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Study on the capacities of the judicial institutions (courts) to address the needs and demands of specific groups: Persons with Disabilities, Roma, and women in Bosnia and Herzegovina

Author: Sevima Sali-Terzić

November 2011

Strengthening Judicial Integrity through
Enhanced Access to Justice

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Background/ Introduction

1.

1.1. Rationale of the Project

Access to Justice is a vital part of the UNDP mandate to reduce poverty and strengthen democratic governance. Within the broad context of justice reform, UNDP's specific niche lies in supporting justice and related systems to work for those who are poor, those belonging to disadvantaged groups and marginalized communities.

The legal system offers an arena in which people can hold political leaders and public officials accountable, protect themselves from exploitation by those with more power, and resolve conflicts that are individual or collective. Access to justice is therefore not only central to the realization of constitutionally guaranteed rights, but also to the broader goals of development and poverty reduction. The ability to access and use services of legal institutions, however, is distributed unevenly in most societies. Making legal institutions accessible and responsive to those belonging to disadvantaged groups is one of the major challenges that confront law and judicial reform initiatives.¹

The integrity, independence and impartiality of the judiciary are essential prerequisites for the effective protection of human rights and economic development. Moreover, judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office. When dealing with marginalized and vulnerable groups to ensure equality, judicial institutions should be sensitized and capacitated on the needs and demands of such groups.

In April 2011, UNDP Bratislava Regional Center (BRC) in collaboration with UNDP Georgia partnered with the GIZ to host an international conference on judicial integrity (*Independence, impartiality, efficiency, Transparency, competence – Modern challenges of the judicial reform in the South Caucasus: Tbilisi*). This conference revealed that there is a lack of knowledge in the region on judicial capacities in relation to three specific groups which are often more vulnerable and have difficulties in access to justice, particularly: persons with disabilities, minorities, and women.

1.2. Goal, objectives and methodology

The overall goal of this project is to enhance access to justice of three specific groups: people with disabilities (PWD), minorities (specifically Roma as the most disadvantaged minority in BiH), and women. The objective is to conduct a research and produce a study on capacities of BiH judicial institutions to address the needs of these groups. Other objectives include identifying possible entry points/niche for UNDP's further support in this area in Bosnia and Herzegovina (BiH), and to inform the regional policy and programming support.

Methodology of the research included extensive desk research on the overall situation of target groups: PWD, Roma and women. Having in mind certain conceptual questions in relation to the constitutional definition of minorities that would be explained in the next section, and the overall goal and objectives of this Study, it was decided during the consultations with the UNDP BiH that the target group "minorities" should be narrowed to researching the situation of the access to justice of Roma, as the largest and most disadvantaged minority in BiH.

¹ Michael R. Anderson in *Access to Justice and Legal Process: Making Legal Institutions Responsive To Poor People in LDCs*, at <http://siteresources.worldbank.org/INTPOVERTY/Resources/WDR/DfiD-Project-Papers/anderson.pdf> pristup 23.10.2011.

The present research primarily provides an overview of data collected in numerous relevant reports and other documents issued either by the different institutions in BiH, international organizations and bodies as well as relevant BiH NGOs, all related to the situation of specific target groups. The paper also presents a basic analysis of the current constitutional-legal framework, court organization, judicial reform issues, institutional legal services scheme, NGO legal service provision and the level of available information related to the protection of rights. The Study seeks to identify the main problems and obstacles that specific target groups face in protecting their rights and in accessing legal protection mechanisms, in particular courts.

During the research, a questionnaire on judicial integrity was sent to 31 legal professionals from different public institutions as well as to 35 representatives of NGOs (total 66 respondents), including those representing these specific target groups and those providing different kind and level of legal services. Also, direct interviews were conducted with judges, prosecutors, governmental agencies representatives as well as NGO/court users representatives. Finally, UNDP organized a Validation Workshop with the aim to discuss and validate recommendations with the research participants.

1.3. Basic information on the general situation of Persons with Disabilities, Roma and women in BiH

1.3.1. Persons with Disabilities (PWD)

There are no official statistical data on the number of PWD in BiH. The official estimate is that 10% of BiH population has some kind of physical, sensor, developmental, mental or emotional form of disability and that 30% of population is directly or indirectly affected by the consequences of the disability phenomenon.² Most of PWD are subject to isolation and unnecessarily suffer due to stereotypes and outdated practices. Also, PWD are additionally affected by poverty and social exclusion. The 2006 Policy Study³ revealed that PWD face numerous problems, including those of access to health care and related costs; limited access to education (due to which their level of literacy is lower than the average citizen); a lack of adaptation in higher educational system to the needs of PWD; a higher degree of poverty and its distribution compared to other citizens.⁴

The policy study also reveals that there is a high degree of discrimination not only of PWD in general, but also within the category. The first form of discrimination stems from the origin of disability.⁵ Disabled veterans both in the FBiH and the RS are entitled to a personal disability benefit starting with 20% disability, while civilian war victims and disabled civilians receive the entitlement only when the level of disability equals or exceeds 60%. In addition, persons in the same category of disability are entitled to personal disability benefits of different amounts, with disabled veterans receiving higher amounts of benefits.⁶

The second form of discrimination is related to the place of residence of a person with disabilities. Namely, in addition to differences that exist in the two entities, there is also further differentiation within the FBiH, since the level of social benefits including disability ones depend on Cantonal legislation.⁷

The objective of the policy and implementation measures in the area of education of children with disabilities is inclusion of children with disabilities in schools, still it is very slow. Furthermore, besides specialized schools, education institutions do not have necessary professionals to assist children, teachers and parents.⁸ The greatest problem in the area of health care is that the main principle according to which everyone should have equal access to healthcare services is not respected. Also, a large number of PWD (children in particular) are not covered with mandatory health insurance, i.e. does not have access to health insurance.

² BiH Disability Policy, adopted by the BiH Council of Ministers on 8 May 2008, available in national languages at: <http://www.poi.ba/POI-web-Sajt/POI-politika.html> (accessed: 21 October 2011).

³ Dr Žarko Papić *et al.*, Policy Study: Executive Summary and Recommendations for Disability Policy and Strategies, 2006, Directorate for Economic Planning of BiH, Federal Ministry of Labor and Social Policy, Ministry for Health and Social Welfare of RS, Independent Bureau for Humanitarian Issues (IBHI), also available at: <http://www.poi.ba/POI-web-Sajt/POI-politika.html> (accessed: 21 October 2011) and interview with Mr. Dragan M. Popović, UNDP, International Transitional Justice Specialist (11 November 2011.)

⁴ Disability is a strong determining factor of poverty; even if other characteristics such as education level, age, gender and place of residence are the same, it is more likely that persons with disabilities would be poor. *Policy Study*, note 9., pp. 28-29

⁵ Disabled veterans both in the FBiH and the RS are entitled to a personal disability benefit starting with 20% disability, while civilian war victims and disabled civilians receive the entitlement only when the level of disability equals or exceeds 60%. *Policy Study*, note 9., p. 30.

⁶ Disabled veterans with 100% disability in the category I in FBiH receive higher benefits than PWDs falling under the category of civilian war victims. At the same time, a person with 90% disability who falls under the category of disabled civilians receives almost four times less in disability benefits compared to the dis-

In general, the most frequently and most harshly violated rights of PWD in BiH are exactly those rights and sectors that are the focus of disability policies in the EU: social protection sector, healthcare sector, education sector, right to receive and disseminate information, employment and labor rights and status and financing of organizations which deal with disability. The general conclusion of the study is that disability problems are not mainstreamed, which has a significant impact on social exclusion of PWD in BiH and results in the inefficient resolution of their problems. Therefore, this policy study strongly recommends the adoption of the EU standards and policies for the purpose of the process of integration of BiH into the EU.

The very difficult position of PWD in BiH was stressed also in the Special Report on the Rights of persons with disabilities issued by the Institution of the BiH Ombudsmen in 2011. The Special Report particularly pointed out the lack of organized and systemic approach to the complex status issues of PWD, uneven practice in BiH in the treatment of PWD due to the complexity of the State organization, and lack of training of both PWD and public servants on the rights and protection mechanisms.⁹

1.3.2. Roma

The Roma are considered to be the largest national minority in both Entities. At the same time, they are the most vulnerable national minority that experiences the worst situation in relation to the protection of their human rights. As pointed out by the Council of Europe's High Commissioner for Human Rights (CoE High Commissioner), the lack of reliable data on the number of Roma continues to present a significant obstacle for the development and implementation of targeted measures to improve their situation.¹⁰ According to the 2008 Action Plan to Address the Problems of Roma in Employment, Housing and Healthcare (Roma Action Plan), the 1991 census registered 8,864 Roma, but the actual number was much higher as many Roma had declared themselves members of other ethnic groups. In 2004, BiH reported to the Advisory Committee of the Framework Convention on the Protection of National Minorities (FCNM) that there were approximately 50,000 Roma in the country. Research that was carried out by local Roma associations led by the National Roma Council confirmed that at least 76,000 Roma lived in Bosnia and Herzegovina in the first half of 2007. This appears to be the most precise data currently available on the Roma population.¹¹ The CoE High Commissioner noted yet again that Roma in BiH face marginalization seriously affecting, *inter alia*, their social and economic well-being. In particular, the lack of registration and possession of identity documents of Roma continues to represent one of the main obstacles for the enjoyment of their social, economic and civil rights. Research carried out in 2006 by the Institution of Ombudsman of the FBiH (FBiH Ombudsman) showed that in three major cities in the FBiH approximately 6,000 children were not properly registered, most of who were believed to be Roma.¹²

The enrolment rate of Roma children at all levels of education is low. Roma often lack the resources to ensure that their children receive an education, although some improvements with regard to the provision of textbooks for Roma children have been reported. As a group, Roma have by far the lowest levels of education in the country; more than 70% of Roma have never attended or have not completed primary education.¹³ According to the 2007 report by UNICEF, up to 80% of Roma children in BiH do not attend school; only 20% of Roma participate in secondary education, and less than 1% in higher education.¹⁴ Thus, Roma illiteracy remains extremely high, particularly among elderly women.¹⁵ These problems are mostly related to poverty, geographical and social isolation, the lack of identity documents, discrimination and widespread prejudice and hostile reactions within the school system itself.¹⁶

The proportion of Roma employed within the public sector in Bosnia and Herzegovina is estimated at 2–3%. This further leads to a very modest number of those who have health insu-

abled veteran with the same level of disability. *Policy Study*, note 9. p. 30

⁷ E.g. a mentally disabled person in Sarajevo Canton was entitled to KM 117 per month in benefits for care and assistance provided by another person in 2005. In Bihać in the Una-Sana Canton, this entitlement equaled KM 39, while in Mostar, a person with the same disability was not entitled to this benefit at all. *Policy Study*, note 9, p. 31

⁸ *Policy Study*, note 9., p. 32

⁹ BiH Ombudsman's Special Report on the Rights of persons with disabilities, available at: http://www.ombudsmen.gov.ba/docs/Invaliditet_ENG.pdf (accessed: 22 November 2011)

¹⁰ Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010 at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837&Site=CoeDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FEC679>

¹¹ Roma Action Plan available at: <http://www.romademadecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf> For more information on the situation of Roma in BiH, see also *Final Report: Conference on the National Strategy on Roma in Bosnia and Herzegovina – Development of Action Plans*, 2006, Conference organized by the BiH Ministry for Human Rights, Council of Europe and UNHCR, supported by the EU, at: <http://www.coe.int/T/DG3/RomaTravellers/archive/documentation/strategies/Final%20Roma%20Report-BiH%20Mostar.pdf> (accessed:

rance and access to health care. Another area of concern is housing, as only few percent of Roma have adequate accommodation.¹⁷ Roma are also the most numerous ethnic group amongst the homeless in BiH. More than 70 % of Roma do not have a house, while the rate of Roma returnees is very low.¹⁸

1.3.3. Women

As it was reported in the 2010 Alternative CEDAW Report, the current situation of support and promotion of women's human rights provides only short term results, as the changes are only visible at the legislative level, without having a real change in attitudes and understanding of gender roles in BiH society.¹⁹ Despite the progress that has been realized with regards to the development of the formal and legal framework and public policies in the field of promoting and protecting women's human rights, women in BiH still do not have equal opportunities when it comes to political participation and are underrepresented in political decision-making within the legislative, executive and judicial authorities at all levels. According to the Alternative Report, the main issues of concern regarding women's human rights are the following:

- Continuing discrimination against women in public life, including public companies and steering boards, as well as executive bodies in the economic sector.
- Stereotyped gender roles as a determining factor in the choice of profession and employment of women, and a growing trend of women educated and employed in the services sector.
- Discrimination in employment due to the lack of affirmative action measures in order to influence sex-based discrimination in the recruitment process and the fact that programs implemented by the State to stimulate employment are not specifically tailored to women and have no real impact on increasing the number of employed women.
- Violence against women, especially domestic violence, continues to be a widespread social problem in BiH, and serious violation of fundamental human rights and freedom of female violence victims/survivors.
- Trafficking in BiH has not been eradicated, it only changed its mode of action since 2006, as the victims are now young girls, BiH citizens, who are sexually exploited in motels, private houses and cottages, or taken to foreign countries.

Several reports suggest that the situation of Roma women is particularly difficult due to double discrimination that they face. The Alternative Report, e.g. points out the discrimination against Roma women in exercising their right to education, employment, health and social care, as well as other rights contributes to their social exclusion in BiH. In general, a large number of Roma girls does not attend school and is mostly illiterate. Public policies adopted by BiH in the field of gender equality and protecting women's human rights neither recognize the problems and needs of Roma women, nor provide for special measures aimed at the prevention and elimination of double discrimination that Roma women are subjected to in BiH.²⁰ Also, the survey that was conducted by two human rights NGOs in cooperation with a number of women Roma groups, suggests "a devastatingly low education level among Roma women". More than half the respondents either did not finish or finished only primary school. Only a small number of women finished secondary school, while a negligibly small number graduated from college or university. The vast majority of the respondents is unemployed or works in the informal sector. Roma women are economically dependent on family members, usually on the husband. Owing to their tradition, difficult living conditions, the violence they suffer from a very early age or by family agreement, Roma women marry rather early in life. Certain areas also show a high percentage of girls sold for marriage. Roma

28 October 2011) and UNHCR Roma Strategy in BiH, at: <http://unhcr.ba/images/stories/Lib/Roma/RomaStrategy.pdf>

¹² Submission by Bosnia and Herzegovina Working Group on Child Protection regarding the Universal Periodic Review of Bosnia and Herzegovina to the Office of the UN High Commissioner for Human Rights, 7 September 2009, at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session7/BA/BiHWGCP_UPR_BiH_S07_2010_BiH_WG_on_ChildProtect.pdf (accessed: 28 October 2011).

¹³ ETF Country Plan, 2009, at: [http://www.etf.europa.eu/webatt.nsf/0/C12578310056925BC125753900361541/\\$file/NOTE7N5DKB.pdf](http://www.etf.europa.eu/webatt.nsf/0/C12578310056925BC125753900361541/$file/NOTE7N5DKB.pdf)

¹⁴ UNICEF, "Breaking the Cycle of Exclusion – Roma children in South-East Europe", 2007, at: http://www.unicef.org/ceecis/070305-Subregional_Study_Roma_Children.pdf

¹⁵ According to some information from Roma NGOs, a large number of Romani women in BiH are illiterate (more than 65%) and in the best case have just 3-4 grades of primary school. Approximately 65% of them speak the Roma language. Source: <http://kopachi.com/articles/roma-women-in-bosnia-and-herzegovina-and-by-hedina-sijeric/> (accessed: 11 November 2011).

¹⁶ Report by CoE High Commissioner, *supra*, note 16

¹⁷ Roma Action Plan, *supra*, note 17

¹⁸ Council of Roma of the FBiH, Comments on the Implementation of the Framework Convention on the Protection of National Minorities in BiH, at: [http://www.nrc.ch/8025708F004CE90B/\(httpDocu-](http://www.nrc.ch/8025708F004CE90B/(httpDocu-)

women who marry in this manner have no other choice but to stay married as, due to tradition or the inability to return the money, their families cannot and will not take them back".²¹

Also, the RS Gender Center 2009 Report emphasizes the problems of another large group of women in BiH: women in rural areas. They are disproportionately more exposed to poverty and a hard economic situation due to very limited source of income. According to the RS Gender Center Report, women in rural areas are marginalized and their role is neglected. The quality of life in rural areas is generally poor, and access to services and infrastructures is inadequate, in particular for women. Public transportation, water supply, electricity, information and communication technologies, and other advantages of urban areas remain a big obstacle for the rural population, especially women. Due to these and other obstacles, rural women have poor education that perpetuates their already hard and disadvantaged position. Furthermore, domestic violence is a severe problem and protection against it is inadequate.²²

Another category of concern is women victims of rape or other forms of sexual violence during the war. At present, there are no reliable statistics on the number of women and men who were raped or otherwise sexually abused (rates vary from 20,000 to 50,000 victims). According to the Report submitted by TRIAL, a Swiss organization against impunity, submitted to the UN Committee against torture in October 2010, BiH has failed, *inter alia*, to amend its criminal legislation related to victims of rape or other forms of sexual violence during the war and to harmonize it with the international law. The TRIAL Report also observes that, *inter alia*, women victims of sexual violence during the war still have serious difficulties in the realization of their rights.²³ The same concern was expressed in the European Commission's 2010 Progress Report.²⁴

When it comes to women's participation in public life, the Gender Equality Law was amended in 2009, setting the mandatory minimum quota of 40% of the least-represented sex. However, as it was pointed out in the CEDAW Alternative Report, although BiH ensured equitable participation of women and prohibition of discrimination in legislation, there is no political will, cultural environment and social conditions to meet the proscribed quota adequately.²⁵ For example, the Election Law has not been harmonized with the amendments of the Gender Equality Law and still prescribes that lists of candidates must include at least 30% of the underrepresented sex. Therefore, women are underrepresented both in the legislative and in the executive branch of the government. As to women representation in the judiciary, the CEDAW Alternative Report states that among presidents of the court, only 25% are women and 16% are chief prosecutors, both less than the prescribed 40% quota set forth in the Gender Equality Law.²⁶

ments)/E1DDFCE39A48E213802570B700587783/\$file/Council-of-Roma+1.pdf

¹⁹ Alternative Report on the Implementation of CEDAW and Women's Human Rights in BiH, October 2010, available at: http://www.rightsforall.ba/eng/dw/alternativ_report.pdf; accessed: 10 November 2011

²⁰ Alternative Report, note 25

²¹ Report on Domestic Violence of Roma Women in BiH, Rights for all, ICVA and a group of Roma Women Leaders, 2010, p. 8, available at: http://www.rightsforall.ba/eng/index_eng.htm (accessed: 13 November 2011)

²² Situation of Women in Rural Areas in Republika Srpska, RS Gender Center, 2009, and the Action Plan for the Improvement of the Situation of Women in Rural Areas in Republika Srpska until 2015, RS Government, 2010

²³ The full text of the TRIAL Report to CAT is available at: http://trial-ch.org/fileadmin/user_upload/documents/reports/BiH/CAT-ES-BOS-Oct2011.pdf?utm_source=BH+Bosnian&utm_campaign=e181becae0-Alg_rie_GB5_26_2011&utm_medium=email (accessed: 14 October 2011)

²⁴ EC 2010 Progress Report available at: <http://www.delbih.ec.europa.eu/files/docs/2010progress2.pdf> (accessed: 14 October 2011)

²⁵ CEDAW Alternative Report, note 25, p. 27

²⁶ Idem., note 25, p. 28

2.

Baseline Data and Statistical Trends

Due to the absence of a recent census, the population of BiH can only be estimated. According to the 2011 estimate the total population is around 3.8 million (30 June 2011).²⁷ The three main ethnic groups ("constituent people" according to the BiH Constitution) are Bosniak 48%, Serb 37.1% and Croats 14.3% (2000 estimate). "Others" (0.6%) represent minorities and those citizens do not declare themselves either as "constituent" or minority. The urban population is 49% of total population (2010) and the rate of urbanization is 1.1% annual rate of change (2010-15 est.).²⁸ The present demographic reality might be different, due to the huge loss and displacement of people across and outside BiH during the conflict of the 1990s, although recently 1,014,340 returnees to BiH have been registered.²⁹ The next full scale census was foreseen for 2011, but the BiH Parliamentary Assembly failed for several times to adopt the relevant legislation due to political obstructions.

There are 17 recognized minorities in the BiH 2003 Law on Rights of National Minorities.³⁰ According to Article 3 para.1 of the Law, a national minority "shall be a part of the population-citizens of BiH that does not belong to any of three constituent peoples and it shall include people of the same or similar ethnic origin, same or similar tradition, customs, religion, language, culture, and spirituality and close or related history and other characteristics".³¹

BiH has a high unemployment rate. According to the 2011 Labor Force Survey in BiH (LFS) The economically active population is 1,127,000 million of which 27,6% are unemployed (26,1% men and 29,9% women).³²

According to the UNDP's Human Development Index (2011), BiH is ranked 74th. Due to the lack of relevant data, the Gender Inequality Index (GII) has not been calculated. In BiH 0.8 per cent of the population suffer multiple deprivations while an additional 7.0 per cent are vulnerable to multiple deprivations. The breadth of deprivation (intensity) in Bosnia and Herzegovina, which is the average percentage of deprivation experienced by people in multidimensional poverty, is 37.2 per cent. The MPI, which is the share of the population that is multidimensionally poor, adjusted by the intensity of the deprivations, is 0.003.³³

According to the UNDP's 2010 MDG Progress Report, a significant percentage of the BiH population has expenditure levels that are just slightly above the threshold (e.g. about 20% of the population have per capita expenditure levels between 204 BAM and 306 BAM, i.e. between 100 and 150 Euro roughly).³⁴

²⁷ BiH Statistical Agency at: <http://www.bhas.ba/>. For more information, see „Demography 2010“, BiH Statistical Agency at: http://www.bhas.ba/tematskibilteni/DEM_2010_001_01-bh.pdf (accessed on 9 November 2011)

²⁸ CEDAW Alternative Report, note 25

²⁹ BiH ETF Country Plan 2009, available at: [http://www.etf.europa.eu/webatt.nsf/0/C12578310056925BC125753900361541/\\$file/NOTE7N5DKB.pdf](http://www.etf.europa.eu/webatt.nsf/0/C12578310056925BC125753900361541/$file/NOTE7N5DKB.pdf)

³⁰ The English text of the Law is available at: http://www.almaprjavorac.com/legislation/LAW_ON%20RIGHTS_OF%20NATIONAL_%20MINORITIES_BOSNIA.pdf

³¹ The following minorities are recognized in the Law: Albanians, Montenegrins, Czechs, Italians, Jews, Hungarians, Macedonians, Germans, Poles, Roma, Romanians, Russians, Rusins, Slovaks, Slovenians, Turks, Ukrainians and "other who meet requirements referred to in Paragraph 1 of this Article", *idem*.

³² http://www.bhas.ba/tematskibilteni/LFS_2011_001_01_bh.pdf

³³ Information source at: <http://hdrstats.undp.org/images/explanations/BIH.pdf>

³⁴ MDG Progress Report BiH, at: <http://www.undp.ba/index.aspx?PID=7&RID=633>

Current Reform of the Judiciary 3.

The reform of the judicial system began with the establishment of the Judicial Assessment Program (JSAP) within the UNMIBH, in 1998. Following monitoring of the judicial system, JSAP concluded that judges had not been independent, had not viewed themselves as independent and had not been treated as independent by other institutions.³⁵ After the JSAP had ended its mandate, the High Representative established the Independent Judicial Commission (IJC) which was tasked with the supervision of the Entity and cantonal commissions/councils responsible for selecting and disciplining judges and prosecutors and to continue the monitoring and assessment of courts and prosecutors offices.³⁶ Following this decision, two Entity Councils and a State level Council were created and they operated for two years. The BiH Law on High Judicial and Prosecutorial Council (HJPC) entered into force in 2004. This Law introduced the unified Council as an independent and autonomous body with a view to ensure the independent, impartial and professional judiciary. The key competencies of the HJPC are: appointment of judges and prosecutors except judges of the Entity and BiH Constitutional Courts; disciplinary proceedings against judges and prosecutors; education of judges and prosecutors; proposals of annual court and prosecutorial budgets; judicial administration and monitoring; coordination and monitoring of the usage of information technologies; provision of comments on draft laws and regulations and on issues that might have impact on judiciary; and initiating adoption of laws and regulations related to issues that are important for the judiciary.³⁷

As of the early summer 2011, the new process of judicial reform was launched by the European Commission, also known as the Structural Dialogue on Justice (Structural Dialogue). To that end, the HJCP created the Judicial Commission for Structural Dialogue Issues in BiH (SD Commission), composed of relevant representatives of the judiciary. The SD Commission's task is to prepare and submit to the HJPC the judicial platform in relation to all issues that will be discussed in the course of the Structural Dialogue between the EU and BiH, for further HJPC's considerations and adoption.³⁸ According to recent information, the November meeting on the Structural Dialogue included the following issues: institutional reform of the appellate system of the Court of BiH, coordination of the Court of BiH and other judicial instances in the country; consolidation of the functions of the HJPC including review of relevant laws; discussion on the Law on Courts of RS; human and financial resources; financing of the judiciary; publication of judgments; and implementation of the BiH Strategy on War Crime Cases.³⁹

The main conclusions of the November 2011 meeting of the Structural Dialogue related to the backlog of cases include: the need to increase efficiency through proposals for legislative changes, monitoring of backlog reduction through the available IT management tools, management training, changes of the internal working procedures at courts, as well as renovation and modernization of buildings; removing the processing of utility cases from courts, transferring the non-judicial part of their enforcement to private or public enforcement agencies, and transferring non-contested inheritance cases to notaries; plan for the introduction of a functional system for in-court and out-of-court mediation throughout BiH be prepared on the basis of the preliminary assessment conducted by the HJPC; all stakeholders to organize a regional workshop for the exchange of good practices on the reduction of the backlog of cases, as well as on the execution of criminal sanctions.

³⁵ BiH High Judicial and Prosecutorial Council: *A Guide Through the BiH Judicial System*, page 3

³⁶ HR Decision providing the Independent Judicial Commission (IJC)

³⁷ HJPC Brochure, p.p. 3-4, available only in national languages at: <http://www.hjpc.ba/docs/vstvdocs/pdf/VTSVBrosuraHRVfinal.pdf>

³⁸ HJPC Press release at: http://pravosudje.ba/vstv/faces/kategorijevijesti.jspx?_af=141&modul=1219&kat=1220&kolona=1352 (accessed: 13 November 2011)

³⁹ <http://www.n24.ba/novost/21555/Nastavljen-sastanak-u-okviru-strukturalnog-dijaloga-o-pravosudju> (accessed: 13 November 2011)

Also, an important conclusion relevant for the current study relates to the Framework Law on Free Legal Aid. Namely, the EC requests that BiH government adopt a Framework Law on Legal Aid to ensure equal rights of citizens before the law throughout the country. Also, the EC expressed concern for the lack of specific provisions on free legal aid in some Cantons of the FBiH.

As to the professionalism in the justice sector, the EC underlines that a number of improvements are necessary, especially to increase accountability, efficiency and effectiveness throughout the sector.⁴⁰

⁴⁰ Recommendations from the European Commission, Second Meeting on the "Structured Dialogue Between the European Union and Bosnia and Herzegovina", Sarajevo 10-11 November 2011, available at: http://www.mrezapravde.ba/mpbh/mpbh_files/file/Structured_Dialogue.pdf (accessed 15 November 2011)

Legal Framework and Structure of Judiciary BiH 4.

In accordance with complex constitutional arrangements, the legal system in BiH is also organized in a complex way. There are four separate legal and judicial systems (State level, RS, Federation BiH and Brcko District). As it was pointed out in the 2010 and 2011 European EC Progress Report, these complexities pose serious challenges to the functioning of the judicial system.

4.1. Legal Framework

Bosnia and Herzegovina ratified all relevant international documents and developed a significant legal framework for the protection of PWDs, Roma and women. The BiH Constitution provides that BiH and Entities will ensure the highest level of internationally recognized human rights and freedoms (Art. II/1.), that the European Convention on Human Rights and Fundamental Freedoms (ECHR) shall apply directly in BiH and shall have priority of all other law (Art. II/2). Also, "all courts, agencies, governmental organs, and instrumentalities operated by or within the Entities, shall apply and conform to the human rights and fundamental freedoms" as set forth in the BiH Constitution (Art. II/6).

4.1.1. People with disabilities

BiH ratified the UN Convention on the Rights of Persons with Disabilities (UN Convention) and the Optional Protocol thereto on 12 March 2010. The basic principles enshrined in these documents are incorporated into the BiH Disability Policy, adopted by the BiH Council of Ministers in 2008, following the Policy Study and its recommendations.⁴¹ The Disability Policy is based on the following principles: human rights, strengthening of socio-cultural capacities and institutions, strengthening of local communities, inclusion of PWD, gender equality, social inclusion, inter-sectoral cooperation, and policy of mixed protection and accessibility of information to all PWD.⁴² In October 2009 and in July 2010 the FBiH and the RS respectively adopted the Strategy for Equal Opportunities for People with Disabilities in FBiH 2010-2014 (FBiH Strategy) and the Strategy for the Improvement of the Social Status of People with Disabilities in RS 2010-2015 (RS Strategy).⁴³

The FBiH Strategy includes objectives, measures, time-line and activities in 12 areas of interest for PWD, including "Information, communication and awareness raising".⁴⁴ One of the objectives in this area is the promotion of human rights of PWDs among public servants and PWD. To that end the following activities are planned: distribution of the European Social Charter to all relevant institutions and to PWD organizations; providing education on relevant services at all levels on the rights of PWD and in particular on the rights as set forth in the UN Convention and in the European Social Charter; and providing education and awareness raising of the PWDs in order to enable them to request the respect and practice of their rights as guaranteed by international standards.

However, due to the political and social system in BiH, the FBiH Strategy recognized that the biggest challenge in the formulation of activities in this document was the development of

⁴¹ See, *Disability Policy*, note 8

⁴² *Disability Policy*, note 8, p. 3

⁴³ Both documents available at: http://iclotos.org.ba/index.php?option=com_docman&task=cat_view&gid=35&Itemid=37 (accessed: 21 October 2011)

⁴⁴ Other defined areas of interest include: social welfare, accessible life in community and housing, health care, education, sport and recreation, professional rehabilitation and employment, family, participation in public, cultural and political life, research and development, organization of PWDs and international cooperation.

the financial projection and funding sources for planned activities.⁴⁵ Therefore, the Commission that was tasked to develop the Strategy decided not to engage in such an endeavor but decided to define the obligation of all competent institutions to ensure finances in their budgets in the General Objectives of the Strategy, as well as the obligation of all competent institutions to develop their action plans. Also, there is an obligation for the cantonal and municipal competent institutions to develop their own strategies and action plans.

Similarly, one of the defined objectives in the RS Strategy, among others, is to ensure the respect of PWDs' rights in domestic legislation through the implementation of the principles enshrined in international standards. To that end, the following activities are planned: harmonization of domestic legislation with the UN Convention and with other international documents that concern PWDs' rights; continuing synchronization of the domestic legislation with the international documents, the UN Convention and BiH Disability Policy; and support of the international cooperation of PWD and experts, institutions and organization with a view to enhance the status of PWD. Also, one of the defined objectives is to increase the awareness of PWD on possibilities of organization and provision of social services in their local communities. To that end the following activities are planned: development and implementation of the program of education of PWD and members of their families; sensitization of legal professionals and general public on the concept of service provision in communities. Another objective concerns encouraging the dissemination of information to PWD on their specific needs and possibilities. The planned activities for the achievement of this objective include: research of the current situation and needs of PWD for education on the usage of the new information and communication technologies; providing official information services through appropriate media.

The RS Strategy provides that the necessary financial resources for the implementation of defined activities will be ensured at the annual level within budgetary planning of every competent institution and in accordance with the planned activities.

4.1.2. Roma

BiH ratified the UN Convention on the Elimination of all Forms of Racial Discrimination, and Council of Europe's Framework Convention on National Minorities (FCNM) and therefore it is subject to regular monitoring and reporting of the European Commission Against Racism and Intolerance.

The BiH Law on Protection of Members of National Minorities was adopted in April 2003. In addition to this, the legislation to implement in practice the principles of this Law has been adopted at Entity levels.⁴⁶ The 2003 Law has been instrumental in ensuring the establishment of the Councils of National Minorities at State and Entity levels.⁴⁷ Also, an Advisory Board on Roma was set up as a permanent advisory body to the BiH Council of Ministers in 2002. However, in its 2011 Report, ECRI called on BiH authorities at all relevant levels "to resolve all outstanding issues with respect to the composition, functioning and resources of the various advisory bodies on national minorities, including the Advisory Board on Roma, so as to allow national minorities to participate effectively in and have influence on public life at all levels, both within Entities and at State level".⁴⁸

The authorities have launched a process of civil registration of Roma. In addition to the 2004 Action Plan on the Educational Needs of Roma and Members of Other National Minorities,⁴⁹ the Action Plan of BiH for Addressing Roma Issues in the Field of Employment, Housing and Health Care was adopted.⁵⁰ Also, measures are in place to distribute textbooks free of charge and "enrolment rates of Roma children in schools are gradually increasing".⁵¹

4.1.3. Women

There is a significant international legal framework in BiH on women's rights and gender equality. The CEDAW was ratified in 1993, and the Optional Protocol to the CEDAW in 2002. Also, BiH is a signatory to the Beijing Declaration and Platform for Action.

⁴⁵ The two Entities are responsible for the basic segments of social structure realising country's policy towards PWDs, while the state of BiH has the mandate only in some central areas of economy and social development. Going further down the organisational structure, the system is increasingly de-centralised: there are cantons, municipalities, local communities, institutions, funds, services, etc. *Supra*, note 3, p. 34

⁴⁶ ECRI Report on BiH (fourth monitoring cycle), CRI(2011)2, published on 8 February 2011, p. 7, available at: http://www.coe.int/t/dghl/monitoring/ecri/country-by-country/bosnia_herzegovina/BiH-CBC-IV-2011-002-ENG.pdf (accessed: 12 November 2011)

⁴⁷ At the State level, the Council was set up in 2008 and it has a purely advisory role. In 2007, the Council of National Minorities was established within the National Assembly of RS. A similar body was established in the FBiH in 2008, both being advisory bodies at respective legislative levels.

⁴⁸ ECRI Report, note 52, p. 39

⁴⁹ Available at: <http://www.ro-madecade.org/files/downloads/Decade%20Documents/Action%20Plan%20on%20Roma%20Education%20BiH.pdf>

⁵⁰ Available at: <http://www.ro-madecade.org/files/downloads/Decade%20Documents/Introduction%20-%20Decade%20National%20Action%20Plan%20BiH.pdf>

⁵¹ ECRI Report, note 52, p. 7

In addition, over the past ten years, BiH has developed a comprehensive domestic legal framework and established a framework of government institutions for gender equality. The Law on Gender Equality was adopted in 2003, and its amendments in 2009, as well as the Anti-Discrimination Law in 2009. Also, in 2005 both Entities adopted specific laws on protection against domestic violence. Both laws provide for the imposition of protective measures in the minor offence procedure - removal from the apartment, house or other residential premises, restraining order, prohibition of harassment or stalking victims of violence, the obligation of psychosocial treatment, the treatment of addiction, ensuring the protection of victims of violence, and measures of community service that exists only in the law of RS.

In 2006, The Council of Ministers adopted the BiH Gender Action Plan 2006-2011 (GAP) as a 5-year strategic document that aims to achieve gender equality in BiH in all areas of public and private life and an operational plan thereto. The GAP defines activities that should be undertaken in 15 different areas.⁵² In 2008, the BiH Parliamentary Assembly adopted the Resolution on Combating Domestic Violence against Women, which is a high level political document that does not have a binding character but clearly expresses the position of the State legislative body on "zero tolerance" to the violence against women. In 2009 the BiH Parliamentary Assembly adopted the Strategy for Combating Domestic Violence for 2009-2011. Also, both Entities adopted strategies and action plans for combating domestic violence.⁵³

BiH developed an impressive framework of institutional gender mainstreaming mechanisms: BiH Gender Equality Agency and Gender Centers in both Entities, with the aim to mainstream gender in all areas of public and private life.⁵⁴ These gender institutions produce reports on implementation of the CEDAW,⁵⁵ develop gender equality strategies, action plans on different identified problems, conduct trainings for public servants, provide comments to laws and regulations in terms of compatibility with the Law on Gender Equality and monitor implementation of specific recommendations of the UN CEDAW Committee.

However, NGOs that have been monitoring the implementation of BiH obligations related to gender equality issues are not quite satisfied with the achievements in this area. Although they recognize that at the legislative and institutional levels there has been progress, they emphasize that BiH authorities "are still failing or avoiding harmonizing a number of laws at State, Entity and Cantonal levels, in order to ensure the equal rights and equal treatment of women before the law". Measures taken by BiH in terms of law adoption, establishing the institutional framework, and the adoption of public policies, as well as implementation of action plans have therefore not been accompanied by substantial changes in attitudes and understanding of gender roles of women and men in BiH society.⁵⁶ Furthermore, NGOs estimate that institutional mechanisms for gender equality in BiH remain largely isolated within the institutional system due to a lack of understanding of their role and resistance to issues of gender equality and women's human rights.

4.1.4. Law on the Prohibition of Discrimination

The BiH Law on Prohibition of Discrimination was adopted in 2009 and is of a vital importance for the protection against pervasive discrimination in BiH, in particular to the protection of PWD, Roma and women. The Anti-Discrimination Law has introduced a number of novelties that can significantly contribute to more efficient resistance towards discrimination both through the judicial system, by directly demanding protection, and also through civil society advocacy activities to eliminate discrimination in laws and in practice. First of all, the Law on Non-Discrimination obliges not only public bodies but all natural and legal persons to refrain from discrimination, thus significantly expanding the scope of protection and extending the non-discrimination obligation from the public into the private sphere. Secondly, the Law on Non-Discrimination stipulates that the institution of the BiH Human Rights Ombudsman is the central institution for protection against discrimination. A Department for the Elimination of All Forms of Discrimination has already been formed within this institution and, among other things, it receives complaints and launches investigations *ex officio* in cases where any form of discrimination on any basis is determined. Apart from that, the BH Ombudsman and other competent institutions are obli-

⁵² BiH Gender Action Plan, BiH Gender Equality Agency, FBiH and RS Gender Centers, available at: http://www.figap.ba/files/GAP_BiH.pdf (accessed: 11 November 2011)

⁵³ For more information, see: BiH Gender Equality Agency at: <http://www.arsbih.gov.ba/>, FBiH Gender Center at: <http://www.fgenderc.com.ba/>, and RS Gender Center at: <http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/gendercentars/Pages/default.aspx>

⁵⁴ More information on these institutional mechanisms at: <http://arsbih.gov.ba/>, <http://www.fgenderc.com.ba/> and http://www.vladars.net/sr-SP-Cyrl/Vlada/centri/gendercentars/Pages/GenderOsnovni_pojmovi.aspx

⁵⁵ The BiH 4th and 5th Periodical UN CEDAW Report was adopted by the BiH Council of Ministers in June 2011. <http://www.arsbih.gov.ba/en/home/85-usvojen-4-i-5-un-cedaw-izvjetaj-bih> (accessed: 26 November 2011)

⁵⁶ Alternative report, note 25, p.7

ged to collect and analyze statistical data on discrimination cases and to deliver them to the Ministry for Human Rights and Refugees. The Law also transfers the burden of proof to the alleged offender if the victim proves likely discrimination. It is particularly important that the Law introduces the possibility of filing a class action, something that had not hitherto been provided for by any law in BH whatsoever. The Law also explicitly stipulates that authorities are obliged to cooperate with civil society organizations. This opens up numerous possibilities for creating and implementing strategic advocacy activities to counter prejudice and discrimination.

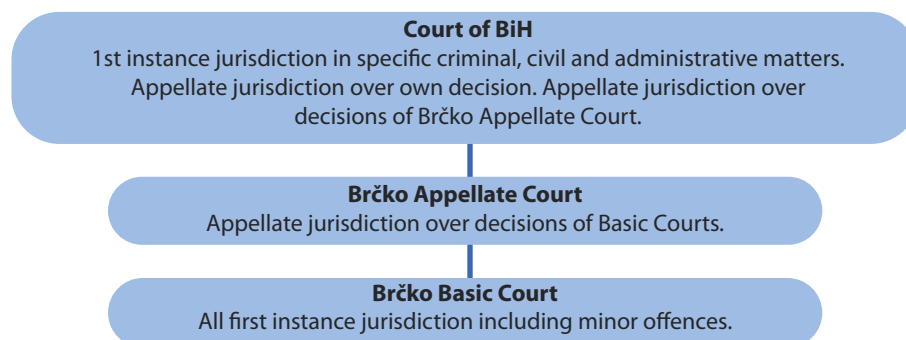
Up to date there have only been several cases based on this Law filed to courts, as victims of discrimination have been reluctant to seek court protection against discrimination. There are various reasons for this. First, this survey as well as experiences of NGO service providers (in particular "Vaša prava", a leading anti-discrimination legal aid provider in BiH) clearly show that there is not enough understanding of discrimination as a concept among the public, so individuals often do not even recognize certain behaviors as discriminatory. Second, the general public and PWD, Roma and women in particular, are still not aware of how to protect themselves from discrimination, of the mechanisms available according to the Anti-Discrimination Law or on public authorities' obligations in this respect. Third, there is a fear among those who are subjected to discrimination in employment of possible negative reactions or sanctions by the employer. Also, and most importantly, the research conducted for the purpose of this study proves that the legal community in BiH is generally not sufficiently educated about the application of international standards related to non-discrimination and methods to prove discrimination as proscribed by the Law and how to provide relief. Also, problems in the functioning of the judicial system, including a large backlog of cases and extended trial periods, do not contribute to the increase of requests for judicial protection against discrimination.

Pursuant to Article 8 para.1 of the Anti-Discrimination Law, "all competent institutions in BiH" are obliged to establish a register of all cases or reported discrimination and communicate the collected data to the BiH Ministry for Human Rights and Refugees. Furthermore, pursuant to Article 8 paragraph 4, the special registries shall be established in legislative, executive and judicial institutions for the registration of discrimination cases "in criminal, civil, extra-judiciary and enforcement proceedings".

4.2. Organization, structure and jurisdiction of courts

There is no traditional judicial branch of the government at the State level, and therefore no state judiciary. However, based on the BiH Constitution, the BiH Constitutional Court is the highest authority for human rights protection,⁵⁷ and the Court of BiH is a specific court that was established by the decision of the High Representative, in particular to deal with war crime cases and organized crime issues.⁵⁸ On the other side, both of Entities and Brčko District BiH have the judicial branches of the government and, according to Entity Constitutions, the Statute of Brčko District BiH and respective Laws on Courts⁵⁹ separate judicial systems as shown in the following charts.

BIH LEVEL AND BRČKO DISTRIKT

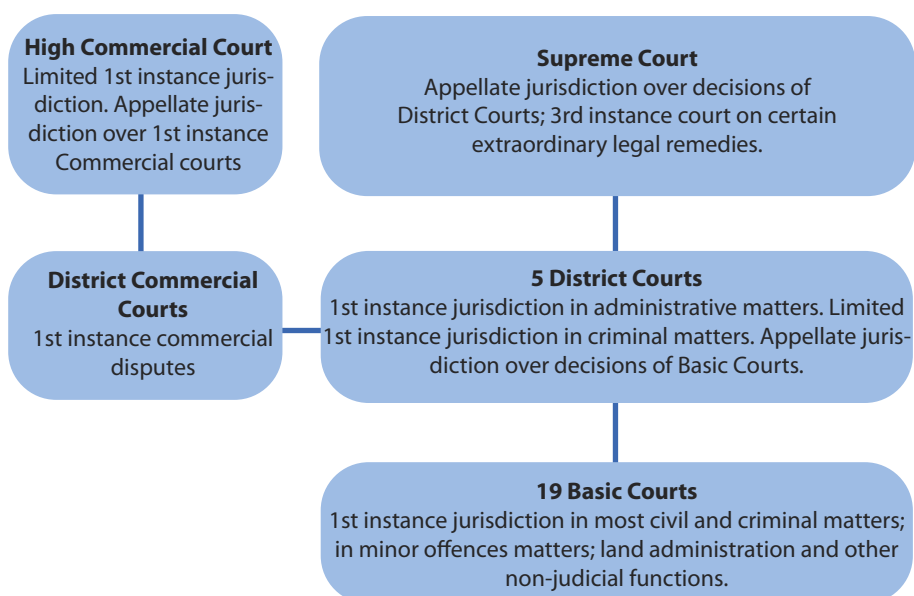


⁵⁷ According to the Art. VI/3.b) of the BiH Constitution, the Constitutional Court "shall also have appellate jurisdiction over issues referred under this Constitution arising out of judgment of any other court in Bosnia and Herzegovina". For more information on the Court's organization and procedure, see also: http://www.us-tavnisud.ba/eng/p_stream.php?kat=518&pkat=519

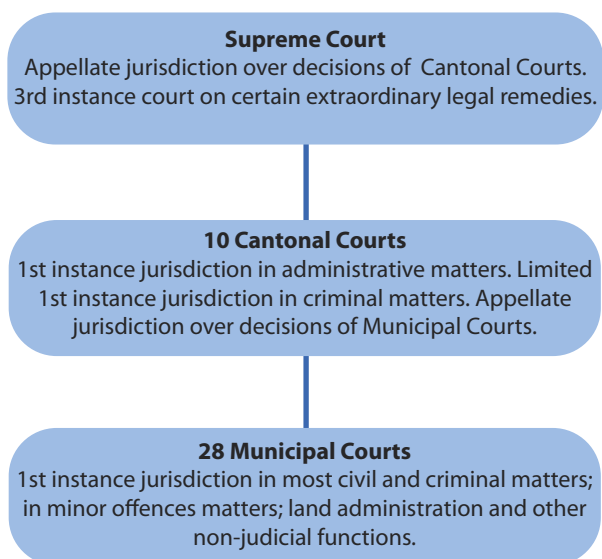
⁵⁸ HR Decision establishing the Court of Bosnia and Herzegovina, 12 November 2000, at http://www.ohr.int/decisions/statemattersdec/default.asp?content_id=362 (accessed: 11 November 2011)

⁵⁹ Law on Courts in the FBiH (Official Gazette FBiH no. 38/05, 22/06 and 63/10); Law on Courts in RS (Official Gazette RS no. 111/04, 37/06 and 119/08); and Laws on Court in BD BiH (Official Gazette BD BiH no. 19/07, 20/07, 39/09 and 31/11)

REPUBLIKA SRPSKA



FEDERATION OF BiH



According to the High Judicial and Prosecutorial Council (HJPC), there are 973 judges in the BiH judicial system (65 court presidents, 798 judges, 9 international judges and 101 “additional judges,” appointed on a temporary basis as one of the measures to tackle the backlog of cases). Out of the total number of judges, 617 are women and 356 are men. As to the ethnic representation, there are 451 Bosniaks, 325 Serbs, 157 Croats, 27 “others”, 7 undeclared and 9 international judges.⁶⁰

⁶⁰ A Guide Thorough BiH Judiciary, Second Edition, HJPC, 2009, p. 20, available at: <http://www.hjpc.ba/docs/vstvdocs/pdf/VodicKrozPravosudje2009.pdf> (accessed: 19 November 2011)

4.3. Judicial Efficiency and Public Confidence in Judicial System

The independence and impartiality of judges, efficacy and generally the reputation of the judicial authority ensure democratic control over constitutionality and legality. The assessment of whether a country is capable of offering legal certainty and protection to its citizens in accordance with its international obligations in terms of the implementation of the standards of human rights and fundamental freedoms is largely based on those criteria. The possibility of citizens and legal entities to seek judicial protection of their rights and the level of confidence in the judicial system are the main conditions for assessing the level of access to justice in a society.

The 2011 European Commission Progress Report concludes that the development of an impartial, independent, effective and accountable judiciary in line with European standards remains at an early stage. It notes that limited progress has been made in the area of judicial reform. In particular, a general lack of political will and adequate planning continued to hamper the effective implementation of the Justice Sector Reform Strategy (JSRS) 2009-2013. Also, the EC Progress Report states that independence of the judicial system is not yet ensured and that political pressure and verbal attacks on the judiciary have intensified. The attempt to undermine the independence of the judicial system remains an issue of serious concern. The complexities of four separate judicial systems continued to pose challenges to the proper functioning of the overall judicial system. In addition to this, the Progress Report recognizes several key obstacles to the proper functioning of judiciary: a moderate progress in addressing the backlog of cases (2 million of pending cases, the majority of which are court cases related to unpaid utility bills); limited progress in the area of juvenile justice and implementation of the relevant national strategy; unsatisfactory implementation of the State War Crime Strategy and low level of prosecution of war crime cases involving sexual violence.

On the other side, the 2011 EC Progress Report notes that there has been progress in the consolidation of information technology resources in courts and prosecutors' offices, and that judicial staff in courts and prosecutors' offices throughout BiH has access to the respective case management systems. The judicial web portal is fully accessible and provides access to a substantial amount of court decisions, in addition to legal opinions issued by the Entities' Supreme Courts. Furthermore, digital access to court cases has improved in most courts and is now used extensively. The Progress Report also notes that Care of Court Users Strategy, which encompasses outreach activities, is in place in most courts throughout the country.⁶¹

The UNDP BiH Special Report: Facing the Past and Access to Justice from a Public Perspective from 2010 (UNDP Special Report) revealed that nearly a negligible percentage of respondents expressed their "full" confidence in the judiciary in BiH. This symbolic confidence in the judiciary leads to a worrying conclusion that it is seriously damaged and indicates strong skepticism towards the judiciary.⁶²

4.4. Alternative Dispute Resolution

The BiH Law on Mediation Process was adopted in June 2004. The law regulates the mediation procedure, principles, the mediator's role, and the deadlines for mediation in case of an ongoing procedure. The Law also regulates voluntary mediation without initiating the court proceedings.⁶³ According to the Law, the parties in dispute may agree, either before or after initiating the court procedure until the conclusion of the hearing, to resolve the dispute in the mediation procedure. If no attempts to resolve the dispute in the mediation procedure have been made prior to the initiation of the court procedure, the judge conducting the court procedure may propose to the parties to attempt to resolve their dispute in the mediation procedure at the preparatory hearing, if he deems it appropriate (Article 4).

According to the information published on the web page of the Association of Mediators in BiH, the first pilot project was initiated in April 2004 in cases of the Banja Luka Basic Court

⁶¹ EC 2011 Progress Report, note 5, p. 11-13,

⁶² UNDP Special Report: *Facing the Past and Access to Justice from a Public Perspective*, 2010, p. 33, available at: <http://www.undp.ba/upload/publications/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf>.

⁶³ The Law on the Mediation Procedure available at: http://umbih.co.ba/eng/about_us/law.htm

and in 2005 in the Sarajevo Municipal court. Until the end of 2006 there were 590 mediations held, of which 330 were closed with settlement agreements, which is about 56% of the total number of mediations. In October 2005 The Association of Mediators in BiH formed a working group to draft the rules on mediation procedure, which would provide the conditions for the full implementation of the Law countrywide. The Steering Board adopted The Rules in February 2006, after which it started developing related forms. The Association has developed mediation guide books for judges, lawyers and users of mediation services, as well as leaflets on mediation. None of these are in any minority language. Also, there is no clear outreach strategy on the dissemination of the materials designed to possible users of mediation services.⁶⁴

4.5. Free Legal Aid in BiH

4.5.1. Public free legal aid legislation aid institutions

According to the EC 2011 Progress Report, only limited progress was made in the area of access to justice in civil and administrative trials. The legal framework formally guarantees equality before the law. However, little progress has been made in the promotion and enforcement of human rights although the legal and institutional framework for the observance of human rights is in place. Also, the system of free legal aid in Bosnia and Herzegovina remains fragmented. The State Framework Law on Free Legal Aid has yet to be adopted and free legal aid in civil cases continues to be mainly provided by privately funded NGOs.⁶⁵ The same problem was emphasized in UNDP's 2010 Report on Free Legal Aid system in BiH.⁶⁶ The Report says there is currently no law in Bosnia and Herzegovina providing for minimum rights to free legal aid for certain population categories. The Draft Framework Law on Free Legal Aid, proposed by the Council of Ministers of Bosnia and Herzegovina, has been in the parliamentary procedure since June 8, 2010. The law was not adopted in the 48th session of the House of Peoples on July 13, 2010.⁶⁷ This Draft Law dates from 2007 and has been sharply criticized by civil society organizations. In particular, the Draft Law does not provide for the possibility of NGO legal service providers to have access to budget resources for their operations.⁶⁸ BiH Ministry of Justice formed a new working group in April 2011 to re-draft the Law on Free Legal Aid. The new draft Law has been subject of the public consultations in November 2011 and is expected to be put up for adoption by the Ministry of Justice.

Although there is no State law, the legal source of the right to free legal assistance derives from the ECHR and the BiH Constitution. In addition, free legal aid laws have been enacted in some parts of the country, according to which institutions for the provision of free legal assistance have been formed. The legislation establishing the right to free legal aid has been fragmented due to the complex State organization. In Republika Srpska, the Law on Free Legal Aid was adopted in 2008.⁶⁹ This Law also regulates the establishment of the Center for free legal aid in Banja Luka as a body under the RS Ministry of Justice, as well as the Center's Offices in the five District Courts in RS and prescribes the conditions under which a person can get free legal aid in criminal, civil and administrative cases.⁷⁰ In the Federation, the situation is more complex. In absence of a law regulating this issue at the Federation level, the issue has been regulated at the Cantonal level. However, five out of ten Cantons have adopted laws on free legal aid and established free legal aid agencies.⁷¹ Brčko District has its own Law on Free Legal Aid and a Free Legal Aid Office.⁷² All these laws have been highly criticized by the NGO sector especially because they do not recognize NGOs as legal aid providers. Namely, even though NGOs have been the only ones providing legal aid to citizens in civil and administrative cases for many years and as such have a great experience in the matter, the legislators did not recognize the existence of this great potential and thus did not include them in the Law in any way.⁷³

According to the existing reports of different international organizations as well as from the NGO sector, the public legal aid offices generally do not have sufficient capacities, including well-educated human resources and sufficient financial resources, to respond to the needs

⁶⁴ Information available at: <http://umbih.co.ba/eng/publications/publications.htm>

⁶⁵ 2011 Progress Report, note 52, p. 15-16

⁶⁶ UNDP: *Facing the Past, Building Trust for Future: System of Free Legal Aid in Bosnia and Herzegovina*, 2010

⁶⁷ UNDP is providing technical support in the process of developing new Draft Framework Law on free legal aid.

⁶⁸ Also, interviews with NGO legal service providers highlight their concerns about possible bias in the legal aid provision by the state administration agencies which are intended as exclusive legal aid providers, especially when it comes to parties in dispute with administrative agencies and state in general. Vaša prava submitted their analysis and recommendations to the Draft BiH Framework Law on Legal Aid.

⁶⁹ The RS Law defines free legal aid as a "form of exercise of the right of individuals to a fair trial and equal access to justice before courts and other bodies, the costs of which are borne fully or partly by the authorities responsible for the implementation of this Law," and that those "forms of exercise of legal aid shall be actions and activities whereby the beneficiaries of legal aid are ensured protection of rights to fair trial and equal access to justice".

⁷⁰ Detailed information in UNDP Free Legal Aid Report, note 72

⁷¹ Posavina Canton, Tuzla Canton, Zenica-Doboj Canton, West Herzegovina Canton and Canton Sarajevo

⁷² For more information on the scope and substance of the legal services established under all these laws, see UNDP Free Legal Aid Report, *supra*, note 72

of the BiH population.⁷⁴ In particular, access to the public legal aid could not be evaluated as user-friendly in relation to the specific needs and demands of PWD, Roma and women. For example, Vaša Prava emphasized that most of Roma in need for legal assistance cannot access public legal aid offices as they do not have legal identifications, and therefore cannot submit necessary documents in support of their request for legal aid. PWD usually have problems with physical access to these offices. In addition to this, NGO legal service providers emphasized the lack of sufficient awareness of employees in public legal aid offices on special needs and demands of PWD, Roma and women which hampers not only access to these services, but also effective protection of rights.⁷⁵ Some NGO legal service providers say that public legal aid offices are “static and have no interest in the rights of marginalized groups, and most of these offices either cannot or does not want to provide full legal support to these groups.”⁷⁶ Also, existing cantonal Free Legal Aid Laws do not have a specific focus on gender-based and domestic violence.⁷⁷

This research, as well as all relevant domestic and international reports, clearly shows that there is no consistent system of free legal aid in BiH that would satisfy EU standards and that would ensure the access to courts and other relevant protection mechanisms in general. This leads to a conclusion that such a fragmented and incoherent system of free legal aid does not provide for the effective exercise of the right to fair trial in accordance with the ECHR and BiH Constitution.⁷⁸

As noted in the BiH Justice Sector Reform Strategy, BiH is yet to establish a viable and comprehensive legal aid system. The big challenge in this area is to find a comprehensive system that provides minimum equality before the law for all citizens of BiH, whilst allowing some flexibility for local circumstances and which is also sustainable within the current budget constraints of the justice sector.⁷⁹

4.5.2. NGO legal service providers

It is commonly recognized that the role of NGO sector in providing free legal assistance to different categories of people such as refugees and displaced population, asylum seekers, women, etc, in particular in places where public legal aid institutions do not exist is of a particular importance.⁸⁰ Also, the public opinion poll conducted by the UNDP throughout Bosnia and Herzegovina in January and February 2010 showed that, in terms of legal aid provision, an average of over 50% of those polled prefers civil society and bar associations, although slight preference is given to NGOs, which is closely related to the fact that this kind of assistance is always provided free of charge, unlike the services provided by hired lawyers.⁸¹

There are several NGOs in BiH that provide legal aid, whose scope depends on the mandate of the particular organization and its priorities. NGO legal service providers represent clients only in civil and various administrative cases and do not represent them in criminal proceedings.⁸² Some organizations are mainstream human rights organizations that also provide legal assistance to citizens, e.g. such as BiH Helsinki Committee from Sarajevo.⁸³ On the other hand, there are women NGOs that provide different kind of support and assistance to the victims of domestic or other forms of gender based violence. Most of these organizations provide only legal advice on rights and court or administrative procedures, write submissions to the courts on behalf of their clients but rarely represent their clients in courts, mostly due to the lack of financial resources.⁸⁴

When it comes to specific legal aid to PWD, Roma and women, there are only a couple of NGOs whose exclusive mandate is to represent socially disadvantaged and/or marginalized groups. In that sense, the Association Vaša Prava is a leading and the largest legal free legal aid provider in the country. It has developed into a network of the legal aid and information centers throughout BiH with four offices located in Sarajevo, Mostar, Tuzla and Goražde in FBiH, and five offices located in Banja Luka, Prijedor, Trebinje, Srebrenica and Petrovac in RS.⁸⁵

⁷³ Lejla Hadžimešić: *Report on Women's Access to Justice*, OSF BiH, 2009. Also, interviews conducted with Ms. Edita Abdibegović, Bakir Mrkonja and Amir Alagić, lawyers from Vaša prava, on 1 November 2011., Mr. Amer Homarac from the Center for Free Legal Aid of the Foundation for Local Democracy, on 3 November 2011., and Mr. Branko Todorović from RS Helsinki Committee on 2 November 2011

⁷⁴ Similar conclusions could be found in UNDP Free Legal Aid Report, *supra*, note 54; Lejla Hadžimešić's Report, note 77; Amnesty International, “*Whose Justice? The Women of Bosnia and Herzegovina are still waiting*” (Index: EUR 63/06/2009), p. 48. Also, this was a general comment made by most civil society actors contacted during the research.

⁷⁵ Interviews conducted with Ms. Edita Abdibegović, Bakir Mrkonja and Amir Alagić, lawyers from Vaša prava, on 1 November 2011., and Center for Free Legal Aid of the Foundation for Local Democracy, Mr. Amer Homarac on 3 November 2011.)

⁷⁶ Interview with Mr. Branko Todorović from RS Helsinki Committee on 1 November 2011

⁷⁷ UNDP *System of Free Legal Aid*, note 72, p. 19

⁷⁸ The additional detailed information on relevant international documents, free legal aid legislation in BiH and Entities, as well as organization and functioning of public free legal institutes and centers, including municipal legal aid offices is available in the UNDP's *System of Free Legal Aid*, note 72

⁷⁹ The document also noted that court appointed lawyers are paid months in

Although Vaša Prava earlier employed the “social criterion” in selection of cases for clients approaching them, since 2010 they began to receive cases of all individuals that are vulnerable in any way: PWD, those financially disadvantaged, civil war victims, veterans, refugees, etc., although they do not have specific funding to cover these additional costs and most of services to these clients are provided *pro bono*.⁸⁶ Currently, legal aid to Roma is the largest free legal service program within Vaša Prava. Only in 2010, they provided different legal services to 2,150 Roma clients in 3,075 different administrative and court proceedings.

Since 2010, Vaša Prava became the leading strategic litigation organization within the BiH Open Society Foundation's Antidiscrimination Program in the course of which they represent individuals in discrimination cases.⁸⁷ As to women's rights, Vaša Prava offer only legal counseling and advice, but do not represent them in court proceedings.⁸⁸

As to the representation of women victims of domestic violence, the Foundation for Local Democracy (FLD) opened the Center for Free Legal Aid for Women in Sarajevo in 2010.⁸⁹ FLD's Center provides free legal assistance for single mothers, survivors of domestic violence, survivors of trafficking in persons and women victims of war violence. The legal assistance includes free legal counseling and possibility of free representation in the court proceeding and administrative bodies.⁹⁰

arrears, if at all, and high costs for defense attorneys result in a reluctance to even inform defendants of their right to a defense attorney. BiH Justice Sector Reform Strategy 2008-2012, BiH Ministry of Justice, at: http://www.mpr.gov.ba/usefiles/file/Projekti/24_SRSP_u_BiH_EJ.pdf

⁸⁰ UNDP's *System of Free Legal Aid*, note 72, p. 36

⁸¹ UNDP 2010 Special Report, note 68, pp. 42-43. It is also noted that the categories of respondents which are socially most vulnerable and most of whom are civilian or military victims of the war, have the information about NGOs which provide free legal aid. A high percentage of women and rural dwellers that are aware that such organizations exist is also encouraging.

⁸² Free legal representation in criminal proceedings is regulated by the criminal legislation at State, Entity and Brčko District legislation and in the existing free legal aid legislation. More information available also in UNDP *System of Free Legal Aid*, note 72

⁸³ In 2010, the HC Legal Office had total of 4,778 complaints received over several years and completed 1,646 cases thereof. Also, in 2010, they provided 1,175 legal advices. The cases related to employment and labor related issues, housing, pensions and social welfare issues, mobbing, sexual harassment in work place and other forms of discrimination, etc. The HC Legal Office did not represent clients up to 2009,⁸ but now they represent clients “in a difficult financial situation, and in particular unemployed women or single mothers”. In 2010 they represented clients in two cases. Interview with Ms.

Branka Inić from BiH HC on 14 November 2011, and Report of the HC Legal Office for 2010, p. 2, available at: <http://www.bh-hchr.org/izvjestaji.htm> (accessed 14 November 2011)

⁸⁴ This Study does not aim to analyze the scope and quality of work of different NGOs providing different kind of legal services, but to emphasize the importance of this resource that is available to citizens. More information on particular women NGOs and the level of legal services that they provide is available in *Report on Women's Access to Justice*, note 61, p. 17-26.

⁸⁵ The legal aid program encompasses a wide range of activities including different legal areas such as labor law, property relations, family law, social rights, status rights, pension and disability insurance, rebuilding and reconstruction, rights of refugees from the Republic of Croatia targeting different categories of beneficiaries from the most vulnerable and struggling of them, such as displaced persons, returnees, refugees, minorities, asylum seekers, victims of human trafficking to vulnerable local population. Vaša prava, among other activities, provides free legal aid, information to the beneficiaries on their rights and obligations, legal advice, drafting various submissions, representing the beneficiaries in the procedures before court, state institutions, organs and bodies consistent with the relevant laws and the international instruments for human rights protection, providing other forms of the legal aid in order to protect the rights and interests of the beneficiaries, including before the European Human Rights Court if necessary. More information available at: <http://www.vasaprava.org/Home.htm>

⁸⁶ Interview with Vaša prava, note 81

⁸⁷ Up to date, they have initiated several cases claiming discrimination of disabled children in public schools, following the positive ruling in so called "Mostar case" (see a short story in the section 7.2.a); filed 2 cases challenging the State supported segregation in public schools in FBiH; and initiated court procedures in at least 8 cases related to mobbing and various forms of discrimination in labor disputes that includes women and Roma. All of these cases are still pending before competent courts. Interview with Mr. Zlatan Terzić, attorney representing clients for Vaša prava, on 1 November 2011.

⁸⁸ BiH OSF has developed a specific project in cooperation with Vaša prava aiming at establishing a unit for legal aid and representation of women in BiH with offices in Sarajevo and Mostar (FBiH) and in Banja Luka, Prijedor, Srebrenica and Trebinje (RS). The project proposal "Unit for Legal Aid and Representation of Women in B&H" was recently submitted to the OSI's International Women's Program.

⁸⁹ More information available at: <http://www.fld.ba/novost/9566/center-for-free-legal-aid-for-women-in-bh> (accessed 3 November 2011)

⁹⁰ Since the beginning of its operation, FLD's Center had assisted 926 clients. The majority of cases relates to the assistance in getting a restraining order in cases of domestic violence since FLD has SOS telephone line and a safe house for women victims of domestic violence. FLD's Center has also an outreach program implemented through dissemination of brochures and guide books containing basic legal information, analysis of laws, guide books for the police in cases of domestic violence as aim "to provide basic information in order to legally empower those in need". Interview with Mr. Amer Homarac on 3 November 2011. Unfortunately, the data on the exact number of cases in which they represent clients in court proceedings was not available at time of the interview nor it could be found on the web page of FLD.

Professional Education of Judges 5.

Training for the judiciary (judges, prosecutors and court associates) is provided by the Judicial and Prosecutorial Training Centers (JPTC) of the two Entities that were established according to the laws adopted in each Entity.⁹¹ Under these laws, professional training and education is obligatory for all judges and prosecutors, and HJPC sets minimum conditions that every judge and prosecutor must fulfill annually in this regard. JPTCs organize professional training under the auspices of the HJPC, develop the plan and program and conduct the training in different areas, including implementation of material and procedural laws, ethical standards, etc. There are 12 modules in JPTCs training programs, and judges and prosecutors must participate in 4 of them annually in order to get a certificate. There is a separate module on human rights. This module includes a seminar on the implementation of the ECHR; another seminar on „Segments in the protection of human rights and freedoms“ that includes, *inter alia*, the Law on Prohibition of Discrimination; a workshop on gender equality. The new 2011-2014 Mid-term JPTCs Strategy provides a shift from general towards more specialized training and education of judges and prosecutors.⁹²

⁹¹ For more information on JPTCs, see www.fbih.cest.gov.ba and www.rs.cest.gov.ba

⁹² Interview with Mr. Radoslav Marjanović, Deputy Director and Mr. Almir Tabaković, Senior Adviser, FBiH JPTC on 14 November 2011

6. Availability, Accessibility and adoptability of court procedures and processes

6.1. Access to courts

⁹³ Each Entity has its own Law on Civil Proceedings as well as Brčko District, and there is also the Law on Civil Proceedings before the Court of BiH. The same situation is with the Laws on Administrative Disputes. According to the results of the Council of Europe's Study on Compatibility of Laws and Practice in BiH with the Requirements of the ECHR, concluded that the main problems with access to courts in the sense of Article 6. of the ECHR is not necessarily in legislation but in practice, in particular

⁹⁴ Compatibility of Laws in BiH with the Requirements of the European Convention on Human Rights, 2006, Council of Europe, available at: http://www.coe.ba/web2/en/component/docman/cat_view/56-judicial-system--sudstvo-pravosue/128-compatibility-of-laws-in-bih-with-echr.html

⁹⁵ More details available in UNDP *System of Free Legal Aid in Bosnia and Herzegovina*, note 70, pp.33-34

⁹⁶ Interviews with Vaša prava and FLD Center for Free Legal Aid, note 81, as well as interview with Ms. Fedra Idžaković from Rights for All on 11 November 2011.

⁹⁷ According to previous civil procedural laws, the judges and court officers were able to provide assistance to indigent or unskillful clients. However, the new civil procedural laws makes this kind of legal assistance im-

In general, Laws on Civil Proceedings as well as Laws on Administrative Disputes at all levels in BiH do not pose specific obstacles for individuals to access them in order to seek protection of rights.⁹³ According to the results of the Council of Europe's 2006 Compatibility Study, the main problems with access to courts in accordance with Article 6 of the ECHR are related to the implementation of legislation, not necessarily the existence of legislation *per se*. In particular, it was noted that following a comprehensive legislative reform of civil procedural system and laws, the lack of the Law on Free Legal Aid could seriously jeopardize the right to access to court for individuals, who may not necessarily understand the complex procedures.⁹⁴

Judges and lawyers interviewed in the course of this research unanimously stated that laws treat all persons equally in terms of access to court. They do, however, recognize that socially disadvantaged groups face financial restraints due to court fees and lawyer costs. As to the court fees, the procedural laws provide for exemption that depends on the financial situation of the person who is seeking exemption. Therefore, the information on the number of requests for the exemption of court fees could be a realistic indicator on the needs of citizens for free legal aid in civil proceedings. However, not all courts have data on the number of cases in which individuals applied for exemption from court fees.⁹⁵

Also, as it has already been mentioned, the free legal aid regulations at the RS and cantonal level (5 cantons passed the law on free legal aid), as well as practices, differ from each other and hamper the effective exercise of the right to equal access to courts. Interestingly, as a rule, all these regulations provide free legal aid to vulnerable individuals only if they are residents in the area of a given entity, district or canton, and provided that they fall under the defined „social category“ based on financial situation that must be supported by specific documentation. However, the financial threshold is rather high, and the procedure of deciding on the right to receive free legal aid is often too long to be effective.⁹⁶

On the other side, citizens that reside in places that do not have public free legal aid offices, including those in rural areas, have no possibility to access free legal aid which puts them in a disadvantaged position, even more than before the 2002 civil procedure legislative reform.⁹⁷

6.2. Access to information

Citizens are inevitably interested in obtaining legal information. The UNDP Special Report revealed that “the expressed level of interest may be described as high, in view of the abo-

ve-mentioned circumstances. In the entire sample, the interest in the information on legislation was expressed by over 60% of citizens in both entities, and 50% of citizens in Brčko District. The difference in responses between men and women is not significant since the level of interest of women is 9% lower than that of men.⁹⁸ Naturally, citizens' interest does not relate to all legislative areas, but to those that concern them directly (criminal proceedings, civil proceedings, housing legislation, property legislation, etc.) and therefore the Special Report notes in particularly the high level (50%) "of interest in information amongst the respondents with a lower level of education, socially vulnerable or socially powerless categories, such as rural population, persons with only primary level of education, or women".⁹⁹

Laws and other regulations are always published in official gazettes of the State, Entity, Brčko District or cantonal levels in the Federation depending on the legislative competencies. However, official gazettes are widely available to public bodies and institutions as well as to the legal community, and also via internet. According to the UNDP Special Report some 60% of all respondents are aware of the Official Gazette in which all laws and legal regulations are published. The majority of them are in the Brčko District (almost 76%), in the RS 65%, and in the FBiH 55%. In the gender structure, 55% of women and 64% men are aware of this publication. However, "only one third of the sample gave a positive answer to the question of whether they knew that the Official Gazette is available on the Internet and that it has a website, which is directly related to the Internet culture in BiH (i.e. the ability to use information technologies and computer literacy) which is still at a relatively low level. [...] Still, it is not possible to conclude from those answers to what extent the respondents utilize the Official Gazette (either print or electronic version) as a source of information, or whether they only know that there is such a possibility".¹⁰⁰ Another factor that must be taken into account is that the access to the Official Gazette is possible only through purchase of a print version or through subscribing to the electronic version which must be paid for.

All courts in BiH have web pages. The vast majority of them use "pravosudje.ba" domain developed under the auspices of HJCP and therefore the web pages of those courts are uniform. However, the kind of information that could be accessed through these web pages differs. For example, some courts provide detailed information on particular proceedings, documents that have to be submitted and even court fees with bank accounts. Others, on the other side, provide only basic generic information without specific details.¹⁰¹ There are no information desks in courts specifically designed to provide where specific information on laws, regulations, procedures and free legal aid could be obtained.¹⁰² However, the court staff is able to provide some basic information and direct court users to relevant court services, but they are not allowed to provide specific information on specific procedures.¹⁰³

Some surveys conducted within USAID's Justice Sector Development Program II analyzed tendencies in citizens' perceptions on judicial reform at local communities' levels.¹⁰⁴ The survey in municipalities of Zenica-Doboj Canton, for example, shows that 80% of citizens receive information on court functions through media, and much lesser from courts. Also, 90-95% of those polled knows that different information materials could be obtained in court buildings most of which concern information on land issues, inheritance procedures, obtaining of different permissions and certificates, divorce procedures, mortgages and appeal procedures.¹⁰⁵

A useful brochure on the information for court users was developed by HJCP in the summer of 2011.¹⁰⁶ Although it is available on the internet, it is still not clear how it would reach the general public and in particular PWD, Roma and women. The HJCP's outreach plan is therefore vague. In general, although the development of judicial information technologies has been praised by different donors and HJCP, it is quite clear that it is not enough for the effective access to relevant legal information, particularly with regards to the most vulnerable and marginalized groups such as PWD, Roma and women in particular in rural areas.¹⁰⁷ Also, there is no specific information related to the special needs and demands of PWD, Roma and women for their effective access to justice.

possible due to the need to preserve impartiality of the judiciary. See, UNDP *System of Free Legal Aid in BiH*, note 72, p. 35

⁹⁸ UNDP Special Report: *Facing the Past and Access to Justice from a Public Perspective*, 2010, note 68, p.37, available at: <http://www.undp.ba/upload/publications/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf>.

⁹⁹ *Idem.*, p. 38.

¹⁰⁰ *Idem.*, p. 38

¹⁰¹ E.g. at the web page of Sarajevo Municipal Court (the biggest municipal court in FBiH) contains information on court jurisdiction, relevant laws and court organization. However, practical information are scarce, and relate to the most basic information mostly directing to court offices where "more information could be obtained" (e.g. the information on the registration of a company states that "more information could be obtained in room 115 at the 1st floor") or relate to the obtaining of land and other certificates. There are no information on free legal aid providers or exemption from court fees. See:

<http://www.oss.ba/?jezik=bos&x=2&y=64>. Also, most of the courts have no information on free legal aid providers, but there are exceptions. The random web search shows that e.g. courts in Mostar, Zenica, Tuzla, Goražde, Trebinje, have information on free legal aid providers (both public and NGO) and detailed information on court fees and exemptions thereof. However, these courts also have only scarce information on realization of particular rights.

Institutional gender mechanisms in BiH and the BiH Ombudsman office have also developed useful information materials, but the outreach strategy, especially with regards to the most vulnerable, is not quite clear. Namely, there are no particular activities to reach those who are in need for particular legal or rights protection information other than providing the brochures and other information materials to different public institutions including police, centers for social welfare, courts, etc., and publishing them on the internet. The same can be said about the outreach activities of the human rights NGOs which have also developed a body of useful information material.

BiH has recently adopted a Care of Court Users Strategy, which aims to assist courts to meet the needs of ordinary citizens and build public trust and respect for the court system. The BiH Justice Sector Strategy recognizes that citizens will have more respect for processes and decisions when they understand them, and conversely, complex procedures that are poorly explained can discourage people from pursuing legitimate claims. The key task now will be to implement the strategy throughout BiH and to help create public confidence in the court system. The Justice Sector Reform Strategy also recognizes the current lack of active participation by civil society organizations in the justice sector of BiH, which negatively impacts the range of interests that are accounted for in strategy, policy and law development processes. Key objectives therefore include building a more systemized model for encouraging the active involvement of diverse interest groups in the aforementioned processes, thus ensuring better representation for all parts of society, and also to build the capacities of those groups to contribute effectively such processes.¹⁰⁸

See, e.g.: <http://opsud-mostar.pravosudje.ba/> and <http://opsud-zenica.pravosudje.ba/> or <http://ossud-trebinje.pravosudje.ba/>. However, no court has specific information on specific court procedures (e.g. related to labor disputes, divorce, child support, execution of judgments, discrimination, etc.).

¹⁰² According to the UNDP Special Report, only 0.4% people try to obtain the information about judicial system through brochures in court and prosecutors' offices. Note 68, p. 37.

¹⁰³ Interviewed judges said that court staff should not provide such information in order to avoid possible erroneous information or directions to court users for which the court might be accountable for.

¹⁰⁴ JSDP II supports the rule of law in Bosnia-Herzegovina through: (1) strengthened judicial independence, accountability and effectiveness; (2) a better coordinated and more unified justice sector oriented towards EU accession; and (3) increased public confidence in the rule of law. More information available at:

<http://www.usaidjsdp.ba/>

¹⁰⁵ Analysis of the effects of judicial reform of municipal courts in Zenica-Doboj, Association Alternativa Kakanj, available at: <http://www.nvo-alternativa.org/pdf/Analiza%20ankete.pdf>. In general, the survey shows that 3/5 of respondents thinks that courts do not treat citizens with respect, that some individuals favorable treatment, and every third respondent believes that courts treat all citizens equally. Also, every tenth respondent thinks that courts resolve cases in due time.

Court services and facilities related specifically to PWD, minorities and women

7.

7.1. General remarks

For the purpose of this study, a series of interviews (32) were conducted with representatives of courts, other relevant public institutions and court users. Also, the regional consultant from UNDP Bratislava Office developed two questionnaires (for legal professionals and court users respectively) uniformly for all countries that are in the focus of the UNDP Bratislava Regional Project. Due to the limited time and human resources for the preparation of the study (each UNDP country office hired one consultant to conduct research, poll survey and to produce a National Study), it was not possible to reach large audience and get representative poll results. However, that does not undermine the value of data gathered as the poll survey results are strongly supported by the interpretation of primary sources such as BiH and international legislative framework, other regulations including relevant strategies and action plans pertinent to the specific groups in focus, reports of international and domestic institutions and organizations on particular issues of PWD, Roma and women, compliance reports of BiH authorities with its international, constitutional and legislative obligations as well as recommendations of the relevant human rights monitoring bodies. Therefore, these interview and poll survey results should be viewed only as an additional, illustrative source of information and findings in relation to the access to justice of these particular groups.

7.2. Interviews findings

Main obstacles for improved access to justice – interviews with court users

All of the interviewed court users agree that PWD, Roma and women are, due to their specific needs, disadvantaged in their access to information that would legally empower them and therefore enhance their access to justice. This deficiency in access to information for these groups is particularly detrimental for the protection of their rights. In that sense, all of the interviewed court users mostly agreed on some general barriers that PWD, Roma and women face in relation to more effective access to justice. These are as follows:

- widespread poverty in general and in particular among women in rural areas, PWDs and Roma and;

¹⁰⁶ Mission, Vision and Principles of the Judicial and Prosecutorial System in BiH: Brochure for the Users of Judicial and Prosecutorial Services, HJCP, 2011, available at: <http://www.hjpc.ba/docs/vstvdocs/pdf/MisijaBOS.pdf>

¹⁰⁷ According to the BiH Communication Regulatory Agency, the internet penetration rate in BiH in 2006 was 24,5%. Source: <http://merlin.obs.coe.int/iris/2007/7/article8.en.html> (accessed: 22 November 2011) According to the 2010 Internet Usage Statistics, there are 1.4 million internet users in BiH or 31.2% of total population. Source: Internet World Stats at: <http://www.internetworldstats.com/euro/ba.htm> (accessed: 22 November 2011)

¹⁰⁸ BiH Justice Sector Strategy, note 85

- generally low level of education, high level of illiteracy and lack of knowledge of PWD, Roma and women (in particular in rural areas) on rights and protection mechanisms in general;
- widespread public prejudices towards PWD, Roma and women;
- insufficient awareness of judges, prosecutors, lawyers and court personnel on specific needs/demands of PWD, Roma and women generally and in relation to the realization of their rights in particular (including low awareness of police and centers for social work in relation to Roma¹⁰⁹ or victims of domestic violence¹¹⁰);
- lack of adequately accessible information in courts on the realization of rights and court procedures specifically designed for PWD, Roma and women;
- lack of adequately accessible information in courts on free legal aid system and providers (both public agencies and/or NGOs), including location of legal aid providers, contact information and accessibility criteria;
- costs of proceedings in general, in particular in civil cases where laws do not provide for obligatory professional representation;
- high financial threshold as provided for in laws on free legal aid, which disproportionately affects PWD, Roma and women as generally more disadvantaged and more impoverished,
- length of court proceedings and lack of effective remedies to challenge it in general, and in particular in cases that must be resolved urgently as provided for in particular laws (e.g. Anti-Discrimination Law and Labor Law);
- lack of effective execution of judgments;
- ineffective capacities of the existing public legal aid offices to provide effective legal aid to PWD, Roma and women;
- lack of information available in any one of the minority languages.

On the other hand, court users stated that most of the information on rights, protection mechanisms and free legal aid is available at human rights NGOs advocating for the rights of these particular groups or those providing free legal aid that they disseminate to different public institutions such as police, centers for social welfare, courts, training centers, etc. However, court users also agree that in spite of this kind of information sharing, it is not enough to significantly raise rights protection awareness among these specific groups and that these materials and information should be disseminated among particular groups in a more efficient way, through carefully developed and financed programs.

¹⁰⁹ Particularly pointed out by Mr. Vehid Tihak, representative of the Roma NGO „Budi moj prijatelj“ (3 November 2011), Edita Abdibegović and Bakir Mrkonja, lawyers from „Vaša prava“ (1 November 2011).

¹¹⁰ Particularly stressed by Mr. Amer Homarac, FLD's Center for Free Legal Aid for Women (3 November 2011); Ms. Branka Inić, BiH Helsinki Committee (14 November 2011)

¹¹¹ The organizations that undersigned the letter are: Center for Civic Initiatives, BiH Helsinki Committee for Human Rights, Bureau for Human Rights, Association for Democratic Initiatives and Association „Vaša prava“. Source: <http://www.dnevniavaz.ba/vijesti/iz-minute-u-minutu/56851-nevladine-organizacije-zele-nastaviti-pruzati-pravnu-pomoc.html>

A particular problem that NGOs also emphasized is the exclusion of NGO legal service providers from the free legal aid legislation. In relation to this, it is worth noting that in September 2011, a group of NGOs sent an open letter in relation to the Draft Framework Law on Free Legal Aid in BiH. They particularly emphasized the strong need to utilize the existing NGO legal service network, their experiences and skills. They also expressed their concern that the exclusion of NGO legal service providers from the free legal aid legislation would not lead to a more efficient, speedy and high-quality access to free legal services, but rather “to the increase of the administration and directing of the budgetary resources for free legal aid to the state and its apparatus”.¹¹¹

Also, majority if not all rights related to the basic protection of PWD, Roma and women are resolved in administrative proceedings (e.g. legal identification of Roma is an administrative proceeding as well decision-making in relation to access to social welfare benefits for all three groups, access to healthcare, unemployment benefits, etc.). However, public servants who are conducting these administrative proceedings lack awareness and training on specific needs and rights of PWD, Roma and women due to which these three target groups are often

deprived of their basic rights or achievement thereof is quite difficult and prolonged. Court users also pointed out the need to improve the work of social welfare centers who are understaffed, underfinanced and lack adequate awareness raising and adequate information on rights protection mechanisms as well as legal service providers.

Main obstacles for improved access to justice – legal professionals

In general, legal professionals also think that the main obstacle for enhanced access to justice for PWD, Roma and women are widespread poverty in general and in particular among PWD, Roma and women (in particular in rural areas); generally low level of education, high level of general illiteracy of Roma in particular and lack of basic legal literacy among all three groups; and widespread public prejudices towards PWD, Roma and women. Interviewed legal professionals also recognized the need to get more training on specific needs of these three groups.

However, the opinion on the availability of information on laws, proceedings and courts' functions are somewhat different among legal professionals than court users. According to majority of interviewed legal professionals, access to information related to laws, courts' jurisdiction and procedures in general has improved. Information on international documents, relevant laws, court proceedings in general, location, organization and jurisdiction of courts, brochures on how to protect oneself from domestic violence, information on basic social and healthcare rights are available to all citizens at different public institutions either through web pages of different institutions including courts, HJPC, BiH Gender Equality Agency, Entity Gender Centers, BiH Ombudsman Office, as well as human rights NGOs, legal service providers and advocacy groups, and certain information could be found in court buildings.¹¹²

As to court staff capacity to provide adequate information to court users in general, legal professionals agree that the court personnel had been well trained and capacitated to provide basic information. Although they almost unanimously stated that the awareness on specific needs of the three target groups is low, they emphasized that "both court personnel and judges treat all court users equally and in accordance with the relevant laws that do not discriminate on the basis of particular status of PWD Roma or women" and that the "justice system is equally accessible to all". Also, they consider that court personnel is adequately trained "to provide all court users with all practical information on the work of the court and that the general information on citizens' rights and obligations are available to the general public either via internet or in court buildings (brochures, leaflets, etc.)" which "includes the three target groups as well".

Nevertheless, the majority of interviewed legal professionals agree that courts still do not have adequately accessible information specifically tailored for the specific needs/demands of the most vulnerable groups, in particular PWD, Roma or women, nor the specific strategies have been designed to meet specific needs/demands of PWD, Roma or women.¹¹³ Also, interviewed legal professionals confirmed that there is no information available in minority languages either on the internet or in court buildings or any other public institutions. They unanimously acknowledged the existence of widespread prejudices towards target groups, in particular Roma, lack of awareness of both judges, lawyers and court personnel on specific needs/demands of the three target groups, extremely low level of legal literacy of these three target groups, in particularly those who are most affected by poverty.

They also agree that there is no disaggregated data in court records to show the number of cases filed by the three groups, and some judges expressed a concern that such data collection would amount to discrimination.¹¹⁴ Also, the courts have not yet established a special registry for discrimination cases and most of interviewed judges were not aware of the obligation of the courts to collect and communicate data on registered discrimination cases to the BiH Human Rights Ministry (see, Section 4.1.4.)

¹¹² Interviews with: Mladen Srdić, Judge (31 October 2011), Branko Perić, Judge and Vesna Trifunović, Judge (1 November 2011), Amela Mahić, Judge (11 November 2011), Milica Filipović, Judge (6 November 2011), Zlatan Terzić, attorney (3 November 2011), Ana Jakšić, FBiH Gender Center Director (8 November 2011), and 5 attorneys who wanted to remain anonymous (8 and 10 November 2011), Gordana Stojaković (7 November 2011), Judge. Judge Milica Filipović observed, however, that publicized information are more useful to legal professionals than for court users.

¹¹³ *Idem.* However, Edin Muzurović, attorney, (11 November 2011) considers that specifically designed information for marginalized groups on the realization of their rights, exist in courts, but did not elaborate further.

¹¹⁴ E.g. Judges Trifunović and Filipović, note 119

Some specific barriers to access to justice based on belonging to a specific target group

In addition to these general observations related to the access to justice for all three target groups, all interviewed respondents pointed out some specific obstacles that individuals face due to their belonging to one particular target group.

a) People with disabilities

- In relation to PWD, one of the serious obstacles is high level of illiteracy and low education due to several reasons:
- general social exclusion,
- lack of inclusive educational programs but also exclusion fostered by families due to cultural and social mentality (families are reluctant to send children with disabilities to schools),
- particular social and legal exclusion of people with intellectual disabilities due to inadequate legislation and awareness,
- lack of adequate physical access to majority of public institutions including courts,
- lack of governmental cooperation with NGOs representing people with disabilities in formulation of strategies and policies related to their specific needs and implementation of rights.¹¹⁵

A true life story

The first case ever submitted to the court base on the Anti-Discrimination Law concerned discrimination in education of a child with a certain intellectual disability. The public elementary school insisted on transferring the child to a so called “special school”, because the child needed additional expert help in the classroom. For a short period of time when school provided an expert who helped the child during classes, he showed significant improvement. However, the school budget was not sufficient to continue with this type of assistance, and the expert assistance stopped. The parents decided to take the case to the court against the Herzegovina-Neretva Canton and Cantonal Ministry for Education, Science and Sport and received free legal aid including representation before the court by the Association Vaša Prava.

The first instance court in Mostar rendered a decision in favor of plaintiffs, stating, among other things, that a minor’s human rights were breached and that a Mostar elementary school, Cantonal Ministry for Education, Science and Sport, and Herzegovina-Neretva Canton had discriminated against a minor and breached his right to education by withholding the expert help that proved efficient and which would have enabled the child’s socialization and inclusion. The Canton and the school were ordered to stop the infringement by providing the necessary conditions within one month. The appellate court confirmed this decision that became final.

Following this success, several more cases related to the same issue have been filed.

b) Roma

In addition to other previously mentioned barriers for greater access to justice, the primary problems that Roma face regarding enhanced access to justice is that of lack of legal identification. The other problems that stem from this issue include inaccessibility of the vast majority of Roma to:

- basic health care services;
- any kind of social welfare;
- education;

¹¹⁵ Mr. Suvad Zahirović, President of the Executive Board of „Lotos” NGO representing rights of PWD, and Mr. Dragan M. Popović, UNDP, International Transitional Justice Specialist (11 November 2011)

- employment;
- housing;
- courts and other protection mechanism.

Also, the problems are worsened by the fact that parents who are not registered cannot register their children, and although there are examples that unregistered children attend schools they cannot get certificates on graduation.¹¹⁶

A true life story

A young pregnant Roma woman rushed with her family to the ER as the birth started. However, she did not have any legal identification, except a certificate that the legal proceeding for her legal identification had been initiated. However, the ER medical personnel refused to admit her, and even called the police as the family would not leave without medical assistance to the women. She called a lawyer from “Vaša Prava” who was working on her case, who arrived to the ER, talked to the police and medical staff, and finally she was admitted to give birth to her child. Following this event, “Vaša Prava” engaged in advocacy activities and succeeded to persuade the competent cantonal authorities to issue the instruction by which all persons in social need “who do not have health insurance covered in some other way” are eligible for free medical assistance and that the costs will be covered by the relevant municipality/cantonal body.

c) Women

Specific impediments for women in relation to access to justice are:

- inadequate training and awareness raising of judges, prosecutors, court personnel, police and centers for social welfare on specific needs of women victims of domestic violence;
- inadequate imposition and implementation of restraining orders in cases of domestic violence that are mostly attributable to the failure of the police to properly collect evidence and to propose imposition of such measures, but also to the unreasonable time in which courts decide on proposed measures;
- low level of awareness among police, centers for social services and judges on the importance of requesting restraining orders in domestic violence cases and ruling on the request in a speedy manner;
- sexual harassment in work places;
- mobbing;
- inadequate execution of judgments relating to child support;
- lack of gender sensibility in cases related to the division of property following the divorce procedure; inadequate legislation related to women victims of sexual violence committed during the conflict, particularly with regards to criminal legislation (failure of State to harmonize it with international standards) and to social welfare.¹¹⁷

As to the women victims of different kind of gender based violence, legal professionals pointed out the lack of sufficient awareness and knowledge among judges, prosecutors and police and among the general population on what constitutes e.g. sexual harassment, mobbing, etc., that disproportionately affect women over men. Also, one judge pointed out that criminal courts almost never decide on compensation for women victims of sexual violence following the conviction of the perpetrator although the criminal law provides the possibility to order compensation for the victim. Rather than doing this, judges almost always direct victims to seek compensation in civil proceedings without taking into account the vulnerability and trauma that the victim had already suffered.¹¹⁸

¹¹⁶ Ms. Edita Abdibegović, Bakir Mrkonja, and Mr. Vehid Tihak, note 81

¹¹⁷ Women victims of torture have not been recognized as “a social welfare category” unless the torture they suffered resulted in some physical disability – minimally 60%. However, the social welfare status of these women is recognized only in three out of ten Cantons in the FBiH and due to that they have free access to health care. Interview with Mr. Dragan Popović, note 119 and Ana Jakšić, FBiH Gender Center Deputy Director (8 November 2011)

¹¹⁸ Mr. Branko Perić, the Court of BiH Judge and the former President of the HJPC explained that this tool provided for in the criminal legislation should be utilized more. as the criminal court, following the conviction of the perpetrator, could order compensation to the particularly vulnerable victim (e.g. of sexual violence) in a lump sum, which would not prevent the victim to request the full compensation in a separate civil proceedings. This would, in his opinion, help victims of sexual violence in particular (including sexual violence that occurred during the war) to avoid further lengthy court proceeding in order to seek compensation and further traumatization. Interview with Judge Perić, note 119.

A true life story

Ms. D.J, a prominent female editor-in-chief of the Information Program of the public Federal TV, was suddenly removed from that position due to her “communication inabilities and bad interaction with colleagues,” as it was officially explained. Following this decision, Ms. J. was subjected to a harsh public media campaign against her, which the BiH Helsinki Committee defined as hate speech. Ms. J. was offered another contract, though less favorable, and her position was filled by a man. She initiated a labor dispute before the court, which decided in her favor ruling that Ms. J.’s removal from the position was illegal. The court ordered, *inter alia*, her immediate reinstatement in the position from which she was removed. However, the Federal TV refused to execute the judgment and, moreover, changed its organizational structure in a way that the position from which Ms. J. was removed was cancelled. She filed a complaint to the BiH Ombudsmen. The BiH Ombudsman Office issued a special report establishing that Ms. J. was subjected to harassment during a significant period of time, resulting in mobbing as defined in the Anti-Discrimination Law. Also, the Ombudsman noted that Ms. J. was among one of the rare women in high positions within the public Federation TV service and that she was replaced by a man. Having taken all these facts into account, the BiH Ombudsman concluded that Ms. J. was subjected to discrimination based on sex, contrary to the Gender Equality and Anti-Discrimination Laws and issued adequate recommendations, in particular related to the execution of a final court judgment. Despite the court decision and conclusions and BiH Ombudsman’s recommendations, the court decision has not yet been executed. Therefore, Ms. J., represented by Vaša Prava, filed a law suit based on the Anti-Discrimination Law in 2010, which is still pending before the court, although the Law provides for a speedy process.
(Story provided by Ms. D.J. and Vaša prava)

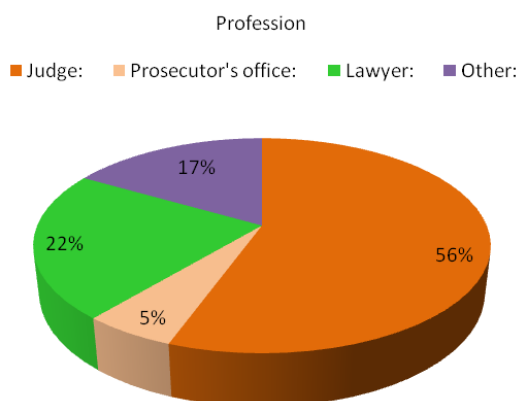
7.3. Questionnaire analysis

The total of 65 different survey participants was asked to provide answers to the questionnaires (31 legal professionals and 35 court users). Out of the total number of those approached, a total of 33 provided answers to the questionnaire (18 legal professionals and 15 court users).

The results of the questionnaire survey are shown and described below.

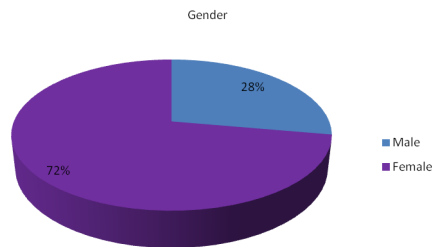
7.3.1. Questionnaire - legal professionals

Q1. Profession

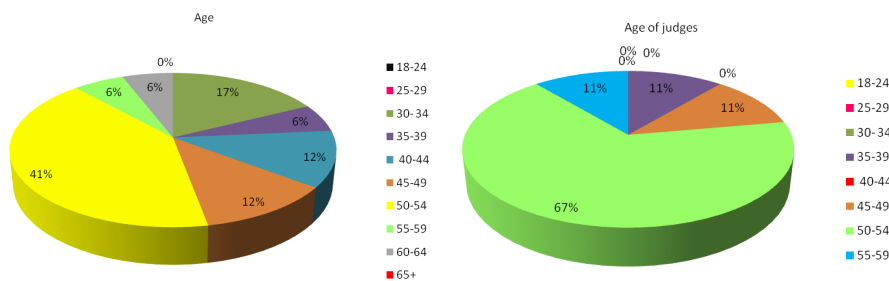


Q2. Education level: 83% of respondents have a diploma or certificate in law from a recognized institution and 17% have Masters or PhD.

Q 3. Gender

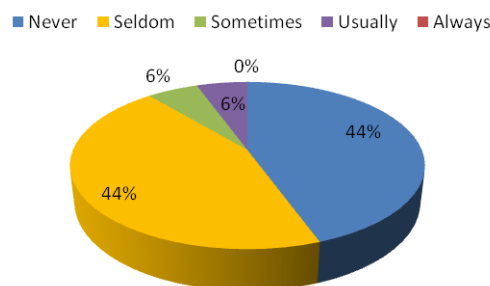


Q4. Age: 41% of all polled legal professionals belong to the age category 50-54, whereas 67% of the polled judges belong to the same category.



Efficiency of the Justice System

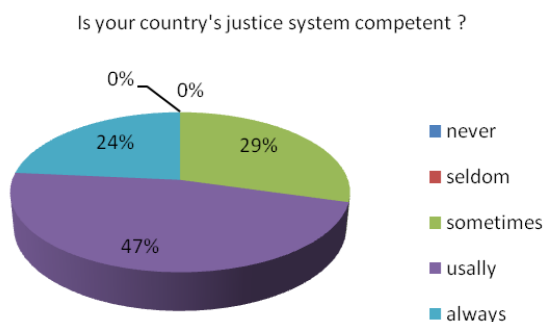
Q5. In your experience, would you say cases involving *women, minorities or PWDs* are usually resolved within a longer timeframe that those cases not involving these groups?



The length of the proceedings (which inevitably includes the huge backlog of cases) is, as it was explained earlier, seen as one of the main deficiencies in the BiH judicial system. However, in response to the length of the proceedings in cases involving the three specific target groups, the poll shows that legal professionals consider that cases involving persons belonging to one of these specific groups “never” or “seldom” (44% each) influences the length of the proceedings. In other words, particular affiliation with one of the three groups is not perceived by legal professionals as a particular reason for the length of court proceedings. Interestingly, court users also agree that their belonging to the one of three target groups had not influenced the length of the proceedings they were involved in, although a significant percent were not able to ascertain whether the connection between the two exists or not (compare Q6 of the court users questionnaire).

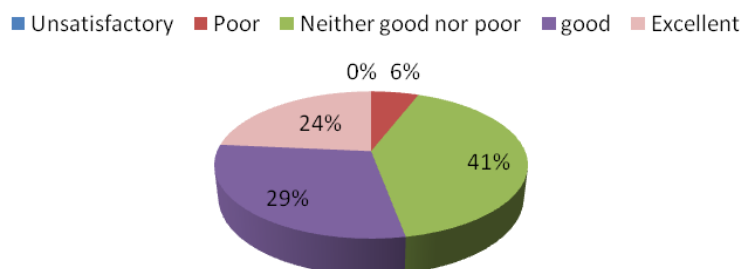
Quality of Services

Q6. In your opinion, is your country's justice system competent?



76% of polled legal professionals consider that the justice system in BiH is “usually” or “sometimes” competent, and 24% as “always” competent, while no respondents evaluated it as “never” or “seldom”. This represents the high level of trust in the competency of the justice system in BiH on the side of polled legal professionals. (Compare Q10 in questionnaire for court users.)

Q7. How would you rate the quality of your country's justice services



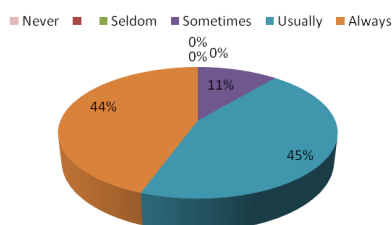
As to the quality of country's justice system, the total of 53% of polled legal professionals consider the justice system to be either “good” (29%) or “excellent” (24%). On the other side, the total of 47% considers the justice system to be of a lesser quality: 41% evaluated it as “neither good nor poor” and 6% as “poor”.

Accessibility

Do you consider your justice system to be affordable for women/minorities/PWDs?

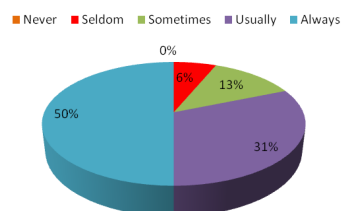
Q8a.

Do you consider your justice system to be affordable for women?



Q8b.

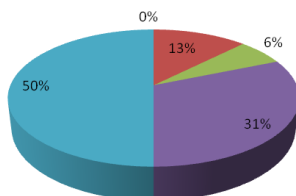
Do you consider your justice system to be affordable for minorities?



Q8c.

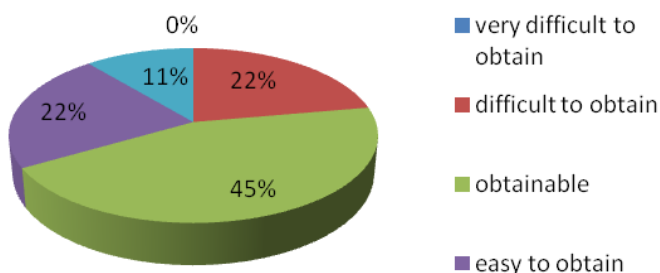
Do you consider your justice system to be affordable for persons with disabilities?

■ Never ■ Seldom ■ Sometimes ■ Usually ■ Always



As to the affordability of the justice system for PWDs, minorities and women, the majority of legal professionals consider that it is accessible “always” or “usually” (89% as to women, 81% as to minorities and 81% as to PWD). The same was expressed in the interview with legal professionals, as they firmly stated that the justice system is equally accessible to all with no discrimination (see Section 7.2.). A much smaller percentage considers the justice system to be only “sometimes” accessible to persons belonging to the three particular groups, and none of the respondents considered it to be inaccessible.

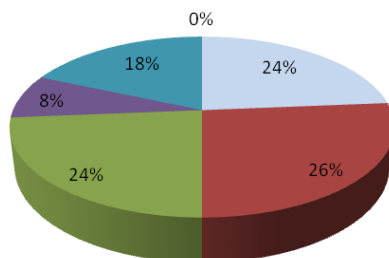
Q9. In your opinion what is the level of availability of information on laws and regulations for women, minorities and PWDs?



Most of the polled legal professionals, 67% total, consider that the level of information on laws and regulations are “obtainable” (45%) or “easy to obtain” (22%) for all three target groups. The rest of 33% of polled consider these information to be either difficult (22%) or very difficult to obtain (22%). However, 61% of court users consider these information to be “difficult” or “quite difficult” to obtain. (Compare with Q12 of the CU questionnaire.)

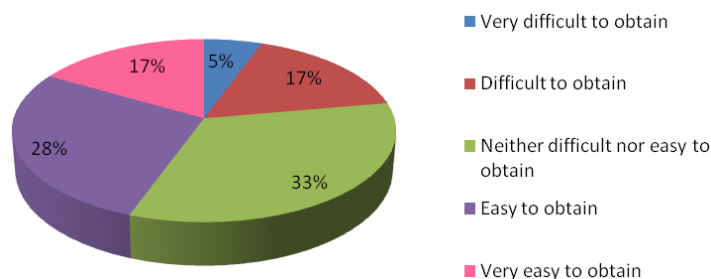
Q10. In your opinion, which personal characteristics (if any) negatively impact on a person's ability to access the courts?

■ Age ■ Economic status ■ Education level ■ Gender ■ Disability ■ Ethnicity

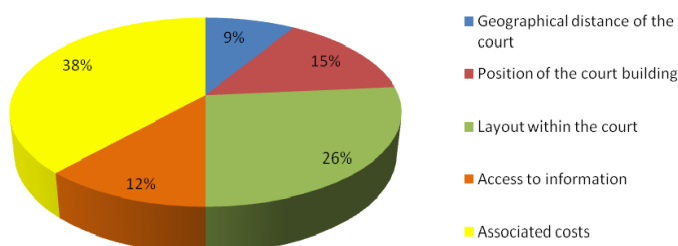


When it comes to personal characteristics that might negatively impact a person's ability to access the courts, the responses show that legal professionals consider economic status, education level and age as negative factors generally influencing the accessibility to the courts. This also corresponds with the interview results which showed that poverty, lack of knowledge and high costs of the court proceedings are recognized as important barriers to more effective access to justice (see, Section 7.2. and compare with Q13 of the CU questionnaire).

Q11. How would you gauge the physical accessibility of the courts in your country?



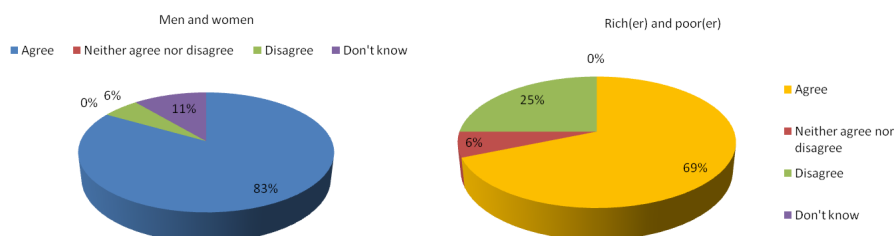
Q11a. In your opinion, which factors negatively impact on a woman/minority/PWD's ability to physically access the courts?

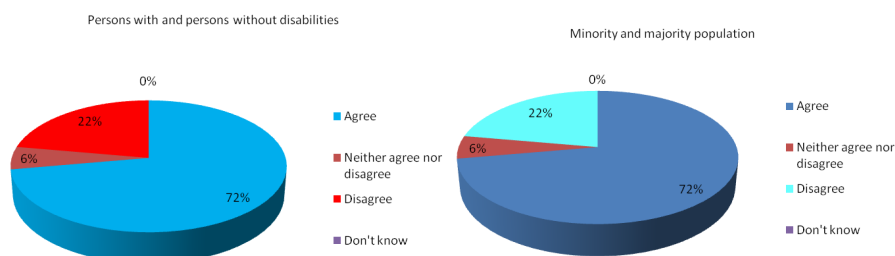


In general, 45% of legal professionals consider the physical accessibility of the courts positively: 28% as "easy to obtain" and 17% as "very easy to obtain". 55% is less convinced that the physical accessibility of courts is quite satisfactory, the majority of which (33%) could not evaluate it neither as "difficult" nor as "easy". On the other hand, those legal professionals who evaluated the physical accessibility "difficult", "very difficult" or "neither" (66% total) in Q11, attribute it mostly to the associated costs (38%) and to the layout within the court (26%), and less to the position of the court building (15%) and access to information (12%). (Compare to Q14 and Q14a. of the CU questionnaire.)

Fairness

Q12. In your experience do the Court(s) treat the following categories of people equally?

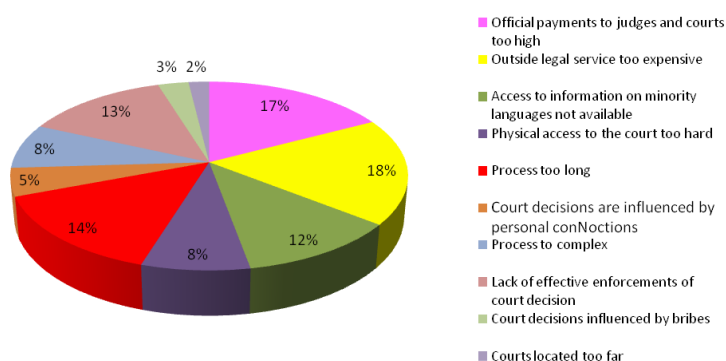




The vast majority of legal professionals agree that courts treat all the listed categories of people equally. As it can be seen, 83% agree that women enjoy equal treatment before the courts, 72% state the same for PWD, 69% think that the person's social/financial status is of no importance and 72% consider that it has no influence whether a person belongs to the group of "majority" or "minority" in terms of equality before the courts. (Compare to the Q16 from the CU questionnaire.)

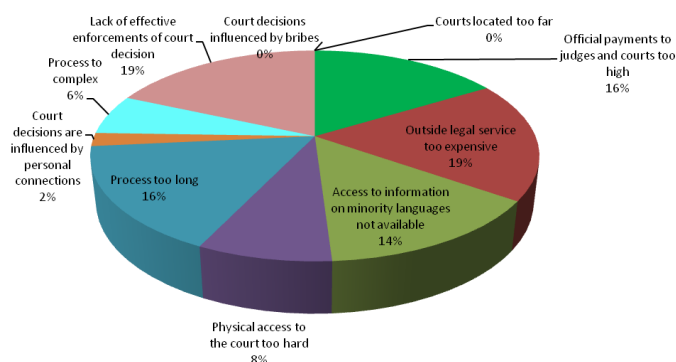
Q13. In your opinion what are the 3 most significant obstacles for women/minorities/persons with disabilities in accessing the courts in your Country?

TOTAL (legal professionals and court users)



Responses from both legal professionals and court users almost unanimously consider three elements the most significant obstacles for PWD, minorities and women: outside costs of the proceedings (18% of all respondents), official payments to courts (17% of all respondents) and duration of proceedings (14% of all respondents). There are obvious but insignificant differences between the two groups over the importance of the three generally recognized obstacles.

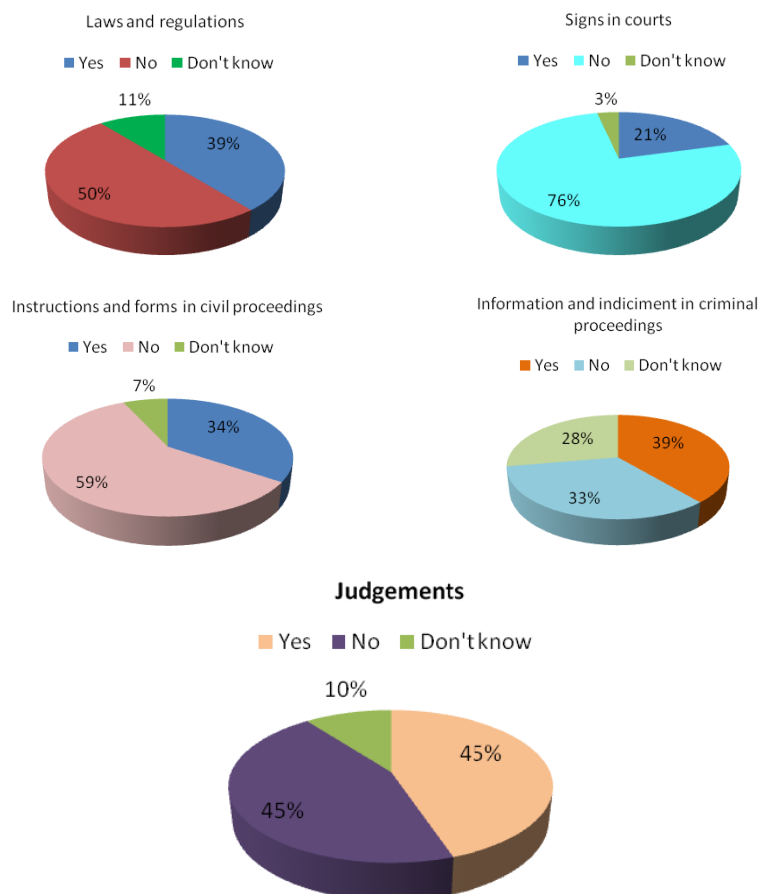
LEGAL PROFESSIONALS



As this chart shows, legal professionals consider the lack of the effective enforcement of judgments (19%) as the greatest obstacle to PWD, minorities and women in their access to justice, while court users evaluated this factor with only 9%. However, expensive outside legal services (19%), costly official payments (16%) and lengthy proceedings (16%) - as estimated by legal professionals- are the greatest obstacles that were also recognized by court users though in somewhat different percentages. Also, 14% of legal professionals evaluated access to information in minority languages (14%) as an important obstacle, while only 9% of court users recognized this as a problem. (Compare with Q17 of CU questionnaire).

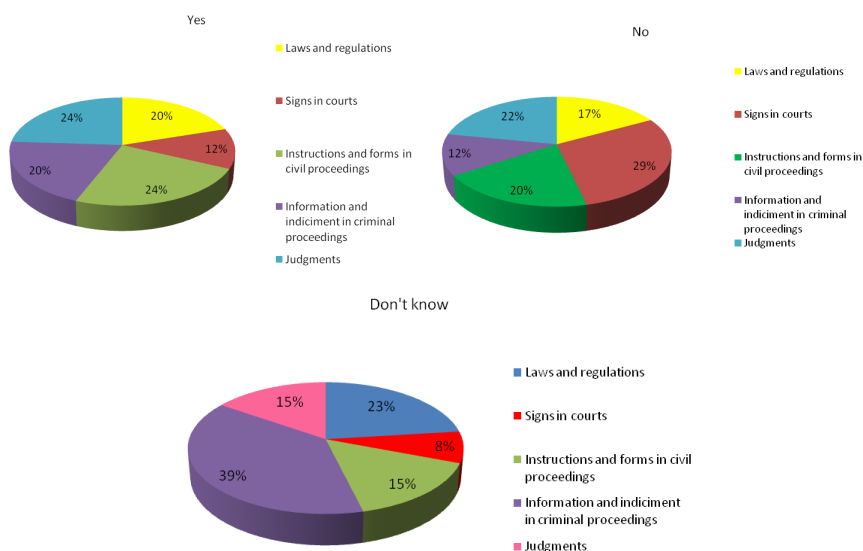
Q14. Are the following sources of information available in your country in minority languages?

TOTAL (legal professionals and court users)

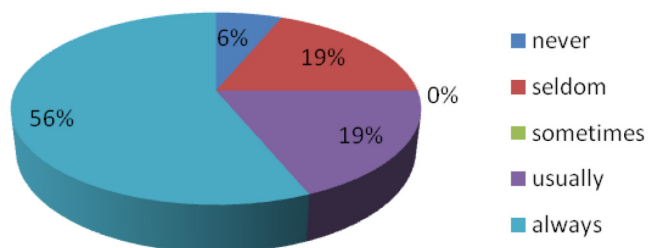


As to the availability of information in minority languages, responses indicate that, in general, information sources are not available in minority languages. The fact is that there are no laws and regulations, judgments or other sources of information in any language of the 17 officially recognized minorities. It is highly possible that the high percentage of the positive responses relate to the BiH specific context. Namely, Bosniacs, Serbs and Croats are recognized as "constituent peoples" in the BiH Constitution. Each "constituent people" has its own language acknowledged as an official one also in accordance with the BiH Constitution. At the same time "constituent people" might be seen as a *numeric minority* in a particular Entity: e.g. Bosniaks and Croats are *numeric minority* in the RS and Serbs are *numeric minority* in FBiH). Therefore, it could be assumed that positive responses to this question relate to the availability of information in all three official languages (Bosnian, Serbian and Croatian) to "constituent peoples" in territories where a particular "constituent people" is a "numeric minority".

Responses disaggregated by professional respondents are in the charts below, and those for court users are under Q15 in the CU questionnaire.



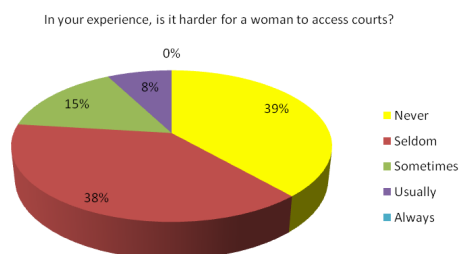
Q15. In your experience, does the state always provide an interpreter at all stages of proceedings that it is obliged, to parties who speak minority languages?



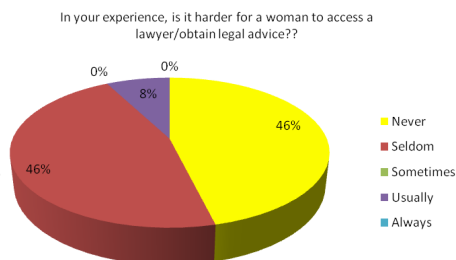
The Criminal Codes both at State and Entity levels and Brčko District provide an obligation that the defendant must have an interpreter in all stages of the criminal proceeding. Therefore, it should be assumed that the 55% of negative responses to this question should be understood as a lack of interpreting services in civil or administrative proceedings. (Compare with the Q22 from the CU questionnaire).

Q16. In your experience, is it harder for a woman to access courts, lawyers/legal advice/get respect?

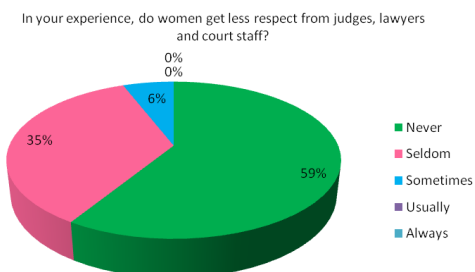
Q16a.



Q16b.



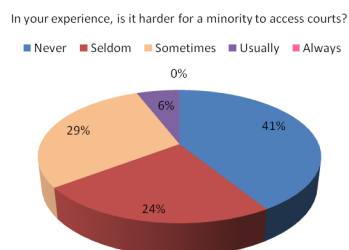
Q16c.



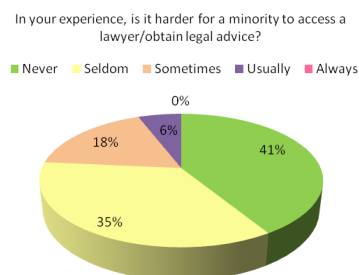
Legal professionals consider that women only seldom have more difficulties in accessing the court (38%), as well as in accessing a lawyer/obtaining legal advice (46%). On the other side, 59% of legal professionals consider that women get the same respect as men from judges, lawyers and court staff. However, a not insignificant percentage (total 41%) think that women are less respected either “seldom” (35%) or “sometimes” (6%). (Compare to Q21a., b. and c. from the CU questionnaire).

Q17. In your experience, is it harder for a minority to access courts, lawyers/legal advice and get respect?

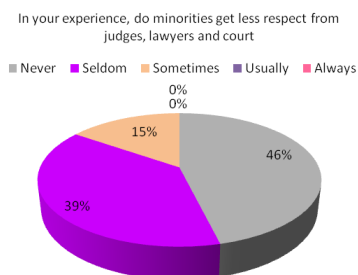
Q17a.



Q17b.



Q17c.



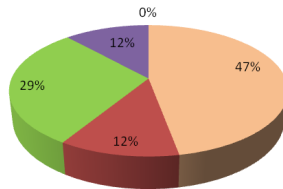
Legal professionals also consider that minorities never (41%) or only seldom (24%) experience difficulties in the access to courts. Further, they consider that minorities never (41%) or only seldom (35%) have difficulties in accessing a lawyer/legal advice, and that minorities never (46%) or only seldom (39%) are less respected by judges, lawyers and court staff. However, court users’ responses differ significantly (compare with Q23a., b. and c. of the CU questionnaire).

Q18. In your experience, is it harder for a PWD to access courts, lawyers/legal advice and get respect?

Q18a.

In your experience, is it harder for a person with disability to access courts?

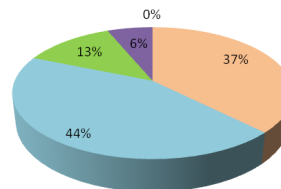
Never Seldom Sometimes Usually Always



Q18b.

In your experience, is it harder for a person with disability to access a lawyer/obtain legal advice?

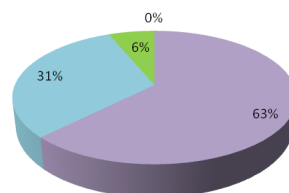
Never Seldom Sometimes Usually Always



Q18c.

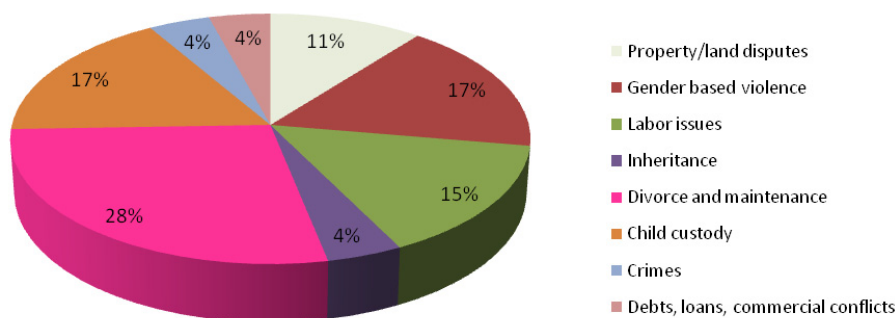
In your experience, do persons with disabilities get less respect from judges, lawyers and court staff?

Never Seldom Sometimes Usually Always



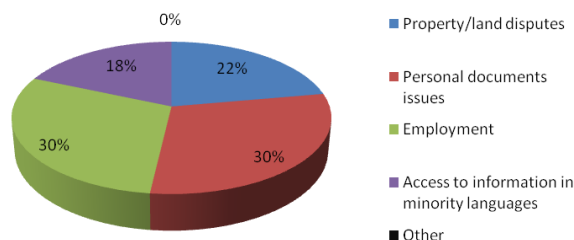
As with the other two categories, legal professionals consider that PWDs “never” (47%) or only “sometimes” (29%) experience difficulties in their access to courts. They also consider that PWDs “seldom” (44%) or “never” (37%) have difficulties in accessing a lawyer/legal advice, “never” (63%) or only “seldom” (31%) are less respected by judges, lawyers and court staff. However, court users’ responses differ significantly (compare with Q24a., b and c. of the CU questionnaire).

Q19. What types of problem do women specifically encounter in your country?



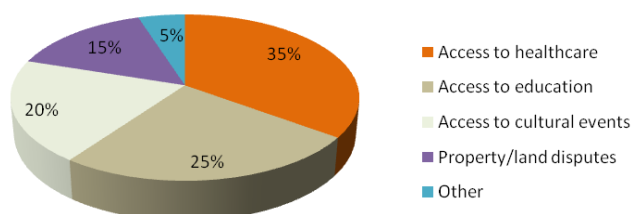
28% of legal professionals agree that divorce and maintenance issues are the problems that women most often encounter in BiH. Gender-based violence and child custody are identified by 17% of respondents, whereas 15% of them consider labor issues as mostly problematic for women. Dowry issues do not exist in BiH laws and therefore the question was not applicable.

Q20. What types of problem do minorities specifically encounter in your country?



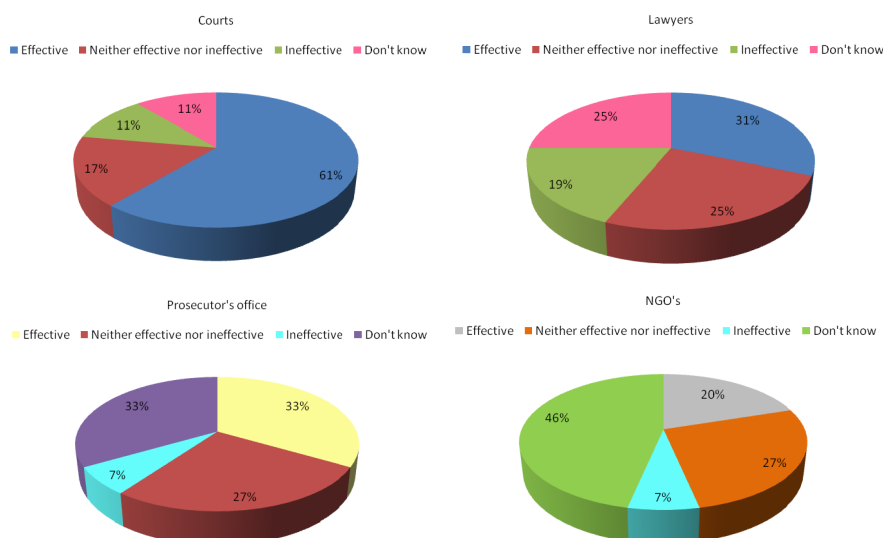
As to minorities, namely Roma, 30% of legal professionals consider personal documents issues to be the biggest problem for Roma in BiH. The same percentage considers employment as the biggest problem. Having in mind that the lack of personal identification documents is an impediment to access to employment, it is obvious that the legal identification of Roma is the main problem that legal professionals identify *per se* or as a source of other problems that Roma face. Importantly, 18% consider lack of adequate information in Roma or any other minority language to be a particular problem of this target group which corresponds with responses on Q14.

Q21. What types of problem do persons with disabilities specifically encounter in your country?

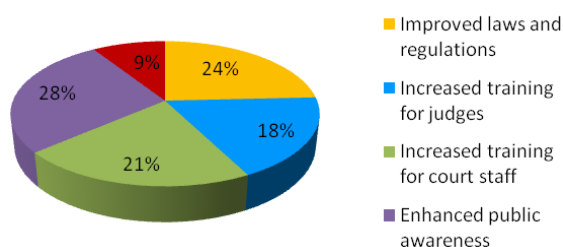


Most of legal professionals consider access to healthcare (35%), education (25%) and cultural events to be the major problem that people with disabilities generally encounter.

Q22. Assess the effectiveness of each institution or group in ensuring access to justice for women, minorities and persons with disabilities in your country



Q23. Which factors do you think would increase access to justice for women, minorities and persons with disabilities in your country?



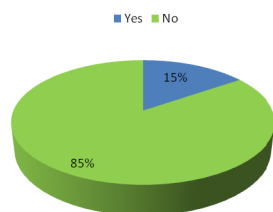
67 % of legal professionals think the main factor that would increase access to justice of PWD, minorities and women is increased awareness raising and training of judges (18%), court personnel (21%) and court users (28%). This corresponds with interview results and other relevant human rights reports stating that awareness of PWD, Roma and women in BiH on rights and protection mechanisms is considerably low, but also that there is a need to further raise judges' and court personnel's awareness on the specific needs of the three target groups. Interestingly, despite of the considerable legislative reform and relatively well developed legislative and institutional framework for rights protection in BiH, 24% of legal professionals still believe that improved laws and regulations are the main factor for more effective access to justice for enhanced access to justice of PWD, Roma and minorities. It is not however clear to what legislation the professional respondents might refer to.

Specific questions for judges, lawyers, prosecutors and court staff

Have you undertaken any specific training related to women/minorities/PWDs in the justice system?

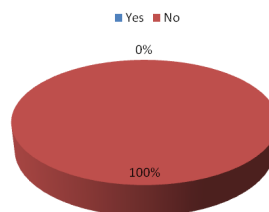
Q24.

Have you undertaken any specific training related to women in the justice system



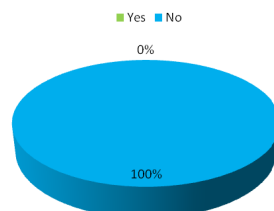
Q25.

Have you undertaken any specific training related to minorities in the justice system



Q26.

Have you undertaken any specific training related to persons with disabilities in the justice system



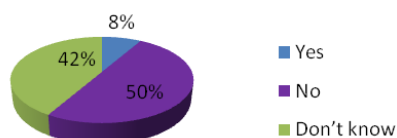
As responses to questions 24-26 show indicate, respondents from the professional group have not received any specific training in relation to minorities and PWD, and 85% did not receive any specific training related to women. Comparing this result with the responses to Q 23, it

is somewhat surprising that only 18% consider the increased training for judges and 21% for court staff as an important factor to the enhanced access to justice of PWD, Roma and women.

Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to women/minorities/persons with disabilities?

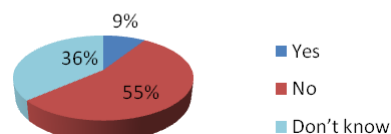
Q27.

Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to women?



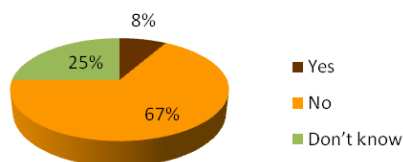
Q28.

Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to minorities?



Q29.

Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to persons with disabilities?

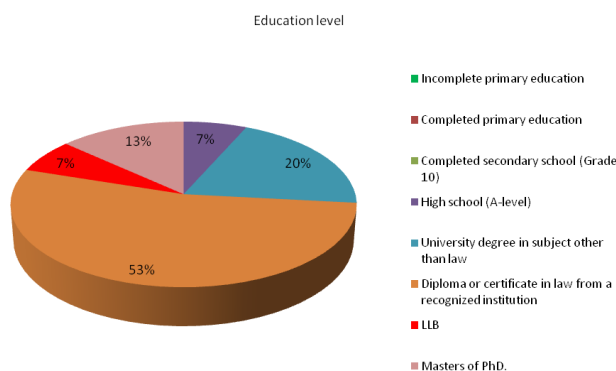


As laws in BiH do not provide for any specific proceedings related to PWD, minorities and women, the answer "no" in questions 27-29 should be considered as the statement confirming that specific procedures for PWD, Roma and women in BiH do not exist. On the other side, "yes" responses could not be analyzed since specific answers to the questions 27(a, b and c), 28(a, b and c) and 29(a, b and c) were not provided and it could not be concluded to what procedures the respondents refer.

7.3.2. Questionnaire – NGOs (court users)

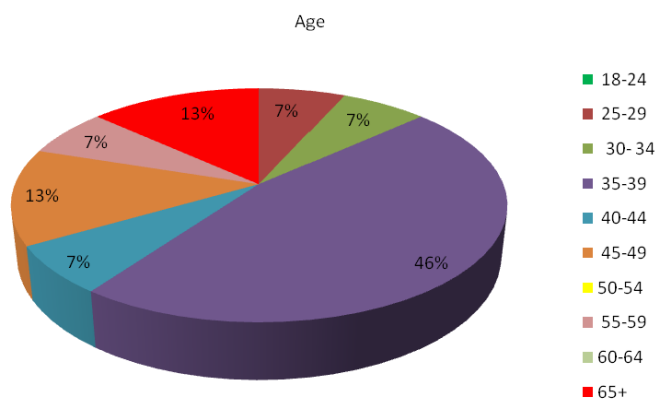
Q1. Gender: 60% female, 40% male respondents

Q2. Education level



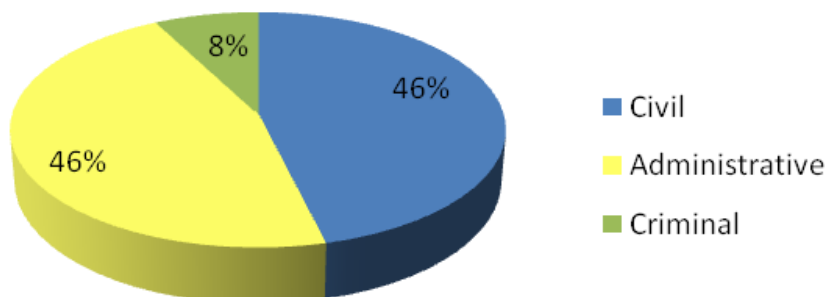
Respondents from the court users group mostly have legal education, and the next big group have a university degree in a subject other than law, which means that a total of 73% respondents have a university degree.

Q3. Age



Most of the respondents from the “court users” group (40%) belong to the 50-54 age group. Out of that percent, the majority, 46%, belong to the 35-39 age group.

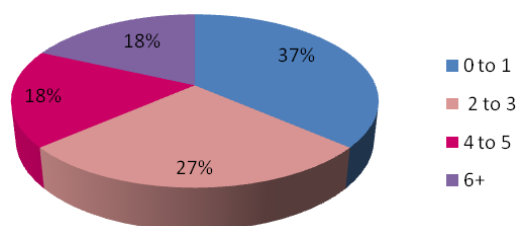
Q4. What types of case have you been involved in?



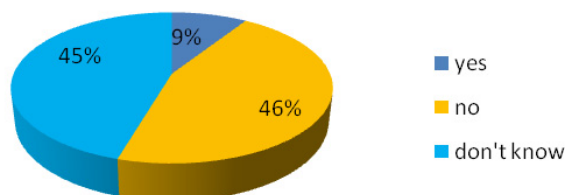
The vast majority, 92%, of the court users respondents were involved in either civil or administrative cases, and only 8% in criminal cases.

Efficiency of the justice system

Q5. How many times were you required to be present in court in order to resolve your case?

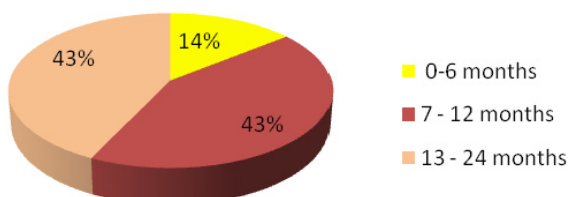


Q6. Do you think your case would have been resolved more quickly if you were not a woman/minority/person with disability?



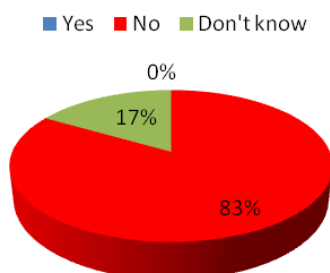
Interestingly, 46% of respondents do not consider that their belonging to the one of three target groups had influenced the length of the proceedings they were involved in. However, 45% were not able to ascertain whether the connection between the two exists or not. The rest of 9% who consider that their belonging to PWD, minority or women negatively impacted the length of the proceeding, did not provide further explanations. (Compare with the results in Q5 of the legal professionals questionnaire).

Q7. How long did it take for your case to be resolved?



Out of 92% of those who replied "no" or "don't know" to Q6., 43% replied that the it took them 13-24 months and 7-12 months to resolve the case. Only 14% resolved their case in a period of 6 months or less.

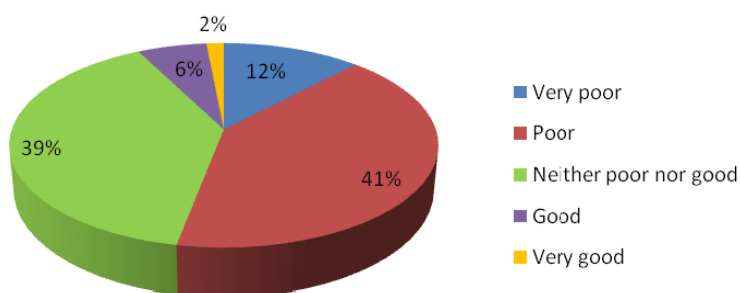
Q8. Do you believe your country's justice system is quick?



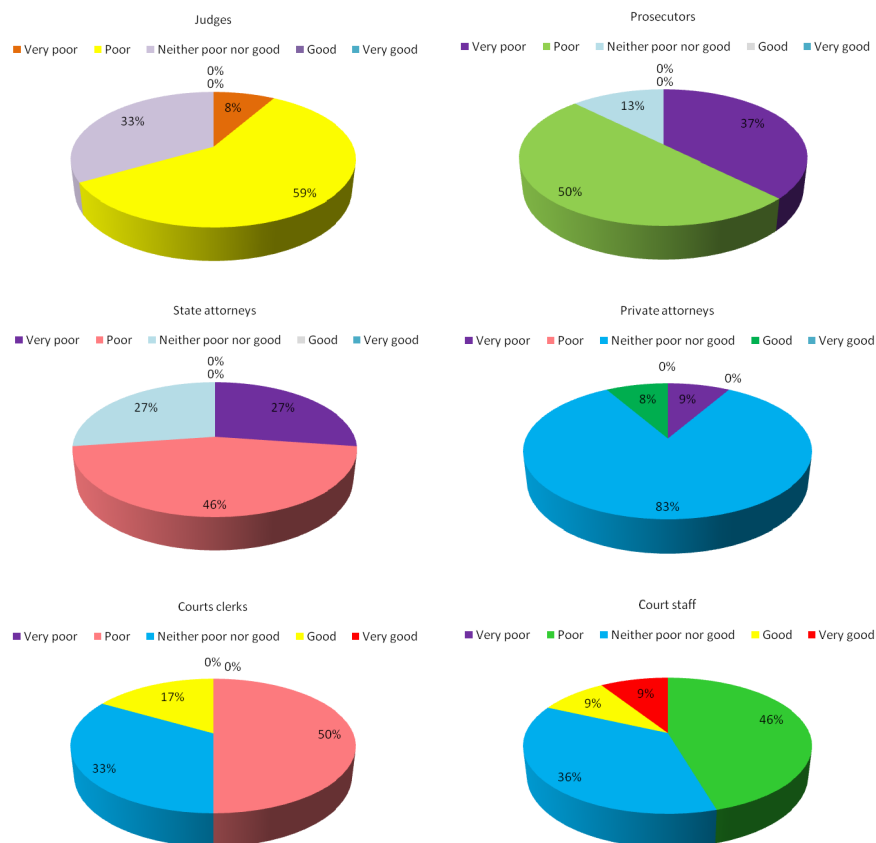
Clearly, 83% of court users consider the justice system in general to be slow, making the length of court proceedings as one of the biggest identified problems by court users for the enhanced access to justice in general. This result is corroborated both with results in Q6. and 7., but also with conclusions drawn from the conducted interviews as well as from conclusions from all relevant reports related to judicial efficiency and the identified need for the State to adopt adequate measures to resolve the issue of the huge backlog and to reduce the length of the court proceedings.

Quality of Services

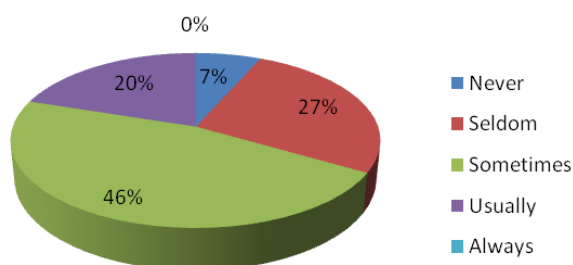
Q9. Based on your experience, please evaluate the quality of the services provided by different operators in the justice system.



The court users do not present a positive picture of the quality of services provided in the justice system. 80% of respondents expressed significant dissatisfaction either by evaluating the quality of services as “poor” (41%) or “neither poor nor good” (39%). An evaluation based on the different operators as shown in the charts below, reveals that 67% respondent evaluate the quality of judges as “poor” (59%) or “very poor”; 87% evaluate prosecutors as “poor” (50%) or “very poor”; 73% evaluate state attorneys as “poor” (46%) or “very poor” (27%), while 83% evaluate private attorneys as “neither good nor poor”. These results, again, strongly support the findings on strong skepticism towards the judiciary (see, Section 4.3).



Q10. In your opinion, is your country's justice system competent?

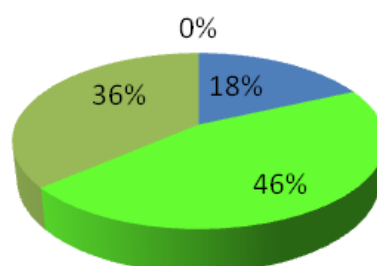


The court users' evaluation shows more dissatisfaction with the competency of the justice system than those of the legal professionals: 46% of court users evaluate it as only "sometimes" competent and 27% as "seldom" competent. Clearly, there is a difference in the perception of the BiH justice system's competency between legal professionals and court users. (Compare to the Q6 of the questionnaire for legal professionals).

Accessibility

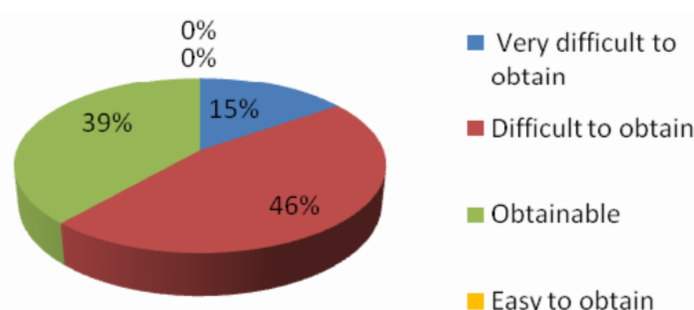
Q11. Do you consider your country's justice system to be affordable for all?

■ never ■ seldom ■ sometimes ■ usually ■ always



Court users express caution and suspicion in relation to the affordability of the court system to all. 46% consider that the BiH justice system is only seldom and 36% sometimes affordable for all, which in total represents 82% of those who do not trust that the system is accessible to all equally.

Q12. In your experience, what is the level of availability of information on laws and regulations for women, minorities and PWD?

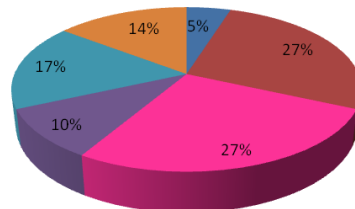


61% of court users consider the information on laws and regulations for the three specific groups to be "difficult to obtain" (46%) or "very difficult to obtain", and only 39% consider it to be "obtainable". This is a different evaluation from the one that legal professionals provided.

ded. It is possible that the different evaluation between two groups could be attributable to the legal professionals' belief that publication of laws and regulations in official gazettes and on the internet is an adequate source of information for PWD, Roma and women. However, these groups usually do not have adequate access to these sources of information, if at all, and therefore evaluate the accessibility of laws and regulations differently than legal professionals (compare to Q9 of the questionnaire for legal professionals).

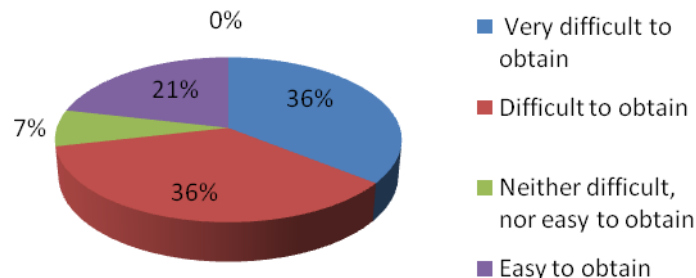
Q13. Did any of the following characteristics negatively impact on your ability to access the justice system?

■ Age ■ Economic status ■ Education level ■ Gender ■ Disability ■ Ethnicity



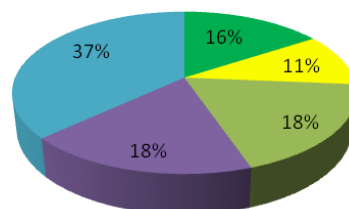
As is the case with legal professionals, court users also evaluate that economic status (27%) and education level (27%) as top two negative factors that negatively impact a person's ability to access the courts. The third identified negative factor is disability (17%), but it is also worth noting that 14% of court users consider ethnicity to be a negative factor too. (Compare with Q10 in the questionnaire for legal professionals and Q19 below).

Q14. How would you rate the physical accessibility of the courts in your country?



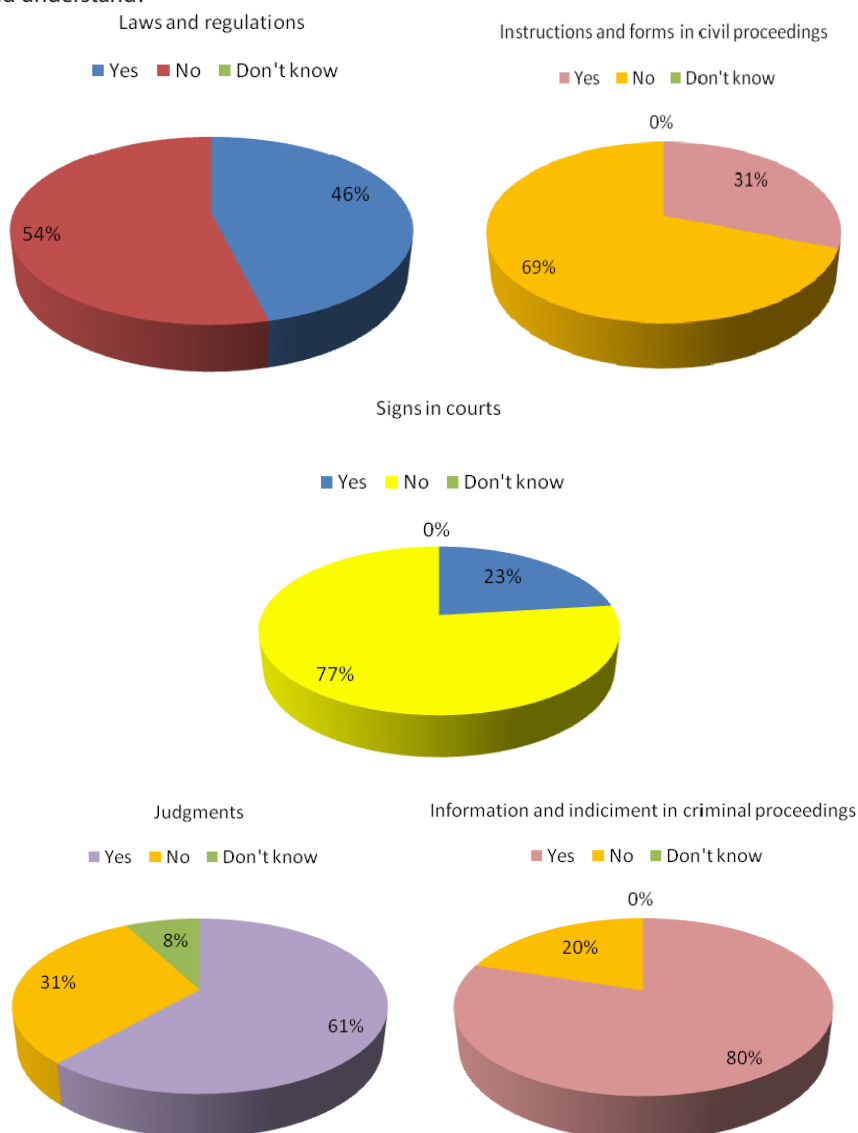
Q14a. Which factors impaired your ability to access the courts?

■ Geographical distance of the court ■ Position of the court building
 ■ Layout within the court ■ Access to information
 ■ Associated costs



72% of all court users consider the physical accessibility to the court as “difficult” (36%) or “very difficult” (36%), whereas 7% responded “neither”. Obviously, the evaluation of the physical accessibility of the courts between legal professionals and court users differs in general. However, out of those who responded “very difficult”, “difficult” or “neither” (total 79%), court users- like legal professionals- consider associated costs (37%) as one of the greatest barriers, followed by access to information and layout within the court (18% each) and geographical distance of the court (16%). (Compare to the Q11 and Q11a. of questionnaire for legal professionals).

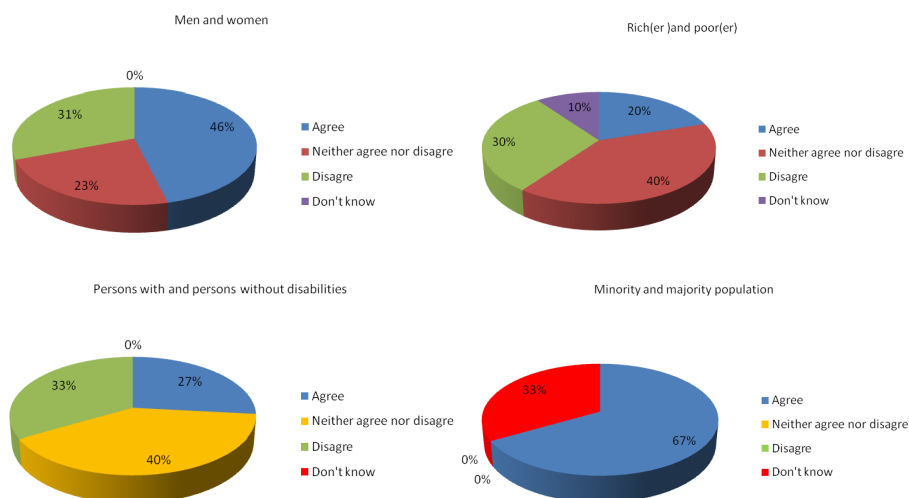
Q15. Were you able to access the following sources of information in a language that you could understand?



As this question does not refer to minorities' languages but rather the one that a person “could understand”, there are more positive answers as to the accessibility to different informa-

tion, since all minorities living in BiH understand and speak three official languages (Bosnian, Serbian and Croatian).

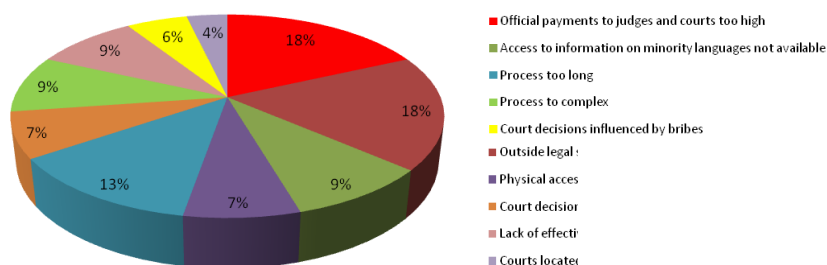
Fairness



Q16. In your experience do the court(s) treat the following categories of people equally?

The court users' responses on the equality before the courts depend on the specific categories listed in the question. For example, the opinion on the possible unequal treatment based on gender is quite divided: 46% consider that women and men are treated equally, whereas the rest of 44% either disagreed (23%) or replied "neither" (31%). As to the social/financial status as the basis for inequality, 40% replied "neither", 30% disagree and 20% agree that this is the basis for different treatment before the courts. Similarly, 40% of respondents could not decide whether the PWD status leads to inequality before the courts, but the vast majority, 67% that affiliation with the "majority" or "minority" has no influence. There is an obvious difference with the responses from the legal professionals whose majority considers that neither of listed categories leads to unequal treatment before courts. (Compare to the Q12 of the questionnaire for legal professionals).

Q17. In your opinion what are the three most significant obstacles for women/minorities/pe-

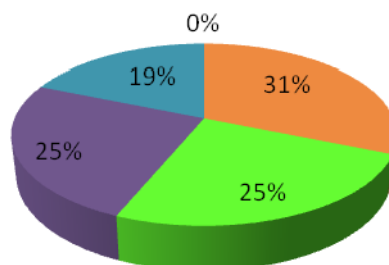


Persons with disabilities in accessing the courts in your country?

As was the case with legal professionals, court users also evaluate that the three most significant obstacles for women/minorities/PWD are too expensive outside legal services (18%), costly official payments (18%) and lengthy proceedings (13%). However, while 14% of legal professionals evaluated access to information in minority languages as an important obsta-

cle (14%), only 9% court users recognized this as a significant problem. (Compare to Q13 of

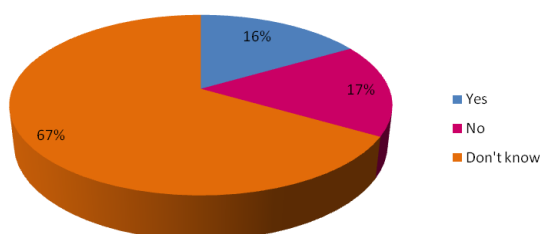
- Disrespect
- Prejudice
- Difficulties in obtaining documents
- Impoliteness
- Unfair trial
- Other –please specify



the questionnaire for the legal professionals.)

Q18. Did you face any problems in your interaction with the justice system?

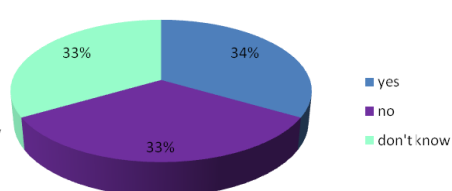
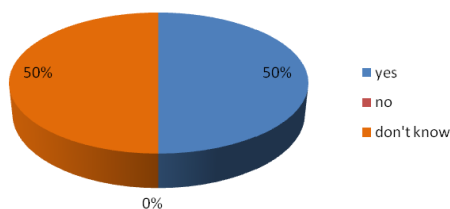
The majority of court users (56%) stated the main problems in the interaction with the court system are prejudice (25%) and disrespect (31%). This differs significantly from the legal professionals' responses to Q16c., 17c. and 18c., where the majority of respondents consider that the women/minorities/PWD are not less respected in the justice system than others.



Q19. Do you think your judgment would have been different if you were not a woman/minority/PWD?

The judgement would have been less in my favour

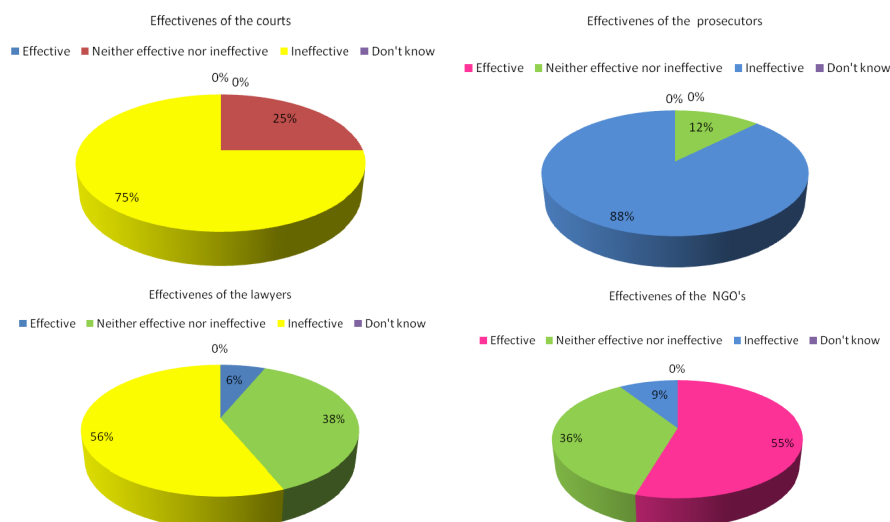
The judgement would have been more in my favour



Q19a.

Court users do not seem to attach significant importance to belonging to a specific group as determining the favorability of the justice system; only 16% think that the judgment would have been different if they did not belong to PWD/Roma/women. It is nevertheless worth noting that 67% answered "don't know," which might be influenced by the low level of court users' know-

wledge of the court proceedings. On the other hand, 50% of those who answered “yes” to Q19 believe that due to their special characteristics they would have received the less favorable ju-

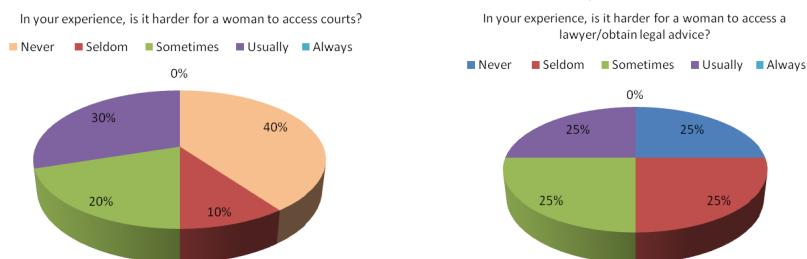


dgment, and 34% believe that the judgment would be more in their favor. Q20. Please assess the effectiveness of each institution or group in ensuring access to justice for women, minorities and persons with disabilities in your country?

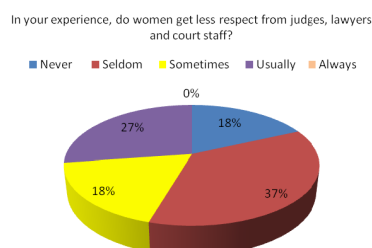
The vast majority of court users evaluate courts (75%), prosecutors (88%) and lawyers (55%) as ineffective. This again confirms the overall distrust in the justice system, especially because 55% evaluate NGOs as effective.

Specific Questions for Female Respondents

In your experience, is it harder for a woman to access courts, lawyers/legal advice and get re-



spect?

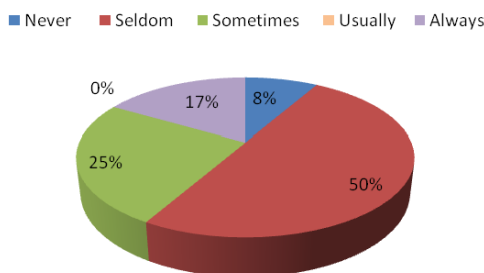


Q21a.
Q21c.

Q21b.

Although 40% of court users replied that it is not harder for a woman to access the courts, when compared to those who answered “usually” (30%), “sometimes” (20%) and “seldom” (10%), it is clear that the majority of court users (60%) think that women’s access to courts is harder compared to men. Also, the majority of court users think that women’s access to legal advice is harder than men’s (total 75%) and that they get less respect (total 82%). This is quite different from the opinion expressed by legal professionals (compare Q16a, b. and c. of the questionnaire for the court legal professionals).

Specific Questions for Minorities

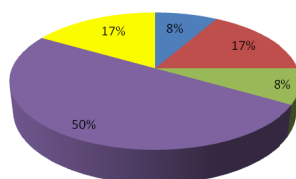


Q22. In your experience, does the state always provide an interpreter at all stages of proceedings that it is obliged, to parties who speak minority languages?
See analysis related to the Q15 in the questionnaire for legal professionals.

Q23. In your experience, is it harder for a minority to access courts, lawyers/legal advice and

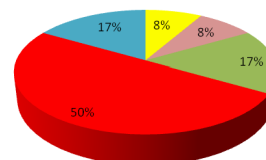
In your experience, is it harder for a minority to access courts?

■ Never ■ Seldom ■ Sometimes ■ Usually ■ Always



In your experience, is it harder for a minority to access a lawyer/obtain legal advice?

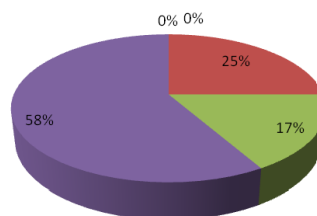
■ Never ■ Seldom ■ Sometimes ■ Usually ■ Always



get respect?

In your experience, do minorities get less respect from judges, lawyers and court staff?

■ Never ■ Seldom ■ Sometimes ■ Usually ■ Always



Q23a.

Q23b

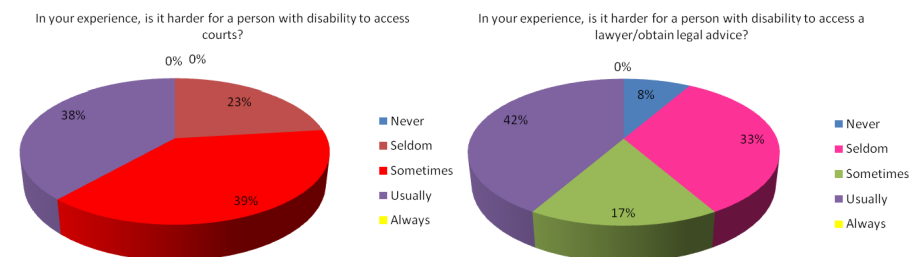
Q23c.

As to minorities, court users also think that it is harder for them to “usually” access courts

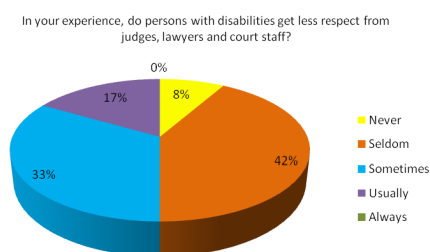
(50%), legal advice (50%) and to get respect from the judges, lawyers and the court staff (58%). These responses also differ greatly from the opinion expressed by legal professionals (compare Q17a., b. and c. in the questionnaire for the legal professionals).

Specific Questions for People with disabilities

Q24. In your experience, is it harder for a PWD to access courts, lawyers/legal advice and get



respect?



Q24a.

Q24b.

Q24c.

As to PWD, court users state that it is always harder for them to access courts, but the level of the hardship is different: 38% think that it is usual that PWD have more difficulty in accessing the court and 39% that they sometimes have difficulty in accessing courts. As to legal advice, however, 44% of the court users think that PWD usually have more difficulties in accessing legal advice, 33% believe that this occurs seldom and 17% "sometimes". 8% think that PWD have no problems in accessing legal advice. As to respect, 33% of the court users think that PWD are less respected in the justice system and 42% that this seldom occurs. There is an obvious discrepancy with the answers provided by legal professionals (compare to Q18a., b. and c. in the questionnaire for the legal professionals).

8. Conclusions and Recommendations

8.1. General remarks

The Study clearly shows that the legal and institutional framework for the observance of human rights in BiH is in place. However, as it has been pointed out in numerous reports, the latest being the EC 2011 Progress Report, there has been little progress in improving the enforcement of guaranteed rights and freedoms in general.

The specific target group of this Study includes PWD, Roma and women. As it has been shown, the legal framework for improving conditions of these particularly vulnerable groups is also in place: laws, strategies and action plans have been developed both at the State and Entity levels, but all the documents have been developed and adopted without or very limited participation of PWD, Roma and women representatives.

A high production of different reports relating either to developing or implementing policies related to vulnerable and socially excluded population, such as PWD, Roma and women is under way. Although it has been widely recognized that social exclusion negatively affects people below poverty line, it seems that BiH has taken only limited, if any, measures for social inclusion of these groups and in particular in policy development processes that address or should be addressing the specific needs/demands of PWD, Roma and women. For example, although almost all of the adopted strategies for PWD, Roma and women do recognize the need to increase their knowledge on rights and protection mechanism, none of these documents, including the Justice Sector Reform Strategy, have specific activities to this end. It therefore seems that such commitments reflected in different policy documents and reports have little effect on the situation in the field, especially at the grass-root level.

With regards to access to justice, there have also been numerous initiatives and activities recognizing that enhanced access to justice is crucial for the legal and judicial reform and the rule of law in general. However, almost no initiative or reform process has viewed the access to justice as the crucial pillar of the legal empowerment of poor, as it has been recognized in the Resolution 64/215 adopted by the UN General Assembly on "Legal Empowerment of the Poor and Eradication of Poverty". Therefore, the efforts of the years' long and ongoing legal and judicial reform in BiH have been focused mostly on laws and state institution, and too little on development, the poor and civil society.¹¹⁹

Taking into account the UN Resolution and the Report of the Commission on Legal Empowerment entitled "Making the Law Work for Everyone" it is obvious that access to justice and rule of law embraces the right to legal identity, the laws that do not discriminate against the people below poverty line because of their economic or social status, to effective and impartial enforcement mechanisms, accessible administration systems and public institutions, the availability of information about the law, and concrete measures to empower marginalized and vulnerable groups. In short, the rule of law must be available to everyone equally, both *de jure* and *de facto*. Access to justice and rule of law is crucial for establishing trust between a government and its people and it is also a prerequisite to the effective enforcement of all other rights.

¹¹⁹ This is the approach that Stephen Golub qualifies as „rule of law orthodoxy“. Golub, Stephen. 2003. Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative, *Carnegie Paper*, No. 41. October

8.2. General Study Conclusions

The Study shows that the main barriers for the enhanced access to justice in general for PWD, Roma and women are widespread poverty and public prejudices towards PWD, Roma and women. More specific barriers identified in the study are the low level of education of the three target groups, the high level of illiteracy of PWD, Roma and women in rural areas in particular, and the lack of basic legal literacy among all three groups.

This study shows that PWD, Roma and women, like most BiH citizens, have a rather low level of confidence in the judicial system. Both court users and legal professionals agree that the most significant obstacles in accessing the courts for PWD, Roma and women are costs and duration of proceedings. Also, both groups of respondents agree that judges, court personnel and lawyers lack sufficient awareness and knowledge about specific needs/demands of these three groups, and that they need more training and awareness-raising. Legal professionals also mostly agree that they do need more training specifically designed to better understand the Anti-Discrimination Law as it introduces some new ways and practices of decision-making.

It is obvious that a lot has been done in relation to the technological advancement of courts and availability of information on the internet in particular (access to information on court functions and access to legislation). However, by taking into account the level of poverty among the three target groups, their inability to access information provided via internet for different reasons and the differences of the kind and substance of information provided via court web pages, it could be concluded that this technological advancement in the judicial information system has not been very useful for PWD, Roma and minority groups.

The public free legal aid system in BiH is fragmented, still underdeveloped and too bureaucratic. It sets certain conditions that most PWD, Roma and women would not be able to meet in order to get public free legal aid (e.g. the relatively high financial threshold for most of those who belong to the target groups and live on the poverty line; or the necessity to produce different documents to support the request for legal aid that makes it impossible for the majority of Roma to access public free legal aid systems due to the lack of legal identification). At the same time, the NGO legal service providers that have been providing legal services to the vulnerable and marginalized for years with more flexibility are excluded from the laws that have already been enacted in the RS and several cantons in the FBiH, but also from the current Draft BiH Framework Law on Free Legal Aid that has not yet been passed. This would create additional difficulties for these NGOs in particular in terms of funding as they are not eligible for funding from the budget, which will have repercussions on their ability to continue to provide services to the most vulnerable as they have been doing up until now.

Finally, although the Study is focused on judiciary, it is inevitable that administrative proceedings have to be taken into account in relation to enhanced access to justice of PWD, Roma and women as many of rights that are crucially important for the three target groups are resolved before administrative bodies who lack training and awareness raising of specific needs/demands of these groups.

8.3. Recommendations

The recommendations based on the study conclusions will concentrate more on the main focus of this overall project – legal empowerment tools as opposed to institution-building activities. There are several reasons for such approach. First, as it has been already said, there is quite an impressive body of legislation, regulations, strategies and institutions in BiH, but the rights implementation and protection is still weak in particular for PWD, Roma and women. Secondly, there are ongoing legal and judicial reforms efforts driven by the requ-

ests of different international monitoring bodies, both the Council of Europe and especially the European Union as part of BiH's accession process. Third, focusing yet again on legislation and institution-building activities would leave PWD, Roma and women on the margins again, even if there would be some efforts to include them. Fourth, the inclusion of civil society in the efforts to enhance access to justice of the PWD, Roma and minority would foster creation of more effective relationships between international donors, governmental bodies, civil society organizations and these particularly vulnerable groups, thus creating a different atmosphere for a better understanding of their specific needs, more effective rights protection and social inclusion.

a) Dialogue and networking for the enhancement of access to justice of PWD, Roma and women

There is an obvious difference in perception between public service providers, legal professionals and court users on access to information and services, efficiency of the judiciary and equal treatment of PWD, Roma and women before the courts. Thus there is a need for dialogue in order to bridge the gap between the service providers and service users. This would be the base for more efficient awareness-raising of specific needs of PWD, Roma and women and of the means available to judiciary to meet those specific needs within the existing legal system. Thus civil society, relevant authorities and public service providers would have to find a way to create platform for better dialogue and networking. This would be the way to support implementation of the recommendations of the Justice Sector Reform Strategy, and it would ensure for more active participation and cooperation with civil society for the enhancement of justice, especially for PWD, minorities and women within the access to justice pillar.

Ultimately, in order to **mainstream issues of disabilities, minorities and gender** in different country's policies it is necessary to secure the participatory process in place when developing different strategies. The participatory process would secure representation of civil society groups and representative organizations of PWD, Roma and women in policy making. Such policies would be sufficient to provide a platform for the community-based interventions to quickly act and mobilize resources to address the needs of the vulnerable groups at the grass-root level. Hence it is also necessary to secure participatory process and inclusion of those vulnerable groups at the community level planning processes (e.g. the process of preparing the budget for the next year by the local governments). For example local governments could make a decision on the administrative services to regulate free legal aid and representation for PWD, Roma and Women in the community.

b) To ensure that everyone has a legal identity (Roma)

As legal identity is a cornerstone of access to justice, efforts should be taken and programs developed to foster the legal identity process. To that end the specific campaigns should be designed in cooperation with community-based Roma NGOs and BiH Ministry of Human Rights and Refugees to inform the Roma community on the necessity and benefits of legal identification as well as providing them with practical information on the process to encourage them to get involved. This includes also the development of a specific outreach strategy and more dynamic media campaign, but also planning on how to minimize any adverse consequences and mitigate risks.

c) To improve physical accessibility to judicial and other rights protection institutions (PWD)

Although some efforts have been undertaken, it is necessary to develop, in cooperation with relevant governmental bodies, further measures to enhance physical accessibility to judicial and other rights protection institutions for PWD.

d) *To improve legal literacy and access to information for PWD, Roma and women*

- Support NGO legal service providers and PWD, Roma and women community-based organizations to develop programs of basic legal awareness-raising, or “legal literacy” work for the members of these groups to educate them on their legal rights and obligations, institutional structures of the legal system, and specific mechanisms that they can use to advance their interests including mediation process. This can include but is not limited to: print, broadcast and internet media; informational flyers, pamphlets and posters; outreach campaigns – radio and TV campaigns; dramatic performances; and wireless/SMS tools.
- In cooperation with relevant Ministries and Employment Agencies, support creation and financing of a system of community based paralegals, preferably identified among young, educated, but unemployed members of the three target groups. Paralegals would receive specific and adequate training and would serve as community based focal points for provision of basic legal advice to PWD, Roma and women and liaisons to legal service providers.
- In the course of the new phase of the judicial reform, develop (possibly together with the HJPC) specific outreach tools aimed at dissemination of information on courts and court procedures that have already been developed (e.g. Care of Court Users Strategy) specifically designed for the needs of PWD, Roma and women;
- Improve organization and layout of courts to facilitate the access of PWD, Roma and women to relevant legal information in courts through help desks and/or adequate sign system in the court facilities that would be able to allow easy access to necessary information taking into account the specific needs of PWD, Roma and women. Special attention should be given to the information on court procedures, necessary documentation and on free legal aid system and providers (both public agencies and/or NGOs), including location of legal aid providers, contact information and accessibility criteria;
- Develop specific training programs for court personnel that would enhance their awareness on specific needs of PWD, Roma and women, enabling them to provide adequate information;

e) *To establish and maintain track record system in courts and other relevant institutions in relation to PWD, Roma and women*

- Improve and enable the Court Management System (CMS) to specifically register discrimination cases and to provide information to the BiH Ministry of Justice as provided for by the Anti-Discrimination Law. Also, it is necessary to track cases of PWD, Roma and women in all court proceedings. This would enable compliance with international standards and establish the basis for the track record system as required by EU in the accession process (Chapter 23 – section on Fundamental Rights).
- To set up the system in the police to register cases of gender based violence and cases involving PWD and Roma. Also to explore the ways and link this system with the prosecutors’ offices.

f) *To improve access to legal services*

- As access to justice rests in great part on reasonable access to legal services, the liberalization of the market for legal services should be pursued in the course of the process of the adoption of the Draft BiH Framework Law on Free Legal Aid, but also in relation to already existing laws. To that end, the advocacy efforts should be planned with NGO service providers to push for the inclusion of NGOs into the public free legal system and by redefining the conditions for the receipt of free legal aid by PWD, Roma and women. This would lead to the creation of a more efficient legal aid system,

that is utilizing the network of very experienced NGO legal service providers and that is more responsive to the specific needs of PWD, Roma and women. This kind of intervention would support the continuation of free legal counseling, advice and legal representation of these groups by NGO providers.

- To introduce measures that would stimulate quality of legal aid, especially legal representation services available to PWD, Roma and women by all legal aid providers.
- To take efforts to review and adequately change the laws on court fees in order to meet specific needs of vulnerable groups, specifically PWD, Roma and women to enhance their access to justice, taking into account that these group are often exposed to low income and poverty. It is especially necessary to amend these laws in a way to abolish provisions conditioning submission of law suits by paying the court fee in advance (this is a clear violation of fair trial standards, Article 6, para.1 of ECHR).

g) To improve access to courts and competent administrative bodies

- In cooperation with judicial training centers and relevant human rights/legal service providers NGOs, raise awareness of judges, prosecutors and court associates on special needs of PWD, Roma and women through specifically designed training modules on particular laws that could provide for the effective protection of these groups, such as the Anti-Discrimination Law, in particular on issues involving different forms of discrimination;
- Develop in cooperation with judicial training centers specific training modules on international human rights instruments related to these groups (UN Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, Convention on Elimination of all Forms of Racial Discrimination, Framework Convention on the Rights of National Minorities, and other relevant international instruments);
- Develop with gender institutional mechanisms and community-based women organizations broader awareness-raising campaigns and training on different forms of gender based violence for law enforcement personnel, judges, lawyers and social workers who are in direct contact with the victims as well as for the public at large and in particular with younger generation – students in high schools and universities;
- Develop or amend specific court rules regulating the implementation of the legal obligation to urgently deal with cases claiming discrimination in cooperation with HJCP;
- Develop a program with the HJCP and/or relevant ministries of justice to explore the ways and measures to reduce costs of the proceedings and to ensure free legal aid to PWD, Roma and women whenever necessary for the effective protection of their rights.
- In cooperation with relevant international and domestic partners develop programs for the improved enforcement of judgments particularly in relation to child support issues, implementation of court orders addressing established discrimination, implementation of restraining orders etc. This would be one of the ways to treat the cause of the problem and work on the prevention of discrimination and better enforcement of access to justice for PWD, Roma and women.
- To work on the improvement of the administrative proceedings, especially at the local government level (municipalities) in order to meet the needs of the PWD, Roma and women. Since administrative bodies of the governments are in most cases in charge of the proceedings directly related to the observance of the most often violated rights of PWD, Roma and women (right to legal identification, different right related to social welfare, healthcare, etc.), there is a strong need for awareness raising and sensitization of public servants in relevant administrative bodies on specific needs and rights protection of PWD, Roma and women. Finally it would be good to enable better access to those services by ensuring adequate level of information in contact

with administrative bodies (thought provision of samples and brochures at the information desk etc).

- In cooperation and partnership with relevant governmental authorities and civil society, to work on the improvement of human and financial resources of centers for social welfare and develop programs to sensitize and further educate social workers on specific needs and protection of rights of PWD, Roma and women.

h) Community based interventions

In order to ensure better observance of rights and justice by the PWD, Roma and women at the grass-root level, design specific interventions focusing on the accessibility to judicial and other service oriented institutions, availability of adequate legal information and advice, and finally legal representation. Then impact of such interventions would be high and easily measured. Civil society would be an important partner and potential facilitator of such local community interventions whereas responsible institutions would be targeted as the secondary beneficiary group. Finally there is an obvious need to reiterate what has been said in the recommendation on legal literacy and access to information (recommendation d. to improve legal literacy and access to information, paragraph two) about the necessity to engage paralegals at the community level. This service could bridge an obvious need at the grassroots level where the demand of vulnerable groups is high and professional assistance especially free of charge is difficult to find.



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