

Violence against women in BiH:

ABSENCE OF SYSTEMIC
PROTECTION AND
SECURED ACCESS
TO JUSTICE



*Aleksandra Petrić,
Udružene žene Foundation, Banja Luka, BiH
in collaboration with PRAVA ZA SVE, Sarajevo*



This policy paper links to the recently adopted policy for establishing gender equality (EU Gender Action Plan 2016-2020) in the European Union (EU) accession process.

EU Gender Action Plan 2016-2020 was adopted by the European Commission and the EEAS as a new framework for the EU's activities on gender equality and women's empowerment. Its aim is to support partners, especially in developing, enlargement and neighbouring countries, to achieve tangible results towards gender equality which is at the core of European values, as well as the new Sustainable Development Goals (SDGs).

The new framework is divided into four pillars: **Fighting violence of any kind against women and girls; Economic and social empowerment; Strengthening voice and participation; and Shifting institutional culture.**

EU High Representative/Vice-President
Federica Mogherini said:

“Women’s rights are human rights and human rights are women’s rights. We want to provide our partners with the effective support they need in order to fight violence against women and girls and at the same time to empower them socially and economically, so that women can participate actively in the political, social and cultural life of their countries.”²¹

CSOs contribution to the EU Country Report
Bosnia and Herzegovina 2016

Background

Violence against women in Bosnia and Herzegovina (BiH) remain and perseveres as a form of widespread violation of human rights of women, with no major progress towards securing unhindered access to systemic, efficient and sensitised support and assistance for women who have survived it, along with absence of mutual harmonisation of laws and public policies in this area, as well as their application in practice, towards securing equal status and protection of rights of women survivors of violence, as well as slow progress towards the fulfilment of international standards and commitments BiH has undertaken, primarily the UN Convention on Elimination of All Forms of Discrimination against Women (CEDAW) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention).

Current legislation in BiH does not recognise violence against women as a specific form of gender-based violence;² instead, it uses gender-neutral definitions, which contributes to minimization of the degree of social danger arising from different forms of violence that women are exposed to in private and public spheres. This document focuses on the burning issues recognised by NGOs across BiH dealing with women's human rights protection for years, which inhibit any real progress in the field of protection of and support for women and girls who have survived violence, as well as the exercise of their fundamental right to a life free from violence. Within three principal areas defined here, measures are proposed so as to seek a more active role by governmental institutions, as well as coordination and synergy with NGOs.

2 The UN defines violence against women as “a manifestation of historically unequal power relations between men and women, which have led to the domination over and discrimination against women by men and to the prevention of their full advancement“. Declaration on elimination of violence against women, UN General Assembly Resolution UN 48/104, 20 December 1993. The Istanbul Convention recognises that violence against women is a manifestation of historically unequal power relations between women and men, which have led to domination over, and discrimination against, women by men and to the prevention of the full advancement of women.“ (Preamble).

Violence against women and girls directly linked to the lack of access to justice and mistrust towards the protection system

Data available from governmental institutions and civil society organisations (CSO) show that domestic violence and partner violence in BiH continues to be the most pervasive form of violence, affecting predominantly women and girls.³ Reports by governmental institutions indicate that a drop in the number of recorded and prosecuted cases is seen as a decrease in violence,⁴ which does not reflect the actual situation, disregarding the fact that many women and girls who experience some form of domestic violence on daily basis do not report it to either the police or social work centres, or any other institution considered to be primary protection providers.⁵ It is worrying that killing of women⁶ and other forms of gender-based violence against women in BiH⁷ is not followed or recorded systemically by governmental institutions; this led to a lack of real assessment of the actual situation and planning of adequate measures aimed at preventing and suppressing these forms

- 3 According to data provided by cantonal ministries of the interior in the Federation BiH, pursuant to Article 222 CCFBiH, a total of 1459 cases were recorded and 992 reports were filed in relation to the crime of domestic violence during 2014, whereas during 2013 a total of 1699 were reported and 916 reports filed. In the 6 safe houses in FBiH managed by CSOs: Local Democracy Foundation Sarajevo, Medica Zenica, Vive žene Tuzla, Žene sa Une Bihać, Žena BiH Mostar and Caritas Mostar, 264 women and children who survived violence were accommodated in 2015, and 373 during 2014, whereas the SOS phone 1265, operated by CSOs (except for Caritas Mostar) and the Jajce Social Work Centre, recorded 914 calls in 2015, and 1103 calls in 2014. Source: Gender Centre of the FBiH Government, available at: http://www.gcfbih.gov.ba/wp-content/uploads/2016/02/statistika_nasilje_zu_web.pdf (last accessed on 20.05.2016). According to data provided by the Ministry of the Interior of Republika Srpska, in 2015 a total of 1089 cases were recorded and 353 reports filed with the competent prosecutor's office, whereas in 2014 a total of 1236 cases were reported and 525 reports filed. During 2014, the SOS phone for victims of violence 1264 for Republika Srpska, operated by the Lara Foundation Bijeljina, Budućnost Modriča and the Udružene žene Foundation Banja Luka, received 3879 calls during 2014. Source: Ministry for Family, Youth and Sports of Republika Srpska, available at: <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx> (last accessed on 19.05.2016)
- 4 See Report on implementation of the BiH Gender Action Plan for 2014, BiH Gender Equality Agency, December 2015. Available at: <http://arsbih.gov.ba/project/izvjestaj-o-realizaciji-gender-akcionog-plana-bih-za-2014-godinu/> (last accessed on 20.05.2016)
- 5 A study on Presence and features of violence against women in BiH [„Rasprostranjenost i karakteristike nasilja prema ženama u BiH“] conducted in 2013 by the BiH Gender Equality Agency shows that only 5.5% of women exposed to violence actually sought assistance from an institution. Available from the BiH Gender Equality Agency at: http://arsbih.gov.ba/wp-content/uploads/2014/01/studija_prevalenca.pdf (last accessed on 19.05.2016)
- 6 During 2015, Fondacija Udružene žene Banja Luka conducted continuous monitoring of media reports on women victims of murder and 14 cases were recorded, whereas 4 cases of murder of women and children were recorded during the first 4 months of 2016.
- 7 This includes grievous bodily harm, rape, sexual violence as war crime, sexual violence against children, sexual abuse of an infirm person, threat to safety, trafficking in human beings, forced prostitution, hate crimes, trafficking in minors, etc., where women and girls appear as injured parties, and all such offences are provided for by the criminal codes in Republika Srpska and the Federation BiH, and partly by the Criminal Code of BiH.

of violence. Although there have been improvements in both entities in terms of governmental institutions providing systemic monitoring of domestic violence,⁸ due to differences in legislative treatment of domestic violence (in the Federation BiH it is a criminal offence, in Republika Srpska as a criminal offence or a petty offence), fragmented administrative and political structures, as well as unclearly divided competences in relation to preventing and suppressing violence against women and domestic violence between the state and the entities, there is no harmonised methodology that would allow for comprehensive and continuous analyses and planning of systemic measures adapted to the actual needs.

The practice of judicial institutions in BiH shows a lack of access to protection of rights of women and children who have survived violence, as well as inadequate sanctions against perpetrators. Local CSOs that monitor criminal proceedings in the area of gender-based violence⁹ report that despite the fact that entity laws on protection from domestic violence prescribe mandatory urgent action, proceedings for criminal offences of domestic violence take four months on average, which does not secure protection from repetition of violence and does not remove further damaging consequences for women survivors of violence. It is worrying that there have been cases of sexual violence against women and girls where more than a year elapsed between the actual commission and a confirmed indictment, although there were no objective reasons for such delays, since the investigation had been conducted earlier, immediately following the offence, statements had been taken from the defendant and the injured party, and material evidence had been collected.

Monitoring has also noted cases of unjustified multiple delays in hearings, frequent changes of prosecutors, suggestions to minor injured parties to testify without the presence of experts who are bound by law to provide assistance in such testimonies, failures of prosecutors to qualify violence as a criminal offence in the prescribed

8 During the period 2013/2014, the RS Ministry for Family, Youth and Sports adopted its Rules on records and reporting on domestic violence, which prescribes an obligation of protection bodies defined by the RS Law on Protection from Domestic Violence to collect continuously the administrative data related to domestic violence and present them twice per year to the Ministry, in the prescribed format. The Ministry publishes the aggregated data on its official web page. During 2014, the FBiH Gender Centre in collaboration with the Expert Team for drafting and monitoring the implementation of the FBiH Strategy for preventing and combating domestic violence, police stations, social work centres and CSOs selected for the pilot project, established an electronic data base on cases of domestic violence reported to the police, monitoring of protective measures by the social work centres, placement of women survivors into safe houses operated by CSOs in FBiH, as well as 1265 SOS calls.

9 Dženana Radončić, Aleksandra Petrić, Monitoring report and analyses of criminal proceedings in the area of gender-based violence [„Izvrještaj i analiza praćenja krivičnih postupaka u oblasti rodno zasnovanog nasilja“], Legal aid centre for women in Zenica and Udružene žene Foundation Banja Luka, 2014. Available at: <http://unitedwomenbl.org/wp-content/uploads/2015/12/analiza-monitoringa-kp-seksualno-i-rzn-u-bih.pdf> (last accessed on 20.05.2016)

form and request the stricter sanction as provided for by law, absence of protection and other security measures aimed at protecting the injured party, absence of legal and psychological support during testimonies by adult women who have survived violence and, as a rule, instructing the injured party to seek damages through a private claim in civil proceedings.

The penal policy in relation to gender-based violence in BiH continues to be extremely mild, although the sanctions prescribed for this offence were recently intensified.¹⁰ As a rule, courts sentence perpetrators of gender-based violence, and particularly of domestic violence, to suspended sentences and fines, rarely very short prison sentences, even in cases of multiple recidivists. It is disturbing that judges frequently take family status and an obligation to provide for minor children as a mitigating circumstance in the offence of domestic violence, despite the fact that the crime was, in fact, committed against family members, which shows an utter lack of sensitivity among judges and the fact that threat violence against women as violence of minimal social threat.

Proposed measures:

- ***In relation to establishing and maintaining data bases on violence against women***, it is necessary for entity laws and regulations to regulate an obligation to maintain data on different forms of gender-based violence against women, to define institutions obliged to collect and process such data, as well as institutions to systematize and analyse the data. Such data must be publicly available, with protection of confidentiality of personal data of victims/survivors and perpetrators.
- ***In relation to facilitating access to justice and protection for women survivors of violence***, it is necessary to secure urgent judicial action, as well as legal possibilities for recognising the status of witness under threat and vulnerable witness for women survivors of gender-based violence, access to compensation of damages in criminal proceedings, and access to protection measures and free legal and psychological assistance and information.
- ***In relation to penal policy aimed at preventing and suppressing domestic violence***, it is necessary for courts to recognise that specific circumstances of family status and child care cannot be seen as or considered to be mitigating circumstances or reasons for applying milder sanctions against perpetrators of violence.

10 For example, the Law on changes and amendments to the Criminal Code of Republika Srpska (Official Gazette No 67/13) tightens the sanctions for offences against sexual integrity and offences against marriage and family.

Safe houses in BiH with no continuous systemic support

Safe houses are an important segment of support, as they provide free and sensitised psychological, legal, and medical support for women and children who have survived violence. In BiH, there is no systemic and harmonised approach to providing support for women and girls who have survived violence, through protective measures of placing in safe houses, or providing support in the recovery process or finding an exit strategy. Establishment and functioning of safe houses is regulated by entity laws on protection from domestic violence, which treat this area differently in terms of establishment, methods of care for women and children who have survived violence, and methods of financing the operation of safe houses.¹¹ There are currently eight safe houses operating in BiH – five in the Federation BiH and three in Republika Srpska.¹² Due to the absence of financial support by governmental institutions, the safe house for women victims of violence in Mostar, managed for years by the Žena BiH NGO from Mostar, closed in early 2016.

In Republika Srpska, the law and secondary legislation regulate systemically the work of safe houses and provides for supervision through the Ministry of Family, Youth and Sports, and in the Federation BiH there has been since September 2015 a pre-draft Law on changes and amendments of the Law on protection from domestic violence in FBiH,¹³ which provides for changes in the method of establishment and status, standards of operation, financing and supervision of safe houses in BiH. The proposed measures are geared towards establishing safe houses in compliance with the FBiH Law on institutions, including their management, operation, closure and supervision in compliance with standards to be issued by the FBiH Ministry

- 11 In Republika Srpska, safe houses may be established by legal persons, survivors are accommodated on the basis of a decision of the competent social work centre, with consent of the survivor, and women survivors of violence have a legal possibility to request from the social work centre to decide on a temporary measure of placement. Funding for temporary placement is allocated 70% from the RS budget, through the Ministry of Family, Youth and Sports, and 30% from budgets of local communities, pursuant to the pre-determined price. Pursuant to current legislation in FBiH, safe houses may be established by legal and natural persons, survivors may be placed in safe houses as well as in other adequate institutions or with another family, on the basis of the appointed legal guardian, with consent by the survivor, who has no right to request this measure on her own. Funding for temporary placement is allocated 30% from the budget of the relevant canton and 70% from the FBiH budget (RS Law on protection from domestic violence, Official Gazette 102/12, 108/13, i 82/15, FBiH Law on protection from domestic violence, Official Gazette 20/13).
- 12 Safe houses exist under the following CSOs: Fondacija lokalne demokratije Sarajevo, Medica Zenica, Vive žene Tuzla, Žene sa Une Bihać, Caritas Mostar, Fondacija Udružene žene Banja Luka, Udruženje građana Budućnost Modriča, and Fondacija Lara Bijeljina.
- 13 The pre-draft of the Law on changes and amendments to the FBiH Law on protection from domestic violence is currently in the public debate stage, initiated by the FBiH Ministry of Justice on 24 April 2016. The text of the pre-draft is available at the web page of the Ministry, at: <http://www.fmp.gov.ba/useruploads/files/Zakon%20o%20izmjenama%20i%20dopunama%20Zakona%20o%20za%20C5%A1titi%20od%20nasilja%20u%20obitelji.pdf> (last accessed on 22.05.2016)

of Labour and Social Policy, and financing on the basis of a decision on the price of services determined by the FBiH Minister of Labour and Social Policy for each calendar year, on the basis of funding plans and in compliance with the FBiH Law on budget.

On the basis of years of experience, tested and proven financing models and guided by the needs of women survivors of violence, CSOs that manage safe houses have a rapid and effective approach to placement in safe houses, support and protection, and they advocate a solution that would allow safe houses to be founded and financed under the Law on institutions, but also the Law on foundations and associations in BiH and FBiH. They also advocate that the established standards should be harmonised with provisions of the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence, thus allowing for unhindered continuation of operation of existing safe houses as well as the establishment of new ones, as needed.¹⁴

The experience of safe houses in BiH indicates difficult for women survivors to access this type of protection and to seek placement in a safe house in Republika Srpska, despite the legal possibility to do so. The competent social work centre decides on the placement to a safe house after it has been established that the victim has no family member or friend who could accommodate her, or if there is a danger of repeated exposure to violence in such accommodation. Pursuant to legally prescribed procedures, women who call the SOS telephone number are referred to the social work centres, which refuse to issue such decisions in order to avoid paying the cost. It is also common practice that centres plan in advance the number of victims to be placed in safe houses during the year and do not want to increase it.¹⁵

Proposed measures:

- ***In relation to harmonisation of standards of establishment and operation of safe houses in BiH,*** it is necessary to adopt laws and secondary legislation based on good practices and experiences of the NGOs that have spent years providing assistance and support to women and children survivors of violence, which would also allow for the survival of existing safe houses and establish-

14 The proposal was submitted to the FBiH female MPs caucus, FBiH Ministry of Labour and Social Policy and FBiH Ministry of Justice. Available at: <http://www.potpisujem.org/doc/86a9544faec8ee1c77b409991ff15aa0>. PDF (last accessed on 22.05.2016)

15 Experiences from the safe house managed by Fondacija Udružene žene Banja Luka and Fondacija Lara Bijeljina, on the basis of statements by the staff and correspondence received from the relevant social work centres refusing to approve placement in the safe house. This problem is also underlined by the Analysis of harmonisation of BiH laws and public policies with the Convention on Preventing and Suppressing Violence against Women and Domestic Violence (ETS 210), second ed., Banja Luka, November 2015, Fondacija Udružene žene Banja Luka, p. 62.

ment of new ones, while recognising the financing model that includes fixed as well as variable expenditure, based on real needs, and continuous planning and allocation of funds from entity / cantonal / local public budgets.

- ***In relation to facilitating real and effective access to protection and assistance in safe houses for women and children survivors of violence***, it is necessary to allow legally and practically that women survivors of domestic violence can request placement in a safe houses, and that it is conducted consistently and under emergency procedures, guided primarily by the need to ensure safety for women and children and protect them from repeated violence, allowing also for their recovery and subsequent life free from violence.

Laws and practice in BiH not fully harmonised with the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence

In November 2013 BiH ratified the CoE Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)¹⁶ as the sixth member state to do so, and in July 2015 the BiH Council of Ministers adopted the *Framework Strategy for Its Implementation for the Period 2015 -2018*.¹⁷ Although there is no provision for an obligation to apply the Istanbul Convention directly, member states are obliged to adopt their legislative and institutional frameworks in order to facilitate effective practical application and improvements in their systems of access to protection from violence for the survivors.

BiH expressed no reservations regarding the Convention provisions, thus undertaking additionally to secure full support to its implementation. The Framework Strategy¹⁸ defines strategic issues, goals, programmes and activities, and recognises the following key principles of action: due attention and obligations of the state, substantive gender equality and elimination of discrimination against women on all grounds and integrated gender-sensitive preventive strategies. In October 2015,

16 Official Gazette BiH 15/13.

17 Framework strategy for implementing the Istanbul Convention in BiH for the period 2015 -2018, available from the web page of the BiH Gender Equality Agency at: <http://arsbih.gov.ba/wp-content/uploads/2015/07/Okvirna-Strategija.pdf> (last accessed on 22.05.2016).

18 At its 16th session on 23 July 2015, the BiH Council of Ministers passed the Decision to adopt the Framework strategy for implementing the Convention on Preventing and Suppressing Violence against Women and Domestic Violence in BiH for the period 2015/2018, published in the Official Gazette 75, 22.9.2015., available at: <http://slist.ba/glasnik/2015/broj75/Broj075.pdf> (last accessed on 26.5.2016).

the Government of Republika Srpska forwarded to the RS National Assembly its reasoned information regarding 34 cases where interests of Republika Srpska were damaged due to erroneous activities by Serb representatives in BiH institutions,¹⁹ including, inter alia, the Framework Strategy; this indicates that the Strategy has not been accepted by all the institutions in BiH as a public policy document aimed at ensuring implementation of measures to suppress and combat violence against women and domestic violence.

CSOs in BiH conducted an analysis of harmonisation of legislation and public policies with the Istanbul Convention, in order to analyse their practical application along with the level of harmonisation of legislation. Results of the analysis show that, in addition to positive practices related to reporting of these crimes, existence of records and investigations, as well as training of professionals, the legal system in BiH has not been fully harmonised with the due attention standard (Article 5 of the Convention), because although laws provide for a negative and a positive aspect of the standards they provide for compensation of damages for the victim solely as a form of reparations, with no guarantee of rehabilitation or non-repetition of violence. Moreover, as for the obligation to inform women survivors of violence about the available forms of support and assistance (Article 19 of the Convention), this is neither regulated by any law, nor are there any institutions designated to provide such information.

Support for victims of sexual violence (Article 25 of the Convention) is not secured, since there are no crisis centres for victims of rape or other forms of sexual violence anywhere in BiH. The analysis has also shown that criminal legislation in BiH (state, entities, Brčko District of BiH) does not criminalise the offences of stalking (Article 34), forced marriage (Article 37) or genital mutilation (Article 38), which is also a deviation from provisions of the Convention.²⁰

19 Article entitled RS Government: Unlawful action violates RS interests [„Vlada RS: Nezakonitim djelovanjem narušeni interesi Srpske“] published in the Glas Srpske daily on 15 October 2015, available at: http://www.glassrpske.com/novosti/vijesti_dana/Vlada-RS-Nezakonitim-djelovanjem-naruseni-interesi-Srpske/lat/195101.html (last accessed on 23.05.2016).

20 For details see Petrić Natalija, Galić Nenad, Base study: level of harmonisation of legislation and public policies with the CoE Convention on Preventing and Suppressing Violence against Women and Domestic Violence [„Osnovna studija: Analiza usklađenosti zakonodavstva i javnih politika sa Konvencijom Savjeta Evrope o sprečavanju i borbi protiv nasilja nad ženama i nasilja u porodici“], second ed., Banja Luka, November 2015, Fondacija Udružene žene Banja Luka, available at: <http://www.potpisujem.org/doc/6c4499475ad65424b269df3166de6eb5.pdf> (last accessed on 22.05.2016).

Proposed measures:

- ***In relation to securing full application of the CoE Convention on Preventing and Combatting Violence against Women and Domestic Violence***, it is necessary for institutions of Republika Srpska and the Federation of BiH to adopt and harmonise legislation that would allow women survivors of any form of gender-based violence to have unhindered access to compensation of damages, rehabilitation and protection from repeated violence, access to information on forms of assistance and support, with an obligation for institutions to make such information available, establishment and sensitised management of services for women survivors of sexual violence, as well as criminalisation of offences as defined by the Istanbul Convention, which are currently not included in criminal legislation in BiH.
- ***In relation to public policy measures focused on applying the Istanbul Convention***, it is necessary for entity institutions to continue their mutual consultations and reach strategic agreement on supporting the implementation of measures regulated by the Convention.



Aleksandra Petrić is a feminist and a women's human rights activist, with twenty years of experience in CSOs and on programmes of institutional development in the field of human rights protection, gender equality, combating violence against women and youth issues. She has worked as a researcher, analyst, and consultant for local and international CSOs and governmental institutions in the region of former Yugoslavia. Aleksandra holds a master's degree in international human rights from the Josef Korbel School of International Studies, University of Denver, USA and has been with the Udružene žene Foundation from Banja Luka since 2003, currently serving as executive director.

Notes



Kvinna till Kvinna

**PRAVA
ZA SVE**

PRAVA ZA SVE is a BiH civil society organisation active in the field of human rights protection and advocacy aimed at creating a fair and democratic society based on human rights principles. PRAVA ZA SVE seeks public responsibility for respect, protection and exercise of human rights for all; seeks justice for victims of human rights violations; promotes equal opportunities for all, irrespective of sex or gender, disability, race or minority status, sexual or gender orientation or any other difference; supports development and empowerment of excluded groups and communities.

This policy paper was developed as part of the project: "Progressing Woman's Rights in EU Accession".
"This material is completely or partly financed by the Swedish International Development Cooperation Agency (Sida) and Kvinna till Kvinna. Sida and Kvinna till Kvinna do not necessarily agree with the opinions expressed. The author alone is responsible for the content."