



## **MONTENEGRO: Domestic Violence Appendix A.**

to Joint Stakeholder Report for the United Nations Universal Periodic Review

Submitted by The Advocates for Human Rights  
a non-governmental organization in special consultative status  
SOS Hotline for Women and Children Victims of Violence-Nikšić  
and  
Women's Rights Center

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**The following is the Executive Summary of Implementation of Montenegro's Domestic Violence Legislation, a report in press, by The Advocates for Human Rights, SOS Hotline for Women and Children Victims of Violence – Nikšić, and Women's Rights Center.**

Domestic violence devastates the lives of millions of women around the world with serious consequences for children, families, and communities. Domestic violence violates women's fundamental human rights to life, liberty, and security of person, equal protection before the law, and freedom from torture. According to the World Health Organization, one in three women will experience violence in her lifetime, and 38 percent of femicides are perpetrated by a male intimate partner.<sup>1</sup>

This prevalence is also reflected in Montenegro, where every third woman has suffered physical violence or another form of abuse in the family. Women are discouraged from reporting the violence because of various factors, such as financial dependence on the abuser, fears of retribution and stigmatization, lack of confidence in systems actors, the absence of effective mechanisms to prevent repeat violence, and lack of information about their rights. A recent survey of approximately 1,000 Montenegrins identified a widespread belief that victims of domestic violence do not feel that they can safely report domestic

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<sup>1</sup> World Health Organization, *Violence against Women: Intimate Partner and Sexual Violence against Women*, Nov. 2016, available at <http://www.who.int/mediacentre/factsheets/fs239/en/>.

violence to government authorities.<sup>2</sup> The survey found widespread distrust of institutions responsible for protecting victims of domestic violence.<sup>3</sup>

In 2010, Montenegro adopted the Law on Domestic Violence Protection (LDVP), a critical step toward promoting victim safety and holding domestic violence offenders accountable. By passing this law, the government has signaled its commitment to combat domestic violence. The law provides protection for victims in the form of a three-day immediate eviction order, as well as an emergency and regular order for protection that provides for various remedies. In addition, the government has promulgated an inter-sectoral protocol to address domestic violence, which established procedures and cooperation. The government should be commended and further encouraged to ensure effective implementation of the LDVP.

Adoption of the law represents a first step, however, and more is needed to ensure an effective government response to domestic violence. Other laws, including criminal, misdemeanor, and family legislation, must be harmonized with the LDVP and reformed to effectively address domestic violence. Systems actors, including police, Centers for Social Work (CSWs), judges, prosecutors, and health care workers, must receive training and standardized guidance on how to best implement these laws and respond to violence against women.

The Advocates for Human Rights, SOS Hotline for Women and Children Victims of Violence –Niksic, and Women's Rights Center carried out fact-finding to monitor and document the Montenegrin government's implementation of domestic violence legislation. The authors carried out a monitoring mission in July 2015, during which they visited 6 cities and conducted 60 interviews with government officials, police, judges, prosecutors, health care workers, CSWs, mediators, and non-governmental organizations (NGOs), and conducted follow-up interviews in 2016 and 2017. The report, in press and to be published July 2017, presents the results of these interviews, the authors' observations, and secondary research. While findings reveal some good practices and initiatives, they also reveal a lack of knowledge, harmful attitudes, and gaps in responses by all systems actors.

Despite an established legal framework, police are not effectively implementing the applicable laws and regulations. In some cases, police lack knowledge of the specifics of the laws and their responsibilities. In other cases, they fail to follow the laws and procedures because of their harmful attitudes and misperceptions about domestic violence.

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<sup>2</sup> Ipsos Strategic Marketing, *Percepcija predstavnika pravosuđa o nasilju nad ženama i porodičnom nasilju*, Nov. 2015, at 18 [hereinafter, Ipsos Strategic Marketing]. This research was part of the project implemented by the NGO Women's Rights Center and UNDP, funded by the Norwegian Embassy in Belgrade.

<sup>3</sup> *Id.* at 19.

As a result, police practices may re-traumatize victims and deter them from making future reports. Police who process domestic violence reports at times discourage victims from pursuing legal remedies and even encourage reconciliation. Officers may do nothing more than issue a verbal warning to an offender. For example, although police have tremendous power to offer immediate protection to a victim through the three-day eviction order, numerous interviewees reported that police underuse this measure and view it as a last resort. Those efforts where police more frequently initiate LDVP proceedings are concentrated in one locale and not representative of a systematic law enforcement response across the country.

Police lack the initiative to follow cases through within the misdemeanor court system. Police rarely file applications for orders for protection before the misdemeanor courts, and if they do, they do not consistently follow the case through to the end. They often rely entirely on the victim's statement to build a case, or on her statement and a medical report, which may not accurately describe the nature of the victim's injuries or extent of domestic violence. Police reports, which are typically the basis for initiating misdemeanor proceedings, lack necessary details to facilitate effective prosecution in both misdemeanor and criminal settings. Moreover, deficient police investigation and communication can prompt prosecutors to decline criminal charges for severe acts of domestic violence.

CSW workers play a critical role as first responders to domestic violence, but they often subscribe to myths about domestic violence, which affect their attitudes and response. Some CSW workers prioritized concern for the offender's welfare over the victim's safety or exhibited skepticism about victims' veracity. While CSW workers indicated knowledge of their role in developing safety plans, they do not always respect victim autonomy nor do they work together with the victim to complete the plans. 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.

CSWs' responses when children are involved indicate a lack of understanding of the dynamics of domestic violence. Some CSWs prioritize the welfare of the violent offender as the parent, only restricting custody when children are direct victims of violence. Others blame the non-violent parent for fleeing the home or allowing their children to witness the abuse. CSWs infrequently recommend supervised visitation; when they do, they fail to enforce supervision, enabling offenders to interact with their victims during visitation even while under an order for protection.

CSWs also head up the multidisciplinary teams (MDTs), an intersectoral approach to addressing domestic violence cases. Despite the use of MDTs, CSWs focus on ad hoc responses for individual cases rather than addressing systemic gaps. As a result, problems persist even in locales where MDTs function.

Misdemeanor judges lack familiarity with the LDVP and the important tools it provides. They fail in their duty to provide the victim with the "full and coordinated protection" to which she is entitled under the LDVP. They unnecessarily subject the victim to the traumatizing procedure of confrontation, forcing the victim and offender to face each other while recounting their experiences. Of particular concern, there is no standardized or mandated bench risk assessment, leaving it to individual judges' discretion to assess future harm. They often fail to inform the victims of their right to seek protective measures, and may encourage them to reconcile with their abusers. In misdemeanor courthouse settings, victims often wait or are present in close proximity to their abuser without adequate security. Misdemeanor court judges fail to issue emergency orders for protection, even though such orders can provide important protection during proceedings. Confidants—individuals who, under the LDVP may accompany victims to proceedings—can provide some measure of support, but judges generally prohibit them from speaking in proceedings and confidants often face threats to their own security.

Misdemeanor judges' practices can further endanger victims and discourage future reporting. Misdemeanor judges often wait until the end of proceedings to issue orders for protection, or do not issue them at all, citing a common belief that a guilty verdict must precede an order for protection. This practice leaves victims at risk of further violence throughout what could be several months of proceedings. Misdemeanor judges impose unnecessarily burdensome and time-consuming evidentiary requirements, relying heavily on CSW or medical reports, and they often fail to take into account an offender's history of domestic violence when adjudicating guilt and imposing penalties. Finally, they often impose penalties such as fines and admonitions that can harm the victim and discourage her from reporting further acts of violence. When addiction or psycho-social treatment is ordered, a lack of effective monitoring hinders their enforcement. Moreover, there is little evidence that existing psycho-social treatment programs adhere to best practice standards, protect victims, or foster change in a perpetrator's violent behavior.

Prosecutors have the authority to hold offenders criminally responsible, yet they are not doing so. Prosecutors tend to downplay domestic violence, either relegating it to the misdemeanor system or encouraging reconciliation. Their charging decisions are often made without adequate inquiry into a perpetrator's history, a problem that is further compounded by the lack of communication and record-sharing between the misdemeanor and criminal court systems. When they do pursue criminal prosecution, they rely on the victim and close many of the cases when victims recant or invoke their right not to testify. Although a new law permits the use of a victim's original statement without her cooperation, there is little practice to indicate that prosecutors are using this provision. In the absence of adequate measures to protect victims during criminal proceedings,

prosecutors nevertheless do not consistently inform women of the availability of misdemeanor orders for protection. Moreover, these misdemeanor remedies can be issued only for separate acts of violence not being prosecuted in the criminal case. While some prosecutors have pursued violations of misdemeanor orders for protection, most are not consistently prosecuting these violations, even though they are a crime.

As with other systems actors, criminal court judges at times display harmful attitudes and insensitivity toward victims in the courtroom setting. Some attribute domestic violence to alcohol abuse, a perception that can affect sentencing. Courts do not communicate with victims about the status of their cases and the victims are left to rely on public sources of information. Although expedited summary proceedings are available in specific cases, most domestic violence cases are protracted and last several months, often leading to further harm or dismissal of cases. Sanctions are often lenient and not commensurate with criminal-level violence; instead, suspended sentences or medical treatments are common. Although recent amendments allow criminal judges to issue post-conviction evictions and restraining orders, judges have not received specific training on these measures, nor are they issuing them in cases where they could.

Overall, the health care sector lacks a standardized response to domestic violence. Without a uniform protocol tailored to the health care sector, health care workers do not proactively screen or investigate any suspicions of domestic violence. Instead, they rely on the patient to communicate about domestic violence. But several physicians reported they do not always separate the victim and offender during an examination, reducing the opportunity for a victim to speak openly, disclose any violence, or seek additional help. Despite the Law on Domestic Violence Protection that mandates reporting of violence for professionals who assist victims and the following Protocol's directive to report, most health care providers follow the World Health Organization's recommendation and do not report without victim consent.<sup>4</sup> Others use ad hoc judgment and report if they think she will sustain further injuries.

Health care workers also play a role in evaluating offenders for purposes of detention and medical treatment in lieu of sanctions. Their reports do not always probe into domestic violence or provide further details of injuries or the abuser's history.

Family law judges carry out their duties with respect to divorce, child custody, and visitation without any formal regulations or bench guides for cases involving domestic violence. Judges do not actively screen for domestic violence, but instead rely wholly on the parties to inform them. They tend to overlook the harms that domestic violence imposes in

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<sup>4</sup> World Health Organization, *Responding to Intimate Partner Violence and Sexual Violence against Women: WHO Clinical and Policy Guidelines* (2013), at 41, available at [http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595\\_eng.pdf?ua=1](http://apps.who.int/iris/bitstream/10665/85240/1/9789241548595_eng.pdf?ua=1).

these cases and instead prioritize reconciliation and make custody and visitation decisions without taking domestic violence into account. In fact, family law judges tend to prioritize visitation as a violent parent's right and may forego any supervision when children are not direct victims of the violence.

Mediation and reconciliation are often part of the divorce process, but the Law on Mediation, Family Law, and the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) forbid such practices in cases of domestic violence. Judges prioritize these harmful processes, yet fail to adequately assess for domestic violence. In the mediation setting, victims are at risk of further coercion as they face their abuser and are disallowed from bringing a confidant to support them. Moreover, court-appointed mediators have an inherent conflict of interest because they are only compensated for "successful" mediations where the couples reconcile.<sup>5</sup> They are not a neutral party in the proceedings.

NGOs in Montenegro fill the many gaps that are left in order to protect victims. They often assist women in applying for orders for protection and are often successful in their requests. When state institutions do not respond effectively to domestic violence, NGOs intervene to hold them accountable and ensure that institutions fulfill their responsibilities. Although CSW workers can also act as confidants, NGOs are best positioned to perform this role as independent outsiders who best understand victims' needs and barriers. NGOs provide legal representation to victims throughout divorce proceedings and help them navigate a system that too often disregards the effects of domestic violence. Although victims may qualify for legal aid, the quality of these private attorneys varies and can place victims at greater risk or disadvantage.

In conclusion, although the government of Montenegro has taken critical steps to combat domestic violence, monitoring revealed that the government must take additional measures to more fully achieve victim safety and to ensure offender accountability. The authors commend the state, the many systems actors, and especially NGOs working together to protect victims and hold offenders accountable. We urge the government of Montenegro to execute the recommendations presented by this report and to continue this vital work.

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<sup>5</sup> Interview with Center for Mediation, Podgorica, July 10, 2015.