



## **A Chance for Justice? War Crime Prosecutions in Bosnia's Serb Republic**

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## Executive Summary

During the 1992-1995 armed conflict in Bosnia and Herzegovina (hereafter Bosnia), there were widespread and serious crimes committed against civilians, prisoners of war, and civilian property, including killing, torture, rape, forcible displacement, and indiscriminate and deliberate attacks on civilian targets. Many of the crimes were committed in territory controlled by Bosnian Serb forces. Almost half of the individuals indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) are Bosnian Serbs.

For most of the past decade there has been effective impunity for war crimes in Republika Srpska (the predominantly Serb entity of Bosnia). By November 2005, only two war crimes trials had been completed in Republika Srpska. In contrast, over fifty war crimes cases were heard during the same period in the Federation of Bosnia and Herzegovina (Bosnia's other entity), including more than a dozen involving defendants from the dominant ethnic group in the location in question. Serbia and Montenegro carried out thirteen trials in the same period, all but one involving Serb defendants, and Croatia had a large number of trials, including nine trials involving Croat defendants.

However, in late 2005 war crime prosecutions began to gain momentum in Republika Srpska. In two trials completed in November and December respectively, a court in Banja Luka convicted a total of four ethnic Serbs on war crimes charges, and one Serb was convicted in the town of Trebinje in December. As of early February 2006, a war crimes trial against an ethnic Serb was ongoing in Trebinje district court, and another one involving a Serb defendant in Banja Luka district court. Prosecutors in charge of war crimes prosecutions in several parts of Republika Srpska were also nearing completion of other investigations.

The rise in the number of prosecutions reflects a greater willingness of Republika Srpska to bring war crimes suspects to trial. In addition, the creation of the new Sarajevo War Crimes Chamber has significantly increased the number of war crime cases likely to be heard in Republika Srpska. During 2005, the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina carried out a review of war crimes cases investigated in Bosnia. While the most serious cases are likely to be prosecuted in the War Crimes Chamber in Sarajevo, a large number have already been referred to local prosecutors in Republika Srpska and the Federation of Bosnia and Herzegovina. The Special Department for War Crimes has transferred around forty cases to Republika Srpska prosecutors, and further transfers are possible.

This new impetus towards prosecuting war crimes in Republika Srpska creates a significant opportunity to reform the criminal justice system. At present, war crimes prosecutions in Republika Srpska are hampered by a range of obstacles. These include limited prosecutorial resources, including shortages of support staff and lack of investigative capacity, and an expanding case load; the absence of specialist war crimes prosecutors, reflecting both a lack of expertise in humanitarian law and the fact that the mandate of prosecutors is not focused exclusively on war crimes cases; insufficient assistance by Republika Srpska police, coupled with a failure to make use of evidence available from other sources; witness intimidation and fatigue; and the non-availability of suspects.

Fair and effective war crimes prosecutions in Republika Srpska are important to overall accountability efforts in Bosnia. Moreover, the crimes at issue are very serious, and their proper resolution is a matter of great interest to victims and their families. The experience from elsewhere in the region and the examination of recent accountability efforts in Republika Srpska suggest that domestic war crimes prosecutions are likely to pose a range of challenges—including lack of investigative capacity and experience on the part of prosecutors and judges, ethnic bias in prosecutions, and inadequate witness protection—that will need to be tackled head on if the trials are to meet international standards.

Based on the research conducted for this report, Human Rights Watch believes that there are several measures that can be taken to help ensure the trials are consistent with international standards. They include the introduction of professional investigators in the prosecutorial offices at the district level, and an increase in the number of prosecutors where the increased number of war crimes investigations so requires. Prosecutorial offices should also make greater use of law clerks in war crimes prosecutions, and make full use of available sources of information relevant to the investigation, including information gathered by nongovernmental organizations, and ICTY transcripts and other material.

History will judge whether the most recent progress on war crimes in Republika Srpska marks a definitive departure from a decade of effective impunity. For that progress to be sustained, it is vital that Republika Srpska, and the national authorities in Bosnia, address the obstacles to more effective prosecutions in the Bosnian Serb entity.

## Background

While the estimates of the total number of casualties in the Bosnian war vary—from early ones putting the number above 200,000, to the more plausible recent estimates placing the number at around 100,000<sup>1</sup>—there is little disagreement that the majority of war crimes were committed by Bosnian Serb forces. Among the 161 persons indicted by the ICTY, seventy-seven are ethnic Serbs suspected of committing war crimes in Bosnia and Herzegovina.<sup>2</sup>

In Republika Srpska, however, suspects have enjoyed effective impunity for war crimes for most of the past decade. Before November 2005, only two war crimes trials had been completed in the Bosnian Serb entity of the country. By comparison, the Federation of Bosnia and Herzegovina—the other entity in Bosnia, mainly inhabited by Bosnian Muslims and Croats—had tried more than fifty cases by that date, including more than a dozen involving defendants from the dominant ethnic group in the location in question. Serbia and Montenegro during the same period carried out thirteen trials, all but one involving Serb defendants. Croatia has conducted a large number of trials on war crimes charges, including a dozen trials involving Croat defendants.<sup>3</sup> (The experience of domestic war crime prosecutions in the region is discussed below, at the end of the section entitled *Importance of War Crimes Prosecutions in Republika Srpska*.)

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<sup>1</sup> In December 2005, the Research and Documentation Center in Sarajevo assessed the number of war-related deaths during the Bosnian war at 102,000, following a four-year survey financed by the Norwegian government. See “Sarajevo Researcher Says 99,000 Killed in Bosnian War” (text of report in English by Croatian news agency HINA), December 17, 2005, [online] [http://www.csees.net/?page=news&news\\_id=48664&country\\_id=2](http://www.csees.net/?page=news&news_id=48664&country_id=2) (retrieved December 30, 2005) (the 99,000 figure in the article’s title refers to the number of deaths established by December 2005, but the researchers assessed that the figure would reach 102,000 at the completion of the survey). A demographics expert working for the ICTY and her colleague had earlier arrived at a figure of 102,622. See Ewa Tabeau & Jacub Bijak, “War-related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results,” *European Journal of Population*, June 2005, p. 206.

<sup>2</sup> See website of the International Criminal Tribunal for the former Yugoslavia, Indictments and Proceedings, at <http://www.un.org/icty> (retrieved February 23, 2005). The figure includes indictments against persons who later died and a number against low-level suspects that the Prosecutor decided not to pursue, on resource grounds.

<sup>3</sup> According to the Organization for Security and Co-Operation in Europe (OSCE), which monitors war crime proceedings throughout the former Yugoslavia, from 1996 to January 2005 fifty-four cases, against ninety-four defendants, reached trial stage in Bosnia. All but two trials took place in the Federation of Bosnia and Herzegovina. OSCE Mission to Bosnia and Herzegovina – Human Rights Department, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina: Progress and Obstacles,” March 2005, p. 6. More than 800 persons were tried in Croatia between 1991 and 2003, many in the absence of the accused. Human Rights Watch interview with Petar Puliselic, Croatian Deputy State Prosecutor, Zagreb, April 16, 2004. In Serbia and Montenegro, nine war crimes trials had been completed by the end of 2003. OSCE Mission to Serbia and Montenegro, “War Crimes Before Domestic Courts,” October 2003, pp. 10-14. Four new trials started in 2004-05.

The prosecution of war crimes in Bosnia's domestic courts is the subject of several reviews by Bosnian agencies involved in the criminal justice system. The process is being led by the High Judicial and Prosecutorial Council (HJPC), a national agency with responsibility for evaluating the work of prosecutors and judges in Bosnia. On November 28, 2005, representatives of the HJPC, ministries of justice and the chief prosecutors at both national and entity level formed a working group to assess the necessary number of prosecutors in the prosecutorial offices and to propose the necessary structural changes.<sup>4</sup> On the same day, the HJPC established another working group to assess the overall ability of the courts and prosecutorial offices to effect war crimes prosecutions.<sup>5</sup> Both working groups are presided over by Marinko Jurcevic, the Chief Prosecutor of Bosnia and Herzegovina.

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<sup>4</sup> Human Rights Watch interview with Branko Peric, Head of High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina, Sarajevo, December 15, 2005.

<sup>5</sup> Ibid.

## **Importance of War Crimes Prosecutions in Republika Srpska**

The expected number of war crimes investigations, the severity of the underlying crimes, the importance of justice for the victims, and experience from elsewhere in the region are among the reasons why it is important to ensure that war crimes investigations and proceedings in Republika Srpska are fair and effective.

### ***Significant Number of War Crimes Cases Yet To Be Heard***

Although the ICTY has an impressive record in prosecuting those responsible for the most egregious war crimes committed in Bosnia, only a fraction of low- and mid-level perpetrators have been tried at the ICTY. The Tribunal has indicted 109 persons for war crimes in Bosnia.<sup>6</sup> Hundreds of other individuals will be tried in Bosnia, before domestic courts.

The courts in Bosnia are currently dealing with two groups of cases: those initiated at the ICTY and subsequently transferred to the domestic courts, and the cases initiated in the past by the Bosnian judiciary. In the future, Bosnian prosecutors and courts will be also dealing with “new” cases, in which neither the local prosecutors nor the ICTY have yet conducted investigations.

The special War Crimes Chamber in the State Court of Bosnia and Herzegovina, established in March 2005, will try the cases of lower- to mid-level perpetrators indicted by the ICTY and referred to the Bosnian court under Rule 11 bis of the ICTY rules of procedure and evidence.<sup>7</sup> In addition to the Rule 11 bis cases, the War Crimes Chamber will be responsible for those cases submitted to it by the ICTY Office of the Prosecutor where investigations have not been completed.<sup>8</sup> The referrals policy is motivated by the ICTY’s objective, mandated by the United Nations Security Council, to complete all

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<sup>6</sup> See website of the International Criminal Tribunal for the former Yugoslavia, Indictments and Proceedings, at <http://www.un.org/icty/cases/indictindex-e.htm> (retrieved December 20, 2005).

<sup>7</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; 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. 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>8</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.

first-instance trials by the end of 2008.<sup>9</sup> (The War Crimes Chamber is the subject of a separate Human Rights Watch report published in February 2006.<sup>10</sup>)

The Bosnian judiciary is also handling war crimes cases originally initiated in Republika Srpska and the Federation of Bosnia and Herzegovina. Under the “Rules of the Road,” an agreement between Bosnian authorities and the ICTY that operated between 1996 and 2004, all domestic war crime cases were first reviewed by the ICTY together with any accompanying evidence. Those cases where the ICTY Office of the Prosecutor deemed the evidence to be sufficient to warrant the arrest or indictment of the suspects named in the case files were referred to as category “A” cases. The Rules of the Road Unit in the ICTY Office of the Prosecutor assessed that the requests concerning 846 individuals met the international criteria necessary to warrant proceeding with prosecution (and therefore a category “A” designation).<sup>11</sup> Between 1996 and January 2005, ninety-four defendants (of the 846 persons from category “A” cases) had been tried in Bosnia. In addition, at least seventy-three persons were being actively investigated or were in the pre-trial phase in January 2005.<sup>12</sup>

In 2004 and 2005, following a verbal agreement between the various prosecutorial agencies in Bosnia, cantonal prosecutors in the Federation and district prosecutors in Republika Srpska referred all their existing war crimes case-files in which indictments had not yet been issued to the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina (hereinafter “Special Department for War Crimes”) for review. The Special Department for War Crimes has the power to take over cases involving the most serious crimes (referred to as “highly sensitive” cases).<sup>13</sup>

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<sup>9</sup> See United Nations Security Council Resolutions 1503 and 1534. S/RES/1503 (2003), adopted by the Security Council on its 4817<sup>th</sup> meeting on August 28, 2003, and S/RES/1534 (2004), adopted by the Security Council on its 4935<sup>th</sup> meeting on March 26, 2004. See also “Security Council endorses proposed strategy for transfer to national courts of certain cases involving humanitarian crimes in Former Yugoslavia,” U.N. Security Council Press Release, July 24, 2002, [online] <http://www.unis.unvienna.org/unis/pressrels/2002/sc7461.html> (retrieved July 28, 2004).

<sup>10</sup> Human Rights Watch, “Looking for Justice: The War Crimes Chamber in Bosnia and Herzegovina,” *A Human Rights Watch Report*, vol. 18, no.1(D), February 2006, [online] <http://hrw.org/reports/2006/ij0206/>

<sup>11</sup> See OSCE Mission to Bosnia and Herzegovina – Human Rights Department, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina,” p. 6. The Rules of the Road unit was closed on October 1, 2004. Since that date, all new war crimes investigations are entirely in the hands of the Bosnian judiciary. *Ibid.*, p. 50, and Human Rights Watch, “Looking for Justice,” pp. 6, 9-10.

<sup>12</sup> OSCE Mission to Bosnia and Herzegovina – Human Rights Department, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina,” p. 6.

<sup>13</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, September 27, 2005.

In deciding which cases are “highly sensitive” the Office of the Prosecutor of Bosnia and Herzegovina has applied the Orientation Criteria for Sensitive Rules of the Road Cases, a document adopted by the Prosecutor in October 2004. The categorization depends mainly, even if not exclusively, on the nature of the crime and

Other cases (referred to as “sensitive”) are the responsibility of cantonal or district prosecutors in the area in which the crimes took place, applying the principle of territorial jurisdiction. As a practical matter, the physical case files are first sent back to the originating prosecutorial office, for transfer to the prosecutorial office with territorial jurisdiction.<sup>14</sup>

The Special Department for War Crimes prioritized for review the category “A” files. As of mid-November 2005, the Department had reviewed the “A” files pertaining to 734 individuals and found 194 to be “highly sensitive.”<sup>15</sup> The War Crimes Chamber in the State Court of Bosnia and Herzegovina will hear those cases.

The task of investigating the remaining 540 suspects in category “A” cases will fall to the cantonal prosecutors in the Federation of Bosnia and Herzegovina and district prosecutors in Republika Srpska.<sup>16</sup> Applying the principle of territorial jurisdiction, the Special Department for War Crimes has determined that district prosecutors in Republika Srpska should carry out investigation into approximately forty category “A” cases (by comparison, cantonal prosecutors in the Federation are responsible for at least 160 cases.)<sup>17</sup> The figure refers to the number of cases, rather than to the number of suspects, as some cases involve multiple suspects.

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position of the perpetrator. The crimes warranting the designation of a highly sensitive case are the following: genocide; extermination; multiple murders; rape and other serious sexual assaults as part of a system; enslavement; torture; persecutions on a widespread and systematic scale; and mass forced detention in camps. The perpetrators who should be tried before the State Court of Bosnia and Herzegovina include military commanders and police chiefs, as well as political leaders and members of the judiciary. Orientation Criteria for Sensitive Rules of the Road Cases (Annex to the Book of Rules on the Review of War Crimes Cases), adopted by the Office of the Prosecutor of Bosnia and Herzegovina on October 12, 2004.

<sup>14</sup> While most offices adhere to this practice, at least one office, in Tuzla (Federation of Bosnia and Herzegovina), is withholding case-files from the prosecutor with territorial jurisdiction (in Bijeljina, Republika Srpska). The prosecutor in Tuzla has argued that the principle of universal jurisdiction in war crimes prosecutions and the familiarity with the cases speak in favor of completing the prosecutions and trials in Tuzla. Human Rights Watch interview with Alma Dzaferovic, cantonal prosecutor in charge of war crimes prosecutions, Tuzla, November 22, 2005.

<sup>15</sup> Human Rights Watch interview with Edita Pejovic, Spokesperson for the Office of the Prosecutor of Bosnia and Herzegovina, Sarajevo, November 17, 2005.

<sup>16</sup> Bosnia and Herzegovina is divided into two entities—Republika Srpska, and the Federation of Bosnia and Herzegovina—and the Brcko District. Republika Srpska is further divided into municipalities. Some of the municipalities contain municipal (“basic”) courts with jurisdiction to adjudicate comparatively minor crimes. Higher, district courts have jurisdiction over cases involving more serious crimes. The five district courts are based in Banja Luka, Trebinje, Doboj, Bijeljina, and East Sarajevo. The Federation of Bosnia and Herzegovina, in contrast, is divided into nine cantons, each of which contains a certain number of municipalities. Municipal and cantonal courts exist within a canton, with a similar division of competence as the municipal and district courts in Republika Srpska.

<sup>17</sup> An official aggregate figure concerning the number of cases referred to the prosecutors in Republika Srpska and the Federation does not exist. Human Rights Watch has arrived at the respective figures (40 and 160) by cross-referencing data from various sources, including: Special Department for War Crimes staff e-mail

Bosnia and Herzegovina prosecutors will also manage numerous cases in which criminal charges were brought before March 2003, but which were never given an “A” designation, either because the ICTY Prosecutor deemed the evidence submitted to be insufficient, was unable to review it, or because the cases were never submitted for ICTY review.<sup>18</sup> Cantonal and district prosecutors are still investigating a number of these cases, collecting evidence, and must submit the files to the Special Department for War Crimes for review.<sup>19</sup>

Any new war crimes cases (those that have not yet been the subject of investigation by the ICTY or Bosnian prosecutors) are the responsibility of the Prosecutor of Bosnia and Herzegovina, who has exclusive competence to conduct investigations into them, by virtue of the legislation adopted in 2003.<sup>20</sup> After the completion of the investigation and issuance of an indictment, the Prosecutor of Bosnia and Herzegovina can refer the case to a district prosecutor in Republika Srpska or cantonal prosecutor in the Federation.<sup>21</sup>

The Chief Prosecutor of Bosnia and Herzegovina has expressed concern that the limited number of war crimes prosecutors in the Special Department for War Crimes (a dozen) will make it next to impossible for the Office of the Prosecutor to handle cases other

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communication to Human Rights Watch, February 2, 2006; Human Rights Watch telephone interview with Behajja Krnjic, head of Team IV (for Eastern Bosnia and Herzegovina) in the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina, February 9, 2006; e-mail communication to Human Rights Watch from Rajko Colovic, Chief District Prosecutor, East Sarajevo, February 9, 2006; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005, and Human Rights Watch telephone interview with Gacinovic, February 2, 2006; Human Rights Watch telephone interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, February 2, 2006; and, Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

<sup>18</sup> According to the OSCE, between 1996 and September 2004 the ICTY Rules of the Road Unit received criminal files against a total of 5,789 war crimes suspects. The files were organized by incident and not suspect, so some suspects were given more than one standard marking. The Unit provided 3,965 markings (in relation to 3,489 suspects) belonging to one of the eight categories (“A” through “H”). The most significant were category “A” (sufficient evidence for prosecution – 846 markings), category “B” (insufficient evidence - 2,346 markings), and category “C” (the Rules of the Road Unit was unable to determine sufficiency of evidence – 675 markings). OSCE Mission to Bosnia and Herzegovina – Human Rights Department, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina,” pp. 5 and 6.

<sup>19</sup> *Ibid.*, p. 50.

<sup>20</sup> *Ibid.*, p. 17 (referring to Article 215(3) of the Criminal Procedure Code of Bosnia and Herzegovina (March 2003)). The Penal Code of Bosnia and Herzegovina, from March 2003, as well as the penal codes of Republika Srpska and the Federation of Bosnia and Herzegovina which entered into force in July and August 2003 respectively, removed war crimes provisions from entity penal codes and placed them in the penal code of Bosnia and Herzegovina.

<sup>21</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005. The process is governed by Article 27 of the Criminal Procedure Code of Bosnia and Herzegovina.

than those already with the department.<sup>22</sup> There is a possibility that future legislation might authorize the referrals in the “new” cases during the investigation stage. In that event, the procedure would resemble that for pre-existing cases, with district and cantonal prosecutors having a major role in the investigation.

### ***Seriousness of Underlying Crimes***

The fact that the most notorious war crimes committed in Bosnia will either be prosecuted at the ICTY or the special War Crimes Chamber in Sarajevo should not obscure the fact the courts in the Republika Srpska will adjudicate cases involving serious violations of humanitarian law.

A glance at the ongoing and recently completed war crimes trials before the district courts in Banja Luka and Trebinje reveals the seriousness of the crimes handled by the judiciary in Republika Srpska.

On November 17, 2005, the district court in Banja Luka convicted three former police officers for the killing of six Bosnian Muslims in Prijedor in March 1994.<sup>23</sup> According to the judgment in the case (*Radakovic and others*), on the night of March 29, 1994, the three men—Drago Radakovic, Drasko Krndija, and Radoslav Knezevic—threw a bomb into the house of Atif and Zlata Djanic, before entering the house and shooting the couple dead.

The court found that the following night, the three men killed Sefik Hergic in his house, before throwing two bombs into the house of Faruk Rizvic. They then entered the Rizvic house, and murdered Faruk Rizvic, his wife Refika, and another woman, Fadila Mahmuljin. The three men beat all three about the head, smashing their skulls, and slit Faruk Rizvic’s throat. The court found that Radakovic, Krndija, and Knezevic committed the killings in revenge for the deaths of several Serb policemen in the fighting against Bosnian Muslims at a frontline nearby.<sup>24</sup>

The Banja Luka district court convicted Nikola Dereta, a former soldier in the Republika Srpska army, on December 5, 2005, for the killing of a Bosnian Muslim and the

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<sup>22</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005.

<sup>23</sup> Judgment of the Banja Luka District Court, No. K.50/01, November 17, 2005.

<sup>24</sup> *Ibid.*

attempted killing of the victim's father in September 1993.<sup>25</sup> News coverage of the trial indicates that on September 25, 1993, Dereta and five unknown perpetrators drove the victim and his father in a military jeep to the edge of a gorge near the town of Mrkonjic Grad. Both men had their hands tied. Dereta and the accomplices shot the son dead, while his father saved himself by jumping into the gorge.<sup>26</sup>

In the third completed case, Dragoje Radanovic was convicted by the Trebinje district court on December 9, 2005, for the illegal detention of four Bosnian Muslim civilians in April 1992.<sup>27</sup>

The war crimes trial currently taking place in the district court in Trebinje involves charges of inhuman treatment, illegal detention, and rape. According to the indictment, in early June 1992 Momir Skakavac forcibly took Bosnian Muslim Atif Hambo from his house in Miljevina (near Foca); Hambo was never seen again. During the summer of 1992, Skakavac and other members of the Bosnian Serb army allegedly kidnapped three Muslim women from their apartments. The women were taken to a cattle farm and forced to work there. Finally, between August and November 1992, Skakavac allegedly visited a house in which a Muslim woman, "No. 120," was held prisoner, and raped her on several occasions.<sup>28</sup>

The second ongoing trial, in the Banja Luka district court, involves the murder of four Bosnian Muslims in the village of Blagaj Rijeka. The defendant, Milanko Vujanovic, a Bosnian Serb, was indicted in March 1993 for the killing of Aziz Uzeirovic on October 19, 1992. According to the indictment, the next day Vujanovic burglarized the house of Arif Memic, took Memic out of the house and shot him dead with a rifle. Vujanovic then allegedly poured gasoline around the house of Arif Memic, burning down the house and burning to death two women, Safeta Memic and Mina Halilovic, who were inside.<sup>29</sup>

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<sup>25</sup> See "RS: Nikola Dereta Sentenced to 13 Years for War Crimes," FENA News Agency (Sarajevo), December 5, 2005, [online] [http://www.fena.ba/uk/vijest.html?fena\\_id=FSA327798&rubrika=ES](http://www.fena.ba/uk/vijest.html?fena_id=FSA327798&rubrika=ES) (retrieved December 30, 2005).

<sup>26</sup> See N. Moraca, "Izrecena presuda Nikoli Dereti za ratni zlocin u Sipovu" ("Nikola Dereta Convicted for War Crime in Sipovo"), *Nezavisne* (Banja Luka), December 6, 2005, [online] <http://www.nezavisne.com/dnevne/dogadjaji/dog12062005-02.php> (retrieved December 30, 2005).

<sup>27</sup> Human Rights Watch telephone interview with Dusko Popic, the presiding judge in the *Radanovic* trial, February 2, 2006.

<sup>28</sup> District Prosecutor in Trebinje, Indictment no. Kt.101/05, May 9, 2005.

<sup>29</sup> Case summary of the Banja Luka District court case K-99/00, prepared by the OSCE Mission to Bosnia and Herzegovina, Banja Luka Regional Center, November 2005 (on file with Human Rights Watch).

## ***Importance to Victims and Relatives***

Prosecutions are important for the victims and their relatives. It is the direct perpetrators of war crimes—those who pulled the trigger rather than those who gave the order—who are most likely to face justice in district courts in Republika Srpska. For many victims and witnesses, the conviction of direct perpetrators is equally if not more important than the punishment of those who ordered the crimes.

Effective prosecutions in local courts would also contribute to sustainable return of displaced persons and refugees to certain areas—such as Visegrad and Foca, in eastern Republika Srpska—where the impunity enjoyed by low-level perpetrators has discouraged potential returnees.

A woman who in 2000 and afterwards led the efforts to start the return of Muslims to Visegrad told Human Rights Watch that by 2005 she had resigned herself to the fact that “the return has failed, because war criminals continue to live freely there. Almost nobody returned to the town.”<sup>30</sup> Those who have returned to their pre-war homes often found themselves surrounded by low-level war criminals as their neighbors. Prospects for genuine reconciliation are weak under such circumstances.

One Bosnian Muslim woman whose husband was taken away in June 1992 after the family was expelled from their village near Zvornik, and has never been seen again, told Human Rights Watch:

I have returned to the area of Zvornik to live there, but if the criminals are not brought to justice, I will not stay there forever. I know that not all of the Serbs are the same, but those who did something should be punished. Then there will be some guarantee that the horrible things will not repeat, and it will be possible to co-exist. For me, both those who ordered a crime and those who carried it out are the culprits. The women from my village, whose husbands and sons were almost all killed in June 1992, can't accept that nobody has been punished for those crimes.<sup>31</sup>

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<sup>30</sup> Human Rights Watch interview with Bakira Hasecic, president of the Association of Women-Victims of War, Sarajevo, November 18, 2005.

<sup>31</sup> Human Rights Watch interview with Suada Selimovic, Belgrade, Serbia and Montenegro, December 26, 2005.

An often neglected aspect of war crimes trials is their potential role in bringing to light information about the fate of missing persons. For some family members and representatives of the associations of the families of the missing persons, it is as important to find the bodies of the missing as it is to have the perpetrators punished. In their view, trials of direct perpetrators offer an opportunity to learn about the whereabouts of the bodies.<sup>32</sup> The need to find the bodies was the immediate impetus for Fikret Bacic to assist the investigation into the killings of his family members on July 25, 1992, in the village of Zecovi, near Prijedor:

A few years ago, there was a meeting in a nearby village about the issue of missing persons. A cantonal prosecutor from Bihac was there. I asked her during the meeting whether I could visit her in her office, and bring the witnesses with me, because I wanted the bodies to be found. It shouldn't be impossible to establish at the trial whose task it was to bury the bodies.<sup>33</sup>

War crimes trials would represent an important step in the right direction in the numerous cases involving forced disappearance. There is a clear connection between the successful prosecution of war crimes in Republika Srpska and the obligation on the authorities of that entity to implement existing human rights obligations regarding disappearances. The European Court of Human Rights has determined in a series of cases that failure by state authorities to conduct a meaningful investigation into disappearance can cause serious suffering to family members, amounting to degrading treatment contrary to Article 3 of the European Convention on Human Rights.<sup>34</sup> Bosnia and Herzegovina is a party of the Convention.<sup>35</sup>

The Human Rights Chamber of Bosnia and Herzegovina (which was established to adjudicate alleged violations of the European Convention on Human Rights in Bosnia,

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<sup>32</sup> Human Rights Watch interview with Fikret Bacic, Zecovi, Bosnia and Herzegovina, December 14, 2005 (Mr. Bacic's wife, two children, mother, and five members of his extended family were killed near Prijedor in July 1992, and their bodies have never been found); Human Rights Watch interview with Seida Karabasic, president of the *Izvor* Association of Prijedor Women, Prijedor, December 14, 2005.

<sup>33</sup> Human Rights Watch interview with Fikret Bacic, Zecovi, December 14, 2005.

<sup>34</sup> A recent example is the judgment in the case *Gongadze v. Ukraine*, Application No. 34056/02, Judgment of November 8, 2005. Other important cases include: *Kurt v. Turkey*, Application No. 24276/94, Judgment of May 25, 1998; *Çakici v. Turkey*, Application No. 23657/94, Judgment of July 8, 1999; and *Orhan v. Turkey*, Application No. 25656/94, Judgment of June 18, 2002. According to the Court, the essence of the violation of Article 3 does not so much lie in the fact of the "disappearance" of the family member but rather concerns the authorities' reactions and attitudes to the situation when it is brought to their attention.

<sup>35</sup> Bosnia and Herzegovina ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms on July 12, 2002.

and has now been superseded by another body, the Human Rights Commission)<sup>36</sup> held that suffering by the family members caused by the absence of meaningful investigation into disappearance of their dearest constitutes “inhuman treatment,” within the meaning of Article 3 of the Convention.<sup>37</sup> Unless the authorities carry out meaningful and thorough investigation into the disappearances, they are responsible for an ongoing human rights violation of inhuman or degrading treatment.<sup>38</sup> (Failure by Republika Srpska authorities to investigate specific disappearance cases is discussed below, in the section entitled *Limited Progress on War Crimes Accountability*.)

### ***Experience of Domestic War Crimes Prosecutions in the Region***

While there has been far greater progress in prosecuting war crimes in other parts of the former Yugoslavia, such measures have been far from perfect. In Croatia and in the Federation of Bosnia and Herzegovina, ethnic bias, mainly to the detriment of ethnic Serbs as the accused or the victims, marred the prosecutions. In Serbia the number of war crimes prosecutions has been very low. An October 2004 report by Human Rights Watch, *Justice at Risk*, analyzed in detail these and other shortcomings of the war crimes prosecutions in Croatia, Serbia and Montenegro, and in the Federation of Bosnia and Herzegovina.<sup>39</sup> The main deficiencies identified included: inadequate witness protection; insufficient interstate cooperation; obstructionism by the police and the army structures; unresolved legal issues concerning the application of the doctrine of command responsibility; and issues concerning the use of the evidence gathered by the International Criminal Tribunal for the former Yugoslavia. In Croatia and in Serbia and Montenegro these shortcomings began to be addressed by the establishment in 2003 of special war crimes chambers, and the early 2005 establishment of the War Crimes Chamber is helping to address shortcomings in Bosnia and Herzegovina.<sup>40</sup>

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<sup>36</sup> The mandate of the Human Rights Chamber expired on December 31, 2003, and its caseload transferred to the Human Rights Commission (an organ of the Constitutional Court of Bosnia and Herzegovina). Cases alleging violations of the European Convention filed since January 1, 2004, are heard by the Constitutional Court of Bosnia and Herzegovina itself.

<sup>37</sup> Human Rights Chamber of Bosnia and Herzegovina, Case no. CH/01/8365, *Selimovic Ferida v. Republika Srpska*, Decision on Admissibility and Merits, March 7, 2003 (the case concerns the disappearance of Bosnian Muslims in Srebrenica in 1995).

<sup>38</sup> *Ibid.*, paras. 186 and 191.

<sup>39</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, [online] <http://hrw.org/reports/2004/icty1004/>

<sup>40</sup> In Serbia, a special war crimes chamber in the Belgrade district court was established in 2003. Law on Organization and Jurisdiction of Government Authorities in Prosecuting Perpetrators of War Crimes, *Sluzbeni glasnik Republike Srbije* (official gazette of the Republic of Serbia), No. 67/2003, July 1, 2003, Art. 11. In Croatia, legislation adopted in October 2003 provides for the establishment of specialized chambers for war crimes in every county court in Croatia and permits the transfer of war crimes cases from the county courts with territorial jurisdiction to county courts in Croatia’s four biggest cities—Zagreb, Osijek, Rijeka, and Split. Law on the Application of the Statute of the International Criminal Court and on the Prosecution of Criminal Acts against

As the number of prosecutions increase in Republika Srpska, any shortcomings in the justice system are likely to be magnified. It is therefore crucial to understand the experience elsewhere in the region, so as to anticipate the likely difficulties.

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International Law on War and Humanitarian Law, *Narodne novine* (official gazette of the Republic of Croatia), No. 175/2003, November 4, 2003, Arts. 12 and 13 (2).

## Limited Progress on War Crimes Accountability

### *War Crime Cases in Republika Srpska prior to 2005*

While the task awaiting the Republika Srpska prosecutors and courts is enormous, and the potential impact of prosecutions significant, the entity has a poor track record on war crimes accountability.

Prior to November 2005, only two war crimes trials were completed in Republika Srpska. The first took place in 1997. The accused, Bosnian Muslim Ferid Halilovic, was tried before the Modrica “basic” (municipal) court for the beatings of twenty-nine Serb civilians detained in a camp run by the Croatian Defense Council (HVO) in Odzak. Four detainees died as a result of the beatings. The Modrica court sentenced Halilovic to fifteen years in prison, and the Doboj district court confirmed the verdict and sentence. Halilovic was soon transferred to a prison in the Federation of Bosnia and Herzegovina, and was released after serving less than one-third of the sentence.<sup>41</sup>

There have been no other trials of non-Serbs on war crimes charges, for several reasons. Until 2004, war crime prosecutions before courts in Bosnia and Herzegovina required prior approval by the ICTY under the Rules of the Road regime. Until the end of the 1990s, the authorities in Republika Srpska were hostile to the work of the ICTY and made little effort to request that approval, even to facilitate prosecutions against non-Serbs.

After 2000, prosecutors in Republika Srpska began seeking approvals from the ICTY to prosecute Bosnian Muslim and Croat suspects. However, the material corroborating the requests was generally of poor quality.<sup>42</sup> As the result, between 2000 and 2004 the ICTY approved only thirty-six requests from Republika Srpska.<sup>43</sup> In Doboj, for example, the

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<sup>41</sup> OSCE Mission to Bosnia and Herzegovina, “War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina,” p. 52.

<sup>42</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005.

<sup>43</sup> A prosecutor in East Sarajevo who has worked on war crimes investigations since the end of the Bosnian war told Human Rights Watch that numerous files against the Bosnian Muslim and Croat suspects had not even been sent to the ICTY Rules of the Road section, because the prosecutors and other competent agencies in Republika Srpska were aware of the poor quality of the files and knew that the ICTY was unlikely to authorize prosecutions on that evidence. Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

requests concerning seven individuals received the “A” mark (designating ICTY approval to proceed), although the prosecutor had sent case-files concerning thirty-two suspects.<sup>44</sup> The East Sarajevo prosecutor sought approval to proceed against sixty-eight suspects but did not receive a single “A” classification from the ICTY Rules of the Road section.<sup>45</sup> In Bijeljina, cases involving four suspects were classified as “A,” out of approximately eighty requests.<sup>46</sup> Trebinje received “A” categories for six individuals, and Banja Luka for nineteen persons.<sup>47</sup> Most of the approved cases pertain to crimes committed against ethnic Serbs in the Federation. Prosecution in such instances will continue either before cantonal courts in the Federation or before the War Crimes Chamber in the State Court of Bosnia and Herzegovina (when the case is “highly sensitive”).

The second war crimes trial (and the first involving Bosnian Serb defendants) began on May 17, 2004 before the district court in Banja Luka, and ended in February 2005 with the acquittal of all eleven defendants.<sup>48</sup> The defendants, wartime members of the Prijedor police, were accused of the illegal detention in 1995 of Roman Catholic priest Tomislav Matanovic, who was later found murdered. The trial originated from the work of the Human Rights Chamber. (The case is referred to as *Jakovljevic and others*, from the name of one of the indictees.)

A trio of human rights groups from Serbia and Montenegro, Croatia, and Bosnia, which monitored the trial, concluded that the court’s decision to acquit the defendants for lack of evidence was a result of an inadequate investigation, and the passive role of the prosecutor in collecting evidence.<sup>49</sup>

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<sup>44</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Dobo, November 24, 2005.

<sup>45</sup> Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>46</sup> Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

<sup>47</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005; Human Rights Watch telephone interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, February 2, 2006.

<sup>48</sup> See Humanitarian Law Center (Serbia and Montenegro), Center for Peace, Non-violence and Human Rights (Croatia), Research and Documentation Center (Bosnia and Herzegovina), “First war crimes trial in Republika Srpska,” press release, April 6, 2005, [online] [http://www.hlc.org.yu/english/War\\_Crimes\\_Trials\\_Before\\_National\\_Courts/Bosnia\\_and\\_Herzegovina/index.php?file=1134.html](http://www.hlc.org.yu/english/War_Crimes_Trials_Before_National_Courts/Bosnia_and_Herzegovina/index.php?file=1134.html) (retrieved December 30, 2005).

<sup>49</sup> Ibid.

The origins of the prosecution lie in a July 1997 decision by the Human Rights Chamber ordering Republika Srpska to report to the Chamber on the results of investigation into the case.<sup>50</sup> Republika Srpska failed to implement the decision until November 2000, when an investigative team from Republika Srpska reopened the case after heavy pressure from the (now defunct) United Nations Mission in Bosnia-Herzegovina.<sup>51</sup> In October 2001 Republika Srpska police discovered the bodies of Father Matanovic and his parents in the well of their family residence in Rizvanovici, near Prijedor. Autopsies revealed that their hands had been handcuffed and that each had been shot in the head.<sup>52</sup>

In other cases of forced disappearance during the conflict where the Human Rights Chamber ruled that Republika Srpska was responsible for the violations, the authorities there have made little progress in their investigations. In the case *Avdo and Esma Palic v. Republika Srpska*, the Human Rights Chamber found in December 2000 that Republika Srpska violated the right to life, the right to liberty and security of person, and the freedom from inhuman and degrading treatment, in connection with the incommunicado detention and eventual disappearance of Col. Avdo Palic. A military commander of the Bosnian Army, Palic was forcibly taken away by Bosnian Serb forces on July 27, 1995, in the presence of United Nations soldiers. Republika Srpska launched an investigation following the Chamber's decision but, on September 7, 2005, the Human Rights Commission under the Bosnian Constitutional Court found that the investigation was inadequate and that the Chamber's December 2000 decision had not been implemented.<sup>53</sup>

The Human Rights Chamber also issued decisions on disappearance cases in November and December 2003. In one case, the Chamber ordered that Republika Srpska initiate a criminal investigation into the disappearance of seven Muslims from Visegrad in May and June 1992, and notify designated agencies, international and Bosnian, of the results of the investigation within six months.<sup>54</sup> Similar decisions were issued in cases

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<sup>50</sup> Human Rights Chamber, *Josip, Bozana and Tomislav Matanovic v. Republika Srpska*, Case No. CH/96/1, *Decision on the Merits*, July 11, 1997, [online] <http://www.hrc.ba/database/decisions/CH96-1%20Matanovic%20Merits%20L.pdf> (retrieved December 30, 2005), paras. 63 and 64.

<sup>51</sup> Amnesty International, "Bosnia-Herzegovina: Some dignity at last for victims of 'disappearance' in Prijedor," AI Index: EUR 63/014/2001, November 23, 2001, [online] <http://www.web.amnesty.org/ai.nsf/Index/EUR630142001?OpenDocument&of=COUNTRIES%5CBOSNI> (retrieved December 30, 2005).

<sup>52</sup> U.S. State Department, Bureau of Democracy, Human Rights, and Labor, "Country Reports on Human Rights Practices 2001," March 4, 2002, [online] <http://www.state.gov/drl/rls/hrrpt/2001/eur/8236.htm> (retrieved December 30, 2005).

<sup>53</sup> Human Rights Commission, *Avdo and Esma Palic v. Republika Srpska*, Case no. CH/99/3196, *Decision on Non-Implementation of a Decision*, September 7, 2005.

<sup>54</sup> Human Rights Chamber, Case number CH/02/8879, December 5, 2003, [online] <http://www.hrc.ba/database/decisions/CH02->

concerning the disappearance of seven Bosnian Muslims from Foca in April 1992,<sup>55</sup> and the disappearance of ten Bosnian Muslims in Vlasenica in June and July of that year.<sup>56</sup>

While the Human Rights Chamber's decisions focus on inaction and failure on the part of the Republika Srpska authorities giving rise to human rights violations, it is also important that the war crimes underlying them are investigated and where possible prosecuted.

### **War Crimes Trials in Republika Srpska in late 2005**

As noted above, courts in Republika Srpska completed three war crimes trials in November and December 2005, and two more trials were ongoing at the year's end. All the defendants were Bosnian Serbs. Prosecutors in charge of war crimes prosecutions in Banja Luka, Trebinje, Eastern Sarajevo, and Doboј were also nearing completion of several investigations.

In the first completed trial (*Radakovic and others*), the district court in Banja Luka sentenced two former members of the Bosnian Serb police on November 17 each to twenty years in prison, and a third former policeman to fifteen years.<sup>57</sup> The same court sentenced Nikola Dereta, former soldier in the Republika Srpska army, on December 5 to thirteen years in prison.<sup>58</sup> On December 9, the Trebinje district court sentenced Dragoje Radanovic to two years in prison.<sup>59</sup> The ongoing trials were of Momir Skakavac in the Trebinje court, and Milanko Vujanovic in Banja Luka.

In three of these five cases, the investigation had begun in the Federation of Bosnia and Herzegovina, and was subsequently transferred to prosecutors in Republika Srpska through the Special Department for War Crimes. The *Skakavac* and *Radanovic* cases were

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8879%20i%20dr.%20Smajic%20i%20dr.%20Admissibility%20and%20Merits%20B.pdf (retrieved December 30, 2005), para. 106.

<sup>55</sup> Human Rights Chamber, Case number CH/01/8569, November 5, 2003, [online] <http://www.hrc.ba/database/decisions/CH01-8569%20i%20dr.%20Pasovic%20i%20dr.%20Admissibility%20and%20Merits%20B.pdf> (retrieved December 30, 2005), para. 73.

<sup>56</sup> Human Rights Chamber, Case number CH/02/9358, December 22, 2003, [online] <http://www.hrc.ba/database/decisions/CH02-9358%20i%20dr.%20Malkic%20i%20dr.%20Admissibility%20and%20Merits%20B.pdf> (retrieved December 30, 2005), paras. 92 and 98.

<sup>57</sup> Judgment of the Banja Luka District Court, No. K.50/01, November 17, 2005.

<sup>58</sup> See "RS: Nikola Dereta Sentenced to 13 Years for War Crimes," FENA News Agency (Sarajevo).

<sup>59</sup> Human Rights Watch telephone interview with Dusko Popic, presiding judge in the *Radanovic* trial, February 2, 2006.

originally investigated by the Sarajevo cantonal prosecutor,<sup>60</sup> and the *Dereta* case originated with the Zenica cantonal prosecutor.<sup>61</sup>

The two other war crimes cases—*Radakovic and others* and *Vujanovic*—occurred after the Banja Luka district prosecutor modified the indictments for “ordinary offences” into ones for war crimes.<sup>62</sup> In 2004 and 2005, the Chief Prosecutor of Bosnia and Herzegovina convened several meetings with the chief cantonal and district prosecutors and encouraged them to review all pending indictments for ordinary offences committed in wartime and, where the underlying facts so warranted, to amend the indictments to reflect the war crimes underlying them.<sup>63</sup>

It appears that the number of ordinary indictments in Republika Srpska suitable for upgrading into war crimes indictments is limited. The office of the district prosecutor in Banja Luka gave an estimate of ten such cases in its jurisdiction.<sup>64</sup> In the other two district courts in which Human Rights Watch made enquiries, in Bijeljina and East Sarajevo, there were no pending cases from this category.

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<sup>60</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>61</sup> Human Rights Watch interview with Muris Hadziselimovic, Chief Cantonal Prosecutor, and Redzo Delic, cantonal prosecutor in charge of war crimes prosecutions, Zenica (Federation of Bosnia and Herzegovina), November 21, 2005.

<sup>62</sup> A number of war crime suspects were indicted during the war for ordinary offences, to avoid the strong moral connotations involved in the notion of “war crime.” Very few of those cases resulted in trials during or after the war. Human Rights Watch interview with Sead Zeric, deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005.

<sup>63</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005; Human Rights Watch interview with Lazar Drasko, Chief Cantonal Prosecutor, Gorazde, November 17, 2005.

<sup>64</sup> Human Rights Watch interview with Sead Zeric, deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005.

## Obstacles to More Effective Prosecutions

War crimes prosecutions in Republika Srpska have been hampered by a range of obstacles. These include: limited prosecutorial resources, including a lack of investigative capacity; the absence of specialist war crimes prosecutors, reflecting both a lack of expertise in humanitarian law and the fact that the mandate of prosecutors is not limited to war crimes cases; insufficient assistance by Republika Srpska police, coupled with a failure to make use of evidence available from other sources; witness intimidation and fatigue; and the non-availability of suspects.

Some of the obstacles described below are beyond the direct influence of the prosecutors in Republika Srpska, and require engagement by the Republika Srpska government, parliament, foreign donors, and other agencies. The role of the prosecutors is nevertheless crucially important.

Supervision of their work, as well as of the judges in Bosnia and Herzegovina, is the task of the High Judicial and Prosecutorial Council. The HJPC can order various disciplinary measures (including official warnings, salary reduction, demotion, and removal from office) against prosecutors who act with ethnic or religious bias, indolence, or negligence, accept bribes, or commit some other infraction expressly prohibited by the law.<sup>65</sup> The HJPC is also in charge of deciding the number of prosecutors and law clerks in each cantonal and district prosecutor's office.

Ultimately, the effectiveness of war crimes prosecutions in Republika Srpska depends on the political will in the Bosnian Serb entity to hold war criminals to account, irrespective of their ethnicity or their position in society. For a long time after the war, wartime abusers and their sympathizers held important positions in the political and economic life of Republika Srpska. Their influence has been greatly reduced by the ICTY trials of the perpetrators of war crimes and the dismissal by the Office of the High Representative of the power-holders who obstructed post-war reforms in Bosnia and Herzegovina. The arrests by Republika Srpska police of two dozen other persons on war crimes charges between October 2004 and December 2005 is also a signal of a change

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<sup>65</sup> Law on the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, September 14, 2004, articles 57 and 58. The HJPC is also obliged under art. 17, point 22 of the law to establish criteria for the assessment of the work of prosecutors and judges, but it has yet to do so. Human Rights Watch interview with Branko Peric, head of the High Judicial and Prosecutorial Council (HJPC) of Bosnia and Herzegovina, Sarajevo, December 15, 2005.

for the good.<sup>66</sup> However, the progress remains limited, and its sustainability is far from evident.

## ***Limited Prosecutorial Resources***

### ***Staffing Limitations***

As noted above, Republika Srpska district prosecutors face a caseload of around forty category “A” “sensitive” cases initiated in the Federation and referred to them by the Special Department for War Crimes, some of the thirty-six category “A” “sensitive” cases initiated in Republika Srpska, and a substantial number of cases in which charges had been brought before March 2003 but the ICTY never issued an “A” marking.<sup>67</sup> (With regard to allegations about war crimes made after March 2003, the Special Department for War Crimes has exclusive jurisdiction to investigate.) The number of prosecutors assigned to war crimes in Republika Srpska is quite limited. The limitation is particularly striking in Trebinje, where two prosecutors (in an office of four) cope with a caseload of more than twenty category “A” cases referred from the Special Department for War Crimes.<sup>68</sup> Similarly, only one prosecutor works on war crimes in East Sarajevo, where the Special Department for War Crimes referred twelve category “A” cases.<sup>69</sup> In Banja Luka, which covers Prijedor and other locations in which numerous crimes against non-Serbs occurred during the war, as of November 2005, there was only one prosecutor working on war crimes.<sup>70</sup> Doboje had three prosecutors assigned to war crime cases, and Bijeljina two such prosecutors as of December.<sup>71</sup> Moreover, all these prosecutors also handled other types of cases. At least in some of the offices, the number of district prosecutors working on war crimes is already inadequate.

Most prosecutors in charge of war crimes prosecutions in Republika Srpska also lack support from law clerks. District prosecutorial offices are permitted to employ law clerks

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<sup>66</sup> Most recently, on December 14, 2005, the police in Banja Luka arrested six former guards in the Serb-run camp at Manjaca, near Banja Luka. See “Tokaca: Ocekujem da se predmet ‘Cuvari logora Manjaca’ vodi na sudu BiH” (“Tokaca: I Expect the ‘Manjaca Camp Guards’ Case to be Tried at the Court of BH),” FENA News Agency (Sarajevo), December 19, 2005, [online] [http://www.fena.ba/rubrika.html?fena\\_id=FSA332947&rubrika=BH](http://www.fena.ba/rubrika.html?fena_id=FSA332947&rubrika=BH) (retrieved December 30, 2005).

<sup>67</sup> Category “B” and “C” cases, and cases never reviewed and categorized by the tribunal. See above, note 19.

<sup>68</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>69</sup> Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>70</sup> Human Rights Watch interview with Sead Zeric, deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005.

<sup>71</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboje, November 24, 2005; Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

to conduct legal research, screen witness statements in order to select the relevant ones, and generally to assist prosecutors. However, the office of the district prosecutor in Doboj employs only one law clerk, who mainly works on non-war crimes cases.<sup>72</sup> Similarly, offices in Trebinje and Bijeljina have most recently employed one law clerk each.<sup>73</sup> The office in Banja Luka does not have law clerks at all.<sup>74</sup> The limited number of law clerks is a result of the assessments made two years ago by the HJPC.<sup>75</sup>

### *Lack of Investigative Capacity*

The 2003 criminal procedure code in Bosnia and Herzegovina dispensed with the institution of investigative judge, and the prosecutors' offices are now responsible for conducting their own investigations. But district prosecutors offices lack specialized investigators, who could assist prosecutors in refining suspect lists, pursuing leads, interviewing potential witnesses, and establishing the context in which the crimes were committed.<sup>76</sup> Under the current legislation in Republika Srpska, it is not possible to hire investigators in the prosecutorial offices. Introducing investigators would require amendments to the Criminal Procedure Code.<sup>77</sup>

Experience from specialist war crimes tribunals (including the ICTY and the Special Court for Sierra Leone) suggests that investigators should be an integral part of the prosecutor's team, located in the office of the prosecutor and in constant communication with the prosecutor.

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<sup>72</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005.

<sup>73</sup> Human Rights Watch telephone interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, February 10, 2006; Human Rights Watch telephone interview with a prosecutor in the Office of the Trebinje Cantonal Prosecutor, February 10, 2006.

<sup>74</sup> Human Rights Watch interview with Sead Zeric, Deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005.

<sup>75</sup> Human Rights Watch telephone interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, February 10, 2006; Human Rights Watch telephone interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, February 10, 2006; Human Rights Watch telephone interview with Idriz Begic, cantonal prosecutor in charge of war crimes prosecutions, Bihac (Federation of Bosnia and Herzegovina), February 10, 2006.

<sup>76</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

<sup>77</sup> Human Rights Watch interview with Branko Peric, head of the HJPC of Bosnia and Herzegovina, Sarajevo, December 15, 2005; Human Rights Watch interview with Krstan Simic, lawyer and member of the Republika Srpska parliament, Banja Luka, December 13, 2005.

Some prosecutors working on war crimes rely on a small number of police officers in the regional police centers, but their contribution is no substitute for well-trained investigators. The police officers working with the prosecutors are detached from the prosecutor's office, and, with the exception of Banja Luka and Bijeljina, they are few in number.<sup>78</sup> According to the district prosecutors, these officers also work on issues unrelated to war crimes,<sup>79</sup> although the head of the Working Team for War Crimes Investigations in the Ministry of Interior of Republika Srpska claimed the opposite in an interview with Human Rights Watch.<sup>80</sup>

Some prosecutors have turned for assistance in investigations to the War Crimes Unit of the Bosnian State Investigation and Protection Agency (SIPA).<sup>81</sup> However, the primary responsibility of the War Crimes Unit is to conduct investigations for the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina (see section entitled *Significant Number of War Crimes Cases Yet To Be Heard*, above, for a description of the caseload of the Special Department for War Crimes).<sup>82</sup> Moreover, the existing staffing shortage undermines the Unit's ability to conduct even those investigations effectively.<sup>83</sup>

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<sup>78</sup> In East Sarajevo, until recently only one policeman assisted the prosecutor in charge of war crimes prosecutions. Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005. In Doboj, the prosecutor in charge of war crimes prosecutions can rely on the services of "one or two" policemen. Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005. The Banja Luka prosecutor has at hand four officers from the Banja Luka police station, and around thirty policemen from the local police stations in the area of the Banja Luka district court's jurisdiction. Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005.

<sup>79</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005.

<sup>80</sup> Human Rights Watch interview with Simo Tusevljak, head of the Working Team for War Crimes Investigations in the Ministry of Interior of Republika Srpska, Pale, December 15, 2005.

<sup>81</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>82</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005; Human Rights Watch interview with Alma Dzaferovic, cantonal prosecutor in charge of war crimes prosecutions, Tuzla, November 22, 2005; Human Rights Watch interview with Muris Hadziselmovic, Chief Cantonal Prosecutor, and Redzo Delic, cantonal prosecutor in charge of war crimes prosecutions, Zenica, November 21, 2005; Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005. See also, Almedin Susic, "Sredoje Novic: Moguce je da se teroristi obucavaju u BiH" ("Sredoje Novic: It Is Possible That Terrorists Are Being Trained in BH")(interview with Sredoje Novic, Director of the State Investigation and Protection Agency), *Nezavisne* (Banja Luka), January 25, 2006, [online] <http://www.nezavisne.com/revija/tekst060122-01.php> (retrieved February 9, 2006).

<sup>83</sup> See Human Rights Watch, "Looking for Justice," pp. 14-15.

## *No Specialist War Crimes Prosecutors*

Laws and customs of international humanitarian law (IHL) make up the body of law applied in war crimes prosecutions. Few prosecutors in Republika Srpska have expertise in this area of law. The problem also impacts judges and defense lawyers, although there is a small group of lawyers who have developed experience in IHL by acting on behalf of defendants on trial at the ICTY.

Many prosecutors, lawyers and judges in Republika Srpska also lack familiarity with the jurisprudence of the ICTY, which would help their understanding of humanitarian law. The prosecutors and judges from Republika Srpska have never traveled to the Hague to learn firsthand from their ICTY colleagues about practical issues such as witness protection, or the use of archived wartime materials in prosecutions.<sup>84</sup>

The November 2005 judgment against Drago Radakovic and others by the Banja Luka District Court illustrates this shortcoming. The judgment refers to the war in Bosnia and Herzegovina as an internal armed conflict, without making any reference to the legal reasoning that led the ICTY judges to arrive at the opposite conclusion.<sup>85</sup> The failure to make reference to ICTY jurisprudence is all the more conspicuous in that the key ICTY decision establishing the international character of the Bosnian war—the Appeals Chamber’s decision in the *Tadic* case—dealt with crimes in the same part of Bosnia as the *Radakovic and others* case.<sup>86</sup>

Since the reform of the judiciary in 2004, there have been three rounds of training for judges and prosecutors in Republika Srpska on war crimes issues. The Center for Judicial and Prosecutorial Training in Republika Srpska organized two trainings in 2005. The first seminar, in April, offered a general introduction to war crimes prosecutions. In June 2005 the head of the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina gave a lecture on the new Bosnian legislation related to war crimes.<sup>87</sup>

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<sup>84</sup> Human Rights Watch interview with Biljana Maric, Director of the Center for Judicial and Prosecutorial Training in Republika Srpska, Banja Luka, December 14, 2005.

<sup>85</sup> Judgment of the Banja Luka District Court, No. K.50/01, November 17, 2005, p. 7.

<sup>86</sup> The Appeals Chamber of the ICTY concluded that “the control of the [Yugoslav] authorities over [the Bosnian Serb] armed forces required by international law for considering the armed conflict to be international was overall control going beyond the mere financing and equipping of such forces and involving also participation in the planning and supervision of military operations.” *Prosecutor v. Dusko Tadic*, Appeals Chamber Judgment, July 15, 1999, para. 145. The Appeals Chamber reversed the finding of the Trial Chamber, which had found the conflict to be an internal armed conflict after May 19, 1992, when the Yugoslav People’s Army formally withdrew from Bosnia and Herzegovina.

<sup>87</sup> Human Rights Watch interview with Biljana Maric, Director of the Center for Judicial and Prosecutorial Training in Republika Srpska, Banja Luka, December 14, 2005.

The third round of training took place in December 2005 and January 2006. Prosecutors and the police took part. Each attendee was offered a five-day training organized by the State Investigation and Protection Agency (SIPA) and the interior ministries and training centers from both entities, with the focus on practical issues concerning investigation and some specific aspects of substantive humanitarian law.<sup>88</sup>

The nature of the recent training fits with the strategy that the Director of the Center for Judicial and Prosecutorial Training in Republika Srpska described in an interview with Human Rights Watch. According to the director, the focus in the training of judges and prosecutors in 2004 and 2005 was on procedural issues, because an entirely new investigative and trial procedure, akin to that traditionally used in the Anglo-Saxon countries, was introduced into Bosnian legislation (traditionally based on continental law) in 2003. The focus is now shifting to substantive law issues.<sup>89</sup>

Participation in the training has not been universal. One prosecutor involved in war crimes prosecutions told Human Rights Watch that he was so overwhelmed by work that he was missing the seminars.<sup>90</sup> The prosecutors in Banja Luka who recently amended several indictments for “ordinary” crimes to war crimes indictments did not participate in any of the training sessions.<sup>91</sup> The presiding judge in two of the war crimes trials held so far in Republika Srpska (*Jakovljevic and others*, and *Radakovic and others*) told Human Rights Watch that he attended two brief training seminars on war crimes, in which he learned “little.”<sup>92</sup>

Human Rights Watch welcomes the current shift in the training of the judges and prosecutors in Republika Srpska to the practical issues concerning investigation and substantive humanitarian law. In the event that additional financial assistance is required to ensure high-quality training, Human Rights Watch urges international donors to provide the necessary funds. It would be particularly useful to include legal experts from the ICTY as instructors on the range of substantive law issues.

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<sup>88</sup> Ibid.

<sup>89</sup> Ibid.

<sup>90</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005.

<sup>91</sup> Human Rights Watch interview with Sead Zeric, deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005

<sup>92</sup> Human Rights Watch interview with Dusko Bojovic, judge in the District Court in Banja Luka, December 13, 2005.

The development of expertise on war crime cases is also impeded by the mandate of district prosecutors. Those district prosecutors in Republika Srpska who work on war crimes cases are also required to prosecute ordinary crimes. The prosecutors in East Sarajevo, Doboј, and Bijeljina dedicate most of their time to cases involving other crimes, and the two prosecutors in the Trebinje office of the prosecutor dedicate roughly equal time to war crimes and other cases.<sup>93</sup>

### ***Special Department for War Crimes as a Potential Model***

The most effective way to address these shortcomings would be to increase the number of district prosecutors to enable some prosecutors to work exclusively on war crimes cases, to recruit specialized investigators for each district prosecutors' office, and to increase recruitment and reliance on law clerks to assist in war crimes prosecutions. This model would roughly resemble the structure now present in the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina.<sup>94</sup>

Changes in the structure of Republika Srpska prosecutorial offices are in the hands of both the Bosnian Serb authorities and the authorities in Sarajevo. While the all-Bosnian HJPC decides the number of prosecutors and law clerks to be employed in each specific prosecutorial office, increasing the numbers of personnel requires budgetary approval from the Republika Srpska Ministry of Justice.<sup>95</sup> The work of the district prosecutors' offices is currently funded solely from the budget of Republika Srpska.<sup>96</sup> (By contrast, the Special Department for War Crimes is funded from the national budget and foreign donations.) There are no legal impediments, however, for donor assistance regarding provision of equipment for the prosecutorial offices in Republika Srpska, with the approval of the HJPC.<sup>97</sup> Such support would lessen the budgetary burden on the Republika Srpska authorities concerning the prosecutors' and law clerks' salaries.

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<sup>93</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboј, November 24, 2005; Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>94</sup> The structure of the Special Department for War Crimes follows the terms of the agreement between the High Representative for Bosnia and Herzegovina and the Presidency of Bosnia and Herzegovina establishing the Registry for the Court of Bosnia and Herzegovina and the Office of the Prosecutor of Bosnia and Herzegovina (December 1, 2004). Human Rights Watch interview with Branko Peric, head of HJPC of Bosnia and Herzegovina, Sarajevo, December 15, 2005.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

Similarly, making the legislative changes necessary to appoint specialist investigators inside prosecutors' offices is also a shared responsibility between Republika Srpska and the authorities at the state level. Major changes in the criminal legislation in Bosnia follow a pattern in which a law is first enacted at the state level, and entity parliaments then adopt identical provisions at the entity level. Amendments to the Criminal Procedure Code of Bosnia and Herzegovina are currently under discussion, and they are expected to be adopted in 2006. According to the head of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, who is involved in the drafting of the amendments, the changes in the law are likely to create the category of investigators and to engender the same legislative developments in Republika Srpska and the Federation.<sup>98</sup>

### ***Limited Assistance by Republika Srpska Police***

Current efforts by the Republika Srpska police to obtain new evidence are mainly focused on the crimes committed against Bosnian Serbs, reflecting the different weight the police attach to the crimes depending on the victims' ethnicity. As a result, prosecutors are unlikely to receive all the necessary assistance from the police in the investigations transferred from the Special Department for War Crimes, most of which concern crimes against non-Serbs.

The district prosecutors in Republika Srpska admit that the police-generated evidence on war crimes is of limited worth. The crimes committed in the areas controlled by the Bosnian Serbs during the war for the most part targeted Bosnian Muslims and Croats. The police material regarding these crimes is scarce. Prosecutors in Doboje and East Sarajevo interviewed by Human Rights Watch were unaware of any existing evidence gathered by the local police about crimes against non-Serbs.<sup>99</sup> The situation is similar in Gacko, where numerous killings of Muslims occurred during the war.<sup>100</sup> Virtually all mosques in Republika Srpska were destroyed during the war, but prosecutors are not in possession of information that might point to the perpetrators. As the chief prosecutor in Bijeljina told Human Rights Watch, "Nobody has filed criminal charges concerning the destruction of the mosques here. The destructions were considered acts of patriotism."<sup>101</sup> In some towns—most notably Foca and Prijedor—police officers were among the main perpetrators of war crimes.<sup>102</sup>

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<sup>98</sup> Ibid.

<sup>99</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboje, November 24, 2005; Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>100</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>101</sup> Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

In those instances in which criminal investigations into crimes against non-Serbs did take place during the war, it was usually at the initiative of the military prosecutor, because the perpetrators, as a rule, belonged to some of the military formations operating in the area.<sup>103</sup> Civilian police usually carried out the actual investigation, because civilian police expertise was superior to that of the military police.<sup>104</sup>

Proper (contemporaneous) police investigations into wartime crimes would have resulted in potentially valuable evidence that could have included: a visual sketch of the crime scene; minutes of the crime scene examination; witness statements; photographic documentation; forensic material from the crime scene, including the location of bullet shells and other material relating to weapons used at the scene; a pathologist's report; expert opinion on potential weapons, if any, used to commit the crime; and, where relevant, log sheets from the police station or military unit at the time of the commission of the crime.<sup>105</sup> For most wartime crimes committed in Republika Srpska, this evidence does not exist, either because no investigation was conducted, or the investigation was flawed.

It appears that in some parts of Republika Srpska, the police even destroyed compromising documents relating to abuses committed during the war. In *Jakovljevic and others*, the police in Prijedor are alleged to have destroyed all evidence about the disappearance and murder of the Roman Catholic priest Tomislav Matanovic and his parents.<sup>106</sup> In the police station in Visegrad, where numerous crimes against local Muslims were committed in 1992, police documentation from that period is missing.<sup>107</sup>

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<sup>102</sup> See Human Rights Watch, "The Unindicted: Reaping the Rewards of 'Ethnic Cleansing,'" *A Human Rights Watch Report*, vol. 9, no. 1 (D), January 1997, [online] <http://www.hrw.org/reports/1997/bosnia/>; and "A Closed, Dark Place: Past and Present Human Rights Abuses in Foca," *A Human Rights Watch Report*, vol. 10, no. 6 (D), July 1998, [online] <http://www.hrw.org/reports98/foca/>

<sup>103</sup> Human Rights Watch interview with Sead Zeric, Deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005; Human Rights Watch interview with Simo Tusevljak, head of the Working Team for War Crimes Investigations in the Ministry of Interior of Republika Srpska, Pale, December 15, 2005.

<sup>104</sup> In addition, the police were formally part of Republika Srpska armed forces during wartime. The Law on Defense of the Serbian Republic of Bosnia and Herzegovina, from June 1992, provided the legal basis for placing the police under the authority of the army.

<sup>105</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Muris Hadziselmovic, Chief Cantonal Prosecutor, and Redzo Delic, cantonal prosecutor in charge of war crimes prosecutions, Zenica, November 21, 2005.

<sup>106</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Krstan Simic, lawyer and member of the Republika Srpska parliament, Banja Luka, December 13, 2005 (Simic was attorney for one of the accused in the trial held in 2004-05).

<sup>107</sup> Human Rights Chamber of Bosnia and Herzegovina, Case number CH/02/8879, December 5, 2003, [online] <http://www.hrc.ba/database/decisions/CH02->

The head of the special team within the Republika Srpska Ministry of Interior, Simo Tusevljak, acknowledged that wartime files were destroyed in some police stations.<sup>108</sup>

An overwhelming majority of war crimes cases investigated by Republika Srpska authorities during and after the war related to crimes committed against ethnic Serbs. Even these cases were not properly investigated for the most part. The crimes at issue largely took place in the territories outside the control of the Bosnian Serbs. The investigations were based on statements given to the Bosnian Serb intelligence services and police by Serbs who fled those territories during the war. The main goal of the interviewers was to obtain militarily valuable information, and the issue of war crimes was often only touched upon.<sup>109</sup> As a result, the parts of the statements referring to war crimes rarely exceeded a few sentences and lacked specific information about the identity of the perpetrators or the victims.<sup>110</sup> Police files sometimes list numerous names of the purported perpetrators, without describing their acts and specific role in the commission of the crime.<sup>111</sup>

Despite the fact that courts in Republika Srpska will from now on mainly try war crimes committed against non-Serbs, the Ministry of Interior continues to focus on obtaining and systematizing evidence about the crimes committed against Serbs, with a view to submitting the evidence to the Special Department for War Crimes in Sarajevo.<sup>112</sup> In January 2005, the Ministry established a special working team for this purpose. In December 2005, the website of the Ministry of Interior, in describing the activities of the working team, referred to two dozen crimes, all of which were committed by Bosnian Muslims and Croats.<sup>113</sup> In part, the focus of the ministry is understandable, given that the ICTY and the Bosnian judiciary have made limited progress in adjudicating war

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8879%20i%20dr.%20Smajic%20i%20dr.%20Admissibility%20and%20Merits%20B.pdf (retrieved December 30, 2005), para. 64 (information provided by the Ministry of Internal Affairs of Republika Srpska).

<sup>108</sup> Human Rights Watch interview with Simo Tusevljak, head of the Working Team for War Crimes Investigations in the Ministry of Interior of Republika Srpska, Pale, December 15, 2005.

<sup>109</sup> *Ibid.*

<sup>110</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005; Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>111</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboje, November 24, 2005; Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>112</sup> Human Rights Watch interview with Simo Tusevljak, head of the Working Team for War Crimes Investigations in the Ministry of Interior of Republika Srpska, Pale, December 15, 2005.

<sup>113</sup> Website of the Ministry of Interior of Republika Srpska, at [http://www.mup.vladars.net/zl\\_lat/r\\_zlocin\\_lat.htm](http://www.mup.vladars.net/zl_lat/r_zlocin_lat.htm) (retrieved December 30, 2005).

crimes against Bosnian Serbs.<sup>114</sup> However, maintaining an almost exclusive focus on the crimes committed against ethnic Serbs will seriously limit the capacity of the Republika Srpska police to investigate those crimes against non-Serbs that the Special Department for War Crimes has transferred to Republika Srpska or will do so in the future.

### ***Failure to Make Use of Available Evidence***

In the ongoing and future investigations and prosecutions of war crimes, the district prosecutors should make use of valuable sources of evidence which they have so far ignored. These sources include information gathered by nongovernmental organizations, and ICTY transcripts and other material.

### ***Information Gathered by NGOs***

A number of nongovernmental organizations in Bosnia and Herzegovina have developed valuable expertise and databases concerning war crimes. For example, the Research and Documentation Center, a leading NGO in Sarajevo, recently compiled a list of all casualties of the Bosnian war, corroborated by detailed information on numerous victims and perpetrators. The Center's search-engine provides instant access to this information, and it could significantly facilitate the work of prosecutors in charge of war crimes prosecutions.<sup>115</sup>

The Association of Women-Victims of War provides an example of positive cooperation with war crimes prosecutors. The organization includes hundreds of women, mainly from eastern parts of the country, who were victims of rape and other war crimes. In October and November 2005, the NGO facilitated the participation of rape victims in the trial against Momir Skakavac, at the district court in Trebinje, following repeated trips of the district prosecutor to Sarajevo to meet with the victims. The association has also submitted a number of affidavits (witness testimonies) to the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina.<sup>116</sup>

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<sup>114</sup> In March 2005 the OSCE compiled a list of thirty-one cases completed or tried in the Federation of Bosnia and Herzegovina in 2004 and early 2005; only three of those trials addressed crimes against the Serbs. See OSCE Mission to Bosnia and Herzegovina – Human Rights Department, "War Crimes Trials Before the Domestic Courts of Bosnia and Herzegovina," pp. 53-59. So far, the ICTY has convicted three persons for crimes committed against Bosnian Serbs, all three in relation to crimes against the detainees in Celebici prison camp in 1992.

<sup>115</sup> Human Rights Watch interview with Mirsad Tokaca, director of the Research and Documentation Center, Sarajevo, November 23, 2005.

<sup>116</sup> Human Rights Watch interview with Bakira Hasecic, President of the Association of Women-Victims of War, Sarajevo, November 18, 2005.

Unfortunately, however, the efforts of the Trebinje prosecutor in this case are a notable exception. District prosecutors in Republika Srpska admitted to Human Rights Watch that they have not developed interaction with the organizations that may have useful information about war crimes.<sup>117</sup> When asked whether he made use of the information gathered by NGOs, one prosecutor told Human Rights Watch, “I am not in the position to look for them. They should contact me, with the information they have.”<sup>118</sup>

The problem is compounded by the fact that many organizations do not see cooperation with prosecutorial offices as a natural adjunct to their efforts. The head of *Izvor*, a leading NGO in Prijedor dedicated to finding missing persons, was unfamiliar with the name and activities of the prosecutor in charge of investigating war crimes in the Prijedor area.<sup>119</sup>

### *ICTY Transcripts and Other Material*

Witness statements and other evidence accumulated by the ICTY offer a vast reservoir of useful information for the district prosecutors. The district courts are likely to deal in the future with many crimes which have already been adjudicated in the Hague, with high- and mid-level superiors as the defendants. In these cases, the district courts will try immediate perpetrators and low-level officers who were also involved in the wrongdoing.

Prosecutions of crimes which the Hague tribunal has not addressed would also benefit from the evidence in the ICTY’s possession. This evidence includes original police and military documents, or their certified copies, seized by the international NATO-led Stabilization Force (SFOR) during raids on the Republika Srpska intelligence agency in 2003.<sup>120</sup>

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<sup>117</sup> Human Rights Watch interview with Ranka Mrcic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>118</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005.

<sup>119</sup> Human Rights Watch interview with Seida Karabasic, president of the *Izvor* Association of Prijedor Women, Prijedor, December 14, 2005.

<sup>120</sup> Human Rights Watch interview with Vojislav Dimitrijevic, former military judge (1993-96) and Chief Prosecutor of Republika Srpska (1998-2002), Banja Luka, December 12, 2005. Dimitrijevic also acted as defense attorney in the trial of the Bosnian Serb Darko Mrdja at the ICTY, in the period between 2002 and 2005. The raids in October 2003 targeted premises of the then-Security and Intelligence Agency (OBS) of Republika Srpska in Banja Luka, Trebinje, Zvornik, Prijedor, and Mrkonjic Grad. See “SFOR Troops, ICTY Investigators Conduct Searches,” *S.E. Times* website, October 16, 2003, [online]

Regrettably, the district prosecutors have so far made no use of ICTY material. Part of the explanation for this is practical: prosecutors do not possess the hard copies of the documents and do not have access to the electronic database of the ICTY. In contrast, prosecutors in the Special Department for War Crimes in the Office of the Prosecutor of Bosnia and Herzegovina possess “keys” [passwords] which allow them access to the database of the ICTY Office of the Prosecutor.<sup>121</sup> According to the Bosnian Chief Prosecutor:

District prosecutors working on war crimes should also have access to the database. My office could mediate between the prosecutors and the Hague, we could ask the ICTY for an additional number of “keys.” However, I need to have the requests from the prosecutors first. I have not received such requests, or requests for hard copies.<sup>122</sup>

All ICTY judgments and non-confidential trial transcripts are already available to the prosecutors, because they are posted on the ICTY website. However, district prosecutors interviewed by Human Rights Watch said they lacked the ability or time to consult this material. One prosecutor told Human Rights Watch that he does not have time “to even think about it.”<sup>123</sup> Another complained about the lack of time and resources, including absence of translators.<sup>124</sup> One prosecutor did not even have a computer when Human Rights Watch conducted the research for this report in November 2005.<sup>125</sup> These concerns underscore the importance of district prosecutors’

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[http://www.setimes.com/cocoon/setimes/xhtml/en\\_GB/document/setimes/features/2003/10/031016-SVETLA-001](http://www.setimes.com/cocoon/setimes/xhtml/en_GB/document/setimes/features/2003/10/031016-SVETLA-001) (retrieved February 9, 2006).

<sup>121</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005. The database in question is the Evidence Disclosure Suite (EDS), used for the disclosure of evidence to the defense appearing before the ICTY. There is currently a proposal to provide access also to the Judicial Database, which would facilitate the search for judgments, decisions and orders issued by the ICTY. See Human Rights Watch, “Looking for Justice,” p. 19. The use of the ICTY evidence by the Office of the Prosecutor of Bosnia and Herzegovina is regulated by an undated memorandum of understanding between the Prosecutor’s office and the ICTY Office of the Prosecutor (on file with Human Rights Watch). The memorandum prohibits the use of ICTY documents and witness statements for any purpose other than the criminal investigations by the Bosnian Prosecutor and the proceedings at the Court of Bosnia and Herzegovina.

<sup>122</sup> Human Rights Watch interview with Marinko Jurcevic, Chief Prosecutor of Bosnia and Herzegovina, Sarajevo, December 19, 2005.

<sup>123</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005.

<sup>124</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>125</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

offices making use of legal clerks to assist with case preparation for war crimes prosecutions.

The use of ICTY material is an area in which far-reaching changes are both essential and possible. A precondition for this is that the High Judicial and Prosecutorial Council and the Republika Srpska authorities ensure that prosecutors have additional support staff and access to information technology. This staff should include individuals trained in the use of computers and software such as ZyLAB, a program used by the ICTY that allows fast full-text search through a large amount of documents.<sup>126</sup> The Special Department for War Crimes and offices of district prosecutors in Republika Srpska should agree on the modalities of the use of the ICTY material to which the Special Department for War Crimes has access. The Office of the Prosecutor of Bosnia and Herzegovina could also facilitate contact between the district prosecutors and the ICTY Office of the Prosecutor, to enable local prosecutors to obtain ICTY material for use in prosecutions before district courts.

### ***Witness Intimidation and Fatigue***

Effective prosecutions in war crimes trials depends heavily on the availability of credible witnesses, which in turn requires that witnesses are confident that they can testify truthfully without fear of retribution. Achieving accountability through national war crimes trials therefore requires measures to protect witnesses prior to, during, and after trials. In some cases, effective witness protection requires a long-term witness protection program or resettlement in another country.

There is little confirmed information about witness intimidation in war crimes trials in Republika Srpska, probably as a result of the limited number of trials. But experience from other parts of the former Yugoslavia suggests that witness intimidation regularly accompanies war crimes trials.<sup>127</sup>

Although Republika Srpska has adopted legislation on witness protection, the government has not devised any witness protection program.<sup>128</sup> One prosecutor

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<sup>126</sup> See Dr. Hans Henseler, "Records Management and Full-text Retrieval: Harnessing full-text search and document retrieval in Records Management applications", March 16, 2005, [online] <http://www.zylab.com/downloads/whitepapers/White%20Paper%20-%20ZyIMAGE%20Records%20Management%20and%20Full-Text%20Retrieval.pdf> (retrieved December 30, 2005).

<sup>127</sup> Human Rights Watch, "Justice at Risk," chapter "Witness Protection."

<sup>128</sup> Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005.

admitted to Human Rights Watch, “I would not know how to implement provisions of the law pertaining to witness protection.”<sup>129</sup> District courts lack technical equipment allowing for the use of protective measures during the testimony, such as video link, or equipment to disguise the voice or conceal the face of a witness.<sup>130</sup>

The State Court of Bosnia and Herzegovina does have the necessary equipment for application of protective measures during witness testimony. Creating similar capacities in the district courts would not require enormous funding (donor support from the international community could help). In the meantime, district and cantonal courts should be able to make use of the existing State Court facilities, where appropriate (for example, to hear testimony of witnesses who live abroad, via video link).

Even if all legal and technical prerequisites facilitating the participation of the witnesses were in place, other hurdles would limit the capacity of the prosecutors to make the best use of witnesses. More than a decade after the crimes were committed, many witnesses have left the country or have died.<sup>131</sup> Others have lost the motivation to testify, for a variety of reasons: because they have already testified on numerous occasions in the past;<sup>132</sup> because they have returned to their pre-war place of residence and do not want

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<sup>129</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005.

<sup>130</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Novak Kovacevic, Chief District Prosecutor, Bijeljina, December 20, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005.

<sup>131</sup> Human Rights Watch interview with Mirsad Tokaca, director of the Research and Documentation Center, Sarajevo, November 23, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Sead Zeric, Deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005; Human Rights Watch interview with Alma Dzaferovic, cantonal prosecutor in charge of war crimes prosecutions, Tuzla, November 22, 2005.

<sup>132</sup> The ongoing referrals of cases, through the Office of the Bosnian Prosecutor, from the cantonal/district prosecutors who had investigated the case to the prosecutors with territorial jurisdiction, often mandate that the latter re-examine the witnesses in order to acquaint themselves with the case and prepare the witness. This exacerbates the already present witness fatigue. Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005.

to risk their well-being by testifying against members of the local majority;<sup>133</sup> or, as one witness told Human Rights Watch, “I don’t want to remember the horrible events.”<sup>134</sup>

Although the described problems are real, their extent should not be exaggerated. Some district prosecutors said that they did not face a problem of witnesses’ being unwilling to testify.<sup>135</sup> One prosecutor, after listing a series of reasons why it is difficult to ensure witness cooperation, acknowledged that witnesses from the Federation nevertheless responded to her summons to give statements during the investigation.<sup>136</sup> Most victims and victims groups’ representatives interviewed by Human Rights Watch stated that, in principle, they would be willing to contribute to investigations and trials.<sup>137</sup>

One witness, from a village near Zvornik, explained:

All of us, women who lost our husbands, fathers, or sons, are willing to testify about it, even if the trial took place in Bijeljina. We have returned to Republika Srpska, but that cannot deter us from testifying. Maybe those who did not lose anybody in the close family aren’t always willing to testify, but we are.<sup>138</sup>

However, the motivation of witnesses to assist the prosecution does not relieve the prosecutors and the courts of the obligation to ensure the safety and well-being of witnesses during and after their testimony. In particular, the prosecutors and judges should receive training on the treatment of vulnerable witnesses.

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<sup>133</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005; Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboj, November 24, 2005; Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005; Human Rights Watch interview with Alma Dzaferovic, cantonal prosecutor in charge of war crimes prosecutions, Tuzla, November 22, 2005.

<sup>134</sup> Human Rights Watch interview with B.D. (former inmate in the detention camp at Omarska), Kozarac (near Prijedor), December 14, 2005. This view was also expressed by Ranka Mrsic, East Sarajevo district prosecutor in charge of war crimes prosecutions, during an interview with Human Rights Watch on November 28, 2005.

<sup>135</sup> Human Rights Watch interview with Slobodanka Gacinovic, Chief District Prosecutor, Trebinje, November 25, 2005; Human Rights Watch interview with Sead Zeric, deputy to the Chief District Prosecutor, Banja Luka, December 13, 2005.

<sup>136</sup> Human Rights Watch interview with Ranka Mrsic, district prosecutor in charge of war crimes prosecutions, East Sarajevo, November 28, 2005.

<sup>137</sup> Human Rights Watch interview with Suada Selimovic, Belgrade, December 26, 2005; Human Rights Watch interview with Fikret Bacic, Zecovi, December 14, 2005; Human Rights Watch interview with Bakira Hasecic, president of the Association of Women-Victims of War, Sarajevo, November 18, 2005.

<sup>138</sup> Human Rights Watch interview with Suada Selimovic, Belgrade, December 26, 2005.

## ***Non-Availability of Suspects***

Domestic war crimes prosecutions in Bosnia are increasingly hampered by the fact that suspects and accused are living outside Bosnia. This problem is particularly acute where the person has citizenship of a country which does not permit the extradition of its nationals. A number of Bosnian Serbs and Croats, including war crimes suspects, have moved to Serbia and Croatia respectively in recent years and received citizenship there, and they are thus protected from extradition back to Bosnia for trial. Other suspects were already citizens of Croatia or of the (post-1992) Federal Republic of Yugoslavia (predecessor of the current Serbia and Montenegro) at the time of the crimes, and are similarly protected from extradition. The absence of suspects from Bosnia, beyond the reach of police and prosecutors, even prevents the issuing of indictments: under legislation adopted in 2003, an indictment cannot be issued unless the suspect has been interviewed.<sup>139</sup>

This problem already affects district prosecutors in Republika Srpska, and it is set to increase as the investigations into the cases referred through the Special Department for War Crimes advance. For example, Bosnian Croats are the suspects in most of the ongoing investigations in Doboј, where the district prosecutor in charge of war crimes prosecutions has investigated crimes committed along the border with Croatia. Two-thirds of the suspects, according to the prosecutor, have left Bosnia for Croatia and obtained Croatian citizenship.<sup>140</sup> The prosecutor in Banja Luka is facing a similar problem with respect to investigations into the crimes against Bosnian Serbs in Kozarska Dubica and Mrkonjic Grad. Croatian Army units were responsible for those crimes, and the prosecutor working on the cases predicts that the trials will eventually be held in Croatia.<sup>141</sup>

The problem of the non-availability of the accused is analyzed in more detail in the recent Human Rights Watch report on the War Crimes Chamber of the Court of Bosnia and Herzegovina.<sup>142</sup> The report recommends that the Bosnian authorities allow the transfer of proceedings to Croatia and to Serbia and Montenegro, linked to an obligation by the authorities in Croatia and in Serbia and Montenegro to provide specific guarantees to facilitate participation of Bosnian witnesses in proceedings. This could

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<sup>139</sup> Article 225 of the Criminal Procedure Code of Bosnia and Herzegovina and article 225 of the Criminal Procedure Code of Republika Srpska stipulate in an identical way that the prosecutor is bound to interview the suspect prior to the completion of the investigation.

<sup>140</sup> Human Rights Watch interview with Slavko Krulj, district prosecutor in charge of war crimes prosecutions, Doboј, November 24, 2005.

<sup>141</sup> Human Rights Watch interview with Branko Mitrovic, district prosecutor in charge of war crimes prosecutions, Banja Luka, November 24, 2005.

<sup>142</sup> Human Rights Watch, "Looking for Justice."

include, for example, providing witnesses with the option of giving testimony through a video link in every case transferred by the Bosnian authorities. Nevertheless, 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 instances, very complex. This is one of the reasons why Human Rights Watch urges that in the longer term the authorities in Croatia and in Serbia and Montenegro abolish the existing ban on the extradition of nationals. 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.

## Recommendations

### ***Recommendations to Republika Srpska Authorities***

#### ***To all Republika Srpska authorities with competence concerning investigation and prosecution of war crimes***

- Implement without delay all decisions of the Human Rights Chamber/Commission and the Constitutional Court on cases of forced disappearance, including by carrying out rigorous criminal investigations with a view to bringing the perpetrators to justice and to providing the relatives of the victims of forced disappearance with information as to their fate.
- Focus a greater part of the Ministry of the Interior's budget for war crimes investigations on crimes committed in Republika Srpska against the non-Serb population.
- Amend legislation in Republika Srpska to enable the recruitment of specialist investigators in district prosecutorial offices.
- Recruit, and provide necessary funding for, additional prosecutors and support staff who are dedicated to the prosecution of war crimes. There should be sufficient capacity amongst prosecutors and staff responsible for prosecution of war crimes to attend proper and effective training necessary to carry out their duties. The Center for Judicial and Prosecutorial Training should organize working visits of prosecutors in charge of war crimes prosecutions to the ICTY, as well as training involving ICTY practitioners as instructors. Attendance should be compulsory for district prosecutors involved in war crimes investigations.
- Instruct local police on the importance of their cooperation with war crimes prosecutors and with the investigation of all war crimes allegations, including those perpetrated by Bosnian Serbs against non-Serbs.
- Develop a witness protection program. At a minimum, the program should provide for the transfer of witnesses to locations other than their places of residence; protection of the witnesses' family members; police escorts; home protection; and the protection of witnesses' personal information. The Center for Judicial and Prosecutorial Training should initiate regular training on the treatment and protection of particularly vulnerable witnesses.

### ***To district prosecutors***

- In those cases in which the ongoing trials or investigations concern wartime offences and disclose prima facie violations of humanitarian law, amend the charges to reflect those violations.
- Request that the High Judicial and Prosecutorial Council authorize increases in the number of district prosecutors working on war crimes cases if current staffing proves insufficient, and consider the establishment of special war crimes departments in each district.
- Request approval from the High Judicial and Prosecutorial Council for the recruitment of a greater number of law clerks, whose tasks would include assisting those prosecutors in charge of war crimes prosecutions.
- Make full use of available sources of information relevant to the investigation, including information gathered by nongovernmental organizations, and ICTY transcripts and other material. Request that the Chief Prosecutor arrange access to the ICTY Evidence Disclosure Suite.

### ***To the Chief Prosecutor of Republika Srpska***

- Endorse requests to the High Judicial and Prosecutorial Council for increases in the numbers of district prosecutors and law clerks working on war crimes cases.
- Develop jointly with the Office of the Prosecutor of Bosnia and Herzegovina modalities for cooperation to enable Republika Srpska prosecutors to access ICTY material to which the Office of the Prosecutor of Bosnia and Herzegovina has access.

### ***To Bosnia and Herzegovina Central Authorities***

#### ***To legislative and judicial authorities***

- In the short-term, allow for the transfer of proceedings in war crimes cases against Serbian and Croatian citizens, respectively, to Serbia and Montenegro and to Croatia, subject to agreement by the authorities in each country that they will facilitate the participation of Bosnian witnesses in proceedings.
- Adopt legislation enabling the recruitment of specialist investigators in prosecutorial offices.

### ***To the Office of the Prosecutor of Bosnia and Herzegovina***

- Develop jointly with the Chief Prosecutor of Republika Srpska modalities of cooperation to enable Republika Srpska prosecutors to access the ICTY material to which the Office of the Prosecutor of Bosnia and Herzegovina has access.
- Establish a focal point in the special war crimes department to manage requests for assistance from Republika Srpska district prosecutors and to facilitate contact with the ICTY Office of the Prosecutor.

### ***To the High Judicial and Prosecutorial Council***

- In cooperation with the Ministry of Justice of Republika Srpska, provide mechanisms for an increase in the number of prosecutors and law clerks in those prosecutorial offices in which the current staff is insufficient to handle the increased caseload of war crimes cases.
- Expedite the creation of the criteria for assessing the work of the district and cantonal prosecutors. Standards for measuring the output of the prosecutors in charge of war crimes prosecutions should reflect the exceptional investment of time and resources necessary for the proper investigation of war crimes.

### ***To Relevant International Actors***

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

- Provide specific guarantees to facilitate participation of Bosnian witnesses in all war crimes cases transferred by the Bosnian authorities for trial before courts in Croatia and in Serbia and Montenegro. 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 European Union and its member states, the United States government, the Council of Europe, the Organization for Security and Co-operation in Europe and other relevant actors of the international community***

- Ensure that accountability for war crimes and effective criminal prosecutions are consistently prioritized in relations with the authorities in Bosnia and in Republika Srpska.

### *To the international donor community*

- Provide material assistance to district courts in Republika Srpska, including computers for all prosecutors and their staff, as well as the technology allowing for testimony to be given via video link, and equipment to disguise the voice or conceal the face of a witness.

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

- Establish communication with the Chief Prosecutor of Republika Srpska and the district prosecutors working on war crimes issues, to develop modalities to provide district prosecutors with access to the ICTY's Evidence Disclosure Suite and Judicial Database, and for their use of other ICTY evidence, and assist in training.
- Cooperate with the Center for Judicial and Prosecutorial Training in order to facilitate expert training for prosecutors and investigators and enable the transfer of expertise in the prosecution of war crimes to domestic tribunals.

### *To the Organization for Security and Co-operation in Europe Mission to Bosnia*

- Extend war crimes trial monitoring to include the investigative phase, with a particular focus on monitoring the use by prosecutors in charge of war crimes prosecutions of potential sources of evidence about war crimes.

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