

# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN **MONTENEGRO**

AUTHOR **MAJA RAIČEVIĆ**



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# MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN MONTENEGRO

## INTRODUCTION

Montenegro was among the first ten countries that signed and ratified in April 2013 the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), without any reservations<sup>1</sup>. In accordance with Article 68 of the Convention, GREVIO started the first evaluation in January 2017. The Montenegrin state authorities subsequently submitted their state report on July 11, 2017. Montenegrin civil society organisations (CSOs) also took part in the baseline evaluation by sending their Shadow Report<sup>2</sup> to GREVIO on July 3, 2017. In October 2017, GREVIO conducted a national dialogue with the state representatives of Montenegro in Strasbourg, and as a second step, GREVIO conducted an evaluation visit to Montenegro in November 2017. During the visit, the delegation met

with both governmental and civil society representatives, including the Ministry of Labour and Social Welfare, Justice, Interior, Education, Health, as well as civil society and CSOs that provide specialist support services and lawyers practicing in the field. The publishing of the GREVIO First Evaluation Report on Montenegro is expected in October 2018.



Montenegro was among the first ten countries that signed and ratified in April 2013 the Istanbul Convention, without any reservations.

<sup>1</sup> Chart of signatures and ratifications, status as of 04/07/2018 at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?desktop=true>

<sup>2</sup> Shadow Report on the Implementation of the Istanbul Convention in Montenegro by: Women's Rights Centre, Women's Safe House, SOS Hotline for Women and Children Victims of Violence Nikšić and SOS Hotline for Women and Children Victims of Violence Podgorica, at: <http://rm.coe.int/report-ngo-montenegro-2/168073c980>

Women CSOs, with support of foreign donors, have implemented most of the Strategy's activities, including training, service provision (food, accommodation, psycho-social support, transport, free legal aid etc.), advocacy and informative campaigns.

The *Law on Gender Equality*<sup>3</sup> uses a gender neutral definition of GBV as any act that causes or could cause physical, mental, sexual or economic harm or suffering, as well as a threat of such act that seriously impedes a person's ability to enjoy his or her rights and freedoms in both public or private life, including domestic violence (DV), incest, rape and trafficking in human beings. It fails to recognise that women are predominantly exposed to these forms of violence because of their gender. The same refers to other relevant legal acts, such as *Law on Protection against Domestic Violence*<sup>4</sup> (LPDV) and Article 220 of the Criminal Code (CC) - *Violence in the Family and Family Community*, whose definitions are also gender-neutral which is not in line with the Istanbul Convention (IC) and fails to acknowledge that women are disproportionately affected by violence. The 2017 changes of the CC introduced definitions of other forms of violence against women (VAW), in line with the IC - Female genital mutilation (Art 38), Forced Sterilisation (Art 39) and Stalking (Art 34).

*The Strategy on Protection from Domestic Violence* (the Strategy) for the period 2016-2020, is the only official document whose definitions are aligned with the Article 3 of the Convention (apart from its title).

Women CSOs, with support of foreign donors, have implemented most of the Strategy's activities, including training, service provision (food, accommodation, psycho-social support, transport, free legal aid etc.), advocacy and informative campaigns. As stated by Biljana Zeković from CSO SOS Helpline for women and children DV survivors – Podgorica : *When you look at the Government's Annual Report on the Implementation of the Strategy for Domestic Violence, the impression is that this report is submitted by a non-governmental organisation, because 90% of the activities is carried out by women CSOs, none of which has been funded by the state.* There are other important gender sensitive policies (Action Plan on gender Equality; Strategy on Resolution 1325, Action Plans for Chapter 23 and 24; Strategy on Roma; Persons with disability; LGBT persons) - but again, supported with very limited resources of the ministries in charge for their implementation.



<sup>3</sup> Article 7, paragraph 7 of the Law on Gender Equality, Official Gazette of the Republic of Montenegro No. 46/2007; No. 073/10, 040/11; 035/15.

<sup>4</sup> Article 8 of the Law on Domestic Violence Protection, Official Gazette of Montenegro, no. 46/10, 40 / 2011-1 at: <http://www.mpa.gov.me/ResourceManager/FileDownload.aspx?rid=258041&rType=2&file=Law%20on%20domestic%20violence%20protection.pdf>

The Working Group for Monitoring of DV Strategy (2011) was the first formal body in charge of coordination and reporting on DV Strategy. However, due to very rare meetings and a total lack of visibility and results, it remained strictly formal. In May 2017, in compliance with the Article 10 of the IC, the Government established the Committee for coordination, implementation, monitoring and evaluation of policies and measures for prevention and fight against all forms of violence (the Committee)<sup>5</sup>. The Committee is chaired by the Minister of Labour and Social Welfare and composed of high level representatives of the Ministry of Justice, Ministry of Interior, Ministry for Human and Minority Rights, Ministry of Health, Supreme Court of Montenegro, State Prosecutors Office and the Union of Municipalities of Montenegro. Hence, the positions of the Committee members are in most cases politically affiliated, and not the expert positions that are independent of government mandates. Women's CSOs providing

specialised support services to survivors of VAW and DV were not included in the work of the Committee.

Although the Committee should have a powerful role in furthering the implementation of the IC, the Government again hasn't provided necessary resources for the operation of this body.

In 2018, following the requests from women CSOs and protests provoked by failure of the police to prevent femicide and protect women survivors of violence, the Ministry of Internal Affairs established an Operational Team for combating VAW and DV. This body has a mandate to discuss high risk cases and to provide recommendations to all institutions involved in the survivor protection process. The Team has similar constituency as the Committee, but also includes representatives of 5 women CSOs<sup>6</sup> with the same mandate to present cases and provide opinions and recommendations as the state representatives.

## INTIMATE PARTNER VIOLENCE (IPV)

### PREVALENCE AND OFFICIAL STATISTICS ●

Official data on DV is collected by the Ministry of Human and Minority rights, and published annually<sup>7</sup>. Their reports contain the data on DV cases according to whether they were qualified as misdemeanour offences (according to the LPDV) or criminal acts (according to Article 220 of the CC)<sup>8</sup>. The data are sex-disaggregated, but do not include information on types of violence<sup>9</sup> or

relationship between the victim and the perpetrator. There is no official centralised electronic data collection system<sup>10</sup>. The data are collected manually by each institution, according to their own methodology, so they are not comparable. Therefore, it is not possible to determine the prevalence of IPV in all registered DV cases, or to automatically obtain information on prosecution and court decisions.

<sup>5</sup> Source: website of the Government of Montenegro at: <http://www.gov.me/ResourceManager/FileDownload.aspx?rld=273935&rType=2>

<sup>6</sup> NGO members are the representatives of: Women's Rights Center, SOS Hotline Niksic, Women's Safe House, Centre for Roma Initiatives and SOS Hotline Podgorica.

<sup>7</sup> Police, judiciary, prosecution, social work centres and health services submit their data to the Ministry of Human and Minority Rights, according to the obligations set out in the Action Plan for Gender Equality.

<sup>8</sup> Annual Reports on Data on Domestic Violence of the Ministry of Human and Minority Rights, 2015 and 2016, available at: <http://www.minmanj.gov.me/biblioteka/izvjestaji>

<sup>9</sup> Some data on types of violence are collected by Centers for Social Welfare, but the methodology is unknown.

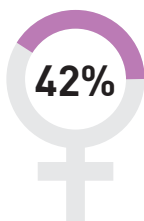
<sup>10</sup> The lack of data collection system is stated in the report from September 2016 made by the Ministry of Justice, with support of UNICEF Office in Podgorica, available on: <http://www.gov.me/ResourceManager/FileDownload.aspx?rld=253391&rType=2>

However, women's CSOs data show that majority of DV cases they register are cases of IPV against women<sup>11</sup>. The results of the 2017 UNDP Study on Violence against Women and Family Violence in Montenegro<sup>12</sup>, conducted on the sample of 2000 women, shows that 42% of women in Montenegro have, during their lives, been exposed to some form of violence (psychological, physical, economic or sexual) by their spouses or partners, whereas 18% of women have suffered from one of these forms of violence over the last 12 months. The study found that patriarchal attitudes and traditional behaviour, which are discriminatory by nature and originating from gender stereotypes, are still widely spread in Montenegro.

These attitudes prevail in responses of representatives of relevant institutions involved in the system of protection against DV. Although there is a declarative consensus that all forms of DV should be reported to competent authorities, many state employees have a dilemma to which extent this issue represents a private family issue and when it is appropriate to intervene and apply the law. The research has shown that the decisions are made on the basis of subjective standpoints and individual perceptions of privacy and autonomy of a family. Although representatives of institutions recognise various forms of violence, they mostly refer to the physical violence. They acknowledge the consequences of psychological violence, but do not believe that these forms of violence could be proven. Economic and sexual violence are rarely mentioned as part of the practice.

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In addition, the same research found that representatives of relevant institutions act in a manner that results in less effective protective measures, with obvious victim blaming, avoiding psychosocial aspects of their work, without adequate training for treatment of survivors, and shifting the responsibility for victims' support onto CSO's. Regarding the multiagency cooperation, it has been noted that responsibility for resolving DV issues is always, directly or indirectly, transferred to some other institution in the system for protection of survivors. Particularly disturbing is the fact that the majority of institutions, with the exception of Centres for Social Work (CSW), believe that there are more important and more dangerous problems in the society that should be given priority.

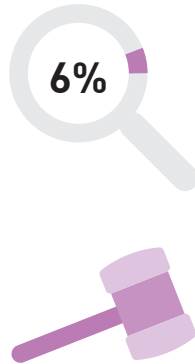


42% of women in Montenegro have, during their lives, been exposed to some form of violence by their spouses or partners, whereas 18% of women have suffered from one of these forms of violence over the last 12 months.

<sup>11</sup> Source: NGO report on the implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence in Montenegro, 2017, Women's Rights Centre, SOS Hotline for Women and Children Victims of Violence-Nikšić, Women's Safe House and SOS Hotline for Women and Children Victims of Violence – Podgorica; at: <https://rm.coe.int/report-ngo-montenegro-2/168073c980>

<sup>12</sup> "Research on Prevalence, Perceptions, Costs and Multidisciplinary Response to Domestic Violence", 2017, was conducted under the Project "Support to policies against discrimination and gender equality", funded by the EU Delegation in Montenegro and implemented by UNDP in cooperation with the Ministry of Human Rights and Minorities, with the objective to determine the prevalence of violence against women in Montenegro, the attitude of the general population and institutions towards violence against women, as well as direct costs of intimate partner violence, available at: <http://www.me.undp.org/content/dam/montenegro/docs/publications/si/Gender/Istrazivanje%20o%20nasilju%20u%20porodici%20i%20nasilju%20nad%20zenama%202017.pdf>

The research has also tried to calculate the direct costs<sup>13</sup> of IPV in Montenegro, its consequence to the Gross Domestic Product (GDP), as well as its demographic effects. The results showed that total loss amounts to EUR 233 million per year or 6% of GDP. Moreover, the annual direct cost of unprocessed cases (per victim) totals EUR 26,000, which is more than twice as high compared to the cost per victim whose case has been processed by the institutions (EUR 11,000).



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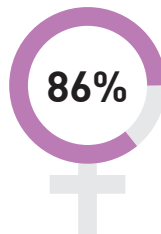
The annual direct cost of cases per victim

Unprocessed cases	Processed cases
<b>26,000 €</b>	<b>11,000 €</b>

The official data on *femicide* is also missing. There is data collected by a women's CSO Women's Rights Centre<sup>14</sup>, mostly from media reports and available administrative sources<sup>15</sup>. According to this report, at least 73 murders of women happened in the period from 2001 till 2017. The highest number of femicides occurred in the woman's home. Of the total of 51 murders of women in Montenegro in the period from 2001 to 2010, no murder was committed by a person unknown to the woman. For the period 2011-2018, an analysis of newspaper articles was used<sup>16</sup>, so the number of femicides is not final, given that perhaps not all cases of murder of a woman came into the media. During that period, according to the available data, at least 22 women were killed. 86% of femicide is committed in a family context, out of which 64% by an intimate partner, and in other cases by male family members - father, grandson, nephew and daughter's ex-partner. Only in 3 cases of femicide there was no family or partnership relationship. In 4 cases that ended with the murder of 3 women and the attempted murder of 2 women, the perpetrator was repeatedly reported to the police and other competent institutions, but they failed to perform risk assessment and provide protection.<sup>17</sup>



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**LEGAL FRAMEWORK** ● Since 2010, IPV is primarily regulated through the LPDV, a misdemeanour law, ensuring the protection of survivors and penalisation of perpetrators.

<sup>13</sup> Direct costs of intimate partner violence represent measurable costs payable in money (or in kind, but expressed in money): salaries of employees working in relevant institutions responsible for processing maltreated persons (social and health workers, judges, police), costs incurred during work in the field, costs of duty, costs of medical material, forensic costs, etc. Although all these costs are directly measurable, often they cannot be calculated due to the lack of necessary data.

<sup>14</sup> The Report "Femicide in Montenegro 2001-2017", was prepared by NGO Women's Rights Center in 2018.

<sup>15</sup> The only available official research on femicide in Montenegro is a study *Forensic Characteristics of Women's Murder in Montenegro in the 21st Century*, published in the Medical Journal of Montenegro in 2013.

<sup>16</sup> Source: The Report "Femicide in Montenegro 2001-2017", was prepared by NGO Women's Rights Center in 2018.

<sup>17</sup> NGO Shadow Report for GREVIO, July 2017.

<b>TYPES OF VIOLENCE</b>	Physical, psychological, sexual or economic violence against spouses and partners from a cohabiting union and other members of family household, regardless of the place where it was performed (in line with Article 3b, IC)
<b>ACTS OF VIOLENCE COVERED</b>	Any act or omission of act that endangers or violates the physical, psychological, sexual or economic integrity, sanity and serenity of another member of the family: use of physical force; threats to use force or induce danger that may provoke a feeling of personal insecurity or cause physical pain in other family member; verbal assaults, swears, calling by offensive names or other insults; denying other family member freedom of communication with third persons; exhausting through labour, deprivation of sleep or other rest, threats to expel from residence or take away children; sexual abuse; stalking; damaging or destroying joint property or property of other family member or attempts to do so; denying means of subsistence to other family member; behaving rudely and disturbing family peace of a family member that does not share family community with; insufficient care to provide food, personal hygiene, clothing, medical care to children or other family member who he has a duty to take care of, where this family member needs special care for reason of illness, disability, old age or other personal characteristics; insufficient care to ensure regular school attendance, or failure to prevent the child from being in harmful company, vagrancy, beggary or theft or otherwise severely neglected duties concerning child development and education; a failure to report (hiding) family member with "special needs".
<b>SENTENCES</b>	The penalties range from ten to sixty days in prison and fines of three to twenty times the minimum wage. The LPDV also includes misdemeanour penalties for violation of the three-day eviction order. Conduct ranging from the use of physical force to threats, verbal insults, sexual abuse, stalking, and damaging property are subject to "a fine amounting to minimum three-fold [minimum wage] or a prison term of minimum ten days."
<b>PROTECTION ORDERS</b>	Protection orders (PO), emergency protection orders (EPO), and temporary police eviction order (TPEO). POs and EPOs may be issued by the misdemeanour court, while the police has the power to issue a three-day TPEO outside of the court's working hours/regular sessions (in line with Art. 52 and 53, IC).
<b>VIOLATION OF PROTECTION ORDERS</b>	Criminal offence (CC Art. 220, par.5) Sentence (in line with Art. 53, IC): fine (400-4000 EUR) or imprisonment (up to 6 months).
<b>PROTECTION ORDERS AND EMERGENCY PROTECTION ORDERS</b>	There are 5 protection orders: eviction order, restraining order, order against harassment and stalking, addiction treatment and psycho-social therapy. Protection orders can be granted before and during the proceeding. EPO has to be issued within maximum 48 hours of the receipt of petition and last till the end of the court proceeding. POs are long-term orders that can last from 30 days to 12 months and may be issued during the court proceeding. A judge may prolong POs for a period of up to two years.
<b>TEMPORARY POLICE EVICTION ORDER</b>	TPEO is issued for a maximum of three days. The written order to perpetrator to leave or not return to residence or other premises must be served by police officer immediately, within a maximum of two hours.

**Table 1** – Key elements of the Law on Protection against Domestic Violence



The LPDV defines a wide circle of protected persons including persons who share the same household, regardless of kinship. Therefore, it provides protection for spouses and partners from a cohabiting union and “members of family household”, but due to a narrow definition of family<sup>18</sup>, leaves out partners or ex partners that have never shared the same household, as well as ex in-laws.

The LPDV<sup>19</sup> pays special attention to the provisions related to: the urgency of acting of all institutions (Article 7), duty of all public legal entities to report violence (Article 9), emergency intervention of the police and other public legal bodies dealing with the protection of victims (Article 10), designing victim assistance plan (Article 11), social protection of the victim (Article 12), legal aid for the victim (Article 13), victim’s security (Article 14), confidentiality of procedure (Article 15) and procedures of issuing orders of protection (Article 26 – 34).

*The Criminal Code* (CC) criminalises IPV through various provisions. CC Art. 220 provides the definition of DV, but lacks the

**OBLIGATIONS ACCORDING TO DV LAWS IN MONTENEGRO**

- Emergency of procedures;
- Bigger authority of Misdemeanour Courts (5 POs);
- Obligatory reporting of DV for all state actors;
- Centralised DV database;
- Bigger Police Authority (72 hours eviction order);
- Multiagency approach/coordinating role of Social Welfare;
- Victims Protection (assistance plan, social care, free legal aid, confidant person Victims Protection ( assistance plan, social care, free legal aid, confidants).

precise description of all forms of DV stipulated by the Article 3, paragraph b. of the IC, as it is the case with LPDV.

<b>CRIMINAL OFFENCES AGAINST MARRIAGE AND FAMILY</b>	Domestic violence including violation of DV protection orders; abduction of a minor; neglect or abuse of a minor; omission to provide child support, breach of family obligations; incest; rape, including marital rape; sex act over a helpless person; bigamy; concluding a void marriage; allowing conclusion of unlawful marriage; customary marriage with a juvenile.
<b>OTHER RELATED CRIMINAL OFFENCES</b>	Heavily bodily injury; minor bodily injury; abandonment of a helpless person, endangering safety, coercion; abduction, ill-treatment, unauthorised photographing, wiretapping and recording; unauthorised publication and demonstration of other person’s documents, portraits and recordings; destroying or damaging property of another person; unlawful possession of weapons and explosives; submission to slavery, slavery-like conditions and forced labour; female genital mutilation; stalking; violation of equality; aggravated homicide.
<b>DV SENTENCES</b>	Fines or imprisonment, up to 12 years.

**Table 2** – Key elements related to domestic violence in the Criminal Code

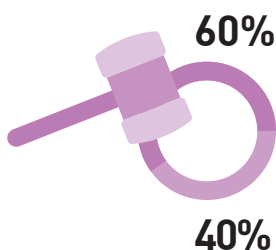
<sup>18</sup> Art. 3 of the Law on protection from family violence, Official Gazette of Montenegro, No. 46/2010.  
<sup>19</sup> The Law on Protection from Domestic Violence, Official Gazette of Montenegro, no. 46/10, 40/ 2011-1 at: <http://www.mpa.gov.me/ResourceManager/FileDownload.aspx?rid=258041&rType=2&file=Law%20on%20domestic%20violence%20protection.pdf>

DV is defined as “the use of severe violence to violate bodily and mental integrity of a family member or members of a family community”, but this definition does not specify the meaning of “severe” violence. Hence, in practice, only the most serious cases under Article 220(3) comprising “heavy bodily injury” or ongoing violence, go to the criminal court. In the period from 2013 to 2017, only 10%-14% of DV cases were charged as criminal offences. Greater sanctions are a rare occurrence, even when there was “severe” physical violence. In 2017, almost 60% of all convictions were suspended sentences, admonitions, acquittals, and fines, while prison sentences make around 40% of all convictions. The CC also provides a narrow definition of protected persons and needs to be amended. Unlike the misdemeanour procedure under LPDV, the criminal procedure does not provide protection measures for DV survivors, which requires amending of the Criminal Procedure Code. The partial overlapping of LPDV provisions with the provisions of the CC in practice creates the problem of appropriate qualification of the act of DV, i.e. the adoption of correct decision on whether the acts of DV should be prosecuted as misdemeanour in accordance with the LPDV, or as criminal offences in accordance with the CC. Such imprecision creates legal insecurity, because it is impossible to predict with certainty the consequences of the offence based on existing provisions of the law.

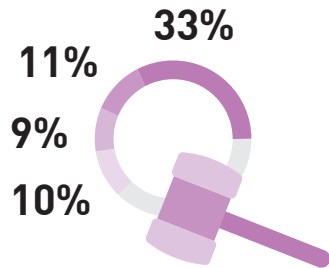
Judges rely on criminal records provided by the police, the victim’s application, and the CSW’s opinion to issue emergency POs, but also on their own personal perception. In cases where there is no previous record or physical evidence of violence, judges still use the confrontation of the victim and the perpetrator, although the practice is contrary to Article 56 of the Convention. For women who have never visited the police or CSW, CSOs play a critical liaison role between institutions to help secure POs.

Although the LPDV provides for 48 hours emergency POs, they are rarely issued. Most misdemeanour judges wait until the end of proceedings to issue them, thereby negating the emergency process by relegating the application for the emergency POs to the long-term procedure that lasts till the end of court procedure, sometimes for months.

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According to the Ministry of Justice Report, between 2010 and 2015 the most common misdemeanor punishments were fines (33%) and suspended sentences (11%). In only about 9% of cases did the offender receive a prison sentence, while nearly 10% of offenders received only a warning.

The key findings of CSO monitoring<sup>23</sup> are extremely worrying - they demonstrate a lack of physical protection for survivors, even after repeated reports of violence to the police and other competent institutions. The police do not monitor whether the violator respects the protective measures and mostly react only on survivors' request. They often do not recognise the violation of the PO against harassment and stalking, as noted by the CSO activist from SOS Help line for women and children DV survivors - Nikšić: *It's very troublesome the way law enforcement is dealing with violations of protection orders against harassment and stalking. The perpetrator can pass 50 times a day by car near the victim's workplace, but the police says it's a public area. The prosecutor doesn't see that as a violation of protection order, even though the victim is terrified. They absolutely do not consider her fear and feeling of danger.*

Furthermore, the penalty scheme under the LPDV is too lenient. In practice, the most common fine is €150<sup>20</sup>. Moreover, judicial reluctance to order jail sentences renders punishments even lighter. According to the Ministry of Justice Report<sup>21</sup>, between 2010 and 2015 the most common misdemeanor punishments were fines (33%) and suspended sentences (11%). In only about 9% of cases did the offender receive a prison sentence, while nearly 10% of offenders received only a warning. The court suspended proceedings in 5% of the total LPDV cases. In that same time period, misdemeanor courts acquitted the defendant in almost a quarter (23%) of LPDV cases.<sup>22</sup>



The key findings of CSO monitoring demonstrate a lack of physical protection for survivors, even after repeated reports of violence to the police and other competent institutions.

<sup>20</sup> NGO Shadow Report for GREVIO, 2017, published by NGO Women's Rights Center.

<sup>21</sup> 2016 Ministry of Justice Report, Section IV, 4.1.

<sup>22</sup> Ibid.

<sup>23</sup> NGO Shadow Report for GREVIO, 2017.

CSOs noted a failure of institutions to conduct a victim's rights centred approach according to Article 49 of the Convention, as well as to comply with the Articles 50 and 51 when it comes to the principle of urgency and obligatory risk assessment. A lenient penal policy means that there is "a deep institutional misunderstanding of the nature of violence, as well as of its consequences for the victim, family members, and society as a whole, as stated in the GREVIO Shadow report of the CSO Women's Rights Centre, Podgorica."<sup>24</sup> In addition, the percentage of POs imposed in a misdemeanour procedure and the provision of physical POs for survivors is worryingly low in relation to the total number of prosecuted cases of DV. Between 2010 and 2017, restraining orders were issued in only 3.6 % of all court cases, orders for removal of the perpetrator from a common residence were issued in 2.4% of cases, while prohibition of harassment and stalking was issued in only 6.6 % of all court cases. The security measures of removal from common residence and restraining order provided by the CC (that

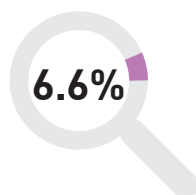
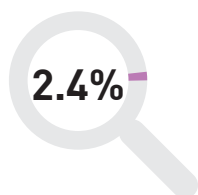
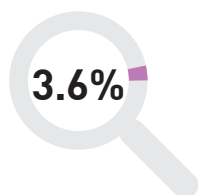
come into effect only after the court decision comes into force), have been issued by the Montenegrin courts only 6 times between 2010-2017<sup>25</sup>. Other shortcomings noted by women's CSOs include the lack of accountability in cases of non-conduct of public officials in charge of victim protection<sup>26</sup>; police too often issue "warnings" for the offender and do not register every report; police and prosecutors rarely file applications for urgent orders for protection before the courts, and if they do, they do not consistently follow the case through to the end. Contrary to the Article 55 of the Convention, they often rely entirely on the woman's statement to build a case, or on her statement and a medical report, which may not accurately describe the nature of her injuries or extent of DV, the fact noted by Valentina Vlahović, from CSO Montenegrin Women's Lobby: "*The acting of prosecutors and their relations with victims has to improve, they should focus on other evidence, not just on the victim's testimony. The police and prosecutors should proactively conduct investigations and protect victims in the proceedings, not re-victimise them. Throughout the process, the victim often becomes deprived of her rights, discouraged.*"

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While prohibition of harassment and stalking was issued in only 6.6 % of all court cases.

Moreover, the institutions fail to inform women of their rights, including the right to free legal aid<sup>27</sup>. They often lack information on the follow up of the case, or on the perpetrator's release from the prison or detention. Even if they do so, it is usually on survivors' own or CSO's demand.



<sup>24</sup> Ibid.

<sup>25</sup> Data on cases of violence against women and domestic violence different sources, Ministry of Human and Minority rights, Podgorica; <http://www.minmanj.gov.me/biblioteka/izvjestaji>

<sup>26</sup> Non-governmental organisations, Women's Safe House, SOS Nikšić and the Women's Rights Centre have led 12 criminal charges against civil servants who did not use their legal powers to protect the fundamental right to life of victims of domestic violence. Criminal applications were led on 15.11.2016. By the time this report was submitted, the state prosecutor's office rejected 6 criminal reports. Appellate procedures are ongoing for two criminal reports before the Constitutional Court of Montenegro, and the remaining four before the Higher and Supreme Court. Out of the remaining 4 applications, one was forwarded to the Special State Prosecutor's Office, and for the remaining three information from has not been forthcoming.

<sup>27</sup> According to the Law on Free Legal Aid ("Official Gazette of Montenegro", No. 020/11 of April 15, 2011, 020/15 of April 24, 2015), the victims of the criminal and misdemeanour offences of domestic violence and trafficking, are entitled to free legal aid, without assessing of their financial status.

## CASE 1

### THE FAILURE OF POLICE TO URGENTLY RESPOND TO REPEATED REPORTS OF VIOLENCE

The woman repeatedly reported to the police threatening messages by her husband, stating that he is a very dangerous person. The police didn't respond and the perpetrator tried to murder the woman. Her father was killed, the woman and her mother were severely injured and her two children were almost killed by the explosion caused by their father. After that, women's organisations jointly filed criminal charges against the acting prosecutors, but the Supreme Prosecution's assessment was that the basic prosecutors acted in accordance with their obligations, because there were no threats.



**DIVORCE CASES** ● CSOs Monitoring report<sup>28</sup> showed many shortcomings in protection of IPV survivors during divorce proceedings: “Although Centres for Social Welfare play a critical role as first responders to DV and coordinating institution of multidisciplinary teams, they often subscribe to myths about DV, which affect their attitudes and response. Some CSW workers prioritised concern for the offender’s rights over the victim’s safety or exhibited scepticism about victims’ claims. This happens even in cases where children are witnesses of IPV - their responses indicate a lack of understanding of the dynamics of domestic violence and its effect on children. Some CSWs prioritize the welfare of the violent offender as the parent and fail to initiate restricting of custody even when children are direct victims of violence. CSWs infrequently recommend supervised visitation or protection measures for children; when they do, they fail to enforce supervision, enabling offenders to interact with their victims during visitation. CSW reports to courts in penal as well as civil proceedings carry great weight, but the reports do not always include information about domestic violence, which affect court decision and victims’ safety.”

Moreover, the report states that judges do not actively screen for DV, but instead rely wholly on the parties to inform them. CSOs noticed that the legal norms have often been misused by the perpetrators “*who quickly recognised it as a possibility to file a counter-claim without being stopped by the system in a timely manner. Actually, the system treats the perpetrators’ claims the same way as the claims of a person who actually survived violence, so they have been automatically processed, without recognizing who is the primary aggressor; in that way, the institutions treat the same way both the perpetrator and the victim, and then the courts also make automatic judgments, to punish both, instead of protecting the victim*” as emphasized by the representative of SOS Helpline for women and children DV survivors – Nikšić. Mediation and reconciliation are often part of the divorce process, although the Family Law forbids such practices in cases of DV, in line with Article 48 of the IC. Moreover, court-appointed mediators are in a conflict of interest because they are not a neutral party in the proceedings as they are only compensated for “successful” mediations where the couples reconcile<sup>29</sup>.

<sup>28</sup> The Advocates for Human Rights, Women’s Rights Centre and SOS Nikšić: Implementation of Montenegro’s Domestic Violence Legislation, 2017, [https://www.theadvocatesforhumanrights.org/publications\\_by\\_country\\_3](https://www.theadvocatesforhumanrights.org/publications_by_country_3)

<sup>29</sup> The Advocates for Human Rights, Women’s Rights Centre and SOS Nikšić: Implementation of Montenegro’s Domestic Violence Legislation, 2017, [https://www.theadvocatesforhumanrights.org/publications\\_by\\_country\\_3](https://www.theadvocatesforhumanrights.org/publications_by_country_3)

## CASE 2

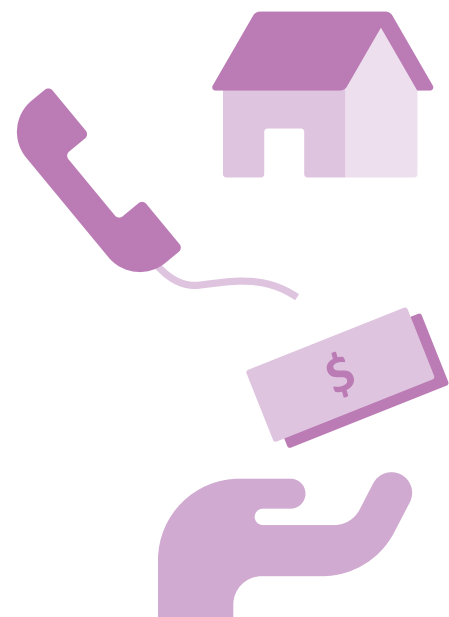
### THE FAILURE OF CSW TO FORGO DV SCREENING IN VISITATION/CUSTODY CASES

In case where a domestic violence perpetrator was convicted both for criminal and minor offence and children continuously witnessed their father's violence against their mother, the Centre for social welfare wrote an opinion stating that both parents are equally eligible for child custody, thereby transferring the case to the judge, who returned it to them for a second consideration. The perpetrator decided to fight for child custody, so it became a never-ending process, in which the woman and her children continued to experience violence and remained without any protection.

In Montenegro specialised services are established and run by women CSOs, funded through foreign donations and include shelters, psycho social support, free legal aid and SOS Helplines.

**SUPPORT SERVICES** ● In Montenegro specialised services are established and run by women CSOs, funded through foreign donations and include shelters, psycho social support, free legal aid and SOS Helplines. The shelters are situated in the central part of the country - 2 for women and one for LGBT, as well as one shelter in the north of Montenegro, while there are no shelters in the southern part of the country. In 2015, Montenegro established a free National SOS Helpline which covers the whole country, and provides services according to principles of confidentiality and anonymity, in relation to all forms of VAW covered by the Convention. The Helpline is operated by women's CSO SOS Helpline Nikšić and co-funded by the Ministry of Labour and Social Welfare and UNDP in Podgorica. It operates in several languages: Montenegrin, Albanian and English.

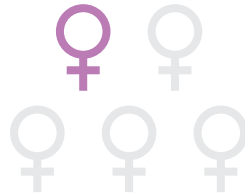
However, the services are not equally available to all women, particularly to women from rural areas due to unequal geographic position and to women with disability who are often unable to use shelter services due to lack of accessibility and lack of support staff.



# SEXUAL VIOLENCE

## PREVALENCE AND OFFICIAL STATISTICS ●

Official National Statistics on sexual violence are not available. However, according to 2017 UNDP Study on Violence against Women and Family Violence, 1 in 5 women experienced some form of violence in 2017, out of which 7% experienced sexual violence. The State Prosecutor's Report for 2017<sup>30</sup> provides information classified according to the type of criminal offence, showing that in 2017, reported cases of sexual violence included 12 crimes of rape, 2 rape attempts (CC article 204), 1 sexual intercourse with a child (CC Article 206) and 7 prohibited sex acts (CC Article 208).



According to 2017 UNDP Study on Violence against Women and Family Violence, 1 in 5 women experienced some form of violence in 2017, out of which 7% experienced sexual violence.



The Montenegrin CC has been further aligned with IC Articles 38 and 39, by criminalising:

Female genitale mutilation	<b>1 - 8 years</b>
Forced sterilisation	<b>3 months - 5 years</b>
Stalking	<b>3 months - 5 years</b>
Forced abortion	<b>1 - 8 years</b>

**LEGISLATIVE FRAMEWORK ●** Sexual criminal offences are prohibited by several provisions of the CC (Articles 204-208). As a result of women's CSO advocacy<sup>31</sup>, recent amendments to CC Article 204 made substantive changes to the crime of **rape** in order to align it with the Article 36 of the Istanbul Convention, requiring that provisions on rape and sexual violence must be based on the lack of consent, instead of the use of force. The new Article 204, paragraph 1, added the crime of rape and other forms of "non consensual" sexual acts. However, the definition is not fully in line with the IC, as it still contains "the use of force" as a more severe form of rape. The prison sentence, foreseen for non consensual cases, ranges from one to eight years and is therefore smaller than the existing criminal offence of rape and sexual offences committed by using force or life threats (two to ten years). CC Articles 204 (Rape) and 205 (Sex acts against helpless person) can be used to prosecute **marital rape**, but prosecution can be instituted by a private charge only, according to CC

Article 212. Prosecution barred by the statute of limitations<sup>32</sup> applies to all criminal offences, including acts of sexual violence and depends on the length of the imposed sentence. For example, for a case of rape relative limitation is between 10-15 years, while in cases that include minor victims, the prosecution is extended until they turn 18 years of age.

Since 2017, the Montenegrin CC has been further aligned with IC Articles 38 and 39, by criminalising **female genital mutilation** (CC Article 151) that predicts imprisonment for one to eight years, forced sterilisation (CC Article 151b), predicting a prison term between three months and five years and stalking (CC Article 168a), that can be criminalized by prison term

<sup>30</sup> Report on the Work of Prosecutor's Council and the State Prosecutor for 2017, page 42, at: <http://tuzilastvocg.me/media/files/IZVJESTAJ%202017%20%20.pdf>

<sup>31</sup> NGO Women's Rights Center advocated for changes of the definition of Rape and together with Women's Safe House and SOS Helpline Nikšić proposed amendments to CC. The amendment on Rape was supported by Political Club of Women.

<sup>32</sup> CC Article 124.

**Customary Marriage with Juvenile provides for the punishment of the parents, adopters and guardians who, by force, threat or benefit from the juvenile, allow them to cohabit in a customary marriage with another or instigates her/him into such marriage.**

between three months and five years if it's committed against a former spouse or partner. **Forced abortion** is defined as *Unlawful Termination of Pregnancy* (CC Article 150), with a prison term from one to eight years. **Sexual harassment** is defined in several legislative acts that refer to different contexts and provide different types of sexual harassment sanctions: *the Labour Law* and *the Law on the Prevention of Harassment in the Workplace* provide for a fine for sexual harassment in the area of employment; the Law on Prohibition of Discrimination prohibits sexual harassment as a form of discrimination by a legal or natural person. The Law on Gender Equality, Article 4, Paragraph 4 also defines sexual harassment as a form of discrimination, but does not state any sanctions. These definitions are largely compatible with Article 40 of IC. However, there is no data on prevalence of sexual harassment, nor on appeals to the Ombudsman<sup>33</sup> or to courts, which calls into question the effectiveness of such legal provisions.

**Forced marriage** can be prosecuted under CC Articles 214 - 2016, but it requires further compliance with the IC Article 37, as Article 214 - *Concluding a Void Marriage*, intends to punish those who conclude a marriage concealing from the other party a fact that makes a marriage void or who misleads or keeps the other party misled on that fact, while Article 215 - *Allowing*

*Conclusion of Unlawful Marriage*, is intended to punish a public official authorised to conclude marriages, who knowingly allows the conclusion of a marriage which by law is prohibited or void. However, both provisions can be applied only to legally recognised marriages and are not adapted to non-registered life communities. Article 216 - Customary Marriage with Juvenile provides for the punishment of the parents, adopters and guardians who, by force, threat or benefit from the juvenile, allow them to cohabit in a customary marriage with another or instigates her/him into such marriage. However, criminal prosecution of such acts is not applicable if the extramarital community transforms into a legally-concluded marriage (Article 216, paragraph 4). Moreover, CC Article 444, Trafficking in human beings can be also relevant, as it was amended by "concluding an unlawful marriage" for the purpose of exploitation. Since 2015, 57 cases of forced marriages in Roma community have been reported to the public prosecutor, but none of them was prosecuted, due to alleged lack of evidence<sup>34</sup>.

<sup>33</sup> In his 2017 Report, Ombudsman registered 14 appeals for discrimination based on sex and motherhood, but sexual harassment is not mentioned as a specific form of discrimination, p.186, at: [http://www.ombudsman.co.me/docs/1522665383\\_final-izvjestaj-za-2017.pdf](http://www.ombudsman.co.me/docs/1522665383_final-izvjestaj-za-2017.pdf)

<sup>34</sup> Source: NGO Center for Roma Initiatives.



### CASE 3

#### SECONDARY VICTIMISATION OF A MINOR SEXUAL VIOLENCE SURVIVOR

15-year Roma girl escaped from the forced marriage with 27-year-old man, father of three children. She was in the shelter for a while and after that she was returned back home. She received constant threats by the man who forced her into marriage. She called the Centre for Roma Initiatives, so they reported the case to the prosecutor. The girl claims that she was raped, but after 4 hours of questioning, the prosecutor decided to quit the case, because they concluded the girl invented that she was raped. Prosecutors treated the girl very badly, even asking her if CSO activist who came with her taught her to talk like that. The girl is again with the perpetrator, out of fear, because he constantly threatened to kill her family members.



**SUPPORT SERVICES** ● Despite clear obligations that arise from Article 25 of the IC, Montenegro doesn't provide specialist free services for survivors of sexual violence, including rape. There are no special protocols or guidelines for survivor support and assistance, nor free specialist psychological support for overcoming trauma. The forensic examination and medical checks for sexual violence survivors, including minors, are conducted in medical centres intended for general population and by regular medical staff, who have hardly passed any training on sexual violence. The acting of law enforcement in these cases is highly influenced by personal beliefs and stereotypes that highly affect prosecution of these cases, as well as victim protection and support.

**There are no special protocols or guidelines for survivor support and assistance, nor free specialist psychological support for overcoming trauma.**

## VIOLENCE AGAINST MIGRANT AND REFUGEE WOMEN



Montenegro was not part of the so-called “Balkan route”, where a large number of migrants, mostly from Syria, tried to reach Western Europe. However, the number of refugees and asylum seekers is increasing. In 2017, 850 applications for asylum were registered, and currently, there are 30 approved protections in Montenegro, of which 17 refugee statuses and 13 additional protections<sup>35</sup>. Information on asylum requested and granted to women is missing<sup>36</sup>. The new Law on Foreigners<sup>37</sup>, which provides for expedited procedures to grant asylum and defines the forms of protection in compliance with the international and EU standards, entered into force in March 2018. The Law confers the acquisition of temporary residence on

grounds of family reunification or for humanitarian reasons<sup>38</sup> that include, inter alia, presumed victims of a criminal offence of trafficking in persons, or a victim of a criminal offence of family violence. Permits on grounds of family reunification may be granted to a period of one year and extended only if the marriage lasted for three years, which is not in accordance with the Article 59 of IC that requires from the Member States to provide victims with an autonomous residence permit regardless of the length of the marriage or relationship. In such cases, a victim of violence may submit an autonomous application for temporary residence only on grounds of humanitarian reasons. According to information acquired from the Directorate of Asylum, there have been cases where women asylum seekers have reported various forms of gender-based, especially sexual violence, including genital mutilation. However, the information about their application results is missing. A specific procedure, guidelines and protocols for determining violence against women do not exist.

According to information acquired from the Directorate of Asylum, there have been cases where women asylum seekers have reported various forms of gender-based, especially sexual violence, including genital mutilation.

<sup>35</sup> Information provided by the Directorate for Asylum on 7th of July 2018, in response to official information request, submitted for the purpose of this research.

<sup>36</sup> Ibid.

<sup>37</sup> The Law on International and Temporary Protection of Foreigners, “Official Gazette of Montenegro”, no. 012/18 of 23 February 2018.

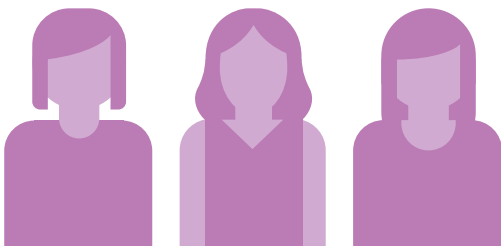
<sup>38</sup> Articles 44 and 52, paragraph 1, of the Law on Foreigners.

## WOMEN'S CSOS

Montenegrin women's CSOs have a key role in providing support and protection for women and children survivors of violence and advocate for their better access to justice. They provide the only available specialised support services for women - SOS Helpline, psychological and legal assistance, organise trainings, campaigns, and participate in drafting of national legislation and policies. CSOs often act as confidants<sup>39</sup> - victim supporters who, under the LPDV, may accompany women to court and other institutional proceedings. Confidants appeared to be a great support for women survivors of violence, but can be exposed to great security risks. A representative of the CSO Women's Safe House described a most recent incident: *I was experiencing verbal attacks from the perpetrator, in the courtroom corridor. My colleague received the threats in the courtroom, in front of the prosecutors. Nobody responded. The perpetrator attacked our attorney in the courtroom. The judge did not react, but the typist called the police, who escorted our attorney to her car.* Representative of Centre for Roma initiatives experienced threats by her own community, while raising awareness against forced marriages: *When we started to talk about forced marriages, one of my colleagues was attacked, stoned*

*by her own community. According to some unofficial information, Roma leaders were behind the attack. No perpetrators were ever found. Later, she moved away. I was attacked physically twice, once in Nikšić and once in Podgorica. The last incident was six months ago when my brother was attacked.* A representative of SOS Helpline Nikšić has similar concerns: *We, as women's rights defenders, cannot count on the system to protect us. The system, if you criticise it, knows very well how to discredit you, to put you at risk. We are generally exposed to the risk of perpetrators. There is no protection plan for either us, or the victim. But women in women's groups are brave and they continue to work.*

Montenegrin women's CSOs provide the only available specialised support services for women - SOS Helpline, psychological and legal assistance, organise trainings, campaigns, and participate in drafting of national legislation and policies.



<sup>39</sup> Article 16 of the LDVP formally recognizes the role of a supportive advocate for victims. Victims may select a "confidant" to attend all procedures governed by the domestic violence law. Confidants typically appear with the victim in court, but may also accompany her to all institutions, including police. Confidants may be a relative of the victim, an NGO employee, or a social worker.

**Law on Free Legal Aid does not recognize CSOs as providers of pro bono legal assistance, although a total number of women looking for pro bono legal assistance in CSOs significantly exceed those who solicit basic courts.**

Despite the declaratory state commitment to ensure active cooperation with CSOs, this obligation has not been implemented to a sufficient extent. The state hardly ensures any funding for women CSOs, so they strive for sustainability, since they are mainly financed through the projects supported by international donors. Apart from the partial funding the state ensured for the national SOS Helpline for victims of domestic violence, there are no positive examples where the state continuously finances shelters or other services for survivors of violence.

Law on Free Legal Aid does not recognize CSOs as providers of pro bono legal assistance, although a total number of women looking for pro bono legal assistance in CSOs significantly exceed those who solicit basic courts. That means that women's CSOs have to finance legal aid from their own budgets, because it is crucial for victim's access to justice. On the other hand, pro bono legal assistance which is available in a framework of basic courts, frequently does not meet women's needs and negatively reflects on protection of survivors and possibility to exercise their rights. In addition, the current process of licensing of social services that tends to include CSO services into a formal social service system, threatens to jeopardise the independent role of women's CSOs and the feminist principles their services are based on. The conditions for obtaining a license, besides professional and licensed staff, require significant funds for ensuring both spatial and other capacities, and fall completely at the expense of CSOs. There are serious concerns that weakening the impact and sustainability of women's CSOs will negatively affect availability of their services and protection of survivors.



## RECOMMENDATIONS



### FOR THE PARLIAMENT

- Increase monitoring role on implementation of the Istanbul Convention and ensure funding for its implementation.
- Support women CSOs in amending domestic violence legislation in line with the IC.

### FOR THE GOVERNMENT OF MONTENEGRO

- Ensure participation of women CSOs in all coordinating bodies established in order to monitor law and policy implementation, including the Committee for coordination, implementation, monitoring and evaluation of policies and measures for prevention and fight against all forms of violence (the Committee).

- The Committee should organise regular meetings and information sharing. The Government should provide necessary resources for the Committee work and ensure its independence from the government mandates, its continuity and accountability.
- The role of the Operational Team, established within Ministry of Internal Affairs, needs to be further institutionalised and its advisory role further empowered by official agreements or memorandums among member institutions and CSOs.
- Establish standardised rules and procedures as well as an independent complaint mechanism in order to increase responsibility and accountability of state officials who are engaged in violence against women cases.
- Adequately fund CSO services for women survivors of domestic violence, including shelters, hotlines, legal assistance, and other support while respecting their autonomy, expertise and work principles.
- National policies against violence against women should be specific and oriented to results and success indicators, for all institutions within the system.
- Develop an integrated and uniform data collection system, along with indicators for evaluating and monitoring implementation of the LPDV at the local and national levels.
- Set-up easily accessible rape crisis centres or one stop shops for survivors of sexual violence in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for survivors in line with the Istanbul Convention provisions.

## FOR THE MINISTRY OF JUSTICE

- Ensure full compliance of the Criminal Code with the IC provisions, so that it defines domestic violence as a criminal offence and covers all other forms of gender-based violence against women, incl. marital rape and psychological violence.
- Define precise legal distinction between misdemeanour and criminal liabilities in cases of DV and VAW, so that it ensures any physical, psychological and sexual violence among family members falls under the criminal offence. Misdemeanour liability should be entailed by the remaining milder forms of domestic violence.
- Widen the circle of protected persons within criminal and misdemeanour protection of the partners and former partners, former in-laws, as well as persons who were or are in an emotional or sexual relationship regardless of whether they were living in the same household.
- Appropriately align the legal definition of rape with the IC, so that it requires lack of consent, not coercion or threat.
- Amend the Law on Free Legal Aid to recognise CSOs as free legal aid providers.
- Develop specific Guidelines and protocols to identify gender-based violence against migrant women.
- Where a parent/partner is physically violent, CSWs and courts should initiate procedures to deprive or restrict child visitation, contacts and custody for the violent parent.
- Where a child is a victim or witness of violence, institutions should initiate procedures in accordance with Article 89 of the Family Law, to modify decisions granting custody or visitation rights to the violent parent, or utilise supervised visitation,
- Prohibit the use of “confrontation” by judges in domestic violence cases.

## MINISTRY OF SOCIAL WELFARE

- In consultation with women’s CSOs adapt legal provisions on founding, licensing and financing of specialised support services for VAW, in compliance with IC Article 22.
- Support the autonomy and principles of work of women’s CSOs in providing specialised services of support and ensure full cooperation with CSW.
- The data collection should include as minimum: the age, sex and relation between the victim and the perpetrator, the number of requests for launch of proceedings, number and result of launched proceedings, number and type of requested and imposed protection measures, including urgent protection measures and those imposed during the proceedings, number and result of proceedings for breached protection measures, number of requested and imposed security measures.

## FOR CENTRES FOR SOCIAL WELFARE AND COURTS

- Domestic violence committed in the presence of a minor child should constitute a domestic violence crime to hold the perpetrator accountable.
- When determining parental contacts, child visitation and custody, CSWs and courts should consider DV and its effects on children.

## **POLICE, JUDICIAL COUNCIL AND PROSECUTORIAL COUNCIL, CENTRE FOR EDUCATION OF JUDGES AND PROSECUTORS**

- Place the rights and interests of DV survivors in the centre of all actions.
- Conduct a comprehensive education and training on DV and VAW, as part of a regular training for police, judges and prosecutors. The training needs to include content on consequences of trauma and behaviour of traumatised witnesses. These trainings need to be developed and implemented together with women's CSO experts providing victim support.
- Collect the data on history of VAW and DV in each case, include procedures for recognising primary aggressor and avoid dual reporting of both victim and perpetrator.
- Ensure proactive approach in processing DV and VAW cases and avoid reliance solely on the victim's own testimony.
- Proactively propose, represent and monitor the application of POs.



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