



Government of Bosnia and Herzegovina

United Nations Development Programme

Support to Processing of War Crimes Cases in BiH -

Building Capacities of Cantonal and District Prosecutors' Offices and Courts in BiH
to Process War Crimes Cases

In recent years, UNDP has supported the emergence of state level war crimes processing in BiH. In recognition of the urgent need to process WC cases, the BiH Ministry of Justice established a government working group in the fall of 2007 entrusted with developing a national strategy for dealing with these cases, as well as with the broader legacy of the BiH conflict. The working group is going to consider the most appropriate way for lower level courts and prosecutors' offices to share the load of the cases and at the same time offer proper treatment to the victims, witnesses, and the accused. For this reason UNDP intends to continue to build cantonal and district prosecutors' and courts' capacities in BiH to investigate, prosecute and try war crimes.

Date: September, 2008

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COMPONENT 1: BASIC DATA

Country: Bosnia and Herzegovina

UNDAF Outcome(s)/Indicator(s): Increased access to justice for vulnerable groups.
 Expected Outcome(s)/Indicator (s): Increased access to justice for vulnerable groups. Indicator: increase in respect for human rights in judicial system; general public awareness raised about the access to justice.
 Strengthened justice system with a view to reconciliation (transitional justice). Mechanisms of transitional justice as an essential precondition for reconciliation advocated. Indicator: General knowledge and confidence in the work of the established WCC in BiH; Indicator: legal professionals working in the field of WC trained.

Expected Output(s)/Annual Targets: Better access to justice ensured for the population at large focusing in particular on vulnerable groups.
 Trials of war crimes cases in BiH conducted by legal professionals working in the WC system

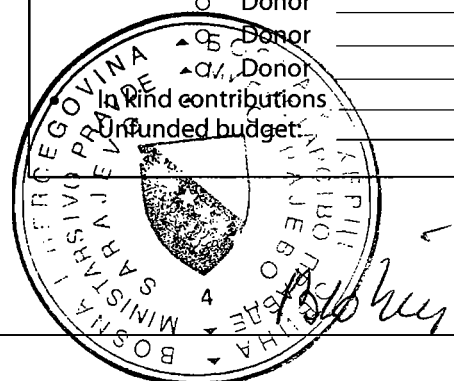
Implementing partner: Ministry of Justice (MoJ), Bosnia and Herzegovina
 Responsible parties: MoJ and UNDP

Narrative

In recent years, UNDP has supported the emergence of BiH State level war crimes processing. BiH State institutions, such as the High Judicial and Prosecutorial Council, the Court of BiH, the Prosecutor's Office of BiH, have played a key role in the State's ability to process war crimes in a manner approaching the standards set by the International Criminal Tribunal for the former Yugoslavia (ICTY). Although BiH's domestic prosecution of war crimes has by no means occurred without challenges, these new institutions should be credited for delivering criminal justice which inspires a significant level of public confidence. However, there is an urgent need to address the back load of sensitive cases that will substantially increase the workload of BiH institutions. In recognition of the urgent need to process these aging cases, the BiH Ministry of Justice established a government working group in the fall of 2007 entrusted with developing a national strategy for dealing with these cases and with the broader legacy of the BiH conflict. The working group is going to consider the most appropriate way for lower level courts and prosecutors' offices to share the load of these cases and at the same time offer proper treatment to the victims, witnesses and the accused. For this reason, UNDP intends to continue to build capacities of Cantonal and District Prosecutors' Offices and Courts in BiH to investigate, prosecute and try war crimes.

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 UNDP RR CHRISTINE MCNAR
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PART I. SITUATION ANALYSIS

I.1 General Context

In the context of post-conflict Bosnia and Herzegovina (BiH), the challenge of dealing with the past/transitional justice touches upon multiple dimensions of justice and human rights: how to bring war criminals to justice, how to do justice to war victims and survivors, and how to reweave a war-torn society and regain trust amongst its ethnic groups by pursuing realistic avenues to justice for generations that will live with the legacy of the past violent conflict. War crimes trials are a basic mechanism of justice during the transition from a society in conflict to a post-conflict society, and their purpose is to establish the responsibility of individuals in cases of past human rights violations and war crimes, and thus achieve justice in the name of victims and establish forensic and legal facts. The year 2005 marks the beginning of the shift from international trials to national trials in BiH. For 10 years, the only court that has dealt significantly with war crimes and crimes against humanity committed in BiH since 1991 has been the International Criminal Tribunal for the former Yugoslavia (ICTY). The ICTY is due to finish all proceedings by 2010. Part of the Tribunal's exit strategy is to transfer unfinished cases to national jurisdictions. With international support, the War Crimes Chamber (WCC) was established in Sarajevo within the Court of BiH (Sud BiH) in 2004. The WCC, with its national and international judges and prosecutors, officially opened in March 2005. The first verdict was passed on 1 July 2005.¹ National courts in BiH have until now held few war crimes trials. Judicial reform, however, was completed in September 2004, and now many more war crimes trials – the vast majority of such trials – could potentially be transferred to cantonal and district courts.

Since there is a large number of war criminals (about 13,000 persons), a long period of time is ahead of BiH in processing war crimes. Holistic approach in dealing with the past is necessary in order to establish an effective judicial truth, bearing in mind that war crimes trials take time and that it is impossible to try such a large number of indictees within a short time in a manner that would create a sense of justice for victims and the whole community. Finally, the basic role of the court is to establish a perpetrator's responsibility, with establishing the truth remaining as one of the additional goals of the court.

There are differential impacts of disasters on men and women. Specific conflict in the territory of BiH included gender-based violence – rape of woman mostly – that should be treated with particular sensitivity.

I.2 War Crimes Recovery in BiH

Although the conflict ended in December 1995, no BiH national strategy for dealing with war crimes has been adopted so far. In September of 2007, the High Representative called for the adoption of such a strategy, noting that the families of victims cannot wait forever for justice in the courts, and that without justice the future is in question.² While professionals may debate the frequency with which individual criminal reports will proceed through the investigative phase and culminate in successful prosecution, it is clear that many hundreds, if not thousands, of investigations and/or prosecutions will need to be completed.³ Since its establishment in 1993, the ICTY has brought cases to conclusion against 106 individuals.⁴ These cases have usually involved high ranking individuals and/or those responsible for extremely serious incidents and have therefore been long and complex. Since its creation in January 2005, the WCC of the Court of BiH has had trials in 19 cases involving 20 accused, resulting in at least a first instance decision. In addition, there are currently 23 cases at various stages

¹ Case of Maktouf Abduladhim, case reference K-127/04, First-instance verdict passed on 1 July 2005.

² Speech of the High Representative to the Parliament of BiH, September 6, 2007. http://www.ohr.int/ohr_dept/presso/.

³ The estimates of the number of reported incidents of potential war crimes range from a few thousand to over 64,000. The most credible reports are from the HJPC and the BiH Prosecutor. In its report of August 2006 the HJPC indicated a total of 12,034 persons reported as possible perpetrators of war crimes. In an undated letter distributed to the Working Group on Developing a National Strategy, the BiH PO indicated 16,152 persons named.

⁴ Report of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, New York (August 2007) at page 4.

pending in Court of BiH. It is clear that if all reports of potential war crimes are to be investigated, the current pace of prosecution will not be adequate to complete all the cases in the foreseeable future. Given the large number of war criminals (about 13,000 persons, or about 6,500 cases), and the fact that the current data show that about 80 cases are closed every year at all levels of the legal system, the number of perpetrators commands a long period of time ahead in processing of war crimes. The government of BiH has formed a working group to address the issue of a national strategy that will fairly and efficiently resolve these matters (Working Group for the National Strategy for Processing of War Crime Cases and War Crimes Recovery). As the main drafter, The Special Department for War Crimes of the Prosecutor's Office of BiH is currently working on a national war crimes recovery strategy in order to devise a more efficient way of processing the remaining war crime suspects.

As it now seems, in the future criminal justice would be served simultaneously at three different levels: at the international level through the ICTY (existing), at the state level through the WCC, and at the local level through cantonal and district courts. The WCC first has to process all war crimes cases submitted to it and to decide which cases the WCC should try, and which cases the local courts should try. The WCC deals with three types of cases. The first type involves suspects who have already been indicted by the ICTY and transferred to the WCC. The second type consists of cases that the ICTY prosecutor has transferred without issuing an indictment based on the information in the cases. The third type of cases are files that were initially put forth by local courts. The ICTY screened these cases as per international agreement until October 2004 when the WCC took over the responsibility. Cases that the WCC decides not to try are sent back to local courts that have jurisdiction over the territory on which the crimes were committed.

Another important issue is the promotion of women's access to justice, in particular in regard to institutions dealing with war crimes in BiH. However, bringing the gender perspective into the justice sector reforms is an ongoing process and needs constant attention. Related gender statistics data in BiH reflect the participation and concerns of women and their empowerment in BiH (see Annex IV). Currently there is a need to raise awareness about gender equality problems and the importance of adopting a gender perspective through legal training activities, as well as the need to strengthen women's networks and organizations in order to facilitate women's active engagement.

1.3 UNDP's Response

The UNDP and the Government of Japan (GoJ) launched its project Support to the Establishment of the War Crime Chamber (WCC) in BiH in response to the Legal/Judicial reform in BiH and international efforts to support country's post conflict transition. The project focused on supporting the capacity of the new machinery to deal with war crimes, especially the specialized WCC within the Court of BiH and the Special Department for War Crimes of the Prosecutor's Office of BiH through the provision of assistance in four major areas: extensive training of the legal professionals, as well as the law enforcement officials dealing with war crimes cases; provision of equipment for war crimes chamber; public awareness; and outreach activities. New Criminal Codes have been passed and the challenge of implementation lies ahead. The authorities and practitioners were faced with the implementation of the codes and different trainings were needed. Thus the main goal of the project was capacity building of judges, prosecutors, defense attorneys, witness support and protection personnel, and Court Management personnel who will be involved in processing of war crimes cases in the future. With regard to capacity building activities, the intention was to target entity levels as initial response to the anticipated needs of local courts, as well as to provide space for the first exchange of experiences between state and entity level practitioners (judges and prosecutors). The project ends after three years of successful implementation in 2008.

Up until now there are criminal reports on some 13,000 individuals. War crimes trials throughout BiH will be a reality in the coming years. The WCC will not be able to prosecute more than a few hundred cases. There is a gap between the support for the WCC and support for the local courts. Moreover, trials that may be the most relevant to victims and involve suspects familiar to the local population may be those

trials done in local courts. These trials will also have more impact regarding inspiring or diluting public confidence in the judiciary.

Given the high priority the BiH public places on criminal justice and the precarious, potentially conflictive situation that perpetrators and victims live in the same local communities, it will be crucial to ensure that the capacities of local criminal justice systems to assume these responsibilities are strengthened in time. For this reason, a thorough capacity needs assessment was necessary to make the foundation for developing a comprehensive response and plan in this field.

UNDP commissioned the assessment study to evaluate the capacities of Cantonal and District prosecutor offices to investigate and prosecute war crimes cases and of the Cantonal and District courts to try those cases. The study was designed to evaluate the resources available to those offices and the obstacles faced in handling what could be a large number of serious and complex cases. Thus, the primary purpose was to identify the capacities of local institutions, as well as any problem areas. The assessment study was also meant to identify strengths and weaknesses in each of the scenarios being discussed, and to indicate where efforts could be made to strengthen the capacities of local institutions to handle these matters under whatever structure is finally decided upon. (Annex I.)

As UNDP holds an observer's status in the state working group on the war crimes recovery strategy, it also provides an opportunity to link its activities in the field of war crimes and complement to the wider state efforts in this area.

Finally, in the holistic area of transitional justice, UNDP takes a multi-pronged approach in addressing several dimensions of transitional justice in BiH that should be seen as complementary and, ultimately, mutually reinforcing. The concept of transitional justice is comprehensive and stresses the complementarity of four fundamental pillars: criminal justice, truth seeking, reparations, and institutional reform. For this reason the BiH government partnered with UNDP to conduct a wide range consultation process including all actors of BiH society from all corners of BiH with the objective of eliciting recommendations for the government regarding elements of a national strategy for dealing with the past.

This project also gives clear reference to the importance of gender mainstreaming and brings a gender perspective into the justice sector. It recognizes the importance of promoting women's empowerment and gender equality through building capacities and promoting accountability. It builds women's skills and confidence and supports women's representation in political and legal spheres.

The specific trainings related to strengthening the Court of BiH WSO staff's ability to cope with and mitigate the impact of violent conflict on the trial process will continually be organized during the 3 years of the project duration. These trainings were a very successful element of the previous WCC project. Furthermore, the best experiences from the state level will be transferred to the local levels through strengthening the network of offices that will facilitate the appearance of witnesses before local courts (before, during and after trial).

Based on statistics available the overall percentage of women leaders in the judicial sector is balanced (see Annex IV).

1.4 Lessons Learned

Based on the long term involvement in the field of transitional justice and war crimes, and a rich exchange of experience with implementing partners, UNDP was able to capitalize on the following lessons learned.

- Structure future intervention on the basis of a national war crimes recovery strategy which will outline competencies in this area. If more responsibility for war crimes trialing is to be given to

lower level courts, the following interventions should extend further support to these levels in education and possibly material equipment.

- Dialogue between the state and lower level judiciaries should be initiated and supported in order to avoid misunderstandings which could impede future cooperation.
- More should be done in contacts with political authorities in order to underline the importance of education on the facilitation of the judicial process, especially in the area of war crimes.
- Establishment and support to activities of the Witness Support Office in the Court of BiH introduced a practice of seminal importance into the BiH judiciary. In future, especially if lower levels of judiciary are to take up more responsibility for processing war crimes, the possibility to replicate these experiences in other courts in BiH should be considered. If financial limitations would prevent the establishment of witness support units, alternative solutions should be found.
- The state level prosecutors requested a format of training similar to the Judicial College organized for the Judges of Court of BiH to be organized for them, bringing together prosecutors and administrative and technical services providing support to the prosecutor's office. Also the request was made to organize seminars in which judges, prosecutors and relevant support staff would be grouped together to discuss the issues at stake.
- There is a definite need for the outreach to involve relevant stakeholders outside the court. Political structures and general public need to be targeted, although the Court itself could play an important role in this regard.
- Exchange of experiences and networking on regional level should be continued on a regular basis, as all judges and prosecutors feel the need to liaise with their colleagues in the region for the purpose of making war crimes trials more efficient.
- Better structure future initiatives in technical terms. A logical framework should be used with specific indicators developed, as well as activities to be undertaken with specified stakeholders and within specified timeline.
- Disparities related to the representation of sexes (what barriers might hinder men or women from participating) should be recorded.
- Funds should be allocated to trainings on gender mainstreaming and the awareness of project stakeholders about gender issues should be developed and raised.
- Gender sensitive recruitment criteria should be integrated within the ToR for outside project experts.

To the extent possible, lessons learned have been used in design of the project proposal.

PART II. STRATEGY

During the ethnic conflict in BiH (1992 – 1995), numerous and extremely serious crimes were committed against civilians, their property and against prisoners of war. These incidents have led to numerous reports to police and military authorities of possible war crimes being committed by persons of all ethnicities.

In the State of BiH, the current law enacted in 2003 places jurisdiction for war crime cases exclusively with the BiH Prosecutor's Office (BiH-PO) and the Court of BiH.⁵ However, the BiH-PO reviews and grades each case and, according to its criteria, labels cases as "sensitive" or "highly sensitive." If a case is found to be "sensitive," it can be referred by the Court of BiH to a cantonal or a district court to be investigated and/or prosecuted. As a result, some cantonal and district prosecutors have investigated and prosecuted war crimes cases designated as "sensitive" by the BiH Prosecutor under the new Criminal Law and Criminal Procedure Code (CPC). These cases are continuing to be tried.⁶

⁵ Thus any reports of War Crimes received by any other prosecutors' office or court must be immediately submitted to the BiH Prosecutor. Criminal Procedure Code of Bosnia and Herzegovina, Article 215(3). ARTICLES 173-184 Criminal Code of BiH

⁶ What law is then to be applied by the cantonal and district courts in these cases has become problematic. In particular the criminal law to be applied and sentences that can be imposed have been decided differently depending on the court hearing the case. In addition, where an indictment has been filed for confirmation, the Court of BiH must make the decision to transfer the case to the local entity court. Recently, in the case of Sreten

The state working group for the war crimes recovery strategy has been looking at differing strategies to handle these cases both efficiently and fairly in order to ensure fair and efficient investigation, prosecution and trial of war crimes cases. An important fact is also the time that would be necessary to implement the strategy. However, the BiH criminal justice system took over the responsibility for trying war crimes suspects and this still represents a major step at the national level. The argument voiced by the prosecutors and judges is that any adopted intervention and strategy in this field **must** provide for equal treatment before the courts for witnesses, victims and the accused. This concern can be addressed by a systematic capacity development complemented by infrastructural assistance.

Conducted Capacity Needs Assessment serves as a foundation for developing a comprehensive capacity development plan in the field of war crimes. This will be complementing and deepening the overall judicial training needs assessment conducted by the High Judicial and Prosecutorial Council (HJPC). Finally, UNDP works in partnership with the relevant state authorities (BiH MoJ and Judicial and Prosecutorial Training Centers), coordinates closely with the HJPC and OSCE, and will draw on its experience in providing capacity development support to the War Crimes Chamber (capacity building of judges, prosecutor, defence attorneys, victims' protection staff and other legal professional involved in processing of war crimes cases at national level).

The Final Project Annual Review meeting for the War Crimes Chamber project held at the end of 2007 represents the best practice for meetings of this kind, with many national counterparts present such as the BiH Court President, a representative of the Prosecutor's Office, two Registrars, representatives of the HJPC and MoJ. The meeting was an opportunity to discuss issues such as Cooperation and Programme priorities (War Crimes and Transitional Justice), lessons learnt and suggestions on improvement, witness/victims support with appropriate conclusions and recommendations. Among many recommendations discussed four stand out:

- 1) Continuous support to the tailor-made capacity building activities at the state level. Judicial College recognized as the best practice, recommended for continuation and gradual transfer to the Court of BiH as an annual event of the Court. The Judicial College was praised also for being clearly the example of activity where the judges and the project staff worked in full partnership, whereas the content remained the ownership of the judges. The need for a similar activity with the Prosecutors' Office;
- 2) Strengthen regional Cooperation in the field of war crimes. Further the Access to ICTY Archives and use of evidence ;
- 3) Support to 16 Cantonal and District prosecutor offices to investigate and prosecute war crimes cases and to the Cantonal and District courts to try those cases;
- 4) Support for victims/witnesses at the local level.

Complementing to the conclusion of the annual review, commissioned Capacity Needs Assessment for Cantonal and District courts and prosecutor offices in broad terms also suggested the following components of continued support; 1) Linkages with the State WC Recovery Strategy; 2) Support to Cantonal and District courts and prosecutor offices; 3) Regional Cooperation and 4) Witness Support.

While significant capacities have been created in the field of war crimes in BiH, there is still a considerable gap to be addressed in provision of tailor-made trainings for the BiH Court and Prosecutors' office, and specific training for 16 cantonal and district courts and prosecutor offices. The challenge of quantity vs. quality of war crimes processed in BiH should be attended to. Based on four specific gaps identified in the area of capacity building, especially for cantonal and district courts and prosecutor offices, victims/witness support and regional cooperation, a response structured around the four activities has been proposed.

In the context of gender in particular, the following issues need to be tackled: 1. Through training activities increase women's access to justice and raise awareness about gender equality problems and

Lazarevic,, a 24/6 panel of the Court of BiH has refused to grant the prosecutor's motion to transfer which was unopposed by the accused. The first instance panel cited the needs of a vulnerable witness that could best be met in the Court of BiH. This case is before the appellate panel at this time. [Lazarevic, Sreten and Others](#), Sud BiH, X-KR-06/243 (17 December 2007).

the importance of adopting a gender perspective; and 2. Strengthen women's networks and organizations to facilitate women's active engagement.

The gaps identified should be addressed in a comprehensive holistic manner to best respond to the national needs. The project output and the four activities represent a response developed and grounded in the Capacity Needs Assessment recommendations, the WCC Project final review meeting conclusions and lessons learned. Finally, all the activities in the area of war crimes should be aligned with the upcoming War Crimes Recovery Strategy in BiH and even revisited in order to make them more responsive to the forthcoming needs.

II.1 Project Objective

The general objective of this project is to strengthen the capacities of legal professionals, Cantonal and District Prosecutors' Offices and Courts within BiH to investigate, prosecute and try war crimes cases in BiH.

This will be achieved through three specific outputs:

- Enhance the capacities of prosecutors and judges working in cantonal and district prosecutors' offices and courts to deal with war crimes cases, and national judicial and prosecutorial training institutions to continuously build capacities in the field of war crimes (**Output 1.**);
- Create a system of victims/witness protection and support for each prosecutors' office and court affected (**Output 1.1**);
- Reinforce the expertise of judges and prosecutors at the Court of BiH and BiH Prosecutors' Office for processing war crimes cases and further building of country's capacities in the field of war crimes (**Output 2.**);
- Strengthen regional cooperation with regards to parallel trials, extradition and the European arrest warrant, and support the national strategic approach to the issue of the ICTY legacy and closure (**Output 3.**);

II.2 Outputs

Given the analysis made, the general project objective and the outputs ahead, specific set of activities have been put in place to address the needs of cantonal and district prosecutors' offices and Courts. This activities will be implemented with the two Entity Judicial and Prosecutorial Training Centers (JPTC) and the High Judicial and Prosecutorial Council (HJPC) in order to ensure the best implementation modality for prosecutors and judges of cantonal and district prosecutors' offices and courts. Moreover, this will be essential in transferring the knowledge and capacities in the area of war crimes to the national capacity building institutions. Apart from the substantive knowledge building technical capacities of JPTCs will be addressed by delivering specially designed train the trainers' session about alternative training methodologies and adult learning techniques. This session will be delivered for the core JPTCs staff and trainers. JPTCs and HJPC will be part of the Project board and will be included in the training implementation from preparation of the material and trainers to the training follow up.

The project will continue to support women and men as equal beneficiaries of all activities and promote equality and women's empowerment.

In training activities, as well as in activities related to the Training Centers, the Project will keep clear reference to gender responsiveness and gender equality of judges, prosecutors and lawyers in order to support and raise the confidence of these legal experts about their skills and knowledge in handling WC cases regardless of their gender.

Through building the local WSO network the Project will strengthen women's networks' and organizations' ability to facilitate women's active engagement in the justice sector and upgrade the level of competency of key actors in gender mainstreaming.

Output 1. (Capacity Building of Cantonal and District Prosecutors' Offices and Courts in BiH)

UNDP, in consultation with the WCC Registry, proposes that one of the intervention areas in support to national capacities for processing of war crimes should be capacity building of cantonal and district prosecutors' offices and courts in processing war crimes cases. The gap between the support for the WCC and the support for cantonal and district prosecutors' offices and courts is evident. Such a gap is also inconsistent with the international community's demand that domestic prosecutors' offices and courts take responsibility for war crimes trials, and brings the risk of failing to deliver long-lasting reforms and results. By building the capacities of cantonal and district courts this inconsistency would be addressed.

Capacity building activities of Cantonal and District Prosecutors' Offices will address:

1. Building capacities of cantonal and district prosecutors' offices to: identify, locate and obtain witnesses; identify, locate and obtain documentary evidence from the ICTY, OTP ICTY, Bosnian State and Entity government agencies and commissions; obtain and preserve evidence from exhumations; and identify, locate and procure the attendance of suspected individuals. This implies having personnel trained to deal effectively with traumatized witnesses and assigned to obtain the agreement and cooperation of witnesses in preparation for attendance and testimony at trial. Plea bargaining should also be attended to.
2. Substantial familiarity of prosecutors with War Crimes Law, including Customary International Humanitarian Law, Law on Transfer of Cases from ICTY, Law on Protection of Witnesses under Threat and Vulnerable Witnesses.
3. In terms of outreach, there must be transparency as to decisions to investigate and/or prosecute, as well as to explain decisions to decline to seek an indictment, and a program of outreach to the community with respect to war crimes. For example, each prosecutor's office should have a plan as to how it will conduct outreach to encourage victims and witnesses to come forward and report war crime incidents.

The capacity building activities will be designed to address regional participation of prosecutors and cover the above mentioned topics (5 trainings are foreseen).

Capacity building activities of Cantonal and District Courts will address:

The overarching starting point is that courts must have the ability to uniformly apply the law.

1. Sufficient resources must be available to protect and support witnesses and victims of war crimes at all stages of the proceedings and after their conclusion. This implies that the court has the physical resources to protect witnesses as required by the Law on Protection of Witnesses. Moreover, this entails that the court has the capacity to provide alternative means of testifying when appropriate. Raising the capacity of Cantonal and District judges on the evidence issues especially in terms of evidence evaluation and relevance in war crimes proceedings.
2. Substantial familiarity of judges with the War Crimes Law, including Customary International Humanitarian Law, European Convention on Human Rights, Law on Transfer of Cases, Law on Protection of Witnesses under Threat and Vulnerable Witnesses, as well as the use of international process to procure suspects.
3. In terms of outreach, courts must ensure transparency in court decisions and verdicts (a program of outreach to the community with respect to war crimes cases). For example each court should have a plan on how it will work with government services and NGOs to encourage witnesses to come forward.

The capacity building activities will be designed to address regional participation of the judges and cover the above mentioned topics (5 trainings are foreseen).

Output1. indicator: 10 trainings organized and 20 training days delivered for Cantonal and District Prosecutors and Judges. 32 judges and prosecutors trained. War crimes cases at the local level tried as per the new state War Crimes Recovery Strategy.

Output1.1 (Strengthening country's capacities for victims/witness support and building Witness Support Network for Entity Prosecutors' Offices and Courts) The Witness Support Office of the Court of BiH created in May 2005 is composed by 3 psychologists, 1 social worker and 2 assistants. The primary goal of the unit is to provide appropriate psychological support and assistance to witnesses before, during and after trial. The objective of the Support Office is to ensure that by providing professional services, the experience of testifying will not result in additional harm, suffering or traumatization of witnesses. Therefore, the Support unit is contributing to the effective functioning of the Court of BiH by facilitating the appearance of witnesses, be they witnesses of the prosecution or the defense. Since the first war crime case in November 2005, the Witness Support Office has been dealing with almost 1000 witnesses appearing in war crime cases before the Court of BiH and thus represents single unique country's and regional capacity in the area of victims/witness support. For this reason they also represent the pool of expertise for future locally built networks or similar support offices.

Courts in BiH lack resources to support witnesses - none of the courts has personnel to assign to the support of victims and witnesses. This represents a serious impediment when dealing with traumatized victims or witnesses. UNDP, with support of the WS office and Cantonal and District Prosecutors' Offices and Courts, will build a witness support network based on regional distribution of war crimes and train relevant staff to be of assistance to local jurisdictions, especially Prosecutor's offices. A system for offering victims/witness protection and support would need to be created for each court affected. One of the approaches to be taken is to use the contacts of the victim witness support group at Court of BiH and convene a round table of NGOs interested in working with courts in supporting victims and witnesses. Cantonal and district judges and prosecutors would be invited to this round table to discuss how these groups can cooperate in supporting witnesses and victims of war crimes (some good practices could be discussed e.g. the Prosecutor from Tuzla might be of assistance in discussing her arrangement with NGOs in that area). In addition one pilot "WSO" office (as a part of a court) will be equipped to deal with witnesses in-house and respond to the needs and right of witnesses as per the Law on Protection of Witnesses under Threat and Vulnerable Witnesses. This implies also having personnel trained to deal effectively with traumatized witnesses and assigned to obtain the agreement and cooperation of witnesses in preparation for attendance and testimony at trial. This specific activity will be implemented based on the specific assessment done and in cooperation with relevant institution such as selected court and entity MoJ.

Plan a conference for mental health professionals and NGOs to meet with victim service experts on the needs of traumatized victims and witnesses to develop an action plan to accomplish the delivery of these needs or services.

Finally for reasons stated above, the assistance to the WSO would entail:

- Continuing supervision of the team every 3 months on a 4 hour basis. Supervision is of high importance in avoiding that the team suffer secondary consequences of their daily work with traumatized persons;
- Funding a trip to The Hague for the professional team in order to visit the ICTY and ICC and their witness support section. This kind of section only exists at international courts and having a professional exchange with other units would be a very rich experience and training;
- Regional meetings with witness support units from Serbia, Croatia, Kosovo and Macedonia in order to implement the ongoing cooperation between the ex-Yugoslavia regions;
- Education on trauma issues – 2 day training for WS staff with participation of internationally recognized experts in this field.

Output1.1 indicator: WS office at the Court of BiH strengthened and provides support in building up of the witness support network in BiH. Witness support network built at entity level to respond to minimum standards set to protect and support the witnesses as required by the Law on Protection of Witnesses. Pilot office for protection of witnesses at the local level set.

Output 2. (Strengthening capacities of the War Crimes Chamber with in the Court of BiH and the BiH Prosecutors' Office – unique pool of expertise in BiH) WCC represents unique capacity built in the region and BiH in the field of war crimes and is essential source of knowledge and experience in further building of countries' capacities in the area of war crimes. UNDP also intends to continue to strengthen the capacity of the War Crimes Chamber (BiH Court and Prosecutors' Office). Several flagship activities developed over the years with the War Crimes Chamber will be continued, as there is an obvious need and interest from the WCC side to embrace these efforts and introduce them as an annual working retreat for judges and prosecutors of the WCC. An Educational Committee at the Court of BiH has therefore been formed to support this activity. WCC and UNDP will work in close partnership to ensure gradual transfer of knowledge and capacity to the Court and Prosecutors' Office to take over this activity at the latter stage. The Judicial College will take place once a year for the judges of the Court of BiH. A similar team capacity building event for the Prosecutors' Office will be developed in close cooperation with the prosecutors and will take place once a year.

Output2. indicator: 120 Judges, Prosecutors and legal officers trained per year and capacities advanced in specific CPC provisions on redundant evidence, evaluation and relevance of evidence, plea bargaining and witness related issues. Efficiency of War Crimes Chamber within the Court of BiH and BiH Prosecutors' Office increased in terms of (1) number of cases handled, (2) speed of trials and (3) verdicts passed.

Output 3. (Regional Cooperation and support to BiH Strategy on ICTY Closure) Regional cooperation and access to ICTY archives will be improved through exchange of experiences, conferences and study visits organized together with the relevant state and entity institutions in bringing both issues closer to BiH. UNDP can offer its expertise and work already done in the field to assist BiH institutions to take ownership of the issue of ICTY legacy, including the archives' accessibility and usage by the WCC.

Regional consultations (conference) will be planned to enhance regional cooperation and discuss issues such as parallel trials, extradition and the European arrest warrant. These issues should be jointly worked on and discussed at the regional level.

Output 3. indicator: Accessibility of ICTY archives and evidence by the WCC enhanced. Access to ICTY digitalised archives secured. Regional cooperation in war crimes initiated and strengthened in terms of European arrest warrant application, parallel trials and extradition.

II.3 Risk Assessment

- It is not possible to exactly foresee the findings of the State War Crimes Recovery Strategy currently in the making. The time frame for the strategy to be finalized is anticipated for the last quarter of 2008. The project components aimed at capacity building of local prosecutors' offices and courts and exchange of experiences between the state level and local jurisdictions will have to adjust their own timing accordingly and anticipate both the possible shift of the activities according to the strategy and fine-tuning within the predicted framework.
- Any meaningful and long term capacity building process is complex and bears many unforeseen factors. Nonetheless, every effort needs to be made to manage expectations from the outset through clear implementation planning process with the relevant state actors (JPTCs).
- Programme management will have to employ victim-sensitive planning and facilitation skills to be able to contribute to the development of victims' and witnesses' support network in BiH. This will have to be done using some of the examples and lessons learned from other post conflict societies while taking into consideration BiH legal and institutional framework at the entity level.
- Dealing with the past through war crimes trials is a highly sensitive process that touches upon the very roots that generated the violent conflict in the first place. Careful monitoring of the project's spheres of intervention will be crucial to adjust the planned activities and take corrective measures, if necessary.

I. ANNUAL WORK PLAN

Year: 2009

EXPECTED OUTPUTS <i>And baseline, associated indicators and annual targets</i>	PLANNED ACTIVITIES <i>List activity results and associated actions</i>	TIMEFRAME				RESPONSIBLE PARTY	PLANNED BUDGET		
		Q1	Q2	Q3	Q4		Funding Source	Budget Description	Amount
Output 1 <i>CB of Cantonal/District POs and Courts in BiH</i> <i>Baseline: Lack of capacities to process WC cases at the local level as per the new state WC Strategy.</i> <i>Indicators: POs and Courts dealing with WC, trained in IHL and introduced with ICTY practices.</i> <i>Targets: Capacities of prosecutors/judges to process WC at local level strengthened. Strategic coordination & partnership with national training institutions (JPTC RS & FBiH) and support to CD of JPRC - 4 trainings organized.</i> <i>Related CP outcome: Increased access to justice for vulnerable groups - Capacity development of legal professionals to investigate, prosecute and try WC.</i>	1. Activity Result - Trainings for Judges - Preparation of written materials		X		X	UNDP, TC, HJPC	Spain	72100, 74200 71300, 71400 71600	
	2. Activity Result - Trainings for Prosecutors - Preparation of written materials		X	X		UNDP, TC, HJPC	Spain	72100, 74200 71300, 71400 71600	
	3. Activity Result - Project Board Meeting - Preparation of written materials & travel of participants	X		X		UNDP	Spain/Japan	74200	
Output 1.1 <i>Support to WSO and building of WS network in BiH</i> <i>Baseline: Low awareness and low capacities. WS exists only at state level. Min. standards set (for witnesses protect./support) by the Law on Protection of Witnesses.</i>	1. Activity Result - Needs Assessment			X		UNDP, HJPC	Spain	71600, 74200	
	2. Activity Result - Engagement of Int.Consultant (4 months)			X		UNDP	Spain	71100, 71600	
	3. Activity Result - 3-4 Debriefing Session for WSO (BiH court)	X		X		UNDP, Court of BiH	Spain	71300,72100	

<p>Indicators: Local capacities to support victim witnesses during the trial increased. State level capacities strengthened.</p> <p>Targets: Introduction of WS mechanisms to local courts (work of WSO). Building/strengthening national capacities for WS at local level – 3-4 “Debriefing” sessions for WSO, Needs Assessment and introductory visit to, the Court. Set base for building up the WS network in BiH.</p> <p>Related CP outcome: Increased access to justice for vulnerable groups</p>	<p>3. Activity Result</p> <ul style="list-style-type: none"> - Preparation/Introductory Visit of selected Pilot Courts to state WSO 					<p>UNDP, Court of BiH, TC</p>	<p>Spain</p>	<p>71600,74200,74500,71300,</p>	
<p>Output 2 CB of WCC - Court of BiH and BiH Prosecutors’ Office</p> <p>Baseline: There is an urgent need to address the back load of sensitive cases that will substantially increase the workload of the WCC.</p> <p>Indicators: Raise of confidence in WCC and efficiency increased (Court/PO). The first internal CD exercise for PO built up.</p> <p>Targets: Strengthening of the capacities of the prosec./judges at state level - 2 trainings for WCC organised.</p> <p>Related CP outcome: Increased access to justice for vulnerable groups</p>	<p>1. Activity Result</p> <ul style="list-style-type: none"> - Judicial College - Preparation Workshop - Preparation of written materials 			<p>x</p>		<p>UNDP, TC, HJPC</p>	<p>Japan</p>	<p>72100, 74200 71300, 71400 71600</p>	
	<p>2. Activity Result</p> <ul style="list-style-type: none"> - Prosecutorial College - Preparation Workshop - Preparation of written materials 	<p>x</p>				<p>UNDP, TC, HJPC</p>	<p>Japan</p>	<p>72100, 74200 71300, 71400 71600</p>	

<p>Output 3 Regional Cooperation</p> <p><i>Baseline: There is huge Archive of evidence/documents collected at ICTY that can be used by national judiciary. ICTY is due to finish all proceedings by 2010 and to transfer unfinished cases to national jurisdictions.</i></p> <p><i>Indicators: Level of cooperation with ICTY and in the region improved in order to enable more successful processing of the WC in BiH.</i></p> <p><i>Targets: Support to prosecutors/judges in Study Visit to ICTY.</i></p> <p><i>1 visit to ICTY in order to improve accessibility of ICTY archives and evidence by the WC departments in BiH.</i></p> <p><i>Related CP outcome: Increased access to justice for vulnerable groups</i></p>	<p>1. Activity Result</p> <ul style="list-style-type: none"> - Study Visit to ICTY - Preparation of introductory meeting and written materials 				x	UNDP, WCC	Spain	71600, 74200	
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Project Implementation

For each programme component, different partners are foreseen. An overview with initial proposals per output:

Output 1. partners:

In this regard UNDP works in close partnership with the relevant state actors, BiH MoJ, Federation BiH MoJ, RS MoJ, and coordinates closely with the District & Cantonal and District Brcko Prosecutor's Office and Courts, both Entity Judicial and Prosecutorial Training Centers, HJPC and OSCE.

Output 1.1 partners:

In this regard UNDP works in close partnership with the relevant state actors, BiH MoJ and coordinates closely with Witness Support Section and Court Support Network of the BiH Court, the CSOs already working on the issues of victims and witness support, RS and FBiH MoJs and Cantonal and Districts Courts and Prosecutor's Offices.

Output 2. partners:

In this regard UNDP works in close partnership with the relevant state actors, BiH MoJ, and coordinates closely with the BiH Prosecutor's Office and BiH Court and HJPC.

Output 3. partners:

In this regard UNDP works in close partnership with the relevant state actors, BiH MoJ, BiH Court and Prosecutor's office, HJPC, and coordinates closely with the Prosecutor's Office and Courts in the region (former Yugoslavia) dealing with War Crimes.

Implementing partners:

Ministry of Justice (MoJ) of Bosnia and Herzegovina was established by the Law on Ministries and Other Bodies of Administration of BiH, and this law regulates the competence of the Ministry. The Rule Book on Internal Organization of the MoJ of BiH regulates the establishment of organizational units that enable execution of tasks and obligations under the competence of the Ministry. Some of the responsibilities of the MoJ BiH are execution of criminal sanctions and monitoring of the work of penal institutions, international and inter-entity legal assistance and cooperation, administration at the state level, strategic planning, aid coordination and European integrations,.

The High Judicial and Prosecutorial Council (HJPC) has been established as an independent and autonomous body founded in accordance with state level law after transfer of authorities from entities in accordance with their constitutional authorities. The HJPC's responsibilities as a state institution refer to all levels of state authority including Brcko District of BiH and to all courts and prosecutors' offices (with the exception of constitutional courts that are subject to certain restrictions). Strategic objectives of the HPJC are directed towards achieving an independent, accountable, efficient and effective judiciary.

Judicial and Prosecutorial Training Centers (JPTC) in RS and FBiH have been established in 2003 in both entities. JPTCs act as independent public institutions and work on continuous education of judges and prosecutors employed in the judiciary in the RS and FBiH. In its activities JPTCs cooperate directly with legal institutions in BiH, law schools, as well as national and international organizations working in the field of justice and human rights and legal education.

The Court of BiH with the specialized War Crimes Chamber (WCC) has been established on 3 July 2002 when the Parliament of Bosnia and Herzegovina adopted the Law on the Court of BiH promulgated on 12 November 2000 by the High Representative in Bosnia and Herzegovina. The Court of BiH and the WCC were set to provide for judicial protection in matters which, according to the BiH Constitution, fall under the jurisdiction of the Court of BiH, such as fight against terrorism, war crimes, human trafficking, organized crime, and economic crime. In addition, with regard to establishing the rule of law, it is important to underline the role of the Court of BiH, which will also work on the harmonization of standards in court proceedings. The competencies of the Court of BiH are regulated by the Law on the Court of BiH and are related to: criminal, administrative and appellate jurisdiction.