim aspect is related to life experiences, emotions and the recollection of events. Unfortunately, when it comes to testimony the expectations of both sides are different and if not resolved these different expectations can complicate the judicial process. The judicial requirement is facts and precise testimony, whereas the expectations of the witnesses are to be

listened to and understood. One of the key roles of the Witness Support Office is to be the in between aspect of the judicial process: the office which creates a bridge between the two sides.

In terms of war crimes proceedings in BiH 2009 was a pivotal year. In particular, serious budgetary issues arose related to the implementation of the transition plan in 2009, both in terms of replacing international judges with national judges and the full integration of national support staff working in the Registry, as well as securing funds required for the operational costs of the Court of BiH: such as witness costs. As a result trial chambers sitting in war crimes cases were forced to "consider how many witnesses they could invite to hearings and whether they could invite witnesses that lived in other countries"³⁵.

When addressing the UN Security Council in September 2009 the Chief Prosecutor of the ICTY expressed concern over the potential departure of international personnel from the Court and Prosecutors' Office of BiH. In addition, the Security Council was informed that the referral to local prosecutors of material pertaining to investigations would soon be completed. The Chief Prosecutor noted that 17 case files, related to 43 suspects, would be handed over to the countries created following the disintegration of the former Yugoslavia³⁶.

Bosnia and Herzegovina can expect an ever increasing number of war crimes proceedings over the next decade. The lack of prioritisation on the part of the BiH authorities in regard to the

needs of judicial institutions, as epitomized by the reduction of the State Court budget as opposed to increasing the resources allocated for the judiciary, is slowing the implementation of the Strategy.

Numerous challenges and obstacles await in regard to war crimes proceedings over the next decade. Building a uniform framework for victim/witness support and protection has become a common agenda for international and national key actors over the last two years. Thus, the activities of the HJPC and the European Commission, the OSCE conferences on witness issues and the UNDP project titled "Building Capacities of Cantonal and District Prosecutors' Offices and Courts in BiH to Process War Crimes Cases" are all focused on ensuring the implementation of the National War Crimes Strategy, so that the same level of support and protection will be available at all levels of war crimes proceedings in BiH.

The challenge is not only to identify other governmental institutions that are better equipped to fill the existing gap, but also to coordinate with existing projects that offer assistance in this area, such as, for example, the Swiss Development and Cooperation (SDC) Agency³⁷ project. Centres for mental health provide services in BiH through a network of 50 centres for mental health: 31 in the FBiH, 18 in RS and one in Brcko District, with multi-disciplinary teams comprised by psychiatrists, social workers, psychologists and nurses.

³⁵ Bosnia Daily, December 2009 – daily E-newspaper

³⁶ Justice Report December 2009.

³⁷ See the Swiss Development and Cooperation (SDC) Agency project.

One of the main obstacles for war crimes case proceedings in BiH today is the effect of the length of proceedings on witnesses. The first war crimes trial conducted by the ICTY was fourteen years ago in 1995 with the Tadić case³⁸. Since 1996, when the first witnesses appeared before the ICTY, more than 5,000 witnesses have testified at The Hague. Since the first war crimes case at the Court of BiH, in 2005, 3,000 witnesses have testified in Sarajevo. At the ICTY and the Court of BiH experience has shown that a large number of witnesses are called to testify several times about the same events but in different proceedings involving different defendants. This repetition of testimony and the psychological impact that it has upon witnesses, that are called year after year to recount the same events, creates a tremendous challenge for the courts and prosecutors' offices in BiH. The challenge to alleviate this burden on witnesses, having to repeat their testimony, needs to be prioritised in light of the State's Strategy timeline for prosecuting the most complex and top priority war crimes cases within 7 years and other war crimes cases within 15 years.

And finally, another obstacle to supporting and protecting victims/witnesses in war crimes proceedings is the lack of access to psychological and social assistance and professional help, as defined under Article 6 of the Law on the Protection of Witnesses. During the field interviews, held at the cantonal and district level, the current situation of existing or nonexistent mechanisms of support was investigated. Centres for social welfare were mentioned and different opinions were expressed, as reported in the assessment chapter below in this document³⁹. The primary obstacles identified by judges and prosecutors were the lack of resources and professional training in trauma issues.

4. Situation Assessments in Cantonal/ District Prosecutors' Offices and Courts in BiH with Regard to Processing War Crimes Cases and Witness Support/Protection

³⁸ ICTY Annual Report 1995.
http://www.icty.org/x/file/About/Reports%20and%20Publications/AnnualReports/annual_report_1995_en.pdf.

³⁹ See Chapter 3 of this report

4. Situation Assessments in Cantonal/ District Prosecutors’ Offices and Courts in BiH with Regard to Processing War Crimes Cases and Witness Support/ Protection

4.1. Prosecutors’ Offices

4.1.1. Capacities of Prosecutors’ Offices to Conduct Investigations and Issue Indictments and the Possibilities for Providing Psychological Support during the Investigation Phase

The capacity of cantonal and district prosecutors’ offices (hereinafter referred to as: prosecutors’ offices) to prosecute war crimes cases is much weaker than the capacity of the State Prosecutor’s Office of Bosnia and Herzegovina. In very few prosecutors’ offices are there prosecutors who are focused exclusively on war crimes cases: the prosecutors employed are mainly engaged in all cases that fall within the competence of their office. There are even examples of prosecutors from cantonal prosecutors’ offices being seconded to provide provisional assistance to local municipal prosecutors’ offices. The vast majority of those interviewed stressed that there is a real need for the establishment of special war crimes departments at the level of cantonal and district prosecutors’ offices. They also stressed the need to recruit a greater number of prosecutors, investigators and prosecutorial associates in order to intensify war crimes investigations, which in turn would result in the issuance of a considerable number of indictments. Equally, there is a need to reinforce and strengthen the technical capacities, since the prosecutors in cantonal and district prosecutors’ offices are

faced with a lack of space in which to operate and a lack of other resources such as, for example, the insufficient number of vehicles that are used during the investigations and the like. Prosecutors’ offices also lack the resources required for recruitment of additional personnel, which under the current situation and the steady inflow of different cases results in Prosecutors’ offices being unable to assign prosecutors to focus exclusively on war crimes cases.

Cooperation with the State Information and Protection Agency (SIPA) and other police services

One of the problems faced by prosecutors’ offices is the lack of cooperation with SIPA. This agency, which under the Law on the State Investigation and Protection Agency⁴⁰ investigates criminal offenses that fall within the jurisdiction of the Court of Bosnia and Herzegovina and the Prosecutor’s Office of Bosnia and Herzegovina, provides protection for witnesses that come forward to testify before the Court of BiH. Following motions filed by prosecutors’ offices and cantonal/district courts the Court of BiH approves the engagement of SIPA for their purposes. However, as the interviewed prosecutors noted, the prosecutors’ offices cannot always rely on SIPA, even though, generally speaking, when they have cooperated with this agency it proved to be very efficient and constructive. In any case, there is a general consensus that it is very important to establish cooperation with SIPA, since in this way it would be much easier to obtain information, for example, about state institutions and ministries when required. Cooperation with SIPA is also necessary due to the fact that the capacities of

⁴⁰ Article 3.1 of the Law on the State Investigation and Protection Agency, <http://www.sipa.gov.ba/bo/regulativa.html>

entity and cantonal law enforcement agencies (police forces) are quite limited, since at these levels there are no specialised police services, such as SIPA.

The issue of quotas and the prosecution of war crimes

A particular problem for all prosecutors is the rating or evaluation system, namely the annual quota of indictments issued per prosecutor, which is the basis for the evaluation of their performance. Under the Criminal Procedure Code, which has been in force since 2003, the prosecutors are now entirely responsible for the investigative procedure; however, they also have the obligation to act at the requests of the Prosecutor’s Office of BiH and attend exhumations, which, nevertheless, is not incorporated into the system of their performance evaluation.

War crimes cases are extremely complex and their preparation takes far more time in comparison to other cases, due to the difficult exercise of locating evidence, adequate witnesses, alleged perpetrators and the like. Some prosecutor’s offices highlighted the problem of insufficient communication with the Prosecutors’ Office of BiH, which makes work on war crimes cases at the level of the prosecutor’s offices additionally difficult. Previously, the prosecutor’s offices referred these cases to the Prosecutor’s Office of BiH, which was the institution responsible for the assessment of case sensitivity.⁴¹

⁴¹ Since December 2008, when the National War Crimes Strategy was adopted, the Court of BiH has been assessing the sensitivity of cases: “very sensitive” cases will be the responsibility of the Prosecutors’ Office and Court of BiH, “sensitive” cases will be the responsibility of the cantonal and district courts and Prosecutors’ offices and the Basic Court and Prosecutors’ Office of Brcko District.
National War Crimes Strategy, 2.2. – Case Management

When the Prosecutor’s Office of BiH assesses a case as being “very sensitive”, from the moment that this assessment is made, the prosecutor’s offices take over either one part of the case or the entire case. No matter how necessary this practice is for those cases that are considered to be “very sensitive” the consequence is that cantonal and district prosecutors cannot issue an indictment in such cases; this is despite the fact that they invested a considerable amount of time and effort in the investigation. Therefore, one gets the impression that the prosecutors’ offices and courts are inefficient in terms of the number of the indictments issued and war crimes cases initiated.

As the prosecutors noted, what makes the efficient conduct of investigations⁴² additionally difficult is the absence of a unit for psychological support to witnesses and victims within the structure of prosecutors’ offices, as well as the insufficient capacities of the centers for social welfare that would be engaged to provide psychological support to traumatised persons during the investigation stage.

The prosecutors have also outlined that one of the problems associated with the conduct of investigations is the fact that some suspects reside in neighbouring countries and that there are constitutional⁴³ or legal restrictions⁴⁴ that prohibit their extradition, which prevents the prosecutors from

<http://www.mpr.gov.ba/userfiles/file/Projekti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf>
⁴² More information can be found below in this document.
⁴³ Article 9 of the Croatian Constitution
http://www.predsjednik.hr/Download/2003/09/10/ustavni_tekst.pdf
⁴⁴ In the case of Serbia these restrictions are underlined in the Criminal Procedure Code, Article 517(1) http://www.parlament.gov.rs/content/lat/akta/akta_detalji.asp?id=360&t=Z#

reaching the alleged perpetrators. A particular problem in this respect lies in the fact that no indictment may be issued without first hearing the suspects.

Due to all of the above difficulties the prosecutors tend to deal with other cases where it is possible for them to obtain a positive performance evaluation grade following their annual evaluation.

4.1.1.1. Problem of Identifying Witnesses and Establishing Cooperation with Witnesses

The majority of the prosecutors interviewed stressed how extremely difficult it is to reach adequate witnesses, whereas some prosecutors’ offices, on the basis of their experience, considered these problems to be solvable, despite certain problems that do exist.

Since witnesses are considered as crucial links in the chain of war crimes investigations, the greatest problem is to identify witnesses and get them to agree to testify. To that end the prosecutors encounter a great number of problems one of which being the fact that the witnesses have either been internally displaced or have taken refuge abroad, which makes it difficult to make the initial contact with them. What is more, even when they learn about the witness’ place of residence the prosecutors complained that they lack the time and/or financial resources to travel to the witness’ place of residence each time they need to take their statement. Furthermore, considering the period of time that has elapsed since such crimes were committed some witnesses have died in the

meantime and others are unable to recall and recount all of the relevant details.

However, even when the prosecutors manage to reach them the witnesses often refuse to cooperate. The following are the most common reasons for such refusals.

1. The witnesses have already given their evidence several times and they are reluctant to be upset again.
2. The witnesses have lost confidence in the judicial system of BiH:
 - a. the witnesses have given evidence, but an indictment was not issued against those persons whom the witnesses identified as the perpetrators;
 - b. the witnesses who gave evidence were not summoned to testify in court;
 - c. the judgment in the court case with regard to which the witnesses gave their evidence or testimony failed to meet the witnesses perception of justice.
3. The witnesses have lost confidence in the State and society as a whole.

Witness displeasure is also affected by problems associated with logistics, since some prosecutors’ offices do not have sufficient funds to reimburse the witnesses travel expenses, accommodation, meals expenses, etc. In addition to these basic costs, some witnesses expect per diem allowances or

seek some other kind of services from the prosecutor. A certain number of prosecutors' offices have, for example, the resources to reimburse travel expenses, provided that the witnesses in question are BiH nationals who reside within the territory of Bosnia and Herzegovina. Other prosecutors' offices, such as, for example, the Basic Prosecutors' Office of Brcko District, have higher amounts of funds and are also able to provide witnesses with accommodation. Another emerging logistics related problem is the fact that a lot of witnesses reside aboard and, even if they are willing to testify in war crimes cases (in some cases they get in touch with the Prosecutors' office willingly), they do not have the financial resources to cover their travel expenses from their own means, while the prosecutors' offices themselves do not have sufficient funds to cover the travel expenses for their witnesses. The prosecutors' offices that have been fostering partnership relations with NGOs get to grips with this problem by soliciting services from these organisations: these organisations may be able to provide for overnight stays and meals arrangements during the period of cooperation between the prosecutor and the witness.

Witness insecurity and traumatisatisation.

One of the major problems highlighted by the prosecutors during the interviews was that potential witnesses and their families would not feel sufficiently safe if they were to testify. This fear is particularly present in the returnee population. These witnesses sometimes do not point out this problem openly, but rather say that they do not want to deteriorate their newly established relationship with their neighbours or that under their new circumstances, as returnees, they do not want to remember the awful moments that they experienced during the war.

The prosecutors believe that their reason for refusing to cooperate lies in the traumatic events that these potential witnesses are no longer willing to remember. As the prosecutors noted, for the most part the witnesses did not seek any psychological support, although it was obvious that they required such support. Only in rare cases did the witnesses produce medical documentation in order to show and prove to the prosecutors that they were unable to cooperate due to severe traumatisatisation. There was a particular problem with female victims of sexual violence who refused to cooperate because of the fear of stigmatisation.

The perception that they lacked personal security and the affect of their traumatisatisation often resulted in the fact that the witnesses were unwilling to establish cooperation with the Prosecutors' office; even if they did cooperate during the investigation they either refused to give testimony before the court or came forward to testify before the court and completely changed their testimony compared to the one given during the investigation.

4.1.1.2. Psychological Support to Witnesses

4.1.1.2.1. Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, and the National War Crimes Strategy

For the purposes of this research the special focus was placed on the provisions relating to psychological protection of witnesses within the Law on the Protection of Witnesses.⁴⁵

The Law on the Protection of Witnesses, Article 6, specifies that both during the investigative procedure and after the indictment has been issued the centres for social welfare will have the obligation to provide psychological support to vulnerable witnesses: the Prosecutors' office will request assistance from these centres during the investigation, whereas the courts will do so after the indictment has been issued.

During the investigation, the Prosecutor, and after the indictment has been issued, the Court, shall ensure that the body responsible for issues of social care is aware of the involvement of the vulnerable witness in the proceedings and shall enable the assistance of this body as well as psychological support to the witness, including the presence of appropriate professionals at examination or hearings.⁴⁶

⁴⁵ This Law was enacted by the Parliamentary Assembly and it was published in the "Official Gazette of Bosnia and Herzegovina", No. 21/03 - Article 3.2 of the Law defines the term "vulnerable witness" as follows: "A vulnerable witness is a witness who has been severely physically or mentally traumatized by the events of the offence or otherwise suffers from a serious mental condition rendering him unusually sensitive, and a child and a juvenile".

⁴⁶ *Ibid.*

Also, the Strategy spells out in detail the matter of psycho-physical support for victims and witnesses. The Strategy points out the need to develop a witness support network throughout BiH, wherein the Witness Support Office of the Court of BiH would coordinate all activities in this domain.⁴⁷

All prosecutors are familiar with the Law on the Protection of Witnesses and the Strategy, as well as with the prescribed procedures for psycho-physical support to witnesses. However, it should be noted that the centres of social welfare are not involved in the process of providing psychological support to traumatised persons and potential witnesses from whom the prosecutors take evidence during the investigative procedure: specifically, with rare exceptions, the prosecutors' offices have mainly failed to inform the centres of social welfare about the provisions of Article 6 of the aforementioned Law, although they were made aware of their obligation through the relevant law. Thus, the majority of prosecutors' offices have not yet established cooperation with these centres in regard to war crimes cases. The main reason why the prosecutors' offices have failed to inform the centres of social welfare about the Law lies in the general conviction that traumatised witnesses cannot receive adequate psychological support from these centres, due to their lack of capacity. Namely, on the one hand, some prosecutors have indicated that the problem with the centres of social welfare is the fact that they do not have sufficient capacities to deal with more cases

⁴⁷ National War Crimes Strategy, 4.2 - Support to Victims and Witnesses <http://www.mpr.gov.ba/userfiles/file/Projekti/Drzavna%20strategije%20za%20rad%20na%20predmetima%20RZ.pdf>
The Strategy recommends the use of the capacities of NGOs with knowledge and experience in providing psychological support to traumatised persons on the one hand and an increase in the existing capacities of the centres for social welfare and the centres for mental health on the other.

on top of their already tight schedule, while the majority indicated the problem of a shortage of capacity in terms of the expertise of the psychologists that would work with persons suffering from war trauma, since this is a specific form of traumatising. However, the prosecutors who were interviewed also stressed that generally there was not a need for such a form of cooperation as they did not encounter considerable numbers of traumatised persons, as far as they were able to conclude, and that they would establish such a form of cooperation with these centres when necessary. Namely, the prosecutors' offices seem to have a tradition of cooperation with the centres for social welfare for cases of juvenile delinquency or general criminality. The prosecutors believe that on the basis of this cooperation in particular it is also possible to establish a partnership relation for war crimes cases with these centres, but that in doing so one must bear in mind the above mentioned limiting factors associated with the centres for social welfare.

However, it was highlighted that it is very important to strengthen these centres capacities by organising additional training or specialist courses: for the specific reason that both the Law on the Protection of Witnesses and the Strategy authorise the centres for social welfare to provide psychological support to witnesses. It was also noted that the local self-government units, from whose budgets these centres are funded, struggle with limited resources and therefore the prosecutors generally expressed doubts as to whether any fast-track strengthening of the capacities required from the centres for social welfare would be possible.

An interesting example is the Prosecutors' Office of Tuzla Canton, which signed an agreement with the Ministry of Justice of Tuzla Canton, the local Centre for Social Welfare and the NGO "Vive žene" for the purpose of overcoming this problem. The agreement made it possible to institutionalise the association "Vive žene" as an expert and recognised NGO by authorising it to provide psychological support services to those who require it for the purposes of the Prosecutors' Office, although not in the instance of war crimes. As has been emphasised, the institutionalisation of NGOs within the domain of witness support is one of the recommendations contained in the National War Crimes Strategy.

And finally, it should be noted that the prosecutors believe that the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses cannot be fully implemented due to the lack of capacities.

4.1.1.2.2. Cooperation between Prosecutors and Witnesses

How do prosecutors find witnesses and how do they get in touch with them?

In most cases prosecutors get in touch with witnesses by phone or through an official letter carried by a courier, as well as through other methods. In exceptional situations they use the services provided by the police. The prosecutors often face the fact that witnesses' addresses are not accurate and in these cases they request the services of the Agency for Identification Documents, Registers and Data Exchange of BiH.⁴⁸ Where it is necessary to establish cooperation with key witnesses or witnesses with perceptible traumatising the prosecutors communicate with the witness several times, whether by phone or through direct contact, in order to explain to them how important their cooperation and testimony is. As soon as they have made the preparations the prosecutors start taking evidence from the witnesses. In any case, the prosecutors decide individually as to the manner in which they will establish cooperation with a witness. However, some prosecutors' offices have had negative experiences when contacting witnesses by phone.

How many witnesses have sought psychological support and how have the prosecutors addressed this problem?

Until now, most prosecutors have not had experience with witnesses who sought psychological support and therefore the prosecutors have not established cooperation with psychologists, whether from the centres for social welfare,

the Court of BiH or from other specialised institutions. However, the prosecutors are aware that a large number of witnesses that they have cooperated with have suffered from some form of trauma. For this reason, the prosecutors are very careful and considerate in their work with traumatised witnesses so that they can earn their trust. Once they have established contact and developed a level of trust, only then will the prosecutor begin to inform the witness about the process, his or her rights, the roles of the key actors in the proceedings (prosecutor, witnesses, defence counsel, defendant, court) and after this they take evidence from the witness.

Nevertheless, the prosecutors have become aware of the critical need to recruit psychologists, specifically during the investigation stage, where traumatised witnesses are concerned. It is quite often the case that key witnesses who were highly cooperative during the investigation stage say that they can no longer remember what happened once they appear in court and have to confront the accused. This proves that the witnesses were not sufficiently psychologically prepared for the court trial itself.

As far as cooperation with other institutions is concerned, as noted earlier, some prosecutors' offices believe that it is possible to establish cooperation with centres for social welfare according to the same principle as is currently in place with regard to cooperation in the area of juvenile delinquency and general criminality; however, there is a general understanding that these centres do not have sufficient capacities to provide support to those persons suffering from war trauma. On the other hand, there is an example of a Prosecutors' office that

⁴⁸ Former CIPS Project.

has developed a partnership relation with a centre for social welfare in order to provide psychological support for potential witnesses affected by war trauma. However, in this case, there was insufficient cooperation between the prosecutors' office and the court and this resulted in the supervision being discontinued during the court trial itself, which was seen as having contributed towards the witness's retraumatisation.

In any event, due to the general attitude that the centres for social welfare cannot yet act as potential partners, according to the words of prosecutors, in the first place it is necessary to establish cooperation and develop trust between the prosecutor and the witness.

Also, whenever there have indeed been specific problems with traumatised witnesses some prosecutors who have effective cooperation with NGOs have tended to seek support from these organisations, as they have gained the confidence of such witnesses.

Is the establishment of units for psychological support to witnesses required within the structure of prosecutors' offices?

Most prosecutors' offices do believe that there is a requirement to establish such units for psychological support to victims and witnesses within prosecutors' offices: as they would be assigned to provide psychological support to victims and witnesses during the investigative procedure and to maintain close cooperation with the corresponding offices of the competent courts. There is a conviction that the establishment of these units would thus generally facilitate the operation of the prosecutors' offices and courts, as well as

boost the efficiency of the entire process. The establishment of such units within the structure of the prosecutors' office would also be instrumental in enabling the prosecutors to focus exclusively on conducting investigations and creating indictments, rather than on providing assistance in an insufficiently professional manner to traumatised witnesses who require actual professional supervision.

Even though they consider it necessary to establish such a unit as part of their own structure some prosecutors, nevertheless, feel that it is even more important to have such psychological support units embedded within the court structure. This is because, although the prosecutors may manage to develop a relationship of trust with a witness later on during the investigation stage, a witness is "blocked" in court. In any case, it is entirely clear to the prosecutors that they cannot take the decision to establish these units and that instead this decision belongs to the HJPC. To this effect, some prosecutors' offices have already addressed their inquiries to the HJPC.

There are some prosecutors' offices that, based on their past experience, have reached the conclusion that the establishment of such units within prosecutors' office is not necessary, but that the issue of providing psychological support to traumatised witnesses may be settled through the recruitment of psychologists from other professional institutions, such as psychologists from the centres for social welfare and other institutions.

4.1.1.2.3. Relations between Prosecutors' Offices and NGOs

The interviewed prosecutors had dissenting views on the establishment of partnership relations between their offices and civil society organisations. Some prosecutors believe that no relationship whatsoever can be established with these organisations as some of them are politicised and biased, and their activities are dependant upon their programmes. It is therefore important for the prosecutors' offices to analyse the programmes of civil society organisations in order to reach a decision concerning more tangible NGO involvement in the activities of the prosecutors' offices.

On the other hand, the prosecutors have stressed that civil society organisations may be very useful, since some of them possess information about victims, crimes, mass graves, potential witnesses and potential perpetrators. To that effect, some prosecutors arrange and schedule regular meetings with NGOs. They think that it is extremely important for prosecutors' offices to establish cooperation with those organisations that have the capacity to provide psychological support to witnesses. Due to the widespread network of users of their programmes civil society organisations can be a solid mechanism for the dissemination of information about judicial proceedings and investigations. This can include the role of all stakeholders in the judicial proceedings, witnesses, injured parties, prosecutors, defence counsel, defendants, courts and other stakeholders within the overall process. Finally, the prosecutors' offices have, generally, established solid cooperation with civil society organisations and they readily attend the seminars, which are of direct importance for the activities of prosecutors' offices, organised by these

organisations. However, there is a unanimous view among the prosecutors that prosecutors' offices must be very careful when selecting those civil society organisations with which they aim to establish a partnership.

Possibilities for civil society involvement in the process of psychological support for witnesses.

The National War Crimes Strategy has envisaged the involvement of NGOs in the process of providing psychological support to victims and witnesses. However, the interviewed prosecutors have dissenting views on this matter. A considerable number of prosecutors tend to believe that it would be beneficial to include civil society organisations in the process of providing psychological support during the investigation procedure, but it would be necessary to first assess their capacities. A proposal has also been made about the establishment of a completely new NGO whose mission would be exclusively to supervise individuals suffering from war trauma. Those civil society organisations that will be involved in this process must have well trained professionals able to comply with the requirement on data confidentiality.

However, there are also some prosecutors who believe that NGOs should in no way be involved in any segment of the investigation, nor in the provision of psychological support. This is based on the perception that there is a general tendency among NGOs to promote the interests of one ethnic group, as has already been mentioned.

4.2. Courts

4.2.1. Capacities of Courts to Try War Crimes Cases and the Possibility to Provide Psychological Support after the Indictment has been Issued

Cantonal and district courts in BiH generally do not have specialised departments for war crimes. Although some courts have appointed judges that are specifically assigned to handle war crimes cases they generally work on other cases as well. One reason for this practice is the fact that the cantonal and district courts are currently not processing significant numbers of war crimes cases. Actually, at this point there are no such cases pending before the courts that earlier tried war crimes cases; there are also those courts that have never processed war crimes case, even though such crimes occurred within their jurisdiction.⁴⁹ As noted by the interviewed judges, the main reason why a larger number of cases are not being tried in their courts is that the corresponding prosecutors’ office has failed to file the indictments and due to their greater sensitivity some cases are referred to the Court of BiH for further action. Ultimately, some courts have established cooperation with Croatian and Serbian courts and referred cases that were initially tried before Bosnia and Herzegovina’s courts to them. For example, the Cantonal Court in Bihac referred three cases to the Croatian judiciary and one to the Serbian judiciary. Other reasons have been highlighted to explain why the number of war crimes cases is so small, such as, for example, the inability to provide witnesses with the entire range of security requirements and psychological support, and insufficient technical capacity: inadequate courtrooms, equipment etc.

⁴⁹ See the table in Annex 3

All of the judges interviewed believed that the number of judges and judicial associates in courts is generally insufficient and does not correspond to the actual needs. However, while some courts have approved recruitment of a larger number of judges and judicial associates these new positions have, nevertheless, remained vacant. This, for the most part, is either because no one has applied through open competition or because the applicants have not met the qualification requirements. It is also attributed to the fact that the courts have failed to provide sufficient funds for the recruitment of new employees. Nevertheless, a certain number of judges believe that their courts do have sufficient numbers of employees to match the current influx of incoming cases; however, if any new incoming cases emerge (no matter whether they are war crimes or other cases)⁵⁰ and exceed their current staffing levels they believe that some effort should be made to carry out an internal reorganisation in order to settle these cases as efficiently as possible. Also, according to what the judges have claimed, it appears that there are insufficient reasons to assign any judges from the current pool of judges to work solely on war crimes cases. This is due to the fact that the competent prosecutors’ offices have not filed any substantial number of indictments and the State Court has yet to assess the sensitivity of cases⁵¹. As a result of which, at this point, the judges are focused on other cases. The most drastic situation exists in the Gorazde Cantonal Court. Until now this court has received just two cases; however, they have not been tried in Gorazde, but instead referred for court trial

⁵⁰ War crimes cases in particular.

⁵¹ According to the National War Crimes Strategy, the Prosecutors’ Office and the Court of Bosnia and Herzegovina have jurisdiction over the cases that the Court of BiH will qualify as “very sensitive”, whereas the cantonal and district courts as well as the Basic Prosecutors’ Office and the Court of Brcko District will set up jurisdiction over “sensitive” cases. More information can be found in the section on Prosecutors’ Offices.

by the Cantonal Court in Sarajevo. The reason for this is the insufficient number of judges in the Cantonal Court in Gorazde and the impossibility of assembling the trial chamber: due to the involvement of judges in the preliminary proceedings and the preliminary hearings, which prevents their participation in the Chamber.

4.2.1.1. Possibilities for the Application of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses, and Other Capacities of the Courts

All of the judges interviewed were familiar with the Law on the Protection of Witnesses as well as the Strategy and its provisions. However, the courts generally do not have the capacities required for full implementation of all prescribed measures related to the psychophysical protection of witnesses. The main reason for this lies in the fact that either the courts do not have sufficient funds or their funds have been reduced year after year, or reconstruction of their courthouses has already begun and as a result it is impossible to allocate such funds for the implementation of all of the provisions of this Law from the current budget envelope available to the courts.

Although the courts have so far not received any requests for psychophysical support in war crimes cases they have such experience, for example, from cases involving organised crime; they believe that the same procedures may also be applied to cases of war crimes. As for psychological support, almost the only way would be to examine the witness in a separate room

and read his or her statement in court. However, in order to overcome the problem of limited capacity in this area the courts have had to undertake various other activities.⁵² Currently, only the Cantonal Court in Sarajevo has video equipment that can be used for the purposes of witness protection. However, the judges believe that it would be very good to perceive the method in which this Law is implemented in the Court of BiH, as well as to organise special training sessions concerning the method of implementation of this Law so that the courts would be able to develop their own strategies.

Finally, some courts have adopted the Rules of Procedure as required by the Law in order to ensure thereafter the appropriate use of witness protection measures envisaged by the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses.

4.2.1.1.1. Technical Capacities

Audio-video equipment

Except for the District Court in Doboj and the Cantonal Court in Sarajevo no other cantonal or district court in BiH, nor the Basic Court of Brcko District, possess video equipment for the purpose of hearing the testimony of vulnerable or protected witnesses. Generally, the courts have audio equipment in their courtrooms. As for video surveillance, this equipment is generally installed at the courthouse entrances, while in some courts the video surveillance systems are also installed in the courthouse corridors.

⁵² See section 4.2.1.1.2 Psycho-physical Support to Witnesses.

Courtroom capacities

The number of courtrooms available to the courts varies and usually ranges from one to three courtrooms per courthouse. Courtrooms generally vary in size: in the courthouses where there is only one courtroom the courtroom is usually large and all trials take place there; however, where the courthouses have two or three courtrooms generally only one courtroom is larger and technically more sophisticated compared to other courtrooms. War crimes trials are held in the largest and best equipped courtroom. Most judges pointed out that the number of courtrooms generally meets the current requirements of the courts, but in the event of a higher inflow of cases the number of courtroom would be quite insufficient. Also, some courts, such as the Cantonal Court in Travnik, have taken steps towards developing reconstruction projects, while in other courts, such as the District Court in Doboj, reconstruction is currently ongoing.

Courtroom and courthouse entrances and facilities for witnesses

In most courts courtrooms are not designed to allow for separate entrances and egress for witnesses, defendants or audiences, and there are no separate rooms designated for witnesses where they can be far from the general public. As a result, the audience, witnesses and defendants are compelled to sit next to one another, wait in the same corridor and use a common entrance. Judges try to solve these problems through makeshift arrangements in accordance with the options and requirements that they identify at their own discretion. Some courts have begun drawing up reconstruction plans for construction of separate entrances and facilities for witnesses. However, many courthouses do not have auxiliary or support

facilities that could be used for the purpose of psychophysical protection of witnesses; in the event that they do have them, such premises may not be able to be utilised functionally for such purposes, either because of the position of the courtroom itself and the absence of separate entrances or due to the existence of non-functional corridors or the lack of other architectural design elements.

Witness Support Office

Witness Support Offices do not exist in any of the courts and there are no psychologists employed within the courts to provide support to witnesses after the indictment has been issued.

IT Technical Staff

IT technical staff are employed in all courts.

4.2.1.1.2. Relations between the Courts and the Centres for Social Welfare

All interviewed judges claimed that they are fully familiar with the Law on the Protection of Witnesses as well as with their obligation to inform the centres for social welfare after an indictment has been issued if the institutions establish that evidence will be given during the trial by traumatised witnesses, in order to provide these witnesses with psychological support.⁵³ Since the courts have so far not received any requests for psychological support to witnesses most of them had never contacted the centres for social welfare. Also, according to what the interviewed judges have claimed, these centres do not have the required capacities to provide psychological support to traumatised witnesses. All courts have so far established direct cooperation with the centres for social welfare regarding other cases such as juvenile delinquency, for example. Likewise, cooperation could also be established on the same grounds between the centres and the courts with regard to war crimes cases. Out of all courts, the District Court in Trebinje is the only court fully satisfied with the capacities and level of cooperation with the respective centre for social welfare and they have full confidence in this institution.

However, some judges have proposed that a more efficient solution for the courts would be to recruit psychologist war trauma specialists to work under temporary service contracts for a fixed period of time, in accordance with the requirements of each court on a case-by-case basis.

⁵³ Article 6 of the Law. The link containing the official version of the Law is traceable in the Search box on the official website of the Prosecutors’ Office of BiH.

4.2.1.2. Psycho-physical Support to Witnesses

So far the courts have not received any request for psychological support in war crimes cases from the prosecutors’ offices. Security protection was requested in a very small number of cases and the courts dealt with it by assigning pseudonyms to witnesses, or by questioning the witnesses beyond or outside working hours; the witness managed to come to the courthouse for the occasion under police escort. In certain types of cases, such as organised crime, under the circumstances of a complete absence of both witness support offices and psychologists, the courts are compelled to undertake various activities in order to establish cooperation with traumatised or vulnerable witnesses whose security is under threat. This kind of practice is also transferrable to the war crimes domain. For example, in one case involving organised crime the District Court in East Sarajevo brought a protected witness to a rear entrance and placed him in the room for witnesses. The witness did not testify in the courtroom, but instead the Trial Chamber questioned him in a separate room designated for witnesses. The witness’ statement was taken and thereafter read aloud in the courtroom. Questions asked by the defence counsel were recorded and the Trial Chamber re-approached the witness to ask him these questions. Likewise, that statement was also taken from him and thereafter read aloud in the courtroom. Similar situations took place in other courts as well, including the Cantonal Court in Bihać and the District Court in Bijeljina.

4.2.1.3. Relation between the Courts and Civil Society Organisations

The judges interviewed believed that it would be very useful to establish a more permanent form of cooperation between the courts and civil society organisations:

- civil society organisations could carry out the psychological preparation of witnesses before testifying, particularly female victims of sexual violence, but also other victims;
- civil society organisations could assist those institutions integrated into the judicial operations system, such as the centres for social welfare;
- some civil society organisations could organise useful seminars for judges;
- civil society organisations also monitor war crimes trials and provide high quality analyses of the proceedings, which the courts could then use for the purpose of improving their operations and include other forms of professional support in areas of their expertise.

However, a certain number of judges have voiced a great deal of scepticism over the idea to grant excessive authority to civil society organisations in the domain of psychological witness support, as well as in other domains. As they have claimed, this could lead to a growing conviction on the part of defence counsel that the court is biased and for that reason the courts might tend to recruit expert court witnesses from the official court roster rather than those from civil society organisations.

5. Recommendations

5. Recommendations

According to the report findings, the Strategy recommendations, as well as according to the conclusions of the recently held roundtable organised under the auspices of the OSCE⁵⁴, which brought together all actors from within this field, the need was confirmed and emphasised for the establishment of a support network for witnesses and witnesses-victims who testify in war crimes cases, which would serve as the basis for extending such support to vulnerable witnesses that are also involved in other criminal proceedings⁵⁵ within the territory of BiH (domestic violence, juvenile delinquency, murder, human trafficking, etc). An important and immediate requirement for the establishment of a uniform and effective support mechanism throughout the country was also confirmed by the adopted strategic measures and timelines for their implementation⁵⁶.

Even though the model for the WSO of BiH has been proven as functional and tailor-made to fit the overall situation in BiH it is important to note the fact that this is an office that would provide support after the indictment has been confirmed, i.e. during the preparation and holding of the court proceedings.

Unfortunately, the investigation stage is a period in which support for potential witnesses is not always adequately provided. Exceptionally, the WSO would be in a position to provide support even at this stage upon the explicit request of the Prosecutors’ Office of BiH, but indeed only in exceptional situations.

It is equally important to note that during the data collection and report development process interviews and consultations were held with lawyers and psychologists involved in the prosecution of war crimes, whereas witnesses, as very important actors, were, nevertheless, not directly included in the development of this report and its recommendations, due to the short amount of time available.

5.1. General Recommendations

5.1.1. Witness Protection at the Cantonal and District Level

- Improve technical conditions in courts by providing satisfactory audio and video equipment for the purposes of witness protection.
- Provide a waiting room – a special room in the courts designed to accommodate witnesses and protected witnesses.
- Make arrangements to ensure the engagement of audio-video technicians in each court with the specific task to implement protective measures in the courtroom over the course of judicial proceedings.

⁵⁴ The Roundtable about the Establishment of a System for Psychosocial Support for Witnesses and Victims in War Crimes Cases in BiH – Mount Jahorina, 3-4 December 2009, organised by the OSCE Mission to BiH.
⁵⁵ Conclusion 8 of the said Roundtable.
⁵⁶ Strategy – Strategic Measures: Va - 31. Creation and Development of a Network of Witness and Victim Support at the Level of Entire BiH – implementation by: WSO of the Court of BiH in cooperation with NGOs, centres for social welfare/mental health; Deadline: 4 months.
32. Establishment of Regional Offices for Witness and Victim Support within the Support Network – implementation by: WSO of the Court of BiH in cooperation with NGOs and courts; Deadline: 2 months.

- Organise courses and training sessions on the subject of the implementation of the Law on the Protection of Witnesses, which can be presented to judges and prosecutors by their peers.
- Create a framework for cooperation between prosecutors and mental health centres during the investigation stage in order to address psychological and social problems of potentially vulnerable witnesses.
- Consider the possibilities for cooperation with the SIPA Witness Protection Unit at the cantonal and district level through the conclusion of certain agreements on working cooperation with witnesses in accordance with relevant legislation.
- Train Court Police personnel about procedures relating to the appearance at hearings of those witnesses who fall under the provisions of the above legislation.
- Consider the possibilities of maintaining the cooperation, aimed at training judges and prosecutors in the field of implementation of the Gender Equality Law, with the Ombudsman Office, the Gender Equality Agencies and the Gender Equality Centers of both the RS Government and the Government of the Federation, and through institutional mechanisms for gender issues.

5.1.2. Witness Support at the Cantonal and District Level

- Provide waiting room(s) for witnesses/victims in courts where they will spend time before and after testifying.
- In courts adjudicating on war crimes cases recruit at least one psychologist trained to work with victims of sexual violence and trauma issues.
- Develop and adopt procedures for Witness Support Units in courts.
- Design and deliver training in relation to judicial proceedings for those employed in Witness Support Units in courts.
- Under the leadership of Witness Support Units create a network of identified NGOs and/or partners from the civil society sector in each canton and district for the purpose of providing support to witnesses, with specific terms of reference.
- Conduct training (to be delivered by the WSO and the newly established Witness Support Offices) in trauma issues for all prosecutors.
- Define mechanisms for cooperation between the Witness Support Office and the centres for mental health in regard to the needs of witnesses before and after conducting war crimes proceedings.
- Reinforce the network of NGOs and partners from the civil society sector that are responsible for the flow of information on war crimes cases.

5.1.3. Special Recommendations and Key Stakeholders

- Identify key stakeholders involved in witness/victim protection mechanisms for war crimes proceedings.
- Reinforce cooperation between the Supervisory Body in charge of monitoring the implementation of the Strategy with all relevant institutions in the field of victim/witness support and protection.
- Strengthen cooperation between all stakeholders and entity ministries for the realisation of support and protection at the cantonal and district level.
- Draw up a Memorandum of Understanding with mental health centres during the implementation of the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses.
- Provide training to the centres for mental health on their role and responsibilities during their work in proceedings conducted in war crimes cases and work with witnesses/victims.
- Include the knowledge and expertise of judges from the Court of BiH in the training on practices used during the implementation of state level legislation.

5.2. Specific Recommendations

5.2.1. For the purpose of providing psychological support by the prosecutors’ offices

- Establish cooperation with Social Welfare Centres on the same grounds as with cases of juvenile delinquency and general criminality as well as with Mental Health Centers according to their structuring.
- Establish cooperation with NGOs with whom they have not previously cooperated, specialised in providing psychological support.
- Establish active cooperation with NGOs that already have the necessary knowledge and experience to provide psychological support to traumatised persons (a beacon example is the Tuzla Canton Prosecutors’ Office).
- Recruit psychologists to provide psychological support to victims and witnesses during the investigation.
- Set up special departments to provide psychological support to victims and witnesses during the investigation if it is expected that a considerable number of cases will be received⁵⁷ and as a result of which there will be a realistic possibility to establish cooperation with a considerable number of traumatised persons.

⁵⁷ Based on data received from cantonal/district prosecutors’ offices and the State Prosecutors’ Office

- Organise specialised training courses for prosecutors that work on war crimes cases⁵⁸ through which they could improve their technique and approach during interviews with potential witnesses that have painful memories or have problems remembering details and events.

5.2.2. Recommendations for Prosecutors’ Offices and Courts

- It would be necessary to improve coordination between the prosecutors’ offices and courts with regard to psychological support to witnesses in order to reduce the risk of retraumatisation.

5.2.3. Recommendations for Social Welfare Centres

- It would be necessary to increase the capacities of the Centres for social welfare in order to enable these institutions to meet their legal obligation to provide psychological support to traumatised persons during the investigation and after the indictment has been issued. Meanwhile, the prosecutors’ offices and courts should fulfil their legal obligations and inform the Centres for social welfare about Article 6 of the Law on the Protection of Witnesses, as well as the recommendations of the Strategy relating to social welfare centres.
- In order for the centres for social welfare to become involved in the process of providing support to traumatised witnesses

⁵⁸ One of the recommendations from the report: Best-Practice Recommendations for the Protection & Support of Witnesses – SCSL, May 2008.

during the investigation stage and after the indictment has been issued it would be necessary to strengthen the capacities of the centres for social welfare through training and specialised courses, or employ new psychologists that already have the relevant experience with war trauma issues.

5.2.4. Recommendations for Entity and Cantonal Governments and Local Self-Government Units

- Since the centres for social welfare are financed from the budgets of local self-government it would be necessary to make a short-term reallocation of existing funds or provide medium-term funding for local governments for the purposes of:
 - strengthening the capacities of the currently existing centres for social welfare;
 - recruiting psychologists that have experience with the provision of psychological support to persons suffering from war trauma;
 - recruiting psychologists to be educated in the domain of war trauma issues.

5.2.5. Recommendations for Police Authorities

- It would be necessary to train individuals that will work in the police departments that are already engaged or will be engaged in the investigation of war crimes and the physical protection of witnesses.

- SIPA should be much more open for cooperation with cantonal and district courts and prosecutors’ offices, particularly due to the lack of sufficient capacity within the police departments that operate in the regions and fall within the jurisdiction of the cantonal and district prosecutors’ offices.

5.2.6. Recommendations for Entity and Cantonal Level Authorities

- In the entity and cantonal police services it would be necessary to establish specialised units, which would be engaged in war crimes investigation and the physical protection of witnesses, by following the example of SIPA. In this regard, it would be necessary to make a short-term reallocation of the existing funds for this purpose and to provide medium-term funding for the establishment of such services.

5.2.7. Recommendations for Civil Society Organisations

- Civil society organisations should provide information to the beneficiaries of their programmes about judicial proceedings and the role of all stakeholders in the judicial proceedings, since it has often occurred that a lack of knowledge about the proceedings leads to avoidance of cooperation and a general sense of dissatisfaction on the part of the witnesses.
- It would be necessary to establish a completely new “Witness Support Network”, whose mandate would be to

provide psychological support to victims and witnesses. It would inter-link the organisations engaged in this support by initiating and promoting their mutual cooperation and an exchange of information and experiences.

5.3. Minimal Capacity Required for Efficient Witness/ Victim Support and Protection during the Judicial Proceedings at the Cantonal and District Level

5.3.1. Spatial Capacity

Based on the experience of the Court of BiH, the minimum capacity requirement for effective victim/witness support and protection is the following.

- 1) A court building with two separate entrances.
- 2) At least one courtroom with the capacity to hold trials with more than 4 accused.
- 3) A courtroom located not higher than the 2nd floor if no lift is available.
- 4) At least 2 entrances to the courtroom.
- 5) A separate private access corridor leading to the courtroom.
- 6) If possible, a booth in the courtroom with blinds for witness testimony.
- 7) If possible, a separate room for witnesses to testify via video-link with the courtroom.
- 8) At least one waiting room (with toilet) for witnesses nearby the courtroom and isolated from the public area, where possible, with a separate direct access to the courtroom.

- 9) Where the waiting room does not have toilets nearby it would be necessary to provide access to toilets that are inaccessible for other court visitors.

5.3.2. Personnel and Equipment

In order to provide adequate support to witnesses and victims-witnesses each support office would have to employ as a required minimum the following personnel and have the following equipment.

Personnel:

- 1. A Psychologist who could provide psychological and emotional support (with exact terms of reference indicated).
- 2. An Administrative Assistant (with exact terms of reference indicated).

In the event of an extremely small number of expected cases (or less complex cases) within a certain court/area, only one staff member might be engaged.
When recruiting personnel, special attention should be paid to the gender issue because of the nature of the occupation that involves working with women victims of sexual torture, all in accordance with the Law on Gender Equality of Bosnia and Herzegovina.

Equipment:

Office: office furniture for 2 employees, 2 computers, 2 telephone lines (ADSL), with landline phone and mobile phone.

Waiting room: sofa, armchair, 2 chairs, club table, minimal equipment for a tea & coffee kitchenette (small fridge and coffee machine); the interior should be improved architecturally (relaxing colours and discrete posters on the walls).

In the absence of the required size of the space the office and the waiting room can be rearranged so as to occupy only a single room, yet bearing in mind the specific requirements of both premises.

Miscellaneous:

Over the course of its daily operation this office would be reliant upon the Finance Department of the court within which the office would exist. It would also use the budget for witnesses as approved by the Court (transportation and per diem costs). It would further use the services of an audio-video technician employed by the court. In addition, it would be necessary for the newly established office to have at its disposal its own minimal monthly funds directly available to the office for purposes of refreshments (water, juice, coffee and paper tissues).

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3. International Conference: “Possible Paths Towards Reconciliation”, presentation by the Ministry of Justice of the Republic of Croatia, – Department for Support to Victims and Witnesses in Criminal and War Crimes Proceedings, Belgrade, 12–14 November 2009.

4. Regional Conference “Witness and Victim Support”, organised under the auspices of the UNDP Croatia, October 2009, Zagreb, presentation by Slavica Peković, the District Court in Belgrade, War Crimes Chamber – Victims and Witness Support Unit.

5. National War Crimes Strategy, Bosnia and Herzegovina, December 2008.

6. Transitional Justice Guidebook for Bosnia and Herzegovina – UNDP in Bosnia and Herzegovina 2009.

7. “Practices of the Court of BiH with Regard to the Application of Protective Measures to Witnesses”, presentation by Minka Kreho, Judge of the Court of BiH, at the UNDP Seminar for Judges: “Evaluation of Evidence in the War Crimes Trials”, 7–8 May 2009.

8. Solving War Crime Cases in Bosnia and Herzegovina: report on the Capacities of Courts and Prosecutor Offices’ within Bosnia and Herzegovina to Investigate, Prosecute and Try War Crime Cases – UNDP 2008.

9. OSCE “Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer” – OSCE September 2009.

10. Bosnia and Herzegovina – Annual Progress Report for 2009 – European Commission, Brussels 2009.

11. ICTY Annual Progress Report, 1995.

Annexes



Annex 1

Research Questionnaires
- Questions for Prosecutors and Questions for Judges

QUESTIONNAIRY FOR PROSECUTORS

General Information

1. Number of prosecutors/associates that deal with war crimes cases?
2. Are there prosecutors/associates that deal exclusively with war crimes cases?
3. How many war crimes cases have arrived at the Prosecutors’ office?
4. Are the prosecutors fully familiarised with the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses?
5. Do the Prosecutors know that according to this Law (article 6) Social Welfare Centres are obligated to provide psychological support to witnesses?
6. Have the prosecutors informed the Social Welfare Centre about this obligation? (According to article 6 of this Law, the Prosecutors’ Office is obliged to inform the Social Welfare Centre during the investigation about the involvement of vulnerable witnesses in the procedure).
7. Are the prosecutors aware of the capacities of the Court (idem judges)?

Status of Cases

1. How many indictments have been filed?
2. How many cases are there at the Prosecutor’s Office?
3. Why this number of cases? What are the problems: insufficient number of prosecutors, associates, etc?
4. Is the problem related to the impossibility of reaching witnesses?
5. Why is it impossible to reach these witnesses?
6. Is the problem the non-existence of specialised police units or a lack of cooperation with SIPA (given the fact that SIPA is a state agency)?
7. Is the problem the fact that witnesses do not want to cooperate?
8. Why do they not want to cooperate (what reasons do witnesses state)?
9. Do they state that the reason for their lack of cooperation is linked to their fears for their personal security and or the security of their family members (is it not possible to ensure security for them in their local community)?
10. Do they state that the reason for their lack of cooperation is linked to the fact that they feel traumatised (they do not want to remember)?
11. Do they state that the reason for their lack of cooperation is linked to the fact that in earlier experiences of providing testimony before other courts they were not well treated (their travels expenses were not paid, officials were not interested, witnesses were not informed properly about the procedure, etc.)?

Psychological Support

- 1. What is the method for contacting witnesses?
- 2. Are available resources sufficient to ensure the presence of witnesses?
- 3. How many witnesses have requested psychological support during the investigation?
- 4. For how many witnesses has the Prosecutors’ Office requested psychological support?
- 5. How were these cases resolved in relation to the limited technical and expert capacities of the Court? What measures were proposed by the prosecutors in order to meet the requirements of witnesses/ victims?
- 6. Have the investigators/ prosecutors noticed the need to provide psychological support to witnesses during an investigation, while witnesses were giving statements?
- 7. Did investigators/ prosecutors requested expert assistance in such cases? How were such problems resolved in the end?
- 8. Have the witnesses requested assistance by themselves?
- 9. Do prosecutors think that it is necessary to organise psychological support for witnesses/ victims-witnesses during investigations, i.e. should psychological support/departments for psychological support be part of/belong to the Prosecutors’ Office structure?

Questions related to NGOs

- 1. What is the opinion of the Prosecutors’ Office concerning cooperation with NGOs?
- 2. NGOs could be partners in terms of informing witnesses about the procedures (the roles of the prosecutor, judge, defence, rights of witnesses, rights of the accused, etc.). Would this type of involvement of NGOs simplify the work of the Prosecutors’ Offices (in terms of finding witnesses, taking statements, etc.)?
- 3. Is the Prosecutors’ Office of the opinion that NGOs could and should be involved during investigations in terms of providing psychological support to witnesses/victims-witnesses, should the need arise?

QUESTIONNAIRY FOR JUDGES

General Information

- 1. How many judges/ associates deal with war crimes cases?
- 2. Are there judges/ associates that deal exclusively with war crimes cases?
- 3. How many war crimes cases have arrived at the Court?
- 4. Is the Court able to implement the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses?
- 5. Are the Judges fully familiarised with this Law?
- 6. Do the judges know that according to this Law (Article 6) Social Welfare Centres are obligated to provide psychological support to witnesses?
- 7. Has the Court informed the Social Welfare Centre about this obligation(the court is obliged to inform Social Welfare Center about involvement of vulnerable witnesses in the procedure after the indictment has been issued)?
- 8. Technical capacities (sufficient or adequate IT equipment, audio and video recording equipment, sound and voice links, etc)?
- 9. Are any technicians employed in the court who can operate and maintain these devices?
- 10. Do you have a sufficient number of courtrooms and are the courtrooms adequately equipped?

- 11. Does the Court have a separate room for witnesses/ victims? If so, is it adequately equipped?
- 12. Do the Court and the courtroom(s) have a separate entrance/ egress for witnesses/ victims?
- 13. If there is a department/ section for psychological support to witnesses/victims-witnesses. If yes, does it have a sufficient number of employees?
- 14. If no, is the main reason for these shortcomings a lack of financial resources?
YES NO
- 15. Is it possible to resolve some of these problems through resources that currently exist and are available to the Court?
YES NO
- 16. What would be the amount of funds required in order to fulfil all the requirements set forth under the Law (technical capacities, education of employees, etc.)?
- 17. Can you make a rough assessment of the resources required to include protection measures for witnesses in this Court in accordance with the Law on the Protection of Witnesses under Threat and Vulnerable Witnesses? Namely, on the one hand, construction expenses related to the provision and equipping of a room for witnesses, equipping the courtroom(s) for processing war crimes cases and technical capacities; on the other hand, ongoing expenses related to the establishment of new organisational units and or new staff, maintenance of the equipment, adequate education of staff, etc.).

Status of Cases

1. How many war crimes cases are currently being processed in this Court?
2. Why aren't there more cases? What are the problems/obstacles?

Please select an answer from the following list.

Indictments have not been filed by the prosecutor.

a. Indictments contain shortcomings or are incomplete. (If so, why have they been rejected?)

b. Indictments have been accepted, but there are not enough judges and associates to work exclusively on these war crimes cases.

c. Indictments have been accepted, but there are not enough courtrooms (both for small and for greater numbers of indictees).

d. Generally, there are no judges and associates able to deal exclusively with war crimes cases (or their number is insufficient).

e. Quota of caseloads completed per judge/norms for judges?

f. It is impossible to provide security protection measures for witnesses (have the prosecutors requested security protection measures for witnesses?)

g. It is impossible to provide psychological support measures for witnesses (have prosecutors requested psychological protection measures for witnesses?)

h. Other reasons.

Psychological Support

1. How many times has the Prosecutor's office requested security protection measures for witnesses/victims-witnesses?
2. How many times has the Prosecutor's office requested psychological protection measures for witnesses/victims?
3. How were these requests responded to by this Court (in line with previous responses)?

Questions related to NGOs

1. What is the opinion of the Court concerning cooperation with NGOs?
2. Although NGOs do not conduct investigations (since this is under the competence of the Prosecutors), is the Court of the opinion that NGOs could and should be involved during investigations in terms of providing psychological support to witnesses/victims, should the need arise?

Annex 2

Prosecutors' Offices and Courts in Brčko District, Republika Srpska and the Federation of Bosnia and Herzegovina as sources for the collected data

	Date	Place	Institution	Representative
1	21. October 2009.	Mostar	Cantonal Court	Mladen Jurišić, President
2	26. October 2009.	Zenica	Cantonal Court	Zijada Alihodžić, President of the Court Faik Spahić, Head Criminal Department
3	26. October 2009.	Zenica	Cantonal Prosecutor's Office	Redžo Delić, Head of WC Department
4	26. October 2009.	Brčko	Basic Court	Jadranko Grčević, President
5	26. October 2009.	Brčko	Brčko District Prosecutor`s Office	Amela Mustafić, Prosecutor
6	27. October 2009.	Bihać	Cantonal Prosecutor's Office	Asim Džafić, Chief Prosecutor Nazif Felić, the Head of the War Crimes Department
7	27. October 2009.	Bihać	Cantonal Court	Fikret Hodžić, Head of the Criminal Department
8	27. October 2009.	Doboj	District Court	Mladen Ružojčić, President
9	27. October 2009.	Doboj	District Prosecutor's Office	Salih Memić, Chief Prosecutor
10	27. October 2009.	Banja Luka	District Prosecutor's Office	Branko Mitrović, Prosecutor
11	27. October 2009.	Banja Luka	District Court	Želimir Lepir, Head WC Dept
12	28. October 2009.	Trebinje	District Court	Bojan Stević, Chief Prosecutor
13	28. October 2009.	Trebinje	District Prosecutor's Office	Slobodanka Gaćinović, Chief Prosecutor
14	29. October 2009.	Goražde	Cantonal Court	Miljana Bjelović, Judge
15	29. October 2009.	Goražde	Cantonal Prosecutor's Office	Mirsad Bilajac, Chief Prosecutor Lazar Draško, Prosecutor

	Date	Place	Institution	Representative
16	30. October 2009.	Bijeljina	District Court	Radomir Aleksić, President
17	30. October 2009.	Bijeljina	District Prosecutor's Office	Novak Kovačević, Chief Prosecutor
18	2. November 2009.	Tuzla	Cantonal Court	Indira Hadžimehmedović, President
19	2. November 2009.	Tuzla	Cantonal Prosecutor's Office	Šesenam Čocić, Chief Prosecutor
20	2. November 2009.	Sarajevo	Cantonal Court	Begzada Gavrankapetanović-Salihagić, President
21	2. November 2009.	Sarajevo	Cantonal Prosecutor's Office	Nives Kanevčev, Chief Prosecutor
22	3. November 2009.	Istočno Sarajevo	District Court	Bogdanka Dabić-Jovičić, President
23	3. November 2009.	Livno	Cantonal Court	Nedim Begić, President
24	3. November 2009.	Livno	Cantonal Prosecutor's Office	Vaso Marinković, Chief Prosecutor
25	5. November 2009.	Novi Travnik	Cantonal Court	Katica Jozak-Mađar, President
26	5. November 2009.	Travnik	Cantonal Prosecutor's Office	Vjekoslav Vavar, Prosecutor
27	6. November 2009.	Mostar	Cantonal Prosecutor's Office	Nijaz Mehmedbašić, Chief Prosecutor
28	6. November 2009.	Široki Brijeg	Cantonal Court	Dragica Šimić, President
29	6. November 2009.	Široki Brijeg	Cantonal Prosecutor's Office	Ivan Hrستیć, Prosecutor
30	6. November 2009.	Istočno Sarajevo	District Prosecutor's Office	Ranka Mršić, President

Additional Meetings				
31	23. October 2009.	Sarajevo	High Judicial and Prosecutorial Council	Amra Jašarević, Deputy Director of the HJPC Secretariat Majda Šalaka, Deputy Head of the Department for Strategic Planning
32	12. October 2009.	Sarajevo	High Judicial and Prosecutorial Council	Milorad Novković, President Admir Suljagić, Chief of Cabinet
33	30. November 2009.	Sarajevo	Prosecutor's Office of BiH	Milorad Barašin, Chief Prosecutor

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Annex 3

Overview of Caseload Relating to War Crimes Cases at local Prosecutor’s Offices and Courts in BiH ⁵⁹

Prosecutor's Office		How many prosecutors deal with WCC?	Do they exclusively deal with WCC?	How many WCC have arrived to PO?
Prosecutors' Offices in Republika Srpska				
1	Bijeljina	2	NO	66
2	East Sarajevo	1	NO	80
3	Trebinje	4	NO	56
4	Doboj	3	YES	277
5	Banja Luka	1	YES	app. 300
Prosecutor's Office in Brčko District				
1	Brčko	3	YES	65
Prosecutors' Offices in Federation of BiH				
1	Sarajevo	4	NO	N/A
2	Tuzla	4	YES	422
3	Zenica	3	NO	N/A
4	Mostar	4	NO	84
5	Bihać	2	NO	74
6	Livno	5	NO	N/A
7	Široki Brijeg	0	0	0

⁵⁹ For official data contact relevant entity judiciary institutions and read National War Crimes Strategy.

Court	Do Judges deal only with WCC?	Backlog	Currently tried Cases	Adjudicated Cases
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District Courts in Republika Srpska					
1	Bijeljina	NO	1	0	1
2	East Sarajevo	YES	5	1	1
3	Trebinje	NO	5-6	5-6	0
4	Doboj	NO	1	0	0
5	Banja Luka	YES	19	18	1
Basic Court in Brčko District					
1	Brčko	YES	5	4	1
Cantonal Courts in Federation of BiH					
1	Sarajevo	NO	35	33	2
2	Tuzla	NO	6	4	1
3	Zenica	NO	12	12	0
4	Mostar	NO	30	N/A	N/A
5	Bihać	NO	32	22	0
6	Livno	NO	6	2	4
7	Široki Brijeg	NO	1	0	0
8	Travnik	NO	11	10	0
9	Goražde	NO	2	0	0

N/A - no data

