



Organization for Security and
Co-operation in Europe
Mission to Bosnia and Herzegovina

**Response to Domestic Violence and Co-ordinated Victim Protection
in the Federation of Bosnia and Herzegovina and the Republika Srpska**

**Preliminary Findings on the Implementation of the
Laws on Protection from Domestic Violence**

July 2009

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1. EXECUTIVE SUMMARY

Domestic violence represents a violation of one of basic human rights and international human rights standards call for states to take robust measures to ensure perpetrator accountability and victim protection. The intra-familial context of the crime, although not unique to domestic violence, renders protecting victims even more crucial and challenging. A range of court imposed, non-criminal measures have become important tools that states should make available for victims. Bosnia and Herzegovina has done just that with the adoption of the Laws on Protection from Domestic Violence (the Laws on Protection) in both the Federation of Bosnia and Herzegovina and the Republika Srpska in 2005, which seek to provide protection for victims through the use of protection measures, such as removal of the perpetrator from the home and restraining orders. Although these Laws entered into force more than three years ago, it is generally known that protection measures have yet to be used as intended.

Following nearly 75 interviews with police, social protection and judicial officials, the obstacles and reasons for non-implementation are apparent. Most officials have not benefitted from sufficient training on the nature and specifics of domestic violence, thus the necessary context to approach the implementation of the Laws on Protection is missing. Many officials were unaware of the basic requirements in the Laws on Protection and corresponding Rule-books. Almost all officials described that additional tools are needed to guide and co-ordinate their work; for example, internal guidelines on appropriate responses as well as protocols outlining each institution's responsibilities and role in providing victim protection.

Another obstacle identified is that protection measures are not understood as a unique form of victim protection. Placing protection measures within the competency of minor offence departments of the basic/municipal courts has created a considerable amount of confusion and blurred the lines between victim protection and sanctioning of perpetrators to the detriment of victims. Adding to this, the Republika Srpska Law on Protection encompasses both sanctioning perpetrators and protecting victims. In practice, judges use the Law on Protection to mete out fines for the minor offence of domestic violence, whilst measures to enhance victim protection are rarely applied. In the Federation of Bosnia and Herzegovina requests for protection measures are rare and, when submitted, are not responded to urgently. In both jurisdictions even when measures have been issued, they are often not implemented.

This initial assessment makes clear that victim protection and safety are not adequately addressed by officials and the Laws on Protection are not serving their intended purpose. It is acknowledged that both Laws on Protection have already been amended once, and in the Federation of Bosnia and Herzegovina an entirely new Law on Protection is presently in parliamentary proceedings (as of June 2009). Nevertheless, much work remains to be done. Urgent attention and resources need to be brought to bolster protection for domestic violence victims, and the hope is that these findings will provide a snapshot of obstacles hindering the implementation of the Laws on Protection and spur renewed discussions on solutions to enhance victim protection.

2. INTRODUCTORY REMARKS

Domestic violence is a complex and widespread phenomenon that requires a co-ordinated state response to ensure victims' safety as well as effective prosecution and sanctioning of perpetrators. It is considered a serious human rights violation and, consequently, international human rights standards impose a positive obligation on states to provide protection and services for victims.¹ Relevant to participating States in the Organization for Security and Co-operation in Europe (OSCE), such as Bosnia and Herzegovina, the OSCE Ministerial Council adopted a decision on preventing and combating gender-based violence and urged participating States to enhance protection and assistance to victims.² Bosnia and Herzegovina's commitment to combating domestic violence is evidenced by a number of recent developments. The Bosnia and Herzegovina Gender Action Plan (2007) includes goals and concrete activities to eradicate violence.³ The Strategy for Prevention and Combating of Domestic Violence in Bosnia and Herzegovina 2009-2011 was adopted by the Council of Ministers in March 2009, and is presently in parliamentary proceedings (as of June 2009).

Further, Bosnia and Herzegovina made great strides towards ensuring protection for victims of domestic violence with the adoption of the Republika Srpska Law on Protection from Domestic Violence⁴ (the RS Law on Protection) and the Federation of Bosnia and Herzegovina Law on Protection from Domestic Violence⁵ (the FBiH Law on Protection).⁶ These Laws are intended to provide protection for victims of domestic violence quickly and without a burdensome procedure for victims. The availability of certain measures such as removal of the perpetrator from the home, restraining orders, and prohibition on stalking and harassment, can serve as key components to prevent exposure to further violence. It is important to distinguish that protection measures as foreseen in international standards are not intended to serve as a form of sanctioning for perpetrators. Rather, protection measures are a remedy for victims and a tool that victims can avail themselves of, independent of any other proceedings. Protection measures are not the definitive answer for victim protection, but they are a key element. International human rights standards call for states to make such measures easily available and enforceable in practice.

Unfortunately, even after three years in force it was apparent that the Laws on Protection were barely applied. In this context, the Human Rights Department of the OSCE Mission to BiH (the Human Rights Department) initiated an examination of the implementation of both Laws in late 2008. The assessment included interviews with officials directly involved in responding to domestic violence and protecting victims: the police, social protection officials, prosecutors and judges.⁷ Discussions with practitioners at roundtables and meetings organized by the Human Rights Department on domestic violence also inform these findings.

As predicted, protection measures foreseen in the Laws on Protection were rarely issued, nor were other forms of protection available or offered to victims. The findings make clear, how-

¹ Recommendation No. 5 (2002) of the Council of Europe Committee of Ministers to member States on the protection of women against violence; Recommendation No. 19 of the United Nations Committee on the Elimination of Discrimination Against Women of 29 January 1992.

² Ministerial Council Decision 15/05, Ljubljana, 6 December 2005.

³ Available on the BiH Gender Agency's website: <http://www.arsbih.gov.ba/index.aspx?PID=3&RID=70>

⁴ Republika Srpska Official Gazette no. 118/05 and entered into force on 1 January 2006. Amendments were published in the Republika Srpska Official Gazette no. 17/08 and entered into force on 6 March 2008.

⁵ Federation of Bosnia and Herzegovina Official Gazette no. 22/05 and entered into force on 7 October 2005. Amendments were published in Federation of Bosnia and Herzegovina Official Gazette no. 51/06 and entered into force on 7 September 2006.

⁶ Of concern, the Brčko District does not have any comparable legislation in force.

⁷ See Annex 1 for list of institutions interviewed.

ever, that the non-implementation of the Laws on Protection is a natural outcome of the lack of adequate understanding of the phenomenon of domestic violence, lack of knowledge about the Laws on Protection, lack of adequate skills and resources to respond to domestic violence, and lack of specific mechanisms to ensure a co-ordinated response among relevant institutions and officials in providing protection for victims and ensuring that perpetrators are held responsible.

This document is structured as follows: first, processing domestic violence as a minor offence is addressed as a preliminary matter. To follow, the proceedings and measures available under the Laws on Protection are explored and gaps identified. The need for a more co-ordinated response among officials and non-governmental organisations (NGOs) as well as the need for training and concrete tools to ensure victim protection are highlighted. Next, the police response to domestic violence as well as the important role of the social welfare centres are explored and concerns identified in the assessment highlighted. The need for comprehensive data collection is also noted. The report concludes with targeted recommendations.

The significant role of NGOs in responding to domestic violence was not the subject of the assessment, as it was deemed necessary to focus on governmental obligations and response. However, given the lack of State commitment to providing services and protection, NGOs have played a pivotal role to fill in these gaps. For example, NGOs have established and managed the few existing safe houses in Bosnia and Herzegovina, with nearly no state funding until recently. Many officials also cited that their only source of training or information on domestic violence came from NGOs. The Mission applauds the perseverance and leadership of these NGOs, and hopes that the present findings will contribute to enhanced co-operation between the non-governmental sector and State structures. Finally, the findings do not address the criminal investigation and processing of domestic violence.

As a final caveat, the importance of international human rights standards with respect to violence against women cannot be overlooked. Globally, a body of standards has been developed since the adoption of the Convention on the Elimination of all Forms of Discrimination against Women in 1979. While binding conventions, such as this Convention and the European Convention on Human Rights, contain general pronouncements, non-binding international obligations are also relevant, as they often contain more specific indications of what is expected of states. Three documents based on international human rights standards and expertise in violence against women cited extensively herein include: the United Nations' *Model Strategies and Practical Measures on the Elimination of Violence against Women in the Field of Crime Prevention and Criminal Justice*⁸ (the Model Strategies and Practical Measures); a report issued by a group of experts under the auspices of the United Nations: *Good practices in legislation on violence against women*⁹ (Good Practices in Legislation); and the Council of Europe's Task Force to Combat Violence against Women, Including Domestic Violence issued a document addressing support and protection services for victims, including the police and judicial response, entitled *Combating violence against women: minimum standards for support services*¹⁰ (the Minimum Standards).

⁸ Resolution 52/86 adopted by the United Nations General Assembly on 17 December 1997. An updated version of the *Model Strategies and Practical Measures* is currently being developed by an inter-governmental group of experts, and a revised draft can be found here: <http://www.unodc.org/unodc/en/justice-and-prison-reform/Expert-group-meeting-Bangkok-2009.html>. It is expected to be adopted in 2010.

⁹ United Nations Division for the Advancement of Women and Office on Drugs and Crime, Report of the expert group meeting, May 2008, available here:

http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/vaw_legislation_2008.htm

¹⁰ Liz Kelly and Lorna Dubois, *Combating violence against women: minimum standards for support services*, (Strasbourg: Council of Europe, September 2008).

3. DOMESTIC VIOLENCE AS A MINOR OFFENCE

Since the reform of the criminal codes in 2003, domestic violence can be prosecuted as a specific criminal offence in all jurisdictions in Bosnia and Herzegovina. With the passage of the Law on Protection in 2006, the Republika Srpska also introduced the possibility for domestic violence to be processed as a minor offence. The Federation of Bosnia and Herzegovina did not take this approach, rather, all incidents of domestic violence should be treated as criminal offences under the Criminal Code of the Federation of Bosnia and Herzegovina. International standards with respect to the prosecution of domestic violence require that such incidents are considered criminal offences and mandatorily prosecuted.¹¹ Harsher punishment should be imposed given the intra-familial context. Specifically, the use of fines as a sanction is discouraged, as these may cause financial hardship to victims and are not found to be a sufficient deterrent or a rehabilitative form of punishment.¹²

Within the context of the legal framework in Bosnia and Herzegovina, the qualification of domestic violence as a minor offence or a criminal offence both comply with the generally understood notion of criminal, as referenced in international documents. There are some important differences, however, between minor offences and criminal offences in Bosnia and Herzegovina. Minor offences do not involve the public prosecution services. Rather, the police submit reports on suspected offences directly to judges of minor offence departments of basic/municipal courts. Minor offence sanctions include fines, court reprimand, probation and protection measures, whilst the sentence of imprisonment is not available.¹³ Minor offences are considered less serious, and processing domestic violence as a minor offence may work towards devaluing and minimizing the seriousness of violence against women.¹⁴

It is also relevant to recall here the expert monitoring body of the Convention on the Elimination of All Forms of Discrimination against Women - the CEDAW Committee - observations on Bosnia and Herzegovina in 2006, where it expressed its concern that the legislation “in both entities may allow for differing judicial interpretations and inconsistent application of penalties due to the fact that in the Federation of Bosnia and Herzegovina domestic violence is defined as a crime, while in the Republika Srpska it is defined both as a crime and a misdemeanour.”¹⁵ Further, the CEDAW Committee recommended that the laws of the two Entities be harmonized. In line with this, the first goal of the Strategy To Prevent and Combat Domestic Violence in Bosnia and Herzegovina 2009-2011 is to analyze and harmonize the legislative framework addressing domestic violence, including the formation of a working group to harmonize the RS and FBiH Laws on Protection.¹⁶ Such harmonization has not yet taken place and, therefore, the assessment revealed distinct problems with respect to the practice in the Federation of Bosnia and Herzegovina and the Republika Srpska, as described below.

¹¹ The Council of Europe Committee of Ministers to member States on the protection of women against violence, and Explanatory Memorandum, adopted on 30 April 2002, Appendix, paragraph 55, see also, United Nations General Assembly Resolution no. 63/155 *Intensification of efforts to eliminate all forms of violence against women*, 30 January 2009, A/Res/63/155, paragraph 16(k).

¹² *Good practices in legislation*, Sentencing, 9.D, p. 59.

¹³ Article 5 of the Republika Srpska Law on Minor Offences, and Article 6 of the Federation of Bosnia and Herzegovina Law on Minor Offences.

¹⁴ While it is acknowledged that victims of domestic violence are both male and female, statistics from around the world, and in Bosnia and Herzegovina, indicate that females are predominantly the victims while perpetrators are predominantly male. For ease of use, these gendered terms will be used.

¹⁵ Concluding comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina, CEDAW/C/BIH/CO/3, 2 June 2006, paragraph 26.

¹⁶ The Strategy to Prevent and Combat Domestic Violence in BiH, 2009-2011, Goal 1.

3.2 *The Federation of Bosnia and Herzegovina*

Findings indicate that the legislators' intended goal of processing all incidents of domestic violence as a criminal offence has not been achieved in some places in the Federation of Bosnia and Herzegovina, which means that the incidents are qualified as minor offences despite the legal framework which requires otherwise. By way of background, it is important to recall that the national legal framework requires the police to inform prosecutors of cases in which there are grounds for suspicion that a criminal offence has been committed, either immediately or within seven days, depending on the underlying suspected offence.¹⁷ Thus, close police and prosecutorial co-operation is required, and appropriate qualification of the offence should involve prosecutorial expertise.

During interviews, it was apparent that some domestic violence incidents are qualified as minor offences under the cantonal Laws on Peace and Public Order, e.g., insolent behaviour in public, or abuse or attack on another in public.¹⁸ Official information from several areas confirms this, and even statistics from one cantonal Ministry of Interior indicate that the majority of reported domestic violence cases are classified as minor offences. Police officials interviewed asserted that cases are classified after consultation with prosecutors, while prosecutors interviewed submitted that police often make these decisions without consultation.

In other areas in the Federation of Bosnia and Herzegovina, the police do not qualify incidents as minor offence. Instead, in some cases the police submit requests for protection measures to the minor offence department of municipal courts, but, as a matter of great concern, they do not report the underlying criminal offence to prosecutor's offices. In this approach, the issuance of protection measures is viewed as a substitute manner of processing domestic violence incidents, and protection measures as sanctions for perpetrators. The prosecution of domestic violence is avoided in these cases, in clear violation of both the national legal framework and international standards. When the matter of failure to prosecute domestic violence was raised with the relevant prosecutor's office, the prosecutors demonstrated a lack of willingness to address this with the local police. Moreover, the measures ordered in these cases are not tailored towards victim protection, as they are viewed as sanctions against perpetrators.

3.3 *The Republika Srpska*

The RS Law on Protection serves a dual purpose: certain provisions provide protection measures for victims, while other provisions address punishing the perpetrator - judges serving at minor offence departments of the basic courts perform both functions. According to the proponent of the Law, the introduction of minor offence liability was not intended to supersede criminal responsibility under Article 208 of the RS Criminal Code.¹⁹ Nevertheless, a range of monetary fines as sanctions are provided for in the RS Law on Protection. For example, for a single incident of domestic violence the perpetrator can be fined from BAM 100 to 300, while for repeated acts, or if a child was witness to the incident, BAM 300 to 1,500. For a violent act which injures a child, a fine of BAM 600 to 1,500 is prescribed.²⁰

¹⁷ According to Article 233 of the Criminal Procedure Code of the Federation of Bosnia and Herzegovina, if there are grounds for suspicion that a criminal offence punishable with a prison sentence of five years is suspected, the Prosecutor's Office shall be informed immediately, while for offences with a prison sentence of up to five years, the reporting requirement is seven days.

¹⁸ See, for example, Canton 10, the Law on Public Peace and Order, Official Gazette no. 4/07, Articles 4 and 5.

¹⁹ Reasoning for Passing the Republika Srpska Law on the Amendments to the Law on Protection from Domestic Violence, the Official Gazette of the Republika Srpska no. 17/08 of 26 February 2008.

²⁰ Article 20, the RS Law on Protection.

As a matter of concern, the findings suggest that the RS Law on Protection is used more to (lightly) sanction perpetrators, instead of providing protection for victims. All judges interviewed reported having received minor offence reports on domestic violence incidents which most often request no protection measures. Judges process these reports in accordance with the RS Law on Protection by finding the perpetrator guilty of a minor offence and issuing a sanction in the form of a fine as per Article 20 of the RS Law on Protection. Only a few judges reported regularly issuing both fines and protection measures. Official information from the Gender Centre of the Republika Srpska for 2007 also confirms that fines are the most often issued sanction with respect to the application of the Law on Protection.²¹ As noted above, best practices on sanctioning of domestic violence suggest that fines are not the most appropriate measures, both because they fail to serve as an effective deterrent and because they often negatively impact the victim.

With respect to the officials' understanding of whether to process domestic violence incidents as a minor offence as provided for in the RS Law on Protection²² or as a criminal offence according to the Republika Srpska Criminal Code,²³ it was repeatedly echoed by the police, prosecutors and judges that they understood that serious consequences, such as bodily injury or repeated acts of domestic violence, should be classified as a criminal offence, whereas less severe acts or verbal abuse should be qualified as a minor offence. Nevertheless, these distinctions identified by practitioners are not clearly set forth in the Laws. For example, Article 208 of the Republika Srpska Criminal Code makes no reference to incidents exclusively resulting in physical injury or to repeated incidents. In fact, Article 208.1 specifically provides that domestic violence can be based on mental cruelty alone, and is punishable by a fine or imprisonment of up to two years. Some police officials noted that there was not always agreement between the police and prosecutors as to the appropriate qualification. One police official noted that the prosecutors encouraged them to qualify most incidents as minor offences, and there was thus increasing discomfort on the part of the police to qualify incidents as criminal offences. On the other hand, one prosecutor critically commented that the police 'over-qualified' incidents as criminal offences. Some officials admitted that there is an overlap in the essential elements of domestic violence as defined in the Republika Srpska Criminal Code and the Law on Protection, but there are no criteria or a methodology to guide the police, prosecutors and judges as to the appropriate qualification.

Similarly as in the Federation of Bosnia and Herzegovina, co-operation between the police and prosecutors on this matter is not a smooth one. It appears that the police do not always inform prosecutors when submitting reports to the basic courts, and the consultation process is spotty or non-existent. The dual nature of the offence means that neither party has to take full responsibility for processing these cases effectively.

One police station noted that there has been an increase in the number of cases reported to minor offence departments of the basic courts, accompanied by a significant decrease of cases submitted to the prosecutors' offices. While openly admitted by a few officials only, this may be an emerging trend in the Republika Srpska as a result of the enhanced use of the RS Law

²¹ The Government of the Republika Srpska, the Gender Centre – the Centre for Gender Equality, Information on Activities To Fight Domestic Violence in the Republika Srpska and the Initiative To Declare 2008-2009 the Years of Combating Domestic Violence, May 2008, p. 21.

²² Article 6 of the RS Law on Protection provides that domestic violence is “any act inflicting physical, psychological and sexual harm sufferings or economic damage, as well as threats to commit the aforementioned...” Specific acts of domestic violence are enumerated in sub-paragraphs 1-12.

²³ Article 208.1 of the Republika Srpska Criminal Code provides that “Whoever, by use of violence, threatening behavior or mental cruelty violates the peace, life, physical or mental health of any member of his family or family household shall be punished by a fine or imprisonment for a maximum of two years.” Additional paragraphs provide enhanced penalties for aggravating factors, such as use of dangerous object, grievous bodily harm, etc.

on Protection to sanction perpetrators. At the same time, measures to protect victims are rarely ordered. Thus, a worst case scenario might be emerging whereby the purpose of the legislator is plainly defeated. On the one hand, perpetrators are confronted to a lesser degree with their criminal responsibility through the use of minor offence proceedings, and the sanctions issued (fines) may negatively impact victims and their children. On the other hand, victims are not provided immediate protection as foreseen by the RS Law on Protection.

3.4 Conclusions and Recommendations

International human rights standards demand that remedies for victims be easily accessible and effective in practice. Given the above findings, this cannot be said of the protection measures available in the Laws on Protection. In both entities, placing protection measures under the jurisdiction of minor offence departments has blurred the lines between measures to protect victims and the sanctioning of perpetrators. Protection measures should be considered a unique form of legal protection designed exclusively for victim protection and separated from any proceedings where perpetrators' responsibility is assessed. Recommendations as to how to remedy the situation include:

- a) With urgency, the Gender Agency of Bosnia and Herzegovina should form a working group as per Goal 1 of the Strategy for Prevention and Combating of Domestic Violence in Bosnia and Herzegovina with the goal of harmonizing the RS and FBiH Laws on Protection. To do this, the best modality to process domestic violence incidents should be assessed, e.g., whether it should be treated exclusively as a criminal offence or both criminal and minor offence. Representatives from the Gender Centres, the Brcko District Judicial Commission and NGOs should be members of the working group. If desired, the Human Rights Department could use its good offices to engage international experts in a consulting role;
- b) If it is decided to retain the dual processing of domestic violence as a minor offence and a criminal offence, clear definitions of what acts constitute a minor offence and what acts constitute a criminal offence should be specified in the legislation. In that case, the definition of domestic violence as a minor offence as well as minor offences of a failure to report domestic violence and sanctions for perpetrators and official persons should be prescribed in a law other than the law governing the protection of victims, so that the Law on Protection is exclusively a vehicle for victim protection. Available sanctions for perpetrators should promote the use of non-monetary ones. Finally, the obligation to consult prosecutors prior to proceeding as a minor offence should be reinforced;
- c) The Gender Agency of Bosnia and Herzegovina, together with the Brcko District Judicial Commission, should address the availability of protection measures for domestic violence victims in the Brcko District;
- d) The Chief Prosecutors of the Republika Srpska, the Federation of Bosnia and Herzegovina, and the Brcko District, respectively should request prosecutors to engage more vigorously in collecting evidence and prosecuting instances of domestic violence as defined in the respective Criminal Codes, remind prosecutors of their role in providing guidance to the police in the initial investigation of such cases, and underline the need to exercise great care in suggesting appropriate sentences; and,
- e) In the Federation of Bosnia and Herzegovina, the Federation and cantonal Ministries of Interior should send a clear message to police officers to qualify all incidents of

domestic violence as a criminal offence under the FBiH Criminal Code, and submit detailed and standardized reports to the prosecutor's offices with respect to every incident. It should be underlined that the application of the FBiH Law on Protection should not be viewed as a substitute to criminal prosecution.

4. PROTECTION MEASURES IN THE REPUBLIKA SRPSKA AND THE FEDERATION OF BOSNIA AND HERZEGOVINA

International standards recommend that states adopt legislation which allows for the judiciary to enact measures aimed at protecting women from all forms of violence, including emergency measures when necessary. Protection orders should be available to victims without any requirement of instituting other proceedings, and it should be made clear that protection orders are not issued in lieu of other legal proceedings.²⁴ While protection measures are considered a civil remedy in many countries, in Bosnia and Herzegovina these measures are placed within the competency of minor offence departments of basic/municipal courts, apparently to ensure easy access and efficiency. As referenced in Section 3 above, this has created confusion as to the nature of protection measures, with a result that these measures are not perceived as a unique form of legal protection, but rather as a type of sanction for a minor offence, or closely linked to the concept of minor offences. The following sub-sections detail procedural and substantive aspects of the RS and the FBiH Laws on Protection and note concerns with respect to both the legislation and emerging practice.

4.1 Mandatory Reporting of Domestic Violence

Best practices in responding to domestic violence support the view that adult victims should be entitled to seek medical care and psychosocial services in confidence, e.g., without the police being automatically informed.²⁵ Such confidentiality requirement does not apply to children victims under eighteen and to cases where the victim's life is at risk, or where the adult suffers a mental condition. At a minimum, mandatory reporting requirements must be crafted with caution in order to respect the integrity and privacy of victims and to ensure that these requirements are enforced with respect to all officials. Both Laws on Protection require professionals, as well as family members and citizens in general, to report instances of domestic violence to the police.²⁶ Failure to report on the part of professionals²⁷ is considered a minor offence and punishable with a fine in the amount of BAM 100 to 300 in the Republika Srpska, and BAM 1,000 to 5,000 in the Federation of Bosnia and Herzegovina.

Despite these requirements, the interviews indicated that in almost all cases victims themselves report incidents to the police. A few police officials also cited neighbours or relatives as reporting incidents, but no police officials interviewed had received a report from a social welfare centre or a health care centre. Several social protection officials note that they are aware of the legal requirements to report to the police, but they rather prefer to advise victims to call the police, if they wished to do so. They asserted that this protects the victim's privacy and is also more efficient, since the police can immediately begin to gather evidence with victims. Other social welfare centre representatives seemed unclear about the legal obligation,

²⁴ *Good practices in legislation*, Section 8.B, page 51.

²⁵ *Minimum Standards*, Table 8.7, Core Minimum Standards.

²⁶ Article 7 of the FBiH Law on Protection, and Article 20 of the RS Law on Protection.

²⁷ The RS Law on Protection requires employees in education, social health institutions services, as well as family members to report, see Article 7, while the FBiH Law on Protection requires employees in official institutions to report, see Article 20.

and further found that minor incidents need not be reported to the police, as they could rather be settled using friendly means. Ideally, social protection, health care and other officials within institutions should work with victims to discuss the mandatory reporting requirements, the impact of filing such a report (e.g., it does not mean that victim would be forced to testify) and agree together with victims on reporting to the police and a safety plan in case the victim faces further danger as a result.

No instances of judges fining officials for failing to report domestic violence were observed, and it is unknown whether the police have ever submitted such reports to the minor offence departments. It can only be concluded that either the provision is not widely known, or the minor offence of failure to report is not taken seriously by the police and other officials.

4.2 Type, Availability and Enforcement of Protection Measures

International standards on violence against women suggest that protection measures which promote victim safety and should thus be available include removing the perpetrator from the home, forbidding the perpetrator from approaching or contacting the victim and her children, ordering the perpetrator to provide financial assistance to the victim (including rent, child support, etc.), prohibiting the perpetrator from purchasing, using or possessing a firearm, and ordering the perpetrator to refrain from violence.²⁸ The use of these measures should be prioritised over perpetrators' property and other rights.²⁹ To date, countries that have used such orders extensively, such as Austria, have reportedly not had any compatibility problems with other protected rights.³⁰

Article 9 of the RS and the FBiH Laws on Protection provide for the issuance of protection measures in the form of perpetrator's removal from the dwelling, restraining order, prohibition on harassment and stalking, mandatory psycho-social treatment and mandatory alcohol or drug treatment. Thus, only three of the measures considered as forms of victim protection within international standards are provided for in the Laws on Protection.³¹ The legal framework supporting implementation of these measures has been guaranteed by the adoption of necessary by-laws.

The assessment findings were clear: many courts had not received a single request for issuance of a protection measure in the Federation of Bosnia and Herzegovina, and most minor offence departments in the Republika Srpska had only received reports on domestic violence as a minor offence, without requests for protection measures. Many officials interviewed simply could not provide information on the implementation of the Laws on Protection because they have yet to apply this legislation. Police and social protection officials often reported that the Laws on Protection are not viewed as viable; therefore, measures are not requested. Nevertheless, the issuance of some measures was observed, and specific concerns noted with respect to each measure follow.

²⁸ *Good practices in legislation*, Section 8.C, page 52.

²⁹ *Minimum Standards*, Table 8.17, Law Enforcement.

³⁰ Rosa Lugar, *Good practices and Challenges in Legislation on Violence against Women*, Expert paper prepared by Rosa Lugar for the Expert Group Meeting on good practices in legislation on violence against women, United Nations Office at Vienna, Austria, 26-28 May 2008.

³¹ The RS Law on Protection adds work in a humanitarian organization or local community (presumably this is rather a sanction for the perpetrator), while the FBiH Law on Protection also has a measure of "protection of the victim of domestic violence", meaning placement of a victim in safe house or temporary financial assistance.

4.2.1 Removal of Perpetrator from the Home, Restraining Order and Prevention of Harassment

Both entities have adopted *Rulebooks on the Implementation of Measures within Police Competencies*, which include removal of perpetrator from home, restraining orders and prevention of harassment and stalking.³² The Rulebooks provide detailed instructions for police to implement these measures, as well as outline the supporting role of the social welfare centre. The procedure involves the appointment of an implementing officer who provides necessary information to the victim, and who develops a victim risk assessment and implementation plan, in consultation with the social welfare centre. Further, the Rulebooks describe the records that the public security centres/cantonal Ministries of Interiors must maintain on victims and perpetrators with respect to protection measures. The Rulebooks and these measures comply with best practices in terms of appropriate police intervention to protect victims.

In practice, these measures are rarely issued and, even when issued, not implemented. With respect to the removal of the perpetrator from the home, conversations with officials reveal apparent concern that until an appropriate alternative accommodation is provided for the perpetrator, this measure cannot be issued or implemented. This, however, reflects a flawed understanding of the measure: alternative accommodation need not be provided for perpetrators. The fact that many couples live in a common household owned by the perpetrator's parents would also appear to be a contributing factor to no using this measure.

The measure of restraining order against the perpetrator was found to be issued on several occasions, but again, rarely implemented. It would appear that the measure of restraining order is sometimes issued against persons who live together, thereby defeating the purpose of the measure. Further, in cases where one of the police measures were implemented to some degree, information indicates that the required victim risk assessment and implementation plans were not prepared.

4.2.2 Mandatory Psycho-Social Treatment

With respect to holding perpetrators accountable for their actions, international standards urge states to develop programmes which require perpetrators to examine and take responsibility for their behaviour with the aim of preventing future violence. Best practices regarding perpetrator programmes indicate that these should not be considered as an alternative to prosecution, conviction, or sentence, and should be on a voluntary basis.³³ Such programmes are also not considered a form of victim protection. Nevertheless, both the FBiH and the RS Laws on Protection have adopted *Rulebooks on Implementation of Measure of Mandatory Psychosocial Treatment*, which allow judges to order perpetrators of domestic violence to attend psychosocial treatment in several types of institutions, including mental health centres or specialized psychiatric services within health institutions, in co-operation with social welfare centres.³⁴ The FBiH Rulebook provides that costs of such treatment shall be covered by the court ordering the treatment, while the RS Rulebook does not specifically address which body shall pay for the services.³⁵

³² Published in the Federation of Bosnia and Herzegovina Official Gazette no. 9/06 and the Republika Srpska Official Gazette no. 26/06.

³³ Recommendation (2002)5 of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002 and Explanatory Memorandum.

³⁴ Federation of Bosnia and Herzegovina Official Gazette no. 60/06 and Republika Srpska Official Gazette no. 97/06.

³⁵ Federation of Bosnia and Herzegovina Rulebook on implementation of mandatory psychosocial treatment, Article 3.

The interviews and monitoring indicate that this measure is, relatively speaking, ordered with some frequency, although the degree to which the measure is implemented remains unclear. For example:

In a small town in the Federation of Bosnia and Herzegovina, the Minor Offence Department of the Municipal Court ordered the measure of mandatory psychosocial treatment to be executed by the Social Welfare Centre three times. The Social Welfare Centre was not able to execute the order as it had no specialized capacity to provide counselling for perpetrators. The Centre notified the Court of its inability to execute the measure. Of note, the Centre also did not possess the relevant Rulebook.

Other social protection officials noted that social welfare centres are unable to provide psychosocial treatment, and even mental health centres, if at all in the area, do not always have qualified and sufficient staff to address the perpetrator's violent behaviour. From the information available it seems that there specialized perpetrator treatment programmes are not offered.

4.2.3 Mandatory Alcohol and Drug Abuse Treatment

As a preliminary observation, mandatory alcohol and drug treatment is not considered a protection measure within international standards on victim protection. Nevertheless, mandatory treatment is included in both Laws on Protection as a protection measure. Since the adoption of *Rulebooks on Mandatory Alcohol and Substance Abuse Treatment*,³⁶ judges may order alcohol and substance abuse treatment in a variety of institutions³⁷ as a protection measure. This measure also requires the social welfare centre to prepare a written action plan for its implementation, to monitor implementation, to report to the issuing court, and to maintain necessary records.

This measure would appear to be the most frequently ordered. Judges report, however, that they are aware of difficulties with respect to its implementation because participation is always voluntary. It is concerning that it is the most frequently ordered measure, as this it does not provide immediate relief and safety for victims.

4.2.4 Safe Houses

Re-locating victims to safe houses is another form of protection that states should make available, although such measures are not considered a court-ordered protection measure. As of the amendments to the RS Law on Protection, shelter in a safe house is regulated as an additional, non-court ordered measure to provide for the physical protection of victims.³⁸ The FBiH Law on Protection includes “the protection of the victim of domestic violence”, meaning placement in a shelter or other form of emergency accommodation as a protection measure, although it does not appear to be used as a court-ordered measure in practice. Presently,

³⁶ The Federation of Bosnia and Herzegovina Official Gazette no. 23/08 and the Republika Srpska Official Gazette no. 97/06.

³⁷ In the Federation of Bosnia and Herzegovina the measure may be implemented in institutions for addiction treatment, mental health centres or in occupational/rehabilitation treatment centres, the RS Rulebook provides that the measure may be executed by include mental health centres, psychiatric departments of general hospitals, psychiatric clinics, specialized departments for treatments of alcohol and substance abuse, and institutions specialized for such conditions, approved by the Republika Srpska Ministry of Health and Social Protection.

³⁸ The RS Law on Protection, Article 7.1.

there are NGO-run safe houses in Banja Luka, Modriča, Prijedor, Mostar, Sarajevo, Bihać, Zenica and Tuzla. Only in 2008 have the governments of the Federation of Bosnia and Herzegovina and the Republika Srpska respectively committed to providing funds for safe houses, and the RS Law on Protection was also amended so that these 70% of funds shall come from the entity level government, while 30% from municipalities or cities.³⁹

While the assessment did not intend to focus on the availability and use of safe houses, many social protection (and police) officials raised the lack of shelters as a key impediment to their work with domestic violence victims. The officials argue that without the necessary funding they are unable to offer victims accommodation in safe housing, and that only wealthier municipalities have the luxury of a budget line dedicated to safe houses. Those centres that had a specific budget allocation for accommodation in safe houses reported using the funds for these purposes. At the same time, despite identifying this need and a gap, social welfare officials did not describe other forms of alternative accommodation for victims (temporary placement in a family, for example), or inter-cantonal or inter-entity co-operation. Human Rights Department advocacy with municipal and cantonal officials indicates that few attempts are made to find affordable and creative solutions to alternative forms of emergency or temporary housing for victims. Notable as well, the option to remove the violent perpetrator from the home does not seem to be considered as another alternative to ensure victim safety.

4.3 Requesting Protection Measures

With respect to requesting protection measures, international standards and best practices in the field of domestic violence encourage states to allow victims to request measures.⁴⁰ Some states also provide for requests by third parties,⁴¹ or provide that the victim's wishes must be taken into consideration.⁴² Both the RS and the FBiH Laws on Protection provide that the victim, the victim's authorised representative, the police, the prosecutor's office, the social welfare centre, governmental or NGO may request a protection measure, or the judge may order one even without a request.⁴³ There is no legal obligation to obtain victims' permission or consent prior to submitting the request on behalf of victims.

Despite this wide range of potential requestors, for the most part only the police have requested protection measures. A few isolated cases where the prosecutor's office or social welfare centres had requested protection measures were noted. Many prosecutors interviewed shared that they did not consider it within their competency to request protection measures. In one case, when a protection measure was requested by the prosecutor, the judge returned the request to the prosecutor's office without ruling on it, explaining that prosecutors are not authorised to initiate minor offence proceedings. As to social protection professionals, they often responded that they had not identified cases in which such measures would be needed. The sentiment that the measures were anyway unenforceable was also noted. One official openly admitted that they were not prepared to be involved in the execution of the measures; hence they didn't see the point in requesting them.

With respect to the requesting party exploring the victim's wishes prior to submitting the request, officials interviewed did not describe doing so. As protection measures are conceived to be tools to ensure victim safety, it would be most appropriate for persons requesting meas-

³⁹ The RS Law on Protection, Article 7.3.

⁴⁰ *Good practices in legislation*, Section 8.F page 54.

⁴¹ See, e.g., the Philippines.

⁴² See, e.g., the Spanish Organic Act on Integrated Protection Measures against Gender Violence (2004).

⁴³ Article 18 the FBiH and the RS Laws on Protection.

ures to confidentially consult with victims as an integral part of any risk assessment prior to requesting measures.

Legal aid or advice in requesting protection measures to financially needy victims is not provided for in the RS or the FBiH Laws on Protection. On 1 July 2009, the Republika Srpska Law on Legal Aid enters into force, and it includes “the injured party in criminal proceedings” as a category of legal aid beneficiaries. It would appear that proceedings for request of protection measures does not necessarily fall under this umbrella, but it would be advisable for the Republika Srpska Legal Aid Centre to ensure that victims may receive legal aid with respect to protection measures requests, as well as any criminal proceedings where they appear as the injured party. In the Federation of Bosnia and Herzegovina, only a few cantons offer legal aid, and to what degree this is provided for crime victims and in proceedings before minor offence departments of municipal courts is unknown. Non-governmental organizations, largely funded through foreign donors, have attempted to fill this gap, although with very limited resources. It can be concluded that legal aid with respect to protection measures (and generally for domestic violence victims) remains a clear gap in Bosnia and Herzegovina, while there is hope that as of mid-2009, victims in the Republika Srpska may have access to legal aid lawyers for proceedings related to protection measures.

4.4 Procedure and Evidentiary Standards

International standards concerning the issuance of protection measures emphasize that the victim’s testimony or a sworn statement should be sufficient evidentiary basis. An emergency protection order, issued temporarily by the police, may not even require this, but rather only the police assessment of violence and risk to the victim.⁴⁴ The underlying purpose of these measures, as forms of protection for victims, dictates this low evidentiary standard. The proceedings are not meant to establish perpetrators’ culpability for criminal offences. The Laws on Protection provide no guidance on the appropriate evidentiary standard and very little guidance as to specifics of the proceedings; in fact the Minor Offence Laws should apply, unless otherwise specified.

A variety of approaches to processing protection measures at minor offence departments of basic/municipal courts have been observed. These distinct approaches are largely a reflection of whether the Laws on Protection take precedence over the general proceedings outlined in the Minor Offence Laws, i.e., whether they are considered *lex specialis*. Most judges stated that the police file requests to initiate minor offence proceedings and, upon receipt, judges call the perpetrator, the police official submitting the request and, in some cases, victims, to the court. Only one judge described using social protection expertise. Review of some decisions indicates that a variety of evidence is considered, including witness testimony, expert evidence and medical evidence. It is not clear whether victims’ statements are considered sufficient for issuance of protection measures, but considering the evidence in cases where protection measures were issued, it would appear that this is not so.

4.5 Urgency of Proceedings

Protection measures should be easily available and quickly processed; this is both promoted by international standards on victim protection, and a stated goal with respect to the Laws on Protection. International best practices emphasize that certain measures may be ordered on an emergency basis when there is an immediate danger of violence, such as removal of perpetrator from the home and restraining orders, without a hearing.

⁴⁴ *Good practices in legislation*, Section 8.G, page 55.

In terms of deadlines, the FBiH Law on Protection provides that judges have up to eight days from the receipt of request until issuance of the measure,⁴⁵ and also includes a provision highlighting the urgency of such protection measure requests for all officials involved in the process.⁴⁶ The RS Law on Protection requires “urgent rulings”, without further precision.⁴⁷ At the same time, the RS Law on Protection makes reference to application of the provisions of the Law on Minor Offences to both protection measures and punishment of perpetrators.⁴⁸

Despite these distinct legal frameworks, it seems that judges take their own approach. For example, a judge in the Republika Srpska issues protection measures within one day of receipt of request, if not the same day. Meanwhile, many judges in the Federation of Bosnia and Herzegovina reported applying minor offence proceedings as per the Law on Minor Offences, with measures issued from two to six months following the request, depending on their court’s backlog of minor offences cases. In one municipal court where delays of six months were identified, the judge noted that the court was making all attempts to shorten this period to three months. The type of measure requested did not appear to have any impact on the urgency of the proceedings. Such delays do not comply with the inherently urgent nature of protection measures.

There appears to be a gap as well in the legislation, since a deadline for issuance of the second instance decision on appeal is not defined. One judge noted that 30 to 45 days are needed before a decision is issued on appeal.

Several police and social protection officials were critical of delays before minor offence departments of basic/municipal courts. The police in particular expressed a clear awareness of the urgency of the proceedings and the physical safety issues in question, while they felt that the judicial authorities did not share this understanding. The end result is that one of the primary purposes of placing protection measures in the minor offence departments of basic/municipal courts --to allow access to urgent proceedings for victims in order to ensure their safety-- is not being realised.

4.6 Monitoring of Protection Measures and Criminalisation of Violations

Monitoring of issued protection measures is necessary to ensure perpetrators’ compliance and sanctioning for failure to comply. Best practice indicates that violation of protection measures should be considered a criminal offence.⁴⁹ Also, judges should receive timely and accurate information in order to adjust the measure, if necessary.

With respect to monitoring and enforcement of measures issued and sanctions for non-compliance, the FBiH and the RS Laws on Protection vary slightly. The FBiH Law on Protection places the responsibility solely with social welfare centres to monitor implementation, report back to the issuing judge, and propose the termination or change of the measure.⁵⁰ The RS Law on Protection grants these same responsibilities to the police, prosecutors’ offices and social welfare centres, depending on the measure in question. Further, the RS Law on Protec-

⁴⁵ The FBiH Law on Protection, Article 2.3 provides that the “court shall deliver the decision on the protection measure immediately or no later than eight days”.

⁴⁶ The FBiH Law on Protection, Article 3.

⁴⁷ The RS Law on Protection, Article 3.2.

⁴⁸ The RS Law on Protection, Article 2.2.

⁴⁹ Recommendation No. 5 (2002) of the Council of Europe Committee of Ministers to member States on the protection of women against violence, Appendix, paragraph 58, f.

⁵⁰ The FBiH Law on Protection, Article 19.

tion provides that the court and body competent for implementing the measure should submit information to the social welfare centre upon request.⁵¹ There is no criminal offence of failure to comply with a protection measure in entity criminal legislation. Both Laws on Protection specify that fines be issued against persons who fail to comply with a protection measure; the RS Law on Protection provides for a fine from BAM 300 to 500, while the FBiH Law on Protection from BAM 2,000 to 10,000.

The interview findings were generally sparse with regard to monitoring of measures, likely due to the few measures issued, and as officials may be reluctant to admit to a lack of follow-up. Some judges noted that the monitoring of the measures falls short due to the insufficient staffing at social welfare centres. With respect to measures falling within the competency of the social protection institutions, only a few centres clearly indicated that they monitor implementation of the measures. Most judges reported not receiving the obligatory reports on implementation of measures. For example:

In one small town in the Republika Srpska, a judge has ordered approximately 25 protection measures in combination with fines, and had not received feedback information/reports on the measures ordered, nor has she requested reports on implementation. It would appear that the protection measures ordered have not been implemented. The local police indicated that they were unable to implement restraining order measures because the victim and perpetrator live in the same household.

In terms of sanctioning the perpetrator for failure to comply with protection measures, no information was obtained concerning this. The low fines in the RS Law on Protection would raise the question of whether this serves a deterrent at all.

4.7 Conclusions and Recommendations

Much work remains to be done to ensure that the Laws on Protection serve their stated aims of protecting victims. No protection measures were requested by victims directly, rather primarily the police have submitted requests, and then, only rarely. When ordered, protection measures are usually not implemented. Further, the Laws on Protection do not distinguish measures which serve to provide immediate protection to victims and measures aimed at assisting perpetrators to change their behaviour. Overall, victims' safety and protection remains insufficiently prioritised. To enhance victim protection for domestic violence victims, it is recommended that:

- a) In terms of legislative changes, with reference to Goal 1 in the Strategy for Prevention and Combating of Domestic Violence in Bosnia and Herzegovina, the BiH Gender Agency should form a working group to consider necessary changes to both the RS and the FBiH Laws on Protection, including:
 - Ensure that protection measures are considered a unique form of victim protection, and de-linked from sanctioning of perpetrators;
 - Consider including an even greater range of measures to protect victims in the Laws on Protection, as well as to re-assess the appropriateness of considering perpetrator-targeted programmes as forms of victim protection, e.g., psychosocial, alcohol and drug abuse treatment. Involvement in a

⁵¹ The RS Law on Protection, Article 19,

perpetrator programme, alcohol or drug abuse treatment should not be considered an alternative to sentencing nor as a protection measure, but as an additional measure;

- In the Laws on Protection, consider providing indication of sufficient evidentiary standard for issuance of protection measures, which should be distinct from the standard needed to sanction perpetrators;
 - Provide shorter deadlines for issuance of protection measures of removal of the perpetrator from the home, restraining order and prohibition on harassment or stalking; these should be considered emergency protection orders and treated as such. A longer deadline for the issuance of the other measures may be appropriate, but should be specified;
 - Provide for deadlines for issuance of decisions on appeal;
 - Additionally, either the Criminal Codes or Laws on Protection should be amended so that a violation of a protection measure is prosecutable as a criminal offence;
- b) Shelter in safe houses or other forms of alternative accommodation should be enhanced. In areas where there are no safe houses, municipalities and relevant cantonal/ministerial authorities should identify appropriate alternatives and allocate adequate funds for emergency and temporary shelter;
- c) The Gender Centres should create an overall plan to ensure adequate shelter capacity and funding for all areas, and take proactive steps with local authorities to ensure the political and financial support for identified needs;
- d) Domestic violence victims should be able to obtain legal assistance to apply for protection measures, at no cost if required. The FBiH Ministry of Justice and all Cantonal Ministries of Justice should take measures to ensure that legal aid is available to all domestic violence victims with respect to requesting protection measures or otherwise seeking advice and assistance regarding all types of domestic violence proceedings. The Republika Srpska Ministry of Justice should ensure with respect to the start-up of the Legal Aid Centre that domestic violence victims are clearly understood as a potential beneficiary;
- e) All institutions should adopt clear internal guidance on reporting instances of domestic violence incidents to the police and information sharing among all actors. Care professionals, especially social protection, health and educational officials, should work with victims to explain their reporting requirements and with victims' knowledge, report to the police;
- f) Requests for protection measures by third parties, such as the police, should be submitted upon confidential consultation with victims;
- g) Judges should receive timely and fact-based reports on implementation of imposed measures from relevant implementing agency in the Republika Srpska and from social welfare centres in the Federation of Bosnia and Herzegovina;

- h) A commentary or other training material for judges on domestic violence and the Laws on Protection should be developed to reinforce key concepts, such as the phenomena of domestic violence, the purpose of protection measures, evidentiary standard, urgency of proceedings and legally prescribed deadlines, among other things. The commentary/training material should emphasize international human rights standards and take a victim-centred approach to implementation of the Laws;
- i) Judges applying the Laws on Protection should treat requests with urgency, and involve social welfare centres to ensure identification of the most appropriate measures and adequate victim support in the process. Also, when ordering measures for victims, judges should bear in mind that perpetrator-focused measures (alcohol and drug treatment and psycho-social treatment) do not provide immediate protection for victims; and
- j) The Gender Centres and relevant Ministries should launch an information campaign to engage all officials and civil society organisations in the application of the Laws on Protection. In particular, informational material for victims and potential victims should be available and widely distributed. Such outreach should target particularly vulnerable groups, such as rural women, Roma, disabled persons, and economically dependent women. All responsible officials should share with victims their rights and possibilities available in the Laws on Protection.

5. CO-OPERATION AMONG OFFICIALS AND NGOs

International standards on victim protection encourage states to co-ordinate responses with respect to victim protection to ensure that victims “receive immediate and comprehensive assistance provided by a co-ordinated, multidisciplinary and professional effort ...”⁵² Co-operation between police, health and social services, the judiciary and non-governmental sector should ensure co-ordinated actions and responses.⁵³ Experts of the Council of Europe identified that, at a minimum, all relevant agencies should develop guidelines for multi-agency co-operation. Ideally, protocols and memoranda of understanding should be used to guide this co-operation.⁵⁴ Protocols should be drafted in a manner that ensures a victim-centred approach and that the victim’s safety and protection needs are considered first. They should also clearly define roles and responsibilities in responding to domestic violence.

With respect to the national legal framework, the RS Law on Protection provides that the police, social welfare centres, prosecutors’ offices, courts, medical and other competent institutions should develop internal protocols to guide their response.⁵⁵ At the time of writing, these internal guidelines are under development by the Republika Srpska Gender Centre, but should be forthcoming by mid-2009. The Strategic Plan for the Prevention of Family Violence in the Federation of Bosnia and Herzegovina provides for the development of protocols,⁵⁶ and in-

⁵² Recommendation (2002) 5, of the Committee of Ministers to member States on the protection of women against violence, 30 April 2002, and Explanatory Memorandum, Recommendation no. II.

⁵³ *Ibid*, Appendix, paragraph 27.

⁵⁴ *Minimum standards*, Table 8.7, Core Minimum Standards.

⁵⁵ The RS Law on Protection Article 3.

⁵⁶ The Strategic Plan for Prevention of Family Violence in the Federation of Bosnia and Herzegovina 2009-2010, Goal 4.

formation from the FBiH Gender Centre indicates that these are under development. In a few locations, protocols are in use mainly due to the efforts of proactive NGOs in those areas.⁵⁷

Interviews conducted in locations where there are no protocols indicate that the necessary co-operation and co-ordination is simply missing. In some places, even the most basic communication on domestic violence cases among officials is rare. For example, despite the specific legal requirement in the Republika Srpska,⁵⁸ the practice in both entities with respect to the police contacting social welfare centres is inconsistent, and quite often they are not contacted. Police officials throughout the country described different criteria by which they decide in which cases to inform the social welfare centre, for example, cases involving juveniles, repeat offenders, or where the victim needs to be taken to a safe house. Even when contacted, however, assistance from the social welfare centre is not always forthcoming, as described by some police officials. For example, it is not clear whether centres have staff on duty around-the-clock to respond to such calls and assist the police in offering protection to victims. Finally, all police expressed frustration about the lack of feedback information on criminal reports submitted to minor offence departments of basic/municipal courts or to prosecutors' offices.

Judges at minor offence departments of basic/municipal courts reported primarily interacting with the police, and they consider the police as the main duty bearers with respect to the Laws on Protection. They were on the whole satisfied with the police work in this regard. Interaction with other actors, though, appears rare. A few judges noted a satisfactory co-operation with social protection officials, although most reported having no working relationship. In one case, in response to a judge's request for a social protection official to appear in court, the centre responded that it was not their responsibility to appear in court with respect to the Law on Protection and domestic violence cases.

Social welfare centres, for their part, expressed frustration with the poor communication with health institutions. Most social protection officials have little contact with prosecutors' offices and courts (with respect to protection measures, minor offences or criminal offences), although this was not described in a problematic way, but rather as a matter of fact. Extremely worryingly, a few centres reported having had no contact with the police, prosecutor's office, or court on any incident of domestic violence.

Prosecutors interviewed, by and large, had no lines of communication open with other officials related to the Laws on Protection. The RS Law on Protection only requires police to notify the prosecutor's office when they have submitted a request for initiation of protection measure to minor offence departments. It would be important to develop a system to ensure that prosecutors are aware of suspects who may have outstanding protection orders issued against them.

Confirming the need to enhance co-operation, most officials interviewed indicated that they believe protocols guiding each institution's actions as well as co-operation with other officials and NGOs with respect to the Laws on Protection and domestic violence instances are generally needed. Several officials also mentioned the key role that schools can and should play in prevention and identification of at-risk children, and the need to actively involve educational institutions in any protocol.

⁵⁷ For example, Žena BiH was instrumental in the development of a protocol in Mostar, Udruženje Žena in Banja Luka, and Budućnost and Medica Zenica in Modriča.

⁵⁸ The RS Law on Protection requires police to immediately inform social welfare centres upon receiving a report or information on domestic violence; this is in line with international standards which suggest that victims should be referred to adequate support services immediately.

Although the present assessment did not intend to examine the implementation or successfulness of the existing protocols, some information on this was obtained. It is clear that the level of knowledge about domestic violence and communication among officials in these locations have improved and some services to victims are enhanced, such as access to shelters. It is not necessarily the case; however, these protocols enhance implementation of the Laws on Protection and use of protection measures for victims. It remains to be further explored if protocols on co-operation were to incorporate specifically responsibilities and duties from the Laws on Protection if this would enhance the use and implementation of protection measures.

5.1 Conclusions and Recommendations

A co-ordinated response among officials and relevant NGOs is crucial to ensure effective victim protection. In locations where there are no protocols adopted, the lack of co-operation and co-ordination among officials was apparent and self-reported. To resolve this, it is recommended that:

- a) The Gender Centres should initiate the development of protocols on co-operation among all key officials and NGOs detailing roles and responsibilities of each institution when responding to instances of domestic violence and modalities of co-operation and information sharing. Further research and analysis on the elements required in protocols to ensure effective implementation of the Laws on Protection should be carried out. Consultation with NGOs that have initiated or supported protocols should be ensured;
- b) Protocols should be presented for public discussion among the target recipients, including victims; and
- c) In the meantime, the Gender Centres should provide expert consultation and training to those municipalities that wish to initiate protocols.

6. UNDERSTANDING OF DOMESTIC VIOLENCE AND FAMILIARITY WITH THE LAWS ON PROTECTION

6.1 Understanding of Domestic Violence

Understanding of the specific dynamics and nature of domestic violence is necessary in order to appropriately protect victims. For example, without an understanding of the various manifestations of domestic violence and high risk factors for victims, social workers and police may not identify victims or high-risk persons. Judges may not order the most appropriate protection measure without a sound understanding of the impact of domestic violence on victims and the victim's children. The CEDAW Committee in 2005 recommended that Bosnia and Herzegovina take measures to:

empower women to report incidences of domestic violence and to ensure, through training programmes, that public officials, especially law enforcement personnel, the judiciary, health-care providers, social workers and teachers, are fully familiar with applicable legal provisions, are sensitized to all forms of

violence against women and are skilled to respond to them in an adequate manner.⁵⁹

Most officials interviewed reported having had little to no training on domestic violence. Through conversations, it became clear that not all officials understand the vicious cycle of violence, or the particular needs of domestic violence victims. For example:

Representatives from two different police stations described their belief that victims misused police services to remove drunken partners from the home, even if violence was not present.

Experts in domestic violence would contradict this, as research indicates that women resort to police assistance only when the violence has already occurred numerous times, and is of a serious level.⁶⁰ Another concerning example:

In one medium-sized town, social protection officials described their belief that most cases of domestic violence are an exaggeration and an attempt by victims to gain an advantageous position in the relationship. With respect to the Law on Protection, the officials described their belief that this Law could easily be exploited by victims. Not surprisingly, they reported giving victims advice on how to behave and tried to dissuade them from taking decisive action via the police and the courts.

Although such an openly hostile attitude towards domestic violence victims was rarely observed, the numerous other instances of apparent lack of appropriate response and protection for victims could also be attributed to a lack of understanding of domestic violence. There were a few exceptions where a proactive approach to domestic violence was adopted. For example:

In one medium-sized town, the Social Welfare Centre has one person who addresses the domestic violence caseload. He maintains close contact with all other relevant institutions, including the police, health institutions, the Prosecutor's Office, the Court, schools, the Gender Equality Commission, the Municipal Assembly, non-governmental organizations, and a safe house outside of his region. He has a standing agreement on the types of cases where he attends the crime scene with the police (in cases involving child witnesses). The police regularly contact him regarding these and other cases, and provide him with written information. He notes that the lack of more personnel within the Centre prevents him from also tackling prevention and rehabilitation of perpetrators.

Of note, this was also a town where a memorandum of understanding on response to domestic violence among officials and an NGO was in effect, and officials had received training on domestic violence. In short, appropriate training and tools can impact the day-to-day response to domestic violence.

⁵⁹ Concluding comments of the Committee on the Elimination of Discrimination against Women: Bosnia and Herzegovina, CEDAW/C/BIH/CO/3, 2 June 2006, paragraph 26.

⁶⁰ Canadian Centre for Justice Statistics, *Family Violence in Canada: A Statistical Profile 2005*, page 26.

6.2 Capacity Building on the Laws on Protection

Most social protection, police and judicial officials interviewed have not participated in educational opportunities with respect to the Laws on Protection. A surprising number of officials were either unaware of, or not in possession of, the relevant Rulebooks. Even police who had implemented a protection measure were unaware of the relevant Rulebook. One police officer admitted that without training on the Law on Protection or any systematic information-sharing within the police, she, quite simply, does not apply the Law on Protection. On a positive note, a few isolated initiatives to enhance capacity were noted, such as one police official who organized internal trainings on the Law on Protection and procedures for his colleagues, after he had participated in training.

With respect to the judicial capacity to implement the Laws on Protection, it is difficult to draw comprehensive conclusions as so few measures were issued. Some of the findings are indicative; nevertheless, enhanced educational opportunities and training tools are needed. For example, the delays in proceedings suggest that judges do not understand that lives and safety are at risk. Training initiatives should encompass the Laws on Protection, as well as the judicial role and responsibilities vis-à-vis domestic violence victims.

6.3 Conclusion and Recommendations

The overall impression from interviews is that officials are not sufficiently familiar with the Laws on Protection to ensure their implementation and victim protection. Important to note, many interviewees themselves identified the need for training on domestic violence to properly protect victims and implement the Laws on Protection. Both Gender Centres appear aware of this problem and are planning steps to address it. Nevertheless, the importance of garnering the necessary political support at all levels for such commitments needs to be reinforced. It is recommended that:

- a) The Republika Srpska and the Federation of Bosnia and Herzegovina Gender Centres take immediate and comprehensive steps to ensure that each competent Ministry prioritises implementation of the Laws on Protection and adequately trains and equips their personnel to do so. In this respect, appropriate training material and tools should be developed, including guidelines, standardised forms, and internal policies;
- b) Institutional training mechanisms, such as the Police Academies, the Judicial and Prosecutorial Training Centres, and social welfare centres' annual meetings, should integrate domestic violence and gender-based violence into their training curricula and include curriculum on the dynamics of domestic violence, appropriate response to protect victims; and the Laws on Protection and accompanying Rulebooks; and
- c) The important role that some NGOs can play in providing training and capacity building on domestic violence should be capitalised upon.

7. POLICE RESPONSE TO DOMESTIC VIOLENCE

The initial police response deserves heightened attention because officials interviewed consistently noted that the police are victims' first contact with any public official. Police play a key role, therefore, in identifying and initiating the necessary activities to ensure victims' protection. International human rights standards and best practices in the field of law enforcement's response to domestic violence suggests that key elements of the initial police response include: interviewing parties and witnesses immediately and separately; recording the complaint in detail; advising victims of their rights; providing or arranging for transportation for victims to receive medical treatment; and providing protection to the reporter of the violence.⁶¹ Victims should be seen as soon as possible by a specially trained officer and, in larger areas, specialist units should be organized.⁶² The police should have powers to enter private property, arrest and remove a violent perpetrator.⁶³

The FBiH Law on Protection provide little guidance about the appropriate police response to domestic violence, while the RS Law on Protection provides only slightly more. Police officials reported that there are no written documents or guidelines on responding to domestic violence incidents. As noted above, only in a few locations have memorandum on co-operation with other actors been developed, but such memoranda are not intended to define the overall police response. In the absence of legal requirements and internal policies, divergent practices have developed with respect to responding domestic violence; some of the key concerns identified are discussed below.

7.1 *Initial Response*

Only police stations that are linked to protocols or memorandum on co-operation had any form of standardized response to domestic violence incidents. Several police stations have focal points for domestic violence, often female, although their role appears to vary from place to place, and it does not appear to be consistently exercised. Many focal points interviewed served as desk officers who maintain statistics on domestic violence, among their other activities.

Many police officials noted that they treat domestic violence calls as any other reported offence. Usually, duty patrol officers arrive to the scene first. In contrast, some police officials reported particular practice or responses, for example, one station noted that a crime technician always attends the crime scene to document material evidence, and who also assists the victim in obtaining proper medical care. In line with best practices, only one station noted that they attempt to have a female officer respond to the crime scene to interview victims. This is also the only station that reported having trained female officers.

7.2 *Evidence Gathering Techniques*

Some identified practices negatively impact the ability to investigate and prosecute perpetrators. Among these, many police officials reported a deliberate practice of waiting for the victim to "recover", or for things to "cool down". Research shows that victims need to be interviewed immediately. In terms of evidence gathering and documenting injuries, one station reported using a camera to document physical injuries prior to requesting the victim to go to a

⁶¹ See *Good practices in legislation*, Section 7.A, page 39.

⁶² See *Minimum standards*, Table 8.17, Law Enforcement.

⁶³ See *Minimum standards*, Table 8.17, Law Enforcement and see also *Model Strategies and Practical Measures*, paragraph 8(c).

health clinic for a medical examination. Very few evidence gathering techniques used at the crime scene were noted, and it is somewhat concerning if material evidence is only documented when crime technicians also attend crime scenes. One police station has introduced a new official standardized form for all domestic violence calls, which is commendable. With respect to documenting the type of violence, the form provides check boxes for the type of violence the victim experienced, e.g., physical attack, name calling, swearing, etc., but with respect to physical violence, does not require any further explanation or details. Best practices in responding to domestic violence encourage the initial police response to thoroughly document the incident and any signs of physical violence on the victim or at the location.

7.3 Information Conveyed to Victim

It is important that victims receive appropriate and timely information about the possible measures available in the Laws on Protection as well other resources available, and what law enforcement officials and other officials can do to assist. Such information sharing serves as a key component to empower victims to make appropriate choices and assists in defining the best course of action for the victim's safety. Few police explicitly described informing victims of their rights from the Laws on Protection, or more generally. It is unclear to what extent victims are informed of their rights and choices in practice, but it is safe to suggest that improvements could be made. Clear guidelines for every first response police team should be developed, setting forth precisely what information must be conveyed to victims at the scene.

7.4 Use of Custody

The criminal procedure codes allow police to arrest persons if there are grounds for suspicion that a criminal offence was committed and if there are reasons supporting one of the enumerated custody grounds (such as fear that the offence will be repeated). Persons can be kept in police custody for a maximum of 24 hours before being brought before the prosecutor. Minor offence legislation also allows police to arrest persons suspected of committing a minor offence for a maximum of twelve hours before being brought before a judge.

With respect to the use of custody, different practices were noted. Some police officials described using 24-hour police custody in the majority of cases as a measure that serves to protect the victim from further violence, particularly when the perpetrator is intoxicated it serves as a "drying out" period. Some police officials also identified custody as an effective preventative measure, noting that perpetrators behave very differently following a 24-hour period in custody. It was unclear, however, whether the prosecutor's office was notified; in many cases, it would appear that they were not. In other locations, police noted that use of an initial period of custody is rare. It would be advisable for the police to share a common understanding of facts and circumstances which warrant the detention of perpetrators to ensure adequate victim protection, and police should notify the prosecutor's office immediately upon initial detention.

7.5 Policies To Address Police Officials as Potential Perpetrators

Finally, best practices in law enforcement strategies on domestic violence include addressing affirmatively violence against women committed by law enforcement personnel. Such policies should include both prevention techniques as well as how to respond to emerging allegations within the force. Internal response and investigation procedures should be developed.⁶⁴

⁶⁴ National Advisory Council on Violence Against Women, *Toolkit to End Violence Against Women*, Chapter 4, Enhancing the response of the Justice System: Criminal Remedies, available on-line at: <http://toolkit.ncjrs.org/>

Such policies should enable victims to be fully protected and perpetrators prosecuted, regardless of the location or position of the police officer/suspected perpetrator. In interviews, the police officials admitted that there was no policy to address domestic violence committed by police officers in their ranks. One police official shared the following:

In a small town in the Federation of Bosnia and Herzegovina, the police learned that one of their officers was suspected of domestic violence. Having no policy in place, the police management decided to conduct an internal investigation. It was found that the police officer was the sole financial support for his family, and it was decided not to file criminal charges (which could have resulted in release from duty), but rather consider the incident a minor offence. The superior police officer believed that this approach was in the best interest of the family.

No further changes or interventions with respect to the police officer's behaviour were mentioned. Although the police management may have been well-intentioned, the overall impression is that an *ad hoc* solution was found and a sense of police immunity reinforced. Without clear policies in place, *ad hoc* and, possibly, inappropriate solutions will be crafted on a case-by-case basis.

7.6 Conclusion and Recommendations

Most police officers noted that guidance from their respective Ministry would be welcome as to the appropriate procedure in responding to domestic violence calls. In addition to the police involvement in the development of protocols on co-operation among actors, as discussed above, other shortcomings identified in the police response should be actively addressed within police structures and, when relevant, in collaboration with prosecutorial structures. With priority, the Ministries of Interior should:

- a) Enhance or establish specialized units to respond to domestic violence, or train individual personnel. The role and function of focal points, if retained, should be further defined. First response teams should include female officers;
- b) Establish guidelines to respond to domestic violence incidents; including, *inter alia*, procedures for dispatch and responding to calls; initial response; requirement to complete a standardized incident report immediately; evidence gathering, including need to document violence or harm; managing victims and ensuring their safety; use of custody against violent perpetrators; obligation to report all incidents to prosecutors' offices; and policies on filing protection measures;
- c) Establish a policy to address the investigation and prosecution of police officers suspected of domestic violence and other forms of violence against women and ensure adequate protection for family members of alleged domestic violence perpetrators; and,
- d) In co-operation with the police academies and the Judicial and Prosecutorial Training Centres, develop and organize joint police/prosecutorial trainings on domestic violence to promote enhanced co-operation, a common understanding of the dynamics of domestic violence, and to improve evidence gathering techniques and investigation outcomes.

8. SOCIAL WELFARE CENTRES' RESPONSE TO DOMESTIC VIOLENCE

International standards urge states to make a wide range of services available and accessible to victims of domestic violence to ensure their safety and rehabilitation, including, for example, emergency and temporary accommodation, medical treatment, physical and mental rehabilitation and counselling services. In Bosnia and Herzegovina, social welfare centres serve as the primary connecting point between victims and access to such services, whether by the centre itself or referral to another institution or NGO. Interviews made clear that social protection officials interact with domestic violence victims regularly. In cases where victims disclose domestic violence, most indicate that the violence has been ongoing for some time. Social protection officials also noted that they discover domestic violence through other interactions with victims, often a divorce or child custody proceedings.

8.1 Procedure

Social protection officials revealed that there is no consistent procedure with respect to processing domestic violence cases and providing protection to victims. In terms of a typical response, this was described as follows: Upon notification, the social protection officer interviews the victim at the premises of the centre or, alternatively, if the centre lacks space, at the local police station, or at the victim's home. Several officials noted that they went to the police station whenever a child victim was interviewed. Some officials described informing victims of their rights and options during this initial interview. Following the interview, an official note is made and a case file opened. Almost all officials stated that they did not take detailed notes during the interview, so as to ease the victim's comfort level by talking openly. Even more worrying, one official noted not keeping any form of detailed records, so as to protect the victim's privacy.

Only a few social welfare centres reported having the capacity to provide a minimum level of short-term counselling, while most asserted that a lack of trained staff prevents them from doing even this. Contacts with victims are maintained through various means: follow-up phone calls, visits to the home, or by asking the victim to stop by the centre. If the violence involves school-age children, social protection officials inform the school pedagogue and liaise with him or her about the child's well-being and progress in school.

8.2 Resources

As was anticipated, most social protection officials stated that due to limited financial resources and staff it was difficult for them to fulfil their responsibilities in relation to domestic violence cases. Generally, social welfare centres do not have specialists on staff, such as psychologists, and the situation is compounded by general understaffing. Often the director is the only social worker on staff who has knowledge and experience to work with victims. Some social welfare centres do not have the facilities available to host interviews with victims in private; some do not have vehicles to facilitate home visits. Many centres noted that their ability to support victims depends on what other resources are available in or near the municipality, e.g., whether there is a safe house, an NGO providing services, or a mental health centre with appropriate and sufficient staff to counsel victims.

In the absence of other resources, many social protection officials reported providing a one-time financial assistance to victims in dire financial situation, although there appear to be no criteria for determining the appropriateness of this assistance. Many social protection offi-

cially expressed concern that victims could not be considered beneficiaries as per the relevant Laws on Social Protection, even if they were receiving direct counselling or other forms of intervention at the centre. This situation results in some victims not having health insurance and access to appropriate medical assistance.

8.3 Safety Plan

The social protection officials interviewed noted there were no policies in place for instances when the staff face security concerns due to their work with perpetrators and involvement in domestic violence situations. Many officials interviewed shared their fears in this respect, and some had in fact experienced specific incidents involving threats to their safety.

8.4 Conclusions and Recommendations

The natural conclusion drawn from the above findings indicate that written policies and procedures for identifying and serving domestic violence victims would enhance the social protection response. A resource developed by Save the Children and initially piloted in the Tuzla Canton Ministry of Labour and Social Affairs may be useful to all social welfare centres, since it provides sample intake forms/evidentiary records, protection measures requests, and reports on the implementation of protection measures.⁶⁵ Information from Save the Children indicates that many social welfare centres have adapted these forms for their use. Such concrete tools are needed. In the absence of the development of more sophisticated mechanisms, such as intervention centres for victims, the social protection authorities must ensure that social welfare centres are sufficiently staffed, trained and equipped to respond to domestic violence. It is recommended that:

- a) The Federation of Bosnia and Herzegovina Ministry of Labour and Social Policy, the Republika Srpska Ministry of Health and Social Protection and the relevant cantonal Ministries of Social Protection should enact comprehensive policies detailing the role of social welfare centres with respect to responding to incidents of domestic violence, addressing, *inter alia*, identifying victims; appropriate first response; where to conduct interviews with victims; how to interview victims and appropriately document violence; appropriate reporting of domestic violence incidents to the police; policies on requesting protection measures on behalf of victims; use of the one-time financial assistance; appropriate interaction with perpetrators; staff safety plan; and record keeping;
- b) The Ministries mentioned above, as well as the municipalities, should recognise and address the issue of domestic violence as a priority and provide adequate resources to ensure that social welfare centres are sufficiently staffed and trained to address domestic violence. Municipalities should be supported in this regard by the entity/cantonal ministries with regards to necessary budget allocations. Alternative solutions to supporting domestic violence victims should be considered, such as enhanced partnerships with non-governmental organizations and roaming expert staff, such as psychologists, covering several social welfare centres;
- c) Entity and cantonal social protection legislation should be reviewed to ensure that, where it is not yet the case, domestic violence victims should be included and specified as a social beneficiary category; and

⁶⁵ *Standard instruments in the field of social and child protection* (2006).

- d) Entity and cantonal authorities should ensure that an adequate number of relevant social protection institutions, particularly safe houses, are available and functioning and that appropriate services are provided. Safe houses established by NGOs should be adequately supported to ensure their continued funding.

9. DATA COLLECTION

International standards emphasize that the need to maintain disaggregated data on all forms of gender-based violence.⁶⁶ Record and data collection policies must protect victims' privacy.⁶⁷ The CEDAW Committee, in its concluding recommendations in 2005, encouraged Bosnia and Herzegovina to collect data on incidences of domestic violence against women.⁶⁸ The Strategy for Prevention and Combating of Domestic Violence in Bosnia and Herzegovina calls for systematic collection of data on domestic violence by all officials, and includes a number of actions in support of this goal.⁶⁹ Specifically with respect to protection measures, the FBiH Law on Protection provides that social welfare centres shall keep records of protection measures issued,⁷⁰ while the RS Law on Protection requires the police, social welfare centres and courts to keep records of pronounced protection measures with respect to victims and perpetrators, depending on which measure is issued.⁷¹ It is particularly important that records of protection measures issued are easily available to the police, prosecutors, minor offence and criminal judges, since the issuance of these measures may be used as facts in other minor offence or criminal proceedings.⁷²

9.1 Data Collection Practices by Officials Interviewed

It appears that most officials interviewed maintain basic data on domestic violence incidents, while a great need has been identified for improved record keeping. With respect to protection measures specifically, it seems that a clear need to maintain these records has not been felt, since few have been issued to date. For example, only a few police stations interviewed appear to maintain detailed disaggregated data. With respect to protection measures specifically, it is unclear what data is maintained, but due to the low number of measures issued overall, most police stations had simply not felt a need to develop a methodology for this data.

Social welfare centres appear to maintain minimal records on domestic violence cases generally, but it is unclear if the data is even disaggregated to identify domestic violence victims among other clients. Many officials were unable to provide precise figures on the number of domestic violence victims served, and it did not appear that the centres considered themselves obliged to maintain such data. Exceptionally, a few centres noted keeping detailed statistics and sharing these with the relevant ministry.

⁶⁶ Convention on the Elimination of All Forms of Violence against Women, General Comment no. 19, 24(u).

⁶⁷ *Minimum standards for support services*, Table 8.17.

⁶⁸ Concluding comments of the Committee on the Elimination of Discrimination Against Women, 2 June 2006, C/BIH/CO/3.

⁶⁹ The Strategy on Prevention and Fight against Domestic Violence in Bosnia and Herzegovina, 2009-2011, Goal IV.

⁷⁰ The FBiH Law on Protection, Article 19.

⁷¹ The RS Law on Protection, Article 19.4.

⁷² *Model Strategies and Practical Measures*, V.10.(e) recommends that states "establish a registration system for judicial protection and restraining orders...so that police or criminal justice officials can quickly determine whether such an order is in force." Also, *Good Practices in Legislation* recommends that legislation should allow the issuance of protection orders to be "introduced as a material fact in subsequent legal proceedings" Section 8.B, page 51.

With regard to judicial records on protection measures, it is unclear to which extent and how these records are maintained and accessible to other relevant officials. The relatively new centralised database of minor offence records maintained by the Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina should serve as a common collection point for all protection measures issued, but it is unclear to what extent is this fully updated and accessed by all relevant officials.⁷³

9.2 Conclusions and Recommendations

The obvious must be noted: service providers, such as social welfare centres, as well as law enforcement officials, cannot justify enhanced resources for domestic violence if they cannot document with certainty the number of victims served or the need in relation to measures requiring budgetary resources. To comply with the requirements of the Convention on the Elimination of all Forms of Discrimination against Women and other international commitments, all levels of government and officials involved in protecting victims should enhance their record collection practices. It is recommended that:

- a) The Gender Agency of Bosnia and Herzegovina should initiate the implementation of Goal IV of the Strategy for Prevention and Combating Domestic Violence in Bosnia and Herzegovina in collaboration with the other stakeholders, namely, the FBiH and the RS Gender Centres, the Ministries of Justice, Bosnia and Herzegovina Statistical Agency, Entity and Brcko District statistical institutions, the High Judicial and Prosecutorial Council and the Agency for Identification Documents, Registers and Data Exchange of Bosnia and Herzegovina to establish data collection policies within each competent body and necessary information exchange;
- b) In the meantime, pending the development of official data collection guidelines, each institution should take the necessary measures to document properly alleged incidents, victims' allegations, protection measures requested and protection measures issued within their scope of responsibility; and,
- c) Protocols on co-operation should reference each institution's respective data collection policy, and specify with whom and when the information should be shared to ensure victims' protection while also respecting privacy issues.

⁷³ See, www.iddeea.gov.ba

10. RECOMMENDATIONS

➤ *To the Gender Agency of Bosnia and Herzegovina, the Gender Centres of the Republika Srpska and the Federation of Bosnia and Herzegovina, and Legislative Authorities*

1. Form a working group as per Goal 1 of the Strategy for Prevention and Combating of Domestic Violence in Bosnia and Herzegovina with the goal of harmonising the RS and FBiH Laws on Protection. Representatives from the Gender Centres, the Brcko District Judicial Commission, and NGOs should be members of the working group. Legislative changes that should be considered include:
 - The best modality to process domestic violence incidents should be assessed: whether treated exclusively as a criminal offence or both criminal and minor offence. If it is decided to retain the minor offence of domestic violence, the minor offence and protection measures should be completely separate, i.e., the Law on Protection should not be a vehicle by which perpetrators are sanctioned;
 - Inclusion of an even greater range of measures to protect victims in the Laws on Protection, as well as to re-assess the appropriateness of perpetrator-targeted programmes as forms of victim protection, e.g., psycho-social, alcohol and drug abuse treatment. Involvement in a perpetrator programme, alcohol or drug abuse treatment should not be considered an alternative to sentencing nor a protection measure, but as an additional measure;
 - Indication of sufficient minimum evidentiary standards for issuance of a protection measure, which should be different from the standard needed to sanction the perpetrator;
 - Shorter deadlines for issuance of protection measures of removal of perpetrator from the home, restraining order and prohibition on harassment or stalking; these should be considered emergency protection orders and treated as such. A longer deadline for the issuance of the other measures may be appropriate but should be specified;
 - Deadlines for issuance of decisions on appeal;
 - The Criminal Codes of the Republika Srpska and the Federation of Bosnia and Herzegovina respectively should be amended so that violations of protection measures are prosecutable as a criminal offence; and,
2. Together with authorities of the Brcko District Judicial Commission, address the availability of protection measures for domestic violence victims in the Brcko District.

➤ ***To the Gender Agency of Bosnia and Herzegovina, and the Gender Centres of the Republika Srpska and the Federation of Bosnia and Herzegovina***

1. Together with relevant ministries, launch an information campaign to engage all officials and civil society organizations in the application of the Laws on Protection. In particular, informational material for victims and potential victims should be available and widely distributed. Outreach should target particularly vulnerable groups, such as rural women, Roma, disabled persons, and economically dependent women;
2. Develop protocols on co-operation among key officials and NGOs detailing roles and responsibilities of each institution when responding to instances of domestic violence. Further research and analysis regarding the elements required in protocols to ensure effective implementation of the Laws on Protection should be conducted. Consultation with NGOs that have initiated or supported protocols should be ensured. Protocols should be presented for public discussion among the target recipients, including victims;
3. Pending the development of these protocols, provide expert consultation and training to municipalities that wish to initiate protocols;
4. Ensure that each relevant ministry prioritises the implementation of the Laws on Protection and adequately trains and equips their personnel to do so. In this respect, appropriate training material and tools should be developed, including guidelines, standardised forms, and internal policies. Domestic violence should be integrated into mandatory training structures; and
5. On the basis of an assessment of the present capacity and needs, create an overall plan to ensure adequate shelter capacity and funding and take steps with relevant authorities to ensure the political and financial support for identified needs.

➤ ***To the Ministries of Justice***

1. Support the Gender Centre in making necessary legislative changes to the FBiH and RS Laws on Protection, as discussed herein;
2. Take measures to ensure that legal aid is available to all domestic violence victims with respect to requesting protection measures or otherwise seeking advice and assistance regarding all types of domestic violence proceedings. The Ministry of Justice of the Republika Srpska should ensure, with respect to the start-up of the RS Legal Aid Centre, that domestic violence victims are clearly understood as a potential beneficiary.

➤ ***To the Ministries of Interior and the Police***

1. In the Federation of Bosnia and Herzegovina, the Federation and Cantonal Ministries of Interior should send a clear message to police officers to qualify all incidents of domestic violence as a criminal offence within the Criminal Code of the Federation of Bosnia and Herzegovina. Police should submit de-

tailed and standardized reports to prosecutors' offices with respect to every incident. The application of the FBiH Law on Protection should not be viewed as a substitute to criminal prosecution;

2. Enhance or establish specialized units to respond to domestic violence, or train individual personnel. The role and function of focal points, if retained, should be further defined. First response teams should include female officers;
3. Establish guidelines to respond to domestic violence incidents; including, *inter alia*, procedures for dispatch and responding to calls; initial response; requirement to complete a standardized incident report immediately; evidence gathering, including need to document violence or harm; managing victims and ensuring their safety; use of custody against violent perpetrators; obligation to report all incidents to prosecutors' offices; and policies on filing protection measures;
4. Establish a policy to address the investigation and prosecution of police officers suspected of domestic violence and ensure adequate protection for family members of these suspected perpetrators;
5. In co-operation with the police academies and the Judicial and Prosecutorial Training Centres, develop and organize joint police/prosecutorial trainings on domestic violence to promote enhanced co-operation, common understanding of dynamics of domestic violence, and improve evidence gathering techniques and investigation outcomes. Domestic violence should be an integrated part of mandatory police training.

➤ ***To the Ministries in Charge of Social Protection and Social Welfare Centres***

1. Enact comprehensive policies detailing the role of social welfare centres with respect to responding to incidents of domestic violence, addressing, *inter alia*, identifying victims; appropriate first response; where to conduct interviews with victims; how to interview victims and appropriately document violence; appropriate reporting of domestic violence incidents to the police; policies on requesting protection measures on behalf of victims; use of one-time financial assistance; appropriate interaction with perpetrators; staff safety plan; and record keeping;
2. Recognise domestic violence as a priority and provide adequate resources to ensure that social welfare centres have sufficient capacity to address domestic violence. Municipalities should be supported in this regard by the entity/cantonal ministries with regards to necessary budget allocations. Alternative solutions to supporting domestic violence victims should be considered, such as enhanced partnerships with NGOs, and roaming expert staff, .e.g., psychologists covering several social welfare centres;
3. Entity and cantonal social protection legislation should be reviewed to ensure that, where it is not yet the case, domestic violence victims should be included and expressly specified as a social beneficiary category; and

4. Entity and cantonal authorities should ensure that an adequate number of relevant social protection institutions, particularly safe houses, are available and functioning and that services of adequate quality are provided. Safe houses established by NGOs should be adequately supported to ensure their continued funding.

➤ ***To Municipal Authorities***

Domestic violence must be recognised as a priority and adequate resources provided to ensure that social welfare centres are sufficiently staffed and equipped to address the needs of domestic violence victims and fulfil their duties as required by the Laws on Protection. Together with the relevant ministries, municipalities should ensure that support structures, such as safe houses, are adequately funded.

➤ ***To Judges***

Protection measure proceedings should be treated with urgency. When ordering measures, victims' safety and well-being should be prioritised and it should be understood that mandatory alcohol and drug treatment and psychosocial treatment programmes are not measures which ensure immediate victim safety. The expertise of social welfare centres should be engaged to ensure that the most appropriate protection measure is identified and victims provided with adequate support.

➤ ***To the Chief Prosecutors***

Request prosecutors to engage more vigorously in collecting evidence and prosecuting instances of domestic violence as defined in the respective Criminal Codes, remind prosecutors of their role in providing guidance to police in the initial investigation of such cases, and highlight the need to exercise care in suggesting appropriate sentences.

➤ ***To the High Judicial and Prosecutorial Council and the Judicial and Prosecutorial Training Centres***

1. A commentary or other training material for judges on the Laws on Protection should be developed to reinforce key concepts, such as the Law on Protection as a unique legal measure (*lex specialis*), the purpose of each protection measure, evidentiary standard, and urgency of proceedings, among other things. International human rights standards and a victim-centred approach to implementation of the Laws should be emphasized in any training material; and
2. A comprehensive module on domestic violence and the Laws on Protection targeted at judges within minor offence departments should be developed to provide the necessary background and context on the phenomena of domestic violence and ensure appropriate use of protection measures. NGOs with relevant expertise should be consulted in the development of such module.

➤ ***To All Officials Involved in Implementing the Laws on Protection and Reporting on Domestic Violence Incidents***

1. Clear internal policies on reporting domestic violence incidents to the police and information sharing among officials should be insisted upon by all institu-

tions. Care professionals, especially social protection, health and education officials, should work with victims to explain their reporting requirements and with victim's knowledge, report to the police;

2. Requests for protection measures by third parties, such as the police, should be submitted upon confidential consultation with victims;
3. Submit timely and fact-based reports on implementation of imposed measures to judges, as required by the relevant implementing agency in the Republika Srpska and from social welfare centres in the Federation of Bosnia and Herzegovina;
4. Pending the development of official data collection guidelines, each institution should take the necessary measures to properly document alleged incidents, victims' allegations, protection measures requested and protection measures issued within their scope of responsibility; and,
5. Share with victims their rights and possible protection measures available in the Laws on Protection.

Annex 1

Institutions Interviewed

Police

Banja Luka Public Security Centre
Bratunac Police Station
East Sarajevo Public Security Centre
Gradiška Police Station
Mrkonjić Grad Police Station
Prijedor Police Station
Srebrenica Police Station
Vlasenica Police Station
Zvornik Police Station
Bosanska Krupa Police Station
Bosanski Petrovac Police Station
Bugojno Police Station
Donji Vakuf Police Station
Drvar Police Administration
Kalesija Police Administration
Konjic Police Administration
Livno Police Administration
Novi Travnik Police Station
Široki Brijeg Police Station
Tomislavgrad Police Administration
Zenica Police Administration

Social Welfare Centres

Banja Luka SWC
Bratunac SWC
Gradiška SWC
Modriča SWC
Mrkonjić Grad SWC
Pale SWC
Prijedor SWC
Srebrenica SWC
Vlasenica SWC
Zvornik SWC
Bosanska Krupa SWC
Bosanski Petrovac SWC
Bugojno SWC
Donji Vakuf SWC
Drvar SWC
Kalesija SWC
Konjic SWC
Livno SWC
Novi Travnik SWC
Široki Brijeg SWC
Tomislavgrad SWC
Zenica SWC

Judiciary

Banja Luka Minor Offence Department of Banja Luka Basic Court
Banja Luka District Prosecutor's Office
East Sarajevo District Prosecutor's Office
Gradiška Minor Offence Department of Gradiška Basic Court
Modriča Minor Offence Department of Modriča Basic Court
Mrkonjič Grad Minor Offence Department of Mrkonjič Grad Basic Court
Prijedor Minor Offence Department of Prijedor Basic Court
Sokolac Minor Offence Department of Sokolac Basic Court
Srebrenica Minor Offence Department of Srebrenica Basic Court
Srebrenica Branch of Bijeljina District Prosecutor's Office
Višegrad Minor Offence Department of Višegrad Basic Court
Vlasenica Minor Offence Branch of Srebrenica Basic Court
Zvornik Minor Offence Department of Zvornik Basic Court
Zvornik Branch of Bijeljina District Prosecutor's Office
Bosanska Krupa Minor Offence Department of Bosanska Krupa Municipal Court
Bosanski Petrovac Minor Offence Branch of Bihać Municipal Court
Bugojno Minor Offence Department of Bugojno Municipal Court
Canton 10 Cantonal Prosecutor's Office
Central Bosnia Canton Cantonal Prosecutor's Office
Drvar Minor Offence Branch of Livno Municipal Court
Jajce Minor Offence Branch of Bugojno Municipal Court
Kalesija Minor Offence Department of Kalesija Municipal Court
Konjic Minor Offence Department of Konjic Municipal Court
Konjic Branch of West Herzegovina Canton Cantonal Prosecutor's Office
Livno Minor Offence Department of Livno Municipal Court
Široki Brijeg Minor Offence Department of Široki Brijeg Municipal Court
Tomislavgrad Minor Offence Branch of Livno Municipal Court
Travnik Minor Offence Department of Travnik Municipal Court
Tuzla Canton Cantonal Prosecutor's Office
Una-Sana Canton Cantonal Prosecutor's Office
West Herzegovina Canton Cantonal Prosecutor's Office
Zenica Minor Offence Department of Zenica Municipal Court