

## **Poor Protection for Balkan Trial Witnesses**

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Local war crimes courts fail to provide adequate support to either traumatised victims or insider witnesses.

Although years have passed since conflict engulfed the former Yugoslav states, war crimes trials are still taking place not just at the Hague tribunal, but locally in Serbia, Bosnia, Croatia, and Kosovo. These trials are essential to establishing a record of what occurred, but they would never happen without witnesses – both victims and “insiders” – especially given that material evidence of wartime atrocities is in some cases impossible to find.

Yet despite their importance to the process, witnesses who come forward to give testimony in local trials still face threats, intimidation, violent reprisals, and the public outing of their identities – sometimes by the very people supposed to be protecting them. In other instances, there is simply no protection or support available.

This issue remains a pressing one across the former Yugoslavia. This report looks at the situation in Bosnia and Serbia specifically.

### **PROTECTING INSIDER WITNESSES IN SERBIA**

During the late 1990s conflict in Kosovo, M. was part of a Serbian paramilitary unit which went into a village, lined up more than a dozen Albanian women and children, and shot them at point-blank range. Most did not survive.

M. claims that he did not join the unit by choice and that he tried to stop his colleagues killing the civilians.

After a lengthy investigation, he was subsequently cleared of wrongdoing in the massacre and chose to testify against fellow-members of the unit in a trial at the Special War Crimes Chamber of the Belgrade District Court, established in 2003. M. gave his testimony under a pseudonym and shielded from public view. The defendants were all given lengthy prison sentences.

Because M. continues to fear for his safety, IWPR agreed to withhold his real name, the pseudonym used in court, and other details that could easily identify him.

“One of [the men I testified against], in maybe four or five years, he’s going to get out of jail,” M. told IWPR in a recent interview. “It’s just a question of minutes, times, days... when somebody is going to just go and shoot me. For them I’m a traitor.”

In war crimes trials, many times occurring years after the events in question, witness testimony from both survivors and those on the perpetrators’ side is often the most important evidence that prosecutors have at their disposal.

“In these trials, you cannot find much material evidence and it’s very hard to collect it, so insiders – members of armed forces who participated in the war – are crucial for proving accountability, because they are the actors of these events and they are eyewitnesses,” Sandra Orlovic, deputy executive director of

the Humanitarian Law Centre, HLC, in Belgrade, said.

As M's case illustrates, insider witnesses are often branded as traitors and face a host of ramifications for testifying against those from the "same side."

Serbia has a Witness Protection Unit, WPU, with powers to give witnesses a new identity and relocate them within the country.

However, observers of the war crimes process, and protected witnesses themselves, say the unit not only fails to adequately assist and protect witnesses, but in some cases it has threatened and abused witnesses in order to dissuade them from testifying.

Because the WPU falls under the jurisdiction of the interior ministry, which oversees the police force, there have been situations where insider witnesses – often former police officers themselves – are being protected by members of the same force, and in some cases the very individuals they are testifying against.

In September 2011, the HLC released a report detailing the mistreatment of four insider witnesses who were due to testify against fellow police officers. The witnesses, together with the five accused, had been part of the 37th Detachment, a special police unit operating under Serbian interior ministry command during the Kosovo conflict. Members of the unit allegedly committed war crimes against the civilian population.

According to the HLC report, members of the WPU asked two of the witnesses, who had been relocated away from their town in southern Serbia in 2009, "about the details of and motives for their testimonies, attempted to dissuade them from testifying and tried to scare them by claiming that the Office of the [Serbian] War Crimes Prosecutor would discard them."

One of the witnesses, identified only by the number 2, told HLC that the WPU continued "warning him that it is better for him to withdraw his statement and that if he did this, he would be relocated to some third country".

The other witness wrote a personal letter to the authorities in April 2011, appealing for help.

"With every encounter and contact, they try to intimidate and humiliate us, and it makes it impossible for us to survive in this environment," the witness wrote in the letter, which was included in the HLC report. "They are doing everything they can in order to expel us from the Witness Protection Programme, thus preventing me from testifying about the war crimes I witnessed."

He wrote that when he told WPU officials what was happening, "they poured scorn on my statements, claiming the things I was asserting simply could not be possible".

Another official, he said, told him to "be very careful about what you do" so as not to end up with a "gun up your butt".

"Even if we had been sentenced to serve a prison sentence, my family and I would have had food and we would have been less humiliated and intimidated," he wrote, describing how WPU officials had withheld his required monthly stipend.

IWPR was able to interview one of the protected witnesses referred to in the report at HLC's office in Belgrade.

This witness, referred to here as B. out of concern for his safety, said, "The programme for protecting witnesses exists only in theory. If you want to speak the truth in Serbia, it's horrible to live here."

Until he entered the protection programme in July 2009, B. was head of a police office in a small town near the Bulgarian border.

While he did not go into detail about what he saw during his three-month deployment in Kosovo during the late 1990s, he said some of the crimes committed against Albanian civilians were straight out of "American horror movies".

He said that "almost 90 per cent of the police force" in his town was sent to Kosovo, and "everyone knew what happened" there. As a result, he said his colleagues regarded him as a traitor and "Serbian trash" for speaking out against them.

When he became a protected witness, "the most funny and tragic thing" was that he was being protected "from the police – by the police", some of whom he knew and had made accusations against.

After B. and his wife and small son were relocated to a different city in Serbia, he said he was given a blank piece of paper to sign without seeing the text of the witness protection agreement. He claimed that the

apartment they were given was infested with cockroaches and other insects, and that he was arbitrarily denied the 300 euro monthly stipend which protected witnesses are entitled to receive, as they are not allowed to work.

Officers would turn up at their home unannounced, he said, and “behaved as if the apartment was theirs and we didn’t exist”. They would often scream at him, terrifying his small child, the man said.

“My life was in chaos, I was hungry, my colleagues would torment me and I didn’t have any money,” he said, summing up the situation.

After a few months, he said, the WPU suddenly informed him that he was no longer in the programme, and he returned to his home town. He still lives there and says he often encounters the men he made allegations against, and “expects any second to be assassinated”.

“There is no safety here in Serbia,” he said. “Everyday we can expect to be in an obituary.”

When IWPR asked the WPU to comment on the claims made by witnesses, it denied all allegations that it mistreated anyone in its programme or acted inappropriately in other ways.

“Witnesses were not bullied, nor were they called ugly names by the WPU, and nobody has influenced them to give up their testimonies,” the unit said in a written response to IWPR. “The WPU does not interfere into the jurisdiction of the prosecution for war crimes, nor is it interested in who will be chosen as a witness by the prosecution, or if he/she is a valid witness during the testimony of the court. The WPU has no reason to influence witnesses to give up their testimonies.”

### **SERBIAN PROSECUTORS CONCERNED FOR WITNESS SAFETY**

It is not just witnesses and NGOs that have raised concerns about the WPU’s methods. The Serbian war crimes prosecution has done so as well.

“We really have very serious complaints about the work of that unit,” said Miodjub Vitorovic, a deputy prosecutor at the Office of the War Crimes Prosecutor in Belgrade. “If I start giving you examples, I can talk until tomorrow morning.”

The overall situation has become so serious, Vitorovic says, that he no longer places his witnesses with the WPU.

“[My witnesses] are protected by the police, though I cannot specify who or which particular unit. The point is that they are not protected by those who are supposed to – by law – protect them. Of course that is not the professional solution, however it is better than the other unit,” Vitorovic said.

In response, the WPU maintained that any allegations made by the prosecutor’s office are “not accurate.”

As for the case of M. -- the former paramilitary member who testified against his wartime colleagues – Vitorovic described it as a “very sad” example of what can happen to an insider witness who is willing to testify.

M. was placed in the WPU on the orders of a judge but later left the programme because he said he did not feel any safer staying in it, and he could not cope with the indefinite isolation. Most crucially, he said his repeated pleas to be relocated to another country were ignored by officials.

Now he lives in a kind of limbo, unable to work, tell people his real name, or live anything resembling a normal life.

Vitorovic agreed that M’s life continues to be in danger.

“Those who have been convicted will come out of prison and he will probably be killed by some of them, if he’s not killed by one of those 150 who are still walking free,” he said.

IWPR spoke to M. for several hours in person and later over the phone. He seemed deeply traumatised by events in his past and had difficulties staying focused on topic.

However, unlike other protected witnesses IWPR spoke to, he said he was not threatened or abused by the officers protecting him, and that the accommodation he was relocated to was adequate.

The problem, he said, was feeling that WPU officials did not care what happened to him and treated him like he “didn’t exist”.

M. described one official telling him, “If you would like to stay [in the programme], you can stay. If you don’t, you can go.”

He asked the official whether there was any longer-term plan in place for him, and was told, “No – we can’t do anything for you.”

Prosecutor Vitorovic gave a harsher assessment of witness M's situation, which he based on discussions he had with him.

"[M.] said the whole situation really affected him very much and said that even if a dog were kept in such circumstances, after a while he would have torn his master to pieces if he saw him. [M.] got almost half-wild being so isolated and being treated like an animal, and not like a human," Vitorovic said.

Analysts say that the WPC's handling of protection issues raises grave concerns about the integrity of ongoing cases.

"The practice of the Witness Protection Unit is jeopardising every single case that is before the war crimes chamber here in Belgrade," the HLC's Orlovic said. "It shows that our society does not support those who are willing to [speak out] about misdeeds."

"You can imagine how frustrated we are," she added. "We have a situation where one state institution – the War Crimes Prosecutor's Office – is also complaining about the protection unit, and nothing is happening."

## **IS INTERIOR MINISTRY CONTROL THE PROBLEM?**

Because the WPU is part of the interior ministry, the prosecutor's office has no control over what it does, or how it treats witnesses. There has been talk of shifting responsibility for the WPU to the justice ministry, but so far this has not happened.

"For the protection unit to be switched from the interior ministry, there must be a law. However, such a law does not exist and we don't know if or when it will be passed," Vitorovic said.

Jean-Charles Gardetto, who as a special rapporteur for the Council of Europe authored a January 2011 report on witness protection issues in the Balkans, said that moving the WPU to the justice ministry "doesn't seem to be a priority these days".

"But it's a problem that needs to be addressed, or at least reminded [about] on a regular basis to Serbian authorities. If I have occasion to remind the Serbs of this issue, then I will do that, because something has to be done," he told IWPR.

Others are less sure that moving the WPU out of interior ministry control would resolve the underlying problems.

"You can have a unit that is professional without any loop[holes] and leaks if you really want. I'm not sure you will change anything by moving the unit from where it stands now," Milan Antonijevic, director of the Lawyers' Committee for Human Rights in Belgrade.

Vesna Terselic, executive director of Documenta, an NGO based in Zagreb, pointed out that Croatia's Witness Protection Unit is part of the police. She said that while very few witnesses actually enter the programme because the conditions involved are arduous, she was not aware of problems like those in Belgrade.

"The police is really the institution that can provide protection," Terselic added.

## **SERBIAN GOVERNMENT'S COMMITMENT IN QUESTION**

Experts say the broader question raised by these issues is whether Serbia's leaders are 100 per cent committed to dealing with the country's wartime past, even as they set their sights on joining the European Union.

Orlovic pointed out that Ivica Dacic, the former interior ministry who became Serbian prime minister this July, told local media in March 2009 that he had feelings of "unrest and concern" when members of the 37th Detachment were arrested. Dacic pledged to "provide all the legal aid that is possible, because it is in the [interior ministry's] best interest to prove their innocence."

"What message does this send to the public?" Orlovic asked. "That the minister, the police and the institutions will always protect and always give support to those who are arrested and suspected of war crimes, but never support those who are brave enough and who have the conscience to testify about what happened."

Orlovic said the "European Commission and international organisations... need to make some reasonable pressure on the new government of Serbia". She said this was especially true given that the recently elected president, Tomislav Nikolic, was allied with hard-line nationalist politicians until just a few years ago.

"This has to be a priority in prosecuting war crimes perpetrators because without the protection unit and

some other preconditions, this very important process of establishing accountability for past abuses will be jeopardised, and I don't know what will happen if nobody reacts," she said.

Antonijevic said Serbia's leadership must start from the position that insider witnesses are "doing something that is useful for Serbia", because they are "brave enough to stand up and say what their role was in the crime, and what kind of crimes the people around [them] committed."

"It's really something that must be defined as a moral value. People see [these witnesses] as traitors because they stood up and spoke the truth. No, they are heroes," Antonijevic added.

### **BOSNIA: WITNESS PROTECTION WORST IN LOWER-LEVEL COURTS**

Problems surrounding the witness protection process are by no means unique to Serbia. Because of the sheer number of war crimes committed in Bosnia and Hercegovina, BiH, during the 1992-95 war, many more trials take place there every year, and hence there are many more witnesses – especially those appearing as victims of the crimes in question.

In BiH, the biggest concern is that witnesses who appear in war crimes trials conducted in local courts – rather than the highest-level State Court – get virtually no support or protection.

In January 2012, a Bosniak survivor of wartime rape made a four-hour trip to appear before a court in Republika Srpska, the Serb entity that with the Muslim-Croat Federation makes up BiH. The case had been transferred to this court, in the town of Trebinje, from the State Court of BiH.

She was to testify against a Bosnian Serb man who she says raped her, slashed her body with a knife, and then gunned down her father-in-law, mother-in-law and sister-in-law on August 15, 1992 in Foca, a town in Eastern Bosnia that had been captured by the Bosnian Serbs after the war broke out.

When the witness, referred to in this report as Z.R., arrived in Trebinje, she sat quietly on a wooden bench in the front row of the small courtroom.

Z.R. had requested that her identity be hidden from the public, but the court did not offer her any measures that would preserve her anonymity, nor did anyone explain to her what she could expect or what her rights were.

As she sat waiting for the court session to begin, reporters from the area surrounded her and started photographing and filming her, so that her face would later appear on Republika Srpska television.

While this was going on, the accused was brought into the courtroom with his lawyer, and was seated just a few metres away from the woman he allegedly raped.

Interviewed later by IWPR, Z.R. said she was "shocked" as the cameras flashed in her face.

"It was horrible," she said.

It was not until about 15 minutes later that the three judges came in. An IWPR reporter present in the court room heard one of the judges – on seeing the photographers – ask, "Did you get enough?"

It was only at this point that judges closed the hearing to the public, on the grounds that Z.R. and another rape victim were "protected" witnesses. It was never explained why photographers were allowed into the courtroom in the first place.

The other witness later collapsed and had to be carried out of the courtroom.

These events took place in the presence of a security guard and psychologist, who were apparently sent to attend proceedings from the State Investigation and Protection Agency. This was an exceptional measure, as the agency's role is usually to assist and protect witnesses only at the State Court in Sarajevo.

Z.R. said that these individuals stood outside the courtroom and did nothing to stop the photographers. Nor did they offer any counsel when she found herself sitting close to the accused for several minutes before the judges came in.

During the interview with IWPR, conducted in her tiny municipality-owned flat outside Sarajevo, Z.R. pointed to a small painting on the wall depicting a tidy white house with a brown roof, surrounded by greenery. This was her in-laws' home in Foca, as painted by one of her husband's sisters before the war.

Z.R. said that after she managed to escape from the defendant, he burned the house to the ground, with the bodies of her dead family members inside.

But in court that day in January, as she prepared to testify, "I had a feeling that I was the war criminal, not him."

“The hardest moment was when they put him so close to me in the courtroom,” she continued. “I was not in 2012, I was in 1992.”

## **TRIALS DEVOLVED FROM STATE TO LOCAL LEVEL**

Z.R.’s experience can, at least in part, be attributed to the incredibly complex government structure created in the Dayton peace agreement that ended the war in 1995.

While the violence she suffered took place in Foca, the court with jurisdiction over the case is in Trebinje, some 95 kilometers away. Both towns are in what is now Republika Srpska, while Z.R. currently lives near Sarajevo, part of the Bosniak-Croat Federation.

The two entities were established in the Dayton peace agreement and enjoy a considerable degree of autonomy.

Observers and victims’ groups say that one of the most serious problems in BiH is that the over burdened State Court – set up with international assistance in 2005 – is in the process of transferring hundreds of war crimes cases to local cantonal, municipal and entity-level courts, even though most of these do not have the facilities or resources to protect and support witnesses.

That is something which local courts themselves readily acknowledge.

“I don’t think we are equipped well enough to prosecute war crimes adequately, since we don’t have – nor can we have – a special room for witnesses and special rooms for protected witnesses where we can apply face distortion techniques and other means of protecting witnesses as we are required by law,” Bojan Stevic, president of the district court in Trebinje, said.

These issues have been going on for years. A 2010 report published by the OSCE mission in BiH spoke of a “systematic failure to ensure the protection of victims’ and witnesses’ rights”.

“This is a fundamental problem in which justice cannot be achieved without violating the human rights of victims of crimes,” the report said.

These concerns are all the more glaring given that the 2008 War Crimes Strategy adopted by the government of BiH explicitly notes the lack of witness protection and support capacity at entity-level and cantonal courts, and makes some recommendations for fixing the problem, such as expanding the mandate of the State Investigation and Protection Agency.

The strategy notes that “witnesses are the most widely used means of evidence in conducting the trials... [and] it is very important to create an atmosphere in which witnesses will give evidence free of fear and threats and pressures”.

According to Francesco Caruso, legal adviser on war crimes and rule of law at the OSCE mission in BiH, more than four years after the War Crimes Strategy was adopted, at entity level “there are not many cases where even the most simple witness protection measures are being used”.

“If there are cases where protective measures are necessary, and those are transferred to courts which cannot ensure those measures, that would be a very big problem and that would impact negatively on the victim, who would be victimised twice,” he added.

Despite the failings in the system, witnesses in BiH are obliged by law to testify. If they do not, they face a fine of more than 2,000 euro, an enormous sum for most Bosnians, let alone wartime victims who are often struggle to provide the basics for themselves and their families.

Caruso pointed out that the majority of witnesses in BiH do not necessarily need to, or even want to, change their identities or seek relocation in another country. But many have “started a new life and don’t want their husbands to know [what happened to them], their kids to know, and it’s a very legitimate expectation”.

“I think that just by prohibiting the name of this person from being published, just by not showing the face of this person, probably in most of the cases you have ensured the kind of protection that people want,” Caruso said.

This is true, others say, even though the law requires the witness’s identity to be made known to the defendant and his lawyers. The individual may also be familiar to residents of the small town or village where the crime occurred.

“If you can’t protect the victim from the [alleged] perpetrator because he will know who the person is, you can still protect the victim from the public,” said Selma Korjenic, a human rights officer with the Sarajevo-based NGO Track Impunity Always, or TRIAL for short.

In some cases, witnesses have been threatened to the point where they see no sense in even trying to hide their identity.

Avdo Popara, who in 1993 was detained and tortured in a Croat-run detention camp in the central Bosnian town of Kresevo, has testified three times since the war ended – once at the cantonal court in Zenica in 2000, a second time in 2002 in Novi Travnik, and then at the State Court in 2008.

The first time Popara testified, in Zenica, he was supposed to be doing so anonymously, but he says that when he got to the court, he was placed in a small office where the accused, his brother and his first cousin were present.

When Popara entered the courtroom, he said, “journalists were coming in normally” and the next day the media carried reports on a protected witness called A.P. – his exact initials.

“From that day, I didn’t have a wish to be a protected witness ever again,” he told IWPR during an interview in Sarajevo, where he now lives.

He said he was subsequently followed by the accused’s cousins when he left the court in Zenica, and believed they would have tried to kill him if police had not intervened.

When he was summoned to the trial in Novi Travnik, Popara did not bother requesting protective measures.

He says he was not offered any when he testified at the State Court. In an incident which illustrates how problematic witness safety is even at the highest judicial level, Popara said that about a month before the State Court trial, he was contacted by a friend of the accused, a police officer in Kresevo, who asked him “not to say anything bad” during his testimony.

He said he reported this to the prosecutor’s office, but never heard any more about it.

When he arrived at the State Court to testify, he said he saw the defendant’s supporters in front of the building.

“Through all my experiences, I don’t have a belief that the court can protect me,” he said. “I am ok to go by myself.”

## **INADEQUATE SUPPORT FOR WITNESSES**

Most of the war crimes survivors and analysts interviewed for this article stressed that in addition to adequate protective measures, witnesses also need strong support mechanisms before, during and after giving testimony. These can range from psychological counselling at all stages of the process, to logistical and financial assistance in travelling to the court, to ensuring that witnesses understand the process and what their rights are.

“Witness support is in many ways as important, if not more important, than witness protection,” said Refik Hodzic, who formerly worked as the Hague tribunal’s outreach coordinator for BiH and is currently director of communications at the International Centre for Transitional Justice in New York. “If we start from the premise that these communities are small, that many of the victims and witnesses – no matter what protection measures are in place – will eventually be known by the accused and defence teams, this further increases the importance of witness support.”

Dragan Mutabdzija, who heads an association of former detention camp inmates in Republika Srpska and has testified publicly at the State Court, said that in many cases, witnesses are appearing in court for the first time. They do not know what to expect and are worried about being “good enough”, he said.

“That is why it’s important to give psychological support to witnesses, especially ones who are uneducated,” he continued. “For a trial, the witness is a key element. Without a living witness and material evidence, there is no trial.”

Victims of sexual violence and torture are particularly at risk of reliving their wartime trauma when they give testimony, and thus are especially in need of good support systems.

“Every time they go to testify, they are going through their trauma which will mark them until the end of their life,” said Irena Antic, a journalist at Federal Radio in Sarajevo who has followed these issues closely. “In many situations, even the closest members of their family don’t know what happened to them. Our society, which is still a little conservative, doesn’t provide the necessary help. And what our society doesn’t recognise is that these women need help on every level, and in some ways it’s still a stigma.”

Hasija Brankovic, vice president of the Section of Women Victims of Torture, who herself survived mass wartime rape in Rogatica, said that victims of sexual violence are especially in need of “moral support” when they have to testify in court.

“They need to be prepared psychologically because they are going through stress,” Brankovic told IWPR. “From my side, I think that is the most important part – that they know what to expect. Because when you come to give testimony, you are afraid and you are confused.”

## **BOSNIA’S HIGHEST WAR CRIMES COURT**

The State Court of BiH, housed in a renovated peach-colored building in Sarajevo, is better equipped than any other court in the country to protect and support witnesses.

It has a special waiting room for witnesses, separate entrances for those testifying anonymously, and the technology to provide image and voice distortion in the courtroom. Furthermore, vulnerable witnesses can testify remotely from a different room if they do not wish to be in the presence of the accused.

It also has the State Investigation and Protection Agency, SIPA, whose job it is to provide security to protected witnesses. SIPA has powers to relocate witnesses and change their identity, although to date it has not done so.

Alma Taso Deljkovic, who heads the small witness support office at the State Court, told IWPR that her unit begins contacting witnesses immediately after an indictment is confirmed to explain the process and assess their needs. The witness is then contacted about seven to ten days before they are due in court, to sort out any logistical issues.

In the case of protected witnesses, Deljkovic said they are accompanied by SIPA staff and enter the court through a different entrance than the defendant.

“Public” witnesses come through the normal entrance, but are advised to arrive early in order to avoid encountering friends and relatives of the accused.

Vulnerable witnesses can also have a support unit member remain in the courtroom with them if they so wish, Deljkovic said.

When witnesses finish testifying, they receive a phone call and are given contact information for NGOs that might be able to help them. Deljkovic said this was usually the limit of the support that could be provided after the event.

“The support that comes after could be better,” she said. “You can always improve things.”

Observers also point out that despite legislation calling for government-funded social welfare centres to support vulnerable witnesses, for the most part these institutions lack the resources to provide even basic levels of care.

Deljkovic concedes that more could be done, such as networks of NGOs and government institutions at the national and local level that would offer witnesses all the support they might need subsequently. But this is really a matter for the BiH government to deal with, she added.

“In general, this is a problem of the state, not the court,” she said. “Our primary goal is to help witnesses while they are here.”

There are already working examples of how such a support network could operate. In two modest houses tucked in the hills above Zenica, about 70 kilometres north of Sarajevo, Sabiha Husic runs Medica Zenica, which provides psychological and other assistance to victims of sexual and domestic violence.

Over tea in her office, Husic explained that her organisation has been working with war rape victims for years, and have given counselling to many who appeared as witnesses at the Hague tribunal.

Medica Zenica now assists women who are called as witnesses at the State Court and in the Zenica-Doboj canton, where her organisation is based.

Although her group has a good working relationship with the cantonal court in Zenica, Husic said that like most courts in BiH, it still lacks essential facilities such as a separate entrance for witnesses and image and voice distortion equipment.

Husic recently helped draft an agreement signed by 17 NGOs and institutions in the canton, including the court and four different ministries, pledging to improve communication and provide assistance that is better organised and follows an accepted set of guidelines.

However, Husic noted that her attempts to create a similar network in another canton, Central Bosnia, received a negative response from the prosecutor’s office there, which declined to sign up.

Like Deljkovic, she believes that the government must take an active role in systemising these kinds of efforts, so that prosecutors and other key players cannot just opt out.

“When we speak about our community, we cannot expect that only NGOs will give this support,” Husic said. “I’m so angry when I speak to different ministries or institutions. They always mention, ‘We do not have money, we do not have money... but they have a very good salary, and a lot of money for their car, their mobile, for their travelling. When we speak about vulnerable categories, such as women who survived war rape and go to give testimony, they really need to take more responsibility.”

## **REPLICATING HAGUE MODEL?**

Because the State Court of BiH was established with the assistance of the International Tribunal for the Former Yugoslavia, ICTY, it has attempted to mirror the Hague tribunal’s best practices, including its witness protection and support systems, which are widely regarded as exemplary.

The logical step would be to take the measures and procedures now applied extensively by the ICTY, and to a more limited extent by the BiH State Court, and encourage their application by entity, cantonal and district courts in Bosnia.

However, experts say the reality is that financial and other constraints make it unlikely that the numerous-lower level courts in BiH could afford to meet the same standards, even if the will to do so was there.

Helena Vranov School, a support officer with the ICTY’s Victim and Witnesses Section, acknowledged that local courts were “struggling with providing even the basic support”.

Many witnesses who have been through the ICTY system go on to give testimony in courts in BiH, and Vranov School noted that “because there is this model that works here, then they expect the same when they testify in local courts”.

“It’s all about expectations,” she said.

She pointed out that it took a long time before all the systems the ICTY now has were put in place.

“The support model that we have here, we had to build it for many years, and we also had lots of struggles to build it up to what it is right now,” she said.

Vranov School explained that it was not until 2009 that the ICTY made it standard practice to make a follow-up call to witnesses, usually four to six weeks after their testimony. This was in response to witnesses who felt “forgotten” when they were not needed for court appearances.

“I think we’ve been fighting so much to provide a support model during the testimony that now actually you see that it’s also just as important in pre-trial and afterwards, especially for those who are going to be testifying for the rest of their lives,” she said.

## **POLITICAL OBSTACLES TO CHANGE**

Analysts say that the obstacles to better procedures in BiH’s local courts are political as well as financial.

“I believe in many cases why the issue is not being addressed is because it costs money – and it is true that it’s also a matter of political will,” Caruso of the OSCE said.

“When it comes to witness support or witness protection, probably in terms of public attention, that is less visible than increasing the number of cases processed. It is a political issue, but indirectly.”

BiH’s complex state structure suffers from a “lack of cohesion”, especially between Republika Srpska and the Federation, and this obstructs a uniform approach to reforms, said Jean-Charles Gardetto, who authored a report on witness protection in the western Balkans for the Council of Europe.

“It’s very difficult to make decisions applicable to the whole country in Bosnia. The constitution... was meant to stop the fighting, but not meant to build a country,” he said.

Gardetto explained that while the State Court enjoys international support and funding, “when it comes to the other courts, it’s a big problem because of the incapacity of the country to manage itself generally at a political level”.

When asked to comment on the lack of adequate witness protection and support at the local level, Sadik Ahmetovic, the BiH state minister of security, told IWPR in a written statement that, “Until now, BiH has had a witness protection programme with a lot of flaws and problems in its implementation.”

He said the security ministry had suggested some amendments to the law on witness protection, which he hopes will be adopted by BiH’s executive branch, the Council of Ministers.

“The ministry of security thinks that adopting these amendments to the Law on Witness Protection will lead to reaching the European standard in this area. The protection agencies will then be in charge of implementing this new law,” Ahmetovic said.

He did not provide details on the nature of the amendments, or how they would change the current situation.

International organisations are aware of the discrepancy between national and local courts, and are trying to address some of the issues.

Thomas Osorio, Rule of Law and Human Rights Officer with the United Nations Development Programme, UNDP, in Bosnia asks whether, as war crime cases are devolved from the State Court, “the entity, district and cantonal courts are ready to accept these cases, in terms of protecting and supporting vulnerable persons? We don’t think so, and we are therefore focusing all our efforts on providing support to all the courts and prosecutor’s offices in BiH”.

The UNDP has set up a witness support pilot programme covering Sarajevo, East Sarajevo and Banja Luka, with three offices in each of the courts there, and three in each prosecutor’s office. Another two offices, in Bihac and Travnik, are expected to open within the next 18 months.

Osorio said the aim was to install witness support offices in every court and prosecutor’s office in BiH, and also to redesign courtrooms so that witnesses can testify anonymously and arrive through a separate entrance.

“The most important person is this witness support officer who works with the police, the prosecution and the presiding judge to ensure that this person is treated with dignity and safety,” he said.

While the UNDP project does not include “hard” protection measures like physical security and relocation, Osorio noted that “we provide supporting elements which cross-cut with protection, in the sense that protecting the identity of victims and witnesses is of course the most important aspect of protection.”

“The project is really about protecting information, and as we call it, protecting the integrity of the process,” he added.

In Croatia, UNDP has already set up seven support offices.

One of the biggest concerns about projects funded by international organisations is whether they will be sustainable. Osorio says this is built into the project design.

“They have to be sustainable. We aren’t interested in just paying salaries. We don’t mind bridging the gap in terms of having someone in that office, but we expect that the post would be regularised in the next [BiH government] budget cycle,” he said.

At the same time, he noted that the pilot programme would depend on future funding from donors, and so far “no one has made commitments”.

When IWPR told Osorio about Z.R., the rape victim photographed by journalists inside the Trebinje court and made to sit a few metres away from the accused, he said he was “appalled” to hear that sort of thing was still going on.

“When you add a concrete example of how the justice system doesn’t work, I think it’s very important because maybe someone will read this article and react,” he said.

**Rachel Irwin is IWPR’s Senior Reporter in The Hague. Velma Saric is an IWPR reporter in Bosnia.**

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