Introduction of Victim/Witness Support Services
in Mostar and Brčko
Bosnia and Herzegovina,
2013 – 2014

Project Proposal to the
Government of Switzerland

February, 2013
Table of Contents

ACRONYMS  2
BASIC INFORMATION  3
INTRODUCTION  3
SITUATION ANALYSIS  4
WITNESS SUPPORT IN BIH JUDICIAL REFORM  5
PROJECT OBJECTIVES AND STRATEGY  5
PROJECT IMPACT  6
EXPECTED RESULTS  6
ACTIVITIES AND INDICATORS  7
  1. Infrastructural development
     Activities and Indicators
  2. Capacity development – joint activities
     Activities and Indicators
SUSTAINABILITY AND IMPLEMENTATION ARRANGEMENTS  8
RISK ANALYSIS  8
DONOR VISIBILITY  9
MANAGEMENT ARRANGEMENTS  9
IMPLEMENTATION TIMELINE  10

ACRONYMS

BiH    Bosnia and Herzegovina
FBiH   Federation of Bosnia and Herzegovina
HJPC   High Judicial and Prosecutorial Council
MoU    Memorandum of Understanding
PO     Prosecutor’s Office
RS     Republic of Srpska
SPWCC  Support to Processing of War Crimes Cases in BiH
UNDP   United Nations Development Programme
VW     Victim and Witness
VWS    Victim and Witness Support
WSO    Witness Support Office
BASIC INFORMATION

Title: Introduction of Victim and Witness Support Services in Mostar and Brčko, BiH, 2013 – 2014

Location(s): The cities of Mostar and Brčko in Bosnia and Herzegovina

Contracting Authority: Government of Switzerland thorough the Embassy of Switzerland in Bosnia and Herzegovina

Implementing Agency: United Nations Development Programme in BiH (UNDP BiH)

Beneficiaries: Victims and Witnesses and the Court and Prosecutor’s Office in Mostar and Brčko

Objective: Strengthen the rule of law and the fight against impunity for war and other serious crimes, particularly those with transnational impact, through capacity building in the judicial sector to institutionalize support to victims and witnesses in BiH

Duration: 14 months

Overall cost: **212,224 EURO**

INTRODUCTION

Facing the events from the recent past and the effective processing of war crimes cases is recognized as one of the basic preconditions for the restoration and maintenance of peace, justice for survivors and national and regional reconciliation.

To this end, complementary to judicial reforms, the BiH Council of Ministers adopted the National War Crime Processing Strategy in 2008 that set ambitious targets to facilitate the efficient processing of war crimes, *inter alia*: A) prosecute the most complex and top priority war crimes cases within 7 years and other war crimes cases within 15 years; B) enhance strategic management and distribution of cases; C) harmonize judicial practice to ensure legal certainty and equality of citizens before the law; and D) strengthen the capacity of the judiciary and police and to “provide protection, support and same treatment to all victims and witnesses in proceedings before all courts in BiH”.

However, four years after its adoption, there are serious concerns regarding implementation of the National War Crimes Strategy and the capacity of the Entity and District levels to address the backlog of cases, *estimated at over 1,300 cases*, (as many as 8,000 perpetrators) in the remaining 10 years (4 years at the State level). Of particular concern is the absence of “equality of citizens before the law” and the lack of institutional capacity to support and protect victims and witnesses at all judicial levels as well as the required support networks necessary to safeguard witnesses and victims from intimidation, re-victimization or reprisals.

Currently, the only jurisdiction under existing legislation to provide protection to witnesses is the State Court of BiH. This is achieved through substantial funding from the international communi-

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ty. Providing protection and support services to all levels of the judiciary is therefore imperative to avoid discrimination and to provide a qualitative administration of justice for all BiH citizens.

Given the fact that the Court of BiH deferred over 300 war crimes cases to cantonal and district courts and prosecutors’ offices in 2012, and considering the stringent need to implement the National War Crimes Strategy, it is essential to enhance capacities at all levels and to ensure that witness support offices are established in all the remaining cantonal/district courts and prosecutors’ offices in the shortest time possible. According to UNDP, a significant portion of these cases will require re-investigation and the vast majority will entail reestablishing contacts with witnesses whom may have not been contacted for more than 10 years.

In light of the above, it is relevant to point out that successful law enforcement is largely dependent on the availability and willingness of persons to give evidence in criminal proceedings. This is particularly true in war crimes cases where physical or documentary evidence is often unavailable or nonexistent and eyewitness testimony represents the only available evidence for successful prosecutions. Supporting and protecting witnesses is therefore critical both in terms of securing vital evidence as well as to protect the rights, dignity and safety of persons.

In this context, victims of sexual violence merit special attention. As recognized by the European Court of Human Rights, those victims have heightened interests in privacy because of the stigma attached to their injuries.

To further promote the treatment of victims and witnesses effectively and with respect for their safety and human dignity, the United Nations adopted the “Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power” and instruments to promote specific rights in this area, principally articles 24 and 25 of the UN Convention against Transnational Organized Crime, requiring States to take appropriate measures to provide effective protection and support.

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

**SITUATION ANALYSIS**

Bosnia and Herzegovina, seventeen years after the end of hostilities, continues to struggle with the devastating political, economic and social effects of the conflict that was marked by gross violations of international humanitarian law, mass killings, widespread and systematic rape, destruction of property and mass displacement of the population.

Combating this violent legacy through the adjudication of war crimes is recognized as an essential element for the restoration and maintenance of peace, justice and reconciliation, as victim/witness testimony is not only the evidentiary basis of judicial decisions but also reveals the truth about the crimes that were committed and helps to rebuild confidence in institutions of governance. In the past years, BiH has successfully targeted an increasing number of war crime cases at the State level. However, the country still faces a large number of open investigations and backlog of war crimes cases estimated at over 1,300 cases involving some 8,000 suspects.

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2 A/RES/40/34 - 29 November 1985 96th plenary meeting
WITNESS SUPPORT IN BIH JUDICIAL REFORM

This project supports the objectives and priorities set out in, inter alia, the BiH National War Crimes Strategy, the BiH Justice Sector Reform Strategy, recommendations of the EU-BiH Structured Dialogue on Justice, the EU funded project ‘Cooperation in Criminal Justice: Witness Protection in the Fight against Serious Crime and Terrorism (WINPRO)’, the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the UN Convention against Transnational Organized Crime, as well as UNDP efforts in the fields of judicial reform and Victim/Witness Support offices in BiH and Croatia.

In addition, the project advances regional judicial cooperation supporting enhanced cooperation in the prosecution and investigation of criminal matters, the development of efficient communication procedures and mechanisms to exchange information related to victims and witnesses and mutual assistance, the protection of witnesses of serious crime, the approximation of judicial systems and legal frameworks towards EU standards and the EU acquis communautaire.

UNDP’s project provides for the special needs of children, elderly persons, persons with disabilities and victims of sexual, gender and domestic violence ensuring that appropriate steps are undertaken to protect and support victims and witnesses during courtroom proceedings, particularly those who are most vulnerable and those who have suffered trauma.

PROJECT OBJECTIVES AND STRATEGY

The project will assist BiH in dealing with the existing backlog of cases and will increase public confidence in the judicial, law-enforcement and social welfare institutions through the establishment of integrated and sustainable victim and witness support mechanisms. Better informed victims and witnesses will be able to access the criminal justice system with greater confidence and therefore contribute to the efficiency of criminal proceedings.

The project will contribute by expanding the current victim/witness support model to two (2) additional locations (thus covering in total 7 out of 16 locations in BiH) and facilitate setting up of a functional network, coordination and uniform approach to victim/witness support and protection.

This UNDP project builds upon the design and achievements of UNDP’s activities as part of the project “Support to Processing War Crimes Cases in BiH,” in particular components establishing witness support services in both the courts and prosecutors’ offices, at three (5) locations - Banja Luka, Sarajevo, East Sarajevo, Bihać and Novi Travnik/Travnik. Over 500 victims/witnesses in over 300 criminal cases received a wide range of support services in Banja Luka and Sarajevo alone.

1. UNIFORMED SUPPORT SERVICES DELIVERED

   A) Equality of citizens before the law, enhanced focus and legal empowerment of victim and witness through the multi-dimensional approach to the adjudication of serious crime;
   B) Established equal standards for access to justice and the efficient and compassionate management of victim and witness at the Entity, Canton and District levels;
   C) Ensured sustainability of V/W services through binding agreements with judicial authorities under the auspices of the HJPC;
   D) Assistance rendered to victims and witnesses in criminal cases, particularly in cases involving war crimes, juveniles, victims of wartime rape, sexual violence and other forms of torture.8

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8 UNDP Programme – Support to Processing of War Crimes Cases in BiH (SPWCC), 2009-2012
9 UNFPA programme - Combating Sexual Violence in Conflict.
2. WITNESS SUPPORT SERVICES ACCESSIBLE IN THE COURTS AND PROSECUTORS OFFICES

A) Adapted physical space (witness waiting rooms with secure accessibility)⁷;
B) Completed employment procedures, education and consultative (peer to peer) orientation of V/W staff;
C) Empowered governmental/non-governmental services providers and referrals for long-term psycho-social, mental health and social welfare assistance for victims and witnesses.

3. PROCEDURES AND TRAINING CURRICULA DEVELOPED

A) Procedural Guidelines (rulebooks) developed and adopted ensuring uniformity in the management of victims and witnesses;
B) Judges and prosecutors and other judicial staff trained on the management of victims and witnesses in criminal proceedings, the role of witness support offices as well as the application of procedural and non-procedural measures.

PROJECT IMPACT:

Based on statistical data and inputs from UNDP pilot projects implemented in 2010-2012, the main impact of this project can be summarized as follows:

- Reduction of the backlog of cases and improved judicial efficiency;
- Enhanced capacities of the courts and prosecutor’s offices to support and protect victims and witnesses before, during and immediately after trials;
- Supported strategic measures stipulated in the National War Crimes Strategy as well as the recommendations from the Structured Dialogue on Justice between the EU and BiH and the recent European Directive 2012/29/EU⁸, constituting new and relevant acquis.
- Improved position of victims and witnesses and enhanced access to justice;
- Enhanced awareness on availability of support services for victims and witnesses and the importance of this service within the judiciary.

Note: The recent EU directive sets minimum standards on the rights, support and protection of victims of crime ensures minimum rights, support and protection for all victims of crime in the EU.

EXPECTED RESULTS

1. Established, integrated, and sustainable victim and witness support offices in the city of Mostar (Federation) and in the city of Brčko (Brčko District). The V/W support offices will enhance the capacities of the courts and prosecutors’ offices to reduce the number of cases, while providing victims and witnesses access to support, protection and legal assistance that will ensure the equality of citizens before the law.

2. Better informed Victims/Witnesses, trained relevant professional staff and the general public on their rights, available services and judicial proceedings contributing to building confidence in the judiciary, governmental, social and non-governmental sectors.

⁷ Article 8 of the Council Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA) refers to the obligation to ensure that contact between victims and an offender is avoided, by providing special waiting areas.
ACTIVITIES AND INDICATORS:

ACTIVITY 1 INFRASTRUCTURAL DEVELOPMENT

Establishment of VWS Offices in Mostar and Brčko

- Select and hire witness support staff (psychologists/social workers) for Witness Support Offices (advertising, selecting and contracting);
- Design, construct, refurbish and equip offices for VW staff and waiting rooms (includes hiring of architect, obtaining of construction permits in cooperation with national partner, subcontracting of construction company, complete furnishing of offices and witness waiting rooms, purchasing of IT equipment – computers, printers, mobile phones, etc.);
- Organization of official opening of Witness Support Offices in order to raise awareness among the representatives of the judiciary and the general public on the existence of WS services;
- Daily running of the WSOs (telephone bills, refreshments, office supplies).

INDICATORS:

- Four VWS Offices established;
- Four witness support specialists selected, employed and working in the Cantonal Court in Mostar and the Basic Court in Brčko and the Cantonal Prosecutor’s Office in Mostar and the Public Prosecutor’s Office of Brčko District;
- Two reconstructed, furnished and equipped waiting rooms and offices at the Cantonal Court in Mostar and the Basic Court in Brčko; two reconstructed, furnished and equipped offices at the Cantonal Prosecutor’s Office in Mostar and the Public Prosecutor’s Office of Brčko District;
- Official opening for relevant implementing partners and other actors active in the field of VWS organized under media attention.

ACTIVITY 2 CAPACITY DEVELOPMENT – JOINT ACTIVITIES

Capacity development, technical expertise/coordination and harmonization of practices

- Conducting preparatory meetings with implementation partners with a goal of securing sustainability and understanding of roles and obligations of all actors involved;
- Develop internal procedures for witness support offices in respective courts and POs;
- Trainings for judges and prosecutors in order to develop their capacities in the field of victim and witness support;
- Curricula development, moderation and facilitation of training events, including review and lessons learned;
- Organization of introduction and on – the – job trainings for newly employed witness support staff;
- Joint supervisory and coordination meetings for new and existing VW support staff in order to harmonize implementation of VWS mechanism throughout BiH;
- Promotion of VWS Offices through creation and distribution of victim/witness support office promotional materials;
- Design, production and distribution of leaflets on the rights and obligations of victims and witnesses appearing in criminal proceedings and available support services;
- Cooperation and coordination with national and international actors active in the field of VW support and protection.
INDICATORS:

- Minimum five meetings organized with judicial authorities to negotiate MoUs;
- Four MoUs signed incorporating VWS in the justice administration, including provisions for sustainable funding after the completion of the project and funding by UNDP;
- Two trainings provided on relevant witness support legislation and role of victim witness support offices for the relevant criminal division judges and prosecutors successfully held in cooperation with relevant national training institutions;
- Two training kits developed and training assessment reports provided;
- Introduction training for witness support staff held and training kit developed;
- On – the job – training for witness support staff organized;
- Rulebooks on Internal Procedures for WSO’s (four) developed and institutionalized;
- Minimum two (2) joint supervisory and coordination meetings for victim/witness support staff for maximum 9 participants held;
- VWS Offices’ practice harmonized and professional skills maximized;
- Four established VWS Offices harmonized with existing VWS structure at all BiH levels;
- Minimum standards on the rights, support and protection of victims of crimes ensured at newly established
- Promotional posters and leaflets for each VWS office designed and distributed.
- Successful coordination and implementation of VWS related project activities.

SUSTAINABILITY AND IMPLEMENTATION ARRANGEMENTS

Once developed, the VWS offices at the selected locations will provide a sustainable, efficient, integrated, and functional service delivery capable of further development and/or expansion as required. Its sustainability will be secured through commitments (MOUs) signed with relevant stakeholders ensuring that standardized VWS posts are incorporated in the justice administration by the HJPC BiH and financed from cantonal budget and/or District budget after the completion of IWSS Project and funding (where applicable) by UNDP.

The Project will ensure active participation of implementing partners. By signing Memoranda of Understanding, partner institutions will commit to actively participate in project realization, to provide premises corresponding to UNDP and national requirements and to incorporate witness support offices into existing institutional structures. Professional staff and other judicial personnel, i.e., judges, prosecutors, other court officers will attend capacity development trainings and apply developed procedures in their daily work. Additionally, the relevant ministries of justice will further commit to secure necessary funding for the offices and new posts.

To avoid overlap, UNDP chairs the Justice Coordination group that includes organizations dealing with witness support and protection issues in BiH (the EU Delegation, OSCE, ICTY, UN, US Government represented by ICITAP, NICO/WINPRO).

In addition, reconstruction activities are closely coordinated with the HJPC currently implementing the IPA funded Project, „Improving Technical Conditions at Cantonal and District Courts for Greater Efficiency at War Crimes Trials“, and all court security issues with ICITAP.

RISK ANALYSIS

A number of preliminary strategic and operational risks that may affect the implementation of the project are identified as follows:

1. Low awareness of VWS issues in judiciary sector.
   **Countermeasures:** Intensify advocacy and promotion of best practices at the local level. Special attention given to the activities of the HJPC on enhancing equality before the law.
2. Complex and demanding national administrative and financial procedures as well as lack of financial resources in judicial sector that can cause problems in transition of the offices
Countermeasures: Intensify advocacy and promotion.

3. Lack of staff with necessary experience in providing support to sensitive witnesses.
Countermeasures: Additional trainings for the staff hired in WSOs prior to their deployment, continuous coordination and close supervision.

4. Complex and time-consuming employment procedures in FBiH. Engagement of UNDP contracted staff through Civil Service Agency of FBiH at the end of the Project creates delays and does not secure employment of trained staff due to national balance criteria.
Countermeasures: Intensify advocacy with key partners and extend funding of positions within courts and prosecutor’s offices.

5. Limited pool of experts on victim witness support practise within judiciary in BiH.
Countermeasure: Research and better planning for the use of available experts.

DONOR VISIBILITY

UNDP BiH will make every effort to ensure that publications, training, programmes, seminars or symposia financed by Swiss funds, and all press releases or other information materials issued by UNDP with respect to Swiss funds, shall clearly indicate that the activities in question have received funding from the Government of Switzerland.

MANAGEMENT ARRANGEMENTS

This project implementation is administered according to “UNDP Programme and Operations Policies and Procedures” under the direct UNDP Implementation modalities (DIM) whereby UNDP assumes overall responsibility for the management of the project activities.

Project Board

The Project Board is responsible for implementation as per the authority delineated in this document. Responsibilities of the Board include: providing guidance to project staff, ensuring transparency and the participation of stakeholders. The Project Board meets quarterly to review progress and to ensure implementation. The meetings are to include progress updates and problems and solutions that shall be presented in the form of quarterly and annual progress reports as well as annual work plans. The final evaluation of the project will be conducted by an independent evaluator in the last quarter.

The Project Board will be administered by UNDP and comprised of the donor, UNDP, MoJ BiH and HJPC. Project Quality Assurance is performed by the Justice and Security Sector Coordinator. The Donor(s) are represented at the Project Board as the Senior Supplier (Swiss Embassy in BiH). UNDP performs the executive role in the Project Board while the role of Senior Beneficiary is held by the BiH Ministry of Justice and the HJPC. UNDP is accountable for the project, its organization, structure, planning and monitoring as well as problem referral.

Monitoring and Evaluation

Monitoring project implementation and impact evaluation will be assured through regular field visits, client feedback and a quarterly progress reports. The methodology consists of review of project materials and deliverables, followed by regular field visits and a final report. The implementation of specific activities will be measured through established activity indicators. The Project Board will monitor project effectiveness and, if required, amend activities to respond to specific circumstances in the four target institutions if conditions change over the project duration.
Final Evaluation of the Project performance

The Final Evaluation will address the Project activities from its start to the end, including design and implementation. Evaluation will focus on the relevance of the proposed project objectives and outputs, efficiency & effectiveness, impact and timeframe. The evaluation will be based on interviews with key stakeholders, while available relevant documentation will be reviewed. Key persons will include government representatives that were involved in the project implementation as well as project team members and consultants.

IMPLEMENTATION TIMELINE

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End of Calendar Year

End of Fiscal Year

NOTE: To ensure the systematization of witness support staff and the financial sustainability of witness support offices and to adhere to cantonal budgetary and financial requirements, the engagement of witness support staff will only begin midyear and finish at the end of the fiscal (in this case calendar) year, allowing for one additional month in the next year to allow for delays in the employment procedure or other unforeseeable impediments.