

FINAL EVALUATION REPORT

**“STRATEGIC LITIGATION
ON ANTI-DISCRIMINATION AND MINORITY RIGHTS ISSUES
IN BOSNIA AND HERZEGOVINA, CROATIA AND KOSOVO”**

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The opinions expressed herein are those of the author and do not necessarily reflect the views of Minority Rights Group International.

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ABBREVIATIONS:

BiH	Bosnia and Herzegovina
CLARD	NGO “Centre for Legal Aid and Regional Development”
CZM	NGO “Centre for Peace, Legal Advice and Psychosocial Assistance” (Centar za mir, pravne savjete i psihosocijalnu pomoć)
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECMI Kosovo	NGO “European Centre for Minority Issues Kosovo”
ECtHR	European Court for Human Rights
IDC BiH	NGO “International Development and Cooperation in BiH”
IDPs	Internally Displaced Persons
IGOs	International Governmental Organisations
MPDL	NGO “Movimiento Por La Paz El Desarme y La Libertad”
MRG	Minority Rights Group International
NGO	Non-Governmental Organisation
OSI	Open Society Institute
RAE	Roma, Ashkali and Egyptian community in Kosovo
SEE	South East Europe

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EXECUTIVE SUMMARY:

The Minority Rights Group's "Strategic Litigation on Anti-Discrimination and Minority Rights Issues Programme in Bosnia and Herzegovina, Croatia and Kosovo" was designed to address several specific types of discrimination of ethnic, religious or linguistic minorities in the programme countries¹. Litigation of strategic minority rights cases was its central activity. The programme purpose was to work with the local partners in order to facilitate better access to legal protection of minority communities and to establish positive legal precedents that could address gaps in the relevant law.

The litigation work was combined with the litigation-oriented advocacy activities and campaigns directed at the adoption and proper application of anti-discrimination legislation in the programme countries.

The programme was implemented from April 2008 until December 2010. Although originally set to be a three-year programme, in the third year the Open Society Institute (OSI) decided to discontinue its support and provide funds only for another six months as a gradual phase-out. It was implemented by MRG as the lead organisation and its in-country partners.

The evaluation was commissioned by MRG and conducted by an external evaluator. It had three goals: to analyze results of the programme intervention, to preserve the institutional memory of MRG and the partner organisations and to enable further improvements in the design and implementation of the MRG's strategic litigation projects. The programme achievements were assessed against the standard performance criteria - relevance, efficiency, effectiveness, impact and sustainability. Gender mainstreaming as a crosscutting issue was also examined.

The content of the evaluation report is divided into five main sections. Chapter A provides brief background information about the programme and its objectives as well about the context in which it was implemented. Chapter B describes the purpose, scope, approach and challenges behind the evaluation, whilst Chapter C organises the findings against the five evaluation criteria. The main findings inform the conclusions and recommendations contained in Chapter D and Chapter E respectively.

Summary of main findings and conclusions

Apart from its capacity-building component, the programme "Strategic Litigation on Anti-Discrimination and Minority Rights Issues in Bosnia and Herzegovina, Croatia and Kosovo" has largely achieved its purpose.

The programme was built on the foundation created by the previous MRG's projects in the region and it was highly relevant to the needs of target groups. Its design was coherent and adequate to support the achievement of the programme objectives.

Its results have to be measured against the unpropitious circumstances in which its goals

¹ The programme documents refer to Kosovo as a fully sovereign state. This, however, should not be taken as necessarily reflecting the evaluator's point of view on this issue.

were pursued. The programme was implemented in a challenging environment characterised by semi-functional anti-discrimination mechanisms, widespread discriminatory practices affecting large segments of population, fear of victimization and lack of trust in the judicial system.

Despite deficiencies identified in the way the programme was implemented, its outcomes are valuable for the further advancement of minority rights in the programme countries. Two positive court decisions against the discriminatory practices were obtained, at least one of which has characteristics of a powerful legal precedent. *Finci v. BiH* is by any definition a landmark case not only for Bosnia and Herzegovina but also for the international level protection against discrimination.

Through its advocacy activities the programme has effectively mainstreamed the use of the last generation anti-discrimination legislation and the concept of strategic litigation for the advancement of minority rights.

The programme did not achieve its capacity building goals. Due to a number of reasons the quality and type of the capacity building activities did not match to the existing needs.

During its implementation, the programme has faced significant challenges – those of financial nature but also internal problems such as withdrawal of a main programme partner and high staff turnover - that hindered the accomplishment of its objectives.

From the evaluation perspective, there have been opportunities to manage at least some of these challenges if stronger efforts had been invested by MRG in the monitoring process.

A follow-up project would be a very good way to consolidate the programme results. Despite all the difficulties encountered during its implementation, all local programme partners expressed their willingness to participate in a follow-up project and continue their cooperation with MRG.

Key recommendations:

The evaluation findings point to the **main recommendations**, as follows:

- Considering weaknesses of the institutional frameworks for minority rights protection in the programme countries, MRG should consider continuation of its support to empowerment of the local civil society organisations through a follow-up project. Given the fact that the displaced population makes up the greatest part of the MRG's target group, the future project could also include activities and partnerships in other countries on the territory of the former Yugoslavia where the displaced minority groups reside in greater numbers. This could further enhance the efficiency and effectiveness of the project's activities and make possible that even more challenging minority rights cases are pursued in the future.
- In strategic litigation projects a choice of in-country partners should be driven by the sustainability objectives. Notwithstanding the implicit risk of a local partner not being able to sustain activities after the project's end, where that is not necessary, it is essential not to engage into partnerships with organisations whose

close operational disengagement from the region could have reasonably been foreseen. It is also of an utmost importance that the projects with strong capacity building component are implemented in partnership with the organisations whose pertinent activities are run by the local personnel.

- A priority needs to be placed on the development of more efficient planning and monitoring in order to support senior managers in identifying and communicating real progress, success and impact against a project's key objectives.
- Certain standards in the provision of legal assistance in lead cases should be ensured. The minimum requirement for the provision of legal assistance in lead cases should be filling in of a case-intake form. An agreement for the provision of legal assistance and/or power of attorney should be also signed.
- Translations of the advocacy briefs and reports in the local languages should be ensured as well a wider dissemination of these materials among the local stakeholders.
- It would be desirable that already in the case selection phase a realistic and concrete exit strategy is devised for each lead case together with the project partners. When possible the exit strategy should contain preliminary estimates of the likely duration of case-handling periods and an initial calculation of likely financial costs for the cases taken on. Furthermore, from the perspective of sustainability of the litigation activities it is advisable that whenever possible the local partners are chosen among the legal aid organisations.

A. BACKGROUND

1. CONTEXT

Despite the high-level political expressions of commitment to the minority rights there are still many problems persistently affecting the position of minorities in the countries formed on the territory of former Yugoslavia. The situation of minority communities in Croatia, BiH and Kosovo does not depart from the general picture. Although there are significant differences, the issues which are undermining minority rights protection in the three programme countries are to a large extent similar. They can be grouped in three sets of interrelated problems.

1) All three countries have ratified major international instruments and have adopted a great number of laws and policies for the protection of minority rights. Yet, big part of the legal framework has not been fully and/or adequately implemented due to the lack of political will. Sound monitoring of the implementation of the given laws and policies and of their impact on the lives of minority communities is rarely occurring. In addition, general lack of awareness of minority rights and anti-discrimination mechanisms is evident in the very small number of discrimination complaints that reach their courts.

2) The position of minorities in these countries with the recent history of armed conflicts is additionally aggravated by a slow return of the displaced population (especially with regard to Croatia and Kosovo). Registration, property repossession, reconstruction and other reintegration issues often bring an additional level of state institutions' arbitrariness into the field of minority rights protection.

3) Finally, due to problems with enforcement of court decisions and excessive length of proceedings, all three countries are characterised by weak judicial systems with the overall low level of its credibility among the citizens.

On the top of these problems the situation in Kosovo is exacerbated by its extremely complex legal framework, which is a perplexing amalgam of often conflicting legal texts, which decreases the level of legal certainty.

2. INTRODUCTION TO THE PROGRAMME

The programme "Strategic Litigation on Anti-Discrimination and Minority Rights Issues in Bosnia and Herzegovina, Croatia and Kosovo" is rooted in the long-established work of MRG on the strategic capacity building of minority and human rights NGOs in the SEE region. MRG has worked in the three programme countries for a number of years and has built up contacts with an extensive range of organisations working on minority rights issues. "Diversity and Democracy in Southeast Europe Partnership Programme (SEE Programme)" was a three-year programme implemented between April 2003 and June 2006 in partnership with local NGOs from five SEE countries, including BiH, Croatia and Kosovo. A further SEE regional project was conducted from 2006 until 2010, seeking to utilize the opportunities provided by the EU accession process in order to mainstream minority and minority women's participation through evidence-based

advocacy activities.² In addition to this, certain programme activities are directly related to the MRG's "Strategic Litigation Programme" that has been ran since 2002, in the course of which the proceedings in the case *Finci v. Bosnia and Herzegovina* were initiated³

The programme was implemented from April 2008 until December 2010 in three countries – Croatia, BiH and Kosovo.

It was designed to address several specific types of discrimination of minorities as well the limited capacity of local organizations to tackle these issues through legal means. The basic idea of the programme was to work with local partners to effectively facilitate access to legal protection of minority communities and to establish positive legal precedents that could tackle gaps in the relevant law. The Programme set out to accomplish its purpose by achieving the following outputs:

- "An increase in the number and quality of minority rights legal cases within national jurisdiction.
- An increase in the number and quality of minority rights representations before national and international bodies.
- National and international bodies issue positive precedents on litigation brought within this programme or states seek to settle cases in a way which concedes important principles to the litigants or negotiated settlements are made that remove discriminatory practices or laws.
- States introduce new laws, policies or practices that eliminate discrimination highlighted in the legal cases and advocacy.
- Informal or monitoring body reports suggest that the incidence and/or severity of those aspects of discrimination highlighted in legal cases and advocacy is beginning to fall."⁴

Litigation of minority rights test cases was the central activity of the programme. It was envisioned that the test cases should address three specific areas of widespread discrimination in the target countries - in political life/electoral participation, when accessing government/public services such as health protection and education and in accessing employment with a focus on the public sector.

The litigation work was combined with the litigation-oriented advocacy activities and with the advocacy directed at the adoption and better application of the comprehensive anti-discrimination laws in the three programme countries.

3. IMPLEMENTATION ARRANGEMENTS

The programme was implemented by MRG as the lead organisation and the in-country partners running the activities in the programme countries. During the first two years of the programme, activities in Bosnia and Kosovo were undertaken together with the Spanish NGO "Movimiento Por La Paz" (MPDL). In its last eight months a local NGO "Vasa

² The exact title of the project was "Advancing Inclusion of Vulnerable Groups in Southeast Europe: Minority Rights Advocacy in the EU Accession Process 2006-2010".

³ MRG Programme for 2011.

⁴ Cited from the Programme Proposal.

prava” took over the activities in Bosnia and ECMI Kosovo assumed activities initiated in Kosovo. The NGO “Center for Peace, Legal Advice and Psychosocial Assistance” (CZM) was the programme partner for Croatia during the whole programme implementation period.

4. TIMEFRAME AND FUNDING

The Programme ran from 1 April 2008 until 31 December 2010. It was funded by the Open Society Institute (OSI) and the Norwegian Ministry of Foreign Affairs.

Although originally set to be a three-year programme, the OSI as the main donor required re-applying for funding at the beginning of each programme year. In the third year of the programme, OSI decided to discontinue its support. Aiming at a gradual phase-out, the funding was provided for six months of the programme activities to be spent within the following eight months.

The total budget for the initially planned three years of the programme activities was set at 459,379 USD. However, due to the partial withdrawal of the main donor’s funding for the last year of the programme, the final amount used for the programme realisation was 388,650 USD⁵.

B. EVALUATION APPROACH AND METHODOLOGY

1. PURPOSE

This external evaluation report has three goals: to document and examine the results of the programme intervention, to enhance the institutional memory of MRG and the partner organisations and to enable further improvement of the design and implementation of the MRG’s strategic litigation activities. For the given reason its findings and conclusions are guided by the utilization-focused approach to evaluation.

2. SCOPE

The evaluation provides assessment of the three main programme components - strategic litigation, advocacy and capacity building - for the entire implementation period.

The evaluation criteria were applied both at the level of the programme outputs and programme outcomes. The possible unintended effects of the programme were also examined.

The units of analysis are set at the level of individual participants, organisations, communities and, if relevant, changes at national, regional and international levels.

⁵ The total budget of 384,379 USD was overspent by 4,271 USD.

2.1. Criteria used

The programme achievements were assessed against the internationally agreed standard performance criteria - relevance, efficiency, effectiveness, impact and sustainability⁶. Gender mainstreaming as the crosscutting issue was also examined.

In accordance with the TOR (see Annex 2), the central questions this report attempts to answer are:

1. What effect has the project had (if any) on the partners' capacity as organisations to carry our strategic litigation projects? Detail progress made but equally identify gaps or constraints that are still impeding progress and which the project could tackle. What could both MRG learn from this both in terms of this project and more generally?
2. Have MRG and partners been able to identify strong cases on issues that have a good chance of testing (and if positive) establishing legal precedents?
3. Have the cases identified been pursued efficiently and effectively. If not, what barriers have prevented this and what could be done differently in future?
4. Have there been any early outcomes as a result of the casework already done and the linked advocacy work? Are there other signs of progress that might indicate that outcomes are likely in future?

2.2. Locations visited

The evaluator visited all three programme countries in the course of the evaluation. In BiH, the evaluator conducted field visits to both Sarajevo and Banja Luka as the local partner's regional office in Banja Luka was involved in a significant number of programme activities. Where still existent, the evaluator visited the premises of the programme partners and their implementing partners.

2.3. Selection of interviewees

During the field trips the evaluator interviewed the representatives and ex-representatives of all the organisations participating in the programme as well several litigants. The evaluator also met with a number of decision-makers and independent experts in order to assess not only the direct and immediate impact of the lead cases, but to what extent knowledge of the programme has cascaded out to the wider community and to what extent MRG and its partners have been able to influence government policy and practice.

In total, 30 interviews were conducted, out of which 20 in person, nine by telephone and one through an email inquiry. Another 22 meetings or telephone conversations were held. In accordance with the TOR, six of the total number of informants were selected from the list supplied by MRG while the others were independently identified by the evaluator.

A telephone briefing was also provided before the start of the field visit by the MRG's Head of Law.

⁶ The Development Assistance Committee (DAC) Criteria for Evaluating Development Assistance, available at: http://www.oecd.org/document/22/0,2340,en_2649_34435_2086550_1_1_1_1,00.html

To ensure the confidentiality of the individual beneficiaries, information presented in this report do not identify the real names of the cases supported by the programme or litigants' names.

2.4. Timeframe

The desk research was conducted during April 2011 while the field visits took place throughout May 2011. The Final Evaluation Report was submitted on 11 of July 2011, following a meeting held on 21 June 2011 in London when the MRG comments on the draft report were discussed.

3. CHALLENGES

In order to collect necessary data for the entire period of the programme implementation, the evaluator had to conduct a significantly higher number of interviews than initially envisioned. This was due to the high level of staff turnover which, to a greater or lesser extent, had occurred in almost all the organisations involved in the programme, a change of the main programme partner in the last year of the programme and the consequential loss of institutional memory.

4. METHODOLOGY

As requested by the TOR, a synergy of standard evaluation techniques has been applied, such as desk research, field visits, semi-structured interviews, phone interviews and email inquiry.

The data were collected through the rapid appraisal method which involved interviews with the representatives of MRG and programme partners as well with the individuals selected for their knowledge and expertise on a topic of interest. Interviews were qualitative, in-depth, and semi-structured.

The evaluator reviewed all available documentation concerning the programme, including minutes of meetings, narrative reports, activity planning documents, email correspondence between MRG and programme partners and the available outputs - related documents and publications.

C. FINDINGS

1. INTRODUCTION

This chapter presents findings from the desk study, interviews and observations, organized according to the evaluation criteria and questions contained in the TOR.

Respondents are not identified, but where individual statements or views are not corroborated by other evidence this will be pointed out. Given the participatory nature of this evaluation, most of the conclusions are not original as they are to a greater or lesser extent based on the insights that were shared in the course of it.

The conclusions identified throughout this chapter are based on what were considered to be the most significant findings.

2. RELEVANCE

Although minority rights have been given increasing attention by the governments in Croatia, BiH and Kosovo, minorities, especially displacement-affected ones, continue to have a pronounced need for assistance.

The legal provisions for protection of minority rights are extensive in all programme countries, as all of them have signed up to most relevant international treaties and frameworks. However, serious deficiencies in implementation and enforcement of minority rights are a common denominator for the whole region. Discrimination, and occasional threats and violence against members of minority communities are still widespread. Minority protection policies remain under-funded and “states often appear satisfied with token gestures in the form of adopting certain laws, not least to satisfy international demands, but show little if any enthusiasm for their proper implementation”.⁷

Against this background, the objectives of the programme were highly relevant to the needs of target groups. The two broad problem areas it addresses – discrimination against minorities and the limited capacity of local organizations to tackle the issue of discrimination – were and still are completely corresponding to the situation in the programme countries *vis-à-vis* minority rights protection.

2.1. Validity of design

Baseline condition was well established and thoroughly elaborated already in the programme proposal, the annex of which contained detailed programme country profiles.

The information on baseline condition was also given in the detailed description, specific for each programme country, of the problem areas to be tackled through the strategic litigation. The reasons why particular types of discrimination against certain minority groups were to be addressed by the programme was well elaborated in the programme proposal, which showed a praiseworthy level of insight into the situation on the ground. This in return gave a sharper focus in the design of the programme litigation and advocacy activities.

The only exception to this conclusion is the problem area chosen to be in the focus of the strategic litigation in Kosovo. Although the segregation of health care and educational systems serving Albanian majority and Serbian minority has been one of the key discrimination issues⁸, its solution seems to be very much dependent on future political settlements. This was soon recognized and already in the activity plan for the 2nd programme year the focus changed towards problems that could be more easily addressed by the strategic litigation.

⁷ S. Wolff, P. Houten, A. Angheloa, I. Djuric, *Minority Rights in Western Balkans*, Report commissioned by the Subcommittee on Human Rights of European Parliament Foreign Affairs Committee, 2008, p. 2.

⁸ Which is also affecting the access to these basic public services by other minority groups.

The choice to pursue strategic litigation combined with the targeted advocacy campaigns as the core programme activities was also based on an excellent assessment of what is needed for an improved protection of minority rights. However, the initially projected timing of the lead cases related advocacy was not fine tuned with the sequence of the litigation activities. Targeted advocacy campaigns around the selected cases can be pursued only after the case was selected and this should have been adequately indicated in the programme planning documents.⁹

A feature common to all three programme countries is that discrimination is seldom raised before the courts and that great segments of minority communities and legal professionals are unaware of the scope of anti-discrimination provisions. Moreover, the anti-discrimination laws adopted in the programme countries contain legal mechanisms which are completely novel in the local legal systems (e.g. the reversed burden of proof, concept of indirect discrimination, etc). Hence, to introduce anti-discrimination arguments before the courts by pursuing the strategic litigation hand in hand with the domestic lawyers was a strategy that was well placed within the local contexts. The same is true for the advocacy strategy built around a concrete anti-discrimination case, thus enhancing the local stakeholders' capacities to understand, respect and protect values on which modern anti-discrimination and minority rights legislation are based.

Given the short lifetime of the Programme and the excessive length of proceedings characterizing the judicial systems in Croatia, Kosovo and BiH, to include a negotiated settlement as the litigation strategy was also a very commendable choice. A negotiated settlement of an individual case could not only bring a faster relief to an individual victim of discrimination but could also further advance receptiveness of the local institutions for the programme values and raise to a completely new level the advocacy capacities of the partner organisations.

The same should be said for readiness of MRG and the programme partners to take up the test cases at any stage of litigation, as another important feature of the programme design aimed at overcoming limitations caused by its relatively short life span.

It can be concluded that the programme intervention was timely and highly relevant to the needs of target groups and that its design was coherent and adequate to support the achievement of the programme objectives.

The only feature of the programme design that merits additional discussion is the absence of logical framework matrix (Logframe) and/or indicators.

2.1.1. Use of logical framework/indicators in the strategic litigation programmes

Logical framework is a planning tool for defining the strategic elements of the project and their causal relationships. It specifies what the project is attempting to achieve and indicates the means by which the achievement may be measured. Through this summarized and explicit expression of the project logic the Logframe shall ensure that the project is designed and implemented in a systematic and coherent way.

⁹ As a consequence of this, the first year programme narrative report could not refer to any advocacy activity performed in relation to lead cases.

There is no common understanding of whether the Logframe shall be necessarily included in the design of the human rights related projects.¹⁰ Commonly stated reasons against its use in the human rights field are the complexities of the environments in which these projects are usually taking place as well the difficulty to plan and measure the impact of activities aimed at social change.

As it can be shown at the example of this programme, the Logframe is not the only way to ensure internal coherence of the programme elements. Even without it, the programme proposal had a logical structure with well-articulated and coherent links between the main programme components. The problem areas were analysed in a systematic manner, objectives were clearly formulated and corresponding to the problems while the activities were well situated to lead to the immediate programme objectives.

However, it should not be forgotten that Logframe is not only a planning tool but as well an important monitoring instrument¹¹. This is particularly true for the indicators, which are among its basic elements. These quantitative or qualitative statements that can be used to measure changes or trends over a period of time are often key ingredient of a sound managerial judgment.¹²

Indicators provide a simplified picture of reality and, as already noted in relation to the Logframe, their use at the level of immediate objectives and long-term project goals is sometimes not attainable in the human rights field. However, defining the so-called “output indicators” is usually a less challenging task.¹³

The output indicators are actually the ones that can have the greatest use in the project monitoring and management process. Their main quality is that they make possible a comparisons over time and hence an assessment of whether project activities are on track. By verifying change, they can be of a great help in demonstrating progress but also in providing early warning signals when things go wrong, thus enabling timely identification of what shall be changed in the organizational strategy and practice. If properly defined, the output indicators may also provide “insights into matters of larger significance beyond those which are actually measured”.¹⁴

There are many reasons why it is not an easy task to craft output indicators for a strategic litigation programme. The litigation related activities are depending on the external factors more than other types of human rights related interventions. This makes it hard to plan their concrete content and to set them within the predefined time frames. The fact that they are very much depending on the motivation, interest and other personal conditions of one or just a few individual litigants is also a serious obstacle faced by the

¹⁰ Generally, the human rights organizations were among the last ones to start using it as a planning and monitoring tool.

¹¹ Monitoring is here seen as a programme management tool allowing the examination of project progress.

¹² This report relies on the OECD/DAC definition of indicator as “quantitative or qualitative factor or variable that provides a simple and reliable means to measure achievement, to reflect the changes connected to an intervention, or to help assess the performance of a development actor”. OECD/DAC, *Glossary of Key Terms in Evaluation and Results Based Management, Evaluation and Aid Effectiveness*, Development Assistance Committee, OECD/DAC 2002, reprinted in 2010, p. 25;

¹³ Output indicators are used to assess progress against specific operational activities.

¹⁴ According to the generic definition of indicators developed by Erik André Andersen and Hans-Otto Sano in *Human Rights Indicators at Programme and Project level - Guidelines for Defining Indicators, Monitoring and Evaluation*, Danish Institute for Human Rights, 2006, p. 11.

managers of the strategic litigation projects.¹⁵

Yet, the significance of output level indicators as monitoring and management tools outweighs the hurdles.¹⁶ While it shall certainly be recognized that defining output indicators in a strategic litigation project is not an easy task, the benefits they can bring to a project implementation are worth investing additional resources in this process.

These benefits are not only confined to the monitoring process. Indicators are also tools that can “aid communication” between the programme partners as well between the programme management and programme staff.¹⁷ As their effectiveness depends on whether they were defined together with the programme partners and accepted by them, this participatory process can in turn enhance the quality of the programme partnerships. Not less importantly, they can also increase a level of clarity among the partner organisations on what the project implementation will concretely imply.¹⁸ The process of establishing indicators also calls for a clear division of monitoring tasks where each project partner has its specific role. Furthermore, since output indicators are always time-bound, a specific time frames set in this way can sometimes be a way to overcome problem of an irregular and patchy communication between the implementing organizations.

Indicators, if adequately defined, can also have a quality of being a motivating factor that can “induce intended performance”.¹⁹ In this sense monitoring can be seen as “an instrument that aids learning because the focus on goal attainment will clarify what works well and what does not”.²⁰ This can be particularly important in the programmes with the capacity building component such as the one under the consideration.

Not least importantly, output indicators in strategic litigation projects can be a good way to protect the interests of individual litigants since their time-bound nature can bring additional safeguards that the litigation activities are conducted in a timely manner.

For all the given reasons, it would be desirable that a process of defining indicators - at least for the core programme outputs - becomes a routine element of the planning and/or implementation phase even in the strategic litigation programmes.²¹

Naturally, this process should be adapted to their distinct features and should be

¹⁵ In relation to this see also: Catherine Corey Barber, *Tackling the Evaluation Challenge in Human Rights: Assessing the Impact of Strategic Litigation Organizations*, Hertie School of Governance Working Paper Series, 2011, accessible at:

http://www.hertie-school.org/downloadcenter.php?nav_id=647

¹⁶ UNDP, *RBM in UNDP: Selecting Indicators*, Result- Based Management (RBM) Methodology Series, 2000.

¹⁷ Erik André Andersen and Hans-Otto Sano, *ibidem*, p. 7

¹⁸ In fact, the Croatian partner has pointed out during the evaluation that it would have been easier for them to implement the programme activities if the progress indicators were set for the key outputs.

¹⁹ According to a Vera Institute of Justice guide to defining indicators for measuring performance in the justice sector, these should have a quality of being capable to induce intended performance. In: Vera Institute of Justice, *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicator across the Justice Sector*, Vera Institute of Justice, New York, November 2003, p. 16. This criteria for development of indicators was further elaborated in Erik André Andersen and Hans-Otto Sano, *ibidem*, pp. 14 - 15.

²⁰ Erik André Andersen and Hans-Otto Sano, *ibidem*, p. 39.

²¹ A number of lead cases to be supported in total and per programme country were the only measurable indicator contained in the planning documents of this programme.

characterized by an additional degree of flexibility. For instance, although it is usually suggested that indicators shall be developed and agreed during the programme planning, in the case of strategic litigation programmes this could be also done in the post-inception phase. Activity planning meetings or meetings for analysing a yearly progress reports could serve as a good opportunity to bring the programme partners together and define or assess/revise the output indicators.²² If this were viable vis-à-vis the programme budget, it would be advisable that the given activity coincides with the field visits to the programme countries thus ensuring a direct participation of all programme partners.²³

Taking into consideration that a high level of uncertainty and difficulties in planning are standard feature of the strategic litigation projects, a way to cope with this could also be to set for each core output one or more of alternative indicators.

A flexible nature of indicators should also be preserved throughout the programme implementation, since the key role of the indicators should be to provide an indication of whether there is a need for redirection of the programme activities and whether the selected indicators are realistic enough. This is particularly important for the strategic litigation programmes where the programme settings can change frequently. If the indicators have been too ambitious in scope, new indicators that would better reflect the practical realities faced by the programme could be set.

Although the above described method is robust and more demanding than traditional expert-driven planning and monitoring, the advantages it provides for the efficient tracking of the programme progress advocate for its use even in the strategic litigation programmes. Yet, defining and monitoring output indicators should never become laborious to the extent that the indicators themselves become the programme drivers and not the change it seeks to influence.²⁴

2.2. Needs assessment and beneficiaries' participation in the Programme design

There is no evidence that a formal needs assessment was conducted in the three programme countries to inform its design. However, the programme partners confirmed that an informal needs assessment took place through a series of consultations held during the planning phase. Judging by the quality of the programme proposal this was enough for setting up a programme highly relevant to the needs of target groups. It seems that the experience that MRG had gained through its prior projects in the region as well the fact that the partner organizations worked on daily basis with minorities enabled fast and accurate assessment of the priorities.

The consultations held in the planning phase had ensured an optimal involvement of national stakeholders in programme design and made the programme a result of a joint planning effort of MRG and its partners.

²² The process of developing indicators should always involve monitoring arrangements i.e. setting an adequate monitoring structure.

²³ See also Erik André Andersen and Hans-Otto Sano, *ibidem*, pp. 38 – 44.

²⁴ Measuring change should not have primacy over implementing programme activities that generate the changes to be measured. Successful realisation of a project requires commitment, well-developed partnerships, leadership, creativity and many other elements none of which can be replaced by the use of indicators.

In addition to this, MRG and the in-country partners had shown a great ability to identify in a timely manner any relevant changes in the external environment and hence ensure that the programme strategy was adapted to the emerging opportunities. This was well demonstrated in the activity plans revised for each year of the programme implementation.

2.3. Programme partnerships

The programme was implemented in partnership with several organisations. MRG carried a role of a lead organisation. One clear comparative advantage that emerged out of MRG's reputation and good track record of its decade long engagement in the Balkans was the legitimacy this had rendered to the programme mainly known as "the MRG programme".

During the first two years the in-country partner for BiH and Kosovo was the Spanish based NGO "MPDL". Upon its withdrawal from the region, the activities in Bosnia were carried out by the local legal aid NGO "Vasa prava" and a local policy-orientated NGO "ECMI Kosovo" in Kosovo. The NGO "Centar za mir" was the main partner for Croatia during the entire duration of the programme. In addition to this, MPDL was implementing the programme activities in close cooperation with its two spin off organizations, NGO "CLARD" in Kosovo and NGO "IDC BiH" in Bosnia.

Overall, all programme partners fulfilled the basic set of requirements set by the MRG's guidelines²⁵ for working with partners in terms of their mandate, influence, and commitment. All four programme partners as well as the MPDL's implementing partners shared the same core values, had close contacts with the local minority groups and clear understanding of their needs, concerns and aspirations. Not less importantly, they were all recognised in their respective countries as relevant actors in the arena of legal aid provision and/or minority rights protection.

However, there are two issues that merit additional attention when considering the programme partnerships - sustainability i.e. whether partners could continue work beyond duration of their collaboration with MRG and the partners' competence for the implementation of the key programme activities.

2.3.1. Brief history of the programme partnerships

"Centar za mir Vukovar" is a local NGO which has been providing legal aid and has been actively engaged in the protection and promotion of human rights in Croatia since 1996. The CZM was for many years the MRG's partner in its various advocacy activities carried in the region. This, coupled with the CZM's high profile among local and international stakeholders, provided a very good foundation for a smooth realisation of the programme activities.

The Spanish based NGO "Movimiento por la Paz" (MPDL) was active in the region for more than 15 years. It had a large regional presence with 10 offices and 65 local employees in BiH, Kosovo, Montenegro, Croatia and Serbia. Its core activity in the region was to provide the displaced population and returnees with free legal assistance and representation before the local courts. By the time the programme was being

²⁵ MRG General Guidelines for Working with Partners, last update: February 1999.

designed, the MPDL's exit strategy was already put into motion and its local staff had created the spin off NGOs in all countries where MPDL was present. In Bosnia, the MPDL local personnel created NGO "IDC BiH" while in Kosovo the new organisation was created under the name "CLARD".

When the programme started MPDL, due to the abovementioned exit strategy, did not have anymore any local staff in Kosovo and had only four local staff members in BiH.²⁶

Hence, in a formal sense the programme was in Kosovo implemented by an expatriate MPDL staff member²⁷. He was, however, assisted by the lawyers from the NGO CLARD. Similarly, in Bosnia the programme activities were managed by an expatriate working as the MPDL Head of Office and implemented by the lawyers working for the NGO "IDC BiH".

These two local NGOs were briefly mentioned in the contracts that MRG had signed with MPDL but no separate contracts and/or partnership agreements were concluded between them and MRG. Instead, MPDL Kosovo had signed with CLARD a separate contract for the implementation of the programme activities that covered the first two years of the programme. When it comes to IDC BiH there is no available complete information whether and in which way its engagement in the programme implementation was formalized. Only a copy of the unsigned draft of the partnership agreement between MPDL and IDC BiH was presented to the evaluator by the MPDL SEE Desk Officer *vis-à-vis* the 1st programme year and an unsigned annex to the partnership agreement for the implementation of the 2nd year programme activities.

MPDL involvement in the region came to an end on 30 June 2010 (just several months after the end of the 2nd programme year). The free legal aid project funded by the Spanish Agency for International Cooperation and Development and implemented under the MPDL supervision by IDC BiH in Bosnia and CLARD in Kosovo was completed couple of months earlier. This left both local implementing partners without the financial resources to continue with the activities. At the time of the evaluator's field visits, IDC BiH existed only formally but without any ongoing projects while CLARD managed to recover from the financial vacuum created after the withdrawal of MPDL and was carrying on several small-scale legal aid projects.

According to the available information, it was not before January 2010 i.e. four months before the end of the 2nd Programme year, when MRG became aware that its main partner in Kosovo and BiH would cease all its operations in just three months.²⁸

²⁶ An accountant, an IT technician, a social worker and a lawyer responsible for the overall coordination of the legal aid activities.

²⁷ Coordinator for the MPDL Office in Kosovo who after some time also became Acting Head of the MPDL Operations in the Balkans.

²⁸ According to the correspondence between the MRG Head of Law and the then MPDL Head of Mission, the MRG was informed that its partner for BiH and Kosovo will cease its operations in the region in mid January 2010 i.e. three months before the formal date of the MPDL's withdrawal. In the subsequent correspondence between the two, the then MPDL Head of Mission stated that they had informed MRG at the time of the programme planning that MPDL could commit itself for only two years. However, this is inconsistent with the information provided to the evaluator during the interviews with the senior ex-MPDL's representatives, who have given a number of mutually differing answers on the question when the final date of the MPDL's withdrawal from the region was set.

The initial plan that IDC BiH and CLARD Kosovo, as the MPDL's offspring organisations, would continue with the programme activities was abandoned, because the MPDL coordinators were not convinced that the two organizations would be able to maintain their human and material resources at the necessary level. After this, the two external organisations, ECMI in Kosovo and "Vasa prava" in BiH, were chosen to replace MPDL for the 3rd year activities.

In the light of the above-mentioned, several important questions about the suitability of choosing a foreign NGO to be the MRG's main programme partner have been posed.

2.3.2. Sustainability of the programme partnerships

The first question is related to the sustainability of the programme intervention. Although the issue of sustainability will be further examined under the fifth evaluation criterion, here the evaluator will shortly assess how much the choice of the programme partners was compatible with the overall programme design and its objectives.

It is not an easy task to find a suitable local partner, this being even harder in a post-conflict context where the crisis has often polarised society. However, the capacity of the local partner to continue work beyond duration of the programme shall always be the core criteria to be looked at when establishing partnerships.

At the time when MRG was searching for in-country partners, both societies (BiH and Kosovo) were already far from the immediate post-conflict, humanitarian phase in which it could be hard to spot a local partner with capacities to carry on a strategic litigation programme. In fact, by 2007 the non-profit sector - including legal aid NGOs and those dealing with the minority rights at the policy level - was significantly consolidated and developed in both countries.²⁹

It can be easily presumed that the main idea behind the MRG's partnership with MPDL was related to the fact that MPDL had large local staff (at least half of them being lawyers) and that, in case of its withdrawal from the region, the sustainability of the programme results could be easily ensured through the MPDL's spin off organisations.³⁰ Yet, this initial plan could not be tested since MPDL ceased its activities in Balkans already after the 2nd programme year and was not replaced by its spin off organisations. This has had negative effects on the smooth running of the programme and its effectiveness.

The partnership with a non-local NGO was not coherent with the character of the programme intervention.

The given partnership has significantly decreased possibility for the effective realisation of the capacity-building component of the programme.³¹ Also, taking into account the

²⁹ See for instance: ICVA BiH Directory of Non-Governmental Organisations of September 2005; Final Report on the Civil Society Assessment in Bosnia and Herzegovina, commissioned by USAID/BIH, June 2004; ICMPD Review of Legal Aid Providers in Kosovo, May 2006; Interim Report to determine the modalities for the development of a Legal Assistance Programme for Internally Displaced Persons in Serbia, commissioned by EAR, November 2007.

³⁰ This was confirmed in the interview with the ex-staff member of MRG who was in charge of this programme in its initial phase.

³¹ This will be further analysed in one of the following sections.

average lifetime of an individual discrimination case pursued before the national courts, MRG should have been particularly cautious on whether a partner organisation could ensure sustainability of the programme results. Notwithstanding the implicit risk of a local partner not being able to sustain activities after the programme's end, it is essential not to engage into partnerships with organisations whose very close operational disengagement from the region could have reasonably been foreseen.

2.3.3. Competence of partner organisations

Another important aspect of a partnership shall be the capacity of a partner organisation to effectively carry on the project activities. In the strategic litigations projects the ultimate criterion should be the capacity of a given organisation to carry on legal work.³²

All three in-country partners except ECMI Kosovo fulfilled this criterion. The main activity of MPDL in Balkans was provision of free legal aid, "Centar za mir" is a formally accredited legal aid provider in Croatia, while NGO "Vasa prava" is the largest free legal aid provider in BiH.

ECMI Kosovo is without doubt the principal local non-governmental organisation engaged with minority issues in Kosovo, but prior to the programme had no experience with providing legal assistance. Its focus was mostly on policy-oriented projects and this is where this organisation developed its core expertise.

At the time of being selected to join the programme, ECMI Kosovo had not lawyer among its staff members and this remained so during the programme implementation. Its former project manager who was in charge of coordinating the programme activities had partly a legal background but no lawyering experience and MRG was aware of this when the partnership choice was made. According to the available information, the ECMI Kosovo strategy to overcome this was to get engaged primarily into the advocacy activities and to outsource the two pending lead cases to an external barrister.

In fact, due to its strong and enduring links with representatives from all communities as well with the main stakeholders in Kosovo, ECMI Kosovo was an excellent choice vis-à-vis the advocacy component of the programme and opened up a completely new perspective for its effective realization.

However, despite a strong commitment of ECMI Kosovo to the minority protection its obvious lack of capacity to conduct legal work made it unsuited for implementation of the strategic litigation component of the programme. To entrust an organisation without a single lawyer among its staff to carry on activities in a real-life discrimination case³³, could have exposed both the local partner and MRG to difficulties such as charges for unauthorised practice of law³⁴ or situations in which the litigant could claim damages for unsatisfactory conduct of legal services.³⁵

³² By this, the evaluator did not intend to say that choice of partners should lead to the exclusion of the smaller or less-skilled NGOs.

³³ According to the Final Programme Narrative Report for Kosovo, from January 2011, in the last months of programme implementation the Kosovo partner "notified the Pristina Municipal Court about the change of party representing [the beneficiary family in *Access to medicaments case*]".

³⁴ This would not be the first time that such charges were raised against a legal aid NGO operating in the region. During 2000 and 2001 several legal actions for unauthorized practice of law, supported by Croatian Bar Association, were brought against staff members of the Norwegian Refugee Council "Civil Rights

Although the MRG programme coordinator's strong involvement in the lead cases was in itself a safeguard that an adequate level of legal assistance had been provided to the individual litigants³⁶, the risk of not performing legal actions in accordance with the highest professional standards or performing them through the arrangements which would go against the local laws, should have been avoided.

Another important issue is that due to the fact that the 3rd year partner organisation did not have lawyers among its staff the lead cases related capacity-building activities could not be accomplished.

It would have been much more beneficial for the effectiveness of the programme and its sustainability if some other organisational arrangements were explored. One of them could have been to replace MPDL in Kosovo with two instead of one new partner organisation. The ECMI Kosovo capacities to carry on high level advocacy activities could be used for advocacy component while the lead cases could be handed over to an organisation with the adequate experience in legal matters.

Actually, what happened in reality could have been wrapped into a more formal programme partnership. CLARD legal aid lawyers who were in charge of conducting lead cases preparatory activities during the MPDL involvement in the programme were eventually contracted by ECMI Kosovo to continue its work.³⁷ On the more positive note, this has resulted in the establishment of an eventually fruitful partnership between the two organisations (ECMI Kosovo and CLARD).

The above-depicted drawbacks that ensued from the MPDL's withdrawal from the region could have been prevented at least to some extent by a more proactive engagement of MRG in the process of identifying new partner organisations.

3. EFFECTIVENESS AND EFFICIENCY

The basic aim of the Programme "Strategic Litigation on Anti-Discrimination and Minority Rights issues in Bosnia and Herzegovina, Croatia and Kosovo" was to effectively facilitate access to legal protection of minorities by working with the local partners on strategic minority rights cases.

Litigation work was the central activity of the programme, which was complemented with the targeted advocacy activities aimed at enhancing the anti-discrimination legal and policy framework.

The programme made significant achievements in tackling discrimination of minorities in three targeted countries by increasing the beneficiaries' awareness of the concept of

Project" in Croatia because they did not have bar exam. See Evaluation Report 4/2002, prepared by the Danish Centre for Human Rights in cooperation with T&B Consulting.

³⁵Of course, the level of risk would depend on the content of the agreement signed between a litigant and the Kosovo partner.

³⁶The MRG Head of Law was constantly involved in drafting of the pleadings and related material during the whole period.

³⁷ According to the MRG programme coordinator, this was in fact agreed already at the first meeting between MRG and ECMI Kosovo.

strategic litigation and its use for the advancement of minority rights and protection against discrimination. However, several difficulties were faced during the programme implementation, which have hindered its efficiency and effectiveness.

3.1. Challenges

With the aim to enable better assessment of the programme efficiency and effectiveness, this section provides an overview of the major challenges encountered during its implementation.

3.1.1. Delays of funding and funding withdrawal in the last Programme year

Short delay of funds coming from OSI, the main donor, occurred already in the 2nd year of the programme but this did not cause any significant drawbacks thanks to the commitment of the MRG and the in-country partners and the smooth communication between them.

However, the donor's consideration of the 3rd year funding took almost half year. It was not before July 2010 that OSI informed MRG about its decision to discontinue further support and provide only a phase-out funding for six months of the 3rd year programme activities. Under the new funding scheme, the 3rd year of the programme ran from 1 April 2010 until 31 December 2010.

The final amount of the 3rd year funding was confirmed in the late September 2010 and funds distributed at the end of November 2010. The consequence of this was that the programme implementation was halted for a significant period (April 2010 - November 2010) during which MRG had very limited contact with the partner organisations.

This had particularly affected the engagement of the new programme partners in BiH and Kosovo who, due to delay of funds, signed the partnership contracts and came formally on board just in mid October 2010.³⁸

3.1.2. Staff turnover

The realisation of the programme activities was affected by a high turnover of the staff engaged in its implementation.

MRG: Cynthia Morel, a Senior Legal Advisor, left MRG at the end of November 2008, and was replaced by Lucy Claridge, Head of Law, in March 2009. The programme was in the interim managed by the MRG Legal Cases Officer, Carla Clarke.

MPDL: At the end of 2008, Fermin Cordoba, Head of Mission and key contact for the Bosnian office, was replaced by Mikel Cordoba, who became Acting Head of Mission and key contact for Kosovo, and by Darko Marjanovic, who became key contact for Bosnia and Herzegovina. Mr. Marjanovic stopped working for MPDL in spring 2009. In April 2009, Salvador Bustamante was appointed as MPDL Coordinator for BiH. These staff changes were also coupled with several changes of the programme contact persons in the MPDL implementing partners - IDC BiH and CLARD Kosovo.

³⁸ The above said was especially true for ECMI Kosovo which, being the small local organisation with limited funding and resources, could not undertake any activities before the funding arrived.

CZM: The primary contact at CZM, Ljubomir Mikic, left the organisation on 31 October 2008.

ECMI Kosovo: Soon after ECMI Kosovo joined the programme, its project coordinator who was the key contact for the programme, Katherine Nobbs, left the organisation and was replaced by Gaelle Cornuz who overtook the programme coordination with the support of Jeta Bakija and Andrea Najvirtova. Couple of months after, Gaelle Cornuz also stopped working for ECMI Kosovo.

The relatively high staff turnover is a standard feature of the civil society organizations and as such is not controllable. A helpful way to preserve the institutional memory in case of the change of programme coordinator or other key management staff of a lead organisation could be to appoint a local programme coordinator (external one or coming from one of the partner organisations). He or she could complement the lead organisation's coordination of the overall programme activities having a more direct insight in the situation on the ground and could substitute for the field visits to the programme countries when the frequent travels are not feasible.

3.1.3. Programme timeframe

As mentioned above, litigation cases are frequently tied up in local courts for excessively long periods of time. Presumably, this could be even more correct to say for the cases involving complex anti-discrimination concepts. For the given reasons three years was a rather short timeframe for a programme whose main focus was at the strategic anti-discrimination litigations.³⁹ This is an important thing to keep in mind when measuring the programme achievements. It is to be hoped that in the future donors would give greater consideration to the specific features of the strategic litigation projects.

3.2. Value for money

The evaluator was requested to give just a general estimate of the “value for money” aspects of the programme, which was in her opinion generally satisfactory in all areas of programme intervention.

The only distinct issue that arose under this heading are the circumstantial indications that MPDL BiH was in breach of the local laws on payroll taxes and social security contributions.⁴⁰ According to the available information, in 2009 two MPDL's local staff members lodged a complaint against MPDL before the relevant local authorities alleging that MPDL Office in BiH was reporting lower payroll figures when deducting taxes and social security contributions.⁴¹ This information emerged during the interviews with four ex-MPDL/IDC BiH local staff members who claimed that MPDL was paying social security contributions and taxes in the amount which corresponded to just part of their gross salaries. The two of the former MPDL Spanish programme coordinators had also confirmed it, one of them claiming that there was a tacit agreement between MPDL and

³⁹ This was underlined by the Croatian partner already in the programme planning phase.

⁴⁰ As in many other countries, applicable laws of Bosnia and Herzegovina require employers, including local or foreign NGOs, to deduct taxes and social security contributions from their employees' pay through the payroll and remit them to the relevant tax authority.

⁴¹ As mentioned earlier in the report, at that time MPDL in BiH had only four local staff members left, who were not transferred to the newly created spin off organisation, IDC BiH.

its local staff not to cover the contributions in the full amount with the idea to preserve the resources to employ more local staff.⁴² On the contrary, the MPDL Desk Officer for SEE and Middle East stated in his written response that the local laws were strictly adhered to by MPDL during its engagement in the region.⁴³

The evaluator did not make further inquiries in relation to this issue since it went beyond the scope of the present evaluation and since the given indications were mostly related to the period preceding the implementation of the programme.⁴⁴ For the matter of clarity it should be added that in the evaluator's opinion under the given conditions MRG could not have been reasonably expected to know this at the time or after the programme implementation.

Beside the question of cost effectiveness, this should be generally considered to be an important matter in delivering development aid projects. In the course of the evaluator's previous work in the region she has observed on several occasions the situations in which the international organisations were not paying adequate attention to the requirements of the local tax laws. In turn, this would have just further add to the general climate of low observance of the local tax requirements by the local population and undermine the core concepts of the development assistance. Furthermore, the situations of this kind can affect the morale of the local personnel and by that the ability of an organisation to properly carry on project activities.⁴⁵

3.3. Achievement of programme objectives

This section provides an assessment of the extent to which the Programme achieved its outputs and purpose. This will be done by applying the "bottom up" approach where the report will first look into the accomplishment of programme outputs followed by an analysis of the level of attainment of programme purpose. The assessment does not deal separately with the programme activities since most of them have contributed to accomplishment of more than one output.

3.3.1. Output no. 1

An increase in the number and quality of minority rights legal cases at national level of jurisdiction.

Litigation work in cases involving discrimination of ethnic, religious or linguistic minorities was the core component of the programme. This was the only output to which a quantitative measurable indicator was assigned in the programme proposal. The goal was to identify, research, lodge and pursue in total **eight** cases designed to establish strategic and positive legal precedents in the field of minority rights and discrimination.

⁴² Notes from the interviews are on file with the evaluator.

⁴³ On file with the evaluator.

⁴⁴ The circumstantial evidence received by the evaluation was mostly related to the period when MPDL was employing local staff, which preceded the initiation of the strategic litigation programme.

⁴⁵ This issue falls within the scope of the evaluation also because, according to the contract signed between MRG and OSI, recipients of the funds were "responsible for all salary, social security, legal and taxation matters related to the execution of the Project and expenditure of the grant".

By pursuing two cases in BiH, three in Croatia and three in Kosovo, MRG and the partners had intended to tackle three areas of widespread discrimination:

- a) Discrimination in relation to public participation (especially in Bosnia).
- b) Discrimination in access to public services such as education or health.
- c) Discrimination in access to employment in the public sector.

The choice of the specific areas of discrimination that should have governed identification of lead cases in each target country was modified several times during the programme.⁴⁶ Discrimination in access to employment in the public sector was the only area of discrimination enlisted in the original programme document where neither one case was selected.

Strategic litigation component was comprised of three main phases/activities - identifying potential lead cases, selecting lead cases and supporting lead cases litigations before national or international bodies. We will analyse the achievements by looking at the cases and activities carried on in each programme country.

3.3.1.1. Identification of lead cases

Identification of potential lead cases could include a wide array of outreach activities such as: informing relevant national institutions and local NGOs of the existence of the programme, engaging with local minority communities or getting in touch with other stakeholders who could have knowledge of the concrete discrimination cases. Should this have not resulted in the identification of the sufficient number of cases with strategic potential, the plan was to revert to launching a 'call for cases' through wider domestic channels in order to generate additional input.

In this sense very promising was the fact that all in-country partners in the first two years of the programme were legal aid providers. This meant that they were in daily communication with the potential beneficiaries, had good insight into the usual discriminatory patterns in the country and an extensive network of contacts with the wide range of domestic stakeholders. In searching for potential cases all partners undertook additional network building activities. 'Call for cases' was launched only by the partner in Kosovo, at the end of the programme's first year.

Despite all of this, the phase was progressing very slowly and got stretched well into the 2nd year of the programme activity. For instance, in the interim narrative report of October 2009, the Bosnian partner refers to a number of meetings that were held during the second year in order to increase the number of sources that could have information about potential cases. Moreover, the quality of identified cases was not at the level that was needed for selecting promising lead cases.

Although discrimination against minorities is present in all programme countries there are number of external reasons which could have negatively affected identification of potential cases such as: low awareness of minorities of their rights, the fact that discrimination is a widespread phenomenon affecting large segments of population, fear of victimization, lack of trust in the judicial systems, etc.

⁴⁶ As reflected in the revised activity plan documents for 2nd and 3rd year.

While conducting interviews with the programme partners, the evaluator gained an impression that a problem was also in the fact that local lawyers were not fully acquainted with what the concept of strategic litigation actually implies. All of them had a general knowledge of what strategic litigation is but were not capable of identifying the elements that a lead case should have *vis-à-vis* the peculiarities of their national legal systems. A good illustration of this could be the case of the first programme partner in Bosnia. In the course of the programme MPDL/IDC BiH identified eight potential cases related to discrimination in access to employment, which all raised “clear and important discrimination issues in respect of minorities, [but] none of them seemed of a sufficiently strategic nature to be worth proceeding with”.⁴⁷ This was despite the fact that these two organisations were known in BiH for the provision of the labour rights’ related legal assistance and as such had an easy access to the potential cases, at least in the employment field.

In the evaluator’s view this problem could be tackled in the future strategic litigation projects in two ways:

- a) By providing local partners with the **training on strategic litigation**. The training should be specifically designed for lawyers and could include comparative analysis of strategic litigation cases run by MRG in the similar country contexts. This would be an easy task for MRG given its rich experience in this field.⁴⁸
- b) By producing a **study** to analyse concrete problems which could get in the way of strategic litigation activities in each programme country and research possible solutions. The study should include: analysis of the anti-discrimination provisions and mechanisms existing in the national legal systems; review of the non-judicial anti-discrimination tools that could complement litigation; analysis of obstacles faced by earlier minority rights related litigations in the given national context (for instance, the average length of litigations, short deadlines for submission of claims, etc); analysis of the major problems in litigating minority rights case that could arise in future; review of the available international legal mechanisms, etc. All this should be then applied to the specific features of the selected discriminatory practices to be tackled by the lead cases in the given country. The study should contain as much concrete set of recommendations as possible, such as whether already initiated cases would provide more chance for success, if so, at which stage of litigation the case should preferably be taken over, etc. This would help in-country partners to get a clearer idea of what they are searching for and hence to conduct a more focused search for potential cases. Timeframe wise, it should be undertaken as the initial programme activity and as a logical continuation of the assessments conducted in the programme planning phase when the specific discrimination areas to be tackled in each country are identified.

3.3.1.2. Selecting lead cases

In the case selection phase, MRG and its partners were analysing previously identified cases with the aim to select those which could effectively and efficiently address the

⁴⁷ Cited from the revised Activity Plan for Years 2 and 3 which was submitted to OSI in March 2009.

⁴⁸ All interviewed representatives of partner organisations stressed that these types of trainings are very much needed and that they would be a great way to do capacity building.

relevant discrimination patterns.⁴⁹ However, the phase lasted longer than initially planned and as such it further decreased the possibility for the important precedents to be set during the lifetime of the programme (output 3).

A notable shortcoming of the programme implementation identified in this phase, which has also caused its procrastination, was insufficient level of capacity building activities. Although the basic idea was to work hand in hand with local partners in order to enhance their capacities to pursue strategic litigations, the evaluator's impression is that the local lawyers could have been more involved in this phase of the programme.

In Bosnia and particularly in Kosovo, a direct communication with the local lawyers was never really established except occasionally in relation to the UGCC case. In Kosovo, the main MRG's interlocutor was the MPDL's expatriate staff member who was at the time the Acting Head of the whole MPDL Mission at the territory of the former Yugoslavia. In fact, not only that there was no direct correspondence between CLARD and MRG but, according to the available information, CLARD lawyers were not present at any of the activity planning meetings. This almost entirely disabled prospects for an effective capacity building in Kosovo, which was among the programme's basic aims. Also, given that only the local lawyers were in touch with the potential litigants, not to be in direct contact with them meant that the selection activities had to be implemented in a less efficient way. Another consequence of this was, as it will be shown in the next section, that MRG coordinator was not always in possession of the complete information about the development in lead cases, which made the monitoring activities even more difficult.

The language barrier could not be a reason for this as both CLARD lawyers were enough proficient in English.⁵⁰ Even if it was so, this problem could have been solved through engagement of an additional translator - a solution that would be more costly but could increase the overall effectiveness and efficiency of the programme.⁵¹

The lack of the local lawyers' clear apprehension of which features a case has to have in order to be "strategic" in the local context was another issue that slowed down the case selection phase. In Croatia, this was also coupled with the fact that the problem areas and identified cases were of a very complex nature and asked for an extraordinary level of knowledge of the local legal framework and judicial procedures.

Local lawyers in each programme country have also pointed out that most of the times they did not have clear idea why certain case was not selected. According to them, this was because of insufficient comments and explanations provided by the MRG counterpart. Another plausible explanation for this when it comes to BiH and Kosovo, as explained above, could lay in that fact that MRG rarely had direct contacts with the local staff. Their communication was mostly conducted through the MPDL expatriate staff who served as some kind of intermediaries. Hence, it could be easily possible that part of the information was from time to time lost due to this complex method of communication.

⁴⁹ The selection was based on the standard set of criteria used for assessing strategic value of a case.

⁵⁰ For instance, the interviews which the evaluator conducted with CLARD lawyers were done in English. Here it should be also noted that their communication with the MPDL coordinator was conveyed in English so there was no actual need for an intermediary in that sense.

⁵¹ Communication with the local lawyer in Croatia, which was carried on smoothly and without significant delays, was conveyed with the assistance of the CZM in-house translator.

The analysed correspondence between the MRG's lawyers and the partner organisations' staff related to this phase of the programme indicates that the MRG's lawyers were very meticulous while analysing the strategic value of the proposed cases. However, a more elaborated feedback and/or a direct contact with the local lawyers would have probably made the whole process more efficient and effective.

Another way to make these activities more efficient in the terms of their capacity-building value could be to ask local lawyers to answer a set of predefined questions in relation to each case they intend to propose. This could be done in the form of a questionnaire, which would contain a set of detailed questions about those elements/features of the proposed case which are generally used as criteria to assess the potential strategic value of a case.

3.3.1.3 Supporting lead cases

According to the programme proposal, depending on the nature of the case and/or the stage of litigation, support to the selected lead cases could include:

- “A fact-finding mission to the affected area.
- Detailed research in the areas of human rights law (domestic, international and comparative) relating specifically to the grievances of each particular minority community.
- Evidence collection.
- Developing and drafting the litigation strategy for these cases, in conjunction with the lead partner and victim(s) involved.
- MRG's training of local lawyer(s) on international legal standards, mechanisms and jurisprudence precedes litigation work when required.
- MRG's training on negotiating a settlement which requires identifying key issues, assessing the strength of the case, persuading the authorities to your position, etc.
- Attendance at the regional and international bodies to defend the case alongside the lead partners. The applicant, him or herself also accompanies the legal team to the hearings, where he/she is trained on the legal system used, and on the content of their rights. This gives the applicant the opportunity to become directly involved in their case, and also the opportunity for he or she to directly represent his or her minority community.”⁵²

The main role of the in-country partners was to undertake the fact-finding activities and evidence collection. They also had an important share in carrying on legal research (particularly the analysis of domestic legal framework), as well in developing and drafting litigation strategies under the MRG's guidance.

All the enlisted activities were also supposed to enhance the capacities of the local lawyers. Although a very important feature of the programme design, due to a number of reasons the capacity building elements of the programme activities planned for this phase were not adequate to the existing needs.

⁵² Cited from the Programme proposal.

While it is true that the level of local lawyers' acquaintance with the international human rights instruments and jurisprudence could vary significantly, a training⁵³ in this field would be very beneficial for the overall success of the programme. A trainer could use the examples of minority rights cases pursued by MRG in order to show in which way international human rights instruments form part of an efficient litigation strategy. This could be a simple training delivered by the MRG Head of Law and/or legal case officers within the regular activity planning meetings. Alternatively, the trainings could be delivered by use of the new, low cost technologies.⁵⁴ The training of this type could be also a great opportunity to discuss the selected cases as an end-of-training exercise.⁵⁵

Another idea that was even more welcomed by the partner organisations was the training on how to negotiate a settlement with state institutions. Here, as well, the MRG's contribution to the local capacity development would be extremely valuable given its experience.

These trainings could increase capacities of the local lawyers to carry on lead cases and continue with strategic litigations once the programme finishes. They would also add to the professional self-confidence of the local lawyers, create stronger links among the partner organisations as well strengthen their relationship with MRG. At the same time, if the trainings would be conducted in the first year of the programme, they would give to MRG a greater insight in the level of capacities of the local lawyers and possibility to adjust its support and guidance.

The MRG and partners have agreed to support a total of eight lead cases during the programme – two cases in Bosnia, three in Croatia and three in Kosovo.

a) Bosnia and Herzegovina

As already described, strategic litigation activities in Bosnia and Herzegovina were seriously affected by the main programme partner's withdrawal from the region. This situation had had negative impact on the overall effectiveness of the programme and had delayed or even lessened the attainment of the output under consideration.

The MPDL's management structure in BiH underwent four key staff changes in the first two programme years, as described above, which had been a direct consequence of the fact that the organisation's engagement in the region was coming close to the end. This affected the institutional memory of the partner and asked for additional resources to be vested in the implementation of the programme activities by the MRG's staff.

Furthermore, proximity of the MPDL's withdrawal from the region very much influenced organisational and interpersonal aspects of the MPDL's collaboration with its spin-off organisation IDC BiH. By the time the programme started, practically all previous MPDL's employees were in a formal sense already staff of the newly created organisation, which was supposed to take over MPDL's assets and activities in BiH once

⁵³ The word "training" is here used to signify a skills-building event as different from the way this word was used in the programme proposal where, according to the explanations provided by the MRG staff, it rather meant a type of a learning-by-doing exercise.

⁵⁴ Such as for instance "webinars", which provides simple solution for organising a real-time virtual training and make possible a direct communication between the trainer and lecturer in the virtual space.

⁵⁵ All of the interviewed local lawyers very much supported this idea.

MPDL departs.⁵⁶ As it appeared from the information collected during the field trip, these new organisational arrangements faced many difficulties vis-à-vis handover of managerial and financial roles and responsibilities between the “mother” and “daughter” organisation. This concerned as well the implementation of the programme activities where managerial and financial coordination was supposed to be conducted by the MPDL coordinator in BiH while the concrete activities were to be done by the IDC BiH lawyers.

According to the information received during the interviews, the lack of transparency as to the contractual and financial arrangements over the IDC BiH involvement in the programme seriously affected the relationship between MPDL and IDC BiH.⁵⁷

What turned out to be the key issue of the conflict that arose between the MPDL and part of IDC BiH staff was the lack of transparency with regards the way IDC BiH was involved in the implementation of the programme.⁵⁸ Four out of five interviewed MPDL/IDC BiH lawyers stated that they never learnt what was the content of the MPDL – IDC BiH partnership agreement for the implementation of the “MRG programme” nor of the budget for the programme implementation.⁵⁹ Salaries of the IDC BiH lawyers who were engaged in the implementation of the programme were another contentious issue. According to the interviewed lawyers, they remained the same as they were set for the implementation of another project⁶⁰. This issue was raised for the first time in an internal document on UGCC case sent to MRG at the end of July 2009, by a local lawyer who was at that time IDC BiH focal point for the programme implementation.⁶¹

All these issues are included in the evaluation report as they can provide, in the evaluator’s opinion, at least a partial explanation of the poor results of the litigation activities carried out in BiH, in particular the partners’ performance in relation to the UGCC case.

⁵⁶ The same was the case with CLARD in Kosovo.

⁵⁷ A very negative interpersonal dynamics also ensued within IDC BiH.

⁵⁸ As already mentioned, upon request sent to MPDL Central Office in Madrid, the evaluator was not given complete information about the format of the IDC BiH engagement in the programme implementation. For the 1st year of the programme only a copy of the unsigned draft of the partnership agreement between MPDL – IDC BiH was presented by the MPDL SEE Desk Officer and an unsigned annex to the partnership agreement for the implementation of the 2nd year programme activities.

⁵⁹ Two of the interviewed persons are at present members of the IDC BiH Executive Board. In relation to this they have informed the evaluator that IDC BiH members decided at its last annual convention, to commission a financial audit of the IDC BiH projects conducted in 2008, 2009 and 2010, including this programme.

⁶⁰ Programme called “Convenion No. 07-CO1-037: Improvement of the economic and social capacities, strengthening the productive network and inserting into the labour market, especially assisting vulnerable groups” - financed by the Spanish Agency for International Development and Cooperation (AECID) and implemented between 2008 and 2010 by MPDL and its spin-off organisations. Some of its activities were similar to the activities carried within this programme.

⁶¹ In fact, the barrister enclosed with the given brief an invoice for the work she carried within the programme and explained that the reason for that was that the IDC BiH Steering Committee “had been notified by the representative of MPDL that the MRG project contract had not been signed yet” on the basis of which she concluded that the compensation for the work carried within the programme should be sought from MRG directly. On the other hand, the MPDL coordinators stated that the IDC lawyers were working for a fixed salary through which their engagement in the programme was also covered.

UGCC case

This case raised issue of an eastern rite catholic church in Bosnia and Herzegovina not being recognized by the state authorities as separate entity from the Roman Catholic Church. As a consequence of this, the church was also denied right to permanent funding from the federal state budget. The case involved discrimination on the grounds of religion and the ability to practice one's culture.

As noted above, this case could be a good illustration of the many problems that programme faced in relation to the BiH programme partner's withdrawal from the region.

The case was identified by MPDL/IDC BiH and the analysis of it took the whole 2nd year of the programme. Several litigation strategies were devised in consultation with the MRG lawyers. However, as it turned out from the interviews with the church representatives who initiated the case, none of these strategies were discussed with the beneficiary. The church representatives stated⁶² that they officially met with the MPDL/IDC representatives only once⁶³ and subsequent to that have received couple of phone calls from a MPDL/IDC lawyer who asked them about the way the case was further evolving.⁶⁴ According to the information received by the church representatives, the beneficiary initiated on its own in total three legal proceedings. Among them is a claim for violation of the anti-discrimination law lodged before the Basic Court in Banja Luka in June 2010 and a compliant submitted to the BiH Ombudsperson in the same year.

Another issue that to a great extent prevented adequate handling of the case was the issue of the case handover. While the MPDL Head of Mission has firmly stated that the case was handed over to the new program partner, representatives of "Vasa prava" claimed that the case file was never handed over to them. The only thing they got from MPDL, as "Vasa prava" stated, were basic information about the case and the electronic copies of the two internal documents containing an analysis of the pertinent law. As further understood from the interviews carried with "Vasa prava" representatives, the biggest obstacle for them was that without a power of attorney or some kind of legal assistance agreement being signed with the beneficiary, they did not have any legal basis to undertake legal actions in the case. What eventually turned out to be the reality is that the official case file handover never took place, for the simple reason that the standard

⁶² The information was received during the conversation with the church representatives and through their written response to the evaluator's inquiries (on file with the evaluator).

⁶³ The beneficiary has described it as an informative meeting and stated that after learning about the facts of the case the MPDL/IDC BiH representatives had said that they were going to consider the possibility of providing legal representation in the case. The church representative further stated that they did not try themselves to approach MPDL for legal assistance after the initial meeting for the four reasons: 1) at the beginning they tried to avoid any further worsening of their relationship with the state representatives, given the sensitivity of the case, and they thought that involvement of a third party could just additionally complicate the matter, 2) afterwards they learned from the MPDL/IDC lawyer that MPDL will cease its activities and "that some other organisations will take over" - they did not want to get involved with the NGO whose mandate is coming close to an end, 3) in the meantime they also learnt that their main interlocutor in MPDL, Darko Marjanovic, who was the initiator of the MPDL's interest in the given case had left MPDL; 4) too much time had already passed and they wanted to initiate the case without further delays.

⁶⁴ This is in contradiction with the programme partner narrative reports which refer to a series of meetings being held with the beneficiary.

case file was actually never created. According to the information received from the representatives of the beneficiary, they have never signed any power of attorney and have never signed with MPDL any other kind of formal agreement to pursue the case.

This points out to a need to ensure certain standards which should be fulfilled in relation to the provision of legal assistance in the lead cases. The minimum requirement for the provision of legal assistance in strategic cases should be filling in of a case intake form that shall contain basic data such as: contact information of the beneficiary, short description of the case, date when the initial contact with the beneficiary was established, precise description of the procedures and advocacy activities that were already undertaken. The case file shall also contain a copy of all the relevant documents. An agreement for the provisions of legal assistance and/or power of attorney should be signed as well. The legal assistance agreement should serve to bring clarity into the relationship between the beneficiary and the partner organisation by clearly indicating what the partner organisation can provide to the beneficiary. This would be a good way to protect both the beneficiary and the partner organisation from the problems that could ensue from potentially excessive expectations.

Another issue ensuing from the inadequate case handover is that the church representatives never got precise information about the new organisation to which they should turn for the legal assistance⁶⁵ or at least, this was never done in a formal manner.⁶⁶

This in practice led to the situation where the programme partner and the beneficiary were undertaking the case related activities in parallel without having any contacts with each other. While the potential beneficiary gave up from seeking further legal assistance within the programme, the new programme partner, lacking information about the case and the beneficiary, was researching about the case from indirect sources. In the anticipation of the contact to be established with the beneficiary and its authorization of the planned legal actions, the programme partner even prepared a submission to the BiH Ombudsman. This happened approximately at the same time when a complaint before the BiH Ombudsman was being submitted by the beneficiary on its own.

Not only that this indicates certain waste of programme resources but it also had two unintended negative consequences:

1) During the field trip the evaluator met with the representatives of a local association focused at preservation of language and culture of the minority group whose members are followers of the church in question. They explained that they learnt about the case initiated by the church representatives when the third year partner has contacted them in an attempt to get contact details of the local priest who was in charge of the case.⁶⁷ The way they learnt about the case and the fact that the case involved potential confrontation with the state institutions lead to a quite negative reaction of the representatives of the

⁶⁵ Nor MPDL provided the new programme partner with the contacts of the church representatives.

⁶⁶ For instance, by arranging a meeting between the new programme partner and the beneficiary or by sending written information about the changes that occurred.

⁶⁷ Given the sensitivity of the issues involved, the church representatives are not easily ready to speak about the case, as witnessed by the evaluator herself, and that was probably also one of the reasons why the 3rd year partner had difficulties to get in touch with the potential beneficiary.

given association. In the evaluator's view, this could have negatively affected the relationship between the church and some of its followers.⁶⁸

2) Another negative consequence was raised by the third year partner "Vasa prava" who claimed that their involvement in the programme, because of the problems related to the lack of UGCC case handover, could have had negative effects on their reputation and put at stake their participation in another project.

Finci v BiH

The programme implementation in Bosnia and Herzegovina was marked with a stark differences in results achieved in the two lead cases. While the UGCC was linked to many problems, the achievements in another case pursued in BiH went beyond the most positive results that could be anticipated. *Finci and Sejdic v. BiH* is a prime example of how strategic litigation should be pursued not only in relation to the litigation strategies used but also with regards the way that post-litigation phase has been run.

In this groundbreaking case, a Bosnian Jew and an ethnic Roma have successfully challenged discriminatory provisions contained in the Constitution and electoral laws of Bosnia and Herzegovina. The European Court of Human Rights judgment was delivered on 22 December 2009, finding the respondent state to be in breach of both Article 14 (in conjunction with Article 3 of Protocol 1) and Protocol 12 of the European Convention on Human Rights.

The case was initiated by Dervo Sejdić and Jakob Finci, the citizens of Bosnia and Herzegovina, who complained of their ineligibility to stand for election for the House of Peoples and the Presidency of Bosnia and Herzegovina on the ground of their ethnic origin. It was originally allocated to the Court's Fourth Section, which in 2009 relinquished its jurisdiction in favour of the Grand Chamber. Apart from written observations submitted by the parties, the Court also received third-party interventions filed by the Venice Commission, the AIRE Centre and the Open Society Justice Initiative.

The proceedings before the ECtHR were practically the only way to overcome the "irresolvable" nature of the electoral discrimination within the framework of the domestic legal remedies available in BiH.⁶⁹ Due to the fact that the discriminatory provisions are embedded in the text of the Constitution and given its own institutional competence and legitimacy, the Constitutional Court of Bosnia and Herzegovina found no way to solve the problem. Hence, the only solution was to raise it before an international judicial forum.⁷⁰

⁶⁸ In fact, the vicar and the local priest who were interviewed by the evaluator stressed that the matter of the case is a sensitive one since it concerns the given church relationship with the state organs and that they did not want to spread information about the case in order not to provoke anxiety among the church followers.

⁶⁹ This, despite the fact that the major Bosnian institutions entrusted with decision-making powers are to a great extent still controlled by the international community. For instance, three out of its nine members of the BiH Constitutional Court are appointed by the President of the European Court of Human Rights.

⁷⁰ For instance, in one of the cases challenging the electoral laws raised before the BiH Constitutional Court, its judge David Feldman noted that this is the only possible solution since: "Such a tribunal has no duty to uphold the Constitution. The Constitutional Court has an express constitutional obligation to uphold the Constitution, and in my opinion has no power to set aside parts of it, or make them ineffective, by relying on rights arising in an international instrument in preference to the express and unambiguous

The judgment is also highly important for the future constitutional developments in BiH.⁷¹ Broader constitutional change, including the electoral reform, is a red flag on the Bosnia's road to European Union. Yet, despite the pressure that was coming through reports and decisions of international bodies in the previous years, the issue reached a stalemate soon after it was identified. The discriminatory nature of the provisions on the composition of the Presidency and the House of Peoples was addressed in the findings of the Committee on the Elimination of Racial Discrimination and the Human Rights Committee.⁷² During the 2006 elections in BiH, the OSCE Office for Democratic Institutions and Human Rights also found out that the elections were in violation of Protocol No. 12 due to ethnicity-based limitations to the right to stand for office contained in the Bosnian constitution.⁷³ In a context of highly sensitive post-war settlement of the constitutional matters in BiH, the ECtHR ruling can provide for a simple but strong further incentive for the necessary constitutional reform.⁷⁴

The case *Finci and Sejdic v. BiH* is by any definition a landmark not only for Bosnia and Herzegovina but also for the international level protection against discrimination.

It is the first case lodged before the ECtHR in which the provisions of Protocol 12 were successfully invoked. By adjudicating the applicability of Protocol No. 12, the Court had set an important line of distinction between the prohibition of discrimination contained in Article 14 to the Convention and the prohibition of discrimination under Protocol 12. The way the Court had applied Protocol 12 in this case creates a basis for "a legitimate expectation that the anti-discrimination mechanism will develop into an independent legal instrument rather than a 'safety net' for cases that could not be applied to Article 14 of the Convention in conjunction with one of the Convention rights".⁷⁵

The ECtHR adjudicated the case during the 2nd year of the programme. Being aware of the complexities of the Dayton Peace Agreement – driven constitutional arrangements and other obstacles to an effective enforcement of the judgment, in the post-litigation phase MRG and its local partners undertook a series of advocacy activities at the local and international level.

terms of the Constitution itself." (The decision of the Constitutional Court of BiH in Case No. AP-2678/06, Admissibility & Merits (Const. Ct. Bosn. & Herz. Sept. 29, 2006). Cited from Marko Milanovic, *Sejdic and Finci v. Bosnia and Herzegovina*, American Journal of International Law, Vol. 104, 2010, pp. 8 – 9, electronic copy available at: <http://ssrn.com/abstract=1672883>)

⁷¹ See on this the recent publication prepared by a local NGO in BiH which is entirely dedicated to the considerations of the constitutional reform matter in the context of the judgment: Enis Hodzic, Nenad Stojanovic, *New/Old Constitutional Engineering? Challenges and Implications of the European Court of Human Rights Decision in the Case of Sejdić and Finci v. BiH*, Center for Social Research "Analitika", Sarajevo, 2011, electronic copy available at: <http://analitika.ba/files/NEW%20OLD%20CONSTITUTIONAL%20ENGINEERING%20-%202007062011%20za%20web.pdf>

⁷² Concluding observations of the Committee on the Elimination of Racial Discrimination of 11 April 2006 (CERD/C/BIH/CO/6), para. 11; Concluding observations of the Human Rights Committee – Bosnia and Herzegovina of 22 Nov. 2006 (CCPR/C/BIH/CO/1), para. 8.

⁷³ Office for Democratic Institutions and Human Rights, Bosnia and Herzegovina, General elections of 1 October 2006 - Election Observation Mission Final Report, Warsaw, 6 Feb. 2007, p. 1, accessible at <http://www.osce.org/documents/odhr/2007/02/23206_en.pdf>

⁷⁴ See about this an interesting discussion which occurred at the Blog of the European Journal of International Law, at <http://www.ejiltalk.org/grand-chamber-judgment-in-sejdic-and-finci-v-bosnia/>

⁷⁵ Samo Bardutzky, *The Strasbourg Court on the Dayton Constitution Judgment in the case of Sejdić and Finci v. Bosnia and Herzegovina*, European Constitutional Law Review, Vol. 6, Issue 02, 2010, p. 331.

During the first programme year the local lawyers were engaged in drafting the applicant's response to government observations and in that sense the case also included a capacity building element.

b) Kosovo

Among the number of potential lead cases identified by the in-country partner in Kosovo, two cases were eventually selected as having the potential to establish important precedents for the protection of minority rights.

Islamic veil case

The first selected case concerned the use of the Islamic veil - a pupil was being barred from attending a secondary school in one Kosovo municipality for wearing a headscarf. The local lawyers working for CLARD (MPDL's spin off organisation in Kosovo) wrote several submissions and eventually an external barrister was contracted to submit a discrimination claim before the Gjilane/Gnjilane District Court. The judgment in favour of claimant was reached on 17 November 2009. However, the victory was only partial since the given decision was not implemented by the secondary school in question until present day.

Moreover, the judgment did not contain any reference to the provisions of the domestic Anti-Discrimination Law, which was an important programme's aim. From the available case documentation it could not be determined with certainty whether that was because the pleadings did not contain reference to the Anti-discrimination law or because the local judges were not enough familiar with the content of the given law. In any case, given very unfavourable conditions in the local judicial system such as extremely long court procedures and complete absence of the anti-discrimination case law, the results of the given litigation should be taken as success.

Although the case did not involve a minority community⁷⁶, it raised important issue of indirect discrimination before the domestic courts. The only negative remark with regards to the litigation support provided in this case is related to the certain delay in undertaking further legal actions for non-implementation of the judgment. Due to the issues related to the MPDL's withdrawal from the region and delay of funding for the last programme year, the pleadings before the Constitutional Court of Kosovo were submitted much after it was initially planned.

Access to essential medicaments case

This case was based on the evidence of indirect discrimination against Roma, Ashkali and Egyptian (RAE) community in accessing essential medicines. The litigants were identified after liaising with a number of local NGOs to find the potential victims of discrimination and the lawsuit was submitted before the municipal court in Fushe Kosovo/Kosovo Polje. Problems similar to those mentioned in relation to the Islamic veil case affected the effectiveness of the support provided to litigants by the implementing partner. Although the draft lawsuit for initiating the first instance

⁷⁶ Islam is the predominant religion professed in Kosovo.

proceedings before the local court were drafted in March 2010 the lawsuit was not lodged before November 2010.

c) Croatia

The Croatian partner was part of the programme from its initiation until the end. Throughout the programme MRG had maintained a direct communication with its lawyers,⁷⁷ which opened up prospects for more effective capacity building. The capacities of the CZM's lawyers were characterized by a notable level of knowledge of the domestic anti-discrimination framework as well of the relevant international instruments and jurisprudence. Despite all of this, the effectiveness of the litigation support provided in two selected cases did not differ greatly in comparison to what was achieved in other two programme countries.

This was mainly because the case selection phase lasted too long. Taking into account the average length of proceedings before the local courts, not much could have been achieved for the time that was left after the cases were finally selected. Another reason laid in the complexity of the chosen problem area. Violations of the rights of minority population displaced during the civil war, which were to be dealt with under the programme, are linked to a number of serious legal obstacles that could not be easily addressed within the short lifetime of the programme.

Revocation of citizenship case

This case represents one of the many cases depicting difficult position of the Serbian minority community in Croatia. The case involved denial of citizenship and associated rights. Although born, educated, employed and permanently residing in Croatia, litigant's personal documents were cancelled after it was incorrectly claimed that he was a citizen of Bosnia and Herzegovina. The case has promising strategic value in particular for the characteristics of the litigant. His cooperativeness and willingness to sustain all the necessary procedures are combined with an excellent level of communication and trust established between him and the CZM's lawyers.⁷⁸ A number of claims were submitted by invoking provisions of the newly adopted Anti-Discrimination Law and remain pending due to the excessive length of the average case-processing time of the local courts.

Pension rights case

The case is about payment of pensions to persons who have attained retirement status based on actual and recognised years of service in Croatia, but for various reasons currently have temporary residence in Bosnia and Herzegovina or Serbia. It tackles one of the key problems affecting the enjoyment of pension rights by refugees and displaced persons, who are mostly belonging to the minority communities. The excessive length of proceedings before the Croatian courts coupled with various other obstacles indicate that many years will probably pass before the case is finally adjudicated.

⁷⁷ Occasionally with the assistance being provided by an in-house translator.

⁷⁸ As witnessed by the evaluator during the field visit to Vukovar.

3.3.2. Output no. 2

An increase in the number and quality of minority rights representations before national and international bodies.

Another important programme component was advocacy work which involved three types of advocacy activities: targeted advocacy around the selected lead cases; advocacy on specific issues of importance for the protection of minority rights in the programme countries; advocacy campaigns for the adoption of the comprehensive anti-discrimination laws in BiH and Croatia and the anti-discrimination awareness raising campaigns carried on in all three programme countries. All partner organisations have actively contributed to the achievement of this output, as different from the previous programme component in which the third year partners participated to a very limited extent.

In the course of the programme a briefing paper on *Finci v. BiH* case was produced, which was a very good way to complement the litigation work. In the post-litigation phase of this case, MRG and its in-country partners also undertook a number of advocacy initiatives to address major international and domestic stakeholders. With the aim to increase the leverage of the ECtHR judgment within the process of the Bosnian constitutional reform, the MRG's representatives undertook trips to Brussels and Strasbourg and attended several important international forums. This raised the profile and visibility of the case and gave an impetus for the discussion which ensued at the local and international level.⁷⁹ Equally, each field trip of the MRG's staff to Sarajevo was also dedicated to further lobbying for the implementation of the judgment.

A briefing paper on significance of the Croatian comprehensive Anti-Discrimination Law for the protection of minorities was published by CZM. In addition to this, leaflets for raising awareness of the local population about the national anti-discrimination laws were produced and disseminated by the partners in all three programme countries. A report about the situation of minority rights in Kosovo was also published in the second year of the programme.

Generally, all the printed material produced during the programme was of good quality and provided for an adequate level of visibility of both MRG and OSI as the main donor. However, not all of them were translated in the local languages, which to some extent has limited the effectiveness of these advocacy activities. Also, an additional effort should have been made to provide for the wider dissemination of the given publications among the local stakeholders. This would in a long run ensure greater impact of the programme and provide MRG with even more leverage in the field of minority rights protection in the region.⁸⁰

⁷⁹ These discussions were not confined only to the academic circles. For instance, during the evaluator's field trip to BiH, a public event that was entirely dedicated to the consequences of *Finci v. BiH* case took place in Sarajevo.

⁸⁰ Given the similarities of the local languages and the cross-border nature of many problems faced by the minority groups.

Minority rights issues were tackled in many occasions by the programme partners and discussed with significant number of international and domestic stakeholders. With this aim at least one roundtable was held in each programme country where minority rights issues, protection against discrimination and lead cases were discussed.

Advocacy activities were implemented in an ad hoc way, expanding in response to opportunities, rather than following a coherent strategy, but this was generally to the advancement of the quality of the results achieved under this programme component.

Only two advocacy activities among those enlisted in the Programme proposal were not realised: advocacy for the implementation and respect for the principles contained in the Sarajevo Declaration⁸¹ and advocacy for the adoption of the next Comprehensive Implementation Plan for the Anti-Discrimination Law in Kosovo. These were replaced with other equally important topics, which were timelier and hence offered greater prospects for conducting an effective advocacy.

The greatest part of the advocacy activities was implemented jointly by MRG and the in-country partners. This component of the programme had a strong foundation in the many years of the MRG's capacity building activities in the region, which were directed at raising the potentials of the local organisation to effectively advocate for the protection of minority rights. As a cumulative result of all these efforts, including the analysed programme, the advocacy capacities of CZM, who was for a decade the MRG's main partner in Croatia, were greatly enhanced. Thanks to the continuing capacity building and other support provided to this organisation by MRG, CZM became kind of a regional info point for the anti-discrimination and minority rights issues.

3.3.3. Output no. 3

National and international bodies issue positive precedents⁸² on litigation brought within this programme or states seek to settle cases in a way that concedes important principles to the litigants, or negotiated settlements are made that remove discriminatory practices or laws.

Given that a common characteristic of all programme countries is that the litigation cases are tied up in courts for long periods of time and that protection of minority rights is not highly positioned in the agendas of the national governments, it could be said that the programme has achieved maximum level of effectiveness in the achievement of this outcome.

On 22 December 2009, the Grand Chamber of the European Court of Human Rights issued a landmark decision in case *Finci v Bosnia and Herzegovina*. A successful judgment

⁸¹ Sarajevo Ministerial Declaration on Regional Return of Refugees signed on 31 January 2005 in Sarajevo (BiH).

⁸² While some could argue that the three programme countries do not have systems based on precedent and that to set this type of immediate objective is wrong in the continental law systems, this is only partially true. The role of the constitutional courts in all three countries introduces elements of a system of judicial precedent since the lower courts do not contradict its judgments. The ECtHR rulings have surely reinforced this tendency.

was also reached in Kosovo in relation to the student who was prevented from attending school for wearing a headscarf. While it is true that none of these two judgments have been implemented there are great prospects that this will eventually happen, at least when it comes to *Finci v Bosnia and Herzegovina*.

The question of what could be the long-term impact of these two judgments asks for a separate analysis of each case. The long-term effect of the positive decision in *Finci v Bosnia and Herzegovina* case is warranted by the nature of the ECtHR judgments and prominence that they have in the region. The question turns to be more complex in Kosovo the legal system of which is still very weak and where it can easily happen that a judgment in civil and administrative matters is not enforced even couple of years after it became legally binding. In addition to this, the powers of its Constitutional Court are still weak while its citizens cannot seek protection of their rights before any international tribunal. These issues present an additional set of challenges to strategic litigations pursued in Kosovo and could be subject of further consideration in a future follow-up programme of this kind.

Another achievement worth mentioning here is that, while approaching authorities in relation to the potential test cases, on several occasions the local partners managed to persuade the local authorities to stop the discriminatory practices.⁸³ In Kosovo, for instance, this was the case with another “Islamic veil” related case. After a petition was organised and over 360 signatures from fellow pupils collected, the CLARD lawyers held a meeting with the director of the secondary school in question who soon agreed to reinstate the pupil. In another case, the CLARD legal team managed to resolve in this way the case where the students of Turkish origin complained that they are barred from enrolling at the Faculty of Medicine in Pristina because the entrance exam was organized only in the Albanian language.

3.3.4. Output no. 4

States introduce new laws, policies or practices to end aspects of discrimination that have been highlighted in legal cases and advocacy.

The programme activities have been conducted in parallel with the process of adopting comprehensive anti-discrimination laws in BiH and in Croatia. The nature of the legislative process precludes an assessment of how much the in-country partners have contributed to the adoption of the given laws.

However, what can be said with certainty is that the Croatian partner “Centar za mir” had a very prominent place in this process, as recognized by a number of external sources.

According to the feedback received during the field trip, the first programme partner’s involvement in the process of adoption of the anti-discrimination law in BiH gained less visibility.

Nevertheless, both MPDL/IDC BiH and the 3rd year partner “Vasa prava” have given

⁸³ According to the information contained in the MPDL narrative reports.

significant contribution to the future implementation of the anti-discrimination law through number of round tables and other advocacy activities organised during the programme.

3.3.5. Output no. 5

Informal or monitoring body reports suggest that the incidence and/or severity of those aspects of discrimination highlighted in legal cases and advocacy is beginning to fall.

It is too early to analyse the attainment of this outcome since the programme finished three months before commencement of the evaluation.

3.4. Assessment of the accomplishment of the Programme purpose

To improve the capacity of minorities to effectively access the legal protection afforded by both national level systems and international conventions on human rights and the international courts and quasi-judicial bodies that enforce them.

To establish positive legal precedents that address current gaps in the law pertaining to minorities.

Apart from its capacity-building component, the programme purpose was largely achieved. Two positive court decisions on the discrimination practices were obtained, at least one of which has characteristics of a powerful legal precedent (*Finci v. BiH*). The programme has further advanced the potentials of the anti-discrimination mechanisms existing in the programme countries for the protection of minority rights.

However, as described in the previous sections, the programme has faced number of difficulties and challenges during its implementation, which to some extent have negatively affected its overall effectiveness.

From the evaluation perspective, there have been opportunities to manage at least some of these challenges if stronger efforts had been invested by MRG in the monitoring process.⁸⁴ However, such monitoring could have been possible only if a detailed plan of action and calendar of activities was developed jointly with the programme partners and regularly adjusted to the new circumstances and pace of the programme progress.⁸⁵

Stronger engagement of MRG in the process of identification and selection of the third year partners could enable smoother overcoming of the difficulties which were caused by the MPDL departure from the region.

More frequent field trips could provide MRG with an opportunity to get more realistic idea of what were the actual capacity building needs of the programme partners. Pre-set

⁸⁴ A monitoring based on observations connected to daily management, on the reports written by the partners as well as on visits to the programme countries.

⁸⁵ This point was developed in a more detailed manner in the section about the programme relevance.

travels to the region⁸⁶ could have been also a useful way to feed the management decisions with a more direct insight into the way the programme activities were evolving.

4. IMPACT

Given that most of the activities within this programme were carried out a relatively short time ago, the possibility for the evaluation of the programme's impact was very limited.

However, an important impact that could be identified at this point of time is an increased interest of the partner organisations and other organisations with similar mandate to expand their activities towards strategic litigation and anti-discrimination field. This could in turn increase the level of assistance provided to minorities to claim legal protection against discrimination.

5. SUSTAINABILITY

An exit strategy is a very important component of the strategic litigation programmes. This is even more the case with programmes of this kind which have short funding time frames and are implemented in the legal systems characterised by lengthy court proceedings.

The sustainability of a strategic litigation programme is not only about the extent to which its impact and outcomes are likely to continue after the programme's end but also about its exit strategy vis-à-vis the initiated cases.

The main component of this programme was provision of litigation support in minority rights legal cases. Six lead cases were supported in total. In *Finci v. BiH* the positive ruling of an international court was received and although it has not yet been implemented, given the attention that the case received from the major national and international stakeholders, not much of the further post-litigation work is needed. Another, *Islamic veil case* in Kosovo, was also positively adjudicated by the local court but the judgment has not been implemented. In this case, however, a bulk of further legal actions and targeted advocacy has to be provided given the features of the Kosovo judicial system as well the urgency of the matter at stake. The *Access to medicaments case* as well the two cases in Croatia were just initiated during the programme and an estimate is that it could take several years before these cases are solved.

According to the programme proposal, the programme sustainability was to be ensured by raising the capacities of the in-country partners to continue with the initiated strategic litigations after its end. It was also envisioned that MRG would continue to deliver ad hoc advises to the partner organisations in their litigation work. In addition to this, the plan was that the MRG's team would provide fundraising trainings and assistance to the programme partners so that financial means for their future litigation activities are ensured.

⁸⁶ Where the schedule of the visits could be agreed already at the beginning of the programme and linked to preparation of progress reports or similar programme activities.

For the reasons explained in the previous sections, the planned “learning by doing” capacity building exercise did not enhance the skills and knowledge of the local lawyers much above the level they had already had. The segment of the programme’s exit strategy on fundraising trainings was never realised as MRG estimated that the programme partners had already possessed adequate fundraising skills. However, in Kosovo and in BiH this estimate was based solely on the assessment of the MPDL’s capacities while the needs of its spin off organisations, which were actually implementing the programme, were not taken into consideration.

While CZM was capable to commit part of its resources for the provisions of future legal assistance in the Croatian lead cases this was not the case with the partners in Kosovo.⁸⁷ Both ECMI Kosovo⁸⁸ and CLARD representatives have stated during the interviews that they cannot continue working on lead cases because of the lack of financial resources.

This was a worrying finding since both lead cases pursued in Kosovo involve human rights violations with serious and continuing effects on lives of the litigants. The capacity of these litigants to pursue further legal actions on their own is very questionable given their level of literacy, their socio-economic status and their age.⁸⁹ At the same time, to stop already initiated court procedures could place on them a significant financial burden. Some “life choice” issues are also at stake in the *Islamic veil case* since the litigant has refused to accept school’s offer to take catch-up cases believing she would be provided with the legal assistance in the further legal proceedings.⁹⁰

Fortunately, MRG will be able to redress this situation thanks to its general policy, as stated by the MRG’s representatives, to ensure that each case initiated within its projects would receive further support, both financial and through continuing advising, if its local partners could not continue providing the legal assistance.

Strategic litigation projects mostly involve natural persons in the role of individual litigants and the litigations initiated within these projects often last much longer than a time frame of an average grant. Many negative consequences can ensue from this if a realistic exit strategy was not timely devised. Staying of the already initiated procedures or even quashing of action due to the lack of legal support after the completion of the project would erase the effects of its activities. This could also lead to the continuation of the minority rights violations. Another, even more worrying consequence of this could be a situation in which a litigant would have to cover all the litigation expenses on her/his own without the intended results being actually achieved.

In order to prevent any risk being placed on the individual litigants, it would be desirable that already in the case selection phase preliminary estimates are made of the likely prospects of case-handling periods. In addition to this, an initial calculation of likely

⁸⁷ The Bosnian partner “Vasa prava” showed its willingness to continue with the UGCC case but since the litigant has started pursuing the case on its own this is not relevant for the present considerations.

⁸⁸ According to available documentation, in late November 2010 the local partner in Kosovo agreed to pursue the initiated cases after the programme’s end but that could not come through due to the subsequent changes affecting its capacities to provide the given support.

⁸⁹ The first litigant has just become a person of full legal age while the other two are aged and in bad health conditions (the evaluator conveyed an interview with the litigants in the *Access to medicaments case* while the information about the litigant in *Islamic veil case* have been obtained indirectly).

⁹⁰ At the very end of the programme, a lawsuit for non-implementation of a 2nd instance court judgment was submitted before the Constitutional Court in Kosovo.

financial costs for the initiated/pursued cases should be produced⁹¹. Only on the basis of this, a well-tailored exit strategy could be made that would ensure maximum programme sustainability and maximum protection of the interests of the individual litigants. Also, it would be very useful if the choice of in-country partners were driven by the sustainability considerations. From this point of view, the MRG's decision to implement the programme in partnership with the legal aid organisations was an excellent choice since they can usually continue pursuing the lead cases as part of their regular activities.

Effects of litigation related briefs and reports could be also seen as a plus to the programme sustainability. These advocacy products are often a good starting point for negotiations with the state authorities and could enable a faster resolution of lead cases.

For the end of this analysis it could be said that, from the sustainability point of view, a follow-up project would be a very good way to consolidate achievements of the programme. Despite all the difficulties encountered during its implementation all local programme partners expressed their willingness to participate in a follow-up programme and continue their cooperation with MRG.

6. CROSSCUTTING ISSUES

Gender issues were given adequate attention in problem analysis and design of the programme. Both programme components were planned in a manner which ensured that the problems that could have possibly affected women's participation in the programme are carefully analysed and resolved. All partner organisations are assigning great level of significance to equal opportunities and gender mainstreaming. In fact, great majority of local lawyers who were involved in the programme implementation or are employed in partner organisations are women. In three out of six lead cases pursued within the programme the litigants were women. On the basis of that, it can be concluded that women made up great part of the programme beneficiaries.

⁹¹ A calculation which would be based on an average cost of hearings and that would include at least two variables, for instance: a case involves X number of hearings and Y amount of time.

D. CONCLUSIONS

Apart from its capacity-building component, the programme “Strategic Litigation on Anti-Discrimination and Minority Rights Issues in Bosnia and Herzegovina, Croatia and Kosovo” has largely achieved its purpose.

The programme was built on the foundation created by the previous MRG’s projects in the region and it was highly relevant to the needs of target groups. Its design was coherent and adequate to support the achievement of the programme objectives.

Its results have to be measured against the unpropitious circumstances in which its goals were pursued. The programme was implemented in challenging environments characterised by semi-functional anti-discrimination mechanisms, widespread discriminatory practices affecting large segments of population, fear of victimization and lack of trust in judicial system.

Despite deficiencies identified in the way the programme was implemented, its outcomes are valuable for the further advancement of minority rights in the programme countries. Two positive court decisions against discriminatory practices were obtained, at least one of which has characteristics of a powerful legal precedent. The case *Finci v. BiH* is by any definition a landmark one not only for Bosnia and Herzegovina, but also for the international level protection against discrimination. Where no judicial decision was reached, the value of the programme laid in its power to enhance the prospects for greater use of the anti-discrimination mechanisms for the protection of minority rights.

Through its advocacy activities the programme has effectively mainstreamed use of the last generation anti-discrimination legislation and the concept of strategic litigation for the advancement of minority rights. Advocacy activities were implemented in an ad hoc way, expanding in response to opportunities, rather than following a coherent strategy, but this was generally to the advancement of the results achieved under this programme component.

The programme did not achieve its capacity building goals. The “learning by doing” capacity building exercise did not enhance the skills and knowledge of the local lawyers much above the level they had already possessed. Due to a number of reasons the quality and type of the capacity building activities did not match to the existing needs.

MRG and local partners had demonstrated a great ability to identify in timely manner any relevant changes in the external environment and hence ensure that the programme strategy was adapted to the emerging opportunities.

Gender mainstreaming was well integrated in the planning document and adequately sustained during the implementation of the programme.

However, the programme has faced number of challenges during its implementation, which to some extent have negatively affected its overall effectiveness.

The main donor’s decision to discontinue its support for the programme was communicated to MRG almost three months after the beginning of the 3rd programme year and the phase-out funds transferred with further five months of delay. As a consequence of this the programme implementation was halted for several months.

The realisation of the programme activities was affected by a high staff turnover which, to a greater or lesser extent, had occurred in almost all the organisations involved in its implementation.

Some of the program partnerships were not coherent with the character of the programme intervention, especially with its capacity-building element, and had decreased the overall sustainability of the programme outputs.

The effectiveness and sustainability of the programme was very negatively affected by withdrawal from the region of the main programme partner for BiH and Kosovo at the end of the second programme year.

The phases of generating and selecting lead cases lasted too long and that had negatively impacted on the achievement of the programme outputs. Out of eight projected lead cases only six were eventually pursued, out of which only two had reached some tangible results by the end of the programme.

From the evaluation perspective, there have been opportunities to manage at least some of these challenges if stronger efforts had been invested by MRG in the monitoring process.

A stronger engagement of MRG in the process of identification and selection of the third year partners could have enabled smoother overcoming of the difficulties which were caused by the main programme partner's departure from the region.

From the sustainability point of view, a follow-up project would be a very good way to consolidate achievements of the programme. Despite all the difficulties encountered during its implementation, all the local programme partners expressed their willingness to participate in a follow-up programme and continue their cooperation with MRG.

E. RECOMMENDATIONS

1. Considering weaknesses of the institutional frameworks for the minority rights protection in the programme countries, MRG should consider continuation of its support to empowerment of the local civil society organisations through a follow-up project. Given the fact that the displaced population makes up the greatest part of the MRG's target group, the future project could also include activities and partnerships in the other countries on the territory of the former Yugoslavia where the displaced minority groups reside in greater numbers. This could further enhance the efficiency and effectiveness of the project's activities and make possible that even more challenging minority rights cases are pursued in the future.
2. A priority needs to be placed on the development of more efficient planning and monitoring in order to support senior managers in identifying and communicating real progress, success and impact against a project's key objectives.
3. It would be desirable that the process of defining indicators - at least for the core project outputs - becomes a routine element of the planning and/or implementation phase of the future strategic litigation projects. Activity planning meetings or meetings for analysing yearly progress reports could serve as a good opportunity to bring the project partners together and define or assess/revise the output indicators.
4. In the strategic litigation projects a choice of in-country partners should be driven by the sustainability objectives. Notwithstanding the implicit risk of a local partner not being able to sustain activities after the project's end, where that is not necessary, it is essential not to engage into partnerships with organisations whose close operational disengagement from the region could have reasonably been foreseen. It is also of an utmost importance that the projects with the strong capacity building component are implemented in partnership with the organisations whose pertinent activities are run by the local personnel.
5. It is important that adequate resources are allocated for visiting the project partners and discussing the progress of the project. Face to face meetings create forums for launching new ideas and getting useful inputs for day-to-day management of a project. Standard travels to the region should be scheduled at the beginning of a project and should be based, whenever possible, upon tentative programme discussed in advance.
6. The appointment of a local project coordinator could be a helpful way to preserve the institutional memory in the case of major personnel changes and to increase the overall efficiency of a project. She or he could complement the MRG's coordination and monitoring role and substitute for the MRG's staff visits to the project countries when frequent travels are needed but not feasible.
7. It would be desirable that each strategic litigation project with capacity building component include at least the following types of trainings:

- Training on strategic litigation
- Training on international human rights law and jurisprudence
- Training on how to negotiate a settlement

These trainings could be delivered by the MRG Head of Law and/or Legal Cases Officers during the regular activity planning meetings or by using virtual platforms. They should be specifically designed for lawyers and could include analyses of selected cases as an end-of-training exercise.

8. A study containing an analysis of the problems that could impede strategic litigation activities should be prepared for each targeted country at the beginning of a project. Recommendations of possible solutions should be also provided in the study.
9. A questionnaire with the detailed set of questions linked to the criteria for the identification of strategic cases could be prepared for the local lawyers as a useful tool for selection of cases.
10. Local lawyers should be given more elaborated feedback throughout the case selection phase as an important element of the capacity building strategy.
11. Certain standards in the provision of legal assistance in lead cases should be ensured. The minimum requirement for the provision of legal assistance in lead cases should be filling in of a case-intake form. An agreement for the provision of legal assistance and/or power of attorney should be also signed.
12. Translations of the advocacy briefs and reports in the local languages should be ensured as well a wider dissemination of these materials among the local stakeholders.
13. It would be desirable that already in the case selection phase a realistic and concrete exit strategy is devised for each lead case together with the project partners. When possible the exit strategy should contain preliminary estimates of the likely duration of case-handling periods and an initial calculation of likely financial costs for the cases taken on. Furthermore, from the perspective of sustainability of the litigation activities it is advisable that whenever possible the local partners are chosen among the legal aid organisations.

Strategic Litigation on Discrimination and Minority Rights Issues – Final Evaluation

Minority Rights Group has worked with a number of local partners based in Bosnia, Croatia and Kosovo to identify, research, lodge and pursue cases designed to establish strategic and positive legal precedents in the field of minority rights and discrimination on the grounds of ethnicity, language or religion. The project was funded by OSI and the Norwegian Ministry of Foreign Affairs. We now want to commission an external expert to carry out a final evaluation of the work. Likely evaluation questions would include:

5. What effect has the project had (if any) on the partners' capacity as organisations to carry our strategic litigation projects? Detail progress made but equally identify gaps or constraints that are still impeding progress and which the project could tackle. What could both MRG learn from this both in terms of this project and more generally.
6. RELEVANCE: Have MRG and partners been able to identify strong cases on issues that have a good chance of testing (and if positive) establishing legal precedents?
7. EFFICIENCY AND EFFECTIVENESS: Have the cases identified been pursued efficiently and effectively. If not, what barriers have prevented this and what could be done differently in future?
8. EFFICIENCY: Have there been any early outcomes as a result of the casework already done and the linked advocacy work? Are there other signs of progress that might indicate that outcomes are likely in future?

An important issue for this programme was that we needed to change our incountry partners in the last year of the programme and that the evaluator will be expected to engage with all organizations (initial and new partners).

The evaluation will need to comment on progress towards the programme's overall objectives:

- To improve the capacity of minorities to effectively access the legal protection afforded by both national level systems and international conventions on human rights and the international courts and quasi-judicial bodies that enforce them.
- To establish positive legal precedents that address current gaps in the law pertaining to minorities.

Expected outputs for the programme included:

In all programme countries:

- “States introduce new laws, policies or practices to end aspects of discrimination that have been highlighted in legal cases and advocacy”.
- An increase in the number and quality of minority rights legal cases at national level of jurisdiction.
- An increase in the number and quality of minority rights representations before national and international bodies.
- National and international bodies issue positive precedents on litigation brought within this programme or states seek to settle cases in a way which concedes

important principles to the litigants OR negotiated settlements are made that remove discriminatory practices or laws.

- Informal or monitoring body reports suggest that the incidence and/or severity of those aspects of discrimination highlighted in legal cases and advocacy is beginning to fall.

In our view, to complete this exercise successfully, the external expert will need to be a qualified lawyer, ideally with experience of human rights litigation or at least familiarity with litigation before international or regional human rights bodies, preferably the European human rights system. Combined with this, the expert will need have considerable expertise in organisational capacity building. Knowledge of minority rights and anti-discrimination legislation and movements would also be an advantage as would be some knowledge of the current political and socio-economic and cultural context of the programme countries. The expert will also need to be independent of MRG (and any of its current work) as well as independent of ECMI (Kosovo), Vasa Prava (Bosnia), Center for Peace (Croatia), Movimiento por la Paz (Bosnia and Kosovo) and any funders currently contributing to this programme, MRG's work in general or the work of our partner organisations.

Work on this report should begin in March 2011 and we would expect a final complete report to be agreed by us if possible by May 2011. For the right candidate we might stretch this to June 2011.

At this stage, we would envisage that the evaluation would need to comprise at least

- A review of all project documentation
- If possible a visit to all three programme countries, if this proves impossible a visit to at least 2 out of three programme countries.
- Conversations or meetings with around 12 independent sources to gauge opinion about the cases and linked advocacy efforts. Of these 6 to be from a longer list of possible individuals supplied by MRG, and 6 to be independently identified by the consultant.
- Conversations and meetings with relevant MRG staff in London (including at least a visit or a skype conversation to agree methods and scope of the evaluation and another to present the evaluation findings and discuss them with programme staff and, if there are wider lessons to be learned, with a larger staff group).

There is no preset format for this evaluation although MRG is particularly interested to learn from it, lessons that we can apply in continuing with the work and in designing a new future phase of work. We would also be keen to check whether there have been any unforeseen negative consequences to date and how we can avoid, minimise or mitigate these in future. The evaluation should consider how well both MRG and partners have mainstreamed gender in the project to date and make suggestions as to how this could be improved (if needed.)

LIST OF MEETINGS:

CROATIA

In-person interviews:

1. Branislav Tekić - Legal Advisor, Centre for Peace, Legal Advice and Psychosocial Assistance (CZM), Vukovar (Croatia)
2. Ankica Mikić - President, Centre for Peace, Legal Advice and Psychosocial Assistance (CZM), Vukovar (Croatia)
3. Radovan Majski, Chief of the Legal Department, Joint Council of Municipalities (Zajednicko veće opština (ZVO)), Vukovar (Croatia)
4. Martina Ugljik - Youth Peace Group Danube, Vukovar (Croatia)
5. Miloš Erić – Secretary, Council of the Serbian National Minority, Vukovar (Croatia)
6. Dušan Erić, ex-President of the Managing Board, Serbian Democratic Forum (SDF), Belgrade (Serbia)
7. Ljubomir Mikić, ex-president of the Centre for Peace, Legal Advice and Psychosocial Assistance (CZM), Vukovar (Croatia)
8. Litigant in the *Citizenship case*

Visits: Centre for Peace, Legal Advice and Psychosocial Assistance (CZM), Vukovar, Croatia

BOSNIA AND HERZEGOVINA

In-person interviews:

9. Fermin Cordoba – Head of ex-MPDL Programme in South Eastern Europe
10. Nedžad Jusić - President of the Council of National Minorities within the Parliament of Bosnia and Herzegovina, President of the NGO “EURO ROM”, Sarajevo (BiH)
11. Javier Leon Diaz - General Legal Counsel and Human Rights Adviser, European Union Special Representative in BiH, Lawyer representing Sejdić case before ECtHR, Sarajevo (BiH)
12. Amela Tandara - Human Rights Adviser, OSCE Mission to Bosnia and Herzegovina, Sarajevo (BiH)
13. Živica Abadžić - Secretary General of the Helsinki Committee for Human Rights in BiH, Sarajevo (BiH)
14. Massimo Moratti - Political Advisor to the Central Election Commission of Bosnia and Herzegovina, Sarajevo (BiH)
15. Aleksandra Martinović - Judge of the Constitutional Court of the Federation of Bosnia and Herzegovina, Sarajevo (BiH)
16. Emir Pranović - Executive Director, NGO “Vaša prava”, Sarajevo (BiH)
17. Stevo Havreljuk - President of the Cultural and Educational Union of Ukrainians “Taras Shevchenko” in Banja Luka (BiH), President of the Alliance of National Minorities in Republika Srpska, Banja Luka (BiH)

18. Anka Koprenovi• - Secretary of the Cultural and Educational Union of Ukrainians “Taras Shevchenko” in Banja Luka (BiH)
19. Dragan Vujanovi• – NGO “Vaša prava”, Office in Banja Luka (BiH)
20. Goran Dragiši• - NGO “Vaša prava”, Office in Banja Luka (BiH)
21. Darko Marjanovi• – Legal Coordinator, ex-MPDL Programme in Bosnia and Herzegovina
22. Ratko Pilipovi• – Lawyer, ex – IDC BiH Office in Banja Luka (BiH)
23. Branka Kolar Mijatovi• – Lawyer, ex-IDC BiH Office in Banja Luka (BiH)

Telephone interviews:

24. Salvador Bustamante – Regional Coordinator for Bosnia and Herzegovina, ex-MPDL Programme in Bosnia and Herzegovina
25. Aleksandar • orni – Lawyer, Member of the Ukraine Greek Catholic religious community in Bosnia and Herzegovina
26. Aida Tanovi•, Lawyer, ex-IDC BiH Office in Sarajevo
27. Boris Kordi• - Lawyer, ex-IDC BiH Office in Mostar
28. Miroslav Krnješin, priest of the Ukrainian Greek Catholic Parish "Hrista Gorja" in Banja Luka
29. Stahnek Mihal – Vicar of the Ukrainian Greek Catholic Church in Bosnia and Herzegovina

Email correspondence

30. Jesus Saenz - Head of Mediterraneo & SEE Activities, MPDL Madrid

Visits: NGO “Vaša prava” – office in Sarajevo and field office in Banja Luka

KOSOVO

In-person interviews:

31. Adrian Zeqiri – Director, ECMI Kosovo, Pristina (Kosovo)
32. Jeta Bakija - Project Assistant, ECMI Kosovo, Pristina (Kosovo)
33. Lars Burema - Project manager, ECMI Kosovo, Pristina (Kosovo)
34. Andrea Najvirtova - Project manager, ECMI Kosovo, Pristina (Kosovo)
35. Nedžad Radon•i•, Executive Director, CLARD, Pristina (Kosovo)
36. Arbane Shala-Rama – Legal Advisor, CLARD, Pristina (Kosovo)
37. Anton Nrecaj, Legal Advisor, CLARD, Pristina (Kosovo)
38. Verginia Micheva-Ruseva - Civil Judge at District Court Level, European Union Rule of Law Mission in Kosovo (EULEX), Pristina (Kosovo)
39. Jenny Schokkenbroek - Civil Judge at District Court Level, European Union Rule of Law Mission in Kosovo (EULEX), Pristina (Kosovo)
40. Hilmi Jashari – Legal Manager, Civil Rights Programme Kosovo (CRPK), ex-Acting Ombudsperson in Kosovo, Pristina (Kosovo)
41. Avnija Bahtijari, Consultative Council for Communities (CCC) within the Kosovo President’s Cabinet, Pristina (Kosovo)
42. Sami Kurteshi - Ombudsperson in Kosovo, Pristina (Kosovo)

43. Aleksandra Dimitrijević – Head of the Field Office in Gračanica/Gracanice, Ombudsperson Institution in Kosovo, Gračanica/Gracanice (Kosovo)
44. Merita Ahma - Associate Protection Officer, UNHCR Kosovo, Pristina (Kosovo)
45. Shpend Halili - Public Information Associate, UNHCR Kosovo, Pristina (Kosovo)
46. Litigants in the *Access to Medicaments Case*, Fushë Kosovo/Kosovo Polje (Kosovo)

Telephone interviews:

47. Mikel Cordoba – Coordinator of ex-MPDL Programme in Kosovo, Acting Head of ex-MPDL Programme in South Eastern Europe
48. Katherine Nobbs, ex-Project Manager, ECMI Kosovo

Visits:

European Centre for Minority Issues Kosovo (ECMI Kosovo), Pristina (Kosovo)

Litigants in the *Access to Medicaments Case*, Fushë Kosovo/Kosovo Polje (Kosovo)

Centre for Legal Aid and Regional Development (CLARD), Pristina (Kosovo)

MRG STAFF:

Telephone interviews:

49. Claire Thomas – Deputy Director
50. Lucy Claridge - Head of Law
51. Cynthia Morel - ex-Senior Legal Advisor