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Supporting Stability and
Justice: a Case Study of
NGO Legal Services in
Post-Conflict Bosnia-
Herzegovina

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LEGAL EMPOWERMENT WORKING PAPERS

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SUPPORTING STABILITY AND JUSTICE: A CASE STUDY OF NGO LEGAL SERVICES IN POST-CONFLICT BOSNIA-HERZEGOVINA

Dan Manning¹

Executive Summary

The international community struggles with the challenge of repairing the harms that haunt post-conflict societies, including restoring the homes, property and other kinds of well-being of traumatized populations. The work of Vasa Prava, a nongovernmental organization (NGO) that has helped heal such wounds in Bosnia and Herzegovina by providing legal services to the displaced and disadvantaged, constitutes a case study of success in a difficult context.

Thirteen years after the Dayton Peace Agreement that ended the war in Bosnia and Herzegovina, the future of the country remains uncertain. While a return to armed conflict seems remote, the country remains divided on ethnic lines and the devastating impact of the war remains palpable. But much has been accomplished as well. Over two and a half million people were forced to leave their homes during the war. By 2007 over a million had been able to return home and many of the others had established new lives elsewhere. Likewise the war ruined the Bosnian economy, but the recovery process is underway. The international community retains ultimate control over the Bosnian government, through the Office of the High Representative, but sufficient progress has been made in restoring government to enable the signing of a Stabilization and Association Agreement in June 2008, the first major step toward joining the European Union.

Progress has been possible through the work of Bosnians themselves and with major support from the international community. This article argues that a relatively small legal aid NGO – fewer than 50 total staff throughout the country as of 2008 – the Association Vasa Prava BiH (“Your Rights”), is making a significant contribution toward achieving stability and prosperity through its advocacy on behalf of poor and disenfranchised Bosnians. Vasa Prava’s work directly addresses the legacy of the war by dealing with problems with housing, income, health care and social services. It promotes individual human rights, helps to build a legal system that holds government to account and advocates for systemic changes to address real problems. It is helping to build an active civil society and a culture of rights. Perhaps most fundamentally, it is playing a vital role in making recovery-oriented legal reforms a reality for Bosnia’s disadvantaged, dispossessed and disenfranchised populations, thus helping to rebuild their lives and their country. Obviously Vasa Prava alone cannot determine the future for BiH, but without it the risk of failure would be greater.

Bosnia is not the only country struggling with its past. While each country has its own unique history, the lessons learned from Vasa Prava’s work suggest the need for international support for similar organizations wherever rebuilding efforts are underway. More broadly, the Vasa Prava experience shows that legal advice, representation and advocacy can hold governments to account for meeting the needs poor and disenfranchised. That lesson applies everywhere.

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Introduction

The international community struggles with the challenge of repairing the harms that haunt post-conflict societies, including restoring the homes, property and well-being of traumatized populations. The work of Vaša Prava, a non-governmental organization (NGO) that has helped heal such wounds in Bosnia-Herzegovina by providing legal services to the displaced and disadvantaged, constitutes a case study of success in a difficult context.

The future of Bosnia and Herzegovina remains the subject of international speculation. On 2 June 2006 *The Times* of London published an article entitled "Calls For Freedom Make The Jigsaw Of Europe More Complicated Than Ever", pointing out that 18 new countries had been created in Europe since 1989 and speculating that:

"In the Balkans, Montenegro's independence drive is likely to be followed by Kosovo, a predominantly ethnic Albanian province of Serbia. That could spark fresh moves by the ethnic Serb Republika Srpska to break away from Bosnia, and Herceg-Bosna's Croats to join Croatia."²

The article included a map of newly independent countries as of 2006 and, under the caption "2020? Ones That Could Be Next", a map in which Bosnia and Herzegovina is replaced by Republika Srpska and Herceg-Bosna. In other words, the goal of the people who started the war in 1992 to create ethnic states through ethnic cleansing would be achieved. More than two years after *The Times* speculation, the future of Bosnia and Herzegovina remains uncertain.

The Constitution of Bosnia and Herzegovina,³ which was adopted as part of the Dayton Peace Agreement (DPA),⁴ recognized Bosniacs, Croats and Serbs as "constituent peoples" and divided the country into two officially designated entities: the Republika Srpska (RS) and the Federation of Bosnia and Herzegovina (the Federation).⁵ The RS is overwhelmingly Serb, and the Federation is predominantly Bosniac with a significant number of Croats.⁶ The DPA also created the Office of the High Representative and EU Special Representative (OHR), an international institution that oversees the implementation of the civilian aspects of the peace agreement.⁷

In his most recent report to the Peace Implementation Council,⁸ the High Representative emphasized that while BiH had taken an important step toward European integration by signing a Stabilization and Association Agreement,⁹

² J Page and R Beeston, 'Calls For Freedom Make The Jigsaw Of Europe More Complicated Than Ever' *The Times*, 2 June 2006 <<http://www.timesonline.co.uk/tol/news/world/europe/article670821.ece>> at 30 November 2008.

³ The country will be referred to as Bosnia and Herzegovina, Bosnia or BiH, the country's initials in Bosnian, throughout this article.

⁴ The General Framework Agreement for Peace in Bosnia and Herzegovina, commonly known as the Dayton Peace Agreement ended the war in 1995.

⁵ *Dayton Peace Agreement* (1995), Annex 4, Preamble and Article 1.3.

⁶ Before the war the RS was 54 percent Serb, 29 percent Bosniac, 9 percent Croats and the rest Others. Two years after the war Serbs accounted for 97 percent. *Request for evaluation of certain provisions of the Constitution of Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina*, Constitutional Court of Bosnia and Herzegovina, Case No. U 5/98-III, Third Partial Decision, 1 July 2000, 24.

⁷ DPA (1995) Annex 10. The High Representative has the power to "...remove from office public officials who violate legal commitments and the DPA, and to impose laws as he sees fit if Bosnia and Herzegovina's legislative bodies fail to do so." See *Mandate of OHR* at: http://www.ohr.int/ohr-info/gen-info/default.asp?content_id=38612.

⁸ Office of the High Representative, *Thirty-fourth Report of the High Representative for Bosnia and Herzegovina*, 1 April to 31 October 2008, <http://www.ohr.int/other-doc/hr-reports/default.asp?content_id=42678>. The Peace Implementation Council (PIC) was established following the signing of the DPA to provide international support for the peace process in Bosnia. *The Peace Implementation Council and its Steering Board*, <http://www.ohr.int/pic/default.asp?content_id=38563> at November 23, 2008.

“Regrettably, this important step has not led to a change in the way politics are conducted in Bosnia and Herzegovina. Instead, nationalist, anti-Dayton rhetoric challenging the sovereignty, territorial integrity and constitutional order of Bosnia and Herzegovina, as well as the authority of the High Representative and the Steering Board of the Peace Implementation Council, have continued to dominate politics in Bosnia and Herzegovina. Of particular note are the ongoing attacks by the Republika Srpska government against State institutions, competencies and laws. Together with provocative statements from the Bosniac side questioning the right of the Republika Srpska to exist, this has served to further undermine inter-ethnic trust, creating a cycle where it is more and more difficult for the country’s political leaders to meet each other half way so that they may make the decisions needed to take the country forward.”¹⁰

As the High Representative’s report shows, although the war ended more than 14 years ago, the future of the country is far from certain. No one expects a return to the killing and ethnic cleansing, and most observers consider the break-up of BiH unlikely. But there is no guarantee that the country is headed towards stability and prosperity in the near future. The legacy of the war is everywhere: the missing and the dead have not been fully accounted for; many homes have still not been rebuilt; segregation and discrimination are rampant; unemployment is widespread; the Government is bloated, fragmented and ineffective; and politics are dominated by nationalist gridlock.

Although there is a possibility that widespread recognition of Kosovo’s independence could precipitate the break-up of BiH,¹¹ it seems more likely that there will be either steady, slow progress or steady, slow decline. The formula for progress has been spelled out repeatedly. In essence it requires building the economy, respecting human rights, building democratic institutions and making government truly responsive to all citizens. Decline will come if nothing is done to change the current situation.

This article argues that a relatively small legal aid NGO – it had fewer than 50 staff throughout the country as of 2008 – the Association Vaša Prava BiH (“Your Rights”) is making a significant contribution to achieving stability and prosperity through its advocacy on behalf of poor and disenfranchised Bosnians. Vaša Prava’s work directly addresses the legacy of the war by dealing with problems with housing, income, health care and social services. It promotes individual human rights, helps to build a legal system that holds the Government to account and advocates for systemic changes to address real problems. It is helping to build an active civil society and a culture of rights. Perhaps most fundamentally, it is playing a vital role in making recovery-oriented legal reforms a reality for Bosnia’s disadvantaged, dispossessed and disenfranchised populations, thus helping to rebuild their lives and their country. Obviously Vaša Prava alone cannot determine the future for BiH, but without it the risk of failure would be greater.

1. Vaša Prava: a brief background

Vaša Prava is a domestic NGO that provides free legal assistance on civil matters for refugees, displaced people and other poor and disadvantaged Bosnians. Vaša Prava traces its roots back to the Legal Aid and Information Center (LAIC) network created by the Office of the United Nations High Commissioner for Refugees (UNHCR) in 1996, soon

⁹ A Stabilization and Association Agreement is “...the first contractual relationship with the EU necessary to achieve candidate status and possible accession to the Union.” 34th OHR Report (2008) 1.

¹⁰ 34th OHR Report (2008) 1.

¹¹ “Following Kosovo’s declaration of independence, the Republika Srpska National Assembly adopted a resolution that condemned Kosovo’s declaration and stated that the Republika Srpska authorities may seek a referendum of independence if a majority of EU and UN Member States recognized Kosovo’s independence.” Commission of the European Communities, *Bosnia and Herzegovina 2008 Progress Report*, SEC(2008) 2693 Final, 5 November 2008, 7.

after the end of the war. At its largest, LAIC had 60 offices in the country providing community legal education, legal advice, assistance in preparing documents, and representation before administrative agencies and courts to enable refugees and displaced persons to re-establish their lives in their communities. At first, LAIC offices were run by international NGOs using local staff. Between 1996 and 2002, LAIC created a smaller number of larger offices combined with outreach teams to handle more complex matters more efficiently. By 2003, the LAIC network had become an entirely Bosnian operation. A group of Bosnian NGOs created Vaša Prava as a new Bosnian NGO and took over operation of the system.¹²

As of late 2008, Vaša Prava had about 50 staff members, 16 offices and 60 mobile teams serving all municipalities. It provides legal advice and representation in court, conducts public awareness sessions, gives media presentations, trains local officials, prepares brochures on legal issues, operates a website and publishes a magazine. Since its founding as the LAIC network in 1996, Vaša Prava has assisted over 340,000 people with legal problems concerning housing, employment, education, health care, asylum and many other issues.

The main goals of Vaša Prava are to:

- support the rule of law and reinforce civil society;
- provide free legal assistance and information;
- facilitate the right of all refugees and displaced persons to return freely to their pre-war homes;
- raise public awareness on civil, socio-economic, cultural and human rights, and promote access to justice for the enjoyment of rights;
- monitor human rights violations;
- serve as a resource for individuals, communities and the nation; and
- become a nationally and regionally recognized legal aid network known for excellence, non-partisan service delivery, advocacy and public education.¹³

2. The situation in Bosnia and Herzegovina

Vaša Prava's importance is best understood in light of the legacy of the war and the current economic, social and political situation.

2.1 The impact of the 1992–1995 War

At least 100,000 people were killed during the war.¹⁴ The infamous massacre at Srebrenica at which Serb paramilitary forces killed an estimated 7,000 Bosnian Muslim men and boys is the most notorious example of the death and destruction that ravaged the country. And there are widows, widowers, orphans and elderly parents throughout BiH whose family members are gone. The emotional and economic impact of these

¹² UNHCR has continued to provide substantial financial support for Vaša Prava. The creation of Vaša Prava is an example of the success of UNHCR in providing early support for legal aid following conflicts. For examples of UNHCR's support for legal aid around the world see: UNHCR, *Legal Aid Search Results*: [http://www.unhcr.org/cgi-bin/texis/vtx/home?id=search&results=web&query=legal percent20aid](http://www.unhcr.org/cgi-bin/texis/vtx/home?id=search&results=web&query=legal%20aid).

¹³ Vaša Prava, *Annual Report 2007*, 7.

¹⁴ There is no agreement on the actual number. For years, responsible organizations inside and outside the country have said over 200,000 died. This estimate is based on information about specific individuals identified by the Research and Documentation Center (RDC) in Sarajevo, and provides a reliable minimum. RDC *Research Results and Database Evaluation*, 2007, <<http://www.idc.org.ba/aboutus.html>>. Researchers for the International Criminal Tribunal for the former Yugoslavia (ICTY) have estimated there were 102,000 victims. E Tabeau and J Bijak, 'War-related Deaths in the 1992–1995 Armed Conflicts in Bosnia and Herzegovina: A Critique of Previous Estimates and Recent Results', (2005), 21(2&3), *European Journal of Population* 187(20).

deaths has devastated the lives of hundreds of thousands of people and deeply wounded the entire country.

According to the 1991 census, Bosnia had a population of 4,354,911. Approximately 2.5 million people, almost 60 percent of the population, were forced to leave their homes during the war: 1.2 million fled to other countries, and 1.3 million were displaced internally. Hundreds of thousands of people spent years living in unsafe, unsanitary and overcrowded public buildings.¹⁵

Half a million homes were damaged or destroyed during the war, out of a total of 1.3 million, causing damage estimated at US\$4 billion.¹⁶ The destruction was widespread and part of a deliberate campaign to drive people from their communities. Roads, water systems, telephone lines and power lines were all attacked. The war ravaged the social as well as the physical environment: in Zvornik, for example, "...expulsions were followed by the destruction of houses, religious sites and community buildings in an effort to render return impossible ... The destruction of cultural objects was even more thorough: all 26 mosques and some other property belonging to the Islamic community in Zvornik were destroyed."¹⁷ Similar destruction occurred all over the country.

By the end of the war in 1995, whole regions were in fact ethnically cleansed. Before the war there had been a relatively large degree of residential and social integration. In what is now the RS, the population was 55 percent Serb, 28 percent Bosniac, 9 percent Croat, 5 percent who self-identified as Yugoslav and 3 percent other. In what is now the Federation, the population was 52 percent Bosniac, 22 percent Croat, 18 percent Serb, 6 percent Yugoslav and 3 percent other. The war changed all that: estimates made in 1997, two years after the end of the war, showed that 97 percent of the people in the RS were Bosnian Serbs and 73 percent in the Federation were Bosniacs, with Croats mostly segregated in their own regions.¹⁸

2.2 Rebuilding and return

The parties to the DPA were required to "...create in their territories the political, economic, and social conditions conducive to the voluntary return and harmonious reintegration of refugees and displaced persons, without preference for any particular group."¹⁹ In effect, the two Entities were obliged to reverse the effects of ethnic cleansing. But there were enormous obstacles: houses had been taken over by the "victors" in particular regions; property had been damaged or destroyed, and funds were needed to rebuild; there were no jobs; there was no guarantee of safety. Legal obstacles had been created because the governments had declared property abandoned and given it to members of the new "majority."

Despite these obstacles, by December 2007 over 1 million refugees and internally displaced persons (IDPs) had been recorded as having recovered their pre-war homes. These included 465,733 "minority" returns and 559,278 "majority" returns. Approximately 739,000 people returned to the Federation and 264,000 to the RS. The return process has since slowed substantially: from over 100,000 returns in 2002, the number fell to less than 7,000 in 2007.²⁰

¹⁵ UNHCR, *Extremely Vulnerable Individuals: the Need for Continuing Integration Support in Light of the Difficulties to Reintegration Upon Return*, (1999) 4.

¹⁶ UNHCR, *Review of the UNHCR Housing Programme in Bosnia and Herzegovina*, (1998) 10.

¹⁷ C Dahlman and O Tuathail, 'Broken Bosnia: The Localized Geopolitics of Displacement and Return in Two Bosnian Places' (2005) 95(3) *Annals of the Association of American Geographers* 644, 648.

¹⁸ "Request for evaluation of certain provisions of the Constitution of Republika Srpska and the Constitution of the Federation of Bosnia and Herzegovina", Constitutional Court of Bosnia and Herzegovina, Case No. U 5/98-III, Third Partial Decision, 1 July 2000, pages 24 & 32.

¹⁹ DPA (1995) Annex VII, Article II, paragraph 1.

²⁰ "Minority" and "majority" are the terms adopted by the international community to indicate whether the people were returning to an area where their "nationality" or ethnic group predominated, or not. The minority

Although the official figures on returns represent a significant accomplishment, they do not mean that the effects of ethnic cleansing have been reversed. At least 1 million people have not returned to their homes. In 2008 the State Ministry for Human Rights and Refugees (MHRR) of Bosnia estimated that the number of people registered as applicants for the status of an IDP was 125,000. In view of the limited number of returns in recent years the MHRR felt that that this figure was likely to remain stable.²¹ A significant number of the returnees are elderly, and many use their homes only on a part-time basis. There have been numerous sales of "returned" property, often at reduced prices.²²

Those who have returned face continuing discrimination. Many are unable to obtain electricity, gas or telephone services. Destroyed water pipes to minority areas have not been repaired. Illegally constructed buildings prevent the use of property. Roads have not been repaired. The Helsinki Committee for Human Rights in Bosnia and Herzegovina noted that: "Disharmonized systems in the field of health care, pension funds, the existence of different school curricula, difference in the entity and cantonal legislation, the large number of subordinate decisions and legislation bring returnees in all the parts of the country into a discriminatory position."²³

2.3 Poverty, employment and social welfare

The United Nations Development Program (UNDP) estimates that the poverty rate may be as high as 24 percent,²⁴ but the poverty rate does not fully describe the vulnerability of BiH residents. On the basis of the World Bank Living Standards Measurement Survey, it has been estimated that "...72 percent of adults in BiH are poor in some aspect of life: material consumption, education, health care, employment, housing, or property rights." In BiH the poor "...are also seriously affected by the feeling of powerlessness and inability to make their voices heard in communication either with other members of the community or with the authorities. Even given the extensive decentralization of the resources distribution system, the poor frequently have difficulty gaining access to the institutions responsible for the decisions and rulings that have a significant impact on their lives."²⁵

Estimates of unemployment range from 20 percent to 40 percent. In addition, "...endemic discrimination against members of minority communities continues to disproportionately affect returnees, denying them equal access to employment. Without employment many returnees are unable to ensure or maintain an adequate standard of living and, facing destitution, many either decide to go back to their area of displacement, or commute there to continue working."²⁶

The social assistance system is "...incapable of providing for the large numbers of the poor."²⁷ Before the war, the World Bank described the social protection system as "very highly developed"; after the war it was fragmented and localized, lacking any

returns refer to people who returned to their place of origin in BiH. UNHCR *Statistics Package*, 31 December 2007.

²¹ Internal Displacement Monitoring Centre, *Broader and Improved Support for Durable Solutions Required* (2008) < [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/C8DEEFACFF6821AD802570A7004C6A42?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/C8DEEFACFF6821AD802570A7004C6A42?OpenDocument) > at March 1 2009.

²² UNHCR, *Update: The State of Annex VII – March 2007*, <<http://www.unhcr.ba/updatemay07/annexVII.htm>> at 16 August 2007.

²³ Helsinki Committee for Human Rights in Bosnia and Herzegovina. 2005. *Report on the Status of Human Rights in Bosnia and Herzegovina, January-December 2005*. Helsinki.

²⁴ United Nations Development Program, *Bosnia and Herzegovina – Poverty Reduction*, 26 September 2008, < <http://www.undp.ba/index.aspx?PID=25&RID=26> > at 16 February 2009 >.

²⁵ World Bank, *Mid-Term Development Strategy of Bosnia and Herzegovina (PRSP)*, March, 2004, 15.

²⁶ Amnesty International, *Bosnia and Herzegovina: Behind Closed Gates – Ethnic Discrimination in Employment* 2005, 3.

²⁷ World Bank, above n 23, 31.

coordinated social policy. Once basic international humanitarian assistance had ended, deep-rooted problems emerged. Because the financing of social assistance is not related to policy or implementation, “[t]he system thus promotes the creation of substantial but unrealizable social rights, completely disconnected from the revenue base...[leading to] fundamental inequities in the implementation of rights and entitlements...”²⁸

2.4 Government, politics and discrimination

An investigation by UNDP found much wrong with governance, in terms of systems and performance, as the following quotations show:

- “BiH citizens still face a raft of discriminatory practices which circumscribe access to basic services and weaken the wider democratic process.”
- “[There is] routine disregard and patchy application of the rule of law. Citizens are deprived of legal certainty and equal treatment in the enforcement of regulations and administrative decisions.”
- “Portions of the population are denied decent educational and employment opportunities and access to a variety of other entitlements is often limited. This situation both threatens to undermine BiH’s human development inheritance, and the political settlement upon which peace was secured in 1995.”
- “The political and administrative framework created by the DPA has failed to bring effective solutions in many domains.”
- “BiH is still a fragmented country split along ethnic lines and burdened with a huge and ineffective public administration system.”
- “The weak Bosnian economy and its people of less than 4 million, have to support 14 governments, 150 ministries, 200 ministers and 146 local governments. This administrative structure results in a high level of complexity and a huge redundant bureaucracy.”
- “BiH has one of the highest numbers of administrative workers per capita in the region, yet at the same time the public sector does not provide a sufficient or effective service to citizens.”²⁹

As a result local government is dominated by ethnic interests, leading to the discriminatory denial of basic services. A report by the UNDP Rights-Based Municipal Assessment and Planning Project (RMAP) found “...favoritism toward the ethnic majority ... when it comes to allocating financial resources [and] property rights. This is direct discrimination against those groups that are not in favor, in terms of a whole range of rights.”³⁰

An assessment by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in December 2005 describes the general climate:

“Discrimination on the basis of gender, age, ethnicity, religion and social status is still widespread. Such discrimination is caused by a number of obstacles, i.e. the constitutional framework, inadequate laws, lack of implementation of laws, lack of financial resources, unjust allocations of existing financial resources, lack of political will, lack of awareness among citizens of their rights, lack of government accountability and overall insensitivity to human rights issues.”³¹

²⁸ World Bank, *Bosnia and Herzegovina Poverty Assessment Vol.I*, 21 November 2003, 100.

²⁹ UNDP, *National Human Development Report 2005 – Better Local Governance in Bosnia and Herzegovina*, 2005, 13–19.

³⁰ RMAP, *Consolidated Report of the Municipality Assessments in Bosnia and Herzegovina*, April 2004, 18.

³¹ OHCHR, *Taking Stock of Human Rights in Bosnia and Herzegovina*, Outcome Document, December 2005, 3.

2.5 Moving forward

A report by the Secretary-General of the United Nations on justice in post-conflict countries laid out the challenges facing Bosnia: "Peace and stability can only prevail if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuse of power, denial of the right to property or citizenship and territorial disputes between States, can be addressed in a legitimate and fair manner."³²

Admission to the European Union (EU) has become the shorthand way of describing what many people want Bosnia to become.³³ To join the EU, the country must achieve "...stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities."³⁴ In 2003, a European Commission Feasibility Report listed 16 priorities that must be addressed before EU accession negotiations could begin, including more effective governance, more effective public administration, an effective judiciary and effective human rights provisions.³⁵

Given the enduring legacy of the war and the multitude of economic, social and political challenges ahead, what difference can a relatively small legal aid NGO make? This article argues that Vaša Prava is a vital, and perhaps necessary, part of the solution to the country's problems. In view of the failure of political leadership, creating a culture of rights in which all citizens are treated equally by a responsive government can only come about through active involvement by citizens themselves. For poor and marginalized people, which in BiH includes a substantial portion of the population, active involvement is hard to achieve without assistance. Vaša Prava provides that assistance.

3. Vaša Prava's work

The core functions of Vaša Prava are to educate people about their rights, provide advice and representation, and work for systemic change on behalf of all disadvantaged people in BiH. Vaša Prava is the only legal services organization operating in the country. Most of its work involves providing direct legal assistance for individuals, which provides a significant amount of information about the problems people face. Vaša Prava clients are the poorest, most disenfranchised and excluded members of Bosnian society.³⁶

In 2005, Vaša Prava had approximately 80 employees in 16 offices throughout the country. Outreach was done at over 120 locations. Financial limitations reduced the staff to 36 in 9 offices in 2009, with 50 mobile outreach locations. Despite becoming smaller since then, Vaša Prava has continued to provide services in all areas of BiH.

In 2007 Vaša Prava assisted 27,556 people, of whom over 15,000 were new clients. Of the new clients 3,420 were IDPs, 4,222 were returnees, 754 were refugees, 6,555 were vulnerable local residents and 169 were in other categories. Vaša Prava handled 35,686 cases, including legal advice and preparation of documents in 18,870 cases, legal representation in administrative proceedings in 7,892 cases, legal representation in court in 7,451 cases, legal representation before human rights institutions in 368 cases, and

³² Secretary-General of the United Nations Security Council, *The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies*, S2004/616, 23 August 2004, 4.

³³ Although there are many obstacles to Bosnia joining the European Union, popular support for European integration is strong according to a comprehensive survey of citizen attitudes released in July 2007. Oxford Research International, *Bosnia 2007 - Visions of the Future, Part 1*, (2007) <<http://www.oxfordresearch.com/7.html>> at 30 November 2008.

³⁴ European Council, *European Council in Copenhagen Conclusions Of The Presidency* 22 June 1993, 14.

³⁵ Commission of the European Communities, *Report from the Commission to the Council on the Preparedness of Bosnia and Herzegovina to Negotiate a Stabilisation and Association Agreement with the European Union*, COM (2003) 692, 11 November 2003, 692.

³⁶ The author has worked with Vaša Prava and its predecessor organization the Legal Aid and Information Center network since 2000.

other types of actions in 1,105 cases.³⁷ Civil legal assistance is provided for poor and marginalized people in almost all areas of concern, including property rights, utilities, family and marital rights, pensions, labor rights, and social welfare.

Vaša Prava's significance comes as much from the way it provides services as the type of cases it handles. It does everything from publishing brochures to presenting cases to the European Court of Human Rights. Much of its work involves letting people know of their rights. The idea that people have rights and can actually do things to enforce them is a new concept for many in Bosnia. Simply getting the word out is an important task. Vaša Prava lawyers appear constantly on radio and TV. Topics have included labor laws, utility services and bills, illegal construction, temporary refugee status, the freedom of access to Information law, veterans' benefits, disability benefits, administrative appeal procedures, civilian victims of war and gender-based violence. Similar information is distributed through brochures and leaflets, *Vaša Prava Magazine* and the website.

Nearly 7,000 people attended 661 Vaša Prava workshops and information sessions in 2007. The discussions at these workshops were practical: How to maintain your status as a refugee. How to apply for medical care and social welfare benefits. How to get your utility service restored. How to file an administrative appeal. Because Vaša Prava works throughout the country, it is able to tailor its public education efforts to the needs of the people it serves.

The goals of the outreach are to let people know their rights so that they can exercise them on their own, and to let people know that Vaša Prava is there to assist them if they need help. Help can take the form of a simple advice session, or assistance in filing out a form. When more is needed, Vaša Prava will actually take on the case and do whatever is necessary from calling a local official to filing a case in court. When systemic problems are identified, advocacy can take the form of "test case" lawsuits intended to change laws or practices, negotiating with government officials or lobbying for legislative changes.

All these services complement and build on one another. Vaša Prava is able to do systemic work because it sees patterns of problems through its many individual contacts. It can provide effective training because of its extensive experience with so many communities. In short, Vaša Prava uses the entire range of legal strategies to meet the needs of the poor and disadvantaged in BiH.

A review of the substantive work done by Vaša Prava and the LAIC network, its predecessor organization, shows their involvement in many of the critical issues facing BiH in its effort to achieve more effective governance.

3.1 Refugees and IDPs

In keeping with its humanitarian role in repatriating refugees and IDPs, UNHCR established the LAIC network "...to provide Bosnian refugees and displaced persons, as well as third-country asylum seekers and refugees, with information and advice on existing services and the enforcement of individual rights."³⁸ Throughout the existence of the LAIC network and in the first years of Vaša Prava's operations, virtually all the work focused on enabling refugees and IDPs to meet basic human needs.

3.2 Property repossession

One of the most critical and complicated issues in rebuilding BiH has been property repossession. Trying to undo the effects of the war and restore pre-war rights in a

³⁷ Vaša Prava, *Annual Report 2007*, 9; author's interviews with staff, beneficiaries and donors.

³⁸ UNHCR, *Directory of Legal Aid and Information Centres*, May 1999, 6.

climate of unrelenting hostility and inadequate resources has been a colossal undertaking. Considering that by May 2006 over 1 million refugees and IDPs had recovered their pre-war homes, the degree of success has been remarkable, even if repossession of property has not always meant actually moving back home. Vaša Prava and the LAIC network played an essential role in this effort.

Restoration of legal rights to property was a necessary first step for people to return home. In October 2000, five major international organizations³⁹ adopted the Property Law Implementation Plan (PLIP) to ensure that all outstanding claims by refugees and displaced persons to repossess their properties were resolved. The intention was to create domestic legal procedures to apply the laws fairly. It treated property issues as a matter of the rule of law and respect for civil rights, not the subject of political contention.^{40,41}

Even after a proper legal framework had been established, huge obstacles remained. Nationalistic political leaders seeking to preserve their political bases resisted implementation of property laws. Local officials went to "...considerable lengths to prevent, hinder, disrupt and delay return..."⁴² and in any case most municipalities lacked the administrative capacity to process claims. On top of all this there was, and remains, a housing shortage in some areas.

PLIP addressed the problem through political intervention, capacity-building and the provision of housing assistance. Monitoring of actual implementation of property laws, determining how and why particular municipalities obstructed the laws, and taking necessary legal enforcement measures were essential. The LAIC network was in the best position to do detailed monitoring and enforcement because it was working with thousands of people seeking to get their homes back.

Many claims were denied for political reasons or because of misapplication of the laws. LAIC lawyers and advocates took such cases through the administrative and sometimes judicial dispute-resolution processes. Because the property laws are complex and the property ownership regime was being transformed from social to private ownership, municipal officials often did not know what to do. The LAIC staff provided training throughout the country. Getting the word out to refugees and IDPs was also important. Again, the centers were key players in the public information campaigns.

A typical LAIC case illustrates some of the barriers encountered:

N.R., a refugee, filed a request for property repossession in August 1998. Two years later she got a positive decision, which ordered the occupant of her apartment to vacate in 90 days. The temporary occupant refused to leave, even after a complaint to the Cantonal Ministry had resulted in an order to the municipal authorities to proceed with eviction within seven days. The municipal officials refused on the grounds that there was no adequate alternative accommodation available. N.R. went to her local LAIC, which complained to the Federal administrative inspector. Again, no action was taken. Only after the case had been brought to the Municipal Court and an order had been issued in October

³⁹ OHR, UNHCR, Organization for Security and Cooperation in Europe (OSCE), United Nations Mission in Bosnia and Herzegovina (UNMIBH), and the Commission for Real Property Claims (CRPC).

⁴⁰ OHR, UNMIBH, OSCE, UNHCR, CRPC, *Property Law Implementation Plan: Interagency Framework Document*, October 2000, 6.

⁴¹ In the first four years of the DPA, the international community focused on creating a legal framework for property return. Over intense opposition and through the use of the High Representative's powers to impose laws, the Entities were compelled to undo wartime laws that had given vacant properties to favored groups and created significant barriers to return. Many adjustments had to be made along the way, but as of 2000 the basic structure for resolving property claims was in place.

⁴² OHR et al, above n 38, 6.

2002 requiring the police to evict did the temporary occupant finally decide to leave.⁴³

At the same time, LAIC offices provided information and advice for families needing alternative accommodation when faced with eviction. They held numerous public information sessions and distributed brochures explaining exactly what the eligibility requirements were and describing what actions disqualified people from receiving alternative accommodation. In country-wide surveys of conditions, they were able to identify the quantity and quality of available accommodation and document the practices of various municipalities.

As late as 2005, Vaša Prava was still devoting substantial efforts to restoration of property rights. Another case example serves to illustrate the need for sustained legal advocacy to solve the problems:

J.B. an elderly single individual, had obtained an apartment in Zenica in 1984. Having been forced out during the war, J.B. applied for return of her apartment in 1999. The local authorities denied her request on the grounds that her documentation was incomplete. She attempted an administrative appeal on her own and it took until 2002 for the first instance body to reject her claim. She then sought assistance from the legal aid office in Dobož. On behalf of J.B., the Vaša Prava lawyer requested that the competent ministry provide the required documentation, filed an appeal to the second instance administrative body, filed three complaints with the Federation Ombudsman and filed a complaint with the Federal Administration Inspector challenging the administrative appeal body's refusal to act on the appeal. Once a favorable decision had been obtained from the second instance body, the lawyer had to get the Ombudsman's office to intervene to require that the administrative officials be instructed to implement the decision. Finally, in July 2005, six years after the process had started, J.B. received the keys to her apartment.⁴⁴

The themes in the cases were always the same: administrative bodies made incorrect decisions, refused to hold hearings, refused to make decisions and/or refused to implement decisions of higher authorities. In order to get relief for their clients, the lawyers had to be fully aware of all the intricacies of the real property laws, know all about administrative procedure law and know what relief was available from the Ombudsman, the Federal inspectors and the courts. Getting property back required constant advocacy. Although the degree of success in property returns is primarily due to the international organizations that created the Property Law Implementation Plan, the plan could not have been executed without Vaša Prava and LAIC.

3.3 Reintegration into communities

Establishing legal ownership of a house or apartment and getting the wartime occupants out were critical steps to returning home, but it was rarely enough. Over 50 percent of the homes in the Federation and about 25 percent in the RS had been damaged during the war, and at least 5 percent in each Entity had been demolished; power lines, water pipes and roads had been destroyed.

But the biggest problem for hundreds of thousands of people was that they were trying to return to an area that had been ethnically cleansed. Labeled "minority returns", these people were trying to go back to places where they would face deep hatred and where municipal governments were controlled by the "majority".⁴⁵ In addition to the huge

⁴³ Vaša Prava case file reviewed by author.

⁴⁴ Vaša Prava case file reviewed by author.

⁴⁵ As of 2007, UNHCR reported 465,733 "minority" returns and 559,278 "majority" returns. In the absence of a census it is not known how many people are actually living in their old communities. See p. 8 above.

psychological problems of trying to live where they were not wanted, these returnees were the victims of discrimination in their efforts to get utilities restored, register as residents, enroll their children in school, establish the right to health care and social services and get approval to rebuild their homes.

The LAIC network and Vaša Prava took on all the problems encountered by people trying to return home, whether they were in the minority or the majority. A seemingly simple first step, registering as a resident, was often very difficult. People were required to register in the municipality to which they wanted to return in order to be eligible for essential benefits and services. But decisions about registration were hard to make because people risked losing assistance in their temporary settlements, only to encounter insurmountable barriers to returning to their former homes. There were also many problems in getting the required documents, often from hostile officials. Legal advice and advocacy were often required. Vaša Prava did many cases of this type.

Restoring electrical and water services was also crucial. The experience of M.J., an LAIC client from Ključ municipality, was typical. Although his house had been rebuilt, the electricity company, Elektro distribucija, said he would have to pay the equivalent of well over €1,000 to get power lines run to his house. After some bargaining, he was told that if he installed the poles himself the company would run the cables. After he had done the work he was told he still had to pay a large amount of money, well beyond his means. It took intervention by LAIC to restore power to the entire village.⁴⁶

Having encountered many variations of the electricity problem, Vaša Prava took part in negotiations between the BiH Ministry for Refugees and Displaced Persons, the BiH Ministry of Energy and Public Enterprises and representatives of the international community on ways to restore power throughout the country. As with the property issues, the international organizations played the lead role, but because Vaša Prava had represented thousands of individual property owners, it was able to show patterns of discriminatory actions by the power companies. This information was essential in forcing an agreement to give returnees across BiH equal access to the electricity system, without having to pay for electricity meters or the labor cost of connections to their homes, and without being taxed for restoration of power. Since the memorandum of understanding was signed, Vaša Prava lawyers have been involved in implementing it, and often file complaints with the government ministries to ensure compliance with the agreement.⁴⁷

While the number of people who returned to their pre-war homes will not be known until there is a new census, it is certain that many people are back in their old communities.⁴⁸ That would not have happened without the promise in Annex 7 of the DPA and the strong backing of the international community; it also required the immensely practical education, advice and advocacy of LAIC and Vaša Prava.

4. Vaša Prava's expansion of services and populations served

From its establishment in 2003, Vaša Prava has continuously broadened its reach beyond refugees and IDPs. At the start, almost all of Vaša Prava's beneficiaries were refugees and IDPs; by 2007 close to half of those served were other vulnerable people. The categories of people now provided with free legal aid, except in criminal matters, include

⁴⁶ LAIC case records reviewed by author.

⁴⁷ Author's interviews with Vaša Prava lawyers.

⁴⁸ There has not been a national census for BiH since 1991. Bosniaks have resisted a new census on the grounds that it would legitimize ethnic cleansing. Serb politicians oppose any census that would leave out questions of ethnic or religious identity. Jusuf Ramadanovic, 'Row Over BiH Census Evokes Bygone Multiethnic Past', *Southeast European Times*, 21 November 2008, <http://www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2008/10/21/feature-02> at 28 November 2008.

asylum seekers, human trafficking victims, refugees/recognized refugees, returnees, IDPs, stateless persons, persons under temporary admission, torture victims, prison camp survivors, persons under humanitarian residence, children without parental care, minorities, single parents, victims of domestic violence, and local vulnerable populations such as welfare beneficiaries, civilian victims of war, disabled war veterans and disabled peacetime military, unemployed persons, pensioners, and employees deprived of their labor rights.⁴⁹

The case breakdown for 2007 by type of service was: (i) labor rights – 19 percent; (ii) family and marital rights – 9 percent; (iii) pensions – 10 percent; (iv) personal property – 6 percent; (v) public documents – 6 percent; (vi) utilities – 9 percent; (vii) private property – 15 percent; (viii) social welfare – 7 percent; and (ix) other – 19 percent.

There is no reliable way to determine the number of people who would qualify for Vaša Prava's services, but it is certain that the organization can only provide direct services for a modest percentage of those in need.⁵⁰ To broaden its reach, Vaša Prava seeks to do its work in a strategic way by advocating for systemic changes through its representation of individuals. Strategic advocacy focuses on overall systems – the functioning of municipal government – and substantive issues such as pensions and social welfare programs.

4.1 Administrative justice

Discriminatory practices, disregard of the rule of law, ethnic fragmentation, and a complex and redundant bureaucracy extend to almost every encounter Bosnians have with their government. Officials ignore requests from citizens, fail to comply with deadlines, refuse to collect information required by law and refuse to respond to complaints from inspectors and ombudsmen. The administrative appeals system does not correct these problems, because first and second instance appeals bodies often do not issue decisions, first-instance bodies often ignore decisions of second-instance bodies, second-instance bodies often ignore court decisions and courts often send cases back to administrators without making decisions on the merits of the claim.

In general the legal framework for oversight and control of government functions is adequate, but in practice it has not worked. To address these problems, the United States Agency for International Development (USAID) funded the Administrative and Procedural Systems Reform Project. Vaša Prava played a central role in one component, the Administrative Justice Initiative. Working with the Center for Institutional Reform and the Informal Sector (IRIS),⁵¹ Vaša Prava focused on the more than 40 municipalities covered by their offices in Sarajevo and Dobož. The immediate objective was to improve the way government officials resolved the multitude of administrative cases dealing with essential government benefits; the longer term objective was to change the way government functions in serving citizens throughout BiH.

Vaša Prava adopted a three-part strategy: (i) aggressive pursuit of individual cases; (ii) public awareness and education; and (iii) strategic advocacy. Individual cases were

⁴⁹ *Vaša Prava Annual Report 2007*, 7.

⁵⁰ As of July 2008, the population of BiH was estimated at 4.5 million, with an estimated poverty rate of 25 percent. United States Central Intelligence Agency, 'Bosnia and Herzegovina', *The World Factbook* <<https://www.cia.gov/library/publications/the-world-factbook/geos/bk.html>> at 29 November 2008. Using the poverty level as a rough gauge of eligibility for Vaša Prava services would mean that over 1 million people would qualify. Vaša Prava served 27,500 people in 2007, fewer than 3 percent of the potentially eligible population. Of course not every eligible person has a legal problem in any given year, but 55 Vaša Prava staff people cannot come close to serving everyone.

⁵¹ The IRIS Center is at the University of Maryland, Department of Economics: <http://www.iris.umd.edu/> The Administrative Justice Initiative was undertaken with support from the Public Interest Law Institute, Budapest, Hungary: <http://www.pili.org/en/> The author was a consultant on the project.

tracked to measure compliance with legal requirements, and appropriate interventions were made when violations were identified. Disciplinary and minor offence proceedings were initiated against offending officials. In some instances, damages actions were filed to recover compensation for harm suffered as a result of illegal practices. Vaša Prava lawyers regularly invoked the European Convention on Human Rights in seeking judicial relief from unlawful actions. The organization also conducted numerous seminars and training sessions for government officials to educate them about their responsibilities.

Recognizing that advocacy on behalf of individuals and educating the public and government officials was not enough, Vaša Prava broadened its reach by launching systemic advocacy campaigns to address problems with the civilian war victims benefits program and the pension system. The intention was to use these campaigns to develop an advocacy model to be applied to other issues.

4.2 Civilian victims of war

The Civilian Victims of War program⁵² provides cash assistance, medical care and other services to surviving family members of civilians killed during the war and to civilians who became disabled because of the war. As a result of under-funding, maladministration and outright discrimination, the program falls far short of meeting its goals.

The case of S.S., a Vaša Prava client, shows one of the problems with the program:

S.S. and her family, all Bosniacs, lived in Dobož, now part of the Republika Srpska, before the war. Her husband was compelled to serve in a work squad for the RS army during the war. He was killed in 1995. S.S. and her children had been forced to leave Dobož because they were Bosniacs. When she was finally able to return to Dobož in 2005, long after the end of the war, she applied for assistance under the civilian victims program. Her application was denied because under RS law she was required to apply within 6 months of her husband's death, an impossibility because there is no way a Bosniac could have returned to Dobož that soon after the war.⁵³

In addition to the deadlines encountered by S.S., there are many other barriers to receiving assistance: applications are ignored, excessive documentation is required, government departments do not produce the documents they have, appeals are never decided, corrupt officials demand bribes and so on. There is ample evidence of outright discrimination against members of the "wrong" ethnic groups who apply. Rigid documentation requirements provide no alternative methods of proof when documents were destroyed during the war. Funding is inadequate.

Clearly a case-by-case approach alone would not be sufficient. While continuing to do individual cases, Vaša Prava has embarked on a broader campaign. A publicity campaign, particularly through radio and TV appearances, has raised awareness of the issues. Vaša Prava has allied itself with several organizations concerned with the program such as the Landmine Survivors Network, which has many members seeking assistance. The publicity led to an invitation for Vaša Prava to participate in a legislative effort to reform the program. Members of the national legislature asked Vaša Prava to assist in drafting a statute that would (i) create uniform eligibility requirements and benefit levels throughout the country, (ii) remove control of the program from the Entities, (iii) provide adequate funding and (iv) establish fair procedures for administering the program. Although the changes have not yet been adopted, the fact

⁵² The Civilian Victims of War program now operates under different statutory authority in the Federation and the RS. The original program traces back to at least 1984 in the former Yugoslavia. Vaša Prava. 2005. *Analysis Of The Regulations On Civilian Victims Of War In BiH*. Author's files.

⁵³ Vaša Prava case file reviewed by author.

that representatives of civilian victims are lobbying for amendments is significant in a country with no history of citizen involvement in the legislative process.

4.3 Pension contributions

There are serious problems with the pension system in BiH. The system uses payments for current workers to support current pensioners. The widespread failure of employers to pay contributions means there is not enough money to pay pensions, disability payments and related healthcare benefits. Armed with the information showing that employers regularly defaulted on their obligations, Vaša Prava began pressuring the pension authorities to enforce the employer contribution laws. The lawyers filed individual claims, initiated legal proceedings and brought media attention to the problem. This led to high level meetings between Vaša Prava lawyers and pension and tax officials, which in turn led to greater enforcement action. The Federation Pension Bureau began a media campaign to let employers know they were going to be taking legal measures to collect contributions. At the same time the Cantonal Court for Sarajevo issued rulings in several cases that required the Employment Bureau to take action to ensure that beneficiaries' rights were protected.

In 2005 the Constitutional Court issued a judgment holding that individual pensioners had standing to sue to enforce the right to pension contributions from employers. This provided Vaša Prava with another tool to use for their clients and enhanced their power in negotiating with government officials. Advocacy by Vaša Prava and increased public attention to the issue caused the RS Pension and Disability Insurance Fund to issue a formal public call to all joint stock companies to provide the data on contributions going back to 1998, with a goal of resolving outstanding pension and disability claims.

The pension contribution issue is far from resolved, but Vaša Prava has been able to assist many individuals in establishing their rights, has educated many more about what their rights are, has made significant changes to the behavior of government agencies that will help all pensioners and applicants for health, disability and unemployment assistance, and has raised the importance of the issue on the public agenda.

4.4 Asylum and trafficking

In 2004 Vaša Prava signed a protocol with the BiH Ministry of Security on provision of free legal aid to asylum seekers, persons with temporary resident status based on humanitarian grounds and victims of trafficking. In a statement that could apply to many areas of Vaša Prava's work, the Office to Monitor and Combat Trafficking in Persons of the United States Department of State commended their efforts on trafficking:

"Vaša Prava is the only NGO providing pro bono legal assistance to victims of human trafficking in Bosnia and Herzegovina.... Attorneys from Vaša Prava are available to domestic victims from the time they arrive at a shelter, even if they are not formally registered by the state, and arrange all residency permits and asylum applications for foreign victims. If a victim chooses to testify, Vaša Prava represents the individual from the first statement until trial completion.

Through its uniform approach and intermediary work between victims and government, Vaša Prava has also helped to strengthen the rule of law in Bosnia and Herzegovina. Victims assisted by Vaša Prava are more likely to testify against their traffickers in criminal proceedings and have provided critical testimony leading to the conviction of several notorious traffickers and organized crime rings. Vaša Prava performs an integral civil role that the Bosnian

Government, due to funding and logistical restraints, cannot fulfill, and has given a voice to those previously silenced.”⁵⁴

4.5 Legal aid

Vaša Prava is a leading member of a coalition of NGOs advocating for the creation of a state-funded, domestic legal aid program. Since 2003, with the support of the Public Interest Law Institute (PILI), UNHCR and the Organization for Security and Cooperation in Europe (OSCE), the coalition has lobbied the Ministry of Justice and the State Parliament for adoption of a comprehensive legal aid law. The draft law prepared by the coalition provided the basis for a law now being considered by the RS Assembly. Vaša Prava’s substantial experience in providing civil legal aid has provided evidence of the need for a comprehensive legal aid program and direction in fashioning a program that responds to the needs of people in BiH. While much remains to be done to establish a legal aid program, a solid foundation has been built.

4.6 Anti-discrimination advocacy

Vaša Prava again collaborated with PILI on a major project entitled “Promoting Anti-Discrimination Laws and Practice in BiH”⁵⁵ to ensure that vulnerable ethnic and religious minorities have equal access to employment, education, and other basic human rights. The overall objectives of the project are to raise public awareness of problems of discrimination, promote the adoption of anti-discrimination legislation, policies and practices in BiH, and increase the capacity of civil society to combat discrimination.

During 2007 and 2008, Vaša Prava and PILI conducted a series of workshops at the regional and national levels to hear from stakeholders about the problems they encountered and to begin to fashion remedies. At the same time there was a media campaign using posters, brochures, and television and radio public service announcements to educate the public about discrimination. An important aspect of the project has been to increase the capacity of Vaša Prava and other advocacy NGOs to use strategic litigation to attack discrimination on a systemic basis.⁵⁶ Litigation efforts are still in the development stage, but a number of issues such as discrimination in employment practices and provision of municipal services have been identified as likely subjects of lawsuits.

Although the BiH Constitution explicitly adopts the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols (ECHR),⁵⁷ which includes anti-discrimination provisions,⁵⁸ there is no comprehensive domestic anti-discrimination legislation. Vaša Prava is now a member of the Ministry of Human Rights and Refugees’ working group, which is drafting legislation to fill this major gap. By October 2008, a proposed law had been drafted using European models and was being circulated for public comment. If adopted, the law would create new administrative remedies and give the courts substantial powers to force government agencies and private organizations to end discriminatory practices on a systemic basis.⁵⁹

No one involved in the anti-discrimination project expects major changes soon, but they do believe that the groundwork has been laid for a long-term campaign to realize the promise of equal treatment for all in BiH. Vaša Prava will be a central player in that campaign.

⁵⁴ United States Department of State, *Trafficking in Persons Report -Released by the Office to Monitor and Combat Trafficking in Persons*, 12 June 2007. < <http://www.state.gov/g/tip/rls/tiprpt/2007/82800.htm>> at 1 August 2007.

⁵⁵ The project was implemented with major support from the European Commission.

⁵⁶ The author took part in three strategic litigation training sessions during 2007 and 2008.

⁵⁷ *Constitution of BiH* 1995, Article II, Section 2.

⁵⁸ ECHR 1950, Article 14 and Protocol 12.

⁵⁹ Author’s review of draft law and interviews with Vaša Prava and PILI staff.

5. The importance of Vaša Prava

The necessity of doing the kind of work Vaša Prava does in post-conflict societies has been recognized by the United Nations. The United Nations Secretary-General's report on transitional justice⁶⁰ stressed the need to support domestic reform constituencies: "Civil society organizations, national legal associations, human rights groups and advocates for victims and the vulnerable must all be given a voice in..." rule-of-law reforms, justice reconstruction and transitional justice initiatives; "Effective rule of law and justice strategies must be comprehensive, engaging all institutions of the justice sector, both official and non-governmental..."; "Beyond the criminal law realm, such strategies must also ensure effective legal mechanisms for redressing civil claims and disputes, including property disputes, administrative law challenges, nationality and citizenship claims and other key legal issues arising in post-conflict settings"; there must be support for "...access to justice to overcome common cultural, linguistic, economic, logistical or gender-specific impediments. Legal aid and public representation programs are essential in this regard."⁶¹

A substantial part of Vaša Prava's work helps to ameliorate the practical consequences of the war. As described in detail above, the organization helps people to return to their homes, rebuild them, obtain utilities, establish residency, obtain financial assistance and health care, and register their children for school. In future it will be dealing with emerging issues such as care for children with disabilities or protection for victims of trafficking. These activities clearly benefit the people who come to Vaša Prava for help. The question is, does Vaša Prava's work promote stability and help alleviate poverty for society as a whole? A review of the type of work it does strongly suggests that the answer is yes.

Vaša Prava promotes government improvement in several ways. Through advocacy, its lawyers force government departments to deal with issues that they have ignored. By constantly invoking the law, they educate officials about their obligations; this is often supplemented with informal and formal training. Administrative appeals, however inadequate at times, force additional scrutiny of department operations. Judicial review brings even more attention, as does the use of the inspectorates and ombudsmen. The use of offense and disciplinary proceedings has a direct impact on the behavior of recalcitrant officials. The failure of officials to do their work properly can be the result of lack of training, lack of resources, lack of knowledge of the law, indifference, hostility, discrimination or in some cases outright corruption. Vaša Prava takes on all these issues to varying degrees.

Justice systems encompass not just courts, judges, police and prosecutors, but all the means of resolving disputes and enforcing the rule of law. Government agencies and the corresponding administrative appeals systems, and ombudsmen and inspectors, are all vital components of the justice system. Poor, disenfranchised and dispossessed members of society are even more dependent than most people on the proper functioning of these oversight bodies, because their very survival often depends on the help they get from government. Proper treatment, in turn, often depends on the effective functioning of appeals systems and judicial review and oversight.

On paper, BiH has a good justice system. The Law on Administrative Procedures and the Law on Administrative Disputes provide for the timely, fair and inexpensive administrative and judicial review of government agency actions. The practice clearly falls well short of the legal requirements. One of Vaša Prava's primary goals is to make that system work at both the administrative and judicial levels. No system functions properly without outside pressure to make it follow the rules. That pressure is most

⁶⁰ See p. 22 above.

⁶¹ Secretary General of the United Nations Security Council, above n 30, 7-13.

effective when it combines the real-life needs of claimants with the knowledge and skill of trained advocates.

The laws in BiH are often exceedingly complex and ineffective because many originated during the communist era. They were sometimes adopted with overtly discriminatory purposes, may conflict with other laws, may not provide real solutions to problems addressed, or are simply poorly drafted. With 14 legislative bodies in operation in BiH, confusion and conflict are inevitable.

Vaša Prava's work highlights problems with existing laws; its expertise and experience helps in fashioning more effective laws. Its work on the Civilian Victims of War program demonstrates this point. The statutes creating the program trace directly to pre-war Yugoslavia. They have been amended to varying degrees in each Entity, but many of the provisions simply do not apply properly to the 1992–1995 war. Also, each Entity made changes that were either overtly or indirectly discriminatory. Vaša Prava's work with many applicants for civilian victims' benefits put it in an excellent position to develop a new law, which they were asked to do. Lobbying by citizen's groups and advocacy organizations is relatively new to BiH, and Vaša Prava is helping to pave the way through this effort and others.

Through its extensive outreach and media and public education work, Vaša Prava is helping to create a culture of rights in which citizens understand that they have rights as individuals and that there are actions they can take to protect and enforce those rights. As a corollary to this, Vaša Prava is supporting the development of an active civil society through its work with law students, citizens' groups, advocacy groups and service organizations. It does this by sometimes representing the groups and their members and sometimes by collaborating on projects.

Vaša Prava has several other qualities that make it effective. First, it is a thoroughly Bosnian organization: it is a registered national NGO with its own board of directors and Bosnian staff. Because it is part of the Bosnian community, the staff are thoroughly familiar with the history and current problems of the country. It is one of the few NGOs that provides services throughout the country, which gives it a broad perspective on the issues.

Equally important, Vaša Prava has a deep commitment to creating a pluralistic society where everyone's rights are protected. This commitment comes from the shared values of the staff and board and permeates all aspects of Vaša Prava's work. They know personally and from their clients how harmful it is to have a political structure that puts ethnicity first. They are working hard to create democratic institutions that serve everyone, regardless of ethnicity.

Conclusion: possible lessons and implications

The BiH Constitution gives pride of place to human rights by declaring that: "Bosnia and Herzegovina and both Entities shall ensure the highest level of internationally recognized human rights and fundamental freedoms."⁶² Vaša Prava represents individuals in order to realize those rights and freedoms. Vaša Prava's core mission is to promote civil, socio-economic, cultural and human rights and to provide fair access to justice for the realization of those rights. The preamble to the Universal Declaration of Human rights acknowledges that "disregard and contempt for human rights [has] resulted in barbarous acts which have outraged the conscience of mankind", a statement that applies with full force to the 1992–1995 war. Correspondingly, recognition of human rights is the

⁶² Article II, Section 1.

"...foundation of freedom, justice and peace in the world." Vaša Prava helps to turn those lofty principles into day-to-day reality for ordinary citizens of BiH.

Vaša Prava's significance extends beyond the work it does for individuals and even beyond the benefit to individuals who are not its direct clients. It is helping to create links between ordinary people and the government institutions that are intended to serve their needs. In forging those links it is, step by step, improving the performance of the institutions and helping to create a climate in which there is transparency and accountability. Vaša Prava cannot directly address the serious political failures in Bosnia, but by helping build responsive institutions it can show people that change is possible and give them more reason to demand political change.

One possible criticism of support for civil society organizations such as Vaša Prava, whether in Bosnia or elsewhere, is that they are not sustainable – that is, they require outside support to continue operating, and in the absence of such support they cannot sustain their work. There are several powerful counter-arguments to this criticism.⁶³ For the sake of brevity, suffice to say that the sustainability of a country's recovery can be influenced by the kind of services offered by Vaša Prava. Furthermore, such civil society services can be far superior to any potentially offered by a government by virtue of an NGO's greater flexibility and a government agency's greater susceptibility to corruption and political control. In many societies, legal service NGOs do prove sustainable because they diversify their funding sources. In a situation such as that in Bosnia, helping to sustain recovery through NGO support trumps any quibbling over whether a civil society group is sustainable in the long term.

Lessons from Vaša Prava's Work

- **Advocacy Matters**
No matter how good the laws or the system for enforcing them, real change requires that individuals and disadvantaged groups have knowledgeable and skilled legal representation.
- **A Small Organization Can Make a Big Difference**
Whether at its peak of over 120 staff or at its current size of fewer than 60, Vaša Prava has demonstrated that a small organization with the right skills, commitment and focus can have a major influence on government and private actions.
- **The Method for Providing Legal Aid is Important**
Legal Aid NGOs can accomplish much more than systems that rely on individual private lawyers. Publicly funded legal aid systems using private lawyers cannot develop the knowledge base or provide the range of services such as public education, outreach, advice, individual representation and systemic advocacy that can be provided by legal aid NGOs.
- **Advocacy for the Disadvantaged Promotes Justice Sector Reform**
The justice sector includes not only courts but all levels of government. Equal justice for all cannot be achieved unless the poor and disadvantaged have a voice in the system. Legal aid NGOs help those voices to be heard.
- **Advocacy Promotes Post-Conflict Reconciliation and Economic Development**
Resolution of immediate post-conflict issues such as housing, documentation and social welfare services lays the groundwork for longer-term economic

⁶³ See, for example, S Golub, 'Myths of Sustainability' (2003) 41, subsection in, *Beyond Rule of Law Orthodoxy: The Legal Empowerment Alternative*, Rule of Law Series 19.

development. Legal aid NGOs help with short-term and long-term issues and can adjust their services as needs evolve.

- Long Term International Support is a Good Investment
Building an effective system to represent the poor and disadvantaged takes time and money. Outside support is necessary to provide the services when they are most needed; but such support must also last long enough to establish domestically-supported systems.

Bosnia is not the only country struggling with its past. Each country has its unique history, but the lessons learned from Vaša Prava's work suggest the need for international support for similar organizations wherever rebuilding is underway. More broadly, the Vaša Prava experience shows that legal advice, representation and advocacy can hold governments to account for meeting the needs of the poor and disenfranchised. That lesson applies everywhere.