



# Accountability for War Crimes

The OSCE Mission to Bosnia and Herzegovina monitors and reports on war crimes proceedings to provide an objective and accurate assessment of the ability of the judicial system to prosecute and try cases in an effective, human rights compliant and expeditious manner. The Mission also supports the judiciary in Bosnia and Herzegovina to reach out to communities in order to increase transparency and the level of public information in the area of war crimes and justice.

## Domestic War Crimes Prosecutions

Courts and prosecutors' offices in Bosnia and Herzegovina (BiH) have been dealing with cases of war crimes since the end of the 1992-1995 war. In 2003, the newly established Court of BiH and BiH Prosecutor's Office were given jurisdiction over these cases and a significant number of cases – over 100 – have been processed successfully since the institutions became fully operational in 2005. In addition, war crimes proceedings are still ongoing in a number of courts in the entities and Brčko District, as the laws and policies in force in BiH foresee the processing of less complex war crimes cases before the cantonal and district authorities.

Since 2004, the OSCE Mission to BiH has monitored approximately 200 proceedings concerning war crimes, crimes against humanity, and genocide before the domestic courts of BiH. The main goal of the Mission in this area has been to give an objective and accurate assessment of the ability of the judicial system to prosecute and try these cases in an effective, human rights compliant and expeditious manner. The Mission also continues to be active in highlighting the need to increase the capacity and efficiency of courts and prosecutors' offices at the entity level and to ensure that state level institutions continue to receive adequate support and resources.

## National Strategy for War Crimes Processing

Current estimates indicate that BiH has 1,300 cases involving some 8,000 suspects in its backlog of war crimes cases. With strong support from the Mission, a National Strategy for War

Crimes Processing was developed to tackle this backlog by BiH justice sector actors and adopted in December 2008. In this process, the Mission actively advocated for the development of a clear and efficient mechanism for the transfer of less complex cases to the entities in order to allow the Court of BiH and BiH Prosecutor's Office to focus on the most complex cases.

The Mission has also taken other concrete steps to support the process. The Mission designed and developed the **Database of Open Case Files** – a software tool – to serve as a centralized database of war crimes case files at the BiH Prosecutor's Office and to permit mapping of the caseload to assist in determining the number and nature of cases for prosecution. This ongoing process will, in turn, allow the prioritization and selection of viable cases for prosecution according to principled criteria identified in the National Strategy for War Crimes Processing.

## Pioneering Judicial Outreach

A lack of information available to the public in BiH about the judicial system has fostered misconceptions about war crimes prosecutions and the capacity of the domestic criminal justice system to deal with these cases. This situation has contributed to an overall public distrust in the criminal justice system and consequently a growing reluctance to co-operate with courts and prosecutors. This is particularly problematic for resolving war crimes cases and moving towards the full restoration of the rule of law in BiH.

As part of the efforts to support the implementation of outreach activities in courts and prosecutors' offices, the Mission regularly brings together actors from the international and national justice systems, including representatives of the ICTY, the Court of BiH, the BiH Prosecutor's Office, judges, prosecutors,



civil society organizations, and members of the press. These forums stimulate necessary and productive debates about enhancing transparency, outreach and support to victims and witnesses. The Mission also supports projects with civil society organizations aimed at fostering the public's level of understanding and trust in war crimes processing in BiH.

## Rule 11bis Cases

In the context of the International Criminal Tribunal for the Former Yugoslavia (ICTY) Completion Strategy, the ICTY transferred six cases involving ten defendants from The Hague to the BiH authorities, in accordance with Rule 11bis of the ICTY Rules of Procedure and Evidence (known as Rule 11bis cases). At the request of the ICTY Prosecutor and in line with its mandate, the Mission agreed to monitor and report on the Rule 11bis cases.

The Mission submitted to the ICTY Prosecutor's Office approximately 60 reports on these cases, describing the main developments in each case and focusing on any challenges identified from the perspective of human rights standards, as well as on positive steps that were taken to address these challenges. All reports were translated into the official languages of BiH and shared with national practitioners and authorities. As the final Rule 11bis case was completed in 2011, the Mission assessed that the handling of these cases demonstrated the capacity of the BiH system to process war crimes cases with fairness and efficiency, notwithstanding some concerns identified in the Mission's reports.

## Capacity Building and Legacy Implementation

The Mission implemented the *Capacity Building and Legacy Implementation (CBLI)* project as the Rule 11bis caseload gradually decreased. The aim of the CBLI initiative was to ensure that the professional capacity of justice actors was strengthened through the co-ordinated efforts of

education providers. CBLI targeted legal practitioners' actual needs while ensuring that steps were undertaken to put mechanisms in place that will allow domestic justice sector practitioners, the ICTY, and neighbouring countries to co-operate with each other in a close, co-ordinated and sustainable manner.

The CBLI project published three thematic reports on issues related to BiH's domestic war crimes proceedings (see below). In 2009, the first ever regional workshop on best practices in knowledge transfer and capacity building in processing war crimes cases was convened in Sarajevo. Although this project is now complete, the Mission continues to collaborate with the national authorities and practitioners on issues surrounding capacity building and the transfer of knowledge from the ICTY through the *War Crimes Justice Project*, an EC funded initiative jointly implemented from 2010 to 2011 by the ICTY, the OSCE Office for Democratic Institutions and Human Rights, and the United Nations Interregional Crime and Justice Research Institute.

## Thematic Reports on War Crimes Processing

In 2011, the Mission published its latest report entitled "*Delivering Justice in Bosnia and Herzegovina: An Overview of War Crimes Processing from 2005 to 2010.*" The report documents findings from the trials of individuals for genocide, crimes against humanity and war crimes monitored by the Mission at both the state and entity level between 2005 and 2010. It considers to what extent the framework for war crimes processing has served to bolster the delivery of justice in war crimes cases and the overall efficiency of the criminal justice system in BiH. The report also examines the progress in and obstacles to the implementation of the National Strategy for War Crimes Processing. *Delivering Justice in BiH* follows the Mission's previous public reports on war crimes proceedings in BiH, all of which are available at [www.oscebih.org](http://www.oscebih.org).

The OSCE Mission to Bosnia and Herzegovina assists BiH in meeting its OSCE commitments and in progressing towards its stated goal of Euro-Atlantic integration by strengthening security and stability through completion of peace-building within the Dayton framework and developing inclusive political discourse and democratically accountable institutions that respect diversity, promote consensus and respect the rule of law. The Mission takes a comprehensive and integrated approach through its field presence, reflecting an emphasis on developing cohesive communities and on the timely identification of obstacles to progress.