



Justice and  
Security



Supporting the Rule of Law and Transitional Justice  
in Bosnia and Herzegovina  
2013-2014

United Nations Development Programme  
in Bosnia and Herzegovina

UNDP - Bosnia and Herzegovina

Project Title: Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina

UNDAF Outcome(s): Relevant institutions at all levels strengthen equal access to justice and the protection and promotion of human rights, gender equality and develop institutional mechanisms for dealing with the past.

Expected Output(s): **Component I: Transitional Justice**  
Output 1: Transitional justice strategy endorsed and mechanisms for redress of victims established at national and local level.

**Component II: Access to Justice**

Output 2: Legislation and institutional capacities to enhance access to justice for vulnerable populations strengthened.

Executing Entities: UNDP BiH, the HJPC, MoJ, Entity, Canton and District Authorities, Civil Society organizations.

Implementing Agencies: UNDP - Bosnia and Herzegovina

|                            |                |
|----------------------------|----------------|
| Total resources required:  | USD            |
| Total allocated resources: | 500,000.00 USD |
| Unfunded budget:           |                |
| In-kind Contributions:     |                |

|                              |               |
|------------------------------|---------------|
| Programme Period:            |               |
| Key Result (Strategic Plan): |               |
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| Start date:                  | June 2013     |
| End Date:                    | February 2014 |
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Brief Description

This Project Document presents the first phase of a multiyear UNDP's "Rule of Law and Transitional Justice" programme that consolidates a number of UNDP projects and provides new tools and direction to comprehensively address the legacy of the '92-'95 war in Bosnia and Herzegovina. While overcoming this legacy is a "sine qua non" condition for consolidating the stability and advancing the democratic process of BiH given the post-conflict political culture developed in BiH, and the lessons learnt from previous smaller scale programmes, UNDP proposes a holistic approach through a consolidated set of tools to address post-conflict issues and bridge gaps between the implementation of the EU *acquis communautaire* and the necessary institutional reforms, provision and delivery of justice to the victims of the war.

The legacy of war crimes committed during the conflict in the former Yugoslavia, as well as their ongoing adjudication by ICTY and local courts in BiH, remains a serious point of contention and conflict between communities. A culture of impunity prevents communities from healing the recent traumas in order to build a common future. Recent judgments rendered by ICTY and local courts have, for example, elicited varying reactions by political elites, media and the public, increasing inter-ethnic tension, rather than mitigating against it. Contributing factors to this include the instrumentalization of the war crimes issue by political elites to increase their legitimacy and power within their own ethno-national group, as well as current weaknesses and capacity gaps in national judicial systems. These capacity gaps in national judicial systems make it hard for them to transform into modern, effective institutions that can adequately address in a sustainable manner war crimes, and therefore access to justice by victims. Without full access to justice victims representing all ethnic communities are left marginalized and frustrated, and therefore prone to ethno-nationalist tendencies that lead to further conflict in BiH.

By addressing current weaknesses in BiH's transitional justice sector and strengthening the capacity of courts and support structures in the field of war crimes adjudication this project seeks to remove war crimes from the menu of grievances that communities in BiH have against each other. The goal of the project, therefore, is to remove the terrible legacy of war crimes, a critical contributing factor to conflict in BiH today, and transform it into a fair, manageable, self-sustaining process that mitigates against further conflict.

Resting on the pillars of UNDP's Justice and Security Cluster, the project aims to enhance judicial efficiency, access to and delivery of justice and improved human security through comprehensive, coordinated and targeted interventions engaging actors at all levels to promote inter-ethnic dialogue and reconciliation, enhance and educate on the respect for human rights, and promote a climate of tolerance.

Agreed by:

(Date)

Minister of Justice of Bosnia and Herzegovina



*M. M. M. M.*

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(Date)

04-06-2013

UNDP Resident Representative

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## Acronyms

|         |   |  |
|---------|---|--|
| ACT     | : | Assisting Communities Together project                       |
| APR     | : | Annual Project Report  |
| AWP     | : | Annual Work Plan   |
| BCPR    | : | Bureau for Crisis Prevention and Recovery                    |
| BiH     | : | Bosnia and Herzegovina                                       |
| CO      | : | Country Office   |
| CSO     | : | Civil Society Organizations                                  |
| DEX     | : | Direct Execution   |
| EWS     | : | Early Warning System reports                                 |
| FBiH    | : | Federation of Bosnia and Herzegovina, Bosnia and Herzegovina |
| FBiH GC | : | FBiH Gender Center   |
| FLA     | : | Free Legal Aid   |
| GA      | : | BiH Gender Equality Agency                                   |
| GAP     | : | BiH Gender Action Plan                                       |
| GBV     | : | Gender Based Violence  |
| GEL     | : | BiH Gender Equality Law                                      |
| HJPC    | : | High Judicial and Prosecutorial Council                      |
| ICMP    | : | International Commission for Missing Persons                 |
| ICTJ    | : | International Center for Transitional Justice                |
| ICTY    | : | International Criminal Tribunal for former Yugoslavia        |
| MoJ     | : | Ministry of Justice  |
| MHRR    | : | Ministry for Human Rights and Refugees                       |
| MPI     | : | Missing Persons Institute                                    |
| OHCHR   | : | Office of the High Commissioner for Human Rights             |
| OSCE    | : | Organisation for Security and Cooperation in Europe          |
| RS      | : | Republic of Srpska, Bosnia and Herzegovina                   |
| RS GC   | : | Gender Centre of the RS Government                           |
| SC      | : | Steering Committee   |
| SGF     | : | Small Grants Fund  |
| TJ      | : | Transitional Justice   |
| UNCT    | : | United Nations Country Team                                  |
| UNDAF   | : | United Nations Development Assistance Framework              |
| UNDP    | : | United Nations Development Programme                         |
| VAW     | : | Violence Against Women                                       |
| WSO     | : | Witness Support Office                                       |
| VWS     | : | Victim/ Witness Support                                      |

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## I. SITUATION ANALYSIS

1. In the early 1990's, Bosnia and Herzegovina, (BiH) was the site of a large-scale armed conflict characterized by systematic and widespread violations of international humanitarian law resulting in the lost of an estimated 100,000 lives and left hundreds of thousands of refugees and displaced persons with a large number of people still missing.
2. Combating impunity for war crimes and facing the events from the recent past is recognized as one of the basic preconditions for reconciliation and progress of Bosnia and Herzegovina both internally and externally for the development of BiH into a democratic and stable country and process of towards European integration.
3. The EU enlargement policy incorporates lessons learnt from the previous waves of enlargement and introduces the “**rule of law**” as a benchmark condition for EU integration in addition to the principles established in the *Copenhagen Criteria*.
4. For BiH, this means addressing the deeply rooted legacy of the war as a matter of priority and increasing the impact, effectiveness, transparency and accountability in war crimes prosecutions. This necessitates combating impunity for war crimes, establishing accountability and removing the perception of rewards for violence on the part of political parties and ethnic or religious groups. This is of a particular importance for all those women who were subjected to violent sexual attacks, tortures and concentration camps. These highly vulnerable, often low income survivors suffered inconceivable torture and extreme violations of human rights during detention in concentration camps. However, it is important to note that not only women but also men were often subject to humiliating sufferings, but this subject is not as often talked about or discussed.
5. All the war survivors want to know the truth about the conflict era, that justice is served, that the harm they suffered is recognized and that they can rebuild their lives in peace. However, when considering the gender of those who suffered it becomes apparent that the needs of men and women in BiH with respect to these processes of truth, justice, reparation and non-recurrence are different. Victims of war time sexual violence, mostly women, face major challenges in obtaining their right to war-related compensation. In short, there is a clear need to integrate a gender-sensitive approach to processes of TJ implementation, including both female and male victims, in order to understand and transform the broader social context of trauma and post-conflict experiences and post conflict development challenges.

For UNDP this further highlights the great need to continue to address the support and assistance these population groups need. This is an imperative, addressed through many UN documents on Bosnia and as such a key, very specific output of the TJ Strategy, the support offered through the Free Legal Aid network, and finally the mechanism of continuing support and referral offered to all Victims and Witness. The most recent figures suggest that some 20,000 to 50,000 women were raped, and over 2.2 million people were displaced

6. However, more than seventeen years after the signing of the peace agreement, Bosnia and Herzegovina continues to struggle with the war's devastating political, economic and social consequences. According numerous national and international sources, BiH failed to progress on implementing much needed structural reforms and streamline its complex institutional structure and lags behind the other countries in the region in terms of meeting its obligations towards meeting EU accession targets, including the benchmarks set by in the EU-BiH “Structured Dialogue on Justice”.

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## II. BACKGROUND

7. The war in BiH was effectively brought to an end by the “*Dayton Peace Agreement*” that required the creation of a particularly complex political and institutional structure that was designed on the principle of guaranteeing the vital national interests of all the former warring parties and thereby access to power for the three constituent peoples.
8. As provided by the Dayton Peace Agreement, BiH is a unified, multi-ethnic state with a complex governmental structure provided as part of the agreement. The new state was provided with a bicameral legislature and a three-member Presidency composed of a member from each of the *constituent peoples*, representing three major ethnic groups. The country is largely decentralized, comprised of two entities: the Federation of BiH, composed of 10 cantons, Republika Srpska, and a third self-governing region, the Brčko District and all functioning with their own internal structure of governance. The role of the central government role is therefore highly limited.
9. With the signing of the EU “*Stabilization and Association Agreement*” (SAA) in June 2008, the government has undertaken to work towards achieving EU standards of governance, strengthening of the justice sector, and enhancing access to justice. Accordingly, the *Justice Sector Reform Strategy (JSRS)* was adopted in 2008 followed by the *Strategy for Processing of War Crimes* (adopted in December 2008). The JSRS indicates that specific Transitional Justice issues should be tackled through development and implementation of the Specific Transitional Justice Strategy, complementary to existing strategic framework. The need to include all governmental levels in discussion for adoption of the TJ Strategy was repeatedly stressed by the IOs and domestic stakeholders<sup>1</sup>.
10. So far BiH has faced significant challenges in process of implementation of adopted strategies, mostly related to the lack of political support, capacities and financial resources that significantly affects the tempo and results of strategic actions. According to the EU Progress Report of 2011<sup>2</sup>: *Access to justice and equality before the law remain hampered by the fragmented legal and institutional framework in the country.*
11. An additional supportive mechanism, addressing justice issues, was established by the European Commission in June 2011 in the form of a *Structured Dialogue on Justice*. Its aim is to advance structured relations on the rule of law with potential candidate countries, even prior to the entry into force of the SAA. The Structured Dialogue will therefore assist BiH to consolidate an independent, effective, efficient and professional judicial system while helping the country move further towards the EU. *Specific issues, such as necessity to develop witness support mechanisms and FLA system have been continually at the agenda of this mechanism.*

|                                  |
|----------------------------------|
| Transitional Justice Initiatives |
|----------------------------------|

12. For the United Nations, the rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards<sup>3</sup>.

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<sup>1</sup> Report “When everyone is silent – Reparation for survivors of war time rape in Republika Srpska in BiH”, Amnesty (2012)

<sup>2</sup> According to the EU progress report, only limited progress has been achieved in the area of judicial system reform. The *Structured Dialogue on Justice* has had a positive effect on the implementation of the Justice Sector Reform Strategy (JSRS) 2009-2013. Increased political support resulted in better coordinated planning among stakeholders and the allocation of more adequate human and financial resources.

<sup>3</sup> GUIDANCE NOTE OF THE SECRETARY-GENERAL, UN Approach to Rule of Law Assistance; <http://www.unrol.org/files/RoL.%20Guidance%20Note%20UN%20Approach%20FINAL.pdf>

13. The rule of law is based on **Justice and Security** – two of the most essential prerequisites for sustainable peace and development. It requires a set of measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, independence of the judiciary, legal certainty, avoidance of arbitrariness, and procedural and legal transparency. According to the EU progress report, only limited progress has been achieved in these areas. Justice sector reforms are stagnating and BiH currently faces a backlog of an estimated 1300 War crimes cases.
14. In order to address Transitional Justice issues, in early 2010 the BiH Government initiated the process of developing the National Transitional Justice Strategy. *The draft of the TJ Strategy, focusing on three strategic pillars a) truth seeking and truth telling; b) reparations (including memorials) and c) institutional reforms was presented to the stakeholders, thus, launching the process of governmental and public dialogue on strategic solutions.*
15. Lack of confidence in governmental institutions has been recognized as one of the key strategic issues throughout the consultations taken place in process of developing the TJ Strategy (involving around 1000 participants' including representatives of victims associations, etc).
16. Facing the events from the recent past and the effective processing of war crimes cases is recognized as one of the basic preconditions for the restoration and maintenance of peace, justice for survivors and national and regional reconciliation. To this end, complementary to judicial reforms, the BiH Council of Ministers adopted the National War Crime Processing Strategy in 2008 that set ambitious targets to facilitate the efficient processing of war crimes, *inter alia*: A) prosecute the most complex and top priority war crimes cases within 7 years and other war crimes cases within 15 years; B) enhance strategic management and distribution of cases; C) harmonize judicial practice to ensure legal certainty and equality of citizens before the law; and D) strengthen the capacity of the judiciary and police and to "provide protection, support and same treatment to all victims and witnesses in proceedings before all courts in BiH".<sup>4</sup>
17. However, four years after its adoption, there are serious concerns regarding implementation of the National War Crimes Strategy and the capacity of the Entity, Canton and District levels to address the backlog of cases in the remaining 10 years. Of particular concern is the absence of "equality of citizens before the law" and the lack of institutional capacity to support and protect victims and witnesses at all judicial levels as well as the required support networks necessary to safeguard witnesses and victims from intimidation, re-victimization or reprisals.
18. With Court of BiH deferring over 300 war crimes cases to cantonal and district courts and prosecutors' offices in 2012, and considering the urgent need to implement the National War Crimes Strategy, it is essential to enhance capacities at all levels and to ensure that witness support offices are established in all the remaining cantonal/district courts and prosecutors' offices in the shortest time possible.
19. To further promote the treatment of victims and witnesses, with respect for their safety and human dignity, the UN has adopted the "Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power"<sup>5</sup> and instruments to promote specific rights in this area, principally articles 24 and 25 of the UN Convention against Transnational Organized Crime<sup>6</sup>, requiring States to take appropriate measures to provide effective protection and support.

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<sup>4</sup> *National War Crimes Strategy, Objectives and Anticipated Results, pages: 4 & 5 - [http://www.genevaacademy.ch/RULAC/pdf\\_state/War-Crimes-Strategy-f-18-12-08.pdf](http://www.genevaacademy.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf)*

<sup>5</sup> A/RES/40/34 - 29 November 1985 96<sup>th</sup> plenary meeting

<sup>6</sup> UN Convention against Transnational Organized Crime, <http://www.uncjin.org/Documents/Conventions/dcatoc/final>



20. In January 2011, the Council of Europe's Committee on Human Rights and Legal Affairs in its report "The protection of witnesses as a cornerstone for justice and reconciliation in the Balkans"<sup>7</sup> called on all states of the former Yugoslavia to establish witness support programmes following the model established by the United Nations Development Programme. The report stresses that witnesses have the right to be protected and that support should be given - including legal and psychological support - before, during and after the trial so the victims and witnesses may deliver testimony safely and free from fear.

#### Access to Justice Initiatives

21. Justice system in BiH is facing high backlog of cases and delays in processes, partly caused by ordinary citizens who initiate proceedings while lacking legal knowledge and financial resources to access to justice system and required support. Except in criminal cases in which the professional legal aid is granted *ex officio*, the access to justice for marginalized and socially excluded is not guaranteed due to fragmented and poorly developed free legal system (FLA) in the country. FLA services are often poorly equipped, understaffed; lacking quality monitoring tools and professional training, and are provided in only 9 out of total 14 jurisdictions.
22. This situation highly affects the level of respect for human rights, contributes to inefficiency of justice system and provides drawback to governmental efforts aimed at combating discrimination (the Law on Prohibition of All Types of Discrimination adopted in 2009) - while the SAA underlines the efficiency of justice and respect of human rights as one of the key priorities in BiH. *The European Commission Reports on Progress continually address the weak progress while emphasizing the lack of equality before the law due to undeveloped FLA system.*
23. The Justice Sector Reform in 2008 called for the development of minimum equal criteria and enhancing capacities in area of free legal aid and as one of the strategic objectives.
24. Citizens and NGOs are increasingly demanding greater transparency and efficiency from justice sector institutions. The complex governance arrangements of the country, coupled with persistent fiscal constraints, render the system vulnerable to inequalities. The poor general economic conditions also risk compromising the ability of individuals and legal entities to ensure citizen and institutional rights are legally exercised before justice institutions in BiH. Key factors in increasing equal access to justice include raising public awareness about the ways in which the justice sector should operate and how information can and should be accessed. The lack of a comprehensive legal aid system for criminal and civil cases must be rectified in order to ensure that economic status does not inhibit the capacity of citizens to pursue their rights before the law.<sup>8</sup>

#### UNDP Projects - Lessons Learned

25. As of 2002, the UNDP Country Office BiH is particularly active in supporting the BiH Government and the High Judicial and Prosecutorial Council in addressing the TJ, FLA and victim/witness support issues in a more coherent and holistic approach.
26. In 2006, the UNDP initiated a project *Supporting National Capacities for Transitional Justice in BiH* - which resulted in consultation process and the BiH Ministry of Justice (MoJ) recognizing the need for approaching the remaining issues of the past in a new, systemic and inclusive way, through the drafting of a national *Transitional Justice Strategy*<sup>9</sup>.

<sup>7</sup> CoE- <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12440.pdf>

<sup>8</sup> See Justice Sector Reform Strategy, 2008-2012,

<sup>9</sup> The first round of consultations was held in Fojnica on 4-6 June, 2008, while another round of consultations was held in Brcko on

27. Building on the success of this project, but with extended activities and coverage, the new project *Access to Justice – Facing the Past and Building the Confidence for the Future* (2009-2013) was launched with support of UNDP/BCPR Global Programme in Rule of Law and Swiss Embassy. The goal of this project with its two components: 1) Transitional Justice and 2) Access to Justice (A2J), was to increase the accessibility of BiH legal institutions and services for standard court users and systematically address remaining A2J challenges for victims of the 1992-95 conflict.
28. The first Component was focusing on supporting TJ processes through development of the *Transitional Justice Strategy* in transparent and inclusive manner, publishing of analysis and recommendation reports in the areas of truth seeking and memorialization, and piloting development of local community based truth seeking and memorialization activity models. This was done in parallel with strengthening of capacities of civil society organizations to engage proactively in actual TJ related processes and serving the needs of war victims.
29. The Second Component activity framework was focused on supporting development of FLA system through provision of technical, administrative and logistical assistance at the State and lower levels and establishment of new FLA Agencies, where needed. *Based on the results of the Project, the BiH Ministry of Justice requested the UNDP to continue its support.* Through set-up of the FLA, the UNDP Projects have resulted in developing State and Cantonal legislative framework, establishment and set up of new governmental Agencies (Bihac and Sarajevo), provision of over 4000 FLA services through UNDP supported civil society organisations.
30. Significant contribution was provided through the project *Support to Processing of War Crimes Cases in BiH* where UNDP, in close cooperation and partnership with the High Judicial and Prosecutorial Council of BiH (HJPC), developed a witness support mechanism for victims and witnesses in criminal cases in three pilot locations (Sarajevo, East Sarajevo and Banja Luka). After a pilot phase of 16 months, the mechanism was fully tested and adopted to the specifics of local jurisdictions in the form of Witness Support Offices, proving to be a very successful tool for courts and prosecutor's office in increasing the efficiency of the proceedings as well as to victims and witnesses who received proper emotional, psychological and logistical support.
31. Implementation of this project also meant accommodating much wider subject jurisdiction of cantonal/district courts and prosecutor's offices by taking the mandate of established Witness Support Offices beyond war crimes to all criminal cases also covering sometime municipal courts. The success of this project is also a valuable contribution to development of judges' and prosecutors' professional capacities to work on war crimes cases. Under the UNDP leadership more than 700 judges, prosecutors and investigators were trained in the area of investigative techniques and these *trainings and "brand trainings" (Judicial and Prosecutorial Colleges taken over by state institutions) are well recognized and highly praised.*
32. *A number of key lessons were learned in the implementation of the projects, namely:*

Importance of continuity in efforts and timing: The politically sensitive nature of TJ creates an important dynamic in implementation realities and success to date was in part due to the continual and consistent supportive efforts provided to the key national partners and flexible set up of activity time framework. In addition, activities are planned in line with ongoing discussion on justice sector reforms under the EU umbrella, between the UN and the BiH [G]overnments (at all levels) and the EU through advocacy, coordination and links to related projects and programmes.

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28-29 April, 2009. Immediately after the *BiH Council of Ministers* approved the *Report on Consultations and concluded to launch development of the Transitional Justice Strategy.*

Government commitment is critical: Majority of BiH government officials have been supportive of the TJ initiative to date. The current situation lacks any strong commitment from the Government of Republika of Srpska, but there are continuing demands by victims and society actors, as well as full commitment from the BiH Ministry of Justice towards supporting TJ processes in future: *“The continuing support is needed from international community as reconciliation requires “change of thinking” which cannot be achieved over short period of time.”*

Support to and networking with the CSOs is critical: As majority of CSOs stayed open and supportive of TJ initiatives, their involvement in consultation process, openness to new ideas and networking present important steps toward creation and sustainability of new policies and mechanisms. Such partnership should be expended further in order to develop strong advocacy platform for new approaches in the areas of TJ, access to justice and witness support mechanism.

Out-of-court VWS mechanism is missing despite very functional VWS services who are delivering the expected results. However, this crucial support was only limited to participation in court proceedings, leaving a large spectrum of other needs of victims and witnesses unattended. Thus, it is of vital importance to strengthen a coordinated and comprehensive support system that includes all relevant actors who will assist victims and witnesses beyond their participation in proceedings, meaning prior and long after the case is legally finalized.

Importance of coordination in VWS provision: A vast range of governmental and non-governmental institutions have different mandates to provide support to victims and witnesses prior and after their court proceedings. However, due to lack of coordinated approach their actions often overlap and leave victims and witnesses lost in referral limbo, wondering from one institution to another, with their needs not being timely and properly addressed. Assessing the actual capacities and defining the exact role of each actor in the referral network will enhance the qualities of services provided and lead to directed action as opposed to current ad hoc approach.

Despite complex political background, often delaying the actual progress of the project, the key local partners (BiH Ministry of Justice, BiH Ministry for Human Rights and Refugees and the HJPC) remain fully committed to continue their efforts in partnership with the UNDP. Recognizing the UNDP BiH as reliable and experienced international organization with unique expertise in BiH in terms of TJ, FLA and the witness support mechanism, the BiH Minister of Justice has asked for continuation of the support in these processes involving highly sensitive and complex issues. Therefore, UNDP intends to build on its past success and lessons learnt to develop country specific project that will strengthen the rule of law in conflict / post-conflict countries in order to ensure equal access to justice and support for all of its population groups. In implementing the project UNDP BiH will be supported by BCPR and will strengthen its partnership with Embassies that have been supporting justice initiatives in BiH.

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### III. STRATEGY

Both outputs and project activities are mutually supporting complementarity and transitional justice processes and goals and are based on the above outlined Lessons learned. Development of an efficient war crimes prosecution, including witness support, referral system mechanism and free legal aid system directly contributes to strengthening of national criminal system to investigate and process the serious human rights violations and crimes against international humanitarian law, as well as enhance the accountability of the BiH

justice system. In parallel, by establishing channels of communication and supporting dialogue among political and other stakeholders on the TJ strategic framework, as well as supporting local efforts in the areas of truth seeking and memorialisation, the Project contributes to enhancing positive changes leading to sustainable peace building and reconciliation.

Moreover, the Project activities are in full complementarity and synergy with other UNDP Rule of Law supporting projects. Currently, with the financial support of the Government of the USA, the witness support mechanism (successfully tested in Sarajevo, Banja Luka and East Sarajevo) is being expanded to Una-Sana and Central Bosnia Cantons, while two more locations are being prepared for the same road thanks to the Swiss Embassy in BiH. The specific transitional justice actions are in process of preparation related to exploring citizen engagement via Active Dialogue Networks and small grants programme to support confidence building measures and support to consultation process and legislative assistance in the area of memorialisation, as well as introducing transitional justice training modules for wide spectrum of public officials. Additional actions are being prepared for expanding the Free Legal Aid mechanisms to all governmental areas where missing, legislative harmonization, and development of quality monitoring tools.

The strategy is based on the needs identified above and continues to address the need for transitional justice, provision of FLA and VWS while also building the platform which will provide the access to justice for all, particularly the most vulnerable ones. The main goal is for these components to work mutually towards increasing the confidence in BiH institutions, ensuring their work is in line with the international and EU standards.

Project activities will include specific gender sensitivity oriented tasks and invest at least 15% of total budget to these activities. The actions are aimed to address specific gender related needs and will contribute to developing specific legal frameworks/mechanism/practices aimed at ensuring gender equality and justice towards women, victims of war. Among others, the Project will contribute to:

- developing local/national platform for dialogue on women's war related experiences, including sexual based violence, in a form of specific truth telling mechanisms;
- developing programme of reparation in ensuring equal standards for women victims of war, with particular attention to women victims of sexual violence;
- developing standards/mechanism in the area of memorialisation and building of culture of remembrance in relation to women's war related experience;
- ensure gender sensitive approach and respect women's need in providing psychological support during and after their acting as witnesses before the courts and prosecutorial offices;
- contribute to having public officials developing legal frameworks in a gender sensitive manner in targeted areas;
- increase provision of free legal aid to women, particularly women victims of sexual and domestic violence;
- contribute to sensitize judges and prosecutors (man and women) to interpret laws in gender sensitive manner;

UNDP is committed to aligning the activities of the project to incorporate the United Nation's work in the area of preventing and addressing the consequences of sexual violence in conflict to effectively support national efforts to address sexual violence, and to deepen partnerships with NGOs and civil society organizations. The gender equality has been mainstreamed throughout the project while ensuring the objectives and results are defined in such a way that aspirations, wishes and needs of women and men are equally valued and favored through the project activities. Projects with a gender perspective contribute to the achievement of the UN 1325 resolution.

In addition, the Project is in full synergy with Small Arms and Light Weapons ongoing UNDP Project involving specific gender violence combating actions focusing, among others, on development of data collection mechanism on gender violence and strengthening of the local community safety mechanism to review and develop policies, prevent and respond to gender based violence.

UNDP BiH will use the momentum and build on the achievement made in the earlier projects and the successful cooperation made with the BiH and lower levels governments. To ensure continuity and further progress, UNDP is now ready to drive this forward with as it is the case with UNDP BiH and BCPR partnering to design and closely work on the local actions, the piloting project in Brcko District.

In support, UNDP has ensured additional technical support through Chief Technical Adviser for providing technical assistance in the course of project implementation, to ensure smooth and timely completion, which is the key given the sensitive nature of the whole process.

Lastly, in post-conflict situations, sustainable capacity development and just self-governance are central to long term stability. Further attention should be, therefore, paid to drafting the necessary legislation to ensure non-discrimination and inclusion of international human rights standards. Such implementation will require accountability from the key actors and independent judiciary. *It also requires that legal aid systems are in place to assist anyone seeking justice, fully operational witness support mechanism, and improved legal awareness.* As CSOs play a key role in this process, strengthening their credibility and organizational capacity is one of the main objectives.

#### UNDP Strategic Framework

UNDP's support to the justice sector will be aligned with overarching national policy frameworks as well as the United Nations Development Assistance Framework (UNDAF) 2010 - 2014 for BiH, the current Country Programme Action Plan (CPAP), and the draft UNDP Country Programme Document (CPD) 2010 – 2014.

The project will contribute to the UNDAF outcome one Democratic Governance (DG Outcome 1.3) and providing government and stakeholders with equal and effective access to justice, while supporting development of mechanisms for Transitional Justice. This will be accomplished through facilitating political and stakeholders' dialogue, supporting and increasing the legal awareness of all citizens, strengthening access to formal and informal justice, and ensuring the witness support mechanism is in place, implemented in gender sensitive manner.

### Outputs

#### **Output 1: Transitional Justice Initiatives**

*Output 1: Transitional justice strategy endorsed and mechanisms for redress of victims established at national and local level.*

The activities under this output continue to build on the success of UNDP's projects *Access to Justice: Facing the Past and Building the Confidence for the Future Project (2009 – March 2013)* and *Support to Processing of War Crimes Cases in BiH (2009 – February 2014)*. The main focus is firstly to strengthen dialogue for the adoption of a state level Transitional Justice Strategy and support piloting of grassroots' truth seeking and memorialization initiatives aimed at exploring good practices. The focus is also to generate supporting activities to increase the ability of national and targeted local communities to address the legacy of war through establishment of specific mechanisms for dealing with the past at national and targeted local levels.

Secondly, the project will focus on supporting and empowering governmental and non-governmental victim/witness service providers in developing a coordinated out – of court VWS referral mechanism, with every actor recognizing its proper role in the referral chain and, working with judicial witness support

mechanism, leaving up to the expectation of citizens who have found themselves victim of serious criminal offence, including war crimes, domestic violence etc.

#### Specific Activities

##### **Activity 1.1: Support political/public dialogue and networking at all governmental levels towards adoption of the TJ Strategy.**

Despite negative political influences, draft of the five-year Transitional Justice Strategy was developed and presented to the stakeholders. It has also been presented to the designated members of the Joint BiH Parliamentarian Committee for Human Rights, Refugees, Youth, Children, Asylum and Ethics which supported further discussion on strategic issues before the BiH parliamentarian bodies. The need to include the key political and other stakeholders in the process of dialogue is highly recognized both by the Project and key local partners (BIH MOJ and BIH MHRR).

The Project will support transparent political dialogue at and among parliamentarian and governmental bodies at State, Entity, Brcko district and targeted local levels. Activities as planned will include support to organization of thematic parliamentarian/governmental sessions at State and lower levels, facilitate visit of the UN Special Rapporteur on Transitional Justice, round tables on specific TJ issues (such is memorialisation), continuation of media oriented outreach activities (TV and radio shows) and strengthening cooperation platform with CSOs in promoting, advocating and working towards adoption of the TJ strategic framework.

A visit of the UN Transitional Justice Special Rapporteur to BiH Government, providing specific support to BiH governmental actors to deal and discuss transitional justice strategic framework for redressing human violations legacy in BiH is planned as one of the key project deliverables.

To support the public dialogue on specific issues and linked to the Activity 1.3, a Conference on memorialisation will be organized, bringing together both international and local expertise to share their experiences. The objective is to lead key actors to engage the subject more formally, to consider development of adequate country-wide mandated mechanism including all key constituencies and regulating the standards for establishment of memorials. The gender balance, representation from different backgrounds, ethnic groups and entities are always carefully considered when planning the events, selecting the participants and trying to ensure their effectiveness. This is also recognized as pre-requisite to ensure the buy-in into the process and dialogue right from the start, to enable the build of knowledge and capacity amongst the key partners on the ground, as well as the sense of ownership and sustainability of the whole process.

Furthermore, the key Objective of this Activity will be to provide all the support and assistance to the MoJ in their attempt to fully involve the RS Government, their participation and commentaries on the submitted TJ Draft and outlined future activities for its completion.

##### **Activity 1.2: Support development of non-discriminatory and harmonised Legal Framework/Programme on Reparation for Victims**

Draft of the Strategy of Transitional Justice of BiH addresses range of issues related to unresolved status or discriminatory treatment of victims of war in the area of reparations. Comprehensive consultations and analysis showed that civil victims of the war and war military invalids are treated differently in two entities; compensations based on administrative decisions are inconsistent; the existing system of payment of compensations is unsustainable, while the compensations for the victims who have been tortured in places of imprisonment have been insufficiently secured; certain legislative limitation in breaching international standards are in place, such as 5 years deadline for seeking compensation for damage occurred during or

linked to war/conflict actions etc. Namely, the current system of compensation of victims in BiH is not inclusive of all victims of the war across BiH, nor provides equal treatment for all victims.

This activity is therefore focused on launching development of legal framework/programme on reparation, firstly focusing on development of the Expert Working Group (50% women and 50% men) and ensuring of administrative and logistical support for the Working group members, as well as development of appropriate gender sensitive training for the WG members aimed at enhancing their capacity on TJ concept and reparations (the provision is planned for the second year of the Project). These actions will ensure adequate start up for developing adequate Reparation Programme in remedying injustice situation the victims of war in BiH are currently facing.

**Activity 1.3: Support the implementation of locally oriented pilot project in the areas of truth seeking and memorialisation.**

In order to support actual processes for achieving the agreement on the national-level TJ Strategy, and development of appropriate models in the area of truth seeking and memorialisation, tailored local community initiatives have been piloted in Brcko District (BD).

BD was established as a result of the interest and dispute between both entities (FBiH and RS) on the issue of governance over this area. It is functioning as a separate district with its own government and, for a long time, under strong international supervisory and decisive role. With its multi-ethnic population structure similar to national wide context, and CSOs cooperating among each other, the BD presents the most suitable area for piloting such sensitive project. The Mayor of BD and the government have unanimously approved its commitment and ownership. The actions taken in the course of the recently ended *Access to Justice-Facing the Past and Building the Confidence Project* were focused on developing, based on local consultations, adequate concept of activity framework in the areas of truth seeking and memorialisation which will be considered and consequently implemented with the ownership of BD authorities.

Within the framework of this Project, the activity structure based on BD consideration should be further developed into an operational plan. Maintenance and strengthening of governmental and CSOs local partnership and in particular CSOs contribution to realization of specific actions should be supported through small grants to strengthen their capacities to provide support and assistance to vulnerable groups in particular women and victims of sexual violence. The activity will engage CSOs across the country. The Project will therefore provide technical expertise and assistance aimed at ensuring the best practices and available tools are used throughout.

**Activity 1.4: Support the development and networking of referral mechanisms to respond to the needs of victims and witnesses.**

Establishment of comprehensive and efficient witness support mechanism for courts and prosecutor's offices at local level has been the focus of UNDP's efforts since 2009. Joining forces with the HJPC, a Needs and Situation Assessment on provision of victim and witness support and protection at cantonal and district judicial institutions was conducted in 2010, directing all future efforts in this field. Since then, a UNDP developed witness support mechanism was tested and piloted at three locations while current SPWCC project activities are aimed at extending the tested mechanism to the whole territory of BiH.

Functional witness support offices have proved to be an effective tool for judicial institutions and victim and witnesses in those moments of reliving the traumatic events they have experienced, but not after their participation in the proceedings. As such, the witness support office (currently in place), provide the following services:

- provide services such as pre-trial familiarization and information on criminal procedure,
- provide emotional and psychological support, as needed
- inform victims and witnesses of findings in key stages of the judicial process,
- ensure accompaniment for victims and witnesses throughout the criminal process,
- ensure that victims and witnesses are aware of all their rights to which they are entitled by law due to their status as victims and witnesses, and
- Provide referral services for victims and witnesses to relevant support agencies.

Indeed, the mandate of witness support mechanisms within court and prosecutor's offices is defined in such a manner that does not allow long-term follow up and support to victims and witnesses as it is directly linked to investigative and trial phases of a criminal case. This leaves victims and witnesses with a wide range of additional needs and often no person/institution to turn to, diminishing public trust in the judiciary and BiH institutions in general.

In order to support the development of coordinated and comprehensive VWS referral mechanism, consultative roundtables with all relevant governmental and non-governmental actors in provision of victim/witness support will be organized at targeted locations (Bihac, Travnik, Mostar and Brčko). These locations were chosen because UNDP is currently in the process of establishing witness support offices at the courts and prosecutor's offices there – so the consultations will result in collection and analysis on external VWS service providers and finally a Reference Guide with data on active witness support service providers and actors, their mandated and defined role in the referral network, governmental and non - governmental. Besides increasing public awareness on whom they can turn to, the Guide will also contribute to establishment, where missing, and/or strengthening of existing referral practices and mechanisms.

**Activity 1.5: Strengthening of capacities of psycho-social and health services to support victims and witnesses.**

While having the mandate to support victims and witnesses prior, during and after their participation in criminal proceedings, in practice many of social and health institutions fail at this task for variety of reasons. Furthermore, in accordance with the entity laws on protection of vulnerable witnesses and witnesses under threat, Social Welfare Centers are the key partners for judicial institutions to cooperate when dealing with victims and witnesses with special needs.

This activity will focus on assessing the capacities of these governmental institutions, in particular social welfare centers and mental health institutions, in relation to their resources, professional capacities, specialized skills and all other factors that may impair their functioning. The assessment will provide a clear picture on where and how these VWS providers need support in order to fulfill their duties in the referral chain. A launch event will be subsequently organized to present the key findings and draw attention to fields that require improvement in the near future and help us to define areas of interventions with relevant Ministries for Social Affairs.



## **Output 2: Access to Justice**

*Output 2: Legislation and institutional capacities to enhance access to justice for vulnerable populations strengthened.*

“Access to justice is a vital part of the UNDP mandate to reduce poverty and strengthen democratic governance. Within the broad context of justice reform, UNDP’s specific niche lies in supporting justice and related systems so that they work for those who are poor and disadvantaged.”<sup>10</sup>

UNDP defines access to justice as: *“the ability of people to seek and obtain a remedy through formal or informal institutions of justice, and in conformity with human rights standards.”*<sup>11</sup> This framework for pursuing justice sector reform refocuses attention on individuals and communities by ensuring not only those justice institutions are functioning effectively, but that the poor and marginalized are informed of and empowered to utilize the services provided.

Based on the results of the situation analysis, conducted in 2010, the poor and vulnerable persons especially refugees and displaced persons were unable to cope alone with all obstacles preventing their access to rights in the process of reintegration in the pre-war places of residence or integration in the host communities. This was mainly due to a severe lack of legal skills and knowledge of the regulations.

The legal areas where the indentified need for legal aid is particularly crucial for refugees and IDPs include: civil status rights, property rights, socio-economic and other acquired rights. Analyses of the number and type of services provided to refugees and displaced persons indicate that the provision of legal aid is a precondition for the access to the following rights: health insurance and access to health care, pensions and recognition of acquired rights, residence status, residence permits and other civil status rights, such as citizenship status, particularly entries into the registry of birth and recognition of legal subjectivity.

Development of an efficient Free Legal Aid System is therefore crucial for remedying the current discriminatory position of numbers of poor and vulnerable ones living in areas lacking governmental FLA mechanisms. Moreover, even those who live in regions where such mechanisms has been established and fulfill eligibility criteria, are denied access to FLA services in case procedures are taken before competent authority outside their current permanent residence.

Since 2011, in cooperation with the National Partners, UNDP has actively engaged and delivered some significant results: the draft legislation at State level was developed, 3 new governmental Agencies have been fully established; 6 existing FLA Providers have been strengthened in terms of their facilities and equipment; FLA Network has been established, including both governmental and CSOs; training assessment and program completed; data base and web site developed; public oriented brochure distributed.

### Specific Activities

**Activity 2.1: Support the adoption/harmonization of legislation and strengthen mechanism for the delivery of Free Legal Aid.**

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<sup>10</sup> Access to Justice: Practice Note, UNDP, 2004 ([http://www.undp.org/governance/docs/Justice\\_PN\\_English.pdf](http://www.undp.org/governance/docs/Justice_PN_English.pdf))

The State Law on Free Legal Aid should ensure the minimum equal standards for all in accessing the Free Legal Aid and create the basis for harmonization of all related legislation at all levels.

The key, first step in order to move forward, is to provide assistance in developing legislation and establish new governmental Free Legal Aid Agencies in jurisdictions lacking legislative and institutional framework. Besides advocating for adoption of State Law on Free Legal Aid, the laws and governmental agencies are missing in Federation of BiH and in 3 Cantons (Travnik, Mostar and Livno).

In the course of 2013, at least one legislative framework and 1 new agency should be fully set up, and at least 1 existing one further strengthened in terms of improving their current facilities and equipment. The Conference dedicated to advocate the adoption of State and lower levels FLA system will also be organised.

The Project will therefore provide legal and coordination expertise on continuing basis and engage outside short term experts in specific areas when appropriate.

**Activity 2.2: Support FLA providers in adopting and implementing of the newly developed case-management, awareness and monitoring tools.**

Main task will be to ensure smooth testing and launching the use of newly developed case-management system (data-base) by the targeted FLA providers and this is crucial for establishing the new practice, better operational efficiency and increasing quantity and quality of FLA services particularly when addressing gender sensitive cases and requirements.

Furthermore, rising public awareness on FLA services should be continued through supporting development of legal and service related information web sites. For that purposes, the members of the FLA Network are expected to provide active contribution as direct beneficiaries; *tasks closely linked to the Activity 2.3 dedicated to supporting the work of the FLA Network.*

UNDP will provide technical, logistical and administrative expertise through Legal Experts and additional outside expertise in the area of IT and WEB design.

**Activity 2.3: Support cooperation and professional development of Free Legal Aid providers.**

FLA Network was established with support of the UNDP in January 2012, by the Agreement of Understanding signed between 11 governmental and non-governmental FLA providers. The Network presents the first coordinated channel for exchanging information and practices among FLA Providers and better serving the needs of citizens. As asked by all eleven members of the FLA network, UNDP should continue to support development and their work until development of state-level legislation and establishment of an effective coordination mechanism. Sustainability is fully ensured and will be incorporated within the new coordination structure as prescribed by the State Law.

The members found this approach highly useful for strengthening their development and expressed their interest to continue proactive engagement in terms of both, cooperation and training areas. To support these efforts, technical and administrative inputs will be planned for organisation of at least two FLA network meetings and at least one training in the targeted area.

#### **IV. MANAGEMENT ARRANGEMENTS**

Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Project will be implemented by UNDP BiH utilizing the Direct Implementation modality, under the overall coordination of the DRR and Justice and Security Sector Coordinator in line with UNDP's results-based management approach. UNDP BiH

will take full responsibility for the achievement of immediate objectives as well as for the administration of financial and human resources.

The management of allocated funds will be carried out in accordance with the UNDP Programme and Operations Policy and Procedures, based on a nine months work plan with a detailed budget. UNDP BiH will be responsible for managing and reporting back to donors on the resources allocated to the work plan. The management structure of the programme will be as follows:

### **Project Board**

In order to provide overall strategic guidance and oversight for the Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Project, a Project Board will be established and supplement project-specific boards. Its members will meet biannually to review the overall project work plan and provide guidance and assistance in resolution of any difficulties experienced during implementation. They will also be responsible for overseeing project reviews on an annual basis and at other designated decision points during the course of execution. Moreover, the Project Board will act as a coordination mechanism to ensure that Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Project initiatives (with their own respective governance structures) are harmonized and able to achieve the maximum level of complementarity and synergy. This body will present a unique opportunity to discuss various Rule of Law challenges and apply sustainable solutions with broad stakeholder support.

The Project Board will consist of the following roles:

- Executive, representing project ownership, and acting as chair of the board, in this case, the UNDP Resident Representative or Deputy Resident Representative;
- Senior Supplier, to provide services for implementation of the programme, in this case UNDP;
- Senior User, to ensure the realization of project benefits, in this case, representatives of the relevant institutional stakeholders as nominated by the BiH MoJ and HJPC.

Senior Partner Representatives may be included as *ex officio* members of the Project Board. These may include representatives of bilateral donors and other international and regional institutions with mandatory or project roles in the BiH justice sector. Senior Partner Representatives may also include those organizations entrusted with direct implementation of some project activities. Additional *ex officio* members may be added to guarantee representation of three constitutive BiH communities.

### **Project Assurance**

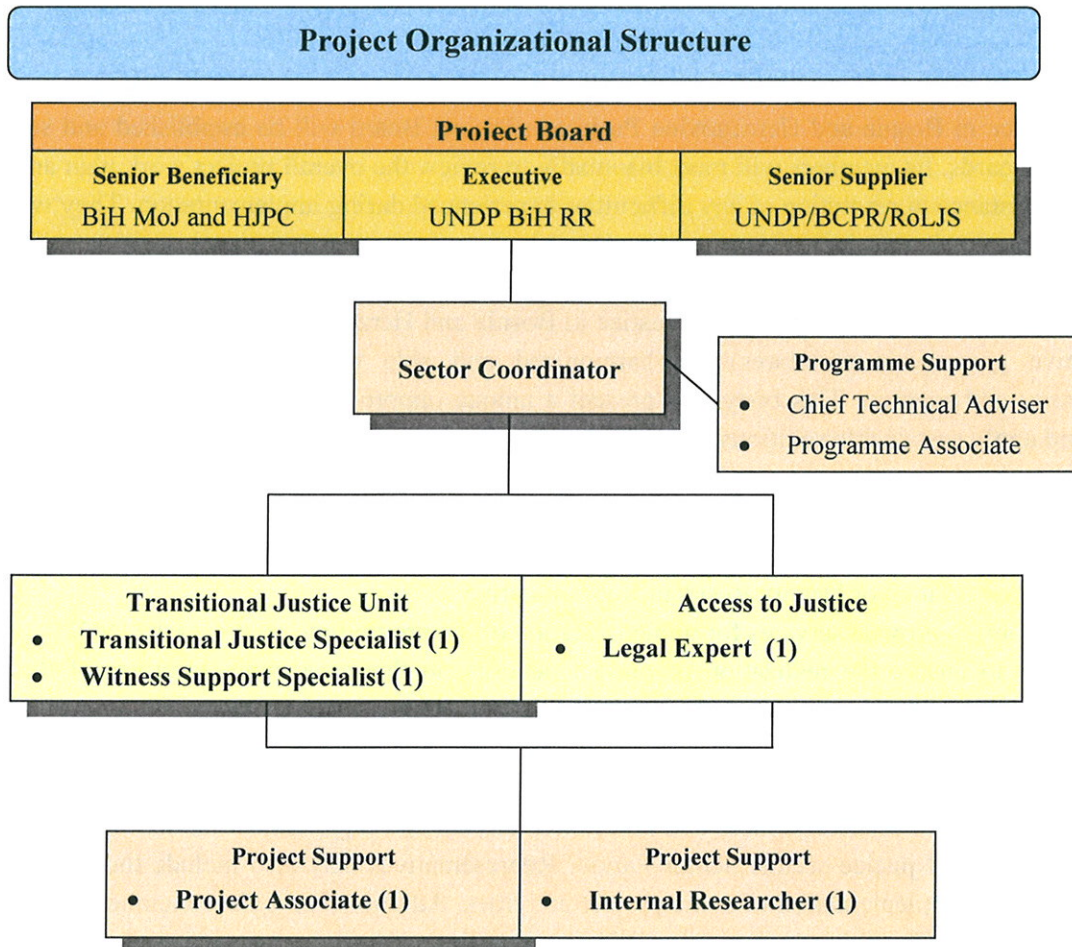
A Project Assurance role will support the Project Board by carrying out objective and independent project oversight and monitoring functions. This role will ensure appropriate project management milestones are designated and achieved.

### **Project Management**

In line with standard practice, the Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Project will be guided and supported from UNDP BiH and Justice and Human Security programme, headed by a Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Sector Coordinator. The Sector Coordinator will have the responsibility to oversee project implementation on a day-to-day basis on behalf of the Project Board. S/he will be responsible for day-to-day management and

will ensure that the project produces the results specified, to the required corporate standards and within the constraints of time and cost. The Sector Coordinator will coordinate the work of her/his own office as well as of the two units corresponding to two distinct project components: Transitional Justice Unit and Access to Justice Unit. S/he will coordinate with and report to the UNDP BiH DRR/ARR, and will consult with the Project Board.

A complete the Supporting the Rule of Law and Transitional Justice in Bosnia and Herzegovina Project organigram looks as follows:



## **V. MONITORING AND EVALUATION**

The UNDP Deputy Resident Representative and the Sector Coordinator will be in charge of overall project oversight, in close coordination with the Project Board. The Board will hold regular meetings to discuss the programme implementation and assess its progress. The Results and Resources Framework (RRF) incorporated into this document will be the touchstone for performance monitoring and reporting. Further monitoring will be performed on the basis of work plans prepared by discrete project teams, which will submit quarterly reports, enabling stakeholders to benchmark and assess progress on rollout of activities.

Monitoring and evaluation of the project will be ensured by the Project Management Unit following relevant UNDP results management guidelines. Implementing partners will be responsible for the direct monitoring of the respective programme components.

In more detail:

- UNDP's Project Management Unit will oversee the overall project monitoring in terms of activities quality, issues, risks, lessons learned, and finances. Respective logs will be maintained and quarterly progress reports will be produced.
- Implementing partners will be responsible for the monitoring of their respective components and will present quarterly progress reports to UNDP.

### **Final Review Report**

The production of the Final Review Report will be conducted with the assistance of external evaluator / agency. The reporting will involve all stakeholders and implementing partners, to assess the achievement of expected outputs and alignment with appropriate outcomes. The review will serve to assess project performance and thus allow corrective and/or follow-up action to ensure all outputs and desired achievements are met, the timing of which depends on the project duration beyond 2013.

## **VI. ANNEXES**

**ANNEX 1: RRF**

**ANNEX 2: RISK ANALYSIS**

**ANNEX 3: AWP**

