



## **Looking for Justice**

### **The War Crimes Chamber in Bosnia and Herzegovina**

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## I. Introduction

The armed conflict in Bosnia and Herzegovina,<sup>1</sup> which lasted from 1992 to 1995, was characterized by grave violations of human rights including mass killings, rapes, widespread destruction, and displacement of the population. Accountability for such heinous crimes in the form of fair and effective trials of perpetrators is critical to ensure justice and build respect for the rule of law in Bosnia. To that end, the United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) to address the widespread impunity resulting from the conflicts in the Balkans.<sup>2</sup> To date, the ICTY has been relatively successful in trying individuals for the atrocities committed in the former Yugoslavia,<sup>3</sup> including Bosnia. However, by the end of its mandate, it will have prosecuted only a small number of top-level perpetrators of war crimes.<sup>4</sup>

To continue with efforts to combat impunity, the War Crimes Chamber was established in Bosnia to bring justice for the most serious war crimes committed during the conflict. The War Crimes Chamber (WCC), which officially began operations in Sarajevo on March 9, 2005, represents a joint initiative of the ICTY and the Office of the High Representative (OHR).<sup>5</sup> In addition to a limited number of cases referred to it by the ICTY, the mandate of the WCC includes trying cases initiated locally. The WCC, together with the Organized Crime and General Crime Chambers, operates within the Criminal Division of the State Court of Bosnia.

The concept underlying the WCC initiative is that accountability for gross violations of human rights that took place during the conflict ultimately remains the responsibility of

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<sup>1</sup> Hereinafter Bosnia.

<sup>2</sup> United Nations Security Council, Resolution 827 (1993), S/Res/827.

<sup>3</sup> Human Rights Watch, "Real Progress in the Hague," March 29, 2005 [online], <http://hrw.org/english/docs/2005/03/29/serbia10386.htm> (retrieved October 31, 2005). To date, proceedings against eighty-eight persons have been concluded before the ICTY. Six indicted persons remain at large. See "Judges in Milosevic case decide on future shape of trial," JP/MO/1036e, December 13, 2005 [online], <http://www.un.org/icty/pressreal/2005/p1036-e.htm> (retrieved December 19, 2005).

<sup>4</sup> For the purpose of this document, the term "war crimes" refers to violations of international humanitarian law committed during the armed conflict, including genocide, crimes against humanity and war crimes.

<sup>5</sup> See "Security Council briefed on establishment of War Crimes Chamber within State Court of Bosnia and Herzegovina," SC/7888, October 8, 2003 [online], <http://www.un.org/Mews/Press/docs/2003/sc7888.doc.htm> (retrieved October 31, 2005).

the people of Bosnia.<sup>6</sup> Thus, although it presently contains a significant international component, the WCC is essentially a domestic institution operating under national law. There is an aggressive transition strategy for the phasing out of international involvement within a short timeframe. The WCC therefore represents the latest model of an internationalized justice mechanism entrenched in a domestic legal system (other examples include the Regulation 64 panels in Kosovo and the Special Panels for Serious Crimes in East Timor). Like other such justice mechanisms, the WCC operates on a relatively small budget—it currently functions on approximately 6 percent of the funds considered essential for the operation of the ICTY.<sup>7</sup>

The WCC, because of its placement within the domestic justice system and its strong commitment to taking ownership over the accountability process, offers tremendous potential to make an impact on the rebuilding of the rule of law in Bosnia. Its location in Sarajevo makes the WCC more accessible to the local population than the ICTY. Further, the WCC cases may resonate more profoundly with victims in Bosnia: unlike the cases directed at more senior officials at the ICTY, the proceedings before the WCC will involve alleged mid- and low-level perpetrators who may have directly participated in the crimes committed during the conflict. In addition, international involvement at the initial stages of the WCC's development can contribute significantly to enhancing the short- and long-term capacity of professionals and institutions in Bosnia to conduct fair and effective war crimes trials.

As the WCC is still in the early stages of conducting trials, this report offers an overview of the key organs whose effective functioning is essential to ensure the WCC's success. In particular, the following areas are discussed: 1) the Special Department for War Crimes within the Office of the Prosecutor of the State Court; 2) the Criminal Defense Support Section; 3) the Witness and Victim Support Section; and 4) the Public Information and Outreach Section. Within each section, we outline the strengths and accomplishments of the WCC. We also highlight particular areas of concern, and make recommendations about where we believe the WCC can improve operations. There are recommendations that require increased donor funding for their implementation, which are noted throughout the report. Some recommendations, however, can be implemented by others, including officials in the Government of Bosnia and the WCC. A consolidated list of recommendations is presented at the end of the report.

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<sup>6</sup> Office of the High Representative, "War Crimes Chamber Project: Project Implementation Plan - Registry Progress Report," October 20, 2004 [online], <http://www.ohr.int/ohr-dept/rule-of-law-pillar/pdf/wcc-project-plan-201004-eng.pdf> (retrieved September 11, 2005), p. 4.

<sup>7</sup> Human Rights Watch telephone interview with Michael Johnson, Registrar of the State Court, New Hampshire, October 5, 2005.

The report is primarily based on a mission Human Rights Watch conducted in Sarajevo in September 2005. During the mission we interviewed various officials in those organs related to the effective functioning of the WCC including: the Special Department for War Crimes of the Office of the Prosecutor, the Criminal Defense Support Section, the Public Information and Outreach Section, the Witness Protection Support Unit, the Witness Support Section, the judiciary, the Court Management Section, the Detention Section and the Registry. We also met with officials of the Organization for Security and Co-operation in Europe (OSCE) and members of local civil society. During the period from October 2005 to January 2006, we conducted a number of interviews in person and by telephone, and received substantial material from officials via e-mail. Many of the individuals we interviewed wished to speak candidly, but did not wish to be cited by name, so we have used generic terms where appropriate to protect the identity of these sources.

As noted above, the WCC represents a unique and valuable opportunity to hold perpetrators accountable for war crimes and build respect for the rule of law in Bosnia. The WCC and its related institutions have already made notable progress in their establishment. However, the real challenge of conducting fair and effective trials lies ahead. Meeting this challenge will require sustained and considerable support as trials commence. Human Rights Watch believes that the Government of Bosnia, as well as the international community as a whole, must provide the WCC and its institutions with the necessary assistance to ensure its success. To that end, Human Rights Watch plans to monitor the WCC's progress and issue follow-up reports accordingly.

## II. Background to the Establishment and Mandate of the War Crimes Chamber

Pursuant to the Dayton Peace Agreement, the State of Bosnia was divided into two Entities: the Federation of Bosnia and Herzegovina and the Republic of Srpska.<sup>8</sup> In addition to the Entities, the Brcko District was established in 2000 as a single administrative unit of local self-government under the sovereignty of Bosnia. The respective Entities and the Brcko District are organized separately. The Federation of Bosnia and Herzegovina consists of a number of cantons. Within each canton, there are municipal and cantonal courts that try less and more serious offenses, respectively. The Republic of Srpska consists of a number of administrative districts. As in the Federation, there are a number of municipal courts that exercise jurisdiction over less serious offenses, while the district courts try more serious offenses. In the Brcko District, the Basic Court handles serious offenses.

The proper functioning of the justice system in Bosnia during and immediately after the conflict was severely impaired for a number of reasons. The loss of skilled members of the legal profession and the judiciary throughout Bosnia, coupled with the physical destruction and lack of proper equipment or facilities, hindered the ability of the courts to administer justice effectively.<sup>9</sup> The situation was compounded by complexities in the legal framework and inappropriate procedural laws.<sup>10</sup> Other obstacles included bias of judges and prosecutors, poor case preparation by prosecutors, and ineffective witness protection mechanisms.<sup>11</sup> Because of these grave deficiencies, the justice system has had a limited impact on putting an end to the widespread impunity in Bosnia for war crimes.

In this context, the War Crimes Chamber (WCC) was established in early 2005. The creation of the WCC was considered necessary to enable effective war crimes

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<sup>8</sup> The General Framework Agreement for Peace in Bosnia and Herzegovina (also known as the Dayton Peace Agreement), signed December 14, 1995 [online], [http://www.ohr.int/dpa/default.asp?content\\_id=379](http://www.ohr.int/dpa/default.asp?content_id=379) (retrieved September 19, 2005). The Dayton Peace Agreement ended the war in Bosnia.

<sup>9</sup> Organization for Security and Co-operation in Europe – Mission to Bosnia and Herzegovina, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles,” March 2005, p. 4 [hereinafter “OSCE War Crimes Report”].

<sup>10</sup> *Ibid.*

<sup>11</sup> Human Rights Watch, “Justice at Risk: War Crimes Trials in Croatia, Bosnia and Herzegovina, and Serbia and Montenegro,” *A Human Rights Watch Report*, vol. 16, no. 7(D), October 2004.

prosecutions in Bosnia.<sup>12</sup> The creation of the WCC was part of an overhaul of the national justice system by the High Representative.<sup>13</sup> This overhaul included numerous reforms of Bosnian criminal law, among them the introduction in 2003 of the state-level criminal and criminal procedure codes, the former of which established the State Court's jurisdiction over war crimes.<sup>14</sup> As part of the State Court, the WCC exercises supreme jurisdiction over the most serious war crimes cases in Bosnia, while the cantonal and district courts can handle other war crimes cases.

The jurisdiction of the WCC consists of several components. First, the WCC will try those lower- to mid-level perpetrators' cases referred to it by the ICTY pursuant to Rule 11 *bis* of the ICTY Rules of Procedure and Evidence.<sup>15</sup> The WCC therefore represents an important component of the completion strategy of the ICTY.<sup>16</sup> In addition to the Rule 11 *bis* cases, the WCC will be responsible for those cases submitted to it by the Office of the Prosecutor (OTP) of the ICTY where investigations have not been completed. This will involve the review of approximately twenty-eight cases.<sup>17</sup>

As a mark of the progress made by the WCC in its establishment phase, the ICTY Appeals Chamber referred the first-ever case to it on September 1, 2005. In doing so, it confirmed that the WCC was fully capable of providing the accused, Radovan Stankovic,

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<sup>12</sup> See "Joint Preliminary Conclusions of OHR and ICTY Experts Conference on Scope of BiH War Crimes Prosecutions," January 15, 2003 [online], <http://www.un.org/icty/pressreal/2003/p723-e.htm> (retrieved November 15, 2005).

<sup>13</sup> The position of High Representative was created under the Dayton Peace Agreement to oversee implementation of the civilian aspects of the Peace Agreement. The mission of the High Representative is to work with the people of Bosnia and the international community to ensure that Bosnia is a peaceful, viable state on course to European integration. For more information, see [www.o-hr.int](http://www.o-hr.int).

<sup>14</sup> OSCE War Crimes Report, p. 9.

<sup>15</sup> Law on the Transfer of Cases from the ICTY to the Prosecutor's Office of Bosnia and Herzegovina and the Use of Evidence Collected by the ICTY in Proceedings Before the Courts in Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 61/04, art. 2 [hereinafter "Law on the Transfer of Cases"]; and Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia, IT/32/Rev. 36, July 21, 2005, Rule 11 *bis* [hereinafter "Rules of Procedure and Evidence"]. This provision of the Rules of Procedure and Evidence allows the ICTY to refer a case to national authorities with jurisdiction after the confirmation of an indictment but before the commencement of the trial.

<sup>16</sup> The strategy of transferring cases involving intermediate- and lower-level defendants to competent national jurisdictions was endorsed by the United Nations Security Council as part of the ICTY's completion strategy. See United Nations Security Council, Statement by the President of the Security Council, July 23, 2002 [online], <http://daccessdds.un.org/doc/UNDOC/GEN/N02/491/47/PDF/N0249147.pdf?OpenElement> (retrieved November 15, 2005). See also United Nations Security Council, Resolution 1503 (2003), S/Res/1503.

<sup>17</sup> Registry for Section I for War Crimes & Section II for Organized Crime, Economic Crime and Corruption of the Criminal and Appellate Divisions of the Court of Bosnia and Herzegovina and the Special Department for War Crimes and the Special Department for Organized Crime, Economic Crime and Corruption of the Prosecutor's Office of Bosnia and Herzegovina, and Ministry of Justice Prison Project, "Project Implementation Plan Progress Report," October 2005 [online], <http://www.registrarbih.gov.ba> (retrieved November 7, 2005), p. 50 [hereinafter "Progress Report"].

with a fair trial.<sup>18</sup> In accordance with that decision, Mr. Stankovic was physically transferred to Bosnia on September 29, 2005, to stand trial before the WCC for charges of crimes against humanity, including enslavement and rape. The ICTY has since referred the case of another accused, Gojko Jankovic, to the WCC,<sup>19</sup> and additional ICTY referrals to the WCC are expected.<sup>20</sup>

The WCC also has jurisdiction over “Rules of the Road” cases. The “Rules of the Road” procedure was first established in response to the widespread fear of arbitrary arrest and detention immediately after the conflict in Bosnia. Under this procedure, the relevant authorities in Bosnia were required to submit every war crimes case proposed for prosecution in Bosnia to the OTP of the ICTY to determine whether the evidence was sufficient by international standards before proceeding to arrest. This process of review reduced incidents of arbitrary arrest in Bosnia. The ICTY ceased reviewing cases on October 1, 2004, and the review function was subsequently assumed by the Special Department for War Crimes within the Office of the Prosecutor of the State Court.<sup>21</sup>

The “Rules of the Road” cases are handled in two ways. Where the case has not yet led to a confirmed indictment, the case must be reported to the Special Department for War Crimes.<sup>22</sup> The prosecutor in the Special Department for War Crimes will then decide whether the case is “highly sensitive.”<sup>23</sup> If so, the case will be taken up by the Special Department for War Crimes to be tried before the WCC (if not, the case is returned to the cantonal or district court with jurisdiction). If, however, the indictment has been confirmed, the Special Department for War Crimes does not get involved,<sup>24</sup> and the case remains with the relevant cantonal or district court to complete the proceedings.<sup>25</sup>

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<sup>18</sup> Prosecutor v. Radovan Stankovic, International Criminal Tribunal for the former Yugoslavia, Case No.: IT-96-23/2-AR11 bis.1, Decision on Rule 11 *bis* Referral, (Appeals Chamber), September 1, 2005, para. 30.

<sup>19</sup> Prosecutor v. Gojko Jankovic, International Criminal Tribunal for the former Yugoslavia, Case No.: IT-96-23/2-AR11bis.2, Decision on Rule 11 *bis* Referrals, (Appeals Chamber), November 15, 2005.

<sup>20</sup> Progress Report, pp. 20-21.

<sup>21</sup> Book of Rules on the Review of War Crimes Cases, KTA-RZ 47/04-1, December 28, 2004, art. 2 [hereinafter “Book of Rules”]. See also Rome Agreement, signed February 18, 1996 [online], [http://www.ohr.int/ohr-dept/hr-rol/thedept/war-crime-tr/default.asp?content\\_id=6093](http://www.ohr.int/ohr-dept/hr-rol/thedept/war-crime-tr/default.asp?content_id=6093) (retrieved December 16, 2005).

<sup>22</sup> Book of Rules, art. 6.

<sup>23</sup> Orientation Criteria for Sensitive Rules of the Road Cases (Annex to the Book of Rules on the Review of War Crimes Cases), A-441/04, October 12, 2004, art. 2. For example, a case against an alleged camp commander involved in the torture of civilians during the conflict could be considered “highly sensitive.” More details of this procedure of review are highlighted in the next section of the report.

<sup>24</sup> Book of Rules, art. 6(2).

<sup>25</sup> It may be possible for the State Court to assume jurisdiction pursuant to art. 449(2) of the Criminal Procedure Code where the indictment was confirmed after March 1, 2003. See Prosecutor v. Nedo Samaradzic, Court of Bosnia and Herzegovina, Section I for War Crimes, Case No. X-KRN/05/46, (Trial Chamber), August 31, 2005 (copy on file with Human Rights Watch).

The significant international presence currently within the WCC and those institutions involved with it includes international judges and prosecutors, defense counsel, experts in witness protection and support, as well as other officials engaged in providing substantive and administrative support. The inclusion of international professionals is intended to ensure that recognized fair trial standards are met in the work of the WCC.<sup>26</sup> The goal is to build on the existing expertise of local professionals within the justice sector to ensure a sustainable domestic capacity to address war crimes cases after international involvement has ceased<sup>27</sup> (a transition that the WCC aims to complete by 2009).<sup>28</sup>

The WCC has both trial and appeals chambers. There are presently five judicial panels allocated to the WCC.<sup>29</sup> Panels are comprised of two international judges and one local judge, who is the presiding judge of the panel.<sup>30</sup> According to the transition strategy of the WCC, between August 2006 and December 2007 the configuration of the judicial panels will shift to two national judges and one international judge. By the end of 2009, it is anticipated that there will no longer be any international judges within the WCC.<sup>31</sup>

In terms of physical capacity, it is anticipated that by early 2006 there will be six large courtrooms available for trials.<sup>32</sup> Once all courtrooms are operational, it is expected that the State Court will have the capacity to run approximately twelve trials simultaneously in both the War Crimes and the Organized Crime Chambers.<sup>33</sup> This additional courtroom capacity is necessary in light of the projected increase in the number of trials in 2006.

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<sup>26</sup> Progress Report, p. 15. There are also a number of international judges and prosecutors within the Organized Crime Chamber of the State Court.

<sup>27</sup> See "Declaration by the PIC [Peace Implementation Council] Steering Board," June 12, 2003 [online], [www.ohr.int](http://www.ohr.int) (retrieved November 15, 2005).

<sup>28</sup> *Ibid.*, p. 17.

<sup>29</sup> Court staff e-mail communication to Human Rights Watch, Sarejevo, December 1, 2005.

<sup>30</sup> Balkan Investigative Reporting Network, *Balkan Insight*, "Address by Meddzida Kreso, President of the Court of Bosnia and Herzegovina," November 15, 2005 [online], [http://www.birn.eu.com/insight\\_08\\_3\\_eng.php](http://www.birn.eu.com/insight_08_3_eng.php) (retrieved November 15, 2005) [hereinafter "Address by the President of the Court of Bosnia"].

<sup>31</sup> Progress Report, pp. 17-18.

<sup>32</sup> Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005.

<sup>33</sup> Address by the President of the Court of Bosnia; Progress Report, p. 43.

### III. The Office of the Prosecutor

#### A. Overview of the Special Department for War Crimes

As part of the War Crimes Chamber Project, the Office of the Prosecutor (OTP) of the State Court includes a Special Department for War Crimes.<sup>34</sup> Within the Special Department for War Crimes, there are five regional prosecution teams, and a sixth team to address allegations arising from the Srebrenica massacre.<sup>35</sup> All prosecution teams are based in Sarajevo.

There are five international prosecutors and one international acting prosecutor, as well as eight local prosecutors, including the deputy prosecutor.<sup>36</sup> There is one international and one local prosecutor assigned to each team, with the exception of the Sarajevo team (dealing with the current Rule 11 *bis* cases), which has one international and three local prosecutors.<sup>37</sup> Each team is headed by a local prosecutor.<sup>38</sup> Administrative, logistical and operational support is provided to these teams by the Prosecution Support Section.<sup>39</sup> According to the transition strategy, the majority of international prosecutors will be gradually phased out of the Special Department for War Crimes between August 2006 and December 2007.<sup>40</sup>

As outlined above, the WCC has jurisdiction over referrals from the ICTY under Rule 11 *bis* of the Rules of Procedure and Evidence. In those cases, the indictment has already been confirmed by the ICTY. Upon referral, in order to proceed, the indictment has to be “adapted” by the prosecutor in the Special Department for War Crimes to ensure compliance with Bosnian law.<sup>41</sup> While there is no authority to remove charges

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<sup>34</sup> Law on the Amendments to the Law on the Prosecutor's Office of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 61/04, art 1. The OTP is an independent institution. Accordingly, the Special Department for War Crimes operates independently of the War Crimes Chamber of the State Court.

<sup>35</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 28, 2005; Progress Report, p. 49.

<sup>36</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 28, 2005. The chief prosecutor of the State Court is not assigned to a specific team. Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, January 19, 2006.

<sup>37</sup> *Ibid.*

<sup>38</sup> Human Rights Watch telephone interview with former Special Department for War Crimes staff, October 18, 2005; Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 28, 2005. In practice, this authority is shared.

<sup>39</sup> Progress Report, p. 49.

<sup>40</sup> *Ibid.*, pp. 17-18.

<sup>41</sup> The Law on the Transfer of Cases, art. 2(1).

from the indictment, it is possible to add charges.<sup>42</sup> The WCC confirms the indictment in relation to the additional charges.<sup>43</sup> The time provided for this procedure is not specified by law and so proceeds on a case-by-case basis. In the Stankovic case, the WCC provided the prosecutor with an initial forty-day period to adapt the indictment, which was extended by fifteen days.<sup>44</sup>

As part of the referral procedure, the ICTY maintains the jurisdiction to rescind the order for referral before conviction or acquittal of the defendant if there are concerns regarding the conduct of the trial in Bosnia.<sup>45</sup> This may include concerns with respect to the demonstrated willingness of the authorities to diligently prosecute such cases, or their ability to conduct fair trials.<sup>46</sup> The ICTY's residual discretion to revoke referral of cases therefore provides an additional incentive to handle these cases fairly and effectively, and makes each case a test of the capacity of the WCC.

As noted above, the WCC also has jurisdiction over those "Rules of the Road" cases which are considered "highly sensitive." This includes all cases passed to the WCC by the ICTY Rules of the Road Unit prior to its closure on October 1, 2004, and all cases involving war crimes allegations initiated locally after that date. With respect to those cases referred by the ICTY, the first stage of the selection process involved review by the prosecutors of the Special Department for War Crimes of all cases given a standard marking "A" (meaning there is sufficient evidence to proceed) by the ICTY Rules of the Road Unit. These cases were substantively and procedurally reviewed in accordance with the Orientation Criteria for Sensitive Rules of the Road Cases and the Book of Rules on the Review of War Crimes Cases, respectively, to determine which cases should be considered "highly sensitive."<sup>47</sup> As of October 2005, of the cases passed by the ICTY Rules of the Road Unit, 202 "highly sensitive" cases have been identified to go forward before the WCC.<sup>48</sup>

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<sup>42</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005.

<sup>43</sup> Law on the Transfer of Cases, art. 2(2).

<sup>44</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 28, 2005.

<sup>45</sup> Rules of Procedure and Evidence, Rule 11 *bis* (F). The ICTY Chief Prosecutor has entered into an agreement with the OSCE pursuant to her authority under Rule 11 *bis* (D)(iv) of the Rules of Procedure and Evidence to monitor the Rule 11 *bis* trials in Bosnia. This agreement was concluded on May 19, 2005. For more details on the agreement, see [http://www.osce.org/documents/pdf\\_documents/2005/05/14401-1.pdf](http://www.osce.org/documents/pdf_documents/2005/05/14401-1.pdf).

<sup>46</sup> Prosecutor v. Radovan Stankovic, International Criminal Tribunal for the former Yugoslavia, Case No.: IT-96-23/2-PT, Decision on Referral of Case Under Rule 11 *bis*, (Trial Chamber), May 17, 2005, para. 93.

<sup>47</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005. The criteria and procedure for review also apply to those cases initiated locally after October 1, 2004.

<sup>48</sup> Progress Report, p. 49.

However, not all of these cases will proceed to trial. A number of category “A” cases were initiated during the war, at a time when there was limited investigation capacity. Accordingly, the designation of these cases as category “A” by ICTY officials was based on a preliminary assessment of probable cause.<sup>49</sup> The prosecutors in the Special Department for War Crimes must now assess and, where possible, conduct supplementary investigations in these cases to determine whether it is possible to proceed to prosecution.<sup>50</sup> This process may be complicated by difficulties in finding witnesses who may have relocated since the war and, in some cases, by deliberate evasion by defendants to avoid apprehension.<sup>51</sup> (This is discussed briefly below, in part D.2 of this section, on regional cooperation.)

## ***B. Progress towards effective prosecutions***

Although only recently established, considerable progress has been made in building a solid foundation within the Special Department for War Crimes to conduct effective prosecutions. The current arrangement of international and local prosecutors on each team is viewed as a good method for local legal professionals to increase their knowledge about the applicability of international instruments, such as the European Convention on Human Rights, to ensure compliance with international standards.<sup>52</sup> The role of international staff in contributing to the capacity of local legal professionals is especially important in light of the breadth and complexity of war crimes cases, coupled with the recent reform of the Bosnian Criminal Procedure Code that has made the criminal justice system in Bosnia more adversarial.<sup>53</sup>

The Prosecution Support Section conveyed to Human Rights Watch its commitment to providing essential training to both local and international prosecution personnel.<sup>54</sup> There have been a number of training sessions for personnel on relevant topics, such as International Humanitarian Law, the Geneva Conventions, Human Rights and Trial Advocacy. Additional training sessions have been planned on War Crimes Investigations, Bosnian Legal and Political Structures, Information Technology and the Media. There are also plans to follow up on the Human Rights and Trial Advocacy

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<sup>49</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005. A determination of probable cause means that there is a substantial possibility that an individual has committed a crime. However, this does not mean that there is enough evidence to secure a conviction.

<sup>50</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005.

<sup>51</sup> OSCE War Crimes Report, p. 13; Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005.

<sup>52</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 27, 2005.

<sup>53</sup> For example, under the previous system, the investigative phase of the proceeding was conducted by an investigating judge. The investigative phase is now conducted by the prosecutor and the police.

<sup>54</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 28, 2005.

training.<sup>55</sup> Human Rights Watch welcomes these initiatives aimed at enhancing the capacity of local professionals. Promoting the capacity of local prosecutors to handle war crimes cases through formal training is a necessary component in ensuring effective war crimes prosecutions long after international staff has been phased out.

Despite the considerable progress made in creating a solid foundation to conduct prosecutions, Human Rights Watch is concerned, however, that there are significant resources shortages that may hinder the overall ability of the Special Department for War Crimes to conduct prosecutions effectively. These concerns are addressed in more detail below.

### **C. Resource shortages**

#### **1. Prosecutors**

As noted above, the existing caseload of the Special Department for War Crimes includes the 202 “highly sensitive” cases<sup>56</sup> and the two Rule 11 *bis* cases already referred by the ICTY. In addition, it includes those cases involving new war crimes allegations initiated locally that must be investigated and prepared for prosecution. Current and former officials in the Special Department for War Crimes have expressed concern to Human Rights Watch about the ability to adequately address this caseload in light of existing staffing levels (i.e. the five international prosecutors, one international acting prosecutor, and eight local prosecutors—see above).<sup>57</sup>

The recently-released report on the Srebrenica massacre lists the names of more than seventeen thousand Bosnia Serb soldiers, police officers and officials involved in the killings.<sup>58</sup> While it is likely that only a small number of these cases will fall under the WCC’s jurisdiction, Human Rights Watch is concerned that, since resources are already extended to address the existing caseload, the Special Department for War Crimes will be unable to prosecute any additional cases.

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<sup>55</sup> Progress Report, p. 51.

<sup>56</sup> This number may include those of the twenty-eight cases mentioned in section II that are ready for prosecution.

<sup>57</sup> Human Rights Watch telephone interview with former Special Department for War Crimes staff, October 18, 2005; Special Department for War Crimes staff e-mail communications to Human Rights Watch, Sarajevo, October 21, and November 14, 2005; Human Rights Watch telephone interview with Joanna Korner, former staff member of both the Special Department for War Crimes and the OTP of the ICTY, London, December 7, 2005. At this early stage, it is unclear how many of the defendants will be located in order to proceed to trial. However, there is still a considerable amount of time spent in the preparation and investigation of cases before a decision can be made to proceed to trial.

<sup>58</sup> Nicholas Wood, “More Prosecutions Likely to Stem from New Srebrenica Report,” New York Times, October 6, 2005.

Further, if additional cases arise and a decision is made to go forward without any increase in resources, existing cases may suffer. At the very least, an increase in cases with no accompanying increase over the current prosecutorial resources could lengthen the delay before the cases go to trial.<sup>59</sup> Extensive delays before commencing prosecution in cases where there are aging victims and witnesses could detrimentally affect the extent and quality of evidence available for trial. Further, the longer the delay before trial, the greater the risk of witnesses being unable to recall important facts when providing testimony.

Prosecuting existing cases efficiently and expeditiously is all the more important given that under Bosnian law, the maximum period of detention for an accused person after the confirmation of the indictment is one year, which cannot be extended.<sup>60</sup> The initial trials may already be slowed by novel legal issues. If proceedings are further slowed by limited prosecutorial resources, resulting in a trial taking longer than one year to complete, a defendant could be released from custody in a highly sensitive war crimes case before the trial is over.

Notwithstanding the WCC transition strategy that foresees the majority of international prosecutors phased out by the end of 2007, Human Rights Watch has been informed that efforts are underway to recruit additional international prosecutors to tackle the immediate caseload.<sup>61</sup> We encourage these efforts, and urge the Registry to ensure that these positions are adequately funded to attract and retain qualified prosecutors in the Special Department for War Crimes. In the event that there are a significant number of additional cases that arise, either flowing from the Srebrenica report mentioned above or otherwise, the Registry should make additional budget allocations to recruit more international and local prosecutors as necessary. We urge the donor community to fund these allocations accordingly.

## ***2. Investigators***

Competent investigation during all stages of case preparation and proceedings is crucial to ensure effective prosecutions, particularly in complex war crimes cases. Investigators can assist prosecutors in refining suspect lists, pursuing leads, interviewing potential witnesses, and establishing the context in which the crimes were committed. Under

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<sup>59</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 14, 2005.

<sup>60</sup> Code of Criminal Procedure of the Court of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 3/03/ 32/03/ 36/03, 26/04, 63/04, 13/05, art. 137 [hereinafter "Criminal Procedure Code"].

<sup>61</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 28, 2005.

Bosnian law, prosecutors are entitled to direct the activities of “authorized officials,” primarily law enforcement authorities, in conducting investigations.<sup>62</sup> Correspondingly, Bosnian law provides that only “authorized officials” can undertake vital investigative actions to assist the prosecutor, such as search warrant execution.<sup>63</sup>

In the Special Department for War Crimes, each prosecution team has been allocated one professional tasked with drawing up an investigative plan that outlines what actions are required in each of the team’s cases.<sup>64</sup> However, as these professionals are not considered “authorized officials,” they cannot carry out the investigative actions they recommend, so they must liaise with other law enforcement authorities to execute their requests.<sup>65</sup> The key body with the authority to conduct investigations is the War Crimes Unit of the Bosnian State Investigation and Protection Agency (SIPA).

As a local law enforcement agency devoted exclusively to war crimes investigations, the SIPA War Crimes Unit (WCU) has the potential to provide substantial assistance to the Special Department for War Crimes, as well as to prosecutors at the district and cantonal levels, on a long-term and sustainable basis. The Special Department for War Crimes and the WCU of SIPA signed a Memorandum of Understanding (MOU) regulating the terms of cooperation on October 12, 2005.<sup>66</sup> Pursuant to the MOU, the Special Department for War Crimes would be assigned a number of WCU investigators exclusively for its investigations. The WCU investigators would be provided with the requisite space and equipment by the Special Department for War Crimes. The assignment of these officers to the Special Department for War Crimes does not, however, preclude assistance by other officers in the WCU.<sup>67</sup> There are currently seven WCU officers assigned to the Special Department for War Crimes, one for each regional team and two for the Srebrenica team.<sup>68</sup>

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<sup>62</sup> Criminal Procedure Code, arts. 20(g) and 35(2).

<sup>63</sup> Criminal Procedure Code, arts. 60 and 61.

<sup>64</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>65</sup> *Ibid.* There is currently an initiative to amend Bosnian law to include these professionals amongst those “authorized official persons” with the power to formally conduct investigations. This could improve the investigative ability of prosecutors in the Special Department for War Crimes to a limited extent. However, at this writing, the amendment had not been approved.

<sup>66</sup> See “Memorandum of Understanding between the State Investigation and Protection Agency and the Prosecutor’s Office of Bosnia and Herzegovina concerning the cooperation in the area of criminal investigations of violations of international humanitarian law,” signed October 12, 2005 (copy on file with Human Rights Watch).

<sup>67</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, November 28, 2005.

<sup>68</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

However, the existing staffing shortage undermines the WCU's ability to conduct effective investigations: at present the WCU is operating at only 50 percent of its projected capacity.<sup>69</sup> A principal factor behind the current staffing shortage appears to be that under the existing recruitment strategy, WCU officers must possess a university degree and at least three years of relevant work experience. These criteria are considerably stricter than those for police officers at the entity level (which is understandable given the sensitive cases at issue), but WCU officers are not paid at a higher rate than police officers. There is therefore little motivation to join the WCU, particularly in light of the increased level of difficulty and possible dangers associated with investigating war crimes cases.<sup>70</sup>

The WCU also suffers from a severe shortage of equipment. For instance, the WCU does not have its own dedicated secure fax machine.<sup>71</sup> As of late September 2005, the WCU had been allocated only one vehicle for the entire unit to conduct investigations, which is not sufficient in light of the number of cases that require investigation by WCU staff. Field visits must therefore be conducted by borrowing other official cars or using private vehicles.<sup>72</sup> The European Union Police Mission has loaned its cars to the WCU whenever possible, but its resources are also limited.<sup>73</sup>

Human Rights Watch welcomes the MOU between the Special Department for War Crimes and the WCU of SIPA mentioned above, and encourages its rapid and complete implementation to solidify cooperation between the WCU and prosecutors in the Special Department for War Crimes. Close cooperation between investigators and prosecutors builds a relationship of trust in conducting complex and lengthy investigations, which encourages the sharing of information and improves the quality of investigations in sensitive war crimes cases.

The fact remains, however, that the WCU is alarmingly understaffed and under funded. Assigning seven WCU investigators to provide assistance to the Special Department for War Crimes, while an important first step, will only have a limited impact in light of the number of cases that require investigation. Moreover, the WCU must provide investigative assistance to the district and cantonal prosecutors,<sup>74</sup> and this cannot be

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<sup>69</sup> Human Rights Watch telephone interview with SIPA official, Sarajevo, November 30, 2005.

<sup>70</sup> Human Rights Watch interview with SIPA official, Sarajevo, September 27, 2005.

<sup>71</sup> Human Rights Watch telephone interview with SIPA official, Sarajevo, November 30, 2005.

<sup>72</sup> Human Rights Watch interview with SIPA official, Sarajevo, September 27, 2005.

<sup>73</sup> Human Rights Watch telephone interview with SIPA official, Sarajevo, November 30, 2005.

<sup>74</sup> As of late September 2005, the SIPA WCU had received a total of twenty-three requests from cantonal and district court prosecutors. Human Rights Watch interview with SIPA official, Sarajevo, September 27, 2005.

done effectively under the existing resource constraints. The Bosnian authorities should therefore allocate additional resources to the WCU of SIPA so that it has the essential resources to conduct adequate investigations. This increase should extend to both staffing and material resources. In terms of staffing, the Bosnian authorities should increase the salaries of all WCU officers to ensure the remaining vacant posts are filled immediately with qualified applicants. In the event additional financial assistance is required to make this allocation, Human Rights Watch urges international donors to provide the necessary funds.

### 3. Translation

The official languages of proceedings before the War Crimes Chamber are Bosnian, Croatian and Serbian (BCS).<sup>75</sup> However, international judges and prosecutors are authorized to use the English language in any of the court proceedings.<sup>76</sup> Further, many of the materials provided by the ICTY in cases other than the Rule 11 *bis* cases require translation. Consequently, in addition to facilitating verbal communication between the local and international prosecutors inside and outside of court proceedings, adequate translation capacity is essential to ensure timely translation of materials into both BCS and English.

There are currently seven language assistants allocated to the Special Department for War Crimes—one language assistant assigned to each prosecution team, and one “floater” who provides additional assistance as required.<sup>77</sup> The prosecution teams also have access to the Language Unit within the Registry, which had thirty-one language assistants as of October 2005.<sup>78</sup> However, these language assistants also provide translation for the Organized Crime Chamber and all court proceedings, which require a minimum of two translators per trial each day.<sup>79</sup> The available assistance of this unit to the prosecution teams is therefore limited.<sup>80</sup>

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<sup>75</sup> Criminal Procedure Code, art. 8(1).

<sup>76</sup> Progress Report, p. 42.

<sup>77</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>78</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, October 21, 2005; Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>79</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, October 21, 2005.

<sup>80</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, October 21, 2005; Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

Human Rights Watch has been informed that the existing capacity to conduct efficient translation of the substantial amount of material in war crimes cases is insufficient.<sup>81</sup> This problem is particularly acute regarding material and evidence provided by the OTP of the ICTY in cases other than those transferred under Rule 11 *bis*: the OTP of the ICTY is only required to provide existing translations,<sup>82</sup> so the available language assistants within the Special Department for War Crimes and the Registry must undertake any additional translation. The amount of time to make an adequate translation of even a relatively short document can be significant.<sup>83</sup>

Efficient and accurate translation is essential for the prosecution to build an effective case for trial. Prompt access to quality translations also assists the prosecution in discharging its disclosure obligations to the defense. Accordingly, Human Rights Watch urges the Registry to make the necessary staff provision for language assistance to the Special Department for War Crimes to ensure the timely and accurate translation of prosecution material. In the event additional budgetary resources are required to do so, Human Rights Watch urges the donor community to provide the necessary funding.

#### ***D. Cooperation with the War Crimes Chamber***

The Special Department for War Crimes relies heavily on prosecutorial cooperation with the ICTY as well as other states in the region. Such cooperation includes the gathering of evidence and, with respect to states within the region, may extend to the location, arrest and trial of defendants. Officials in the ICTY and the authorities in Bosnia, Croatia and Serbia and Montenegro have taken steps to improve cooperation and facilitate prosecutions of alleged perpetrators of war crimes during the conflict in Bosnia. However, there are obstacles remaining, particularly with respect to regional cooperation, that may impede effective prosecutions and require attention. These factors are outlined in more detail below.

##### ***1. ICTY cooperation***

The distinct but related mandates of the ICTY and the WCC to bring to justice perpetrators of war crimes in Bosnia makes strong cooperation between these institutions with respect to the sharing of evidence crucial. This cooperation is a

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<sup>81</sup> Special Department for War Crimes staff e-mail communications to Human Rights Watch, Sarajevo, October 21, 2005 and November 14, 2005; Human Rights Watch telephone interview with former Special Department for War Crimes staff, Sarajevo, October 18, 2005; Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>82</sup> Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, October 21, 2005.

<sup>83</sup> *Ibid.*

fundamental component of the Rule 11 *bis* cases transferred to the WCC by the ICTY and the greater number of war crimes cases initiated locally. For example, there may be a witness whose statement and/or testimony is relevant in proceedings before both the ICTY and the WCC. The possibility could arise that a witness has given a statement to the ICTY that is inconsistent with a statement given in relation to proceedings before the WCC. The potential impact of such a discrepancy on the witness' credibility could affect the outcome of the trial.

The transfer of information and evidence to facilitate prosecutions in national jurisdictions is handled by designated officials within the Registry and the Office of the Prosecutor (OTP) of the ICTY. The main priority of these officials is to assist the prosecutor in preparing the necessary materials to transfer cases to national jurisdictions under Rule 11 *bis*.<sup>84</sup> The material that is considered necessary includes all background material, the pre-trial brief, witness and exhibit lists, and documentary and demonstrable exhibits.<sup>85</sup> In the Stankovic case alone, more than fourteen thousand pages of documentation have been forwarded to the Special Department for War Crimes by the ICTY.<sup>86</sup>

Prosecutors in the Special Department for War Crimes can also make specific requests for evidence to the ICTY. Depending on the nature of the information sought, such requests are directed to specific staff members in either the Registry or the OTP of the ICTY. For instance, requests for transcripts are made to the Registry. A Registry official reviews the transcripts and removes any confidential information before providing them to the requesting prosecutor in the Special Department for War Crimes.<sup>87</sup> Requests for evidence in relation to protected witnesses are forwarded directly to the OTP of the ICTY, which may subsequently file a request with the tribunal to change protective measures.<sup>88</sup> As of November the OTP of the ICTY had responded to

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<sup>84</sup> Human Rights Watch telephone interview with Joanna Korner, former staff member of both the Special Department for War Crimes and the OTP of the ICTY, London, December 7, 2005; ICTY staff e-mail communication to Human Rights Watch, The Hague, December 15, 2005.

<sup>85</sup> Prosecutor v. Radovan Stankovic, International Criminal Tribunal for the former Yugoslavia, Case No.: IT-96-23/2-PT, Decision on Referral of Case Under Rule 11 *bis*, (Trial Chamber), May 17, 2005, para. 71; Rule 11 *bis* (D)(iii), Rules of Procedure and Evidence.

<sup>86</sup> Balkan Investigative Reporting Network, *Balkan Insight*, "Address by Carla Del Ponte, Chief Prosecutor of the International Criminal Tribunal for the former Yugoslavia," November 15, 2005 [online], [http://www.birn.eu.com/insight\\_08\\_3\\_eng.php](http://www.birn.eu.com/insight_08_3_eng.php) (retrieved November 15, 2005) [hereinafter "Address by ICTY Chief Prosecutor"]; Special Department for War Crimes staff e-mail communication to Human Rights Watch, Sarajevo, October 10, 2005.

<sup>87</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>88</sup> *Ibid.* In this regard, defense advocates in Bosnia can make a request directly to the OTP of the ICTY to change protective measures. See Prosecutor v. Gojko Jankovic, International Criminal Tribunal for the former

thirty-four requests from prosecutors in the Special Department for War Crimes in 2005.<sup>89</sup> In addition to handling requests from the Special Department for War Crimes, staff in the Registry and the OTP of the ICTY deal with requests from officials in the cantonal and district courts in Bosnia, as well as officials in Croatia and in Serbia and Montenegro.

The time it takes to respond to requests for confidential information can, in some cases, be lengthy.<sup>90</sup> According to a current ICTY official, the amount of time it takes to respond to requests from prosecutors in the Special Department for War Crimes is primarily determined by the type of request made.<sup>91</sup> For example, it can take up to one month for the tribunal to issue a decision in response to a motion to change protective measures. Further, in order to release the statement of an ICTY witness, it is necessary to obtain his or her consent. This can take a significant amount of time depending on when the witness in question is located.<sup>92</sup>

Human Rights Watch has also been informed of concerns that not enough ICTY staff members have been assigned to promptly handle requests for confidential information from officials in the Special Department for War Crimes, the cantonal and district courts, as well as officials in Croatia and Serbia and Montenegro.<sup>93</sup> In this regard, an ICTY official has advised Human Rights Watch that the OTP is in the process of assigning additional staff to address these requests as the workload increases.<sup>94</sup> The timely sharing of evidence and information by ICTY officials with officials in Bosnia is essential to promote effective prosecutions. Human Rights Watch therefore looks to the ICTY to ensure requests for information and evidence are handled as efficiently as possible.

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Yugoslavia, Case No.: IT-96-23/2-AR11bis.2, Decision on Rule 11 *bis* Referrals, (Appeals Chamber), November 15, 2005, para. 51. However, requiring the defense to make a request to the OTP to submit such a motion on its behalf may prove problematic insofar as it requires the defense to reveal its investigation and/or litigation strategy.

<sup>89</sup> ICTY staff e-mail communication to Human Rights Watch, The Hague, December 15, 2005.

<sup>90</sup> Human Rights Watch telephone interview with former Special Department for War Crimes staff, October 18, 2005; Human Rights Watch telephone interview with Special Department for War Crimes staff, November 30, 2005.

<sup>91</sup> ICTY staff e-mail communication to Human Rights Watch, The Hague, December 15, 2005.

<sup>92</sup> *Ibid.*

<sup>93</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, November 30, 2005; Human Rights Watch telephone interview with Joanna Korner, former member of both the Special Department for War Crimes and the OTP of the ICTY, London, December 7, 2005.

<sup>94</sup> ICTY staff e-mail communication to Human Rights Watch, The Hague, December 15, 2005.

Human Rights Watch has been informed of other efforts to improve access to non-confidential information in the possession of the ICTY. Each of the prosecution teams in the Special Department for War Crimes has been provided with a password to access the Evidence Disclosure Suite (EDS) of the ICTY.<sup>95</sup> This database is used for the disclosure of evidence to the defense appearing before the ICTY.<sup>96</sup> Further, there is currently a proposal to provide access to the Judicial Database (JDB).<sup>97</sup> This would facilitate the search for judgments, decisions and orders issued by the ICTY. Human Rights Watch welcomes these initiatives to improve access to ICTY material.

A Memorandum of Understanding (MOU) formalizing cooperation between the OTP of the ICTY and the Special Department for War Crimes was signed on September 2, 2005.<sup>98</sup> An additional MOU regulating the nature and extent of cooperation between the respective institutions in more detail is currently being developed.<sup>99</sup>

## ***2. Regional cooperation***

In addition to causing mass internal displacement, the conflict in Bosnia caused the departure of many people from the country. A number of war crimes cases within the WCC's jurisdiction involve victims, witnesses, and/or defendants who have relocated to other countries of the former Yugoslavia, namely Croatia and Serbia and Montenegro. Unlike the ICTY, which was created pursuant to a resolution of the United Nations Security Council, the WCC does not have United Nations Chapter VII authority to require state cooperation. Therefore, the effective prosecution of such cases relies heavily on the willingness of authorities in other states to cooperate in order to substantiate allegations, obtain evidence and, in some cases, to locate, arrest and/or try defendants.<sup>100</sup>

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<sup>95</sup> Ibid.

<sup>96</sup> Address by ICTY Chief Prosecutor.

<sup>97</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005; ICTY official e-mail communication to Human Rights Watch, The Hague, December 14, 2005.

<sup>98</sup> Address by ICTY Chief Prosecutor; ICTY staff e-mail communication to Human Rights Watch, The Hague, December 15, 2005; Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>99</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, November 30, 2005.

<sup>100</sup> The obligation of states to prosecute grave breaches of international humanitarian law is outlined in each of the Geneva Conventions. In particular, see Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 49; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 50; Convention (III) relative to the Treatment of Prisoners of War, art. 129; Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 146.

There have been positive developments to promote regional cooperation in war crimes cases. The Bosnian authorities on April 30, 2004, signed the European Convention on Mutual Assistance in Criminal Matters, and it entered into force in Bosnia on July 24, 2005.<sup>101</sup> In addition, the Special Department for War Crimes has entered into agreements with the authorities in Croatia and in Serbia and Montenegro to enhance prosecutorial cooperation.<sup>102</sup> There are also efforts underway to establish a regional agreement between Bosnia, Macedonia, Slovenia and Albania.<sup>103</sup> The WCC has recently for the first time established a video link with a court in Belgrade, where six Bosnian Serbs are on trial accused of having committed war crimes against Bosnian Muslims in Bosnia in 1992.<sup>104</sup> It is anticipated that the video link will facilitate future testimony of Bosnian witnesses in this trial.<sup>105</sup>

Prosecutors, however, continue to face difficulties with respect to defendants who are residing as citizens in countries that do not permit extradition of nationals. In some cases, defendants may have assumed citizenship of these countries after the war in an effort to benefit from this ban and escape prosecution.<sup>106</sup> The ban on extradition of nationals is entrenched in the respective constitutions of Croatia and Serbia and Montenegro.

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<sup>101</sup> The European Convention on Mutual Assistance in Criminal Matters, E.T.S. No. 030, entered into force on June 12, 1962. The Convention entered into force in Croatia and in Serbia and Montenegro on August 5, 1999, and December 29, 2002, respectively.

<sup>102</sup> Protocol on the agreement in realizing the mutual cooperation in fighting all forms of capital crimes signed between the General Attorney's Office of the Republic of Croatia and the State Protector's Office of the Republic of Bosnia and Herzegovina; Protocol on the agreement in realizing the mutual cooperation in fighting all forms of capital crimes signed between the Chief State Prosecutor's Office of the Republic of Montenegro and the State Protector's Office of the Republic of Bosnia and Herzegovina; Protocol on the agreement in realizing the mutual cooperation in fighting all forms of capital crimes signed between the Republic State Prosecutor's Office of the Republic of Serbia and the State Protector's Office of the Republic of Bosnia and Herzegovina (copies of all three Protocols on file with Human Rights Watch).

<sup>103</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, November 30, 2005. Although currently foreseen as one agreement, it is possible that individual agreements will be negotiated between Bosnia and the respective countries instead. Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, January 19, 2006.

<sup>104</sup> Human Rights Watch telephone interview with WCC staff, December 6, 2005. See also "Bosnia and Herzegovina Prosecution prepares more indictments," B92 Info (Belgrade), December 1, 2005 [online], [http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=12&dd=01&nav\\_id=181602&nav\\_category=64](http://www.b92.net/info/vesti/index.php?yyyy=2005&mm=12&dd=01&nav_id=181602&nav_category=64) (retrieved December 2, 2005). This case was not the result of a request from the Bosnian authorities for the transfer of proceedings.

<sup>105</sup> Human Rights Watch telephone interview with Special Department for War Crimes staff, Sarajevo, January 19, 2006.

<sup>106</sup> Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 28, 2005. See also Organization for Security and Co-operation in Europe, "Report on the follow-up to the OSCE-facilitated expert level meeting on inter-state cooperation in war crimes proceedings and the Trilateral Ministerial Conference on inter-state judicial cooperation in war crimes proceedings," Vienna, June 13, 2005, p. 2 (copy on file with Human Rights Watch).

Under the present legal framework in Bosnia, it may be possible to transfer cases involving defendants who are residing in other countries to the relevant authorities for prosecution in that jurisdiction. In this regard, pursuant to the European Convention for Extradition, a state that does not permit the extradition of its nationals is obliged to submit the case to its competent authorities so that proceedings may be initiated if considered appropriate, provided a request has been made to do so by the state seeking the extradition.<sup>107</sup> However, under Bosnian law, it is not possible to transfer a case where the underlying offense is punishable by more than ten years' imprisonment.<sup>108</sup> Accordingly, only a limited number of war crimes cases can be transferred to other jurisdictions.<sup>109</sup>

Human Rights Watch urges the Bosnian authorities to take action in order to bring to justice those alleged perpetrators of war crimes where the applicable punishment is more than ten years' imprisonment and the alleged perpetrator is outside Bosnia. In the short-term, Human Rights Watch encourages the Bosnian authorities to amend Bosnian law to allow for the transfer of proceedings in all war crimes cases, provided the death penalty will not be imposed on the defendant. The authorities in Croatia and Serbia and Montenegro should assist by providing specific guarantees to facilitate participation of Bosnian witnesses in proceedings. This could include, for example, providing witnesses with the option of giving testimony through a video link in all cases transferred by the Bosnian authorities, as was done in the case currently being conducted in Belgrade mentioned above.

Over the longer term, Human Rights Watch urges the authorities in Croatia and in Serbia and Montenegro to abolish the existing ban on the extradition of nationals. The logistics of maintaining close cooperation between authorities where a case has been transferred to ensure a fair and effective trial can be, in some cases, very complex. Further, conducting a war crimes trial in the jurisdiction where the offense was committed offers an important opportunity for victims to see justice being done.

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<sup>107</sup> European Convention on Extradition, E.T.S. No. 024, art. 6(2), entered into force on April 18, 1960. The European Convention on Extradition entered into force in Bosnia, Croatia and Serbia and Montenegro on July 24, 2005, April 25, 1995, and December 29, 2002, respectively.

<sup>108</sup> Criminal Procedure Code, art. 412(4).

<sup>109</sup> For example, under the Criminal Code of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina 3/03 [hereinafter "Criminal Code"], the offenses of genocide (art. 171), crimes against humanity (art. 172), and war crimes against civilians (art. 173) are punishable by more than ten years' imprisonment and therefore cannot be transferred to another jurisdiction once proceedings have been initiated before the WCC. Criminal Code offenses that could be transferred include membership in a group aimed at instigating the perpetration of genocide, crimes against humanity and war crimes (art. 176(2)), marauding the killed and wounded in the battlefield (art. 178), unjustified delay of the repatriation of prisoners of war (art. 182), and the destruction of cultural, historical and religious monuments (art. 183).

## IV. Defense

### A. Overview of the Criminal Defense Support Section

Ensuring that defendants receive a fair trial in accordance with international standards is essential to the rule of law. A fundamental component of a fair trial is the principle of “equality of arms.”<sup>110</sup> The equality of arms does not necessarily require the equality of means and resources between the prosecution and the defense.<sup>111</sup> Rather, this principle means both parties are entitled to full equality of treatment, so that the conditions of trial do not “put the accused unfairly at a disadvantage.”<sup>112</sup> In light of the significant international presence within the Special Department for War Crimes to facilitate effective prosecutions, adherence to the principle of equality of arms requires a similar capacity to assist the defense.

Accordingly, the Criminal Defense Support Section, which is generally known by its Bosnian acronym OKO (*Odsjek krivične odbrane*), was created to provide legal assistance to defendants in war crimes cases.<sup>113</sup> The establishment of OKO is an important development in ensuring equality of arms. Indeed, the establishment of an office devoted exclusively to defense support in war crimes cases at this early stage represents a step forward from the practice of the ICTY where, for example, an arrangement to assist defense counsel previously did not exist.

OKO is headed by an international director and is part of the administrative and management structure of the Registry of the State Court.<sup>114</sup> In terms of financial support, the Registry raises funds on behalf of OKO.<sup>115</sup> However, both OKO staff and

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<sup>110</sup> International Covenant on Civil and Political Rights (ICCPR), 999 U.N.T.S. 171, art. 14(1), entered into force March 23, 1976, ratified by Bosnia (by succession) on March 6, 1992; *Morael v. France*, Communication No. 207/1986, November 14, 1988, UN Doc. Supp. No. 40 (A/44/40) at 210 (1989), para. 9.3.

<sup>111</sup> *Prosecutor v. Clement Kayishema and Obed Ruzindana*, International Criminal Tribunal for Rwanda, Case No.:ICTR-95-1-A, Judgment (Appeals Chamber), June 1, 2001, para. 69.

<sup>112</sup> *Delcourt v. Belgium*, European Court of Human Rights, Judgment, January 17, 1970, Series A, no. 11, para. 34. See also *Prosecutor v. Dusko Tadic*, International Criminal Tribunal for the former Yugoslavia, Case No.: IT-94-1-A, Judgment (Appeals Chamber), July 15, 1999, para. 48.

<sup>113</sup> Additional Rules of Procedure for Defense Advocates Appearing Before Section I for War Crimes and Section II for Organized Crime, Economic Crime and Corruption of the Court of Bosnia and Herzegovina, adopted by the Court of Bosnia and Herzegovina at the plenary session held on June 30, 2005, art. 2.1(1) [hereinafter “Additional Rules”]. OKO provides limited assistance to defendants in organized crime cases. For example, OKO will provide defendants with a list of approved lawyers who can provide representation in organized crime cases. However, OKO does not provide litigation support for organized crime cases. OKO staff e-mail communication to Human Rights Watch, Sarajevo, December 6, 2005.

<sup>114</sup> Progress Report, p. 53.

<sup>115</sup> Human Rights Watch group interview with OKO staff, Sarajevo, September 28, 2005.

the defense attorneys it employs function independently of the Registry in the provision of legal advice to defendants.<sup>116</sup> Further, it is anticipated that during 2006 OKO will evolve to become an independent institution.<sup>117</sup>

OKO offers essential support to the defense in two ways. First, OKO provides assistance directly to defendants (for example, about how to select a qualified defense advocate).<sup>118</sup> Second, OKO provides legal and administrative support to defense advocates.<sup>119</sup> To that end, the defense support provided by OKO is organized into five regional teams, each consisting of one Bosnian lawyer, one Bosnian intern and one international intern (OKO recently received funding for a sixth team to address Srebrenica cases).<sup>120</sup> The respective teams provide advice to individual attorneys defending cases before the State Court and assist with the preparation and presentation of legal arguments,<sup>121</sup> and there is a consultant budget for the payment of experts as the need arises in specific cases.<sup>122</sup> Further, OKO acts as a conduit on behalf of the defense with the Registry of the ICTY.<sup>123</sup>

OKO is also the licensing authority for those attorneys who wish to appear before the State Court.<sup>124</sup> Accordingly, OKO maintains a list of those eligible to appear as defense counsel, and outlines the criteria that defense counsel must meet in order to be included on the list. In addition, OKO is charged with the responsibility of providing training courses for advocates seeking to fulfill the criteria for inclusion on the list, and continuing their professional training.<sup>125</sup> Maintaining a degree of control over the quality of defense counsel promotes effective representation of defendants in war crimes cases.

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<sup>116</sup> See art. 2.2(4) of the Additional Rules, which states that legal advice provided by OKO staff to detainees, accused or other persons, including advocates, is considered privileged. This provision also states that advocates employed by OKO are independent from the Registry.

<sup>117</sup> Progress Report, p. 53.

<sup>118</sup> Additional Rules, art. 2.2(3)(f).

<sup>119</sup> Additional Rules, art. 2.2(3)(g).

<sup>120</sup> OKO staff e-mail communication to Human Rights Watch, Sarajevo, December 6, 2005.

<sup>121</sup> Progress Report, p. 53.

<sup>122</sup> Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

<sup>123</sup> Progress Report, p. 52.

<sup>124</sup> Additional Rules, arts. 2.2(2) and 3.1; Law on Court (*sic*) of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina, 16/02, Official Gazette of the Federation of Bosnia and Herzegovina, 52/00, Official Gazette of the Republika of Srpska, 40/00, art. 12(1) [hereinafter "Law on the Court"]. Further, pursuant to art. 12(2) of the Law on the Court and art. 3.4(4) of the Additional Rules, the State Court possesses a residual discretion to admit advocates who are not on the list maintained by OKO under limited circumstances. For example, the State Court can admit an advocate who may have already appeared before the ICTY in a Rule 11 *bis* case to ensure continuity in defense representation.

<sup>125</sup> Additional Rules, art. 2.2(3)(h).

## ***B. OKO efforts to enhance existing capacity of defense counsel***

OKO has made considerable efforts to contribute to the existing capacity of local legal professionals in order to promote the effective representation of defendants in war crimes proceedings before the WCC. In 2005, OKO, with assistance from the International Committee of the Red Cross and the American Bar Association Central European and Eurasian Law Initiative (ABA-CEELI), organized training for seventy-five lawyers in Sarajevo and Banja Luka on the international law of armed conflict and new elements of the domestic criminal law. In the coming months, OKO will expand its training program to include sessions on advocacy, written legal argument, legal research, investigation and ethics.<sup>126</sup> By the end of 2007, it is estimated that OKO will have trained approximately 350 lawyers.<sup>127</sup>

## ***C. Challenges that could undermine effective representation***

Despite efforts to increase local capacity, there are several obstacles that could prevent effective defense representation in war crimes proceedings. Specifically, the current system of remuneration for defense attorneys in cases where a defendant has no means to pay is problematic. In addition, there is no provision that explicitly provides for the payment of defense investigators under Bosnian law. These factors may undermine the ability of defense advocates to provide quality representation. Each of these factors is discussed in more detail below.

### ***1. Payment of defense counsel***

Under Bosnian law, an indigent defendant is assigned one defense attorney.<sup>128</sup> Remuneration of court-appointed attorneys is regulated by a payment scheme, which identifies particular work by defense counsel eligible for compensation from funds made available by the government of Bosnia.<sup>129</sup> Payment for a full day in trial is approximately €200, which is considered a good rate of compensation for a defense attorney in Bosnia.<sup>130</sup>

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<sup>126</sup> Progress Report, p. 53.

<sup>127</sup> Human Rights Watch group interview with OKO staff, Sarajevo, September 28, 2005.

<sup>128</sup> Criminal Procedure Code, arts. 45 and 46. In complex war crimes cases, it may be possible to assign an additional lawyer to a defendant. Both lawyers would be compensated at the same rate. Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

<sup>129</sup> Decision on reimbursement of the costs of criminal proceedings pursuant to the Criminal Procedure Code of Bosnia and Herzegovina, adopted on February 10, 2005, by the Council of Ministers of Bosnia [hereinafter "Decision on reimbursement"]. The work is assigned a points value, which is then translated into a monetary value according to a fixed exchange rate. For example, in relation to submissions made during the preliminary proceedings, after the confirmation of the indictment or during the main hearing, defense attorneys are awarded 52 points, which translates into payment of approximately €78.

<sup>130</sup> OKO staff e-mail communication to Human Rights Watch, Sarajevo, November 15, 2005.

However, under the current system of remuneration, there is no explicit reference to the payment of defense counsel for preparation throughout the trial.<sup>131</sup> This would include time spent reviewing witness statements, exhibits, evidence presented by the prosecutor, and any other material necessary in the preparation of the defense strategy for trial.<sup>132</sup> Accordingly, it is unclear whether defense counsel will, in fact, be remunerated for time spent in preparation.<sup>133</sup> In light of the seriousness of the crimes alleged and the complexity of the cases at issue, the amount of preparation time to construct an effective defense is likely to be considerable.<sup>134</sup> Human Rights Watch is concerned that the lack of clarity in the existing scheme may discourage defense advocates from representing indigent accused. When defense counsel assume these cases, there is less incentive to spend the time required to prepare an adequate defense.

In addition to the lack of clarity regarding the payment of defense counsel for time spent in preparation, the current format for the payment of defense counsel in Bosnian law is problematic. Under Bosnian law, defense counsel are provided with funds in advance for “necessary expenses,” such as fees for expert witnesses and travel costs.<sup>135</sup> However, payment for the actual representation rendered by defense counsel appointed by the court is not required until the end of proceedings.<sup>136</sup> Human Rights Watch is concerned that the burden on defense advocates resulting from the delayed payment for services provided is another factor that could undermine the quality of representation. High-quality defense advocates may be less willing to represent indigent accused in lengthy war crimes cases.<sup>137</sup> In addition, the defense advocates who agree to represent accused in war crimes trials may be required to take on a number of other cases to ensure financial solvency. This could diminish the amount of time these advocates have available to put together an adequate defense in complex war crimes cases.

The Bosnian authorities should amend the existing payment scheme to explicitly indicate that preparation time by court-appointed defense advocates will be compensated. The Bosnian authorities should also amend the Criminal Procedure Code to make the compensation of defense advocates throughout the proceedings a “necessary expense.”

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<sup>131</sup> Decision on reimbursement, art. 29(2).

<sup>132</sup> Indeed, as noted above, the ICTY transferred over fourteen thousand pages of material to the prosecutor in Bosnia in relation to the Stankovic case. The review of even a fraction of that material by the defense would necessitate a significant amount of preparation time.

<sup>133</sup> Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

<sup>134</sup> OKO staff e-mail communication to Human Rights Watch, Sarajevo, November 15, 2005.

<sup>135</sup> Criminal Procedure Code, art. 185(4).

<sup>136</sup> Criminal Procedure Code, art. 185; Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

<sup>137</sup> Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

Formally amending the existing payment scheme and the Criminal Procedure Code as opposed to proceeding on an ad hoc basis in individual cases would ensure consistency in the treatment of defense advocates of indigent defendants.

## **2. Investigators**

Adequate investigation in complex war crimes cases before the WCC is essential. Access to investigators by defense counsel is therefore necessary in war crimes cases due to the seriousness of the charges and the complicated nature of these cases.<sup>138</sup> For example, defense investigators can establish leads for potential defense witnesses, pursue exculpatory or other evidence to support the defense, and follow up on statements made by prosecution witnesses. Such assistance is necessary to ensure that the accused is not placed at a significant disadvantage vis-à-vis the prosecution.

Under Bosnian law, defense counsel do not have formal access to investigators.<sup>139</sup> There is a general provision in the law that requires defense counsel to take all the necessary steps to establish facts and collect evidence in favor of the defendant, and to protect his or her rights in the course of representation.<sup>140</sup> This could include conducting investigations on behalf of an accused in order to mount an effective defense. Indeed, in the existing payment scheme relating to indigent defendants, there is a provision that permits the compensation of the court-appointed defense advocate who participates in actions aimed at obtaining evidence.<sup>141</sup>

However, there is no provision in the existing payment scheme that explicitly provides compensation to other individuals who obtain evidence on behalf of the defense.<sup>142</sup> Consequently, defendants may not have consistent access to individuals capable of conducting investigations in all cases. Human Rights Watch is concerned that the absence of appropriate compensation could discourage persons trained in conducting investigations from taking on indigent cases. We are also concerned that they might lack the willingness and ability to conduct investigations fully when such cases are assumed.

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<sup>138</sup> Defense teams appearing before the ICTY, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone have access to investigators.

<sup>139</sup> Human Rights Watch group interview with OKO staff, Sarajevo, September 28, 2005; Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005.

<sup>140</sup> Criminal Procedure Code, art. 50.

<sup>141</sup> Decision on reimbursement, art. 29(2).

<sup>142</sup> Human Rights Watch telephone interview with OKO staff, Sarajevo, December 13, 2005.

Human Rights Watch was informed that, as a matter of practice, some defense attorneys send junior attorneys to conduct investigations.<sup>143</sup> Since these junior attorneys are not considered “authorized official persons,” their work product remains with the defense advocate during proceedings and is not subject to disclosure. Not all defense attorneys have access to junior staff, however.

Where there is no assistance available in conducting investigations, circumstances may compel the defense attorney responsible for representing the defendant to conduct the investigation him or herself. The defense counsel could in turn be requested to appear as a witness in the main trial in relation to his or her investigation, and be subject to cross examination. Attacks on the defense attorney’s credibility as a witness during cross examination could in turn affect the perception of his or her credibility as an advocate before the court. The defense attorney may also be requested to provide information as a witness that is inconsistent with his or her role as an advocate for the defense. This could jeopardize the quality of defense representation received by indigent defendants.

The Bosnian authorities should amend the existing payment scheme to include payment for investigations undertaken by individuals other than the defense attorney on behalf of indigent defendants in war crimes cases. Doing so would encourage individuals trained in conducting investigations (other than defense attorneys) to make their services available to indigent defendants in complex war crimes cases. Providing adequate payment to those individuals also promotes thoroughness in the collection of information to assist the defense.

In addition to ensuring adequate payment, it is important that these individuals receive payment throughout the proceedings. As noted above, only “necessary expenses” are compensated throughout proceedings. The Bosnian authorities should therefore amend the law to explicitly include defense investigators as a “necessary expense” of the defense in war crimes cases.<sup>144</sup> In addition to promoting consistency with the proposed changes in the payment scheme, this would ensure that such expenses are paid throughout the proceedings as necessary. Further, clearly specifying the availability of defense investigators under Bosnian law, together with the proposed amendment to the payment

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<sup>143</sup> Human Rights Watch telephone interview with OKO staff, Sarajevo, November 16, 2005. In an effort to ensure quality investigations, OKO has organized a training session for those members of defense teams that are most likely to conduct investigations in existing cases. The training is aimed at familiarizing participants with the relevant provisions of Bosnian law, as well as practical investigative techniques, such as taking statements.

<sup>144</sup> Specifically, art. 185 of the Criminal Procedure Code should be amended. Since the defense investigators would not be acting in a law enforcement capacity, it is not necessary for them to be considered “authorized official persons” as outlined in art. 29(g) of the Criminal Procedure Code.

scheme, could encourage the development of a body of professionals devoted exclusively to this task.

## V. Witness Protection and Support

Witness protection and support before, during and after war crimes proceedings is crucial to ensuring the safety and well-being of witnesses and promoting effective trials. At the State Court level, the Witness Protection Support Unit and the Witness Support Office handle witness protection and support, respectively, for both the War Crimes and Organized Crime Chambers. As outlined below, both the Witness Protection Support Unit and the Witness Support Office have far-reaching and impressive plans aimed at promoting the safety and well-being of witnesses in trials before the WCC.

### **A. Role of the Witness Protection Support Unit before and during trial**

Given its location in the country where the crimes occurred and the particular challenges associated with concealing a witness's identity in a small country, the importance of ensuring effective protection is heightened in relation to the WCC. Under Bosnian law, the Witness Protection Department in the Bosnian State Investigation and Protection Agency (SIPA) is the body responsible for all witness protection matters.<sup>145</sup> At present however, SIPA's ability to provide the necessary resources to support the Witness Protection Department is limited. SIPA therefore entered into a Memorandum of Understanding (MOU) with the Registry of the State Court for the coordination of activities regarding witness protection on March 1, 2005.<sup>146</sup> The MOU includes reference to the development of a joint strategy with respect to witness protection, training projects and methodology.<sup>147</sup>

Pursuant to the MOU, the Witness Protection Support Unit was established within the Registry to provide technical and material assistance to the SIPA Witness Protection Department.<sup>148</sup> The Registry has also provided a secure office location, equipment, staff and training, as well as the assistance of an international Witness Protection Advisor. Notwithstanding the Registry's support, the core responsibility for witness protection remains with SIPA.<sup>149</sup> The assistance provided by the Registry is therefore consistent

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<sup>145</sup> Bosnia and Herzegovina Witness Protection Program Law, Official Gazette of Bosnia and Herzegovina, 29/04, art. 3(1).

<sup>146</sup> "Memorandum of Understanding between the State Investigation and Protection Agency and the Registry for Section I and Section II of the Criminal and Appellate Division of the Court of Bosnia and Herzegovina and the Special Departments of the Prosecutor's Office of Bosnia and Herzegovina on cooperation in the area of witness protection and witness support," signed March 1, 2005 (copy on file with Human Rights Watch).

<sup>147</sup> MOU; Human Rights Watch telephone interview with WCC staff, Sarajevo, December 1, 2005, art. 3(1).

<sup>148</sup> Progress Report, p. 41.

<sup>149</sup> Human Rights Watch group interview with court staff, Sarajevo, September 28, 2005.

with the overall transition strategy of building local capacity within existing institutions to promote sustainability.

There are various measures aimed at ensuring the protection of witnesses before and during the proceedings. For example, the State Court has been designed to promote the safety and well-being of witnesses who provide testimony. Defense and prosecution witnesses have separate entrances to the court to minimize the possibility of contact before proceedings. Separate waiting areas have also been designated for defense and prosecution witnesses for use prior to providing testimony in proceedings.<sup>150</sup>

In addition, there are a number of protective measures available to a witness under Bosnian law. During the investigative phase, the prosecutor can invoke protective measures for a witness.<sup>151</sup> Under certain circumstances during court proceedings, testimony can be provided from behind a screen and/or technical means for voice distortion may be used to prevent the disclosure of a witness's identity to the public.<sup>152</sup> To that end, each courtroom has the necessary equipment to implement these means when required.<sup>153</sup> In all cases, measures of protection can only be instituted with the consent of the witness.<sup>154</sup> The Witness Protection Support Unit works closely with a witness throughout the process to ensure appropriate protection measures are in place.<sup>155</sup>

Where there is an imminent and manifest risk to the security of a witness that is unlikely to be mitigated after the testimony is given, or will be aggravated by the giving of testimony, the court can conduct a protection hearing on its own initiative or upon a motion of the prosecutor, defendant, or defense counsel.<sup>156</sup> A protected witness provides testimony at the protection hearing, the record of which is later read out at the main trial.<sup>157</sup> During the protection hearing, the identity of the protected witness is only

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<sup>150</sup> Tour of State Court of Bosnia and Herzegovina by Human Rights Watch researchers and court staff, Sarajevo, September 26, 2005.

<sup>151</sup> Criminal Procedure Code, art. 217(1).

<sup>152</sup> Law on Protection of Witnesses Under Threat and Vulnerable Witnesses, Official Gazette of Bosnia and Herzegovina, 3/03, art. 13(2) [hereinafter "Law on Protection of Witnesses"]; Amendments to the Law on Protection of Witnesses under Threat and Vulnerable Witnesses, Official Gazette of Bosnia and Herzegovina, 61/04, art. 10(2) [hereinafter "Law on the Amendments to the Law on Protection of Witnesses"].

<sup>153</sup> Progress Report, p. 35.

<sup>154</sup> Law on the Amendments to the Law on Protection of Witnesses, art. 5.

<sup>155</sup> Human Rights Watch group interview with court staff, Sarajevo, September 28, 2005.

<sup>156</sup> Law on Protection of Witnesses, art. 11(1); Law on the Amendments to the Law on Protection of Witnesses, art. 14.

<sup>157</sup> Law on Protection of Witnesses, arts. 15 and 17; Law on the Amendments to the Law on Protection of Witnesses, arts. 19 and 21.

revealed to the members of the court and the minute taker of the hearing, and a pseudonym is assigned to the witness for the purpose of the trial record.<sup>158</sup> The defense is not provided with the witness's identity. The defendant, however, cannot be convicted solely or to a decisive extent on the testimony provided by a protected witness.<sup>159</sup>

Human Rights Watch supports the use of closed sessions and other confidentiality measures to conceal the identity of a witness from the public and the media, and to protect witnesses from re-traumatization, provided such measures are consistent with the rights of the accused and a fair and impartial trial. However, we oppose the use of evidence from a witness whose identity as known to a defendant is concealed from that defendant in criminal proceedings. The use of such evidence violates international standards for a fair trial.

Article 14 of the International Covenant on Civil and Political Rights (ICCPR) states a defendant's right to "adequate time and facilities for the preparation of his or her defense."<sup>160</sup> The ICCPR also states the right of a defendant to "examine, or have examined, the witnesses against him."<sup>161</sup> The defendant must therefore be afforded a reasonable opportunity to examine witnesses in putting forward his or her defense. Where the identity of the witness testifying against the defendant is not disclosed, it is not possible to conduct an effective cross-examination to either discredit the witness or refute his or her testimony. This could in turn undermine the defendant's ability to prepare an adequate defense, and thus place him or her at a significant disadvantage as compared to the prosecution. The Bosnian authorities should amend the law to eliminate the possibility of concealing a witness's identity from the defendant in all criminal proceedings.

### ***B. Role of the Witness Support Office before and during trial***

Effective support for witnesses who have experienced severe trauma in war crimes cases promotes their dignity and psychological well-being before, during and after testimony has been provided. Within the State Court, the Witness Support Office provides essential psychological support to prosecution and defense witnesses in both organized crime and war crimes cases. However, while there have been 190 witnesses in organized

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<sup>158</sup> Law on Protection of Witnesses, arts. 15 and 16, Law on the Amendments to the Law on Protection of Witnesses, arts. 19 and 20.

<sup>159</sup> Law on Protection of Witnesses, art. 19; Law on the Amendments to the Law on Protection of Witnesses, art. 23.

<sup>160</sup> Specifically, see ICCPR, art. 14(3)(b).

<sup>161</sup> ICCPR, art. 14(3)(e).

crimes cases in the period of May to October 2005, only 10 percent of witnesses in those cases have required psychological assistance. By contrast, it is anticipated that all witnesses in war crimes trials may require psychological support.<sup>162</sup> This underscores the pivotal role of the Witness Support Office in minimizing the negative effects of providing testimony in proceedings before the WCC.

In most cases, the involvement of the Witness Support Office commences after an indictment has been made public. Staff members in the Witness Support Office review the list of witnesses in order to identify potentially vulnerable individuals and obtain background information from the prosecution or defense. Staff members then contact these witnesses by telephone or arrange a meeting when necessary.<sup>163</sup> During this initial contact, an explanation is provided about the function of the Witness Support Office. An assessment is also made about the social and psychological needs of the witness, including an evaluation of the witness's health, family and financial situation. Where appropriate, an explanation may also be provided about the physical and psychological impact of providing testimony, including the possibility of re-traumatization.<sup>164</sup> To demystify the process, a staff member from the Witness Support Office explains the court process, informs the witness about the right to request a break during proceedings and, in some cases, shows him or her the courtroom in advance of the proceedings.<sup>165</sup> After this initial contact, the witness is provided with a twenty-four-hour telephone number to reach the Witness Support Office in the event that there are additional questions or concerns about giving testimony.<sup>166</sup>

During proceedings, the Witness Support Office aims to be an advocate of the witness. To that end, a staff member is present in the courtroom during proceedings and conveys information about the witness's stress level to the prosecutor and the judge(s).<sup>167</sup> The Witness Support Office also responds to requests from prosecutors and defense counsel with concerns about the possible negative effects on a witness after he or she has testified. Further, the Witness Support Office provides general information to judges in the State Court to maximize their sensitivity about issues related to victims.<sup>168</sup>

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<sup>162</sup> Human Rights Watch group interview with court staff, September 28, 2005.

<sup>163</sup> *Ibid.*

<sup>164</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, November 3, 2005.

<sup>165</sup> Human Rights Watch group interview with court staff, September 28, 2005.

<sup>166</sup> *Ibid.*

<sup>167</sup> *Ibid.*

<sup>168</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, November 3, 2005.

In addition to psychological support, the Witness Support Office provides, on its own initiative, a measure of financial assistance for witnesses with special needs to facilitate the experience of providing testimony. For example, a witness in financial need who is responsible for the care of a child or an elderly family member may be entitled to a child care or dependents allowance, respectively. Similarly, a vulnerable witness may receive support for an accompanying person to be present during proceedings, in addition to the Witness Support Office staff member.<sup>169</sup> Despite budgetary constraints, the Witness Support Office informed Human Rights Watch that it has thus far managed to provide the allowance to all of the most vulnerable witnesses.<sup>170</sup> Human Rights Watch encourages the ongoing support of the Registry to the Witness Support Office in providing these allowances when necessary, particularly as the number of trials, and consequently the number of vulnerable witnesses before the WCC, increases.

### **C. Protection and support post-trial**

Human Rights Watch was informed that protective measures have been set up for after the completion of proceedings. After trial, the Witness Protection Support Unit conducts an updated threat assessment to determine what measures should be applied.<sup>171</sup> In exceptional circumstances, one of the measures available for a witness and his or her family is relocation outside Bosnia. To that end, the Witness Protection Support Unit has entered into several agreements with other states to facilitate the logistics for such relocation for witnesses involved in proceedings before the State Court, including the WCC.<sup>172</sup>

The Witness Support Office also has a role in the post-testimony phase. Within fifteen days of providing testimony, a staff member in the Witness Support Office contacts the witness to assess his or her mental health. The witness can also contact the Witness Support Office anytime after providing testimony using the twenty-four-hour contact number mentioned above. In addition, the Witness Support Office has established contacts with a number of mental health professionals throughout Bosnia who are familiar with the strict confidentiality required in sensitive war crimes cases. In the event a witness requires additional therapy, the Witness Support Office provides this contact information to the witness for further assistance.<sup>173</sup>

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<sup>169</sup> Court staff e-mail communications to Human Rights Watch, Sarajevo, November 4 and December 6, 2005.

<sup>170</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, December 6, 2005.

<sup>171</sup> Human Rights Watch group interview with court staff, Sarajevo, September 28, 2005.

<sup>172</sup> Human Rights Watch group interview with court staff, Sarajevo, September 28, 2005; Progress Report, p. 41.

<sup>173</sup> Human Rights Watch group interview with court staff, Sarajevo, September 28, 2005.

## VI. Outreach and Communications

### **A. Overview of the Public Information and Outreach Section**

Effective outreach about the functioning of the WCC is crucial. Outreach creates a sense of awareness and interest in the legal process and makes the work of the WCC relevant to the people of Bosnia. The type of information disseminated as part of an effective outreach strategy includes the WCC's work product, such as non-confidential indictments, motions, orders and judgments. It also involves providing information to the general public about the WCC's mandate in trying war crimes cases, and about its limitations, in order to prevent the formation of unrealistic expectations regarding its capabilities.

The importance of outreach was realized late by the ICTY. Although its first indictments were issued in late 1994 and early 1995, its outreach program was only established in 1999.<sup>174</sup> The WCC's physical proximity to where the crimes occurred gives it a distinct advantage in terms of its visibility and accessibility. As part of the domestic justice system, the WCC also has greater potential than the ad hoc ICTY for a sustained impact on the rule of law over the long term.

However, the WCC will face challenges in establishing its legitimacy as an institution given the ethnic divisions in Bosnia and inconsistent support for war crimes prosecutions from within Bosnia's constituent entities. The WCC must also grapple with Bosnia's history of ineffective and biased prosecutions and trials for war crimes at the cantonal and district levels.<sup>175</sup> This context underscores the importance of the WCC's undertaking strategic and widespread outreach to maximize its impact. This must extend beyond the dissemination of its work product to engaging the people of Bosnia in the operation of the WCC.

Outreach on behalf of the WCC and its related institutions is coordinated by the Public Information and Outreach Section (PIOS). The PIOS has been allocated five staff

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<sup>174</sup> ICTY, "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," August 25, 1999 [online], <http://www.un.org/icty/rappannu-e/1999/AR99e.pdf> (retrieved December 7, 2005).

<sup>175</sup> OSCE War Crimes Report, pp. 4, 32-37; Human Rights Watch, "Justice at Risk." There have been recent reforms at the cantonal and district level to improve the perception of independence and impartiality of judges and prosecutors. For example, by the end of March 2004, the High Judicial and Prosecutorial Council made a significant number of appointments of judges and prosecutors at the cantonal and district level. See "Final Report of the Independent Judicial Commission, January 2001- March 31, 2004" [online], <http://www.hjpc.ba> (retrieved December 5, 2005), p. 63.

members, and operates on a modest budget for the payment of this staff and implementation of its activities.<sup>176</sup> Despite its limited budget, the PIOS has engaged in several innovative and potentially far-reaching initiatives, which are discussed below.

## ***B. Initiatives of the PIOS***

### ***1. Court Support Network***

The primary outreach initiative of the PIOS, as described to Human Rights Watch in late September 2005, is the Court Support Network (CSN). This initiative involves the creation of a network of non-governmental organizations (NGOs) and community groups to facilitate the widespread dissemination of information about the WCC throughout Bosnia. The CSN contains several “rings” in its organizational structure. When fully operational, there will be a first “ring” of eight NGO-run centers located in major cities and towns throughout Bosnia—at present four of these centers are operating, in Sarajevo, Mostar, Tuzla and Prijedor, with the remaining centers in Travnik, Bihac, Banja Luka and Bijeljina scheduled to begin operation by the end of 2006.<sup>177</sup>

The centers in the first “ring” are run by coordinators whose primary task is to establish a network of organizations and institutions within their geographic area of responsibility. These organizations constitute the second “ring” of the CSN. Their role is to create a social climate that is supportive of victims and witnesses and to promote the legitimacy of the court and the rule of law. At this stage, there are approximately 130 organizations in the second “ring.” These organizations form a support mechanism within the respective communities for victims and witness before, during and after the process of providing testimony.<sup>178</sup>

The centers in the first “ring” act as focal points for information about the WCC. This is done in two ways: First, the coordinators in each center disseminate information about the WCC, and those bodies related to its effective functioning, to the center’s

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<sup>176</sup> The projected 2006 budget for PIOS is €70,000. Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; Court staff e-mail communication to Human Rights Watch, Sarajevo, December 13, 2005.

<sup>177</sup> Registry of the State Court of Bosnia and Herzegovina, “Court Support Network Project,” p. 7 (copy on file with Human Rights Watch) [hereinafter “CSN document”]; Progress Report, p. 45.

<sup>178</sup> There are a number of different organizations within the second “ring” of the CSN. For example, the CSN includes a ladies handball team. Under the CSN strategy, this ladies handball team could provide support to victims or witnesses of war crimes who are members of (or otherwise connected to) the team, such as accompanying the witness to and from proceedings before the WCC. Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005.

regional network of partner organizations.<sup>179</sup> This information is then distributed to individuals in the community. Second, each center is assigned a telephone operator tasked with answering calls from the public in the region of operation regarding the general work of the WCC. Where appropriate, the telephone operators can refer members of the public to designated contact points within the Special Department for War Crimes and the WCC generally. For example, if an individual contacts the operator with information about an accused or a witness in a case, he or she would be referred to a specific staff member within the Special Department for War Crimes assigned to handle such referrals.<sup>180</sup> Where appropriate, telephone operators can also refer individuals to partner organizations within the network that may be in a better position to provide specific information or support.<sup>181</sup>

In terms of support by the WCC, the coordinators of each center received training organized by the Registry concerning, among other issues, the implementation guidelines of the project, scope of the work, the different organs of the WCC, media relations and communication skills.<sup>182</sup> Coordinators are in turn required to submit progress reports to the PIOS every two months.<sup>183</sup> Further, the four centers currently operating in the first “ring” received funding for their establishment and the first six months of operation from the Registry.<sup>184</sup>

However, the CSN operates independently of the WCC. For example, the four centers currently in operation must arrange their own funding beyond the initial six-month period,<sup>185</sup> while the four centers still to be established will operate on funds obtained directly from donors.<sup>186</sup> Financial independence is an important component of the CSN strategy, as it encourages a sense of ownership over it at the grassroots level.<sup>187</sup> Since the

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<sup>179</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; CSN document, p. 6. This could include non-confidential decisions of the WCC, pamphlets about the role of the Witness Support Office, and the calendar of proceedings of the WCC.

<sup>180</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005. Staff in the Special Department for War Crimes have indicated their willingness to Human Rights Watch to participate in this project. Human Rights Watch interview with Special Department for War Crimes staff, Sarajevo, September 28, 2005.

<sup>181</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; CSN document, p. 6.

<sup>182</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, December 2, 2005.

<sup>183</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, December 13, 2005.

<sup>184</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; Court staff e-mail communication to Human Rights Watch, Sarajevo, December 13, 2005.

<sup>185</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005.

<sup>186</sup> Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005; CSN document, p. 7. The Registry will provide limited assistance to all eight centers in identifying and securing funds from donors.

<sup>187</sup> Human Rights Watch interview with court staff, Sarajevo, September 26, 2005.

CSN operates independently of the WCC, it maintains the freedom to criticize problematic elements of the WCC's functioning as it feels necessary.<sup>188</sup> Further, as an independent entity, the CSN's role in the dissemination of information on behalf of the court is voluntary.<sup>189</sup>

Human Rights Watch welcomes this innovative approach to promote the widespread dissemination of information and support throughout Bosnia. The value of the CSN in widely disseminating information on behalf of the WCC is heightened since the PIOS's modest budget for outreach activities limits its ability to do so. At the outset, however, Human Rights Watch would like to emphasize the importance of putting in place a mechanism to monitor the overall effectiveness of the CSN, over and above the progress reports provided by coordinators. This is necessary to ensure that information about the WCC is disseminated by the CSN on a consistent basis throughout Bosnia.

In light of the limited staff within the PIOS, this could entail employing an independent contractor to evaluate the functioning of the CSN on a regular basis and ensure that the level of support and information dissemination provided by the CSN is consistent in the different regions.<sup>190</sup> Where problem areas are identified in the CSN with respect to the dissemination of information, the PIOS should assume this important responsibility. In the event that additional support cannot be provided by the Registry, Human Rights Watch urges the donor community to provide the necessary funds to ensure this outreach strategy is effective.

## ***2. Initiatives to engage the media***

The local media has the ability to reach out to people of all ethnicities throughout Bosnia and to put forward information about the WCC on a mass scale. Because of its power to inform and potentially influence people's perceptions about the WCC, engaging the local media is a crucial part of an effective outreach strategy. Working with the media can also make the WCC more accessible for those living outside of Sarajevo.

The PIOS has undertaken a number of initiatives to promote media awareness of the WCC's activities. For example, the PIOS assisted in designing the curriculum for the training of journalists in war crimes reporting organized by the Balkan Investigative

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<sup>188</sup> Human Rights Watch interview with court staff, Sarajevo, September 26, 2005; Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005.

<sup>189</sup> Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005.

<sup>190</sup> The possibility of engaging an independent evaluator to monitor this relationship has been anticipated by the PIOS. See CSN document, p. 4.

Reporting Network.<sup>191</sup> It is also possible for media outlets and the general public to obtain a video recording of court proceedings upon request.<sup>192</sup> Further, the PIOS has been involved in the production of several specialized TV programs and features on the State Court and war crimes trials, which have been shown on major public and private channels in Bosnia.<sup>193</sup> There is already a spokesperson within the Special Department for War Crimes, and efforts are underway to recruit a spokesperson for the WCC.<sup>194</sup> This latter position will be essential in terms of providing a focal point for journalists to establish contact with the WCC, and fielding specific questions about its operation. Efforts have also been made within the Registry and the PIOS to engage the international media in the work of the WCC.<sup>195</sup>

### 3. *Other Initiatives*

The PIOS has undertaken a number of other outreach initiatives. Most notably, the PIOS initiated visits by victims' groups to the State Court. These visits are aimed at demystifying the trial process for victims by familiarizing them with the proceedings. The visits also promote direct contact between victims, prosecution officials within the Special Department for War Crimes and other court staff.<sup>196</sup> Between August and early December 2005, there were twelve visits by victims' groups to the State Court.<sup>197</sup> The Witness Support Office recently took over the organization of the victim association visits, and is currently working on the 2006 schedule with the International Commission for Missing Persons (ICMP).<sup>198</sup> For the visits, an effort is made to select victims' groups

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<sup>191</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 28, 2005. More than thirty journalists from both entities representing print, radio, television and newswire outlets attended the course, which took place between March and August 2005. In addition to this training, the Balkan Investigative Reporting Network has put forth a proposal to start a newswire service to provide regular, comprehensive and reliable information on war crimes trials and other relevant events at the WCC. The journalists involved in this initiative will produce a weekly "Justice Report", which will offer an in-depth analysis of trials before the WCC. BIRN staff e-mail communication to Human Rights Watch, Sarajevo, November 5, 2005. See also BIRN, "BIRN BiH Justice Series – Media, Civil Society & War Crimes Trials, Phase 2 – 2006 Project Proposal," (copy on file with Human Rights Watch).

<sup>192</sup> Under art. 241(3) of the Criminal Procedure Code, filming is not permitted in the courtroom unless the president of the State Court makes an exception. Human Rights Watch was informed that the president of the State Court issued a directive accordingly. Consequently, the proceedings are taped and copies are provided to the Court Management Section for distribution upon request once any sensitive material has been removed. Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005.

<sup>193</sup> Progress Report, p. 45.

<sup>194</sup> Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005.

<sup>195</sup> *Ibid.*

<sup>196</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005.

<sup>197</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, December 2, 2005.

<sup>198</sup> Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005. The ICMP is an intergovernmental organization that addresses the issue of persons missing as a result of the conflicts in the former Yugoslavia.

from throughout Bosnia to ensure ethnic diversity. The ICMP coordinates with the Witness Support Unit and the PIOS in selecting these groups<sup>199</sup> and provides a measure of financial assistance by covering the travel costs to Sarajevo.<sup>200</sup>

Human Rights Watch welcomes the above efforts to make the trial process more accessible. Familiarizing victims and witnesses with the logistics of court proceedings helps to address any fear or apprehension associated with providing testimony. We encourage the continuation of these efforts, particularly as the number of trials and witnesses increase. It is also important that the PIOS resume a coordination function with respect to these visits once there is an increase in trials, to ensure that the Witness Support Office can devote its resources to directly assisting witnesses in providing testimony before, during and after proceedings.

Other outreach initiatives include: 1) conferences throughout Bosnia involving officials from the State Court and the cantonal and district courts to raise awareness of the WCC's mandate; 2) websites for the Registry and the State Court; 3) reports by the Registry on the progress of the WCC, available on its website; and 4) plans to issue a "frequently asked questions" document, which would provide current information about the functioning of the WCC.<sup>201</sup> In addition to these projects, the Criminal Defense Support Section (OKO) has a website, which includes links to key legal materials.<sup>202</sup>

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<sup>199</sup> Victims groups such as the Union of Associations of Families of Missing and Captured Persons of Republic of Srpska, the Association of War Victims of Prijedor and the Women of Srebrenica have been included in this initiative. Court staff e-mail communication to Human Rights Watch, Sarajevo, December 2, 2005.

<sup>200</sup> Court staff e-mail communication to Human Rights Watch, Sarajevo, December 2, 2005.

<sup>201</sup> Human Rights Watch interview with PIOS staff, Sarajevo, September 26, 2005; Human Rights Watch telephone interview with court staff, Sarajevo, December 1, 2005. The websites of the Registry and the State Court are as follows: <http://www.registrarbih.gov.ba> and <http://www.sudbih.gov.ba>.

<sup>202</sup> OKO's website can be accessed at the following link: [www.okobih.ba](http://www.okobih.ba).

## VII. The War Crimes Chamber's Potential for Impact

The WCC offers tremendous promise to affect the way justice is realized in Bosnia. In this regard, Human Rights Watch is encouraged by the efforts made thus far to create a solid foundation to conduct fair and effective trials before the WCC, including initiatives to promote sustainable local capacity. However, the real challenges associated with conducting fair and effective trials lie ahead. Depending on how these challenges are addressed, the WCC and its institutions have the potential to make a significant impact on building respect for the rule of law in Bosnia. In that regard, it will require continuous support from the international community and the people of Bosnia in realizing its full potential.

Finally, the limited mandate and resources of the WCC mean it will try a small number of the most serious war crimes cases in Bosnia. The bulk of the prosecutions of war crimes cases will take place in the district and cantonal courts throughout Bosnia. Although a detailed analysis of the functioning of those courts is outside the scope of this report, there are reasons to believe that their lack of resources, among other factors, may undermine their ability to conduct fair and effective war crimes trials.<sup>203</sup> Ensuring effective trials in these courts, in addition to those in the WCC, is absolutely essential to building respect for the rule of law in Bosnia. Moreover, without adequate support for these courts, there is a real risk that the accomplishments of the WCC will, at best, only have limited impact. We therefore strongly urge the international community to provide the cantonal and district courts with this much-needed support.

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<sup>203</sup> See Human Rights Watch, "Justice at Risk."

## VIII. Recommendations

### *To the War Crimes Chamber*

#### *To the Registry*

- Continue with efforts to recruit additional international prosecutors, and ensure that these positions are adequately funded to attract and retain qualified candidates.
- Make additional allocations for local and/or international prosecutors for assignment to the Special Department for War Crimes as required, and particularly in the event that there is a rise in the number of cases for investigation and prosecution.
- Make the necessary staff provision for language assistance to the Special Department for War Crimes to ensure the timely and accurate translation of prosecution material.
- Ensure ongoing support to the Witness Support Office in providing financial allowances to vulnerable witnesses when necessary, to facilitate the experience of providing testimony.

#### *To the Public Information and Outreach Section*

- Monitor the functioning of the Court Support Network on a regular basis to ensure that the level of support and information dissemination provided is consistent in all regions of the country.
  - This may include engaging an independent evaluator to monitor the functioning of the Court Support Network.
  - Where problem areas are identified in the Court Support Network with respect to the dissemination of information, the Public Information and Outreach Section should assume the responsibility of information dissemination about the work of the War Crimes Chamber.
- Resume the coordination function with respect to visits by victims once there is an increase in trials, so that the Witness Support Office can devote its resources to assisting witnesses in individual cases.
- Continue to build strong relationships with the local media to maximize the impact of the War Crimes Chamber on the people of Bosnia.

### ***To the authorities of Bosnia and Herzegovina***

- Allocate additional resources to the War Crimes Unit of the State Investigation Protection Agency, so that it has the resources necessary to conduct effective investigations, in the following respects:
  - Increase the salaries of all War Crimes Unit officers to ensure the remaining vacant posts are filled immediately with qualified applicants.
  - Provide the War Crimes Unit with the necessary equipment, such as additional vehicles and a dedicated and secure fax machine.
  - Solicit funds from the international donor community where additional financial assistance is required.
- Amend the Criminal Procedure Code in the following respects:
  - Allow for the transfer of proceedings in all war crimes cases, except where the defendant would be subject to the death penalty.
  - Include representation rendered by defense advocates as a “necessary expense” to permit their compensation throughout war crimes proceedings.
  - Include defense investigators as a “necessary expense” of the defense in war crimes cases.
- Amend the payment scheme applicable to court-appointed defense attorneys in the following manner:
  - Clearly indicate that preparation time by court-appointed defense advocates will be compensated.
  - Include payment to individuals other than the defense attorney who conduct investigations on behalf of indigent defendants in war crimes cases.
- Amend the Law on the Protection of Witnesses to eliminate the possibility of concealing the identity of a witness from the defendant in all criminal proceedings.

### ***To the authorities of Serbia and Montenegro and of Croatia***

- Provide specific guarantees to facilitate participation of Bosnian witnesses in all war crimes cases transferred by the Bosnian authorities to be tried before courts in Serbia and Montenegro and in Croatia. This could include, for example, giving witnesses the option of providing testimony through a video link in every case transferred by the Bosnian authorities.

- Undertake the necessary measures to abolish the existing ban in the countries' respective constitutions on the extradition of nationals to other states to stand trial for the most serious crimes, including war crimes.

### ***To the International Criminal Tribunal for the former Yugoslavia***

- Continue with plans to:
  - Provide access to the ICTY's Judicial Database (JDB) for prosecutors and defense attorneys in Bosnia.
  - Designate additional staff members to address requests for evidence from Bosnia, as well as other jurisdictions within the former Yugoslavia, to facilitate national prosecutions by ensuring that requests for information and evidence are handled as efficiently as possible.

### ***To the international donor community***

- Ensure that the organs necessary for the effective functioning of the War Crimes Chamber, including the Special Department for War Crimes of the Office of the Prosecutor, the Criminal Defense Support Section (OKO), the Witness and Victims Support Office and the Public Information and Outreach Section, are adequately funded.
- Respond positively to requests for support to increase the funding provided to these respective organs and the War Crimes Chamber generally.
- Coordinate efforts to ensure essential assistance is provided to the cantonal and district courts to facilitate fair and effective war crimes trials.

## IX. Acknowledgements

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