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International Standards on Domestic Violence and Their Implementation in the Western Balkans

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Human rights are universal; the trans-border cooperation between NGOs on the implementation of human rights is therefore an important means to become aware of each other’s situations, problems and solutions.

The Netherlands Humanist Committee on Human Rights (Humanistisch Overleg Mensenrechten, HOM) started this project in cooperation with women’s and human rights organizations in the Western Balkans at the suggestion of Hivos, the Dutch Humanist Institute for International Cooperation, which also provided most of the funding. The aim was to apply international human rights standards in the countries of the Western Balkans, specifically the United Nations Convention on the Elimination of Discrimination against Women (CEDAW), the European Convention on Human Rights (ECHR) and the European Union (EU) standards.

The project began in 2003 with a needs assessment and project identification, which resulted in a partnership with 14 organizations from Albania, Bosnia and Herzegovina, Croatia, Macedonia, Serbia and Montenegro. In 2004 an initial Round Table Conference identified domestic violence as the main subject for the project, since it was the most urgent problem. Domestic violence is violence against women that occurs in the private sphere and that menaces the physical and mental integrity and lives of millions of women and girls every day in many countries.

The women and men present at the first Round Table decided that the project would begin by making an in-depth report on the level of implementation by governments and civil societies in the Western Balkans of the international standards regarding domestic violence, the way these standards could be invoked, and the practices – good and bad – that are already part of reality in the countries involved. From this report, effective strategies would emerge to structure and support the work of the partner organizations in their struggle against domestic violence.

In 2005 aspects of capacity enhancement were added to the research, with training programmes on lobbying, using legal texts for implementation in practice and using a logical framework. Strategies were designed, and follow-up activities planned. A second donor, PSO, provided most of the funding for these capacity-strengthening activities.
Within the project, much attention has been devoted to the opportunity and the challenge of devising a concrete and practical tool that makes it possible to convert international standards to the local level and to make these standards applicable in the field. This resulted in the development of a comprehensive checklist. We often felt like we were making a journey in search of something that did not yet exist, so we had to invent it ourselves on the way.

In each partner organization, one person was responsible for carrying out the research and strategy development: the local project officers (LPOs). Some were lawyers, some were social scientists, some were activists, some were both or all three. Each of them contributed to this project with effort, expertise, commitment and enthusiasm. The plans were drafted with the help of a logical framework to guide the activities and to determine how these would lead to the expected results and the specific and general goals. An expert on the human rights standards of United Nations, the Council of Europe and the European Union organized the legal research aspects. Three Research Mentors guided the day-to-day data gathering work of the LPOs, and the HOM coordinated the exchanges at the regional level.

Seven Round Table conferences and an e-mail group provided the necessary exchange and input among the partners at the regional level. The Round Tables, which were held in a different country each time, and the e-mail exchange were the vehicles for cooperation among the partner organizations of HOM. The relevant decisions were made, and the process and the methods were determined, in consultation with all partners.

At the national level, every organization cooperated with its counterpart in the same country and compiled the data; national Round Tables and other activities were organized for this purpose. As a result of the participative process involving governmental and non-governmental actors, this became a unique research project which greatly contributed to the awareness of domestic violence in the respective countries.

The present regional report, *International Standards on Domestic Violence and Their Implementation in the Western Balkans*, is the proof that this joint, 18-month journey ended satisfactorily. The report will be useful both for non-governmental organizations working on domestic violence and for government officials, policy makers, lawyers, judges and legal researchers who deal with the problem of domestic violence in their work.

With this report, the project has not come to an end. The development of strategies against domestic violence will continue to be carried out by the partner organizations. The partner organizations have become more experienced with
the problem of domestic violence, and they have become contact points for the relevant stakeholders in their countries. HOM intends to refine the instrument that has been used to draft the reports into a more universal legal advocacy instrument against domestic violence. We hope that our expert friends from the Western Balkans will continue to support this effort with their experience and high-quality input.

The project was experimental in the sense that HOM tried to develop an instrument for women’s and human rights organizations to be used in advocacy against domestic violence. In the process of its creation, we attempted to share our ownership with our partners in the field. Because we acted innovatively, we may have made mistakes, for which I would like to apologize.

HOM would like to thank the local project officers and their organizations, the research mentors and the legal expert for their personal contributions, good will, professional input and cooperation. HOM also is grateful to the donors Hivos and PSO for having made this project possible.

Martha Meijer
Director of HOM
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We want to thank all those who contributed in various ways to the research that was the basis of the regional report. In particular, we want to thank all those who agreed to participate in national activities or who made their material or data available to the researchers.
CHAPTER I

INTRODUCTION

“Violence against women is perhaps the most shameful human rights violation. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress toward equality, development and peace.”

Kofi Annan, United Nations Secretary-General

1. Introductory remarks

Today, the protection of human rights, especially protection against violence, has become a major issue at the global and national levels. Virtually all topics discussed at various forums are linked with basic human rights and freedoms. This issue is emphatically present during the formulation and implementation of policies aimed at combating violence and eliminating various kinds of discrimination. When violence is discussed, this usually concerns street violence and armed conflicts. However, the most widespread form of violence remains largely invisible and is not adequately addressed by states, even though it occurs in all societies. This is the violence of men against women in the private sphere – in homes and in intimate relationships far away from the eyes of the public.

Due to its prevalence, violence against women is a major human rights concern. Aggression in the private realm is just one form of violence suffered by women, but it occurs in all countries and all social classes. In every country where reliable, large-scale studies are available, between 10% and 50% of women report having been physically abused by an intimate partner during their lifetimes. Population-based studies indicate that between 12% and 25% of women have experienced either attempted or completed acts of forced sex by an intimate partner or ex-partner. In 1998, interpersonal violence was the tenth leading cause of death for women between the ages of 15 and 44. Of all violent crimes reported in Europe, 25% involve a man assaulting his wife or partner. These
data from recent reports of the World Health Organization\textsuperscript{1} and the European Parliament illustrate the magnitude of this problem. Reliable research indicates that violence against women, particularly in the private sphere, menaces the physical and mental integrity and lives of millions of women and girls every day, regardless of where they live. Most studies on violence against women show that the perpetrators of violence against women are almost exclusively men; that women are at greatest risk of violence from men they know; and that women and girls are the most frequent victims of violence within the family and between intimate partners.

The widespread occurrence of this form of violence makes it a global phenomenon; it is therefore a phenomenon that must to be addressed not only at the local level, but also at national and international levels. In recent decades, domestic violence has been discussed more and more frequently by the international community. The biggest and the most influential global organization, the United Nations, is focusing on this issue more and more often, discussing the problem and establishing obligations and recommendations for the Member States. All participating countries have signed the Convention on the Elimination of Discrimination against Women (CEDAW Convention) and other major UN human rights documents.\textsuperscript{2} This means that the governments of these countries are obliged to implement these documents with due diligence and in good faith.

This obligation is also related to the agreements made under the auspices of the Council of Europe, Europe's oldest intergovernmental organization. All its 46 Member States signed the European Charter of Human Rights and Fundamental Freedoms (ECHR). This intergovernmental organization also maintains a very extensive list of documents that establish standards and obligations for its members in this area. Moreover, at the beginning of 2006 a Task Force to Combat Violence against Women, including Domestic Violence was established. This was done in accordance with the Action Plan adopted during the Third Summit of Heads of State and Government of Council of Europe Member States in Warsaw in May 2005. The Task Force will prepare a blueprint for a Pan-European Campaign to Combat Violence against Women, including Domestic Violence, to be launched in 2006.


\textsuperscript{2}Serbia and Montenegro, and Bosnia and Herzegovina are members of the UN and Council of Europe as part of a union. Therefore, they are accountable under international law as a union, not separately.
The eagerness of the countries in the Western Balkans to participate in the European Union increases their motivation to comply with international human rights standards. Moreover, by passing the Resolution on Combating Men’s Violence against Women (adopted on February 2, 2006), the European Parliament called on the Commission and the Member States “to establish the necessary means to monitor the activity and progress of the accession and candidate countries regarding treatment of women in all areas of society, and to make the safety and treatment of women in these countries a criterion for accession” (par. 1(k)). At the same time, the European Parliament introduced a zero tolerance policy regarding violence against women. Although the resolutions and other documents of the European Union apply only to EU Member States, non-member European countries that want to apply for EU membership must harmonize their legislation with EU standards.

The fact that the most respected and influential international political forums address the issue of domestic violence is an important reason why governments should pay more attention to the problem. In this regional report we will discuss in detail the kind of obligations that arise from membership in the UN and the Council of Europe. The central question of our project was whether the international legal and policy standards require a more active and more effective approach towards combating domestic violence from the governments of the participating countries.

This report consists of five chapters. The first chapter makes introductory remarks and introduces the material on which the report was based. It also provides background information on the countries included in the research. The second chapter introduces the information we have regarding the factual situation and the prevalence of domestic violence in the participating countries. The third chapter provides a brief summary of the relevant international law: what are international standards, where can we find them, and what are states expected to do? The work of the UN, the Council of Europe and the European Union in combating domestic violence is summarized, along with the international standards in this field. In the fourth chapter we determine if those standards have been correctly implemented in the participating countries, and we discuss the research. The main research question was, do the governments comply with the international standards in this field? In the final chapter we present the remarkable findings of the study concerning the role of non-governmental organizations (NGOs) in the participating countries regarding the protection of women and the prevention of domestic violence, and we advocate improved implementation of the international standards. The report ends with an evaluation.
of the level of implementation of these standards by the governments in the region and in what respects they should improve their laws and policies.

The appendix provides more information about the background materials used for the research: (1) a checklist of international norms with respect to domestic violence; (2) summaries of the national in-depth studies (chapter II) related to the factual situation and prevalence of domestic violence in these countries; and (3) conclusions of the national studies and recommendations to the governments and NGOs. There is also a list of organizations and individuals who made the national studies and contributed to the research for the purpose of this regional report.

Chapters I (sections 1 and 2), III (sections 1, 2, 3 and 4), IV (sections 2, 3, and 4) and V (section 3) were written by Mirjana Dokmanović; Chapters I (sections 3 and 4), II, III (sections 5 and 6), IV (sections 5, 6 and 7) and V (sections 1 and 2) were written by Vesna Nikolić Ristanović. The conclusions were written jointly by both authors.

2. Aim of the research/regional report

The aim of this regional report is to evaluate the implementation of the existing norms at the level of the United Nations, the Council of Europe and the European Union related to domestic violence in the countries of the Western Balkans. The report summarizes the implementation of international standards in the region and makes a comparison of the countries. In addition, it highlights examples of good and bad practices in implementing these norms with the aim of combating domestic violence more effectively. This research gives the governments information about how far they have come in implementing international standards and their overall progress in this area.

This is the first regional study of its kind. Previously, various types of research on domestic violence have been conducted in the individual countries of the Western Balkans. A number of surveys and studies on the prevalence of domestic violence at the country level have been completed by women’s NGOs. This issue was previously discussed in the National Shadow Reports on CEDAW, as well as under the auspices of international organizations such as the World Health Organization, Amnesty International and the Minnesota Advocates for Human Rights. There have also been a few studies on the implementation of national legislation (criminal code, law on misdemeanours, family law, etc.) in this field. However, the present report is the first comprehensive study to
evaluate the level of compliance of states with their international commitments based on international law and existing international norms and standards in the area of human rights and domestic violence. This is our contribution to the existing research.

For the first time, an in-depth study into the implementation of international legal norms on domestic violence has been conducted in the participating countries. The study consists of a description and analysis of the legal norms and recommendations for policies on the international level that aim to combat domestic violence, including a description of the monitoring mechanisms and the sanctions that can be applied when a state fails to implement these norms.

The second unique contribution of this study is the development of the list of international standards/instructions for combating domestic violence that can be derived from these international human rights documents. This is the first comprehensive list made in this field. It enables policy makers, state officials, judges, journalists, legal students, NGO activists and others who are interested in this topic to acquire a clear overview of international standards in this field. As part of this project, we used this list to evaluate the level of compliance of the states in the Western Balkans with the international human rights documents, but it can also be used for other purposes. For instance, it can be used by students of international law, in legal studies, or as an advocacy tool for women's groups fighting for women's rights and the elimination of discrimination and other forms of violence against women. In addition, this methodology can be applied not only to other aspects of women's rights, such as reproductive law, political rights, the economic and social rights of women, but also to other fields of human rights such as labour law and labour standards, environmental law and minority rights.

The third unique contribution is that the use of the same methodology at the national level in several countries allows researchers to make a comparative study at the regional level. The possible use of this methodology in other countries/regions would result in increased numbers of broader studies and research. This leads to the fourth unique contribution of this project: the development of the instrument for lobbying and advocating the elimination of violence and discrimination against women at the international level (e.g. at the level of the United Nations). As we mentioned at the beginning of this introduction, domestic violence is present in all countries; we therefore need an international response and the commitment of the international community. Using a unique methodology to evaluate that response can help those involved to determine the best practices and legal solutions to prevent violence against women and
protect the victims. Therefore, this study is useful not only for legal experts and academics, but also for policy makers, politicians, members of governments, NGO activists, women’s groups, journalists, donors, and all others who are committed to human rights and gender equality.

3. Method and basic materials used for the regional research/report

The basis for our research was seven national, in-depth studies from following Western Balkan countries: Albania, Bosnia and Herzegovina, Croatia, Macedonia, and Serbia and Montenegro. These national, in-depth studies were the result of research conducted as part of the project “Support women’s human rights in the Western Balkans” by researchers from 14 NGOs from the above-mentioned countries. The aim of the research was to compare the factual situation regarding domestic violence with international norms. While working on national in-depth studies, local project officers were advised by the authors of this study and Arta Mandro from Albania, as their research mentors.

National research was primarily conducted by means of desk studies of available materials. However, in order to fill the gaps in the available information, local project officers also collected data themselves, either by distributing specially-designed questionnaires or by holding round-table discussions and other national activities with representatives of non-governmental and/or governmental organizations/institutions. The research that resulted in national in-depth studies was conducted during 2005. During the project, researchers met at eight round-table discussions, where they received training in methodology, developed their research and exchanged ideas and experiences in data collection, analyses, writing and advocacy.

In the research for the regional study, we used national studies as our research material and analyzed and compared the situation in different countries in relation to international norms. We used other sources only occasionally, mostly for the

3 Bosnia and Herzegovina consists of two entities (the Federation of Bosnia and Herzegovina and the Republic Srpska) and one autonomous district (District Brcko) which have different legal systems, in addition to a common federal legal system. Therefore, two national legal studies were conducted (one in the Federation of Bosnia and Herzegovina, and one in the Republic Srpska and District Brcko), while the component that deals with the factual situation related to domestic violence included the entire country. Regarding Serbia and Montenegro, although it was a Community of States representing a single international identity, the states have different legal systems, so two separate national reports were written.
analysis of the prevalence of domestic violence. The responsibility for the reliability
of the information used for regional research is held primarily by the researchers
who conducted the national research and wrote the national reports.

Based on the definitions found in the international documents, a definition
of domestic violence to be used in both national studies and for the purpose of
regional study was formulated. For the purposes of the research, the term domestic
violence was defined as “any form of physical, psychological and sexual violence
against women occurring within a family, household and intimate relationships”.

In the first stage of the development of the research plan for national in-depth
studies on domestic violence, the Checklist of international law was developed.
Its aim was to provide structure for the research into the national situation
in each of the countries involved in the project. In-depth studies concerning
both main topics – the national legal situation and the national policies with
respect to domestic violence and the approach of non-governmental organizations
towards combating domestic violence – were therefore structured around the
same themes as those derived from the international standards.

In addition, the Checklist was later used to evaluate the actual situation in
each country. We therefore used the Checklist both in national studies and in the
regional study to assess whether the national governments were actually complying
with their obligations under international law. However, although the focus in the
national studies was on individual countries, in the regional report we compared
situations in various countries regarding their compliance with international law.
This gave us a comprehensive picture about the situation in the entire region.

The central question was whether the international legal and policy standards
demand a more active and a more effective approach to combat domestic violence

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4 For the purposes of this research, we have used the following definitions:
• “Women” - adult women, including wives, live-in partners, former wives and partners, female
  friends (including those not living in the same household), female relatives (including but
  not restricted to sisters, daughters and mothers), and female domestic workers. The term
  “women” also includes young women/girls aged 15 to 18 in regions where girls of that age
  become vulnerable to domestic violence because of their status of a wife in a family and/or a
  household (due to the tradition of early marriages and early cohabitations). The term “women”
  also includes non-national women, including refugee women; the state should protect such
  women if they suffer from domestic violence, and hold non-national men accountable for acts
  of domestic violence.
• “Intimate relationships” – relationships between partners including those not living in the
  same household.

Excluded from the scope of this research are acts of physical, psychological and sexual violence
occurring within a family and household that are directed at children and acts of economic
violence against women.
by the governments of the participating countries. The activities developed by NGOs were evaluated in the same way (against the background of the norms on the Checklist). On this basis, we formulated a set of recommendations in the national studies and in the regional study about how the governments should improve their policies in such a way that the implementation of international standards would be more correct. The recommendations developed in the national studies were applied to the respective countries, while the conclusions and recommendations for the entire region were developed for the regional study.

4. Background information about the countries included in the research

The countries included in the research are located in the Western Balkans. The population in most countries is between 2 and 4.5 million inhabitants, with the exception of Serbia and Montenegro, which has about 8 million citizens (7,498,001 in Serbia and 617,740 in Montenegro). All countries, except Albania, were part of the former Socialist Federal Republic of Yugoslavia, and were thus governed by Yugoslav-style communism. Unlike the other countries, Albania was governed by Soviet-style communism. Consequently, the economic and political situations were different in countries governed by these two styles of communism. The economic situation was much worse in Albania than in former Yugoslavia. Among the federal states of Yugoslavia, the economic situation was better in Croatia, Serbia and Bosnia and Herzegovina than in Macedonia. In addition, unlike the citizens of Albania, citizens of the former Yugoslavia were free to communicate with all countries and travel everywhere, including Western countries, without restrictions.

In late 1980s and at the beginning of the 1990s these countries started their transition from communism to capitalism. This meant the introduction of political pluralism and market economies, but for Albania it also opened the borders to Western countries. However, in Bosnia and Herzegovina, Croatia, Serbia and Montenegro, the transition was blocked or postponed from the early 1990s due to the ethnic war; it did not really begin until later in the 1990s and after 2000. In Serbia, there were additional difficulties caused by the dictatorship of Slobodan Milosevic and the isolation of the country as a consequence of UN sanctions imposed due to its role in the war.

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5 For the entire text of the Checklist, see the Appendix.
All countries are presently undergoing transition from communism, and most of them experienced the war directly. In addition, even countries like Macedonia and Albania, which did not directly experience war during the 1990s, were indirectly affected by the flow of refugees. Apart from the fact that the war was especially disastrous for Bosnia and Herzegovina, the country is currently under international government and has a very complicated state administration. This directly affects legislation and policy and has impacted all parts of the society (National report of BiH, p.5).

As a consequence of the transition and the war, all countries are presently facing economic difficulties and related social problems. All the national reports indicate increased poverty and unemployment and a prevailing sense of economic and social insecurity; this especially affects women. The feminization of poverty and the increasing redundancy of women who work predominantly on state-owned factories undergoing privatization is mentioned in all reports. Women usually do not own their apartments or houses, which may seriously hamper their ability to leave their abusers (Branković, National report on Serbia:15). National reports also suggest a large gender pay gap and other forms of gender discrimination in the workplace.

The poverty situation is especially dramatic in Albania, which continues to be listed among the countries with the highest percentage of poverty in Europe; 25% to 30% of the population lives below the poverty level. Another 30% of the population live very close to the poverty level and could be considered very vulnerable to an economic downturn (SEDA-UNDP, 2005: 36-37). According to the index of human development as measured by UNDP, Albania ranks 65th (based on the data gathered in 2004) of 177 countries; it therefore ranks lower than many of the South-eastern European (56-73) and all the Central European (33-47) countries in transition (UNDP-Albania 2002-2004: 15). Moreover, in the early 1990s about 1/6 of the population of Albania emigrated and settled temporarily or permanently in other countries. The free and unrestricted movement of the population within the country has also changed the ratio between the urban and rural populations. Migration has contributed greatly to the weakening of the social coherence and traditional family and community ties, thereby leading to increased economic uncertainty and the neglect of various social groups in the population.

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6 Bosnia and Herzegovina (BiH) comprises two entities: the Republic Srpska and the Federation of Bosnia and Herzegovina, and the Brčko District. The Federation of BiH is divided into 10 cantons. It has 14 constitutions, 14 governments and 14 parliaments (legislative bodies).
Corruption, weak state institutions and the increasing crime rate are prevalent in all countries. Difficulties related to the war and transition, along with the elimination of bans on religion, increased the social role and influence of religion.

National reports suggest that the traditional patriarchal model of gender relations still prevails in all countries. In post-communist societies there is still an obvious gap between legislation and actual practice; women are equal with men in formal terms, but in reality there are countless examples of discrimination. The national report for Albania stresses that arranged marriages are still prevalent in this country. Despite some positive trends (e.g. in Serbia women became rectors, presidents of parliament, Supreme Court judges etc.), the overall participation of women in political institutions is still very low in all countries.

The “re-traditionalization” of gender roles is a noticeable trend in all countries, but simultaneously many attempts are being made, mostly by NGOs, to achieve emancipation, respect for women’s human rights and gender equality. Examples of positive discrimination, which serve as an incentive for women to undertake traditional roles, are mentioned as well (e.g. benefits for women with three or more children). In addition, the Croatian report especially emphasized the newly-acquired role of the church in society. This also suggests that in Croatia, as in other countries, but perhaps even more strikingly, the church is propagating traditional and patriarchal values and gender roles. This is especially visible regarding the attitudes of the church towards women’s reproductive rights in general, and specifically its disapproval of abortion.

Research on the representation of women in school textbooks in Croatia and Serbia suggests that traditional gender images of genders from the socialist period have not changed; consequently, women are still presented less often than men, and when they are presented, they are usually shown as stereotypes (National report of Croatia: 12; Branković, National report of Serbia:18). A survey carried out in Albania confirms that both men and women support and even instigate gender discrimination (National report for Albania: 10), while a domestic violence survey in Serbia showed that a high percent of women do not consider domestic violence to be a criminal offence. It was also observed that the media contribute to the traditional perception of gender roles, especially towards the image of women as a sexual object or commodity. As stressed in the National Report of Serbia (Branković: 55), this is emphasized especially in advertisements (e.g. advertisements for cars where beautiful young women appear to sell their bodies as much as the cars).
CHAPTER II

WHAT IS THE SITUATION IN THE REGION REGARDING DOMESTIC VIOLENCE?

On the basis of data presented in national reports and original sources,\(^7\) in this chapter we will present the factual situation regarding domestic violence in the countries included in the research.

Data on the factual situation include data from empirical research, from official statistics based on police and court cases as well as data obtained from NGOs that offer support to victims. These data refer to three main questions: what is the prevalence and dark number (unreported cases) of domestic violence, what are the characteristics of the victims and offenders and what are the factors that contribute to domestic violence? Because of the low level of reporting, we relied primarily on surveys based on representative samples, when available, for drawing conclusions on prevalence. We bore in mind that official statistics and those from NGOs often do not indicate actual prevalence, but are in fact indicators of the work of the institutions/organizations and the victims’ awareness of their potential to help. However, we used other data for analyzing other issues and for the countries where no representative national prevalence surveys were available.

1. Prevalence of domestic violence

Because the reports used different definitions of domestic violence and applied various methods with varying levels of reliability, it was extremely difficult to compare prevalence data from different countries. Nevertheless, the available data from the national reports suggest that domestic violence is a widespread

\(^7\) Information in national reports was sometime presented incompletely; in these cases we had to refer to the original sources and use them directly instead of using their interpretation in national reports.
and serious problem in all countries studied. According to the information about the method provided by the national studies, national prevalence surveys that addressed domestic violence by all family/household members were carried out on representative samples in Macedonia and Serbia. In Croatia, Albania and Montenegro, national prevalence surveys were also carried out on representative samples, but they addressed only partner (actual and former) violence.

Empirical research carried out on representative samples usually gave separate prevalence data for physical, psychological and sexual violence; it also paid special attention to various control tactics used by violent men. Some surveys also provided separate prevalence data for physical violence threats (e.g. Serbia and Croatia). All surveys offered examples of concrete manifestations of violence and control used by abusers.

The first survey on the prevalence of domestic violence in Macedonia, conducted by ESE (Association for Emancipation, Solidarity and Equality of women in the Republic of Macedonia) during 2000 on a sample of 850 women older than 18, showed that 61.5% of respondents stated that they were victims of mental violence, 23.9% were victims of physical violence and 5% were victims of sexual abuse within the family. Of the respondents, 35.1% said they were beaten more than ten times, and in 70.3% of the cases violence occurred during the last five years. Physical violence was reported most often by Roma women, who are also among those in the worst socio-economic situation (Čačeva and Čoneva, 2000: 23-25, 67).

<table>
<thead>
<tr>
<th>Emotional violence and control tactics reported in surveys in Macedonia and Serbia</th>
</tr>
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<tbody>
<tr>
<td>Humiliation: insults, name-calling, swearing, minimization, making respondent feel bad or inappropriate.</td>
</tr>
<tr>
<td>Isolation: restriction of movement and communication with friends and family.</td>
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<tr>
<td>Emotional violence: shouting, quarreling, food throwing, nagging, jealousy, alcohol abuse.</td>
</tr>
<tr>
<td>Economic violence: preventing respondent from going to work.</td>
</tr>
<tr>
<td>Threats, blackmail and scare tactics.</td>
</tr>
<tr>
<td>Using male privileges, e.g. destruction of precious possessions, preventing respondent from sleeping, not allowing her to leave the abuser, telling her what to wear etc.</td>
</tr>
<tr>
<td>The abusers must always have the last word.</td>
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</tbody>
</table>
According to the first prevalence survey on domestic violence in Serbia carried out by the Victimology Society of Serbia in 2001 on a representative sample of 700 women older than 18, 30.6% said that they suffered physical violence, 46.1% reported psychological violence and 8.7% said that they were sexually abused. Threats of physical violence were reported by 26.3% of the respondents, 25% of the women were beaten during the previous year and more than half of them during the last five years. In 7.4% of physical violence cases, weapons or objects that can cause serious harm were used. In 27% of these cases, the violence was repeated more than five times. Apart from women, in 18% of cases other family members were abused as well (Vidaković, 2002: 14). A more recent prevalence survey carried out by the Autonomous Women's Centre in 2003 for the territory of Belgrade (part of the larger World Health Organization's Violence against Women survey) confirmed the above findings (AŽC, 2005).

Similarly, the findings of a partner violence survey carried out in Montenegro on a representative sample of 500 women showed that one-third of the women were threatened with beating and one-sixth were threatened with murder. About 20% of women said that they experienced some form of control tactics, while 25% said that they were beaten by their partner. In addition, 25% of the women stated that they experienced forced sex by their partner, 14% were threatened with the kidnapping of their children, and 6% reported that the children were actually kidnapped (Radulović, 2003: 20, 21, 29).

In Croatia, the survey on the prevalence of partner violence was carried out in 2003 by the Zagreb Autonomous Women's House on a representative sample of 976 women. It showed that 21% of the women experienced physical violence committed by their current or former male partner. Threats of physical violence while they were with their former partners were reported by 61% of divorced or separated women, and 27% said that they were threatened by their current partners. Forced sex was reported by 34% of the respondents. (Otročak, 2005: 48).

The widespread prevalence of domestic violence was also confirmed by the indirect knowledge of respondents, where 50.1% of the respondents in Serbia knew for sure about incidents of domestic violence in other families, and 26.9% had some indication but did not know for sure. In Macedonia, 65% of the respondents who stated that they were not abused in their own family also said that domestic violence was widespread in the Macedonian population; 37.5% of them knew women who were abused in the family. In Croatia, 29% of respondents

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8 Actually, the sample was close to being representative, or as representative as possible, since the rejection rate was very high: 38.6%.
reported having a friend who experienced partner violence, while the mothers of 36% were abused by their partners when the respondents were children.

In Serbia and Macedonia sexual violence was obviously very much under-reported, which suggests that sexual abuse and sexuality in general are still taboo issues in these countries. This supposition is also in accordance with data about sexual violence in general, related to reports made to the police as well as to data from victim support organizations and researchers (Mamula, 2005: 27).

<table>
<thead>
<tr>
<th>Forms of physical violence reported in the Macedonian and Serbian survey</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slapping</td>
</tr>
<tr>
<td>Battering</td>
</tr>
<tr>
<td>Throwing objects</td>
</tr>
<tr>
<td>Kicking</td>
</tr>
<tr>
<td>Arm twisting, pulling out hair</td>
</tr>
<tr>
<td>Strangling</td>
</tr>
<tr>
<td>Biting</td>
</tr>
<tr>
<td>Extinguishing cigarettes on woman's body</td>
</tr>
<tr>
<td>Imprisoning woman in a barrel</td>
</tr>
<tr>
<td>Forcing woman to kneel on grain</td>
</tr>
<tr>
<td>Pulling her leg and beating her stomach during pregnancy</td>
</tr>
<tr>
<td>Use of knife or pistol</td>
</tr>
</tbody>
</table>

A Reproductive Health Survey (RHS) was conducted in Albania in 2002. It represents the first systematic effort to gather representative national data on population and reproductive health issues in Albania. This report provided the first population-based data from Albania on the issue of domestic violence committed by intimate partners. Domestic violence was one of many topics explored in this study. The RHS, after analyzing the responses of 5,697 women and 1,740 men, concluded that 30.4% of the interviewed women reported verbal abuse from an intimate partner and 22.8% reported verbal abuse during the past year. Lifetime physical violence was reported by 8.2 % of the women, with 4.5% reporting physical violence during the past year, 2.9 % reporting forced, unwanted sex by their husband or partner and 1.5 % reporting unwanted sex during the past year.

In Bosnia and Herzegovina, data presented by various NGOs suggest that domestic violence is widespread. The survey carried out in 1998 by the NGO Medica in the municipality Zenica showed that 23% of women were beaten by their partners, while 29% knew a woman who had been beaten (Andrić-Ruzicić 1999: 54-55).
2. Dark numbers of domestic violence

All national reports suggest high dark numbers for domestic violence. Dark numbers can be estimated on the basis of data on the willingness of women to report violence to police, as well as to social welfare and non-governmental victim support organizations. In addition, dark numbers can be estimated from data about women who refused to be interviewed in domestic violence prevalence surveys.

According to prevalence surveys, dark numbers seem to be higher in Serbia and Croatia than in Macedonia. For example, only 16.5% of domestic violence cases were reported to the police in Serbia, 17% in Croatia and 20.8% in Macedonia. In Albania, the Reproductive Health Survey from 2002 found that only 9.5% of women said they had reported their husband to the police.

The level of reporting to other institutions and organizations is often very low as well. Only 9.4% of victims in Macedonia and 9.6% in Serbia turned to social work centres for assistance. Even fewer turned to non-governmental victim support organizations: 0.5% in Macedonia and 2.4% in Serbia. Many more women refused to participate in prevalence surveys in Serbia than in Macedonia: 38.6% compared to 5.1%. Such a large difference could reflect a difference in the willingness of women to speak about domestic violence, but it could also be the result of the lower level of confidence in Serbian society in general; this lack of confidence is related to the period of dictatorship, war and criminalization of the society. In the above-mentioned Albanian study, the participation rate in research interviews was 96%.

3. Characteristics of victims and offenders

All the reports indicated that women are most often abused by their partners with whom they live either in formal marriage or in cohabitation. However, due to the prevalence of extended families with several generations living together, women are also abused by other family members. For example, according to the Macedonian survey the partner was the abuser in 81.7% of the cases (in 70.8% the current partner and in 10.9% the former one), while in the remainder of the cases the abuser was another family member (in-law, parent, sibling or distant relative). The findings for Serbia were similar. In 74.8% of the cases, the abuser was the current or former husband, while in the remainder of the cases the abuser was the father, mother, son, daughter, sibling or in-law (Vidaković, 2002:14,15).
All the reports indicate that victims and abusers belong to all social, economic and educational groups, but the risk is greater for those with lower education and those who are socially and economically marginalized.

The surveys suggest that most victims are women without any education and that economically independent women are more prepared to leave abusive partners than those who don’t have sufficient resources to live on their own. It also appears that unemployment and poverty not only increase women’s vulnerability to domestic violence, but also decrease the probability that they will leave violent men.

All available data also suggest that women are vulnerable not only when they are in an economically-disadvantaged position in comparison to their partners, but also when they are the primary breadwinners. This means that women who take over the man’s role in the family are frequently abused by their partners, who feel badly about not fulfilling the expected male role.

Because of their multiple marginalization, Roma women are particularly vulnerable to all forms of domestic violence. Albanian women in Macedonia also seem to be more vulnerable to psychological violence than other ethnic groups, which is explained by their more rigid patriarchal tradition.

Abusers are both employed men and those unemployed or on forced leave. Most often they have only a secondary school education, although some have a higher education. Abusers include those with economic problems and the nouveau riche, who became rich overnight, often through criminal activities, including organized crime and war crime. The violence is related either to a demonstration of their newly-acquired traditional masculinity or to their frustration of not measuring up to this tradition.

4. Factors that contribute to domestic violence

As factors that contribute to domestic violence, the national reports stress the impact of socio-economic factors connected to transition and war, such as the reacquisition of the traditional gender role, alcohol abuse, trans-generational violence transmission and the impact of religion and church. In Albania, the practice of arranged marriages is also highlighted.

Available data suggest that poverty and sudden changes in social and economic status, together with a high level of instability and the difficulty of making decisions in such circumstances, cause a high level of social stress and contribute
to the destabilization and disorganization of family relationships and to family violence. They also lead to difficulties in the fulfilment of gender and generational roles, and do not allow the space necessary for adjusting to the new situation.

Economic changes resulting from the transition to a market economy strongly influence the way people live together. Their negative consequences on relationships within the family were clearly demonstrated in all available research. For example, according to the surveys carried out in 1999 and 2000 in Macedonia, Serbia, Hungary and Bulgaria (Nikolić-Ristanović, 2002), 53.6% of respondents said that their family relationships had gotten worse during the last ten years. Relationships worsened mainly when the husband, wife, or both lost their job, when the husband had difficulty finding a job, when the husband or wife started a private business, and/or when their financial and/or housing situation worsened. On the other hand, getting rich quickly was also reported as a factor contributing to the deterioration of relationships, especially when the husband was nouveau riche. Similarly, the deterioration of relationships between adult children and parents, as well as with in-laws, was connected to financial difficulties, unemployment or the lack of job prospects, poor housing situations, the cohabitation of several generations, drug addiction or a relative’s return from fighting in the war.

Economic changes brought on by the transition period had two main effects on men’s social status and masculinity. On the one hand, the improved social and economic position of some men led to the intensification of male identity and a renewed traditionalism of gender roles within the family. On the other hand, and probably more frequently, the decrease in the social and economic status of a large majority of men as well as the increase in status incompatibility, social stress, and social isolation were strongly related to the risk of wife abuse. For this latter group of men, crises or the marginalization of masculinity – i.e. the widening gap between the social constructs of traditional masculinity and their ability to fit into these constructs – could contribute to their violent behaviour in the family. For example, in Albania, the Reproductive Health Survey (2002) showed that 36.7% of interviewed women said that the unemployment of their intimate partners was a cause of domestic violence (quoted from the National study for Albania).

Poverty and unemployment seem to affect women more because they are often more dependent on men now than they were previously. This model applies to couples where violent behaviour is involved; this suggests a connection between the re-domestication of women and a renewed traditionalism of gender roles.

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9 According to Gelles, status incompatibility is when the husband, whom society expects to be the head of the family, has less education or earns less than his wife (Gelles, 1997).
on one hand, and domestic violence on the other. This is in accordance with the assumption that traditional gender roles divide women and men from each other (Andersen, 1988: 78), simultaneously creating a favourable context for violence and decreasing the economic and social potential for women to leave the abuser (Nikolić-Ristanović and Milivojević, 2000; Čačeva and Čoneva, 2000: 65). These assumptions also fit with research findings suggesting the significance of women's economic dependence as the factor in wife abuse which is directly related to the institution of marriage in its traditional form (Schur, 1987). As stated in the Albanian national study, the closure of inefficient factories in urban areas and the destruction of collective property in the rural areas brought about the marginalization of women and increased their financial dependency, resulting in the inferior position of women with respect to men.

As mentioned in the national study in Albania, the migration of the rural population after 1991 also contributed to the domestic violence in this country. Prior to the 1990s, migration was possible only upon state authorization. The process of voluntary migration began with the collapse of the socialist system in 1991. Migration resulted in a 13% reduction of the rural population. The migrants brought the customs, traditions, mentalities and lifestyles from various regions of Albania into the urban areas. The migrants were also faced with a different kind of life in the cities, which brought about confusion in family and other relationships. Poverty, lack of infrastructure and the change of the cultural environment increased stress and triggered a negative reaction in some migrant families.

However, according to the findings of the surveys in Serbia, Macedonia, Hungary and Bulgaria, the re-traditionalization of the gender division of labour and other gender roles has various consequences on masculinity and femininity, depending on the position women and men occupy within the social structure and on changes related to that structure. Re-traditionalization, can, but does not always, mean that masculinity is successfully associated with hegemonic masculinity. Hence we can distinguish between two forms of masculinity in relation to the traditional gender division of labour, i.e. women's economic dependence on men, where domestic violence is likely to occur. The first form of masculinity comes “closest to matching the conditions of the ideal type of patriarchal family”. The other form is closer to an egalitarian family with neither spouse having workplace authority, resulting in the family being located in the “obey class” (Hagan, 1988: 172-3). On the women's side there is a crisis of socialist femininity, which is connected to their loss of paid jobs (especially among educated women who were accustomed to economic independence during communism and often feel degraded in the role of housewife); this is an additional risk factor for spouse abuse.
(Nikolić-Ristanović, 2002). This new social position leads to women becoming frustrated and to a decrease in their self-esteem and ability to resist violence. These factors combine to make women even more vulnerable to violence. But paradoxically, the improved social status of women may have the same effect when an increase in their economic status creates status incompatibility and leads to a “most unusual family class relation” where the man is either unemployed or employed in a position “without authority”, while the wife is employed and holds a position “with authority” (Hagan, 1988: 172).

Among the factors connected to transition, the national reports also mentioned a distrust of state institutions and corruption. In addition, the Croatian report stresses the negative impact of the church’s demand that the family be saved at any cost and its prohibition of divorce.

A woman from Croatia who suffered long-term abuse by her husband:

“I went to see our priest and asked him for advice. He told me that I should stay with him. He told me that men have needs which must be satisfied. He advised me to make myself look nice and to go into the room with my husband; then I would find peace. He also told me that my husband does not have right to beat me, but he did not know what I should do. Anyway, he said that I must not leave him since in our religion people do not divorce.”

The war also contributed to the worsening of marital and family relationships. This is especially connected to the disturbance in inter-ethnic relationships, to men's decisions to go to and return from war, to difficulties brought on by forced migration and to the high level of tolerance to all kinds of violence. Moreover, many weapons remained in the hands of civilians after the war ended and there were feelings of insecurity, powerlessness and existential fear connected to the NATO bombings of Serbia.

Available findings suggest that the impact of war is usually combined with the impact of economic difficulties. The risk of domestic violence for women increases during both war and economic difficulties; they often live in mixed marriages, are war refugees confronted with economic hardships, and after returning from war their husbands may suffer from post-traumatic stress disorder and a masculinity crisis. Moreover, the domestic violence survey in

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10 Possession of weapons by civilians is also mentioned in Albania as a factor contributing to domestic violence becoming more severe, although Albania was not at war.
Serbia indicates that domestic violence by ex-soldiers is more brutal and more often involves the use of weapons (Knežić, 2002: 81).

The disturbance in inter-ethnic relationships connected to ethnic conflicts in the former Yugoslavia affected the lives of spouses who belonged to different ethnic groups and who lived in territories directly or indirectly affected by ethnic conflicts. Domestic violence in these cases was usually connected to the woman's belonging to a different ethnic group. The phenomenon of abstract hatred directed against other nationalities was easily transformed into a hatred of very close individuals such as wives, children and relatives. In some cases, the violence became more severe because the wife belonged to a different ethnic group, while in some cases nationalism provoked violent behaviour from husbands. The husband may come to see a woman of another nationality as a concrete symbol of “the enemy” and/or as a part of his property which has become worthless because of her ethnic origin. The woman becomes a source of the man's shame and of problems in his interactions with significant individuals outside the family. Consequently, the man feels not only that his identity as a man is in danger, but that his ethnic identity is also threatened since his wife's ethnic background prevents complete social acceptance (Nikolić-Ristanović, 1996). Thus his violent behaviour becomes his way to confirm both his masculinity and his ethnic loyalty and to satisfy the corresponding social expectations. Sometimes this is a result of the hegemonic masculinity of a man from the dominant ethnic group, but sometimes it is an expression of masculinity which has been marginalized due to his economic position, ethnicity or both.

Domestic violence was also connected to family disputes about men's decision to go to war and the ex-soldiers' stress and desire to regain their status in the family. At the very beginning of the war in the former Yugoslavia some women reported a “post-TV violence syndrome” (Fischer, 1994: 165). This meant that their husbands became very aggressive after watching TV news, since war propaganda was mainly implemented through such broadcasts. Some men made decisions to go to fight after watching the broadcasts, and when women started to speak about their worries and fears for them, the men became violent.

Another problem is the long-term separation of spouses. This could be the source of conflicts related to men's frustrations stemming from their difficulty in adapting to the altered division of labour caused by war. The women's active role and proven ability to assume both the female and traditional male roles in the family may additionally lower the men's already low self-esteem related to his lost role in the family.
During the NATO bombing of Serbia, women mainly reported long-term violence, which either continued with the same intensity or became worse during the bombing. Only a few women stated that the violence started at that time. As circumstances that precipitated violence, women often mentioned aspects directly or indirectly related to the bombing (Milivojević, 1999: 47).

Findings from the countries included in this research suggest that there is a significant connection between violence witnessed or endured in childhood and the later violent behaviour of men and victimization of women. Moreover, in all countries alcohol was mentioned as a factor in domestic violence (e.g. 37.2% of the cases in Serbia and 51.5% in Macedonia). Drug addiction was also mentioned, but only in a few cases. The survey on domestic violence during the NATO bombing in Serbia suggests that alcohol consumption increased at that time and that its increase was reflected in domestic violence cases reported to women's organizations (Milivojević, 1999: 46).

In Albania, arranged marriages are an additional factor that leads to domestic violence. In a survey of 55 female victims of domestic violence and an analysis of the factors behind domestic violence in Albania, Baban referred to the phenomenon of marriages arranged by a male authority. In this study, 19 of the 55 women interviewed reported having arranged marriages, which they said resulted in humiliating scenes, tensions and conflicts. Another study carried out by the Refleksione Association also showed that 58.17% of the respondents admitted that domestic violence was a result of arranged marriage (Baban, 2003).

5. Research on domestic violence

Data on domestic violence were available in all countries included in this research. Surveys on this topic were also conducted in all countries. However, academic research based on reliable methodology is rare. Most studies were carried out in a single town or in only one or a few parts of the country, or they reflect the practice of individual NGOs. In addition, most of the studies were carried out by non-governmental and/or international organizations for the purpose of awareness-raising. Their definitions are often unclear and they often do not have proper information about methodology, or their information about methodology is insufficient. This sometimes led to huge differences in the data obtained, so that it was very difficult to decide which data to trust.
When this research was carried out, national prevalence data which was based on representative samples and which addressed domestic violence committed by all family members was available only in Macedonia and Serbia. In Croatia, Albania and Montenegro, prevalence surveys that were conducted on representative samples did exist, but they were limited to partner violence. The Albanian Reproductive Health Survey was part of a larger World Health Organization survey; partner violence was an important aspect of the survey, but was not its main focus.

It is also worth mentioning that in Serbia, besides the prevalence surveys, many other academic studies were carried out, which is unique in that regard among countries included in the present research. These surveys were either qualitative or their aim was to learn about the implementation of laws or the connection between transition and different forms of violence against women, including domestic violence.\textsuperscript{11} Finally, for the territory of Belgrade, a representative survey on violence against women and women's health was carried out as part of a World Health Organization survey and using their methodology.

It is obvious that comprehensive national prevalence surveys based on representative samples are necessary as the basis for appropriate social responses. In countries where such surveys exist, it is important to replicate them after some time and compare the data obtained with previous surveys. This is especially important in view of the many state reforms and NGO activities that have been undertaken in the meantime, and it would be interesting to see if they had any impact, and if so what changed and how.

\textsuperscript{11} One of the studies dealing with the impact of transition and war on domestic violence, which was widely quoted by some authors of national studies during their analysis of factors contributing to domestic violence, was carried out in Serbia, Macedonia, Hungary and Bulgaria by the author of this chapter. The results of this comparative survey were published in: Nikolić-Ristanović, V. (2002) Social Change, Gender and Violence: Post-Communist and War-Affected Societies, Kluwer Academic Publishers, Dordrecht, Boston, London: Kluwer.
1. Introduction

In the previous chapter we described the situation with respect to domestic violence in the participating countries. It appears that domestic violence is a serious problem that needs high-level attention from the national authorities. In recent decades the problem of domestic violence has been placed on the agendas of many national and international organizations, both governmental and non-governmental. On the international level this has – although slowly and little by little – resulted in a large body of legal norms, political agreements, policy guidelines, recommendations and practical advice. For the sake of brevity we will refer to this body of norms as the “international law on domestic violence”.

In this project the national research teams addressed the question of whether the governments of the participating countries correctly implemented international law on domestic violence in their national laws, policies and practices. In order to answer this question, it is first necessary to explain what international law is, how it works, and what role it could and should play in combating domestic violence. In other words, what should state parties to international treaties and agreements or members of international organizations do generally and specifically with respect to domestic violence?

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12 In this chapter we will explain the differences between these norms, guidelines, etc. in greater detail.

13 In the project plan, the goal was formulated as follows. “The overall goal of the in-depth study is to evaluate the implementation of the existing norms of the CEDAW Convention, the Council of Europe and the EU related to domestic violence in the participating countries, and to develop recommendations and strategies to improve the level of implementation of these norms, in order to combat domestic violence more effectively.”
We will describe the international norms and guidelines on domestic violence that exist on three different levels: the United Nations (UN), the Council of Europe (COE) and the European Union (EU). In addition, we will present the list of international norms/instructions from these documents on domestic violence. We refer to this list as the Checklist, because in our project we used this list to evaluate whether the national governments were implementing international law correctly. This Checklist was used to formulate recommendations about how the governments should improve their laws, policies and practices in order to bring their national situation into compliance with international law.

2. The role of international law in the fight against discrimination and violence against women (with the accent on domestic violence)

2.1. What is international law?

International law is the body of legal rules that applies to the relations between sovereign states as well as to the relations with and between other entities that have been granted international personality by sovereign states. International law differs from national law. While national law is the internal law of states that regulates the conduct of individuals and other legal entities within their jurisdiction, international law applies only between entities that can claim international personality (mainly sovereign states, or international and supranational organizations, like the EU).

States and international organizations were considered to be the main actors of international law until the middle of the 20th century. Until then, individuals had a specific and random status as actors of international law in cases where they had group characteristics as refugees and asylum seekers. Individuals entered into the focus of international law after the establishment of the United Nations.

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14 A full list of all of the documents that were analyzed for the construction of the Checklist can be found in the Appendix.

15 Definition from the International Labour Organization, (http://www.itcilo.it/english/actrav/telelearn/global/ilo/law/lablaw.htm#Definition_of_international_law)
and the adoption of its Charter and the International Bill of Human Rights,\textsuperscript{16} documents that are milestones of modern international human rights law.

2.2. International human rights law

Human rights are rights that every human being has and is entitled to enjoy simply by virtue of being human. They are based on the fundamental principle that all human beings possess an inherent human dignity and that they are equally entitled to enjoy their rights to certain fundamental freedoms regardless of sex, race, colour, language, national origin, age, class or religious or political beliefs.\textsuperscript{17} Human rights are universal; they are applied equally and without discrimination to all people. They are inalienable – no one can have his or her human rights taken away, other than in a specific situation. They are also indivisible, interrelated and interdependent; it is insufficient to respect some human rights and not others. The violation of one right often affects several other rights.

Human rights have been laid down in legally-enforceable norms protecting individuals and groups against actions that interfere with human dignity and fundamental freedoms. Its founding documents are called the International Bill of Human Rights. It consists of the United Nations Charter,\textsuperscript{18} the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

2.3. Human rights of women

At the beginning, the discourse of human rights was insensitive to the position and concerns of women. It was derived from the concept and rules of traditional international law that was formulated by men; due to women's subordinated social roles, they were not present in this process. Moreover, even those who inspired and drafted the main international human rights instruments “forgot” to use gender-sensitive language while calling for equality and non-discrimination.\textsuperscript{19} The history of human rights law shows that these so-called women's

\textsuperscript{16} See below, for an explanation of this term.
\textsuperscript{17} Universal Declaration of Human Rights, adopted and enacted by General Assembly Resolution 217 A(III) on 10 December 1948. Art. 1 and 2. UN Charter, Art. 55 (c).
\textsuperscript{18} Signed on June 26, 1945, this document acknowledged the importance of human rights and established such rights as a matter of international concern.
\textsuperscript{19} It was entirely due to women monitoring the drafting of the UNHR that the phrase “human rights” was used instead of “men’s rights”.

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issues have gained visibility due to increased women's action in the international arena (Pietila, 2002).

The UN Charter established new substantive elements of crucial importance for women; the UN was given the mandate to promote economic and social progress and development and to establish subsidiary bodies. Women's organizations have used this opportunity. Their work and advocacy efforts significantly contributed to the recognition of women's rights as human rights.

A major role in this process was played by the UN Commission on the Status of Women (founded in 1947) that—among others—drafted the CEDAW Convention and initiated four world conferences on women (held in Mexico, Copenhagen, Nairobi and Beijing). These conferences resulted in documents signed by the majority of the UN Member States. Over the years women's human rights have been given the respect and recognition that they need and deserve, not only as a separate body of law (in which the CEDAW Convention and the General Recommendations of the CEDAW Committee are central), but also as an integral part of all human rights. During the World Conference on Human Rights in Vienna in 1993 and the World Conference in Beijing, women's rights were recognized as human rights. For the first time, their formulation was accepted as an aspect of international human rights law. This recognition facilitated the entry of women's rights into the framework of international law and international, regional and national human rights policy.

The adoption of the CEDAW was followed by a great number of international and regional human rights instruments and policy documents that obliged governments to take steps in national policies aimed at protecting, fulfilling and implementing women's rights. At the Beijing +5 (2000) and the Beijing +10 (2005) global meetings, the UN Millennium Conference (2000) and the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (2001), the UN Member States reiterated their commitment to strengthen their capacity at the country level to implement the principles and practices of the human rights of women.

20 Article 18 of the Vienna Declaration and Program for Action states: “The human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex are priority objectives of the international community... The human rights of women should form an integral part of the United Nations human rights activities, including the promotion of all human rights instruments relating to women.” A/CONF.157/23 (12 July 1993) available at http://www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/A.CONF.157.23.
2.4. Women’s human rights and violence against women

What is the link between human rights and violence against women? Why should states respond to aggression against women? In the next part of this chapter we will address these issues, with a specific focus on domestic violence.

Every day millions of women all around the world are victims of various kinds of abuse such as domestic battery and brutality, sexual harassment and intimidation at work, forced marriage, sex trafficking, mental cruelty, female genital mutilation and forced prostitution. All these forms of aggression against women have two common factors: they are directed against a woman because she is a woman, and they affect women disproportionately. These forms of violence are based on gender, or, in other words, on the traditional subordinate role of women in a society. Consequently they are usually invisible since they are hidden by the cultural and traditionally patriarchal patterns. They are associated with inequality between women and men and strategies to perpetuate or entrench that inequality. Therefore, violence against women is a manifestation of the fundamentally unequal positions of women and men; it constitutes a form of discrimination against women.

A great number of the UN documents and other important international and regional legal and policy documents (listed in this chapter) argue that gender-based violence is a distinct form of discrimination which, in itself, constitutes a violation of international human rights law. This argument was used for the first time in 1985 at the First World Conference on Women in Nairobi. The concluding document, the Nairobi Forward Looking Strategies, links equality and violence against women by stating that violence against women is an obstacle to equality and peace. It urged governments to intensify efforts to establish or strengthen forms of assistance to victims of violence through the provision of shelter, support, legal and other services and to increase public awareness of violence against women as a societal problem.

In its General Recommendation 19, the CEDAW Committee recognizes violence against women, including domestic violence, as a form of discrimination. It states that the general prohibition of gender discrimination contained in the Convention includes gender-based violence. Therefore, the definition of discrimination in Article 1 of the CEDAW also comprises violence against women. This means that violence against women can be a violation of specific

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21 A/Res/40/108
23 “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women... of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”
provisions of the CEDAW. While assaults are committed throughout all sectors of society, gender-based violence, such as domestic violence, is directed primarily at women with the intention of depriving them of a range of rights and maintaining their subordination as a group.²⁴

In the Declaration on the Elimination of Violence Against Women²⁵ (DEVAW), adopted in 1993, the UN Member States recognized violence against women as a “manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”. This recognition was reiterated in UN policy documents such as the Beijing Platform for Action (1995), the final document of the General Assembly 23rd Special Session in 2000 (Beijing +5), Resolution 2003/45, and the series of reports from the Special Rapporteur on Violence Against Women mandated by the UN Commission on Human Rights.

The regional organizations also recognize violence against women as a violation of women’s human rights that call for action from the relevant states. In its Declaration²⁶ from 1993, the Council of Europe stated that eliminating violence against women is a key aspect of counteracting the structural inequality between men and women. The Committee of Ministers also indicated that the unequal power relations between men and women and patriarchal family structure are factors that contribute to violence in the family.²⁷ In its Resolution²⁸ from 1997, the European Parliament stated that violence against women is “unquestionably linked to an unequal balance of power between the sexes in the social, economic, religious and political sphere, despite national and international legislation proclaiming equality”.

The recognition that violence against women is a form of discrimination also is present at the national level. In some national legal systems, certain forms of

²⁵ A/Res/48/104.
²⁸ Resolution on the need to establish a European Union wide campaign for zero tolerance of violence against women, 1997/10/06.
violence against women are subject to judicial review according to the relevant non-discrimination legislation.\textsuperscript{29}

2.5. Domestic violence
as a violation of women’s human rights

Domestic violence is one of the most prevailing forms of violence and discrimination against women.\textsuperscript{30} In spite of the widespread evidence of this form of violence, it has not been recognized as a violation of women’s human rights until very recently.

This happened for the first time at the Copenhagen Second World Conference on Women (1980). The Conference adopted a resolution on “battered women and violence in the family” and referred to violence in the home in its final report. This was elaborated in the two General Recommendations of the CEDAW Committee on violence against women (General Recommendation no. 12 from 1989, and General Recommendation no. 19 from 1992), where the Committee mandates the States Parties “to protect women against violence of any kind occurring within the family, at the workplace or in any other area of social life”. States are requested to provide information concerning legislation and other measures to counteract violence against women.

The failure of states to address domestic violence as a violation of women’s human rights has been attributed to the demarcation of the public and private spheres and to the state-centred system of international law (Section 3.7). Nowadays international legal standards clearly prohibit domestic violence\textsuperscript{31} as a violation of the following primary human rights and fundamental freedoms guaranteed by the UDHR for all individuals:

\begin{itemize}
  \item Right to Equality (Art. 1)
  \item Freedom from Discrimination (Art. 2)
  \item Right to Life, Liberty, and Personal Security (Art. 3)
\end{itemize}

\textsuperscript{29} For example, sexual harassment in the workplace is considered as sex discrimination in the USA, Canada, Australia and the Netherlands.

\textsuperscript{30} Data in the latest report of the World Health Organization (\textit{Multi-country Study on Women’s Health and Domestic Violence against Women}) shows that domestic violence is widespread and demands a comprehensive response from the states. Available at: http://www.who.int/gender/violence/who_multicountry_study/en/index.html

• Freedom from Torture and Cruel, Inhuman or Humiliating Treatment (Art. 5)
• Right to Recognition as a Person before the Law (Art. 6)
• Right to Equality before the Law (Art. 7)
• Right to Remedy by Competent Tribunal (Art. 8)
• Right to Equality in the Family (Art. 16)
• Right to the Highest Attainable Standard of Mental and Physical Health (Art. 25).

All listed human rights and freedoms are widely recognized by the international community. According to the UDHR, “everyone is entitled to a social and international order in which rights and freedoms set forth in this Declaration can be fully realized” (Art. 28). Most provisions of the UDHR have become binding as part of customary international law. Countries act as if provisions of the UDHR were law, thus making the UDHR law. Many countries have integrated the above-mentioned human rights in their constitutional provisions, thus guaranteeing freedom from domestic violence for women. As the supreme law of a state, a constitution declares its most fundamental values, and a state’s declaration that abuse of women offends its most fundamental values is significant. Women should be able to use these constitutional declarations to press for legislative change and seek redress for a state’s failure to protect women in a family (Armatta, 1997: 808).

In 1985, the UN General Assembly adopted the first resolution on domestic violence; it was based on a recommendation made by the Commission on the Status of Women to the Economic and Social Council and on the outcome of the Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. The implementation of the 1985 Resolution included the 1986 Expert Group Meeting on Violence in the Family, with special emphasis on its effects on women. This Meeting adopted concrete recommendations with regard to legal reform, police, prosecutor and health sector training, and social and resource support for victims.

In 1994, the Commission on Human Rights created the first gender-specific human rights mechanism and appointed Radhika Coomaraswamy of Sri Lanka as the first Special Rapporteur on violence against women. Her mandate was to seek and receive information on violence against women, including domestic violence, from governments and to recommend measures to eliminate violence.
The first case raising the issue of domestic violence as a violation of human rights was brought before an international tribunal, the Inter-American Commission on Human Rights, in 1998. According to the arguments made in the Pamela Ramjattan case, the Government of Trinidad and Tobago breached Ms Ramjattan's rights when it convicted her of murder and sentenced her to death after failing to consider mitigating factors specific to Ms Ramjattan's experience as a battered woman. During her trial, she reportedly gave sworn evidence that she was subjected to severe forms of domestic violence throughout her eight-year common law marriage. According to the Commission, the police, legal aid lawyers, prison authorities, the courts and the Government of Trinidad and Tobago failed to consider the violent abuse which Ms Ramjattan and her children were subjected to and the effect of the abuse on her state of mind and her actions. Referring to Recommendation 19 of CEDAW (Trinidad and Tobago ratified the CEDAW in 1990), the American Convention on Human Rights and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ruled that Ms Ramjattan's right to life, fair trial, equal protection of the law and non-discrimination on the grounds of sex had been violated. The fact that the case was brought before the Commission was, in itself, an important step in the international movement to guarantee the human rights of women.

3. The obligation of States Parties to implement international human rights law

3.1. Introduction: how does international human rights law operate?

In Section 2 we stated that there is a large body of international legal norms, political agreements, policy guidelines, recommendations and practical advice with respect to domestic violence. We will now examine this situation more closely. What exactly is international law, where does it come from and what
kind of obligations does it entail? To answer these questions we will first look at the formal aspects of international law. In the following section (4) we will then take a closer look at the content of all these norms, agreements and guidelines. The reader should not expect a legal textbook. Instead, this is a brief introduction to some of the most fundamental notions and concepts that are essential for understanding the role that international law can play with respect to combating domestic violence.\textsuperscript{32} In the present section we will discuss the following topics: the sources of international law, the nature of states’ obligations under international human rights law, the differences between norms regarding their binding power, how international law can be transposed into national law, the supervision of the implementation of international norms by international bodies and the implementation of norms concerning domestic violence.

### 3.2. Sources of international law

The international legal obligations of a state derive from the sources of international law. These sources are forums in which rules of international law come into existence, and are listed in Article 38(1) of the Statute of the International Court of Justice as follows:

- International conventions or treaties, which are binding only on the parties thereto;
- International custom, which describes the rules derived from the general practice, based on the perception of a legal requirement, among states in international relations; they are, with few exceptions, binding on all states;
- General principles of law, such as “good faith”, recognized by civilized nations, which are also binding on all states;
- Judicial decisions, for example of international tribunals, and the writings of eminent scholars; these help to determine the existence and the interpretation of these several types of binding rules.

\textsuperscript{32} In international law the terms domestic violence and violence in the family (and other terms) are used interchangeably.
3.2.1. Treaties and other agreements
as contracts between autonomous states

States are sovereign legal entities. This means that they have the liberty to act in the manner that they deem best. The international community lacks central law-making authority. Thus, the creation of new law must pass through the consensual process. By means of entering into contracts (treaties or covenants) with other states, they can bind themselves to act in a certain way. For example, when a state – together with 20 other states from the same region – signs a treaty which states that every human being has freedom of religion, this means that the government of this state is obliged to prevent any form of religious intolerance on its territory. When this occurs, the other parties to the treaty can hold the state responsible for this “misbehaviour”. This means that international law primarily establishes a contractual relationship between the states parties to a treaty or covenant. In this relationship, certain norms are important. The central norm is the ancient adagium *Pacta servanda sunt:* everyone who enters into a contract is obliged to carry out the terms of the contract in good faith.

Another general responsibility is that the states parties shall immediately begin to implement the standards and norms established by the treaty. This means that the state has no excuse to suspend its activities. For example, the argument that the economic situation must improve first is not a valid excuse to delay the implementation of women’s rights standards. This is often expressed in treaties by stating that the state should implement the treaty provisions with “due diligence”.

A third general condition is that the state should take all appropriate measures to implement the standards or norms of the treaty. The measures that are deemed to be “appropriate” depend on the wording of the provisions in the treaty. In this respect, we can make a distinction between positive and negative obligations. Positive obligations mean that a state is committed to take action; negative obligations mean that a state is committed to refrain from certain actions.

In the legal literature there is a debate about whether international human rights treaties, such as the CEDAW Convention, contain obligations of *result* or obligations of *intent*. In the first case a specific level of protection of human rights is expected (within a certain time limit). In the second case, the state is only obliged to do its best to achieve some improvement over time. Although many international documents refer to “gradual implementation”, this does not

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33 Latin for “pacts must be respected”.
mean that a state can simply express its intent and actually do nothing. It is increasingly accepted that human rights law is about guaranteeing a certain level of protection against human rights violations. This means that it is ultimately the result that counts, not the intent.

3.2.2. The effect of treaty provisions on individual citizens

A treaty therefore primarily establishes a contractual relationship between autonomous states. The question that arises next is whether such a contract can also establish rights for individuals. Normally, a contract between two parties does not create rights for third parties. For example, if you agree with your neighbour that you have the right to picnic on his or her land, other people in the village where you live cannot derive any rights from this contract to have picnics on the same land. However, in human rights law it is possible for individuals to claim certain rights under treaties between states. This means that by signing a human rights document, the state promises (directly to other states, but indirectly to its own citizens) that it will respect human rights.

Individual citizens can claim that a state has violated his or her human rights. For example, a woman can claim that her government violated the clause that every citizen has a right to equal protection under the law, irrespective of sex, if this state has a family law in which women are excluded from the right to divorce (even though men can divorce). In legal terms, this means that human rights can be invoked in vertical relationships (between the state and individual citizens).

However, human rights violations do not only occur in the vertical relationship between a state and its own citizens or inhabitants, but also in the horizontal relationships between the individual citizens of a state or between institutions or enterprises and individuals. It is generally accepted that states – to a certain degree – have the positive obligation to ensure that human rights are also respected in such horizontal relationships. This is a positive obligation for which a state is responsible. For example: a state can be held responsible for not having adopted a law that prohibits marital rape. Another question is whether another individual can directly be held responsible for violating someone else’s human rights. For example: can a woman who has been sexually harassed at the workplace claim that her employer violated the provisions of the CEDAW Convention? We will return to this issue in more detail in the following sections.
3.3. The nature of states’ obligations under the human rights law

When we refer to international law, we primarily think of norms that impose some kind of legal obligation on a state. The responsibility of a state to comply with and implement international law derives from its acceptance of specific rules by becoming a member of an international or supranational organization. By joining an organization, a state accepts the rules that are imposed on its members. Two or more states may join together to form an organization at a regional, international or supranational level; during this process they can define common rules aimed at regulating their relations in the regional/international community. These rules establish the international legal order. One characteristic of international law is that there are no sanctions, comparable to those in national legal systems, to punish actors/states for their violations of international rules. Therefore, the implementation of the international rules is based on the good will of a state. A state can still be sanctioned for its violations of international law by means that are different than sanctions for violations of national law. These sanctions can include a public decision that the state is in violation of international law leading to disapproval by other states parties or the entire international community, followed by economic and political sanctions, isolation from the international community and exclusion from membership.

A key concept in human rights is the respect for the human dignity and value of every individual. This concept is reflected in the relationship between every individual and society, where inherent and universal values must be acknowledged. In this context, the rights of individuals are recognized by their society. Human rights essentially entitle all individuals to a set of guarantees (the rights themselves) which are universal. By definition, these rights are non-negotiable and belong to all individuals, in all contexts and under all circumstances. They establish a minimum level below which no state should perform.

In treaties and other international agreements, we find three ways of describing these obligations:

a) The obligation to respect (a negative obligation: must renounce torture, must not tolerate unfair trials; must not discriminate based on sex; etc.);

b) The obligation to protect (a positive obligation: establishing shelters for female victims of domestic violence, providing health services for victims, funding social services dealing with the problem of domestic violence, providing training for police to address domestic violence, etc.);
c) The obligation to fulfil (a positive obligation that requires appropriate measures to be taken to assure that women's rights standards are attained: providing remedies to address a faulty trial, guaranteeing victims of domestic violence access to social services and health care, etc.).

In the field of domestic violence, this means that a state has responsibilities not only to prohibit the violation of the human rights of women, but also to take active measures for prevention and protection. A state is obligated to ensure that domestic violence does not occur, and if it does occur, it is obligated to ensure that victims are protected.

The obligations of a state include both the obligation of conduct and the obligation to achieve concrete results. The obligation of conduct includes both taking action and abstaining from action. The obligation of result means attaining a particular outcome through active implementation of programmes and policies. A state must achieve results in implementing women's rights and eliminating discrimination and violence against women.

3.4. Binding law and soft law

In the above section we mainly discussed the aspects of international law that contain more or less binding human rights norms for states parties – and to some extent for individuals to respect the human rights of other individuals. However, international law comprises more than this type of norm. Some international norms are more binding than others; in general, legal norms are the most binding, recommendations of experts and NGOs are the weakest norms and policy norms lie somewhere in between.

Legally-binding instruments create law that may provoke legal action if there is non-compliance. Instruments that are not legally binding establish commitments; these are political or moral obligations, often referred to as “soft law”. Strictly speaking, this is not law at all, but it results in a strong expectation that states will respect and comply with its provisions.

It is difficult to make a clear division between the various kinds of norms and their binding power. This may also differ from one country to another. For the purposes of this study, we have made a rough classification ranging from stronger to weaker norms.

(a) Legally-binding norms. These are norms that can be found in international treaties34 that are binding for the states parties, are supervised by courts or treaty

[34] "Every treaty in force is binding upon the parties to it and must be performed by them in good faith." Vienna Conventions on the Law of Treaties, Art. 26.
bodies, and are applicable in some way to individual citizens. These norms can be used in legal procedures and/or implementation. Within this category there is a wide variation in the binding force. The ECHR contains strong legal norms, which are supervised by a court and applied by citizens. The CEDAW is not supervised by a court, but by a treaty body. The applicability of the norms at the national level depends on the national legislation; at the international level the optional protocol contains an individual procedure with the treaty body.

(b) Interpretation of legally-binding norms by courts or treaty bodies. Courts and treaty bodies interpret the scope and the meaning of legal norms in their individual decisions (case law of the ECHR; views of CEDAW in individual cases) and in documents of a more general nature (general recommendations, concluding observations). Because these are interpretations made by the bodies that are supervising the implementation of the norms, they are strong interpretations. In some cases interpretation of the legal norms is essential. For example, the CEDAW Convention does not contain a specific provision about violence against women. However, in General Recommendation no. 19, the CEDAW Committee explained that gender-based violence is a form of discrimination against women that falls under the scope of this Convention (Art. 1). In the same document, the Committee also included family violence as part of the concept of violence against women.

(c) Policy norms. These are the directions for establishing adequate and effective public policies contained in the recommendations, resolutions or declarations of various international bodies (such as the Council of Europe or the European Parliament), but which have no legally-binding force. Nevertheless, these norms can be important for establishing the concrete obligations of states to combat domestic violence. Policy norms to which a state agreed (by being a member of a body or signatory) can be used to demand the measures that are recommended. Policy norms can be used in legal procedures; they can provide more concrete content to the first two categories of norms. If a state has signed a policy document that contains very concrete measures (for example, providing shelters or safe houses to victims), a procedure against the state can argue that a legally-binding norm which is less concrete (such as taking “necessary measures” to protect the victims) must include the more concrete provision (the state must actually provide shelters).

(d) Interpretations of legally-binding norms and policy documents by experts and international organizations. Such interpretations are not binding at all, but can be very helpful in building a strong argument to demand certain
measures or to support a case in a court procedure. Various documents from the UN or other international organizations clarify the meaning of “adequate protection” or “appropriate protective and support services”. These interpretations provide states with concrete directions about how to fulfil their obligations (under the CEDAW Convention, for example).

3.5. Transposition of international norms into national law and policies

International human rights instruments do not determine the type of procedure that a state can use to convert its international commitments and obligations into suitable rules and rights that apply to all individuals under its authority. It is up to a state to decide how it will incorporate international law into national law. However, if a state does not comply with its obligation to incorporate provisions from a ratified international treaty, it will be accountable to other states parties.

International legal and policy documents take effect in the national legal system and policy schemes in several ways. Their provisions may be incorporated/transposed into national legal provisions. The process of incorporation depends on the constitutional order of a state. Constitutions may take different attitudes toward international law, which vary between two extremes.

Due to the collective recognition of international law standards by the international community as a whole, some states consider these provisions to stand above their internal legal norms; they can therefore be applied directly in the national legal systems. These states accept the primacy of international law (monistic systems). In other words, as soon as a State has ratified or acceded to an international agreement, that international law becomes national law for that state.

At the other extreme there are states which believe that national law has primacy over international law (dualistic systems); therefore they strictly separate these two levels of legal provisions. They do not apply an international provision directly if it has not been integrated into the national legal system in a manner prescribed by the constitution; international law does not have the force of law without the passage of additional national legislation. A state may assume that an international treaty has been integrated in its national legal system when it is ratified by the parliament (in this case an international treaty becomes a national legal document), or by calling for its transformation by adopting a law or another legal document that would have the same content as the international treaty.

International legal standards may be transposed into national systems by direct implementation by national courts, governmental bodies, agencies, etc., and by
treaty conformity interpretation (judges may have been guided by international law in their interpretation of a specific legal provision). In addition, international norms may be a source of inspiration for changing existing policies or developing new policies. For instance, recommendations given in the Beijing Platform for Action may be used for developing a national action plan to combat domestic violence. International human rights law may be used as a guideline in setting up minimum standards of protection (e.g. for victims of domestic violence) that national laws should attain. Advocacy for law reform may endeavour to bring a national law into accordance with internationally-accepted standards for the protection of human rights/women's rights.

3.6. Self-executing provisions

If no transposition has taken place it is possible, under certain conditions, that a norm that is included in international law will take effect in the legal system of a national state. Such a norm can, for example, be invoked in a court case in which it is claimed that the state or an individual has violated the human rights of the claimant. In legal terms this is called the “self executing” or direct effect of international law.

The majority of international human rights treaties, conventions and other documents are not self executing, because they require additional, more precise provisions for direct application. Analyzing the constitutional system of a state and determining whether its legal system is monistic or dualistic is important to human rights advocates. Specifically, a state may attempt to exempt itself from implementing an international obligation related to the enforcement of human rights by arguing that it cannot integrate that obligation into the national legal system. But, if its constitution has provided for ratified international instruments to be integrated into the national legal system, the government may not need to amend national laws in order for the ratified international obligations to take effect. In that case, national courts and judges can apply those norms, regardless of whether they are transposed into national provisions. According to the General Assembly Resolution 375 (4th session 1949) “every state has the duty to carry out in good faith its obligations arising from treaties and other sources of international law, and it may not invoke provisions in its constitution or its laws as an excuse for failure to perform this duty” (Art. 13).
3.7. The monitoring of implementation
by international bodies

Every international and regional organization has its own way of monitoring whether the obligations under the treaties signed by the states parties are fulfilled. Many states create human rights enforcement systems that may include a human rights commission to investigate claims, and special adjudicative bodies to hear cases.

By signing a treaty or a convention, the states parties may also agree to establish the monitoring mechanism. For instance, the monitoring mechanism for the CEDAW (and the Optional Protocol to the CEDAW) is the Committee on the Elimination of All Discrimination Against Women (CEDAW Committee). The implementation of the European Convention on Human Rights is monitored by the European Court of Human Rights. At the level of the European Union, the enforcement mechanism for community law is the European Commission. Ad hoc or permanent commissions may be established to monitor and report on ongoing human rights concerns. For example, following the Fourth World Conference on Women in Beijing in 1995, the participating governments committed themselves to report to the UN General Assembly and Secretary General about violence against women and other issues critical for implementing women’s human rights.

3.8. Implementation of norms concerning
domestic violence – specific problems

Until recently, states have been reluctant to intervene with regard to violence that takes place in a family; they believed this was a private matter and that a state has no obligation in the private/domestic domain. Acts of violence against women were carried out by non-state agents, states did not consider themselves to be accountable for this behaviour. It was widely accepted that state responsibility comprised only the behaviour of state agents (e.g. military officers who violate the human rights of prisoners); establishing accountability in gender violence has therefore been elusive. Due to this dual conception of accountability for violence, a woman victim of violence caused by a stranger on the street has access to legal remedies, but this same right is often denied to a woman who is beaten by her husband or intimate partner at home. Throughout the world, domestic violence has rarely been prosecuted because of this private/public differentiation.
The emergence of international human rights law and the human rights concept that all people are equal regarding their basic human rights and should be treated equally has resulted in the widely-accepted idea that human rights are above the rights of a state and above state’s sovereignty. However, this process was very slow, since it was driven mostly by women's organizations and gender advocates. Some of this private/public distinction concerning women still remains in some human rights documents. For instance, the European Convention for the Protection of Human Rights and Freedoms prohibits the interference of a state in private life, which is justified by the right to enjoyment and the protection of the right to private life and family life. This was also an attempt to marginalize the concerns of women. While human rights norms aim at protecting the private sphere and family life from outside interference, at the same time they ignore the fact that the private sphere is where most oppression of women takes place.

As we see in the series of human rights documents on our Checklist, according to international law, the state is obliged to act with “due diligence” to prevent, investigate, and punish acts of violence and to provide remedies regardless of whether such acts are committed by private or state actors. This concept of due diligence is spelled out in a number of international documents that concern women's human rights. The process began with the CEDAW, which introduced affirmative action by a state to prevent discrimination, even if by private actors. States bear the responsibility under international law to prevent, investigate and punish violence against women and to ensure that the victims receive adequate remedies and reparation, regardless of whether the act was perpetrated by state agents or a private person (General Recommendation 19 Art. 8, DEVAW, Art. 4).

The latter point is very important for women; it often happens that women’s human rights are not violated by the State itself, but by perpetrators in the private sector (labour relations, trade relations etc.) or in the private sphere (home). This private/public distinction is gendered, since women usually operate in the private sector where abuses such as domestic violence and degradation are often left unregulated by the law. In these situations state responsibility arises if a state facilitates, condones, accommodates, tolerates, justifies or excuses private denials of human rights, therefore from a state’s own lack of diligence to prevent, control, correct or discipline such private acts through its own executive,

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legislative or judicial organs (Pentikainen, 1996: 96). Consequently a state becomes blameworthy by not doing, for instance by not passing appropriate laws and policies to protect women from battery at home. Under this concept, a state’s culpability is also due to perpetuating violence through omission: by not taking appropriate measures to protect vulnerable women. A state is also guilty of perpetuating violence when it accepts “honour killing” and grants men impunity for violence in cases where they murder their wives or partners.

In her report on violence in the family, the Special Rapporteur outlined three doctrines put forward by scholars and experts in international law in attempting to deal with this issue of violence against women by private actors. The first, taken from the international law doctrine of state responsibility, was that states have a duty to prevent, investigate and punish international law violations and pay just compensation. The second doctrine is related to the question of equality and equal protection. If it can be shown that law enforcement discriminates against the victims in cases involving violence against women, then states may be held liable for violating international human rights standards of equality. Finally, scholars and international human rights organizations have also argued that domestic violence is a form of torture and should be dealt with accordingly.

For example, in October 2000 Amnesty International launched a worldwide campaign against torture aimed at mobilizing people around the world to confront and eradicate the torture of women. This organization noted that torture, even when it happens in a private sphere and is committed by a non-state actor, is a fundamental violation of the human rights of women that is universally prohibited under international law. It is rooted in pervasive discrimination that continues to deny women full equality with men and that legitimizes violence against women. During this campaign, states were reminded that they have a duty to ensure that not a single woman is subjected to torture or ill treatment, whether inflicted by agents of the state or by private individuals. When a state fails to take effective measures to protect women from torture, it shares responsibility for the suffering these women endure.37

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The due diligence standard of state responsibility for private actors was discussed in detail by the Inter-American Court of Human Rights in the decision on the Velasquez-Rodriguez case handed down on 29 July 1988. In that case, the Government of Honduras was held responsible for violating human rights in the case of disappearances. The Court found that “An illegal act which violates human rights and which is initially not directly imputable to the State (for example, because it is the act of a private person) can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention . . . The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation. This obligation implies the duty of State parties to organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights.”

4. The international legal and policy documents that are relevant to domestic violence

In the above sections, we introduced the norms and procedures, and now we will present the content of international law with respect to domestic violence. We will do this by presenting the obligations of states in the field of domestic violence that were introduced at three levels: at the level of the UN, at the level of the Council of Europe, and at the level of the European Union. The aim of this section is also to show that all the countries in the region targeted in this study, being the Member States of the UN and the Council of Europe (COE), are bound by those memberships. In particular, this means that all these countries are legally bound to fulfil and implement norms concerning women’s rights and the elimination of discrimination and violence against women that derive from the accepted or ratified UN and COE documents. In addition, the countries
are morally and politically obliged to comply with and implement their policy
documents in related fields. Although these policy documents are not legally
binding, their main aim – the protection and implementation of human rights
and freedoms – strongly shapes policies in all the Member States. The countries
in the region are not members of the European Union, but its legislation has a
strong influence on the legislation and policies in the whole region.

4.1. The level of the United Nations

The United Nations documents were crucial to the acknowledgment that dome-
stic violence is a human rights violation under international law and a form of
discrimination against women, as well as to the recognition of state responsibi-
li ty for private acts of violence against women. These documents are of various
types, and their power ranges from binding to legally non-binding. However,
regardless of their binding potential, the UN documents in this field had a
strong influence on expanding the international law on women’s rights.

As one of its central goals, the Preamble to the Charter of the UN cites the
reaffirmation of “faith in fundamental human rights, in the dignity and worth of
the human person, in the equal rights of men and women.” Art. 1 proclaims that
one of the purposes of the United Nations is to achieve international cooperation
in promoting and encouraging respect for human rights and for fundamental
freedoms for everyone, without regard to sex, among other things. By the terms
of the Charter, the first international instrument to refer specifically to human
rights and to the equal rights of men and women, all members of the United
Nations are legally bound to strive towards the full realization of all human
rights and fundamental freedoms. The status of human rights, including the
goal of equality between women and men, is thereby elevated: a matter of ethics
becomes a contractual obligation of all governments and of the UN.

Since all the countries in the region covered by this study are Member States of
the UN, they are legally bound to fulfil and implement the goals prescribed in the
Charter of the UN. Moreover, these countries have ratified all the international
documents in accordance with the International Bill of Human Rights that
strengthen the commitment to the human rights of women. In addition, each
covenant specifically binds the ratifying states to ensure that women and men
have equal access to all the established rights.

The International Bill of Human Rights, combined with related human rights
treaties, lays down a comprehensive set of rights to which all persons, including
women, are entitled. However, the invisibility of various forms of violations
of the human rights of women, hidden in cultural patterns and patriarchal
social structures, proved insufficient to guarantee them the enjoyment of their internationally-agreed rights. Therefore, the UN Commission on the Status of Women (CSW) has worked hard to define the general guarantees of non-discrimination in these instruments from a gender perspective. This work has resulted in a number of important declarations and conventions that protect and promote the human rights of women. The most important one is the CEDAW.

4.1.1. Legal binding UN norms: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)\(^{38}\)

The CEDAW has been viewed as an international bill of rights for women. It defines discrimination in a very substantive way, making clear that women have the right to full and equal enjoyment of all their human rights. The CEDAW\(^{39}\) aims at ensuring equality as a primary obligation for the States Parties (Art. 2), and improving the de facto position of women (Art 3-24), thereby implying positive action. It combats the dominant gender ideology (Art. 5a) by enhancing a change of traditional attitude towards women that hamper women in the realization of their rights (including eliminating hidden gender stereotypes in legislation).

All the countries in the region have become States Parties to the CEDAW by ratifying or acceding to it, thereby accepting a legal obligation to counteract discrimination against women. States Parties commit themselves to undertake a series of measures to end discrimination against women in all forms, including the following:

- To incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- To establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- To ensure the elimination of all acts of discrimination against women by persons, organizations or enterprises.

Most of these obligations of the States Parties are positive obligations; therefore they should be:


\(^{39}\) For more on the importance of the CEDAW, see: Report Committee on the Convention on the Elimination of All Forms of Discrimination against Women, The UN Women’s Convention in the Netherlands in 1997, Den Haag: Ministerie van SZW.
• Result-oriented (it is not enough to “make all efforts” or “to do its best”). CEDAW calls for “all appropriate measures to be taken” that result in the intended effect. Such measures include positive action, establishing and strengthening national machinery, investment in research and advisory services, monitoring the results, cooperation with the women’s movement, etc. The obligation to take concrete action must result in improving the position of women. To combat domestic violence, a States Party should therefore ensure that women victims of domestic violence have access to legal remedies and health care, organize training of police officers and support hotlines for victims of domestic violence, among other activities;

• Undertaken without delay (e.g., a State Party cannot postpone its obligation to ensure protection of victims of domestic violence by citing difficult economic conditions or economic crises);

• Undertaken with due diligence;*40

• Implemented progressively. States Parties must achieve demonstrable progress when implementing the CEDAW. Therefore they have a duty to submit periodical reports about whether or not there has been progress. More policy and different policy is expected from a developed country than from a developing country, but the important thing is that implementation is begun. The obligation to include bans on discrimination in legislation must be followed at any case;

• Implemented with consideration to changing social conditions – the provisions must be interpreted in a dynamic way, as obligations evolve over time. For example, after a State Party has adopted the Law on Combating Domestic Violence, it should regularly analyze and consider its provisions and make changes and adaptations if needed based on changing circumstances;

• Implemented in good faith – a State Party is obliged to interpret the Convention accordingly to the intentions of the drafters.

CEDAW has an exceptionally large membership. On March 2006, 181 states (more than ninety percent of the members of the United Nations) were parties to the Convention. It States Parties have also made more reservations than any other human rights convention. A number of States Parties entered reservations

*40 The use of this principle in the field of domestic violence is explained in 3.7.
to specific articles on the grounds that their national laws, traditions, religions or cultures are not congruent with Convention principles. Some States Parties entered a reservation to Article 2, which condemns discrimination against women in all its forms, even though their national constitutions or laws prohibit such discrimination. There is therefore an inherent conflict between the provisions of their constitutions and their reservations to the Convention.

Countries that have ratified or acceded to the Convention are legally bound to put its provisions into practice. They are also committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. Due to the generally-accepted belief that CEDAW comprises obligations to attain results, there are opinions that it could have direct effect and that its provisions could be directly applied if they are invoked during judicial procedures. It is also widely believed that the Convention applies to the horizontal relations between citizens themselves. As Art. 2 stipulates, the duty rests on a government to actively ensure that the principle of non-discrimination is followed; therefore it is required, where possible, to assign a horizontal effect to the Convention.\textsuperscript{41}

The monitoring mechanism for CEDAW (and the Optional Protocol to CEDAW) is the Committee on the Elimination of All Discrimination Against Women (CEDAW Committee), an expert body established in 1982. It monitors the progress concerning women made in countries that are States Parties to CEDAW, it monitors the implementation of national measures to fulfil this obligation and it reviews national reports submitted by the States Parties within one year of ratification or accession (thereafter every four years). These reports, which cover national actions taken to improve the situation of women, are presented to the Committee by government representatives. The Committee also issues General Recommendations on issues affecting women to which it believes the States Parties should devote more attention (e.g. General Recommendation 19 on violence against women).

As a UN treaty document that imposes a long list of obligations on States Parties to take “all appropriate measures”, CEDAW has great political significance, which was reinforced by the adoption of the Optional Protocol to CEDAW and General Recommendation 19 of the CEDAW Committee.

\textsuperscript{41} For more about the vertical and horizontal effects of the Convention, see the Dutch case: Op.cit.
Despite its great significance in codifying international legal standards for women and its widespread acceptance by the UN community, CEDAW has its weaknesses. It does not have a strong enforcement mechanism and is not monitored by a court. At the national level the applicability of its norms depends on the national legislation; national laws frequently fail to guarantee women's human rights and courts just as frequently fail to uphold the constitutional or legislative protection that is available. At the international level, existing procedures for promoting the implementation of CEDAW, consisting of reporting by States Parties and the adoption of “general recommendations” by the CEDAW Committee, were not strong enough as instruments to determine the legal accountability of States Parties.

Due to the worldwide women's campaign demanding procedures that would allow women to seek redress for violations of CEDAW when no remedy is available at the national level, the UN adopted the Optional Protocol to CEDAW. It offers women international remedies and possibilities for obtaining justice in individual cases and achieving a broader impact by encouraging governments to take the necessary action at the national level.

The Optional Protocol can be ratified only by States Parties to CEDAW. By ratifying this document, a state recognizes the competence of the CEDAW Committee to receive and consider complaints from individuals or groups within its jurisdiction. The Optional Protocol creates two procedures: the Communications Procedures that allow women and groups to submit complaints of violations of rights protected under CEDAW, and the Inquiry Procedure that allows the Committee itself to initiate inquires into situations of grave or systemic violations of women's rights in a particular jurisdiction, without having first received a complaint.

A communication can be submitted directly by the victim/individual or group of victims whose rights under CEDAW have been violated or by other individuals or groups on behalf of the victims. All available national remedies must have been exhausted first, but some significant exceptions were introduced. For example, the Committee is allowed to waive the exhaustion requirement if no effective remedies exist, if the procedures take an unreasonably long time, if the victim has been prevented from using the procedure by threats or actual harm, or if high financial costs make the remedy inaccessible.

Once the Committee has reached a decision, it can issue recommendations to the State Party. It then has six months to submit information about measures taken.

However, the decision of the Committee is not binding. The power of the decision is based on the commitment and activities of women’s rights advocates, the civil groups and the international community in applying pressure on a State Party to fulfil its obligations that derive from the basic – and binding – human rights treaties.

The Optional Protocol has a great significance for the interpretation of the rights under CEDAW and detailing the steps that should be taken to implement those rights in specific situations. Those steps can include remedies for individual women, such as compensation, or systemic measures, such as changing legislation, adopting a certain type of policy or providing specific services. The decisions of the Committee help to build the case law that ensures the practical significance of CEDAW for spelling out the concrete legal accountability of the States Parties. In that sense the views of the Committee in the case of A.T. v Hungary have contributed to significant progress in the field of domestic violence. This case definitely pointed out the responsibilities of the CEDAW States Parties to respond to domestic violence and take effective measures to protect women from the violent acts of private actors. By strengthening the principle of accountability for violations, the Optional Protocol has strengthened the effectiveness of CEDAW as a tool for securing women’s human rights.

In 2003, Ms A.T. submitted a complaint to the CEDAW Committee claiming to be a victim of a violation by Hungary of Articles 2(a), (b) and (e), 5(a) and 16 of CEDAW. As a victim of domestic violence, the complainant urgently requested an effective interim measure of protection. She stated that she and her two children had been subjected for the past four years to regular domestic violence and serious threats by her common-law husband. She stated that she had not gone to a shelter because none in the country were equipped to take in her disabled child. She initiated civil proceedings regarding division of the property, which were suspended, and two ongoing criminal procedures concerning incidents of battery and assault that caused her bodily harm. Despite her initiatives, no action was taken by the Hungarian authorities to protect her from the offender.

The CEDAW Committee ruled that Hungary, being a State Party to CEDAW and the Optional Protocol to CEDAW, had failed to fulfil its obligations and had thereby violated the rights of the complainant which are guaranteed in the above-mentioned articles. The Committee made recommendations to the State to take immediate and effective measures to

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guarantee the physical and mental integrity of A.T. and her family and to ensure that she was given a safe home, received appropriate child support and legal assistance, and reparation proportionate to the physical and mental harm suffered. The Committee also made the following general recommendations:

- To respect, protect and fulfil women’s rights, including their right to be free from all forms of violence, including intimidation and threats of violence;
- To assure victims of domestic violence the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women;
- To take all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated;
- To provide regular training to judges, lawyers and law enforcement officials;
- To investigate all allegations of domestic violence and bring the offenders to justice;
- To provide victims of domestic violence with safe and prompt access to justice including free legal aid;
- To provide offenders with rehabilitation programmes.

4.1.3. Interpretation of legally-binding norms by the treaty body:

General Recommendation 19 of the CEDAW Committee

General Recommendation 19 strengthened the CEDAW Convention as a tool for securing women’s human rights, especially in the field of domestic violence. It clearly states that domestic violence is included in CEDAW, although it is not specifically mentioned. It stresses that the definition of discrimination includes “gender based violence that is directed against a woman because she is a women or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty”. This Recommendation was the first official interpretation of a human rights treaty to prohibit violence against women.

General Recommendation 19 requires States Parties to take the measures that are necessary to overcome family violence; these should include adopting

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specific legislation on domestic violence, including criminal sanctions and civil remedies. The Recommendation also suggests a number of preventive measures (including public information and education programmes to change attitudes concerning the roles and status of women and men) and protective measures (including refuges, counselling, rehabilitation and support services for women who are victims of violence and who are at risk of violence). States Parties should report on all forms of gender-based violence, including data on the incidence of each form of violence and on the effects of such violence on the women who are victims. They should also monitor and continuously review actual effectiveness of the measures so that modifications can be made if necessary.

4.1.4. The UN policy norms

Declaration on the Elimination of Violence Against Women\textsuperscript{45}

The Declaration on the Elimination of Violence Against Women (DEVAW), adopted in 1993, defines violence against women broadly and recognizes that it can occur in the family. Although it has no legally binding force, its norms were very important in establishing the concrete obligations of a UN Member State regarding domestic violence. It is universal in coverage and is recognized as a source of international law.

It specifies the following actions that a Member State should take to eliminate violence occurring in the private sphere: it must develop appropriate criminal legislation; it must consider developing national plans of action to eliminate violence against women; in the light of the available resources it must provide social services for women victims of violence; it must take measures to ensure that public officials entrusted with implementing the laws have adequate training to sensitize them to the needs of women; and it must ensure that adequate resources are set aside in the government budget to counteract violence in the family. The DEVAW makes it clear that the actions of States Parties can be measured against international standards that clearly articulate a strategy for the elimination of violence against women in the family.

UN Commission on Human Rights Resolution 2003/45, Elimination of Violence Against Women\textsuperscript{46}

In Resolution 2003/45, Elimination of Violence Against Women, the UN Commission on Human Rights condemns all acts of violence against women and

\textsuperscript{45} A/Res/48/104
\textsuperscript{46} E/CN.4/2003/L.11/Add.4
affirms that violence against women is a violation of their human rights. The Commission stresses that “all forms of violence against women occur within the context of de jure and de facto discrimination against women and the lower status accorded to women in society, and are exacerbated by the obstacles women often face in seeking remedies from the State”. It reminds Member States of their obligations under CEDAW, and urges Member States that have not yet done so to ratify CEDAW and its Optional Protocol. In addition, it stresses that governments “have an affirmative duty to promote and protect the human rights of women and girls and must exercise due diligence to prevent, investigate and punish acts of all forms of violence against women and girls.”

**Model legislation on domestic violence by the Special Rapporteur on violence against women**

In 1996 the Special Rapporteur on violence against women included model legislation on domestic violence in her report. This model includes a definition of domestic violence, complaint mechanisms, duties of judicial officers, criminal and civil proceedings, and provisions regarding emergency and non-emergency services, training of police and judicial officials, and counsellors. The framework of this model legislation outlines important elements that are integral to comprehensive legislation on domestic violence. The objective is to serve as a drafting guide to legislatures and organizations committed to lobbying their legislatures on domestic violence. The purpose of this legislation is to comply with the international standards sanctioning domestic violence and establishing specific legislation prohibiting violence against women within interpersonal and family relationships. The model provides a wide range of flexible and speedy remedies to discourage domestic violence and protect women where such violence has taken place. The model should also contribute to a greater understanding within the community of the incidence and causes of domestic violence and encourage community participation in eradicating domestic violence.

**Beijing Platform for Action**

The Platform for Action outlines many specific actions that governments, NGOs, private sectors, educational institutions and others should take to confront and counteract violence against women, including strengthening the response of national legal systems to domestic violence. Governments were obliged to take corresponding measures and to report to the UN Secretary General on progress

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until 2000. These reports were reviewed at the UN General Assembly 23rd Special Session in 2000 “Women 2000: Gender Equality, Development and Peace for the 21st Century”, known as Beijing +5, and at its Session in 2005, known as Beijing +10. The outcome document of Beijing +5 reported on achievements and obstacles in all areas of concern, including domestic violence, and made recommendations to the Member States. In the area of domestic violence, as a matter of priority, they were advised to review and revise legislation, and to take other necessary measures and establish appropriate mechanisms to ensure that all women are protected against domestic violence, which should be treated as a criminal offence punishable by law (Art. 69).

4.2. The level of the Council of Europe

The Council of Europe (COE), a regional intergovernmental organization, has focused on the protection of human rights since its founding in 1948. It currently comprises 46 Member States. The COE human rights system is based on treaties, which define obligations for the Member States, and non-binding documents such as directives, recommendations and resolutions. The COE human rights treaties are the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention), which was adopted in 1950 and went into force in 1953, the European Social Charter (1965), and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989). The European Convention has a special importance for the Member States, and its ratification is a de facto political condition for joining the COE. All COE Member States have to incorporate the European Convention into national law. The Convention has a direct effect on domestic laws, and therefore, the judiciary at the national level can take the provisions of the European Convention into consideration.

The European Convention contains a relatively strong enforcement mechanism with a special Court (the European Court of Human Rights, based in Strasbourg), an individual complaints procedure and the Council of Ministers that monitors whether the Member State has indeed complied with the judgements of the Court. The European Court of Human Rights is not a substitute for national courts, but is subsidiary to national systems that safeguard human rights. Both individuals and NGOs of Member States have a right to petition the European Court of Human Rights, but they are required to first exhaust domestic remedies before a case can be considered admissible by the Court. The final judgments of the Court are legally binding on the State concerned.

48 All the countries in the Western Balkans are members of the COE.
In the case of C.R. v. the United Kingdom (No. 20190), 22 November 1995, the issue of marital rape arose. The applicant claimed that his conviction for raping his wife violated article 7 of the ECHR since in his view his behaviour did not constitute a crime. This argument was rejected by the European Court in the following decision: “...the abandonment of the unacceptable idea of a husband being immune against prosecution for raping his wife was in conformity not only with a civilized concept of marriage but also, and above all, with the fundamental objectives of the Convention, the very essence of which is respect for human dignity and human freedom” (para. 42).

The COE human rights documents refer to the principals outlined in the UN treaties and other documents which state that violence against women is a violation of fundamental human rights. Art. 14 of the European Convention states that “the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex...” The Convention guarantees the right to life (Art. 2), the right to liberty and security of person (Art. 5) and the right to be free from torture, inhuman or degrading treatment (Art. 3). The treaty also establishes a woman’s right to an effective legal remedy before a national authority if her human rights are violated (Art. 13).

The Committee of Ministers made several recommendations to the Member States concerning domestic violence. This was also the subject of the 3rd, 4th and 5th European Ministerial Conferences. The 3rd European Ministerial Conference on equality between women and men in 1993 was devoted to strategies for the elimination of violence against women. The Conference adopted the Declaration on Policies for Combating Violence Against Women in a Democratic Europe. A working group was formed to create a Plan of Action to Combat Violence Against Women. The final report was finalized in 1998 and includes recommendations to combat violence against women at both the national and international level. They include legislative, judicial and law enforcement reforms.

In 2000, the Parliamentary Assembly adopted Recommendation 1450, and recommended the creation of a European programme to combat violence against women that would include harmonizing national law with European law, thereby ensuring the protection of victims throughout the legal system. In its Recommendation adopted in 2002, the Parliamentary Assembly

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49 EG-S-VL (98)
50 No. 1582 (2002)1
stressed that domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims such as housing, health, education and the freedom to live their lives without fear. The Recommendation states that domestic violence violate criminal law and therefore the Parliamentary Assembly urges member States “to recognize that they have an obligation to prevent, investigate and punish acts of domestic violence and to provide protection to victims”.

In 2004 the Parliamentary Assembly adopted Recommendation 1681, “Campaign to combat domestic violence against women in Europe” 51 due to its concern about the extent and escalation of domestic violence against women. The Assembly also noted that this serious problem extends to all Council of Europe Member States. “The acute nature of this problem must force Council of Europe member states to regard domestic violence as a national political priority and to deal with it in a broader political framework, with government, parliament and civil society involvement. Member states have an obligation under international law to act with due diligence to take effective steps to end violence against women, including domestic violence, and to protect its victims/survivors. If they do not themselves want to be held responsible, states must take effective measures to prevent and punish such acts by private actors and to protect the victims/survivors.” (Art.2). The Assembly advocated that “acts of domestic violence be made a criminal offence, that victims be afforded better judicial, psychological and financial protection and that a European year against domestic violence be held to ensure that such violence is no longer a taboo subject,” (Art. 3).

In accordance with the Action Plan adopted during the Third Summit of Heads of State and Government of Council of Europe Member States in Warsaw on 16-17 May 2005, a Task Force to Combat Violence against Women, including Domestic Violence was set up in 2006. The Task Force is in charge of evaluating progress at the national level and establishing instruments for quantifying developments at the pan-European level with a view to drawing up proposals for action. It also has a mandate to prepare a blueprint for a Pan-European Campaign to Combat Violence against Women, including Domestic Violence.

4.3. The level of the European Union

The European Union (EU) is a supranational organization which currently has 25 Member States. The principles of law of the European Union, known as

51 Assembly debate on 8 October 2004 (32nd Sitting; see Doc 10273, report of the Committee on Equal Opportunities for Women and Men, rapporteur: Mr Branger). Text adopted by the Assembly on 8 October 2004 (32nd Sitting).
Community Law, have direct effect in national legal systems, since Community Law takes precedence over national law in EU Member States. The main sources of Community Law are treaties and directives. The European Commission is the enforcement mechanism for Community Law. The EU allows individuals and groups to submit complaints and petitions to the European Commission and the European Parliament about specific incidents of human rights violations and non-compliance with Community Law. However, the European Commission cannot issue binding judgments that would provide relief for violations of an individual’s rights. The European Court of Justice has jurisdiction over cases brought by a Member State against another Member State for treaty infringement, by a European Community institution against a State and by individual citizens or organizations against European Community institutions. It does not arbitrate complaints brought by individuals against Member States. However, a national court can ask for an opinion of the European Court of Justice about the correct application of EU law in a certain case.

The EU addresses gender equality through numerous directives, resolutions, recommendations and acts which are approved by the Council of the European Union, the European Commission and the European Parliament. Violence against women is one of the major topics that the EU deals with. The European Parliament adopted the Resolution on Violence Against Women in 1986. It called for the legal recognition of marital rape, training for those who may come into contact with victims of domestic violence, and recommended that women be provided with legal assistance. In 1997 the European Commission set up the Daphne Project to combat violence against women, and the European Parliament called for a campaign of no tolerance for violence against women (Tolerance Zero). In the same year the European Women's Lobby set up the European Centre for Political Action for Violence against Women and its European Observatory for Violence against Women.

Since 1998, the EU Presidency has placed the issue of domestic violence on the political agenda and has passed a number of recommendations dealing mainly with domestic violence. In addition, the European Campaign on Domestic Violence was launched in 1999. At the EU Conference on Violence Against Women held in the same year, five expert forums were established to investigate certain aspects of domestic violence: the extent, reasons behind and consequences, legal possibilities for combating domestic violence, prevention, help organizations

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53 A4-0250/1997.
and cooperation with institutions and European networks, and on work with perpetrators. The Conference adopted the Recommendations of the Expert Forums\footnote{http://europa.int.eu/comm./employment_social/equn_opp/colognerc_en.html.} to the Member States.

The EU Expert Meeting on Violence Against Women held in 1999 drafted recommendations for joint models for action help to combat violence.\footnote{http://presidency.finland.fi/netcomm/news/showarticle1871.html.} The recommendations address treatment programmes for men who use violence, legal proceedings and research on violence. They stress that domestic violence is a crime that is subject to criminal proceedings and that treatment programmes for men cannot compensate such proceedings.

The Proposal for European Parliament and Council Directive on the right of citizens of the EU and their family members to move and reside freely within the territory of the Member States\footnote{COM/2001/0257.} explains that the article on “divorce or annulment of marriage shall not entail the loss of the right of residence of an EU citizen’s family members who are not nationals of a Member State” should also apply to situations involving domestic violence. The Economic and Social Committee recommended that this wording should be more explicit referring, among other things, “to family, domestic or gender violence, both psychological and physical in nature”.

Reviewing the implementation of the EU Member States, the Council of the EU has issued a report on the issue of domestic violence.\footnote{Review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action, Draft Council Conclusions (13348/02), 12 October 2002.} The Report includes draft Council conclusions relating to domestic violence indicators and a list of indicators prepared by the Danish presidency for measuring Member States compliance with the domestic violence provisions of the Beijing Platform for Action.

At the beginning of 2006, the European Parliament introduced a zero tolerance policy regarding all forms of violence against women. With its Resolution on combating men’s violence against women, adopted on 2 February 2006,\footnote{This Resolution is not included in our Checklist because it was completed with documents issued through November 2005.} the European Parliament urged the Member States to take appropriate measures of prevention and punishment in their national laws, as well as measures to support victims and those who are at risk of becoming a victim. In addition, it called for the Commission and the Member States “to establish the necessary means to monitor the activity and progress of the accession and candidate countries regarding treatment of women in all areas of society, and to make the safety and treatment of women in these countries a criterion for accession” (par. 1k). All these
activities at the level of the EU show how much importance it attaches to combating domestic violence and the responsibility of the Member States in this regard.

5. The Checklist: how was it developed and who contributed?

The Checklist of international norms/instructions on domestic violence was constructed by international law expert Rikki Holtmaat, with the assistance of Zahra Achouak El Idrissi and Margreet de Boer, HOM Project Officer, and in cooperation with local project officers and their research mentors who were involved in the project “Support for women's human rights in the Western Balkans.”

The Checklist was developed by taking the following steps:

1. Making an overview of relevant documents
2. Creating a matrix for surveying the definitions/norms/instructions in documents on domestic violence
3. Analyzing the documents according to certain questions
4. Constructing the Checklist of international norms on domestic violence.

After the survey of relevant international documents was completed, these documents were analyzed according to the following questions:

1. Does the document contain a definition of domestic violence? If so: how is it formulated?
2. Does the document prescribe/recommend that certain legal norms on domestic violence should be in place?

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59 This list of questions was derived from the Matrix on norms on violence against women that was constructed by Ineke Boerefijn et al. in: I. Boerefijn, M.M. van der Liet-Senders & T. Loenen, Het voorkomen en bestrijden van geweld tegen vrouwen. Een verdiepend onderzoek naar het Nederlandse beleid in het licht van de verplichtingen die voortvloeien uit het Vrouwenverdrag, Den Haag: Min. SZW 2000. (A summary of this report has been published as an appendix to the third periodic report (CEDAW C/net/3, 25th session) of the Netherlands to the CEDAW Committee. The obligation to assemble data and to monitor the effectiveness of legislation and policies was added to the list in this Report.)
3. Does the document prescribe/recommend that certain legal remedies or procedures with respect to protection against domestic violence should be in place?

4. Does the document prescribe/recommend that certain preventive measures should be taken?

5. Does the document prescribe/recommend that certain protective measures should be taken?

6. Does the document prescribe/recommend that data about the prevalence or the nature of domestic violence should be collected and/or that the situation with respect to domestic violence should be monitored?

Based on this analysis, the relevant norms/policy directions were described in one document, which was used as a first draft of the Checklist. The next step was to arrange the relevant norms/directions in each section (legal norms, legal remedies and procedures, etc.) from a general and abstract level to more concrete instructions about how to combat domestic violence. If any items were formulated in a similar way, they were merged together (the clearest wording was chosen). For each item on the Checklist, the source(s) of the norm/direction were included. This draft was used during the Round Table in Albania (November

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60 A remedy is a possibility to take legal action. Some remedies are directly available to the victim (e.g. the possibility to request an injunction that prohibits the man from coming near the victim’s house) and some remedies are only indirectly available to the victim (e.g. a criminal law procedure has to be started by the public prosecutor). In the latter case she has only limited power to decide whether the remedy is invoked or not. Procedures are the necessary formalities that accompany the legal remedy. For example, the criminal court procedure may require that the women had made an official complaint at the police station within a certain period of time after the violence occurred.

61 Preventive measures are defined as general measures that are intended to avoid the occurrence of domestic violence, other than the legal measures (legal norms prohibiting domestic violence).

62 Protective measures are defined as measures aimed at the protection of the individual victims of domestic violence, other then legal measures (effective legal remedies and procedures).

63 Apart from these specific topics we also found some very general recommendations in the international documents, for example the recommendation to ratify or accede to the CEDAW Convention or withdraw reservations to that Convention (see rec.1450 (2000). Other examples are the recommendation to develop national plans of action for combating violence against women, or more specifically, domestic violence (see DVAW and Res.2003/45) or the recommendation that Council of Europe Member States should regard domestic violence as a national political priority and deal with it in a broader political framework, with government, parliament and civil society involvement (Rec. 1681(2004)). A final example of a very general recommendation is to draw on the good practices of other Member States (Rec. 1681(2004)). We did not include these very broad and general items on our Checklist.
2004) to create a definitive Checklist of international norms/directions on domestic violence. In June 2005, the checklist was improved by classifying the norms according to their binding power, and some case law was integrated (CEDAW AT vs Hungary and 3 decisions of the ECHR). We have tried to arrange the topics on the list according to the source, in the sense that more binding instruments were put above soft law or policy instruments.

6. The use of the Checklist in the national in-depth studies

In the national in-depth studies the Checklist had two purposes:

(a) to construct the national research plans (formulate questions that need to be dealt with in the research) and
(b) to evaluate the outcome of the research.

During the first stage of the development of the research plan for the in-depth studies on domestic violence, the Checklist was used to structure the actual study of the national situation in each of the six countries involved in the project. This meant that the in-depth study of both main topics – the national legal situation and national policies with respect to domestic violence and the approach of non-governmental organizations towards combating domestic violence – was structured around the same themes that were derived from the international standards. Consequently, we decided that the two Chapters (IV and V) of the national reports that address the government and the NGO policies should contain sections on the following topics:

- definitions that are in use,
- legal measures that are in place/proposed,
- legal remedies and procedures that are in place/proposed,
- preventive measures that are in place/proposed,
- protective measures that are in place/proposed,
- collection of data and monitoring legislation and policies (or their effectiveness).

During Round Table 3 in Albania, the draft Checklist was used to formulate in detail the questions or sub-questions that needed to be asked (and answered) in the parts of the study that would provide the materials to write the reports on
the national situation (Chapters IV and V). On this basis, a provisional Index of these Chapters has been constructed. This provisional Index served as a guideline for gathering information and describing the information that was found.

During the final stage of the in-depth study (July – November 2005), the Checklist was used to evaluate the factual situation in each country. It was used as the point of departure for an assessment of whether the national government was in fact correctly fulfilling its obligations under international law. The central question was whether the international legal and policy standards demand a more active and a more effective approach to combat domestic violence by the governments of the participating countries. On this basis, a set of recommendations were formulated on how the government could or should improve its policies in such a way that the implementation of international standards will be more correct or complete.

In the same way the activities and strategies that have been developed by NGOs were evaluated against the background of the norms/directions on the Checklist. We presumed that the Checklist would provide ideas for new or improved activities and strategies of NGOs.
CHAPTER IV

IMPLEMENTATION OF INTERNATIONAL LAW BY THE GOVERNMENTS

1. Introduction

In the previous chapter we discussed the obligations that governments have in general under international law and the different types of legal norms, recommendations and/or guidelines that can be found in various international documents, especially in the field of human rights. In that respect we paid special attention to the human rights of women. As we have seen, violence against women constitutes a specific type of violation of women's human rights. In this chapter we turn to the question of what this means for the problem of domestic violence.

In our survey of the international documents at the UN, Council of Europe and EU levels, we found a wide range of provisions that are directly or indirectly relevant to the topic of domestic violence. As we have seen (Chapter III, 2.5), domestic violence is being given more and more attention by international conventions, intergovernmental organizations, treaty bodies and NGOs. In recent decades, all these organizations have generated a long list of recommendations, judgments, opinions, declarations, resolutions, directives and expert guidelines, which contain very specific directions as to what governments could and should do to combat domestic violence. A complete overview of these documents and of the relevant provisions is presented in the Appendixes to this Regional Report. Our analysis of these documents revealed that many provisions relate to the following six topics:

1. The appropriate definitions of domestic violence.
2. The legal measures that should be in place.
3. The legal remedies and procedures that should be in place.
4. Preventive measures that should be taken.
5. Protective measures that should be taken.
6. The necessary data collection and monitoring legislation and policies, including their effectiveness.

In this chapter we will describe these international standards and – based on the in-depth studies of the national situation in the six participating countries – determine whether or not the policies of their governments are in compliance with them. This means that there will be six sections in this chapter. Each section will focus on one country and will present our findings concerning the relevant international documents and the findings of the research teams. We will also compare the situation in the participating countries and we will give examples of good and bad practices concerning the implementation of international standards in national legislation, policies and practices.

2. Definitions of domestic violence

2.1. International standards concerning definitions of domestic violence

In the international documents we found no clear guideline for the most appropriate definition of domestic violence. From studying the international documents, it appears that international organizations that make statements about domestic violence or family violence often use very broad definitions or descriptions of these phenomena. In addition, they often use a method in which they give a list of examples (but not an exhaustive one) of what can be considered to fall under the concept of domestic violence or family violence.

For the purpose of legislation at the national level, such “definitions” are not very adequate or appropriate because they leave too much room for interpretation or for discussion about what does or does not fall under the law. On the other hand, a broad and unlimited definition might be useful when formulating policies and strategies to combat domestic violence. The evaluation of the appropriateness of the definitions that exist on the national level therefore depends on the context in which they are used by the government.

Although no clear set of standards or guidance can be derived from the international documents, we found some guidelines that can be used when
evaluating the national government’s policies in this respect. This means that some criteria for the formulation of an appropriate definition of domestic violence by the government can be derived from the definitions or descriptions that we found in international documents concerning violence against women or domestic violence. We have listed these items in the textbox that follows. In the next section we will evaluate the findings of the in-depth study in the participating countries concerning definitions that are in use in the region.

Guidelines concerning the definition of domestic violence:

- The definition of domestic violence should clearly indicate that this is a specific form of gender-based violence; in this context it is advisable for the government to use the definition of gender-based violence that is prevalent in international documents (such as General Recommendation 19 of the CEDAW Committee).
- The government should not define the scope of domestic violence too narrowly; for example it should not exclude violence between a legally-married husband and wife or violence that occurs outside the home (such as that within intimate relationships).
- The government should avoid using the term family violence instead of domestic violence when this means that victims or perpetrators other than members of the legal family are not included in the definition.
- The government should not define the nature of domestic violence too narrowly, for example by only including physical violence or explicitly excluding psychological violence; from the international documents it is clear that at least three forms of domestic violence should be included in the definition: physical violence, sexual violence and psychological violence.
- When other forms of violence (such as economic violence) are included in the definition, this form of violence should be defined.
- The term violence should be defined in such a way that not only physical coercion is included, but also other, perhaps more subtle, controlling patterns.
- If the government intends to include incest in the definition of domestic violence, it should formulate this clearly.
- The definition or description of domestic violence should clearly state that this kind of violence against women – although occurring
in the private sphere of family or domestic relations – cannot be considered to be a private matter which is of no concern to the government. On the contrary, domestic violence should be declared to be a matter of public concern that requires intervention by public authorities.

- If the government intends to include specific forms of violence against women (like rape or trafficking in women) in the concept of domestic violence, it should make clear in what way these forms of violence should be treated differently if and when they occur in the context of domestic or family relationships or in other contexts.
- The government must acknowledge the nature and causes of domestic violence. This is especially necessary with a view to developing effective remedies, both in the field of law and in the field of preventive and protective policy measures.

2.2. Definitions of domestic violence that are in use in the countries

In this section we will evaluate to what extent the governments in the countries in the project comply with the guidelines on the definition of domestic violence. In recent years, all the countries, except Albania, have introduced definitions of domestic violence in their legislation. Although Albanian Family Law stipulates that domestic violence may be a cause for dissolution of a marriage and prescribes measures against violence, it does not provide a definition of domestic violence. In its policy documents, the government uses definitions that stemmed from the ratified international documents. However, the draft Measures Against Violence in Family Relations Act specifies a definition, so it is expected that Albania will soon have an official definition, like the other countries in the region.

The definitions, or more precisely descriptions of acts of domestic violence, are given in laws on the protection of family members from family violence (Republic Srpska, Federation of Bosnia and Herzegovina, Croatia), family laws (Macedonia, Serbia) and/or criminal codes (Croatia, Serbia, Macedonia, Montenegro, both entities of Bosnia and Herzegovina and the Brcko District).
The direct definition of domestic violence can be found in the Laws on Protection of Family from Family Violence of the Federation of Bosnia and Herzegovina and of the Republic Srpska (Art. 6):

...any act of inflicting physical, psychological, sexual or economic harm or suffering, as well as threats regarding the aforementioned, and lack of due care and attention which may seriously impede family members from enjoying their rights and freedoms in all areas of public and private life which are based on equality.

This is the only definition in the region which states that domestic violence threatens the enjoyment of human rights and freedoms and mentions the principle of equality. It integrates the three most prevailing forms of violence (physical, psychological and sexual), also adding “economic harm”, but it does not define this concept.

The Family Law (Art. 197) of Serbia defines domestic violence as

...behaviour of a family member that harms the physical integrity, mental health or tranquillity of another family member.

The definition is followed by many examples of acts of all three forms of violence.

In Croatia, the Law on Protection against Family Violence enumerates a long list of acts that comprise domestic violence, but only in the scope of the family. These acts include

...every use of physical force or psychological pressure against the integrity of a person; every other behaviour of a family member which can cause or potentially cause physical or psychological pain; causing feelings of fear or being personally endangered or feelings of offended dignity; physical attack regardless of whether or not it results in physical injury, verbal assaults, insults, cursing, name-calling and other forms of severe disturbance, sexual harassment; spying and all other forms of disturbance; illegal isolation or restriction of the freedom of movement or communication with third persons; damage or destruction of property or attempts to do so.

The descriptions of domestic violence given in criminal laws are very similar in all countries. The criminal acts comprise acts of violence, arrogance and battery that threaten the physical integrity, serenity or psychological health of a family

64 The definitions in the laws of both entities are identical.

The most inexplicit and vague description is found in the Criminal Code of Croatia. It defines violent behaviour in the family as a situation in which

...one member of the family puts another member of the family into a humiliating position by means of force, abuse or particularly impertinent behaviour (Art. 215a).

The legislation does not define the content of the criminal acts or specify the concept of “humiliating position”. Moreover, the act of “putting into a humiliating position” is a qualitative description of a punishable violent act that is very difficult to define, ascertain and measure. Therefore, the content, as well as the fact of existence of domestic violence, is totally remitted to judicial practice. Such inadequate definitions of domestic violence should be avoided in accordance with the criteria for formulating the definition that we found in international law.

Although in Croatia the criminal act “violent behaviour in the family” implicitly includes physical, psychological, sexual and economic violence, the problem lies in describing the objective condition of putting another person into a humiliating position. In practice, criminal charges have been filed only in cases where this act (putting into a humiliating position) has occurred in conjunction with the criminal act of molestation and neglect of a child.

The other problem related to the definition of family violence in the Croatian Criminal Code is that there is no clear distinction about when the perpetrator will be prosecuted under the Law on Protection from Family Violence (a misdemeanour law), and when it will be prosecuted as a criminal procedure. The majority of definitions of domestic violence in the countries of the region include violence only within a family relationship. The vocabulary in each national language mirrors this perspective. The terms “violence in the family” or “family violence” are used in all countries. However, there is a clear tendency to broaden the scope of family members in relation to domestic violence. The definitions in the newly-adopted Family Law in Serbia and Laws on the Protection of Family from Family Violence in both Bosnian entities include ex-husbands/wives, ex-partners, their parents and children, and couples who
have or are expecting a child or children, even if they have never lived together in a shared household. The Criminal Code of Montenegro includes persons that are not relatives but live together in the same household, while the law in Macedonia includes persons who are in intimate relationships.

In the policy documents, domestic violence is defined only in Macedonia. In the Macedonian National Gender Equality Action Plan it is defined as

\[ \text{an act of violence that results in physical, psychological or sexual harm, including threats of these acts, forced or arbitrary deprivation of freedom, regardless of whether it occurs in public or private life.} \]

The Croatian National Strategy to Combat Domestic Violence 2005-2007 has no specific definition, but relies on definitions in the Criminal Code, the Law on the Protection of Family from domestic violence, DEVAW, the Beijing Platform for Action, and Rec. 2002(5). However, this policy document explicitly refers to violence against women as the most prevailing form of domestic violence. As this report was written, the Working Group on developing legal changes on Law on Combating Family Violence in Croatia was reformulating the definition of domestic violence in order to stress its gender dimension.

2.3. Conclusions

In general, the governments in the countries in the region are moving forward in defining domestic violence in their legislation, but the process is slow. Existing definitions and descriptions in legislative are not completely harmonized with the criteria for the formulation of an appropriate definition that derives from international documents.

The common characteristic of definitions and descriptions of domestic violence that are present in the legislation of the countries in the region is that they do not clearly state that this is a specific form of gender-based violence. This is only referred to indirectly in Bosnia and Herzegovina; its Gender Equality Law defines gender-based violence as acts of physical, psychological and sexual harm and threats of such harm when this happens in the private sphere. Therefore, the definitions of domestic violence in the legislation of this country and of both the entities have this background.

There is no definition or description that stresses that this violence is directed against women, thereby threatening their enjoyment of basic human rights and freedoms. However, the governments previously corrected this defect in
the policy documents, which usually do not contain a definition of domestic violence, by stating

...that it is obvious that the victims of violence are predominantly female persons of various ages and family status, while the perpetrators are predominantly male, present or former marital or extramarital partners, fathers or sons of victims (Rules of Procedures in Cases of Family Violence, Croatia).

The second characteristic is that the governments previously defined domestic violence too narrowly, comprising mainly violence that occurs within a family relationship or a household, and thus indirectly excluding violence that happens within intimate relationships of same and/or different sexes. In all the countries this attitude is still reflected in the use of terminology, in the national language, such as “violence in a family” or “family violence”.

All definitions include at least three forms of domestic violence: physical, psychological and sexual violence, as well as threats of these acts. If economic violence is included, it is not defined. The policy documents do not define domestic violence, even if they deal with this issue. Instead they prefer to use definitions in criminal codes and/or family laws or in international documents.

The analysis of definitions of domestic violence in these countries shows that the governments still need to develop an appropriate definition as agreed in international documents, and in a way that it would be clear that domestic violence is not a private, but a public matter of their special concern.

3. Legal norms concerning domestic violence

3.1. International standards regarding legal norms in the field of domestic violence

As stated in Chapter III, domestic violence is described in international documents as a serious infringement of fundamental human rights such as the right to freedom, physical integrity and the right to life (See III, 2.5.). A woman who is the victim of domestic violence should enjoy the protection of the domestic laws against this kind of violation of her basic human rights. In many international documents we found standards regarding the legal norms that should be
in place at the national level in order to combat domestic violence or to protect women from domestic violence. These standards are summarized briefly in the text box below and are listed in more detail in the Checklist in the Appendix. From this summary it is apparent that international organizations pay a lot of attention to this topic.

Since domestic violence (as a specific form of violence against women) is seen as a particular form of discrimination against women, this means that every country should have legislation that prohibits any form of discrimination of women, either at the constitutional level or in specific anti-discrimination legislation. This is the primary obligation of each Member State under the CEDAW Convention. In other words, it is the minimum requirement for any signatory to this Convention. However, a quick look at the Checklist makes it clear that governments must do more than the minimum. They also need to adopt specific legislation in which domestic violence is made into a criminal offence and/or that offers compensation to victims. Some documents recommend that governments adopt a specific law against domestic violence, one which provides comprehensive coverage of this topic, including such issues as criminal provisions, the right to civil damages, protective orders, the social security rights of victims and general preventive measures. Other documents stress the fact that existing general criminal law provisions or existing civil law provisions should be reformulated in such a way that they can serve as a tool for effectively combating this form of violence against women. Still others stress the necessity of reform in the sphere of matrimonial property law or divorce law. In the international documents in our study we found directions and guidelines concerning specific legal provisions concerning the prohibition of domestic violence, criminal, civil and administrative laws and sanctions, civil laws and sanctions, the defence grounds and the burden of proof.

In the next section we will evaluate whether, according to the findings of the in-depth study, the legislation in the participating countries is in accordance with these standards.

3.2. Legal norms that are in place or absent in the region

In this paragraph of our report we will evaluate whether the legal norms concerning domestic violence that are in place (or are absent) in the region are in compliance with the standards of international law. We will make a comparison between the countries that were included in the research project. We will also provide examples of good and bad legislation, compared to the standards in international documents.
Domestic violence, like all forms of violence against women, is a form of discrimination against women. Therefore every country should have constitutional and other legal protection against discrimination in place.

All the countries in the region have constitutional provisions that forbid discrimination based on gender and guarantee equality before the law to all their citizens. Fundamental human rights and freedoms are guaranteed as indivisible, inalienable and inviolable and standing at the foundation of the entire juridical order. The Constitutional Charter (2002) of the state union of Serbia and Montenegro provides various guarantees to its citizens of their human rights, including rights relating to gender equality. According to Article 9, both states must regulate, ensure and protect human and minority rights and civil liberties. The Charter of Human and Minority Rights and Civil Liberties provides for equality before the law and equal protection without discrimination (Art. 3). Article 3 also prohibits direct and indirect discrimination based on protected grounds, including gender. The Constitutions also prohibit torture, inhuman and cruel treatment.

These anti-discriminatory principles have been developed into Gender Equality Laws in several countries (Albania, Bosnia and Herzegovina, Croatia), but without any effective protective mechanisms. For example, the Albanian Gender Equality in Society Act (no. 9198, 2004) aims at eliminating direct and indirect gender discrimination in public life. It defines the responsibilities of the central and local authorities for drafting gender equality policies. However, the Act does not specifically cover discrimination that occurs in private life, where gender discrimination is a common phenomenon. In contrast to Albania, gender equality laws in Bosnia and Herzegovina (2003) and Croatia (2003) prohibit any form of gender-based discrimination and violence in either the public or private arena. In Serbia, the Anti-discriminatory Act and Gender Equality Act are currently being drafted.

Gender-based discrimination is punishable by law under Article 137 of the Criminal Code of Macedonia and under Article 174(1) of the Criminal Code of Croatia. In Croatia, perpetrators may be sentenced to imprisonment for six months to five years. However, there is no evidence in legal practice that this provision has been ever implemented in the case of discrimination against women.
Despite all constitutional guarantees and anti-discriminatory provisions, the national in-depth studies show that these rights are not enforced.

3.2.2. Specific laws that are aimed at violence against women/domestic violence

- Governments should adopt comprehensive legislation that specifically prohibits domestic violence against women; this legislation should provide for criminal sanctions, civil law remedies, protection and exclusion orders as well as support services, including shelters.
- Governments should adopt legislative measures aimed at the prevention of violence against women.

Until now only Croatia, the Federation of Bosnia and Herzegovina and the Republic Srpska have satisfied their international commitments to adopt specific legislation prohibiting domestic violence. The most recent legislation was adopted by the Republic Srpska in December 2005. In Albania and Montenegro, the process of adopting the special Law has begun. In Albania, civic organizations began drafting of the Law on Measures against Violence in Family Relations in October 2004. This work was completed in January 2006, and the draft law was presented to the Albanian Parliament by a coalition of NGOs, led by the Citizen's Advocacy Office. The advocacy campaign and lobbying aimed at adopting the Law has recently been initiated. In Montenegro, the draft version of the Law on Protection Against Family Violence was completed in 2005 as a joint effort involving the Ministry of Justice, Save the Children (an NGO) and a group of legal experts.

The dominant problem in the existing laws on domestic violence is that violations are treated as misdemeanours and that punishment usually involves a fine rather than a jail sentence. Moreover, the laws do not provide adequate victim protection during the legal proceedings. On the positive side, the laws stress the obligation to report family violence. This means that medical personnel, providers of social welfare, psychologists, social workers, social pedagogues and staff of educational institutions have an obligation to report any suspected acts of domestic violence which they encounter during their professional duties to the police or the public prosecutor. Failure to act in accordance with these provisions is a misdemeanour.
Violation of this law is considered a misdemeanour, and anyone who violates a prescribed protective measure may be fined KM 2,000 to 10,000 (Art. 21). An “official person” who fails to report an act of domestic violence as outlined in Article 6(2) may be fined or face a minimum prison sentence of fifty days.

*Law on Protection against Family Violence of the Federation of Bosnia and Herzegovina*

The Laws on Protection from Violence in the Family of the Federation of Bosnia and Herzegovina and the Republic Srpska describe a wide range of acts that constitute domestic violence, such as the use of physical force or psychological coercion; acts that result in physical, psychological or monetary damage; certain forms of intimidation; verbal attacks; stalking; sexual harassment; the destruction of joint property, and; a failure by other family members to protect the victim under specified circumstances. The list of acts in the Croatian Law on Protection against Family Violence is much broader. It defines an act as being violent even if a physical attack does not result in physical injury. In addition, it adds a list of verbal attacks such as insults, cursing, name-calling and “other forms of severe disturbance”, spying and other forms of disturbance (stalking). In addition, according to this law “illegal isolation or restriction of the freedom of movement or communication with third persons” is also an act of violence.

The Croatian and Bosnian laws define economic violence (in the acts of family violence) as “monetary damage” (Federation of Bosnia and Herzegovina) and “damage or destruction of property or attempts to do so” (Croatia, Republic Srpska).

These Laws define violence in the family as a misdemeanour act. For the first time, this new legislation allows a victim to initiate the misdemeanour procedure; this is contrary to the general misdemeanour provisions, which require the police to initiate the procedure. However, the sanctions are usually fines. The longest prescribed sentence of 60 days in prison is not adequate in cases of extreme violence. The laws also introduced protective measures with a maximum length of two years.

The Law on Protection against Family Violence of the Republic Srpska contains an interesting innovation. If the perpetrator does not pay the fine imposed by the court, it will be replaced with humanitarian work on behalf of a humanitarian organization or the local community (Art. 21). The Ministry of Justice should develop the model and conditions of implementation for this measure.
Specific legislation related to domestic violence often introduces innovative procedures and prescribed behaviours of state officials, policemen, judges, prosecutors, social workers, medical workers etc. Often new measures and rules must to be introduced to respond to the new obligations of competent bodies. For example, the government of the Federation of Bosnia and Herzegovina postponed the enforcement of the newly adopted Law on Protection against Violence in the Family for six months to allow such measures to be developed.

We found a good example of a method for implementing new legislation in Croatia, where the Rules of Procedures in Cases of Family Violence\textsuperscript{65} were recently adopted. This protocol, adopted in September 2005 by the Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity, contains a list of obligations of competent bodies and other factors involved in the identification and elimination of violence and in providing help and protection to persons exposed to family violence, as well as forms, means and areas of cooperation between these bodies.

However, these specific laws against domestic violence have not introduced measures such as support services and shelters or measures aimed at the prevention of violence against women.

3.2.3. Criminal law norms and sanctions

- Governments should make domestic violence a criminal offence.
- Governments should make incest a criminal offence.
- Governments should make marital or conjugal rape a criminal offence.
- Governments should make any non-consensual sexual act, even where the victim had not resisted physically, a criminal offence and should see to the effective prosecution of such acts.
- Governments should revise and/or increase the sanctions, where necessary, for deliberate assault and battery committed within the family.
- Governments should adopt special criminal laws against stalking.

\textsuperscript{65}Available at: http://www.mobms.hr/page.aspx?PageID=53. Accessed 26 January 2006. The Rules of Procedures are really the protocol of proceedings of competent state institutions and bodies involving correct implementation of legislation related to the identification of violence and providing help and protection for persons exposed to domestic violence. They are not to be confused with the rules of juridical and criminal procedures. Therefore, for the purpose of this report, we shall call these rules the Protocol of Procedures in Cases of Family Violence.
All the countries in the region, except Albania, have made domestic violence a specific criminal offence. In Albania, domestic violence can be prosecuted as a general crime of assault as stipulated in the Criminal Code.

The sanctions vary from country to country. Prison sentences of up to one year can be imposed in the Brcko District and Montenegro, up to two years in the Republic Srpska and up to three years in the Federation of Bosnia and Herzegovina, Serbia and Croatia. Fines can also be imposed for this criminal offence. However, the sanctions are much more severe if the perpetrator causes serious bodily injury. If a victim of domestic violence dies as a result of her injuries, the perpetrator may be sentenced for up to 12 years in the Republic Srpska, up to 15 years in the Brcko District (or for lifetime imprisonment if the victim was previously maltreated and then murdered) and up to 45 years in the Federation of Bosnia and Herzegovina. The Criminal Code of Macedonia nearly doubles the sentences for murder, involuntary manslaughter, serious injury and injury if they are committed within family relationships. In that case a perpetrator can be sentenced to a term of ten years to life if the victim was murdered, and for serious injury he can be imprisoned from one to five years.

However, instead of increasing the sanctions for violence in a domestic context, there is also evidence of the opposite practice. In Serbia, sanctions for acts of violence in the family have been decreased by the changes of the Criminal Code adopted in 2005 (from three years of imprisonment to one year). For the most severe form of violence, resulting in the death of the victim, the perpetrator can now be sentenced to imprisonment with a minimum term of three years up to a maximum of 12 years, while the previous Criminal Code prescribed a minimum sentence of 10 years. The sanctions for this latter form of domestic violence have not been brought into proportion with those for the qualified form of serious murder. If the violence resulted in the death of a victim who was previously molested, the perpetrator can be sanctioned to a much higher sentence: a minimum of 10 years of imprisonment, with a maximum of 30 to 40 years. Consequently, the severity of the sanction depends on the prosecutor's qualification of the situation – as a criminal act qualified as domestic violence (with a lower sanction) or as a criminal act with a qualified form of murder (with a much higher sanction).

However, there is one positive shift in Serbia introduced by the new Criminal Code. For the violation of protective measures ordered by a court, the perpetuator may be sentenced to a fine or imprisonment for up to six months. This is a good

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66 In Bosnia and Herzegovina, domestic violence is introduced as a criminal offence by the criminal laws in both entities and in the Brčko District.
example of the interaction between criminal and civil norms; the Criminal Code supports the protective measures provided by the Family Law.

In the Federation of Bosnia and Herzegovina, there are several criminal offences that are linked with “violence in the family”. These related offences are: bigamy (Art. 214), illegal removal of a child (Art. 217), violation of marital commitments (Art. 221), participation in suicide (Art. 170), endangering personal security (Art. 183) and violent behaviour (Art. 362). Bigamy related to domestic violence is an important issue in Bosnia and Herzegovina, especially in its western region. It is still common for a man to enter into marriage with a second wife under religious (Sheriat) law without having divorced his first wife under civil law. In that case, he cannot be prosecuted for bigamy. But it often happens that the first wife is left without any economic resources, while the second wife is without any legal protection, since she is not legally married.

In Albania, violence in the family is prosecuted ex officio – not as a specific criminal act but as the general crime of assault. Serious intentional injury which has caused mutilation, deformation, any other permanent damage to health, termination of pregnancy or which threatened life at the moment of its infliction is punishable by three to ten years of imprisonment. Non-serious intentional injury is punishable by a fine or up to two years of imprisonment. Other intentional harm is punished with a fine or up to six months of imprisonment. Termination of pregnancy without the woman’s consent is punishable by a fine or up to five years in prison under Article 93. According to the Law on Criminal Procedures (Art. 284), crimes of non-serious intentional injury, as well as rape and sexual harassment, (violent sexual relations with adults, sexual or homosexual relations with family members or foster children, forcing or preventing someone to cohabitate or dissolve a marriage) can be prosecuted only when the victim files a complaint. When a criminal offence is committed by taking advantage of family relations, or is committed against a child or a pregnant woman, it is considered to have been committed under aggravating circumstances, and the sentence is more severe.

In all the countries, regardless of whether domestic violence was made a criminal offence or not, the acts that constitute this kind of violence (such as battery, inflicting deliberate injuries, threats, coercion, insults etc.) are treated as misdemeanour acts. The prescribed sanctions are fines, imprisonment and protective measures. In the Federation of Bosnia and Herzegovina, the perpetrator may also be reprimanded by a misdemeanour court. Imprisonment for up to two years is possible if there are deliberate injuries. In Albania the perpetrator may be imprisoned for up to two years for making threats to prevent the reporting
of a crime; this is important in cases where women are victims of violence in the family. Misdemeanour protective measures that may be imposed on the perpetrator in all countries include obligatory medical treatment of alcoholics and drug addicts, and protection of the person who is the object of a threat or violence.

Incest is a very specific form of violence occurring within the family that requires specific legal norms, sanctions and remedies, as well as protective and preventive measures. Therefore, it was not included in the national in-depth studies. However, it should be noted that incest is penalized in all countries in the region. The differences among the countries are related to the category of persons who have been subjected to this crime and the corresponding sanctions. In Macedonia, the Federation of Bosnia and Herzegovina, Bosnia and Herzegovina/Republic Srpska, Croatia and Serbia only grandparent/parent/child and brother/sister relations are viewed as incest, while the Albanian Criminal Code adds to this list persons who have a guardian or adoption relationship. The sanctions range from a fine or up to one year of imprisonment (Brčko District, Croatia), a maximum of two years of imprisonment (Federation of Bosnia and Herzegovina), a maximum of three years (Serbia, Montenegro, Republic Srpska), and a maximum of seven years (Albania). Sanctions are more severe if the victim is a child, and in that case they range up to eight years in Croatia and up to ten years in Macedonia. However, the analysis shows that incest is rarely prosecuted because it is usually kept secret due to pressure, shame and extortion inside the family or fear of negative judgement from the community.

Marital rape has been made a criminal act in all the countries studied. The range of sanctions is very similar to those for incest. The perpetrator can be sanctioned to imprisonment for up to ten years, with much more severe sentences (up to 18 years) in cases of aggravating circumstances or where the victim died. However, the national studies have shown that conjugal rape is usually neither reported nor prosecuted. Due to cultural attitude, both women and men consider that a woman cannot be raped by her husband, since it is her marital duty to be “at his service.” In addition, the criminal procedure is long, very unpleasant and unfriendly to women who report cases, while prosecutors, police officers and judges often are not gender sensitive; there are difficulties in proving this crime; and there is no prompt and thorough investigation. Having all these reasons in mind, victims rarely report these acts.
“Rape is punishable by law, as is spousal rape; however, in practice, spousal rape was not reported or prosecuted. The concepts of spousal rape and sexual harassment were not well established, and, consequently, such acts often were not considered crimes by authorities or the public.”

*Bureau of Democracy, Human Rights, and Labour, Tirana, 2005*

The national in-depth studies show that only Croatia prosecutes rape even if a victim did not resist physically but it was still a non-consensual sexual act. In other countries, the resistance of the victim is an imperative requirement.

None of the countries studied have a specific law against stalking. However, some acts that may be referred to as stalking are included in the list of acts that are defined as family violence, and are therefore punishable by law. The Croatian Law on Protection against Family Violence includes “spying and other forms of disturbing” in the definition of family violence. The Federation of Bosnia and Herzegovina notes stalking as a form of violence.

### 3.2.4. Civil law norms and sanctions

- Governments should develop civil remedies if they are non-existent or inadequate.
- Victims should receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred.
- Governments should simplify divorce proceedings, child custody proceedings and financial compensation proceedings in case of divorce.

The provisions in civil laws of the relevant countries that involve compensation for harm or damage inflicted apply to all aspects and are not specific to the victims of domestic violence. There are no special compensatory provisions for victims of domestic violence. Instead, the general provisions on compensation from the laws on obligations are applied. In Serbia, although its laws anticipate the possibility of compensation of domestic violence victims, both for material and non material damages, no relevant case was found in the jurisprudence. Recent amendments to the Law on Obligations in Croatia involve compensatory provisions for “rights of person/ality”, including the right to life, physical and
psychological health, dignity, privacy and freedom. This provision may be used for pecuniary damage compensation for victims of domestic violence, but until now there has been little jurisprudence. This is due to the following reasons: the victims are not informed, the process is usually very long, and the courts still do not take this issue seriously.

The case cited in the Croatian national in-depth study illustrates the non-sensitivity of courts to enable appropriate compensation for victims of domestic violence. In the municipal court in Ivanic-grad, a woman tried to get compensation through civil suit for injuries inflicted by her husband. The court estimated that she contributed to the damage she suffered by “50 per cent”, and therefore “her injuries are the result of shared responsibility”. The court has accepted “as a true and logical” statement of her husband that he was “disturbed when his wife opened a door and hence made the house cooler while he was preparing to take a bath”.

Cited from in-depth national study in Croatia: Orlanda Obad, “Same su to tražile” [“They asked for that by themselves”], Jutarnji list, 9 April 2005

In Bosnia and Herzegovina, social security legislation does not refer to domestic violence, but some cantonal laws in the Federation of Bosnia and Herzegovina, as well as the Law on Social Security of the Brcko District, include victims of domestic violence within the category of a “person in a state of social need”, and therefore provide them with small amounts of aid.

Regarding the existence, scope and accessibility of civil remedies, women victims of domestic violence in Albania are in the most unfavourable position. Article 61 of the Law on Criminal Procedure restricts the possibility of filing a civil lawsuit in a criminal process for material damages. This is a disturbing restriction for victims of domestic violence, since they usually suffer primarily from non-material damage (loss of dignity, personality, health etc.). If the criminal offence has inflicted non-material damage on the injured party, a victim cannot file a civil lawsuit in the criminal process, but may address the civil court. However there is a possibility for reparation of the non-material damage. Based on the request of the civil plaintiff, the court can order the publication of the decision in the media as a means to recover the non-material damage inflicted. But this possibility contradicts the general principle stressed by Art. 61 of the Law on Criminal Procedure. The provisions that allow compensation for harm or damage inflicted in the Albanian Civil Code cover all subjects in general and are not specific for the victims of domestic violence.
In all countries studied, family laws did not simplify divorce procedures in a case of domestic violence. In Albania, although domestic violence is a cause for termination of marriage, the procedures of divorce and custody are not simplified in such cases. If a violent husband fails to appear at the negotiations, the Family Law of the Federation of Bosnia and Herzegovina simply terminates the negotiation process. This enables women victims of domestic violence to speed up the divorce.

Regarding child custody proceedings, domestic violence is used as a reason for deprivation of parental rights only in Serbia and Croatia. The newly adopted Family Law (2005) in Serbia has a new custody procedure when children are victims of domestic violence. In those cases the process is urgent. The court may order separation of a child from a violent parent. However, NGOs in Croatia warn that centres for social care do not always apply this provision, and that there were still cases where child custody was given to the violent parent. In Bosnia and Herzegovina, although there is no specific legal provision, centres for social work take the existence of domestic violence into consideration when making child custody proposals.

### 3.2.5. Administrative sanctions and legislation

- Governments should develop administrative sanctions for domestic violence.
- Governments should grant an independent right of residence to immigrant women who have been or who are victims of domestic violence.

The term administrative sanction is unknown in these legal systems. No observers reported any countries granting independent right of residence to immigrant women who had been or who are victims of domestic violence.

### 3.2.6. Defence-grounds and the burden of proof

- There should be a possibility for victims to appeal to self-defence as a ground for avoiding punishment when they commit a crime that is a response to the structural violence of which they are the victim.
- Governments should adopt specific legislation to preclude the “defence of honour”.
- Governments should preclude adultery as an excuse for violence within the family.
- The burden of proof for sexual offences should not be heavier than for other crimes.
Criminal legislation in these countries exempts persons who commit a crime from criminal sanctions under certain conditions: when they have been subjected to violence and have been obliged to protect their life, health and rights. All the legislation provides the right to self defence if the defence is proportionate to the severity of the attack. Victims of domestic violence can appeal to general provisions of self defence. Accordingly, a woman would not be guilty of the murder of her violent husband if he had assaulted her and if the use of force that resulted in his death was proportionate to the severity of the assault. If a crime is committed as a response to structural and long-term violence, it is up to the courts to decide whether this could be grounds for defence.

For example, according to the Albanian Criminal Code, if the response of victim is not authentic, justified and spontaneous, then there can be no legitimate defence. Any act of murder committed in the absence of such conditions is punishable with imprisonment of up to seven years (Art. 83). Deliberate murder committed under conditions of strong psychological disturbance, caused by the use of violence or serious insult of the victim, is punishable with imprisonment of up to eight years (Art. 82).

There is no specific legislation to preclude the defence of honour and adultery as an excuse for violence within the family. However, due to widespread social prejudices and cultural stereotypes, it was noted that in Albania adultery and the defence of honour are taken into consideration by the community as a justification for domestic violence.

Although the burden of proof for sexual offences should not be heavier than for other crimes, according to the court practices in all the observed countries this is not the case. Although the evidence that is used to prove acts of domestic violence is the same as in the case of any other criminal act, the process is much more complex due to the nature of the act, which occurs in intimate or family relationships, and strong prejudice of legal professionals that violence in the family is not the same as violence in public.

“The process of proving a criminal offence related to domestic violence during a trial is more complex than the process of proving criminal cases in general. This is due to the nature of such criminal offences, their typology, since the events that take place within the home, under specific circumstances, are the result of the relationship of the perpetrator of the offence and the injured person.”

Cited from: In-depth national study in Albania, Simoni, et al., ”Legal and Social Treatises on the protection from domestic violence”, Tirane 2005, p.83.
The burden of proof is particularly difficult and painful for victims in the case of marital rape. The Albanian in-depth study stresses that proving criminal offences that involve sexual violence, especially within walls of the home, is difficult for a number of reasons: it is painful for the victim to discuss intimate facts in public; there is a need to hold the family together; the violence is played down by justifying it as a male right; evidence is difficult to identify; the victim worries that she will not be believed, etc. Women also bear the burden of proof: they must prove that the sexual abuse happened. In addition, psychological violence is very difficult to prove, which means that the perpetrators often go unpunished. Proving the use of domestic violence is hard, and there are no well-defined, accurate and specific procedures concerning the actions that public institutions such as the prosecutor's office and the police can undertake in response to such a complaint.

3.3. Conclusions

After summarizing the legal norms that are in place or absent in the countries studied, we can conclude that many positive changes have been made in recent years to harmonize national legislation with the standards set by international law. All the countries have constitutional provisions that forbid discrimination based on gender and that guarantee equality before the law to all citizens, regardless of sex. The constitutions prohibit torture and inhuman and cruel treatment. Anti-discriminatory principles have been developed in the Gender Equality Laws in Albania, Croatia and Bosnia and Herzegovina, while gender-based discrimination is penalized in Macedonia and Croatia. Nevertheless, women's human rights are not being adequately enforced and effective protective mechanisms have still not been developed.

Specific laws that are explicitly aimed at combating domestic violence have been adopted in Croatia, and both Bosnian entities, Republic Srpska and the Federation of Bosnia and Herzegovina, while the draft laws are being developed and are expected to be passed soon in Albania and Montenegro. However, the above legislation treats domestic violence as a misdemeanour and does not provide criminal sanctions, as demanded in the international standards. The main sanctions for perpetrators are fines and protective orders. On the positive side, the laws stress the obligation of reporting domestic violence, and the failure of state officials to act in accordance with the law is qualified as a misdemeanour. In addition, these laws give victims the possibility of initiating the misdemeanour procedure themselves.
In compliance with international standards, all the governments in the region, except Albania, have made domestic violence a criminal offence, and the public prosecutors must bring charges *ex officio*. Even in Albania, family violence can be prosecuted under the general crime of assault. Incest and marital rape are crimes in all countries. Nevertheless, the criminal sanctions for acts of domestic violence are mild. Instead of increasing the sanctions in accordance with the international standards, there is evidence that the punishment for perpetrators has decreased after the revision of criminal legislation, as happened in Serbia. By softening the state policy towards domestic violence, the message of the state to the public could be that the state tolerates violence in the private sphere, that courts, police and prosecutors can apply much milder standards when prosecuting violent offences that occur in the private sphere, and that perpetrators may sometimes not be sanctioned at all for their violent acts.

Civil remedies for victims of domestic violence exist, but are usually inadequate. Victims may receive compensation for damage suffered using the general compensatory provisions from the law on obligations, but there is very little jurisprudence in this regard. Proceedings are usually very long and victims are not informed. Divorce proceedings, child custody proceedings and financial compensation proceedings involving divorce are not simplified in domestic violence cases. The practice of the courts shows that the burden of proof for sexual offences is still heavier than for other crimes.

4. Legal procedures and remedies that offer protection against domestic violence

4.1. International standards concerning legal procedures and remedies that offer protection against domestic violence

It is not enough to enact laws that prohibit and sanction acts of domestic violence or laws that give victims of domestic violence the right to claim damages. It is equally important to set up a judicial system that gives women the opportunity to effectively complain about any infringement of their rights, including domestic violence. When they bring this violence into the open, they should have
easy access to the system that is designed to protect them. This means that the national legal system should offer adequate and effective procedures and remedies for victims of domestic violence. In the international documents that we studied for the compilation of our Checklist, we found a long list of standards and guidelines on this issue. These initially concern general aspects of criminal and civil procedures that should be shaped in such a way that victims receive effective protection. There are also more specific requirements concerning access to justice, the question of who can submit a complaint, the legal protection and legal aid during legal (court) proceedings, rules of procedure and legal measures of protection against the perpetrator. We have summarized these standards briefly in the textboxes. A full list can be found in the Appendix.

4.2. Procedures and remedies that are in place or absent in the region

In this section we will present the outcomes of the studies in the six countries and evaluate whether the procedures and remedies concerning domestic violence that are in place or absent in these countries are in compliance with the standards of international law. We will make a comparison between the countries that were included in the research project. We will also provide examples of good and bad legislation, based on the standards in international documents.

**General requirements**

- Governments should provide effective legal complaint procedures.
- Governments should ensure that victims of domestic violence receive the maximum protection of the law by acting with due diligence to prevent and respond to such violence against women.
- Governments should investigate promptly, thoroughly, impartially and seriously all allegations of domestic violence and bring the offenders to justice in accordance with international standards.
- A mechanism for establishing the liability of state officials or state bodies for acts or omissions involving the breach of fundamental human rights should be available for the victim.

The analysis of the criminal legal procedures in the countries of the region shows that victims of domestic violence are treated as an injured party and a witness. Their rights and status in the procedure are defined by the general
rules applied to witnesses and persons who suffered damage by the perpetrator. Consequently, they are not given any special treatment during the criminal, misdemeanor or complaint procedures due to their vulnerable status as a victim of domestic violence. As an injured party, victims can file a complaint. Whether or not they do this depends on the level of their protection from the perpetrator during the court proceedings. We will discuss the legal protection of victims in a separate section of the report.

The governments of all countries in the region have taken steps to establish the liability of the state and state officials for acts or omissions involving the violation of human rights of women and their protection against violence in the private sphere. In all the countries that have adopted specific laws against domestic violence (including Serbia, which does not have this specific law, but where this state responsibility has been introduced by the Family Law), the failure of state officials and other competent bodies to respond to acts of domestic violence is qualified as a misdemeanour offence.

The best example of the response of the government to the complexity of the issue of domestic violence can be found in Croatia, which has recently begun implementing the National Strategy for Protection against Domestic Violence for 2005 – 2007 and has passed the Protocol of Procedures in Cases of Family Violence. This document directly refers to the obligation of the state to respond to and take measures to eliminate domestic violence, punish perpetrators and protect victims. The document stresses the obligation of all competent bodies (police, centres for social care, judicial bodies, medical and educational institutions) in the identification and elimination of violence and in providing help and protection to persons exposed to family violence.\textsuperscript{67}

\begin{quote}
Public administration bodies identified by these Rules are obliged to perform immediate measures to provide a system, organization and equipment, and a sufficient number of specialized professionals dealing with the issues of family violence, as well as to provide appropriate allocation of state budget funds by the relevant ministries.

\textit{Protocol of Procedures in Cases of Family Violence, Ministry of Family, Veterans’ Affairs and Intergenerational Solidarity, Croatia}
\end{quote}

\textsuperscript{67} As we said in par. 3.2, medical personnel, providers of social welfare, psychologists, social workers, social pedagogues, and educational institutions’ employees have an obligation to report to the police or to the competent district attorney’s office on any acts of violence that they became familiar with in the line of their duties. Failure to act in accordance with these provisions is to be qualified as a misdemeanour.
In Bosnia and Herzegovina, the Gender Equality Law (Art. 19) guarantees that every person whose rights are violated under this Law may initiate legal action in a court.

### 4.2.1. Access to justice

- Victims of violence must be encouraged to use legal remedies.
- Victims of domestic violence should be provided with safe and prompt access to justice, including free legal aid where necessary, to ensure the availability of effective and adequate remedies and rehabilitation.
- Women must to be informed of their right of access to the mechanisms of justice.

A major shift forward in the access to justice has been observed in the countries where domestic violence was made a criminal offence (Croatia, Serbia, Montenegro, Macedonia, Bosnia and Herzegovina), where the criminal procedures are initiated *ex officio*. But the practice is still lagging behind the legislation. As noted in the national in-depth studies in Serbia, Croatia and Montenegro, victims rarely use legal opportunities to obtain justice. A number of reasons for this have been ascertained; these include lack of knowledge and information, reluctance to begin excessively long criminal processes, fear of the perpetrator (connected with lack of effective protective measures), fear of publicizing private matters, fear of condemnation from family members or the community and reconciliation with gender stereotypes (e.g. the subordinated position of women in the family). In addition, research shows that victims do not have enough confidence that their rights will be protected by the existing mechanisms of justice and that the perpetrator will be brought to justice. This notion is reinforced by the lengthy criminal procedure, mild sanctions and uncertainty of the result of the criminal procedure.

The criminal procedure in all the countries is lengthy and therefore discouraging for victims of domestic violence. There is no practice of rapid procedure in cases of domestic violence. However, a shortened procedure can be applied to criminal offences where fines and prison terms up to three years are prescribed.

In the criminal and misdemeanour procedures, legal aid is free in all the countries, but in civil procedures no free legal aid is provided by the government. Free legal counselling services are provided by women’s NGOs. Only in Macedonia is there a provision in the Family Law on providing free legal aid and defence.
to victims of domestic violence. Centres for social care should provide this aid. However, this provision is poorly implemented due to the low capacity of the centres. Still, in recent years there have been some positive shifts in the countries that indicate a change in the governmental approach to the issue. For example, the Croatian Ministry of the Interior initiated a media campaign (using leaflets and posters) in 2005 aimed at informing victims of domestic violence how to acquire access to justice. Similar activities were noted in Serbia, the Province of Vojvodina, where the Secretariat for Labour, Employment and Gender Equality, the Executive Council of Vojvodina launched a campaign to combat domestic violence and provide aid to women victims.

4.2.2. Who can submit a complaint?

- It must be possible for criminal proceedings to be initiated by the public prosecutor.
- It must be possible to prosecute a case without having a complaint from the victim herself.
- Third parties should be allowed to submit a complaint.

In all the countries in the region, criminal proceedings involving acts of domestic violence can be initiated by the prosecutor \emph{ex officio}. In Albania, where domestic violence is a specific criminal act, this can be done under the umbrella of a general criminal offence. If the public prosecutor withdraws the charge or does not bring legal action against the perpetrator within one month, the victim of domestic violence can initiate legal action in a court instead of the prosecutor. Having the status of injured persons, victims of domestic violence have the right to object to the verdict of the court of original jurisdiction.

4.2.3. Legal protection and aid during legal (court) proceedings

- Provision of (free) legal aid to the victims.
- Governments should ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence.
- Governments should envisage the institution of special conditions for hearing victims or witnesses of violence in violence in order to avoid the repetition of testimony and to lessen the traumatising effects of the proceedings.
Governments should ensure that at all stages in the proceedings, the victims may receive medical and psychological care. Governments should encourage the recruitment of female police officers.

There are few measures that protect victims during criminal proceedings in the countries studied. If she fears that this could endanger her life, physical integrity, freedom or property, the victim may refuse to provide personal information or make a statement until adequate protection is provided. The court may also order the temporary arrest of the perpetrator with the aim of protecting the victim, but this is a short-term measure (e.g. in Croatia up to 15 days) and is rarely used in cases of domestic violence.

Besides temporary arrest and protective orders, the legislation in Croatia and other countries prescribes limitation or exclusion of the public during the proceedings, a special method for interviewing the witness, the removal of the perpetrator from the courtroom and maintenance of order during the proceedings. Misdemeanour provisions in the Law on Protection from Family Violence in Croatia are adequate in terms of their definition and scope, but protection measures are defined as sanctions and therefore cannot be used during the trial procedure. In addition, perpetrators cannot be held in custody during proceedings, when there is often an escalation of violence, and the courts do not use other possible measures to protect victims (e.g. official warnings as prescribed in the Law on Misdemeanours). The measures involving direct protection of the victim are left to her initiative, and she may be too frightened to initiate them. This may result in fewer reported cases and lead to the continuation or escalation of violence. Another problem is that the penalties in the misdemeanour procedures usually involve fines instead of imprisonment.

The new Law on Criminal Procedure (2004) of Montenegro provides witnesses with special protection during the court proceedings; this protection is also applicable to victims of domestic violence. If there is a justified fear that a witness would jeopardize himself or herself by testifying, a witness can refrain from testifying until protection is provided. The protection of a witness consists of special methods of testifying during the criminal proceedings. If the witness was a victim of sexual violence, she has the right to testify in a separate room before a judge and a court clerk, while the prosecutor, the defendant and the defence attorney may ask questions from the courtroom via electronic communication channels.
Recently, according to the newly-adopted law on juvenile offenders and criminal law protection of minor victims, a similar type of victim protection has become available in Serbia, but only for juveniles. For example, they can testify in a separate room or even at home or in the juvenile institution in order to avoid facing the perpetrator, the number of hearings is limited and it is possible to use various audio and video techniques to protect minors during hearings. In Bosnia and Herzegovina, courts should apply the Law on Protection of Victims under Threats and Endangered Victims (2003) in cases of domestic violence. Psychological, social and other aid should be provided to victims during the investigation and their hearings. The perpetrator can be removed from the courtroom if there is a fear that his presence will influence the victim’s testimony. The national in-depth studies have shown that the legal status of privileged witness, which protects her/him while testifying against a family member who is accused of a criminal act, actually harms victims of domestic violence. Most victims decide not to testify for various reasons (such as fear of the perpetrator or trying to keep the family together). As a result, the charges are dropped, or the perpetrator is sentenced to a minimum penalty.

The Law on Criminal Procedure in Serbia enables the court to protect the victim against insults, threats and other attacks, and to warn the violator or impose a fine (Art. 109). In the case of a serious attack or threat, the court is obliged to inform the public prosecutor so a criminal charge can be made.

In Croatia, the Protocol of Procedures in Cases of Family Violence guarantee female victims access to free legal aid and free services of a lawyer from the Croatian Chamber of Lawyers, as well as free medical aid. The victim will be given the opportunity to provide, in a safe and supportive environment, all information relevant to the act of violence committed against her. The protection of the victim is provided with her safety in mind; there are separate court hearings for her and the perpetrator. These are the rules of the procedure according to this Protocol and should be implemented fully in order to protect victims.

Despite the Law on Criminal Procedure (Art. 278) and the Family Law (Art. 62), which guarantee that rights of the individual are respected during the proceedings, in actual practice the system of criminal justice in Albania does not provide adequate assistance to victims of domestic violence. Due to this lack of protection, they can be persuaded to withdraw the charges. In some cases the judges, lawyers, and police recommended that the victim think twice before taking any steps, for the sake of preserving the family. For criminal offences related to domestic violence, which have been treated as misdemeanours, the perpetrator is usually not arrested because this measure is seen as incompatible
with the seriousness of the offence and the need for security, even though other
security measures are rarely, if ever, used. This may be one of the reasons why the
perpetrators are often required to pay fines and can then return to the marital
home and resume the use of violence. In such instances, the woman who is the
victim of domestic violence must also contribute to the payment of the fine.
Due to this paradoxical practice, victims lose trust in the judiciary and do not
denounce the violent partner. Judges complain that they cannot enforce the
legal provisions concerning protection of victims when there are no deadlines
for the consideration of these measures and for their application, when there
is no enforcement mechanism and there are no supportive structures such as
shelters and rehabilitation centres.

The national in-depth studies have shown that victims are not provided
with medical and psychological care during the proceedings. As stressed in the
Macedonian study, in cases where a medical certificate for the injuries is needed
to initiate criminal proceedings, the costs of obtaining this certificate must be
paid by the victims themselves. At the end of the procedure, these costs are
reimbursed to the victim by the court or by the perpetrator. This practice is an
obstacle for victims to gain access to justice.

Regarding the gender ratios of police officials, women are underrepresented
in all countries studied. However, in recent years there has been some progress
in encouraging women to enrol in the police academy and in recruiting female
police officers. Until now, only the Croatian Protocol of Procedures in Cases of
Family Violence stresses that one of the police officers who goes to the scene of
domestic violence should be female. In Serbia, an increased number of female
police officers have been given training on domestic violence.

4.2.4. Rules of procedure

- Prosecution of offenders in cases of domestic violence must be
  possible even in the absence of testimony of the victim in the
  Court.
- The police and law enforcement agencies should be granted the
  authority to carry out investigations and obtain evidence.
- It should be provided that, for sexual offences and crimes, any
  limitation period does not commence until the day on which the
  victim reaches the age of majority.

In the countries that made domestic violence a criminal offence, there has
been progress in the treatment of this kind of violence by the police and law
enforcement agencies. This is especially true where units and officials have been trained on how to deal with domestic violence. However, there are still problems in obtaining evidence, especially in cases of psychological violence, because the results are not as visible and cannot be documented medically. As noted in the Serbian in-depth study, if the victim does not want to make a statement or is afraid to do so, and if other family members, friends, neighbours or other witnesses do not want to testify, then the police do not continue to obtain evidence even though the Law obliges them to do so. The police officials in Serbia stress that the behaviour of the prosecutor’s office is an obstacle, because it often rejects the criminal charges with the rationale that there is no evidence of the crime being committed. In these cases, police officials simply file the case away and wait for the violence to escalate with more visible consequences, which makes it possible for them to respond and protect the victim. This practice is evident in all the countries studied.

According to the results of the survey made by the Hot Line in Podgorica, Montenegro, police officials reported that the most frequent problems related to domestic violence are the undefined role of the police in treating domestic violence, the lack of experience during intervention, and the lack of “practice in uncovering family violence”. After operational knowledge on the existence of family violence is acquired, this is not used to start the investigation. There are several reasons for this: much more attention is paid to more “serious” forms of violence and crimes such as theft; the participation of all relevant institutions (shelters, centres for social care, etc.) is not secured and coordinated; due to sluggish and inadequate decisions of the prosecution and the court, the efforts of police become futile; due to inefficient procedures, police officials encounter the dilemma of whether to qualify domestic violence as a criminal act or a misdemeanour act, the latter being more effective because protective measures can be used.

In Croatia, the governmental Protocol on Procedures in Cases of Family Violence prescribes the detailed behaviour of state officials who deal with acts and victims of domestic violence. This is the state document of this type in the region and therefore it may be used as a guideline for prescribing similar rules in other countries.

Here are some examples of directions given to state officials. Accordingly to the above Protocol, when there is notification of violence, the police must send without delay at least two police officers, preferably of both sexes, to the location of the reported event for the purpose of intervention. Verification must be made even in cases where the house or apartment is closed. Police officials
must immediately take measures to protect the victimized person and offer any necessary medical and other help, as well as to prevent the perpetrator from further aggressive behaviour. They must gather evidence and all necessary information for the clarification and presentation of evidence for misdemeanour or criminal offences classified as “violent behaviour in the family” or other types of misdemeanour or criminal offences. The evidence and all information must be gathered in such a way that the person reported or presumed to be the victim of violence is able to cooperate and provide all relevant information, in an interview conducted in a separate room, in an undisturbed manner and without fear and in absence of the perpetrator. If the perpetrator of violence possesses a licensed weapon, it will be temporarily confiscated to prevent possible abuse, and a proposal will be made for the revocation of the firearm license. In the course of proceedings the police officers are obliged to inform the victim of violence in an appropriate and clear way of his or her legal rights. If the victim of violence asks for placement in a shelter or the Home for Children and Adult Victims of Family Violence, the competent centre for social care will be asked to undertake immediate measures to place the victim in an appropriate shelter.

However, this Protocol has also some deficiencies that could weaken the proceedings in practice. The obligations of the institutions have not been worked out, while the section pertaining to the judiciary is inadequate.

Other countries do not have such comprehensive rules of procedure aimed at proper implementation of legislation in cases of domestic violence as those in Croatia. The National Programme on Prevention of Violence of the government of Montenegro provides for this kind of the Protocol, but it has not yet been developed. However, the Ministry of the Interior of Montenegro has signed the Protocol of Procedures in cases of prevention and combating criminal offences of violence in the family and victims’ protection. This Protocol describes the role of the police and its conduct toward victims. Despite the fact that this document has been signed and approved by the Minister, it awaits the adoption of the Law on Protection against Family Violence before it can go into force. In January 2006 the Ministry of the Interior of Montenegro approved the Ethical Codex of the Police that requires police officials to help all persons whose lives are in danger.

Regarding the practice of the police, we found one good example in Bosnia and Herzegovina. There, in the canton of Sarajevo, every police department has a contact person in charge of cases of domestic violence. This makes the work of social workers easier, as they do not need to explain why they need police intervention in every case of family violence.
4.2.5. Legal measures of protection against the perpetrator

- Victims should be provided protection during the judicial procedure.
- Civil or criminal proceedings should temporarily or permanently ban the perpetrator from the house where the victim and her children have continued to reside and/or the victim should have the option of asking for a restraining or protection order.

The national in-depth studies show that many women victims of domestic violence are still not using legal remedies because they are too afraid for their physical integrity. However, the recently-adopted amendments in the legislation in the countries in the region give us hope that this situation may be changing and that victims may be provided with proper protection. The specific laws on combating domestic violence, as well as changes in family laws, have introduced protective orders in compliance with international standards.

In Albania, the Family Law (Art. 62) gives the spouse against whom violence is used the right to request the court to take the urgent measure of removing the violent spouse from the marital home. However, the court decisions in 2004 monitored by the NGO Centre for Legal and Civic Initiatives have shown that no cases have as yet been tried that are based on this article, but we should bear in mind that the Family Law was recently adopted.

During years of providing free legal aid to victims of domestic violence and monitoring the criminal decisions of the Courts of Tirana, Shkodra and Vlorë, the Centre for Legal Civic Initiatives has observed that the coercive measure (prescribed in Article 232c of the Law on Criminal Procedure) referring to the “prohibition to stay at a certain place” has never been imposed on the accused party. As a result, the woman victim has had to continue living together with her perpetrator, even though a criminal process against him has begun. This attitude of the court has been regarded by the victims as evidence of the indifference and insufficient engagement of the judicial system in the domestic violence they suffer. It has therefore been one of the reasons that they withdraw from the lawsuit.

Women's groups in Bosnia and Herzegovina observed that in the majority of cases, women and children are forced to leave the house or apartment, and not the violent party. Moreover, they also ascertained that victims of violence are not properly protected during the criminal proceedings. The perpetrator therefore has the opportunity to pressure and influence the victims, who usually withdraw the criminal charges.

As noted in the national studies, the protective orders required by the laws on criminal procedures are usually ineffective. For example, the Montenegrin national study points to the new Law on Criminal Procedure (2004) in Montenegro that introduced the prohibition of approaching certain places or regions as a protective order. The study also points out that article 139 of the same Law states that the right of a perpetrator to reside in his family home cannot be limited, despite the fact that in the majority of cases of domestic violence women live with the violent partner in the same house or apartment.

This defect will hopefully be eliminated by the Law on Protection Against Family Violence, which is currently being drafted. The following protective orders are proposed: prohibition of approaching and entering the apartment/house, workplace, school, kindergarten, religious institution, etc.; prohibition of approaching the family member or the member of the household; prohibition of contacting the member of the family or the household in any way, including electronic means of communication such as e-mail and fax; and the obligation of the perpetrator to give alimony to the member of the family or the household until the criminal procedure is terminated.

It should be emphasized that these measures can be ordered according to the Law on Executive Procedure, but there is a gap in practice. For example, in 2001 the judge of the lower court in Herceg Novi, Montenegro, imposed a temporary prohibition on approaching the victim, but the higher court abolished the order.

In contrast to this provision in the Montenegrin law, in Serbia the perpetrator may be removed from the family house or apartment, even if he owns or rents the property. This measure was introduced recently by the new Family Law (2005). To protect victims of violence in the family, it provides a range of measures that temporarily forbid or limit personal relations of the perpetrator with other family members. Besides the removal of the perpetrator from the family house or apartment, these measures are: ordering the victim to be moved to the
family house or apartment, prohibition of approaching the family member at a certain distance, prohibition of access to the place of residence or workplace of the family member, and prohibition of stalking the family member. These protective orders may last up to one year, and may be extended as long as necessary. This Law demands that courts deal with cases of domestic violence as an urgent matter.

The newly-adopted laws on protection against domestic violence in Croatia, the Federation of Bosnia and Herzegovina and Republic Srpska provide protective orders with misdemeanour sanctions. This includes the prohibition of approaching the victim, removal from the house or apartment, prohibition of stalking, compulsory psychosocial and dependence treatment, and security measures to protect the victim. With the aim of protecting the victim, she can be provided with temporary lodging (in centres for social care, other families, shelters or other suitable places) and has the right to temporarily maintenance from the Alimony Fund (which is about to be established). In the Republic Srpska, protective measures – besides being requested by the victim, the police, the prosecutor, centres for social care and governmental institutions – may also be ordered on the demand of NGOs. Prohibition of approaching the victim is pronounced ex officio. The court can order security measures before ending the criminal procedure in order to protect the victim. Because these laws were recently passed, there is a lack of court practice related to their implementation.

The court can also ban the perpetrator from approaching a victim, issuing this as a protective order in Croatia, Serbia and Montenegro.

4.3. Conclusions

An analysis of the situation in the countries in the region shows that the governments do not fulfil all their obligations that derive from international law regarding legal procedures and remedies that offer protection against domestic violence.

In all the countries studied, the rights and status of victims of domestic violence in the criminal procedure are defined by the general provisions applied to witnesses and parties who suffered damage by the perpetrator. Accordingly, they do not have special treatment during the legal proceedings. Two major advances in their access to justice are the criminalisation of family violence and the fact that the public prosecutor makes the charge ex officio in the majority of the countries. The major problem is that practice is lagging behind the legislation. Due to defective and lengthy criminal proceedings, the mild sanctions for perpetrators and the insensitivity of state officials, victims are discouraged from using the
accessible remedies or submitting a charge or complaint. In addition, the victims face lack of protection during court proceedings. Existing measures of protection are not adequate or are not applied. Governments also fail to provide free legal aid during civil proceedings and medical and psychological care at all stages of the proceedings. Free legal aid and legal services are prescribed only in the Croatian Protocol on Procedures in Cases of Family Violence.

In recent years governments have begun to prescribe protective orders in the legislation in accordance with international standards. However, the practices in all the countries show that courts still rarely order them, or that existing measures are ineffective in protecting victims. As a consequence, it is the women and children who are forced to leave the house or apartment and to seek the shelter, and not the violent party, who usually stays at home. Due to lack of jurisprudence and effective protection of victims during the criminal procedure, the perpetrator has the opportunity to pressure them, and they often withdraw the charges. There are some positive changes regarding the protection of the victim during the criminal procedure which have been introduced by recently-adopted laws on the protection against family violence in the Republic Srpska and the Federation of Bosnia and Herzegovina. There is also a good example of protective orders introduced by the new Family Law in Serbia. Time will show whether these measures will be properly applied.

Despite the deficiencies in existing legal procedures and remedies that countries in the region offer as protection to victims of domestic violence, there is a positive tendency of developing mechanisms for establishing the liability of state officials and state institutions for acts or omissions involving the breach of fundamental human rights of women. For example, the special laws on domestic violence in both Bosnian entities and the newly adopted Protocol on Procedures in Cases of Family Violence in Croatia directly refer to the obligation of the state to respond and take measures to eliminate domestic violence, punish perpetrators and protect victims. Failure to act in accordance with these provisions is qualified as a misdemeanour. In addition, the Croatian Protocol describes in great detail the behaviour of state officials who deal with cases of domestic violence. This is still the only state document of this type in the region, although there is an attempt to pass a similar protocol in Montenegro.
5. Measures to prevent domestic violence

5.1. International standards regarding prevention of domestic violence

If domestic violence is a criminal offence, this can have a preventive effect in the sense that the legislator gives a clear signal that this kind of behaviour is not allowed and will be punished. However, it is generally acknowledged that legislation alone is not enough to stop people from committing criminal acts. This is especially the case when this behaviour is connected to deeply-rooted (gender stereotyped) cultural and religious practices or when it is caused by pressing social and economic circumstances. Therefore, other preventive measures to stop domestic violence are necessary. This is also acknowledged in international documents, where we have found a wide range of preventive measures that are required or recommended. These include general recommendations, such as states being obligated to respect, protect, promote and fulfil women’s human rights, including their right to be free from all forms of domestic violence. Another example of a very general recommendation is that the state must strive to empower women and must take social and economic measures that offer them more independence. We also found more specific guidelines, such as those concerning the necessity of public information campaigns and the obligation of the state to support NGOs in their national and international activities in this field. In the next section, we provide a summary of these requirements and recommendations. A full list can be found in the Appendix.

5.2. Preventive measures that are in place or absent in the region

In this section we will present the results of the studies in the countries included in the research regarding preventive measures that are undertaken by governments in the region or are absent. We will also evaluate whether the situation regarding preventive measures concerning domestic violence in these countries is in compliance with the standards of international law.
5.2.1. General preventive measures

- Promotion and protection of the human rights of women and girls.
- States must respect, protect, promote and fulfil women's human rights, including their right to be free from all forms of domestic violence, including intimidation and threats of violence.
- Development of national action plans.
- Taking all necessary measures to ensure that the national strategy for the prevention and effective treatment of violence within the family is promptly implemented and evaluated.

According to the national reports of the countries studied, the governments of these countries make very few comprehensive and systematic efforts toward undertaking general preventive measures regarding domestic violence.

According to the national studies, these countries rarely undertake the general preventive measures that are stipulated in international documents. However, most of the countries have started establishing gender equality mechanisms as tools for the implementation of international standards on women's human rights. All countries therefore have government bodies on gender equality. Serbia and Croatia also have gender committees in their Parliaments. In Croatia there is also an Ombudsperson for gender equality.

At the time of data collection, all countries had laws on gender equality or drafts of such laws. Most of the countries did not have national action plans against domestic violence or violence against women. A national strategy and action plan against violence was found only in Montenegro. However, we also found the National Strategy for Protection from Domestic Violence in Croatia and the National Action Plan for Gender Equality in Macedonia. In Serbia, the National Action Plan for Women was just starting to be drafted as this study was written. This was organized by the Council for Gender Equality and was drafted by NGOs.

National studies offer several examples of the activities of state gender equality bodies; their purpose was raising awareness of and providing education on domestic violence and other forms of violence against women. However, some national studies also refer to the scarce resources of these bodies, who, similar to NGOs, have to work very hard to raise funds for their activities.

In Albania, the Committee for Gender Equality prepared the “Platform of action for the improvement of the status of women in Albania” for 1999-2000, in which special attention was given to the protection of violated women. Later
on, the Committee prepared the Albanian Government platform for 2002-2005, which devotes special attention to gender equality and the empowerment of women. Among the social problems identified by this platform that the Albanian Government would have to deal with is that of domestic violence. The Committee's main objectives for Equal Opportunities in 2004 included the implementation of the Platform for Equal Opportunities of the Albanian Government, where social issues and domestic violence were one of the priorities.

In the framework of the implementation of the Initiative for Women's Rights in Albania, the Committee for Gender Equality organized a training session entitled "Preparing a coordinated response of the community against domestic violence" (22-23 June 2004). The participants in this training session were representatives from ministries, jurists, prosecutors, judges, police officers, social workers and administrators. The Committee also organized a roundtable, "Coordinating the work among the local government, state institutions and the civil society to minimize the phenomenon of domestic violence against women and girls" (in cooperation with the municipality of Tirana). In addition, the Committee organized several training sessions on gender issues and women's rights for the ministries and other state bodies.

At the end of 2005, the Gender Alliance for Development Centre, in cooperation with the Ministry of Labour, Social Affairs and Equal Opportunities, supported financially by UNICEF, began the implementation of the project "Drafting the National Strategy against Violence in the Family". After gathering data on violence in the family in Albania, a report, "Violence in the Family-Presentation of the actual Situation", will be published in 2006.

The Albanian national study also referred to several examples of activities of the Ministry of Education and Sciences, which, in cooperation with scientific institutes and NGOs, introduced the concepts of gender equality and non-violent behaviour in schools and universities, together with important standards for curriculum development. As a result, human rights were included in curricula and were explained by various teachers.

Discrimination, family and gender roles have been some of the themes included in these textbooks. The Albanian Ministry of Education and Sciences, in cooperation with the Institute of Pedagogical Studies, has drafted the standards for curriculum content. The approval of these standards led to the treatment of human rights as a legal obligation by the authors of the programmes and texts. The standards of achievement for civic education in the primary school system include topics such as human dignity, freedom, justice, equality, examples of conflicts among individuals,
descriptions of the restrictions of the rights in family life, class etc., along
with the correct attitudes and examples of participation in concrete activities.

The national strategy and action plan against violence in Montenegro are
based on cooperation between government and non-government organizations
using a multidisciplinary approach. However, as stated in the national report
of Montenegro, this document had a very limited influence. Although it has
existed since 2003 and provides for many important activities, this document
has not yet been implemented because of the lack of interest and resources.
At the same time, the draft of a more comprehensive document, the National
Action Plan for Gender Equality, was drafted in 2005; one section of this Plan
is devoted to the prevention of violence.

The national strategy in Croatia includes many important measures for the
protection of victims and the prevention of domestic violence, such as education
about gender equality, domestic violence and non-violent conflict resolution, gender
equality measures, interdisciplinary cooperation and a multidisciplinary approach,
combating all forms of domestic violence and alleviating its consequences. It
also includes measures for eliminating stereotypes from the media. However,
similarly to Montenegro, these measures have not yet been implemented. In
Serbia, the introductory text for a national strategy was presented only recently
and, as stated in the national report, the state did not include members of NGOs
in its drafting, which had negative consequences on its quality.

5.2.2 Raising public awareness

- Governments should take awareness-raising measures, including
  a campaign of zero tolerance, to make domestic violence socially
  and morally unacceptable.
- Governments should design educational programmes targeted
  at men and boys about the prevention of violence and the reform
  of traditionally negative attitudes towards women.
- Effective measures should be taken to ensure that the media
  respect and promote respect for women.
- Governments should support the dissemination among families of
  knowledge and information on early detection of potential conflict
  situations and information on the settlement of interpersonal
  and intra-family conflicts.

Government activities for raising public awareness about domestic violence
are rarely present in the countries included in the research. If there were such
campaigns, they did not have long-term goals and were limited to the efforts of individual state bodies and to individual actions. No zero-tolerance campaigns have ever been organized in the countries included in the research. Moreover, only modest efforts have been undertaken by the governments to ensure that education is used for the prevention of domestic violence and that the media respect women and promote respect for them. Governments often support campaigns initiated and organized by non-governmental organizations or take an active part in them. According to the national reports, campaigns were organized by the governments only in Macedonia and Montenegro.

In Macedonia, the Ministry for Labour and Social Policy organized a national media campaign, in cooperation with UNICEF, with the aim of empowering victims and increasing their awareness and readiness to ask for assistance. At the same time, on the local level, centres for social work organized different preventive activities with the same motivation. In Montenegro, the government Office for Gender Equality organized 16 days of activism against violence against women in 2003. In 2005, the Office conducted activities intended to increase the visibility of domestic violence and the activities of NGOs in the media.

However, several government awareness campaigns were about to start as this report was being researched. For example, the Municipality of Tirana was planning the project "Together for a family and society without violence", which is intended to increase the awareness of families and the community about violence. The project aims to educate forty young people from the Myslym Keta school about violence, its roots and consequences. The programme will refer to the relevant NGOs that offer services for victims and will print and distribute leaflets, etc. This campaign will also be presented in the written and electronic media.

Measures taken to ensure that the media respect and promote respect for women are mentioned only rarely in the country reports. Even when some measures exist, they are usually ineffective. For example, the Law on gender equality in Bosnia and Herzegovina introduced some obligations for the media, but there have been no developments in practice, except some sporadic steps owing to the enthusiasm of individuals. As stated in the national report of Bosnia and Herzegovina, the Law is only the basis, but for its implementation it is necessary to change the consciousness of both those who produce and those who consume media content. In Bosnia and Herzegovina, they noticed small steps forward taken by the government Gender Equality Centre, which, in cooperation with NGOs, contributed to the promotion of women's rights in general, including rights connected to domestic violence.

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68 Refer to page for more information about the activities of NGOs.
In Albania, the Committee for Gender Equality proposed the idea of developing a media strategy for the prevention of violence and the protection of women in the family. Conscious of the important role of the media in awareness-raising and promoting non-violent behaviour, the Committee has invited state and independent media representatives to events and activities, where it promoted ideas such as the treatment of domestic violence as a violation of fundamental human rights; the importance of promoting and encouraging positive models of behaviour and of consulting specialist opinions in dealing with gender-oriented issues; and the presentation of alternatives and strategies to combat violence and aid the development of values and attitudes.

Education and training of professionals on gender and domestic violence has largely been sporadic or has been based on the enthusiasm of individuals employed in state institutions. In most countries there is no systematic approach and state strategy, but only pilot projects, training sessions organized by non-governmental organizations or individual courses based on the enthusiasm of individual professors.

Only in Bosnia and Albania is there some gender and domestic violence education in elementary and secondary schools, as well as in pre-school education. In Bosnia and Herzegovina, there is a government-initiated project to introduce gender concepts in primary and secondary schools. It was implemented in the Sarajevo canton as well as in other parts of the country.

In Albania, education about gender roles and domestic violence is included in broader subjects in elementary and secondary schools, but many other subjects contain gender stereotypes, and the teachers are not trained in how to implement new gender role models.

Albanian primary education addresses gender roles based on gender equality, as well as concepts such as violence, including violence against women and other members of the family such as the elderly and children. At the primary level (sixth class) the subject of Social Education explains ill-treatment, violence and domestic violence. For the year 2007-2008, the citizen education subject for the eighth class aims to enable the youth to combat violence and intolerance, prejudices and any form of discrimination. The Institute of Curricula and Standards has published a manual on extracurricular activities, which can be used as a tool by the teachers to study the issue of human rights.

Gender and domestic violence appear to be addressed in higher education in most of the countries, either as part of women/gender studies at the university level or included in other courses/subjects such as social work, psychology, criminology, law, journalism and sociology.
5.2.3. Social measures

- Governments must promote economic independence of women by creating more employment and ensuring equality in employment.

The only national report that mentions social measures as prevention measures undertaken by the government is the national report of Albania. These measures are part of the Albanian government platform for equality, the Strategy for Employment and Professional Development. \(^{69}\) This Strategy aims to implement programmes for unemployed women and women with serious social problems. There are three programmes to increase employment with a focus on women and girls. The national report also mentions the Platform for Action for the Improvement of the Status of Women in Albania and refers to the law on Promoting Employment and Decision No.632 of the Council of Ministers (passed on 18.09.2003) as a good legal basis for improving the situation of unemployed women. Among other things, the platform refers to the issue of protecting women from domestic violence. According to the national report of Albania, despite the access they claim to offer to this target group, these strategies are still in progress and more significant results are expected in coming years.

5.2.4. State funding of social service programmes

- Governments must increase state funding to support the social services dealing with the problem of domestic violence.
- Governments must develop community intervention strategies at the local level aimed at the coordination of inter-agency cooperation and the mobilization of financial and human resources in the fight against domestic violence.
- Governments must establish a governmental coordination institution or body in charge of the implementation of measures to combat violence against women.

According to the national reports, the governments of all countries do not comply with the above obligations. The reports mainly refer to governmental and parliamentary gender bodies and their broader activities, which are also important for the prevention of domestic violence.

5.2.5. Providing support to NGOs for their national and international activities

- The government should cooperate with the women's movement and NGOs.
- Governments should support NGOs in their national and international activities.
- Governments should support the development of NGOs and establish an adequate financial framework for this support.

The national reports mainly mention that cooperation of the governments with the women's movement and NGOs is better than it was before. This cooperation is mainly done through implementation of partnership projects and by signing memoranda of understanding. The reports also state that governments began to support some NGO activities financially, but this support is still not systematic and often depends on politics or international funding secured by the governments themselves.

However, as mentioned in most of the reports, the cooperation is not systematic and comprehensive, so that it is still more often based on personal contacts than on professional obligations. Some reports also suggest that the cooperation is sometime only formal and is without real impact (e.g. when NGOs are involved in the preparation of laws). Also, as pointed out in the Croatian report, social work centres sometimes violate the rules about secret addresses of shelters, or they inform abusive partners about the victim complaining to the police.

The Albanian report specifically refers to the potential of the Committee for Gender Equality for extending the cooperation between the state and the NGOs. The Ministry of Labour, Social Affairs and Equal Opportunities of Albania is working towards the institutionalization of its relations with private legal persons, and especially with NGOs, who are expected to play a more significant role in the area of social services. In this respect, relations have been established with NGOs on three levels: signing of cooperation agreements, cooperation contracts and licensing. Among other things, the services offered by private legal persons will include shelters, reception and rehabilitation centres, counselling services and awareness-raising projects. As stated in the national report, financial
resources for social care services will come from conditional funds within the state budget, local revenue, joint projects between the government and various donors, contributions from beneficiaries, donations, sponsorships, and funds from other organizations, legal or natural persons or individuals.  

5.3. Conclusions

Data about preventive measures undertaken by governments that are presented in the national reports suggest that the practice in the countries in the region is still very far from being in compliance with international norms.

Until now the governments of these countries have made very few comprehensive and systematic efforts toward undertaking general preventive measures on domestic violence. However, much effort has recently been devoted to the establishment of gender equality mechanisms, which can be seen as preconditions for a more systematic approach toward the promotion, respect and protection of the human rights of women and girls.

At the time when the data were collected, most of the countries in the region did not have national strategies and plans of action against domestic violence or violence against women. Government activities for raising public awareness about domestic violence were very rare as well. No zero-tolerance campaign has ever been organized in the countries included in the research. In addition, only modest efforts have been taken by the governments to ensure that education is used for the prevention of domestic violence and that the media respect women and promote respect for them. Education and training of professionals on gender and domestic violence has mostly been sporadic or based on the enthusiasm of individuals employed by state institutions. Moreover, no effective measures have been taken to ensure that the media respect and promote respect for women.

The cooperation of the governments with the women’s movement and NGOs has improved. Governments have started to financially support some of the NGOs. However, the cooperation and the government support is often only formal and it is not systematic and comprehensive.

Governments have not complied with their obligation to increase state funding to support the social services dealing with the problem of domestic violence or their obligation to develop community intervention strategies at the local level. They have not aimed at the coordination of inter-agency cooperation or the

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establishment of a governmental coordinating institution or body in charge of the implementation of measures to combat violence against women.

6. Protective measures against domestic violence

6.1. International standards regarding the protection against domestic violence

An important form of protection against domestic violence is the adoption and implementation of effective legal norms, procedures and remedies. We have already discussed these subjects in the above sections. However, legal protection is often inadequate in actual cases of domestic violence. Shelters, hotlines, social services and other support services are also necessary. Police officials and social workers should be trained to deal with cases of domestic violence in such a way that maximum protection is offered to the victims. The development of effective policies aimed at protection against perpetrators is the subject of many international guidelines and recommendations. In this respect special attention is given to the protection of children in families where domestic violence occurs. States are required to ensure that services are available for the purpose of protecting the children against any violence to which they are exposed due to the conflict between a couple and which may seriously harm the development of their personality. They should also ensure that children of victims have specialized assistance, such as rehabilitation, assistance in child care and maintenance. Other standards that we found in the international documents are related to aftercare, training programmes, protocols, support services and various other measures.

6.2. Protective measures that are in place or absent in the region

In this section we will present the outcomes of the national studies concerning protection and evaluate whether the factual situation in these countries is in compliance with the standards of international law.
6.2.1. Shelters, telephone help lines, counselling and rehabilitation programmes and access to specialized services

- Take immediate and effective measures to guarantee the physical and mental integrity of the victim and her family; this includes offering shelters, counselling and rehabilitation programmes.
- Provide access to specialized services, including medical assistance to victims.
- Establishment of telephone help lines and shelters for battered women either by the government itself or by supporting associations or foundations whose aim is to help and assist the victims of violent family situations.
- Give special financial support to non-governmental organizations as well as to women’s associations who work with victims of domestic violence.
- When one of the partners must leave the house, the perpetrator should be the one who is forced to leave, not the victim.

Data provided by national reports suggest that shelters, telephone help lines and counselling are still predominantly run by NGOs. In most countries, there is no systematic state effort and strategy in this area. Moreover, states only rarely give special financial support to non-governmental organizations or to women’s associations who work with victims of domestic violence, as required in international documents. In addition, rehabilitation programmes for women and children and access to specialized services, including free legal and medical aid, except those available to all other citizens, are not available. Regarding the latter, Macedonia is in some ways an exception. In this country, centres for social work are obliged to offer free legal aid and representation to victims of domestic violence. However, the centres are not able to fulfil this obligation.

In Albania, in a survey of legal professionals developed in cooperation with a UNICEF project and implemented in 2003 by WAC and the School of Magistrates, the question “How can the state support victims of domestic violence?” was answered by 47% of the respondents in the following way: “By providing free legal aid to victims of domestic violence.”

Free legal aid is also considered as very beneficial to the work of the courts. When asked the question, “How beneficial is legal aid for victims of domestic abuse and for the court in its endeavours to find the objective truth?” 41% of the respondents answered “very useful”, 30% “moderately useful”, 13% “of little
use” and 2% “of no use”. Free legal aid for vulnerable groups in civil and criminal lawsuits is currently provided by NGOs (national and international). Free legal services have been offered to victims of domestic violence from various not-for-profit organizations in Tirana and in various districts of the country, such as Elbasan, Durrës, Shkodër, Berat and Vlore. But these NGOs are dependent on the policy of donors and are not able to offer this service in continuity.

Despite the general trend of governments’ low involvement in the protection of victims of domestic violence described above, there are also some indicators of trends toward the establishment of state shelters for battered women or of states providing financial support to NGOs that work with victims of domestic violence.

For example, in Macedonia the establishment of shelters was formally and factually the competence of social work centres. They are part of the protection system established by the government. At the time the data were collected, a National SOS Hotline and six state shelters for battered women existed in Macedonia, covering all parts of the country. According to data quoted in the Macedonian national study, in the period between March and September 2005, 905 victims called the National SOS Hotline. This hotline is a 24-hour service that also operates a women’s temporary shelter. However, the number of places available is too small in comparison to the number of victims.

In Serbia, several state shelters have been established recently. Moreover, the national office of the President of the Republic is currently developing a safe house for women with children with the aim of supporting them in their efforts to start independent lives as single mothers. This project also provides that women who do not have proper housing will be offered accommodation at discount prices and programmes for professional training and self-employment within 12 months after they leave the shelter.

In Albania the state provides financial support only to shelters for victims of trafficking. The shelters offer safe accommodation and assistance to victims of trafficking, Albanian and foreign, such as women, girls, children and illegal immigrants in transit via Albania. However, some of the women are trafficked by their partners, so that they are at the same time victims of domestic violence.

In cases where the state finances the programs of NGOs, the funds provided by the governments are usually insufficient to cover all necessary expenses. Some reports also suggest that financial support provided by the government has negative consequences in terms of the restriction of the autonomy of the shelters. Finally, it should be stressed that the support provided by the governments is
usually limited to insufficient financial support, without otherwise encouraging establishment of victim support services.

Finally, in the situation where one of the partners is required to leave the house, the norm is that perpetrator should be the one to be forced to leave, not the victim. This norm has not been fulfilled in either legal or actual terms in the countries included in the survey.

6.2.2. Rehabilitation programmes for offenders

- Provide offenders with rehabilitation programmes and programmes on non-violent conflict resolution.

Government rehabilitation programmes for offenders are generally not available in the countries included in the survey. During 2004 in Serbia, experimental rehabilitation programmes were run by social work centres, but they were stopped due to lack of funding. In Croatia, the work of NGOs work in that field was partly financed by the government.

6.2.3. Training and awareness-raising programmes for judicial personnel, law enforcement officials and members of the legal and health professions to sensitize them to the needs of women

- Provide training and awareness-raising programmes for judicial personnel, law enforcement officials and members of the legal and health professions to sensitize them to the needs of women.

Training programmes for social workers, medical staff, police officers, judges, prosecutors and government officials organized by the governments are mainly done on the initiative and in cooperation with international and non-governmental organizations. However, several systematic training programmes emerged within centres for the education of judges and prosecutors in Albania and Bosnia and Herzegovina (Federation), while in Serbia, although such a centre exists, it does not as yet have any gender or violence against women curricula.

During 2004, the School of Magistrates in Albania organized a training programme with the aim of helping participants to identify issues and improve the way they treat problems of domestic violence. The School of Magistrates, as the most professional training centre for judges and prosecutors in Albania, also has domestic violence training. These training
sessions were part of the project “Training justice system professionals on domestic violence issues”, a one-year project of the School of Magistrates in cooperation with the Advocacy Centre for Women (known today as the Centre for Legal Civic Initiatives), supported by UNICEF. A module and a training programme were prepared, followed by eight two-day sessions in Tirana (2), Vlore, Shkodër, Korcë, Berat, Gjirokastër and Lezhë. Approximately 300 (8×35) judges, prosecutors, lawyers, officers of the judicial police and social workers attended the training sessions.

6.2.4. Compulsory protocol for the operation of the police and medical and social services

- Establishment of protocols for healthcare and procedures for hospitals for dealing with violence against women.
- Establishment of a compulsory protocol for operation so that the police and medical and social services follow the same procedure.

Among the countries included in our research, only Croatia has a protocol for the operation of medical and social services in cases of domestic violence; a protocol for the operation of the police was expected at the time the data were collected. In Serbia there is only a protocol for operation in cases of violence against children, while in Macedonia the creation of a protocol was initiated by ESE (an NGO), which was still working on that project at the time the data were collected. All national reports stress the importance of protocols for medical and social services and the police.

6.3. Conclusions

Governments generally do not fulfil their international obligations regarding the protection of victims of domestic violence.

Shelters, telephone help lines and counselling are still predominantly run by non-governmental organizations in most countries; there is not any systematic state effort and strategy in that regard. States only rarely give special financial support to NGOs as well as to women’s associations who work with victims of domestic violence, as required in international documents. Moreover, rehabilitation programmes for women and children and access to specialized services, including free legal and medical aid, except those available to all other citizens, are not available. Rehabilitation programmes for offenders are not
available as well. The support provided by the governments is usually limited to insufficient financial support, without otherwise encouraging establishment of victim support services. However, even in cases where the state finances programmes of NGOs, the funds provided by the governments are usually not sufficient to cover all necessary expenses. Compulsory protocols for the operation of the police and medical and social services are generally unavailable. Finally, training programmes organized by the governments for social workers, medical staff, police officers, judges, prosecutors and government officials are mainly done on the initiative and in cooperation with international and non-governmental organizations.

Only recently have some trends toward more involvement of governments in the protection of domestic violence victims been noticed. This is mostly related to the establishment of state shelters for battered women or of states providing financial support to NGOs that work with victims of domestic violence, but also to the creation of initial protocols and training programmes for judges and prosecutors.

7. Collection of data and monitoring domestic violence

7.1. International standards regarding data collection and monitoring concerning domestic violence

In Chapter II of this report, it became quite clear that, although data about the prevalence of domestic violence are available in the region, there is a general need for more knowledge about this form of violence against women. International organizations and experts have recognized this as an important barrier for the adoption of effective protective and preventive remedies, both at the legal and policy levels. In the international documents that we analyzed for the compilation of the Checklist, we found numerous references to the need to acquire more data on domestic violence. There are provisions asking for compilation of statistics and research, international cooperation and publication of research findings. There are also recommendations about reviewing, monitoring and evaluating existing laws, policies and statistical data.
Governments should encourage the compilation of statistics and research on the extent, causes and effects of different forms of violence against women.

Governments should improve statistics on domestic violence, and with this in mind develop a clear picture of its nature and prevalence, with the aim of identifying resources earmarked for this problem and the evaluation of initiatives to tackle it.

Governments should continuously review the actual effectiveness of the measures that are taken, so that modifications can take place if necessary.

Governments should promote research, data collection and networking on the medium- and long-term consequences of assaults for the victims.

Governments should enable international cooperation in systematic research and the collection, analysis and dissemination of data, including data concerning sex, age and other relevant information on the extent, nature and consequences of violence against women, and on the impact and effectiveness of policies and programmes for combating this violence.

Governments should report regularly to international human rights bodies on developments in the field of domestic violence against women and on measures taken to prevent and combat it.

Governments should make public the statistics and findings of research on domestic violence.

7.2. The practice concerning research and monitoring in the region

The outcomes of the national studies regarding research and monitoring show that the situation is very far from the international requirements. Data collection is mostly done partially and sporadically, without a clear strategy and a systematic and uniform approach, while state monitoring does not exist at all. Also, research into domestic violence was neither encouraged nor conducted by state institutions. Moreover, state institutions did not support NGOs in research efforts.

The state statistics in all countries are still very old fashioned, do not have data about victims and their relationship with the offender and they are not
sufficiently gender-sensitive. State statistics bureaus do not conduct victimization surveys for obtaining a more accurate picture about crimes with high dark numbers. Since the number of cases known to the criminal justice system is low, even in countries where domestic violence is a specific offence, data about domestic violence are often put in the category “other crimes”, and as such are not visible in state statistics. However, even when it is possible to get official statistics about domestic violence, these data are a poor indicator of the extent and characteristics of domestic violence, since they are primarily the indicator of the functioning of the criminal justice system and, as such do not give a clear picture of the nature and prevalence of domestic violence.

State statistics on reports of domestic violence and prosecutions and convictions are available in Serbia and Croatia. In Serbia these data are collected by statistics bureaus, while in Croatia this is done by the state prosecution office. Statistical collection began after domestic violence became a distinct criminal offence. In Macedonia, the Ministry of Labour and Social Policy collects data from social work centres by using identical methods of data collection. In Serbia, Macedonia, Croatia and Bosnia-Herzegovina (Republic Srpska), it is also possible to acquire some data about domestic violence from the Ministry of the Interior. To enable easier reviewing of the effectiveness of legal measures, in some countries (e.g. Serbia and Montenegro) police and/or courts introduced the system of recording, which allowed for easy identification of cases of domestic violence as well as for the collection of a broader range of data about the cases than is usual for criminal cases in general. This kind of recording of domestic violence cases was introduced on the initiative of NGOs.

All reports stated that existing research was initiated and carried out by NGOs. It is therefore owing to these NGOs that we have an idea about how widespread domestic violence is today. They also stressed that in their reports, governments usually rely largely on data collected by NGOs. Only in Albania is there a state institution with the purpose of serving as a documentation, communication and training centre. This is the Centre of Information and Documentation, which is part of the Committee for Gender Equality. The role of the Centre is to collect and distribute information. It has a library and a gender statistics database. The gender statistics database is divided into several areas, one of which is violence against women, girls and minors.

Cooperation between governmental and non-governmental organizations in data collection is still rare. As rare example of good practice in that regard, the project “From good intentions to good practice”, conducted by the Autonomous Women's Centre and the City Centre for Social Work in Belgrade, was mentioned.
The establishment of a uniform data collection system for nine municipal centres for social work, which includes various data about victims, abusers and interventions, is one of the most important results of this project.

As an additional problem, some national reports stress the unwillingness of international donors to fund good research in relation to domestic violence.

Finally, all national reports mention the state CEDAW reports. These reports are usually criticized because of their poor quality or because they mostly use data from NGOs. Since they are often not satisfied with the quality of the state CEDAW reports, NGOs usually write their own “shadow” reports. Governments do not make any significant efforts towards developing international cooperation in systematic research and the collection, analysis and dissemination of data about domestic violence.

7.3. Conclusions

The situation regarding research and monitoring is very far from the international requirements. Data collection is mostly done partially and sporadically, without a clear strategy and a systematic and uniform approach, while state monitoring does not exist at all. Moreover, research into domestic violence was neither encouraged nor conducted by state institutions. In addition, state institutions did not support NGOs in their efforts to conduct research.

State statistics are still old fashioned, without sufficient data segregated by sex and age. Even in rare cases when state statistics do contain data about domestic violence, these data are indicators of the functioning of the criminal justice system rather than of the nature and prevalence of domestic violence. In addition, the statistics do not have data about victims, and state statistics bureaus do not conduct victimization surveys to acquire a more accurate picture about crimes with high dark numbers.

The cooperation between governmental and non-governmental organizations in research is still rare, and governments do not make any significant effort toward developing the international cooperation in systematic research and the collection, analysis and dissemination of data about domestic violence. State reports to international organizations are inadequate in terms of their quality and reliability.
CHAPTER V

THE ROLE OF NGOS IN COMBATING DOMESTIC VIOLENCE

1. Introduction

As mentioned in the previous chapter, NGOs play a very important role in all countries included in this research. Most of developments in government policy are actually the result of NGOs’ advocacy and NGOs still have a central role in the protection and support of victims of domestic violence in the entire region. Thus, although the main focus in this report is on the governments’ compliance with international standards regarding domestic violence, in this chapter we will also review what the NGOs are doing.

We will present the grassroots activities of NGOs as well as their activities toward advocating better implementation of international standards. We have followed the structure that is complementary to the structure of Chapter IV, which means that we will present prevention, protection, data collection and monitoring activities of NGOs, as well as their advocacy for better implementation of international standards in this field.

2. Grassroots activities of NGOs

The national studies offer a plethora of information about various grass root activities of NGOs in the region. In this part of the report, we will present the highlights of the studies concerning the role of NGOs in the prevention of domestic violence, the protection of victims and in data collection.
2.1. Prevention

Activities related to prevention of domestic violence include most of the activities of NGOs in the region. This includes two main groups of activities: public awareness-raising (in general, and specifically by the use of mass media), and the awareness-raising of various professionals.

2.1.1. Public awareness-raising

Public awareness-raising includes various activities, such as public panels, workshops, street performances, campaigns (with or without evaluation research), press conferences, peer education and peer prevention programmes, awareness-raising of school children, students and parents, brochures, posters, leaflets and other popular publications for the general public or special target groups, exhibitions, radio and TV programmes, TV spots, silent witness performances, public presentations of new books and programmes, counselling for young couples, non-conflict communication education for men and awareness-raising for refugees.

NGOs from countries included in the research were involved in most of the activities mentioned above. However, there are also some activities that are mentioned as being done only in some of the countries involved. For example, only in Serbia is there a male group which deals with the prevention of violence, Men Against Violence Against Women. The Albanian national report also mentioned two unique examples of effective public awareness-raising activities:

In the period 2002-2003, the Shelter for Abused Women and Girls (Tirana), in the context of a survey on the supporting (care-taking) families for domestic violence victims, which was the first one of this kind in Albania, identified and assessed the families that could receive women and girls after their treatment in the Shelter. During this process, 800 interviews were conducted while sensitizing public opinion to the needs, risks and difficulties that domestic violence victims have to face.

Another awareness raising activity in 2004 was the Shelter Staff contribution in the making of a film on the causes, cases and consequences of domestic violence in Albania funded by UNICEF. They were all involved in identifying the “typical” cases. It took a very long time to complete this film because women had difficulty in feeling ready to face the camera. The documentary film was presented on 25 November 2004, on the International Day of Combating Violence Against Women. It was a success not only for the topic, the information and message it conveyed, but also
because it attracted the interest of various policymakers, representatives of many public institutions, associations, donors and individuals. On the same night, it was transmitted on one of the main national TV channels and had a considerable impact on the public.

All national reports stressed that during the “16 days of activism against violence against women”, the public awareness-raising activities were especially intensive. In some countries, these activities are coordinated by and include almost all women's NGOs (e.g. Serbia, Croatia and Albania), which may be stressed as an example of good practice. Mobilization of many activists on a voluntary basis as well as activities with a common and very clear message, organized at the same time in all parts of the country, have synergetic effect and provide the highest contribution toward the visibility of the problem of domestic violence. An example of good practice is also found in the cooperation between Serbian and Croatian NGOs during 16 days of activism through sharing awareness raising materials, exchanging ideas etc.

The media seemed to be much more interested in the activities of NGOs during the 16 days of activism than is usually the case; the NGOs used this occasion to make themselves and their activities publicly visible. This is especially significant having in mind that, although they now stress better relationships with the media than they did previously, NGOs are still not very satisfied with the attention the media give them. However, in some national reports (e.g. Albania) it was stressed as well that the NGOs themselves lack sufficient experience to cooperate with the media, which implies that someone from their staff should be trained in this area and acquire skills for writing effective articles in local and national newspapers.

The importance of the NGOs' contribution was even recognized by the state. For example, in one report of the Serbian Government, it was stated that the visibility of violence was increased thanks to the activities of NGOs, as well as that “in the next period society needs to undertake very serious and comprehensive steps towards the prevention of violence” (quoted from Branković, national study of Serbia).

71 The “16 days of activism against violence against women” is the worldwide campaign organised every year between 25 November (International Day Against Violence Against Women) and 10 December (International Human Rights Day). The campaign consists of various activities aimed at raising public awareness about violence against women.
2.1.2. Awareness-raising training for various professionals

The role of NGOs in all countries studied was very significant in terms of raising the awareness of various professionals about the problem of gender discrimination and domestic violence. The NGOs organized many training sessions for teachers of primary and secondary schools and initiated women's and gender studies programmes, some of which later became the part of university programmes. The NGOs also held training sessions for police officers, health service workers, social workers and criminal justice officers.

During 2002, the first pilot project, “Basic gender awareness program for primary and secondary school teachers in Serbia”, was created and implemented in Serbia by CARE International Yugoslavia and the NGOs Voice of Difference, the Autonomous Women’s Centre, Group MOST and the Belgrade Women’s Studies Centre. The programme included 224 teachers from 22 Belgrade schools, and it had the permission and support of the Ministry of Education. The project was later continued by the Belgrade Women’s Studies Centre, in cooperation with Voice of Difference and Association Anthropy, and included 320 teachers from 51 schools in nine towns from Serbia. As part of the programme, the first ever gender equality manual for teachers was published and distributed to the seminar participants. However, this extremely important form of education did not become part of the regular curricula in primary and secondary schools.

At the time the national study was written, the Ministry of Education had not responded to the initiative of the above-mentioned NGOs to involve the proposed workshops in the regular curriculum for the school subject “Civic Education”.

During 2003 and 2004 in Macedonia, ESE (an NGO) implemented a programme of gender sensitization for teachers and pupils of secondary schools. Two secondary schools from different regions were chosen for the project. Four teachers from each school and Directors and Representatives from the Ministry of Education were trained. They then trained 80 pupils, who are expected in turn to train their peers. The project also resulted in sensitization modules for teachers, which should help in developing discussions about gender stereotypes in teaching materials. In addition to this project, ESE also initiated the project “Violence against women – Violation of human rights”, which aimed to raise the awareness of teachers and pupils about violence against women.

Similar projects were implemented in Bosnia and Herzegovina and Albania as well. In Bosnia and Herzegovina, the subject “Democracy and Human Rights” was introduced recently. It includes various themes, domestic violence being one of them. The Albanian Centre for Population and Development implemented a project, “To reduce gender disparities in the districts of Vlora, Shkodra and
Elbasan as a means of community development”, from September 2004 to September 2005. The goal of the project was to promote women’s rights and to contribute to the education of adolescents, especially boys, so that in the future they would become promoters of the efforts to improve the legal status of women and girls. In the context of this project, 48 boys and 42 girls, 90 high school teachers and university professors were trained; the trained people then conducted a number of workshops with 375 people from the community. Along with these activities, a number of posters and copies of a quarterly newsletter “Adolescent”, which aimed to raise awareness and provide information about gender issues and women’s rights, were disseminated in the three districts. The publication of a manual “Adolescents and Gender” for the teachers was especially significant.

NGOs also conducted a number of awareness raising training sessions for various professionals who are in a position to get in touch with victims of domestic violence.

The Serbian national study stressed that training sessions are most regularly attended by police officers and social workers, while prosecutors and judges appear to be the least interested. In Serbia, these programs started as attempts to achieve basic sensitization, but later they became more focused on changing the model of intervention and also included the creation of manuals and protocols about acting in situations of domestic violence. As an example of good practice, the network of governmental and non-governmental organizations called “The Network of Trust” is mentioned, which was established by the Incest Trauma Centre NGO. One of the aims of this network was the sensitization of various professionals. A total of 114 police officers and social workers from 14 social work centres, as well as representatives of schools, health services and teachers of police schools attended training sessions in 2002. This project is ongoing and several hundred officials (police officers, social workers, representatives of schools and teachers in police schools, etc.) have been trained so far.

The Serbian study also mentioned the project “For life without fear”, which was implemented by the Autonomous Women’s Centre in cooperation with the City Centre for Social Work. It trained police officers and social workers from all municipalities in Belgrade and resulted in the creation of a protocol about acting in situations involving domestic violence, as well as in a model for recording domestic violence cases. The Autonomous Women’s Centre also held training sessions for health professionals with the aim of introducing standardized protocols for documenting injuries resulting from domestic violence.
In Croatia, the only NGO which trained state officials was the Society for Psychological Aid. This organization held 49 seminars for more than 600 participants in Croatia, and also implemented the same programme in Macedonia and in Bosnia and Herzegovina. An especially significant outcome of these training sessions was the book *Domestic Violence*, written by Professor Marina Ajdukovic and Gordana Pavleković, which is also accepted as a textbook for university students.

Within the framework of the project “Supporting Women`s Human Rights in the Western Balkans”, a training session for 40 representatives from 20 NGOs working in the field, organized by UWOM, was held in December 2004. The representatives were trained on domestic violence issues. In 2005, UWOM held a national seminar with the representatives from the five centres for social work from five cities of the Republic of Macedonia as well as with NGO representatives. In addition, UWOM held educational workshops for police officers.

In Albania, the Centre for Legal Civic Initiatives, in cooperation with the Magistrate School, implemented a one-year project (2003-2004), “Training the judges and prosecutors on domestic violence cases”. After the modules and training programmes were compiled, eight two-day training courses were held, two in Tirana and the others in other districts. About 300 judges, prosecutors, attorneys, police officers and social workers participated. The objectives of the training courses were closely linked with the protection of women and children, victims of domestic violence and the punishment and education of the perpetrators.

Since 1999 an Albanian NGO, the Gender Alliance for Development Centre, has held training courses on gender and development with various target groups, representatives of police forces, judges, lawyers and journalists. In 2003 the above-mentioned NGO held three training courses aiming at sensitizing journalists and developing their reporting skills on issues such as gender, gender violence and HIV/AIDS. A total of 20 journalists, representing the national newspapers and television stations, were trained on advanced techniques of reporting on issues of gender and domestic violence. Since its establishment in 1993, the Albanian Centre for Population and Development has held numerous training courses with health care providers regarding the improvement of their services, on how to distinguish the marks of violence exerted against women and girls as well as awareness-raising about domestic violence, so that they keep the correct attitude towards the victims. In 2004 alone, they trained 200 health care providers.

In Montenegro, SOS Hotlines from Podgorica and Nikšić, as well as the NGO Sigurna ženska kuća (Women’s Shelter) held a number of training sessions on domestic violence for police, judges, prosecutors, health care professionals,
teachers and local authorities. The NGO Sigurna ženska kuća also held a train-the-trainers seminar for 20 policewomen, 18 of whom earned training certificates.

2.2. Protection and support

The protection of victims is one of the most important activities of NGOs in all countries included in research. It includes various ways of providing emotional support, psychological assistance, legal aid, legal representation, information, economic empowerment and other ways of helping women victims of domestic violence. The national report for Montenegro also mentioned psychosocial support offered to children from the families who have experienced violence, implemented by the Podgorica SOS hotline. In Serbia, Montenegro and Albania, support is also available to battered women who killed their abusers, i.e. to women in prison. Programmes for abusers that are operated by NGOs exist only in Croatia and Bosnia and Herzegovina.

NGOs offer protection and support through shelters, SOS hotlines and counselling services. Although the numbers of shelters and other services for victims of domestic violence have increased recently, they are still far from being sufficient to cover the needs of all victims.

In Serbia there are 30 SOS hotlines and counselling services, as well as seven shelters (three in Belgrade and four in other towns). The shelters can accommodate 82 women and children. Among the countries included in the research, there is an SOS hotline for disabled women only in Serbia (operated by the NGO Out of Circle). The only programme for battered women who kill their abusers in Serbia is run by the Victimology Society of Serbia; it includes monitoring of trials, humanitarian aid, as well as direct emotional support and information offered to women in prison. After one woman committed suicide in prison in 2002, the Victimology Society launched a campaign for the release from prison of battered women who killed their abusers. The campaign is called Amnesty for Victims and it resulted in six women being released from prison and two women having their sentences reduced. The Victimology Society also provides the only victim support service available to female and male victims of crime, including victims of domestic violence, which offers emotional support, information and referrals.

The results of data collected through the distribution of the questionnaire specifically constructed to be used in this research show that in Croatia there are four shelters and one reception centre run by NGOs, which can accommodate 73 women and 33 children. These data also show that there are 24 SOS hotlines,
which mainly offer psychological support in broader sense, although some of them are specialized to support victims of domestic violence.

In Macedonia, ESE operates three centres for legal aid covering different regions. Macedonia also has seven SOS hotlines and only one shelter run by an NGO. The shelter accommodates 25 people. The first SOS hotline in Macedonia was established in 1992 on the initiative of Ms Savka Todorovska, at that time the president of the Union of Women of Skopje. In March 2005, this hotline became the National SOS Hotline for women and children victims of violence; it is based on the agreement between the Union of Women of Macedonia (UWOM) and the Ministry of Labour and Social Policy. The initiative for the establishment of the National SOS hotline came from UWOM. In addition, there is women’s temporary shelter, which functions as part of the National SOS hotline and where victims in a situation of acute violence can stay for 24 plus 24 hours. Since 2003, UWOM has also operated an SOS hotline and counselling centre for young victims, the Open Space youth centre.

In Bosnia and Herzegovina there are six shelters run by NGOs. Apart from victims of domestic violence, some of these shelters also accommodate women and children victims of war trauma. There are also nine SOS hotlines operated by NGOs. Recently, representatives of NGOs have appeared and are accepted as expert witnesses before the courts in domestic violence cases. This is a new development.

In Albania, the only two shelters are run by NGOs. Apart from these two shelters, there are 13 counselling centres for women and girls that offer both telephone support and direct support. The Centre for Legal Civic Initiatives offers free legal aid and legal representation before the court.

The first Counselling Centre for Women and Girls was established in Tirana in 1996. It started as a project of the Association “Refleksione”. A priority of this Centre has been the geographical extension of its activity in order to facilitate the access of as many battered women and girls as possible to this service First two affiliates were established, one in Shkodra (the largest northern district of Albania) and the other one in Pogradec (a district which has a very strategic position with regard to its connection with other south-eastern areas). Later on, in 2001, a new affiliate of the Counselling Centre for women and girls was established in Berat (a southern district, also located strategically with regard to the access for women and girls living in the South).

During 2003-2004, the Association “Refraction”, after compiling the research paper “Creating Opportunities for Sentenced Women”, implemented a project for the women prisoners of Prison 325 in Tirana. The project mainly consisted
of offering psychological counselling to imprisoned women and supporting some of them to participate in a training course provided by the National Employment Service. It also identified women’s needs for legal assistance, housing (after their release) and referred them to relevant service providers. In order to help imprisoned mothers to develop and maintain relations with their relatives, especially with their children, the Association contributed to the reconstruction of the Mother and Child meeting room. For a period of one year (2003-2004), 60 imprisoned women managed to meet 128 children in that room. The Independent Forum of Albanian Women contributed to the vocational training of the women in prison by helping them to prepare for their future life out of prison.

In Montenegro there are two shelters and nine SOS hotlines. During 2001, SOS hotlines established the network in order to have mutual support in reaching common goals throughout the country. Since 1999, volunteers of the SOS hotline from Podgorica have offered support to all women prisoners, including workshops and self-help groups, vocational training and legal and humanitarian aid.

In all countries, NGOs that offer support to domestic violence victims face the problem of the lack of stable and adequate funding, the result of which is that services often cease to exist after the project funding ends. In two towns in Bosnia and Herzegovina, Banja Luka and Trebinje, for example, women’s NGOs secured funding to purchase the houses for shelters, but did not manage to get funding to pay for their rebuilding and daily expenses. As a result, the shelters did not open. However, the national reports also provide examples of shelters and SOS hotlines which, thanks to the enthusiasm and voluntary work of their staff, managed to survive despite insufficient or terminated funding.

2.3. Collection of data/research and monitoring

As mentioned previously, NGOs had an important role in initiating and conducting research on domestic violence in the countries included in the research. These NGOs did research on the prevalence and characteristics of domestic violence, but as we mentioned in Chapter II, this research, with some exceptions, is more important as an awareness-raising tool than as a source of reliable data. In Serbia, NGO research also includes research on battered women who kill their abusers and other women in prison.

All national studies suggest that NGOs that support victims of crimes often have their own data base and statistics. These statistics are also used as indicators of prevalence and trends and, as such, as a tools for awareness-raising. However,
in most countries the NGOs use different methods of data recording and analysis, which makes it very difficult to compare the data. As an exception, we should mention the uniform data recording methods used by the SOS hotlines in Montenegro. At the end of each year, these data are compiled, analyzed and published as data about the domestic violence cases dealt with by SOS hotlines throughout Montenegro. As mentioned in the national study of Montenegro, the statistics of the SOS hotlines network are the most comprehensive data about domestic violence in Montenegro.

In some countries (e.g. Albania, Serbia and Montenegro), research on the implementation of legal norms related to domestic violence was carried out by NGOs. For example, in Albania, the Centre for Legal Civic Initiatives (CLCI) monitored court practices in domestic violence cases for the period 2001-2002 in the First Degree Courts of Tirana, Vlora and Shkodra Districts – the largest courts at this level. The Centre monitored 1502 civil cases and 388 criminal cases. This monitoring enabled the interpretation of the data and the detailed analysis of a significant proportion of the court verdicts. The Centre also implemented the monitoring project “To improve the activity of the bodies of criminal procedures and the court for a better enforcement of the laws that punish and prevent domestic violence”. Similarly, the Women’s Research Centre from Niš (Serbia) and the SOS Podgorica (Montenegro) conducted research on the implementation of the criminal code provisions on domestic violence.

In Albania and Serbia, an analysis of the media reporting on domestic violence cases was conducted. The national reports for most of the countries also mentioned other ways the NGOs monitor the media’s approach to domestic violence (e.g. through collection of press clippings) and the implementation of laws. In Macedonia, UWOM is monitoring the media presentation of women and gender.

Since 1996, the Gender Alliance for Development Centre (GADC) from Albania has been monitoring press articles about women and children and gender issues. In the framework of a joint project of the Network against Gender Violence and Women’s Trafficking, the GADC published a report titled “Print media on gender violence for the year 2000”. The articles of the daily press were monitored and archived according to keywords so that they could be used by students, researchers and institutions. Considering it as a positive experience, the Centre continued with the same activity for the year 2003 and published “Monitoring Media on Domestic Violence – 2001 and 2002”. It continued monitoring the print media for the period January – December 2003 on a wider scope and published the report “The Perception of Print Media Regarding Gender Issues in Albania”.

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3. Advocating better implementation of international standards

In all the observed countries, women's NGOs have played and are still playing the key role in combating domestic violence and introducing related international human rights standards in the national legislation. NGOs have taken on a role that should be the obligation of the state and state institutions: urging and advocating the implementation of international standards from ratified international human rights documents. The positive changes in implementing, protecting and promoting women's human rights and combating discrimination and violence against women that have been noted in all the countries in the region are mainly due to women's actions. This is especially obvious in the field of combating domestic violence, since states would have been much slower in broadening the scope of their obligations to the private sphere without being pushed by the women's movement and NGOs.

Without a doubt, the existing gender equality laws, anti-discrimination laws, special laws on protection against family violence, domestic violence being made a criminal offence – all of these legal innovations in national legislation from the 1990s until now are the result of women's struggle for the implementation and protection of women's rights and the elimination of discrimination against women. The detailed and extensive chapters devoted to the role of NGOs in combating domestic violence in the national in-depth studies support this statement. In the following subsection we will elaborate on the most important contributions of women's NGOs in combating domestic violence by their advocacy of the implementation of international human rights standards.

3.1. Activities for introducing international standards in national legislation

The women's NGOs in Croatia were the first in the region which succeeded in having domestic violence sanctioned as a criminal act and which successfully advocated the adoption of a special law on Protection Against Family Violence. Their advocacy campaign led to legal changes in the Criminal Code in 2000 by criminalising violent behaviour in the family. Most recently, in 2005 and 2006, they have been active in lobbying for new changes to the Criminal Code, namely to increase the imprisonment for violent behaviour in the family. The representatives of the women's NGOs are present in the working group appointed by the government for drafting the legal changes.
There are several women's groups (B.a.b.e.: “Be active, be emancipated”, the Autonomous Women's Centre Zagreb, and the Centre for Women Victims of War “Rosa” are the most active ones) which regularly monitor new laws and initiatives for amendments to the relevant legislation (such as the special law against family violence, the Criminal Code, Family Law, the Law on Misdemeanours and the Law on Gender Equality). They monitor the implementation of the laws and react to legal changes proposed by the government by sending their observations and proposals for improvement to the relevant ministries. In addition, they support these activities through a media campaign.

These women's NGOs participated in drafting the Law on Protection Against Family Violence. They initiated and led a broad national advocacy campaign aimed at introducing the public to the importance, goals and intentions of the new legislation. Their recommendations have also been introduced to the parliamentary committees. They were also active in drafting the policy documents, such as the National Strategy Against Violence in the Family and writing reports concerning violence against women, such as the National Shadow Report on CEDAW and the reports for Beijing +10. As the present report was being written, the NGO B.a.b.e. was participating in the working group drafting amendments to the Law on Protection Against Family Violence.

In 2002 the women's groups made comments on the draft of the Family Law, demanding the elimination of its defects. As a result, the scope of family members that may be defined as victims or perpetrators of domestic violence was broadened to all the adult members of the family. Until then, according to the definition in the Family Law, only children could be victims and only parents could be perpetrators.

In Bosnia and Herzegovina, women's organizations in both entities have also played a crucial role in adopting new gender-sensitive legislation. Under this pressure and based on the proposals of the NGOs, the following legal changes related to domestic violence were introduced at the level of the State, the entities and the Brcko District:

- The Gender Equality Law of Bosnia and Herzegovina (2003) – forbids discrimination based on gender and sexual orientation, and guarantees equal opportunities to all citizens, men and women, in both the public and private sphere. This is the first law in which NGOs participated in its development as equal partners with the government. Bosnia and Herzegovina was the first State in the region that adopted this kind of law.
- Incrimination of domestic violence introduced by changes of the Criminal Codes (2003) of both entities.
• The Special Law on Protection Against Family Violence at the entity level (adopted in 2005 in both entities) introducing measures to protect victims of domestic violence.

• The Law on Social Care in the Herzegovian-Neretvian Canton.

• Amendments to the Family Law of the Federation of Bosnia and Herzegovina.

• Amendments to the Law on Passports – on the occasion of issuing the passport to a child, it is not obligatory to ask for the agreement of both parents if they are divorced.

In addition, the NGOs in Bosnia and Herzegovina successfully advocated integrating the principle of gender equality in the national legislation, and they introduced gender quotas in the Election Law. At the present time there is also an initiative to amend the Constitution and the Election Law and to make gender a constitutional element, besides nationality. According to the present constitution, the constitutive elements of Bosnia and Herzegovina are nationalities: Serbs, Bosnians, and Croats. This leads to the election of the parliamentary, executive and judicial authorities based solely on nationality quotas, thus ignoring the equal representation of both sexes.

In 1999 and 2004, women’s NGOs from both entities participated in preparing the National Shadow Report on CEDAW, which focused on the state’s obligations in the field of implementing and protecting women’s rights according to international standards. In 2004 women’s NGOs adopted the Platform for Action aimed at advocating consistent implementation of the Gender Equality Law. In 2005 the NGOs participated in preparing the National Action Plan for Advancement of Women in Bosnia and Herzegovina, as well as the Strategy for Implementation of Gender Equality.

The necessity to compile a report on the situation of Albanian women based on the CEDAW encouraged the Albanian Family Planning Association (now the Albanian Centre for Population and Development) and the Independent Forum of Albanian Women to compile and publish the “NGO Shadow Report” for Albania. (January 2002). This report consists of an analysis of the enforcement of Albanian women’s rights and recommendations for the relevant institutions to improve the status of women in Albania.

The greatest success of the civil sector in combating domestic violence in Serbia is the result of the legal initiative made by the Victimology Society of Serbia (in Belgrade) and the Women’s Research Centre for Education and
Communication (in Niš), and its support by women's groups and NGOs. In 1998 the Victimology Society of Serbia developed a Model of Legal Protection Against Violence in the Family. It introduced a comprehensive and coherent system of legal protection against family violence based on relevant international standards, best practices in the comparative legal systems, and a complete system of civil and criminal protective measures. The legal initiative was introduced to the public and was followed with the campaign on increasing public sensitivity to gender issues, educational seminars on violence against women and lobbying for legal changes. After several years of campaigning by women's groups, domestic violence became a criminal offence in 2002. Recently, the Victimology Society of Serbia launched another initiative for legal changes. These are related to the Law on Misdemeanours and the Law on Public Order. The proposed changes would make violence in the family a special misdemeanour act in the Law on Public Order. In that case, domestic violence would become a punishable act as a misdemeanour, as well as a criminal act. The scope of protected persons would broaden to include those in intimate relationships; the perpetrator can then be prosecuted by a misdemeanour court in a case of a threat of violence, and not only for a serious threat as required by the Criminal Code; the proposed sanctions are a fine and imprisonment for up to 60 days; the protective measures of banning contact with the victim and obligatory therapy for violent persons are also proposed. The proposed changes to the Law on Misdemeanours also include new protective measures: banning contact, obligatory psychological treatment without imprisonment, obligatory psychological treatment and protection in the health institution, and obligatory therapeutic treatment for violent persons. The proposed protective measures have been worked out in detail, as practice has shown that there is a great need to develop effective protection for victims.

The integration of the issue of domestic violence into the newly-adopted Family Law (2005) of the Republic of Serbia is also primarily the result of the pressure of women's NGOs. They have participated in writing a legal analysis of the draft law, developing a broader definition of domestic violence and legal measures for protecting the victims. During the lobbying for legal changes, the women's groups cooperated with the governmental Gender Equality Council.

The legal regulation of family violence in Macedonia is also the result of the initiative and lobbying of civic groups. The Association for Emancipation, Solidarity and Equality of Women in Macedonia (ESE) initiated the adoption of legislation on domestic violence that would recognize it as an issue that needs a serious and consistent approach from the State. In drafting the legal provisions this NGO used the best practices of other countries and relevant international
standards. This legal initiative was followed by comprehensive activities that included educational seminars and training, a public debate and lobbying.

The Union of Women's Organizations of Macedonia (UWOM) participated in the preparation of the National Action Plan for Gender Equality. It was prepared by the Unit for Promotion of Gender Equality within the Ministry of Labour and Social Policy, and adopted by the Government in 1999. One of the NAP’s strategic goals was combating violence against women in private and public life. UWOM initiated the establishment of the Unit for Promotion of Gender Equality in 1997. This NGO also participated the working group for initiating and preparing the strategy for introducing the Equality Law in 2005.

Albania has no special law on protection against domestic violence, but it is expected to get one very soon, due entirely to women's action. Ten major Albanian NGOs joined forces to prepare the draft law against domestic violence. The initiative was presented in October 2004 to the government, UN agencies, and OSCE, under the name “The Alliance for Promotion of Legal Initiatives Against Domestic Violence”, led by the Citizen's Advocacy Office. The initiative came about due to the lack of provisions against domestic violence in the new Family Law that entered into the force in December 2003. The draft law On Measures against Violence in Family Relations was presented to the Albanian parliament by citizens' petition. Twenty thousand Albanians had signed the petition presenting the draft law. The advocacy activities of NGOs were accompanied with broad awareness-raising campaign throughout the country and by a lobbying campaign directed at the policy makers.

Women's NGOs in Albania have been constantly present for two decades, advocating and lobbying for the integration of international human rights standards into laws and their implementation from a gender perspective. In 1994, twelve women's organizations established the Women's Legal Group, a coalition of advocates for women's rights and gender equality. Its experts reviewed the Criminal Code with respect to domestic violence, rape and assault, and the Law on Criminal Procedure concerning the treatment of female victims of crimes. The Centre for Legal and Civic Initiatives has contributed to the review of a number of laws from gender perspective. In cooperation with the Ministry of Justice, this Centre has made a number of recommendations on the changes to the Law on Criminal Procedure, the Criminal Code, and the Law on the Organization and Function of the Criminal Court. Another step forward in the protection of women's rights was the approval of the Gender Equality Law in March 2004. In 2005, this NGO reported on its monitoring of the draft laws from gender perspective.
As a result of the lobbying and pressure from the women's movement in Albania, a number of laws have been improved, thereby benefiting the legal status of women. One of the most important successes was the public awareness campaign on the new Family Law in 1998-1999, which was organized by the Gender Alliance for Development Centre (then known as the Women's Centre). The goal was to adapt the European standards to the Albanian environment and contribute to promoting and protecting women's rights. During the latest changes to the Family Law, the NGOs have succeeded in including measures against violence that entitle the spouse who suffers violence to require the court to remove the violent spouse from the conjugal residence. In 2004, the Centre for Legal and Civic Initiatives launched a six-month campaign to inform the public, and women in particular, about the innovations in the new Family Law.

3.2. Activities to improve the effectiveness of legal remedies and procedures

In order to improve the legal remedies and procedures for victims of domestic violence, Bosnian NGOs monitor the implementation of current provisions and propose amendments to existing regulations or establishing new ones. The NGOs observed inconsistency in enforcement of the Criminal Code of the Republic Srpska and the Federation of Bosnia and Herzegovina; as a rule, the courts reach mild verdicts on perpetrators, sentences of imprisonment are very rare, the criminal proceedings are very lengthy and there are no effective protective measures for victims. Taking these defects of court practice and the legal loopholes into account, the NGOs initiated the adoption of the special law on domestic violence. The intention was to introduce protective measures such as temporary removal of the perpetrator from the family home or apartment aimed at separating him from the victim.

Lobbying for changes to the Family Law, the Croatian women's NGOs commented on court practices. The Family Law transferred a number of

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72 In the Bosnian municipality of Modrica, the court has not imposed any prison sentences at all for acts of domestic violence.

73 For example, a woman N.N. from Zenica (in Bosnia and Herzegovina) waited for 34 months for the end of the criminal procedure that was brought against her violent husband due to severe physical injuries. Such long proceedings are more the rule than the exception in court practice.

74 The representatives of one centre for social care in Bosnia and Herzegovina reported a case of domestic violence where the violent husband was allowed to stay in the house while his wife and eight children were thrown out on the street and were forced to find shelter elsewhere.
competencies from centres for social care to the courts. However, the NGO B.a.b.e. warned that due to the slowness and length of the proceedings, the large number of unsolved cases, and the inadequate court system, citizens would have great difficulty realizing their rights without special family courts or special court departments for family issues. Therefore the enjoyment of certain rights, for instance in cases of temporary custody, could be jeopardized.

In Macedonia, two NGOs, ESE and Akcija Združenska, initiated the adoption of the Protocol on Procedures in the Cases of Family Violence. The aim of this Protocol is to enable effective and coordinated activities of all the state and civil actors that deal with the issue of domestic violence. Other governmental and non-governmental organizations were also involved in the process of developing the Protocol, such as the Shelter and the Crises Centre “Nade” (Hope), the National Hot Line Skopje, the Ministry for Labour and Social Policy, the Ministry of the Interior and the Ministry of Health. In the process of drafting the document, other NGOs that deal with domestic violence were also consulted. After the Protocol is adopted, it will be followed by the unification of protection systems in civil and criminal proceedings.

Unfortunately, the cooperation between governmental institutions and civic organizations is not this good everywhere. In Montenegro, women’s NGOs warn that the process of drafting laws related to the protection of vulnerable groups is not transparent and not participatory. Women’s groups are as a rule excluded from this process, as are experts and those who will implement the laws (police officials, prosecutors, judges). As a result, women’s NGOs did not participate in drafting the new Family Law, or in drafting the special law on violence in the family. After the initial draft of this Law was completed in 2005, the Montenegrin women’s NGO Hotline in Podgorica began to gather comments from experts in the field in the country and abroad. This NGO has estimated that the draft law does not respond to the gravity of domestic violence as a social problem, and does not offer adequate protection for women victims of violence. In addition, this NGO monitored the implementation of Art. 220 (violence in the family) of the Criminal Code of the Republic of Montenegro. Its main remarks show that there is a huge gap between the legislation and court practice, and that the state should put more effort into establishing effective protection of victims of domestic violence.

Women’s NGOs in Montenegro have shown their strength and efficiency in advocacy by stopping the Law on Amnesty in 2001. By doing so they succeeded in stopping the amnesty for perpetrators of sexual offences, including those involving minors and helpless individuals as victims. The Hotline Podgorica
and Centre for Girls Ksenija initiated the biggest women's action until then by gathering more than 16,000 signatures from the entire country to stop the proposed Law and introduce an amendment to exclude perpetrators of sexual crimes from amnesty.

To counter the defects in court practice in Albania, the Centre for Legal and Civic Initiatives carried out a study on the legal problems. It contains conclusions and recommendations for the improvement of the activity of the court administration. The recommendations refer to the organization and functioning of the prosecutor's office, execution of the criminal decisions, the rights and treatment of prisoners, the organization of the judiciary and the judicial police.

All the above-mentioned activities of women's groups and NGOs in the field of combating domestic violence have demonstrated the strength and power of women's commitment and advocacy and lobbying for the elimination of violence against women. Their influence on forming the national legislation and legal practice is huge and important in all the countries, without exception. In effect, the women's groups and NGOs take the role of the state in respecting and protecting women's rights and promoting gender equality.

However, the national in-depth studies also referred to their weaknesses, which can be eliminated by capacity building. Many women's groups do not have enough capacity to monitor the work of governmental institutions and the implementation of the relevant laws, and to propose legal changes. This is especially the case in the rural areas.

In addition, in all the observed countries women's NGOs have shown inadequate knowledge about using international law to combat domestic violence. For example, the survey of civic organizations in Montenegro, provided by the NGO Women's Action, showed that only 10% of the NGOs are familiar with the standards of the European Union or other important international human rights documents, while 40% know them only partially. The national in-depth studies support this finding. Women's NGOs mainly use the most well-known international women's rights documents, as the CEDAW, the DEDAW and the Beijing Platform for Action when advocating the elimination and prevention of domestic violence. The majority of NGOs are unfamiliar with the long list of other international documents that provide standards in this field. This is regrettable, since they could use these documents as an excellent and very effective tool to force governments to address their commitments and implement international standards that they have ratified.
4. Conclusions

Non-governmental organizations have contributed greatly to the public visibility of the domestic violence problem, and most of the developments in government policies in the region are actually the result of the NGOs’ advocacy. In addition, the NGOs continue to have a central role in the protection and support of victims of domestic violence in the entire region. The NGOs also had an important role in initiating and carrying out research on domestic violence in the countries studied.

Positive shifts in introducing legislation aimed at combating domestic violence and protecting the victims are the results of the efforts of the women’s movement and women’s NGOs. In all the countries in the region, they have taken over the role of the State in urging and advocating the implementation of international standards in the ratified international human rights documents. They also engaged in many campaign, lobbying and advocacy activities to improve the effectiveness of legal remedies and procedures. To this end they monitor the implementation of the relevant legislation and initiate and lobby for legal changes. However, despite these successes, the majority of women’s NGOs are not well-informed about the international human rights documents in this field. Besides the CEDAW Convention and the Beijing Platform for Action, they rarely use other international documents as a lobbying tool.
CONCLUSIONS

In general, the governments in the countries in the Western Balkans only partially comply with their obligations from the CEDAW Convention and other international human rights documents with respect to domestic violence. Some positive shifts have been noted, but the process is slow, and practice lags behind the positive legal changes aimed at preventing and sanctioning domestic violence and protecting the victims.

All the countries have constitutional provisions that forbid discrimination based on gender and that guarantee equality before the law to all citizens regardless of sex. Their constitutions prohibit torture and inhuman and cruel treatment. Throughout the region, the gender equality legislation and mechanisms are in the process of construction. Nevertheless, women's human rights are not being adequately enforced and effective protective mechanisms have still not been developed.

On the positive side, there is the penalization of domestic violence and the possibility for the public prosecutor in each country to file the charge ex officio. This form of violence has been made a specific criminal offence in all the countries except Albania. Specific laws that are explicitly aimed at combating domestic violence have been adopted in Croatia, both entities of Bosnia and Herzegovina, the Republic Srpska and the Federation of Bosnia and Herzegovina, while the draft laws are being developed and are expected to be passed soon in Albania and Montenegro. All recently-adopted legal changes in the region stress the obligation to report domestic violence, and the failure of state officials to act in accordance with the law is qualified as a misdemeanour. Because these legal changes have been recently introduced, time will show whether they will be properly implemented.

However, this specific legislation does not provide for criminal sanctions, as demanded in the international standards, but qualifies domestic violence as a misdemeanour. The main sanctions for perpetrators are pecuniary and protective measures. Moreover, adequate protection of victims during civil proceedings is not provided, nor are support services, shelters and preventive measures. Criminal sanctions for perpetrators are usually low, the process is long and discourages victims from filing charges or submitting a complaint. The governments do not fulfil all their obligations that derive from international law regarding legal procedures and remedies which offer protection against domestic
violence. Civil remedies exist, but mostly they are inadequate. Divorce proceedings and child custody proceedings are not simplified in cases of domestic violence. The practice of courts shows that the burden of proof for sexual offences is still heavier than for other crimes.

The definitions and descriptions of the acts of domestic violence in the legislation are not yet completely harmonized with the criteria for the formulation of an appropriate definition that derive from international documents. They do not make clear that this is a specific form of gender-based violence which is not a private matter, but a public matter of special concern. However, in the policy documents the governments are beginning to recognize that the victims of domestic violence are predominantly female.

The governments make very few comprehensive and systematic efforts toward undertaking general preventive measures regarding domestic violence, they do not fulfill their international obligations regarding the protection of victims of domestic violence and the situation regarding research and monitoring is still very far from the international requirements. Despite some positive developments, all these activities are still predominantly initiated and conducted by NGOs, who do not get appropriate funding from the governments.

However, the recent effort toward the establishment of gender equality mechanisms may be the correct precondition for the development of international standards, especially if followed by national strategies and plans of action. Similarly, some recent trends toward greater involvement of governments in the protection of domestic violence victims have been noted.

Governments must contribute more actively to raising public awareness about domestic violence and ensure that education is used for the prevention of domestic violence and that the media respect women and promote respect for them. The education and training of professionals, including social workers, medical staff, police officers, judges, prosecutors and government officials, on gender and domestic violence is especially important and should be undertaken systematically by the governments. It is important that governments actively work towards the development of rehabilitation programmes for victims as well as for perpetrators.

In all the participating countries, women's NGOs played a crucial and dominant role in combating domestic violence and protecting the victims. By urging and advocating the implementation of international standards in the ratified international human rights documents, they have taken on a role that should be the obligation of the state and state institutions. They provide protection and support through shelters, SOS hotlines and counselling services, they conduct
various activities related to raising the awareness of the public and state officials, and they collect data and perform research. Positive legal changes in this field are the result of the pressure and systematic activities of women's groups and NGOs. They provide training and other activities aimed at introducing international legal standards in legislation and raising the effectiveness of legal measures and remedies. Despite these successes and tremendous positive results, the majority of them are not sufficiently familiar with all the international documents and related standards in the field of domestic violence, with the exception of the CEDAW Convention and the Beijing Platform for Action.

The cooperation of the governments with the women's movement and NGOs must be developed further until it becomes comprehensive and systematic. In addition, the governments should support the NGOs financially in a systematic and substantial way.
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APPENDIX I

Support Women’s Human Rights in the Western Balkans

CHECKLIST
of INTERNATIONAL NORMS/
INSTRUCTIONS WITH RESPECT
to DOMESTIC VIOLENCE

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Leiden, December 2004

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List of abbreviations

CEDAW: Convention on the Elimination of all forms of Discrimination Against Women

Beijing + 5: Beijing plus 5: A Special Session on Women 2000: Gender Equality, Development and Peace for the Twenty-First Century

DVAW: The UN Declaration on Violence against Women

GR 19: General Recommendation number 19 of the CEDAW Committee

res. 2003/45: Commission on Human Rights resolution 2003/45 Elimination of violence against women

rec. (85)4: Recommendation No. R(85)4 of the Committee of Ministers to Member States on violence in the family


rec. (90)2: Recommendation No. R (90) 2

rec. (2002)5 Recommendation Rec (2002)5 of the Committee of Ministers to member states on the protection of women against violence


Resolution 1997: Resolution on the need to establish a European Union-wide campaign for zero tolerance of violence against women

Recommendations of the Expert Forums: Recommendations of the Expert Forums of the EU Conference on violence against women

Meeting: EU Expert Meeting on Violence Against Women
Introduction

Legal and policy norms with respect to domestic violence

This Checklist contains most\(^\text{75}\) of the relevant international legal and policy norms that have been issued by the United Nations, the Council of Europe and the European Union in the field of domestic violence or combating domestic violence.\(^\text{76}\)

By legal norms we mean norms that are contained in documents that have a certain legal force, which can be used in legal procedures and/or their implementation and which are monitored by international bodies. Mainly these are the norms that can be found in international treaties (like the CEDAW Convention) and in the general recommendations or concluding comments of treaty bodies, or treaty-monitoring bodies (like the CEDAW Committee).

By policy norms we mean directions for adequate and effective public policies that are contained in the recommendations, resolutions or declarations of various international bodies (like the Council of Europe or the European Parliament) that have no binding legal force. Although they are not legally binding, these norms can be important for the establishment of the concrete obligations that states have in the field of combating domestic violence.

The relationship between the legal norms and the policy norms is that the latter give more concrete content to the former. To give an example, the CEDAW Convention does not contain a specific provision about violence against women. However, in General Recommendation number 19, the CEDAW Committee explained that gender-based violence is a form of discrimination against women that falls under the scope of this Convention. In the same document, the Committee also included family violence in the concept of violence against women. In Article 24 sub b of General Recommendation no. 19, the CEDAW Committee states that States Parties:

...should ensure that laws against family violence and abuse, rape, sexual assault and other gender-based violence give adequate

\(^{75}\) See the Appendix, which contains a summary of the documents that we have assembled and an explanation about which of them are included in this Checklist.

\(^{76}\) The documents were assembled by Zahrah Achouak el Idrissi under the supervision of Prof. Rikki Holtmaat. For a list of the documents that were included in the analysis, see the Appendix. Most of the documents are mentioned on the website www.stopvaw.org in the section on domestic violence. See below for the definition of domestic violence that is used in the current study.
protection to all women, and respect their integrity and dignity. Appropriate protective and support services should be provided for victims. Gender-sensitive training of judicial and law enforcement officers and other public officials is essential for the effective implementation of the Convention.

In various documents at the UN level or from other international organizations, the concepts of adequate protection or appropriate protective and support services are defined. This means that in these policy documents a State Party can find concrete directions as to how to fulfil its obligations under the CEDAW Convention.

The construction of this Checklist

The choice of relevant aspects

The Checklist has been constructed after the documents that we have found were analyzed according to the following questions:77

1. Does the document contain a definition of domestic violence? If so, what is it?
2. Does the document prescribe/recommend that certain legal norms with respect to domestic violence should be in place?
3. Does the document prescribe/recommend that certain legal remedies or procedures78 with respect to protection against domestic violence should be in place?

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77 This list of questions is derived from the Matrix on vaw-norms that was constructed by Ineke Boerefijn et al. in the Report: I. Boerefijn, M.M. van der Liet-Senders & T. Loenen, Het voorkomen en bestrijden van geweld tegen vrouwen. Een verdiepend onderzoek naar het Nederlandse beleid in het licht van de verplichtingen die voortvloeien uit het Vrouwenverdrag, Den Haag: Min. SZW 2000. A summary of this report has been published as an appendix to the third periodic report (CEDAW C/net/3, 25th session) of the Netherlands to the CEDAW Committee. To the list in this Report we added the obligation to assemble data and to monitor the effectiveness of legislation and policies.

78 A remedy is defined as a possibility to take legal action. Some remedies are directly available to the victim (e.g. the possibility to request an injunction that prohibits the man from coming near the victim's house); some remedies are only indirectly at the disposal of the victim (e.g. a criminal law procedure has to be started by the public prosecutor). In the latter case she has only limited power to decide whether the remedy is invoked or not. Procedures are the necessary formalities that accompany the legal remedy. For example, the criminal court procedure may
4. Does the document prescribe/recommend that certain preventive measures should be taken?
5. Does the document prescribe/recommend that certain protective measures should be taken?
6. Does the document prescribe/recommend that data about the prevalence or the nature of domestic violence should be collected and/or that the situation with respect to domestic violence should be monitored?

On the basis of this analysis we described the relevant norms/policy directions in one document (the draft Checklist). Apart from these specific topics there were also some very general recommendations to be found in the international documents. One example of such a recommendation is to ratify or accede to the CEDAW Convention or withdraw reservations to that Convention (see rec.1450 (2000)). Another example is the recommendation to develop national plans of action for combating violence against women or more specifically domestic violence (see DVAW and Res.2003/45) or the recommendation that Member States to the Council of Europe should regard domestic violence as a national political priority and deal with it in a broader political framework, with government, parliament and civil society involvement (Rec. 1681(2004)). A final example of a very general recommendation is to draw on the good practice of other member states (Rec. 1681(2004)). We have not included these very broad and general items in our Checklist.

A first draft of this Checklist document was used during the Round Table in Albania (November 2004) to create a Checklist of international norms/guidelines with respect to domestic violence.

**The choice of a definition of domestic violence**

The first step in this process was to define what we mean by domestic violence for the purposes of this in-depth study. On the basis of the definitions found in the international documents (see below, Section 1) we agreed on the following definition of domestic violence:

*For the purpose of this research, the term domestic violence is defined as any form of physical, psychological and sexual violence require that the woman had made an official complaint at the police station within a certain period of time after the violence had occurred.*

79 By preventive measures we mean general measures that should help prevent the occurrence of domestic violence, other than the legal measures (legal norms prohibiting domestic violence).
80 By protective measures we mean measures aimed at the protection of the individual victims of domestic violence other than legal measures (effective legal remedies and procedures).
against women occurring within a family, household or intimate relationship.  

In several documents a broader definition of domestic violence is being used, including violence against children or violence against male members of the family. In these documents the recommendations also cover a broader range of situations. The participants in the Round Table have selected only the items that are relevant to our own definition of domestic violence. This means that some recommendations that are directed at combating incest, for example, have been left out of the Checklist.

The construction of the Checklist

The next step was to arrange the relevant norms/guidelines in each section (legal norms, legal remedies and procedures, etc.) from a general and abstract level to more concrete instructions about how to combat domestic violence. We also tried to arrange the topics on the list according to the source, in the sense that more binding instruments were put above soft law or policy instruments. If items were formulated in a similar way, we combined them (choosing the clearest wording). For each item on the Checklist we included the source(s) of the norm/direction.

The use of this Checklist

In the first stage of the development of the research plan for the in-depth study on domestic violence the Checklist was used to create the structure of the actual study of the national situation in each of the six countries involved in the project.

For the purpose of this research, the following terms are to be understood as:

- “Women”: adult women, including wives, live-in partners, former wives and partners, female-friends (including those not living in the same household), female relatives (including but not restricted to sisters, daughters and mothers), and female household workers. The term “women” also includes young women/girls aged 15 to 18 in the regions where, due to the tradition of early marriages and early cohabitation, girls of that age become vulnerable and exposed to domestic violence because of their status as a wife in a family and/or a household. The term “women” also includes non-national women, including refugee women; the state should offer protection to non-national women if they suffer from domestic violence and should hold non-national men accountable for acts of domestic violence.

- “Intimate relationship”: a relationship between partners including those not living in the same household.

For the purpose of this research, the acts of physical, psychological and sexual violence occurring within a family and household subjected on children, and acts of economic violence against women are excluded from the scope of the research.
This means that the in-depth study was structured around the same themes as were derived from the international standards concerning two aspects: (1) the national legal situation and the national policies on domestic violence and (2) the approach of NGOs towards combating domestic violence. This means that the two chapters (IV and V) of the national reports that describe the policies of governments and NGOs would contain sections about the following:

- definitions that are in use
- legal measures that are in place/proposed
- legal remedies and procedures that are in place/proposed
- preventive measures that are in place/proposed
- protective measures that are in place/proposed
- collection of data and monitoring legislation and policies and their effectiveness.

During Round Table 3 in Albania, the draft Checklist was used to formulate in detail the questions that must be posed (and answered) in the parts of the study that would provide the materials to write the reports on the national situation (Chapters IV and V). On this basis, a provisional index of these chapters was constructed. This provisional index will serve as a guideline for gathering information and for describing the information that has been found.

In the final stage of the in-depth study (July – November 2005) the Checklist was used to evaluate the factual situation in each country. This means that there would be an assessment of whether the national government was correctly fulfilling its obligations under international law. The central question was: do the international legal and policy standards demand a more active and a more effective approach by the governments of the participating countries towards combating domestic violence? On this basis, a set of recommendations would be formulated as to how the government could/should improve its policies in such a way that the implementation of international standards will be more correct/complete.

In the same way, the activities/strategies that have been developed by NGOs would be evaluated against the background of the norms/directions that are included in the Checklist. We presumed that the Checklist would provide some ideas for new or improved activities and strategies for the NGOs.

The contents of this Checklist

The Checklist contained in the remaining part of this document has been structured according to the list of questions mentioned above.
Definitions of domestic violence

Introduction

This section of the Checklist contains an overview of the definitions (or descriptions) of the phenomenon of domestic violence that we found in the international documents. Apart from the term domestic violence other terms are also often used, such as family violence and violence occurring in the family.

In the final assessment of the situation with respect to the correct implementation of the international norms/directions, the researchers needed to establish whether the governments of the countries involved in the study were using an appropriate definition of domestic violence.

From the definitions or descriptions that we found in international documents, it became clear that international organizations who “declare” something about domestic violence or family violence often use a very broad definition or description. They also often use a method in which they give a list (non-exhaustive) of examples of what can be considered to fall under the concepts of domestic violence or family violence.

For the purpose of legislation such definitions are not really adequate or appropriate, because they leave too much room for interpretation or for discussion about what does/does not fall under the law. On the other hand, such broad and “unlimited” definitions might be useful when formulating new or amended policies and strategies to combat domestic violence. The evaluation of the appropriateness of the definitions that exist on the national level therefore depends on the context in which they are used by the government.

Criteria with respect to the formulation of a definition of domestic violence

In general, some criteria for the formulation of an appropriate definition of domestic violence by the government can be derived from the definitions/descriptions that we found in international documents concerning violence against women or domestic violence:

- The definition of domestic violence should make it clear that this is a specific form of gender-based violence; in this context it is advisable for the government to use the definition of gender-based violence that is prevalent in international documents.\(^{82}\)

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\(^{82}\) See Article 1 of General Recommendation 19 of CEDAW: “Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”
The government should not define the scope of the concept of domestic violence too narrowly, e.g. by excluding violence between a legally-married husband and wife or violence that occurs outside the home (e.g. within intimate relationships).

The government should avoid using the term family violence instead of domestic violence when this means that victims or perpetrators other than members of the (legal) family are not included in the definition. 83

The government should not define the nature of domestic violence too narrowly, e.g. by including only physical violence or explicitly excluding psychological violence; the international documents clearly state that at least three forms of domestic violence should be included in the definition: physical violence, sexual violence and psychological violence.

When other forms of violence (e.g. economic violence) are included in the definition, they should be defined.

The term violence should be defined in such a way that not only physical coercion is included, but also other (more “subtle”) controlling patterns.

If the government wants to include incest in the definition of domestic violence it should state this clearly. 84

The definition/description of domestic violence should make it clear that – although occurring in the private sphere of family or domestic relations – this kind of violence against women cannot be considered to be a private matter which is of no concern to the government. On the contrary, domestic violence should be declared a matter of public concern that requires intervention by public authorities.

If the government intends to include specific forms of violence against women (like rape or sex trafficking) in the concept of domestic violence, it should make clear in what way these forms of violence should be treated differently if and when they occur in the context of domestic or family relationships or in other contexts.

83 This can be derived from the fact that the term family violence is avoided in the most recent documents and/or from the fact that when the term family violence is used it is always explained in such a way that persons other than family members can be included.

84 However, incest with children/minors is a very specific form of violence (or domestic violence) which requires specific legal norms/sanctions and legal remedies and also requires very specific preventive and protective measures. That is why we have not included incest in our own definition of domestic violence.
According to the definitions/descriptions listed below, it is clear that the government must acknowledge the nature and causes of domestic violence. This is especially necessary with a view to developing effective remedies, both in the field of law and in the field of preventive and protective policy measures.

Definitions/descriptions of domestic violence found in international documents

...physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women. (DEDA W, art. 2a and Beijing + 5)...

...physical, sexual and psychological violence occurring in the family, which encompasses, but is not limited to, battering, sexual abuse of women and girls in the household, dowry-related violence, marital rape, female infanticide, female genital mutilation, crimes committed against women in the name of honour, crimes committed in the name of passion, traditional practices harmful to women, incest, early and forced marriages. (res.2003/45, art. 7)

Family violence is one of the most insidious forms of violence against women. It is prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put women's health at risk and impair their ability to participate in family life and public life on a basis of equality. (GR 19, par. 23)

...domestic violence is gender-specific violence directed against women, occurring within the family and within interpersonal relationships. (Special Rapporteur: Framework model legislation)

Domestic violence is the most common form of violence against women and its consequences affect many areas of the lives of victims – housing, health, education and the freedom to live their lives without fear and in the way they wish. This widespread phenomenon is common to all European countries and is not limited to any particular social group or
class. Domestic violence can take a number of forms such as physical assault, sexual abuse and rape, threats and intimidation and should be recognized as a crime. (rec. 1582(2002), art. 1)

...violence occurring in the family or domestic unit, including, among others, physical and mental aggression, emotional and psychological abuse, rape and sexual abuse, incest, rape between spouses, regular or occasional partners and cohabitants, crimes committed in the name of honour, female genital and sexual mutilation and other traditional practices harmful to women, such as forced marriages. (rec.(2002)5, appendix, art. 1, sub a)

The definition of domestic violence should be broadened so that violence against women would include, apart from physical violence, also psychological, sexual and economic violence. It may mean various controlling patterns of behaviour that are not distinctly violent. Domestic violence is a public, not a private issue. (EU Expert meeting)

**Legal norms/sanctions that are obligatory or recommended**

**General**

- Adopt specific legislation about domestic violence, including criminal sanctions and civil remedies (CEDAW).
- Enact and, where necessary, strengthen or amend domestic legislation, including measures to enhance the protection of victims, to investigate, prosecute, punish and redress the wrongs done to women and girls subjected to any form of violence, whether in the home, the workplace, the community or society, in custody or in situations of armed conflict, to ensure that such legislation conforms with relevant international human rights instruments and humanitarian law, and to take action to investigate and punish persons who perpetrate acts of violence against women (Res. 2003/45, art. 14, sub g).
- To take measures to ensure that the victim's interests are not prejudiced by interference between civil, administrative and criminal measures, it
being understood that criminal measures should be taken only as a last resort (rec. R(85)4, par. 11, rec.(2002)5).

Criminal law norms and sanctions

- Revise and/or increase the penalties, where necessary, for deliberate assault and battery committed within the family (rec.(2002)5).
- Penalize incest (CEDAW, rec.(2002)5).
- Penalize marital or conjugal rape (CEDAW, rec.1450 (2000), rec.(2002)5).
- Adopt special laws against stalking (Resolution 1997).

Civil law norms and sanctions

- Develop civil remedies (CEDAW, DVAW).
- Victims should receive appropriate compensation for any pecuniary, physical, psychological, moral and social damage suffered, corresponding to the degree of gravity, including legal costs incurred (CEDAW, rec.(2002)5).
- Simplify divorce proceedings, custody over children and financial compensation (Resolution 1997).

Administrative sanctions and legislation

- Develop administrative sanctions (DVAW).85
- Immigrant women who have been or who are victims of domestic violence should be granted an independent right of residence (rec.1582 (2002), rec.(2002)5).

85 In the DVAW it is not explained what is meant by administrative sanctions. We have seen no examples of administrative sanctions in the case of domestic violence in any of the other documents.
Defence – grounds

- There should be a possibility for victims to appeal to self defence as grounds for avoiding punishment when they commit a crime that is a response to the structural violence of which they are the victim (CEDAW).
- Adopt specific legislation to eliminate the “defence of honour” (CEDAW).
- Preclude adultery as an excuse for violence within the family (CEDAW).

Burden of proof

- The burden of proof for sexual offences should not be heavier than for other crimes (CEDAW).

Legal remedies / procedures that should be available for victims

General

- Effective legal complaint procedures should be provided (CEDAW, DVAW, resolution 1997).

Access to justice

- Victims of violence must be encouraged to use legal remedies (CEDAW).
- Inform women of their right to access to the mechanisms of justice (DVAW, res.2003/45).

Who can submit a complaint

- Allow third parties to submit a complaint (CEDAW, rec.1582 (2002), rec. (90) 2, resolution 1997).
• It must be possible to prosecute a case without having a complaint from the victim herself (CEDAW).

• Ensure that criminal proceedings can be initiated by the public prosecutor (rec.(2002)5).

• Set up administrative departments or multidisciplinary boards which should have the power to receive reports of acts of violence in the family (rec.(85)4).

Legal protection and aid during legal (court) proceedings

• Ensure that rules of procedure prevent unwarranted and/or humiliating questioning for the victims or witnesses of violence (rec.(2002)5).

• Envisage the institution of special conditions for hearing victims or witnesses of violence in order to avoid the repetition of testimony and to lessen the traumatizing effects of proceedings (rec.(2002)5).


• Ensure that at all stages in the proceedings, the victims can receive medical and psychological care (rec.(2002)5).

• Encourage the recruitment of female police officers (rec.1450 (2000)).

Rules of procedure

• Provide that any limitation period for sexual offences and crimes does not commence until the day on which the victim reaches the age of majority (rec.(2002)5).

• The police and law enforcement agencies should be granted the authority to carry out investigations and obtain evidence (rec.1582 (2002)).

• Prosecution of offenders in cases of domestic violence must be possible even in the absence of testimony of the victim in the court (CEDAW).

Legal measures of protection against the perpetrator

• Provide protection during the judicial procedure (CEDAW, rec.(85)4, rec.1582 (2002)).
• Ensure that measures are taken to protect victims effectively against threats and possible acts of revenge (rec.(2002)5).
• Enable the immediate separation of the victim from the offender through the immediate removal of the violent man from the common household and the environment of the woman and her children. The police forces should be given concrete instructions on the implementation of such regulations, including additional measures to protect the victim. The efficacy of the measures taken and the behaviour of the violent man must be monitored both during and after their implementation (Recommendation of the Expert Forums).

Preventive measures that should be taken\textsuperscript{86}

General

• Develop national plans of action (DVAW, res.2003/45, rec. 1450 (2000)).
• Promote and protect the human rights of women and girls (res.2003/45).
• Take measures to ensure that, in any case resulting from a conflict between a couple, measures are available for the purpose of protecting the children against any violence to which the conflict exposes them and which may seriously harm the development of their personality (rec.(85)4, par. 10).\textsuperscript{87}
• Children of victims should have specialized assistance, such as rehabilitation, assistance in child care and maintenance (DVAW, rec. (90) 2).\textsuperscript{88}

\textsuperscript{86} Here we describe preventive measures other than the preventive aspects of general legal measures (described in Section 2), such as criminalizing domestic violence.
\textsuperscript{87} Although violence against children is not included in our definition of domestic violence, we have included this aspect under preventive measures because it is generally known that children who are subjected to violence in the family run a greater risk of becoming a perpetrator or victim of domestic violence as adults.
\textsuperscript{88} Idem previous footnote.
Public information campaigns

- Promote the dissemination among families of knowledge and information on early detection of potential conflict situations and information on the settlement of interpersonal and intra-family conflicts (rec.(85)4).
- Take all necessary measures to prevent honour killings, including information campaigns aimed at the population groups and professionals concerned, in particular judges and legal personnel (rec.(2002)5).
- Reinforce sex education programmes that give special importance to gender equality and mutual respect (rec.(2002)5).
- Implement educational programmes targeted at men and boys on the prevention of violence and the reform of traditional negative attitudes towards women (CEDAW).
- Provide education on gender equality and non-violent behaviour at a very early stage and ensure adequate training for teachers (rec.1582 (2002)).
- Take effective measures to ensure that the media respect and promote respect for women (CEDAW).
- Ensure that law school curricula and continuing judicial education include the Convention and its applicability at the domestic level (CEDAW).

Empowerment of women (CEDAW, rec.(2002)5)

- Encourage women to learn self-defence techniques (rec.1582 (2002)).

Social measures

- Promote the economic independence of women by creating more work and equality in employment (CEDAW, res.2003/45).
- Provide adequate housing and urban policies which can prevent potentially-explosive situations within the family (rec.(90) 2).
State funding and programmes

- Increase state funding to support the social services dealing with the problem of domestic violence (rec.1582 (2002)).
- Develop community intervention strategies at the local level aimed at the coordination of inter-agency cooperation and the mobilization of financial and human resources in the fight against domestic violence (rec.1582 (2002)).
- Establish a coordinating governmental institution or body that is in charge of the implementation of measures to combat violence against women (rec.(2002)5).

Support NGOs in their national and international activities

- Ensure the cooperation of the government with the women’s movement and NGOs (DVAW).
- Support NGOs in their national and international activities (rec.1450 (2000)).
- Support the development of NGOs and establish an adequate financial framework for this support (Resolution 1997).

Protective measures that should be taken

General

- Promote proactive victim protection services (rec.1450 (2000)).

Aftercare

- Develop and strengthen support services (res.2003/45).
- Provide services to ensure the safety and security of victims of family violence (including refuges), including counselling and rehabilitation programmes (CEDAW,res.2003/45,rec.(90)2,rec.(2002)5,rec.1681(2004)).

89 Here we describe protective measures other than the legal measures mentioned in Section 3.
• Provide access to fair and effective remedies and specialized services, including medical, assistance to victims (res.2003/45, rec.(2002)5).


Training and other programmes


• Provide training for law enforcement officers and public officials responsible for implementing policies to sensitize them to the needs of women (DVAW).

Protocols

• Establish protocols for healthcare and procedures for hospitals for dealing with violence against women (CEDAW).

• Encourage all relevant institutions dealing with violence against women (police, medical and social professions) to draw up medium and long-term coordinated action plans, which provide activities for the prevention of violence and the protection of victims (rec.(2002)5).

• Establish a compulsory operational protocol so that the police and medical and social services follow the same procedure (rec.(2002)5).

Support services

• Establish a telephone help line (CEDAW, rec. (90) 2, rec.(2002)5, resolution 1997).

Support services for families where domestic violence has taken place (CEDAW).

Arrange for, encourage the establishment of and support work of agencies, associations or foundations whose aim is to help and assist the victims of violent family situations, with due respect for the privacy of others (rec.(85)4).

Open residential centres where women can receive psychological support (rec.1582 (2002)).

Give administrative departments or multidisciplinary boards the power to help, care for and advise the various parties involved in cases of violence in the family and to carry out social inquiries to that end (rec.(85)4).

Give special financial support to non-governmental organizations and women’s associations who work with victims of domestic violence (rec.1582 (2002)).

Other Measures

When one of the partners is required to leave the house, the male perpetrator should be the one forced to leave the house, not the woman (CEDAW, rec. (90) 2, Recommendations of the Expert Forums).

Remove the obligation of secrecy from the members of certain professions to give the administrative departments or multidisciplinary boards information concerning cases of violence in the family (rec.(85)4, rec. (90) 2).

Data collection
and monitoring domestic violence

Review

The actual effectiveness of the measures must be continuously reviewed so that modifications can take place if necessary (CEDAW, DVAW).
A review of existing national laws and comprehensive research is necessary (rec. 1582 (2002)).

**Monitoring agencies**

- The states parties should establish and/or strengthen effective national machinery, institutions and procedures, at a high level of government, and with adequate resources, commitment and authority to comprehensively monitor the situation of women (CEDAW, DVAW).
- Regularly monitor the telephone calls and evaluate the data obtained from the SOS help lines (rec. (2002) 5).
- Monitor the efficacy of the measures taken to protect the victim and the behaviour of the violent man (Recommendations of the Expert Forums).

**Compilation of statistics and research**

- States parties should encourage the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence. (CEDAW, DVAW, rec. (90) 2, rec. 1681 (2004)).
- Promote research, collect data and compile statistics, especially concerning domestic violence, relating to the prevalence of different forms of violence against women (CEDAW).
- Improve the statistics on domestic violence, and use this information to develop a clear picture of its nature and prevalence, identify resources earmarked for this problem and evaluate initiatives to tackle it (rec. 1582 (2002) rec. (2002) 5).
- In the absence of adequate research on the special situation of disabled members of the family, governments should promote and/or subsidize studies on this subject (rec. (90) 2).
- Promote research, data collection and networking on the medium and long-term consequences of assaults on victims (rec. (2002) 5).
International cooperation

- Promote international cooperation in systematic research and the collection, analysis and dissemination of data, including data categorized by sex, age and other relevant aspects, on the extent, nature and consequences of violence against women and on the impact and effectiveness of policies and programmes for combating this violence (res.2003/45).
- Report regularly to international human rights bodies on developments in domestic violence against women and measures taken to prevent and combat it (rec.1681 (2004)).

Publication of research

- Publish statistics and findings of the research on violence against women (DVAVW).

List of international documents that were used to draft this Checklist

At the level of the UN, the Council of Europe and the European Union we assembled the following official documents that are relevant to the issue of domestic violence or combating domestic violence.

The UN Level

- General Recommendation 19 on violence against women of the CEDAW Committee
- The UN Declaration on Violence against Women (DVAVW)
- UN Commission on Human Rights Resolution 2003/45, Elimination of violence against women
- Model legislation on domestic violence by the Special Rapporteur on violence against women
- The Beijing Platform for Action
As far as the Concluding Comments of the CEDAW Committee are concerned, we derived their recommendations in the field of domestic violence or combating domestic violence from two groups of sources.

For the period up to the year 2000, we used the analysis we found in the report on violence against women in the CEDAW Convention and parts of Chapter 2 of the in-depth study by Boerefijn et al. about CEDAW and violence against women in the Netherlands. For the period from January 2000 until January 2003, we analyzed the Concluding Comments of the Committee, which are published on the website of DAW. We summarized these findings in a separate document (the appendix to the Reader).

**The Council of Europe level**

- Recommendation no. r (85) 4 of the Committee of Ministers to the Member States on violence in the family.
- Recommendation no. r (90) 2 of the Committee of Ministers to the Member States on social measures concerning violence within the family.
- Recommendation 1582 (2002) of the Committee of Ministers to the Member States on domestic violence against women.
- Recommendation Rec(2002)5 of the Committee of Ministers to the Member States on the protection of women against violence.

**The European Union level**

- Resolution on the need to establish a European Union-wide campaign for zero tolerance of violence against women.
- Recommendations of the Expert Forums of the EU Conference on Violence Against Women.
- EU Expert Meeting on Violence Against Women: Joint models of action help to combat violence.
• Review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action Draft Council conclusions.

We did not have the time or opportunity to include the content of all of these documents in the Checklist. This means that the Checklist, as it stands now, may be incomplete. This is also a reason not to use it outside our HOM project! Also not included in the Checklist is the content of the document “Model legislation on domestic violence” by the Special Rapporteur on violence against women (Reader no. 10). This document contains very detailed instructions to the States Parties to the CEDAW Convention. The same applies to the “List of Indicators of Domestic Violence” (included as an appendix to the Review of the implementation by the Member States and the EU institutions of the Beijing Platform for Action Draft Council conclusions. See Reader no. 26). We must study these two documents separately to see if they contain additional criteria.

Finally, the directions and guidelines in the Beijing Platform for Action overlap with the other documents to such an extent that we did not make a separate analysis of this document.
APPENDIX II
Summaries of the second chapter (factual situation and prevalence of domestic violence) of all national in-depth studies

ALBANIA

Research conducted mainly by NGOs shows that domestic violence is a serious problem in Albania. This violence is perpetrated as physical, psychological and sexual abuse, which in most cases are intertwined. Its most prominent features are its widespread prevalence and in some cases the severity of this kind of violence.

The prevalence of domestic violence is difficult to specify due to the conditions and mentality of life in Albania. The fact that this phenomenon takes place behind closed doors makes it more difficult to measure its severity and extent. Despite the efforts to minimize under-reporting, researchers have generally assumed that violence data are under-reported in population-based surveys due to factors such as stigmatization, fear of reprisals and cultural norms.

On the other hand, the absence of a legal definition of domestic violence and of a law on this kind of violence is another obstacle in classifying the official statistics. This is because domestic violence is registered as a crime committed against another individual, and consequently no specific statistics are kept by the police, the prosecution office or the courts.

Research shows that violence committed against women living in rural areas is crueller than that in urban areas, and that rural women are exposed to more violence in the family than women in urban areas. The masculine mentality of rural areas forms an insurmountable barrier that prevents women from enjoying their economic and social rights and a life free of violence. For example, the survey conducted in ten villages of Lezha district shows that 90% of rural women have witnessed various forms of violence, 95% report having experienced violence, and one in five women reported receiving death threats from her husband. Another survey carried out in 2003 on a sample of married women in Tirana between
the ages of 25 and 65 showed that more than one-third of those interviewed had been battered at least once by their husbands in the past year. One-fourth of the women reported three or more episodes.

Women living in urban areas also have more access to social, legal, medical and psychological services than rural women, where these services are very limited.

Research shows that a variety of social, economic and political factors trigger domestic violence. Such factors include the collapse of communism and various reforms carried out during the transition period of the country, unemployment, lack of public order and civilians armed with the weapons stolen from firearms storage sites during the civil unrest in 1997.

In the research the interviewees cited their difficult financial situation as the primary motive for conflicts within the family. Income, or at least most of it, is traditionally provided by a man in the household. Therefore, when income is low and when there is no other conventional way to solve the problem, violence resulting from the traditional exertion of power and control is seen as a way to save male pride.

The migration of the rural population to urban areas, forced by the need for a better living, has been one of the most dramatic consequences of the Albanian transition. Poverty, lack of infrastructure and the change of the cultural environment increased stress and triggered a negative reaction in many migrant families.

Small living spaces and living in extended families is another factor setting a favourable scene for domestic violence. This results in the accumulation of stress, and in these cases the woman often becomes the target of violence from her father or brother-in-law, besides that of her husband.

Patriarchal traditions that still prevail have been another factor in domestic violence incidents. The custom of Kanun, which sets the norms for many aspects of life including marriage, family life, gender roles, as well as crime and justice, continues to have an impact especially in the northern areas. Despite the progress made during the years of democracy, Albanian society is still dominated by men who are encouraged by their families and society in general to exercise their control on women.

The analysis of the factors that generate violence in Albania shows that our country has yet to understand that domestic violence is a gender-related phenomenon and the social relations between women and men must change in order to win the battle against domestic violence.
BOSNIA AND HERZEGOVINA

According to the information of NGOs, official institutions and experts, the number of registered cases of domestic violence in Bosnia and Herzegovina is increasing. For example, the Ministry of Internal Affairs of the Republic Srpska recorded 282 criminal acts of domestic violence in this entity during the first nine months of 2004, which is 44% more than during the same period in 2003. But the Ministry of Internal Affairs of the Federation of Bosnia and Herzegovina recorded 499 criminal acts of domestic violence in 2004, which is 248% more than in 2003. However, we should point out that domestic violence as a criminal act became part of Criminal Law in August 2003, which means that police only began to report the cases of domestic violence from that period.

In 2004, the Safe House in Modriča provided shelter for 291 victims of domestic violence, which is about 15% more than in the year before. The Women's Centre, an NGO from Trebinje, also recorded an increase in cases of domestic violence. In 2004, 47 persons asked for help, which is twice as many as in 2003. The number of calls to SOS help lines increased as well. We estimate that the frequency of calls varies from 37 calls in the Unsko-sanski canton per month to 600 calls per year in the Tuzlanski canton.

Irrespective of the extent and quality of the information that we gathered, it is difficult to estimate the scale of domestic violence in Bosnia and Herzegovina. Because there were no statistics on domestic violence from before the war, the first question is: what can we compare these data with?

Domestic violence was not recognized as a problem before the war period in the 1990s; before that time it was not defined as a criminal act. It was a taboo subject. So first of all, it is difficult to compare the current prevalence of domestic violence with the prevalence before the war. Secondly, there is no central database of the number of victims of domestic violence at either the entity or the national level that could be used to make valid conclusions. Thirdly, there is an obvious difference in the number of cases of domestic violence recorded by civic organizations and by governmental institutions. For example, the SOS help line operated by United Women in the Banjaluka region registered 987 calls in 2004, while the Ministry of Internal Affairs registered only 282 criminal acts of domestic violence during the first nine months of 2004 in the entire territory of the Republic Srpska.

The NGOs agree that it is difficult to determine which forms of domestic violence prevail, although physical violence is the most visible form.

Regarding the dark number of cases of domestic violence in Bosnia and Herzegovina, the estimations of NGOs vary. Some estimate that for every
reported case of domestic violence, two additional cases are not reported, while others estimate that there are 10 unreported cases for each reported case.

Public opinion about domestic violence is influenced and shaped by stereotypes and misunderstandings about the problem. Generally, people think that perpetrators belong to the lowest level of society, that they are uneducated, alcoholics, drug addicts and are mentally disturbed. This perception is different from reality; research shows that the average perpetrator in Bosnia and Herzegovina is a husband or a partner aged 35 to 50 with at least a secondary school education. Perpetrators can be workers, university professors, businessmen, farmers, doctors or politicians. Victims can also be women of all ages, from young girls to women who have been married for 25 or 30 years. Victims include women of all professions, such as labourers, professors, owners of private companies and doctors.

Many factors influence domestic violence: economic and political factors (unemployment, low wages) and tradition, culture and religion. In our research, none of these factors could be observed separately. Unstable social status and low income, housing problems, changes in gender roles – a combination of the negative influences of all those factors often leads to domestic violence.

Regarding the general awareness of this problem in society, our general estimation is that society is not interested in the problem of domestic violence. The traditional view that domestic violence is private matter and a usual means of communication between partners still prevails in Bosnia and Herzegovina.

Many women are unwilling to talk about this problem because they think that it is something they should be ashamed of. For example, the results of one survey show that out of 3726 interviewed women living in urban areas of Bosnia and Herzegovina, two-thirds of them have faced some forms of domestic violence, while the majority of them (73%) have never asked for help or confided in anyone; shame was one of the reasons for their silence.

Professionals who work with women and children victims of violence emphasize that women never ask for help after their first beating. They only become aware of the violence they are sustaining after several years of abuse.

The workshops for perpetrators are a relatively new phenomenon in Bosnia and Herzegovina. Experts who worked with perpetrators point out that it takes a long time for them to accept the fact that what they do to their partners involves violence and misuse of physical force. Most of them are not even aware of the fact they endanger a woman’s integrity and her human rights by engaging in such behaviour.

Despite the increase of the number of media reports and features about domestic violence, such publicity is still limited to “women’s days” such as
the 16 days of activism, the 8th of March or the International Mother’s Day. Otherwise, these topics are not usually part of major media reports or TV news. However, the media remain one of the main sources of information about domestic violence.

**CROATIA**

Domestic violence is a serious problem in modern Croatian society. The un-systematic and inadequate approach of governmental bodies amplifies the significance of the problem. The seriousness of this issue has been shown by field research, which showed that 29% of women have experienced some sort of physical violence inflicted by their intimate partners. Every fourth woman in Croatia is a victim of daily domestic violence, which has devastating consequences on her mental and physical health. The analyzed data show that women face all forms of violence in the family: psychological, physical, sexual and economic violence.

Taking into consideration the prevalence of domestic violence and its consequences on victims, it is clear that this problem is not being treated appropriately. Dark numbers are far greater than official police data; in fact, only one of every five victims of domestic violence in Croatia reports this to the police. The aim of the present study is to improve our understanding of the problem of domestic violence and to encourage a more active approach to its solution.

Domestic violence is a serious problem, and the victim is often embarrassed and terrified to talk about it. Tradition and economic dependency prevent women from leaving this vicious circle of domestic violence. Patriarchy, which re-emerged due to social changes in the early 1990s, resulted in the degradation of women and their role in society. Women are now seen primarily as mothers and wives whose only interest should be the well-being of their families. Other aspects of life are neglected. The church, which was also experiencing a rebirth, had a significant influence on “restoring women to their traditional roles”; it views women only as mothers and devoted wives and does not acknowledge divorce under any circumstances. War, the process of transition, economic stagnation and the partial isolation of the country have resulted in an unstable atmosphere in which the phenomenon of ever-present male violence against women is put aside. The widespread presence of this phenomenon diminishes its significance and transfers the responsibility of the perpetuator and society to the victim. Under these circumstances, it is clear why victims do not report perpetuators. Their experience with government institutions and church has resulted in distrust and fear.
The priorities of the state during the last 15 years have been clearly defined in government policy, but very little was done about the problem of violence against women. In 2003 the Law on Protection against Family Violence was passed and the voice of NGOs that address this issue is being heard more clearly.

**MACEDONIA**

Closely related to the subject of our study, domestic violence, are the traditional relations in the household and the family. It is widely accepted by the general population that men are the providers of material security in the family; women are responsible for taking care of children and the home, and men are the breadwinners. These traditional relationships resulted in the inferior position of women to men, and they are an essential reason for the occurrence and continued existence of domestic violence.

Regarding the prevalence of domestic violence in the Republic of Macedonia, only one empirical study has been conducted (by the Association for Emancipation, Solidarity and Equality of Women of the Republic of Macedonia – ESE – in 2000). The study refers to widespread violence against women within the family. More concretely, 61% of women reported psychological violence and 24% reported an escalation of physical violence. Clearly, this is alarming information about the scope of domestic violence in our country.

The most prevailing form of violence against women in Macedonia is psychological violence; this demonstrates the traditional dominant roles of male spouses and reinforces the inferior position of women.

Physical violence is manifested in several forms, ranging from lighter to more serious forms. However, if one takes into consideration the fact that every third woman sought medical intervention and assistance, the problem of domestic violence is obviously very serious, not only due to the magnitude but also in terms of its qualitative dimension.

The unemployment of the woman is one of the most important risk factors for her to become a victim of all types of violence. Men – the aggressors – are often unemployed as well or have a lower income than their spouse. These are the circumstances which lead most often to domestic violence in our country.

For the man, the loss of a job means removal from the public sphere, but he also loses a basic attribute of traditional gender identity. At the level of the family, his position becomes doubtful. He is no longer in a position to play the role of a source of power, to work and be the family breadwinner. However, the loss of a job and the lack of income are stressful by themselves; the man cannot fulfilled himself in his profession or provide for his family. This is frustrating,
and one of the responses to the frustration is aggression. The risk of violence, especially the risk of violence against women, is therefore increased.

To a certain extent, the economic crisis of unemployment leads to a limitation of the realization of the traditional gender roles (the man remains out of work, or there are cases where the woman works and the man does not), or to situations (such as homelessness and poverty) which are very stressful and frustrating. This has resulted in the increased scope of violence in recent years.

The consumption of alcohol is an important risk factor for a family living under the threat of violence. Every fourth aggressor drinks often, and half of them were under the influence of alcohol during the last incident. Increased alcohol consumption and alcoholism can be also linked to the economic crisis in the country. Unemployment, the inability to solve existential issues (such as housing), poverty etc., are circumstances that open the road to alcohol.

The multi-ethnic character of the country has shown itself to be an important factor in violence against women in terms of its scope (or the expressed preparedness to report violence), the type of violence and especially content of the violence. However, ethnic background by itself is not a factor in violence against women. Instead, according to the conceptual positioning of the research, the explanation should be sought in the preservation of the traditional matrix that regulates the relationships in the marriage and the family, the treatment of women and the objective living conditions.

Regarding another aspect of the problem, the media, we can conclude that the media approach is characterized by marginalization of the problem, inappropriate treatment of the problem due to the ignorant attitude during the period of social change and by inappropriate interest in violence as a societal phenomenon today. There is some interest in the violent event itself, but virtually no interest in the underlying problem.

Finally, we have observed a lack of official research in the Republic of Macedonia into several issues related to the problem of domestic violence, such as the influence of the macroeconomic factors and the transitional period, the political situation and armed conflict and the special survey on the implementation of the legal provisions by the relevant governmental institutions and bodies.

SERBIA

A recent study has indicated a high prevalence of domestic violence in Serbia. The study, conducted by Pošarac on a nationally-representative sample of 3200 women, aged 20-55 years, pointed out an interesting paradox; although most women assessed their marriage/relationship as “harmonious,” 57% reported that
their husband/partner sometimes applied coercion in “solving marital conflicts”. A study conducted by the Victimology Society of Serbia on a sample of 700 adult women from seven Serbian cities in 2001 indicated high prevalence rates: every third woman reported physical violence, every second woman reported psychological violence, and about 9% reported sexual violence. The findings on the rates of physical violence were particularly disturbing, since they were higher than those identified in neighbouring countries, such as Macedonia and Bulgaria, with similar economic and social conditions and cultural patterns. It should be stressed, however, that a possibility to generalize research conclusions to a general population of women in Serbia was somewhat limited, due to problems in obtaining nationally-representative samples; as many as 39% of women refused to take part in research studies, and all researchers have also faced the problem of categories of women who are “invisible” in official demographic statistics, such as Roma women and refugees. Research results indicated that uneducated or poorly educated women, as well as economic dependent ones, were more frequently exposed to physical violence (the latter also correlated with extreme poverty of the family).

However, all forms of violence were reported more often in families in which the husband/partner earned less than the woman, or where the woman was the main provider for the family, implying that the economic marginalization of males is related to their violent behaviour (males who cannot conform to expectations related to the traditional perception of gender roles often project their aggression on female partners). In addition, a theory of trans-generational transmission has been largely confirmed. Studies that focused on sexual violence against adolescents, conducted by Brankovic on a nationally-representative sample of 3825 high school students, aged 15 to 19 years from 24 Serbian cities, also provided alarming results. Every eighth female teenager reported that she had experienced rape, attempted rape, incest, rape by several offenders, blackmail, sexual harassment or other forms of sexual abuse. The most recent study (Autonomous Women's Centre, 2005), carried out on a sample of 1456 adult women in Belgrade in 2003, indicated that every fifth woman reported that she had been exposed to physical violence in partnership relations during her life.

Analysis of other social factors linked to violence revealed that violence appeared to be linked with war trauma; war veterans were more inclined to inflict brutal violence or to use guns or weapons. Less direct links between violence and socio-political factors were implied/presumed or identified in other studies; widespread stereotypes related to gender roles probably contributed to public tolerance of violence against women (school textbooks, media and advertising
clearly support the traditional perception of gender roles). A trend towards re-
traditionalization has recently become even more pronounced. The state media
during Milosevic's dictatorial regime contributed to the glorification of violence in
society. This influence is no longer present. However, a recent study by Veselinović
indicated that the media focused primarily on sexual violence against minors
or brutal incidents of physical violence, while neglecting psychological violence.
In addition, the media rarely reported on court trials and convictions.

The data on reporting domestic violence to institutions are particularly alarming.
A study conducted by the Victimology Society in 2001 showed that the rates
of reporting violent incidents to institutions were very low: 16.8% to police and
9.6% to centres for social work, while only 3.6% got to the courts. In addition,
only 2.4% of women asked for help from SOS lines. This indicates that state and
NGO statistics represent only the top of the iceberg. Similarly, a study in Belgrade
conducted by the Autonomous Women's Centre revealed that a majority of victims
(78.2%), regardless of the type and severity of violence they had been exposed
to, had never reported it to state institutions or NGOs; only 12.1% reported
violence to police, 9.6% to medical centres, 8.9% to Centres for Social Work,
and 2.1% to women's NGOs/hotlines. This low level of reporting to institutions
could be possibly attributed to the victims' fear of perpetrators, a fear of being
stigmatized by the local community, but also to a lack of trust in institutional
mechanisms for victim protection and/or distrust in the institutions' efficiency in
general. The latter was confirmed in other studies, such as a study by Brankovic
between 1998 and 2005 which revealed that the subjects had no confidence
in courts, police, social service centres or any public institution whatsoever,
while the trust in psychological counselling centres was somewhat higher.

Since the above-mentioned rates of reporting to institutions were obtained
before domestic violence became a specific criminal act, we analyzed whether
the gap between occurrence and reporting has recently become narrower.
Through comparison of recent (although incomplete) state statistics on cases
reported to police and prevalence rates obtained in research studies, we reached
a tentative conclusion that the gap between reporting and prevalence is still very
large. Consequently, by relying on different research findings and statistical
indicators, dark numbers could be estimated as being very high. This large
number of hidden cases of domestic violence could be partially interpreted as
a result of institutional policy, since previous and recent research on attitudes
of officials toward domestic violence and implementation of laws indicated a
mild penalizing policy of the courts and, to some extent, officials' insufficient
knowledge /understanding of domestic violence. Research conducted on a very
large sample of court cases (before domestic violence was legally defined as a specific criminal act) indicated that only 5% of perpetrators were sentenced to imprisonment, while the mitigating circumstances appeared rather arbitrary. A tendency toward mild penal policy was also noted in a recent comprehensive study based on the analysis of 620 official reports of the police, public prosecutors and courts; fines and suspended sentences were the most common, while imprisonment was imposed at the prescribed minimum, or even below the minimum in same cases as shown in the study conducted by Konstantinović-Vilić and Petrušić. That study also indicated that the police and the legal system have not treated domestic violence in a uniform/standardized manner, since the individual attitude of officials toward specific cases played important role in the legal qualification of violent acts. Because the legal practice reflected an attitude that domestic violence was a “less dangerous” criminal act, the researchers concluded that such interpretations led to a narrower range of legal protection from domestic violence.
APPENDIX III
The main conclusions and recommendations from the national studies to the governments and NGOs

ALBANIA

Conclusions and recommendations to the government

1. General overview of relevant general legal norms

Conclusion: Albania has ratified a set of international conventions on the protection of human rights in general, in particular CEDAW and ECHR. The Albanian Parliament has also ratified a broad range of international Conventions (UN, CoE) related to human rights. A detailed list of ratified international conventions and the respective protocols is accessible to all citizens on the website of the Ministry of Foreign Affairs.

2. National strategy and action plan to combat domestic violence

Conclusion: The Albanian Government has not yet developed a national strategy or an action plan for the prevention of and protection against domestic violence; in this regard it is not in conformity with DWAV, Res. 2003/45, Rec. 1450 (2000).

The Albanian Ministry of Labour, Social Affairs and Equal Opportunities is seriously committed to the preparation of a national strategy against violence in the family by implementing the project “Drafting the National Strategy Against Violence in the Family” in cooperation with the Gender Alliance for Development Centre; this project is supported financially by UNICEF.
Recommendation: The Albanian government should finish drafting the National Strategy Against Violence in the Family, in cooperation with the Gender Alliance for Development Centre, and develop a national action plan for the prevention of and protection against domestic violence.

3. Definition of domestic violence

Conclusion: In the current legislation, there is no definition of domestic violence. The definitions used are those stemming from ratified international instruments. Thus, the term domestic violence comprises all forms of physical, psychological, economic violence and their combined form, already contained in the international documents.

Recommendation: The terms of reference used in the Albanian legislation should be directly addressed.

4. Relevant legal norms for combating domestic violence

4.1. Specific law on domestic violence

Conclusion: There is no specific law on domestic violence in Albania that includes criminal sanctions and other legal civil remedies. Although the current laws provide for some legal measures, which aim at the prevention of and protecting against domestic violence, these norms are very restricted and incomplete, and they are not effective with respect to the investigation and punishment of the perpetrators. Thus, the Albanian government is not in conformity with its obligation as formulated in Article 24 of General Recommendation No. 19.

This has been one of the main recommendations of the CEDAW Committee, which underlined this obligation for the Albanian government during its 28th session held on 13-31 January 2003. Although some time has passed since the CEDAW Committee voiced its concern, the Albanian Government has not yet approved a specific law on domestic violence, but without having any justification for this delay. In the meantime, a draft law on protection from domestic violence was prepared by civic organizations. Many actors were consulted during the drafting of this document before it was submitted to the legislators for consideration and adoption.

Recommendation: Given the current legal situation, we strongly recommend that Albania adopt a specific law on domestic violence that comprises measures to protect victims, investigate the criminal offences, institute criminal proceedings and punish the violators.
4.2. Criminal law and misdemeanour provisions


In its recommendations to the Albanian government in January 2003, the CEDAW Committee referred to this legal vacuum and voiced its concern over the fact that the Albanian Criminal Code makes no distinction between acts committed by other persons and acts committed by a family member. No further steps have yet been taken by the responsible authorities on this issue. Under these conditions, domestic violence can only be prosecuted under the general crime of assault as defined in the Criminal Code.

Recommendation: We recommend the approval of a new law on domestic violence or the amendment of the existing legislation with a specific provision that defines domestic violence as a specific criminal offence.

Conclusion: The Criminal Code prohibits incest in conformity with the obligations stemming from CEDAW (Concluding observations on the report of the Czech Republic (Exceptional session, 2002) and Recommendation (2002)5). The Criminal Code also prohibits sexual relations with adult women through use of violence. According to this Criminal Code provision, two elements are necessary to make this a criminal offence: violence must be used as part of a non-consensual sexual act and the victim must resist physically. There is no specific provision on marital rape. Penalization of marital rape stems from CEDAW (Gr. 19 par. 24b,) and ECHR case law (Concluding observations on the reports of Suriname (27th session, 2002), rec. 1450 (2000), rec. (2002)5). Beating and other forms of less serious injury are punishable as criminal acts in our criminal laws, but when they occur in family relations, they are often not given proper attention by the law professionals who deal with the victims of domestic violence. This mild treatment can lead to more serious criminal offences or the continuation of violence.

Recommendation: Taking into consideration the enforcement of existing legal norms, several amendments to criminal law are necessary to effectively criminalize marital rape and allow the penalization and effective prosecution of any non-consensual sexual act, even when the victim does not resist physically. We also recommend that the judiciary devote more attention to the criminal acts of beating and other forms of less serious injury, since these are the most frequently-encountered violent acts in family relations.
Conclusion: There are certain criminal acts that can occur in family relations but which cannot be prosecuted without a complaint from the victim. This does not appear to be in conformity with CEDAW (Concluding observations on the report of Croatia (18th session, January 1998)). In such cases, our criminal legislation does not provide the possibility for third parties to initiate proceedings; in this regard it is not in conformity with CEDAW (Concluding observations on the reports of Cyprus (15th session, 1996), rec. 1582 (2002), rec. (90)2, resolution 1997).

Recommendation: We recommend the amendment of criminal legislation to allow the prosecution of a case without having a complaint from the victim and to allow third parties to submit a complaint and initiate proceedings.

Conclusion: Our criminal legislation exempts perpetrators of a crime from criminal responsibility under certain conditions, such as when they have been subjected to violence and have been obliged to protect their life, health and rights. This is in conformity with CEDAW (Concluding comments on the reports of the United Kingdom (21th session, 1999)). There are no provisions in the criminal law that justify honour killing.

Adultery is not seen as a justification for domestic violence.

4.3. Provisions in civil legislation

Conclusion: There is an ineffective implementation of civil remedies, which is not in conformity with CEDAW (GR19 par.24ri, DVAW). The provisions in our Civil Code that provide for compensation for harm or damage inflicted are general provisions. They do not apply specifically to the victims of domestic violence. The obligation that the victims should receive due compensation for every physical injury and psychological, moral and social harm incurred, in proportion to the amount of damage, including the legal costs, stem from CEDAW (GR19 par. 24ti, rec (2002)5). The legal and actual situation in Albania is far from meeting such an obligation. Although domestic violence is a cause for termination of marriage, the procedures of divorce and custody are not simplified in such cases, as required by Resolution 1997.

Recommendation: We recommend the implementation of legal measures that provide for specific compensation for victims of domestic violence. In addition, the divorce and custody procedures in cases of domestic violence should be harmonized with international standards, in order to simplify them.
4.4. Free legal aid

Conclusion: There are no provisions for free legal aid for victims of domestic violence in Albanian legislation. The services provided by civic organizations are not available everywhere in the country and are not offered consistently due to their dependence on financial support from foreign donors. This standard stems from CEDAW (AT vs Hungary) and from rec. 1582 (2002) and rec. (2002)5 as a necessary measure to protect victims against domestic violence.

Recommendation: We strongly recommend the provision of free legal aid for victims of domestic violence as a responsibility of the government.

4.5. Legal protection during legal proceedings

Conclusion: The number of female police officers is considerably smaller than the number of male police officers.

Recommendation: We recommend that the recruitment of female police officers be encouraged, as recommended in rec. 1450(2000).

5. Preventive measures taken by the government

Conclusion: No programmes and awareness campaigns are being consistently undertaken to make domestic violence an unacceptable phenomenon. This factual situation is not in accordance with the observations of CEDAW (Concluding observations on the report of Hungary (Exceptional session, 2002) res. 2003/45), and with the following recommendations: rec. 85/4, rec. 1450 (2000), rec. 1582(2002), rec. 90 (2), rec. (2002)5 and rec. 1681 (2004). No campaigns to inform women about their access to the mechanisms of justice are being undertaken, which is not in conformity with DVAW, res. 2003/45. The measures undertaken by the government to ensure that the media promote women's rights and show respect for women have not always been effective. The promotion of women's rights and respect for women by the media is an obligation stemming from CEDAW (GR.19, par. 24d), which requires effective measures to be undertaken. There are no regular educational programmes targeted at men and boys to uproot their traditional negative attitude towards women and to promote new gender roles. This is not in conformity with CEDAW (GR 19, par. 24tii). Although the Albanian government has made consistent efforts to reform the curriculum, the gender education objectives are not specifically present in the national education standards. The government has undertaken training for the judicial and health personnel who deal with and enforce the relevant laws

Recommendation: We recommend that governmental policy concerning all preventive measures at the local and central levels be clearly defined. In its policy, the government should treat the stakeholders in civic organizations as partners, should benefit from their experience and should support the NGOs that work with violence prevention. We strongly recommend that gender objectives be included at all levels of education along with training policies for teachers on gender issues. The indispensable role of printed and electronic media should be taken into consideration, with the aim of promoting gender equality and emancipated social attitudes. We applaud the training programmes that have been provided by the state for the judicial and health personnel and officials dealing with relevant issues, and we recommend that such training sessions be continued on a regular basis.

6. Protective measures

Conclusion: Measures to protect the victims of domestic violence and their children from their abusers, such as shelters, advisory lines and rehabilitation programmes, are not provided by the state. The provision of protective measures by the state for the victims of domestic violence is an obligation stemming from CEDAW (GR19, par.24riii), ECHR case-law, Recommendation (85)4, DVAW, Recommendation (90)2, Recommendation 1450(2000), res. 2003/45, rec. (2002)5, rec.1681 (2004), rec.1582 (2002) and Resolution 1997. Thus the Albanian Government is not in compliance with this obligation. Although the Committee on the Elimination of Discrimination Against Women (28th session, 13-31 January 2003) recommended that Albania take measures to provide shelters for women victims of domestic violence, no effective measures have been taken in this regard. Also, the Albanian Government does not provide financial support to the NGOs that are engaged specifically providing protective measures (other than through grants or credits provided by international actors) as recommended by rec. 1582 (2002). The Social Services Strategy (2005-2010) of the Ministry of Labour, Social Services and Equal Opportunities shows that serious efforts are being made by the state to create the necessary financial framework to support the NGOs, being thus in conformity with Resolution 1997. But this strategy concerns policies for the future.
Recommendation: The Albanian government should support the existing services provided by the NGOs on the basis of contemporary standards and provide financial support to new services, also in cooperation with local authorities. We recommend that the Social Services Strategy for 2005-2010 be adequately implemented; deadlines should be set which are based on government policies for supporting social services that target the group of abused women and girls. We applaud the efforts of the government regarding the financial support for NGOs that work in this field, and we recommend the responsible implementation of this support.

Conclusion: The procedures for hospitals, police and social services that deal with violence against women are not harmonized. This is counter to rec. (2002)5.

Recommendation: The establishment of a compulsory operational protocol for the police, medical and social services will unify the services and protection each of them provides separately.

7. Scientific statistics and research on domestic violence

Conclusion: Conducting scientific research and the collection of statistics on the content, causes and consequences of violence, the effectiveness of the measures to prevent and deal with violence, and the spread of various forms of violence have not been encouraged so far. This obligation to conduct scientific research and collect statistics on domestic violence stems from CEDAW: GR19, par.24c, DVAW, rec. (90)2, rec.1681(2004). The Albanian government is currently not meeting this obligation.

Recommendation: We recommend the encouragement, support and publication of scientific research and the collection and publication of statistics on domestic violence, its content, causes and effects, the prevalence of the various forms of such violence and the effectiveness of the measures taken to deal with it and prevent it.

Conclusion: The existing national mechanism is not strong enough and does not have the adequate authority to promote research and to collect data and compile statistics concerning domestic violence and the prevalence of various forms of violence against women. The Albanian Government is therefore not in conformity with CEDAW: GR 19, par. 24 tu.

Recommendation: We recommend that the national mechanism be strengthened in order to promote research, to collect data and to compile statistics relating to the prevalence of various forms of violence against women.
Conclusion: As yet no systematic analysis has been conducted on the impact and effectiveness of policies and programmes for combating domestic violence. This is not in conformity with res. 2003/45.

Recommendation: We recommend that systematic analysis is conducted on the impact and effectiveness of policies and programmes for combating domestic violence.

Conclusions and recommendations to NGOs

1. NGOs’ interventions with respect to legal norms

Conclusion: NGOs play a significant role in the process of drafting and amending laws in the interest of the legal status of women. They have contributed to drafting the Law on Reproductive Health, the Family Code (Law), the Law on Gender Equality, several amendments to the Labour Code and a number of recommendations for draft laws on social-economic aspects of the country after monitoring them from the gender perspective. An Albanian coalition of NGOs has initiated a draft law on Domestic Violence, has organized a nationwide awareness campaign to gain public support for the law and has submitted the draft law to the Parliament.

Recommendation: NGOs should continue to lobby for the approval of draft law on domestic violence by the Albanian Parliament. They should also pressure the government to establish mechanisms for monitoring law enforcement, while insisting that the NGOs’ expertise in the field of legal norms and remedies be used.

2. Educational programmes on domestic violence

Conclusion: NGOs have provided various educational programmes, with women as the target group, regarding their rights and empowerment. However, there are still insufficient educational programmes from NGOs targeted at men. In the context of preventive activities to create a social environment that boosts non-violent relations among young people, some NGOs focused their attention on educational activities with students with the aim of providing knowledge on gender equality and its importance in their lives, in their families and in communities, and also to promote changes in their family’s culture. NGOs consider the training of police, lawyers and health care providers to be an indispensable tool which will lead to the reduction of domestic violence. Although they continue
to provide many training courses for this group, the strategies of NGOs in this respect have been short-term ones, due to the lack of funds.

Recommendation: NGOs implement more programmes that target not only the victims of domestic violence, but also their families, friends and neighbours so that they obtain their support in combating domestic violence. They should train community groups to identify women at risk for domestic violence and help them to establish culturally appropriate mechanisms to support battered women. Recognizing the key role that men can play in fighting domestic violence and in changing stereotypes detrimental to gender equality, they should focus especially on programs for men and boys with the aim of preventing domestic violence, especially in rural areas where the traditional perception of gender roles still prevails. NGOs, which have already acquired expertise in this area, should increase their visibility so that the government recognizes their capacity and uses it to organize the above training programmes. The programmes against domestic violence should be integrated with other programmes dealing with youth violence, sexual reproductive health and rights, drug abuse, etc.

3. Preventive measures advocated by NGOs

Conclusion: Women's NGOs organize awareness-raising campaigns and educational activities aimed at preventing and reducing the incidence of domestic violence. These activities have had an impact on the community and have contributed to the change of attitude regarding domestic violence prevalence and its contributing factors. However, the media cover mainly the activities organized during the “16 Days of Activism” and those on 8 March. The visibility of the activities of NGOs in the media remains very limited.

Recommendation: Because the media are an effective means through which NGOs can promote changes in traditional attitudes, behaviours and roles that maintain stereotypes and gender disparities, NGOs should develop strategies of cooperation with the media. NGOs can increase their visibility by publicizing their work for the promotion of gender equality more broadly, including the prevention of domestic violence and the reintegration of domestic violence victims in Albanian society. Along with their educational activities against violence in the family, NGOs should respond publicly and more forcefully as a group whenever the image of women in the media is discriminatory and when women are severely battered, seriously wounded or even killed by the perpetrators.
4. Activities of NGOs in protection of victims

Conclusion: NGOs are the only organizations that provide protection to the victims of domestic violence. They have established hot lines, counselling centres and shelters (with low capacity) where they provide psycho-social services to battered women, free legal aid and programmes for their reintegration into society, such as vocational training courses. However, there are a limited number of such services and they cannot meet all the needs of the domestic violence victims. In addition, women from rural areas do not have sufficient access to these services due to the lack of infrastructure. Another issue is that NGOs do not have any programmes targeting the perpetrators.

Recommendation: NGOs should put pressure on the government to implement protective measures prescribed by law for the domestic violence victims; this is an obligation that derives from CEDAW rec 1582 (2002), rec 1450 (2000), res 1997, etc. Since NGOs are operating the existing shelters, hot lines and counselling centres, they should also lobby the government to provide consistent financial support for their maintenance and development. They should also address their attention to programmes for perpetrators.

5. Monitoring and data collection by NGOs

Conclusion: Generally speaking, the research on domestic violence prevalence and contributing factors is conducted by NGOs. However, a large number of such studies consist of the data from surveys conducted in certain areas; they are very limited with regard to geographical distribution and not very reliable because of the ambiguous methodology used, which sometimes makes it difficult to draw conclusions on the prevalence of domestic violence in Albania. In addition, the NGOs monitor the data on domestic violence from SOS hotlines, newspapers and court decisions on domestic violence. The data analyzed by NGOs are used to draw conclusions on the domestic violence situation in the country, its consequences, the attitude towards the victims and public concern about the issue.

Recommendation: NGOs should make it a priority to harmonize their endeavours in order to conduct surveys on a national scale, thus providing an overall picture of the prevalence of domestic violence which help to improve the services to domestic violence victims and the strategies for the prevention of domestic violence. In conducting surveys on domestic violence, NGOs should increase their surveys of men. This would help in the observation of their reaction and attitude towards domestic violence; this information could then be used to
compile programmes on their involvement to combat domestic violence, which will ultimately lead to an effective response of the community against domestic violence. NGOs should also conduct surveys on the economic effect of domestic violence in order to provide proof of the costs caused by domestic violence in the country; they could then use these figures to address the negligence and insufficient commitment of the government to the domestic violence problem. NGOs should also gather and disseminate the international best practices in combating domestic violence.

BOSNIA AND HERZEGOVINA

Conclusions and recommendations for the government

1. Specificity of the constitutional and legal framework of Bosnia and Herzegovina

Conclusion: Bosnia and Herzegovina is a very complex state with a decentralized constitutional and legal system comprising two entities: the Republic Srpska and the Federation of Bosnia and Herzegovina, with the Brcko District as a special administrative unit. In addition, each of these levels has the competence to adopt laws in certain domains. To a certain extent, this complexity is an obstacle for exercising fundamental human rights and for protection against domestic violence.

Recommendation: The laws at the different levels (local, cantonal and entity) should be harmonized with laws at the state level, especially with the Gender Equality Law. A legal framework should be established at the state level in order to provide a separate system of protection for domestic violence victims.

2. General overview of relevant legal norms

Conclusion: Bosnia and Herzegovina has ratified international conventions, such as CEDAW; EHCHR and its Protocols, which should be implemented directly in legal practice with the primacy over all laws of the state, but the court practice is not sensitized enough to use these norms for the protection of victims of domestic violence.
Recommendation: The government of Bosnia and Herzegovina should make the list of ratified international documents available to the public, with all the basic information about these documents. Centres of education for judges and prosecutors in both entities should provide education in order to qualify/prepare the judges and prosecutors for dealing with domestic violence cases.

Conclusion: Bosnia and Herzegovina has adopted the Gender Equality Law, which forbids gender discrimination and any sort of violence in the public and private spheres, but it has not been implemented in practice as yet.

Recommendation: We recommend that the competent authorities create a programme, for a period of five years and with financial support, for the realization of Article 17 of the Gender Equality Law (measures for eliminating and preventing violence; providing aid, protection and compensation).

Conclusion: At the level of the Federation of Bosnia and Herzegovina, there are two laws addressing domestic violence. The first is the Criminal Law, which defines domestic violence as a criminal act, and the second is the Law on Protection against Family Violence, which provides protective measures for victims before the Misdemeanour Court. Since both laws are fairly new, there are no relevant parameters for their implementation.

Recommendation: Establish mechanisms and create a separate database in the Basic and Misdemeanour Courts for the systematic monitoring and implementation of the above laws.

Conclusion: In the Republic Srpska, the Criminal Law was amended in 2000 to recognize domestic violence as a criminal act, but the rest of the laws are not harmonized with the Criminal Law; this results in a lack of protection for victims of domestic violence. There is a newly-adopted Law on Protection against Family Violence, which for the first time includes protective measures.

Recommendation: All relevant legal regulations in the Republic Srpska should be urgently harmonized with its Criminal Law in order to provide appropriate protection to victims of domestic violence.

3. Action plan to combat domestic violence

Conclusion: A national strategy has not yet been adopted, although the state has the obligation according to DVAW (2003/45) and Recommendation 1450 (2000) of the EU to develop a national plan of action.

Recommendation: The state should develop a national plan of action against domestic violence or integrate domestic violence within existing national plans.
for the advancement of women’s status in Bosnia and Herzegovina and for the implementation of the Gender Equality Law.

4. Legal norms relevant for combating domestic violence

Conclusion: The Gender Equality Law regulates the obligation of state institutions to develop preventive measures that are in accordance with UN Resolution 2003/45 (UN Commission of Human Rights Resolution on the Elimination of Violence against Women), Recommendation 1582 (2002) of the Council of Europe (Committee of Ministers) and Resolution 1997 (Resolution on the need to establish an EU-wide campaign for zero tolerance of violence against women).

Recommendation: State institutions should urgently adopt preventive measures against domestic violence and ensure financial means for their enforcement.

5. Civil law provisions

Conclusion: There are no civil remedies regarding domestic violence, and the compensatory provisions from the Law on Obligations are related to all subjects of the law on protection. Consequently, the legislation is not in accordance with CEDAW, DVAW, Recommendation (2002) 5 and Resolution 1997. Divorce and custody procedures are not simplified in cases of domestic violence, which is not in accordance with Resolution 1997.

Recommendation: Family law in both entities and in the Brcko District should be amended and harmonized with international documents in order to simplify divorce and custody procedures for victims of domestic violence.

6. Social security

Conclusion: Social security law regulations do not address domestic violence, but some cantonal laws include victims of domestic violence within the category of the “person in a state of social need” and provide small grants for them.

Recommendation: The governments should include victims of domestic violence as a special category within laws on social security at all levels. The Social Security Law should be passed at the state level, which would allow specific protection for victims of domestic violence at the state level, and not only at the municipal/cantonal level as it is now. There is a need for greater financial support of the social welfare centres.
7. Availability of free legal aid for victims of domestic violence

Conclusion: During criminal and misdemeanour procedures, legal aid is free, but in civil procedures it is not; this is not in accordance with CEDAW and Recommendation 2002.

Recommendation: Service centres for free legal aid should be established at the local level within local municipalities.

8. Preventive measures taken by the government

Conclusion: At the state level there is no official policy on preventive measures, but there are some exceptions in the local communities based on the good will of individuals. The government undertakes preventive measures only in the sphere of education with the aim of educating young people on gender equality principles.

Recommendation: The governments should, in partnership with NGOs, carry out awareness-raising campaigns and educational programmes on gender issues and non-violent behaviour. The government should permanently provide financial support to projects of NGOs for combating domestic violence, as recommended in Rec. 1582 (2002).

9. Protective measures taken by the government

Conclusion: The government does not provide any kind of protective measures such as shelters, hotlines or rehabilitation programmes. This is not in accordance with ENCHR Case Law, Recommendation (85) 4, DVAW, Recommendation (90) 2, Recommendation 1450 (2000), CEDAW, Resolution 2003/45, Recommendation (2002) 5, Recommendation 1681 (2004), Recommendation 1582 (2002) and Resolution 1997.

Recommendation: The government should use special budgets to support the existing protective mechanisms developed by NGOs and establish new ones, as well as provide all other protective measures prescribed by laws and international standards. The government should change its tax policy in order to reduce the tax rate on donations to NGOs as a stimulus for individuals and companies to support non-profit NGOs.

10. Collecting data and monitoring

Conclusion: Statistics are not gender sensitive, but some police stations have started keeping gender-sensitive statistics and classifying them with specific
crimes. At the state level there is no database regarding domestic violence; this is not in accordance with CEDAW, DVAW, Recommendation (2002)5, Recommendation 1582 (2002), Recommendation (90)2, Recommendation 1681 (2004) and Resolution 2003/45. Monitoring mechanisms have not been developed as yet. Bosnia and Herzegovina submitted the initial report to the CEDAW Committee at the end of 2004, but it has not yet been discussed.

Recommendation: The Government of Bosnia and Herzegovina should prepare a separate data collection system relating to cases of domestic violence; this system should be provided to all institutions dealing with domestic violence in order to create a database within the authorized ministries.

Conclusions and Recommendations for NGOs

1. International legal standards

Conclusion: NGOs in Bosnia and Herzegovina use several international norms (such as CEDAW and the Beijing Platform) during their lobbying and advocacy activities in order to change legislation, as well as for their campaigns to raise public awareness regarding domestic violence. But the majority of NGOs are unaware of the wide range of international and regional human rights documents related to domestic violence.

Recommendation: NGOs should strengthen their lobbying activities by using a broader spectrum of international and European documents to combat domestic violence.

2. Interventions by NGOs concerning legal norms

Conclusion: NGOs have initiated the approval of several new laws and were involved in the drafting groups. But their impact and contribution in these processes has remained invisible. Most of the cooperation protocols made between NGOs and governmental institutions have turned out to ineffective.

Recommendation: NGOs should insist on the application of existing protocols and on the verification of the cooperation and partnership with government through different kinds of agreements.
3. Activities to improve the effectiveness of legal remedies and procedures

Conclusion: In order to improve the effectiveness of legal remedies and procedures, NGOs in Bosnia and Herzegovina initiated the drafting of a new law on domestic violence, organized training for police officials, judges, representatives of social welfare centres and journalists, and provided free legal aid to victims.

Recommendation: Governments are obliged to organize the training and education of professionals who deal with the issue of domestic violence. Due to their knowledge and experience, NGOs should insist that their capacities be used by government for organizing this training and education. The NGOs would receive compensation for these services. In this way we would avoid redundancy and would utilize the available NGO capacities.

4. Preventive measures proposed by NGOs

Conclusion: NGOs engage in a number of different activities to prevent domestic violence such as awareness-raising campaigns, training, education and media presentation. However, most of these activities are only visible during so-called “women’s days” (16 days of activism and 8 March).

Recommendation: NGOs should develop strategies for media presentation and demand free commercials for SOS lines from the public broadcasting services.

5. Activities of NGOs in the protection of victims

Conclusion: NGOs in Bosnia and Herzegovina are the only ones that provide protection of victims by accommodating them in shelters, by SOS lines, psychosocial treatment and occupational therapies; they also provide rehabilitation programmes for the perpetrators. Since the protection facilities are located in the large cities of Bosnia and Herzegovina, this limits the participation of women from other cities, particularly those from rural areas.

Recommendation: NGOs should put pressure on governmental institutions to implement the protective measures prescribed by law and to provide continuing financial support for the maintenance and development of already-existing NGO capabilities directed towards the protection of victims of domestic violence.
6. **Awareness of victims of the existence of NGOs**

Conclusion: Victims of domestic violence are not very aware of the existence of NGOs that deal with domestic violence. However, women in big towns have better access to information than women in rural areas and more possibilities to use the protection services of NGOs.

Recommendation: NGOs should take the problems of women in rural areas into consideration and include them in their activities.

7. **Monitoring and collecting data by NGOs**

Conclusion: NGOs have not sufficiently developed monitoring mechanisms or the methodology for collecting data.

Recommendation: NGOs should create specific systems for data collection for victims of domestic violence, for SOS hotlines and shelters.

8. **Cooperation with governmental institutions**

Conclusion: Cooperation between governmental institutions and NGOs has been improving steadily, but it is still unsatisfactory. NGOs have not been fully accepted as a partner of governmental institutions in combating domestic violence.

Recommendation: NGOs should offer a partnership and subsidy agreement to governments, specifying their services and expectations.

9. **Problems of NGOs in their work**

Conclusion: NGOs face many problems in their work, but one is crucial: their unstable income and complete dependence on foreign donors who are slowly but surely leaving Bosnia and Herzegovina.

Recommendation: Since a long-term strategy has not yet been established and the majority of activities are project oriented and time limited, NGOs should develop a national strategy in Bosnia and Herzegovina to combat domestic violence.
CROATIA

Conclusions and recommendations for governmental and non-governmental organizations

1. Research on domestic violence

Conclusion: Only one study on the prevalence and forms of domestic violence has been conducted in Croatia. Croatian government institutions have never initiated or planned any research on the problem of domestic violence. There are no permanent funds that would allow continuous scientific work on this matter. The problem of domestic violence will not be properly addressed until relevant research is conducted by experts from different fields of science (psychologists, sociologists, medical experts, legal experts and victimologists).

Recommendation: We strongly recommend that all relevant governmental institutions take special measures to ensure that scientific research is conducted into the prevalence, causes and consequences of violence against women in the family. This will lead to better understanding and adequate treatment of the problem. Findings from this research should be applied to the education of state officials that are involved in the problem of domestic violence and to make them more sensitive to this very important problem. During the process of adopting the state budget, the Croatian government should take into consideration the problem of domestic violence and provide a budget item for research and scientific work on the matter of violence against women in the family.

2. Stereotypes about domestic violence

Conclusion: Domestic violence is a serious problem in our society, but unfortunately it is subject to widespread stereotypes that cause misunderstanding and make this problem seem irrelevant to the general population. These stereotypes have great influence on a large part of the population. Consequently, the problem of violence against women in the family is underrated and the responsibility of the violent abuser is transferred to the victim and other external factors (such as alcohol and drugs).

Recommendations: We strongly recommend that the government work steadily towards diminishing the stereotypes related to domestic violence, change school curricula in order to counteract patriarchal stereotypes, promote
models of partnership and tolerance among partners and thereby establish special programmes that will promote non-violent conflict solutions. It is necessary to organize, finance and support public campaigns that will focus on the problem of violence against women and children in the family and stress the unacceptability of violence and the negative consequences of violence within the family. Cooperation with NGOs is very important; the government should initiate and support this cooperation and the exchange of experience and practice. Also, we strongly recommend that governmental institutions create a brochure for women who are potential victims of domestic violence with instructions on how to react and whom to approach, a list of their rights and the obligations that governmental institutions and employees have towards them, a list SOS hot lines and other relevant information.

3. Gender-based stereotypes and gender equality

Conclusion: Gender-based stereotypes are widespread and they have a major influence on the general population. Through the obligatory educational system and family, which are the most important agents in the process of socialization, and through the media, gender-based stereotypes are widely disseminated in our society. In its documents, resolutions and recommendations, the UN has voiced its concern that gender-based stereotypes are the root of the problem of male violence against women.

Recommendations: We strongly recommend that the Croatian government develop and implement educational programmes in the school curriculum that contribute to the process of reducing gender-based stereotypes. We urge the government to conduct campaigns on gender equality through the state media and to encourage the media to promote a non-stereotypical image of women and men, as well as to organize education and training focused on this issue. Governmental institutions are also advised to promote the empowerment of women in order to achieve full equality between women and men.

4. Awareness-raising campaigns

Conclusions: Public awareness is very important for combating domestic violence because decreased tolerance towards violence in the family is the first step in this process. Governmental institutions rarely organize campaigns to raise awareness of the problem of domestic violence.
Recommendation: We strongly recommend that the government initiate public campaigns focused on informing the public about the problem of domestic violence. The state should conduct national awareness-raising campaigns and adopt appropriate legislative, judicial and financial measures. We strongly recommend initiating zero tolerance campaigns that will contribute to the recognition of violence against women as being socially and morally unacceptable. It is very important to periodically publish and promote the results of research and statistics on domestic violence.

5. Training and education for state officials who work with the problem of domestic violence

Conclusion: One of the greatest difficulties that women victims of violence in the family have during their contact with state officials is their insensitivity to the problem and the victim. During the process of exercising their rights, these women are victimized a second time by the officials, which leads to permanent mistrust towards state institutions. Besides being insensitive, state officials are often unfamiliar with the subject of domestic violence.

Recommendations: We strongly recommend that governmental institutions cooperate with international and national experts to organize and conduct training and education for the police, judiciary, lawyers, medical staff and social workers. This should be done in cooperation with the relevant NGOs who are experienced with this problem. We demand that state officials acknowledge the trauma experienced by women victims of domestic violence and treat them properly during the process of establishing contact and helping them.

6. Direct help services for women victims of domestic violence

Conclusion: For women victims of domestic violence it is very important for them to receive the required direct assistance, which includes psychological and legal counselling, representation in court, safe shelter and support. Women's NGOs are doing a great deal of work in this area, but because of their limited resources they cannot provide for the national requirements. The current capacity for direct help services in Croatia is inadequate; consequently, the state does not comply with international recommendations. There is a great need to establish new shelters and free SOS help lines.

Recommendation: We strongly recommend more significant engagement in the process of organizing and financing services of direct help for women
victims of domestic violence, including shelters, counselling centres, free SOS hotlines (24 hours) and programmes for the economic empowerment of women. During the process of establishing shelters or other direct help services for women victims of domestic violence, it is very important to follow the norms and recommendations of experts and the relevant international standards. The government has the duty to increase state funding to support the social services dealing with domestic violence. In the process of establishing shelters, we recommend that governmental institutions cooperate with women's NGOs and take their experience, knowledge and suggestions into consideration.

7. Programmes for women with special needs

Conclusion: There are no programmes for women with special needs who are victims of domestic violence. Moreover, there are no programmes for women who are imprisoned because of killing an abusive partner nor is any research being conducted on this topic.

Recommendation: We strongly recommend that governmental institutions develop and implement programmes that focus on women with special needs and organize direct help services adapted to their needs. Special programmes must be developed for women who are in prison because of killing a violent partner. It is very important to take into consideration the conditions that led to the killing.

8. Definitions of domestic violence

Conclusion: The national strategy for combating domestic violence does not include a specific definition of domestic violence; instead it invokes existing definitions from national and international documents. The definitions of domestic violence in national documents do not clearly state that this is a specific form of gender-based violence. The definitions in national laws, as well as the National Strategy, use the term family violence instead of domestic violence. We can also conclude that the scope of the definition in legislation is too narrow because it doesn't include violence that occurs in intimate relationships, while the Criminal Law only includes partners who live in the same household. The definitions do not stress that domestic violence is not a private matter, but a public matter of special concern to the government.

Recommendations: The government should include the definition of domestic violence in the National Strategy as a basis for all other definitions.
This definition should include all forms of violence (physical violence, sexual violence, psychological violence and economic violence) and stress that domestic violence is a specific form of gender-based violence. This definition should also stress that domestic violence is a public matter of special concern to the government. In all policy documents and in laws, the government should replace the term family violence with domestic violence. The definition of domestic violence in the Criminal Law should be harmonized with the definition in the Law on Protection from Family Violence and should exclude the condition that partners have to live in the same household. All definitions should include violence occurring in intimate relationships.

9. **Criminal law norms and sanctions**

Conclusion: The Criminal Law covers very divergent forms of violent behaviour, including the specific criminal act of violent behaviour in the family. Although this criminal act implicitly includes physical force, psychological force, and sexual or economic violence, one problem is the objective condition of putting the other person (the victim) into a degrading position. It is unclear how this notion is interpreted in legal practice, but experience shows that criminal charges are raised only in cases where this criminal act has occurred in conjunction with the criminal act of molesting and neglecting a child. Another problem regarding the Criminal Law definition is that there is no clear guideline about when the perpetrator will be prosecuted under the Law on Protection from Family Violence (which is a misdemeanour law) and when he will be prosecuted in a criminal procedure. A third problem is that Croatia still doesn't have special provisions or a law on stalking.

Recommendations: We recommend the following:

- Exclude the objective condition of putting another person (the victim) into a degrading position as a condition for sanctioning domestic violence under the Criminal Law,
- Establish clear criteria for making a distinction between a misdemeanour and a criminal act for domestic violence in a way that physical attacks are always prosecuted under criminal law,
- Increase the severity of imprisonment sanctions from 3 months to 3 years, and from 6 months to 5 years,
- Adopt special laws against stalking,
– The Ministry of justice should establish a clear policy regarding the sanctioning of domestic violence in such a way that every case is handled with due care as a criminal investigation,

– The government should become aware of the institutionalized discrimination against women victims of domestic violence that occurs in bringing cases to criminal trial and stop this practice by means of clear regulations and education programmes for judges, prosecutors and other judiciary staff,

– The Criminal Law should offer the possibility for victims to appeal to self defence as grounds for avoiding punishment when they commit a crime that is a response to the structural violence of which they are the victim.

10. Civil law norms and sanctions and misdemeanour norms

Conclusion: Misdemeanour provisions in the Law on Protection from Family Violence are adequate in the sense of definition and scope, but practice has shown serious gaps in the procedures. First of all, protection measures are defined as sanctions and therefore cannot be used during the trial procedure, which means that perpetrators cannot be imprisoned during the proceedings. During this period there is often an escalation of violence and the courts do not use other possible measures for the protection of victims (e.g. precautionary measures in the Law on Misdemeanours). One of the biggest problems with misdemeanour procedures is that penalties are usually pecuniary and do not involve imprisonment.

Divorce proceedings have an obligatory reconciliation process if the partners have children. This process is usually very traumatic for victims of domestic violence because they have to sit and communicate in the same room with the perpetrator without any protection. Norms for child custody proceedings do not mention domestic violence as one of the criteria for making decisions on custody. There are no special compensatory provisions for victims of domestic violence, but only a general provision in the Law on Obligations. Recent amendments to this law include compensatory provisions for “rights of person/personality”, including the right to life, physical and psychological health, dignity, privacy, freedom etc. This provision should be used for pecuniary damage compensation for victims of domestic violence.
Recommendations:
- Changes of Law on protection from family violence should include precautionary measures that would enable courts to hold perpetrators imprisoned for the length of the trial,
- Courts should harmonize their practice in domestic violence proceedings regarding the use of precautionary measures from the Law on Misdemeanours,
- Sanctions in the Law on Domestic Violence should be more severe and should stress imprisonment more than pecuniary sanctions,
- The reconciliation process as a part of divorce proceeding should not be obligatory in families where domestic violence has occurred,
- Custody norms should include domestic violence as one of the criteria for granting custody in such a way that the perpetrator cannot be in the same position for obtaining custody as the victim,
- The government should finance an education programme for judges regarding interpretation and the level of pecuniary damage for victims of domestic violence,
- NGOs that provide free legal aid to victims should also provide aid and representation in the courts for obtaining pecuniary damages for victims,
- The government should exempt victims of domestic violence from having to pay the costs of a pecuniary damages trial in advance.

11. Legal remedies, procedures and practices

Conclusion: Many victims of domestic violence are still not using legal remedies because they are afraid for their physical safety. The Law on Criminal Procedure does not make provisions for precautionary measures such as forbidding the stalking or harassment of the victim, expulsion of the perpetrator from the family home, confiscation of weapons, etc. During criminal proceedings, legal measures on the protection of witnesses should also be applied to victims of domestic violence, especially measures for protecting witnesses outside the courtroom and the proceedings. Currently, protection measures are available to victims of domestic violence only during the proceedings.
Recommendations:
- Include the following precautionary measures in the Law on Criminal Procedure: forbidding the stalking or harassment of the victim, expulsion of the perpetrator from the family home and the confiscation of weapons,
- Allow the immediate separation of the victim from the offender through the immediate removal of the violent man from the common household and environment of the woman and her children,
- The court should inform victims about the precautionary measures and/or protection measures that are available to them, and they should be allowed to ask for protection measures regardless of the request from the public prosecutor,
- Precautionary measures should not be fixed, but judges should have the possibility to provide such measures as required by the specific case,
- The government should ensure that rules of procedure prevent unwarranted and/or humiliating questioning of the victims or witnesses of violence and establish rules for giving testimony and questioning victims,
- In all proceedings victims of domestic violence should have the right to free legal aid provided by state,
- The government should establish rules to protect the privacy of victims and witnesses in domestic violence proceedings,
- The government should ensure that the victims can receive medical and psychological care at all stages during the proceedings.

12. Data collection and monitoring

Conclusion: The current system of data collection is inadequate in the sense that it does not provide realistic insight into domestic violence problems. Data collection systems are different at different institutions and therefore are not comparable. Presently, there is no central agency that collects and processes data on domestic violence.

Recommendations: The government should secure funding and institutional support for the compilation of statistics and research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with
violence. The government should develop and fund monitoring mechanisms for the implementation of existing laws and policies on domestic violence. Part of the monitoring could be conducted by experienced NGOs.

REPUBLIC OF MACEDONIA

Conclusions and recommendations to the government

1. Research on domestic violence in Macedonia

Conclusion: In the Republic of Macedonia no research on domestic violence has been conducted by governmental institutions from 2004 (when the first laws addressing the problem were adopted) until now. The only official data is collected at the individual level by the relevant ministries and state institutions that are in contact with the problem. However, we stress the inadequate collection of this data and the fact that some state institutions do not collect any data at all on domestic violence, even though they have direct contact with the victims (e.g. the Ministry of Health). Also, the available data is not harmonized in the sense of using the same parameters.

No detailed analysis of the data from the ministries has been done. Neither is there any research on the causes of using or not using the legally-prescribed possibilities or about the effectiveness of the systems of protection.

In this regard there is a need to conduct research that can be used as a starting point for the preparation of the national programme, which, beside intervention, will include prevention, strengthening human capacities through education, etc.

The CEDAW Committee (GR 19), the UN Declaration on Violence Against Women, and Recommendations (90) 2 and 1681 (2004) of the Council of Europe state that the States Parties are “encouraged” to compile statistics and conduct research on the extent, causes and effects of violence, and on the effectiveness of measures to prevent and deal with violence. General Recommendation 19 of CEDAW stipulates the promotion of research, collection of data and compilation of statistics, especially those concerning domestic violence. To properly address the problem, there is a need for continuous monitoring and comparative analysis of the situation.
Recommendation: Conduct research that reflects the factual situation regarding domestic violence by determining its extent, its various forms, its consequences, as well as the means for upgrading systems of protection (legal and other). Data for each relevant topic in the field of domestic violence must also be collected, allowing comparative analysis and systematization of these data with the aim of determining the factual situation and the results from the state activities in this area.

2. Strategy and action plan to combat domestic violence – capacities and financial resources allocated for this purpose

Conclusion: The state response towards the problem of domestic violence has been inadequate in terms of the capacities and financial resources allocated. At present, the resources that the state allocates for this purpose are part of the funding for the programme for socially-excluded persons within the Ministry of Labour and Social Policy (MLSP).

Most of the relevant financial support is allocated to the national shelters, which leads to a lack of resources in areas such as prevention and to a lack of support for other systems of protection established by the NGOs (except the National SOS Hotline). To compensate for this lack, even governmental institutions use donations from international organizations; this is the case with the UNICEF support of the prevention activities of the above ministry.

We conclude that a strategy document and annual operational plans are required which will lead to the effective operation of the MLSP, it being the dominant institution regarding obligations and responsibilities in the area of domestic violence. This applies as well to other governmental and non-governmental organizations in this field.

This condition is the result of not having established a special programme for combating domestic violence. Such a programme requires the allocation of funds from the state budget especially for the purpose of combating domestic violence. In this regard, ESE has established a partnership with the MLSP for the preparation of such a programme. This process will include all relevant governmental, non-governmental and other organizations (such as religious organizations), in order to establish an appropriate coordinated approach to the problem. The Council of Europe (recommendation 1582 (2002)) prescribes “increased state funding for the support of the social services which deal with cases of domestic violence".
Recommendation: Prepare a national programme for combating domestic violence including the allocation of funds in accordance with the priorities, measures and activities planned within the programme.

3. Damage compensation

Conclusion: The legislation of the Republic of Macedonia does not contain specific provisions regarding damage compensation in cases of domestic violence. The general provisions from the Law on Obligations apply to damage compensation. In cases where a criminal procedure has been initiated, if a victim wants to obtain damage compensation, they are required to initiate a civil procedure to address the issue of compensation (this might be added to the criminal procedure: an adhesion procedure). Otherwise they would have to initiate a civil procedure after the criminal procedure is finished (if the judgment releases the defendant); this could put the victim through a second traumatic process.

The CEDAW Committee (General Recommendation 19, paragraph 24) prescribes compensation for damages suffered (pecuniary, physical, psychological, moral or social) corresponding to their seriousness, including the legal costs incurred.

Recommendation: Adopt specific provisions regarding damage compensation which will be applied in cases of domestic violence and simplify the process for addressing the compensation issue within ongoing criminal procedures.

4. Compensation of costs incurred by victims

Conclusion: Regarding the costs incurred by victims of domestic violence, there are two types of relevant procedures, criminal and civil. Criminal procedures regarding domestic violence are initiated either ex officio or by proposal (in cases of bodily injury). In cases where a medical certificate for the injuries is needed, the costs for this certificate are paid by the victims themselves. At the end of the procedure these costs are reimbursed to the victim by the court or by the perpetrator. In civil procedures, such as divorce and division of property, the victim is obliged to cover the court costs for initiating the procedure and when the verdict is proclaimed (costs for the verdict itself). At the end of the procedure these costs are usually paid by the side that lost, or in certain cases both sides share the costs equally.
Regarding the costs of temporary protection measures, these measures are implemented by the social welfare centres. Therefore all related costs are covered by them as an organization.

The research on domestic violence that was conducted by ESE in 2000 identified the financial dependence of the victims as one of the reasons for not leaving a violent relationship. Because the victim is required to pay the court costs at the initiation of a civil procedure and the costs for the medical certificate in a criminal procedure, these are obstacles that actually prevent victims from having access to the court system. According to CEDAW (General Resolution 19) the state should provide compensation for any legal costs incurred by victims.

Recommendation: Establish a separate fund from the state budget for the compensation of the costs incurred by victims of domestic violence, e.g. the initial costs of civil procedures and the costs of medical certificates in criminal procedures charged by courts in the Republic of Macedonia.

5. Continuity of awareness-raising activities

Conclusion: The Ministry of Labour and Social Policy began activities in the area of awareness-raising after the adoption of amendments to the Criminal Code and the Family Law in 2004. Until now, the leading actors in these activities were NGOs. Usually, these activities were conducted during the “16 days of activism against gender violence”. There is clearly a need organize such activities year round. Recommendations (85) 4, (2000) 1450, 1582 (2002), (90) 2, (2002) 5 and 1681 (2004) of the Council of Europe refer to the obligation of the state to organize zero-tolerance campaigns, which condemn domestic violence as morally and socially unacceptable. To achieve a real raise in awareness, the above-mentioned activities are necessary. To this end, the MLSP and other relevant ministries must initiate campaigns and other activities targeted towards raising awareness about the problem of domestic violence. This is especially important regarding the promotion of law amendments and services that help protect victims of domestic violence.

Recommendation: Organize campaigns and other activities aimed at the general public that concern the prevention of this kind of violence and that promote systems of protection for the victims.

6. Education of professional groups

Conclusion: In the area of prevention, the educational component has not been developed to a satisfactory level. Educational activities are mainly conducted by
NGOs that are active in this field. Education is targeted at certain professional groups, as well as mixed groups from various professions that are in contact with domestic violence. Recently, governmental institutions have also provided educational activities; the MLSP, with support from UNICEF, conducted multidisciplinary training sessions for social workers, health workers, judges, NGOs and police officers. Besides these training sessions, which were organized by the Women's Programme of the Open Society Institute of Macedonia (now called Akcija Združenska), another training session was held in 2003 for representatives of the Ministry of the Interior (in Skopje). However, there is no continuity or long-term strategy in such education and training.

Several international documents identify education as a component that is essential to strengthen the skills and capacities of professionals who deal with cases of domestic violence. Such provisions are included in CEDAW GR. 19, Resolution 2003 of the EU and recommendation 1450 (2000) of the Council of Europe. These documents prescribe training and awareness-raising programmes for judges, police officers and representatives of the legal and health professions. To comply with these recommendations, it is crucial for our country to develop education and training in this area. Finally, the relatively low level of the implementation of this component is directly related to the lack of finances allocated from the state budget in this regard.

Recommendation: Place a specific item on the budget concerning domestic violence education which will be allocated for continuous multi-sector education for all persons who work with victims of domestic violence. Provide education for new employees at all institutions. Continuous education is not only essential to change general attitudes or raise general awareness, but it also strengthens the capacity of professionals to deal with cases of domestic violence. The multi-sector character of the training assures the coordination between all disciplines involved in combating domestic violence.

Conclusion: There is no education targeted towards men in the area of domestic violence. This would include preventive education programmes on gender roles, violence and traditional attitudes that should be changed. There are few programmes that work with abusers, even though Family Law Article 104, par. 8 prescribes this when civil restraining orders are issued by the court. It stipulates that the court should “order the abuser to take part in appropriate counselling”. CEDAW GR 19 stipulates the implementation of “educative programmes targeted toward men/boys regarding prevention of violence and changes in negative traditional attitudes toward women”. According to Recommendation (2002)5 of the Council of Europe, the state should support
gender education programmes that give special importance to gender equality and mutual respect.

Recommendation: Develop and implement educational programmes for the prevention of violence that target men.

Conclusions and recommendations for NGOs

1. Implementation of international standards in the strategies of NGOs

Conclusion: As part of their activities and promotion of personal action, NGOs often refer to international documents that prescribe standards for achieving certain goals. But that does not always mean that these standards are part of their strategies and programmes. We can therefore conclude that most NGOs do not take the full range of standards of international organizations into account, but incorporate them only incidentally. This supposition is confirmed by the small number of NGOs which take a serious approach towards international documents by determining whether a specific issue is in accordance with provisions from an international document (such as reports on the implementation of conventions, covenants etc.)

The same applies to the monitoring of international reactions/processes which are complementary to standards prescribed in international documents such as Beijing + 10, the Millennium Development Goals etc.

Recommendation: In order to respond adequately to the problem of domestic violence and produce long-term results, international standards must be incorporated into the strategic orientation of the relevant NGOs. This includes the planning and implementation of activities in accordance with the already-prescribed standards on domestic violence at the international level.

2. Education programmes for police officers, judges, advocates and journalists who deal with cases of domestic violence

Conclusion: Educational activities conducted by NGOs focus more on building the capacities of other NGOs and less on governmental institutions. The deficiencies in education in the governmental sector can be described in two areas. The first is the education of existing employees regarding domestic violence (for those who are first coming into contact with the problem). The second area involves the education of new employees. The different approaches
in the first and second areas concern compensation for the lack of professional awareness about the problem.

Recommendation: Put pressure on governmental institutions to develop and implement continuous education of professionals through the available organizations.

Plan and provide training for professionals in accordance with the priorities that emerge from the evaluation of the governmental approach towards the problem, in coordination with and with the participation of the human resource departments of those institutions.

3. Preventive measures advocated by NGOs
   (awareness-raising activities on the problem of domestic violence)

Conclusion: In the area of prevention, NGOs conduct various activities which are mainly targeted on awareness-raising. The aim of these activities is to make real changes in the perception of the problem of domestic violence by society (it was previously treated like a private, family matter). Unfortunately, this perception continues to exist, even after the formal reaction to and sanctioning of the problem by the state. These activities are conducted mainly without coordination between NGOs. The only time such events are coordinated is during the international “16 Days of Activism Against Gender Violence”.

Recommendation: NGOs should work towards mutual coordination of activities involving awareness-raising activities. Throughout the year they should also share resources and capacities to acquire more influence with the public on certain issues.

4. Activities of NGOs in the field of protection
   (cooperation with governmental institutions)

Conclusion: In the absence of a formal reaction to the problem, the first step in addressing the question and bringing it into the open was taken by civic organizations (NGOs), which incorporated the problem in their sphere of activities during the mid-1990s. The first official reaction to the problem took place with the adoption of amendments to the Criminal Code and Family Law. There is a great necessity for cooperation between the governmental and non-governmental sectors regarding domestic violence intervention and prevention. This creates the basis for building an effective system for combating domestic violence. This system must be targeted on meeting the needs of the victim. This principle
must be an integral part of our combined approach (NGOs and governmental organizations), otherwise our work would be irrelevant.

Recommendation: The NGOs should take concrete steps aimed at establishing cooperation with relevant governmental institutions that will result in joint activities or in developing a coordinated approach directed towards the needs of the domestic violence victims (counselling, provision of legal aid, psychosocial assistance and health care).

5. Monitoring and collection of data by NGOs

Conclusion: A few of the NGOs that provide services to the victims of domestic violence as a part of the informal system of victim protection collect internal statistics about the problem. The statistics collection takes place according to parameters established by the individual organizations. The data are most often for internal use and for the promotion of their activities. The data are not normally available to the public and are reluctantly shared with those who ask for it. A related problem is the need to conduct another survey (the last survey was conducted by ESE in 2000). This is especially important if you take into consideration the existence of official data, which is also collected on the basis of internal parameters and is issued only according to the demand of the relevant ministries. As yet, no cross-analysis or deeper analysis of data on reported domestic violence is being done.

Recommendation: Unify the data collection system used by governmental and non-governmental organizations by at least using mutually-determined parameters. Moreover an in-depth survey should be conducted which will be used as the basis for determining the future response to domestic violence.

MONTENEGRO

Conclusions and recommendations to the government

1. Compliance of the Montenegro legal system with the international standards and ratified Conventions

Conclusion: The Montenegrin law system allows the direct incorporation of international standards and ratified conventions. This is due to the Constituti-
onal Charter of Serbia and Montenegro and the Constitution of the Republic of Montenegro. However, institutions do not use this possibility frequently enough.

Recommendation: Montenegrin institutions, especially the courts, should be more courageous in applying international legal norms. Concrete, intensive training programmes in the field of international legal norms related to domestic violence are required in each branch of government: executive, judicial and legislative.

2. National action plan for the prevention of domestic violence

Conclusion: Montenegrin authorities ratified CEDAW in the legal framework of the former Yugoslavia; according to DVAW (2003/45) and Recommendation 145 of the European Union, Montenegro has been obligated to adopt a National Action Plan for violence prevention since 2003.

Recommendation: The authorities in the Republic of Montenegro should be more dynamic in the process of adopting a National Action Plan for violence prevention; the low standard of living is no justification for inaction on this issue in comparison with the surrounding countries and European countries generally. The authorities should formulate a specific National Action Plan for the prevention of domestic violence.

3. The definition of domestic violence

Conclusion: In July 2002, the Montenegrin Parliament approved an important amendment to the Criminal Law; since then domestic violence has been a specific crime according to Art. 220 (formerly Art. 100a) of the chapter on “Crimes against sexual freedom” of the Criminal Law.

Recommendation: The definition should be expanded with respect to the list of potential victims of domestic violence, especially when compared with the definition adopted in our in-depth study.

4. Existing and draft provisions concerning domestic violence in the Montenegrin legal system (criminal and civil)

Conclusion: We do not have a specific protective measure that bans the perpetrator from approaching the victim (a domestic violence restraining order). Consequently, the positive effects of the above-mentioned Article 220 are negligible. The main problem is that many perpetrators will continue to molest their wives and children even if their wives report them to the police. In our legal
system, victims of domestic violence can get some compensation for damages related to domestic violence if the Criminal Court convicts the perpetrator. In civil procedures, the victims (wife and children) can also receive compensation for mental anguish. This possibility is based on Civil Law and Federal Obligatory Law. Recently, the Law on the Prevention of Domestic Violence was drafted (Ministry of Justice, Law Faculty, Professor Radoje Korać and the NGO Save the Children), along with a National Action Plan draft law on gender equality and a law on gender equality (drafted by the government Gender Equality Office).

Recommendation: The definition should be broader concerning the list of potential victims of domestic violence, especially in comparison with the definition adopted in our in-depth study. Regarding the Montenegrin legal system, the existing provisions should provide more concrete norms specifically related to the victims of domestic violence, and norms should be oriented more to the prevention of domestic violence. Existing legal norms should be harmonized with the aim of tackling the serious social phenomenon of domestic violence. When drafting legal norms, every competent authority/institution that is important to the process should not be listed. However the government should include victims of domestic violence as a special category in laws on social security at all levels.

5. Free legal aid for victims of domestic violence

Conclusion: Free legal aid for victims of domestic violence is available only through the programmes of NGOs.

Recommendation: The government should permanently support projects of NGOs in combating domestic violence with financial means, as recommended in Rec. 1582 (2002).

6. Preventive measures taken by the government

Conclusion: Montenegrin authorities have not continued the dynamism of the National Action Plan, which included preventive measures in the first plan. The participation of the government Gender Equality Office in the “16 days of activism” campaign and periodic public discussions related to drafting and adopting a new law are the only activities so far. There are no educational programmes in schools or universities.

Recommendation: Intensify the realization of the activities prescribed by the National Action Plan. The activities should be realized in cooperation with all
relevant organizations that deal with domestic violence. Campaigns should focus on informing and strengthening women as well as on raising the awareness of the general public. The education programmes on the prevention and elimination of violence against women should be incorporated into each level of the school system, and especially into the programmes for training future professionals; all these activities should take place with the participation of women’s NGOs.

7. Protective measures taken by the government

Conclusion: The government does not provide any protective measures at present. In Montenegro, there are no shelters, SOS hotlines, rehabilitation centres or free medical services specifically for victims of domestic violence. There has been no significant harmonization of procedures in the area of protective measures. No professions are addressed by the specific laws against domestic violence and there are no binding rules or guidelines for working with cases of domestic violence.

Recommendation: The Government should support, through special budget allocations, the existing protective mechanisms developed by NGOs and establish the new protective mechanisms prescribed by international laws and standards. State institutions should also establish shelters, SOS hotlines, crises centres and special health care facilities for victims of domestic violence. It is a top priority to create permanent multidisciplinary teams with binding protocols for the police and the health and social services.

8. Experiences of the victims with the legal system, government policy and government officials

Conclusion: As part of their institutional support work, SOS activists surveyed women victims of domestic violence who passed through the institutional proceedings. Of the women surveyed, positive experiences were reported by 25.8% concerning the police, 19.5% concerning the judicial system and 9.1% concerning centres for social care.

Recommendation: The Government of Montenegro should prepare special forms for all institutions dealing with cases of domestic violence and establish databases within the authorized ministries.
9. Collecting data and monitoring

Conclusion: In Montenegro there are no official statistics, systematic data collection or official registration involving cases of domestic violence. The departments of the Ministry of Internal Affairs do not register those cases. There is no systematic monitoring or evaluation of any governmental programme for the protection of victims, which is very rare in any case. The only example of cooperation we have found is that between SOS Nikšić, the centres for safety (the local Ministry of Internal Affairs departments in the towns) and courts in 14 towns, which was realized during 2004 and 2005. The government Office for Gender Equality has been working on the initial report for Montenegro in accordance with CEDAW.

Recommendations: The state has an obligation to monitor cases of domestic violence, estimate its intensity, incidence, consequences and importance for the whole society in order to take adequate measures. It is essential to have valid data, both from the institutions and from the NGOs, and there is definitely a need for a single governmental institution or body to monitor the relevant laws, plans and policies. Publication of the collected data on domestic violence and publicity about the actions taken to solve and prevent this problem could serve as a basis for the active reporting of our institutions to the international bodies that deal with human rights protection.

Conclusions and recommendations to NGOs

1. The role of the NGO sector in the struggle against domestic violence

Conclusion: Women’s NGOs are leading the promotion of a single democratic society and enjoy widespread support and visibility.

Recommendation: It is necessary to develop an exchange of knowledge, experiences and capacities in order to strengthen cooperation throughout the NGO sector at the regional and international levels. It is also necessary to develop the capacity of the women’s NGO sector in the field of organizational project management, public advocacy, monitoring and strategic planning, as well as in skill development for working with those who experienced violence. This will develop a solid resource base for the successful and sustainable operation of these organizations. It will also lead to improved levels or standards of services for victims of domestic violence.
2. The perception (definition) of domestic violence used by NGOs

Conclusion: Women's NGOs define domestic violence as a behaviour that leads to the control of other persons by the use of force, threats and manipulation. This definition applies to all forms of domestic violence.

Recommendation: Domestic violence should be defined as “the exertion of any form of physical, psychological or sexual violence on the women who live in a family, intimate relationship or any kind of shared living arrangement”. This definition should be accepted both by the institutions and NGOs because it leads to more efficient solutions of the problem of domestic violence.

3. International rules and NGOs

Conclusion: The research that has been completed shows that NGOs are sufficiently informed about the Millennium aims and CEDAW provisions, but that their use in practice is inadequate. In addition a small number of NGOs have established rules concerning gender equality, which shows that the NGO sector is the only solid base for the implementation of international standards. International documents are a basis for developing strategic action plans and creating mechanisms that will serve to monitor governmental institutions.

Recommendation: Research in this area leads to the definite need for a much broader and higher quality presentation of the international documents to civic organizations and the general public. Attention should be devoted to the main goals, millennium goals and CEDAW. International documents should be important tools used to inform the public about the obligations of the state concerning women's human rights.

4. Interventions into legal provisions

Conclusion: The law-making process concerning the protection of endangered citizens in Montenegro is characterized by its lack of transparency and participation.

Recommendation: NGOs must constantly improve their mutual cooperation to increase their impact on the government in Montenegro. It is essential to create and implement successful programmes for the promotion and protection of women's human rights as well as for the replication of good practices in Montenegro.
5. Activities to improve the effects of the remedies and procedures

Conclusion: Women's NGOs organize intensive training for the police, judiciary, centres for social care, health institutions, local authorities and journalists. The activities are aimed at providing free legal aid for victims of domestic violence, building multi-disciplinary cooperation, initiating the creation of institutional mechanisms for law and policy application, monitoring institutional operations, informing the public about the work of NGOs and institutions, and realizing human rights.

Recommendation: Create a database for the precise definition of problems, identify the level of the services and protection conditions with the aim of recognizing the weaknesses in the process, and define the possibilities and potentials for a more efficient application of law and policy. Improve the capacity of government staff in the area of human rights protection, intensify the influence on the government to realize Nation Action Plans and educate professionals so they can perform well based on international rules concerning domestic violence.

6. Preventive measures taken by NGOs

Conclusion: NGOs conduct various activities aimed at preventing domestic violence: mediation between stakeholders, realization of scientific projects, education of volunteers, distribution of information to the public about violence against women, training about non-violent communication, education of citizens about human relations and education of women about women's human rights. The activists in women's NGOs actively participate in all publicly-organized discussions on the social, cultural, educational and health aspects related to the improvement of women's position in society. In cooperation with state institutions, they hold seminars on the issue of domestic violence, they work with public awareness raising. More indirectly, the NGOs also influence laws, structures and institutions.

Recommendation: Increase the knowledge and skill levels of representatives from governmental and non-governmental organizations about methods and techniques related to research, monitoring and public relations to improve the promotion of cultural tolerance and women's human rights protection. In that way, the mechanisms will be created to guarantee the development of positive practice and also motivate the experts to realize planned activities. The NGOs must improve their information provision to the public about women's human rights and the mechanisms for its protection. It is important to raise social and
political awareness concerning the problem of domestic violence and to develop sensitivity among governmental institutions for this problem.

7. Protective measures taken by NGOs

Conclusion: The activities of the NGOs regarding the protection of victims of domestic violence are very important for the creation of a safe and supportive environment for them. The work of the women's NGOs provides solid support to the victims including legal aid, self-help groups for women who experienced domestic violence, psychological help, psycho-social support, shelter, education and a rehabilitation programme for the perpetrators. Another important activity is initiating amendments to the laws that address the problem of violence against women and lobbying for their adequate implementation in practice.

Recommendation: The NGOs must empower the representatives of institutions and civic organizations to work as watchdogs for violations of human rights at every level and to provide more information to the public about existing mechanisms for the protection of victims. They should involve larger numbers of community figures after sensitizing them to the issues; this would lead to more sustainable solutions and improved participation in global society. The conditions for good programme development should be created because we need to create positive legislation to improve the treatment of endangered persons; we need a specific law on domestic violence that is harmonized with the social climate in our country.

8. The awareness of victims of domestic violence about NGOs that deal with the problem of domestic violence and offer support to the victims

Conclusion: Statistical data from women's NGOs show that more women are using their services; this indicates that women are become more aware of the relevant NGOs. The women who use their services and female citizens have a generally positive attitude about women's NGOs.

Recommendation: NGOs must publicize themselves, their programmes/activities and their help and support services. Women's groups should follow uniform procedures/regulations in their work with victims, based on trust, safety and equality.
9. Data collection and monitoring by NGOs

Conclusion: Data collection and monitoring concerning all aspects of domestic violence in Montenegro will allow this problem to become visible. We should stress the importance of this problem so society can pay attention to it. We should conduct research and systematically collect data from the women victims and from the institutions that are involved with cases of domestic violence: the Ministry of Internal Affairs, the centres for social care and the judiciary.

Recommendation: NGOs must begin creating and using the required forms for domestic violence case registration at all relevant institutions. A unified system for data collection and analysis by the SOS help lines should be implemented at the republic level. Information from this system should be distributed to the relevant institutions and made available to the public. By developing partnerships with the government, the importance of a single database for violence recognition can be stressed. NGOs should monitor the operation of the judiciary, the police and the centres for social care with the aim of improving their ability to solve the problems ascertained in the monitoring process.

10. Cooperation with governmental organizations

Conclusion: The active participation of key individuals within governmental institutions in seminars and in the daily contact with and joint treatment of the cases, especially after establishing multidisciplinary teams, increases the degree and quality of cooperation between governmental and non-governmental organizations in solving domestic violence cases. Multi-professional cooperation has resulted in the signing of the Memorandum of Cooperation involving the judiciary, the prosecutors office, the Ministry of Internal Affairs, centres for social care, medical institutions, local authorities and SOS hotlines in the cities of Podgorica, Bijelo Polje, Berane, Ulcinj and Nikšić.

Recommendations: There is a clear need to build strong cooperation with governmental organizations by maintaining constant contact, exchanging human and organizational resources and by becoming directly involved in the activities of the organizations with the purpose of making joint proposals to ensure the adequate treatment of domestic violence in society.

- Increase the information provision to the officials at institutions involved with domestic violence as a social problem;
- Increase the level of knowledge of the officials concerning the effects of domestic violence and the strategies of perpetrators to avoid sanctions;
Enable interested persons/professionals to work permanently on violence prevention;
Increase the level of awareness and knowledge concerning the roles of the institutions and civic organizations in victim protection/violence prevention;
Build multidisciplinary teams;
Create conditions for the replication of good practices in local communities.

11. Problems encountered by NGOs during their work

Conclusion: There is no specific budget allocated to women's NGOs that address violence against women; funding is provided to the entire NGO sector in Montenegro for specific projects. That means that the funds are shared out equally so that every organization receives a small sum of money. Governmental organizations appear to be involved with building formal partnerships with NGOs because this is a condition of the donors regarding project financing; this situation definitely leads to less solid programmes in the key areas.

Recommendation: NGOs must make sure that governmental organizations understand their own interests in increasing the relevant budgets. The NGOs should point out to the authorities and representatives of Parliamentary bodies that funding of NGOs is inappropriate. There is a need to build a strong network of women's NGOs in order to create the critical mass that is required for lobbying and monitoring the work of the state institutions.

SERBIA

Recommendations to the government

We recommend that the government should adopt a special law on domestic violence that includes both civil and criminal protection and that is in accordance with Recommendation 19 of CEDAW and with the opinion of the Committee on the case A.T versus Hungary. This special law should also provide for appropriate support services to the victims of domestic violence, including safe houses and shelters, in accordance with the demands from the case A.T. versus Hungary.
We recommend that the government establish legal preventive measures and harmonize legislation in accordance with Resolutions 2003/45, 1582 (2002) and 1997 of the Council of Europe.\textsuperscript{90}

We suggest that domestic legislation be amended to include measures for the protection of victims, for investigation procedures, criminal prosecution, punishment of and compensation for damage suffered by women and girl victims of any kind of violence, whether it occurred in the household, workplace or community, in order to harmonize the legislation with relevant international instruments for the protection of women's human rights and humanitarian rights.

Demands related to the criminal norms and sanctions:

- The government's intention, as formulated in the new Criminal Code, to decrease the penalties prescribed for criminal acts of domestic violence, is a serious violation of the demands of Recommendation 2002 of the Council of Europe (CoE), since this Resolution demands increased penalties for perpetrators of domestic violence.

- As this study was written, Serbia still did not have any regulations concerning stalking; we can therefore conclude that our legislation is not harmonized with the demands of CoE Resolution 1997.

Demands related to the civil norms and sanctions:

- Although our laws anticipate the possibility of compensation for domestic violence victims, both for material and non-material damages, there have been no cases in practice. We therefore have to conclude that the legislation has been formally harmonized with the CEDAW requirements, but is still in de facto disagreement with CEDAW and relevant Recommendations of the CoE.

- The new Family Law in Serbia has made the divorce procedure more complicated by initiating two different obligatory proceedings: reconciliation and mediation. We therefore conclude that the requirements related to CoE Resolution 1997 have not been implemented in domestic law as they should be.

\textsuperscript{90} CoE Res.2003/45, rec.1582 (2002), Resolution 1997
**Misdemeanour sanctions and regulations:**

- Our legislation does not provide misdemeanour sanctions for acts of domestic violence, so this legislation is yet harmonized with demands deriving from the UN Declaration on violence against women.

- National regulations do not offer the possibility of giving resident status to immigrant women who were or are victims of domestic violence; the regulations are therefore not harmonized with the demands from international documents.

**Demands related to the grounds of defence:**

- In accordance with standards derived from international documents, Serbia should provide the possibility of exemption from criminal prosecution on the grounds of self defence for domestic violence victims who commit a crime in response to the structural violence they suffered. This has not been the case so far.

**Legal norms and procedures that should be available for the victims**

**General norms:**

- An analysis of the protection available for domestic violence victims and of the conduct of officials has shown that Serbia does not comply with demands derived from relevant international documents. Our country should provide maximum protection to domestic violence victims and treat them with appropriate consideration with the aim of preventing and responding to this form of violence against women.

- State officials should investigate all domestic violence reports promptly, fully and with objectivity, and bring the perpetrators to justice in accordance with international standards. This has not been the case so far. They should also harmonize national regulations with the international standards on domestic violence.

- We also recommend that the state provide domestic violence victims with mechanisms for establishing the responsibility of government officials and bodies for all acts or omissions, including the violation of
their rights, in accordance with the standards of the European Court of Human Rights. In cases where the most basic and important human rights (as defined in Articles 2 and 3 of the ECHR) are violated, provisions for the compensation of non-material damage should be in place.

Access to justice:

- Considering the fact that the Serbian government does not conduct information campaigns for victims of domestic violence concerning possibilities for their protection, we can conclude that our country is not in accordance with the demands of the international community. We therefore recommend that the government take action to encourage domestic violence victims to use the available legal remedies.

- Court practice has shown so far that domestic violence victims do not have sufficient access to justice or free legal aid, which is required by the international documents. We therefore conclude that our court practice is not in accordance with relevant international norms.

Who can initiate proceedings?

- Domestic violence is treated as a criminal act by the prosecutor’s office, so we are in accordance with the relevant demands deriving from international documents.

- There is no administrative or multidisciplinary board which is authorized to review charges of acts of domestic violence; we therefore recommend that the government establish one in order to be in accordance with CoE Recommendation (85)4.

Legal protection and legal aid during court proceedings:

- We recommend that the Government provide domestic violence victims with free legal aid in accordance with demands deriving from relevant international documents.

- We also recommend that certain regulations be amended to prevent the irrelevant or demeaning questioning of victims or witnesses of domestic violence. In this respect, there should be regulations for special interrogation procedures for victims or witnesses in order to
avoid repetition of testimony and thereby reduce the traumatic effects of the criminal proceedings. Victims should also receive appropriate medical and psychological care during all stages of the procedure, and the recruitment of women police officers should be encouraged.

**Rules for evidence presented in court:**

- As our court practice shows, the majority of criminal charges are withdrawn by the prosecutors office because the victims do not want to testify. Therefore criminal prosecution of perpetrators should be allowed even if the victim does not testify in the courtroom in order to harmonize our regulations with relevant international documents. In this regard, police officers and other state actors should be given the authority to investigate and collect the necessary evidence.

- Our laws do not yet prevent the statute of limitations for sexual crimes from commencing until the victims have reached adulthood; this should be done to harmonize our legislation with demands deriving from recommendations of the CoE.

**Legal measures for protection from perpetrators:**

- Victims should be protected during court proceedings. However, there are no legal measures that provide domestic violence victims with effective protection from possible threats and revenge.

- Serbian Family Law does have provisions for protective orders and measures against domestic violence; we can therefore conclude that we are in accordance with principles deriving from the case A.T. versus Hungary, which states that domestic violence victims should have access to civil or criminal procedures that provide temporary or permanent restraining orders to prevent perpetrators from living in the house where the victim and her children live and/or from approaching the victim.

**Preventive measures that should to be taken**

**General measures:**

- As required in the case A.T. versus Hungary, by the CEDAW Committee and CoE Resolution 2003/45, the state must respect, promote and fulfil women's human rights, including the right to be free from all forms of violence in the family, including threats of violence.
Considering the fact that women's human rights for life and physical and mental integrity cannot be subordinated to other rights, including the right to property and the right to privacy, we can conclude that we are in accordance in this regard with demands deriving from international instruments.

Serbia does not currently have a comprehensive national strategy for the prevention of violence, but only a framework for that strategy. It is therefore necessary to do everything required to prepare, implement and evaluate such a strategy for the prevention and effective treatment of domestic violence. A national action plan should also provide special measures such as a public information campaign, various social measures, state financing and development of state programmes for victims and state support of NGOs for their national and international activities.

**Demands related to public information campaigns:**

- In order to be in accordance with demands from international documents, the state should conduct awareness-raising campaigns, including zero tolerance campaigns for domestic violence, with the aim of promoting the awareness that violence is a socially and morally unacceptable behaviour.

- It is essential to develop educational programmes on violence prevention and gender education for men and boys with the aim of counteracting the traditional negative attitude towards women and enabling schools to provide such curricula. Continuing education should be provided for judges in accordance with CEDAW. Awareness-raising campaigns for families about detecting the early phases of conflict situations and conflict resolution should be conducted; sexual education programmes should be organized with a special focus on gender equality and mutual respect; education on gender equality and non-violent behaviour should be provided in primary schools along with appropriate training of teachers and all other measures needed to prevent “murders in the name of honour”, including informative campaigns aimed at citizens and experts, especially lawyers and judges.

**Demands related to social measures:**

- Serbia has done little so far to ensure the economic empowerment of women or domestic violence victims. It is therefore essential to advance
the economic independence of women by creating possibilities for the employment of women and equality in employment.

- An adequate housing policy is also important to the prevention of situations that could lead to domestic violence.

**State financing and programmes:**

- Increased state funding is required to ensure support for social services that deal with domestic violence problems.
- Intervention strategies should be developed at the local level to coordinate the actions of various institutions and organizations and to mobilize the financial and human resources for combating domestic violence.
- A special governmental institution or body should be established to coordinate the implementation of the measures for combating domestic violence.

**Support to NGOs for their national and international activities:**

- Cooperation between the government and women’s NGOs is essential. The government should support the national and international activities of NGOs and provide adequate financial support for their long-term development as organizations.

**Protective measures:**

- It is essential to take measures to ensure the protection of children from violence in their families that could seriously harm the development of their personality, measures that will enable specialist support to child victims of domestic violence. Such measures should include rehabilitation, support and financial support, and proactive services for victim protection.

**Providing care for victims of violence:**

- It is essential to take emergency and long-term measures to ensure the physical and mental integrity and safety of the victims and their
families. Such measures include safe houses and shelters, counselling services and rehabilitation programmes, access to justice and effective legal remedies and specialized services, including medical support. Rehabilitation programmes and non-violent behaviour programs for perpetrators should also be provided.

**Training and education programmes:**

- The state should provide training and awareness-raising programmes for judges, public prosecutors, police officers, lawyers and health care workers. It should also provide periodic training on CEDAW and the Optional Protocol of CEDAW, especially for judges, lawyers and other legal officers and public officers engaged in combating domestic violence. Training programmes for government officials who enforce and implement laws should be provided to sensitize them to women's needs.

**Protocols:**

- Protocols concerning domestic violence should be established for health care centres and hospitals. All institutions that deal with domestic violence, including the police and centres for social work, should make long-term and short-term action plans concerning the prevention of domestic violence and the protection of victims; they should also establish mandatory protocols so that the police and the health care and social services follow the same procedures.

**Support services:**

- The government should establish support services for families that are experiencing violence, such as SOS hotlines and shelters for battered women.

- It is essential to organize or promote support agencies, associations and foundations whose aim is to provide help to domestic violence victims. With due respect to the privacy of others, centres should be opened where victims can receive psychological support and where they can stay temporarily. Administrative departments or multidisciplinary
boards should be established which have the authority to help, take care of and provide advice to various parties involved in domestic violence, to conduct research in this area. Special financial support should be provided to NGOs and women’s associations that deal with domestic violence victims.

Other measures:

- The victim has the right to a safe home where she can live with her children; she has the right to appropriate support for her children, the right to legal aid and the right to compensation proportional to her physical and psychological injuries and their seriousness.
- Remove the secrecy obligation from certain professions regarding information on domestic violence.

Data collection and monitoring of domestic violence cases:

- It is important to monitor the efficiency of all measures so that modifications can be made if necessary.
- It is important to monitor existing laws and to conduct in-depth research.

Monitoring agencies:

- Serbia should establish effective national machinery, institutions and procedures at the governmental level with adequate resources, commitment and authority to conduct in-depth monitoring of women’s position in society.
- It is important to monitor the calls to SOS hotlines and to evaluate data from such hotlines. It is essential to monitor the efficiency of measures intended to protect the victims as well as the behaviour of violent men.

Statistics and research:

- The government should encourage research and the collection of statistics on the scope, causes and consequences of violence and on the efficiency
of preventive and other measures related to violence; it should promote research and data collection that is specifically related to domestic violence and the scope of domestic violence with the aim of improving the statistics on domestic violence, arriving at a clear picture of the nature and scope of domestic violence, identifying resources that are relevant to this problem and evaluating initiatives that deal with such violence.

In the absence of adequate research on the special position of handicapped family members, the government should finance research and data collection on this topic and establish networks concerning the short-term and long-term consequences of domestic violence.

**International cooperation:**

- International cooperation is essential to systematic research and data collection, the analysis and dissemination of data, classified according to sex, age and other relevant factors, on the scope, nature and consequences of domestic violence, and the effectiveness of measures and programmes for combating domestic violence.
- Regular reporting to the international bodies authorized to monitor human rights issues should be respected; these bodies must be informed on developments in the prevention and control of domestic violence.

**Dissemination of data collected:**

- Statistical data and research findings on domestic violence should be disseminated widely.

**Recommendations to NGOs**

1. Initiate a public debate on the draft government report to the CEDAW Committee and the reasons for the three-year delay in its submission; reach agreement between NGOs on coordinated actions related to the new law on Nongovernmental Organizations (in particular, the articles on “Public Interest NGOs”) and organize a meeting during which criteria and methods of collaboration between NGOs and state institutions would be defined (establish procedures for cooperation in
joint projects with the governmental organizations which are related to
decision making, division of work, visibility of partners and the double
affiliation of authors in joint research projects). Design democratic
procedures within a network of women’s NGOs – define how specific
activists would be elected/appointed to represent the joint interests
of the entire NGO community in negotiations with the state (e.g.,
drafting a National Action Plan for Women, other national strategies
relevant for women or standardized protocols for institutions).

2. Initiate several new projects of NGOs related to: a) monitoring
women’s human rights in general and gender-based violence in
particular, b) writing shadow reports to the CEDAW Committee and
other international bodies, c) lobbying and advocacy related to gender-
based violence, d) creating networks of state institutions and NGOs
dealing with gender-based violence, e) conducting research projects on
gender-based violence and comparing the results with data obtained
in the region and from EU Member States.

3. Enhance and expand regional/international collaboration with other
NGOs in the field of combating gender-based violence (in particular,
creating new models of data collection and standardized research
methodology, writing handbooks of best practice examples and
initiating changes in institutional policies).

4. Improve the existing protocols/manuals for officials in institutional
systems for victim protection: police officers, medical workers, judicial
officers and social workers. Improve the existing manuals for teachers
in schools (and develop new ones) on gender-based violence and the
integration of the gender equality perspective into school practice.

5. Further professionalize the services offered to victims by NGOs that
plan to become accredited/licensed centres for providing help/support
to victims. Apply for state funding in the future and design models of
internal and/or external evaluation of services provided to clients.

6. Develop standardized models of data collection (joint/uniform
database) on reported cases of gender-based violence within the
NGO sector (in various SOS hotlines, shelters, and counselling
centres run by NGOs) and develop projects aimed at creating uniform
models of data collection that would be applied by NGOs and state
institutions.

7. Provide a symbolic annual reward to journalists who have made the
most interesting contribution (printed article or TV programme) on
gender-based violence; lobby celebrities/well-known public figures to participate in national campaigns, “16 days of activism” and enhance the involvement of men in awareness-raising campaigns on gender-based violence.

8. Appoint several women's NGOs to assume the responsibility for monitoring government policy, draft legislation, conduct media/public debates and write press releases, public announcements and petitions on behalf of the NGO community (their task would be to attract media attention and influence public opinion in cases of women's human rights violations, and to react to decisions of the government that are related to the status of women).
APPENDIX IV
LIST OF CONTACTS FOR LOCAL PROJECT OFFICERS AND RESEARCH MENTORS

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