

# Ensuring Accountability for War Crimes and Promoting Transitional Justice



The OSCE Mission to Bosnia and Herzegovina (Mission) monitors and reports on domestic war crimes proceedings to provide an objective and accurate assessment of the capacity and willingness of the judicial system to investigate, prosecute and adjudicate war crimes in an effective, human rights compliant and expedient manner. In addition, the Mission has begun increasing its focus on transitional justice as an essential complement to judicial proceedings. Related Mission programming includes capacity-building, promoting transparency, targeted advocacy and technical support.

## Domestic War Crimes Prosecutions

Since the end of the 1992-1995 war, courts and prosecutors' offices in BiH have been investigating and

trying war crimes cases. Following the adoption of the Completion Strategy of the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 2003, specialized departments in the Court

of BiH and the Prosecutor's Office of BiH (PO BiH) have jurisdiction over these crimes and have processed over 285 cases. Given the magnitude of the case backlog, the National War Crimes Processing Strategy (NWCPS) provided the mechanisms and criteria for distribution of cases to ensure State-level institutions address the most complex cases and those involving the most responsible perpetrators, while cantonal and district prosecutors' offices and courts in the entities and in Brčko District continue to process less complex war crimes cases.

Since 2004, under the auspices of its trial monitoring programme, the Mission has monitored more than 640 proceedings concerning

war crimes, crimes against humanity and genocide before the domestic courts of BiH. Based on this data and analysis, the Mission regularly underscores the need to increase the capacity and efficiency of courts and prosecutor's offices across BiH and to ensure the provision of adequate support and resources to address these sensitive cases.

## National War Crimes Processing Strategy

Estimates that BiH had about 1,300 cases involving approximately 8,000 potential suspects in its backlog of war crimes cases led to the adoption of the NWCPS as a policy document in December 2008 as well as its subsequent revision in 2020. Through

the process of drafting, adopting, implementing and revising the NWCPs, the Mission has advocated for the establishment of clear and efficient mechanisms to transfer less complex cases to the entities, thereby allowing State-level authorities to focus on those of the greatest complexity, in line with the NWCPs itself. To further support the prioritization and selection of cases for prosecution according to the criteria identified in the NWCPs, in 2008 with the support of the Norwegian Embassy, the Mission designed and developed the Database of Open Case Files. This centralized database of war crimes case files at the PO BiH enables caseload mapping to assist in determining the number and nature of cases to prosecute or transfer.

### Pioneering Judicial Outreach

A lack of accurate and publicly available information has fostered misconceptions about war crimes prosecutions and the capacity of the BiH criminal justice system to deal with such cases. This contributes to distrust in the criminal justice system and a growing reluctance, including by essential witnesses, to co-operate with courts and prosecutors. In support of the outreach efforts of courts and prosecutor's offices, the Mission regularly brings together actors from international and national justice systems, including representatives of the ICTY, the Court of BiH, the PO BiH, other judges and prosecutors, civil society organizations and members of the press. These forums stimulate debates

about enhancing transparency, community outreach and support to victims and witnesses. Working with civil society organizations, the Mission fosters public understanding of and trust in war crimes processing in BiH.

### Rule 11bis Cases

In the context of the [ICTY Completion Strategy](#) and in accordance with Rule 11bis of the ICTY Rules of Procedure and Evidence, the ICTY transferred six cases involving ten defendants from The Hague to BiH authorities. Based on a request from the ICTY and in line with its mandate, the Mission agreed to monitor and report on these Rule 11bis cases. The approximately 60 reports submitted by the Mission on these cases describe key developments and challenges as well as steps taken to address them. Following the completion of the final Rule 11bis case in 2011, the Mission assessed that the handling of these cases demonstrated the capacity of the BiH system to process war crimes cases fairly and efficiently, notwithstanding certain concerns identified in the Mission's reports.

### Extra-Budgetary Projects

The generous support of international partners has enabled the Mission to implement several Extra-Budgetary Projects that bolster its core programming to improve war crimes processing and end impunity for genocide, crimes against humanity and war crimes. Implemented in 2009, with the support of the governments of the France,

Greece, Norway, Switzerland and the United Kingdom (UK), the Mission's Capacity Building and Legacy Implementation (CBLI) project targeted the needs of legal practitioners and devised mechanisms to allow sustainable cooperation between domestic justice sector practitioners, the ICTY and neighbouring jurisdictions. The War Crimes Capacity Building Project (WCCBP), which ran from 2014 to 2017 with funding from the UK, the United States of America, Switzerland, Germany, Norway, Italy and Austria, conducted capacity-building programming for prosecutors, judges, defence attorneys and investigators. Strengthening Rule of Law by Improving War Crimes Processing in BiH (IWCP), funded by the UK from 2018 to 2020, addressed systemic challenges in the Special Department for War Crimes of the PO BiH (SDWC) identified in the 2016 report, [Processing of War Crimes at the State Level in Bosnia and Herzegovina](#), written by Judge Joanna Korner, QC. IWCP established an electronic archive of evidence at the SDWC within the PO BiH and concluded with the publication of a follow-up report by Judge Korner in 2020, [Improving War Crimes Processing at the State Level in Bosnia and Herzegovina](#). Currently, the Mission is implementing the War Crimes Monitoring Project (WCMP), funded by the European Union, launched in 2014, in further support of the fair and effective processing of war crimes cases.

### Thematic Reports on War Crimes Processing

Reports on war crimes processing issued by

the Mission since 2012 publicize data collected through its extensive trial monitoring programme. This includes three reports on progress and challenges in processing conflict-related sexual violence, [Combating Impunity for Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress and Challenges](#), in both 2014 and 2015, and a comprehensive 2017 follow-up report, [Towards Justice for Survivors of Conflict-Related Sexual Violence in Bosnia and Herzegovina: Progress before Courts in BiH 2014–2016](#). Multiple Mission reports have examined the implementation and advancement of the NWCPs. In [Observations on the National War Crimes Processing Strategy and its 2018 Draft Revisions, including its relation to the Rules of the Road "Category A" cases](#) (2018), the Mission analysed the proposal for a revised NWCPs, while [War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina](#) analysed specific challenges in the prioritization of legally and factually complex war crimes cases in line with the NWCPs. Most recently, in 2022, [A Race against Time - Successes and Challenges in the Implementation of the National War Crimes Processing Strategy of Bosnia and Herzegovina](#) analysed systemic challenges in domestic war crimes prosecutions in the context of the revision of the NWCPs. The Mission also presents an [annual information sheet](#) that provides a statistical overview of war crimes case processing.

For more information, scan the QR code.

