



Access to Justice: Provision of Information, Advice and Free Legal Aid in Bosnia and Herzegovina

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Association for Democratic Initiatives (ADI) is a non-governmental organization working on political and economic development, the rule of law, protection of human rights, and EU integrations in Bosnia and Herzegovina by fostering participatory and direct democracy practices and instigating partnerships between the civil society, governmental institutions and the private sector. ADI realizes its objectives through proposing policy solutions, implementing projects and advocacy campaigns, and organizing educational trainings. Particularly, ADI's efforts are directed towards building institutional capacities of civil society organizations and promotion of their role in the society.

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Executive Summary

Although Bosnia and Herzegovina (BiH) has made significant progress since the conflict in the mid 1990s, it still faces significant development challenges, such as high unemployment, underdeveloped rural areas, and an under-resourced and inefficient social welfare system. The economy is at 70% of its pre-war level of development, and 20% of the population lives below the poverty line, which is very high, given that an additional 30% of the population lives slightly above the poverty line. Taking these facts into account, the establishment of an efficient free legal aid system is all the more important given the social status of BiH citizens and poverty rates in the country. In addition, many citizens remain uninformed about their rights and a large number of unresolved legal disputes instigated by citizens is hindering the efficient functioning of the courts in BiH.¹ Finally, the large majority of citizens of BiH throughout find that the country should have an equally guaranteed right to the minimum free legal aid (90%).²

Despite these conditions, the current free legal aid system in BiH is unable to provide minimum legal assistance services to all citizens in BiH on an equal basis. As such, it does not fulfil the international and European standards in this regard. The NGO *Vasa prava*, the largest free legal aid provider in the country, states that the current free legal aid framework “is characterized by the absence of policy planning, many deviations from the Justice Sector Reform Strategy in BiH, as well as fragmentation and different approach in dealing with issues of legal aid. Also, the role of NGOs in the system of free legal aid has been continually minimized, which led to the absolute exclusion of NGOs from the public consultation process.”³ Public institutions have not been proactive in organising the provision of free legal aid in a systematic matter. Several legal aid services have recently been established in Republika Srpska, Brčko District and several other cantons, but these remain unavailable in many other cantons and in most rural areas.

These and other similar issues have been identified as reasons for the adoption of a national legislative framework which would provide basic free legal aid and legal mechanisms for the reform of existing laws that may be a source of discrimination against citizens on the basis of the place where they may live. This report intends to add to the on-going policy debate by providing an analysis of the legal framework and current practice relating to the provision of information and assistance services to citizens and aims to identify several viable policy recommendations.

In order to address these issues and policy options, a survey on the provision of information, advice and legal aid services in Bosnia and Herzegovina was organised throughout the period from March to May 2013. The purpose of the survey was to map existing citizens information and assistance services, to identify gaps in services and to develop policy recommendations. The survey was sent to an extensive number of public institutions – including municipalities and providers of free legal aid, as well as non-governmental organizations and trade unions were contacted in order. In total, 65 organizations participated in the survey, out of which 24 were public institutions (free legal aid institutions and municipalities) and 41 are non-governmental organizations.

¹ Research Center of the Parliamentary Assembly of Bosnia and Herzegovina, “Recommendations for modification and promotion of the proposed draft law on free legal aid” No. 03/10-50-3-96-9/10, Parliamentary Assembly of Bosnia and Herzegovina, Sarajevo, 25.10.2010, accessible online: <https://www.parlament.ba/sadrzaj/about/istrazivanje/default.aspx?id=20310&langTag=en-US&pril=b>. See also US State Department US Department of State, “2012 Human Rights Reports: Bosnia and Herzegovina” April 2013, which reports that “There was a backlog of an estimated two million unresolved civil cases, more than one-half involving unpaid utility bills.”, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204268.htm>.

² Pajić, Zoran and Popović, Dragan, “Facing the Past and Access to Justice from a Public Perspective” UNDP in BiH, 2012, accessible online:

<http://www.undp.ba/upload/News/Facing%20the%20Past%20and%20Access%20to%20Justice.pdf>

³ NGO *Vasa prava*, “Lack of harmonization and inefficiency of the free legal aid system and the need to adopt the law on free legal aid on the level of BiH.” Draft. Accessed online: <http://www.vasaprava.org/wp-content/uploads/downloads/2012/04/MAGAZIN-29-2012-final-R.pdf>

Preface – Introduction to the Project

The project Triple A for citizens - access to information, advice and active help - is a project implemented in the framework of the European Commission's Partnership programme for Civil Society organisations⁴. The implementing partners are as follows: the lead organisation European Citizen Action Service (ECAS), Belgium; National Foundation for Civil Society Development (NFCSD), Croatia; Association for Democratic Initiatives (ADI), Bosnia and Herzegovina; Civil Rights Program (CRP/K), Kosovo; Lawyers' Committee for Human Rights (YUCOM), Serbia; Association of Civil Society Development Centre (STGM), Turkey; Law Centres Network (LCN), UK; National Association of Citizens Advice Bureaux (NACAB), Romania; National Association of Citizens Information Services (NACIS), Ireland.

The Triple A project aims to encourage non-governmental organisations to provide information, advice and active help to citizens on their rights in the Western Balkans and Turkey. It also seeks to promote the role of civil society in giving citizens a voice and holding governments to account. By aggregating the complaints and evidence they receive, citizens' information and legal advice services should be able to influence government policy on key reforms and their implementation. The immediate objective is to spread the citizens' advice concept to Western Balkans and Turkey.

Triple A for citizens - access to information, advice and active help - is the organising framework and strategy for the partnership:

- Access to information: Everyone has an equal right to “come to our door”, irrespective of income, status, language or belief and be treated with dignity and respect. People should be able to find and access information about their rights in the most convenient way possible. Equal access requires reaching out to those most in need as a result of having a modest income or being in vulnerable situations because of a disability, social exclusion, or other reason.
- Advice: Citizens must find a free, personal, independent, confidential and impartial service they can trust. This can take the form of self-help manuals or interactive tools to resolve an issue through preventative action. In certain circumstances, however it is necessary to go into individual circumstances to find a solution face-to-face. In all cases, citizens should receive the same high level of service and care.
- Active help: Citizens should not be left in situations of impasse, or having to start the whole process over again each time they seek assistance. In a small number of cases it is necessary to go further often in cooperation with more specialised services (i.e. in debt, housing or social entitlements), pro-bono legal support or assistance towards preparing an administrative or judicial appeal. There is consensus that the *one-stop shop* is the right approach since many citizens have a range of interrelated questions, i.e. about housing, social benefits, their wages or pension and expect to find at least a first answer without being sent from one service to the next. This is also the approach favoured by funders, particularly at a time of cuts in public expenditure. The trend is to encourage more advice services to come together and also for smaller ones to merge into larger units with wide geographical scope in order to achieve economies of scale.

Providing assistance to citizens is an important service in its own right, but it should not be seen as an end in itself. Preventative or problem-solving action can help solve individual problems, but there is a general interest in using this experience to seek solutions for those who do not

⁴ Regional and Horizontal Programmes Ref. EuropeAid/132438/C/ACT/Multi.

approach the service. The experience of Triple A can be analysed and turned into evidence that can serve as the basis for advocating for changes in law and policy. In the framework of the project two key preparatory activities are envisaged:

- Mapping of the existing citizens assistance and free legal advice organisations in the region through the use of surveys and face to face interviews;
- Feasibility study which should propose models for effective provision of services in the Western Balkans and Turkey.

These activities will be followed by an open call for proposal to civil society organisations to submit projects for sub-granting. The selected pilot projects (two per country making ten in total) should help embed the Triple A concept in the Western Balkans and Turkey and create the forefront of sustainable citizen oriented services. The projects will benefit from a series of capacity building activities constituting in three study visits to assistance and advice services in the United Kingdom, Romania and Ireland and a mentoring scheme which will bring experts from the EU to the region to help set up and run the services on the ground.

The second stage of the projects will depend on the results and impact of the ten pilot projects. The extension of the sub-granting to Macedonia and Montenegro, which are currently not covered by the project, would be the most logical development. Creation of a regional network of citizens' advice and active helps services would also constitute a useful and necessary step should the Triple A concept prove its worth and generate tangible results in the five countries.

Historical Context of Citizens Information Services

The post-conflict landscape in Bosnia and Herzegovina greatly determined the framework for the provision of information, assistance and advice services to citizens across the country. During this period, legal aid services shifted away from the system developed in the former Yugoslavia that is viewed described by many stakeholders today as having been relatively efficient.⁵ The Law on the Provision of Legal Aid of 1977⁶ broadly defined the providers of legal aid, but emphasized the role of municipalities and local workers' collectives as the main institutions for provision of free assistance. Each municipality had a legal aid office where citizens could ask for information, advice or any other type of legal aid including representation at courts and help in preparing legal documents. This model was effective as the service was provided in close proximity to the citizen. The legal aid services that were provided to citizens primarily related to the protection of labour rights, to the protection of persons with disabilities, to families of fallen soldiers, and persons in social need or in other circumstances exempting payment of public fees. Many municipalities still operate legal aid offices as part of their regular services due to the fact that the Law on the Provision of Legal Aid was never repealed in BiH for several years after the war, although at the same time it was not fully complied with. Another important source of free legal aid in the past has been the workers' collectives and trade unions.

After the war, the free legal aid system was for the most part provided by non-governmental organizations (NGOs) with the support of international donors and development agencies since 1996. This has tended to focus on the provision of legal aid to refugees and internally displaced persons. These NGOs were particularly active in providing free legal aid in the areas of property relations, housing, access to social and economic rights amongst other areas. In recent years, several NGOs have developed strong capacities in the provision of legal aid (*Vasa prava*, Foundation of Local Democracy, Center for Human Rights in Mostar, etc.). At the same time, associations that represent specific social groups – such as the Roma, persons with disabilities, refugees, civilian victims of war, women and victims of domestic violence - have taken on a more prominent role in the provision of information and legal advice to their target groups. Aside from these, several associations of consumers -such as the active association “Consumers’ Club” in Tuzla Canton - have also been formed and offer assistance in the form of legal advice, the preparation of legal documents and the provision of mediation services.

On the other hand, after the war, public institutions have been relatively less active in organising free legal assistance in a systematic manner. While legal aid institutions were established several years ago in Republika Srpska and several cantons, many citizens are not well informed about these existing services due to the absence of outreach as a major component in the work of the majority of public institutions. Most of the cantonal legal aid institutions are in their infancy.

In 2012, the Free Legal Aid (FLA) Network in Bosnia and Herzegovina was established following the joint signing of a Memorandum of Understanding between 14 organizations that provide free legal aid services throughout the country.⁷ With the support of the UNDP⁸, the FLA Network was created to share expertise among the participating organisations and to promote, apply and develop standards in the field of free legal assistance.

⁵ Conference Report, “Local Governance in Service of Citizens: Strengthening Social Accountability in Sarajevo”, Institute for International Urban Development (I2UD) and others, December 2012.

⁶ Zakon o pružanju pravne pomoći SR BiH. Službeni list SR BiH 11/77.

⁷ The NGOs involved are *Vaša prava* BiH, Center for Free Legal Aid of Republika Srpska, Office for Legal Aid Brčko District, Institute for Free Legal Aid in Tuzla Canton, Institute for Free Legal Aid in Zenica Doboj Canton, Cantonal Free Legal Aid Institute in Odžak, Cantonal Free Legal Aid Institute in Široki Brijeg, Cantonal Free Legal Aid Institute in Sarajevo, Institute for Free Legal Aid in Bihać, Institute for Free Legal Aid in Goražde, Center for Information and Legal Assistance in Zvornik, Center for Legal Assistance for Women in Zenica, and the Foundation for Local Democracy. See UNDP press release: <http://www.undp.ba/index.aspx?PID=7&RID=740>.

⁸ Further details of UNDP’s “access to justice” project in BiH can be found here: <http://www.undp.ba/index.aspx?PID=21&RID=95>

Legal Framework of Citizens Information & Assistance Services

Bosnia and Herzegovina has not enacted any comprehensive legislation that specifically regulates the provision of information and assistance to citizens. However, there are a number of constitutional provisions and legislative enactments which govern or impact the provision of information and assistance services to citizens.

The Constitution of Bosnia and Herzegovina⁹ (Article II) provides that the rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols are to apply directly in Bosnia and Herzegovina and are to have priority over all other laws. Article 6 of the ECHR¹⁰ guarantees the right to a fair trial. It also specifically secures the right to free legal aid in cases when a person who is charged with a criminal offence is unable to afford legal assistance and when this is required in the interest of justice. Over time, the case law of the European Court for Human Rights has also recognised the right to legal aid in civil cases¹¹. As a consequence, Bosnia and Herzegovina is under an obligation to provide free legal aid to its citizens in criminal, civil and other disputes involving “the determination of his civil rights and obligations”.

The constitutional obligation to provide legal aid has been further recognised in the Justice Sector Reform Strategy (JSRS) for BiH which has noted that “[t]he lack of a comprehensive legal aid system for criminal and civil cases must be rectified in order to ensure that economic status does not inhibit the capacity of citizens to pursue their rights before the law.”¹² The Strategy also identifies several measures that would ensure creation of a harmonized system of free legal aid in civic, criminal and administrative cases across the country. Despite this strategic commitment, most of these measures have so far not been implemented.

Regrettably, a national framework law on free legal aid has so far not been adopted. The Ministry of Justice has on several occasions sent a draft law on free legal aid to the Parliamentary Assembly of BiH for consideration, but the draft law has been repeatedly rejected by parliamentarians. Some commentators suggest that the reticence to adopt the law may be due to a perception held by some lawyers and bar associations that adoption of the aforementioned law would not be beneficial for them and they have accordingly lobbied for its dismissal¹³. Furthermore, members of the Assembly of Republika Srpska entity blocked the adoption of the proposed framework law last time it was introduced for consideration, justifying their decision by the fact that Republika Srpska had already adopted such legislation and contested the jurisdiction of the Republic of BiH to enact legislation on legal aid at the state level. In spite of this opposition, civil society and legal experts continue to raise awareness of the important need to adopt a national legislative framework on free legal aid that will, firstly, ensure provision of legal aid for all citizens in need and, secondly, provide a basis for the harmonisation of rules and regulations in this area.

As a result, although the country does not currently have a national law on legal aid, separate legal frameworks exist in its two constitutive entities Republika Srpska, the Federation of Bosnia and Herzegovina as well as in Brcko District, and several cantons in the second entity Federation BH adopted their own legislation on free legal aid. While Republika Srpska has its own legislation

⁹ An official English translation of the Constitution of Bosnia and Herzegovina is available on the website of the Constitutional Court of Bosnia and Herzegovina:
http://www.ccbh.ba/eng/p_stream.php?kat=518

¹⁰ Available online: <http://www.hri.org/docs/ECHR50.html>

¹¹ The right to legal aid in civil cases has been the subject of judgments by the European Court of Human Rights in several cases including *Airey v. Ireland*, 9 October 1979, *Aerts v. Belgium*, 30 July 1998, *P., C. and S. v. the United Kingdom*, 16 July 2002, and *Steel and Morris v. the United Kingdom*, 15 February 2005.

¹² Ministry of Justice, “The Justice Sector Reform Strategy of Bosnia and Herzegovina” 2008, accessible online: <http://www.mpr.gov.ba/dokumenti/projekti/Default.aspx?id=913>

¹³ See for example, the views held by participants in the televised broadcast “Free legal aid in BiH” on Zabranjeni forum, TV Pink, 31 March 2013, accessible online: <http://www.youtube.com/watch?v=FNtMCU12XOQ>

on the matter, the approach in Federation BiH has been further decentralized to its ten cantons, which have taken on the role as providers of legal assistance. As a consequence, these separate legislative frameworks lead to a situation of unequal access to justice.¹⁴

Aside from the disparate legislation on free legal aid, the national Code of Criminal Procedure¹⁵, as well as the procedural codes adopted by the entities¹⁶, also recognise the right to free legal aid in Bosnia and Herzegovina. These rules of procedure provide that the accused has a right to obtain legal representation from a court-appointed attorney in case the accused cannot afford the services of a defence lawyer but only in cases when the person is accused of a criminal offence that carries a sentence of imprisonment of three years or more, or when it is in the interests of justice to do so. The criminal procedure codes also prescribe the circumstances in which an accused person must be represented by a lawyer¹⁷. However, it remains unclear what criteria should be used by the courts when considering whether to grant applications for court-appointed attorneys when the accused cannot afford the costs of defence. Legal representation in court may only be provided by lawyers who are licensed to practice law and are listed in the register of attorneys in the Federation of Bosnia and Herzegovina or the corresponding register in the Republika Srpska¹⁸.

In addition, the codes on criminal procedures (nor legislation on free legal aid more generally) do not stipulate whether victims or injured persons have a right to free legal aid.¹⁹ The Law on Protection of Witnesses under Threat and Vulnerable Witnesses²⁰ and the Law on Witness Protection Program in Bosnia and Herzegovina²¹ provide for the right to free legal aid for the benefit of vulnerable witnesses and also those under threat. However, it is unclear how free legal aid is to be provided or financed for witnesses.²² Additionally, the OSCE has reported that legal aid for witnesses have so far not been incorporated into the criminal procedure codes.²³

In civil cases, the civil procedure codes in BiH²⁴ provide that the court may exempt a party from paying the costs of proceedings if the party's financial situation is such that payment of the costs of proceedings would jeopardise their ability to support themselves or members of their family. The exemption from paying the costs of the proceedings includes exemption from paying court fees, while getting a lawyer free of charge is part of separate processes directed towards the free

¹⁴ For a more detailed analysis of the free legal aid regulation in BiH, see Milanović, Mirna and others, "Free Legal Aid System in Bosnia and Herzegovina" 2012, accessible online: <http://www.mrezapraavnepomoci.org/ba/preuzimanja/brosure-publikacije-i-analize>

¹⁵ Code of Criminal Procedure of BiH ("Official Gazette of BiH", no. 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09), accessible on-line: <http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=40&jezik=e>.

The criminal procedure code in force in the Federation of BH is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=42&jezik=e> The criminal procedure code of Republika Srpska is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=43&jezik=e>

The criminal code of Brčko District is accessible here:

<http://www.tuzilastvobih.gov.ba/?opcija=sadrzaj&kat=4&id=44&jezik=e>

¹⁶ Zakon o parničnom postupku („Sl. novine FBiH", br. 53/03, 73/05 i 19/06); Zakon o parničnom postupku („Sl. glasnik RS", br. 58/03); Zakon o parničnom postupku Brčko Distrikta („Sl. glasnik Brčko Distrikta 8/09, 52/10).

¹⁷ Code of Criminal Procedure of BiH, Article 46, specifies that a person who is accused of a criminal offence must be represented by a lawyer if the accused is mute or deaf as well as in other circumstances relating to the alleged offence.

¹⁸ Code of Criminal Procedure of BiH, Article 39 and Law on Court of Bosnia and Herzegovina, ("Official Gazette of BiH", no. 28/00, 15/02, 16/02, 24/02, 03/03, 37/03, 42/03, 04/04, 09/04, 35/04, 61/04, 32/07, 49/09, 74/09, 97/09), Article 12; see also Law on Attorneys' Profession of the Federation of Bosnia, ("Official Gazette of FBH", no. 25/02, 29/03) and Law on Attorneys' Profession of the Republika Srpska ("Official Gazette of RS", no 37/02, 30/07, 59/08).

¹⁹ Milanović, Mirna and others, "Free Legal Aid System in Bosnia and Herzegovina", cited above..

²⁰ Law on Protection of Witnesses under Threat and Vulnerable Witnesses ("Official Gazette of BiH", no. 03/03, 21/03, 61/04, 55/05).

²¹ Law on Witness Protection Program in Bosnia and Herzegovina ("Official Gazette of BiH", no. 29/04).

²² Milanović, Mirna and others, "Free Legal Aid System in Bosnia and Herzegovina", cited above.

²³ OSCE Mission in BiH, "Witness Protection and Support in BiH Domestic War Crimes Trials: Obstacles and recommendations a year after adoption of the National Strategy for War Crimes Processing." January 2010, accessible online: www.oscebih.org/Download.aspx?id=65&lang=EN

²⁴ Code of Civil Procedure Before Court of BiH ("Official Gazette of BiH", no. 36/04, 84/07, 58/13), Article.

legal aid providers. As a result, only limited legal aid is available in civil proceedings in BiH.

Legal assistance in administrative proceedings is not regulated by legislation in BiH as the laws on administrative proceedings (national, two entity laws and one in Brčko District)²⁵ do not mention free legal assistance. However, the aforementioned laws contain identical provisions on the principle of assistance to an uneducated person. This principle states that the authority conducting the procedure has to ensure that in case of an unlearned person, that proceedings will not result in injury of that person's rights. Although this provision does not include the right to free legal aid to hire an attorney or other professional representation, it obliges public institutions to provide legal assistance to citizens, particularly legal information. In practice, municipalities and courts have usually appointed personnel and sometimes even departments offering assistance to citizens in filing documentation in administrative proceedings.

Another important legal instrument in terms of the provision of information, advice and free legal aid to citizens in Bosnia and Herzegovina is the Freedom of Information Act (FOIA) which was adopted at both the national and the entity levels²⁶ in 2001 at the request of the High Representative for Bosnia and Herzegovina. The FOIA provides a basis for citizens and civil society groups to request access to public information. It establishes "that every person has a right to access this information to the greatest extent possible consistent with the public interest, and that public authorities have a corresponding obligation to disclose information."²⁷ Although its implementation has been uneven²⁸, in recent years the law has become quite an important instrument for NGOs and civic groups in the country to obtain public data, including free legal aid organizations²⁹. Several studies³⁰ have shown that the implementation of the FOIA has been more successful at the national level than at the level of the entities, cantonal and local government units. The FOIA does provide a basis for better protection of individual and collective human rights as journalists and human rights activists use it as a tool in monitoring the enforcement of human rights. Thus, the Law serves as a basis for demanding better public information and services.³¹

Unfortunately, the Parliamentary Assembly in Bosnia and Herzegovina is currently considering proposed changes to FOIA that would significantly restrict access to public information and documents.³² Namely, the amendments potentially exclude the release of any public documents

²⁵ Zakon o upravnom postupku („Sl. novine FBiH”, broj 2/98-33 i 48/99-1861); Zakon o opštem upravnom postupku („Sl. glasnik RS”, broj 13/02-1 i 87/07-15-ispravka); Zakon o upravnom postupku Brčko Distrikta BiH („Sl. glasnik BD BiH”, br. 3/00-1, 5/00-164, 9/02-665, 8/03-513, 8/04-341, 25/05-887, 8/07-279, 10/07-384, 19/07-893, 2/08-45 i 36/09-881) i Zakon o upravnom postupku („Sl. glasnik BiH”, br. 29/02- 783, 12/04-1191, 88/07-10700 i 93/09-1)

²⁶ Freedom of Information Act for Bosnia and Herzegovina ("Official Gazette of BiH", no. 28/00, 45/06, 102/09, 62/11), Freedom of Information Act in the Federation of Bosnia and Herzegovina ("Official Gazette of FBH", no. 32/01, 48/11) and Freedom of Information Act in the Republika Srpska ("Official Gazette of RS", no. 20/01). Unofficial English translations of the various FOIA are accessible on the website of the High Representative <http://www.ohr.int/ohr-dept/legal/laws-of-bih/public-info.asp>

²⁷ FOIA, Article 1.

²⁸ See Hodžić, Amra. "Making government transparent and accountable: Enabling access to information" Open Society Fund in BiH, Sarajevo, 2011, accessible online: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdftp_10-11/Studies/ENG_59_Amra_Hodjic.pdf

²⁹ Savić, Milena. "„Dokle je došao moj predmet? Primjena Zakona o slobodi pristupa informacijama u sektoru pravde" [When will my case be resolved? Implementation of the Law on Free Access to Information in the justice sector in BiH] in the Access to justice in Bosnia and Herzegovina, The Justice Network in BiH, 2011, accessible online: <http://www.mrezapravde.ba/mpbh/latinica/txt.php?id=15>

³⁰ See Hodžić, Amra. "Making government transparent and accountable: Enabling access to information" Open Society Fund in BiH, Sarajevo, 2011, accessible online: http://www.osfbih.org.ba/images/Prog_docs/PDFP/pdftp_10-11/Studies/ENG_59_Amra_Hodjic.pdf; Also see: US Department of State, "2011 Human Rights Reports: Bosnia and Herzegovina" May 2012, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186336.htm>

³¹ The Institution of Ombudsmen for Human Rights of BiH is in charge of monitoring implementation of the Law, while each public institution is obliged to appoint a person or establish a department in charge for provision of information to the public. In case a public institutions does not provide requested information, a citizen can make an appeal in an administrative procedure, but these tend to be long and complicated.

³² Center for Investigative Journalism. "Zakon o kojem se javnost ne pita: zaštita ličnih podataka ili zaštita institucija?" [Law that nobody talks about: protection of personal information or protection of institutions] Klix, 23 April 2013,

that contains personal data. This potentially covers information of great public importance, such as the use of public funds for social welfare, healthcare and unemployment benefits, as well as information concerning the performance of public office holders which is not included in a narrow list, all court decisions which are not included in a limited list of “cases of public interest” (“war crimes, organized crime, corruption, terrorism, tax evasion and other cases which represent cases of public interest”), as well as potentially other information concerning court proceedings which are ongoing or even after decisions have been handed down. The supporters of this proposal claim it justified by the need to harmonise the FOIA with the Law on the Protection of Personal Data in BiH³³. In this instance, many NGOs have addressed the Ministry of Justice through the public consultation process in order to advocate for the scope of the right of access to public information to be retained in its present form. Whether this civic initiative will be successful in preventing the adoption of the proposed changes to the FOIA remains to be seen.

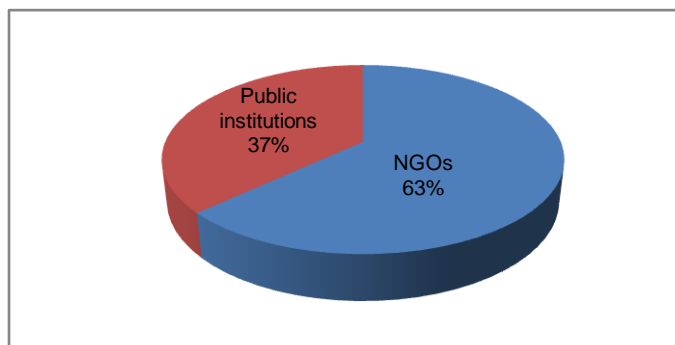
accessibleonline: <http://www.klix.ba/vijesti/bih/zakon-o-kojem-se-javnost-ne-pita-zastita-licnih-podataka-ili-zastita-institucija/130423122>

³³ Law on the Protection of Personal Data in Bosnia and Herzegovina (“Official Gazette of BiH”, no. 49/06, 76/11, 89/11).

Availability of Citizens Information& Assistance Services

In practice, free legal aid in civil cases continues to be mainly provided by privately funded NGOs, while legal assistance provided in criminal cases is provided through court-appointed lawyers³⁴. NGO legal service providers only tend to represent clients in civil and administrative cases and do not tend to represent them in criminal proceedings. There are several NGOs in BiH that provide legal aid depending on the mandate of the particular organization and its priorities. NGO Vasa Prava is the leading and the largest free legal aid provider in the country. It has developed a network of legal aid and information centres throughout BiH with four offices located in Sarajevo, Mostar, Tuzla and Gorazde in the Federation of Bosnia and Herzegovina, and five offices located in Banja Luka, Prijedor, Trebinje, Srebrenica and Petrovac in Republika Srpska. Some mainstream human rights organizations also provide legal assistance to citizens, such as the Helsinki Committee for Human Rights in Sarajevo. On the other hand, there are several women's rights NGOs that provide different kinds of support and assistance to victims of domestic or other forms of gender based violence. Most of these organizations tend only to provide advice on rights and court or administrative procedures, as well as write submissions to the courts on behalf of their clients but rarely represent their clients in courts, mostly due to the lack of financial resources. The Foundation for Local Democracy (FLD) opened the Center for Free Legal Aid for Women in Sarajevo in 2010 and since then it has provided free legal assistance for single mothers, survivors of domestic violence, survivors of trafficking in persons and women who are victims of war violence. The legal assistance includes free legal counselling and possibility of free representation in the court proceeding and administrative bodies.³⁵ Aside from these NGOs, the Centre for Information and Legal Assistance in Zvornik, the Centre for Legal Assistance for Women in Zenica, amongst other NGOs³⁶ have also been significant providers of free legal aid.

Graph 1: Type of institutions that participated in the national survey



In addition to NGOs, public provision of legal aid has recently been established at the entity and cantonal level throughout BiH³⁷. These public free legal institutions are: the Centre for Free Legal Aid of Republika Srpska, the Office for Legal Aid Brcko District, Institute for Free Legal Aid in the canton of Tuzla, the Institute for Free Legal Aid in the canton of Zenica Doboje, the Cantonal Free Legal Aid Institute in Odzaka, the

Cantonal Free Legal Aid Institute in Široki Brijeg, the Cantonal Free Legal Aid Institute in Sarajevo, Institute for Free Legal Aid in the canton of Bihać, and the Institute for Free Legal Aid in the canton of Goražde. These public bodies, along with courts that granted waivers of court fees, together provided legal assistance in 2,589 civil cases in 2011.³⁸

³⁴ In 2011, legal aid was granted in 4,539 criminal cases European Commission for the Efficiency of Justice (CEPEJ), "Bosnia and Herzegovina Report 2011" Scheme for evaluating judicial systems, 2012, accessible online: www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

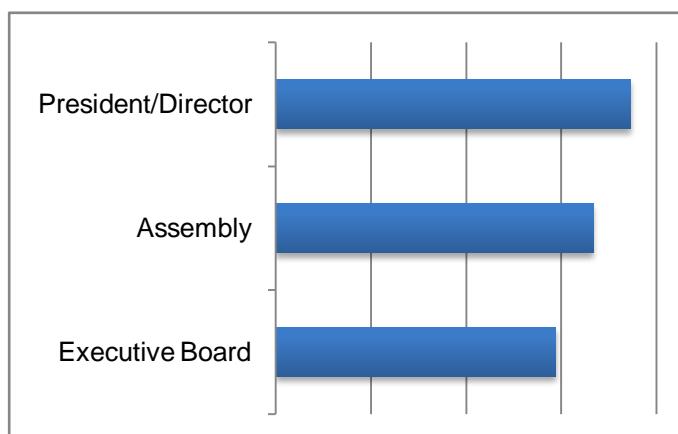
³⁵ Sali-Terzić, Sevima. "Study on the capacities of the judicial institutions (courts) to address the needs and demands of specific groups: Persons with Disabilities, Roma, and women in Bosnia and Herzegovina. Strengthening Judicial Integrity through Enhanced Access to Justice." UNDP, November 2011. Accessed online : www.undp.ba/download.aspx?id=3029

³⁶ Please see the organisations listed in Annex A.

³⁷ 63% of institutions that participated in the survey are non-governmental organizations, while 37% of them are public institutions.

³⁸ European Commission for the Efficiency of Justice (CEPEJ), "Bosnia and Herzegovina Report 2011" Scheme for evaluating judicial systems, 2012, accessible online: www.coe.int/t/dghl/cooperation/cepej/evaluation/2012/Rapport_en.pdf.

Graph 2: Decision-making bodies of legal information and aid providers



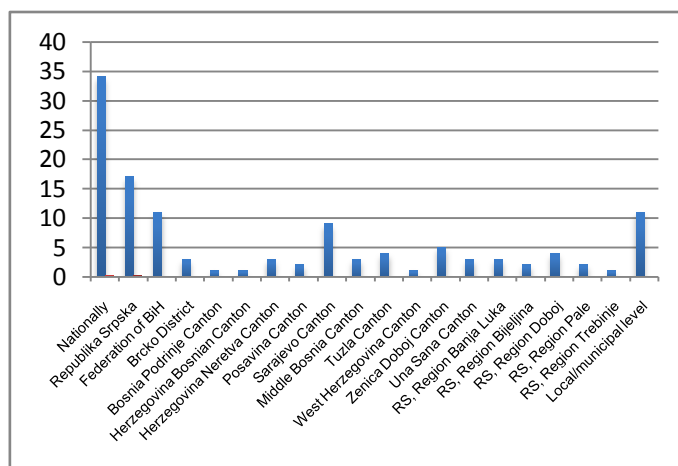
Majority of these public institutions, as well as the NGOs, are managed by a director or an executive board, while only 33.33% of them have an assembly that is in charge of decision-making.

The survey conducted as the part of preparation of this report, also shows that municipalities are still active providers of free legal aid. The municipal offices for legal aid provide legal information and advice mostly on issues pertaining to administrative law. For example, the municipality of

Stari Grad stated that in 2012, they received 8,173 requests for legal aid, and were able to assist citizens in 5,194 cases. The Centre for business support of the municipality of central Sarajevo received and assisted in 250 requests from citizens and small business in 2012. Evidently, most municipalities have offices that provide legal assistance to citizens through legal assistance departments. However, municipal legal officers do not represent citizens in courts.

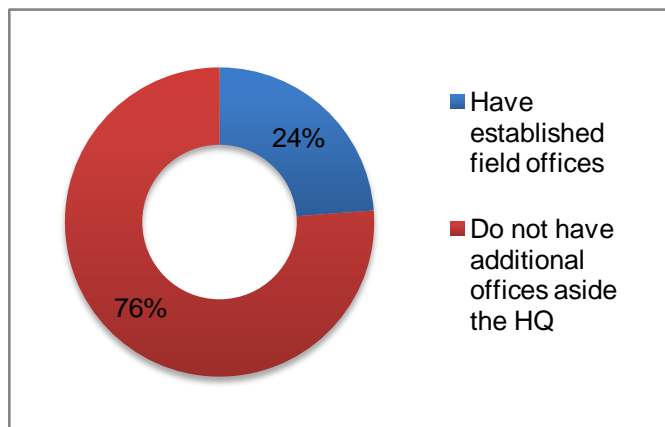
Today, trade unions also represent an important source of free legal aid, including representation at court in proceedings relating to workers' individual and collective labour rights. The Trade Union of Republika Srpska as well as the Independent Trade Union of Bosnia and Herzegovina both offer free legal aid to workers. The Trade Union of Workers in Commerce and Services in BiH made an agreement with a private law firm that offers discounted and free legal aid and representation. Trade unions, however, provide assistance primarily to workers who are their members. While there have been exceptions in the past, workers asking for assistance would have to be members of the union before being eligible for free legal aid.

Graph 3: Administrative level at which survey responders operate



The survey conducted for this report indicates that 29% of survey respondents operate at the national level, while 9% state they are operate at the local or municipal level. The rest operates only in one or a limited number of jurisdictions in BiH, with 27% of survey participants being located in Sarajevo. In addition, only 24% organizations indicated that they had established field offices aside from their main office, with the rest of survey respondents having only one office.

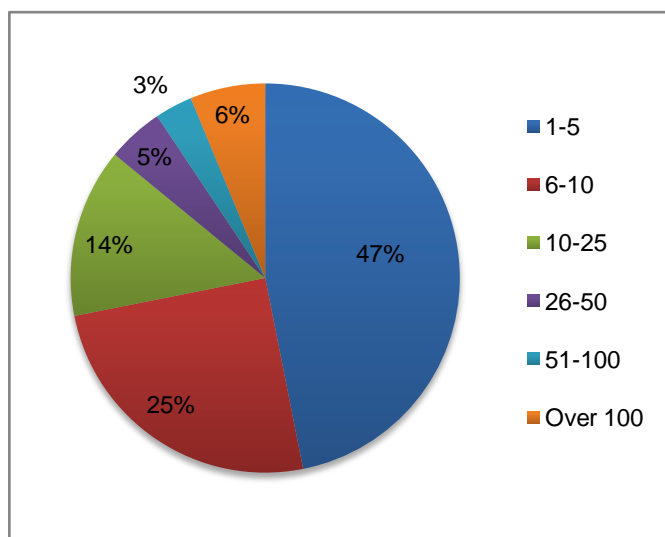
Graph 4: Legal information and aid providers with field and without field offices



Most organizations employ legal officers employed. However, 25% of survey respondents indicated that they do not have a legal officer employed at their institution, while 28% only employ one legal officer. Out of a total of 65 survey participants, only 14 organizations have a lawyer as part of their team. Volunteers form a significant part of the workforce of free legal aid providers, while paid internships at these organisations only occurs occasionally and mostly in public institutions. Most organizations have 2

to 3 volunteers while some NGOs that gather large populations, such as those working with people with disabilities have extensive number of volunteers, but usually they do not offer legal assistance.

Graph 5: Number of employees of survey responders



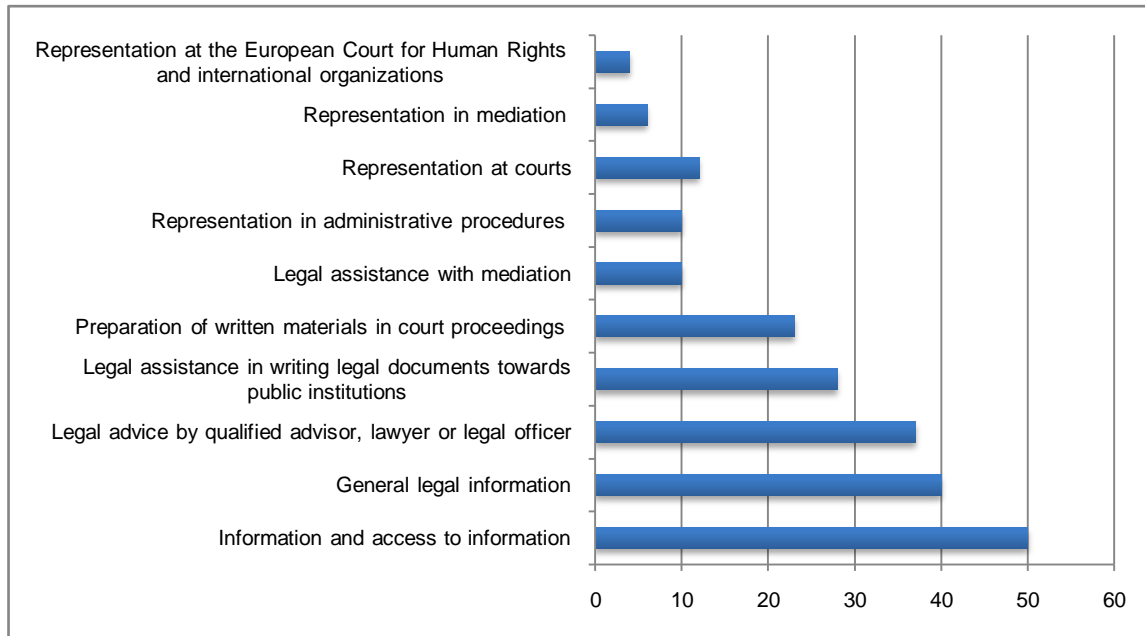
In total, 47% of organisations had between 1 to 5 staff members, while 25% of them had between 6 and 10 people employed at the organisation and 14% of organisations employed between 10 and 15 staff members. The remaining 14% were organisations with more than 15 employees.

The participating organisations mentioned that they offer the following legal services to their users:

- Information and access to information
- General legal information
- Legal advice by qualified advisor, lawyer or legal officer
- Legal assistance in writing legal documents towards public institutions
- Preparation of written materials in court proceedings
- Legal assistance with mediation
- Representation in administrative procedures
- Representation at courts
- Representation in mediation
- Representation at the European Court for Human Rights and international organizations

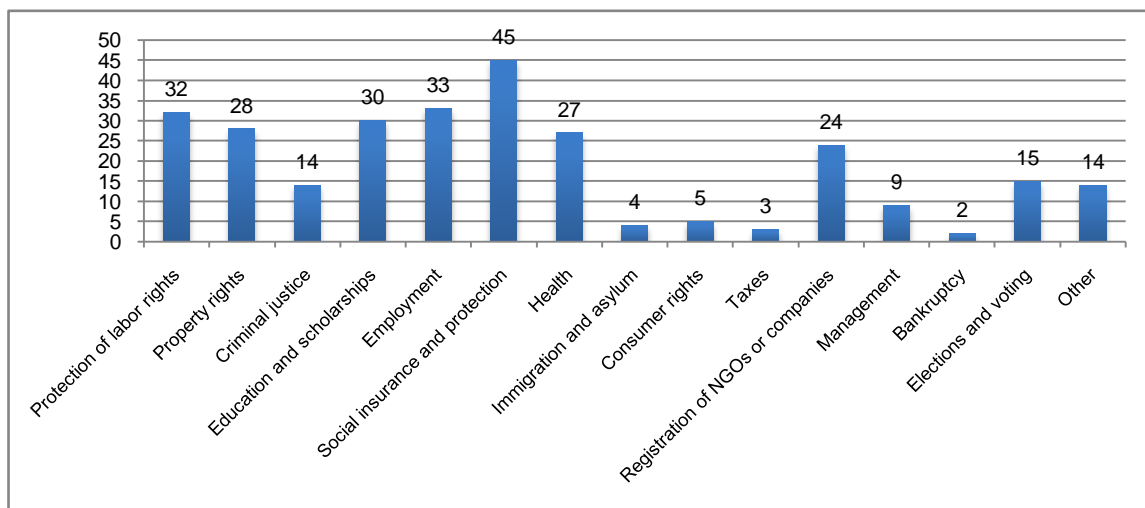
The majority of survey participants indicate that they provided information, general legal information and advice from a qualified legal officer, while only 12 organisations represent their clients in courts.

Graph 6: Legal services offered by survey responders



These services are offered in a variety of areas of law, with the majority of assistance being in the area of social welfare, then with employment, the protection of labour rights, property rights, and health.

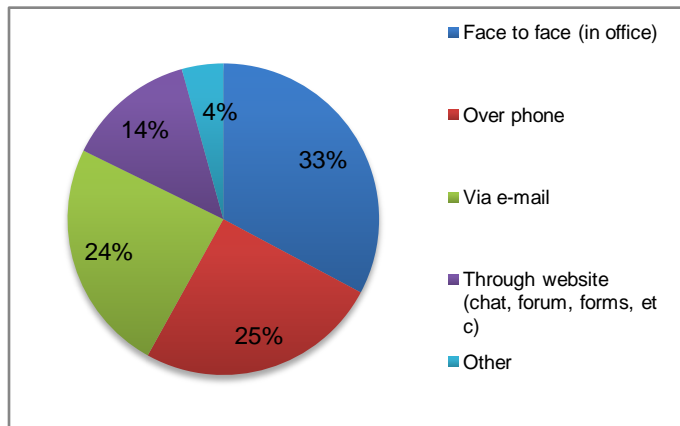
Graph 7: Areas and sectors in which legal information and aid is offered



These legal services often tend to be provided face-to-face, with 33% of survey respondents indicating that their clients come to their offices and talk to their staff directly. 25% of respondents offered legal assistance over phone, while 24% offered legal assistance by email. Interestingly, 13% organisations indicated that they offered legal assistance through their websites (chat,

forums, and similar) while a smaller number (4%) provided assistance via postal correspondence as well.

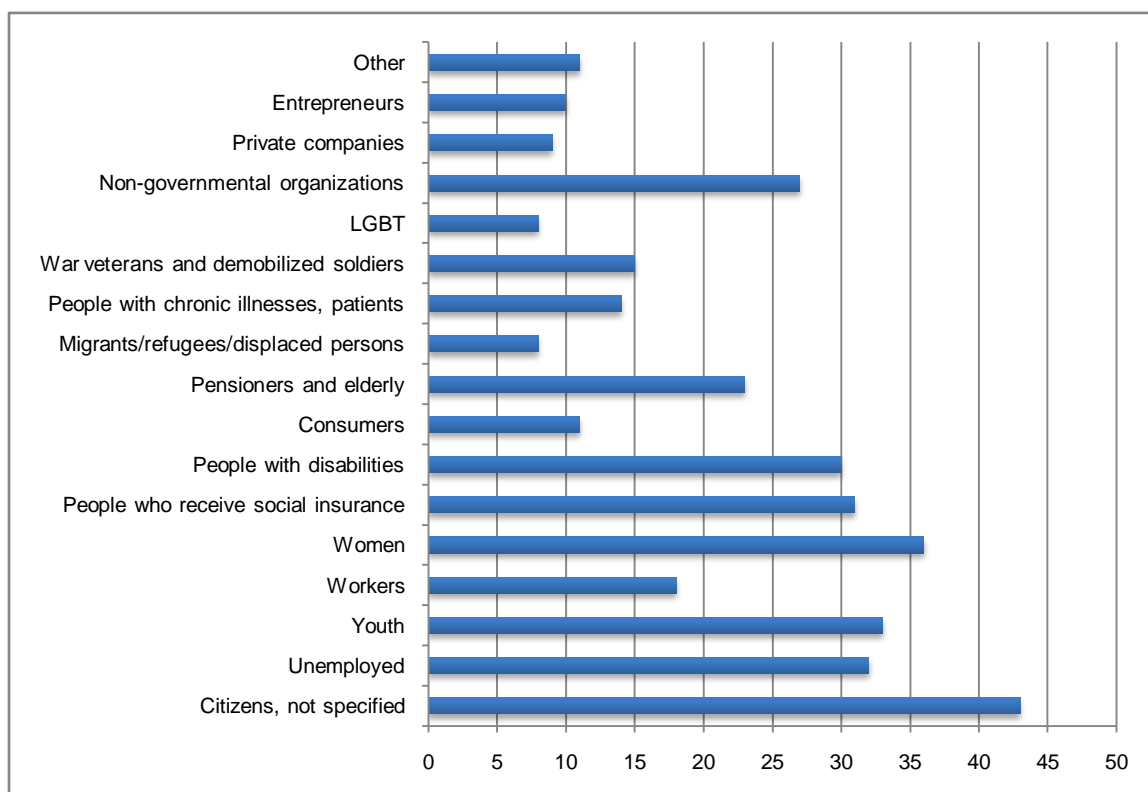
Graph 8: Manner in which free legal information and aid services are provided



Based on the existing regulation³⁹ that sets down financial and other criteria for granting legal aid, the right to free legal aid is guaranteed to the following vulnerable groups:

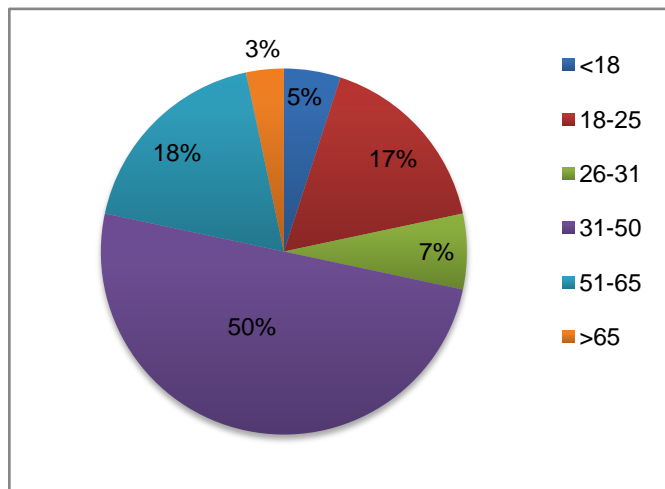
- Welfare recipients,
- Unemployed persons with no regular income,
- Children without parental care,
- Poor persons,
- Pensioners (in some cantons only pensioners who receive a minimum pensions are eligible to receive legal aid),
- Persons whose capacity to exercise rights has been withdrawn by court decision and mentally ill persons kept in mental-health institutions (only in Republika Srpska),
- Persons who have been recently granted legal aid in another case (only in Republika Srpska).

Graph 9: Type of users of free legal information and aid services



The survey results indicate that in practice respondents identified the same social categories as receiving free legal aid. The groups who receive legal aid most frequently are people who recipients of social welfare benefits, the unemployed, women, youth, persons with disabilities, as well as pensioners and the elderly, namely the most vulnerable social groups in society. As for the age of clients, free legal aid providers indicated that the majority of people who receive legal aid are between the ages of 31 and 50 years. Interestingly, a large portion of free legal aid is provided to parents of children (18%) and youth (17%).

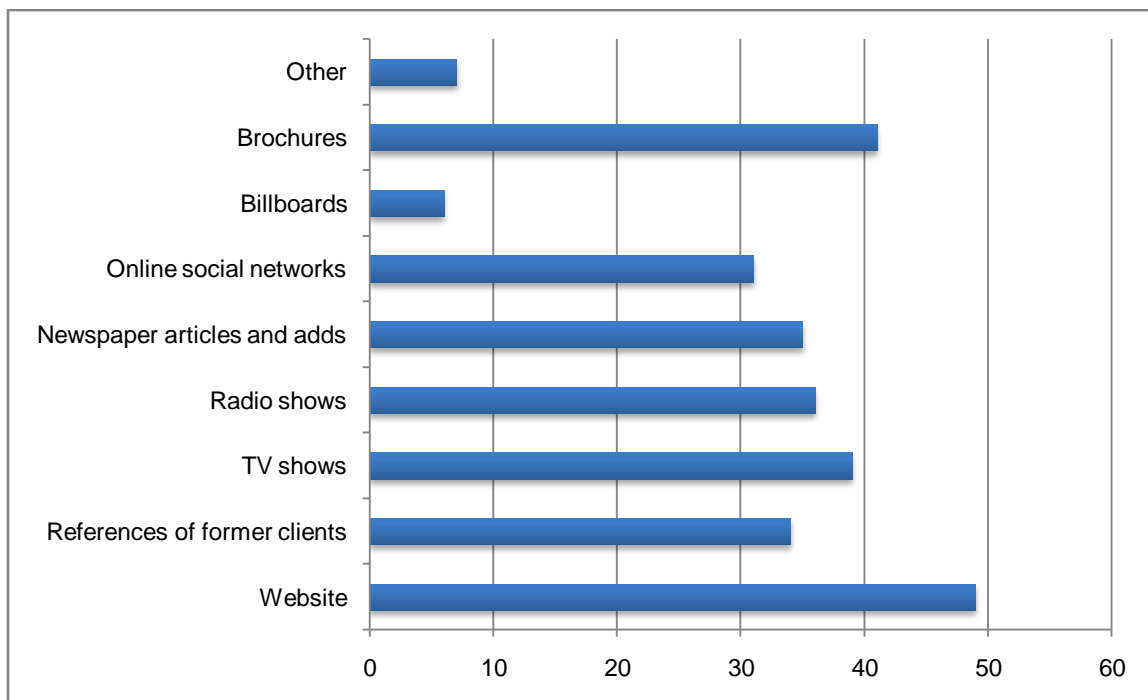
Graph 10: Age of users of free legal information and aid services



On average, each organization receives around 2,332 requests for legal assistance a year. However, differences exist between legal aid providers, larger organizations and smaller ones. For example, Municipality of Stari Grad Sarajevo received 8,173 requests last year and was able to assist in 5,194 cases. The largest NGO that provides free legal aid, *Vaša prava*, received 9,357 requests from citizens for legal assistance in 2012, while the Centre for Legal Assistance to Women from Zenica provided assistance in 3,620 cases. On the other hand, Free Legal

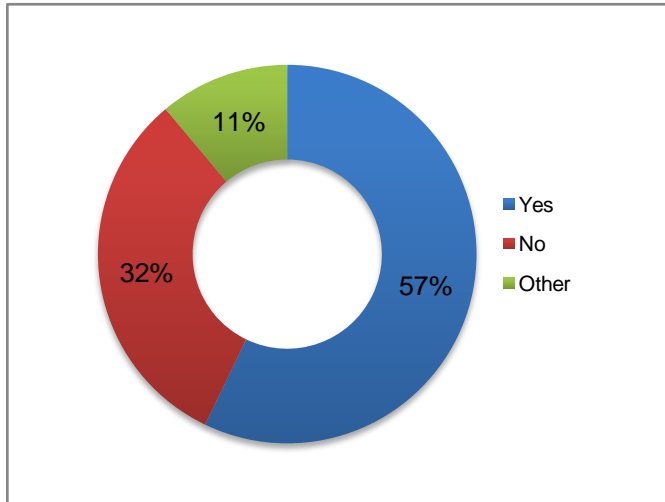
Aid Center in Odžak received 59 requests and was able to assist citizens in 56 cases. In instances where legal aid providers cannot assist clients with their problem, the organisation concerned almost always forwards the case to another organisation or institutions depending on the matter at stake.

Graph 11: Communication channels used by survey responders to inform the public



In order to inform the public and their target groups about their services, legal aid providers use mostly one-way communication tools, such as their websites and brochures. However, most of them indicate that they use various tools of communications, and also rely greatly from references from existing clients.

Graph 12: Response to the question whether organizations use any measurements of quality or quality standards for their services?

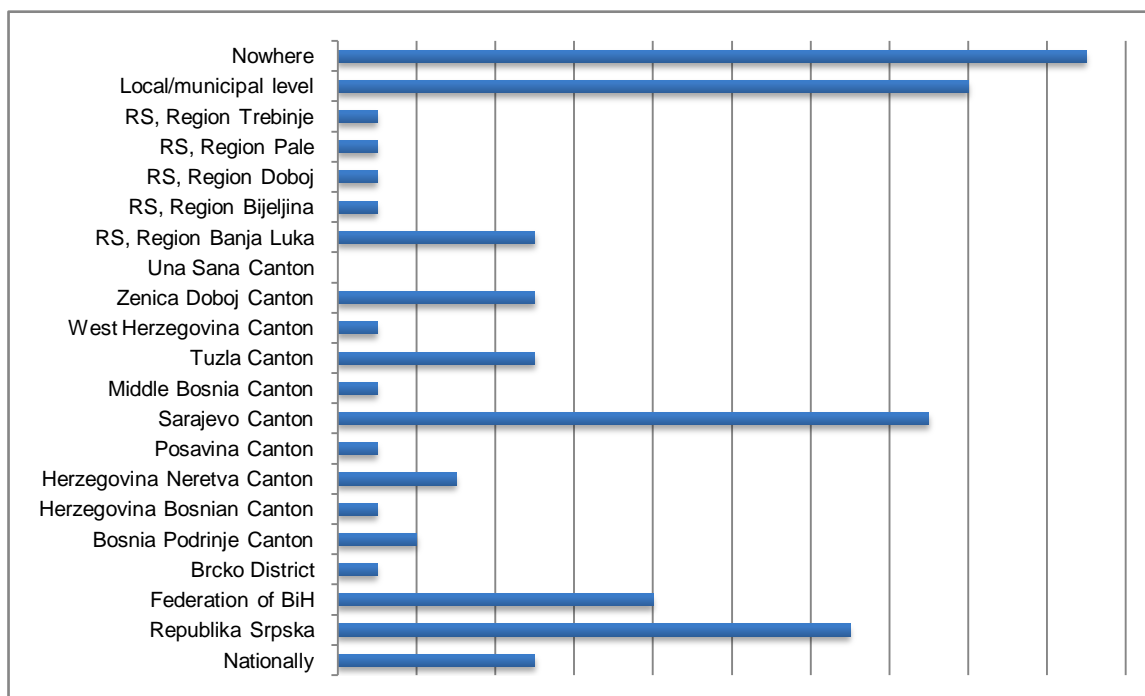


Furthermore, 57% survey responders indicate that they have established quality standards for provision of their services. For municipalities these are quality management ISO-9000 standards, while NGOs usually used evaluation questionnaires and collated data on numbers of cases.

Identified Gaps in Availability of Citizens Information & Assistance Services

The mapping exercise of information, advice and free legal aid services in Bosnia and Herzegovina indicates a rather asymmetrical and decentralised practice in the provision of the services. While several legal aid institutions have been established throughout the country, they are currently missing in several cantons, such as in the Livno Canton and the Middle Bosnia Canton. The European Commission has emphasized the issue in its progress report on Bosnia and Herzegovina for BiH for 2012 and expressed the concern that “the system of free legal aid in Bosnia and Herzegovina remains fragmented and unregulated in some Cantons of the Federation” and noted that the Framework Law on Free Legal Aid had not yet been adopted.⁴⁰

Graph 13: In your opinion, in what areas of the country are the information, advice and assistance services to citizens well-developed?

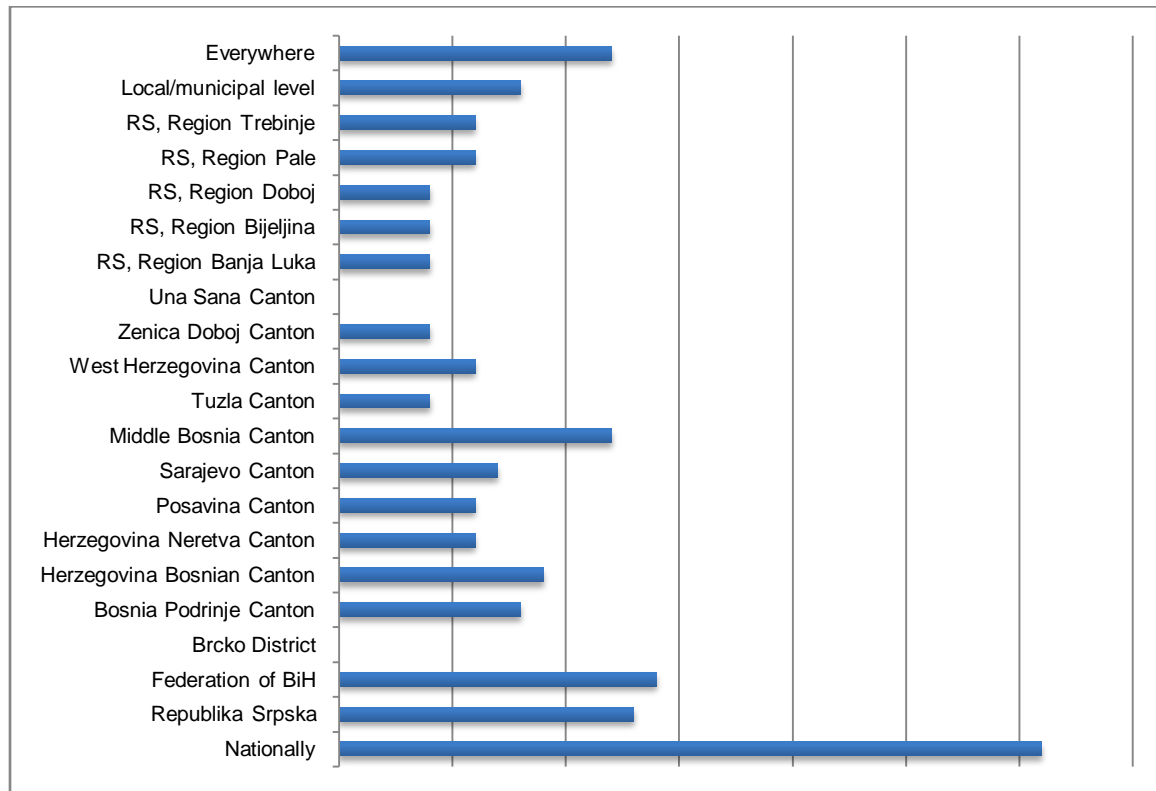


However, problems with access to legal assistance are not limited to the fact that it is not currently available in a number of cantons. The mapping of available legal assistance also shows that access to justice remains unavailable for many rural populations with the current system in place, while free legal aid tending to be available primarily to citizens living in larger cities and in some smaller towns. This is of most concern to recipients of social welfare and persons with disabilities living in rural areas who face significant obstacles to travel to the closest city in order to access free legal aid. Therefore, the question arises how this problem can be addressed by the current system since free legal aid providers in the Federation of Bosnia and Herzegovina tend to be based in the capital cities of cantons, while in Republika Srpska, providers are also concentrated in major cities in this entity. The way the free legal aid system is currently organised does not appear to cater adequately to rural populations. The survey respondents observed that access to legal aid assistance is most extensive in the canton of Sarajevo (Graph 13), while 50% of participating legal aid providers took the view that these services were not easily accessible

⁴⁰ European Commission, “Bosnia and Herzegovina 2012 Progress Report. Enlargement Strategy and Main Challenges 2012-2013” SWD(2012) 335 final, Brussels, 10 October 2012, p.16:
http://ec.europa.eu/enlargement/pdf/key_documents/2012/package/ba_rapport_2012_en.pdf.

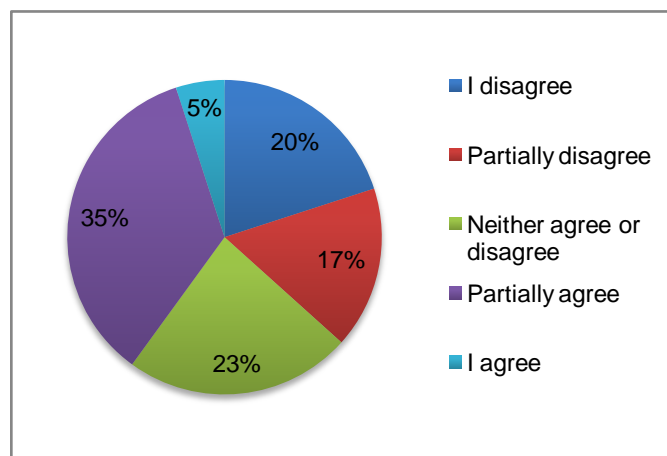
throughout the country (Graph 13).

Graph 14: In your opinion, in what areas of the country are the information, advice and assistance services to citizens is not well-developed?



Furthermore, this fragmented legal aid system creates additional regulatory issues. The majority of survey responders voiced their dissatisfaction with the existing regulatory system on free legal aid because it does not provide sufficient support for the provision of legal assistance.

Graph 15: The existing laws provide a comprehensive framework for the provision of information, advice and active help to the public

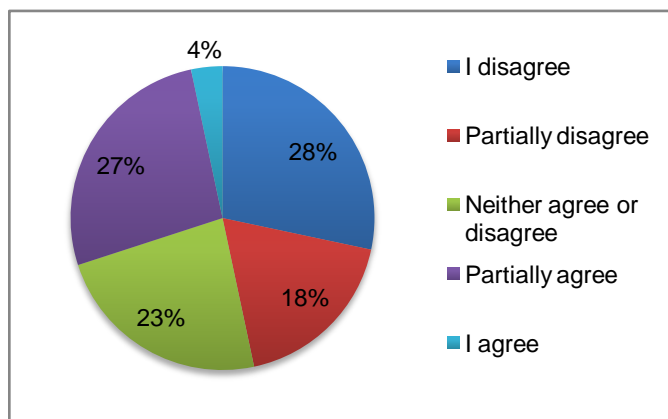


The established public bodies for the provision of free legal aid in BiH have different statuses within their respective governance structures. For example, the Centre for the Provision of Free Legal Aid in Republika Srpska is an independent body established by the Ministry of Justice, while the Office for Free Legal Aid in Brcko District is an independent body operating under the auspices of the Judiciary. On the other hand, the cantonal institutions for free legal aid in the Federation of Bosnia and Herzegovina have been established within the relevant

Ministry of Justice and as such, do not have the status of independent public agencies.⁴¹ Consequently, their employees have a different status: in some instances they are public servants and in some cases judicial personnel. In some instances they are obliged by the law to be lawyers and in some cases they are not.⁴² Aside from different treatment of public employees providing free legal aid, the issue of how public legal aid institutions are established can generate additional problems. In Republika Srpska and several cantons in the Federation attorneys are employed by their justice ministries to provide criminal defence services, while also employing them as prosecutors on other cases. Civil liberties groups criticized this practice as a conflict of interest.⁴³ It is important to safeguard the independence of these public institutions to minimise possible interference from other governmental institutions, given that they may often be called to represent the interest of clients which are not in line with the interests of the government. As a way to safeguard these public institutions, they should be allocated with an independent budget for free legal aid and their activities should be directed by internal management bodies (for example, an executive board).

The review of the legal framework and survey respondents also illustrate that the criteria and procedures for the granting of free legal aid differ across jurisdictions in BiH. The existing legislation on the matter differentiates in many aspects and therefore creates possibilities for inconsistent practices and differences in treatment of citizens. For example, in the canton of Tuzla the Institute for Free Legal Aid can provide legal assistance on the territory of the whole country and represent citizens in cases at any court or institution in the country, whereas in the canton of Zenica-Doboj although the institute there provides legal aid to all citizens of BiH, it can only represent them before the cantonal courts and institutions. The Law on Free Legal Aid of Republika Srpska rules out legal assistance and representation before administrative bodies and in administrative proceedings.

Graph 16: The existing citizens advice services fully answers public's needs for information, advice and active help



The survey results indicate that almost half of free legal aid providers (46%) finds the existing free legal aid system does not meet the needs of citizens for legal assistance (Graph 16). They also find that the legal needs of workers, consumers and entrepreneurs are not adequately met by the existing system in contrast to the legal assistance available to socially excluded, the unemployed and youth (Graph 17). Furthermore, survey respondents indicated that free legal aid services should be more

developed for specific social groups, such as persons with disabilities, refugees and internally displaced persons, pensioners and the elderly (Graph 18).

Another issue tied to eligibility for free legal aid is the way social categories are defined. Since one third of population now in BH is in danger of social exclusion and poverty, the need for free legal aid is self-apparent. However, many NGOs and public institutions base their criteria for eligibility for free legal aid strictly on the status of the claimant (such as unemployment, civilian victims of war, etc.). As a result, many people who are in need of legal assistance cannot access it because it remains unaffordable even for employed people, especially in civil matters. For

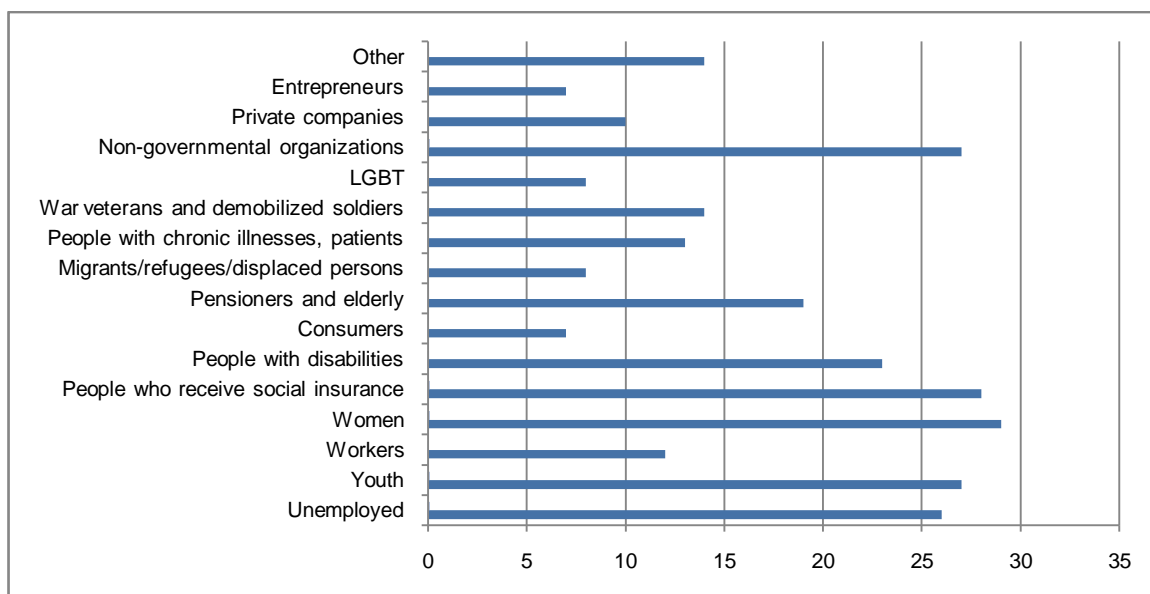
⁴¹ Milanović, Mirna and others "System of Free Legal Aid in Bosnia and Herzegovina", cited above

⁴² Ibid.

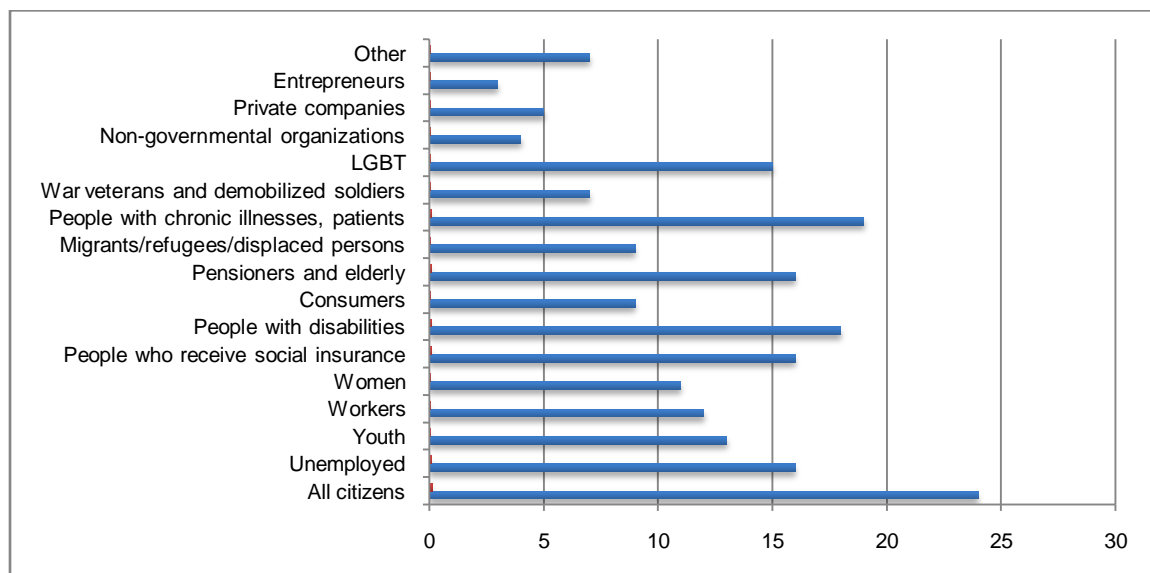
⁴³ US Department of State, "2011 Human Rights Reports: Bosnia and Herzegovina" May 2012, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2011/eur/186336.htm>

example, average net salary in Federation in BiH for June 2013 amounted to 423 Euros⁴⁴, while costs of litigation can amount to several thousands Euros, depending on the length and other elements of the case. Thus, legal aid is provided to social categories and not necessarily to those on a low income due to the fact that the social welfare system in BiH is based on belonging to a certain category and is not necessarily based on need.⁴⁵

Graph 17: In your opinion, which target population groups are adequately serviced by your organization and / or others, or can easily find information, advice or help if they need it?



Graph 18: In your opinion, which target population groups are not adequately serviced by your organization and/or others, or cannot easily find information, advice or help if they need it?



⁴⁴ Monthly Report. Federal Institute for Statistics. June, 2013.

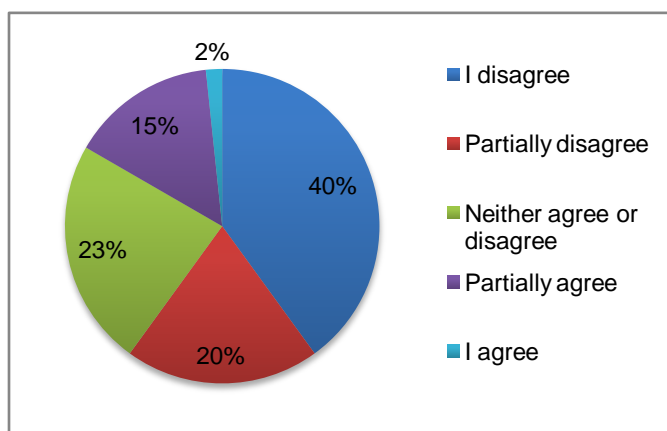
⁴⁵ Demir, Elma. "At what price? Court costs, access to justice and legal aid to Bosnia and Herzegovina." Association for Democratic Initiatives and Center for Human Rights at the University of Sarajevo. Sarajevo, June 2013. See also the UNDP Report on Social Inclusion in Bosnia and Herzegovina published in 2007.

In addition, it should be noted that the Gender Action Plan⁴⁶, the Law on Gender Equality⁴⁷ and the National Strategy for Prevention and Fight Against Violence⁴⁸ incorporate special measures that call for legal counselling and the provision of free legal aid to victims of domestic and sexual violence. However, the recognition and special attention which these victims should be entitled to is missing from the existing legislation and the provision legal counselling services remains to be implemented in practice.⁴⁹

Similar issues arise as regards to refugees and displaced persons. The existing free legal aid legislation does not recognise refugees, internally displaced persons and returnees as special categories deserving free legal aid. This problem is important because displaced persons are socially and financially the most vulnerable part of the population, and they experience constant existential uncertainty and social exclusion. Moreover, "most displaced persons do not have the financial means to pay for lawyers' fees and, also, the majority of lawyers are not familiar with the specific problems experienced by displaced persons, as well as the legislation of the countries of their origin or relevant international treaties and standards."⁵⁰

Another problem is the fact that free legal aid is not always available in claims of damages as compensation for harm resulting from unlawful actions by administrative bodies and public officials.⁵¹ Also, in criminal proceedings, there were several reported instances when the police failed to inform detainees of their rights or to allow effective access to legal counsel prior to being questioned.⁵²

Graph 19: The existing information provided by the government to the public is too complicated to understand



Furthermore, the current system limits access to information and legal assistance simply due to its bureaucratic complexity. 60% of survey respondents found that the information and assistance provided by public institutions was too complicated for citizens to understand (Graph 19). 67% of survey respondents also found that administrative procedures are unnecessarily complicated and not easy to understand for citizens (Graph 20).

⁴⁶ Official Gazette of Bosnia and Herzegovina 16/03.

⁴⁷ Official Gazette of Bosnia and Herzegovina 41/09.

⁴⁸ Official Gazette of Federation of BiH 84/12. All materials are available online on the main web page of the Gender Equality Center of Federation of BiH: <http://www.fgenderc.com.ba>

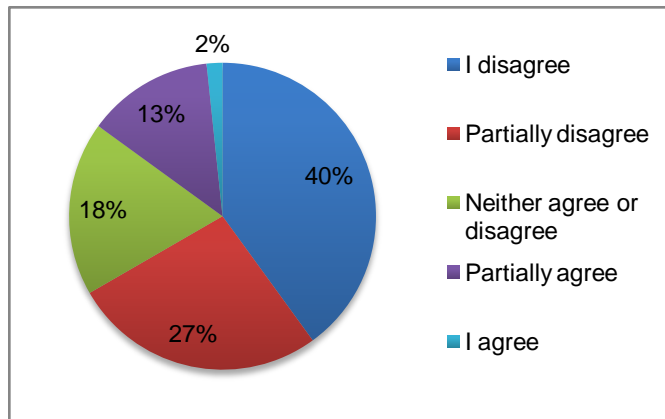
⁴⁹ NGOs *Udružene žene* and *Lara*, "Monitoring and analysis of criminal procedures and court practice in the area of sexual and gender-based violence in the Republika Srpska.", Banja Luka, Bijeljina, 2011, accessible online: www.undp.ba/download.aspx?id=2861.

⁵⁰ NGO Your Rights and others, "Access to free legal aid for displaced persons in the Western Balkans countries: Overview of the situation in Bosnia and Herzegovina, Croatia, Serbia and Montenegro" November 2011, accessible online: [http://www.internal-displacement.org/8025708F004CE90B/\(httpDocuments\)/7CF45F04A4181D87C125798900563FDF/\\$file/Full+Report_336.pdf](http://www.internal-displacement.org/8025708F004CE90B/(httpDocuments)/7CF45F04A4181D87C125798900563FDF/$file/Full+Report_336.pdf)

⁵¹ Ibid.

⁵² US Department of State, "2012 Human Rights Reports: Bosnia and Herzegovina" April 2013, accessible online: <http://www.state.gov/j/drl/rls/hrrpt/2012/eur/204268.htm>. It also appears that defence counsel do not play an active role in defending clients: "Many persons complained that lawyers provided by authorities remained silent throughout the initial court proceedings."

Graph 20: Existing administrative procedures in most areas are simple and tailored to citizens and users

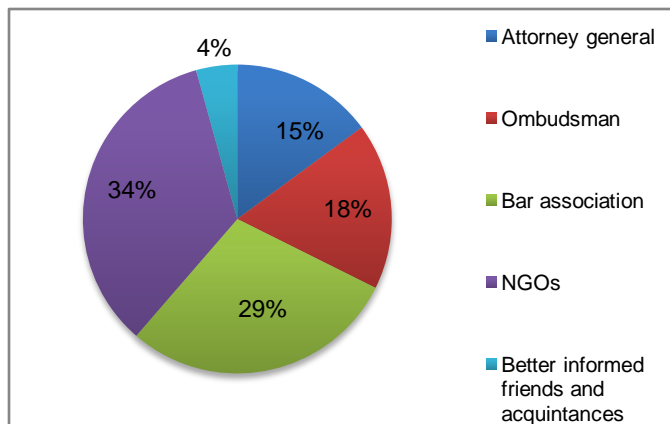


Education and training have unfortunately been neglected by public institutions, despite this forming an important aspect of the efficient implementation of free legal aid system in practice. The Justice Sector Reform Strategy emphasizes the need to organise trainings for free legal aid providers in order to maintain the quality of legal aid services. The UNDP in collaboration with members of the Network of Free Legal Aid Providers in BiH has developed a study that aims to

identify the capacity building needs of legal aid providers. The study identified gaps in the education of free legal aid providers since their needs are not adequately being addressed by the training delivered by each entity's judicial and prosecutorial center, while entity bar associations have only occasional consultation sessions.⁵³

In addition, public outreach by free legal aid providers is another issue that needs special attention. Most citizens are not aware of legal assistance the newly established public institutions offer.⁵⁴ It is therefore not surprising that the UNDP's recent report on access to justice⁵⁵ observes that the majority of citizens have most confidence in free legal aid services provided by non-governmental organizations followed by the bar associations (Graph 21). There is scope for public trust in the public institutions providing legal aid to be enhanced.

Graph 21: Organizations from which citizens firstly would seek free legal aid, source: "Facing the Past and Access to Justice from a Public Perspective." UNDP in BiH



In certain jurisdictions in BiH, such as in Posavina Canton, it is not clear whether NGOs are recognised as providers of free legal aid. Another gap in the framework governing the provision of legal assistance is the lack of cooperation between the public and the non-governmental sector. Since the various governments in BiH are not currently in the position to provide legal aid in a consistent way, it is regretful to note that cooperation with civil society organisations has not been established in a systematic

⁵³ UNDP in BiH and Network of Free Legal Aid Providers in BiH, "Evaluation of educational needs of free legal aid providers from the Evaluation Report on capacities of free legal aid providers" draft 2013 available online at: <http://mrezapravnepomoci.org/ba/preuzimanja/brosure-publikacije-i-analize>

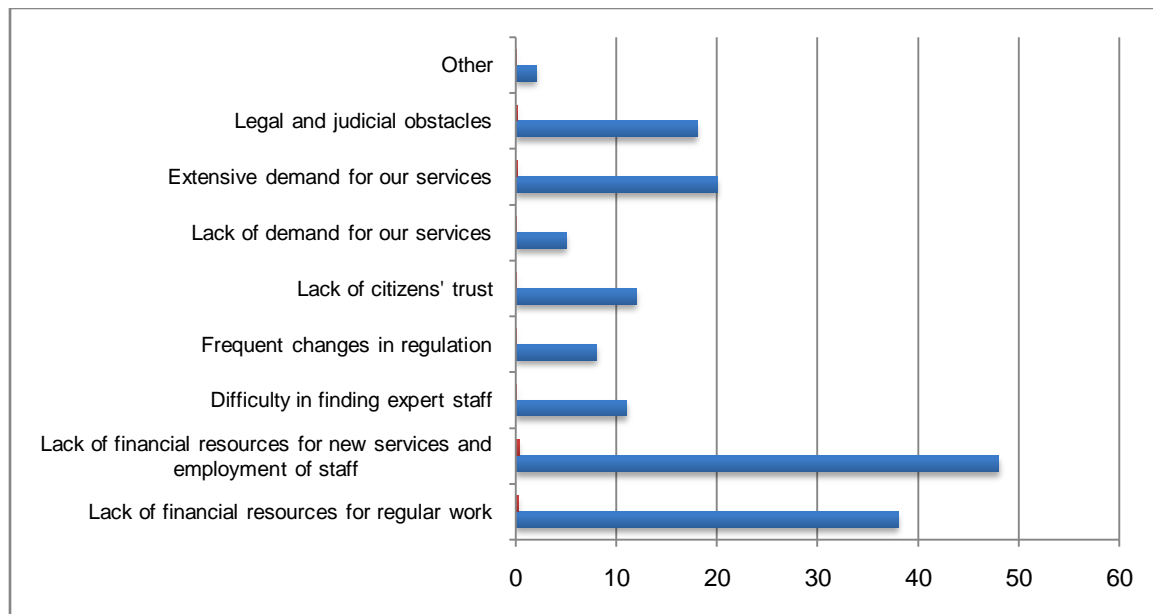
⁵⁴ Demir, Elma. "At what price? Court costs, access to justice and legal aid to Bosnia and Herzegovina." Association for Democratic Initiatives and Center for Human Rights at the University of Sarajevo. Sarajevo, June 2013.

⁵⁵ Pajić, Zoran and Popović, Dragan, "Facing the Past and Access to Justice from a Public Perspective." UNDP in BiH, 2012, accessible online: http://www.ba.undp.org/content/bosnia_and_herzegovina/en/home/library/crisis_prevention_and_recovery/facing-the-past-and-access-to-justice.html

basis, save on a few occasions in specific projects. Such public-private partnerships could potentially be useful in enhancing the provision of legal assistance, such as in the area of consumer protection or the protection of workers' rights in collaboration with trade unions.

Although bar associations play a key role in the provision of free legal assistance in several countries, the role of bar associations in this respect has not been fully developed in BiH. Legislation on free legal aid in BiH does recognise bar associations as providers of free legal aid. In addition, the codes of conduct of the bar associations in both entities also foresee the provision of legal aid by members of the bar⁵⁶ Despite this fact, this service has not been used in practice due to lack of public outreach by the bar associations and the lack of awareness among citizens that such services exist.⁵⁷ However, it should be noted that lawyers are not under an absolute obligation to provide legal assistance in all cases. The lawyer may refuse to provide legal assistance to any person when it is not in accordance with the Law on the Legal Profession, the bar association's statute or other applicable legislation. The lawyer may also refuse to provide legal assistance in a number of circumstances. In practice, it appears that lawyers often refuse requests for legal aid claiming that they are too busy even if they maybe indicative of significant human rights violations.⁵⁸

Graph 22: The main obstacles faced by the free legal information and aid organization in providing their services



Finally, the financing of free legal aid remains problematic. Several NGOs state that it is becoming more difficult to find donors to support their regular legal assistance activities as donors have expressed the view that this should be the responsibility of the government. On the other hand, the public funding that is allocated to free legal aid is not considered sufficient and public free legal aid institutions face shortages of staff members. In this respect, 67% of survey respondents found that public funds for free legal aid is not sufficient. The CEPEJ reports that

⁵⁶ Code of Conduct of the Bar Association of Federation of BiH, accessible online: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Code_of_Ethics_Bar_A27_1292580820.pdf. Code of Conduct of the Bar Association of Republika Srpska, Article accessible online: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/Code_of_Ethics_Bar_A27_1292580602.pdf.

⁵⁷ Milanović, Mirna and others. "Free Legal Aid System in Bosnia and Herzegovina." 2012. Accessed online: mrezapraavnepomoci.org

⁵⁸ Bejtović, Adela, "Free legal aid in Bosnia and Herzegovina" *Pravna misao* (Sarajevo), broj 9 – 10 / 2010, 57 – 78.

almost 3 million Euros was allocated to free legal aid in BiH in 2011.⁵⁹ For example, Sarajevo Canton Government allocated 125 000 Euros for operations of its Institute for Free Legal Aid in 2013.⁶⁰ The issue of funding was identified as representing a challenge by a significant number of respondents. 23% of survey respondents indicated that a major obstacle in their work is the scarcity of funding for undertaking regular work, while 30% of survey respondents also felt that they lack funds to develop new legal assistance services which would require the employment of additional staff (Graph 22).

Financing is also identified as a major cause for the relatively small number of persons employed in the public institutions that provide free legal aid. The UNDP has reported that this situation is “usually a result of the inability to provide more funds for the financing of these institutions.”⁶¹ While the laws that regulate these institutions place restrictions on the qualifications of persons who can provide legal aid, the existing framework has not been utilised, which adversely affects the efficiency of these institutions and their ability to provide the free legal assistance to all persons who have a right and need for it.⁶² This is evident from the fact that only 17 legal officers are employed by public free legal aid institutions in the entire BiH.⁶³

⁵⁹ European Commission for the Efficiency of Justice (CEPEJ), “Bosnia and Herzegovina Report 2011” Scheme for evaluating judicial systems, cited above.

⁶⁰ “Siromašni građani KS dobili mogućnost besplatne pravne pomoći” [Free legal aid available to poor citizens of Sarajevo Canton] Klix, 7 March 2013, accessible online: <http://www.klix.ba/vijesti/bih/siromasni-gradjani-ks-dobili-mogucnost-besplatne-pravne-pomoci/130307074>

⁶¹ Milanović, Mirna and others, “Free Legal Aid System in Bosnia and Herzegovina” cited above.

⁶² Ibid.

⁶³ Ibid.

Conclusion and Recommendations

Due to a variety of reasons, the free legal aid system that was in place before the war has not been re-established after the conflict. Certain elements of the old system are still present through the ongoing work of municipalities and trade unions. Although these possess great potential for the operation of a successful free legal aid system, these institutions have been neglected. Instead, the international community has partnered with several NGOs and fostered their capacity to provide legal services, while the local authorities have established new public centers and bodies at both entity and cantonal levels. Today, the provision of information, advice and legal aid services in Bosnia and Herzegovina mirrors the existing political system in the country: it is highly decentralized and the product of efforts of diverse stakeholders including national institutions, NGOs and international organisations.

Despite this fact, this research, as well as the existing local and international reports on the subject, clearly illustrate that there is no consistent system of free legal aid in BiH that would satisfy European and international standards and that would ensure access to courts and other relevant protection and redress mechanisms in general. As a result, this fragmented system of free legal aid falls short of satisfying the requirements of both the BiH Constitution and the ECHR as regards the right to a fair trial.

Based on the analysis of survey responses, the following policy recommendations can be formulated in order to improve the system of citizens' information and assistance services in Bosnia and Herzegovina:

Recommendations addressed to the governments of BiH and the Entities:

- A framework law on free legal aid should be adopted at the level of Bosnia and Herzegovina in order to create a coherent system of legal aid which will conform to European and international standards and practice.
- The role of municipalities, trade unions, NGOs, bar associations as well as other relevant social institutions should be recognised in the provision of free legal aid.
- Regulations on the provision of free legal aid in all BiH jurisdictions should be harmonised in order to ensure the minimum standards in the provision of legal aid in the entire territory of Bosnia and Herzegovina
- Amendments should be made to the codes on criminal procedures (and free legal aid legislation) in order to include the right to free legal aid for victims or injured persons in criminal cases, to vulnerable witnesses and those under threat, as well as to the victims of domestic and sexual violence, and further how free legal aid is to be provided or financed for these beneficiaries.
- Legal aid legislation should be amended to revise the conditions of eligibility for free legal aid eligibility based on the financial need and not simply based on the fact that a person belongs to a certain social group or not and appropriate amendments should be made to the existing free legal aid legislative framework.
- The development and implementation of public-private partnerships between governmental institutions and civil society groups for the provision of targeted free legal aid services should be encouraged.

- Public outreach campaigns on free legal aid should be developed and sustained.
- The government should create and financially support educational programs, counselling and trainings on free legal aid to police officers, prosecutors and other judicial personnel through the entity centres for training of judges and prosecutors and other training agencies.
- New proposals for the harmonisation of the Freedom of Information Act with the Law on Protection of the Personal Data should be developed in a manner that does not infringe the purpose and spirit of the laws governing free access to public information.

Recommendations addressed to civil society in BiH:

- Specific legal assistance should be developed for specific social groups, including persons with disabilities in collaboration with existing organisations that assist these groups.
- Free legal assistance should be extended to rural areas, including through field visits.
- A national survey on citizens' needs in relation to legal assistance should be developed and implemented, which can provide a basis for future policy developments.

Recommendations addressed to donors:

- Donors should provide sufficient material and financial resources to free legal aid providers.
- Educational programs, counselling and training for free legal aid providers should be created and financially supported.

Recommendations addressed to national and local bar associations in BiH:

- Bar associations should be encouraged to develop and implement free legal aid services by their members.