

Strengthening Judicial Integrity

through Enhanced Access to Justice



Analysis of the national studies on the capacities of the judicial institutions to address the needs/demands of persons with disabilities, minorities and women

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Executive Summary

1.1. Background and Context

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

Access to justice is more than improving an individual's access to courts or guaranteeing legal representation.¹ Access to justice is defined as the ability of people to seek and obtain a remedy through formal or informal institutions of justice for grievances in compliance with human rights standards.² There is no access to justice where citizens, especially marginalized groups, fear the system, and see it as alien; where the justice system is financially inacces-

sible; where individuals have no lawyers; where they do not have information or knowledge of rights; or where there is a weak justice system. For UNDP, access to justice involves normative legal protection, legal awareness, legal aid and counsel, adjudication, enforcement, and civil society oversight.

The integrity, independence and impartiality of the judiciary are essential prerequisites for the effective protection of human rights and economic development. Moreover, judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. Ensuring equality of treatment to all before the courts is essential to the due performance of judicial office.³

Within Europe and the Commonwealth of Independent States, UNDP's regional programme for 2011-2014 is focused on promoting

1 United Nations Development Programme, "Access to Justice Practice Note" 2004.

2 United Nations Development Programme, *Programming for Justice: Access for All: A Practitioner's Guide to a Human Rights-Based Approach to Access to Justice*, Bangkok, UNDP, 2005.

3 Equality is defined as per the Bangalore Principles of Judicial Conduct. The Bangalore Principles of Judicial Conduct were developed by the Judicial Integrity Group, an informal gathering of chief justices and senior justices as a Draft Code of Judicial Conduct in Bangalore, India, in February 2001. The Draft Code of Judicial Conduct, later called the Bangalore Principles of Judicial Conduct, were elaborated and further developed through various rounds of international round table meetings involving the UN Commission on Human Rights and the Commission on Crime Prevention and Criminal Justice by judges from common and civil law countries. For further information please see http://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf

human rights and access to justice for social inclusion and legal empowerment (PHASE project). As part of this programme, UNDP Bratislava Regional Centre (BRC) representatives participated in an international conference on judicial integrity, which was held in Tbilisi, Georgia, in April 2011, and organized in partnership with Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ).⁴ One of the recommendations arising out of the conference was that UNDP should follow up on the evaluation of national judicial systems, processes and its components. A preliminary desk review revealed the lack of information on capacities of the judicial institutions to address the needs of some specific groups: persons with disabilities, minorities and women.

1.2. Objectives

The overall goal of this initiative is to enhance access to justice for three specific groups: people with disabilities (PWD), minorities and women. The objective of this report is to provide an analysis of the national studies that were carried out in five selected countries/territories, Bosnia and Herzegovina, Kazakhstan, Kosovo,⁵ Kyrgyzstan and Serbia, to assess the capacities of judicial institutions (courts) to address the needs of the target groups.⁶ The analysis will also identify possible entry points and niches for UNDP at the national level for the provision of further support in this area, and to inform regional policy and programming support.

1.3. Methodology

Although there were some differences in the approach at the national level, the same basic, multi-faceted methodology was applied. The selected countries had applied via a competitive process and met pre-defined criteria. Two questionnaires were designed for professionals and courts users respectively, which sought to elicit opinions, perceptions and experiences on the efficiency of the justice system, and the quality of services, accessibility and fairness of the justice system in each country/territory. In addition, specific questions were addressed to judges, prosecutors, lawyers and court staff regarding their training and awareness of procedures relating to the target groups, and additional questions were posed to the target groups on accessibility issues relating to their specific needs. In addition, some of the Country Offices (COs) organized a validation workshop with the aim of discussing and validating the findings and recommendations from the national studies with the research participants.⁷ In addition, comprehensive desk research was undertaken both at the national level and regionally, and additional consultations were carried out as required. Overall, the methodology outlined above, with its mix of qualitative and quantitative data collection methods, helped to draw up a comprehensive picture of the access to justice situation in the selected countries/territories in respect of the target groups.

4 <http://www.giz.de/en/home.html>

5 Hereinafter referred to in the context of the UN Security Council Resolution 1244 (1999).

6 In Bosnia and Herzegovina the definition of minorities was narrowed to include only Roma, as the most numerous and disadvantaged minority group.

7 Validation Workshops were carried out in Bosnia and Herzegovina prior to the finalization of their national study and in Kosovo and Kyrgyzstan after the finalization of their national study.

1.4. Structure and Scope of the Study

The report seeks to present an overview of the relevant access to justice framework within each country/territory. It identifies the main problems and obstacles that women, PWDs and minorities face in protecting their rights and in accessing legal protection mechanisms, and in particular through the courts. It seeks to compare professionals' opinions with court

users' experiences, with a view to identifying any shortcomings and gaps between the perceptions of service providers, on the one hand, and the experiences of service users on the other. The findings and recommendations have been drawn up from the data obtained and comments and suggestions made by stakeholders during the consultations, as well as from the comprehensive desk research undertaken.

2 Introduction

2.1. International Standards and Framework

General UN human rights treaties provide important standards for the protection of the rights of persons belonging to minorities, including women and persons with disabilities. The rights guaranteed in all UN human rights conventions apply equally to all members of minority groups, including women and PWDs.⁸ Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is the most widely accepted legally binding provision on minorities and provides the basis and inspiration for the subsequent UN Declaration on Minorities.⁹ Given the wide ratification of the ICCPR, every state in the world has a legally binding obligation to protect minority rights based on its voluntary commitments under international law.

2.2. Access to Justice for Minorities, Women and Persons with Disabilities

Although equality between women and men is guaranteed in the constitutions of 139 countries and territories throughout the world, inadequate laws and loopholes in legislative frameworks, poor enforcement and vast implementation gaps make these guarantees hollow promises, having little impact on the day-to-day lives of minorities, women and PWDs.¹⁰ Justice is central to the efforts to help minorities, women and PWDs become equal partners in decision-making and development, yet “no country is free from discrimination in the administration of justice”.¹¹

Access to justice for minorities, women and PWDs is specifically safeguarded in a

8 These include the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities.

9 Article 27 of the ICCPR reads: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”

10 Progress of the World’s Women 2011-2012 – In pursuit of justice, UN Women, 2011.

11 Statement by a group of UN independent human rights experts to mark the International Day for the Elimination of Racial Discrimination, Monday 21 March 2011.

number of international conventions, standards and recommendations, yet in reality, minorities, including women and PWDs, often lack access to justice and equal protection of the law.¹² This exclusion can be caused by various factors, including discrimination, poverty, low institutional trust or confidence in the process, lack of capacity, language barriers, weak access to information, or living in remote areas with a lack of judicial facilities. Some minorities may also prefer to use traditional justice systems to resolve disputes. Minorities are more vulnerable to arbitrary arrests and are less likely to receive a fair trial due to discrimination, under-representation in legal services, higher levels of social exclusion and language barriers.¹³

According to the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, in October 2011, persons with disabilities are often denied access to justice on an equal basis with others. "There is an atmosphere of impunity surrounding abuses committed against people with disabilities."¹⁴ In October 2011, the UN Special Rapporteur on the independence of judges and lawyers called for the urgent need to integrate a gender perspective into criminal justice systems, as a fundamental step towards allowing equal

access to justice for women and men. Women are still largely underrepresented in judicial office and in the legal profession throughout the world, in particular in the highest-level positions; this undoubtedly reflects institutionalized gender discrimination within the justice system.¹⁵

2.3. Overview of Country Profiles

While development challenges in Europe and the CIS vary widely, the region is united by some commonalities, for example, relatively high human development levels (with most countries in the region being middle-income countries); and the post-Communist transition. Bosnia and Herzegovina, Kosovo and Serbia, as successor states/territories of the former Yugoslavia share a common history and background, which is reflected in the inheritance of the same judicial system and a similar development path, with all countries/territories seeking accession to the European Union. Kazakhstan and Kyrgyzstan also share similarities, as former Soviet states.

All of the countries/territories participating in the survey are parties to the international human rights agreements and instruments

12 See for example, the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 1992, Article 4.1. "States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law."; the Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, Article 13 - Access to justice "1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. 2. In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff."; and the Convention on the Elimination of all forms of Discrimination against Women Article 15.1. "States Parties shall accord to women equality with men before the law".

13 Marginalized minorities in development programming, UNDP, Democratic Governance Group, Bureau for Development Programming, May 2010

14 Thomas Hammarberg, 18 October 2011, http://www.coe.int/t/commissioner/news/2011/111018tpiromania_en.asp

15 Interim report of the Special Rapporteur on the independence of judges and lawyers, 10 August 2011 A/66/289.

that protect the rights of the target groups.¹⁶ However, the application of these agreements and instruments varies, for example in Kosovo the application applies to substantive rights only and not procedural rights, since Kosovo is a member of neither the UN nor the Council

of Europe and is thus not in a position to ratify them. Please see Annex I for a snapshot of each country/territory providing useful data and information relating to access to justice.

16 These agreements and instruments include the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, the Council of Europe Framework Convention for the Protection of National Minorities, the Convention of the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention of the Rights of the Child and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

3

Analysis of National Studies

Because it is not possible to draw direct comparisons between all countries/territories, what follows is an analysis, which picks out common themes and trends, using specific examples and data to support them. The analysis has been shaped around the components contained in the questionnaires. It was not always possible to reach large audiences and get representative survey results. However, that does not undermine the value of data gathered as the survey results are strongly supported by the interpretation of primary sources, such as national and international legislative frameworks, other regulations including relevant strategies and action plans pertinent to the specific target groups, reports of international and domestic institutions and organizations on particular issues of PWDs, minorities and women, compliance reports of national authorities with their international, constitutional and legislative obligations as well as recommendations of the relevant human rights monitoring bodies. Therefore, the interviews and survey results should be viewed as an illustrative source of information and findings in relation

to the judicial institutions' abilities to meet the specific needs of the target groups.

3.1. Common Themes and Cross-Cutting Issues

3.1.1. Women

Throughout the region gender-based violence is one of the most frequent issues facing women. In Kosovo, "convictions for domestic violence are rare, due to the traditional, male-dominated society and the attitudes towards women, which contribute to the high level of domestic abuse and low number of reported cases".¹⁷ Professionals surveyed throughout the region pointed out the lack of sufficient awareness and knowledge among judges, prosecutors and police and among the general population on what constitutes gender-based violence, as well as other issues such as sexual and work-place harassment that disproportionately affect women over men. In Kyrgyzstan, poor media coverage of the problem of gender vi-

17 Human Rights Report on Kosovo, published by USA Bureau of Democracy, Human Rights, and Labour: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm>

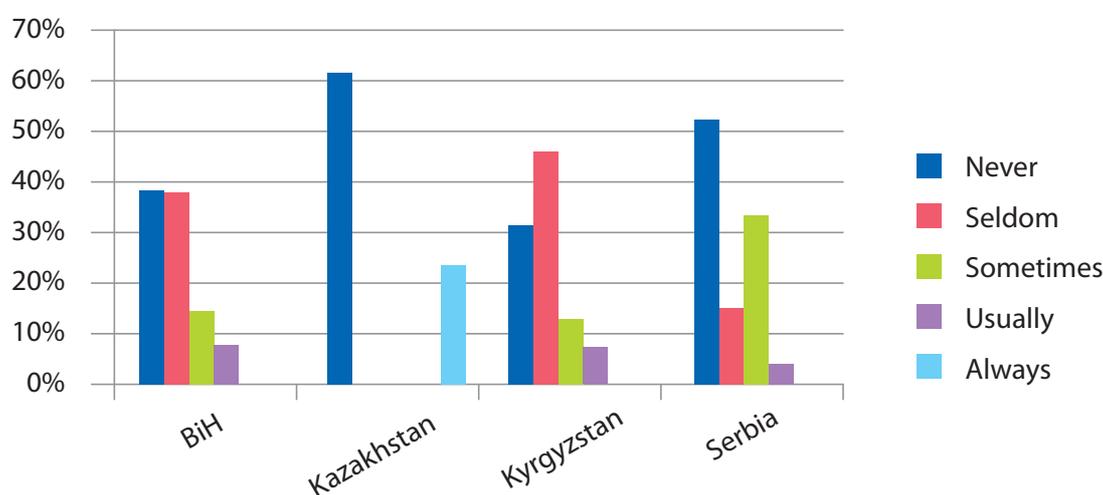
olence and the general lack of information on the preventative measures and assistance that are available to women is also a problem. The survey and desk research indicate that these problems are replicated throughout the region. For example, in Kyrgyzstan, no court protective orders were issued for persons who committed spousal assault between 2003 and 2010. During the first quarter of 2011, only two were issued. This is in part due to the lack of legal knowledge among the population and also due to the lack of opportunity of women, in particular in rural areas, to report crimes due to the insufficient development of communication and infrastructure.¹⁸

Discrimination against women is common throughout the region and the most discriminated against are women with disabilities, minority women, single mothers, older women and those living in rural areas. There is continuing discrimination against women in public life, including public companies and steering boards, as well as executive bodies in the economic sector. Stereotyped gender roles as a determining factor in the choice of profession and employment of women, and a growing trend of women educated and employed in the services sector is observed throughout the region. Furthermore, discriminatory recruitment practices are prevalent and there is a lack of gender-sensitive measures to stimulate employment for women. The results of the surveys illustrate this. For example, in Serbia, the survey showed that there is a weakness of information among institutions, mainly the police, social workers and health care services, which results in women's rights not being sufficiently protected. Protocols on cooperation between these institutions either do not exist at the local level or they are inefficiently implemented.

In Kyrgyzstan, despite the recent progress in achieving gender equality, notably the adoption of a gender equality law and related National Action Plan, women still have problems in accessing justice. According to the results of the national study, these problems are, for the most part, connected with the influence of traditions, customs and religion. For example, in Kyrgyzstan, bride kidnapping is a particular issue that women face, as is polygamy. Women who are second wives are exposed to exploitation as unpaid workers and are disadvantaged legally because their marriages are not registered. According to the national study, there is a lack of knowledge among the general population regarding the issues surrounding polygamy.

In Serbia, despite the existence of a clear overall policy and legislative framework for promoting the rights of women and gender equality, including laws, regulations and a set of strategic documents, and despite gender equality mechanisms being in place at national, provincial and local levels and the basic normative framework relevant for institutional regulation of gender equality being established, in practice, women remain discriminated against particularly in the labour market. There has been an increase in the number of reported cases of domestic violence in Serbia and victims are usually women. Administrative authorities often resort to gender-related stereotypes in their organizational structures and methods of work, and treat domestic violence as a private matter, which leads to the inappropriate application of available statutory powers. At the same time, the European Commission's Serbia 2010 Progress Report states, "the rules on legal protection of women during court proceedings are not sufficiently applied in practice".

18 Nevertheless, the authorities of internal affairs of the Kyrgyz Republic since 2004 have issued 4,574 temporary protective orders. In 5 months during 2011 the authorities of internal affairs issued 383 temporary protective orders, 352 of them in relation to men, 31 to women. Some 216 people were brought before the authorities, including via Article 66-3 of the Code on administrative responsibility (spousal assault). Some 28 cases of domestic violence were registered.

Chart I: Professionals: In your experience it is harder for a woman to access the courts?

Trafficking is another issue which is common throughout the region, and which disproportionately affects women.¹⁹ Within the countries/territories of the Western Balkans the trafficking of women is mostly for prostitution and in Kosovo also for begging, while in Kazakhstan and Kyrgyzstan women are also trafficked for forced labour, most notably to China. In Kyrgyzstan, it is estimated that approximately 4,000 women are trafficked annually, due to loopholes in the legal framework and the system of border controls. The complex economic situation and high level of unemployment are also contributing factors.

Women in rural areas in all the countries/territories studied are disproportionately more exposed to poverty and a harder economic situation due to their very limited sources of income. Women in rural areas are more often

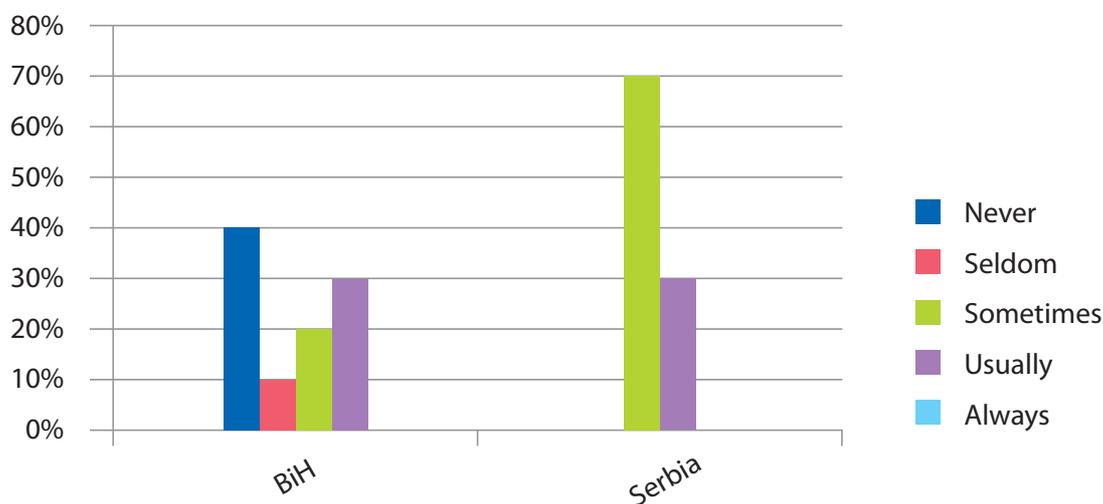
marginalized and their role is often neglected.²⁰ The quality of life in rural areas is generally poor, and access to services and infrastructure is inadequate, in particular for women. Public transportation, water supplies, electricity, information and communication technologies, and other advantages of urban areas remain a big obstacle for the rural population, especially women. Due to these and other obstacles, rural women have poor education that perpetuates their already hard and disadvantaged position and further restricts their access to justice.²¹

The charts show that a majority of professionals in all countries perceive that it is never or seldom more difficult for a woman to access the courts. In those countries where court users were asked whether in their experience it was more difficult for women to access the courts,

19 The US State Department's Trafficking of Persons Report 2011 <http://www.state.gov/g/tip/rls/tiprpt/2011/index.htm> rates Kazakhstan, Kosovo, Kyrgyzstan and Serbia as tier 2 countries; those that do not fully comply with the minimum standards for the elimination of trafficking and Bosnia and Herzegovina are rated as tier 1 countries.

20 See for example, the Situation of Women in Rural Areas in Republika Srpska, Republika Srpska Gender Center, Report 2009.

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

Chart II: Court users: In your opinion is it more difficult for a woman to access the courts?

in Serbia 100 percent and in Bosnia and Herzegovina 50 percent of female respondents answered that it was sometimes or usually harder, to access the courts. In Kazakhstan and Kyrgyzstan there is a big divide between those respondents who answered affirmatively and those who answered negatively. It is probable that these results correlate to the difference in opinion between the professional respondents and courts users. Similar results were obtained in all countries among both professionals and court users, when they were asked whether it was more difficult for a woman to access legal services in their country. Regarding judges', lawyers' and court staff's respect for women, in Serbia most professionals were of the opinion that women either never, or seldom, or sometimes get less respect. On the other hand, all of the female court users were of the opinion that women sometimes get less respect.

Similarly, in Bosnia and Herzegovina, 40 percent of professionals responded that it is not harder for women to access the courts, yet the majority of female courts users (60 percent) think that women's access to justice is harder compared to men. The majority of court users also think that women's access to legal advice is harder than men's (75 percent) and that they get less respect (82 percent). In contrast to this, 46 percent of professionals think that the courts treat men and women equally.

Conversely, in Kazakhstan, only 43 percent of professionals believe that the courts treat men and women equally, whereas 62 percent of court users state that it is never harder for a woman to access the courts and 71 percent state that, in their experience, women do not get less respect from judges, lawyers and court staff.²²

22 It should be noted that the results of the survey from Kazakhstan were amalgamated to include both professional and court user responses. Furthermore, only 2.4 percent of the respondents were representing the target groups with an additional 4 percent of respondents being social workers. All other respondents were justice professionals.

Best Practice Example: Gender Equality

Over the past 10 years Bosnia and Herzegovina has developed a comprehensive legal framework and established a framework of government institutions for gender equality. This includes a Law of Gender Equality, an Anti-Discrimination Law, a specific Law on Protection against Domestic Violence, which provides a comprehensive package of protective measures, the Gender Action Plan 2006-2011, and the Resolution on Combating Domestic Violence, which expresses “zero tolerance”. Bosnia and Herzegovina has developed an impressive framework of institutional gender mainstreaming mechanisms including the Gender Equality Agency and Gender Centres with the aim of mainstreaming gender in all areas of public and private life. These gender institutions produce reports on, and monitor the implementation of, CEDAW, develop gender equality strategies, action plans, conduct training courses for civil servants and provide comments on laws and regulations in terms of their compatibility with the Law on Gender Equality.²³

3.1.2. Persons with Disabilities

Throughout the region, the countries/territories participating in the study all have constitutions that prohibit discrimination against persons with disabilities. However, the position in Kosovo, which is reflected among the other countries, is that “the government did not effectively implement laws and programmes to provide persons with disabilities with access to buildings, information, and communications, and the situation for persons with disabilities remains difficult”.²⁴ Similarly, the 2010 UNDP Kosovo Human Development Report, “Social Inclusion”,²⁵ portrays this category “as the most discriminated in Kosovo society, particularly those that live in rural areas”.²⁶ In Serbia, despite the existence of a legal framework to protect them, PWDs are still faced with discrimination and marginalization because regulations are not implemented and there are omissions in other laws. Again, this position is reflected in

the other participating countries in the region. Only 23 disability-based discrimination cases were initiated between 1 January 2010 and 1 January 2012, following the adoption of the Law on the Prohibition of Discrimination in Serbia. This illustrates that the law is not adequately in use, neither is it implemented in practice to the extent expected, and in addition judges are not sufficiently familiar with some of the innovations that the law introduced, such as the shifted burden of proof, as prescribed by the EU Directive 78/2000/EC.

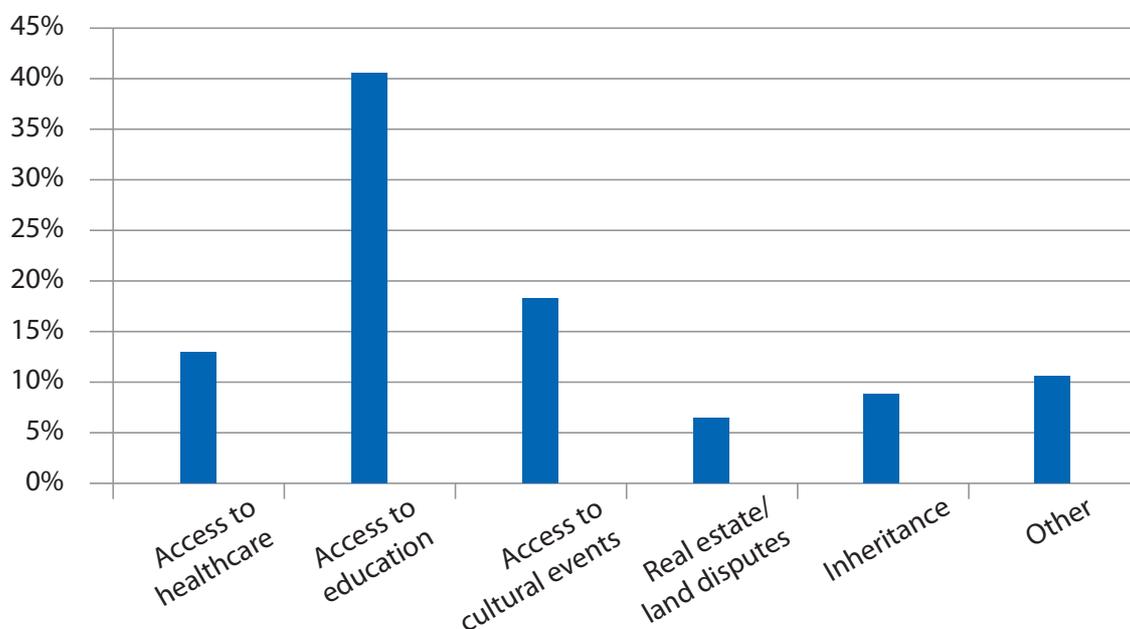
In terms of the percentage of the population who have disabilities, no precise data has been collected and estimates vary – in Bosnia and Herzegovina, Kosovo and Serbia it is estimated that approximately 10 percent of the population have disabilities, whereas in Kazakhstan and Kyrgyzstan it is estimated that only 2.5 per cent of the population have disabilities. This is likely to be due to discrepancies in data collection methods and definitions of disabilities.

23 However, these measures have yet to be accompanied by substantial changes in attitudes and understanding of gender roles of women and men in society in Bosnia and Herzegovina.

24 2010 Human Rights Report on Kosovo, see: <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm>, pp. 35-36.

25 UNDP Kosovo Human Development Report 2010, http://www.kosovo.undp.org/repository/docs/HDR_2010_English.pdf

26 Monday 17, October 2011, on the occasion of International day for professional opportunities for PWD organized by the Kosovo Office on Good Governance and Gender Equality, and in cooperation with OSCE and UNDP. See article in daily newspaper *Kosova Sot*, Tuesday, 18 October 2011, pg. 8, quote of a UNDP official.

Chart III: What are the problems faced by PWDs in the region? (Professionals and court users)

Throughout the region, the study highlighted that persons with disabilities face numerous problems, including access to health care and related costs; limited access to education (due to which their level of literacy is lower than the average citizen); a lack of adaptation of the higher education system to the needs of PWDs, and a higher degree of poverty and the distribution of poverty compared to other citizens²⁷ (see Chart III below).

One of the most serious obstacles is the high level of illiteracy and low education, which is a result of general social exclusion, a lack of inclusive education programmes, inadequate

legislation and awareness and a lack of adequate physical access to the majority of public institutions, including courts. In a recent study in Kosovo, none of the court buildings were found to have full access for PWDs, while 38 percent had no access for PWDs at all.²⁸ It can also be said that there is a lack of government cooperation with NGOs representing PWD in the formulation of strategies and policies related to their specific needs and implementation of rights.²⁹ This is true throughout the region.

In Serbia, PWD, in general, are excluded from public, cultural and political life and face problems regarding education, employment

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

28 HANDIKOS – association of PWDs in Kosovo, supported by the EC Liaison Office has conducted a survey on the adaptability of public buildings for PWDs in Kosovo “A Suitable Environment – a society for all, 2010”. The survey addresses the concerns on accessibility and furthermore it provides clear technical guidance and instructions for the adaptation of buildings for the needs of these groups. See: <http://www.handi-kos.org/en>.

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

and the exercise of their rights. Even though Serbia was among the first countries in the region to adopt a Law on Preventing Discrimination against Persons with Disabilities, as early as 2006,³⁰ citizens with disabilities are still faced with discrimination. According to the survey, one area where the opinions of professionals and courts users did not differ in their responses was with regard to PWDs' ability to access courts and lawyers or legal advice, where the majority of both were of the opinion that access is sometimes or usually harder for PWDs. All PWD court users in Serbia answered that they were sometimes treated with less respect as a result of their disability.

The justice system in Serbia is generally accessible in terms of court building locations and accessibility of information. However, when it comes to physical accessibility of the courts and layout within the court buildings the situation is qualified as very difficult. Even though discrimination on the basis of disability in the area of access to public buildings and premises is strictly prohibited by the Law on the Prevention of Discrimination against Persons with Disabilities, the majority of the court buildings in Serbia and the region neither have appropriate entrances for PWDs nor layout within the court buildings to support PWDs.

In Kyrgyzstan, despite the ratification of international treaties and equality of rights formalized in both the constitution and other laws, PWDs continue to face significant obstacles and barriers in accessing justice. According to the survey, reasons for this include distrust of the existing system, costs, lack of information and knowledge, inaccessibility of courts and related buildings, transport, infrastructure of

towns and cities and the absence of interpreters. In Kazakhstan, the most common reasons for PWDs to access the courts, is in relation to access to work, access to medical care, access to education and access to cultural events. It was noted, however, that despite the large number of legal problems, citizens, especially those with disabilities rarely go to court and even if they do, they are not always sure of a fair resolution of disputes.

3.1.3. Minorities³¹

Each of the countries/territories participating in the study has a significant number of minorities – please see the table in Annex I for the individual breakdowns. Within these states, institutional and societal discrimination persist against minority communities in the areas of employment, education, social services, language use, freedom of movement,³² the right to return,³³ and other basic rights. This discrimination also translates to minorities' abilities to access the justice system.³⁴

Regarding the employment of national minorities in public service in Serbia, including in the judiciary, the majority of public administration authorities and services do not apply the regulations, do not plan to take measures to increase the number of minority employees and do not keep records of the ethnic structure of employees. This situation is mirrored throughout the region in the countries/territories studied.

The position of the Roma is particularly vulnerable. Roma are considered to be the largest national minority in Bosnia and Herzegovina and make up a sizeable minority in

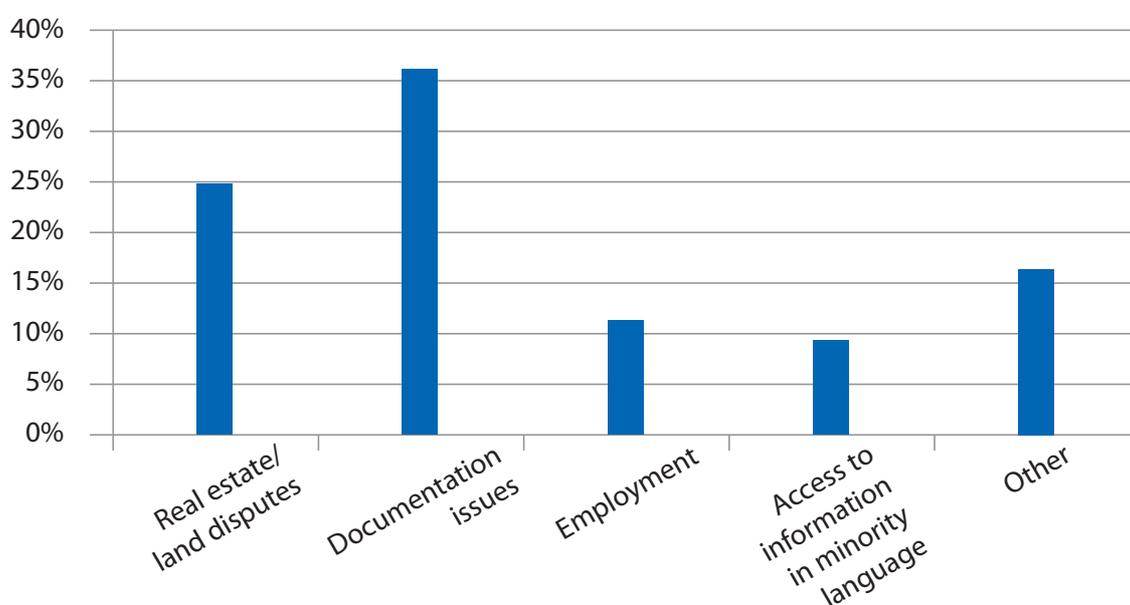
30 It also adopted the Strategy for Improvement of the Position of PWDs and signed the UN Convention on the Rights of PWDs.

31 The scope of this report does not permit a full examination of all minority issues in the region but seeks to present some common themes and issues that were highlighted in the results of the studies and desk research.

32 Most notably in Kosovo.

33 In particular in Bosnia and Herzegovina and Kosovo.

34 See for example, the 2010 Human Rights Report on Kosovo, <http://www.state.gov/g/drl/rls/hrrpt/2010/eur/154432.htm>

Chart IV: What are the problems faced by minorities in the region?

both Kosovo and Serbia. Precise numbers are difficult to provide due to the lack of registration and inclusion in other official statistics and data, such as censuses. At the same time, within the sub-region of the Western Balkans, Roma are the most vulnerable national minority and experience the worst situation in relation to the protection of their human rights. As pointed out by the Council of Europe's High Commissioner for Human Rights during a visit to Bosnia and Herzegovina, the lack of reliable data on the number of Roma continues to present a significant obstacle for the development and implementation of targeted measures to improve their situation.³⁵ In particular, the lack of registration and identity documents among Roma continues to represent one of

the main obstacles for the enjoyment of their social, economic and civil rights. The other problems that stem from this issue include lack of access of the vast majority of Roma to basic health care services; any kind of social welfare; education; employment; housing; and access to courts and other protection mechanisms. Female Roma and/or those with disabilities often face double or even triple discrimination.

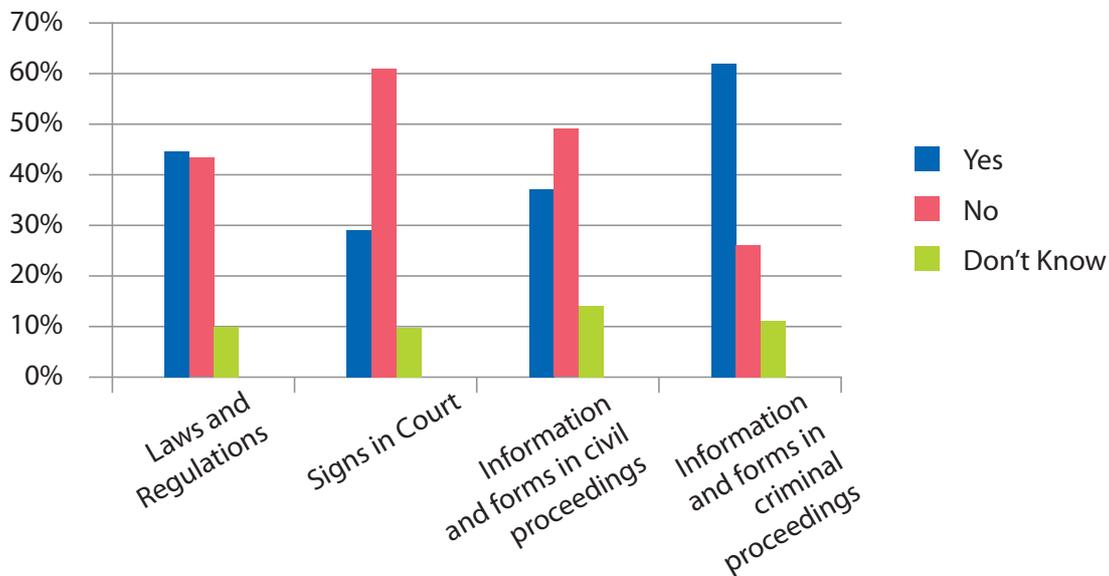
In Serbia, for example, the cultural autonomy of national minorities has been defined by the constitution and specific laws.³⁶ However, the exercise of particular rights of national minorities is impeded or prevented by the lack of by-laws, guidelines, rulebooks or other acts, which the administrative authorities

35 Report, Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, Following his visit to Bosnia and Herzegovina on 27-30 November 2010 at: <https://wcd.coe.int/ViewDoc.jsp?id=1766837&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>

36 Namely, the laws on the protection of rights and freedoms of national minorities and on national councils of national minorities.

37 Problems occur in the exercise of the right to the official use of national minority languages in local self-government units and public authorities. Different practices of local self-governments pertaining to the exercise of the right to the official use of language and script puts them in an unequal position within the same legal system.

Chart V: Are the following sources of information available in minority languages in your country?



should enact.³⁷ Regarding employment of persons belonging to national minorities in public services, including the judiciary, the majority of public administration authorities and public services do not apply the regulations, do not plan measures to increase the employment of persons belonging to national minorities and do not keep records of the ethnic structure of employees, because the required administrative procedures have not been developed yet, among other things.³⁸ The professionals participating in the survey in Serbia highlighted personal documentation issues, access to information in minority languages and employment as the three most prevalent issues facing minorities.

Throughout the Western Balkans, refugees and IDPs also make up a significant minority.³⁹ In both Kazakhstan and Kyrgyzstan there is a sizeable Russian minority, while in Kyrgyzstan there is also a large Uzbek minority. The results of the survey showed that access to information in a minority language is one of the main issues facing minorities in the region. Differing types of information and data support this. For example, respondents in Bosnia and Herzegovina and in Kyrgyzstan were asked whether the following sources of information were available in minority languages – please see Chart V below for the results:

These results show that signs in courts, information and forms in civil proceedings and

38 Ombudsperson Annual Report for 2010.

39 For example, Serbia has one of the largest displaced populations in Europe, including persons displaced from Kosovo (IDPs) as well as persons who are still registered as refugees, mainly from Croatia but also from Bosnia and Herzegovina. A significant percentage of refugees have locally integrated as Serbian citizens and another large percentage have returned to their country of origin or resettled in third countries. However, over time the large-scale return efforts have been reduced to minimal levels while the remaining refugees include many who have not been able to achieve durable solutions either because of difficult personal circumstances (age, illness etc.), or intractable obstacles impeding sustainable return. Similar situations and issues apply in both Bosnia and Herzegovina and Kosovo.

laws and regulations are more often not available in minority languages. Interestingly, but not unsurprisingly, given the legal requirement in most countries, information and forms in criminal proceedings are more readily available in minority languages. In Serbia, the survey found that problems occur in the exercise of the right to the official use of minority languages in local self-government units, public authorities etc. In Bosnia and Herzegovina, the majority of the interviewed professionals confirmed that there is no information available in minority languages either on the Internet or in court buildings or any other public institution.

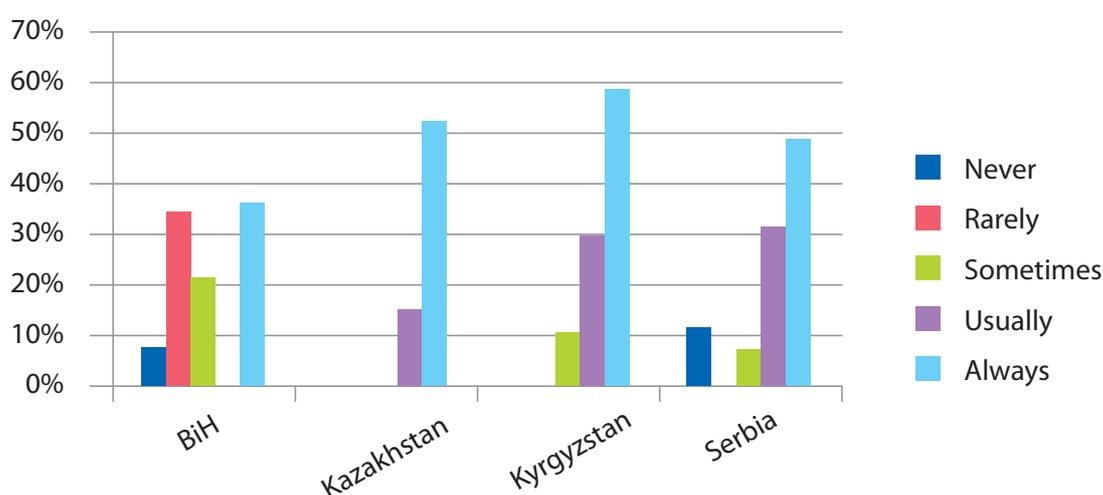
In all countries/territories in the region, in order to ensure access to justice for those who do not speak the language of the proceedings, interpreters should be freely available and the minority party should be able to speak in their mother tongue. This right is safeguarded in the constitutions of all countries/territories participating in the survey and in other legislation such as criminal and civil procedural codes and specific minority protection legislation. However, when the respondents in the region were asked whether the state always provides an interpreter at every stage of the proceedings, responses

among both court users and professionals were mixed – see below.

The survey showed that in general, the right to an interpreter is more often provided for that not. However, the legal arrangements for an interpreter in all countries/territories needs further improvement. One of the major problems is the shortage of qualified and certified interpreters, the search for which often leads to the prolongation of a case. Some respondents in Kazakhstan for example, highlighted the necessity of establishing full-time posts for interpreters in the apparatus of court staff. This is particularly important in the north and east of Kazakhstan where there are problems associated with a lack of professionals who are fluent in the national (Kazakh) language. The survey in Kazakhstan also noted the difficulties in preparing documents in the official language.

In Serbia, the survey showed that regarding the abilities of minorities to access courts and lawyers/legal advice, the perception between professionals and minority court users differed in the sense that all the answers of minority court users were divided between “seldom” and “sometimes” while professionals provided answers more or less equally from “never” to “usually”. None of the professionals answered

Chart VI: Does the State always provide an interpreter at every stage of the proceedings?



Example of Best Practice: Minority Rights

In September 2009, the Serbian Assembly adopted the Law on National Councils of National Minorities. The law regulates the competencies and elections of the national minority councils in line with international standards and represents the intention of the State to contribute to strengthening the vibrant and thriving multi-ethnic society of Serbia. The Council of National Minorities coordinates the work of the 15 National Councils (Hungarian, Ruthenian, Romanian, Walachian, Croatian, Slovak, Bunjevci, Greek, Bulgarian, Ukrainian, Romani, Bosniak, Macedonian, Jewish and German Councils). The National Councils have competencies in four areas of national minority rights: culture, education, information and the official use of language and the alphabet. Line ministries have the duty to consult with the council any time they are preparing policies or regulations in these areas. The council has representatives of each minority council who are elected by their constituencies for a term of four years. The council is part of the Serbian Agency for Human and Minority Rights, chaired by the Prime Minister. Municipalities with one national minority that accounts for more than 5 percent of the municipal population, or all national minorities collectively that account for more than 10 percent of the municipal population form a Council for Inter-Ethnic Relations, to deal with the realization, protection, and improvement of ethnic equality in local communities. The Government of Serbia has also established the Agency for Human and Minority Rights. Its responsibilities include: monitoring the harmonisation of local regulations with international standards for human and minority rights; reporting on the implementation of international agreements on human and minority rights; supporting the Council of National Minorities; and establishing connections between national minorities and their countries of origin.

that it is always harder for minorities to access courts and lawyers/legal advice. Regarding respect that minorities get from judges, lawyers and court staff, professionals were of more or less equal opinion that minorities, either never, seldom, sometimes or usually get less respect. However, none of the professionals was of the opinion that minorities are always treated with less respect. Conversely, all minority court users were of the opinion that they are sometimes or usually treated with less respect.

In Kyrgyzstan the events of June 2010⁴⁰ have resulted in profound mistrust between representatives of national minorities and the police and courts. Due to negative communication with police and courts and/or anecdotal

and preconceived ideas, many representatives of national minorities in Kyrgyzstan are not inclined to participate in the formal justice system.

3.1.4. Free Legal Aid

Among the countries/territories participating in the study, the framework surrounding free legal aid differs, but in all instances could be improved. In Bosnia and Herzegovina and Serbia there are currently no free legal aid laws but both countries have draft laws which were the subject of public consultations in November 2011 and which are expected to be put up for adoption by the respective ministries of justice in 2012. In both countries, the issue regarding

40 The Kyrgyz Revolution of 2010 began in April 2010 with the ousting of Kyrgyz president Kurmanbek Bakiyev in the capital Bishkek. It was followed by increased ethnic tension involving Kyrgyz people and Uzbeks in the south of the country, which escalated in June 2010. The violence ultimately led to the consolidation of a new parliamentary system in Kyrgyzstan.

the providers of free legal aid, and whether to include NGOs as providers is still outstanding. In all countries/territories free legal aid continues to be provided to a greater or lesser degree by NGOs, irrespective of the formal provisions.

In Kazakhstan and Kyrgyzstan there are no specific free legal aid laws, although there is provision for free legal aid in certain types of cases and for certain categories of persons within the respective criminal and civil procedure codes. This right is also safeguarded in the constitutions of both countries. However, application of this right is variable. For example, in Kyrgyzstan, PWDs are included in the list of persons having the right to receive free legal aid but in reality this right only translates to criminal proceedings and no free legal aid is provided by the State for civil or administrative cases. In Kazakhstan there is an *ex officio* method of providing free legal aid lawyers, meaning they are appointed from provincial bar associations and paid for from the State budget. However, there have been efforts to improve the quality of legal assistance provided by lawyers in a targeted manner. Addressing the quality of legal assistance requires strengthening control mechanisms over the expenditure of budgetary funds, which requires the creation of a specific legal framework, that is, a law governing the provision of free legal assistance.

In Kosovo, Regulation No. 2006/36, on Legal Aid, guarantees provision of legal aid to those who would otherwise be denied effective access to justice because they lack sufficient resources. Legal aid facilities provide primary and secondary legal aid. The draft law foresees provision of legal aid without direct or indirect discrimination against any person or persons based on sex, gender, age, marital status, language, mental or physical disability, sexual orientation, political affiliation or conviction, ethnic origin, nationality, religion or belief, race, social

origin, birth or any other status.⁴¹ However, based upon interviews with courts users, the survey noted that the existing legal aid mechanisms are either considered ineffective, or there is no information on their operation, particularly in rural areas, or that they operate mainly in a language not understood by other ethnic communities.

Other problems concerning the provision of free legal aid and assistance are also prevalent throughout the region. For example, in Bosnia and Herzegovina most of the Roma in need to legal assistance cannot access public legal aid offices as they do not have legal identification and cannot submit the necessary documents in support of their request. PWDs usually have problems with physically accessing these offices. There is also a lack of sufficient awareness of employees in public legal aid offices on the special needs and demands of PWDs, minorities and women, which hampers not only access to these services but also the effective protection of rights.

3.1.5. Judicial and Public Administration

The availability of the judicial system and the quality of justice it dispenses depend largely on the coordinated work of judges and the staff of the courts, their professional competence and compliance with ethical standards of conduct and workplace discipline. In most countries in the region, there is a distinct lack of confidence in the judicial systems. For example, the UNDP Bosnia and Herzegovina Special Report: "Facing the Past and Access to Justice from a Public Perspective" revealed that only a negligible percentage of respondents expressed their "full" confidence in the judiciary in Bosnia and Herzegovina. This symbolic confidence in the judiciary leads to a worrying conclusion that it is seriously damaged and

41 The draft Law on legal aid is being processed within the Parliament of Kosovo, and soon the regulation will be replaced by the law, however, no major changes are expected as regards the field of operation.

indicates strong scepticism towards the judiciary.⁴² This situation is similarly reflected in Serbia, where a recent study commissioned by the World Bank found that only 13 percent of members of the general public who had experience with court proceedings expressed trust in the judiciary.⁴³ In Kyrgyzstan those interviewed as part of the survey stated that the most prevalent barrier in accessing justice was distrust of the existing system, while in Kosovo the European Commission's "Progress Report 2011" acknowledges the low level of confidence in the courts.⁴⁴ Conversely, in Kazakhstan, 69 percent of respondents found the justice system to be usually or always competent, with 64 percent of respondents rating the country's justice system as either good or excellent.⁴⁵ Bosnia and Herzegovina is trying to address these issues, for example, by adopting a Care of Court Users Strategy aimed at assisting the courts to meet the needs of ordinary citizens and building public trust and respect for the court system. The key task is to implement the strategy throughout Bosnia and Herzegovina and to help create public confidence in the court system.

In Kosovo the survey found that among professionals it is viewed that the justice system makes great efforts to implement and enforce all rights with regard to vulnerable groups in an equal and fair manner, yet court users and representatives of the target groups highlight that the justice system is inefficient, that the judges have a traditional (patriarchal) approach, with stereotyped attitudes towards vulnerable groups, that there is a lack of institutional coordination, a lack of adequate training, corruption, non-adherence to principles of equality

and fair treatment and a deficiency in implementation and the full application of the law.

The majority of rights related to the basic protection of PWDs, Roma and women are resolved in administrative proceedings (for example, registration, decision making in relation to access to social welfare benefits for all three groups, access to health care, unemployment benefits, etc.). However, the survey found that the public servants who are conducting these administrative proceedings often lack awareness and training on the specific needs and rights of PWDs, Roma and women due to which these three target groups are often deprived of their basic rights, or if they do access these basic rights, the process is quite difficult and prolonged. There is also a need to improve the work of social welfare centres, which are in general understaffed, underfinanced and lack adequate awareness of and information on rights protection mechanisms, as well as legal service providers. Problems in the functioning of the judicial systems, including a large backlog of cases and extended trial periods, do not contribute to the increase of requests for judicial protection against discrimination.

3.1.6. Judicial Training and Integrity

In Kazakhstan, the Strategy on Judicial Education develops and implements educational programmes for judges, plans to organize internships for judges and regulates the operation of training centres and the Institute of Justice at the Academy of Public Administration under the President of Kazakhstan. The aim is to introduce compulsory in-service training for

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

43 Justice in Serbia: A multi-stakeholder Perspective, World Bank, 2011.

44 Kosovo 2011 Progress Report, European Commission, Brussels 2011, http://ec.europa.eu/enlargemnet/pdf/key_documents/2011/package/ks_rapport_2011_en.pdf

45 The majority of respondents to the questionnaire in Kazakhstan were judicial professionals.

judges at least once every five years, to develop distance learning and to update the role of mainstream and on-site classrooms and training centres. However, the results of the survey show that of the judges interviewed, only 7 percent had attended any training on gender issues and none had received any training on issues relating to PWDs or minorities. The scope of the survey did not make it possible to evaluate how effective this training is.

In Kyrgyzstan, pre-service and in-service training is provided by a Judicial Training Centre under the authority of the Supreme Court. Inter-related theoretical and practical training courses, as well as placements aimed at helping judges to obtain judicial skills are included in the comprehensive programme for pre-service training. Despite this, very few lectures concerning the target groups are conducted and those that are only indirectly touch upon the problems of women, PWDs and minorities. The survey found that the majority of judges in Kyrgyzstan do not possess knowledge of, or receive training on, issues relating to women, PWDs and minorities.

Training for the judiciary in the Western Balkans is provided by their respective Judicial Training Centres. In Bosnia and Herzegovina for example, professional training and education is obligatory for all judges and prosecutors, and the High Judicial Council sets the minimum conditions that every judge and prosecutor

must fulfil annually in this regard.⁴⁶ There are 12 modules in the training programme, and judges and prosecutors must participate in four of them annually in order to obtain a certificate. There is a separate module on human rights, including a seminar on the implementation of the European Convention on Human Rights (ECHR; another seminar on “Segments in the protection of human rights and freedoms”, which includes, inter alia, the Law on Prohibition of Discrimination; and a workshop on gender equality. The new 2011-2014 Mid-term Judicial Training Centre (JTC) Strategy provides a shift from general towards more specialised training and education of judges and prosecutors.⁴⁷ However, when asked if they had undertaken any specific training on issues relating to women, 85 percent of the professionals answered no. Similarly, 100 percent answered that they had not received any training on issues relating to minorities or PWDs. A similar situation exists in Kosovo, and the low awareness levels among the judiciary regarding ethical aspects and their incomplete understanding of the Bangalore Principles of Judicial Conduct was relatively obvious in the survey.⁴⁸

In Serbia, as a part of its programme of permanent training, the Judicial Academy provides training on anti-trafficking cases, gender equality, and protection from discrimination as well as training on the institutional law of the EU, human rights and EU law. Approximately

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

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

48 The Kosovo Judicial Institute confirms the requirement for further advancing and familiarization of all judicial personnel with the Bangalore Principles of Judicial Conduct, considering it as an important element to increase awareness of and treatment of vulnerable groups while approaching the courts/prosecutors' premises. “Trainings have been conducted for the Law on Anti-Discrimination, the Law on Gender Equality, on Constitutional provisions concerning human rights instruments and international conventions, but unfortunately one of that factors that impedes proper implementation is the unwillingness of key stakeholders to cooperate”. Part of the training programmes for judges and judicial officers contain initial (basic) familiarization with the ethics rules, providing an explanation of the notion of equality, its role and importance in delivery of justice by judges. Interview/questionnaire with KJI Director, Mr Lavdim Krasniqi, 17 November 2011. Mr Krasniqi emphasized the need to upgrade and focus on ethics training as envisaged in the Bangalore Principles of Judicial Conduct and its commentary, which according to him were not part of the KJI programme so far.

30 percent of the professionals (including judges, prosecutors and attorneys) who took part in the survey in Serbia attended specific training courses related to women in the justice system.⁴⁹ The same percentage was aware of specific court procedures that should be followed in cases involving issues related to women. However, according to the experience of all of them, these procedures were only “sometimes” applied in relevant cases, mostly due to the lack of awareness of judges, prosecutors and the woman involved. Regarding PWDs in the justice system, 18 percent of professionals in Serbia attended seminars related to PWDs. None of the professionals who participated in the survey attended any training related to minorities in the justice system, nor were any of them aware of any specific court procedure that should be followed in cases involving minorities.

3.1.7. Access to Information and Public Awareness

Throughout the region, it can be said that there is not enough understanding of discrimination as a concept among the public, so individuals often do not even recognize certain behaviours as discriminatory. The general public and PWDs, minorities and women in particular, are still not aware of how to protect themselves from discrimination, of the mechanisms available to them or of

public authorities’ obligations towards them in this respect. There is also a fear among those who are subjected to discrimination in employment of possible negative reactions or sanctions by the employer. Also, and most importantly, the research conducted for the purpose of this study proves that the legal community within the countries/territories studied is generally not sufficiently educated about the application of international standards related to non-discrimination and methods to prove discrimination as stipulated by the laws, and how to provide relief.

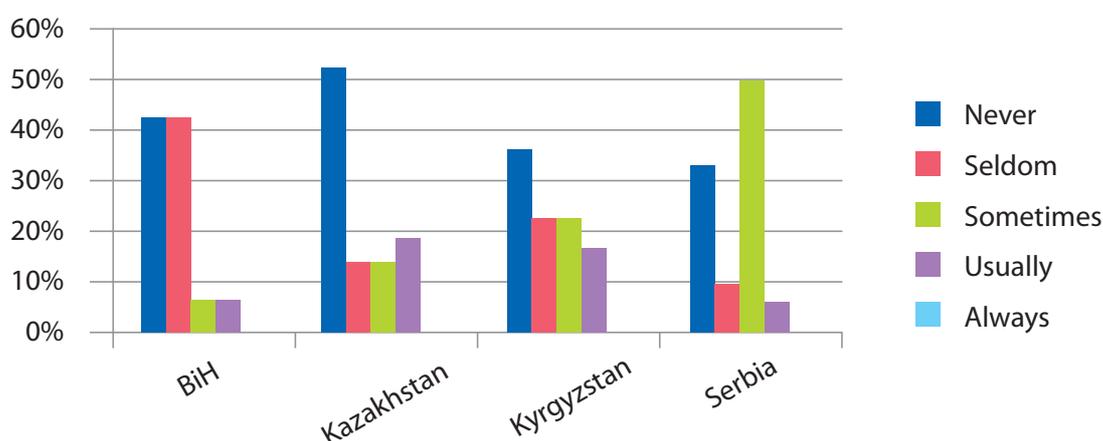
For example, in Kosovo the findings of the survey showed that awareness levels about the availability of formal justice mechanisms are quite low among the vulnerable groups. Low awareness levels about the available services can be attributed to factors such as geographical location in remote rural areas, insufficient promotion, inadequate access to the media, low literacy levels especially among women, use of technical jargon in published documentation and lack of proper translation into minority languages.⁵⁰ Similarly, in Bosnia and Herzegovina, the majority of interviewed professionals agreed that the courts do not have adequately accessible information specifically tailored to the needs and demands of the target groups.

Kazakhstan has a Republican Centre of Legal Information of the Ministry of Justice, which includes a database of legislation. The

49 The training courses were organized in the form of seminars and lectures three times per year with an average number of 24 hours’ training per person. The subjects were gender equality, anti-trafficking and family violence. Activities during the training consisted of introducing the attendees to domestic and international regulations on the relevant subject followed by elaboration of specific provisions that refer to the conduct of the prosecution and the court. Members of the judiciary that attended the training courses assessed them as useful for their practice.

50 On the matter of proper translation into Serbian language, during the interview (27 October 2011), the judge of the Constitutional Court of Kosovo emphasized that: “The translation of the laws into Serbian is extremely bad and incomprehensible: it can only be understood by those who are literate in all three languages, English, Serbian and Albanian”. Additionally, an interesting point was given from the text of the Constitution of Kosovo, where the Constitutional Court in the Serbian version has been referred as a Court of High Instance, a non-existent mechanism. He emphasized, that these and similar examples create practical incapacity for Serbian /Bosnian/Gorani/Croat/ speaking communities to properly address and access the court services.

Chart VII: Professionals: In your experience would you say that cases involving women, PWDs and minorities usually take longer to resolve than those cases not involving these groups?



database is accessible from frequently visited locations, such as public service centres, information and reference stands operating in the courts, computer classes at universities, research libraries, public reception offices of the governing party and institutions of the committee of the prison system. The ministry is working on innovative projects to ensure the free accessibility of the database for all citizens.

3.1.8. Efficiency of Justice

Interestingly, the results of the survey show that particular affiliation with one of the target groups is not seen by professionals as a particular reason for the length of the court proceedings. Similarly, court users seem to agree that their belonging to a target group had not influenced the length of the proceedings.

Best Practice Example: E-justice

In Kazakhstan, work is under way to launch an “e-justice” system, which is being implemented on a pilot basis in specialised district commercial courts. This is based on the best practise example of Turkey where a comprehensive system of e-justice has been implemented. Citizens can reach and examine their case information via the Internet and can be informed via the website about their cases or hearing dates. They can submit their claims to court using their electronic signature and examine their files via the Internet. Lawyers can file a suit, submit any document to court and pay the case fees from their offices by use of their electronic signature via the Internet. They can litigate a claim or dispute to court and review their cases via electronics means and submit their petition online. The system was developed in order to ensure a fast, reliable, and efficient justice system. It not only connects judicial units with each other but also with concerned institutions. In the trials, judges can access criminal records and birth certificate registrations online according to their authority. All cases in Turkey’s courts can be accessed online by judges, prosecutors and lawyers. Land registries and driver registers can be retrieved instantly at the beginning of trials.

3.1.9. Infrastructure

Many of the court buildings in the region are not fit for their purpose. For example, in Kyrgyzstan there is an absence of adequate space, buildings are falling down, there are old and dangerous electrical wiring systems, an absence of adequate heating, water and toilets, and an absence of basic safety measures. The conditions of judicial premises in Kyrgyzstan and, to a lesser extent, other countries/territories in the region, make it difficult for the courts to work efficiently and ethically, and are inconvenient for the public. Lack of space for the separation of parties has serious consequences for professional honesty in the work of courts and public safety. Most importantly, bad conditions of judicial premises in Kyrgyzstan undermines the respect of citizens for the judicial system and the supremacy of the law

3.1.11. Alternative Dispute Resolution Mechanisms

Although the scope of the study did not include examining alternative dispute resolution mechanisms (ADR), it is important to include a few comments, given the rising importance of the use of ADR mechanisms throughout the region. In Kazakhstan, the judicial reform strategy aims by 2020 to use extensively various forms of conciliation and mediation. In Kyrgyzstan, the Aksakals are local community courts or councils, which make decisions on moral and family issues that may be in dispute,

and other certain limited issues such as contracts of employment and land disputes, and cases involving juveniles. They do not charge fees for hearing cases and the law provides that they should aim to reconcile both sides and make a fair decision, which does not contradict the law. The 2002 law, which regulates the activities of the Aksakals severely limits the penalties that they can impose. In some parts of Kyrgyzstan these courts function well and many citizens, including women, PWDs and minorities apply to them successfully to protect their rights. However this is not the case throughout Kyrgyzstan.

In Bosnia and Herzegovina despite the existence of the Law on Mediation and an Association of Mediators, mediation is still not used to the extent that it could be. This is also the case in other countries/territories in the region including Serbia. In Bosnia and Herzegovina the Association of Mediators has developed mediation guide books for judges, lawyers and users of mediation services, as well as leaflets on mediation. None of these are in any minority language. Also, there is no clear outreach strategy on the dissemination of materials designed for possible users of mediation services, including women, PWDs and minorities. In Serbia, the Law on Mediation is currently being revised by a specialized Working Group, established by the Ministry of Justice. The mandate of the Commissioner for the Protection of Equality, the national human rights institution for equality, is to consider mediation as a first recourse in all complaints that it receives.⁵¹

51 See Article 38, Law on the Prohibition of Discrimination, 2010. To date, the Commissioner has not referred any cases to mediation.

4 Findings and Recommendations

4.1. Findings

Based on the analysis of the different national studies, the following generalized findings can be made in relation to the capacities of the courts in the selected countries/territories to deal with women, persons with disabilities and minorities:

General Findings

(i) There are differences in opinions, perceptions and expectations on key aspects of the judicial system capacities between professionals from the judiciary on the one-hand and courts users and non-governmental organization (NGO) representatives on the other.

(ii) There is widespread discrimination and discriminatory practices against all target groups in all countries/territories that participated in the study.

(iii) There is a lack of uniform and coordinated support by rule of law institutions in setting and implementing programmes on legal reform and access to justice, in particular for women, persons with disabilities and minorities.

(iv) The treatment of all citizens is not equitable under the justice systems in force.

(v) There is widespread poverty in general, and in particular among PWDs, minorities and

women, which impinges on all aspects of life, including access to justice.

(vi) There is a generally low level of education, high level of illiteracy and lack of knowledge among PWDs, minorities and women on their rights and protection mechanisms in general.

(vii) There is widespread public prejudice towards PWDs, minorities and women.

(viii) There is insufficient awareness of judges, prosecutors, lawyers and court personnel on the specific needs/demands of PWDs, minorities and women generally, and in relation to the realisation of their rights in particular.

(ix) There is a lack of adequately accessible information in courts on the realisation of rights and court procedures specifically designed for PWDs, minorities and women.

(x) There is a lack of adequately accessible information in courts on free legal aid systems and providers (both public agencies and/or NGOs).

Findings: Women

(i) Gender-based violence is one of the most frequent issues facing women in the region.

(ii) There is a lack of sufficient awareness and knowledge among judges, prosecutors and police and among the general population

of what constitutes gender-based violence as well as other issues such as sexual and workplace harassment and trafficking, all of which disproportionately affect women over men.

(iii) Discrimination against women is common throughout the region and the most discriminated against are women with disabilities, minority women, single mothers, older women and those living in rural areas.

(ix) There is continuing discrimination against women in public life, including public companies and steering boards, as well as executive bodies in the economic sector.

(v) Stereotyped gender roles as a determining factor in the choice of profession and employment of women, and a growing trend of women educated and employed in the services sector is observed throughout the region. Furthermore, discriminatory recruitment practices are prevalent and there is a lack of gender-sensitive measures to stimulate employment for women.

(vi) Women in rural areas in all the countries/territories studied are disproportionately more exposed to poverty and a harder economic situation due to their very limited sources of income. Women in rural areas are more often marginalized and their role is often neglected.

Findings: Persons with Disabilities

(i) Despite the existence of a legal framework to protect them, PWDs are still faced with discrimination and marginalization often because regulations are not implemented and there are omissions in other laws.

(ii) PWDs face numerous problems, including access to health care and related costs; limited access to education (due to which their level of literacy is lower than the average citizen); and a higher degree of poverty and the distribution of poverty compared to other citizens.

(iii) One of the most serious obstacles is the high level of illiteracy and low education, which is as a result of general social exclusion, a lack of inclusive education programmes, inadequate legislation and awareness and a lack

of adequate physical access to the majority of public institutions, including courts.

(iv) The majority of professionals and court users throughout the region were of the opinion that access to justice is sometimes or usually harder for PWDs.

(v) The majority of the court buildings in the region neither have appropriate entrances for PWDs nor layout within the court buildings to support PWDs.

(vi) PWDs continue to face significant obstacles and barriers in accessing justice. Reasons for this include distrust of the existing system, costs, lack of information and knowledge, inaccessibility of court and related buildings, transport, infrastructure of towns and cities and the absence of interpreters.

(vii) Despite the large number of legal problems, citizens, especially those with disabilities rarely go to court and if they do, they are not always sure of a fair resolution of disputes.

Findings: Minorities

(i) Institutional and societal discrimination persist against minority communities in the areas of employment, education, social services, language use, freedom of movement, the right to return, and other basic rights. This discrimination also translates to minorities' abilities in accessing the justice system.

(ii) Roma people's lack of registration and possession of identity documents continues to represent one of the main obstacles for the enjoyment of their social, economic and civil rights and their inaccessibility to basic health care services, any kind of social welfare, education, employment, housing, and access to courts and other protection mechanisms.

(iii) Access to information in a minority language is one of the main issues facing minorities in the region.

(iv) The legal arrangements for interpreters in all countries/territories need further improvement.

(v) All minority court users were of the opinion that they are sometimes or usually treated with less respect.

Findings: Free Legal Aid

(i) Among the countries/territories participating in the study, the framework surrounding free legal aid differs but in all instances could be improved.

(ii) Free legal aid continues to be provided to a greater or lesser degree by NGOs, irrespective of the formal provisions.

(iii) Existing legal aid mechanisms are either considered to be ineffective, there is no information on their operation, particularly in rural areas, or they operate mainly in a language not understood by minorities.

Findings: Judicial and Public Administration

(i) In most countries in the region, there is a distinct lack of confidence in the judicial systems.

(ii) The justice system is inefficient; judges have a traditional (patriarchal) approach with stereotyped attitudes towards vulnerable groups; there is a lack of institutional coordination; there is a lack of adequate training; and there is corruption, non-adherence to principles of equality and fair treatment, and a deficiency in implementation and the full application of the law.

(iii) Public servants who are conducting administrative proceedings often lack awareness and training on the specific needs and rights of PWD, minorities and women, due to which the target groups are often deprived of their basic rights or access to which is difficult and prolonged.

Findings: Judicial Training and Integrity

(i) There is an almost total absence of training for judges, lawyers and court staff throughout the region on issues relating to women, PWDs and minorities.

(ii) The majority of judges, lawyers and court staff do not possess any knowledge re-

lating to issues concerning women, PWDs and minorities.

(iii) The legal community within the countries/territories studied is generally not sufficiently educated about the application of international standards related to non-discrimination and methods to prove discrimination as stipulated by the laws and how to provide relief.

Finding: Access to Information and Public Awareness

(i) Throughout the region, it can be said that there is not enough understanding of discrimination as a concept among the public, so individuals often do not even recognize certain behaviour as discriminatory.

(ii) Signs in courts, information and forms in civil proceedings and laws and regulations are usually not available in minority languages.

(iii) The courts do not have adequately accessible information specifically tailored to the needs and demands of the target groups

Finding: Alternative Dispute Resolution

(i) The use of ADR mechanisms throughout the region is becoming more and more important.

4.2. Recommendations

UNDP's niche is its "diverse development mandate, strong country-level programming and policy presence and partnerships with national and local level institutions".⁵² In this context and in view of the findings that have been drawn from the analysis of the national studies, combined with the supplementary desk research, the followings recommendations are made. All recommendations are made in line with international standards and best international practise and focus on the devel-

52 A.H. Monjurul Kabir, Policy Adviser and Regional Programme Manager for Human Rights, Justice and Legal Empowerment, UNDP Bratislava Regional Centre, UNDP DG Insights, 16 December 2011.

opment of legal empowerment tools as well as institution-building activities. The recommendations can be applied throughout the ECIS region, and not just in those countries where the survey took place.

(i) Legislative reform: UNDP should provide technical support to governments to review existing legislation for compliance with international standards on non-discrimination and minority rights. UNDP should develop strategies for more effective implementation of non-discrimination legislation, such as individual complaints mechanisms that are accessible to all. Constitutional reform is a good entry point for the legislative protection of minorities. Constitutional guarantees of protection and promotion of minority rights exist in many countries. Efforts could be made to understand what legal protections for minority rights have been adopted in national laws to give effect to the constitutional provisions. Examples of laws that should be introduced include laws on free legal aid and mediation (see below), and anti-discrimination, and reviews of civil and criminal procedural codes to ensure compliance with international human and minority rights standards.

(ii) Strengthening Systems of Free Legal Aid: As access to justice relies largely on reasonable access to legal services, the liberalization of the market for legal services should be pursued in the process of adopting the draft free legal assistance laws in the Western Balkans and introducing them in the Commonwealth of Independent States (CIS), and in relation to already existing laws. To that end, advocacy efforts should be planned with NGO service providers to push for the inclusion of NGOs into the public free legal system and to redefine the conditions for the receipt of free legal aid by PWDs, minorities and women. This would lead to the creation of more efficient legal aid

systems utilising the network of experienced NGO legal service providers, which would be more responsive to the specific needs of PWDs, minorities and women. This kind of intervention by UNDP would support the continuation of free legal counselling, advice and legal representation of these groups by NGOs. UNDP should aim to develop the activities of legal aid commissions in rural areas with a view to targeting women, minorities and PWDs. Legal aid should be targeted at and made more easily accessible to women, PWDs and minorities, including by means of outreach and the provision of translation services in minority languages. Information campaigns should be carried out for all citizens, but in particular the target groups.

(iii) Development of comprehensive pre- and in-service judicial training programmes on human, gender, PWD and minority rights: In cooperation with the judicial training centres in the region, UNDP should develop comprehensive training programmes. Training should be provided to all judges, lawyers and court staff⁵³ in the region on international minority/gender/PWD rights standards, domestic minority/gender/PWD rights legislation and frameworks, and other relevant regulations, laws and practices. In line with best international practice, training should be provided on equality and diversity awareness, how to deal with vulnerable victims and witnesses from the target groups, and ethics training. Training needs to be linked to practical skills in order to be effective. Institutionalised training on gender equality and women's rights, including national, regional and international human rights law and jurisprudence, should be established and be made compulsory, so as to ensure the consistent application of a gender perspective.⁵⁴ Training should also

53 Likewise for police and other institutions dealing with the public, although not covered within the scope of the study.

54 As per the Human Rights Council, Forum on Minority Issues, Fourth session Geneva, 29-30 November 2011: draft recommendations on guaranteeing the rights of minority women.

be provided on international human rights law and jurisprudence, in particular gender equality and women's rights, for all judicial actors, as an important requisite for an independent and impartial judiciary. Active participation of the target groups in choosing the training methodology and content is crucial and should be promoted by UNDP.⁵⁵

(iv) Inclusion of civil society: in efforts to enhance access to justice for women, PWDs and minorities, UNDP should foster the creation of more effective relationships between international donors, government bodies, CSOs and the target groups in order to create a different atmosphere and better understanding of their specific needs, more effective rights protection and social inclusion. Enhanced inclusion of civil society most often leads to greater accountability and reduced discrimination. See also (v) below.

(v) Dialogue and networking: There is an obvious difference in perception between public service providers, professionals and court users with regard to access to information and services, efficiency of the judiciary and equal treatment of PWDs, minorities and women before the courts, as illustrated through the results of the surveys. Thus there is a need for dialogue in order to bridge the gap between the service providers and service users. This would be the basis for more efficient awareness raising of the specific needs of PWD, minorities and women and of the means available to the judiciary to meet those specific needs within the existing legal system. UNDP should develop activities to ensure that civil society, relevant authorities and public service providers find a way to create a platform for better dialogue and networking. This would ensure more active participation and cooperation with civil society

for the enhancement of justice, especially for PWD, minorities and women within the access to justice pillar.

(vi) Mainstream issues of women, PWDs and minorities: UNDP should facilitate and secure that the participatory process is in place in countries in the region when they are developing different strategies. The participatory process would secure representation of civil society groups and representative organisations of PWD, minorities and women in policy making. Such policies would be sufficient to provide a platform for community-based interventions to act quickly and mobilise resources to address the needs of the vulnerable groups at the grass-root level. Hence it is also necessary to secure the participatory process and the inclusion of these vulnerable groups in community level planning processes (for example, the process of preparing the budget for the next year by the local governments). Local governments could, for example, make a decision on the administrative services to regulate free legal aid and representation for PWDs, minorities and women in the community.

(vii) Ensure everyone has a legal identity: As legal identity is a cornerstone of access to justice, efforts should be taken by UNDP, and programmes developed to foster the legal identity process. To that end specific campaigns should be designed in cooperation with community-based minority NGOs and national human rights institutions or agencies to inform the minority communities, in particular the Roma, on the necessity and benefits of legal identification as well as providing them with practical information on the process to encourage them to get involved. This includes the development of a specific outreach strategy and a more dynamic media campaign, but

55 It is important to include associations/organizations that represent the vulnerable groups in preparing training modules and co-lecturing. First, this will help to lower the level of prejudice towards these categories, and second and most important, is that most of these categories know how to represent their needs and rights, and deal with the challenges that they face.

also planning on how to minimise any adverse consequences and mitigate risks.

(viii) Improve physical accessibility to the courts and other public institutions: Although some efforts have been undertaken in the region, it is necessary to develop, in cooperation with relevant governmental bodies, further measures to enhance physical accessibility to judicial and other rights protection institutions for PWDs. UNDP should also work to improve the organisation and layout of courts to facilitate the access of PWDs, minorities and women to relevant legal information in courts through help desks and/or adequate sign systems in the court facilities that would allow easy access to necessary information, taking into account the specific needs of PWDs, minorities and women. Special attention should be given to the information on court procedures, necessary documentation and on free legal aid system and providers (both public agencies and/or NGOs), including the location of legal aid providers, contact information and accessibility criteria in minority languages.

(ix) Improve legal literacy and access to information: Support should be provided by UNDP to NGO legal service providers and community-based organizations working with PWDs, minorities and women to develop programmes with regard to basic legal awareness-raising, or “legal literacy” work not only for the members of these groups to educate them on their legal rights and obligations, institutional structures of the legal system, and specific mechanisms that they can use to advance their interests, including the mediation process, but also to the population at large. This can include, but is not limited to: print, broadcast and Internet media, social media, information flyers, pamphlets and posters; outreach campaigns via radio and television and the performing arts; and wireless/SMS tools. In cooperation with relevant Ministries and Employment Agencies, support should be provided to the creation and financing of a system of community-based paralegals, preferably from young, educated, but unemployed mem-

bers of the three target groups. Paralegals would receive specific and adequate training and would serve as community-based focal points for provision of basic legal advice to PWDs, minorities and women and liaise with legal service providers. UNDP should also develop specific outreach tools aimed at the dissemination of information on courts and court procedures that have already been developed (for example, the Care of Court Users Strategy, as developed in Bosnia and Herzegovina) and are specifically designed for the needs of PWDs, minorities and women.

(x) Promote the role of the ombudsperson and National Human Rights Institutions: The Ombudsperson’s role is critical in addressing and recommending the elimination of discrimination and the violation of citizens’ rights and interests by discriminatory decisions of public authorities. The institution of the Ombudsman also acts as a watchdog for the laws approved by local authorities in order to ensure their adherence to international human rights standards and law requirements on good governance. UNDP should provide support to national Ombudspersons institutions and should support National Human Rights Institutions (NHRIs) to improve their capacity to protect minority rights. In addition to improvements in non-discrimination legislation and enforcement, NHRIs may need guidance on the content and application of minority rights. Different types of awareness-raising and capacity-building activities should be considered.

(xi) Media: The media also plays a fundamental role in performing watchdog functions (for example, through investigative journalism). However, it can equally jeopardise access to justice through deficient or saturated reporting. Enhancing reporting capacities of media on human rights and access to justice issues improves the enabling environment for successful justice reforms. Communication strategies should be tailored to the target audiences, that is, women, PWDs and minority communities that suffer from exclusion or acute vulnerability, and presented in user-friendly formats.

(xii) Promote Alternative Dispute Resolution Mechanisms (ADR): Traditional systems of justice are important to many minority communities. The adoption of ADR mechanisms is one means of improving access to justice for these minority groups. This may take several forms, including recognition of traditional law in some areas of law (for example, divorce, property); use of traditional mediators from minority communities to settle disputes; and training paralegals from minority communities to aid in dispute resolution and advise on the use of formal judicial services. Mainstream judicial actors may be educated about traditional justice systems as appropriate. UNDP should promote the use of ADR/mediation in both civil and criminal proceedings⁵⁶ and should promote its use in discrimination cases, in accordance with the European Commission against Racism and Intolerance General Policy Recommendations No. 2 and No. 7, which states that one of the key functions of national human rights institutions is to assist victims of discrimination by providing them with support in seeking out-of-court settlements of complaints. Systems of ADR should be developed and promoted throughout the region in order to enhance and extend access to justice.

(xiii) Establish and Maintain Track Record Systems in courts: UNDP should recommend that courts start keeping and maintaining records and statistics on the structure of the employees and clients in the judicial system based on gender, nationality and disability and keep records and statistics on court cases involving woman, minorities and PWDs. Improvements should be made to enable court management systems (CMS), where they exist to specifically register discrimination cases and to provide information to the relevant institutions, as provided for

by the anti-discrimination laws/constitutions. This would enable compliance with international standards and establish the basis for the track record system as required by the European Union (EU) in the accession process (Chapter 23 – section on Fundamental Rights). UNDP Serbia has already designed an ADR database that records this type of information. The database is being piloted by the (NHRI) for equality in cases of discrimination in Serbia. This database could be use as a template and replicated among other countries in the region.

(xiv) Community-based interventions: In order to ensure better observance of rights and justice by PWDs, minorities and women at the grass-roots level, UNDP should design specific interventions focusing on the accessibility to judicial and other service-oriented institutions; availability of adequate legal information and advice; and, finally, legal representation. The impact of such interventions would be high and easily measured. Civil society would be an important partner and potential facilitator of such local community interventions whereas responsible institutions would be targeted as the secondary beneficiary group. There is also a need to engage paralegals at the community level; this service could bridge an obvious need at the grassroots level where the demand of vulnerable groups is high and free professional assistance is difficult to find.

(xv) Strengthening of Judicial Institutions' Capacities: UNDP should create activities to develop the coordination between legal/rule of law institutions, both local and international, in improving the rule of law and access to justice for identifying and raising issues of interest to citizens and to the practitioners themselves. More institutionalised and organised cooperation between

56 As per Council of Europe Committee of Ministers Recommendations No. R (2002) 10 and No. R (99) 19, which recommend the use of mediation in civil and criminal proceedings.

expert teams within the social work centres, police departments and judiciary through the creation and adoption of clearly defined actions, measures and detailed guidelines for procedures of these bodies should also be developed.

(xvi) Introduction of E-Justice Systems: Following the best practise example of Turkey,

which has also been adapted to the Kazakhstan judicial system, systems of e-justice should be introduced to enhance the efficiency and expediency of justice. Once systems are introduced, extensive training will be required for all stakeholders and outreach efforts should be made to promote the system throughout the respective countries/territories.

5 Conclusion

The study shows that the main barriers to enhanced access to justice for women, PWDs and minorities are widespread poverty and public prejudice, low education of the target groups and lack of legal literacy. The most significant obstacles in accessing the courts are costs and duration of proceedings. Additionally, judges, lawyers and court staff lack sufficient awareness and knowledge about the specific demands of these groups and need more training and awareness.

In general, it can be said that despite the progress that has been realised with regard to the development of the formal and legal framework and public policies in the field of promoting and protecting women's, PWDs' and minorities' rights, these groups in the region still do not have equal opportunities when it comes to political participation and are underrepresented in political decision-making within the legislative, executive and judicial authorities at all levels. There is a lack of political will, and the cultural environment and social conditions do not favour the improvement of the position of women, PWDs and minorities in society. Overall, disability, gender and minority issues are not mainstreamed, which has a significant impact on the social exclusion of women, PWDs and minorities and results in the inefficient resolution of their problems.

The efforts of the long and ongoing legal and judicial reform processes throughout the region have been focused too much on laws and institution building and too little on development and legal empowerment of the poor and civil society. Although almost all the adopted strategies for PWD, minorities and women do recognise the need to increase knowledge on rights and protection mechanisms, none of these documents have specific activities to this end. It therefore seems that such commitments reflected in different policy documents and reports have little effect on the situation on the ground, especially at the grass-roots level. In this context, UNDP needs to enable a strong link between policy-level interventions and operational outcomes, which improve the lives of the target groups. It needs to adopt a comprehensive programmatic approach throughout the region to maximise the linkages among the different stakeholders (both rights-holders and duty-bearers) and act as a platform for promoting the coordination and capacity development of national actors to engage in planning, reform and multi-stakeholder dialogue. Through its justice and human rights initiative, UNDP should ensure that it increases the capacities of judicial institutions throughout the region to meet the needs and demands of women, persons with disabilities and minorities.

Annex I

Snapshot of Country/Territory Profiles

Country/Issue	Bosnia and Herzegovina	Kazakhstan	Kosovo	Kyrgyzstan	Serbia
Human Rights protected in Constitution	Yes	Yes	Yes		Yes
Human Development Index Ranking⁵⁷	74/187	68/187		126/187	59/187
Income Level⁵⁸	Upper middle	Upper middle	Lower middle	Lower middle	Upper middle
% of population living in poverty⁵⁹	14%	15.4%	45%	43%	6.6%
GNI per capita US\$⁶⁰	4,790	7,440	3,300	880	5,810
Composition	48% Bosniak 37% Serb 14% Croats 1% Roma ⁶¹	86%Kazakhstani 9% Russian 1.5% Ukrainian 3.5% Others 3% PWDs	92% Albanian 4% Serb 4% Turk/ Bosniak/ Roma ⁶²		90% Serb 2.5% Bosniak 1.4% Roma 1.1% Albanian 5% Others
Judicial Reform process	Ongoing 2009-2013, new phase launched by EC in 2011	Ongoing until 2020			Ongoing, new National Judicial Reform Strategy signed 2012-2017
Free legal aid law	No – requested by EC	No – limited provisions in Civil and Criminal Procedural Codes	No – but provided for under Regulation 2006/36		Yes
Anti-discrimination law	Yes	No	Yes		Yes
Law to protect minorities	Yes	No			Yes
Law/policy to protect PWDs	Yes	No			Yes
Gender protection law	Yes	No			Yes

57 The Human Development Index is used as a reference for both social and economic development by cross-referencing health, education and living standards. For further information see <http://hdr.undp.org/en/statistics/hdi/>

58 As per the World Bank data and statistics on countries and economies <http://data.worldbank.org/country>

59 Ibid.

60 Ibid.

61 These figures are based on data collected in 2000 and have the potential of being significantly different now due to a large number of returnees (over 1 million) in the last 10 years. The 2011 census has not taken place due to the current political situation in Bosnia and Herzegovina. The number of Roma is estimated due to their lack of formal registration.

62 No official census has been carried out in Kosovo since 1991, when the Albanian population boycotted the census, although official projections estimated them to represent 82% of the population, with 10% Serb and 2.3% Roma.

ANNEX II

Strengthening Judicial Integrity through Enhanced Access to Justice

UNDP Regional Survey – Bosnia and Herzegovina, Kazakhstan, Kosovo, Kyrgyzstan and Serbia 2011

PROFESSIONALS QUESTIONNAIRE

A. PROFILE

1. Profession (please circle the correct answer):

- a) Judge
- b) Prosecutor's office
- c) Lawyer
- d) Court staff
- e) NGO – please state which
- f) Other – please specify

If d, e or f, please go to question 2.

If a) What is the time spent by the Judge in Court service?

If b) or c) What is the number of days spent per week in court?

What is the number of years in practice?

2. Education level – please circle just one (the highest attained):

- a) Incomplete primary education
- b) Completed primary education
- c) Completed secondary school (Grade 10)
- d) High school (A-level)
- e) University degree in subject other than law
- f) Diploma or certificate in law from a recognized institution
- g) LLB
- h) Masters or PhD.

3.	Gender	Male	Female
		1	2

4. Age – please circle just one

- a) 18-24
- b) 25-29
- c) 30-34
- d) 35-39

- e) 40-44
- f) 45-49
- g) 50-54
- h) 55-59
- i) 60-64
- j) 65+

B. EFFICIENCY OF THE JUSTICE SYSTEM

5.	In your experience, would you say cases involving women, minorities or PWDs are usually resolved within a longer timeframe that those cases not involving these groups?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

f 1 or 2, please skip to question 6.

if 3, 4 or 5

5.a.	Select all the reasons that apply by marking 1 in the corresponding boxes	Yes
	a) Lack of knowledge of court staff relating to cases involving women, minorities, persons with disabilities	
	a) Lack of knowledge of judges relating to cases involving women, minorities, persons with disabilities	
	c) Difficulties for women, minorities, persons with disabilities in accessing information	
	d) Difficulties for women, minorities, persons with disabilities in accessing legal assistance/representation	
	e) Other (please specify)	

C. QUALITY OF SERVICES

6.	In your opinion, is your country's justice system competent	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

7.	How would you rate the quality of your country's justice services	Unsatisfactory	Poor	Neither good nor poor	Good	Excellent
		1	2	3	4	5

D. ACCESSIBILITY

8.a.	Do you consider your justice system to be affordable for women?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

8.b.	Do you consider your justice system to be affordable for minorities?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

8.c.	Do you consider your justice system to be affordable for persons with disabilities?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

9.	In your opinion what is the level of availability of information on laws and regulations for women, minorities and persons with disabilities?	Very difficult to obtain	Difficult to obtain	Obtainable	Easy to obtain	Very easy to obtain
		1	2	3	4	5

Please mark "Yes" answers by writing/marking "1" in the corresponding box; please mark "No" answers by writing "2" in the corresponding box; please mark "Don't know" answers by writing "0" in the corresponding box

10.	In your opinion, which personal characteristics (if any) negatively impact on a person's ability to access the courts	Yes	No	Don't know
	a) Age	1	2	0
	b) Economic Status	1	2	0
	c) Education level	1	2	0
	d) Gender	1	2	0
	e) Disability	1	2	0
	f) Ethnicity	1	2	0

11.	How would you gauge the physical accessibility of the courts in your country?	Very difficult	Difficult	Neither	Easy	Very easy
		1	2	3	4	5

If 4 or 5, please go to question 19.

If 1, 2 or 3 please answer the following:

11.a.	In your opinion, which factors negatively impact on a woman/minority/PWD's ability to physically access the courts	Yes	No	Don't know
	a) Geographical distance of court	1	2	0
	a) Position of court building	1	2	0
	b) Layout within the court	1	2	0
	c) Access to information	1	2	0
	d) Associated costs	1	2	0

E. FAIRNESS

Do you agree or disagree with the following statements? (1 = agree, 2 = neither agree nor disagree, 3 = disagree, 0 = Don't know)

12.	In your experience do the court(s) treat the following categories of people equally?	Agree	Neither agree nor disagree	Disagree	Don't know
	a) Men and women	1	2	3	0
	b) Rich(er) and poor(er)	1	2	3	0
	c) Persons with disabilities and persons without disabilities	1	2	3	0
	d) Minorities and the majority population	1	2	3	0

13.	In your opinion what are the 3 most significant obstacles for women/ minorities/persons with disabilities in accessing the courts in your country? Please select them by marking "1" in the corresponding boxes	Yes
	a) Official payments to judges and courts too high	
	b) Unofficial payments to judges and courts too high	
	c) Outside legal services too expensive	
	d) Access to information in minority languages not available	
	e) Physical access to the court too hard	
	f) Process too long	
	g) Court decisions influenced by bribes	
	h) Court decisions are influenced by personal connections	
	i) Process too complex	
	j) Lack of effective enforcements of court decision	
	k) Courts located too far away	
	l) Other – please specify	

14.	Are the following sources of information available in your country in minority languages?	Yes 1	No 2	Don't know 0
	a) Laws and regulations	1	2	0
	b) Signs in court	1	2	0
	c) Instructions and forms in civil proceedings	1	2	0
	d) Information and indictments in criminal proceedings	1	2	0
	e) Judgements	1	2	0

15.b.	In your experience, does the state always provide an interpreter to parties who speak minority languages?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

16.a.	In your experience, is it harder for a woman to access courts?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

16.b.	In your experience, is it harder for a woman to access a lawyer/obtain legal advice?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

16.c.	In your experience, do women get less respect from judges, lawyers and court staff?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

17.a.	In your experience, is it harder for a minority to access courts?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

17.b.	In your experience, is it harder for a minority to access a lawyer/obtain legal advice?	Never 1	Seldom 2	Sometimes 3	Usually 4	Always 5

17.c.	In your experience, do minorities get less respect from judges, lawyers and court staff?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

18.a.	In your experience, is it harder for a person with disability to access courts?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

18.b.	In your experience, is it harder for a person with disability to access a lawyer/obtain legal advice?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

18.c.	In your experience, do persons with disabilities get less respect from judges, lawyers and court staff?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

19.	What types of problem do women specifically encounter in your country? Please select them by marking "1" in the corresponding boxes	Yes
	a) Property/land disputes	
	b) Gender-based violence	
	c) Dowry issues	
	d) Inheritance	
	e) Divorce and maintenance/alimony	
	f) Child custody	
	g) Crimes	
	h) Debts, loans, commercial conflict	
	i) Other – please specify	

20.	What types of problem do minorities specifically encounter in your country? Please select them by marking "1" in the corresponding boxes	Yes
	a) Property/land disputes	
	b) Personal documentation issues	
	c) Employment	
	d) Access to information in minority languages	
	e) Other – please specify	

21.	What types of problem do persons with disability specifically encounter in your country? Please select them by marking "1" in the corresponding boxes	Yes
	a) Access to health care	
	b) Access to education	
	c) Access to cultural events	
	d) Property/land disputes and inheritance	
	e) Other – please specify	

22.	In your country overall, please assess the effectiveness of each institution or group in ensuring access to justice for women, minorities and persons with disabilities in your country	Effective	Neither effective nor ineffective	In-effective	Don't know
	a) Courts	1	2	3	0
	b) Lawyers	1	2	3	0
	c) Prosecutors	1	2	3	0
	d) NGOs	1	2	3	0

23.	Which factors do you think would increase access to justice for women, minorities and persons with disabilities in your country? Please select them by marking "1" in the corresponding boxes	Yes
	a) Improved laws and regulations	
	b) Increased training for judges	
	c) Increased training for court staff	
	d) Enhanced public awareness	
	e) Other – please specify	

If respondent is court staff, from an NGO or other – thank you for participating in this questionnaire!

SPECIFIC QUESTIONS FOR JUDGES, LAWYERS, PROSECUTORS AND COURT STAFF

24.	Have you undertaken any specific training related to women in the justice system?	Yes	No	Don't know
		1	2	0

If no, please go to question 25.

If yes,

24.a.	Please provide details of the training as follows:	
	a) Type of training	
	b) Format of training	
	c) Total number of hours trained	
	d) Frequency of training.....	
	e) Any formal assessment	

25.	Have you undertaken any specific training related to minorities in the justice system?	Yes	No	Don't know
		1	2	0

If no, please go to question 26.

If yes,

25.a.	Please provide details of the training as follows:	
	a) Type of training	
	b) Format of training	
	c) Total number of hours trained	
	d) Frequency of training.....	
	e) Any formal assessment	

26.	Have you undertaken any specific training related to persons with disabilities in the justice system	Yes	No	Don't know
		1	2	0

If no, please go to question 27.

If yes,

26.a.	Please provide details of the training as follows:	
	a) Type of training	
	b) Format of training	
	c) Total number of hours trained	
	d) Frequency of training.....	
	e) Any formal assessment	

27.	Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to women?	Yes	No	Don't know
		1	2	0

If no, please go to question 28.

If yes,

27.a.	Please provide details as follows:
	a) Type of procedure/process?
	b) How were you made aware of these?

27.b.	In your experience are these procedures and processes applied in all cases involving issues related to women?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

If 5, please go to question 28.

If 1,2 3 or 4,

27.c.	Please select all reasons that apply for them not being applied	1
	a) Lack of awareness of judge	
	b) Lack of awareness of prosecutor	
	c) Lack of awareness of lawyer	
	d) Lack of awareness of woman	
	e) Other – please specify	

28.	Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to minorities?	Yes	No	Don't know
		1	2	0

If no, please go to question 28.

If yes,

28.a.	Please provide details as follows:
	a) Type of procedure/process?
	b) How were you made aware of these?

28.b.	In your experience are these procedures and processes applied in all cases involving issues related to minorities?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

If 5, please go to question 29

If 1,2 3 or 4,

28.c.	Please select all reasons that apply for them not being applied	1
	a) Lack of awareness of judge	
	b) Lack of awareness of prosecutor	
	c) Lack of awareness of lawyer	
	d) Lack of awareness of minority	
	e) Other – please specify	

29.	Are you aware of any specific court procedures or processes that should be followed in cases involving issues related to persons with disabilities?	Yes	No	Don't know
		1	2	0

If no, thank you very much for participating in the questionnaire.

If yes,

29.a.	Please provide details as follows:
	a) Type of procedure/process?
	b) How were you made aware of these?

29.b.	In your experience are these procedures and processes applied in all cases involving issues related to persons with disabilities?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

If 5, thank-you very much for participating in this questionnaire

If 1,2 3 or 4,

29.c.	Please select all reasons that apply for them not being applied by marking 1	1
	a) Lack of awareness of judge	
	b) Lack of awareness of prosecutor	
	c) Lack of awareness of lawyer	
	d) Lack of awareness of person with disability	
	e) Other – please specify	

Thank you for your participation!

ANNEX III

Strengthening Judicial Integrity through Enhanced Access to Justice

UNDP Regional Survey – Bosnia and Herzegovina, Kazakhstan, Kosovo, Kyrgyzstan and Serbia 2011

COURT USERS QUESTIONNAIRE

A. PROFILE

1.	Gender	Male	Female
		1	2

2. Education level – please circle just one (the highest attained):

- i) Incomplete primary education
- j) Completed primary education
- k) Completed secondary school (Grade 10)
- l) High school (A-level)
- m) University degree in subject other than law
- n) Diploma or certificate in law from a recognized institution
- o) LLB
- p) Masters or PhD.

3. Age – please circle just one

- a) 18-24
- b) 25-29
- c) 30-34
- d) 35-39
- e) 40-44
- f) 45-49
- g) 50-54
- h) 55-59
- i) 60-64
- j) 65+

4. Type of case – please circle just one (if respondent has been involved in more than one type of case, please complete a separate questionnaire for each case).

	What types of case have you been involved in? Please select by marking "1" in the corresponding boxes	Yes
	a) Civil	
	b) Criminal	
	c) Administrative	

B. EFFICIENCY OF THE JUSTICE SYSTEM

5.	How many times were you required to be present in court in order to resolve your case?	0-1	2-3	4-5	6+
		1	2	3	4

6.	Do you think your case would have been resolved more quickly if you were not a woman/minority/person with disability?	Yes	No	Don't know
		1	2	0

If 2 or 0, please go to question 7.

If 1

6.a. Please provide further information

7.	How long did your case take to resolve?	0-6 months	7-12 months	13-24 months	25+ months
		1	2	3	4

8.	Do you believe your country's justice system is quick?	Yes	No	Don't know
		1	2	0

C. QUALITY OF SERVICES

9.	Based on your experience, please evaluate the quality of the services provided by different operators in the justice system	Very poor	Poor	Neither poor nor good	Good	Very good
	a) Judges	1	2	3	4	5
	b) Prosecutors	1	2	3	4	5
	b) State attorneys	1	2	3	4	5
	c) Private attorneys	1	2	3	4	5
	d) Courts clerks	1	2	3	4	5
	e) Court staff	1	2	3	4	5

10.	In your opinion, is your country's justice system competent?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

D. ACCESSIBILITY

11.	Do you consider your country's justice system to be affordable for all?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

12.	In your experience, what is the level of availability of information on laws and regulations for women, minorities and persons with disabilities?	Very difficult to obtain	Difficult to obtain	Obtainable	Easy to obtain	Very easy to obtain
		1	2	3	4	5

Please mark "Yes" answers by writing/markings "1" in the corresponding box; please mark "No" answers by writing "2" in the corresponding box; please mark "Don't know" answers by writing "0" in the corresponding box.

13.	Did any of the following characteristics negatively impact on your ability to access the justice system?	Yes	No	Don't know
	a) Age	1	2	0
	b) Economic Status	1	2	0
	c) Education level	1	2	0
	d) Gender	1	2	0
	e) Disability	1	2	0
	f) Ethnicity	1	2	0

14.	How would you rate the physical accessibility of the courts in your country?	Very difficult	Difficult	Neither	Easy	Very easy
		1	2	3	4	5

If 4 or 5, please go to question 15

If 1, 2 or 3

14.a.	Which factors impaired your ability to access the courts – please select all those that apply	Yes	No	Don't know
	a) Geographical distance of court	1	2	0
	a) Position of court building	1	2	0
	b) Layout within the court	1	2	0
	c) Access to information	1	2	0
	d) Associated costs	1	2	0

15.	Were you able to access the following sources of information in a language that you could understand?	Yes 1	No 2	Don't know 0
	a) Laws and regulations	1	2	0
	b) Signs in court	1	2	0
	c) Instructions and forms in civil proceedings	1	2	0
	d) Information and indictments in criminal proceedings	1	2	0
	e) Judgements	1	2	0

E. FAIRNESS

Do you agree or disagree with the following statements? (1- agree, 2- neither agree nor disagree, 3 - disagree, 0-Don't know)

16.	In your experience do the Court(s) treat the following categories of people equally?	Agree	Neither agree nor disagree	Disagree	Don't know
	a) Men and women	1	2	3	0
	b) Rich(er) and poor(er)	1	2	3	0
	c) Persons with disabilities and persons without disabilities	1	2	3	0
	d) Minorities and the majority population	1	2	3	0

17.	In your opinion what are the 3 most significant obstacles for women/minorities/persons with disabilities in accessing the courts in your country? Please select them by marking "1" in the corresponding boxes.	Yes
	a) Official payments to judges and courts too high	
	b) Unofficial payments to judges and courts too high	
	c) Outside legal services too expensive	
	d) Access to information in minority languages not available	
	e) Physical access to the court too hard	
	f) Process too long	
	g) Court decisions influenced by bribes	
	h) Court decisions are influenced by personal connections	
	i) Process too complex	
	j) Lack of effective enforcements of court decision	
	k) Courts located too far away	
	l) Other – please specify	

18.	Did you face any problems in your interaction with the justice system? Please select all those that apply by marking "1".	Yes
	a) Disrespect	
	b) Impoliteness	
	c) Prejudice	
	d) Unfair trial	
	e) Difficulties in obtaining documents	
	f) Other – please specify	

19.	Do you think your judgement would have been different if you were not a woman/minority/person with disability?	Yes	No	Don't know
		1	2	0

If 2 or 0, please could to question 20.

If 1

19.a.	Please select all those that apply:	Yes 1	No 2	Don't know 0
	(i) The judgement would have been less in my favour	1	2	0
	(ii) The judgement would have been more in my favour	1	2	0

20.	In your country overall, please assess the effectiveness of each institution or group in ensuring access to justice for women, minorities and persons with disabilities in your country	Effective	Neither effective nor ineffective	In-effective	Don't know
	a) Courts	1	2	3	0
	b) Lawyers	1	2	3	0
	c) Prosecutors	1	2	3	0
	d) NGOs	1	2	3	0

SPECIFIC QUESTIONS FOR FEMALE RESPONDENTS

21.a.	In your experience, is it harder for a woman to access courts?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

21.b.	In your experience, is it harder for a woman to access a lawyer/obtain legal advice?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

21.c.	In your experience, do women get less respect from judges, lawyers and court staff?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

SPECIFIC QUESTIONS FOR MINORITIES

22.	In your experience, does the state always provide an interpreter at all stages of proceedings to parties who speak minority languages?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

23.a.	In your experience, is it harder for a minority to access courts?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

23.b.	In your experience, is it harder for a minority to access a lawyer/obtain legal advice?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

23.c.	In your experience, do minorities get less respect from judges, lawyers and court staff?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

SPECIFIC QUESTIONS FOR PERSONS WITH DISABILITIES

24.a.	In your experience, is it harder for a person with disability to access courts?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

24.b.	In your experience, is it harder for a person with disability to access a lawyer/obtain legal advice?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

24.c.	In your experience, do persons with disabilities get less respect from judges, lawyers and court staff?	Never	Seldom	Sometimes	Usually	Always
		1	2	3	4	5

Thank you for your participation!

Notes

Notes



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