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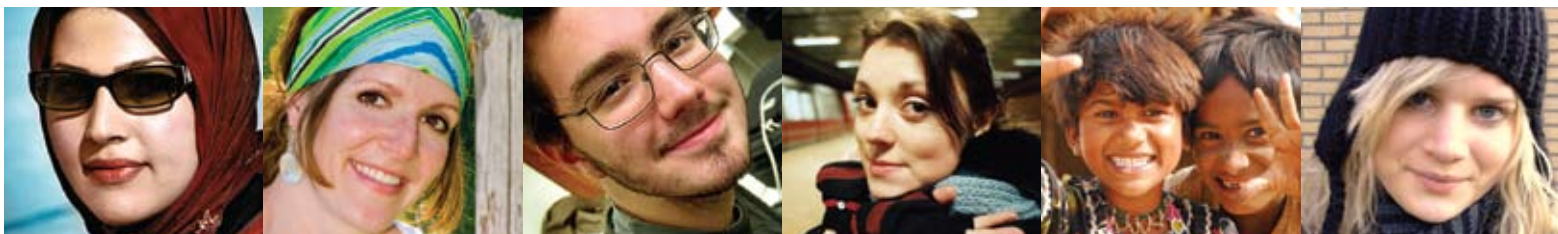
Baseline analysis

of institutional capacities for implementation of antidiscrimination legislation in Serbia



The project "Support to the Implementation of Anti-discrimination Legislation and Mediation in Serbia" is implemented by the Ministry of Labour and Social Policy of the Republic of Serbia and the United Nations Development Programme and is funded by the European Union.







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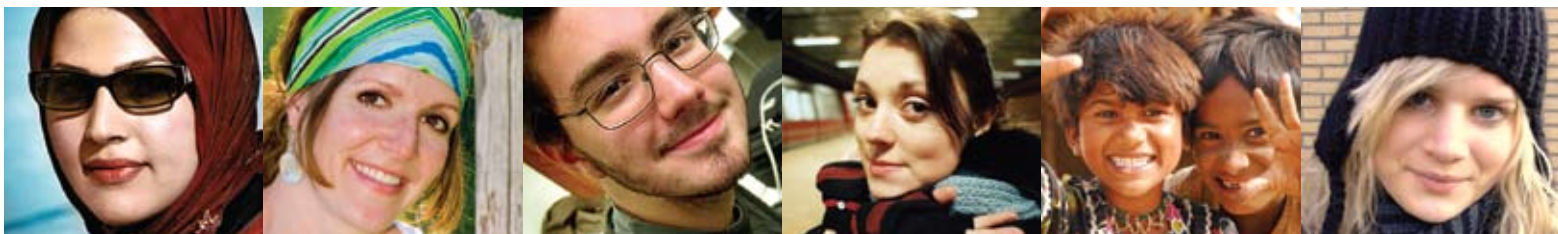




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I. Executive Summary

With the objective of assisting the Serbian Government to harmonize its legislation with European standards, UNDP, through the support of the European Commission assisted the development of a framework Law on the Prohibition of Discrimination, through the Project to Support the Implementation of Anti-Discrimination Legislation and Mediation in Serbia. The second component of the project is geared toward providing “institutional support to the agencies and bodies involved in the implementation of current and future anti-discrimination legislation.”¹

Although many organizations, governmental and non-governmental, work with vulnerable groups throughout Serbia, including on issues of discrimination, the Government maintains the overall responsibility for implementing the anti-discrimination law. This Baseline Survey² thus focuses on the Government’s ability to monitor, evaluate and report on its implementation. Serbia has extensive antidiscrimination legislation, but the focus of this Baseline survey will be on the framework Law on the Prohibition of Discrimination. It is expected that most recommendations concerning this law can be applied to other pieces of legislation (Gender Equality Law, Law on the Employment of persons with Disabilities, etc.). There are currently three key governmental bodies whose capacity and collaboration remains essential for monitoring and reporting on the new Law: the Ministry for Human and Minority Rights, the Ministry for Labor and Social Policy and the Ombudsman’s Office. A fourth, the Commissioner for the Protection of Equality, is to be established next year. Overlapping institutional competencies with respect to monitoring and reporting on the new Law, constitutes one of the challenges in developing their institutional capacities.

At the same time, raising the awareness of State actors at all levels is critical in order to both prevent future violations by the State and to ensure the ability of State actors to recognize and effectively respond to incidents of discrimination when they do occur. Developing the capacity

of line ministries to monitor, report on and implement the Law within their respective competencies would greatly advance anti-discrimination policy in Serbia, and their inclusion in the recommended actions is essential. The participation of anti-discrimination experts from the NGO sector in all activities would foster a transfer of knowledge as well as cooperation between Government and civil society sectors.

Given the newness of the legislation, there remains an enormous need to provide information to the general public about their rights under the new Law. A recent public opinion poll on discrimination in Serbia³ and a survey conducted among civil society and government organizations revealed the importance of informing the general public, and of training State actors, particularly those working at the local level.

Currently, no formal mechanism exists to monitor and report on the implementation of the anti-discrimination law, and Government coordination remains reportedly weak. The ability to evaluate the Law’s effectiveness will require the identification of country-specific indicators as well as quality data collection. Although Serbia already reports on issues of discrimination to international bodies, there remains a gap with respect to reporting on discrimination at the national level. Efforts to strengthen information gathering processes and to develop new channels for reporting on discrimination at the national level are currently necessary.

Effective monitoring and reporting on the implementation of the anti-discrimination law requires numerous organizational capacities.⁴ The emphasis here lies on supporting the Government’s ability to:

- evaluate the impact of the Law;
- report on the Law’s implementation;
- monitor relevant indicators;
- produce a comprehensive report on discrimination in Serbia;
- raise public awareness; and,
- establish the Commissioner for the Protection of Equality.

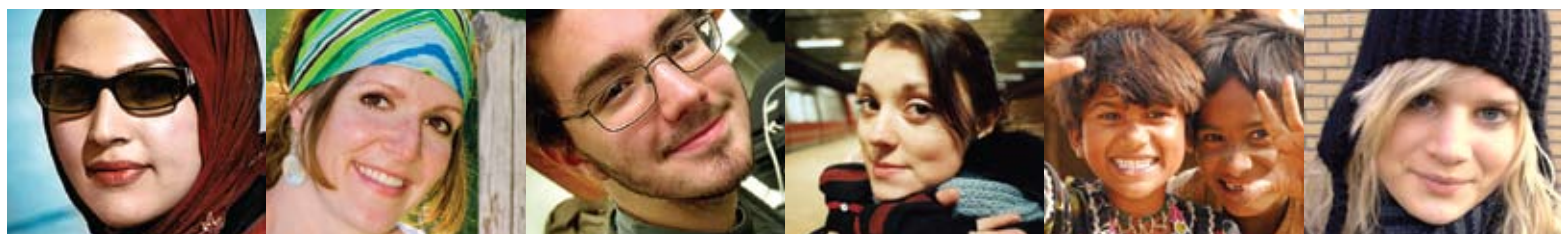
To this end, it is recommended that UNDP’s Project to Support the Implementation of Anti-Discrimination Legislation and Mediation in Serbia organize an anti-discrimination seminar for the key governmental bodies tasked with monitoring and reporting on the Law, the Ministry of Labor and Social Policy, the Ministry of Human and Minority Rights and the Ombudsman’s Office, as well as high-level representatives from line ministries and expert NGOs. The seminar would cover the content of the Law on the Prohibition of Discrimination, and include sessions on model monitoring and reporting practices. It would also provide an opportunity

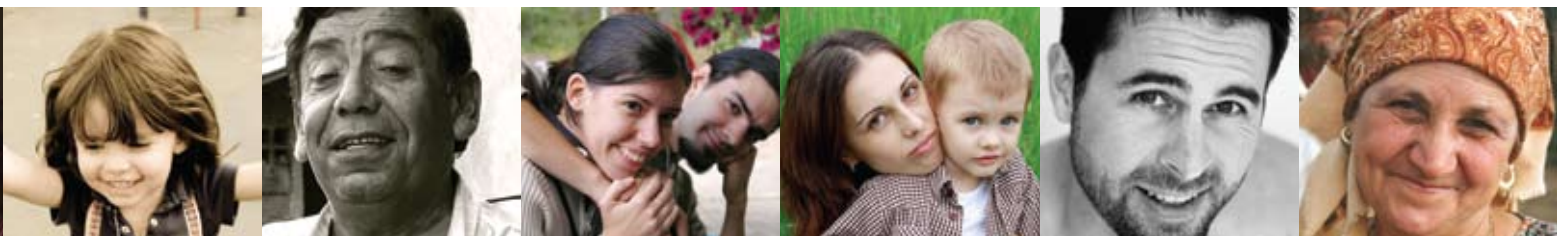
¹ Annex I, Description of the Action (“DoA”), Support to the Implementation of Anti-Discrimination Legislation and Mediation in Serbia, European Community Contribution Agreement with an International Organization, p. 4.

² Based on interviews with government actors in Belgrade (Appendix C), a standardized questionnaire of government and civil society organizations across Serbia (Appendix B), a public opinion poll, consultations with national consultants and a desk review of numerous project documents, this Baseline Survey summarizes the present institutional context for monitoring and implementing the anti-discrimination law in Serbia. It also proposes coordinated follow-up actions.

³ Public Opinion Poll about Discrimination and Inequality in Serbia, February 2009

⁴ The full list of capacities can be found in Appendix A.





to garner political and financial support for the establishment of the Commissioner for the Protection of Equality, and to plan the publication of a comprehensive report on discrimination, either as a one-time public awareness raising activity or as the first of an annual report.

Methodology

The methodology used to draft this baseline study involved international and local consultants taking into account and analyzing the existing knowledge and experience among various government bodies, non-governmental organizations and individuals that deal with discrimination issues.

The foundation for this study mostly came from:

- workshop in Nis in October 2008(about thirty regional organizations that filled out survey on their practice in combating discrimination and what are their needs and recommendations in this field),
- Public Opinion Poll conducted in 2009 that shows present perception among Serbian citizens regarding discrimination and thirty seven interviews with different government and non government institutions and organizations. The base for the interviews was standardized questionnaire
- Needs assessment study for Ministry of Human and Minority Rights

The main idea was to get input from various sources and various sides so that unbiased study can be produced. One can see in the Baseline Survey that there many similar observations and also some different perspectives to the problem, but they helped crucially to understand where are the main challenges and effective solutions regarding (anti)discrimination.

Intentionally, most of the information (Nis workshop and the interviews) was collected from outside of Belgrade in direct contact with local organizations(municipalities, NGOs, local branch offices of government administration...) in order to start network of focal points around Serbia. This will be important in future steps of the project to create decentralized mechanism of reporting and monitoring of discrimination in Serbia.

II. Brief History of the Key Governmental Institutions Relevant to Anti-Discrimination Legislation

Over the last few years, the Serbian Government has continued to undergo substantial institutional reforms in light of ongoing geopolitical and economic instability. Continuous organizational change presents significant challenges to capacity-building endeavors. Staff turnover and shifting organizational mandates and structures all complicate efforts to build and sustain institutional knowledge.

Such institutional unpredictability largely defines the historical development of the Law on the Prohibition of Discrimination and the Serbian Government's future capacity to successfully implement it. The Law was initially conceived within the former Ministry of Human and Minority Rights of the former Republic of Serbia-Montenegro. Upon its dissolution, a part of this Ministry was transformed into the Agency for Human and Minority Rights ("the Agency") of the Republic of Serbia in June 2006. Because agencies are not empowered to propose laws, the MoLESP undertook the role of the Law's principle advocate before the Government until its final passage. It was thus targeted to be the primary beneficiary of the Project.⁵

In July 2008, the Agency once again became the Ministry of Human and Minority Rights ("MoHMR"), which is now charged with formal oversight of the implementation of the Law. Yet, the institutional continuity of the MoHMR remains uncertain given the possibility of the Government to dissolve several ministries as a cost-saving measure in response to the global economic crisis. This uncertainty holds important implications for any plans concerning the development of its organizational capacity.

The Ombudsman's Office constitutes a third key institution with respect to both monitoring and reporting on the new anti-discrimination law, as it is responsible for monitoring the State's obligation to protect human rights. It has a broad mandate, which includes an individual complaint mechanism for rights violations committed by State actors. A fourth institution will be forthcoming, the Commissioner for the Protection of Equality ("CPE"), whose establishment is foreseen by the new legislation. Once instituted, the CPE will be the primary

⁵ DoA, p. 6.





institution charged with monitoring the implementation of the Law. The CPE will also have the competence to consider individual complaints concerning violations by both public and private actors. Its establishment is projected for 2010.

III. The Law on the Prohibition of Discrimination

The passage of the Law on the Prohibition of Discrimination in March 2009 marks an important milestone in securing this basic human right in Serbia, and in bringing national laws into conformance with European and international standards. As a framework law, it enhances the protection afforded by the previously passed Law on Preventing Discrimination of Disabled Persons, and other legislation which prohibited discrimination in particular fields.⁶

The Law “is a well-organized measure” that prohibits “a wide range of discriminatory actions.”⁷ It prohibits direct, indirect and retaliatory discrimination, associating for the purpose of discriminating, hate speech, harassment and severe forms of discrimination. It also recognizes positive measures, also known as affirmative action.

The Law covers the full range of protected categories. As noted by OSCE/ODIHR, “[a]ll the grounds of discrimination provided for in EU equality law are present . . . and indeed are significantly expanded. Specific measures are provided for some of these grounds.”⁸ Its prohibition of discrimination on the basis of sexual orientation brought extensive media attention to the Law’s passage. Unfortunately, other aspects of the Law received scant media coverage, requiring future public awareness raising measures. The Law prohibits discrimination in the fields of employment, access to public accommodations, education and professional training, and health.

An important feature of the new Law is that it foresees the establishment of an independent body dedicated to monitoring the situation concerning discrimination in Serbia and empowered to receive and consider complaints for violations of the Law: the Commissioner for the Protection of Equality. The creation of the CPE is projected for 2010, and ensuring its establishment is one of the objectives of the Project and a topic of the proposed seminar, as discussed in more detail below.

⁶ A Gender Equality Law was also recently passed.

⁷ OSCE/ODIHR Comments on the Draft Law on Prohibition of Discrimination of the Republic of Serbia, 17 March 2009, p.4.

⁸ *Ibid.*, p.4.

The Law sets forth the framework for electing the CPE and the scope of his or her mandate and staff. It establishes the procedure for bringing complaints to the CPE, and for challenging discrimination before courts, such as the burden of proof, and testing. Also related to enforcement, “it sets valuable provisions on ‘temporary measures,’ on court orders other than compensation and the possibility of associations and organizations initiating and participating in court proceedings.”⁹ Finally, the Law contemplates penal sanctions.

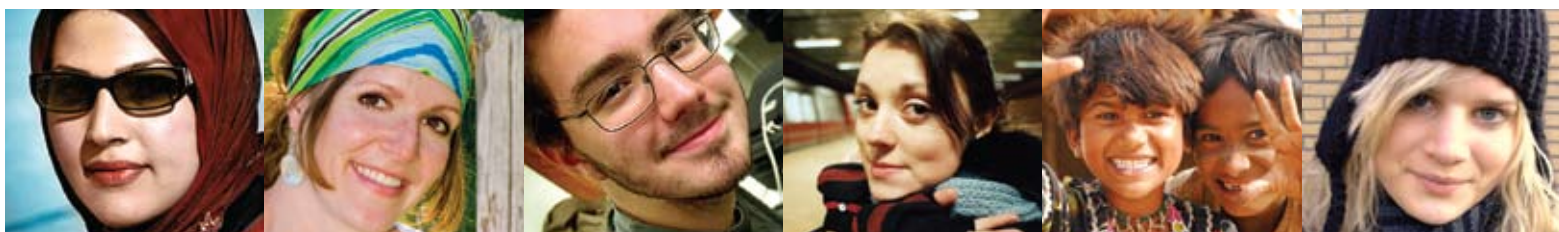
IV. Civil Society Organizations, Governmental Institutions & Public Opinion

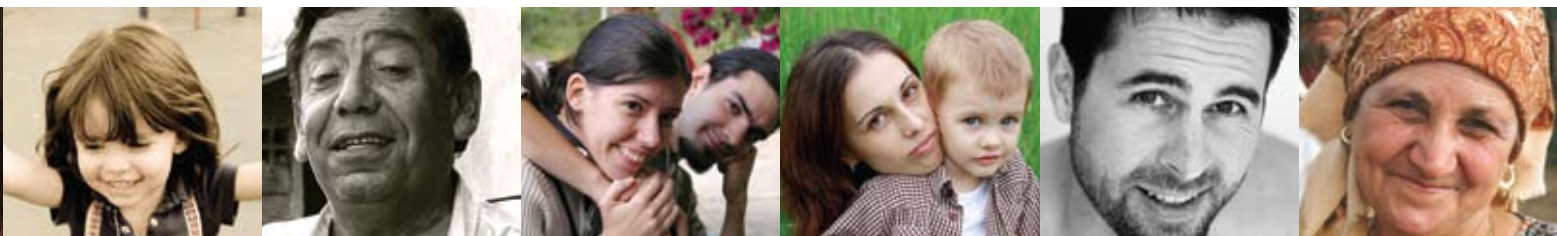
According to the public opinion poll elaborated for the needs of the project, Public Opinion about Discrimination and Inequality in Serbia, most people (86%) believe that discrimination is not justified, and a majority of persons (66%) support affirmative action. Although the poll suggested that people hold negative views about the concept of discrimination, it also revealed strong prejudice and intolerance toward some categories of persons protected under the Law.

Indeed, discrimination remains a deeply entrenched social problem in Serbia, as in the world over. Indeed, strengthening institutional capacities to monitor and report on the Law on the Prohibition of Discrimination takes place within a broader societal context. This section examines the broader context of the field of anti-discrimination. It is primarily based on information obtained through a public opinion poll conducted prior to the passage of the Law, and the responses to a standardized questionnaire assessing the capacity of civil society and government organizations to implement the new Law, undertaken for the purposes of this Baseline survey.

There are numerous actors, including NGOs, international organizations, donors and governmental agencies already working with vulnerable populations, including on issues of discrimination, across Serbia. For example, the Coalition against Discrimination, a broad-based coalition of civil society organizations, participated extensively in drafting and lobbying for the Law on the Prohibition of Discrimination. The Coalition also monitors discrimination in Serbia, conducts awareness-raising activities and has for the past three years published annual reports on the issue.

⁹ *Ibid.*, p.4.





In order to assess the current status of the field, the Project developed a standardized Questionnaire for the Assessment of Existing Capacities in the Protection of Equality. Three national consultants conducted 37 face-to-face interviews with primarily NGOs and Government bodies,¹⁰ but also with international organizations, faith-based organizations and trade unions—all selected for their experience, and relatively high level of capacity and work in the field of anti-discrimination. Organizations working outside of Belgrade were targeted, given the importance of decentralization to monitoring and reporting on the Law.

The interviews provided an opportunity to gain additional insight into the professional experiences of actors working on these issues throughout the country. They also served to map existing programmes relevant to the field of anti-discrimination, and the capacity and training needs of these organizations. The Questionnaire specifically inquired into targeted vulnerable groups, perceived obstacles to implementing the anti-discrimination law, and the extent of cooperation with, and between, Government authorities.

With respect to the phenomenon of discrimination, survey respondents point to the legacy of the inter-ethnic conflict, fostering strong prejudices and nationalism. Many also noted that Serbia remains a traditional and patriarchal society. Several respondents expressed continuing concern about nationalism. One stated, “[t]he culture of violence, nationalism, militarism, organized crime and crime in general has not been eliminated from our environment.” Another identified “nationalism, the preservation of the nationalistic discourse and institutional prejudice” as the key obstacles to implementing equality protection in Serbia.

Most respondents of the Public Opinion Poll (55%) attributed to the Government the power to effect the biggest change in reducing discrimination in Serbia. Sixty-nine percent of those polled believe that the Government is not doing enough to combat discrimination. However, only 37% of those polled believe that combating discrimination should be one of the Government’s priorities.

Obstacles to Implementing Anti-discrimination Policies

Failure to implement the Law and the absence of political will for devising and adhering to effective implementation methods were cited by an overwhelming majority of the respondents as the principle obstacles to implementing anti-discrimination policies. Numerous respondents noted that on issues where “the legislative framework is adequate, it is not implemented.” One stated, “The rule of law is not completely in place. It is a common occurrence that the law is implemented only at times.

We are somehow focused on getting around the law.” Another reported, “implementation of the law is a problem. The lack of sanctions . . . demoralizes people.” It is interesting to note in this regard that although the Public Opinion Poll was conducted before the passage of the Law on the Prohibition of Discrimination over half of the persons polled believed that such an anti-discrimination law already existed, but that it was not respected and that “violators bear no consequences.”¹¹

The lack of political will is reportedly most acute at the local level. One questionnaire respondent noted the related problem of institutional “accountability for results and actions. That is truly missing.” Many respondents also identified the need to strengthen institutional capacities as well as to raise public awareness. Indeed, according to the results of the Public Opinion Poll, a “majority of citizens think that the public is not sufficiently informed about the problem of discrimination either if the source of information are [sic] the media or the responsible State institutions.”¹²

A large majority of the respondents to the questionnaire also concurred that the Government currently lacks any system of coordination to address issues of discrimination. Indeed, respondents consistently noted either the absence of, or weak, coordination between Government bodies in general, including on reporting. There is reportedly no established links between institutions in order to obtain information or assistance in response to identified problems. One questionnaire respondent that works on readmission stated, “Each ministry is separate. They have no obligation for coordination, so every step requires a lot of energy.”¹³ One leading NGO stated succinctly, “there is no coordination [on combating discrimination], as there is no activity.”

Cooperation is reportedly particularly weak with local authorities. Interestingly, stronger cooperation between Government bodies was noted by both NGOs and international organizations working in Southern Serbia. Several questionnaire respondents also drew attention to the lack of clear reporting mechanisms on issues of anti-discrimination. One stated “here we all undertake to report cases of discrimination, but the mechanism isn’t clear, it hasn’t been fully developed.”

An absence of knowledge about discrimination by State actors was cited frequently as a significant problem. Several respondents who work with vulnerable groups also identified clear instances of intentional discrimination by government officials in their work. One

¹⁰ Interviews were not conducted with the Judiciary, nor private sector organizations, both of which should be targeted at a later phase of the implementation process.

¹¹ *Public Opinion about Discrimination and Inequality in Serbia, February 2009, p.4.*

¹² *Ibid., p.5.*

¹³ Another respondent that works with refugees and IDPs confirmed, “their problems are not related to one ministry only, but to a number of ministries to deal with issues related to health care, public sector employment, education, etc.”





representative from an international organization explained that officials discriminate “for lack of knowledge or from ill intentions on the basis of names or ethnic origin.”

On the other hand, several NGOs commented on the positive efforts made by the new MoHMR, specifically in reference to the Memorandum of Understanding it signed with 150 NGOs. One leading NGO stated, “it is making steps in the right direction.” Another commented, “the MoHMR is the true opportunity, if it is not removed. It is a step forward that Serbia has a ministry like that.”

Several survey respondents recommended that the State tap into the existing knowledge and expertise within the NGO sector as it moves ahead to implement the Law on the Prohibition of Discrimination. At the same time, many NGOs need training in skills related to monitoring and reporting on the law, including data collection, designing case studies, monitoring government action and producing shadow reports. It is significant to note that respondents described a lack of solidarity among civil society organizations, stating that each works only in its own interest. Thus, while the capacity of NGOs may be presently adequate, civil society is seen as fragmented and there is a lack of coordination between groups.

Protected Categories

The organizations surveyed work with the full gamut of vulnerable persons, who would constitute protected categories under the law, including, inter alia, IDPs and refugees, women, national minorities, persons with disabilities, veterans, sexual minorities, workers, the elderly, Roma and persons living under poverty. As the Feasibility Study conducted by UNDP pertaining to the Law¹⁴ concluded, in Serbia “the most difficult position was that of the poor, rural population, the uneducated, Roma children, the elderly, refugees and internally displaced persons, the disabled and women.”¹⁵

According to the Public Opinion Poll, the highest levels of intolerance in Serbia are held against HIV+ persons, sexual minorities and Albanians. Further, the “percentage of citizens who were not ready to accept Roma (46%), Muslims/Bosniaks (40%), Croats (31%) as spouses of their family members was striking.”¹⁶

Both respondents and reports by international bodies have called attention to racism against Roma, identifying it as the group facing the most pervasive discrimination. One international donor stated, “[i]t is not true that only racism

against Roma is a problem, the problem is that [government] institutions ignore it.” One questionnaire respondent described discrimination against Roma as systemic. The UN Human Rights Committee is also “concerned that widespread discrimination against the Roma persists with regard to all areas of life. The Committee is particularly concerned about the deplorable social and economic situation of the Roma minority, including access to health services, social assistance, education and employment.”¹⁷

The discrimination faced by IDPs, HIV carriers and sexual minorities was underscored as particularly severe by questionnaire respondents. One respondent described women as victims of “structural discrimination.” Inaccessible facilities result in systemic discrimination against persons with disabilities. Many respondents pointed to employment discrimination as the most problematic sector, noting pervasive gender discrimination particularly against pregnant women and women on maternity leave. Similarly, the public opinion poll identified employment and healthcare as the sectors most plagued by discrimination.

Strategic Litigation

Litigation constitutes a key strategy for implementing anti-discrimination laws. Yet, the achievement of rights through strategic litigation is not a central strategy among civil society actors in Serbia, for a number of reasons. First, as everywhere, litigation is a time-consuming and costly process. As one questionnaire respondent stated, “there are no funds for NGOs to represent citizens before courts, and this is important in order to make use of what the law offers.” In Serbia, cases take generally from five to seven years from start to finish. For example, since its passage in 2006, five cases have been brought under the Law on Preventing Discrimination of Disabled Persons; two have been decided. Survey respondents repeatedly offered comments about the inefficiency of the court system, and the widespread belief that the judiciary is a political institution.¹⁸

Other factors precluding the use of litigation include the fear of retaliation and unwanted media attention by potential litigants, as well as the view that courts are political. Strategic litigation, such as the use of class actions, as a means of social change on issues such as discrimination remains an important potential for the future. Several questionnaire respondents provide legal aid to their constituencies, and could thus participate in identifying cases as well as litigating at the national and international

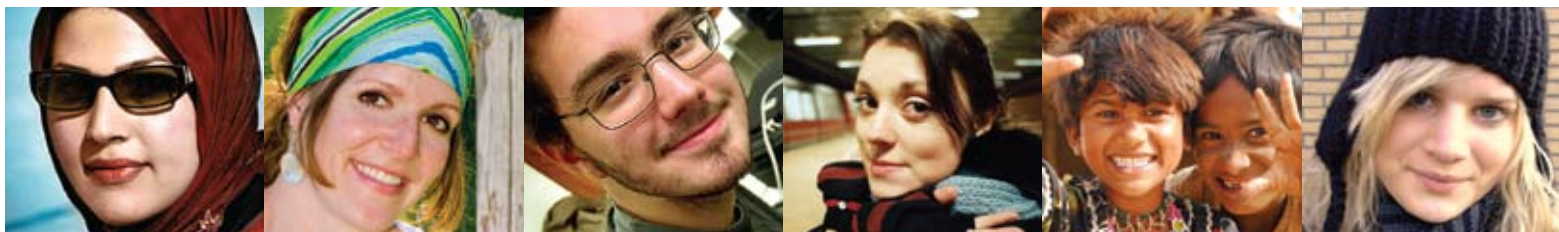
¹⁴ Feasibility Study from 2007 regarding the future comprehensive approach pertaining to AD legislation, UNDP

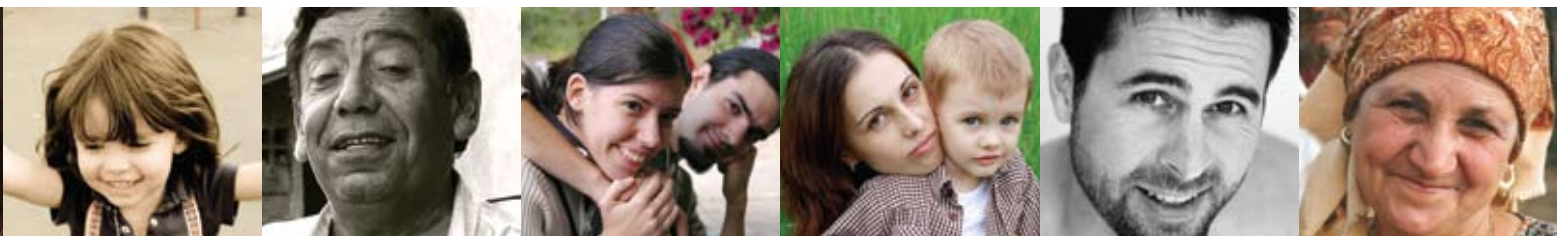
¹⁵ Introductory Remarks on the Law Prohibiting Discrimination, p.2 (citing Feasibility Study, p.6).

¹⁶ Public Opinion about Discrimination and Inequality in Serbia, February 2009, p.5.

¹⁷ Concluding Observations of the Human Rights Committee: Serbia. 12/08/2004, CCPR/CO/81/SEMO, ¶24.

¹⁸ The UN Human Rights Committee has encouraged Serbia to continue its efforts to strengthen the independence of the judiciary, noting its concern “at alleged cases of executive pressure on the judiciary in Serbia,” Concluding Observations of the Human Rights Committee: Serbia. 12/08/2004, CCPR/CO/81/SEMO, ¶19.





level.¹⁹ As noted by several respondents, long-term financial and expert assistance to victim-litigants and their legal advocates would be needed.

Educational Reform

Finally, it is also important to note that respondents repeatedly mentioned the need for meaningful education reform to combat discrimination in Serbia. In addition to the lack of educational materials to address the issue of discrimination, several respondents asserted that the educational system itself continues to foster discriminatory attitudes. One respondent called for “a fundamental reform in education in order to change the content.” Another respondent suggested reaching out to “the teacher training colleges and pedagogic academies with topics such as tolerance, discrimination, religion [and] human rights.” Indeed, [reports] indicate that intolerance was higher among youth than in older populations²⁰. Although the Ministry of Education will be included in the seminar, it is recommended that a special emphasis be placed on the education sector in a future phase of the Project.

Future Training Needs

The questionnaire also inquired into training needs in the area of discrimination. Respondents were presented first with an open-ended question: “Do you think that additional training is needed, and in what area?” To this, multiple respondents highlighted the need for raising awareness among the general public. Targeting the labor inspectorate was also recommended, given the level of employment discrimination.²¹

Following that question, five specific training needs were listed:

- Recognizing discrimination in daily work and mechanisms to promote equality (24)
- The general anti-discriminatory legislative framework in Serbia, and international standards (21)
- Monitoring and evaluation of progress in preventing discrimination and protecting equality (16)
- Fundraising for projects (8)

- Supervision and monitoring of authorities and status in the sector (shadow reports for conventions, inclusion in monitoring mechanisms of international organizations) – for NGOs only. (12)

The numbers listed to the right of each question indicates how many groups out of the 37 interviewed stated that that type of training was necessary. It is important to keep in mind when considering these numbers that, depending upon their mandates, the listed training needs may not be relevant to all of the organizations surveyed. Even so, a large majority of the respondents require training on recognizing illegal discrimination in daily life; half need training in understanding the legislative framework in Serbia. In other words, even those organizations with an higher than average capacity to work on discrimination remain in need of training on anti-discrimination, both on the Law and its application to daily life. Very few organizations stated that they had no training necessities.

Training governmental actors that operate on the local level, such as health care and social work centers is critical for implementing the Law in practice. It also remains one of the best ways of raising public awareness. As one respondent stated:

“The greatest opportunities for improvement can be achieved through continued and systematic education of the relevant authorities, professionals and the general public, through raising the capacities of the relevant actors, and through building an appropriate approach to monitoring the implementation of anti-discrimination regulations”.

Specific future trainings with the government sector should include those existing line ministry focal points that currently report to MoHMR on discrimination. This would result in improved data collection and reporting practices. A concerted focus on training and building the capacity of the Labor Inspectorate to correctly and uniformly enforce the new Law would also have a significant impact in the field of employment discrimination.

Similar training could be considered for other inspection organs, operating within the auspices of the Ministries invited to the proposed Seminar, such as the education inspection or the health inspection. These institutions do not yet perceive themselves as having a role in implementing the Law on the Prohibition of Discrimination, given that it appears, a first glance, to be part of legislation in a different sector. However, the role of well trained inspection organs can be crucial in both assuring that state institutions do not themselves in avertedly violate the law, as well as in preventing occurrences of discrimination within their specific sectors. The role of inspection organs is also relevant in assuring correct monitoring and reporting on violations of the Law in the field, and training should also include these aspects.

¹⁹ Organizations providing legal aid include, inter alia, Serbia Democratic Forum (providing legal aid to refugees and returnees), the Belgrade Center for Human Rights (bringing cases to the European Court of Human Rights), the Center for Human Rights Niš (CHRN) (providing legal aid to victims of torture).

²⁰ The citation is from European Commission against Racism and Intolerance, CRI(2008)25, 14 December 2007.

²¹ The Labor Inspectorate maintains several staff persons who are trained as trainers, and who could thus participate in the next phase of trainings. They could subsequently disseminate the training to all 300 labor inspectors.





With regard to the NGO sector, because many NGOs are specialized and provide services to a discrete protected category, such as refugees or persons with disabilities, they more than likely have training needs on discrimination that affects other protected categories, such as women or sexual minorities (minorities within minorities). Other organizations that work with protected categories stated, “we do also fight discrimination, yet we have not described our activities in that way.” In other words, while there exists a Coalition against Discrimination, much can still be done to raise consciousness among NGOs already working on these issues to foster their solidarity in movement building by framing their work in unifying terms: anti-discrimination. One respondent stated, “Only through an organized civil society sector and the self-organization of vulnerable groups is it possible to exert pressure. . . . We should have done this earlier.”

Other civil society organizations without high levels of expertise could benefit greatly from anti-discrimination trainings. For example, one trade union commented on the lack of understanding of discrimination among trade union organizations generally.

Depending upon the specific training needs identified at the seminar (see section on the seminar, below), the creation of a tailored curriculum would foster sustainability with respect to future trainings in the field of anti-discrimination. Specifically, the curriculum could cover the substantive content of the anti-discrimination law, providing clear examples of what constitutes discrimination for multiple protected categories. It could also contain information concerning model monitoring and reporting mechanisms for the use of both government actors and NGOs.

Ideally, and as recommended by questionnaire respondents, future trainings would involve a mix of trainers. Numerous questionnaire respondents opined that “a combination of experts, members of vulnerable groups and activists is the best approach [to training], as it covers both theory and practice.”²² In fact, the inclusion of trainers from protected categories is often particularly interesting for participants, as members of protected categories can best explain their real life experience of discrimination. Including activists “who have direct experience” was also seen by numerous respondents as particularly important. Several NGOs in Serbia maintain specialized training curricula and trainers, which could be integrated into the overall curricula.²³

²² Another respondent stated, “It is good to have experts deliver trainings, but it is also a challenge to have as a speaker someone from the vulnerable groups. That is the best combination.”

²³ For example, the Center for Independent Living and the Roma Information Center maintain trainers specialized in disability and Roma discrimination, respectively. Group 484 also has a training module on forced migrants; Belgrade Center for Human Rights also provides human rights and anti-discrimination training to the general public.

V. Capacity Development to Monitor and Report on the Law on the Prohibition of Discrimination

Building the capacity of “the government, judiciary, civil society and other key stakeholders to monitor discriminatory practices and lead an effective anti-discrimination policy” constitutes one of the Project’s expected results.²⁴ To that end, “capacity development and training on anti-discrimination regulations and policies and their implementation will be provided to relevant institutions dealing with the implementation, monitoring and realization of the anti-discrimination normative and policy framework.”²⁵ Given the nascent status of the Law, and the actual institutional context described above, focusing on the capacity of State institutions as a first intervention is highly recommended.

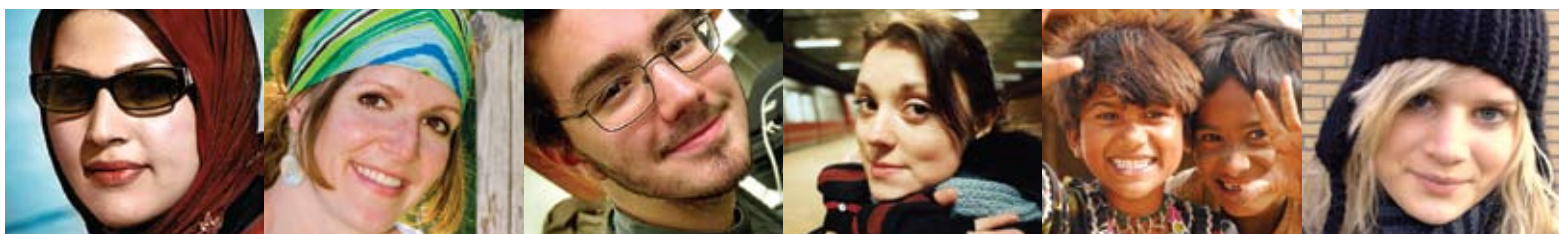
Concentration at the outset on State institutions, rather than civil society organizations, reflects the fact that it remains the Government’s positive duty to guarantee basic human rights, including the right to be free from discrimination.²⁶ Ensuring the ability of State institutions to monitor and implement the law not only recognizes the primary role of the State as guarantor of human rights, but also places emphasis on its ability to prevent violations through awareness training and capacity building among State actors.

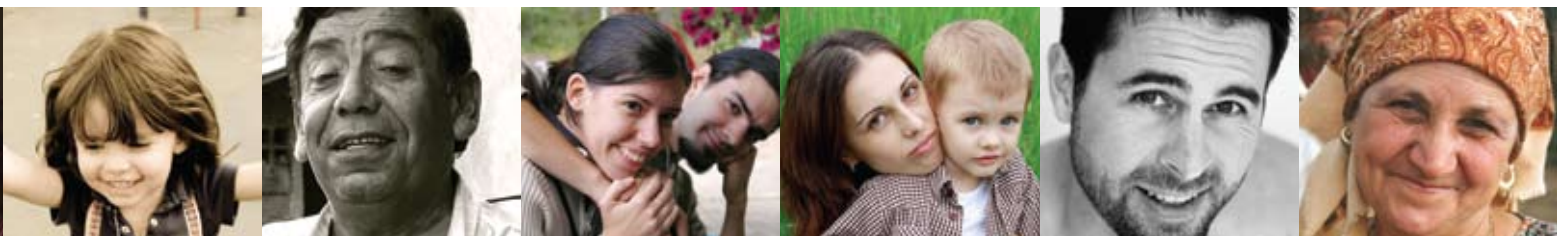
As an initial matter, the MoHMR, MoLESP and the Ombudsman’s Office are involved with monitoring and reporting on the Law pursuant to their respective competencies. In addition to the participation of these three key State agencies, including high-level functionaries from line ministries

²⁴ *Ibid.*, p. 10.

²⁵ *Ibid.*, p.12.

²⁶ Curriculum development will start in fall 2009 since the Judicial Training Center is currently undergoing a major transformation into the Judicial Academy (The Draft Law on the Judicial Academy has been adopted by the Government beginning of July and is expected to be voted on in the National Assembly end of August). The new Judicial Academy Program Council will develop new curricula for all judges and prosecutors and, for the first time, for candidates for judicial positions who will have to attend the extensive two-year initial training. Besides sitting judges and prosecutors and candidates for judicial positions there will be two more target groups to be educated by the new Judicial Academy: assistants to judges and prosecutors and judicial trainees as well as judicial and prosecutorial administrative staff. All four target groups will receive trainings on the implementation of Law on Prohibition of Discrimination, tailored to their professional needs. The principle of equality and anti-discrimination practice will thus become a cross-cutting issue in training programs of the new educational institution for the justice system.





with the aim of raising the profile of the Law and their obligation to implement it among their existing duties is also recommended. Indeed, each ministry remains implicitly obliged by the Law to ensure that its staff does not discriminate. Line ministries maintain clearly defined competence to prevent discriminatory practices—both systemic and individual occurrences. Involving higher-level actors at the outset is essential for establishing institutional commitment to the whole endeavor.

Increased ownership of the Project by line ministries remains crucial to the overall implementation of the Law. In fact, discrimination by government officials emerged in the questionnaire as a potential significant problem, underscoring the need for training throughout the ranks of each ministry. As one international organization explained, “the problem of inter-ethnic relations is not so much about the relations between members of different ethnic groups, as it is a matter of relations between citizens and institutions.” Another respondent noted clear institutional discrimination in the treatment of refugees, IDPs and returnees, “but this discrimination is not intended [nor] systemic, rather it is a result of lack of awareness by the relevant institutions.” Furthermore, some of the responses to the questionnaire by State agencies revealed ethnic bias. For example, one stated that it did not hire Roma because they “lack qualification.”

The participation of NGOs with a solid background in anti-discrimination work in the suggested capacity-building endeavors would foster the transfer of Serbia-specific expertise and at the same time strengthen linkages between the State and civil society. The involvement of civil society has been seen as crucial since the outset, “since some CSOs are especially familiar with the particularities of problems and obstacles that vulnerable people, such as refugees, IDPs, returnees and Roma face will trying to get access to services.”²⁷ Additional capacity building work with a wider scope of government agencies, civil society organizations and other stakeholders is also highly recommended for subsequent phases of the Project.

In sum, because the CPE does not yet exist, it is recommended that UNDP’s Project to Support the Implementation of Anti-Discrimination Legislation and Mediation in Serbia place its initial focus on building the capacity of the key existing State institutions relevant to the monitoring and reporting on the new anti-discrimination law, including the MoLESP, MoHMR, the Ombudsman’s Office, line ministries, and including NGOs working in the field of anti-discrimination.

Although the recommendations herein propose working closely at the outset with central Government institutions and including NGOs in Belgrade, decentralization remains a primary medium-term goal of the Project, and should be a continuing priority in the Serbian context. As expressed repeatedly by all actors throughout the consultation process,

²⁷ *Ibid.*, p. 5.

the need for awareness raising campaigns outside of the capital city and in rural areas far exceeds that of Belgrade. Similarly, the awareness and professional capacity to address issues of discrimination by local actors also reportedly lags behind those working in Belgrade.

Anti-discrimination Seminar

Upon completion of the Baseline Survey, and in light of its overall recommendations, the suggested first follow-up action is to hold an anti-discrimination seminar for staff from the main governmental institutions, including MoLESP, MoHMR, the Ombudsman’s Office senior staff from line ministries²⁸ and NGO experts. The primary purpose of the meeting would be to provide an overview of the new Law to ensure a full and uniform understanding of its content. As an initial intervention, the seminar would convene the key government figures responsible for implementing, monitoring and reporting on the Law to ensure a common understanding as to the Government’s obligations, and to develop a strategy for collaboratively moving forward. To be held at a retreat center outside of Belgrade, the meeting would foster an environment that allows participants to focus exclusively on these issues for two days.

Specifically, the seminar agenda²⁹ would include an overview of the new Law, as well as the results of the recent Public Opinion Poll on discrimination in Serbia, the findings of this Baseline Survey and the questionnaire. It would also cover model monitoring and reporting practices in the field of human rights. Drawing on the experience existent within both the government and NGO sectors, participants would identify best practices concerning data collection, monitoring and reporting systems, specifically examining the monitoring system employed by the Ombudsman’s Office in light of the network of local Ombudspersons. An emphasis would be placed here on inter-agency communication and cooperation. In this respect, participants would be selected from those actors with first-hand knowledge of the inner-workings of each institution and thus best placed to determine the functional capacities of their organization and to devise effective modalities for collaboration.

Given the absence of a national reporting mechanism on discrimination in Serbia, participants would also develop strategies for mainstreaming discrimination issues into national reporting processes. For example, they could consider such possibilities as including the issue of discrimination in MoLESP, MoHMR and other line ministries’ reports to the Government Annual Report, and/or in their reports to the Serbian European Integration Office, which forwards information to the European Commission.

²⁸ The following ministries should be included: the Ministry of Health, the Ministry of the Interior, the Ministry of Education, the Ministry of Self-governing Authorities, the Ministry of Labour and Social Policy, and the Ministry of Finance.

²⁹ The proposed seminar agenda is attached as Appendix D.





Ministry representatives would be asked to offer their experiences to date in the field of anti-discrimination in order to identify best practices. In other words, the seminar would provide an opportunity for line ministry officials to map existing anti-discrimination projects, highlighting those that are, or were, particularly successful. Line ministry participants would ideally serve as, or appoint, future focal points for follow-up actions on the development of more tailored anti-discrimination policies within each ministry.³⁰ The seminar would also cover such critical issues to the implementation of anti-discrimination policy as affirmative action, also known as positive measures. Affirmative action policies should eventually be established throughout the State sector.

As the recent passage of the Law makes it a prime moment to draw attention to issues of discrimination in Serbia, seminar participants would be asked to discuss the compilation of a comprehensive report on discrimination in Serbia.³¹ The development of such a report as a follow-up action to the seminar would have the added benefit of fostering interagency collaboration, while its dissemination would raise public awareness about the various forms of illegal discrimination and the rights protected by the new Law.

Convening senior line ministry officials and actors from the key institutions involved in human rights protection would provide an excellent opportunity to build consensus on the need for the establishment of the CPE in 2010. Seminar participants would be able to develop the necessary political and financial strategies to make the office a reality.

In sum, the seminar would provide an opportunity for facilitated dialogue between line ministry officials, human rights bodies and NGO experts on the following topics:

- an overview of the content of the Law on the Prohibition of Discrimination;
- identifying best practices for reporting on anti-discrimination;
- improving channels of data collection on issues of discrimination;
- establishing specific procedures for national-level reporting;
- initiating a plan for the compilation of a comprehensive report on discrimination in Serbia;
- garnering the financial and political support for the establishment of the office of the Commissioner for the Protection of Equality;

³⁰ Existing line ministry focal points assigned with reporting to Mo-HMR on discrimination might best fulfill this function.

³¹ As discussed in more detail in the sections below, the issuance of annual and special reports on human rights issues falls within the competencies of the Ombudsman's Office; the issuance of annual and special reports specifically on issues of discrimination will fall within the competence of the Commissioner for the Protection of Equality. The Ministry of Human and Minority Rights is responsible for reporting on discrimination issues to international bodies.

- identifying other strategic priorities for advancing anti-discrimination policies, such as affirmative action;
- identifying the priority training needs for future capacity development in the field of anti-discrimination.

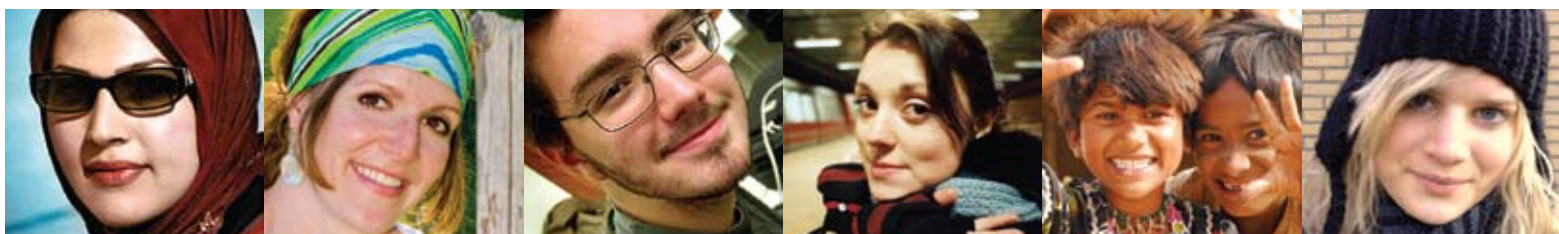
As envisioned, the seminar would result in several concrete outcomes. First, it would ensure that the relevant actors within each institution have received training on the new Law, as well as on the forms of legislative monitoring and reporting. Secondly, it would provide an opportunity to map existing anti-discrimination work within the government sector, identifying best practices. Third, participants would build consensus around two principle inter-agency anti-discrimination projects: producing a comprehensive national report on discrimination and the establishment of the CPE. Finally, participants would be asked to provide recommendations concerning future training needs, on both substantive issues as well as organizational capacities, as it is recommended that the Project provide support for successive trainings in the Fall of 2009.

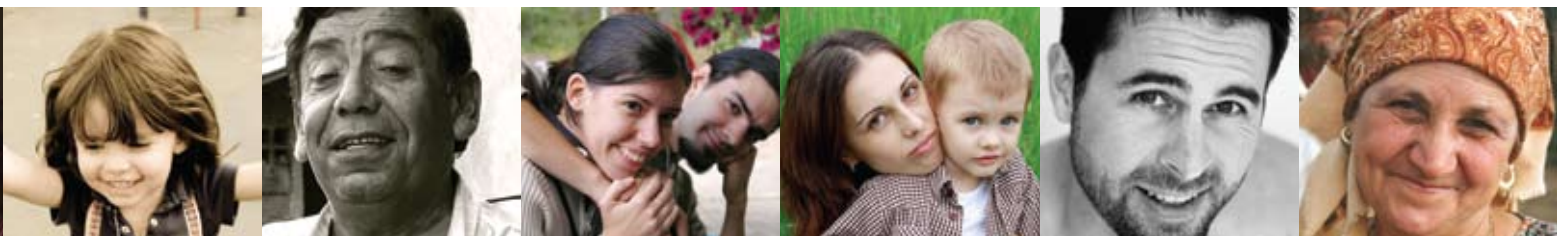
Given the enormous need for anti-discrimination training both within and outside of the government sector across Serbia, the proposed seminar constitutes a modest, but essential beginning. While the recommended initial focus of the Project lies in first building the capacity of the relevant governmental institutions responsible for monitoring and reporting on the Law, the next phase of work should address the capacity building and training needs of civil society organizations.

VI Capacity Building of the Judiciary

Education of judges and prosecutors, until the establishment of the Judicial Training Center (JTC) in 2001, had been sporadic and un-institutionalized. The Ministry of Justice and the Association of Judges of Serbia, with the support of UNDP, founded an institution that was to meet enormous educational needs of justice sector professionals (2,400 judges, 700 prosecutors and around 1,000 of judicial assistants and trainees). The training of the administrative staff was also in the mandate of the JTC as opposed to the training of misdemeanor judges that remained with the Ministry of Justice

Due to the number of potential participants and wide range of educational topics (numerous new laws passed by the National Assembly, new standards introduced by the ratification of a number of treaties and practice of international judicial bodies, judicial ethics, professional skills) on one side and lack of sufficient





resources to meet all those needs, on the other, the JTC's programs in first couple of years were primarily oriented at the training on most urgent issues. In the second phase of its development, the JTC had created a solid basis for the research capacity, the training data base, core group of trainers, built a variety of training programs for specific target groups or legal areas etc. At that point the discussion on the evolution into a full-fledged educational institution that will educate young law graduates for the judicial career started and the Working Group for drafting the Law on the Judicial Academy was established by the Ministry of Justice. The Working Group has completed the work, the draft Law was discussed by the justice sector professionals and finally the Law will be before the National Assembly in August 2009 (it is expected to be adopted by the Government of Serbia at the July 9 session).

In fall 2009 the management and program development structure of the new Judicial Academy will be in place and curricula development will start immediately afterwards. The law on the Judicial Academy will create the basis for the permanent education of all sitting judges and prosecutors and, for the first time, for candidates for judicial positions who will have to attend the extensive two-year initial training. Besides those two core target groups there will be two more groups to be educated by the new Judicial Academy: assistants to judges and prosecutors and judicial trainees as well as judicial and prosecutorial administrative staff. Special ToT programs will also be developed for mentors and lecturers to be engaged with the Judicial Academy.

All four target groups and mentors/lecturers will receive trainings on the new Law on Prohibition of Discrimination, tailored to their professional needs. They will learn on the subject of the Law, forms and cases of discrimination, the scope of work of the Commissioner for the Protection of Equality, procedure before the Commissioner, judicial protection envisaged by the Law, penal provisions for not complying with the obligations prescribed by the Law. The principle of equality and anti-discrimination practice will thus become a cross-cutting issue in various training programs of the new Judicial Academy.

Additionally, judges and prosecutors will receive the training on how to apply the Law on Prohibition of Discrimination (and all anti-discriminative provisions within other pieces of legislation) within their authorities in administration of justice and how to incorporate standards set by the EU directives and decisions issued by the international bodies in the area of discrimination (most notably the European Court of Human Rights but UN Committees that protect the equality of specific vulnerable groups, too). They will also be offered examples of good practice from the national level as well as from foreign jurisdictions, known for their good results in protection from discrimination. That way, all judicial officers will receive in-depth instruction on how to apply the Law on Prohibition of Discrimination to provide for quality judicial protection of equality in Serbia.

Pilot-training events will be delivered jointly by the Judicial Academy and the Project to Support the Implementation of the Anti-Discrimination Legislation and mediation in Serbia (engaging most prominent experts from Belgrade Center for Human Rights and from Law School Union University etc.). After the evaluation of those training events, the program will be rolled out and delivered by the Judicial Academy on regular basis.

* * * *

What follows is an assessment of the capacity of the three main governmental institutions relevant for monitoring and reporting on the implementation of the anti-discrimination law.

VII Ministry of Human and Minority Rights

Given its mandate, the Ministry of Human and Minority Rights is the appropriate institution for taking the lead—at the present moment—in advancing anti-discrimination policy in Serbia. A comprehensive assessment of its institutional capacities was recently produced by UNDP, (“Needs Assessment”).³² This section draws heavily upon that document and on interviews with MoHMR staff. It focuses specifically on MoHMR's capacity to monitor and report on the new anti-discrimination law.

As noted above, MoHMR has undergone two major transformations from a Ministry under the auspices of the Republic of Serbia-Montenegro, to an Agency under the auspices of the Republic of Serbia, and finally, once again to the status of a Ministry. It is significant to note that the primary functions of the office did not, at least on paper, substantially change.³³ The institution has undergone numerous improvements since its status as an Agency. As mentioned above, questionnaire respondents from the NGO and government sectors as well as donors praised the efforts of this

³² It is important to note that in addition to the Project to Support the Implementation of the Anti-Discrimination Legislation and Mediation in Serbia (“The Project”), UNDP CDAG Cluster is has also been implementing a project entitled “Support to Capacity Building of the MoHMR” and a Terms of Reference are being currently designed under the Instrument for Pre-Accession Assistance (“IPA”) 2007 funds of the EU with the intention of building the capacity of MoHMR in a number of fields, including national minority legislation, prevention and combating of torture and work with vulnerable migrant categories. All efforts of these initiatives should be harmonized to obtain the maximum results.

³³ Report on Serbia, Appendix “Comments by the Authorities of the Republic of Serbia on the First Report of the ECRI on Serbia,” European Commission against Racism and Intolerance, CRI(2008)25, 14 December 2007, pp. 54-5.





new Ministry so far. However, some of the obstacles that it faced in its prior incarnation continue to plague its effective functioning.

The UN Special Representative of the Secretary-General stated during her visit to Belgrade in September 2007 that while the Agency was “meant to coordinate human rights work across ministries, [] there does not seem to be a system or procedure of coordination with the result that implementation of its mandate of has been largely ineffective.”³⁴

Monitoring the Law on the Prohibition of Discrimination

According to Article 47 of the Law on the Prohibition of Discrimination, MoHMR is charged with its oversight.³⁵ It is interesting to note in this regard that Article 47 does not refer specifically to MoHMR, but rather to “The Ministry in charge of human and minority rights.” The language of the Law thus contemplates the distinct possibility that these duties may eventually correspond to another ministry.

MoHMR staff explicitly expressed the need for training on the content of the Law on the Prohibition of Discrimination. They also requested technical assistance with respect to its monitoring obligations, as they had not yet clearly identified the specific functions that MoHMR should undertake in carrying out its duties in this regard.

Reporting

One of its signature tasks, MoHMR reports on Serbia’s human rights obligations to international bodies, such as UN treaty bodies and the European Court of Human Rights (“ECHR”). Serbia is a party to, among others, the International Covenant on Civil and Political Rights (“ICCPR”), which prohibits discrimination on numerous grounds, as well as to the Convention on the Elimination of All Forms of Discrimination against

Women (“CEDAW”) and the Convention on the Elimination of Racial Discrimination (“CERD”), prohibiting sex and race discrimination, respectively. Thus, MoHMR is already engaged in collecting data and reporting on issues of discrimination in Serbia at the international level.

Through information obtained from focal points across line ministries, MoHMR presently gathers information on discrimination. MoHMR staff noted that these focal points also need training on issues of discrimination. Line ministry focal points could be subsequently trained on anti-discrimination by MoHMR staff after its participation in the seminar. Providing training on the content of the Law on the Prohibition of Discrimination as well as on —indicators, quality data collection and effective reporting practices—to existing line ministry focal points remains essential for effective anti-discrimination reporting. If not conducted by MoHMR staff, these focal points should thus be invited to participate in future trainings.

Improving the quality of data collection processes and the development of country-specific indicators for national monitoring and reporting purposes is essential, and would have the added benefit of improving the quality of reports to international bodies. The information collected by MoHMR on issues of discrimination should also be channeled into national reporting procedures, such as the Government Annual Report.

The publication of a separate published report on discrimination in Serbia would be an excellent means of both monitoring and raising public awareness about the Law. The publication of such a report would be placed on the agenda to be discussed in greater detail at the seminar, especially given the fact that the publication of annual and special reports falls within the competence of the Ombudsman’s Office and the CPE, and the fact that the CPE will be the institution responsible for implementing the Law on the Prohibition of Discrimination.

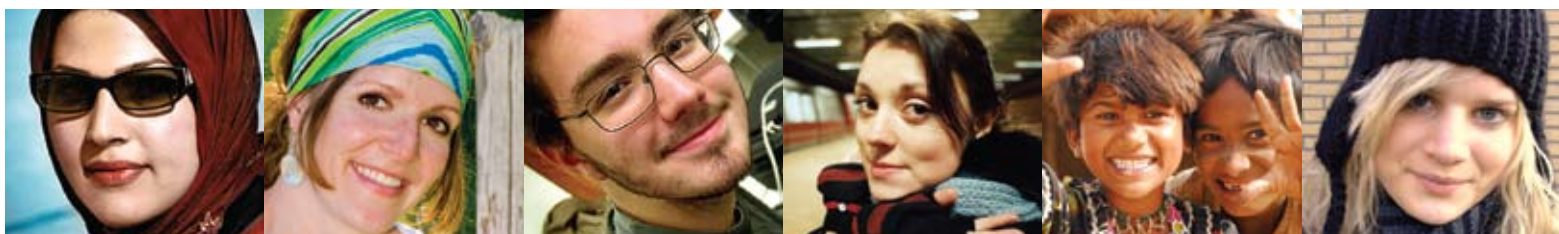
Advising Government Authorities on Standards for Anti-discriminatory Practices

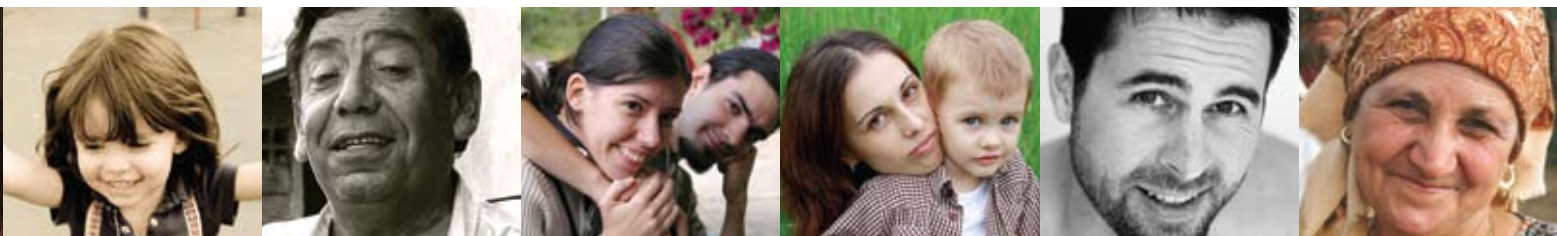
Capitalizing on its role as a ministry, MoHMR is poised to work on the policy level, liaising with its ministerial counterparts to develop and mainstream anti-discrimination policies into their daily work. Practically, this would mean working with focal points within each line ministry to ensure: awareness of the Law from high-level to local actors (by conducting trainings); providing technical assistance on the development of tailored anti-discrimination policies for each ministry, and monitoring and reporting on the implementation of each policy (e.g., data collection, positive measures). Such efforts foster interaction and cooperation among ministries, one of the recommendations of the Needs Assessment.³⁶

³⁴ Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/7/28/Add.3, 29 February 2008, ¶¶33-4 (further noting: “There is no national plan of action or strategy on human rights that guides the coordination function of the Agency. This reflects, on the one hand, a lack of commitment to its mandate and, on the other renders the Agency unable to take a lead role in driving a Government human rights agenda.”)

³⁵ “Oversight” constitutes a term of art within Serbian administrative law, and refers specifically to the obligation to hear administrative appeals for violations of the law. Significantly, there are no administrative procedures foreseen by the Law, no oversight or monitoring by a Ministry can be exercised over the judicial system (considering that the Law is specifically developed in order to facilitate judicial proceedings), and the CPE is established by Parliament, with specific obligations to report to parliament on antidiscrimination. For these reasons oversight by MoHMR over this Law remains ambiguous. MoHMR staff expressed a willingness to broadly interpret Article 47 to entail an overall responsibility for monitoring the implementation of the law. Indeed, this interpretation is consistent with its overall mandate to “monitor the implementation of international treaties in the field of human rights.” Needs Assessment, pp. 16-7.

³⁶ Needs Assessment for MoHRM, pp. 24-5.





While MoHMR is best placed to work with its ministerial counterparts to develop and implement tailored anti-discrimination policies, its capacity to do so remains questionable. First, as a new Ministry, it might lack the political leverage necessary for establishing anti-discrimination as a priority issue within other Government agencies. Secondly, because much of its staff was drawn from the NGO community, they might lack the full range of contacts among their government counterparts necessary for planning and orchestrating the meetings and trainings that would be required. Despite these obstacles, it must be emphasized that the development and implementation of anti-discrimination policies within line ministries constitutes a critical step for making the protections set forth in the Law a reality in Serbia.

The recommended seminar would therefore serve, among other things, to prepare MoHMR staff to support the implementation of the Law on the Prohibition of Discrimination across line ministries and other State bodies.

Public Awareness & Trainings

Given the recent passage of the Law, it remains a prime moment for launching an awareness-raising campaign on anti-discrimination issues. Such a campaign would ideally be directed at a general audience and be national in scope.

The Needs Assessment drew particular attention to MoHMR's mandate to "organize educational and training activities on human rights among different groups of the population, especially the disadvantaged."³⁷ However, it also noted that MoHMR's capacity to promote public awareness remains particularly weak, both with respect to fostering the general public's consciousness concerning human rights, as well as on the work of the institution.³⁸ Within the IPA framework, the process of developing a general capacity-building project in collaboration with MoHMR to begin in September 2009 is currently underway, one element of which will likely be a broad-based public information campaign on human rights. Ideally, the campaign will capitalize on its recent passage to draw special attention to the Law on the Prohibition of Discrimination.

Organizing public awareness campaigns and trainings requires both substantive knowledge on human rights issues and training skills. By participating in the proposed seminar, MoHMR staff would be more prepared to engage in public outreach on issues of anti-discrimination.

³⁷ Needs Assessment, p. 25.

³⁸ Needs Assessment, p. 26. The lack of public awareness about the Agency of Human and Minority Rights was also noted by ECRI. See, Report on Serbia, European Commission against Racism and Intolerance, CRI(2008)25, 14 December 2007, ¶27 (stating, "NGOs have deplored the fact that the general public knows little about the Office's position and capacity"). As noted, due to recent concerted efforts by MoHMR to reach out to NGOs, this situation is changing.

Collaboration with NGOs and Other Institutions

Much of the work performed by MoHMR should be conducted in collaboration with other actors in the field, including the Ombudsman's Office, other ministries and NGOs. On paper, the official competencies of MoHMR and the Ombudsman's Office overlap extensively. Ideally, the seminar would provide an opportunity for actors from both institutions to clarify this overlap and further develop modalities for collaboration concerning their respective duties under the Law on the Prohibition of Discrimination.

While the Needs Assessment noted a need for the MoHMR to improve its relationship with NGOs,³⁹ it appears that several steps have been taken in this regard. First, a database was created listing NGOs interested in collaborating with the MoHMR. Second, MoHMR recently entered into an MoU with 150 NGOs. The MoU stipulates that the NGOs will provide information to MoHMR concerning human rights, and that the MoHMR will inform the NGOs on human rights-related legislative initiatives and give them an opportunity to comment. These developments point toward increased linkages and potential for collaboration with NGOs.

Human Resources

MoHMR's successive institutional transformations resulted in high staff turnover. Consequently, a significant number of staff persons are new, and are also new to working within the government sector. Consequently, they may not have had the benefit of extensive training on all of the subjects within MoHMR's competence. As mentioned above, staff specifically requested training for on the content of the Law on the Prohibition of Discrimination, which would be provided at the proposed seminar.

MoHMR also expressed the need for an additional staff person to dedicate the necessary time and human resources to the work on anti-discrimination. According to the Needs Assessment, the Unit for Monitoring the Implementation of International Treaties in the Field of Human Rights Protection has six civil servant posts assigned to it pursuant to the Act on Internal Organization and Systematization of Posts, two of which are formally assigned to deal with anti-discrimination issues. However, only three of these six posts have actually been filled, and one of them is the Head of the Unit.⁴⁰

³⁹ ECRI and the UN Special Representative also found this to be true of the Agency of Human and Minority Rights as well. See, Report on Serbia, European Commission against Racism and Intolerance, CRI(2008)25, 14 December 2007, ¶27 (stating, "NGOs have deplored the fact [] that this body does not always have a positive attitude towards them"); see also, Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/7/28/Add.3, 29 February 2008, ¶36 (noting that "cooperation with civil society is not systematic, including on the occasion of reporting to the United Nations treaty bodies. Few [human rights] defenders reported having had any interaction with the Agency.")

⁴⁰ Needs Assessment, pp. 17-18, 22 (noting that "the anti-discrimination policy also falls





The Needs Assessment specifically noted that “one additional person should be engaged in order to monitor compliance of the national law with international human rights standards” as stipulated under both the Act on Ministries and the Act on Internal Organization and Systematization of Posts. It also suggested that “[t]his individual would be further entitled to perform coordinating work throughout informing all public authorities and especially working groups in place about any [progress made] or news in the field” among other duties.⁴¹ Consistent with the recommendation from the Needs Assessment, this post should be filled (e.g., funded) and charged with monitoring the implementation of anti-discrimination policies through coordination with line ministries.

MoHMR’s ability to fulfill its staffing requirements depends on its capacity to secure additional funds in the upcoming budgetary process and/or through seeking funds from external sources, such as donors.

VIII Ombudsman’s Office

The Law on the Protector of Citizens (Ombudsman) was passed in 2005. Although the Law provided for the Ombudsman to be appointed within six months after its entry into force, the Ombudsman was not appointed until July 2007. The Ombudsman’s Office (“the Office”) was not provided with premises in which to work until the end of 2007, and then was moved to its current premises in 2008. Both locales lack sufficient space. Indeed, it appears as though the Office continues to operate without full Government support. In her visit to Serbia last year, the UN Special Representative of the Secretary-General recommended that the Government “collaborate with and support the work of this institution to allow it [to] deliver the expected results.”⁴² As expressed by one questionnaire respondent, “the Ombudsman is functioning well within his insufficient resources and working conditions.”

The Law on the Protector of Citizens stipulates that the Ombudsman is to oversee and enhance the protection of human and minority rights, and to control the legality and fairness of the work of public administration

under the competence of the Ministry of Labour and Social Policy.” It is important to note in this regard that the MoLSP’s competency should be transferred to MoHMR pursuant to the law, and as appropriate to their respective competencies. This recommendation conflicts directly with that of the Needs Assessment, which finds that because of this overlapping competence “there is no need for strengthening the capacities of the MoHMR in this field.”

⁴¹ Needs Assessment, p. 20.

⁴² Report of the Special Representative of the Secretary-General on the situation of human rights defenders, A/HRC/7/28/Add.3, 29 February 2008, ¶32.

bodies.⁴³ The Office’s jurisdiction is thus limited to acts committed by the State. It does not have jurisdiction to act on violations occurring within the private sector.⁴⁴ The administration has an obligation to fully cooperate with the Ombudsman and to permit access to all of its facilities, data and the information within its possession. The Ombudsman is also granted the right to access places of detention and to interview, in private, persons in detention.

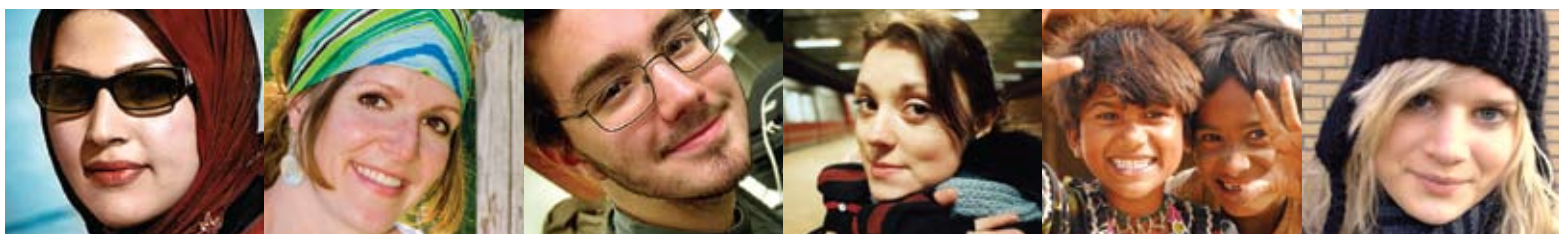
Organizationally, the Office is divided into two programmatic sections; one deals with individual grievances, the other with the advancement of human and minority rights. Its subject matter competence includes issues of discrimination as only one of the full range of human rights issues. As detailed on its website⁴⁵ the Office has an expansive mandate and scope of activities, which include the following:

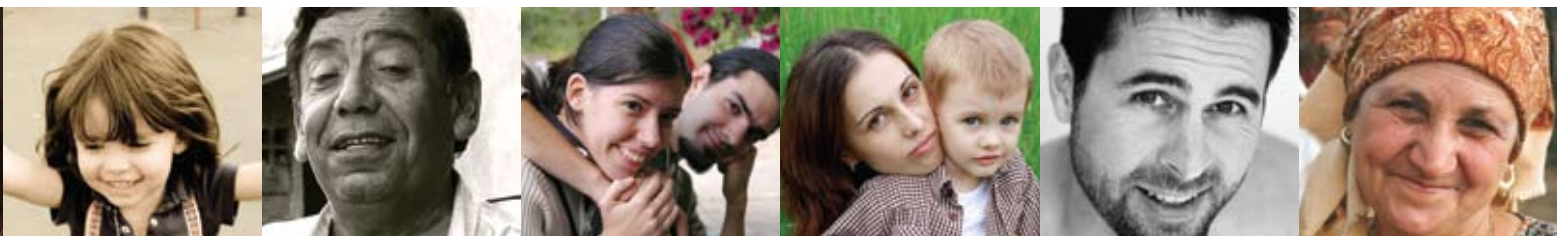
- requesting the Constitutional Court to appraise the legality of laws, other legal instruments and general acts;
- publicly recommending dismissal of officials and civil servants responsible for rights violations or for non-cooperation with the Office;
- submitting criminal or misdemeanor charges for violations;
- bringing cases to court, either in response to a complaint or on its own initiative;
- initiating legislative reform before Parliament to ensure conformance with international standards;
- providing opinions on legal initiatives prepared by other government bodies;
- preparing suggestions, recommendations and advice to prevent breaches of human rights and to enhance protection;
- participating in meetings, panels and conferences with other government bodies, NGOs and international organizations;
- drafting project proposals;
- prepare yearly and special reports on human rights issues;
- draft publications to promote human and minority rights;
- responding to media requests for information about human rights issues;
- prepare publications for public administration bodies on rights protection, promoting good governance;
- disseminating information to the general public to facilitate access to rights;
- promoting a code of ethics for civil servants;

⁴³ In this capacity, it is charged with monitoring the work of MoHMR. The Ombudsman answers to the Parliament.

⁴⁴ The CPE’s subject matter jurisdiction will be focused exclusively on cases of discrimination. In contrast to the Ombudsman’s Office, it will have jurisdiction over private actors as well as the State.

⁴⁵ See, <http://www.zastitnik.gov.rs/index.php/lang-en>.





- receiving individual complaints, verifying allegations, and ordering a response by government bodies;
- provide legal assistance to those with grievances outside of its jurisdiction (private sector violations, domestic violence, etc.)
- prepare and initiate proposed measures for enhancement of work of public administration bodies for advancing civil rights;
- submitting recommendations to public administration bodies;
- monitoring decisions of the Constitutional Court and the ECHR;
- monitoring the status of human rights protections in Serbia;
- gathering and systematizing data on human rights;⁴⁶
- assisting citizens to file grievances; and,
- enhancing dialogue between ethnic and national minorities.

Although the Office included anti-discrimination matters within its competence before the passage of the Law, efforts must now be made to mainstream this issue more explicitly within its on-going work. For example, the civil servant code of ethics might require the inclusion of anti-discrimination issues.⁴⁷ Discrimination should be a category for all data collection, including individual complaints, as well as a subject matter to address at relevant meetings and conferences, and in its yearly reports. Potential future actions taken by this Office towards monitoring and reporting on the Law might include the publication of a special report on discrimination in Serbia, and drawing attention to these issues in its contact with the media.

Notably, for the purposes of monitoring and reporting on the Law on the Prohibition of Discrimination there is an overlap between the Ombudsman and the future CPE with regard to cases of discrimination committed by public authorities. Overlaps in the monitoring of the status of human rights protection in Serbia between the Ombudsman and the MoHMR which may be of relevance in the determination of an effective monitoring and reporting process with regard to the Law.

The proposed seminar would provide an opportunity for actors within these institutions to discuss how best to coordinate their efforts concerning the implementation of the Law.

Responding to Individual Complaints

Within its first year of operation, the Ombudsman's Office received over 3000 complaints.⁴⁸ It currently receives between 300 and 400 complaints each month, reportedly more than it can handle. Half of the

complaints come from Belgrade; the other half from the rest of Serbia. This figure provides a clear indicator of the need for public information campaigns outside of the capital, both as regards to the existence of the Ombudsman's Office's individual complaint procedure as well as with respect to human rights awareness generally, and the new Law on the Prohibition of Discrimination in particular.

Significantly, respondents of the Public Opinion Poll named the Ombudsman's Office with frequency as the place to which one directs discrimination complaints. However, of those persons polled who had experienced discrimination only 16% reported it to the authorities. The majority of those polled, who had not experienced discrimination, named the police and the Ombudsman's Office as the authorities to which they would report such an offence.⁴⁹

The Ombudsman's competence to respond to individual complaints is very straightforward. The Office should, however, be involved in the development of a more formalized system of referrals, and in particular can assist with passing on lessons learned and best practices to the future CPE.

Enhancement of Human and Minority Rights

For the purpose of monitoring and reporting on the Law on the Prohibition of Discrimination, the Section of the Office dedicated to the Enhancement of Human and Minority Rights is assigned generally with assuring the implementation of relevant laws by State bodies, and with providing advice and recommendations concerning the prevention of breaches of human rights. Given its scope of activities, there are several possible ways in which the Office could contribute to monitoring and reporting on the Law.

Collaboration with Line Ministries and NGOs

The Ombudsman's Office reportedly maintains good relations with NGOs. Staff explained that many individual complainants are referred to them from NGOs, and that NGOs are also a key source of data. The Office also reports good relations with line ministries, particularly with the Ministry of Interior, but noted that cooperation with ministries could also be improved.

Human Resources

The Ombudsman is supported by four Deputies, and has been assigned 60 staff persons pursuant to the Act on Internal Organization and Systematization of Posts. At present, however, the staff consists of 30. Its budget remains insufficient, and it lacks adequate office space and equipment. The Office expressed the need for an additional staff person to

⁴⁶ Significantly, the Office maintains disaggregated data.

⁴⁷ The code of ethics for civil servants is an excellent point of intervention for training and awareness on issues of discrimination.

⁴⁸ See, http://glassrbije.org/E/index.php?option=com_content&task=view&id=3302, last checked 15 May 2009.

⁴⁹ Public Opinion about Discrimination and Inequality in Serbia, February 2009, p.5.





dedicate time and human resources to issues of discrimination. It appears to maintain strong relations with international donors, strengthening its ability to seek funds for additional human and programmatic resources.

One important characteristic of the Ombudsman's Office is its presence in the field. Significantly, it plans to open a satellite office in Southern Serbia. At the same time, it maintains close working ties with the twelve local ombudsman's offices, established under the auspices of local self-governing authorities. These offices are soon to be linked by an electronic network. At present, the Ombudsman holds meetings with these local counterparts once every two months in order to discuss cases and issues of mutual concern.

In addition to cooperating with municipal officials and the provincial secretariat of Vojvodina, the Office organizes field visits. The Ombudsman noted that after each visit to the field, the Office receives a marked increase in individual complaints. These visits are clearly an effective means of raising public awareness both about the services provided by the Ombudsman as well as about human rights issues. The Ombudsman's links to the field outside of Belgrade could be an important future component of this Project, given its aim of decentralization. For example, local ombudsman might be invited to attend the seminar.

IX. Ministry of Labor and Social Policy

The Ministry of Labor and Social Policy ("MoLESP") monitors the implementation of the Law on the Prohibition of anti-discrimination legislation through its inspectorates and linked agencies, as well as with regard to specific vulnerable categories of the population. The MoLESP has over 500 staff members in Belgrade and throughout Serbia, and is in charge of monitoring the overall social welfare network in Serbia, which is the first point of contact for a number of vulnerable categories. MoLESP houses the Department for Veterans' Rights, the Department for the Rights and Protection of Persons with Disabilities, the Department for Family Care and Social Protection, the Centers for Social Work, the Gender Equality Directorate, the Department for Demographic and Social Integration Policy, the Social Inclusion Fund and the Labor Inspectorate.⁵⁰ Its IT Department maintains and processes data relevant to the rights of social protection beneficiaries throughout Serbia. In other words, its

staff is extremely well placed to identify and address both systemic and individual cases of discrimination, as well as to collect data and provide information for reporting purposes.

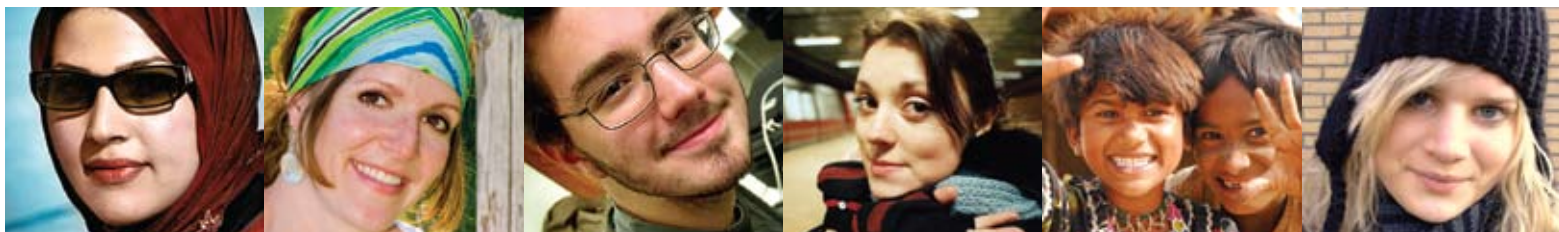
Specifically, the Department for the Rights and Protection of Persons with Disabilities, oversees the situation and proposes measures for the improvement of the position of Persons with Disabilities. The Labor inspectorate, charged with assuring the compliance with national legislation in labor relations. The Labor inspectorate has field outposts throughout Serbia, and is familiar with monitoring antidiscrimination measures in view of the obligations it has under the Serbian Labor Law, which prohibits direct and indirect discrimination in labor relations. The Gender Equality Directorate is another institution within the organizational framework of the MoLESP, performing monitoring and reporting with regard to gender equality, including development of gender sensitive statistics and specific indicators. The MoLESP is also organizationally in charge of several inter-agency Working Groups, including those for Children, for the Elderly as well as for Readmission migrants. MoLESP to date, has provided the primary de facto institutional backing necessary for the Law's development and eventual passage as the current "governmental institution in charge of equal opportunity policies."⁵¹ As mentioned above, UNDP's Project to Support the Implementation of the Anti-Discrimination Legislation and Mediation in Serbia remains housed within MoLESP. Therefore, staff from MoLESP will be invited to participate in the workshop and training of trainers in order to ensure continuity with respect to MoLESP's institutional knowledge of, and contribution to, the Project. This is particularly relevant in order that MoLESP remains able to ensure follow-up and continuity with respect to monitoring and reporting on the Law's implementation within its field of competencies. The participation of MoLESP in its capacity as a line ministry in the seminar will be critical for the successful implementation of the Law, as it is the Ministry assigned to address the needs of vulnerable persons as such.

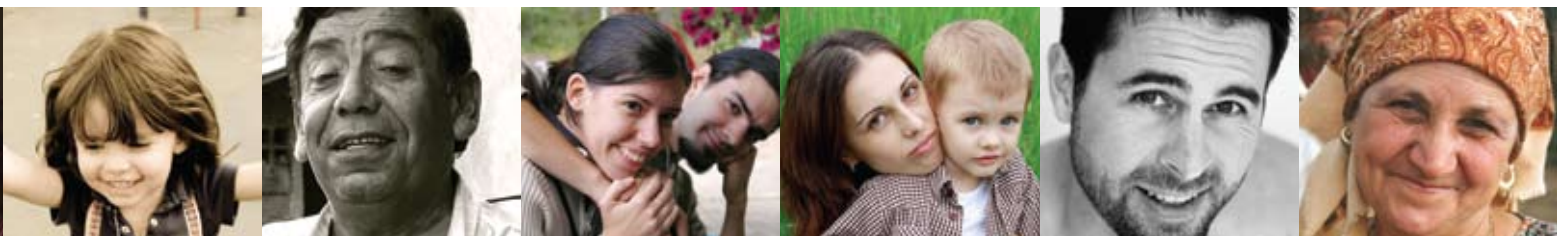
Over the course of meetings in Belgrade, MoLESP officials expressed sincere interest in supporting the Law's implementation. At the same time, responses by the staff of MoLESP agencies to the questionnaire revealed a clear lack of understanding about the meaning of discrimination and the protections afforded by the Law. Concretely, one of the agencies expressed ethnic bias in its response to a survey question. Another department, one of the only respondents that indicated that it had no need for training,⁵² consistently made incorrect references to protections afforded by the Law. Ensuring that MoLESP staff, throughout its varied departments, receives proper anti-discrimination training has enormous potential for preventing discrimination by State actors.

⁵⁰ Approximately ten labor inspectors are trainers who regularly provide trainings to their colleagues. Their inclusion in a training of trainers would ensure dissemination of the curricula to an important target group (the approximately 300 inspectors) throughout Serbia.

⁵¹ DoA, p. 6.

⁵² This department stated, "older colleagues share their knowledge and experience with the younger ones, meaning internal knowledge sharing. They are all experienced and there is no need for training."





A few questionnaire respondents from the NGO sector specifically noted the importance of providing anti-discrimination training to both the Labor Inspectorate and the Centers for Social Work, “as they are in direct contact with the victims, and can exercise discrimination.” One specifically recommended that they be trained through external, rather than internal, trainers.

It is important to note that in its response to the questionnaire, the Labor Inspectorate indicated that it received very few reports of workplace discrimination for two reasons: 1) it is difficult to prove; and 2) workers don’t report discrimination for fear of losing their jobs. Workplace discrimination is one of the most pervasive forms of discrimination in Serbia, in accordance with the Public Opinion Poll. In this regard, strengthening the capabilities of the Labor Inspectorate to provide consistent enforcement of the new Law should be the focus of future capacity building endeavors. Efforts should be made to ensure that all labor inspectors are aware that the Law reduces the complainants’ initial burden of proof in initiating a claim, and that ultimately the burden of proof falls on the defendant.⁵³ They should also be informed of, and empowered to enforce, the provision within the new Law prohibiting retaliatory discrimination.⁵⁴ Further, efforts must be made to raise the awareness of potential claimants of their rights under the new Law.

The lack of coordination between agencies within the same Ministry with respect to the development of the anti-discrimination law also became apparent during consultations in Belgrade. Another capacity assessment supported by UNDP, focused on the Gender Equality Directorate and conducted in February 2009, noted that the coordination, organized data gathering and statistical elaboration by the Centers for Social Work in the field of gender-based violence (a form of discrimination) remains weak, and that MoLESP’s capacity for monitoring indicators is low. In its response to the survey, the Labor Inspectorate also reported inadequate internal coordination between inspectorates, resulting in contradictory decrees.

Given its size and the breadth of its work, MoLESP staff should be a primary target for anti-discrimination training and capacity building. Sustained focus on this Ministry alone holds enormous potential for effective implementation of the Law. While the Departments within the MoLESP “aim to... provide conditions for the full inclusion of all vulnerable

groups in every aspect of Serbian society,” they are relatively new and remain in need of capacity development.⁵⁵ Importantly, at the central level, MoLESP remains committed to supporting the implementation of the anti-discrimination law, which has the potential to translate into committed action at the intermediary and local levels.

X The Establishment of the Commissioner for the Protection of Equality

Chapter IV of the Law on the Prohibition of Discrimination establishes the Commissioner for the Protection of Equality (“CPE”). This new body, when it is established, will ensure sustained attention to the issue of discrimination in Serbia. Although projected for 2010, given the current economic crisis, the feasibility of establishing a new body in light of the planned closure of several ministries remains of concern. The success of such an endeavor depends on the ability of generating political pressure to ensure that funds are dedicated in the 2010 budget.

Clearly, the establishment of the CPE will require an additional, substantial investment in developing its staff and organizational capacity. The CPE will have an expert service to assist him or her, comprised of three assistants.⁵⁶ The division of duties among staff and the establishment of procedures will most likely require expert assistance. For example, pursuant to the Law on the Prohibition of Discrimination, it is the CPE that must devise the rules of procedure governing the office.⁵⁷

The establishment of the CPE will also require developing additional modalities for collaboration and division of competencies between it and other agencies, mainly the Ombudsman. For example, like the Ombudsman’s Office, the CPE will also have the competency to initiate legal regulations or amendments on issues of discrimination, provide opinions on draft laws and regulations, recommend measures to public administration bodies and monitor the relevant laws.⁵⁸

⁵³ Article 45, *The Rules Concerning the Burden of Evidence, Law on the Prohibition of Discrimination*. Unfortunately, both Articles 35 and 45 impose an initial burden of proof on the complainant, which is unclear in the text of the law and in contravention of international standards. International and European standards merely require a plaintiff to allege a prima facie case. See also, OSCE/ODIHR Comments on the Draft Law on Prohibition of Discrimination of the Republic of Serbia, 17 March 2009, p.7 (recommending “that the reversal of the burden of proof in EU law should explicitly apply to both direct and indirect discrimination.”)

⁵⁴ Article 9, *The Prohibition of Calling to Account, Law on the Prohibition of Discrimination*.

⁵⁵ DoA, p. 6.

⁵⁶ Article 32, *Law on the Prohibition of Discrimination*.

⁵⁷ Article 34, *Law on the Prohibition of Discrimination*.

⁵⁸ Article 33(7),(9), *Law on the Prohibition of Discrimination*.





Individual Complaint Mechanism

The CPE will have the competence to consider complaints concerning violations of the anti-discrimination law by both public and private actors.⁵⁹ By assuming responsibility for all cases addressing discrimination, the CPE may reduce the workload of the Ombudsman's Office with respect to individual complaints for violations committed by State actors. Careful attention must be paid to the procedures and remedies offered by both institutions to ensure parallel access to remedies by complainants.

While at present individual complaints concerning violations of the Law on the Prohibition of Discrimination by State actors are addressed by the Ombudsman's Office, complaints concerning violations by private actors and all other needs for assistance are addressed in an ad hoc manner. The development of a clear referral mechanism to assist individuals would ensure that all victims of violations receive assistance and at the same time reduce overlapping competencies.

The CPE will be empowered to issue opinions and recommendations on individual complaints, to submit "misdemeanor notices" for violations, and to "caution" violators who fail to provide redress. It can inform the public of the violation if it is not redressed within 30 days of the caution.⁶⁰ The CPE's complaint procedure was designed to be faster and simpler than bringing a case to court. The CPE shall provide information to complainants, and can file suit in particular cases,, in agreement with the complainant.⁶¹

Monitoring and Reporting on the Law

The CPE shall submit annual and special reports to the National Assembly on issues of discrimination.⁶² The annual report is to contain an evaluation of the work of public administration bodies and service providers in the field of anti-discrimination. A summary of the report is to be published in the "Official Gazette of the Republic of Serbia."⁶³ Special reports are to be submitted to the National Assembly upon the Commissioner's initiative or upon request by the National Assembly on issues of "particular importance."⁶⁴ While the reports issued by the CPE will maintain discrimination as their focus, it will remain important for it to collaborate with the Ombudsman's Office and MoHMR concerning the content of their respective reports.

⁵⁹ Article 33(1), Law on the Prohibition of Discrimination.

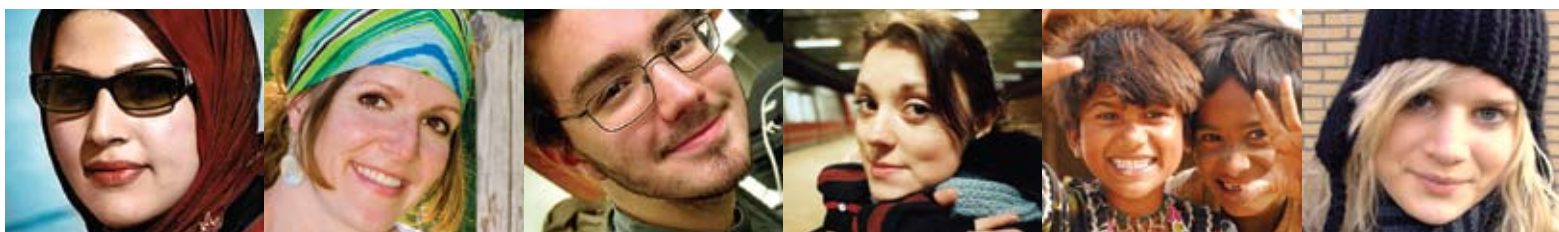
⁶⁰ Articles 33(1),(4), 39, 40, Law on the Prohibition of Discrimination.

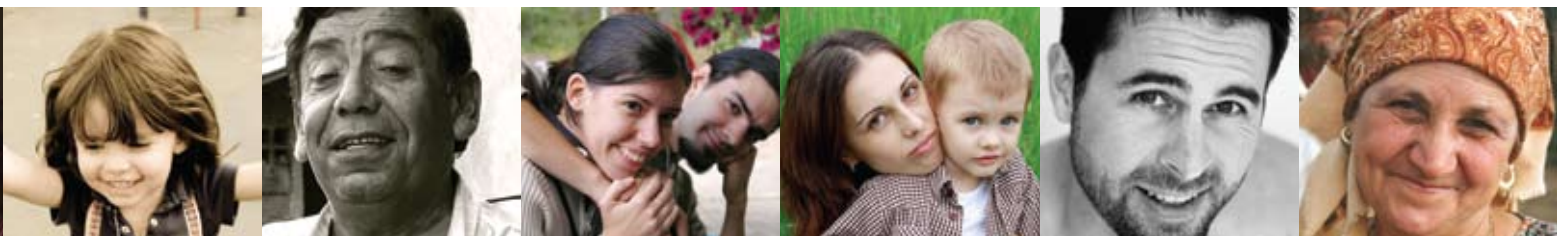
⁶¹ Article 33(2),(3), Law on the Prohibition of Discrimination.

⁶² Articles 33(5), 48, Law on the Prohibition of Discrimination.

⁶³ Article 48, Law on the Prohibition of Discrimination.

⁶⁴ Article 49, Law on the Prohibition of Discrimination.





Appendix 1

List of Functional Capacities for Monitoring, Evaluating and Reporting on Anti-Discrimination Laws and Policies

- evaluate the substantive content of relevant legislation and government acts (legal harmonization with international standards);
- evaluate the effective impact of laws;
- advise government authorities with respect to legal regulations concerning discrimination;
- provide information to State and other relevant institutions (international organizations and NGOs);
- provide policy advice on standards of anti-discriminatory practice in specific areas and establish measurable objectives for their implementation;
- provide trainings to State and other actors;
- promote awareness raising on anti-discrimination to the general public;
- provide information and referrals to individuals needing assistance;
- ensure the accessibility of services to individuals;
- produce, publish, disseminate materials on anti-discrimination;
- report to international bodies on issues of discrimination;
- support the ratification of additional, related international treaties;
- maintain effective media relations; and,
- seek additional funds for the implementation of special projects.

Appendix 2

Organizations Interviewed Questionnaire for the Assessment of Existing Capacities in the Protection of Equality

- Božur (NGO)
- Group 484 (NGO)
- Čovekoljublje (Humanitarian Fund of the Serbian Orthodox Church) (Faith-based Organization)
- Justitia et Pax -- Caritas (Faith-based Organization)
- Independence (Trade Union)
- SSSS (Trade Union)
- Federation of Independent Trade Unions of Serbia (Trade Union)
- Peščanik (weekly radio program)
- The Užice Center for HR and Democracy (NGO)

- Žene u crnom (Women in Black) (NGO)
- Amity- Power of Friendship (NGO)
- Belgrade Centre for Human Rights (NGO)
- Canadian International Development Agency (CIDA) (International Donor)
- UNDP PRO 2 Program (Development)
- OSCE Bujanovac (International Agency)
- Centre for Development of Civil Society (NGO)
- SeConS – group for development initiative (NGO)
- Serbian Democratic Forum (NGO)
- Centre for Human Rights Niš (NGO)
- Centre for Independent Living of Persons with Disabilities Serbia (NGO)
- Sandžak Committee for Human Rights (NGO)
- MoLESP Department for Rights and Protection of Persons with Disabilities (Government Agency)
- MoLESP Department for Veterans' Rights (Government Agency)
- MoLESP IT Department (Government Agency)
- MoLESP Labor Inspectorate (Government Agency)
- MoLESP Center for Social Work (Government Agency)
- MoLESP Sector for family care and social protection (Government Agency)
- National Employment Service (Government Agency)
- Ombudsman's Office (Government Agency)
- Municipality of Novi Pazar (Government Agency)
- Serbian Statistical Office (Government Agency)
- Coordinating Body in Preševo (Government Agency)
- NVO Generator (NGO)
- Resource center Leskovac (NGO)
- Roma Information Centre (NGO)
- Society for the Protection and Enhancement of Mental health of Children and Youth(NGO)





Appendix 3

Baseline Survey Meetings, held in Belgrade with international Antidiscrimination consultant Lori Mann

April 19 – 29, 2009

UNDP Project Staff:

- **Marija Vujnović** – Project Manager,
- **Milovan Batak** – Project Coordinator
- **Nataša Rašić** – Legislative Dev. Coordinator
- **Olivera Vučić** – ADR Coordinator
- **Sanja Nikolin** – National Consultant

Ombudsman's Office

- **Saša Janković** – Ombudsman
- **Mina Rolović Jočić**

Ministry of Labour and Social Policy

- **Zoran Martinović** – State Secretary

Social Innovation Fund (MLSP):

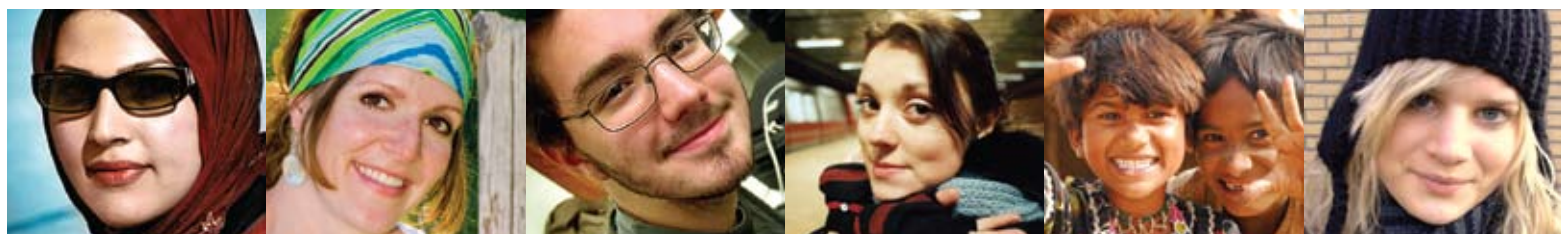
- **Aleksandra Čalošević** – Project Manager
- **Irma Lutovac** – Project Officer

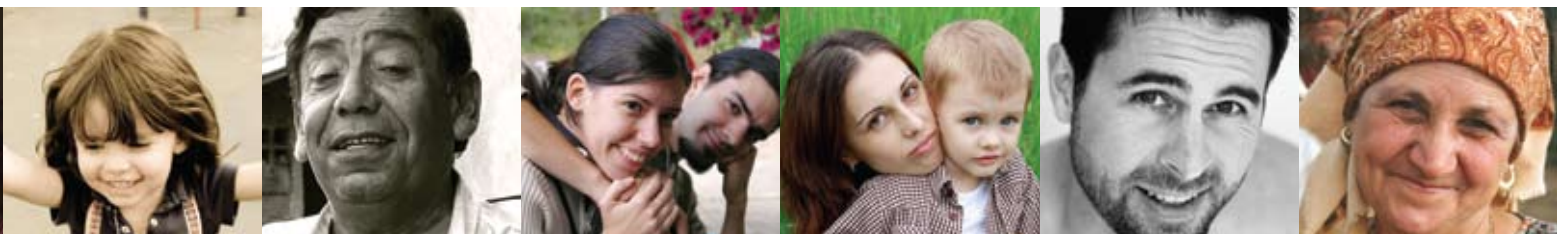
Ministry of Human and Minority Rights:

- **Marko Karadžić** – State Secretary,
- **Katarina Ginić** – Head of the department for European integration i project management

Gender Equality Directorate (MLSP):

- **Natalija Mićunović** – Director
- **Mira Marjanović** – Consultant
- **Vesna Jarić** – Consultant





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Lori Mann

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Editors:

Olivera Purić, Team Leader, Capacity Development for Accountable Governance Cluster
Marija Vujnović, Project Manager “Support to the implementation of Anti-discrimination Legislation and Mediation in Serbia”

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