Bridging the gap between the ICTY and Communities in Bosnia and Herzegovina

Conference Proceedings

Foča

9 October 2004

United Nations
Nations Unies

International Criminal Tribunal
for the former Yugoslavia
Tribunal Pénal International
pour l'ex-Yougoslavie

Bridging the gap

between the ICTY and communities in Bosnia and Herzegovina

Conference Series

Foča

9 October 2004

The Bridging the Gap conference in Foča would not have been possible without the hard work and dedication of many people and agencies. Our thanks to all those that made this remarkable series possible.

Appreciation is expressed to the Helsinki Committee in Republika Srpska, Bosnia and Herzegovina. Their commitment to truth-seeking and upholding basic human values, often in the face of hostility, is acknowledged.

The event was generously supported by the Neighbourhood Programme of the Danish Ministry of Foreign Affairs.

Heartfelt appreciation is extended to those people most affected by the crimes addressed at the conference. Without their bravery, nothing could be accomplished.

Bridging the Gap
between the ICTY and communities in Bosnia and Herzegovina
CONFERENCE SERIES
FOČA
9 OCTOBER 2004

A publication of the Communications Service, Registry, ICTY
Contents Editor: Liam McDowall
Graphics Editor: Leslie Hondebrink-Hermer
Contributors: Ernesa Begić, Rebecca Cuthill, James Landale, Alexandra Milenov, Natalie O'Brien

Printed by Albani drukkers, The Hague, Netherlands
2009

Table of contents

Map ..... **iv**

Foreword ..... **v**

List of participants ..... **vi**

Welcome and Introductory Remarks **1**

Session One
Investigations **3**

Images **17**

Session Two
Indictments **25**

Session Three
Trials **42**

Session Four
Judgements **60**

Questions and Answers Session **69**

Closing Remarks **73**

FOČA

Map

BOSNIA AND
HERZEGOVINA
SERBIA
CROATIA
Sarajevo
Foča
MONTENEGRO
ADRIATIC
SEA

Foreword

During 2004 and 2005, the Tribunal's Outreach programme conducted a series of landmark conferences entitled "Bridging the Gap between the ICTY and Communities in Bosnia and Herzegovina". Senior ICTY staff travelled to Bosnia and Herzegovina to explain some of the cases completed at the Tribunal to the local population in places where some of the most notorious crimes under the Tribunal's jurisdiction were committed. These conferences took place in Brčko, Foča, Konjic, Srebrenica and Prijedor.

The event in Foča enabled the Tribunal to provide key audiences – victims' associations, municipal authorities, judicial officials and law enforcement agencies, as well as local politicians and civil society representatives – with a detailed and comprehensive picture of the Tribunal's activities in relation to allegations of serious violations of international humanitarian law occurring in the area during the 1992-1995 armed conflict.

Making extensive use of the enormous volume of evidence presented in the cases, representatives from the Tribunal were able to give an insight into the meticulous and painstaking investigations conducted by the Tribunal and explain how allegations of torture, rape, enslavement, and outrages upon personal dignity were proven before the court. In the "Foča" case, the three defendants – Dragoljub Kunarac, Radomir Kovač and Zoran Vuković – were found guilty of crimes against humanity and violations of the laws or customs of war and sentenced to 28, 20 and 12 years imprisonment, respectively.

Reactions of the audience highlighted the need to persist with efforts to bring to justice perpetrators of all crimes, regardless of the nationality of the victims or the perpetrators. ICTY representatives reiterated the Tribunal's preparedness to continue to do all it can to assist domestic authorities in bringing further prosecutions.

This book contains a summary of proceedings using the transcripts from the day, including opening remarks, presentations from Tribunal staff, photographs used as evidence in the cases and questions from the audience.

Listed below are the speakers who participated in the conference:

Čedo Stanković
Deputy Mayor of Foča

Branko Todorović
Chairman, Helsinki Committee for Human Rights in Republika Srpska

Christian Rohde
Deputy Senior Legal Officer, Registry, ICTY

Peter Mitford-Burgess
Investigator, Office of the Prosecutor, ICTY

Hildegard Uertz-Retzlaff
Senior Trial Attorney, Office of the Prosecutor, ICTY

Christina Moeller
Former Legal Officer, Chambers, ICTY

Catherine Marchi-Uhel
Senior Legal Officer, Appeals Chamber, ICTY

Refik Hodžić
Former ICTY Outreach Coordinator for Bosnia and Herzegovina

Welcome and Introductory Remarks

Refik Hodžić, former ICTY Outreach Coordinator for Bosnia and Herzegovina:
Welcome. I invite Čedo Stanković, Deputy Chief of the Municipal Administration, to give introductory remarks. Branko Todorović, the President of the Helsinki Committee of Republika Srpska and Christian Rohde, a Tribunal Registry representative, will follow him.

Čedo Stanković, Deputy Mayor of Foča:
Ladies and gentlemen, it is my privilege and honour to greet you here on behalf of the administration and citizens of Foča/Srbinje. I hope you will feel welcome in our town and I wish you success in today's conference. I am particularly pleased that you took the decision to hold this conference in our town. It is a special recognition for us and proof that in the strengthening of democratic principles and in promoting mutual tolerance we have achieved considerable progress. Eight years have elapsed since the signing of the Dayton Accords, which marked the end of the war in Bosnia and Herzegovina. After the long period of suffering during the war, which made it difficult for people to exercise their fundamental human rights - such as the right to return, freedom of speech and freedom of political activity - considerable results have been achieved in our municipality. Annex VII of the Dayton Accords has been consistently implemented. However, the return of the displaced is made difficult by the economic situation. As you know, we are still under an economic embargo. That is why the process of return is very slow, or rather, suspended. Many of our pre-war citizens would gladly return to their property if they could make a living. That also applies to former workers of enterprises which no longer operate and they don't have the conditions to sustain their return. However, it is in our interest for people to return because they would help revive the economy and overall life in our municipality.

The topic which is the focus of today's conference can contribute considerably to positive changes. The war was a time of suffering for all communities which live in Bosnia and Herzegovina, including the citizens of Foča/Srbinje. Individuals from all three communities committed war crimes. The existence of war crimes is not denied by anyone because there are witnesses and there is evidence. War crimes were not committed by nations or individual ethnic communities. They were committed exclusively by individuals who have to be brought to justice. We believe that the International Tribunal was established with the task of bringing to justice those who committed war crimes regardless of their ethnic, religious or other affiliation. The Tribunal will therefore enjoy the support of all citizens, but especially the victims, who will find a certain moral satisfaction in its proceedings. I believe that today's conference will operate on these principles. I wish you every success in your work.

War crimes were not committed by nations or individual ethnic communities. They were committed exclusively by individuals who have to be brought to justice.

Branko Todorović, Chairman, Helsinki Committee for Human Rights in Republika Srpska:
Welcome. I bid a special welcome to the investigators, representatives of the Chambers and the Registry of the Tribunal who worked on specific war crimes committed in Foča and who will be presenting that work today.

The purpose of this conference is to present to the local community in Foča the results achieved to date by the ICTY regarding the crimes that were committed here. These crimes, unfortunately, represented a horrific degradation and denial of fundamental values. The victims were mistreated, tortured, raped and killed. Do we have enough courage to face that? Can we accept that concealing, avoiding or covering up these crimes is almost as horrific as the crimes themselves? In order to build tolerance, confidence and solidarity among people of various ethnic and religious communities, we need courage and openness. Today, here in Foča, you the citizens will display your own attitude towards the eternal struggle between good and evil, build hope or show hopelessness. The failure of one generation to assume responsibility for what some of its members have done, with the participation or simply the tacit acceptance of others, always falls upon the shoulders of future generations who have no direct link with these events. They will certainly never forgive us if this burden of our difficult past is passed onto them. We have no right to close our eyes before the truth. I therefore appeal to you, for the sake of your own better future and the country we live in, to look for truth and justice together, even in the most tragic and most painful events from our past. The local communities which manage to achieve that certainly have a hope of a better future where violence, crimes and hatred will never be repeated. Let us look truth in the face. Let us be victorious over fear and hatred. Let us open our hearts to build a new better world of tolerance and mutual coexistence. And let us show some human compassion for the victims and seek justice for the perpetrators together.

Christian Rohde, Deputy Senior Legal Officer, Registry, ICTY:
Good morning everyone. Thank you for your warm welcome. The purpose of today's meeting is to go through the procedures and the judgements in two cases, based on the events that happened in and around Foča. There are two judgements in first-instance trials and two judgements in appeals. We are here to talk about these judgements and also to demystify the Tribunal's work. Although it is located far away and has, perhaps, procedures that not everyone is used to, the Tribunal is a simple criminal court, with investigators, prosecutors, defence counsel, judges and others. It is very important for the population in this region to have confidence in both its own criminal courts and in the Tribunal. I hope that after today's presentations, your confidence in the Tribunal's judgements will be increased. We are not going to dwell on lengthy legal arguments – we are going to stick mostly to facts. Even though the events themselves and the judgements and the procedures were quite complex, we will try to simplify them, but we will try to be complete, as well. Some of the things we are going to talk about are going to be hard to listen to. We are aware of that. These events have had a very serious effect on people, especially on the victims. I would like to thank the Municipality of Foča for its assistance. I would also like to thank the Helsinki Committee for Republika Srpska and the sponsor of this event, the Neighbourhood Programme of the Danish Ministry of Foreign Affairs.

Refik Hodžić:
The first person to address us today is Peter Mitford-Burgess. He is an investigator who worked on the Foča cases. His presentation will address how the investigation began, how it proceeded and the evidence uncovered during the investigation.

Session One
Investigations

Peter Mitford-Burgess, Investigator, Office of the Prosecutor, ICTY:
I am an investigator with the Office of the Prosecutor (OTP) at the ICTY. I have been involved with the Foča investigations for some time and today I would like to provide you with some detail on the investigative process that eventually resulted in the appearance of certain persons charged with war crimes before the Tribunal in The Hague. Specifically, I am referring to Dragoljub Kunarac, Radomir Kovač, Zoran Vuković and Milorad Krnojelac, who the Tribunal's OTP indicted and who were subsequently tried for crimes committed in Foča. Essentially, I will provide you with an overview of what the investigative process involved and how we obtained the appropriate evidence to place before the Court.

The events that occurred in Foča during the course of the conflict were investigated by a number of international observers prior to the ICTY's establishment.

The "Commission of Experts" produced a final report in May 1994. In that report the commission provided some details of the events that occurred in Foča from April 1992, including the bombardment and ethnic cleansing of villages, mistreatment and torture in detention facilities, executions, rape and the existence of a number of mass grave sites. The report identified as perpetrators of the crimes, a number of Bosnian Serbs from the area.

The Tribunal was also provided with material from various international humanitarian and non-governmental organizations that had been working with refugees and persons who had left Bosnia and Herzegovina. Some of this material included detailed information on victims, described events that had occurred including a variety of crimes, assaults, murders and rapes, and also identified a number of the perpetrators of these crimes.

During the course of the investigation, the Tribunal was also provided with extensive material from the authorities in Bosnia and Herzegovina containing details of crimes and potential witnesses.

Prior to 1996, the OTP had no access to the Foča area where the crimes were committed. Therefore, the investigation consisted primarily of a review of the information that was provided to the Tribunal concerning the events in Foča and interviews of those witnesses who were available to the investigators. Efforts were also made to contact Serb witnesses to obtain details of crimes. However, there was no cooperation forthcoming.

In respect of the Foča region, some Bosniak and Croat citizens, who had been expelled or exchanged, had been interviewed by the Bosnian authorities and various non-governmental organisations and had given details of the events that occurred in Foča and the surrounding villages in the period from early 1992 through to 1993. The records of these interviews were provided to the OTP.

This information may or may not have been correct. The OTP formed a team consisting of lawyers, investigators, analysts and interpreters. The team's responsibility was to determine which crimes had been committed in the Foča region that the Tribunal had jurisdiction over, and to identify the persons responsible for committing them.

At this early stage the investigation team, having reviewed and analysed the material that had been provided to the OTP, formulated a course of action for the proposed investigation.

In particular, because of the seemingly high number and consistent pattern of sexual assaults against women, it was proposed to focus on those rapes that had been committed against women and young girls who were held in detention centres, as opposed to the rape of women in their homes. The sexual assaults against the women and children held in detention centres appeared to be organized in character and were committed frequently by what appeared to be specific groups of soldiers.

In respect of the non-Serb male victims it was decided to concentrate on their treatment whilst in custody at detention centres, particularly the prison Kazeno-Popravni Dom (KP Dom), principally focusing on crimes such as assault, torture and murder.

The decision was that the investigation would not be perpetrator-driven, but instead would concentrate on identifying the crimes that were alleged to have been committed in the Foča region.

In this respect, the investigation followed the standard approach to the investigation of any serious and/or violent crime: interview the victims and witnesses, examine the crime scenes and collect the appropriate evidence. Once this was done, the review and analysis of the material would identify the offenders.

One of the team's major tasks was to locate potential witnesses and conduct interviews to establish the exact facts of what had occurred, the nature of the acts or crimes that had been committed against individuals, and what acts or crimes they had been witnesses to.

Bearing in mind that a considerable number of these potential witnesses no longer lived in Bosnia having left as refugees, one of the immediate problems was in determining where they were living at that time so that interviews could be arranged. Assistance was therefore sought from various governments and organizations to locate people required for interview.

These persons were located. During the period 1995 to 1996, Tribunal investigators interviewed some 300 people in countries from Turkey to the USA. A considerable number of those were in Europe.

Investigators conducted comprehensive interviews in which they recorded the events as the witnesses recalled them. Some witnesses had an excellent recall of the events and described in exact detail what had occurred and what they had witnessed. It was obvious even at that stage that some of the witnesses were still traumatized by the events that had occurred. However, the fact that a person is traumatized does not in and of itself mean that the person is unreliable. Some did not want to recall the events or had tried to block them from memory. A great deal of compassion, understanding, patience and trust was necessary to get witnesses to describe in detail the events that they experienced.

A great deal of compassion, understanding, patience and trust was necessary to get witnesses to describe in detail the events that they experienced.

It was imperative that the investigators and legal officers obtain as much accurate detail as possible from these witnesses, especially the nature of the alleged crimes and the identity of those persons responsible. Some of these witnesses were seen several times in the process of collecting the information, checking their facts, and corroborating events with other witnesses. It was also necessary to obtain a wide selection of people from across the Foča region so that as accurate a picture as possible could be obtained of the events that had actually occurred.

In the summer of 1996, officers from the OTP were able to actually get into Foča for the first time and to view at first hand some of those locations and premises that the victims and witnesses had mentioned during the course of interviews.

There was a degree of non-cooperation from certain Republika Srpska officials. For instance, during the search of Karaman's house there was a degree of hostility in Miljevina, a village near Foča, but otherwise the local population was interested in what we were doing.

Some sites which were of interest were not accessible, being used at the time. However, others such as the KP Dom were available for inspection, the officials were cooperative and it was possible to conduct appropriate forensic examination.

I have prepared a selection of photographs taken during the mission to Foča in 1996, which I will show during the course of this presentation. This is by no means the total of all of the photographs that were taken during that mission, but simply a small collection to emphasize to you what we did and why we did it.

The aim of the 1996 mission was to obtain photographs of some of the key locations where we believed crimes had occurred, conduct any forensic examination that was considered necessary and to search for any physical evidence that might still be available, bearing in mind of course that some time had elapsed between the date of the crimes and our visit, and that the premises or locations might have undergone changes and been subject to other uses in the meantime.

In an effort to corroborate the facts provided to us by the witnesses, it was imperative that we locate and photograph various sites. This was important, first of all, so that the photographs could be shown to witnesses to confirm that they were the premises which the witnesses were referring to, in some instances so that the witness could identify specific rooms in a building in which they were detained, and also to clear up some inconsistencies of description in witness testimonies. It was also necessary to obtain photographs that could be tendered to the Court as evidence in any future proceedings.

I now refer you to a map of the Foča area and the locations of some of the premises. This map here is simply an overview of some principal locations we were interested in, such as the Partizan Sports Hall, the Lepa Brena apartments, the KP Dom, the Aladža High School and some private houses.

I also refer you to a map of Foča and some of the surrounding municipalities in which are indicated some of the rape sites outside the city of Foča. Those referred to on the map are Trnovače and Miljevina.

In an effort to demonstrate to you the correlation between the facts from witnesses, the collection and establishment of evidence and the identification of offenders, I propose to describe to you a sequence of events which happened in Foča.

Before doing so, I will show you a map of the ethnic composition of the settlements in the Foča municipality. It principally demonstrates the split between the population of Muslims, Serbs and other peoples who were living here at the time. Essentially, the population of Foča was 45% Serb and 52% Muslim.

Trošanj, a small Bosniak village about 10km from Foča, was inhabited by approximately 120 people in 1992. The village had enjoyed good relations with neighbouring Serb villages over the years. However, in April 1992 following the attack on Foča by Serb forces, the inhabitants became fearful for their lives and began sleeping in nearby woods during the night. This was not uncommon in a number of villages in the region at this time. Explosions and the sounds of shooting became frequent and nearby Muslim villages were seen burning.

On the morning of 3 July 1992, the settlements of Trošanj and Mješaja were attacked by Serbs wearing camouflage clothing and a number of men and women were killed by gunfire whilst trying to flee. The remaining women and children were captured and taken by foot to Buk Bijela.

In interviews with witnesses, the following persons were identified as being present during the assault upon the villages: Janko Janjić, Gojko Janković, Radomir Kovač, Dragan Zelenović and Zoran Vuković.

Buk Bijela was a former hydro-electric plant construction site consisting of workers barracks and a motel. Some Serb soldiers were living there at this time. Buk Bijela served as a detention site for women and children after the takeover of Mješaja and Trošanj villages.

The two photographs on the screen were those taken in 1996 by OTP staff and these premises were identified by witnesses as the place they were taken to (image 1).

Whilst being held at these premises under the pretext of being questioned, a number of the women and girls were sexually assaulted or raped in huts by the Serb soldiers. One 24 year old victim was raped by at least ten different soldiers, losing consciousness, and another 15 year old by at least three soldiers. Some of the women recognized the Serb soldiers. Some Muslim men were also killed whilst being detained here.

Again, witnesses identified amongst the offenders Gojko Janković, Dragan Zelenović, Janko Janjić, Zoran Vuković and a number of others.

Buk Bijela was the place where these women, who had been detained at the Partizan Sports Hall, were taken to some months later. They had initially been taken to the Foča Stadium, where they had been gang-raped by soldiers, after which they were taken to Buk Bijela and also gang-raped by some Serb soldiers.

The women from these two villages, Mješaja and Trošanj, after being held in Buk Bijela for several hours, were taken by bus to the Foča high school in Aladža. It was here that the women and children remained for the following two weeks. During that time they were joined by more women and children from other villages, numbering about 70 people. They slept on mattresses. There were toilets, but no facility to bathe or shower. Minimal food was provided. Police guarded the premises at all times.

On the screen, I will now show you a number of photographs of the Aladža high school that were taken by our staff during the mission in 1996 and were eventually presented

as evidence in the court. They are probably scenes with which you are all familiar - the exterior of the premises, the entrance, the hall inside, classrooms. These photographs were identified by the witnesses as the place they were taken to and where the sexual assaults and rapes took place (image 2).

The women and girls described their treatment during the time they were detained here and all were consistent in their accounts of ill-treatment, beatings, threats, and repeated sexual assaults and rapes, sometimes by multiple offenders. The rapes took place in empty classrooms at the school and also in buildings away from the school.

As I have said, there were about 70 women and children in this school. Some of the victims were aged 15, 16, 19, 22, 24, 26, 27, 31, 34, but there were others, lots of others. This is only a small selection. The witnesses described soldiers coming each night about two days after they had arrived and after that, sometimes in twos and threes, selecting women and girls and taking them away for several hours, or the whole night. They were subjected to beatings, humiliation and various manner of sexual assault and rape. They were taken to various premises in and around the centre of Foča, where there were often other soldiers who also proceeded to sexually assault and rape the victims. The premises they were taken to, included the Lepa Brena apartment block. Women and girls were taken to several apartments in this block and raped. Empty Muslim houses and flats in the Gornje Polje neighbourhood were also used.

During the time the women and children stayed in the Aladža school, the following persons were also identified to have committed sexual assaults against them: Gojko Janković, Dragan Zelenović, Janko Janjić, Zoran Vuković and Dragoljub Kunarac. There were other soldiers, of course. They were known by nicknames or were unknown to the women and girls.

On or about 13 July 1992, the women and children were transported to the Partizan Sports Hall, which they had to clean when they arrived. They were kept in a large hall. Again, the facilities consisted of toilets and hand basins, but the showers did not work. They slept on thin mattresses, of which only a few were available. Food was irregular and meagre. The sanitary conditions were poor and unhygienic and there was no medical care. Their stay was about four weeks and the premises were patrolled by armed guards subordinated to the then head of the Secretariat of Internal Affairs (SUP), Dragan Gagović. Partizan was close to the SUP and the municipal building and the events that were happening in the Partizan Sports Hall could easily be seen by people working in the SUP. The detainees were all Muslims consisting of women, children and elderly persons. On about 13 August 1992, this group of women and children were deported to Montenegro, but later the Partizan Sports Hall became a temporary detention centre for a group of other villagers, being Muslim women and children from such places as Tjentište, Paunci, Jeleč and Miljevina.

They slept on thin mattresses, of which only a few were available. Food was irregular and meager. The sanitary conditions were poor and unhygienic and there was no medical care.

The following is the series of photographs which we took in 1996, showing the Partizan Sports Hall, which were produced in evidence during the trial (images 3-4). Again, these photographs were used to show to victims and witnesses, so they could identify to us the premises in which they were held and the rooms in which the rapes took place, and

to corroborate their testimonies about what happened at this location. These photographs show the offices and halls. At the time the photographs were taken they were being used for other purposes. Here is a photograph of toilets, showers, a large hall and windows.

The photograph on the screen now shows the proximity of the Partizan Sports Hall (1) to the SUP Building (2) and the Municipality Building (3). It is a landscape view of the same premises (image 5).

Immediately after their arrival, armed soldiers often in groups of three or four came and forcibly took the women and girls to houses, apartments and the Zelengora Hotel for the purposes of sexual assaults and rape. The pattern here was prolonged and consistent, with the victims being subjected to sexual assaults both night and day in what was a continual process. The soldiers were rough and violent, and oral, vaginal and anal rape occurred including repeated gang-rapes. Afterwards the victims were in shock, terrified, sometimes barely able to walk, bleeding and with visible injuries. The acts of sexual assault and rape caused the victims severe mental and physical pain and suffering. In the description I am giving to you at the moment, I cannot in all honesty give justice to the horror, humiliation and degradation that these women and children received during the time they were in these detention facilities. No one apart from them can best describe how they felt and what they underwent. The mistreatment given to victims by the Serb soldiers was based on ethnic grounds as evidenced by victims being told on several occasions, "that they would give birth to Serb babies" and "enjoy being fucked by a Serb". Groups came constantly both day and night, often Montenegrin soldiers. One of the witnesses described the scene in which soldiers came into the hall and one of them raped a woman who was sleeping next to her 10 year old child. Witnesses describe often having to clean the apartments and cook meals for the soldiers prior to being raped.

One of the witnesses described the scene in which soldiers came into the hall and one of them raped a woman who was sleeping next to her 10 year old child.

Places they were taken to included the house in Aladža at 16 Osmana Đikića Street, flats in the Lepa Brena apartment block, a house in Pod Masala, and the Hotel Zelengora. This photograph is an overview of those premises and the second is the Hotel Zelengora (image 6).

I shall now show you the house at 16 Osmana Đikića street (image 7). This was the premises that Kunarac and his soldiers allegedly controlled. Witnesses often returned to this house several times and were raped by Dragoljub Kunarac and other soldiers under his command. Kunarac and his Montenegrin soldiers were frequent visitors to the Partizan Sports Hall, taking girls away for the purposes of rape. Multiple and gang-rape by his soldiers at this house was common. On one occasion, whilst taken to this house for rape, the witnesses also described meeting other young girls who had been brought from Kalinovik school. They were also raped by soldiers at the house. These girls from Aladža arrived on the night that the Aladža mosque was blown up, as they heard the explosion and windows shattered inside the house.

During the detention of women and girls at the Partizan Sports Hall, four of the girls were taken to Karaman's house in Miljevina in August when the Aladža mosque was blown up. They did not return.

The remainder of the women and girls were eventually taken from the Partizan Sports Hall on about 3 September 1992 and taken to Goražde for exchange. It was during this journey that a 12 year-old was taken off the bus, physically removed from her mother in the bus and taken to Karaman's house where she was subjected to repeated rapes over a period of time.

The witnesses detained in the Partizan Sports Hall identified the following persons responsible for raping women and girls: Dragoljub Kunarac and his group of soldiers, Janko Janjić, Zoran Vukovič, Dragan Zelenović, Gojko Janković, Juraj Radović, Jagoš Kostić, Dragomir "Gaga" Vuković. As I have said before, some of them were known by their nicknames and there were many that were unknown.

Four witnesses describe being taken from Partizan to Karaman's house in Miljevina on 2 or 3 August and remained until 30 October when they were joined by other girls. The house was occupied by soldiers subordinated to Pero Elez's unit, which was part of the Bosnian Serb Army (VRS). This became probably the most notorious of the houses in Foča where girls and women were held and raped. The ages of the girls that were here were 12, 14, 15, 15, 16, 19, 19, 20, 24 - teenagers, children. Girls were also brought here from the Kalinovik school. They were forced to do household chores - washing, laundering, cleaning, and cooking. Each of the soldiers who were there took a girl for himself. The victims were repeatedly raped, sexually assaulted and often beaten during their stay. As I said, the soldiers took the girls for themselves and they remained their property for the time that they were there. They were also offered to other soldiers who came to the house and they were raped and sexually assaulted by them as well. Although some of the soldiers left in October with some of the victims to other flats or apartments within the Foča area, other soldiers remained and young girls were brought here as well. They were also raped and sexually abused up until March 1993.

Now I will show you a series of photographs of Karaman's house located in Miljevina. On the bottom screen you can see the Miljevina Hotel in the distance, which was at the time used as the headquarters or gathering point for Pero Elez and his associated groups of soldiers. But the house on the top was where women and girls were held and subjected to rapes. Here are views of Karaman's house (image 8).

The witnesses identified the following persons as being responsible for raping women and girls whilst detained at Karaman's house: Dragoljub Kunarac, Radovan Stanković, Dragan Zelenović and a host of others. I have not named them all.

There were other houses and flats to which women and girls were taken whilst detained in Foča. Radomir Kovač and Jagoš Kostić had an apartment in the Lepa Brena apartment block. Two girls were kept there for four months, as well as two other young girls after being at Karaman's house. Kovač and Kostić took one girl each and raped them repeatedly over the period of time they were detained there. They were often threatened with murder, beaten, and made to wash, clean, and cook. They had no contact with the outside world. They were humiliated, degraded, oppressed and kept in constant fear and raped mostly every night. They were provided on occasions with leftover food, but diet and hygiene were neglected. They were required at times to strip and dance naked with soldiers watching. They were paraded around Foča with Kovač and were also raped by other soldiers who visited the address. The girls were treated by the two as if they were their property and they had complete control over them. The 24 year old and the 12 year old were taken to two other apartments then later returned here for more rape. Two other victims – one was 15 and one was 19 – were later sold by Kovač to Montenegrin soldiers for the sum of 500 Deutsche marks.

Radomir Kovač, Jagoš Kostić, Zoran Vuković, Slavo Ivanović and others committed sexual assaults at this location.

There was a house near the Hotel Zelengora where Serb soldiers took the 24 year old and 12 year old and held them for about 15 days. There were 10 - 15 soldiers there and the girls were raped repeatedly during the time they were held.

The 24 year old and 12 year old were also taken to another location in Pod Masala and held for seven to ten days and raped by another group of Serb soldiers. Again, this was the 24 year old and 12 year old who were held hostage in Kovač's apartment. The 12 year old was the girl taken off the bus. She had a horrific period of time after she was taken from her mother.

In December 1992, the girls were taken to the place of an individual called "Dragec" in Foča. He rented them as prostitutes to other soldiers and other people. The 24 year old was eventually sold and kept confined in an apartment in the Pod Masala area of Foča until March 1993 when she managed to escape. The 12 year old was taken by one "Jasko Gazdić" never to be seen again. We presume she is dead but we have no idea where she is. She was never heard from by her mother, family or anybody else. She was only 12 years old.

On 2 August 1992, girls aged 16 and 14 were taken from the Kalinovik school and brought to a house at Trnovače. They stayed there for several months (one until September and one until January 1993). Kunarac and another local commander kept them confined. They were not free to leave and even if they were, there was nowhere to go. They were forced to cook and clean and required to use Serb names. Again, they were treated as the soldiers' personal property. Both girls were continuously raped during the time they were at this house, including by other soldiers who came to the house. Other girls - aged 16, 16 and 18 years - were also brought to the house for short times and raped.

The individuals identified by witnesses were Dragoljub Kunarac, "Gaga", Zoran Nikolić and others.

I have outlined a shocking series of facts that were told to us over a period of time by these witnesses. It was important to identify who the persons responsible for these crimes were, crimes that included rapes, sexual assaults, beatings and torture. In order to establish who was criminally responsible for the sexual assaults and rape of the women and children, it was necessary to identify the offenders. For some, this was relatively easy as some of the victims knew who the offenders were. That is, some of the offenders were from the local Foča area and were known by some of the victims prior to the war. They knew their correct name, employment, and sometimes their actual address, family and background. In this respect, identity for us was not a problem. But such was not always the case.

... some of the offenders were from the local Foča area and were known by some of the victims prior to the war. They knew their correct name, employment, and sometimes their actual address, family and background.

For a number of the women and girls, the offenders were previously unknown and their first contact was during the course of the assaults. Some of the victims overheard

the offenders being referred to only by nicknames or were not referred to by any name whatsoever. In such instances, the offenders were identified by the place where the crime occurred, their physical description, or by who else may have been present at the time the rapes and assaults took place. Because most of the offenders took the victim or victims to the same places, it was a matter of identifying the address and establishing who those soldiers and persons who frequented the address were. Sometimes, offenders' nicknames were widely known in the community, as were those persons with whom they associated, so it became possible to identify these persons. For instance, "Žaga" and "Gaga" were common names the girls gave us. These were names known to people in the community and we managed to establish without much of a problem who these persons were. Dragoljub Kunarac was the person named "Žaga" and he was the person in charge of the house at 16 Osmana Đikića Street. He also revealed his identity to some of his victims. In his testimony, Kunarac admitted visiting these premises, meeting some of his victims and revealing his identity.

There were about 11 Zoran Vuković's in the area and we had to establish who was the one responsible for the crimes. We were aided in that respect by the victims themselves who managed to provide us with very good physical descriptions of this individual.

Kovač's identity was also not a problem. The victims were with him over an extended period of time and he also had a nickname with which people often used to refer to him. We also prepared photographs, which we called identification photographs, to show victims, so that we could identify the offenders. So, establishing the identity of the perpetrators was not a problem.

This is one example of a series of photographs we used, 12 photographs in total. The suspect is amongst them in one location and the identification board was shown to the victims to see if they could identify the person we suspected was the offender.

In this respect it was imperative that the investigation establish the correct identity of those responsible for the crimes, so they could be charged in due course.

The second case which I will describe to you concerns the events of 7 April 1992, when the Serb forces began the takeover of Foča. As the Serb forces, consisting of military police, local and non-local soldiers, gained control of the town, Muslim and non-Serb inhabitants were arrested. After the Serb forces took over Foča, they continued to take over and destroy Muslim villages in the Foča municipality. These facts were again established from the number of people who were interviewed and who described what they saw and heard during this period.

During this time, there were a number of premises that had been destroyed and during our mission we saw that there were a number of sites that had been heavily damaged by shelling and gunfire – parts of Aladža, Donje Polje, Gornje Polje and the old town of Foča.

The photograph on the screen now is that of the Čizluk neighbourhood across the Čehotina River, which is a Serb neighbourhood. You see that the Serb Orthodox church still stands.

I now wish to show you a video of premises in Foča that were destroyed at the time. The video was provided to us for the purpose of using it as evidence.

(Shows video footage)

One of the most famous mosques destroyed during this time was the Aladža mosque. It was blown up on the night of 2 or 3 August 1992. After its destruction, the rubble was completely removed, leaving little sign that such a building ever existed.

What I am showing you now is a series of aerial photographs of some of the destroyed mosques in Foča, which were presented in court as evidence. They include two close-up aerial photographs, one taken in October 1991 and the other in August 1992 (image 9). There is a photograph of the Aladža mosque in the days before it was destroyed and one showing it after it had been destroyed and the rubble removed. We also have photographs of the mosque's interior, which were also presented in court (image 10). There are also photographs of the site that had been cleared after the mosque was destroyed (image 11).

During the course of the on-site investigation of the KP Dom, the investigation team found rubble that was clearly from the Aladža mosque. The rubble consisted of parts of the mosque, which were identifiable because of their marble structure and ornamental design.

There are some more photographs of the premises' interior.

We have photographs showing some of the rubble that had been found at the excavation site near the KP Dom, where the rubble had been taken to. It is believed that there had been persons buried at the site. Our historian recognized the rubble as coming from the Aladža mosque.

The Bosnian State Commission for Gathering Facts on War Crimes listed 17 Muslim sacred sites in Foča, including 12 mosques, that had been destroyed.

During the course of the arrest of the non-Serb population many Muslims were initially taken to the Territorial Defence Military warehouse at Livade. However, eventually all male detainees were transferred to the KP Dom. The women were allowed to go back to their homes, but remained under effective house arrest with little freedom to move about. On occasions, some of these women who were alone in their homes were visited by Serb soldiers. Their premises were looted, money was stolen from them, and sometimes women were sexually assaulted and raped.

The Kazneno-Popravni Dom (KP Dom), a prison, was the primary detention centre for Muslim and other non-Serb men.

I refer you now to a photograph of the KP Dom taken by OTP staff in 1996 and submitted in court as evidence.

Prior to going there, a written request had been made to the authorities indicating the intention of the OTP to photograph the prison and to examine certain detention rooms and cells. A blue-print of the KP Dom is one of the documents that was provided to us.

The detainees imprisoned at the KP Dom were mostly civilians who had not been charged with any crime. They were Muslim men between 16 and 80 years of age, including the mentally handicapped, physically disabled and the seriously ill. From April 1992, groups of detainees were brought in regularly. Up to 760 men were imprisoned at the KP Dom. Muslim men were detained at the KP Dom from 1992 until the end of 1994 for periods lasting from four months to two and half years. The majority of detainees were

transferred, deported or taken out for so-called exchanges during 1992 and 1993. The number of men listed as missing and last seen at the KP Dom is 266. However, there are another 35 persons who are not on this list who are also missing. To be counted as missing from the KP Dom, a person had to have two independent sources to state that they last saw him there. There were two sources for 266 people, but not for the other 35.

The number of men listed as missing and last seen at the KP Dom is 266.

The KP Dom was also used to house Serb prisoners convicted of committing crimes. However, in 1992 they were kept separate from the Muslim prisoners.

During the course of the investigation, a considerable number of men were interviewed regarding the treatment they received whilst being detained at the KP Dom. These interviews established a pattern of interrogations, beatings, killings, solitary confinement, forced labour and cruel treatment by those persons in charge and responsible for their confinement. As a result, it was necessary to establish who was in charge at the KP Dom and who was responsible for the treatment received by the detainees.

Witnesses describe Milorad Krnojelac as being the KP Dom's Warden during the period April 1992 through August 1993. They describe him being addressed as 'Warden' and that he had ultimate responsibility for their welfare. Requests for matters such as outside visits to detainees, phone calls to families, etc., were all made to Krnojelac in his role as the Warden. Krnojelac also exercised responsibility for the security of the premises, provision of food for the detainees and their work duties.

Savo Todović was Deputy Commander of the prison staff from April 1992 through to August 1993. Witnesses describe him as being the Deputy Warden and second in command to Krnojelac. He was also the person who assigned work duties to Muslim detainees. He was described as being involved in the selection of detainees for work duties, exchanges, interrogations, solitary confinement, and was responsible for their punishment.

Mitar Rašević was the Commander of the guards before and during the war until October 1994.

This photograph shows a drawing made by one of the inmates which was submitted as evidence in court. It is a drawing of the KP Dom's interior where this man was confined together with other detainees. The Building Number 8 on the left-hand side, which has the figure 'A' on it is one of the rooms where Muslims were detained. Figure Number 2 shows where the guards' offices were and where some of the beatings took place (image 12).

Witnesses also describe the presence of persons in various military uniforms at the prison, Yugoslav People's Army (JNA) soldiers from Užice, in western Serbia and soldiers from Montenegro. They were also involved in the arrest, transfer and exchange of detainees, as well as functioning as guards and interrogators.

Detainees were also required to do forced labor. The Brioni farm was one of the places where they were taken to, as well as the metal workshop and the furniture factory. Detainees were also taken to work in the mine at Miljevina.

Detainees after arrival were searched and their property was taken from them. They were placed in cells and interrogated.

Detainees were interrogated during their confinement regarding the majority Bosniak Party for Democratic Action (SDA) membership, possession of weapons, and their situation prior to the war. A number were threatened, subjected to beatings and forced to sign statements or provide information. Often, after their interrogations, detainees were unable to walk or talk.

Beatings and periods in isolation cells were often the result of requests to get additional food, warm water, attempts to communicate with other inmates or guards, minor violations of prison rules or for no obvious reason.

These photographs show some of the isolation cells. Sometimes up to 18 detainees were kept in one of these isolation cells (images 13-14).

Between April and July 1992, the detainees were beaten on a systematic and frequent basis. The KP Dom guards used lists in order to select detainees to be taken to the administration building and to offices where they were beaten. Guards, soldiers or policemen from outside the KP Dom often carried out the beatings in connection with the interrogation of the detainees.

Some of these detainees were taken to the administration building by guards. Detainees heard the sounds of beatings, cries, and moans from the place where they were detained.

If you look at the Building Number 8, Wing A on the left-hand side, the room is Number 5. The detainees could clearly see from there across to the administration block where the beatings occurred.

Guards could be overheard insulting and provoking the detainees who were beaten with batons and fists. Other detainees could identify the voices of the guards and the screams and pleas of the detainees being beaten. Some of the witnesses also observed the beatings.

These photographs show the view from the administration block across to the premises where the detainees were kept. It is quite evident that they could actually see from where they were to where the offices were, where the beatings were alleged to have occurred (image 15).

This office here is one of the offices used for beating prisoners. It was necessary to take these photographs so that we could show to the court that witnesses were not lying when they told us that they could see the beatings taking place. It was necessary to produce these photographs to corroborate the facts that witnesses had provided to us.

At the time we did the inspection in 1996, the walls of the office where we believed the beatings occurred had been scraped and any evidence of beatings that there might have been had been removed. It appeared that these were the only offices in which the interior walls had been recently renovated.

Detainees told us that they could hear shots. The detainees who had been previously taken to the administration building never returned. After the beatings, guards were seen taking blankets into the administration building and removing what appeared to be bodies. Other detainees who later entered the rooms where the beatings had taken place saw bloodied instruments and blood on the walls and the floor. Bullet holes were also seen in the walls of the hall behind the metal door to the administration building.

During 1992 and 1993, many detainees were removed from their cells for interrogation and never returned. They disappeared without a trace and are presumed to have been killed.

In September 1992, some 30 detainees, many of them hungry, volunteered to go picking plums. They were taken from the KP Dom and have never been heard of since, although I understand that at one of the exhumation sites the bodies of two of the persons who had been taken on the plum-picking expedition were found.

The photographs on the screen show: 1 – the administration building with offices where the beatings took place, and 2 - where detainees where held. These were submitted to the court simply to show what it was that the detainees could see (image 16).

This photograph shows the exhumations that took place in the Foča area between 1996 and 2000. It identifies 10 different sites where exhumations were conducted from 1996 through to 2000.

Now, some facts:

Since the war 10,500 Bosnian Muslims have been exhumed from burial sites in Bosnia. Bosnian Serbs exhumed between 1,200 and 1,500 of these bodies and Bosnian Croats about 500.

Within the Foča municipality 430 bodies were found, of which 375 have been identified. The 375 have been identified as Bosnian Muslim. Of those, 55 remain unidentified, but are also believed beyond reasonable doubt to be Bosnian Muslims based on clothing, the villages where they were found, being predominantly Muslim, and evidence from witnesses who survived these executions.

There are 730 people (596 men, 133 women, one three-day old baby) currently recorded as missing from the Foča municipality. Most of them disappeared from April to September 1992.

There are 266 persons recorded as missing from the Foča municipality and were last seen at the KP Dom.

There were 230 exchanged from the Foča KP Dom. However, this includes members of the army who were taken prisoner between 1994 and 1995.

Thank you for bearing with me during this presentation, since it does not paint a pretty picture of the events that occurred. I only concentrated on two areas – the crimes committed against the men in the KP Dom and sexual assaults and rapes committed against women who were detained in various premises. But that does not mean to say that there were no other crimes, other sexual assaults, rapes and other murders that were committed here and in the region as a whole. My presentation today was just to give you an idea of the nature of the investigation, some of the things we did, how we were able to gather evidence, what we did in fact gather and how it was presented in court. In due course, my colleagues will take over and explain to you what happened with this material that we gathered together and how it formed a part of the case against people who were subsequently charged.

Images

Image 1
Buk Bijela, a former hydro-electric plant used as a detention site for women and children.

Image 2
Aladža high school, a site where women and children were held and where sexual assaults and rapes took place.

Images 3 & 4
The Partizan Sports Hall, a site where women and children were held and rapes took place.

Image 5
A view of Foča showing the proximity of the Partizan Sports Hall (1), the SUP (Secretariat of Internal Affairs) building (2) and the Municipality building (3).

Image 6
Hotel Zelengora, where women and girls were taken for the purpose of sexual assault.

Image 7
The house at 16 Osmana Đikića Street, controlled by Dragoljub Kunarac and soldiers under his command.

Image 8
Karaman's House, outside the town of Foča where women and girls were held and subjected to rape.

Image 9
An aerial photograph showing some of the destroyed mosques in Foča.

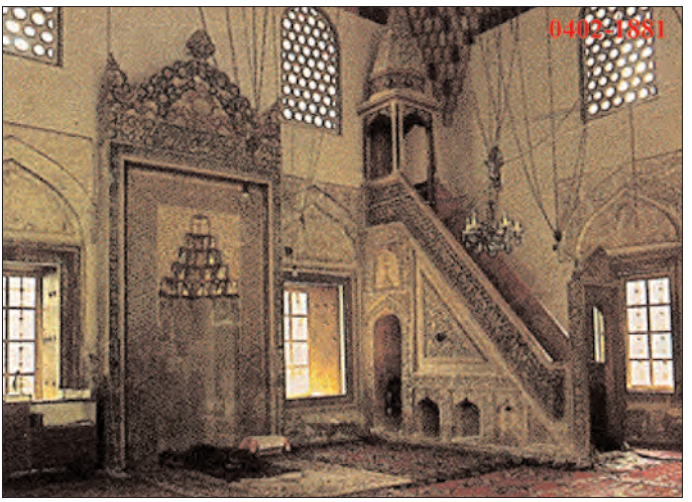

Image 10
The Aladža mosque (interior) before its destruction.

Image 11
The cleared site, following the destruction of Aladža mosque.

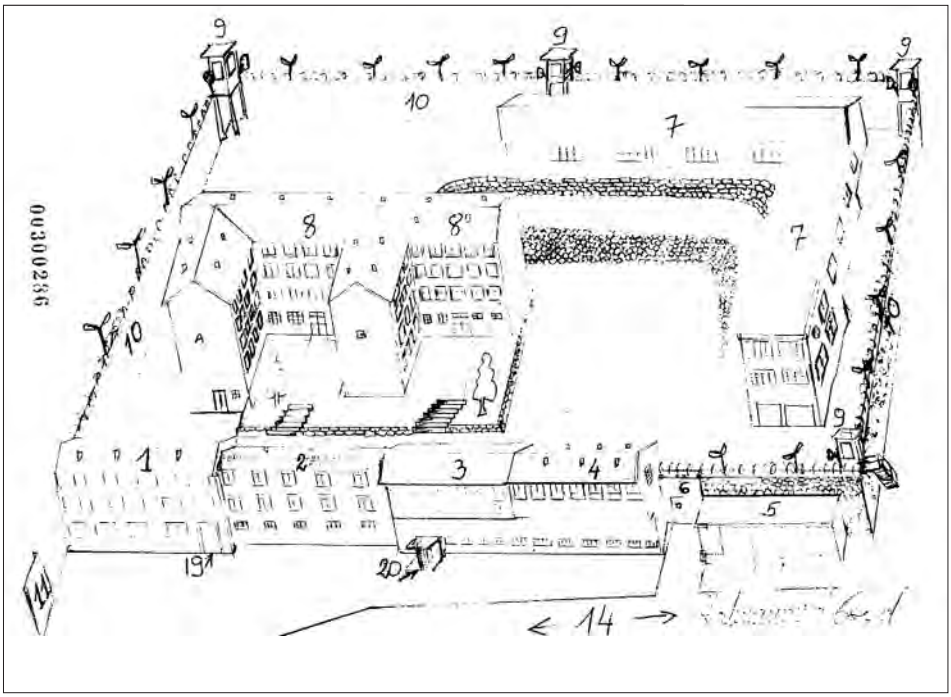

Image 12
An inmate's sketch of KP Dom, the primary detention centre for Muslim and other non-Serb men.

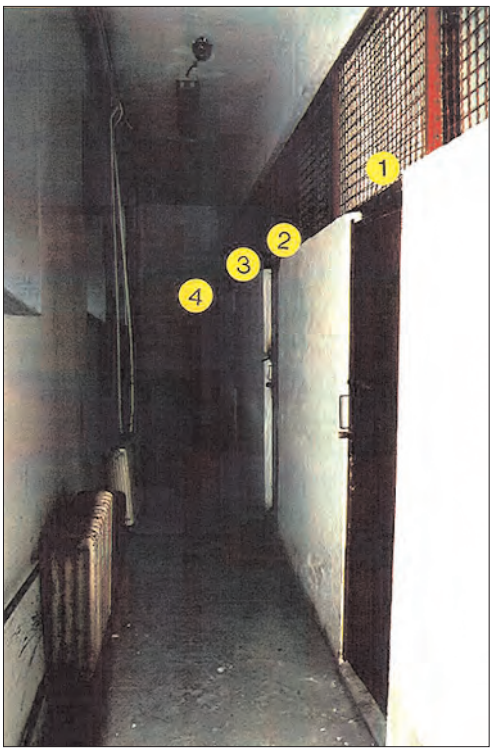

Image 13
An isolation cell in KP Dom.

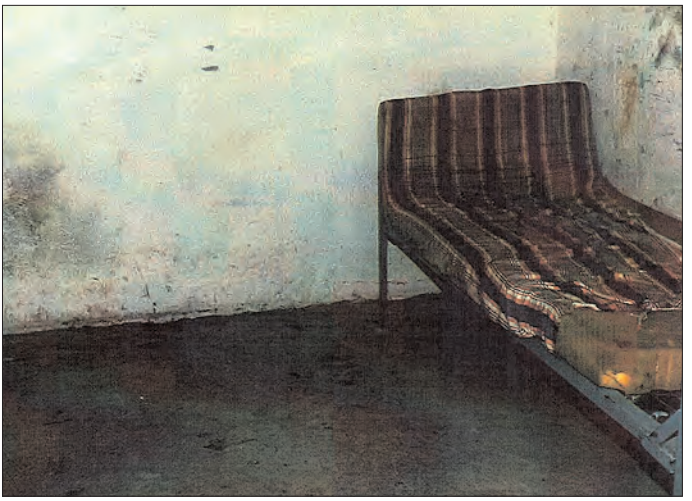

Image 14
An isolation cell in KP Dom. Up to 18 detainees were kept in a single cell.

Image 15
A view from the KP Dom administration complex to the neighbouring building where detainees were kept.

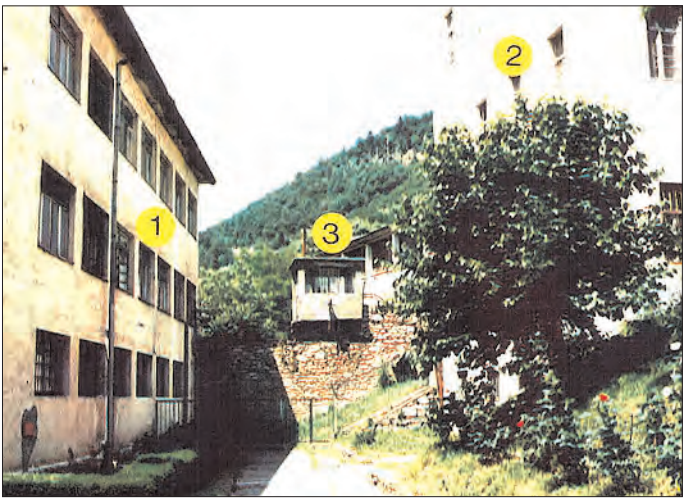

Image 16
The KP Dom administration building (1) across to buildings where detainees were held (2).

Session Two
Indictments

Hildegard Uertz-Retzlaff, Senior Trial Attorney, Office of the Prosecutor, ICTY:
Good day ladies and gentlemen. I started in the OTP in The Hague on 1 May 1995 and as soon as I arrived I was assigned to the Foča investigation. I followed it through to the first instance verdict and also assisted in the appeal. From summer 1996 onwards, I visited Foča during the investigation and the trial on several occasions to see the crime scenes and I also met all the witnesses who testified in the two Foča cases.

Let me tell you why these indictments were important for the overall prosecution strategy:

When I joined the OTP, several investigative teams looked at various regions in Bosnia and Herzegovina that had been the location of serious crimes. At that time, it was the OTP's aim to prosecute both notorious perpetrators, no matter what rank they had, and those of high rank, who were equally responsible for the crimes that occurred.

For the prosecution of high-level perpetrators, it was important to concentrate on group events and crimes that were systematic and widespread, and which also involved the participation of higher ranking officials.

The events in Foča and the neighbouring municipalities of Gacko and Kalinovik provided both. On the one hand, you had widespread and systematic crimes that followed a pattern very similar to those in other regions such as Prijedor and Brčko. At the same time, you had the involvement of officials, in particular of the police and military, and even the involvement of members of the government on the level of the Republika Srpska (RS).

The events in Foča could also be closely linked to the wider picture of the events in Bosnia and Herzegovina and the overall goals of the Bosnian Serb leadership. This is a map that was not used in the Foča cases, but is an exhibit that we used in the case against former Yugoslav President Slobodan Milošević.

The map shows the so-called Serbian Autonomous Districts. Foča is right in the middle of it, as part of the "SAO Herzegovina". The map shows the territories that the Bosnian Serb leadership wanted to unite and make part of the RS, which they succeeded in doing. You can also see that it connects the Serbian lands in Croatia, Bosnia and Serbia and Montenegro.

Foča was of special strategic importance for the overall goal of uniting Serb lands because it borders Montenegro: it is at the crossroads that lead to Sarajevo, Pale and to the sea. Therefore, it is no surprise that events in Foča were not only charged in the two indictments and trials we have already spoken about this morning, but also featured prominently in other indictments: indictments against Slobodan Milošević, Momčilo Krajišnik, Biljana Plavšić and Radovan Karadžić.

When you look at the two indictments against Dragoljub Kunarac and his companions and Milorad Krnojelac, you will also see that the crimes charged are actually two parts of a whole course of events, two sides of one coin. We looked at what happened in a widespread persecution campaign that took place in Foča. We also looked at what

happened in this campaign against the Muslim men and what happened to the Muslim women. Such a campaign is usually referred to as "ethnic cleansing." I know that many of you will not like this term, but I must tell you that the Judges in the Kunarac verdict used an even stronger term: they spoke about "expulsion through terror".

Why did we concentrate on the detained people both male and female and not on mass murders?

As I said in the beginning, the OTP wanted to focus right from the beginning on investigating the higher ranking officials up to the very top who are responsible for committing crimes. Focusing on events in the detention facilities were the most likely to lead to these high-level perpetrators. There is simply a higher likelihood that high ranking perpetrators can be linked to continuing and widespread crimes rather than isolated incidents.

When looking at the sexual assaults that were committed in this municipality, we got evidence of a lot of sexual assaults that were committed during the takeover of villages, and subsequently in the neighbourhoods, which involved one perpetrator and one victim. We were neither in a position to, nor did we want, to follow up on all these incidents. The Tribunal can only deal with a relatively small percentage of crimes that were committed. It is up to the authorities of the successor states of the former Yugoslavia, namely the local police and the local prosecutors and judges to follow up on the rest of the crimes.

The Tribunal can only deal with a relatively small percentage of crimes that were committed.

Let me in this context refer you to Article 9, paragraph 1, of the Tribunal's Statute, which addresses the Tribunal's concurrent jurisdiction.

> *1. The International Tribunal and national courts shall have concurrent jurisdiction to prosecute persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1 January 1991.*

What it means is that the local authorities are expected to conduct investigations and prosecutions, *in addition* to those that the Tribunal is conducting. The Tribunal is in its completion phase. It is expected that perpetrators who the Tribunal will not be able to prosecute will be tried here in Foča and in surrounding places. There are prosecutors, law enforcement officers and judges here, and I hope they will do the job in the future.

Over the past decade or so there have been some successful prosecutions of war criminals here in Bosnia and Herzegovina. However, they are very few and have been dealt with almost exclusively by the authorities in the Federation.

There is no shortage of suspects, allegations, or reasonable evidence. I say this as the Tribunal has since 1996, in accordance with the so-called "Rules of the Road"[1] agreement, worked with authorities in Bosnia and Herzegovina from all sides and reviewed a huge number of case files, involving more than 1000 suspects. The Tribunal has returned the files to the relevant authorities indicating that based upon the materials contained within the files, the local courts should press on with criminal charges and prosecutions against

[1] The Rules of the Road project was established in 1996 and required the ICTY to review case files on alleged perpetrators of war crimes investigated by the authorities in Bosnia and Herzegovina. Tribunal staff reviewed these case files and assessed whether there was sufficient evidence for an arrest warrant to be issued.

more than 700 persons. It is hoped that in the years to come, this really will take place.

However, in addition to those Rules of the Road cases that I just mentioned, there is another category of war crimes that may very soon be heard here in Bosnia and Herzegovina. I am referring to a small number of ICTY cases involving lower level and intermediary perpetrators which the ICTY intends to transfer to the national jurisdiction here in Bosnia and Herzegovina, in particular, the State Court.

In this regard and in relation to Foča, on 21 September 2004, the Prosecution filed a motion for the case against Radovan Stanković, who my colleague spoke about and who is now in custody in The Hague, to be referred to the State Court of Bosnia and Herzegovina.

But let me return to the Prosecution's strategy in relation to Foča. From the start we concentrated on group rapes involving a number of victims and a number of perpetrators. The investigation started many years after the crimes were committed and it was clear that the evidence would basically rely on witness statements. Group events are experienced and observed by several witnesses, which meant that witnesses could corroborate each other and errors could easily be avoided. That was important for the Prosecution in addition to the points that I already mentioned.

In relation to the Bosnian male victims, we concentrated on the main detention facility, the KP Dom, which existed for two and a half years.

Why did we not include murders in the rape indictment, although we knew that those indicted for rapes had committed murder as well? Why did we not include mass murders that occurred during the attack on villages or shortly thereafter in both of the indictments?

What the Prosecution intended to do is produce indictments that concentrated on concise criminal behaviour that was conducted by groups of perpetrators together against certain groups of men and certain groups of women. We wanted to have short compact trials in which groups of perpetrators could be tried together. Had we included also murders and other crimes these perpetrators had committed separately from each other and unrelated to the detention facilities, the trials would have been much longer, sort of scattered and the systematic nature of their conduct would have just dissolved.

Some of the victims were not happy with this decision. I recall that one rape victim said that the murder of her father and her young brother that happened before she was raped was so much worse than what happened to her. Why would I want to indict someone for the rapes and not for her relatives' murders? I understand that position.

I recall also one detainee from the KP Dom asking me why Dragoljub Kunarac was not accused of having killed the detainee's father. He was very disappointed about this. I understand that too and I share these concerns.

We could have produced lots of indictments against a lot of perpetrators. However, given the OTP's priorities that simply could not be done. It is not possible for the Tribunal to indict all the perpetrators for all the crimes they committed against all the victims. Let me express again my hope that this will start to happen very soon in this country.

However, murders, forcible transfer or deportation, destruction of religious sites and Muslim property and other acts of persecution against the mostly Muslim inhabitants of Foča, were addressed in both of the Foča trials, because they were part of a widespread and systematic attack.

And let us not forget that many crimes, in particular the murders in the villages, are part of the leadership cases against Slobodan Milošević, Momčilo Krajišnik, Radovan Karadžić and others. For example, the two murders that the two victims complained about, that were not in the Foča indictments are addressed in these cases.

What you see here is the first page of the indictment against Dragan Gagović and others; that is, the rape case. The indictment is dated 26 June 1996.

Why did we indict these eight perpetrators?

When interviewing the witnesses from Foča and the neighbouring villages and municipalities, these eight perpetrators are those who were mentioned the most. They include the most senior police officer and the seven most notorious soldiers involved in the rapes. Several of them had certain military ranks such as battalion leader or detachment commander. Let us in this context not forget that the Partizan Sports Hall is next to the police station. The women went there for help and they were sent away. One of the victims, while being abducted from her apartment block next to the police station managed to escape Dragoljub Kunarac. She ran for help to the police and was chased away into the hands of her attackers. That is why the Chief of Police is also in this indictment.

The other indictment is the Milorad Krnojelac indictment, dated 17 June 1997. We charged only the three people that were in the camp leadership, the management of the camp.

In relation to the KP Dom indictment, in the first draft we actually had included the most notorious guards as well. So our plan initially was to have eight indictees on this indictment as well. There were serious allegations against some particularly brutal guards such as Milenko Burilo, Dragomir Obrenović and Zoran Matović. These guards and their involvement in beatings and killings at the KP Dom were mentioned by almost every detainee who gave a statement. The names of these three were mentioned numerous times during the trial. Their names are also mentioned in the indictment, but not as indictees.

The decision was taken not to indict the guards, because at the time when the indictment was filed, it had become obvious that the local authorities were not willing to transfer the accused. We feared that if we indicted seven or eight of the KP Dom staff, we would have to have the same trial again and again, since we feared that they would only come one after the other. This in fact happened. After Milorad Krnojelac was convicted, Mitar Rašević arrived in The Hague. It would have gone on like this and we did not want to have the witnesses coming seven times to testify. That is why we restricted the indictment. I can only hope and express again that the local authorities will do something about it.

In the indictment and also in the judgement, you can read references about Milorad Krnojelac's collaboration with outside authorities. During the trial, there were a lot of references from witnesses, and the accused himself, that decisions on the detainees' fate were taken by authorities outside of the KP Dom. We did not indict these authorities, nor did we name them in the indictment or during the trial. They remained hidden behind the term "military command".

I can explain the reason for this. The victims locked up in the KP Dom's cells did not have the knowledge to tell us who was in the military command and who decided what.

They only saw those who dealt with them in person; that is, the KP Dom staff. They had only hearsay information about who was actually making the decisions in the military command. Those who had the knowledge of the chain of command outside the prison did not cooperate with the Tribunal. That is why we did not have sufficient evidence in 1997 to include members of the military command. That is why you do not find them on this indictment.

Why did we lay these charges against these accused?

Those who have observed the trials and are familiar with the indictment know that, for instance, Dragoljub Kunarac was not just indicted for rapes and murders, but for enslavement and other charges. We drafted the indictment in this way since I felt, and still feel, that the OTP and the Tribunal should help to interpret the terms for criminal charges in our Statute as well as in international conventions and in jurisdictions elsewhere in the world.

I have shown you the first pages of the original indictments against Dragoljub Kunarac *et al*. and Milorad Krnojelac *et al*. Many years passed before the perpetrators were finally either arrested or surrendered in 1998 and 1999. Therefore, the indictments were amended for several reasons:

- First, to reflect only the responsibilities of those who actually arrived in The Hague;
- Second, to reflect the evidence that had meanwhile been discovered and,
- Finally, to reflect changes in jurisprudence.

However, let me address one reason for amending the Kunarac indictment that I personally found very painful. Because of the big time gap between indictment and arrest, several witnesses were not willing to testify anymore. They were trying to forget the past and did not want to speak about or reflect on their terrible experiences. In addition, one witness who was crucial for one set of charges related to the Aladža house that Peter Mitford-Burgess mentioned, was psychologically and physically in such bad shape that she was not able to testify and we had to withdraw the charges.

In addition, Dragoljub Kunarac gave us a statement when he arrived here that disputed the events surrounding the rapes in the Aladža house and brought forward an alibi defence for a very crucial day; that is, the night when the Aladža mosque was destroyed. Because of his description of the events and his alibi defence, we had to investigate further and interview more witnesses. We discovered in the course of this investigation the ordeal of this group of young girls from Kalinovik, and we amended the indictment considerably to add these charges.

Let me briefly address an issue that pleasantly surprised me in both cases, and that is the cooperation between the Prosecution and the Defence teams. Despite all the disagreement as to the facts, and despite the fact that we spoke different languages and had to have an interpreter with us, the cooperation was always good. One could see that we actually came from very similar legal systems and approached matters with a certain legal understanding of our roles. This fact enabled us to get the cases to move along very quickly. It only took about six months per trial.

Why do I mention this to you? I hope that you here in Bosnia and Herzegovina take this as a good example. Let me express the hope that in the near future local investi-

gations will start and that all officials involved will simply act as professionals and investigate and prosecute the crimes no matter what ethnicity the perpetrator has. I also hope that the witnesses and victims will cooperate with these authorities, even though they may not have the same ethnic background.

The defence strategy in both cases was basically denial. First of all, in both cases the Defence teams and the accused denied the widespread and systematic attack against the Muslim population. Instead, the Defence claimed that the Muslims threatened and attacked the Serb population. In their view, it was not the Muslims and Croats who were the victims in Foča, but the Serbs, and only the Serbs.

Let me make one point clear to you here, on all sides civilians suffered and became victims. There is no doubt about that. You can easily see and hear that when you follow the trials in The Hague. The OTP has indicted perpetrators of all ethnic groups.

The trials related to Foča were not about who started the war there, or who said what and who did what in Foča before mid-April 1992. There you can definitely have different opinions.

When we speak about a widespread and systematic attack on the Muslim and Croat population in Foča, we speak about the events that occurred *after* the Serb forces and authorities were in control. We speak of a persecution campaign after 17 April 1992. That the Serb authorities were in control after 17 April 1992 was never in dispute. Both the Defence and the Prosecution accept this date. The Foča cases were about crimes committed against the non-Serbs *after* Serb authorities were in control.

The Foča cases were about crimes committed against the non-Serbs after *Serb authorities were in control.*

The Prosecution provided evidence from the witnesses who described what happened to them during the persecution campaign: the arrests, the beatings, the killing, the destruction, the discrimination.

The Prosecution asked defence witnesses during cross-examination about what happened in Foča during the persecution campaign we believed had occurred. Some of the Defence witnesses confirmed our view. I would like to show you a video clip of one of the Defence witnesses, but before I do that, I want to make three points:

The witness does not have a name but is known as Witness A. She needed a pseudonym, because she is a Muslim woman and she feared that she would be called a traitor afterwards. But let me tell you that those who come to The Hague to testify are just doing their duty: they help us to establish the truth. Whoever comes and testifies and tells the truth is not a traitor but a very brave person and it is a pity that we have to protect them.

Speaking of witness protection, you will see in the video clips that the witness has a pseudonym, and therefore you cannot know her name, you cannot see her face because it is distorted and you cannot hear her real voice, which is also distorted.

The first video clip is of defence Witness A, in the Krnojelac case.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Witness:	Witness A
Date:	7 May 2000

Prosecutor Uertz-Retzlaff: Witness, you mentioned your friend who was not living in Town A any more. Why did he not live in Town A anymore?

Witness: Why he was not living there any more? Well, because he was of Muslim ethnicity and he left like many other Muslims. He left Town A, just as many Serbs left Town B.

Prosecutor: Witness, you said that your father was killed by Serb soldiers. Why was he killed?

Witness: Why was he killed? I suppose because he was a Muslim.

Prosecutor: Your Honour, no further questions.

Hildegard Uertz-Retzlaff:
In relation to the rape indictment, basically the position of all accused was that the rapes either did not occur at all, or if they did, it was definitely not them who did it.

Dragoljub Kunarac was the only one who gave a statement after his surrender. Kunarac at first actually pleaded guilty to a rape committed in the Aladža house. However, when we interviewed him to find out what details lay behind his decision to plead guilty, he denied that he had raped the girl DB, which he was accused of. Basically, he said that he felt morally guilty that his men gang-raped witness 75, which occurred at the same time and in the same place. But he said that he did not know about it at that time.

Dragoljub Kunarac claimed that he had taken the two witnesses and victims to the Aladža house in order to investigate an allegation that the girls had been raped there by someone impersonating him. He claimed that he separated the girls in the house in order to speak to one of them in more detail. He said he was not aware the other girl was gang-raped at the same time.

This video clip shows Dragoljub Kunarac testifying on 6 July 2000.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Accused:	Dragoljub Kunarac
Date:	6 July 2000

Defence Counsel Prodanović: Please, let us not go into all this repetition. I'm going to put a question to you. Was there any contact between the two of you there?

Accused: Well, after the conversation that went on for about an hour and a half or two, at one moment after I had insisted so persistently that she gave me the names of these men or to mention any man, even if they were not those who were in the house, then she started beseeching me that I do not ask her. Then

she was sitting next to me. She fell on me. She put her head on my chest and begged me not to ask her anything. This gesture on her part did surprise me. I tried to pacify her, to convince her that there was no reason for her to be frightened, that nothing would happen to her, that she would be protected. At that point, she started kissing me and begging me not to ask her a thing. At that moment, I was totally confused. I absolutely did not understand what she was doing. I tried to refuse this behaviour of hers and to tell her again that I had to find out who these men were, because I do not want my name to be mentioned in such contexts. I don't want this journalist to write such articles that I had nothing to do with. Then she started kissing me on the mouth, on the body. She started unbuttoning me. I remained totally confused. After this – even when I wanted to say something, she would either put her hand on my mouth or she would start kissing me on the mouth. She did not allow me to say anything. After that, I accepted this behaviour of hers and we had full sexual vaginal intercourse, although I did nothing to give her a reason or pretext for this. And I did not refuse her in any way; I accepted her behaviour.

Judge Mumba: Is it your position, accused, that DB seduced you?

Accused: At any rate, at that point in time when this was happening, not at a single moment did I give any reason- I did not give her a pretext for having sexual intercourse. I didn't say I wanted it. At that moment, I had sexual intercourse with her against my will. I mean, without having a desire for sex. I will explain this later. She did this quite consciously for other reasons that I was not aware of at that moment.

Judge: That's enough. Questions, please.

Hildegard Uertz-Retzlaff:
What Kunarac is actually telling us here is that the victim raped him. The witnesses involved in this sexual assault on that night of course told a completely different story. They described how they were raped that night and afterwards taken to Miljevina. Together with two more girls they were handed over to Pero Elez and stayed in Karaman's house.

We have another similar example from Dragoljub Kunarac. He was charged with having raped Witness 87, a young girl of 17, in Karaman's house. Again he confirmed to have met the girl in that house. And again, he claimed that he did not rape her, but that in fact he just wanted to help her. Listen to this for yourselves:

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Accused:	Dragoljub Kunarac
Date:	11 July 2000

ProsecutorUertz-Retzlaff: At the house you were told by soldiers in Karaman's house to pick from the girls and take advantage of them, right?

Accused: No, nobody said that to me. I only saw DB then and Witness 87. When I saw DB there, it was only then that I realised that she had not gone with the rest and that she had remained there. I wanted to talk to her. However, the presence of these other men there, and the men who were present there were

present during Gaga's wounding, together with DP3 who had actually wounded Gaga. So I wanted to use this opportunity to talk to them and to DB; however, at that moment DB was preparing coffee there and she was busy with this work. So I did go outside then and I gave a sign to Witness 87 to come along with me, and she did. As she followed me, she started off going upstairs. I wanted to go outside with her but she went upstairs. And then I followed her upstairs. We went to the first room on the left. I tried to talk to her then. I asked her how come she was there and she said that she had been brought there. She was lost completely. As I said during my first and second interviews, she looked like a vegetable. She didn't even answer questions. She was totally depressed. She did tell me that they were taking all sorts of things out on her, that people were doing whatever they wanted to do to her there, and she said that she did not expect me to take her aside for a conversation but she expected me to do what the others were doing to her. She lay on the bed and I sat next to her. I tried to talk to her and I did tell her to unbutton a few buttons. She was wearing a shirt or something like that. Her breasts were not revealed, though. I was afraid that some of these men who were present there could come in and that something might happen, because I never found out the details about Gaga's wounding. But when I saw DB there and when I saw 87 there, I thought that Gaga might have been killed because of them. Because when I talked to him after his wounding, on the 13th or 14th, he just begged me not to interfere, not to lose my head, to be careful. He did not want to say what had happened. He said, "It's my fault. I made a mistake. Please think of those children." So I spent five or 10 minutes at the most in that room with Witness 87, but I absolutely had nothing physical with her. I did not even touch her hand. As I said, I tried to talk to her but she absolutely was not capable of any kind of conversation. I went back and then I walked out and sat on the terrace. In this house, in the other big room, there is a terrace that is on the back of the house. I sat on the terrace. Now, how much time did I spend there? At that time DB- sorry, DB was preparing coffee and when I was back, she was serving coffee. She was preparing coffee before I left, and then she was serving coffee. I asked her to come out on the terrace because I absolutely could not talk to her in front of all of those people who were there because I was afraid that I would go through Gaga's fate.

Prosecutor: Mr Kunarac, let me cite from your previous statement, Exhibit 71, page 13: Somebody said, "Just pick anyone and take advantage of her". That's what you said. That's how the women in Karaman's house were abused, right? Pick and take advantage.

Accused: Well, when we walked into the house, I said there were about 10 of us there. These men were behaving very comfortably there. There was joking, all sorts of things. But at one moment one of them did say something like - well, not directly - well, literally, yes, he said that not only I, but anybody could do whatever he wanted to do and he can choose any one of them and take advantage of them, in that context.

Prosecutor: Mr Kunarac, and you understand, when someone says, "Pick anyone and take advantage," you understood that it was an invitation for rape, right?

Accused: Yes. At any rate, I did understand that they kept those girls there and the conversation with the girls itself confirmed to me that that is what was happening to them.

Hildegard Uertz-Retzlaff:
You can hear from Kunarac's own mouth that what the witnesses were saying was the truth. What he denied was that he was involved. However, we had the victims who told us what he did to them. They said that he did not come to Karaman's house to help them, but that he also took advantage of the girls and picked one.

I would also like you to hear Witness 87 testifying about what Kunarac did to her:

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 87
Date:	4 April 2000

Witness: One of them was Radovan Stanković, nicknamed Rašo. The other was Neđo Samardžić, I think. And the third was Nikola. I think his surname was Brčić, although I'm not sure.

Prosecutor Kuo: Did other soldiers come to this house?

Witness: Yes.

Prosecutor: What did the soldiers do when they came to this house?

Witness: Usually they would select one of the girls and take her off to the second floor.

Prosecutor: How long were you kept at Karaman's house?

Witness: I can't remember that exactly. A month and a half, two months perhaps, although I'm not quite sure.

Prosecutor: During that time, what happened to you there?

I, like all the other girls in Karaman's house, was raped by the Serb soldiers.

Witness: I, like all the other girls in Karaman's house, was raped by the Serb soldiers. I think that after a certain amount of time, that two other girls were brought in, or three, but at any rate, all of them were raped either every night or every other night often.

Prosecutor: Are you able to count how many times you were raped in Karaman's house?

Witness: I don't think that is possible.

Prosecutor: Did Žaga Kunarac ever come to Karaman's house?

Witness: I remember only one time when he was there. I remember that he was wounded or injured and that he had a cast on a part of his body. He had something bandaged up somewhere, although I don't remember very well. I remember that one time. As for the others, whether he came or not, I couldn't say.

Prosecutor: What did he do that time when he came, that you remember?

Witness: I don't remember exactly why he came and what he was doing in that house exactly. All I remember is that he took me into a room on the upper floor and that he raped me there.

Prosecutor: Was there anything in particular about that incident that made an impression on you?

Witness: Well, I think I thought about how an individual who was, I wondered how an individual who had been wounded or injured could do something like that.

Prosecutor: Would you be able to recognise Žaga Kunarac today?

Witness: Perhaps.

Prosecutor: Could you please look around the courtroom and tell us if you see him?

Witness: Yes.

Prosecutor: Could you please describe where he's seated and what he's wearing?

Witness: He's sitting on the left-hand side, and the second man there. I think he's got a dark blue blazer on, a white shirt. He's got a tie with a pattern on it, something reddish, something like that.

Prosecutor: Let the record reflect that the witness has identified the accused Dragoljub Kunarac.

Judge Mumba: Yes.

Prosecutor: During the time that you were kept at Karaman's house, were there other girls there as well, and if so, could you give us their names or initials on the paper before you?

Witness: Yes, there were other girls there as well. I knew the ones who had come with me, number 75, DB, and 190, although 190 was returned from the house after a short while. And afterwards, after some time, others were brought; that is to say, AB, AS, and one other one whose name I don't see here. Yes. And number 132, and another girl whose name I can't see on the list.

Prosecutor: With the assistance of the usher, perhaps this witness could be given a blank piece of paper, and that paper can be marked as Exhibit 194. I would ask the witness to write down the name of this girl whose name she does not see on the exhibit before her.

Registrar: This piece of paper will be 194, and it will be under seal.

Prosecutor: Witness, you mentioned someone identified as AB. Do you know how old she was at that time?

Witness: I couldn't say how old she was exactly, but I think she was either 12 or 13.

Hildegard Uertz-Retzlaff:
I want to play to you another clip of Witness 87's testimony:

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 87
Date:	23 October 2000 (Two segments)

Prosecutor Kuo: Did you ever give the impression that you were Kovač's girlfriend?

Witness: No.

Prosecutor: Did you ever tell anyone that he had saved you?

Witness: No.

Prosecutor: Did you ever send Kovač a postcard or a card, thanking him?

Witness: No.

Prosecutor: Did you ever tell anyone that you were in love with Kovač?

Witness: No.

Prosecutor: And my last question to you, Witness, is: Were you ever in love with Kovač?

Witness: No.

(…)

Witness: As for harassment, there were not many people who did that, who harassed me, who ill-treated me. One of them was Kovač at that time, in those early days, and then for a long time after that. And then there was also Kostić. In addition to those two, there were no others.

Prosecutor: How can you say that you had the same situation in the flat with only two of them, and at the Partizan school centre, at Karaman's, where there were more of them, where the living conditions were much harder, much more dangerous?

Witness: Same. It was the same situation, because rape is something that draws a certain equality between Partizan and Karaman's house and that flat. That is how I look at those three situations. To me, they are the same. And if you want me to say that in a certain respect the situation in Klanfa's flat was better, well, in a way it could be so, because there is a difference between being raped by one or two individuals and being raped by 20, or who knows how many.

Hildegard Uertz-Retzlaff:
My colleague Christina Moeller will give you more details later on.

Zoran Vuković also did not testify. At a rather late stage of the proceedings his defence came up with an amazing story. He argued that his case was one of mistaken identity. He claimed that because of an injury he had been impotent at the relevant time and thus could not have raped any of the victims.

In relation to the impotence claim, the court heard medical experts, however their evidence was not conclusive. In relation to this accused the key was identifying him. As Peter Mitford-Burgess has already mentioned, this was difficult with 11 persons named Zoran Vuković in the region.

The Prosecution in court put some weight on identification, in particular in light of the fact that there were three accused sitting there. We asked each and every witness in court to point out the perpetrator to the Judges. As you could see with Witness 87, she did so. For the Prosecution it was a crucial moment in the case, as it was for the victims/witnesses. Before going to court, some witnesses expressed fear in having to look at the perpetrators, some expressed discomfort, and some feared that they would not be strong enough to face them. However, they all looked at them, and they all did so with dignity and courage. My colleagues and I were very impressed by this.

I would like to show you the statement of Witness 50, which concerned identification:

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 50
Date:	29 March 2000 (Two segments)

Prosecutor Kuo: And when you arrived at Buk Bijela, where did you go, or where were you taken?

Witness: We were taken to one of the rooms in these barracks.

Prosecutor: Were you taken out separately from that room at some point?

Witness: Yes.

Prosecutor: Who took you out?

Witness: Am I supposed to say the name?

Prosecutor: If you know the name, please say it.

Witness: A man named Zoran Vuković took me out.

Prosecutor: Did you know this man from before the war?

Witness: I might have seen him before the war. The face seemed very familiar to me. Whether I knew it from before, I don't know.

Prosecutor: Did you know his name before the war?

Witness: I don't remember.

Prosecutor: Did you learn his name during the war?

Witness: On several occasions, yes.

Prosecutor: At the time that he took you out at Buk Bijela, did you know his name?

Witness: I don't remember.

(…)

Prosecutor: Do you remember the first time that you were taken out from Partizan?

Witness: Yes.

Prosecutor: Do you remember when it was?

Witness: Perhaps a day or two later, after our arrival in the Partizan.

Prosecutor: Do you remember who took you out?

Witness: Yes.

Prosecutor: Who was it?

Witness: It was what I talked about a moment ago, when I was in the WC. Two soldiers whom I did not know came, and among them was Zoran Vuković again.

Prosecutor: When you say again, do you mean the same person who raped you at Buk Bijela?

Witness: Yes.

Prosecutor: Do you remember if he was armed at that time?

Witness: Yes, he was.

Prosecutor: Where did he take you?

Witness: He took me to an apartment. I assume that it had been abandoned, because I didn't see anybody there. When he brought me to that apartment, he took me into one of the rooms, which was to the left-hand side of the hallway. There was a big bed there for sleeping in. I don't remember exactly whether there was a cupboard or what there was there, but it was a bedroom. And then it happened once again; I was raped again.

… when he finished raping me, he sat down and lit a cigarette, and he said that he could perhaps do more, much more, but that I was about the same age as his daughter, and so he wouldn't do anything more for the moment.

Prosecutor: Did Zoran Vuković say anything to you?

Witness: Well, yes. They would always say things. But once he had done what he was about- I mean, once he had raped me, when he finished raping me, he sat down and lit a cigarette, and he said that he could perhaps do more, much more, but

that I was about the same age as his daughter, and so he wouldn't do anything more for the moment.

Prosecutor: Can you - would you be able to recognise Zoran Vuković today?

Witness: Yes, I could.

Prosecutor: I'm going to ask you to look around the courtroom, and please take your time. Let us know if you recognise somebody here who was the Zoran Vuković you have described.

Witness: If I look from the door going down, the first person next to the guard with dark hair, is Zoran Vuković.

Prosecutor: To help clarify the record, could you just describe something he's wearing?

Witness: He is wearing a light blue shirt, a dark blue suit.

Prosecutor: Your Honour, may the record reflect that the witness has pointed out the accused, Zoran Vuković.

Judge Mumba: Yes.

Hildegard Uertz-Retzlaff:
I will speak about Milorad Krnojelac briefly because my colleague will address this in more detail later.

Identification was not an issue in relation to Krnojelac. His defence claim was that he was not the Warden of the entire KP Dom prison, despite what official documents that we received from the RS stated. He claimed he was merely the person in charge of the KP Dom's economic section and a so-called civilian part, in which only convicted Serbs were serving their sentence. He claimed that he had nothing to do with the so-called military part of the prison where the Muslims and other non-Serbs were detained. He claimed that he had no authority over the prison staff, and in particular over the guards who dealt with the non-Serbs in the prison. He said that he had no dealings with the non-Serbs, knew nothing about the bad conditions they lived in, and in particular knew nothing about beatings, killings and disappearances.

According to Krnojelac, the commander of the guards Mitar Rašević and Savo Todović did not report to him, but to the outside Military Command. Krnojelac's claim that he was totally ignorant of what was going on made it necessary for the Prosecution to prove each and every single incident of beating, mistreatment, killing and disappearance. That is why we needed 50 prosecution witnesses to testify, most of them former detainees. It was very painful to listen to all the gruesome details of their time in detention, the pain and the fear they suffered. We saw and we could feel that they still suffered the consequences of their detention, 10 years after the fact.

In addition, the Prosecution had to establish Krnojelac's exact role and duties and his proximity to the incidents. The Prosecution also had to prove that he was the Warden of the entire prison and all the prison staff, and that the split between a civilian and military part, over which he had no influence, was a fiction.

In relation to the mistreatment of the detainees, let me remind you of how close Krnojelac was to the scene of the abuse. In this sketch, when you look at the left hand side on the lower part you see indicated there Buildings 1 and 2, as well as the door that is the main entrance Number 19. The mistreatment of the detainees took place in the downstairs rooms of both Building 1 and Building 2. The rooms faced the prison yard, and not the outside where the road was.

Krnojelac had his offices in Building 2 on the top floor. When you look from the entrance, the first windows on the top and to the right is where Krnojelac sat and worked. His windows faced the yard. He could hear what was going on, and he did hear what was going on. That is at least what the Prosecution embarked to prove and the Judges accepted our arguments. Krnojelac could see every day when the detainees went to the canteen. He even saw them when he went to the canteen. He could see how little they got to eat and how they were fading away. Krnojelac could see what was happening in the yard when the guards or outside soldiers beat the detainees. He could see blood stains on the walls. However, he claimed that the detainees were actually treated well in the prison.

In relation to Krnojelac's knowledge and control, the Prosecution had to have witnesses who had direct contact with him and could give details of the KP Dom's inner structure. We had several witnesses who actually spoke with him, but I would like to show you only one witness' testimony – Witness 111.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Witness:	Witness 111
Date:	27 November 2000

Witness: … He was justifying everything by this war situation. He mentioned that his house had burned down - that his house burned down as well, and that all of this was a misfortune.

Prosecutor Uertz-Retzlaff: Did you speak about the conditions at the KP Dom and why you were there? Did you ask him or did he say anything - did he himself say something?

Witness: I did not ask him why I was there. I mean, there were a lot of people already in the camp. Well, "camp" is not a word that was permitted. It was prison. So we kept using the word "prison" rather than "camp." And also I was saying that it would be a good thing to have medical care as soon as possible; that's what we talked about. And we said that Čedomir Dragović, a colleague who worked with convicts in the prison before that, would be a good idea, a person who was familiar with the method of work, just as I did this too.

Prosecutor: After this conversation, did you try to see Mr Krnojelac again?

Witness: Yes, yes. That was this critical period of June/July. I sent requests in writing and orally, asking him to receive me, because I realised that I was still losing weight and I was wondering whether something could be done about an exchange and an overall improvement of conditions in the camp, especially because some kind of exchange of prisoners from Foča for prisoners from Sarajevo was being mentioned, and that had greatly pleased us. And we were living in the hope that this would happen as soon as possible, so I wanted to talk to him about

that, in that sense. However, I could not reach him; he would not receive me.

Prosecutor: But you said you saw him twice. When was the second time?

Witness: When I say twice, I mean this direct contact. I saw him many times moving about with the guards through the compound, around the compound, as he was carrying out his duties as a Warden, from my room, from various rooms where I was standing. And on 10 June, 1993, we had our other, second, direct contact.

Prosecutor: Did you request this contact, this second direct contact?

Witness: Yes, yes, and this was in writing. And this was made possible for me; namely, we talked once again in the same room.

Prosecutor: And who was present besides you and Mr Krnojelac?

Witness: Well, at that time I can't remember, really, whether there was anyone else who was present.

Prosecutor: What was Mr Krnojelac wearing that time?

Witness: I can't remember now. I think it was still a uniform, a military uniform. We were already used to seeing it, to seeing people in that uniform, people who had these duties. As for the conversation, my questions were what would happen to us, that I was ill. Already then I could not walk downstairs from the third floor to the canteen. My leg hurt me a lot. So I asked for food to be brought to me, to my room, because I could not manage to walk downstairs so fast and get out like the rest of them. And the guards were telling me to hurry up, so I couldn't even manage to eat what I was given. In that period, I had my ration of food brought to me in the room. And I was seriously concerned about my condition. That was the main reason why I requested another meeting with him as he was the person responsible.

Prosecutor: And what did he tell you when you spoke about your condition?

Witness: He said that it did not depend upon him, really; that he could not influence my exchange because it was a higher command that was deciding on that, that's what he told me, his Superior Command. Then he mentioned something to me that greatly surprised me and worried me, when he said that a few days before that he had attended a meeting in Bijeljina with all wardens of camps from all over Bosnia-Herzegovina, and that general camp problems were discussed at that meeting. And he said, unfortunately it was not only that camp, but that practically every municipality had a camp. I was astonished by this revelation.

Hildegard Uertz-Retzlaff:
Finally, Krnojelac also claimed that the Muslim detainees were POWs and their detention was lawful. The Prosecution therefore called witnesses who were elderly, ill, physically handicapped and had been arrested in their homes, and doctors from the hospital, who could by no means have been combatants. We called witnesses who had been detained for two and half years without ever being charged with any offence whatsoever.

This will now conclude my presentation and afterwards we will have a discussion, but first you will hear from my colleague, Christina Moeller.

Session Three
Trials

Christina Moeller, former Legal Officer, Chambers, ICTY:
Good afternoon, this session is about the trials. Let me briefly introduce myself. From 2000 to 2003, I worked as a Legal Officer in Trial Chamber II, one of the three Chambers of the Tribunal. The Legal Officer's function is to assist the Judges of a Trial Chamber with the administration and conduct of the trials, to collect and assemble all the evidence that is adduced at trial and to help draft the judgement. In this regard, I had the opportunity to sit in the hearings with the Judges for both Foča cases and heard most of the witnesses who testified. A little later on I will play you a number of additional clips from both cases to give you a better impression than you already gained this morning about how these trials were conducted and the kind of evidence the Judges heard before they finally drew their conclusions and wrote the judgements, about which my colleague Catherine Marchi-Uhel will speak in the final session for today.

Each Trial Chamber of the Tribunal is composed of three judges, as they were in the Foča cases. In the Kunarac case, the bench was comprised of Judge Florence Mumba [Presiding], Judge David Hunt from Australia and Judge Fausto Pocar from Italy. In the Krnojelac case, Judge Hunt presided along with Judge Mumba, who had also sat on the Kunarac case. So the Krnojelac case had the benefit of having two judges who had already heard the evidence from the Kunarac case as to the general conditions in Foča during the time relevant to the indictments. The third judge in the Krnojelac case was Judge Liu Daqun from China.

I would like to give you a very short explanation of how trials are conducted in the first instance at the Tribunal.

Unlike the legal system of the former Yugoslavia, which has a civil law system, the Tribunal incorporates elements of the common law system. The main difference between the two systems is that in the civil law system the trial is dominated mostly by the judge, who has a very strong role in examining witnesses, whereas in common law systems trials are adversarial, meaning that the parties bring forward and examine their witnesses and all other evidence.

The trials at the Tribunal are always conducted in the same way. First, the Prosecution presents its opening statement and all evidence that incriminates the accused. This is called the Prosecution case. Then, the Defence is called upon to bring forward any evidence that it feels exonerates the accused. This is called the Defence case. There is an opportunity for a so-called rejoinder proceeding, in which the Prosecution may be allowed to respond to such defence evidence that was presented entirely unexpectedly. If the Judges allow a rejoinder, then the Defence may, under certain circumstances, respond to the evidence brought forward by the Prosecution in this phase. Like all other trials before the Tribunal, the Foča cases were also conducted in this manner.

As in a civil law system, the Judges may put questions directly to the witnesses if they want to during all stages of the trial.

Hildegard Uertz-Retzlaff has already told you why and how the Prosecution chose the evidence that was presented in both cases, in particular which witnesses were selected and why.

So, let me only address three more aspects related to the presentation of evidence. Two of them were already mentioned by Ms Uertz-Retzlaff in passing and I just want to add some remarks from the Chamber's perspective.

The first issue is the fact that the evidence presented at trial was restricted. Ms Uertz-Retzlaff explained why the Prosecution had to carefully select and restrict the charges placed against the accused. Of course this led automatically to a restricted presentation of evidence at trial. She mentioned the fact that it was painful for some witnesses that certain crimes could be prosecuted while others could not.

This was also an issue for the Trial Chamber and it became very obvious when some witnesses testified in court. I remember very vividly one witness in particular, an older man, who testified in the Krnojelac case. After having completed his testimony on what he experienced in the KP Dom, the witness literally begged the Trial Chamber to also hear his testimony on how he was treated and how he suffered in another camp to which he was transferred after having been at the KP Dom. That was of course not possible for the Trial Chamber to hear because the fairness of the trial restricts the Judges to only hear evidence that relates to the accused and not other evidence. This evidence is, of course, also important, but it is not related to the trial in which they must decide. Such situations did not occur only once, which made it quite obvious that only a small part of all the crimes committed in the area could be dealt with by the Tribunal in this case and the other case related to Foča, the Kunarac case. As I said, it was the Trial Chamber's duty to focus only on the crimes that were charged in the indictment, and this is what they did.

After having completed his testimony on what he experienced in the KP Dom, the witness literally begged the Trial Chamber to also hear his testimony on how he was treated and how he suffered in another camp to which he was transferred after having been at the KP Dom.

The second issue is the fact that the investigations started many years after the actual crimes had been committed. It took even longer for the trials to get started. It was only in March 2000 that the Kunarac trial started and the Krnojelac trial started in October 2000. About eight years had lapsed since the crimes had been committed, and the witnesses had to recall facts that had long passed. It is very understandable I think, and the Trial Chamber took this into account when evaluating the reliability of the witnesses, that after eight years not every detail of each incident was very fresh on the mind of each witness. Minor discrepancies between a statement a witness gave to authorities very shortly after the crime had been committed, and his or her testimony in court would necessarily occur. This is a general problem that we have to face in all trials at the Tribunal, and is not specifically related to the Foča Trials.

For the Foča cases, however, there were some other factors that impacted on the memory of witnesses and victims and which the Trial Chamber had to specifically consider.

First, in the Kunarac trial, many of the witnesses were minors at the time they were victimised. Some were as young as 15 years old when they were sexually assaulted and they had to testify about that. The Trial Chamber took into account that the level of detail these very young witnesses could give may be different from that of a more mature witness.

Another specific factor in the Kunarac case was that in some instances only one witness could testify to a particular incident that was charged. This is not unusual, in particular in cases concerning sexual violence, as often only the perpetrator and the rape victim will be present when the incident occurs. Generally, the Tribunal's jurisprudence allows for a conviction to be based on the testimony of a single witness. Of course in such cases, in fairness to the accused, the Trial Chamber is particularly careful when weighing the reliability of such evidence.

Finally, one more factor that concerned both Foča cases as well as other "camp cases" at the Tribunal, related to witnesses who had been detained and mistreated in several different camps. Witnesses were often sent from camp to camp and to other locations, and were locked up in rooms with different people at different times. They often witnessed horrible crimes committed against co-detainees while themselves being victimised. In both Foča cases, victims and witnesses were detained over several months, some for up to two and half years. This was, of course, a seriously traumatising experience for them. But it also, quite naturally, resulted in witnesses not being able to recall all the minutiae of each particular incident. They may have mixed up places, times or people to a certain extent while still being perfectly capable of recalling the very essence of the incident charged, including the identification of the perpetrator. The Trial Chamber took into account the individual circumstances of each individual witness who testified when evaluating the evidence that he or she gave. As long as a witness could reliably recount the essence of the incident in acceptable detail and no major discrepancies occurred, the Trial Chamber would accept the testimony.

The last aspect of the Foča trials that I wish to address is the very important issue of witness protection. The Tribunal has in place a very sophisticated system of victim and witness protection for those whose safety is at risk and/or whose privacy needs to be respected. Such measures include giving the witness a pseudonym and distorting his or her voice or face during testimony. All of these measures serve to protect the witness from exposure to the public. I want to stress here, and this is very important, these measures do not protect the witness' identity from the accused or his defence counsel. The accused and his defence counsel at all times during testimony know the identity of the witness who speaks against the accused. The Defence has a full opportunity to cross-examine the witness. Therefore, the protective measures that the Tribunal granted in both cases in no way harmed the accused's defence.

I would now like to turn to some video clips from the trials in order to give you an impression of how such trials are conducted. More importantly, they will give you the best impression of the kind of evidence that the Trial Chamber had in front of it before the Judges made their findings. Generally, you have to imagine this trial and its different stages - first the Prosecution case and then the Defence case - like the painting of a picture. Stroke by stroke, witness by witness who appears, the Trial Chamber gets a broader picture of what happened. They get to know not only about the specific incidents that the specific witness testifies about, but they also see the broader frame of what happened in the area, in your area, in Foča. Day by day, they can see whether the charges laid down by and put forward by the Prosecution actually are proven by what the witnesses tell the Trial Chamber.

Stroke by stroke, witness by witness who appears, the Trial Chamber gets a broader picture of what happened.

I would like to start with the testimony of Witness 75 from the Kunarac trial. She was 25 years old in 1992. Her case is quite typical: she was taken to many different locations and was sexually abused. Her ordeal lasted almost a year and among the many soldiers who abused her were the accused Zoran Vuković and Radomir Kovač. The accused Kunarac took her from places and handed her to soldiers.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 75
Date:	30 March 2000 (Four segments)

Prosecutor Uertz-Retzlaff: Witness, would you please explain what you see on this photo.

Witness: I see this place called Buk Bijela.

Prosecutor: You were taken there, together with the other women?

Witness: Yes. Yes.

Prosecutor: When you arrived there, where were you put? What happened?

Witness: They brought us here, in front of this motel. Then they lined us up. Beban Vasiljević lined us up, all of us, women, children, the elderly. We stood there and he put this machine-gun in front of us, so I thought that he would kill everyone then. However, as we stood there for about five minutes, others came and said, "You come, you come, you come". I was taken to one of those prefabricated buildings down there (indicates). That's where I found Gojko Janković inside.

Prosecutor: Just for the record, the witness points on the last building with the white roof.

Witness: Yes.

Prosecutor: Please continue.

Witness: They took me to that building there. That's where Gojko Janković already was. And also Dragan Zelenović and Janko Janjić. They asked me to speak the truth, and they said that if I would not say the truth, I would be gang-raped. They asked me who had weapons, who was arming the people in Trošanj. I said no one and I said that I didn't know that. And I said that we woman were not allowed to know anything about this. Then he asked me about all the names and surnames of the people who lived in the village and he wrote all of that down. When they finished that, they took me out of that room. As I was leaving the room, I encountered my uncle. They were taking my uncle. He was all covered in blood.

Prosecutor: Let me interrupt you at that point. Did you see who was accompanying you, your uncle, when you encountered him?

Witness: Yes. I saw Zoran Vuković.

Prosecutor: Would you please describe Zoran Vuković.

Witness: Well, he was short, a small man, blond, fair, fair, fair haired, if I can remember correctly.

Prosecutor: Can you describe his face?

Witness: No.

Prosecutor: How do you know that this man has the name Zoran Vuković?

Witness: I didn't know then, because I had not known him. Again, after the four months of my stay in Foča, Kovač brought him to the apartment and that's when I found out that he was that man.

Prosecutor: We are ahead of time in the chronological order, therefore, I would rather discuss this with you later on and we go back to 3 July, 1992. This soldier, Zoran Vuković, was he the only one who accompanied your uncle?

Witness: No. I'm not sure now whether there was one or two or more of them there as well. I just glanced at my uncle and I went away with my head down, because they took me to this other part of the building.

Prosecutor: You mentioned that your uncle was – your uncle's face was bloody. Did he have injuries in his face?

Witness: I cannot remember. I cannot remember. I just saw blood, blood flowing down his face.

Prosecutor: Where were you taken after you passed your uncle?

Witness: About five metres away, to another room, where an old Chetnik met me. He was 40 or 50 years old, and he pushed me into a room there and made me take my clothes off. And he said that he would be the only one to rape me there.

Prosecutor: At that time were you frightened?

Witness: Of course I was frightened. I was not just frightened, I was completely in a state of shock.

Prosecutor: And did this man rape you?

Witness: Yes, he did.

Prosecutor: Was that the only one who raped you at that time?

Witness: In that hall I just counted up to 10, because that was the order they made. I counted up to 10, and I don't know how many there were after that number. There could have been about 20 of them. I don't know.

(…)

Prosecutor: While you were being raped, did you hear anything concerning your uncle?

Witness: While I was conscious I heard shooting, I heard my uncle's screams from all the beating. And at one point I heard one of them saying, "The balija's escaped." And then there was a burst of gunfire and then everything was quiet and I didn't hear him again. And I knew at that moment for sure that they had killed him.

Prosecutor: The gang-rape you described, was it painful?

Witness: Yes.

Prosecutor: How did this make you feel?

Witness: I felt dead.

Prosecutor: Where were you taken after this gang-rape?

Witness: While they had all taken their turn, I thought that they had killed all the other women and thrown them into the Drina. But then one of them said, "Hurry up and get dressed. We're going into a bus". I wasn't able to get up or to get my clothes on. So two of them had to help me and take me onto the bus. And when I got into the bus I saw that everybody was in the bus except for one girl. Her mother was crying, standing in front of the bus, and asking them to give them back her child, give her back her child.

And when I got into the bus I saw that everybody was in the bus except for one girl. Her mother was crying, standing in front of the bus, and asking them to give them back her child, give her back her child.

(…)

Prosecutor: Were you sexually assaulted while at the high school?

Witness: Yes, I was.

Prosecutor: Once, or many times?

Witness: Many times, yes.

(…)

Prosecutor: How long did you stay at the high school all together?

Witness: All together about 15 days we stayed at the school centre, until Mitar Šipčić arrived and came into the classroom and said that we would have to make some sort of order, get the hall in some sort of order, because television Belgrade was coming and the S Channel, television channel from Pale to film how they were looking after us there and feeding us there and how they had saved us and how we were having a nice time there, and that nobody would do this for us. But we knew - we were the only ones to know what it was really like for us there.

Prosecutor: And when this journalist came, did any one of you speak to them

and tell them what actually was going on?

Witness: No, nobody said what was actually going on.

Prosecutor: Why not?

Witness: Nobody talked to the journalist directly. Well, what could we say? I didn't even look to see who had come or who had left the room. The world should see, to look in our eyes. How can I say? Because they had killed my mother before that, they had killed my brother. And up to that day I had been raped by almost 50 of them. So how could I say anything, to look them in the eyes and say that I was fine? I couldn't.

Christina Moeller:
The next clip is from the testimony of Witness 87. In April 1992, she was only 15 years old and she endured an ordeal similar to the witness we have just heard, for almost one year. Like Witness 75, this witness was constantly sexually assaulted, humiliated and raped by many soldiers, including the accused Dragoljub Kunarac and Radomir Kovač.

In this sequence she testifies about her helpless situation at the Partizan Sports Hall and Karaman's house where she was detained at one time.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 87
Date:	4 April 2000 (Two segments)

Prosecutor Kuo: While you were at Partizan, did you feel free to leave?

Witness: No. The same applies as to the high school, the guards were always there, and to go into the street or anywhere else was unsafe.

Prosecutor: With the assistance of the usher, I would like to have this witness shown Exhibit 11, photograph 7302. Do you recognise that photograph?

Witness: Yes. That is the Partizan Sports Hall.

Prosecutor: Thank you. Did soldiers also come to Partizan and take girls out?

Witness: Yes.

Prosecutor: How often did they do that?

Witness: Sometimes it was every night, sometimes every other night. I can't remember exactly.

Prosecutor: What would they do when they came to the hall to take girls out?

Witness: They would come inside looking for particular persons, girls. They would select them, as many as they wanted, and then they would take them with them.

Prosecutor: Do you know the names or nicknames of the soldiers who did this?

Witness: I remember Gojko Janković. I remember a man called Žaga; his surname is Kunarac. I'm not sure of his first name. I think it's Dragan or something like that. Then also Janjić Tuta would come there. I think Gagović was there twice also. I can't remember any others.

(…)

Prosecutor: Was the door at Karaman's house locked?

Witness: The door wasn't locked. I think it was the kind of door that you could open from the inside but not from the outside. Only if you had a key could you open if from the outside. At first we weren't allowed to go out of the house, although later on we were able to go out into the garden or onto the terrace.

Prosecutor: Why didn't you just leave the house, go away from there?

Witness: Once again, for the same reasons. You didn't know where to go or where this would lead you, this attempt to escape. Nothing was safe. You wouldn't know where it would lead to.

Christina Moeller:
As Ms Uertz-Retzlaff mentioned, the Defence's position was outright denial. In the case of the enslavement charge, the Defence however went as far as claiming that the accused Radomir Kovač actually protected the girls. Let us hear what Witness 75 expressed about how she really felt in this situation:

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 75
Date:	30 March 2000 (Two segments)

Witness: They took us to an apartment there in the Ribarsko settlement in Foča.

Prosecutor Uertz-Retzlaff: Were you raped in this apartment?

Witness: Yes.

Prosecutor: When did that happen?

Witness: Well, it was about - I think that same night when they took us there. I don't know what the exact time was, but it was that same night.

Prosecutor: And who raped you on this occasion?

Witness: Tuta.

Prosecutor: And the other girls you mentioned, were they raped as well?

Witness: Number 87 was raped by Zelenović, and AB was raped by Gojko Janković. Because he had previously made us go into the bathroom and clean the bath and fill it with water, and then he shut himself up there with the little girl in the bathroom.

Prosecutor: Did you stay in this apartment for longer or were you taken somewhere else?

Witness: No. We spent the whole night there; we slept there. And then the next day, sometime in the afternoon, Radomir Kovač, nicknamed Klanfa, turned up, and Jagoš Kostić, nicknamed Jadža, also came, and they took us away from there to the Brena apartment, fourth floor. That was also a Muslim-owned flat, although this person Kovač had taken it over, and he wrote "Klanfa" with a magic marker on the front door so that everybody knew that he was living there.

(…)

Well, Klanfa told us, in no uncertain terms, "We're taking you to us now. You'll be protected". And all the ones before him said the same thing. They would always say that nobody would touch us, nobody else would come, that we would have a nice time, up until one point, until we left, managed to get out.

Prosecutor: Did you ever feel protected?

Witness: No.

Prosecutor: What actually- how did you actually feel?

I was just waiting, waiting for them to say they would kill us or something like that, because I never believed them for a moment.

Witness: How would one feel? We were very, frightened, always in shock. I was just waiting, waiting for them to say they would kill us or something like that, because I never believed them for a moment. Regardless of what they would say, I never believed anything they said.

(…)

Prosecutor: Did you see that Klanfa also raped the other girls, except for the two of you that you have already mentioned: you and 87?

Witness: I didn't see that, but I'm sure about AB. I'm sure he raped AB.

Prosecutor: You said that after a certain period of time he brought in others to rape you. Could you tell me whom he brought in?

Witness: On one occasion he brought Zoran Vuković to me.

Prosecutor: Do you recall when that was?

Witness: Well, I don't remember exactly, but ...

Prosecutor: Was it in the period before you were transferred to some soldiers from Serbia?

Witness: Yes.

Prosecutor: When you say Zoran Vuković came to you, is that the Zoran Vuković

who was together with your - you saw with your uncle, and is that the Zoran Vuković you pointed out to us after the lunch break?

Witness: Yes.

Prosecutor: Can you describe what happened exactly?

Witness: He shut me up in the kitchen with him and we sat and talked there: who was killed, who was not killed. And then he said that he had killed my uncle, that he had been allegedly forced - that is to say that he started fleeing across the River Drina and that then they shot him. But I don't believe him.

Christina Moeller:
When Kovač finally got tired of some of the girls he had incarcerated in his flat, he sold Witness 75 and the 12 year old child for 500 Deutsche marks to other soldiers. As we already heard this morning, the 12 year old child has never been seen again since, she is still missing.

Let us have a look at a sequence from Witness 75's testimony on what happened to her and the 12 year old girl, whose pseudonym is AB.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 75
Date:	3 April 2000

Prosecutor Uertz-Retzlaff: What happened to AB?

Witness: The next day when we got up, Klanfa came and said that Dragec would come to take AB. As for me, he said that Tuta and Zelja would come to take me away. And after a while, Dragec came, and when he rang the bell, Klanfa saw through the peephole that Dragec was counting some money, and so he laughed, saying, "Look, this one is counting his notes." And Dragec came in, and I saw him give him 200 Deutsche marks. He took the young girl and went off. After a while, Tuta and Zelja stopped in front of the building, with a car, and told me to follow them. I went out, got into the car, and they drove me towards Aladža. And when you come out of the park, the first building there, they stopped in front of it and climbed upstairs into that building. They spent some time there, and when they came back, they told me that I was going with AB. I went upstairs, as I was terribly frightened and I was crying. Then Dragec screamed at me, "What are you crying for? Don't you know that I have saved your life? They wanted to kill you now. Do you know that they wanted to kill you?" And so when he said that, I calmed down a little. I realised what was happening.

Prosecutor: When did you see AB for the last time?

Witness: We were together for quite some time after that, probably some two months or so, because Dragec would sell us everywhere, and he would do business with us. About 15 days or a month later, we were separated and Jasko Gazdić took her away and after that I never saw her again. But I am quite sure, and I know very well that Kovač himself knows exactly what happened to that little girl. She was a 12 year old child.

Christina Moeller:
My colleague Ms Uertz-Retzlaff already mentioned that with regard to the enslavement of Witness 87, the accused Kovač claimed that she was actually in a love relationship with him. The Trial Chamber rejected this defence. It classified the relationship between Witness 87 and Kovač as follows, and I quote from the judgement: "The relationship between FWS-87 and Kovač was not of love as the Defence suggested but rather one of cruel opportunism on Kovač's part, of constant abuses and domination over a girl who, at the relevant time, was only about 15 years old".

The inhumane manner in which Radomir Kovač abused, humiliated and terrorised Witness 87 and other girls is best illustrated in yet another sequence of Witness 87's testimony.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Witness:	Witness 87
Date:	4 April 2000

Prosecutor Kuo: Was there another time when Kovač forced all of you to take your clothes off?

Witness: Yes. This was in another apartment. I think it was somewhere in Gornje Polje, although I'm not quite sure about that. I think he forced us to strip and to stand on the table, and when he said that he would take us through the town naked and take us to the river where he would kill us.

Prosecutor: When you say "he," who are you referring to?

Witness: I'm referring to Kovač.

Prosecutor: And you said that he would take you through the town to the river. Did he, in fact, do that?

Witness: Yes, he did that, though when he said that he would do that, I can't remember whether it was him or Kostić who said that we should put our clothes on and then we did. After we put our clothes on, he took us to the river.

Prosecutor: What happened at the river?

Witness: I don't remember that, actually, very well. I just know I was terribly frightened, and I just kept thinking how they were going to do that, in what way. I know that shortly after that, he took us back to his apartment.

Christina Moeller:
We have heard and seen what happened to many non-Serb girls and women. What happened to their husbands, brothers, their sons and other male members of the non-Serb society in Foča was dealt with in the Krnojelac trial.

The Trial Chamber heard many witnesses giving their accounts of how they were arrested without any legal grounds, brought to the KP Dom, interrogated and imprisoned there for prolonged periods of up to two and half years. They were never given any reason why they were imprisoned nor were they ever brought before a court. Again and again, witnesses appeared before the Trial Chamber and recounted the living condi-

tions that were imposed on them while being illegally detained at the KP Dom; living conditions which the judgement described as having been "deplorable and brutal". One witness after another testified how they were housed in cramped conditions, isolated, starved, exposed to freezing temperatures, and punished for any attempts to improve these conditions a little bit by using the few means they had available. For instance, non-Serb detainees who tried to make winter clothes out of the very few blankets they had were harshly punished. The blankets were removed and the detainees were sent to solitary confinement cells where the temperatures were even colder.

While these living conditions, as the judgement documents, robbed many of the detainees of their health, they were by far not the worst aspect of detention at the KP Dom. Witness after witness also told the Trial Chamber how people were taken out of their rooms and how they heard them being tortured and beaten. The detainees could not identify any clear criteria as to why somebody was taken out of a room and mistreated or not, so everybody lived in constant fear that he could be the next one. Many of the detainees became nervous, panicky because they could not avoid hearing the moans, the cries and the screams, and sometimes killing sounds during the night. Many detainees were taken out and beaten up several times, and then brought back afterwards so that other detainees could see how they looked, how bruised they were, and hear their stories of how they were mistreated. At some point they were not brought back anymore. They are still missing. The Prosecution submitted a list of 29 persons alleged to have been killed at the KP Dom in a schedule to the indictment: Schedule C. The Prosecution presented evidence with regard to each individual person named in the schedule to prove that he was killed and how.

... everybody lived in constant fear that he could be the next one. Many of the detainees became nervous, panicky because they could not avoid hearing the moans, the cries and the screams, and sometimes killing sounds during the night.

Let us have a look at the testimony of one witness from the trial, Witness 86, who recounted what he observed with regard to one those victims, victim Number 29 on this list, whose name is Zulfo Veiz. The Trial Chamber found that while detained at the KP Dom, Zulfo Veiz was taken out repeatedly, beaten and interrogated before one day in June or July 1992, when he was taken out and did not return. Witness 86 recalled the day that Zulfo Veiz was killed as follows:

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Witness:	Witness 86
Date:	16 January 2001

Prosecutor Smith: Yesterday you gave some evidence that Zulfo Veiz was taken out of your room at about 9.00 and taken down to the administration building, and then you heard some beatings and some screaming coming from that building about 10 minutes after he was taken out. You said that the beatings and the screaming lasted for about half an hour to an hour. Then I asked you, "Did you hear anything else after this beating or screaming?" And you said that was one of the last things that happened.

Following the screaming and the beatings, did you hear anything else that was connected to this particular incident?

Witness: I heard that very late in the night, between 11.00 and 12.00 at night. I mean, between 23:00 and 24:00 hours, I heard the squeaking of brakes or, rather, wheels, and bursts of gunfire from weapons. Approximately about ten minutes later a loud sound was heard, the thump of something falling into the Drina. This could be heard well because it was about 200 metres away as the crow flies, and the silence was such we say that it was as silent as in a cemetery or in the grave. I had the impression that I could see all of this although I could not see it. I could hear and feel that this could have been his end. I'm referring to Zulfo Veiz.

Prosecutor: And how many bursts of gunfire did you hear?

Witness: Well, usually these were intermittent shots, two or three, depending on how many persons there were for that night.

Prosecutor: After this night, after Zulfo Veiz was taken out, have you ever seen him again?

Witness: No.

Prosecutor: Have you ever heard of him being alive since that night?

Witness: No. But people who were with me in the camp from that room asked one of the guards, "What's up with Zulfo?" The guard said, "He's been transferred to another camp".

Prosecutor: You also mentioned that this type of incident that occurred to Zulfo Veiz occurred to a number of other detainees who were taken out over a one to two month period from the dormitory and taken to the administration building. You said that some people were taken three or four times a week and sometimes it was just once a week, and you said you had to place a pillow over your ears to block out the screams. Is that correct?

Witness: Yes, correct. Within about two months' time, what happened to Zulfo Veiz happened to many others, whether it's 40, 50, 60, whatever. But these people were usually taken before night would fall, at 6.00, 7.00, or 8.00, and after that, such terrible screams and moans could be heard from that direction that I would take a sponge instead of cotton wool to put into my ears. And even that couldn't keep the sound out. I even had to put my pillow over my head so that this would not reach my ears and so that I would not be so ill because of all those screams.

... such terrible screams and moans could be heard... I even had to put my pillow over my head so that this would not reach my ears and so that I would not be so ill because of all those screams.

Prosecutor: Now, you mentioned after Zulfo Veiz was taken to the administration building, that there was gunfire and then the thump of his body into the - the thump of what appeared to be a body into the river. Did gunfire occur after other beatings that you've just referred to, or was it just in relation to Zulfo Veiz?

Witness: The same happened to the others who were taken out for beatings and the same procedure was involved, approximately the same: the squeaking of

brakes or, rather, wheels, then a very short trip. And in a relatively short period of time, it depended on how many people had to be finished off, there were intermittent bursts of gunfire that lasted longer, in relation to Zulfo, that is. On the assumption that this night between 20 and 21 of August, as far as I can remember, Zulfo was taken away in the evening, and four, five, six times, a loud splash could be heard, loud splashes of something falling into the water.

Prosecutor: About how many people were taken to the administration building over this period that you've just mentioned and appeared to be beaten in his way? Can you give an approximate number?

Witness: Well, that lasted for about two months. As far as that period is concerned, I haven't got any precise records, but 40, 50, or even 60 people finished in that way.

Prosecutor: When you say "finished in that way", you've stated that 40 or 50 or 60 people were beaten in that way. How many of those people came back to the KP Dom after those beatings?

Witness: No one did.

Prosecutor: Do you know who generally was committing these beatings? Who was going - who was committing these assaults in the administration centre?

Witness: I don't know. But according to information previously received, it was the military police that contributed to this the most.

Prosecutor: These particular people that were taken out and beaten in the administration building, were they selected for any particular reason over and above other detainees?

Witness: Well, for the most part, to the best of our knowledge, "special treatment" was accorded to members of the SDA, persons who worked in the municipal authorities, persons who had worked in the police before, as well as persons who were organised in some kind of SDA logistics. At least that's what people said.

Prosecutor: How well known amongst the prisoners, amongst the detainees, was this practice of beating and subsequent hearing of shots?

Witness: Well, everybody heard it. Part of the detainees would see them leave but no one would see these men return. Ninety-nine per cent of all detainees could hear these screams.

Prosecutor: This practice of people being taken out and beaten and never being seen again, what effect did that have on you whilst you were in prison?

Witness: Very hard. I don't know what the right term for this would be, but it was horror.

Prosecutor: Other than these people that you mentioned were taken into the administration building and beaten, were there other detainees that appeared to have disappeared from the KP Dom whilst you were there?

Witness: Yes. That was, as they say, "legal", under quotation marks. Certain groups would go to pick plums or to do other things in groups of 10 or 15, which later did not return at all, nor did we receive any information as to what had happened to them. But only later it turned out that they were out on a road of no return.

Prosecutor: Other than the detainees that you've mentioned that were beaten in the administration centre, how many- can you put a number as to the amount of detainees that were at the KP Dom whilst you were there and were never seen again afterwards? If you're unable to say, just say so.

Witness: According to our records, records were kept every day because we went in the direction of the restaurant for about 100 meters, and I said in my statement that sometimes one or two groups would be brought together as they went out. We knew every day how many people there were within the camp. We also knew how many people were in solitary confinement. In my assessment, between 700 and 800 people had passed through the camp.

Prosecutor: In the time that you were there, did you have any assessment as to how many people were missing after being in the camp? Only from the time that you were there.

Witness: In that period about 100 persons disappeared. Perhaps 110 or 115 even, but around 100.

Prosecutor: And does this include the people that were beaten in the administration building in the evening or is that number on top of that?

Witness: No. That is the total number.

Christina Moeller:
Another important charge in the Krnojelac indictment concerned forced labour. Detainees were forced to perform a variety of different work. They were not asked whether they wanted to work and they were not paid for it. The most inhumane kind of work was imposed on three detainees - they were used as human mine clearing devices.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Witness:	Witness 86
Date:	15 January 2001

Prosecutor Smith: Thank you. Now I'd like to go back to the topic of labour at the KP Dom, labour performed by detainees. You mentioned earlier that about 50 people seemed to be involved in the performance of labour at the KP Dom whilst you were there, and you listed a number of groups and the type of labour they were involved in. Do you know whether some prisoners were forced to clear mines?

Witness: Yes. It was tragic to watch one of them who drove a lorry every day in front of the column or a part of transport or men, according to the information, a lorry, a truck, which was used as a de-miner. There were three of those men, as far as I can remember, and I can especially single out one who perished rapidly, who in about 15 or 20 days time, he could not walk without a stick any longer so he quickly withered. I can give you his name if you want me to.

Prosecutor: Yes, the name of that person and also the name of the other two.

Witness: This person that I just mentioned, his nickname was Hrušćo, and his last name is Islambašić, and it was both funny and sad to look at how he was physically fading out. Another one was Hamed Čelik. Hamed Čelik. And the third one was Goša Kukavica. That was his last name.

Prosecutor: Do you know the first name of Islambašić? Not his nickname but his first name?

Witness: It escapes me. I know that the other one was Hamed Čelik, and Islambašić is - no, I simply can't. I know where he works to this day in Sarajevo.

Prosecutor: And is it your evidence that these three men were asked to drive lorries to clear mines in front of some other vehicles?

Witness: I - we know. We heard from them what they did because they told us what they had to do, and that is why I said and I underlined how horrible that job was. It wasn't difficult to drive the lorry, but the uncertainty, whether they would survive. And it was this psychological and physical torture that he - that his withering away was so conspicuous that he eventually had to use a cane, a stick.

Prosecutor: Who were they clearing the mines for?

Witness: As a rule, according to their story, they would drive a lorry empty and would move in the direction towards those places which had been the sites of the - scenes of conflict or fighting between the BH army and the SDS. So those were- that was the way to clear the mines, to de-mine the infantry or anti-tank mines, to have a lorry go first, and if it comes across a mine then it blows up and the area for others is clear, I mean, for those behind the truck. They have then a clear area in front of them.

Prosecutor: And on about how many occasions were they asked to do this? On how many occasions did they drive these lorries to clear the mines?

Witness: I don't know how many times, but the feeling I have is that they did it every day.

Prosecutor: Did these three men tell you about this or did you hear this through other prisoners?

Witness: I heard it from them personally. It was straight from the horse's mouth while I was in the camp.

Christina Moeller:
I will conclude with another video clip that relates to Krnojelac's defence that he was not the Warden of the entire KP Dom and had nothing to do with the so-called military part of the prison. Many witnesses' testimonies rebutted this allegation, which the Trial Chamber also rejected.

The following sequence from the testimony of witness Ekrem Zeković demonstrates with regard to the forced labour regime operated in the KP Dom how involved the accused really was.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Witness:	Ekrem Zeković
Date:	21 February 2001

Prosecutor Kuo: Now, let's talk about the metal workshop. When you worked there, who was your supervisor?

Witness: The supervisor of the metal workshop was Relja Golijanin.

Prosecutor: Your Honours, in Exhibit P3, which is the employee list, this is listed as Number 40.

Judge Hunt: Thank you.

Prosecutor: Do you know who was his boss, who was above him in the KP Dom structure?

Witness: The Warden of the KP Dom.

Prosecutor: Who was that?

Witness: Milorad Krnojelac.

Prosecutor: How did you know that he was the Warden?

Witness: Of course I did. I knew that as soon as I got detained. The people who had been detained before me knew that. Also later this was corroborated. I also had direct contacts with him within the metal workshop, and everybody addressed him as "Mr Warden."

Prosecutor: What kind of contact did you have with him in the metal workshop?

Witness: In the summer of 1992 we were supposed to do some locksmiths' jobs at his house. We were making a staircase and some railing, and then he would come to see us at the metal workshop and he had contact with us.

Prosecutor: Did he speak to you inside the metal workshop?

Witness: Yes.

Prosecutor: What did he say?

Witness: Once we were doing something, he came and he gave us some kind of new instructions. One of the workers who was working with me - he was from Jeleč - said, "Relja told us to do something different". And he said, "You just do it the way I told you to do it and tell him that Micko said so".

Prosecutor: And while he gave this instruction, were you or the other worker working on the metal staircase for his house?

Witness: Yes.

Prosecutor: Did you ever actually go to his house?

Witness: Yes.

Prosecutor: When was that?

Witness: Well, that was in the summer of 1992. I don't know the exact date now. It was in August, possibly the beginning of September, something like that. I went two or three times.

Prosecutor: Could you tell us the condition of Mr Krnojelac's house when you saw it?

Witness: Burned.

Prosecutor: And what were you supposed to do there?

Witness: We were supposed to make a staircase that would lead from the second floor to the attic, and also some kind of railing. I don't know.

Prosecutor: How many detainees went?

Witness: Two or three of us went. It depended. Usually three. I went three times.

Prosecutor: During those three times, did you see Mr Krnojelac there?

Witness: Yes. He stopped by once.

Prosecutor: What kind of contact did you have with him? Did he say anything?

Witness: Well, he came to see how things were going. I don't know. Talked to the guards. There was a guard with us invariably, of course.

Prosecutor: So would you say it was obvious that you were detainees from the KP Dom who were there to work?

Witness: Absolutely.

Christina Moeller:
Let me end with one final remark relating to an issue that was already addressed this morning. Ms Uertz-Retzlaff has explained why only a very small number of perpetrators could be indicted and tried at the Tribunal. She has expressed her hope that local authorities will follow up on that in due time to prevent other perpetrators from getting away unpunished. She stated that those who followed the trial will know who they are. Let me add to that. Wherever the Trial Chamber was satisfied beyond reasonable doubt that the witness had identified additional perpetrators who victimised either themselves or another victim, the Chamber spelled these names out in both Trial Judgements. When you look at the judgements you will see that this was done with regard to quite some incidents and quite some names. The names are thus out in the open, documented and easily available for the local authorities. So both Foča judgements can enable local authorities to initiate further investigations, if only they want to do so. I share Ms Uertz-Retzlaff's hope that this will happen in due time and I wish you the very best with this endeavour. Thank you very much for your attention.

Session Four
Judgements

Catherine Marchi-Uhel Senior Legal Officer, Appeals Chamber, ICTY:
Allow me to introduce myself briefly. I am a judge, a member of the French judiciary since 1989. I joined the Tribunal in 2002. I am serving with the Appeals Chamber of this Tribunal as a Senior Legal Officer. In the Krnojelac appeal, I was responsible for supervising the preparation of the case, for the appeals hearing, assisting the Judges during the deliberation process, supervising the drafting of the judgement, and writing part of it.

What I would like to do now is talk about the outcome of the trials. The judgements are quite dense documents. The Judges and the legal assistants put into them as much as they could to set up the facts, to explain how the court evaluated the evidence, to establish the crime, to acquit when necessary, to establish an accused's level of responsibility, and to sentence.

After all the evidence is gathered and presented in court, the parties give their closing speeches. This is the end of the trial *per se*. The Trial Chamber assesses the evidence and Ms Moeller explained the key aspects of this phase of the process. For example, as Ms Moeller explained, the Trial Chamber had to consider what weight to give to the minor inconsistencies which had occurred between the statements witnesses had given to investigators and their testimonies in court.

However, there is one aspect of this process of evaluating the evidence that I would like to discuss. It is related to the identification process.

The Trial Chamber was aware of the possibility that an error in identifying the accused could occur, especially when the accused, or rather the person who perpetrated the crime, was unknown to the victim when the crime occurred. Accordingly the Trial Chamber placed considerable weight on the descriptions that the witnesses gave. It considered carefully whether the evidence from other witnesses actually supported the identification made by the witnesses. What the Trial Chamber did not do, despite the expectation from the Prosecution and the witnesses, was to give weight to the "in court" identification. You will recall that you heard that each witness who was a victim as well was asked to identify the perpetrator in court.

In the Kunarac case, the Trial Chamber considered that "because all of the circumstances of a trial necessarily lead such a witness to identify the person on trial" (or when there are several accused, at least the person on trial who most resembles the perpetrator) the Trial Chamber considered that no positive probative weight will be given to these "in court" identifications. Therefore, the Trial Chamber only relied on identification made through the witness statement or testimony, by way of a description of the perpetrator.

Now let us move to the Trial Chamber's findings:

The judgement itself is a written document. However, the day the judgement is delivered in court, the Presiding Judge only reads a summary of it. In the clip you are about to see from the reading of the Kronojelac judgement, you will hear Judge Hunt, the presiding judge, discussing some of the major aspects of the situation in Foča, as well as the Defence position that Kronojelac was merely detaining prisoners of war, but not civilians.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Trial Chamber Judgement	Judge Hunt
Date:	15 March 2002

A vast number of non-Serb civilians, the overwhelming majority of whom were Muslims, had been arrested throughout Foča and its environs when the conflict broke out early in 1992, and many of the male civilians were transferred to the KP Dom. The Defence claimed that they were prisoners of war and that their detention was on that basis lawful. The Trial Chamber has not accepted this argument. A small number of detainees had been combatants, but it is clear from the circumstances in which they had been arrested that they had not been taken prisoners as such. Among the detained, there were young and elderly, ill, wounded, physically incapacitated and mentally disturbed persons. There was no suggestion in the evidence that anyone had been arrested pursuant to a valid arrest warrant. They were arbitrarily detained for periods ranging from four months to two and a half years. None had been charged with any offence, and their detention has been found to be unlawful.

Among the detained, there were young and elderly, ill, wounded, physically incapacitated and mentally disturbed persons.

Catherine Marchi-Uhel:
The Trial Chamber in the Kunarac case also described the detention conditions in Foča.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Trial Chamber Judgement	Judge Mumba
Date:	22 February 2001

On a general level, the terror expressed itself in the violent destruction of the religious symbols of the Muslims. All mosques in Foča were blown up and the ruins razed to the ground. Civilian Muslim men and women were rounded up in the villages surrounding Foča, and even as far as the neighbouring municipalities of Kalinovik and Gacko. The men were separated from the women and children. The men often had to suffer long periods of detention in the Foča KP Dom prison. Detention without justification. Some were severely mistreated when they were captured. Some were killed on the spot, often in the presence or within earshot of their families. The women and children from the Foča region were taken to collection points, such as Buk Bijela, a settlement south of Foča. From there, they were transferred by bus to Foča High School where they were detained. Some of them were later taken to other places in and around Foča, such as the Partizan Sports Hall, which was about a stone's throw away from the police station, and to private houses in Miljevina and Trnovače. There they would meet women and girls from the other two municipalities. In the above-mentioned places the terror took on another, very personal dimension.

Catherine Marchi-Uhel:
One of the main concerns in the Krnojelac case, as well as in the Kunarac case, was the

conditions in the detention facilities. Judge Hunt in the following clip offers further details relating to the conditions the non-Serb detainees were held in.

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Trial Chamber Judgement	Judge Hunt
Date:	15 March 2002

> The non-Serb civilian detainees were housed in cramped conditions making it impossible for them to move freely or, in some instances, to sleep lying down. They were isolated from the outside world and denied access to their families. They were subject to deplorable hygienic conditions. They were exposed to the freezing temperatures of the winter, and they were fed starvation rations which led the detainees to suffer considerable weight loss ranging from 20 to 40 kilograms. Many of the detainees were denied access to medical care which was available, and those requiring emergency medical attention were not handled with proper care. The non-Serb detainees were also subjected to a psychologically exhausting regime whilst detained at the KP Dom. They were exposed to the sounds of their fellow detainees being beaten and tortured, leading many to fear that they would be next. Attempts made by the detainees to improve their living conditions were punished harshly with beatings and periods in the isolation cells. As a result of these conditions, the physical and psychological health of many of the non-Serb detainees deteriorated or was destroyed. The substantial cause of the death of one such detainee was the failure to provide access to medical care, and 19 other detainees suffered serious physical and psychological consequences as a result of the living conditions of the KP Dom. Most suffered severe weight loss, many spent periods in hospital after their release, and some still require constant medication and medical care. Nearly all continue to suffer from some form of psychological disorder, including anxiety attacks, sleeplessness, nightmares, depression and other nervous conditions.

Catherine Marchi-Uhel:
The Trial Chamber first considered the broader context of what was going on in Foča, before shifting its focus to the acts and omissions of the accused, in order to determine their individual, direct or superior responsibility. The Kunarac case has sometimes been called the "rape camp case." It is cited as an example of the systematic rape of women of another ethnicity, where rape was used as a "weapon of war." When reading the summary of the judgement, Judge Mumba made the following statement: "It is to some extent misleading to say that systematic rape was employed as a "weapon of war." This could be understood to mean that an order was given to the Bosnian Serb armed forces to rape Muslim women as part of their combat activities in the wider meaning. There is not sufficient evidence for such a finding before the Trial Chamber."

According to the Trial Chamber, what the evidence in this case shows is that rape was used by members of the Bosnian Serb armed forces as an instrument of terror, an instrument they were given free rein to apply whenever and against whomsoever they wished. What the evidence shows, is that it was possible for the Serb forces to set up and maintain a detention centre for scores of Muslim women such as the Partizan Sports Hall, next to the municipal police building in Foča. Women and young girls were taken away from here on a regular basis to other locations to be raped.

In what follows, Judge Mumba continues with her summary of the judgement.

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Trial Chamber Judgement	Judge Mumba
Date:	22 February 2001

> What the evidence shows is that the authorities who were meant to protect the victims, such as the local police which had been taken over by the Serbs, turned a blind eye to their suffering. Instead, they helped guard the women and even joined in the maltreatment when approached by them for help against their oppressors. What the evidence shows are Muslims, women and girls, mothers and daughters together, robbed of their last vestiges of human dignity, women and girls treated like chattels, pieces of property at the arbitrary disposal of the Serb occupation forces, and more specifically, at the beck and call of the three accused.

Catherine Marchi-Uhel:
In relation to Milorad Krnojelac's responsibility for crimes committed in the KP Dom detention centre, the Trial Chamber did not find that he had physically perpetrated any of the crimes. In his case, he was charged with having assisted the main perpetrators and encouraged them through his inaction while he was the camp's Warden.

In relation to Krnojelac's powers as Warden, the Trial Chamber rejected his argument that his powers were limited to the civil section of the camp involving only convicted Serb detainees and to the economic unit. Krnojelac claimed that the non-Serb detainees were the Military Command's responsibility and that he had no power to act. The Trial Chamber was satisfied that the accused retained all the powers of the Warden of the KP Dom, and that he did in fact exercise those powers. Those powers included supervising his subordinates- the guards within the camp - and the detainees who were held in the KP Dom. The Trial Chamber found that the following crimes were committed:

In relation to the crime of unlawful imprisonment, the judgement rejected the Defence's argument that non-Serb detainees were prisoners of war. The Trial Chamber found that the accused, Milorad Krnojelac, played no role in securing their detention and that he could not unilaterally order or grant release of any of the detainees. However, what the Trial Chamber found is that Krnojelac knew that their detention was unlawful and that his acts or omissions were contributing to maintaining the detainees' unlawful detention.

In relation to the inhumane living conditions during detention, we have heard Judge Hunt relate how 19 detainees suffered serious physical and psychological consequences. I would like to share with you a passage from the judgement in the Krnojelac case that will give you an even clearer picture of the situation:

"Dr Amir Berberkić was brought into the KP Dom on crutches from the hospital, while he was still undergoing treatment after having been wounded in the legs. His physical therapy was interrupted by his transfer to the KP Dom. During his detention, he suffered various symptoms of malnutrition after his weight dropped from 87 kilograms on his arrival to 62 kilograms. His bones ached so much that he had difficulty sleeping, he suffered from vomiting spells and he found standing tiring. His eyesight weakened. When he was released from the KP Dom, he began to see a psychiatrist and was prescribed medication for post traumatic stress syndrome. Dr Berberkić still suffers from mental blocks and has anxiety attacks. He continues to

experience flashbacks from the traumatic events experienced at the KP Dom".

The Trial Chamber found that the accused, Krnojelac, aided and encouraged the main perpetrators who unlawfully detained non-Serbs and held them in inhumane living conditions.

The Trial Chamber found that the non-Serb civilian detainees were systematically beaten and mistreated while they were detained at the KP Dom. The offenders were not only the KP Dom guards but also soldiers and military police who came from outside the detention facility. Krnojelac was *not* responsible for the actions of the soldiers and the military police. However, he was responsible for the actions of KP Dom's guards, who permitted the soldiers and military police to enter the KP Dom in order to mistreat detainees. The Trial Chamber found that over 50 incidents of beatings constituted inhumane acts and cruel treatment, which means that they were serious enough to amount to war crimes and crimes against humanity. The Trial Chamber found that Krnojelac knew about the beatings. Peter Mitford-Burgess already described to you that the KP Dom's administration building was right in front of the place where the beatings took place. Because he knew about the beatings and because he failed to take any appropriate measures to stop them, which as a warden he was obliged to do, the accused encouraged these acts by his subordinates. The Trial Chamber found that Krnojelac should have acted as a superior to punish those who had beaten non-Serb detainees and prevent further beatings and that he failed to do so. It therefore found him guilty of this charge.

Krnojelac was also charged with responsibility for 11 incidents of torture committed against 14 detainees. When we use the term "torture," we mean beating with an intention to obtain information or a confession, to punish or persecute the victim. However, the Trial Chamber found that, with one exception, Krnojelac had no knowledge that the beatings committed by the guards, the military police and the soldiers were actually perpetrated for one of these purposes.

The one exception refers to a detainee called Ekrem Zeković who was beaten as punishment. It was established that Krnojelac knew about this incident. However, The Trial Chamber did not convict Krnojelac of this particular incident, because it found that he had insufficient knowledge. Therefore, the Trial Chamber acquitted him of this count. The Appeals Chamber reversed several of the acquittals, which I will come to later.

These are the crimes which the Trial Chamber found were established beyond a reasonable doubt, and which it found, or did not find, Krnojelac guilty of. There were also crimes charged which the Trial Chamber did not find to be established in the present case. The Trial Chamber objectively weighed the evidence before it and sometimes concluded that the Prosecution had not proven beyond a reasonable doubt that the crimes were actually committed. This does not mean that the crimes did not occur. It means that the Trial Chamber was not satisfied that it had sufficient evidence to convict. For this reason, the Trial Chamber acquitted Krnojelac of the crimes of enslavement, deportation and expulsion. The Appeals Chamber reversed these acquittals. The Trial Chamber took the same approach with respect to the crime of murder as it did to that of torture: it found that the Prosecution established that a crime had been committed, but that Krnojelac had insufficient knowledge, no knowledge, or no reason to know that murders would be committed. Judge Hunt makes this finding particularly clear:

(court transcript)

Case name and number:	Krnojelac (IT-97-25)
Trial Chamber Judgement	Judge Hunt
Date:	15 March 2002

> The Trial Chamber has been satisfied that, during the months of June and July 1992, detainees were called out of their rooms during the evening hours by the guards of the KP Dom and taken to the administration building to be beaten. The beatings lasted well into the evening, and the sounds of the beating and screams of the victims were clearly heard by other detainees held at the KP Dom. Following the beatings, shots were sometimes heard. KP Dom guards were observed taking part in the beatings, and blood and bloodied instruments were seen in the rooms in which the beatings occurred. Despite efforts by families, the Bosnian State Commission for the Finding of Missing Persons and the International Commission for the Red Cross, none of these persons was ever seen again after being detained at the KP Dom. The Trial Chamber has found that 26 persons were murdered at the KP Dom in this way. Although none of the bodies of any of these persons has been recovered, the Trial Chamber is satisfied beyond reasonable doubt that these persons died by being beaten to death, shot, or as a result of injuries inflicted by the beatings in the KP Dom. However, the Trial Chamber has not been satisfied that the accused knew that his subordinates were involved in the killing of the detainees, or that he should have known. There was therefore no basis established for finding that the accused was responsible for those murders.

Catherine Marchi-Uhel:
The Trial Chamber found Krnojelac to be guilty of aiding the commission of a crime, encouraging the commission of a crime by his failure to act, and failing to prevent or punish the commission of a crime when he knew, or had reason to know, that it would be committed, in other words he was found to have superior responsibility.

The situation was rather different in the Kunarac case because the Trial Chamber found that Dragoljub Kunarac, Radomir Kovač, and Zoran Vuković took direct part in the commission of several of the crimes they were accused of. The crimes that the Trial Chamber found them guilty of are the following:

- On or around 16 July 1992, Dragoljub Kunarac took Witnesses FWS-75 and D.B. to Osmana Đikića Street Number 16, where several soldiers raped them, where he personally raped DB, and aided and abetted several soldiers who gang-raped Witness FWS-75;

- On 2 August 1992, Dragoljub Kunarac took Witnesses FWS-87, FWS-75, FWS-50 as well as DB to the same place and he personally raped Witness FWS-87 and aided and abetted soldiers who raped Witnesses FWS-87, FWS-75 and FWS-50;

- On one occasion, between 13 July and 2 August in 1992, Dragoljub Kunarac took Witness FWS-95 from the Partizan Sports Hall to Osmana Đikića Street Number 16, where he personally raped her;

- The next incident is described in detail in the following video clip (see below);

- Sometime in September or October 1992, Dragoljub Kunarac went to a place called

"Karaman's house" in Miljevina. He took Witness FWS-87 to the upper floor and he raped her;

- On 2 August 1992, Dragoljub Kunarac personally raped Witness FWS-191 in the house in Trnovače and, by taking the girls to the house, he aided and abetted the soldier with the pseudonym DP6 who raped Witness FWS-186;

- From 2 August 1992 onwards, Dragoljub Kunarac raped Witness FWS-191 whenever he visited the house in Trnovače. Witnesses FWS-186 and FWS-191 were kept for several months in the house in Trnovače, where Kunarac and DP6 treated them like their private property. They did everything they were ordered to do, including the cooking, the household chores, *inter alia*. Kunarac asserted exclusive control over Witness FWS-191 by reserving her for himself. Both FWS-191 and FWS-186 were at the constant disposal of Kunarac and DP6. Kunarac offered one soldier permission to rape FWS-186 for 100 Deutsche marks in the presence of Witness FWS-191 and they were effectively denied any control over their lives.

Judge Mumba describes in detail during the reading of the judgement, the one incident which I skipped (above):

(court transcript)

Case name and number:	Kunarac *et al.* (IT-96-23)
Trial Chamber Judgement	Judge Mumba
Date:	22 February 2001

The Trial Chamber will now set out its verdict with regard to each accused. Will the accused Dragoljub Kunarac please stand. Dragoljub Kunarac, under counts 1 to 4, you were charged with rape and torture, both as a violation of the laws or customs of war and as a crime against humanity. The Trial Chamber does not accept your defence of alibi with respect to any of these charges and that applies equally for all the other counts that you were charged with in the indictment.

(…)

One evening in mid-July 1992, you and two other soldiers took Witness 183 from her home to the banks of the Ćehotina River in Foča where the three of you raped her. You personally raped Witness 183 and aided and abetted her rape by the other two soldiers by encouraging the other men while they were raping her. You further mocked the victim by telling the other soldiers to wait for their turn while you were raping her by laughing at her while she was raped by the other soldiers, and finally by saying that she would carry Serb babies and that she would not know the father. Accordingly, the Trial Chamber finds you guilty under count 11 of torture as a violation of the laws or customs of war; and under count 12 of rape as a violation of the laws or customs of war.

You personally raped Witness 183 and aided and abetted her rape by the other two soldiers by encouraging the other men while they were raping her.

(…)

By the totality of these acts you have shown the most glaring disrespect for the

women's dignity and their fundamental human right to sexual self-determination, on a scale that far surpasses even what one might call, for want of a better expression, the "average seriousness of rapes during wartime." You abused and ravaged Muslim women because of their ethnicity, and from among their number, you picked whomsoever you fancied on a given occasion. You were a soldier with courage in the field, somebody whom your own men undisputedly are said to have held in high esteem. By this natural authority you could easily have put an end to the women's suffering. Your active participation in this nightmarish scheme of sexual exploitation is therefore even more repugnant. You not only mistreated women and girls yourself, but you also organised their transfer to other places where, as you are fully aware, they would be raped and abused by other soldiers.

This behaviour calls for a severe penalty commensurate with the gravity of your crimes. The Trial Chamber therefore sentences you, Dragoljub Kunarac, to a single sentence of 28 years' imprisonment.

Catherine Marchi-Uhel:
Radomir Kovač was found guilty of having transferred four girls to his apartment in the Lepa Brena Building in Foča in October 1992. Two of them, including 12 year old AB, were kept for about a week in the apartment during which time Kovač treated them as his personal property and frequently sexually assaulted them.

On one occasion, Radomir Kovač raped Witnesses FWS-75 and FWS-87 at the same time whilst playing music on his stereo. During their time in Kovač's apartment, Kovač personally raped Witnesses FWS-75 and AB, as did other soldiers. In one instance, Witness FWS-75 refused to go with a soldier named Slavo Ivanović, whom Kovač had brought to the apartment. As a result, Kovač slapped her and sent 12 year old AB in her place. He then visited the house in which they were kept for about two weeks and there pretended to feel sorry for them. They were subsequently handed to yet another group of soldiers who continued to rape them and eventually brought them back to Kovač. The next day, Kovač sold AB and handed Witness FWS-75 over to the soldier with the pseudonym DP1. The Trial Chamber found that Kovač personally raped Witnesses FWS-75 and AB and aided and abetted their rape by the other soldiers.

While Witnesses FWS-87 and AS were kept in Radomir Kovač's apartment, Kovač and Jagoš Kostić constantly raped them. Kovač personally raped Witness FWS-87. However, the Trial Chamber did not find that Kovač knew that Jagoš Kostić raped the same witness.

On an unknown date between 31 October 1992 and 7 November 1992, Radomir Kovač forced Witnesses FWS-87, AS and AB to dance naked on a table whilst watching them.

Finally, on or about 25 February 1993, Radomir Kovač sold both Witnesses FWS-87 and AS for 500 Deutsche marks each to some Montenegrin soldiers.

Radomir Kovač was also found guilty of the count of enslavement, as well as for outrages upon personal dignity.

Zoran Vuković was found responsible for only one of the incidents charged, for having raped Witness 50 on 14 July 1992. He and another soldier took her out of the Partizan Sports Hall after they threatened her mother that he would kill her if she did not tell him where the witness was hiding. She was 15 years old at the time. He knew how old she was because he had told her that his own daughter was the same age.

The Trial Chamber sentenced Zoran Vuković to 12 years imprisonment, having convicted him of four counts.

The Trial Chamber sentenced Milorad Krnojelac to seven years imprisonment for the various crimes which I described earlier. The Appeals Chamber amended the verdict against Krnojelac in respect of all the crimes which he was found to have aided and abetted the main perpetrators. The Appeals Chamber considered that he actually had the same intent as the main perpetrators. Krnojelac exercised his duties over a period of time and had knowledge of the system in place at the KP Dom. The Appeals Chamber found that the crimes were committed as part of that system and were discriminatory in nature. The Trial Chamber should have inferred that Krnojelac was part of this system and intended to further it. Therefore, the Appeals Chamber found that he was not merely aiding and abetting, but that he intended the crimes to be committed.

As I mentioned earlier, the Trial Chamber considered that Krnojelac did not have sufficient knowledge to convict him of torture and murder. However, the Appeals Chamber considered that Krnojelac did have knowledge of these crimes, or that he had sufficient knowledge to at least investigate further what was going on in the camp. If he had no particular knowledge of actual murders being committed, he had sufficient and worrying information to start an investigation, which he did not do. The Appeals Chamber, therefore, found that he had superior responsibility for these crimes. Due to the change in the mode of responsibility for some crimes, the fact that he was found responsible as a principal perpetrator for others, and that he was convicted of two additional crimes- deportation and forced labour as an element of persecution, Krnojelac received a higher sentence. The Appeals Chamber sentenced Krnojelac to 15 years of imprisonment.

The last issue I wanted to raise concerns the consent of the victim. An element of the crime of rape is that there is no consent. This is also an element of the crime of forced labour and of the crime related to the so-called exchanges which Peter Mitford-Burgess mentioned earlier. Thirty-five of the detainees were allegedly sent for exchange in Montenegro and the Trial Chamber considered that they had consented to this exchange. The Appeals Chamber found that, given the system in place, there was no viable possibility to consent to anything, and that, therefore, these exchanges were coerced. Agreeing to work to get a bit more food, or because you fear being beaten or killed; or agreeing to be exchanged because you just want to escape the KP Dom where you are illegally detained- the Appeals Chamber did not consider this to be viable consent. This is the main reason why the Appeals Chamber considered this crime to have been established.

I can imagine that what we have spoken about today must have been very difficult for you who live in this community- it was certainly difficult for us as professionals. I hope that this exercise will be useful for you in the future. I believe that facing the truth, facing the facts, the reality of what happened and what the Tribunal has established must help you in this process. What has been established in this case is not only confined to the particular case. The testimonies which have been heard have been used in other cases already. In the Milošević case quite an important number of witness testimonies have been introduced into evidence. There will be a possibility for the accused in this case to challenge the testimony, but they are already part of the trial record. In the Krajišnik case, facts adjudicated by the Trial Chamber and confirmed on Appeal have also been accepted. This shows that the process of establishing the facts in these cases related to Foča is contributing to the process of establishing the truth in other cases, concerning other accused. I can only share the hope that the local authorities of Bosnia and Herzegovina, and in particular in this region of Foča, will now take the lead and do their part of the job. I think the Tribunal has done its part, and I am quite proud of having had a small role in this process. I thank you for your attention.

Questions and Answers Session

Refik Hodžić:
We have received over 100 questions. Unfortunately, we cannot answer all of them. However, fortunately, many of them are very similar in content. In the view of those putting the questions and quoting some information heard today, there are people who are responsible for crimes who have not been tried. Then, there are questions concerning the presentations. There is a large number of questions referring to crimes committed against Serbs in the Foča municipality.

The first question is as follows: "Why have no trials been held against the people who belonged to the Foča Crisis Staff and the Miljevina Crisis Staff?" Their names are listed here: Vojislav Maksimović, Velibor Ostojić, Petko Čančar, Miro Stanić, Nade Radović, Radojica Mlađenović, Dragan Govedarica, Pavle Elez, Vlado Golubović, Milenko Vuković and Miloš Krunić, among others. Related to this is another question: "Why have no indictments been raised against people from the military command, the police and the martial court?" There is no time to read all these names. I will ask our guests from The Hague to respond to these questions.

Hildegard Uertz-Retzlaff:
Our goal was precisely to find out who the superiors of people like Krnojelac and Kunarac were, and to indict them. However, there was always a piece of evidence missing. We heard from the Muslim witnesses that these people who Mr Hodžić just mentioned had something to do with it. But that is not enough. What we needed to know is who was responsible and who had which role within the Crisis Staff in Foča and Miljevina. We needed to know exactly what Marko Kovač, the military commander, did in relation to the KP Dom. We also needed to know what the police did in relation to the KP Dom, in particular the military police. We did indict one police commander, actually the police's chief commander. But we did not have the evidence of which role these other officials played: which documents they signed, or which orders they gave. We were not provided with this information. It is left for you investigate this here. If the organs of the Federation and organs of Republika Srpska work together, it will be very easy to gather the necessary evidence to indict other officials.

Christian Rohde:
The materials and information that the Prosecution has collected is not lost. When the Tribunal closes we will not lock this material up and forget about it. This material will be available for further investigations. In which way, and in what form it will be available to the local authorities, will have to be seen, but it is certainly not lost.

Refik Hodžić:
The next question is linked to Dragoljub Kunarac. "Dragoljub Kunarac, as we heard today, was sentenced for rape. However, he has not been tried for murders he committed and which have been proved. There are witnesses who were present when these murders were committed. Why was he not tried for these crimes and with what right has the Tribunal granted him amnesty for this? Will he ever be tried for these cruel crimes?"

Hildegard Uertz-Retzlaff:
What we wanted to do in relation to this group of rapists is to indict them all together and to have just one trial. One cannot overload such a trial by packing everything that

a person did into it. But, the fact that the Tribunal did not indict him for murders does not give him any amnesty. As soon as he is released from serving his prison term, local authorities can indict him and he can still be convicted of other crimes. Let me remind you that Zoran Vuković, who the Tribunal convicted, was also indicted and convicted of murder in Montenegro. When the man is out of jail, the Montenegrin authorities can pursue this case. Nothing prevents anyone else here in the former Yugoslavia investigating the murders these people committed and to try them.

Christian Rohde:
It is not even necessary to wait before the convicts have served their sentence to initiate proceedings against them. I do not believe that anything stands in the way of murders and other crimes that these persons committed being prosecuted. There can be no mention of amnesty. Individuals who committed murders can be indicted at any time.

Refik Hodžić:
There are a number of questions in connection with crimes perpetrated against Serbs in Jošanica, Jabuka and Slatina. I will read just one which I think best summarises all of them. "Will the Tribunal raise indictments against persons who committed crimes against Serbs in Foča municipality and when? If we want reconciliation to take place, we will need to punish perpetrators of crimes on every side. We are pleased that perpetrators of crimes against Muslims in Foča have been deservedly punished, but we also think that perpetrators of crimes against Serbs should be tried as well. In villages around Foča, members of the Army of Bosnia and Herzegovina killed hundreds of Serb civilians in a most horrific way and burnt scores of houses". In other questions, the following details are provided: the killing of 49 civilians on 23 June 1992, others were killed on St. Nicholas' Day [19 December] in 1992, and in Jošanica 55 civilians, women, children and elderly were killed in the most brutal manner. Also mentioned was the killing of 16 people in Poljice on 10 September 1992. "The perpetrators are more or less known and they are all moving freely about Goražde and Sarajevo. Will the Tribunal ever deal with these crimes?"

Hildegard Uertz-Retzlaff:
When I came to Foča for the first time in June 1996, I had a discussion with a local prosecutor and I was actually provided with copies of several of the cases that the Serb prosecutor was pursuing. I do not recall the names of the places any more, but I know that for instance on the Goražde frontline a Serb village – I do not know if this is Jošanica, but I think it is – was wiped out. I also recall very vividly that I saw photographs of the Orthodox church that was totally destroyed. Of course, I took these files to The Hague and presented them to the management. In fact, the Foča team suggested that we ourselves should undertake this investigation. However, at that time we discovered that Serb witnesses of such crimes did not want to work with the Foča investigative team because we were investigating Serb perpetrators. We transferred the cases to the section in the Tribunal that pursued Muslim perpetrators. It is correct that there are no indictments in The Hague. However, about a 1000 "Rules of the Road" cases were reviewed in The Hague involving 700 perpetrators. That means that local prosecutors will have to deal with these matters. I think it would have promoted reconciliation had we included Muslim perpetrators in the Foča case, but there was no time to do it. But it will contribute to reconciliation equally, or even more, if these cases are tried here in the local courts.

Refik Hodžić:
According to the person posing the next question, "the International Red Cross cooperated with forces that included war criminals, as did the Montenegrin Red Cross which reported refugees to the police, who were then deported to the KP Dom. The

International Red Cross provided verbal guarantees to these people that they would be protected, but these promises were false. There is irrefutable evidence to show this. Does the Tribunal have any information on the involvement of the Red Cross and will anyone from the Red Cross ever be held responsible for this?"

Hildegard Uertz-Retzlaff:
There was no reliable information to this effect. We had received indications that local authorities in Montenegro had lists of refugees who had fled from Foča to Montenegro. However, we could never confirm that and we never received reliable information that these lists definitely came from the Red Cross. This is a presumption that some people have, but we could never verify it.

Refik Hodžić:
Incidentally, some of these questions contain a lot of information, such as names of missing persons and names of suspects. We will hand this over to Tribunal representatives to be passed on to the relevant persons. Here is a specific question linked to something we heard today. "Can the accused see the protected witness, unlike us who were unable to see the witnesses?"

Christine Moeller:
Yes, indeed. As I mentioned earlier today, the accused can see protected witnesses and can also hear their voices. Protective measures protect witnesses from exposure to the public. They do not shield them from the accused or defence counsel. Both parties, as well as the Judges and the assistants are in the same courtroom and there are no walls, no shields and no distortion measures in the courtroom. The trial is entirely transparent to the accused and he has every opportunity to challenge a witness's testimony by cross-examining him or her.

Refik Hodžić:
Question: "Why in spite of so many crimes proved against Bosniaks in Foča has there been no indictment for genocide? Has genocide been perpetrated in your view in Foča?"

Hildegard Uertz-Retzlaff:
That is a very hard question. There was definitely no basis for including genocide in the indictment against Kunarac and the other three rapists because we could not prove that what they did amounted to genocide or that they acted with genocidal intent. Of course, when you look at what happened all over Bosnia and Herzegovina, you could argue these crimes were part of a genocidal campaign. Since we did not have to decide this question, we did not really look into it deeply. As far as I remember, in the Milošević case the Foča municipality was not considered one in which genocide had occurred. The evidence we had available pointed more to the conclusion that the crimes here were acts of revenge and acts of brutality and persecution intended to make Muslims leave. Judge Mumba called it "expulsions through terror."

Refik Hodžić:
"How can you mention so frequently the name of Dragan Gagović as a guilty person? His guilt was never proved, since he was never given a chance to provide a defence. On the other hand, there are even statements of Muslim women pointing to his innocence. Can a person be considered guilty if his/her guilt has not been proven?"

Hildegard Uertz-Retzlaff:
Of course not. I mentioned the fact that he was on the first indictment because we had strong evidence against him that he was involved in the rapes. He was in a position

similar to that of Krnojelac, a superior in Foča who had a duty to prevent the things that happened, which he did not do. However, we had evidence that he even committed rapes himself. This is what was in the indictment. He was not charged and of course nobody can claim that he really did it. I would have loved to have had him in The Hague to see what his case was. Unfortunately, this did not happen.

Refik Hodžić:
Question: "In whose care is the protected witness if he is even unable to return to a place where the crime has been committed against him because everybody has information about his identity? Does the Tribunal believe it is their concern? Why does the Tribunal care about the witness only while he is in the courtroom and the moment he boards the plane, he becomes nobody's care?"

Christian Rohde:
The Tribunal has a very sophisticated system of witness protection measures. We know that testifying in The Hague is very difficult for witnesses who have to leave their homes and relive situations that terrified them in the Tribunal's courtroom. What any criminal court does is hear a witness's testimony in a case. If protection measures are required, the court will implement them. In the Tribunal, we are able to provide voice distortion, face distortion, and pseudonyms. If the threat level is very great, witnesses can be relocated. However, most of the time, the Tribunal hears the witness' testimony and afterwards he or she goes back to his or her life.

Refik Hodžić:

The last group of questions relates to the process by which the Tribunal approves cases for trial before local courts in Bosnia and Herzegovina, what we call our "Rules of the Road" programme. When a local court in Bosnia and Herzegovina decides to process a war crimes case, it has to send the file to the Tribunal for a review to see if there are grounds to proceed. If there are, the case is given a standard marking "A", which means that the case can be tried before a local court. The first question is: "Why does the procedure of sending "Rules of the Road" files from the Tribunal take so long? Is this intentional procrastination so that witnesses get tired, discouraged or die?" And the second question is: "Why do IPTF (International Police Task Force) and EUPM (European Union Police Mission) issue certificates to suspected policemen who have already been marked "A" by the Tribunal as persons liable for criminal prosecution in war crimes cases?"

Christian Rohde:
Since 1996, the Tribunal has assisted in the process of identifying cases for local prosecution, what we call the "Rules of the Road" programme. Local prosecution offices in Bosnia and Herzegovina send war crimes investigation files where they want to raise indictments to the OTP in The Hague. The OTP looks into these files, but it should be recalled that this is not its main mandate. They have a very small hardworking staff which, if I'm not mistaken, had reviewed in excess of 3,500 files in the last years. If there is sufficient evidence to proceed, the file is given a mark "A", "B" if the evidence is insufficient, or "C" if further evidence is required. In relation to why it takes so long for these cases to get to trial, it should be recalled that the review process in The Hague is only one stage of the process. When a file is returned with an "A" mark, the local prosecution also has to act. The Tribunal's OTP gave a lot of "A" marks for cases, but only a small portion have been indicted, prosecuted and tried so far, which is very unfortunate.

The second question should be directed to IPTF or EUPM. It is very important that the local police force is not staffed by persons whose reputation is questionable. I believe everybody would agree with that.

Closing Remarks

Refik Hodžić:
We worked very hard today. Before you leave, I would like to ask Mr Stanković, Mr Todorović and Mr Rohde who opened the conference to give a couple of final remarks. I wish to thank you all for your patience and your contributions.

Čedo Stanković:
Ladies and gentlemen, on behalf of the hosts I wish to thank everyone for their contributions to today's conference, the members of the Helsinki Committee of Republika Srpska for its organisation and, especially, the ICTY's representatives for their valiant effort. I wish to say that this conference, as well as the last one in Brčko and all the future conferences dealing with war crimes committed in the previous war, send a clear message that everything that happened in this war should never happen to anyone again. Thank you.

Branko Todorović:
I believe that we can all agree that this has been a very difficult, moving and very serious day when we confronted something that has not been entirely suppressed and, I am confident, we wish had never happened. What is encouraging is that we seem to be together on this road in Bosnia and Herzegovina. We have all displayed seriousness, responsibility and adopted a dignified approach to those who are missing from this hall today and who are victims of serious violations of human rights and crimes that we can only wish would never happen again. As to the results of today's conference, first of all I would point out that we have seen today strength, responsibility and seriousness here in Foča to extend a brotherly hand to the victims and their families by facing the truth. This should give us hope. During today's presentations, one of the speakers said that the trials concluded before the Tribunal contain many elements, names, specific events, places, witnesses and other information for prosecutors' offices in Bosnia and Herzegovina to prosecute those who have not yet been held to account. Crimes must not remain unpunished. Let us try to imagine that we do not live in this town, but that we live in another town and that we know that next door women, girls and very young girls are being raped and abused. We would certainly be horrified and we would certainly want the criminals to be brought to justice. We must speak about these crimes as our common misfortune that must be confronted with universal and humanistic values, which I believe this community also shares. In order to have hope, we expect that the process that has begun will continue and will be supported, hopefully, by all those people whose hearts and hands are clean. Thank you.

Christian Rohde:
On behalf of my colleagues and the rest of the Tribunal who worked on cases in this area, I would like to thank you for your time. One thing that I noticed today and in other meetings like this is that, however the questions are formulated, they share a common spirit. Whether somebody asks "What about the crimes against Serbs?" or "Why did you not indict this person also for murder?" or "How can you certify a police officer who may have participated in war crimes?"- all show a uniform search for justice, how important justice is, and how important it is to deal with war crimes so that you can close this dark chapter in the region's history. The local judiciary here in Bosnia and Herzegovina has a very important role to play for a very long time to come. The Tribunal will do everything it can to assist local judicial officials in their work. Thank you very much.

Texts from trial proceedings are to be used only for reference purposes.
For definitive texts please consult relevant ICTY documents.