



# **Firearms Possession and Domestic Violence in the Western Balkans:**

## **A Comparative Study of Legislation and Implementation Mechanisms**



**SEESAC**

South Eastern and Eastern Europe Clearinghouse  
for the Control of Small Arms and Light Weapons

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The **South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons** (SEESAC) has a mandate from the United Nations Development Programme and the Stability Pact for South Eastern Europe to support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

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## Executive Summary

The countries of the Western Balkans<sup>1</sup> face high levels of violence, crime and human insecurity as a legacy of recent conflicts, political turbulence and economic crises. The war in the former Yugoslavia increased the proliferation and easy availability of small arms and light weapons, both legally and illegally possessed, contributing to a rise in violent behaviour not only in the public space, but also within the family. Other factors linked to the post-conflict situation and transition have also contributed to an increase in domestic violence, including economic and personal insecurity, unemployment, crime and intolerance.

Available data from existing research suggest that domestic violence is the most widespread form of violence throughout the region, and that women are the primary victims. It is estimated that every fourth 'ever-partnered woman' has experienced physical or sexual violence in intimate relationships. Surveys, conducted mostly by women's NGOs, suggest a high level of unreported cases of domestic violence, due to existing gender prejudices that discourage women from reporting domestic violence, and the lack of safe and prompt access to justice. Furthermore, research shows that victims usually seek help only after being exposed to violence for several years, and after receiving physical injuries.

Largely as a result of the advocacy of women's NGOs, governments in the region have made progress in recent years in developing specific legislation against domestic violence, introducing legal measures, and penalizing it *ex officio*. In the majority of the countries domestic violence is now a specific criminal offence. Almost all countries have adopted specific laws against domestic violence and have developed misdemeanour legislation that provides for protective measures for victims, including the possibility to order the seizure of a firearm from the abuser.

However, full enforcement of the legislation is hindered by gaps between legal provisions and their implementation; a lack of comprehensive policies addressing domestic violence; insufficient institutional development and a lack of budgetary allocations for national strategies in this field. There is also a lack of systematic support for NGOs who provide services for victims of domestic violence. In all countries of the region, services to protect victims of domestic violence are mostly provided by women's groups and funded by international donors. Recently, national authorities have begun to increase the involvement of social services aimed at protecting victims of domestic violence, however governments still pay almost no attention to awareness-raising activities, education for youth, training of professionals and other preventive measures. There is also a lack of comprehensive and coordinated data collection, research and monitoring, which undermines the development of effective policies.

In a post-conflict situation, the response to domestic violence must address the issue of SALW control in policies, strategies and measures aimed at prevention and protection of victims. However, in the Western Balkans firearms as a risk factor in domestic violence, and linkages with the proliferation of SALW, have not been explicitly recognised by either governments or, for the most part, civil society, until now. Thus, there have been no links made between the national strategies and action plans in the fields of domestic violence and SALW control and comprehensive policies and monitoring mechanisms have not been developed.

One area in which linkages have been made is in the legislation regulating obtaining a firearm licence and possessing a firearm, but there remain several gaps in both legislation and implementation in this area that impede the effective prevention of armed domestic violence. A history of violent behaviour, prosecution and conviction for a criminal offence are criteria for refusing an application to obtain a licence for firearm acquisition, but these restrictions are still too lenient. Furthermore background checks on applicants lack clear procedures and instructions and generally do not include consultation with family members and ex-partners about the potentially violent behaviour of the applicant. Proof of sound mental health and psychological condition of the applicant is not currently mandatory in all countries.

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<sup>1</sup> This study refers to Albania, Bosnia and Herzegovina, Croatia, Montenegro, Serbia, The former Yugoslav Republic of Macedonia and the UN Administered Territory of Kosovo. Based on Security Council Resolution 1244 of 10 June 1999, the UN Administrative Interim Mission in Kosovo (UNMIK) was set up and has since then been the administrative authority in Kosovo. 'The former Yugoslav Republic of Macedonia' is used by the UN to refer to this country, due to the name dispute between the country in question and Greece. For the purposes of this report 'FYR Macedonia' will be used throughout the text.

In terms of protection services for victims, interagency cooperation and operational protocols on dealing with domestic violence among all relevant institutions have not been developed in the majority of the countries. As a rule, education and training programmes for police officials, judges, prosecutors, social workers and other professionals dealing with domestic violence are not implemented on a regular and systematic basis by the state. Professionals are not 'gender-sensitive' and not properly trained to implement specific legal provisions on domestic violence, particularly in cases when there is a risk of firearms being used. Implementing mechanisms and structures are generally not effective or well coordinated. There is no continuous control or monitoring of the behaviour of people that legally own and/or carry firearms.

Preventive measures against armed violence are also poorly developed. The National Action Plans for Gender Equality provide for national policy in the field of combatting domestic violence, but do not address the issue of firearms control. This issue has not been on the agenda of the gender equality mechanisms in any of the research countries. Gender-sensitive school education, educational programmes targeting boys and men to prevent violence or rehabilitation programmes for perpetrators do not exist. There is no comprehensive awareness-raising campaign against the 'gun-culture' and the mentality of having a firearm in the house.

As a result, victims of domestic violence, including armed violence, still do not have prompt and safe access to justice and proper protection, despite notable advances in legislation. Governments must take actions to address this issue, including developing and implementing preventive measures aimed at ending all forms of violence, taking responsibility for the protection of victims and developing policies to reduce firearms availability and misuse. Women's NGOs can make an important contribution to achieving this goal by including the issue of SALW control in their advocacy and lobbying activities.

## Acronyms

BiH	Bosnia and Herzegovina
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESC	(UN) Committee on Economic, Social and Cultural Rights
CoE	Council of Europe
ECHR	European Charter on the Protection of Human Rights and Fundamental Freedoms
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
FYR Macedonia	The former Yugoslav Republic of Macedonia
IANSA	International Action Network on Small Arms
KFOR	Kosovo Force (NATO)
MFA	Ministry of Foreign Affairs
MLSAEO	Ministry of Labour, Social Affairs and Economic Opportunities
MLSP	Ministry of Labour and Social Policy
MoD	Ministry of Defence
MoH	Ministry of Health
MoI	Ministry of Interior
MoJ	Ministry of Justice
NGO	Non-Governmental Organisation
OSCE	Organisation for Security and Cooperation in Europe
PAMECA	Police Assistance Mission of the European Community to Albania
RS	Republika Srpska
RSD	Serbian Dinar
SALW	Small Arms and Light Weapons
SEE	South East Europe
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of SALW
UNDP	United Nations Development Programme
UNIFEM	United Nations Fund for Women
UNMIK	United Nations Interim Administration Mission in Kosovo

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# 1 Introduction

## 1.1 Background of the study

The countries in the Western Balkans share a lot of characteristics related to their common and interrelated past, present and future. They are all post-socialist and post-conflict countries, sharing the consequences of violent wars, political turbulences, economic crisis and transition to a market economy.

Currently all Western Balkan countries are in the process of moving towards integration with the European Union, eliminating the burdens of the past, and building policies, legislative frameworks and mechanisms that will contribute to democratization, the rule of law, human rights protection and gender equality. On this track, the countries are in the process of developing, or have recently developed, new legislation in the field of weapons possession and acquisition and domestic violence. This represents an important opportunity for the States of the Western Balkans to benefit from each others' experience and from global best practices in order to pass the best laws possible to protect states' and citizens' interests.

Available evidence suggests that domestic violence is a widespread and serious problem in the region, aggravated by post conflict tensions and related problems. Data from women's shelters shows that the prevalence of weapons use in these cases is high, either used as a threat to victims or to injure or kill. This information is supported by data from surveys in the region and media monitoring reports and analysis.

Experience from other countries has shown that linkages between civilian firearm acquisition and possession and domestic violence legislation has led to a significant decrease in the number of women killed, injured or threatened by weapons in domestic violence.<sup>1</sup>

Until now, no relevant research on these linkages has been carried out in the Western Balkans. This regional study aims to fill this gap. The study will look at the extent to which domestic violence laws and arms control regimes are aligned in the region in order to inform recommendations for improvements in the legislation and implementation mechanisms, and to build a lobbying platform for civil society opposing violence against women to engage in the disarmament process. Both the research process of the study and its findings will help to build the capacity of civil society and national authorities on disarmament issues, through engaging in discussions, building networks and providing the information and analysis necessary to advocate for improved prevention of armed domestic violence and protection of victims.

## 1.2 Objectives

The main goal of the study is to evaluate the linkages between weapons acquisition and possession regimes and domestic violence legislation, in order to develop strategies and recommendations for improvements in legislation and implementation mechanisms to increase the protection of victims of domestic violence and to combat domestic violence more effectively.

The specific objectives of the study are:

- To demonstrate existing linkages, as well as the need for further linkages, between legislation on domestic violence and on weapons possession and acquisition in order to reduce the number of deaths, injuries and threats from firearms in domestic violence;
- To create a lobbying platform from which to advocate for governments and law-makers in the Western Balkans to pass or improve legislation regulating domestic violence and the acquisition and possession of weapons;
- To raise awareness among governments and civil society of how they can act to reduce the impact of firearms use in domestic violence and increase and improve the protection of victims from such violence;

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<sup>1</sup> See Annex A – Review of Global Best Practices.

- To support disarmament lobbying processes in the Western Balkans or, where these are not present, to encourage civil society (in particular women's NGOs) to engage in the disarmament debate and lobby for changes to weapons possession legislation as well as domestic violence legislation.

### 1.3 Methodology

The study has both a national and regional character. Research was conducted into domestic violence and SALW legislation and implementation mechanisms in the six countries of the Western Balkans and the UN Administered Territory of Kosovo.<sup>2</sup>

The central questions of the national research were defined as follows:

- To what extent are domestic violence regulation and national arms control regimes linked?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease violence against women in the private sphere?

In addressing the research questions, researchers conducted both desk and field research. Researchers analysed current and planned specific domestic violence and SALW legislation as well as relevant provisions within Gender Equality Law, Criminal Law, Family Law, the Law on Public Law and Order and relevant national strategies and action plans.

In order to gather information on how these laws are implemented in practice and interpreted by courts, police, prosecutors, centres for social work and health care institutions, researchers conducted personal interviews with representatives of these institutions. Women's NGOs who deal with the issue of domestic violence were also included in the interview process. For this purpose, common questionnaires were developed. Questionnaires included questions on data that are not available or not easily accessible in official statistics (such as the number of cases in which a perpetrator used firearms to threaten or attack the victim, or the number of victims injured or threatened by firearms who have sought shelter). The researchers also inquired about the good and bad practices in protecting victims and preventing domestic violence. In addition, the interviewed persons were asked for their opinion as to what should be done to improve current legislation and practice with regard to decreasing the use of firearms in domestic violence.

The national research revealed that existing data and information in the research countries on the use of firearms in domestic violence are collected using different methodologies and samples; they are related to different periods and are collected on different levels, some national and others regional. Thus, it is difficult to compare them. Therefore, data from national sources and research conducted in each country will be used in the regional report without attempts to make comparisons.

The desk and field research included analysis of legislation, policies, and practices that are present in each country with respect to domestic violence and SALW regulation, analysis of the interpretation of laws by responsible state actors and women's NGOs, and identification of existing state and non-state protection structures. Researchers drafted recommendations on how each government can become more responsive to and responsible for the problem of armed domestic violence, and options for future strategies of NGOs in this field.

This regional report is a comparative study made on the basis of the findings, conclusions and recommendations of the national research, as well as on a review of relevant global best practices.<sup>3</sup> Chapters 7 and 8 contain general recommendations for governments to improve domestic violence and weapons possession and acquisition legislation and for civil society to lobby and advocate on this issue. Chapter 9 contains a summary of the main conclusions of the national research as well as key recommendations to governments.

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<sup>2</sup> Based on UN Security Council Resolution 1244 of 10 June 1999, the UN Administrative Interim Mission in Kosovo (UNMIK) was set up and has since then been the administrative authority in Kosovo.

<sup>3</sup> See Annex A – Review of Global Best Practices.



## 2 Firearms as a risk factor in domestic violence in the Western Balkans

### 2.1 Prevalence of civilian possession of firearms

Civilian possession of firearms has traditionally been very high in all countries of the Western Balkans, due to the long-established cultural and historical tradition of owning a gun. As a legacy of the violent conflicts in the ex-Yugoslav region and the civil unrest in Albania during the 1990s, the number of legal and illegal firearms in the hands of citizens dramatically increased. The post conflict situation raised tensions and problems, due to an unstable and stressful environment marked by unemployment, poverty, a rise in discrimination based on ethnicity and gender, and violations of human rights. Large numbers of guns that were issued by national authorities to civilians and former soldiers to take part in the conflicts were not returned after the war, often being taken home as 'war souvenirs'. Many of these guns were later legalized and registered by their owners.

The proliferation of SALW contributes to and facilitates violence, crime and insecurity throughout the region. National authorities, supported by international organizations (the UN, OSCE and EU) and regional agreements (the Stability Pact for SEE), have committed to developing policies and taking measures to better control the availability, use and trade in SALW.

Today, more than a decade after the violent conflicts ended, there is still a very high number of firearms kept within households in the region. The recent SALW Surveys of the Balkan countries<sup>4</sup> show disturbing data. It is estimated that in Croatia there are approximately 968,000 firearms in civilian hands, including those both legally and illegally possessed, in Serbia 2,047,300; in Albania 200,000; 175,000 in Montenegro and 400,000 in Kosovo<sup>5</sup>. In Bosnia and Herzegovina, there are some 353,000 registered civilian firearms<sup>6</sup>, in FYR Macedonia the number is 140,000. It is extremely difficult to measure the number of illegal weapons. These surveys indicate that in the Western Balkans, with a total population of 19.6 million, there are approximately 4,280,000 firearms in civilian possession. Due to difficulties in assessing the number of illegally owned weapons, it may not be an exaggeration to estimate that each household in the region has at least one firearm.

Unfortunately, most of the statistics related to the SALW issue are not disaggregated by sex. Nevertheless, existing statistics and surveys show the overwhelming dominance of men as both victims and perpetrators of armed violence and crimes committed with SALW. The majority of SALW owners are men. In the Western Balkans, men commit 99 percent of firearms crime and make up 85 percent of victims, while women make up 15 percent of the victims but only one percent of perpetrators.<sup>7</sup> Besides this, men and women often have a different attitude towards the possession and use of weapons. The prevailing 'gun-culture' in the region is linked with the traditional patriarchal concept of masculinity and men as defenders of their family and property. Thus, the issue of SALW, and by extension armed violence, is highly gendered, regardless of whether it happens in the public or private sphere.

### 2.2 Prevalence of domestic violence

Data from all over the region confirm that the victims of domestic violence are mostly women, and the perpetrators are mostly men. Surveys conducted over the last five years by local NGOs in the former Yugoslav republics show that one-third to two-thirds of women in Croatia and Bosnia and Herzegovina have experienced partner

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<sup>4</sup> SALW Surveys of all the Western Balkan countries can be found at: <http://www.seesac.org>.

<sup>5</sup> These data include weapons both legally and illegally possessed by civilians. They do not include data about weapons possessed by police and army officers, or other state officials.

<sup>6</sup> This information is taken from the SALW Survey of Bosnia and Herzegovina, 2004, pp. 20-21. However, due to the fact that there is no centralised firearms registration system in BiH it is difficult to know even how many legal firearms there are in the country, not to mention illegal weapons.

<sup>7</sup> Statistics were taken from 'SEESAC Strategy for Gender Issues in SALW Control and AVPP Activities', <http://www.seesac.org/resources>, accessed on 30 June 2007.

abuse.<sup>8</sup> The World Health Organization study showed similar results for intimate partner violence in Serbia.<sup>9</sup> Accordingly, every fourth 'ever-partnered woman' has experienced physical or sexual violence. Similar results were found in research in other countries of the Western Balkans. Due to different methodologies applied, it is difficult to compare prevalence data from different countries. Nevertheless, the available data from existing research, conducted mainly by women's NGOs, suggest that domestic violence is a widespread and serious problem throughout the region.<sup>10</sup>

Data from women's NGOs on the high level of domestic violence is supported by the number of police interventions in domestic violence cases, which have been consistently increasing over the past years. According to the data of the Ministry of Interior of the Republic of Croatia, during 2005 the police intervened in 15,696 cases of domestic violence; a six percent increase on 2004. There were 31 percent more people held in police custody as a measure to protect victims; 20 percent more charges of misdemeanours related to domestic violence and 16 percent more criminal charges for domestic violence. In total domestic violence affected 22,207 persons in 2005, or 14 percent more than in 2004. In 2005 police requested Magistrates' Courts to issue 4,916 precautionary measures related to domestic violence.<sup>11</sup>

In the same year in 'The former Yugoslav Republic of Macedonia' (FYR Macedonia)<sup>12</sup>, the Ministry of Interior registered 215 criminal offences, 1,202 misdemeanors and 3,750 complaints of domestic violence, while in the period June 2005 to June 2006, the social work centres registered 839 cases of domestic violence. Domestic violence perpetrated against women in FYR Macedonia accounted for 18 percent of the total number of registered criminal offences in 2005, 19 percent in 2006 and 26 percent in the first half of 2007. In Kosovo, according to the Police Service's Investigation Sector for Domestic Violence and Child Abuse, in the period 2005 to June 2007, 3,300 cases of domestic violence were reported. The highest number of cases was recorded in 2006 (1,371), while the most affected region is Pristina with 989 reported cases.

Unfortunately, family violence is even more widespread than these existing data show. Relevant statistics and data are fragmented, poorly collected and not standardized, even in the countries that have adopted specific legislation in this field.<sup>13</sup> In addition, experiences of NGOs and experts that are working on this issue indicate that the majority of cases are not reported. It is very unlikely that victims report domestic violence after the first incident; they usually only report it after years of abuse. It is also possible that a victim of armed domestic violence will not report the use of firearms for pressuring or threatening them due to fear that the firearm will not be confiscated and may be used again. Therefore, many cases of domestic violence stay out of the records. Estimations on 'dark numbers' (unreported cases) range from one in three to one in ten (i.e. for each reported case there are ten unreported ones)<sup>14</sup>.

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<sup>8</sup> 'NGOs in the Former Yugoslav Republics Focus on Education of Youth to Change Post-War Culture of Violence', 09 June 2007, [http://www.stopvaw.org/NGOs\\_in\\_the\\_Former\\_Yugoslav\\_Republics\\_Focus\\_on\\_Education\\_Youth\\_to\\_Change\\_Post-War\\_Culture\\_of\\_Violence.html](http://www.stopvaw.org/NGOs_in_the_Former_Yugoslav_Republics_Focus_on_Education_Youth_to_Change_Post-War_Culture_of_Violence.html), accessed on 04 October 2007.

<sup>9</sup> World Health Organization, 'WHO Multi-country Study on Women's Health and Domestic Violence against Women: Serbia and Montenegro Fact Sheet', 2005, [http://www.who.int/gender/violence/who\\_multicountry\\_study/fact\\_sheet/SerbiaandMontenegro.pdf](http://www.who.int/gender/violence/who_multicountry_study/fact_sheet/SerbiaandMontenegro.pdf), accessed on 21 September 2007.

<sup>10</sup> Nikolic-Ristanovic, Vesna and Dokmanovic, Mirjana, *International Standards on Domestic Violence and Their Implementation in the Western Balkans*, Belgrade: Prometej, 2006. pp. 21-24.

<sup>11</sup> Source: Council of Europe, Directorate General on Human Rights, 'Legislation in the Member States of the Council of Europe in the field of Violence against Women', January 2007, [http://www.coe.int/t/e/human\\_rights/equality](http://www.coe.int/t/e/human_rights/equality), p.119, accessed on 01 October 2007.

<sup>12</sup> Due to the name dispute between this country and Greece, the UN refers to the country as 'The former Yugoslav Republic of Macedonia'. For the purposes of this report 'FYR Macedonia' will be used throughout the text.

<sup>13</sup> For example, in its concluding remarks on the Report for Bosnia and Herzegovina, the CEDAW Committee expresses its concerns about 'the absence of statistical data on acts of domestic violence against women and that such acts continue to be underreported and viewed as a private matter', 'The Concluding Comments of the Committee for the Elimination of Discrimination against Women: Bosnia and Herzegovina, 35<sup>th</sup> session, 15 May- 02 June 2006', CEDAW/C/BIH/CO3, para. 25.

<sup>14</sup> 'Study about Family Violence in Bosnia and Herzegovina - Excerpt', Banja Luka: Helsinki Citizens' Assembly Banja Luka, Organization of Women 'Lara', Bijeljina and Association 'Women to Women', Sarajevo, May 2006, pp. 11-12.

Many factors contribute to a rise in domestic violence in a post conflict situation, including socio-economic factors linked to transition and recent war,<sup>15</sup> such as increasing economic and personal insecurity, vulnerability to poverty, unemployment, crime, violence and intolerance. Political, social and economic turbulence, armed conflicts, ethnic cleansings, migration of rural populations and a high number of refugees and displaced persons have contributed to the destabilization of the family and caused a high level of social stress. The consequences of war in the ex-Yugoslav region are still visible, contributing to the prevalence of all forms of violence. Many people, particularly ex-soldiers and war victims, still suffer from post-traumatic stress disorder. All these factors have a strong impact on men's social status and masculinity, shaking their self-confidence and identity. In many cases the results of this massive traumatising are taken out on families, which causes a worsening of marital and family relationships and increases incidences of domestic violence.

Domestic violence is the most prevalent form of violence and discrimination against women. The international community, including the most influential International Organizations (such as the UN), recognises domestic violence as a violation of women's human rights and prohibits it through international human rights treaties.<sup>16</sup> As a form of violence linked to discrimination based on gender, in the Western Balkans domestic violence is fuelled by increased overall intolerance and discrimination of minorities and marginalized groups in all parts of the region. Gender-based violence is provoked by the re-traditionalization of gender roles in society and within the family, the increased influence of the church and the tradition and re-acquisition of patriarchal values. All these factors have contributed to making women and children more vulnerable to violence of all kinds.

### 2.3 The impact of small arms on domestic violence

Despite the evident fact that the issue of SALW is inherently gendered, as noted above, the relevance of this has not been sufficiently explored with regard to domestic violence. Official statistics on armed domestic violence, including firearms injuries in the countries of the region, are largely unavailable and there is a lack of reliable relevant research.

The only specific research on the impact of SALW on gender-based violence that included the issue of domestic violence was conducted in Montenegro.<sup>17</sup> Data obtained from the Police Directorate in Podgorica show that in 2006 49 women were victims of criminal offences against life and physical integrity, 14 percent of whom were victims of violence involving firearms. The results of the survey, which covered 1,500 women who sought help from the women's shelter, show that 90 percent of victims were threatened with firearms by their partners and that 27 percent of victims said that the perpetrator participated in the war.

Similar estimations on the prevalence of armed domestic violence are given by shelters in Bosnia and Herzegovina. The shelter house in Modrica keeps records on its beneficiaries that include cases of threats and attacks with firearms. In 2006, 70 percent of 206 victims of domestic violence who asked for help were threatened with murder, including threats with firearms. In the first half of 2007, 74 percent of 127 victims of domestic violence experienced armed domestic violence. Unfortunately, the majority of shelters do not keep statistics on this issue. Despite data given by shelters run by women's NGOs, centres for social work and other state institutions in Bosnia and Herzegovina largely neglect the issue of armed domestic violence.<sup>18</sup> They do not keep records about the use of firearms in cases of domestic violence and social workers are not even obliged to ask victims whether the offender used a firearm or any other weapon.

<sup>15</sup> Popa, Raluca Maria, *Ending Domestic Violence in Southeast Europe and Turkey: Towards a Regional Strategy for Action*, Bratislava: UNIFEM CEE, 10 July 2007, p. 45.

<sup>16</sup> 'Violence Against Women in the Family', Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1999/68 10 March 1999. General Recommendation 19 of the CEDAW Committee stresses that the definition of discrimination in the CEDAW 'includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty', U.N.DocA/47/38 (1992).

<sup>17</sup> Krkeljic, Ljiljana, *Small Arms and Gender-Based Violence in Montenegro – A Research Study*, Podgorica: UNDP, 2007.

<sup>18</sup> For example, in the Centre for Social Work in Eastern Sarajevo, according to its manager, incidents of domestic violence are very rare, while cases with use of firearms do not exist. In the last two years, only two cases of domestic violence were reported. The Centre's work mainly focussed on maintaining marriages.

In Montenegro, during the period 2002 to 2007, 1,223 women turned to the SOS hotline in Podgorica for protection from offenders within the family or intimate relationships. Of this number, 190 women were threatened with murder, nine percent of whom had been threatened by firearms. The Montenegrin Women's Lobby recorded that during the five-year period, 2001 to 2006, 30 percent of 637 victims of domestic violence were threatened with murder. This NGO also keeps records on media announcements and notes that during the same period (2001 to 2006) 12 women were murdered by firearms used by family members or intimate partners.

Official data gathered in the national research in Croatia shows that small arms are used in only a small percentage of domestic violence cases, while knives are used much more frequently. Police statistics in Croatia show that 27 percent of homicides and 11 percent of attempted murders in 2006 were committed within a family or intimate relationship. In the highest percentage of cases (40 percent) the husband was the offender. In the majority of cases cold weapons were used, rarely a firearm. Interviewed judges expressed their opinion that there is no strong correlation between possession of firearms (legal or illegal) and the use of firearms by perpetrators of domestic violence. However, this may be due to a lack of understanding of the nature of domestic violence among these professionals. In terms of the low figures reported, women's NGOs who deal with victims of domestic and sexual violence believe that this number is much lower than the actual figure, because the use of a firearm reduces the likelihood of a victim reporting the incident due to fear that the firearm will not be confiscated from the perpetrator and will be used again.

A survey conducted by the Victimology Society of Serbia in 2001 included a particular section on the influence of small arms on domestic violence.<sup>19</sup> They found that seven percent of women who experienced domestic violence were attacked or threatened with firearms or other dangerous weapons or tools. In 27 percent of recorded cases, physical attacks with or without dangerous weapons were repeated more than five times. The most prevalent form of armed violence is that using a cold weapon, mostly a knife (34 cases), while firearms were used in 11 cases, mostly to threaten a female family member. According to the press-clipping analysis conducted by women's NGOs in Serbia for the purpose of the national advocacy campaign against domestic violence in 2003, entitled 'Why They Are Not with Us', 31 women were killed during that year by their husbands or partners, while 60 percent of all murders were committed against a family member.

The research from Kosovo shows high levels of armed domestic violence. Interviewed persons from the Women's Wellness Centre from Peja/Pec indicate that domestic violence is closely related to possession of firearms by perpetrators, and believe that the level of possession of firearms in Kosovo is very high, while the number of confiscations by police is very low. In the first half of 2007, this NGO recorded 33 cases of domestic violence, including four cases of sexual violence. In 17 of these cases, victims were threatened with firearms, while in four cases female victims were actually injured by firearms. Staff of the NGO, Liria, report that victims of domestic violence from Gjilan/Gnjilane seeking their support stated that perpetrators possessed firearms in most cases, but these were not confiscated by the police.

The evidence of using firearms in cases of domestic violence is not properly recorded by any of the institutions that deal with perpetrators and victims of domestic violence. Therefore, the existing data cannot be considered as a reliable indicator of the use of firearms in cases of domestic violence. It can be assumed that they show only the tip of the iceberg. The practice of keeping records of these cases is only starting to be developed. Bearing in mind the high level of unreported cases of domestic violence, it is realistic to conclude that incidences of firearms use by an offender to threaten and pressurize other family members is much higher than official data shows. As research by women's NGOs on the prevalence of domestic violence indicates in all the research countries, women are less likely to report offenders, particularly if they are in fear of their life, when threatened by a dangerous weapon or a firearm.

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<sup>19</sup> Vidakovic, Ivana, 'Rasprostranjenost nasilja u porodici' ('Prevalence of Violence within the Family'), *Porodичno nasilje u Srbiji (Family Violence in Serbia)*, ed. Vesna Nikolic-Ristanovic, Belgrade: Victimology Society of Serbia & Prometej, 2002. pp. 49-59. The survey was conducted with a sample of 700 women older than 18 years in six towns in Serbia, 74.4% living in urban areas, and 25.6% in rural areas.

### 3 The National Governments' approach to combatting domestic violence

#### 3.1 Legislation and legal provisions related to domestic violence

During the last decade, all governments in the Western Balkans have made significant progress in penalizing domestic violence and introducing legal measures to protect victims. This progress is the result of the harmonization of national legislation with international standards of human rights, and advocacy campaigns of women's NGOs. The countries under research are State Parties to all the United Nations core international human rights treaties, including the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)<sup>20</sup> and its Optional Protocol. Given that the countries, with the exception of Bosnia and Herzegovina,<sup>21</sup> have a monistic approach to international law, ratified international treaties become part of the national legislation, and may be applied directly. This means that the States are obliged to comply with international human rights standards related to combatting domestic violence.

This obligation arises from the fact that domestic violence is recognised as a violation of human rights, and one of the most prevalent forms of violence and discrimination against women.<sup>22</sup> International human rights documents prohibit domestic violence as a violation of basic human rights and freedoms as guaranteed by the Universal Declaration of Human Rights, including the right to life, liberty and personal security, the right to equality, and freedom from torture and cruel or humiliating treatment.<sup>23</sup> Besides this, all the States are Member Parties to the Council of Europe, and have signed the European Charter on the Protection of Human Rights and Fundamental Freedoms (ECHR). The Council of Europe has an impressive list of documents and policy directives that establish standards and obligations for Member States in the field of combatting domestic violence. As State Parties to the UN and the Council of Europe, the governments are obliged to implement their human rights documents with due diligence and in good faith.

All countries in the region have integrated basic human rights into their constitutional provisions, thus guaranteeing that women and men and girls and boys will enjoy, amongst other rights, equal protection by the State from domestic violence. The national Constitutions guarantee human rights and fundamental freedoms as indivisible, inalienable and inviolable. Equality before the law for all citizens is guaranteed, while discrimination based on sex is forbidden, as is torture and inhumane and cruel treatment.

In general, the legal frameworks that support activities and measures against domestic violence include, beside the constitutional provisions, specific Laws against Domestic Violence, Laws on Gender Equality,<sup>24</sup> Criminal Laws, Family Laws, and Laws on Public Order.

<sup>20</sup> Convention on the Elimination of All Forms of Discrimination against Women, <http://www.un.org/womenwatch/daw/cedaw/>, accessed on 10 October 2007.

<sup>21</sup> Bosnia and Herzegovina is a complex state whose constitutional, legal and political framework is established by the Dayton Peace Accords (1995). It consists of two entities (the Federation of Bosnia and Herzegovina and the Republika Srpska) and one autonomous district (Brčko District), which have different legal systems, in addition to a common federal legal system. The federal State is decentralised, and has several authority levels: local, cantonal, Brčko District level, entity level and State level. According to the Constitution of Bosnia and Herzegovina (Art. 2), the State directly implements human rights and freedoms guaranteed by the European Charter on Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols, which have priority over national laws. Besides this, the State and its entities have to assure the implementation of all human rights and freedoms recognised by the major international treaties (including CEDAW), without discrimination, to all citizens (Dayton Peace Accords, Annex 6).

The Constitution of the Republic of Montenegro does not have any provision on the relationship between international and national law. However, Article 44 guarantees citizens the right to address international institutions in order to protect their constitutional rights. The Draft of the new Constitution foresees the primacy of international law.

<sup>22</sup> 'Violence Against Women in the Family', Report of the Special Rapporteur on violence against women, its causes and consequences, Radhika Coomaraswamy, submitted in accordance with Commission on Human Rights resolution 1995/85, E/CN.4/1999/68 10 March 1999.

<sup>23</sup> Analysis of the role of international law in fighting domestic violence, and the list of international norms in this field can be found in: Nikolic-Ristanovic, Vesna and Mirjana Dokmanovic, *International Standards on Domestic Violence and Their Implementation in the Western Balkans*, Belgrade: Prometej, 2006. pp. 33-71 and pp. 153-175.

<sup>24</sup> Laws on Gender Equality exist in Bosnia and Herzegovina (2003), Croatia (2003), Albania (2004) and Kosovo (2004). In Serbia, the Law against Discrimination and the Law on Gender Equality are currently being drafted.



The Gender Equality Law in Bosnia and Herzegovina forbids all forms of gender-based violence in both the public and private spheres and prescribes a punishment of imprisonment from six months to five years for such acts. This kind of provision does not exist in the Gender Equality Laws in Albania, Croatia and Kosovo. Specific laws to address domestic violence have been adopted in Albania (2006), Croatia (2003) and in both entities of Bosnia and Herzegovina (the Federation of Bosnia and Herzegovina (2005), and the Republika Srpska (2005)). They regulate the concept of family violence, persons considered as family members, and forms of protection for family members. The basic concept of these laws is to protect the victim by removing the perpetrator from the place of residence of the victim, and ordering mandatory psychosocial or addiction treatment for the perpetrator as appropriate.

Special legal provisions are also in place in Kosovo, under UNMIK Regulation 2003/12 on Protection against Domestic Violence. A separate Law on Prevention from Domestic Violence was drafted in Montenegro, but has not yet been adopted. All the research countries, including those that have separate laws on domestic violence, provide legal provisions addressing domestic violence in the Criminal and Family Laws. In addressing cases of domestic violence, courts also apply the Law on Public Order.

The implementation of the law against domestic violence is separate from legislation aimed at criminal prosecution. Specific laws provide for protection and exclusion orders, and treat domestic violence as a misdemeanour. Sanctions usually involve fines and short-term imprisonment of the perpetrator (Croatia, Bosnia and Herzegovina). The laws follow the concept of immediate protection of the victim from further violence by providing for the physical removal of the offender from the victim. This legislation allows victims to initiate the misdemeanour procedure by themselves. The specific laws do not include criminal sanctions and do not provide for support services, such as shelters.

Domestic violence has been made a specific criminal offence in Croatia, Montenegro and Serbia, as well as in both entities of Bosnia and Herzegovina and in the Brčko District. In all countries, it is prosecuted *ex officio*. In Albania and Kosovo, domestic violence is prosecuted not as a specific criminal act, but as a general crime of assault, infliction of physical injuries or rape. In FYR Macedonia, domestic violence is criminalized within a number of criminal acts in the criminal legislation, which was amended in 2004: murder, 'homicide in the heat of the moment', bodily injury, serious bodily injury, coercion, illegal deprivation of liberty, endangering the security of another or facilitating prostitution and sexual assault of children. The Criminal Law provides the definition of family violence and prescribes more severe forms of punishment if these acts are committed against a family member (e.g. for murder and heavy bodily injuries).

The prescribed sanctions are fines and prison sentences.<sup>25</sup> Prison sentences vary from country to country: up to one year in the Brčko District, Montenegro and Serbia; up to two years in the Republika Srpska and up to three years in the Federation of Bosnia and Herzegovina and Croatia. Aggravated forms of domestic violence subject to more severe sanctions also exist. The Criminal Laws in Serbia (Article 194.2) and Montenegro (Article 220) prescribe more severe sanctions if any dangerous weapon is used: up to three years of imprisonment. In FYR Macedonia, if a firearm has been used on a repetitive basis for threatening or coercion, its use may be considered as an aggravating circumstance in sentencing cases of domestic violence, but it does not trigger prescription of a more severe punishment. In both Bosnian Entities and the Brčko District, the law prescribes higher sentences for armed domestic violence only in cases when the victim suffers heavy bodily harm, or when injuries have caused damage to health or resulted in death.

Some States have failed to revise and/or increase sanctions under recent legislative changes. For example, instead of increasing sanctions for domestic violence, Serbia has recently decreased them under the changes of criminal law in 2005 (from a maximum of three years imprisonment to one year).<sup>26</sup>

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<sup>25</sup> However, in Serbia, in practice, conditional sentences are most frequently passed in legal proceedings. Source:

Council of Europe, 'Legislation in the Member States of the Council of Europe in the field of Violence against Women', January 2007, [http://www.coe.int/t/e/human\\_rights/equality](http://www.coe.int/t/e/human_rights/equality), accessed on 01 October 2007.

<sup>26</sup> The CEDAW Committee has expressed its concerns about decreasing penalties for domestic violence. The Concluding Comments of the Committee for the Elimination of Discrimination against Women: Serbia, 35<sup>th</sup> session, 14 May – 01 June 2007, CEDAW/C/SCG/CO/1, para. 21.



The application of the legislation on domestic violence in Bosnia and Herzegovina is hindered by the lack of harmonization of different legal provisions that apply in the Republika Srpska and the Federation of Bosnia and Herzegovina.<sup>27</sup> There is a legal ambiguity in defining cases when domestic violence should be considered as a crime (applying the Criminal Law) and cases when it should be considered as a minor misdemeanour act (applying the specific Law on Domestic Violence). Courts often charge offenders with minor offences, prescribing them with lighter sanctions, such as fines. In response to this situation, the UN Committee on Economical, Social and Cultural Rights (CESC) urged the State of Bosnia and Herzegovina 'to ensure harmonization of the criminal law provisions of the Entities and of Brčko District on the crime of domestic violence with the State Law on Gender Equality, as well as their application by judges, prosecutors and the police', and to 'take measures to sensitize law enforcement officials and the general public to the causes, and criminal nature of acts of domestic violence, as well as the specific needs of victims'.<sup>28</sup> The CEDAW Committee formulated a similar recommendation, calling upon the State party 'to harmonize the laws of the two entities and to speed up the formulation and adoption of by-laws and the establishment of relevant structures and institutions needed for implementation'.<sup>29</sup>

### 3.2 Measures to protect victims of domestic violence and armed domestic violence

The countries under review are relatively homogeneous with respect to the institutionalized structures for protecting victims of domestic violence, most of whom are women. The regional pattern for providing services to protect victims of domestic violence includes shelters, hotlines, counselling and free legal aid, mostly provided by women's NGOs. All countries have introduced legal protective measures aimed at protecting victims during criminal proceedings and while restraining orders are in place. However, the analysis of the practice shows a huge gap between the *de iure* and *de facto* situations.

#### Provision of services

The national research indicates that women usually start seeking help after being exposed to violence for years, and after receiving serious physical injuries.<sup>30</sup> Shelters, SOS hotlines and counselling for victimized persons exist in each country, but in insufficient numbers to meet the needs of victims.<sup>31</sup> In Croatia, there are ten shelters and 24 hotlines, in Serbia nine shelters and 39 hotlines, in Bosnia and Herzegovina seven shelters, and in Montenegro two safe houses. Crisis intervention centres exist only in Kosovo and FYR Macedonia. Safe houses are not always easily accessible in terms of geographical distribution, and are predominantly situated in urban areas. Shelters and counselling services are still predominantly run by women's NGOs, and mostly funded by international donors. The states partially participate in supporting shelters, but without systematic strategies. Government-operated shelters exist in FYR Macedonia (six) and Albania (one).

Help lines providing psychological and legal assistance are also mostly operated by women's NGOs. A number of help lines in Serbia are operated by centres for social work. Rehabilitation programmes for women and children and access to specialized services, other than those generally available, do not exist.

In recent years, the national authorities have begun to increase the involvement of social services aimed at protecting victims of domestic violence. In this regard, the most progress has been achieved in FYR Macedonia. On the national level, the Ministry of Labour and Social Policy has a mandate to establish and coordinate protective

<sup>27</sup> Popa, Raluca Maria, *Ending Domestic Violence in Southeast Europe and Turkey: Towards a Regional Strategy for Action*, Bratislava: UNIFEM CEE, 10 July 2007, p. 12.

<sup>28</sup> E/C.12/BIH/CO/1, 'Concluding Observations of the UN Committee on Economic, Social and Cultural Rights', para. 43.

<sup>29</sup> 'The Concluding Comments of the Committee for the Elimination of Discrimination against Women: Bosnia and Herzegovina, 35<sup>th</sup> session, 15 May- 02 June 2006', CEDAW/C/BIH/CO3.

<sup>30</sup> Research in Bosnia and Herzegovina observed that victims usually assume that nobody will believe that they are abused if they are beaten 'a little'.

<sup>31</sup> After considering the periodical reports of Croatia, the CEDAW Committee expressed its concerns 'about the high incidence of domestic violence, the limited number of shelters available for women victims of domestic violence, and the lack of clear procedures, or protocols for law enforcement and health-care personnel who respond to cases of domestic violence'. The CEDAW Committee urges the State Party to ensure that enough shelters are available to women victims of domestic violence, 'The Concluding Comments of the Committee for the Elimination of Discrimination against Women: Croatia, 32<sup>nd</sup> session, 10-28 January 2005', CEDAW/C/CRO/CC/2-3, para. 31-32. Similar recommendations were given to Serbia, 'The Concluding Comments of the Committee for the Elimination of Discrimination against Women: Serbia, 35<sup>th</sup> session, 14 May - 01 June 2007', CEDAW/C/SCG/CO/1, para. 22.

services for victims of domestic violence, as well as to propose temporary measures of legal protection. On the local level, the 27 centres for social work are responsible for dealing with cases of domestic violence. They are required to provide protection through delivering services and requesting courts to issue temporary measures of protection. The Ministry of Labour and Social Policy allocates funds to support state shelters, operate the National SOS Hotline and other activities to address domestic violence.<sup>32</sup> On the local level, a juvenile delinquency inspector is appointed in each internal affairs authority to coordinate those measures to fight domestic violence that require police intervention.

In Serbia, several shelters are operated as partnership projects of NGOs and the state-run centres for social work. They may receive project-based grants from the Fund for Social Innovation within the Ministry of Labour, Employment, and Social Policy.<sup>33</sup> In this respect, positive changes have recently been introduced in the Serbian Autonomous Province of Vojvodina. The Provincial Secretariat for Labour, Employment and Gender Equality has initiated the building of a shelter in Novi Sad, in cooperation with the Executive Council of Vojvodina. This shelter is financially supported by the City of Novi Sad, and run by the centre for social work. Additionally, the Executive Council of Vojvodina has set aside funds to support building a shelter in Zrenjanin, and there are a few initiatives for setting up shelters by local municipalities (Subotica, Sombor, Pancevo). The Decision on Gender Equality of the Parliament of Vojvodina<sup>34</sup> in Article 15, which refers to social and health protection, includes a recommendation that centres for social work should establish SOS help lines and shelters for victims of domestic and partnership violence.

In general, the States do not fully comply with their obligation to support NGOs dealing with combatting domestic violence and protecting victims. The governments have recently started to support NGOs that run shelters and hotlines, but this support is on an ad-hoc basis.

## Police response

In the majority of countries studied, police are obliged by law to conduct the same procedure and to respond in the same manner to acts of armed violence, whether they occur in the home or in a public space. When called to a scene of armed domestic violence, police routinely check for the presence of a firearm. If a firearm has not been used, police will search for it only if they have received information about illegal possession of a firearm, or about inappropriate use of legally possessed firearms. If a firearm is found, police seize it and then continue with other police and investigative procedures.<sup>35</sup> If the perpetrator has a licence to possess a firearm, police officers will take the licence, and make a note in their report.

In Albania, this would result in the Commission for Firearms Licences of the Police Commissariats, in charge of criminal investigation cases, cancelling the right of the perpetrator to own a firearm. The seized weapon is sequestered by the government (or it will be auctioned in the case of hunting rifles).

Police in Montenegro are not legally obliged to check for the presence of firearms and licences at the scene of a domestic violence incident. The practice is to check data about the perpetrator in police files (possession of firearm and/or licence, criminal record, previous violent behaviour, etc.). The Rules of Procedure in Preventing and Discovering the Criminal Offence of Domestic Violence and Protecting Victims, which have not yet been adopted,<sup>36</sup> will introduce an obligation for police officials to check for the presence of a weapon at the scene of a domestic violence incident.

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<sup>32</sup> Popa, Raluca Maria, *Ending Domestic Violence in Southeast Europe and Turkey: Towards a Regional Strategy for Action*, Bratislava: UNIFEM CEE, 10 July 200, p. 16.

<sup>33</sup> 'Violence against Women: Does the Government in Serbia Care? NGOs Fact sheet on the state response', 2006, Open Society Institute, [http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/SERBIA\\_VAW\\_FACT\\_SHEET\\_2006\\_3.pdf](http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/SERBIA_VAW_FACT_SHEET_2006_3.pdf), accessed on 05 April 2007.

<sup>34</sup> Official Gazette of the Autonomous Province of Vojvodina, no. 14/04.

<sup>35</sup> Research in Albania describes the procedures, which include a search for the firearm if it is hidden by the offender, or a demand for the offender to hand the weapon voluntarily to the police; seizure and sequestering of the firearm; proper measures to prevent the loss of fingerprints and other evidence found on the surface of the weapon; the carrying out of all necessary procedures if the firearm is licensed by the State Police.

<sup>36</sup> The policy document is signed and approved by the Minister of Interior, but must be adopted by the government in order to come into force.

In Serbia, police have the authority to seize a weapon temporarily during an investigation if possession of the weapon could lead to a criminal act or misdemeanour, if it is necessary for public safety, or if the person is in custody and has a weapon that can be used for self-injury, attack or escape. Police always check the database on firearms possession in advance of interventions into domestic violence cases, before approaching the perpetrator's residence. Police may only search the perpetrator's home or apartment if they have a warrant. In case the police seize a firearm, the confiscated weapon will be held in the court depository until the end of the criminal proceedings. The police are obliged to submit the official document related to the temporarily confiscated item. If the person is released without charge, the confiscated item will be returned.

In Bosnia and Herzegovina, police and prosecutors will inquire whether the perpetrator possesses a firearm only if they have a 'good reason' to do so. Police cannot search for firearms at the scene of domestic violence if they do not have a good reason for the search, such as reports from the victim or a witness that a firearm has been used. In cases when the use of a firearm is reported, the police seize the firearm and suspend the firearm licence, if the weapon was legally possessed. If the perpetrator applies for a firearm licence during a criminal proceeding, their request will be rejected on this basis. Firearm licences will be confiscated from those individuals who have been charged for criminal and misdemeanour acts, including acts of domestic violence, committed in the past three years.<sup>37</sup>

Progress has been achieved with respect to introducing liability of state officials to respond to domestic violence. The legislation in Croatia, Serbia, the Federation of Bosnia and Herzegovina and the Republika Srpska, stress the obligation of officials to report family violence. Medical personnel, providers of social welfare, psychologists, social workers, social pedagogues and staff of educational institutions are obliged to report any suspected acts of domestic violence that they encounter during their professional duties to the police or the public prosecutor. Failure to act in accordance with these provisions is considered a misdemeanour.

However, police practice still needs improvement. Women's NGOs in Bosnia and Herzegovina report that police, in general, are not likely to make an official report when a victim suffers a light bodily injury and/or reports domestic violence for the first time. Police usually wait for incidents to be repeated a couple of times before taking an official statement from the victim and perpetrator. There are still cases when domestic violence is treated as a violation of the Law on Public Law and Order as this was the practice before the introduction of laws on protection against domestic violence. The implication of this is that no restraining orders can be requested from the court. Thus, the victim remains exposed to violence and threats from the perpetrator.

Cases of domestic violence that are more serious because perpetrators have used firearms are rarely reported to prosecutors and police. One reason for this may be that victims fear retaliation from the violent partner, and do not believe that the firearm will be confiscated. Thus, these victims generally do not benefit from any protective measure that would ensure their safety. Very often, despite urgent need, victims cannot be placed in shelter houses because of their insufficient capacities. It was also noted that often victims are not medically insured, therefore they do not seek treatment for their injuries, thus health services do not come into contact with the case, removing another opportunity for the case to be recorded in official statistics.

### **Protection by courts**

Access to justice is available to victims of domestic violence in all countries, but it is not as safe and prompt as demanded by international standards. The criminal procedure is usually lengthy and therefore discouraging for victims. A number of victims do not use legal opportunities to obtain justice due to lack of knowledge and information, fear of the perpetrator (related to the lack of effective protective measures), reluctance to publicize private matters, lack of confidence that the perpetrator will be brought to justice, mild sanctions and uncertainty of the result of the criminal procedure.<sup>38</sup> In addition, the national research indicates that only a small proportion of all cases reported by police end up in court.

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<sup>37</sup> Unfortunately, research in Bosnia and Herzegovina stresses that this measure cannot be a sufficient guarantee of the victim's protection, due to the wide availability of illegally possessed firearms in the country.

<sup>38</sup> Nikolic-Ristanovic, Vesna and Mirjana Dokmanovic, *International Standards on Domestic Violence and Their Implementation in the Western Balkans*, Belgrade: Prometej, 2006, pp. 97-98, 106-107.

All countries in the region have developed legislation that provides for protective measures for victims of domestic violence, but they differ regarding their range, scope and effectiveness. These may be non-molestation orders that prohibit a perpetrator from making contact or coming close to a victim; occupation orders, enforcing the victim's rights and the rights of children to remain in the house or restricting the perpetrator's right to occupy or re-enter the house; and restraining orders, such as confiscation of a weapon. Deprivation of a firearm licence in all observed countries is under the mandate of the Ministry of Interior office or department that issues licences and keeps records on issued, suspended and cancelled licences, as well as on seized, found and voluntarily surrendered firearms. The sources of these protective measures are predominantly the specific Law on Domestic Violence, the Law on Criminal Proceeding, and/or Family Law. Protection measures include obligatory medical treatment of people with alcohol and drug addictions. These measures are temporary (they may last up to one year), and prescribed in legal proceedings as being particularly urgent.

The UNMIK Regulation on Protection against Domestic Violence in Kosovo<sup>39</sup> provides for a wide scope of protection measures that courts may order. These include protection orders, emergency protection orders and temporary protection orders. The aim of these measures is primarily to physically separate the offender from the victim and protect them from any possibility of being exposed to violence, or threats of violence. Accordingly, the court may order the seizure of a firearm, including hunting and sporting weapons (Article 2.1h), as well as ordering the Police Commissioner to suspend or revoke a firearm licence issued under UNMIK Regulation 2001/7 on the Authorization of Possession of Weapons in Kosovo (Article 2.1o). The seizure of a firearm may also be ordered as an emergency measure. The court may order any other measure deemed necessary to protect the safety, health or wellbeing of the victim and/or any other person with whom the victim lives in the household (Article 2.1p). Besides the victim and their legal representative or lawyer, the request for the seizure of firearms may be submitted by a centre for social work, by any person with whom the victim lives in the same household, or by a person who knows that the victim is being abused. The court makes its decision upon this request in an urgent procedure. The protection measure may last up to one year. Violation of the measure is considered a criminal offence and sanctioned by a fine or imprisonment for up to six months. Outside court working days, the police may issue a temporary protective order (Article 13). However, seizure of a firearm may not be ordered by the police as a temporary measure.

In Serbia and FYR Macedonia courts always ask about the presence of a firearm during criminal proceedings, and order its seizure from the perpetrator, under the provision, 'deprivation of an item used or intended to be used in a criminal act'. Items may be confiscated if there is a threat that they may be used again in another criminal act. Courts keep records of all found or seized items, including firearms. The confirmation of the seizure contains the technical characteristics of the firearm. Upon rendering the sentence, firearms are taken into state property. If a case ends in acquittal, the seized firearm is returned to its owner. In Serbia, the violation of protection measures is punishable under Criminal Law, by a fine or up to six months of imprisonment. Despite this provision, practice shows that courts still do not use these protection measures regularly.

In Montenegro, police are not allowed to make requests for protection measures; this is the responsibility of the court. Police have recently introduced a new form for informing the administrative office responsible for issuing firearms licences about all committed criminal acts prosecuted *ex officio*, as prosecution for such acts is an obstacle to obtaining a licence. If a firearm is used in a criminal act, the police practice is to seize it temporarily and bring the procedure to the responsible administrative office who will confiscate it permanently if the perpetrator is found guilty, or return it to the perpetrator if the case is acquitted or the court rejects the criminal charge. In Montenegro, courts request data about a firearm only if it is used or is intended to be used in a criminal act. The obligatory measure of deprivation of a weapon, which may be a firearm, is only ordered as a security measure after the perpetrator is found guilty. Montenegrin legislation does not foresee seizure of a weapon as a protection measure, but as a security measure.

In Bosnia and Herzegovina, the court will order the seizure of a firearm if the victim reports armed domestic violence.

During criminal proceedings, courts may order the removal of the offender from the courtroom, but this measure is usually not sufficient to protect the victim. The court may 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

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<sup>39</sup> UNMIK/REG/2003/12.

cases of domestic violence. Although the burden of proof for sexual offences should not be heavier than for other crimes, court practice still lags behind the law. The burden of proof is particularly difficult and painful for victims in cases of marital rape and sexual assault.

In cases where victims commit a crime in response to domestic violence, they may cite self-defence as a ground for avoiding punishment, but it is up to the courts to decide on each case. However, the national research indicates that court practice is not favourable for women victims of domestic violence who have murdered their male abusers, particularly if they have used a weapon (either a knife or a firearm) to defend themselves from long-term abuse. In these cases, courts are not likely to consider committing murder as self-defence, and prescribe severe sentences of imprisonment.

As a rule, the criminal and civil legislative frameworks in the research countries are not properly adjusted. There is one example of good practice from Serbia, however, in terms of the interaction between criminal and civil norms, whereby violation of protective measures under family law, ordered by a court, can result in the perpetrator being sentenced to a fine or imprisonment for up to six months.

### **Rehabilitation programmes for offenders**

There is a lack of rehabilitation programmes for domestic violence offenders, even in countries where these are obligatory and prescribed by law, as is the case in Bosnia and Herzegovina and FYR Macedonia. There are only a few NGOs that carry out these activities, but not in a systematic way. In Croatia, the work of NGOs in this field is partly financed by the government. In Serbia, centres for social work did provide experimental rehabilitation programmes, but these were stopped due to lack of funding.

### **Reporting mechanisms within the public health system**

In all the research countries, legislation provides for reporting mechanisms within the public health system. Health care professionals are legally bound to report every severe bodily injury or instance of armed violence to the police. However, as the national research indicates, health care workers do not pay enough attention to conversations with victims to get an informed history of violence and the circumstances under which the violent behaviour happened. In Albania, health care workers do not have a legal obligation to ask their patients about the causes of their injuries, neither to record their answers in the patient's records.<sup>40</sup> There is also a lack of clear protocols for documenting records. In general there is a need for training of staff within public health systems on the need for consultations with patients and record-keeping.

### **Interagency cooperation**

In order to develop better inter-professional cooperation in cases of domestic violence, operational protocols among all relevant institutions have been adopted in Croatia and Montenegro. The Croatian Rules of Procedure contain the list of obligations of all competent bodies involved in the identification and elimination of violence and in providing help and protection to persons exposed to family violence. In Montenegro in 2003, police departments, courts, prosecutors' offices, centres for social work, local administrations, SOS help lines and health care institutions signed a Memorandum of Understanding and Agreement of Cooperation in five out of 21 municipalities in the country. Multidisciplinary teams have been established at local level, but they are not yet functional.

In 2005, the Office of the Provincial Ombudsperson in the Serbian Province of Vojvodina initiated the establishment of the network 'Life without Violence',<sup>41</sup> which included all the relevant institutions (centres for social work, police, courts, prosecutors' offices, health care institutions, etc.) that deal with the issue of domestic violence. The members of the network signed the Memorandum on Collaboration at provincial and local level. On the basis

<sup>40</sup> Only 13 percent of health service providers report that they record cases of violence, of which only four percent report recording both the case and the cause of violence. In the study of the Albanian National Association of Social Workers (2006), the written responses of health care workers (37 percent) indicate that they did not recognize gender-based violence, considering domestic violence as a private matter within the family.

<sup>41</sup> Autonomous Province of Vojvodina, Provincial Ombudsman, 'The 2005 Report of the Provincial Ombudsman', Novi Sad, 2006, pp. 132-138.



of this Memorandum, in almost all of the 45 municipalities in Vojvodina, local teams for addressing the issue of domestic violence and protecting victims have been established.

Special police units to respond to cases of domestic violence only exist in Kosovo. Police officers to handle these cases have been appointed in Croatia and Montenegro. In Serbia, there is a successful practice at local level (in Sombor municipality) of establishing a round-the-clock interdisciplinary mobile team for intervention in cases of domestic violence, in a partnership between the centre for social work and the local police. Attempts have been made to establish a special medical unit conducting systematic examination of victims of sexual violence.

### **Training for professionals**

As a rule, training of police officials, judges, prosecutors, social workers and other professionals dealing with domestic violence is not mandatory and not provided by the state. Training programmes exist in all countries, but are not conducted on a regular and systematic basis and are generally provided by NGOs. Only in Kosovo are all police officers required to attend these programmes. The police academies in Croatia and Montenegro have recently incorporated the training of future police officers for handling domestic violence issues into the curricula. There have been some state-sponsored training initiatives on domestic violence in FYR Macedonia.

## **3.3 Measures to prevent domestic violence and armed domestic violence**

According to the national research, governments in the region have made very few systematic and comprehensive efforts towards undertaking policies and measures to prevent domestic violence. The biggest steps forward have been realized in establishing gender equality mechanisms. They now exist in all the countries, both as governmental and parliamentary bodies, with different names and scope of competencies, but in general dealing with establishing a systematic approach towards the promotion of women's rights and gender equality.

Consequently, all countries have made progress in drafting or adopting gender equality legislation and national action plans and strategies that include the issue of domestic violence. However, the governments' activities in the field of preventing domestic violence have still been very poor, and have lagged behind the States' commitments. There have been some recent initiatives to include gender equality issues in regular education and to eliminate gender stereotypes in school curricula, but these steps are only in the early stages. Governmental activities for raising public awareness on domestic violence, and governmental campaigns against the culture of violence, are still very rare. Additionally, almost no attention is paid to firearms as a risk factor or to the linkage between SALW and domestic violence regulation.

### **National Action Plans and Strategies**

A specific National Strategy on Protection against Domestic Violence (for the period 2005 to 2007) exists only in Croatia, while in Albania it has been drafted. The Croatian Strategy, adopted in 2004 and currently being implemented, contains 27 short and long-term prevention and protection measures. These measures highlight the need to change legislation as well as court and police practices and procedures, education, the judiciary system and to raise public awareness. The Strategy introduces the obligations of all relevant institutions to investigate, prevent and prosecute all forms of violence within the family. The implementation of the National Strategy is coordinated by a special department within the Ministry of Family, which has its own budget. State-sponsored actions in support of efforts to end domestic violence in Croatia encompass both measures of intervention (police intervention) and protective measures (provision of services). Some financial support from governmental and local funds is currently available for NGO shelters, but the concrete conditions vary from county to county. Most services for women victims of domestic violence continue to be provided by NGOs, which offer legal advice, psychological support and shelters. The Strategy does not mention SALW control and regulation.

The Albanian Draft National Strategy and Action Plan for Gender Equality and Eradication of Domestic Violence (2007 to 2010)<sup>42</sup> aims to harmonize the entire legal framework with international and EU standards in this field, to create avenues for implementing gender issues in public policy and to decrease domestic violence. The Draft National Strategy focuses on prevention and addressing the root causes of domestic violence. One of its

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<sup>42</sup> This strategy paper is part of the National Strategy for Development and Integration.



objectives is to strengthen the political engagement of all stakeholders in order to prevent and eliminate domestic violence. Recognising the lack of effective measures in combatting domestic violence, the Draft Strategy outlines preventive measures that the Albanian government should take in the most important fields, i.e. education, the judicial system, the health care system, the social services sector and awareness-raising. In the framework of police duties in the implementation of protection measures issued by courts, the Draft Strategy underlines the obligation to seize any weapon found during police checks from the perpetrator. The document does not address the issue of firearms control.

In the other countries in the region, governmental action plans in this field are defined within general National Action Plans for Gender Equality<sup>43</sup> in a separate chapter addressing violence against women, including domestic violence. The national research indicates that there are serious gaps in implementing these policy documents. For instance, although the Council of Ministers of Bosnia and Herzegovina adopted the Gender Action Plan in 2006, with a separate section on domestic violence, to date no dedicated strategy or action plan in this field has been developed.

In Montenegro, the fight against domestic violence is included in the general National Plan for Prevention of Violence, adopted in 2003 in cooperation with NGOs. The main aims of the plan are to improve legislation; raise education levels on the issue; establish multidisciplinary cooperation between all stakeholders, including the civil society sector; improve the position of women, youth, children and old people; eradicate poverty and build the capacity of health care institutions to respond to domestic violence.

In contrast, the Serbian Initial Framework of the National Strategy against Violence, drafted in 2005, does not recognize the gender dimension of violence. Serbia has no national strategy against domestic violence, but work on drafting a strategy at the level of the Province of Vojvodina began in September 2007, under the auspices of the Secretariat for Labour, Employment and Gender Equality. The aim is to build an effective framework to combat domestic violence through comprehensive long-term and short-term measures at provincial and local level. A specific budget line will be set up for the implementation of the strategy.

None of the existing national action plans (or drafts) addresses the issues of armed domestic violence, firearms as a risk factor in domestic violence, or linkages with SALW regulation.

### **Budgetary support**

In general, countries in the region lack specific budgets to support activities in the field of preventing domestic violence. Consequently, the majority of activities defined in the policy documents have still not been implemented. The exceptions to this are in FYR Macedonia (where the budget for addressing domestic violence is included within the budget of the Ministry of Labour and Social Affairs under the category of 'socially excluded persons'), in Croatia (under the Ministry of Family there is a special department dealing with domestic violence) and in Kosovo (the Kosovo Police Service contains a budget line item for financing the operation of the special unit in this field<sup>44</sup>). In Serbia, the Fund for Social Innovations within the Ministry of Labour, Employment and Social Policy has provided grants for innovative projects in the field of social protection, including State and NGO partnerships. In the Serbian Province of Vojvodina, the Secretariat for Labour, Employment and Gender Equality financially supports the work of several SOS hotlines within centres for social work on a regular basis, as well as some specific NGOs' projects aimed at combatting domestic violence. Thanks to the initiative of the Provincial Ombudsperson, a number of provincial Secretariats has set up specific budget lines to support activities in the field of prevention of domestic violence in 2007.<sup>45</sup> There is an initiative to establish permanent budgetary support of programmes aimed at eliminating domestic violence, including training, hotlines, shelters and awareness campaigns.

In Albania there is no budget line earmarked for this issue, but the Strategy on Social Services foresees an increase in the budget for these services and for supporting NGOs that provide services to victims of domestic

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<sup>43</sup> National Plans in the field of gender equality have been drafted in Montenegro and Serbia, but not yet adopted.

<sup>44</sup> 'Violence against Women: Does the Government Care in Kosovo? NGOs Fact sheet on the state response', 2006, Open Society Institute, [http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/KOSOVO\\_VAW\\_FACT\\_SHEET\\_2006\\_3.pdf](http://www.stopvaw.org/sites/3f6d15f4-c12d-4515-8544-26b7a3a5a41e/uploads/KOSOVO_VAW_FACT_SHEET_2006_3.pdf), accessed on 06 April 2007.

<sup>45</sup> For example, the Provincial Secretariat for Health and Social Affairs established funds for the specific education of social workers, and volunteers, providing rooms for victims of domestic violence and some other services.

violence. The Draft National Strategy on Gender Equality and Domestic Violence includes a budget for its implementation.

### **Awareness-raising campaigns**

As a rule, governments in the region have not instigated public awareness campaigns on domestic violence. The lead agencies of these campaigns are still women's groups and women's NGOs, which have organized widespread national campaigns as part of the international campaign '16 Days Activism against Violence against Women'. Governmental campaigns are still very rare. They have not had long-term goals and have been limited to the efforts of the individual state bodies, such as the Governmental Office for Gender Equality in Montenegro. The exception from this widespread practice of neglecting the importance of public awareness-raising is FYR Macedonia. There, three Ministries<sup>46</sup> led the national campaign to address domestic violence in 2005 and 2006.

Positive practice can also be found in the Serbian Province of Vojvodina, where the Secretariat for Labor, Employment and Gender Equality regularly joins and supports these campaigns. Provincial and local institutions, members of the network 'Life without Violence' (provincial ombudsperson, centres for social work, courts, prosecutors' offices, representatives of police, health care institutions, etc.), have also joined awareness-raising activities. A number of initiatives has been proposed and addressed to the state institutions. These initiatives include: establishing an Emergency Fund to help victims of domestic violence; empowerment of the police, judges and prosecutors to respond to cases of domestic violence; developing rules of procedure in cases of domestic violence at national level; informing professionals and state officials on international standards in this field; establishing a monitoring mechanism; statistics and data collection and regular information and awareness raising of the public about the importance of combatting domestic violence and eliminating discriminatory practices against women.

Media treatment of armed domestic violence is generally on a 'sensational' basis, with the primary objective of attracting the attention of the public, instead of highlighting the seriousness, prevalence and causes of the phenomena. No effective measures have been taken to ensure that the media promote respect for women and eliminate gender-based stereotypes and prejudices in media representations.

To date, none of these preventive activities in the area of domestic violence have addressed the issues of disarmament and arms control. These issues have not been raised even in campaigns run by women's groups and NGOs.

### **Education of children and young people**

Gender-sensitive curricula in schools that are free of gender stereotypes and prejudices are beginning to be discussed but have not yet been introduced in most countries of the region. The National Action Plans for the Advancement of Women and the gender equality laws, adopted in the majority of the research countries, provide for inclusion of gender equality issues in primary, secondary and higher education. However, educational programmes targeted at men and boys to prevent violence and eliminate gender stereotypes have not been developed until now. In Albania, the government has reviewed textbooks for several grades of primary schools, and criteria for reviewing textbooks from a gender perspective have been established. This activity is prescribed by law in Bosnia and Herzegovina, but has not yet been implemented.

## **3.4 Implementation mechanisms**

International human rights documents identify governments as the primary actors obliged to implement international human rights standards in good faith and with due diligence. They are responsible for applying these principles in respect to combatting and preventing domestic violence as it is recognised by international norms as an issue of public concern. In general, in recent years the governments in the Western Balkans have made visible progress in complying with their obligations from the CEDAW and other human rights documents

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<sup>46</sup> The Ministry of Interior, the Ministry of Health and the Ministry of Labour and Social Policy are the holders of this national campaign, together with the Citizens' Association Akcija Zdruzenska, the Association for Emancipation, Solidarity and Equality of Women – ESE, the National SOS Line of the Skopje Organization of Women, the Crisis Centre – Hope and the Shelter Centre.

regarding domestic violence, and have established a number of mechanisms for implementing commitments in this field. However, to date the practice of these mechanisms has not been efficient enough. In particular there are still huge gaps related to data collection and monitoring.

At national level, mechanisms for implementing protective and preventive measures in the field of domestic violence have been set up by legislation relevant to particular areas of activities, such as Criminal Law, Family Law, the Law on Criminal Procedure, the Law on Public Law and Order, the Gender Equality Law, the Law on Protection against Family Violence, etc. The mechanisms for implementing legislation relevant to combatting domestic violence and protecting victims are the competent ministries within the executive branch of power: the Ministry of Interior, the Ministry of Justice and the Ministry of Labour and Social Policy<sup>47</sup>. In addition, there are also a number of ministries responsible for the implementation of preventive measures in the field, such as the Ministry of Education.

Specific strategies on preventing domestic violence, where these exist, and other relevant policy documents (such as the National Action Plan for the Advancement of Women), name ministries and other state bodies responsible for implementing each of the specific activities. Some of these documents form a specific monitoring body. For instance, the Montenegrin National Plan for the Prevention of Violence (2003) has established a Coordinating Council as a monitoring body formed by members of the government, competent ministries, police and other state institutions and governmental bodies, as well as representatives of NGOs. The Coordinating Council has the authority to establish multi-sectoral teams at the local level.

In the field of monitoring and proposing policy changes, gender equality mechanisms have certain competencies. In Bosnia and Herzegovina, these are gender centres and parliamentary commissions; in Croatia the Ombudsperson for Gender Equality and in Montenegro the Office for Gender Equality. In Serbia, gender equality mechanisms have been established at national, provincial and local level, and gender equality commissions or committees exist as both governmental and parliamentary bodies. However, they are primarily counselling bodies without a significant impact on governmental policy. The exception is in Vojvodina, where the Secretariat for Labour, Employment and Gender Equality is part of the executive power, while the Office of the Ombudsperson has a deputy in charge of gender equality. In Vojvodina, the Institute for Gender Equality has been recently established and is the first of this kind in the region.

In all countries, centres for social work have a significant role and impact as state institutions dealing with victims of domestic violence.

### **Data collection and monitoring**

Despite some progress in harmonizing regulation with international standards in the field of preventing and combatting domestic violence, all states in the region are deficient in collecting data, research and monitoring. Data are mostly collected in a partial and sporadic way, without a clear strategy or a systematic and uniform approach, while state monitoring does not exist at all. However, there has been some progress in this field. For instance, police in the Republika Srpska has started to keep records on the use of firearms in domestic violence, while the prosecution offices have started to mention domestic violence in their statistical reports.

State statistics on reports of domestic violence, prosecutions and convictions are available in some countries. In Serbia, these data are collected by statistics bureaus, while in Croatia this is done by the state prosecution office. In FYR Macedonia, the Ministry of Labour and Social Policy collects data from centres for social work using identical methods of data collection every three months. Parameters used for data collection include, amongst others, completed/solved cases; cases reported by other institutions and organizations; nationality, gender and age of the victim; type of intervention undertaken by the centres for social work; police intervention; proposed temporary protection measures and number of requests submitted to issue such measures. The Macedonian National SOS Hotline is also obliged to collect data and to inform the Ministry regularly about the number of calls and the protection provided. Still, there are scarce data on armed domestic violence, due to the different

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<sup>47</sup> Ministries of the same competencies may have different titles. For instance, in Croatia the relevant ministries are the Ministry of Family, Defenders and Intergenerational Solidarity and the Ministry of Health and Social Protection, which has responsibility for social protection, while in FYR Macedonia and Serbia it is the Ministry of Labour and Social Policy.

methodologies of collecting and recording data used by different state institutions, and lack of coordination between these institutions.

In Serbia, FYR Macedonia, Croatia and the Republika Srpska, it is possible to acquire some data about domestic violence from the Ministry of Interior. In Bosnia and Herzegovina, the annual Gender Statistics of the Statistics Agency still lack statistics on violence against women, including the use of arms in domestic violence, although the Gender Equality Law stipulates that all data and records in state bodies, public services, institutions and private corporations must be gender disaggregated and accessible to the public. Croatia has not yet established an integrated system of data collection on domestic violence. In Croatia, institutions involved in work on domestic violence collect data separately. It is compulsory for police to have records on domestic violence related to sex, type of violence and injuries. Hospitals have also recently started to produce reports on cases of domestic violence. NGOs keep their own records.

To enable easier review of the effectiveness of legal measures, in some countries (e.g. in Serbia and Montenegro) police and/or courts have introduced a system of recording, which allows for the 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.

Law enforcement institutions in all countries in the region lack data on armed domestic violence, namely on reported, prosecuted and convicted cases, and data on victims, offenders and whether a firearm was used and the type. There is also a lack of data from health care institutions and centres for social work.

### 3.5 Summary

Thanks to the advocacy efforts of women's movements, governments in the Western Balkans have introduced positive changes in recent years to harmonize legislation on combatting domestic violence with standards set by international law. The Constitutions forbid torture and cruel treatment and discrimination based on gender. Gender equality mechanisms and legislation have been developed, and a positive shift has been made in penalizing domestic violence. All countries prosecute domestic violence *ex officio*. The majority of states have defined it as a specific criminal offence. Almost all countries have adopted specific laws on protection against domestic violence. If a firearm has been used, police are obliged to seize the weapon from the perpetrator. Courts may order the confiscation of a firearm as a protective measure, but it will be returned to the offender if they are acquitted or if the proceeding is suspended due to lack of evidence. The use of firearms is prescribed as an aggravating circumstance.

However, there are evident gaps in implementation of the legislation. Specific laws on domestic violence treat it as a misdemeanour, creating a legal ambiguity in defining when cases should be considered as minor acts, and when as criminal offences. Sanctions for perpetrators are usually low, proceedings are lengthy and protection measures are inadequate, therefore victims are discouraged from seeking justice. Shelters, counselling and other services for victims are still mainly provided by women's NGOs. Governments still rarely support protective measures, and they have paid little attention to preventive policy in this field, even if national strategies or action plans have been adopted. Data collecting and monitoring have mostly been carried out partially and sporadically, without a systematic and uniform approach.

## 4 National regulation of civilian possession of SALW

### 4.1 Weapons acquisition and possession legislation

In the countries of the Western Balkans, acquisition and possession of SALW is regulated by the respective Laws on Weapons.<sup>48</sup> The legislation<sup>49</sup> stipulates the conditions for the acquisition, possession and carrying of weapons and ammunition by civilians and private security company personnel.<sup>50</sup> The countries have two different kinds of licences for weapons: for possession, and for possession and carrying. The process of issuing a licence is conducted in two phases. First, a weapon authorisation card (licence) must be obtained from the authorized administrative body of the police, after which a firearm can be acquired within a certain time period. A firearm must be registered at the relevant police authority within a prescribed number of days (usually eight) after acquisition.

Albania is the only country in which civilians are not allowed by law to possess and carry firearms, except for hunting weapons. The only people who are entitled to hold firearms are those who hold state and party positions, as listed in the Law on Weapons. After leaving their position, these officials are deprived of the right to carry firearms and must return them to the appropriate Public Order body.<sup>51</sup>

A comparative analysis of the requirements for obtaining a licence shows differences among national regulations in the field:

Age
The minimum age to obtain a firearm licence is 18 years in FYR Macedonia, Serbia, and Bosnia and Herzegovina, 21 years in Montenegro and Croatia and 22 years in Albania.
Health and ability to possess and carry weapons
Macedonian, Montenegrin, Croatian, Bosnian and Albanian legislation requires a person requesting a licence to pass a medical examination and provide proof of good health in the form of a medical certificate. However, a test of the mental and psychological condition of the applicant is not always obligatory. The Ministry of Health (together with the Ministry of Interior in FYR Macedonia and Croatia) is authorized to regulate the type of medical examination and the means of performing it in order to assess the ability of an applicant to possess and carry a firearm, and the list of diseases and health conditions which make someone incapable of possessing and carrying a firearm. Only Albanian law clearly demands a certificate proving that a person has no mental health issues, in addition to being physically healthy. In Serbia, the institution competent for issuing licences will ask for a medical certificate only if doubts arise during the procedure of issuing the licence concerning the applicants' ability to handle firearms. <sup>52</sup> The new Croatian Law on Weapons introduces an improvement on the previous law by demanding that the competent authorities check the applicant's health within the validity period of a firearm licence. The medical certificate is valid only five years, and must be renewed if the person wants to keep the licence, which is issued for ten years. The relevant authority takes the final decision on whether the licence can be renewed.

<sup>48</sup> Due to the complexity of the legal system in Bosnia and Herzegovina, in this country there are relevant laws in this field in the Republika Srpska and Brčko District, and laws at cantonal level in the Federation of Bosnia and Herzegovina. In Kosovo, civilian possession of SALW is regulated by UNMIK Regulation No. 2001/7.

<sup>49</sup> In Croatia, the new Law on Weapons entered into force on 01 September 2007. It abolishes some regulations such as the possibility of a licence for a co-user of a weapon, which is currently issued to about 5,000 persons. Licences for weapons kept as 'memorabilia from the war' will also be abolished, and persons holding such a licence will have a two-month period either to disable, register in accordance with the regulations for obtaining a regular licence, sell or donate the weapon to the State.

<sup>50</sup> Regulation of firearms carrying by the military, police and members of State authority is usually regulated under a separate law.

<sup>51</sup> With respect to the case of Albania, the listed requirements in this chapter of the report are related only to persons who are entitled to possess firearms according to the Albanian Law on Weapons.

<sup>52</sup> After the recent event of a mass killing by a person with mental health issues in Eastern Serbia in August 2007, this provision has been questioned and a public discussion on weapons acquisition and possession regulation was provoked. The issue of more severe licence screening for all gun owners who possess firearms, including obligatory psychological testing, has been raised.

<b>No criminal record</b>
<p>This requirement for obtaining a firearm licence is prescribed in all of the research countries. There are only slight differences in describing this condition in law. In FYR Macedonia, a person applying for a licence must not represent a danger to the public, or, in other words, must not have been sentenced for a criminal offence or for disturbing public order and peace with elements of violence. In Croatia, a person may acquire a licence provided that they have not been convicted of a criminal offence against life or body, or for other offences with elements of violence, or for a minor offence, i.e. that no proceedings indicating that the arms might be abused have been initiated. The Montenegrin law requires that a person has not been prosecuted for an offence committed while on duty.</p> <p>The Serbian Law on Weapons and Ammunition lists the criminal offences that result in denial of a licence application. These criminal offences do not include family violence separately, although it has been made a specific criminal act under criminal law. However, it may be assumed that the authorities will not issue a licence to a person who has been sentenced for domestic violence, as it is a crime prosecuted <i>ex officio</i>. In addition, criminal offences listed in the Law on Weapons include a number of acts that may be related to domestic violence, such as murder, heavy bodily injuries, light bodily injuries, rape, endangering someone's survival with a dangerous weapon during a fight or a quarrel, and violent behaviour. The licence request will be refused if it is necessary to protect the personal security of other persons.</p> <p>In Serbia and Bosnia and Herzegovina, one of the conditions to obtain a licence is that a person has not been sentenced to imprisonment for a misdemeanour act or for an act of violating the Law on Public Law and Order in the preceding three years (in Serbia and the Republika Srpska) or five years (in Sarajevo Canton).</p> <p>Since domestic violence is prosecuted <i>ex officio</i> in all of the research countries, it can be assumed that a licence to acquire, possess and carry a firearm will not be issued to persons who have been sentenced or prosecuted for acts of domestic violence. However, if the criminal proceeding is halted due to lack of evidence, or charges are dropped, or the perpetrator found not guilty, the licence will be issued.</p>
<b>Justified reason</b>
<p>In Montenegro, Croatia, FYR Macedonia and Bosnia and Herzegovina an applicant for a licence must prove that they have a justified reason to acquire and possess a firearm. In FYR Macedonia the applicant must prove that their personal security or the security of the family or property is seriously endangered, while in Bosnia and Herzegovina it is sufficient to state a reason for requesting the licence, which is very rarely questioned by the police. In Croatia and Kosovo, citizens may be issued permits to acquire firearms only for purposes of self-defence. One's vulnerability should be proved by evidence, including, but not limited to, information in police reports. Additionally, in Croatia licences may be issued for hunting and target shooting and in Kosovo for an applicant's registered bodyguards.</p>
<b>No record of disturbed family relations</b>
<p>In Montenegro, Croatia and FYR Macedonia the legislation prescribes that it must be proved that no circumstances exist indicating the misuse of a firearm, including evidence of gravely disturbed family relations. In FYR Macedonia, the concerned authority is obliged to look into evidence as to whether the person is registered as having disturbed relations in the family.</p>
<b>Technical knowledge for proper use, storage and maintenance of the firearm and of firearm regulations</b>
<p>In FYR Macedonia, Montenegro, Croatia and Serbia an applicant must prove, by means of a certificate from a competent institution, that they have passed the training for the proper use, storage and maintenance of the firearm.</p>
<b>Other</b>
<p>Serbian Law forbids issuing a licence to a person whose working capacity is diminished. Similarly, in FYR Macedonia it is required that a person does not have diminished or limited ability to work. This should be proved with a certificate issued from the centre for social work based on a court decision. Additionally, in FYR Macedonia a person must prove that they have residency in the country, or, if they are a foreigner, have been granted permanent residency.</p> <p>The expiry date of a firearm licence in Montenegro and Serbia is five years, and in Croatia and FYR Macedonia ten years (in FYR Macedonia five years for people older than 65). In the Republika Srpska, a firearms licence issued for personal protection is valid for five years, while in other cases for an indefinite period. In the cantons of the Federation of Bosnia and Herzegovina the licence is issued for an indefinite period. The validity period of a firearm licence is the shortest in Kosovo, where it is only one year.</p> <p>On the basis of a request from the applicant, the licence may be extended for the same period again, under the same conditions as acquiring the licence for the first time. Prior to extending the validity of a licence in FYR Macedonia, the responsible authority must check the requirement that the applicant must not pose a threat to public order. In addition, if the person is older than 65, they are obliged to submit a medical certificate valid for up to one year.</p>



## Background checks

The analysis of SALW legislation in the Western Balkans shows that all countries have made court verdicts for criminal offences prosecuted *ex officio* a criteria for rejecting an application for a firearms licence, or for confiscating a firearm and the licence. A licence will be not issued if there is an ongoing criminal investigation against the applicant. Therefore, domestic violence, as a criminal act prosecuted *ex officio* in all the research countries, is an obstacle to obtaining a licence to possess firearms. Moreover, in Croatia, FYR Macedonia and Montenegro there is an additional condition that the applicant must not have gravely disturbed family relations. However, as the national research indicates, there is no proper background check that takes into consideration incidents of domestic violence that were not processed by courts, such as warnings given, etc. The procedure for background checks does not always include notification of family members during the application process for a firearms licence. Research in Bosnia and Herzegovina highlights that, considering the fact that only a small number of cases of domestic violence is processed by courts, it may be assumed that most perpetrators of domestic violence are able to obtain a firearms licence. In general, checks that are more restrictive could be introduced in order to reduce the influence of firearms in domestic violence by limiting the number of firearms in civilian possession.

The Ministry of Interior in FYR Macedonia conducts background checks to establish that applicants do 'not pose a threat to public order', but there is no available information as to whether responsible authorities consult family members as part of this process.

In Serbia it is police practice to talk to the applicant's neighbours, colleagues and family members. Similarly, in Albania, police officials make investigations into the applicant's personality by interrogating their marital partner or ex-marital partner. Police in Montenegro have recently introduced a new form that facilitates background checks by regularly informing the administrative body authorized to issue licences about criminal acts committed that have been prosecuted *ex officio*, which are an obstacle to obtaining a firearm licence.

The SALW regulation in Kosovo prescribes the background check procedure that is to be conducted by the UNMIK Police and KFOR. This investigation includes, but is not limited to, checking the applicant's criminal history, including any criminal investigation; checking records on mental health problems affecting the applicant's suitability to hold a firearm; checking records on police call-outs due to disorder caused by the applicant or any other complaints of anti-social behaviour; checking records on the applicant's resistance of arrest and records of history of violent behaviour, which must include records of any acts of domestic violence.

In all countries except Kosovo, according to the SALW regulations, the authorised state body will issue the applicant an authorisation card to possess firearms if they pass the background check and fulfill all the requirements prescribed by law. In Kosovo the UNMIK Head of Police has a discretionary right to reject a licence application. It will not be issued to any person who, in the opinion of the Head of Police, is not suitable to hold a firearm for any reason, even if they fulfill all the prescribed legal conditions.

The SALW regulations prescribe the conditions for temporary confiscation of a firearm, ammunition and licence. If a criminal charge is filed against the holder of a firearm licence for commission of a criminal offence or a misdemeanor committed against public law and order with elements of violence, the relevant authority brings a decision for the temporary confiscation of the licence until a court sentence has been rendered and the court is appropriately notified.

In all the research countries a court sentence for domestic violence is a basis to cancel a firearm licence and confiscate firearms. The temporary measure of prohibition for the perpetrator to possess a firearm is used as a protection measure by the court until the requirements for issuance/refusal of a firearm licence have been met. This measure is ordered by the court during a criminal proceeding, and is valid until the end of the proceeding. This measure will be ordered as permanent if the perpetrator is found guilty and sentenced for a criminal offence (in some countries, also for a minor offence). In Croatia the licence will be cancelled if the person has a record of violent behavior, abuse, alcoholism or similar negative behavior. In Kosovo, the licence may be suspended or cancelled at any time if the authorized body receives any information that, according to the opinion of the UNMIK Head of Police, influences the suitability of the licence holder to possess a weapon, or due to any other reason. In that case the firearm will be confiscated. A reported threat with a firearm is grounds for confiscation in Kosovo,

Albania and Croatia. However, temporary protection measures prohibiting possession of or temporarily seizing a firearm do not constitute grounds to refuse a licence request.

### **Illegal possession of firearms**

In the majority of the research countries, possession of illegal firearms is treated both as a misdemeanour (when it is treated as a violation of the Law on Weapons) and a criminal offence (regulated by Criminal Law). As a misdemeanour it is sanctioned by fines (Croatia<sup>53</sup>, Serbia<sup>54</sup>, Republika Srpska<sup>55</sup>) and/or imprisonment, from 30 to 45 days in Croatia, and up to 60 days in Serbia and Republika Srpska.

Illegal keeping and trading of firearms is sanctioned as a criminal offence. In Serbia and Montenegro, it is sanctioned by imprisonment of up to three years; in FYR Macedonia sanctions are much more severe, from one to ten years for the basic offence, and a minimum of five years if the offence involves a large quantity of arms. According to the opinion of NGO activists and experts, these penalties are not severe enough.

### **International Agreements and National Strategies**

All countries in the region are committed to the UN Programme of Action on SALW<sup>56</sup>. Accordingly, a number of States have established National Commissions on SALW and have developed or are in the process of developing a relevant National Strategy. However, as the national research stresses, none of the National Strategies include any gender specific action or activities, or systematic solutions for reducing the use of SALW in cases of domestic violence. A gender perspective is not incorporated into the National Strategies, although they stress the importance of controlling SALW in order to improve public security and personal safety.

## **4.2 Implementation mechanisms**

There are a number of state mechanisms responsible for implementing SALW regulation. Besides the Ministry of Interior, these usually include the Ministry of Defence, the Ministry of Foreign Affairs and the Ministry of Integration (responsible for harmonisation with EU standards). The Police is the authority responsible for enforcing the legislation.

### **Data collection and monitoring**

Data on SALW are mostly collected by the registry, an authorised administrative body of the Ministry of Interior. It issues guidelines on how to keep records on reported crimes, while the Ministry of Justice issues guidelines for recording data on criminal acts and proceedings in courts and prosecutors' offices. Statistics are considered to be public data, and can be provided to all interested parties. They are published periodically and available on the website of the Ministry of Interior. Individual data on particular cases can be provided only to authorized bodies as prescribed by the Law on Protection of Personal Data.

In terms of monitoring armed violence, hospitals, general practitioners and other healthcare institutions are obliged to record and report all injuries inflicted by small arms to the Ministry of Interior. The Ministry of Interior holds a registry of such injuries, which is regularly updated. Although statistics are kept by a range of relevant institutions, there is no system for analysing them within a unified framework. No information was available about the financial resources allocated for the collection and analysis of data on armed violence.

The national research shows that there is a great need to improve data collection and monitoring, particularly with respect to victims and perpetrators of armed domestic violence and procedures to prevent armed domestic violence, punish offenders and protect victims. The most important need is to have a more accurate and unified

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<sup>53</sup> Up to Euro 6,500.

<sup>54</sup> Up to RSD 50,000 (approximately Euro 625).

<sup>55</sup> In Republika Srpska and the majority of cantons in the Federation of Bosnia and Herzegovina, illegal possession of firearms is treated as a misdemeanour act. Only in Sarajevo Canton is it treated as a criminal offence, and sanctioned by imprisonment of up to one year.

<sup>56</sup> UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Document A/CONF. 192/15), <http://disarmament.un.org/cab/poa.html>, accessed on 12 July 2007

database at national level that will gather all the relevant data with respect to firearms and licence acquisition, possession and cancellation, including data from courts. In this regard, it is particularly important to have an accurate database on criminal offences disaggregated by specific acts, including domestic violence.

Monitoring legislation and its implementation is also not sufficiently systematic. Bosnia and Herzegovina particularly faces difficulties and gaps in this field due to the complexity of its legal system and non-harmonized laws at cantonal and entity level. This country does not have a special unified registration system on domestic violence. The system should include accurate data and information from all relevant stakeholders (courts, police, prosecutors' offices, centres for social work, health care institutions, shelters, etc.). The research in Bosnia and Herzegovina reveals that nobody knows how many firearms licences have been issued in Bosnia and Herzegovina, or how many firearms are in illegal civilian possession.

Having recognised gaps in this field, some countries have introduced activities aimed at improving data collection and monitoring. In FYR Macedonia, a new system of arms recording and management is expected to start functioning in the near future. It will contain data on arms licences issued to individuals. There have also been efforts to improve the registration of criminal cases, police reports and court statistics in Albania. The research in Serbia noted that the establishment of a Clinical Judicial Medicine Unit specializing in criminal medical documentation would improve the efficiency of documenting bodily injuries in a variety of criminal cases. Better record keeping of criminal offences and misdemeanours would also allow for better control of licence issuing.

#### **4.3 Summary**

In some respects legislation on acquisition and possession of SALW in the countries of the Western Balkans has acknowledged domestic violence as an issue. A licence should not be issued to a person who has a criminal record, including for domestic violence and violent behaviour within a family. Some countries request that the applicant does not have a history of gravely disturbed family relationships. A medical test, proof of a justified reason to acquire a firearm, and technical knowledge for the proper use and storage of a firearm are also prescribed as requirements. The law also prescribes background checks.

However, there are a number of omissions in regulating SALW licence acquisition. A medical test on mental health and for people addicted to alcohol and drugs is not an obligatory requirement in each country. The background checks do not always include consultations with family members and ex-partners about the potentially violent behaviour of the applicant. These checks usually lack clear instructions and procedures. Illegal keeping of firearms is sanctioned both as a criminal and a misdemeanour act.

The SALW regulations prescribe the conditions for the temporary seizure of a firearm, ammunition and licence. If a criminal charge is filed against the firearm owner, the weapon will be confiscated until a court sentence has been rendered. A court sentence for domestic violence is a basis for confiscation of a firearm and licence. The temporary measure of prohibition for the perpetrator to possess a firearm is used as a protection measure by the court until the requirements for issuing or refusing a firearm licence have been met.

In line with the UN Programme of Action on SALW, the governments have developed or are in the process of developing national action plans in the field of SALW control. However, until now none of these policy documents have been analysed from a gender perspective, and the issue of armed domestic violence has been omitted. There are also evident gaps in data collection, recording and monitoring with respect to the implementation of SALW legislation.

## 5 Linkage between small arms control regimes and domestic violence legislation

### 5.1 Legislation and practice

There is no strong connection in any of the research countries between SALW regulation and domestic violence prevention. The lack of reliable data and recording about cases of domestic violence and usage of SALW in the private sphere significantly hinders advancements in combatting armed domestic violence. There is only one relevant specific research on the linkage between the SALW control regime and domestic violence legislation, which was conducted in Montenegro.<sup>57</sup>

The national research has found that the existing linkages between these two legislative frameworks are in:

- a) The legal requirements necessary to obtain a firearm licence; and
- b) The legal grounds for seizure of firearms and/or suspension of a firearm licence.<sup>58</sup>

The national laws on combatting domestic violence and protecting victims do not put a strong emphasis on weapons and firearms when defining protection measures. The best practice is found in the Albanian Law on Measures against Violence in Family Relations. It obliges police officers to seize any weapon belonging to a perpetrator found during a police check, or to order a perpetrator to surrender any weapon in their possession.

The use of a weapon, including a firearm, in threatening and violating the physical integrity of a family member or any other person involved in an intimate relationship is considered as an aggravating circumstance when sentencing the perpetrator. Threatening to use a firearm is also taken as an aggravating circumstance. Albanian Criminal Law prescribes imprisonment from five to 15 years for the specific offence of 'sexual or homosexual assault with the threat of firearms use'. Sentences prescribed by law are much more severe in cases of injuries and fatality. For instance, in Montenegro and Serbia, if a perpetrator has used firearms, they should be sentenced by imprisonment from three months to three years, in the case of fatality from three to 12 years. However, according to the opinions of women's NGOs, there is a gap between the legislation and the practice. The use of a firearm is rarely taken as an aggravating circumstance in criminal proceedings in cases of domestic violence, and even then, the average sanctions are low.<sup>59</sup>

The research throughout the region indicates that there is an urgent need to improve current legislation and practice with regard to decreasing the use of firearms in domestic violence. A number of activities are identified as prerequisites to achieving this goal:

- a) Strengthening the skills of professionals to implement the specific legislation on domestic violence and criminal law correctly, particularly in cases when there is a risk of firearms being used;
- b) Building operative, well informed and well coordinated structures for better implementation of the existing legislation;
- c) Empowering police officers to conduct comprehensive background checks in preparing reports on the character of applicants for a firearms licence.

There is also a need to introduce legal changes in order to make it more difficult for individuals to possess a firearm in general. Some of these additional requirements might be obligatory checks of records on acts of domestic violence, not only in courts, but also with the police, centres for social work, among family members, ex-partners, neighbours, etc., and obligatory checks of criminal records related to violent offences. Records of

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<sup>57</sup> Krkeljic, Ljiljana, *Small Arms and Gender-Based Violence in Montenegro – A Research Study*, Podgorica: UNDP, 2007.

<sup>58</sup> Details of the criteria for obtaining a firearm licence and for the confiscation of a firearm or licence can be found in chapter 4, section 4.1 Weapons acquisition and possession legislation.

<sup>59</sup> According to the Serbian national research, the average sanction in the case of severe bodily injury would be maximum one-year imprisonment. Women's NGOs in Bosnia and Herzegovina note that cases of domestic violence are treated more seriously only when serious damage to a victim's health is caused.

domestic violence cases should be exchanged in both judicial procedures (criminal and civil) in order to prevent further violence. This can be done by setting up a special registry system on domestic violence.

According to the findings of the national research, the best ways to link domestic violence legislation and SALW regulations are the following:

- a) Correct implementation and correlation between laws and by-laws for granting permission to carry firearms and domestic violence legislation, in order that no one who has a history of committing domestic violence may possess a firearm;
- b) Tightening of requirements for issuing a firearm licence. Requesting the opinion of (certain) family members that live with the applicant for a licence should be a requirement;
- c) Limitation of licences for hunting weapons. (There are cases in which hunting weapons are used in cases of domestic violence);
- d) More severe punishments in cases when firearms are used to threaten, pressurize or harm a victim. Any type of abuse of arms in domestic violence should be considered as an aggravating circumstance and be regulated by law;
- e) Conducting awareness-raising campaigns against the mentality of having a firearm in the house and against the 'gun-culture';
- f) Continuous control of the behaviour of persons that legally own and/or carry firearms;
- g) Obligatory medical testing of the mental health and psychological condition of applicants for and holders of a firearm licence.

The criteria for proposing and issuing temporary measures for confiscating a firearm could be intensified in order to reduce incidences of armed domestic violence. For example, it should be made possible to order protection measures in cases of threatening, and if the offender shows a tendency towards violent behaviour, or is addicted to alcohol or narcotics. Procedures for implementing this measure should be carried out more quickly, which may necessitate courts issuing the measure without prior requests, for example, and prompt implementation by the police.

In terms of court practice, if an illegal firearm is used in a domestic violence case, besides bringing a criminal charge of domestic violence against the perpetrator, they are charged with being in possession of an illegal weapon. The national research indicates that criminal legislation usually prescribes more severe sanctions for keeping illegal weapons than for domestic violence. For instance, in Montenegro the sanction for possessing an illegal weapon is imprisonment of up to three years, while for domestic violence sanctions are fines or imprisonment of up to one year. If a firearm has been used, the sanctions are from three months to three years imprisonment. As the Montenegrin research indicates, the court practice follows the legislation and higher sanctions are prescribed for illegal possession of weapons than for violence within the family.<sup>60</sup> The Croatian research notes that in the view of prosecutors and judges, illegal possession of a firearm is considered as significant a crime as domestic violence.

## 5.2 Gaps and good practices

### Gaps

The most significant challenge that undermines the fight to end domestic violence in the Western Balkans is the gap between legislation and governmental commitments. Relevant legal provisions are often not implemented, not properly implemented or not properly interpreted by the government and relevant state institutions (police, courts, prosecutors, centres for social work, etc.). All countries in the region lack effective action plans or national strategies for combatting domestic violence, and particularly armed domestic violence. Despite recent progress in developing legal frameworks aimed at eliminating domestic violence, laws are not supported by comprehensive policies at all levels that include all relevant actors.

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<sup>60</sup> For example, in 25 cases of domestic violence, the court in Podgorica, Montenegro, has pronounced only six sentences of imprisonment, while all others were acquittals or suspended sentences.

In general, there is a lack of budgetary support for the implementation of legislation and legal and policy measures, coupled with a lack of trained professionals in the field. In some countries, such as Bosnia and Herzegovina, the issue of armed domestic violence is still completely ignored by all relevant institutions, although specific laws on domestic violence have been adopted. The governments still lack sensitivity in recognising domestic violence as a matter for their concern, and its linkage with the prevalence of firearms.

In addition, there are still gaps in both the legal framework regulating domestic violence and firearms possession, and its implementation. This is particularly visible at the following levels:

- a) *Implementation of temporary protection measures in general:* governments rarely make efforts to create or support the conditions for implementing protection measures that require investment and resources, such as shelters and temporary alimony for victims; police officials, judges, prosecutors and other officials are not always aware of the protection needs of victims; victims are not always and not properly informed in advance of the possibility to demand certain protection measures; there is a lack of effective protection measures during criminal proceedings; the burden of proof is on victims; there is a lack of prompt and safe procedures, including during the criminal proceedings;
- b) *Implementation of protection measures for confiscating a firearm, and/or cancelling a firearm licence:* as a rule, courts and police do not conduct obligatory checks into whether the offender possesses or has under their control an illegal firearm; firearms are confiscated only if a victim or someone else reports its use; the criminal proceeding is slow and does not guarantee the safety of the victim; the implementation of the court order is slow; the firearm will be returned to the offender if the proceeding is suspended due to lack of evidence;
- c) *Sanctioning offenders:* if domestic violence is regulated both as a criminal offence and as a misdemeanour, there is a legal ambiguity in defining cases when it should be considered as a criminal offence, and when as a minor offence. In this case, public prosecutors have difficulties in identifying the qualification of acts of domestic violence, i.e. when it stops being classified as a minor offence and becomes a criminal act. The practice is that prosecutors more often prosecute domestic violence as a minor offence, and thus prescribe offenders with lighter sanctions; courts do not always take the use of a firearm to threaten or pressurise the victim as an aggravating circumstance;
- d) *Implementation and interpretation by professionals:* there is a lack of trained professionals who deal with cases and victims of domestic violence; a lack of special police units; a lack of women police officers; a lack of gender-sensitivity among professionals; a lack of effective police protocols to address armed domestic violence; a lack of coordination between all relevant actors and institutions and a lack of supplemental legal acts for the proceedings of the relevant institutions;
- e) *Implementation of legal provisions related to requirements for issuing a firearm licence:* there are no clear instructions as to how police should conduct background checks with relations of the applicant; the former spouse or partner is usually not included in the inquiry;
- f) *Implementation of laws if offenders are police, military or other state officials who are entitled to be in possession of firearms:* there is a tendency to neglect and/or suppress acts of domestic violence if committed by these state officials; there are no available data on acts of domestic violence committed by police and army officers (therefore it is not possible to estimate the level of incidence of domestic violence in their homes); there is a lack of psychological support programmes that would help these officials to cope with negative influences that increase violence, such as stress and exposure to trauma;
- g) *Prevention:* there are no rehabilitation programmes for perpetrators; a lack of data on the use of firearms in domestic violence; a lack of statistics and harmonisation of records of the judicial system and other governmental institutions, both at local and national level; a lack of research and surveys; a lack of awareness-raising campaigns; a lack of educational programmes about human rights, women's rights, gender equality, peaceful conflict resolution and a lack of campaigns against the culture of violence.

The national research indicates that a number of gaps listed above are a result of the lack of by-laws and instructions needed for the implementation of domestic violence legislation, as well as the lack of comprehensive intersectional policies, budgetary support and trained personnel.



In relation to the issue of combatting domestic violence, the following gaps in firearms legislation are evident:

- a) The medical test does not always include an examination of the mental health of an applicant or a psychological test;
- b) There is no obligatory medical test, including a psychological test, during the validity period of a firearms licence;<sup>61</sup>
- c) The validity period for a firearms licence is usually too long (five years or more);
- d) A background check of family relations is not always obligatory; there are no clear instructions as to how it should be conducted or who to include;
- e) There are no accurate and unified databases that include data not only from courts and police, but also from health care institutions and centres for social work;
- f) There is a lack of obligatory background checks into the reason given by the applicant to justify the need to possess and/or carry a firearm; police very rarely question the validity of the reason given;
- g) There is inadequate control over civilian ownership of firearms;
- h) There are low sanctions for the illegal possession of firearms;
- i) There are no limitations on the number of firearms that may be possessed by an individual in any of the research countries.

### Good practices

One of the most important protective measures with regard to combatting domestic violence is mandatory confiscation of weapons used in cases of armed domestic violence as an emergency protective order, introduced in Albania by the newly adopted Law on Protection against Domestic Violence.

In Kosovo, a licence will not be issued to a person who has a record of violent behaviour, including domestic violence. A record of mental health problems is also an obstacle to obtaining a licence. In Croatia, FYR Macedonia and Montenegro, police have to check that no circumstances exist indicating the misuse of firearms, including gravely disturbed family relations. A new form on reporting criminal acts prosecuted *ex officio* has been introduced in Montenegro, which facilitates background checks on whether the offender possesses firearms, has a criminal record, etc.

The newly adopted Law on Weapons in Croatia has introduced an obligatory medical test for individuals who hold firearms licences within the validity period of the licence; the validity of a licence is ten years, while the medical test is valid for only five years. In addition, in Croatia, records of crimes are entered into a database by police officers in all police stations and special departments of all police headquarters. Data compiled at the national level draw on uniform practices in recording crime data across the country. The Croatian police information system offers an unusual level of detail on armed violence. The information system contains databases holding information dating back 30 years, which enable the analysis of the following factors: how many of the total number of each type of crime involved SALW; which gender is most often victim or perpetrator; which age group is most often victim or perpetrator; whether crimes are more or less common among low-income, ethnic, refugee or other groups; what type of weapon was most commonly used for each different type of crime; how many crimes were the result of different kinds of incident; in which areas firearms-related crimes are most common; in what type of location crimes are most likely to take place (home, workplace, school, etc.); at what time of day/week/month/year crimes are most likely to occur; what the variations are in the types of crime occurring in different areas and whether incidence of firearms-related crime is linked to the abuse of particular substances.

### 5.3 Existing proposals for legal and policy changes

To date, both governments and NGOs in the region lack awareness about the interconnection of the prevalence of firearms and violence in the private sphere. Therefore, there has only been one proposal for legal change that linked the legislations in these two areas in order to enhance personal safety and decrease domestic violence.

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<sup>61</sup> Except in Croatia, where a licence is valid for ten years but a medical test is valid only for five years.

This was an initiative instigated by the Victimology Society of Serbia in 1998. This NGO has developed and introduced a new model of legal protection against violence within the family, which included a proposal to amend the Law on Arms and Ammunition. It was proposed to refuse an application for a firearm licence when this refusal is necessary to safeguard the personal safety of a family member, or is demanded by a family member who is or has been a victim of violence. This initiative was introduced to the public during the public debate about the proposed new model of protection against domestic violence, but it has not been adopted by the government.

Currently, there are proposals for legal changes related to domestic violence in the Republika Srpska, but they are not related to linking the SALW regime with domestic violence legislation. In July 2007, women's NGOs and the Helsinki Citizens' Assembly, Banja Luka, submitted their recommendations for changes to the Law on Protection from Domestic Violence to the Gender Centre and Ministry of Justice. Their proposals include, amongst others, to delete provisions from the law that define domestic violence as a misdemeanour act; to ensure that police or social workers accompany and place a victim into the shelter and to enable a victim to prolong their stay in a shelter under special circumstances, or until the court proceeding is over. The Government of the Republika Srpska has also submitted a draft on changes to the domestic violence legislation to the parliament. The most important proposed changes are related to the financing of shelters from municipal and town budgets from 2009, while in the transitional phase, from 2007 to 2008, the shelters would be financed by the entity government.

## 5.4 Summary

The countries in the Western Balkans lack relevant research on the linkage between SALW regimes and domestic violence legislation. Analysis of the legislation in these two fields has shown that contact points may be found in the legal requirements necessary to obtain a firearm licence, and the legal grounds for seizure of firearms and/or suspension of a firearms licence. National SALW regulations require that a person who applies for a firearm licence does not have a criminal record, including a criminal history of domestic violence. The use of a weapon, including a firearm, in threatening and violating the physical integrity of a family member or any other person involved in an intimate relationship is considered as an aggravating circumstance in sentencing the perpetrator.

The evident progress in developing the legal framework for combatting domestic violence is undermined by gaps between legislation and its implementation. Legal provisions, particularly those related to the protection of victims and prevention of armed domestic violence, are often not properly implemented by relevant state institutions. In addition, there is a lack of budgetary support for the implementation of legal and policy measures, coupled with a lack of trained professionals in the field.

The national research indicates that there is a need to improve current legislation and practice with regard to decreasing the use of firearms in domestic violence. The skills of professionals should be strengthened in order to improve the implementation of the specific legislation on armed domestic violence. Police must be empowered to conduct comprehensive background checks in preparing reports for assessing the suitability of the character of applicants for a firearm licence. The conditions to obtain a firearm licence should be stricter in order to prevent their misuse. Governments should be more responsible in implementing legislation, penalizing misuse of firearms, conducting awareness-raising campaigns and introducing legal changes. Currently, there is no proposal or initiative for legal and policy change in these fields in the region.

## 6 Conclusions

The proliferation and easy availability of SALW in the Western Balkans, as a legacy of recent conflicts, a turbulent history and the tradition of a 'gun-culture', have contributed to violence, insecurity and crime, in both the public and private sphere. Domestic violence is the most widespread form of violence in all countries in the region, and the number of incidents continues to rise. Both SALW use and domestic violence are highly gendered phenomena; SALW owners and perpetrators in domestic violence cases are mainly men, while victims are mainly women.

In recent years, the countries in the region have made some progress in implementing international standards in the field of combatting domestic violence. All countries now prosecute it *ex officio*. The majority of them have adopted specific laws, while specific national action plans and strategies are being developed. Measures aimed at protecting victims, such as court orders, have been introduced by law. State officials are obliged to report domestic violence and protect victims.

However, the full enforcement of the legislation is hindered by the lack of policies addressing domestic violence, insufficient institutional development in this field, and very limited support for NGOs dealing with domestic violence. Shelters, counselling and other services for victim protection are still predominantly provided by NGOs. Governments make very few systematic efforts to undertake preventive measures, such as awareness-raising campaigns, education programmes for youth and training of professionals. Institutionalized rehabilitation programmes for offenders do not exist. Interagency cooperation is still not well coordinated. The national action plans and strategies either have not been adopted or, where they exist, are not implemented or poorly supported. There is a lack of systematic data collection, research and monitoring, particularly with regard to armed domestic violence.

Despite the significant role of firearms in exacerbating violence in general, the interconnection and the interrelationship between SALW control regimes and domestic violence legislation have not been analysed until now. Neither has the issue of firearms as a risk factor in domestic violence been considered. These topics have hardly been raised as issues even by women's NGOs.

The existing contact points between legislation on SALW and on domestic violence are related to the legal requirements necessary to obtain a firearm licence, and the legal grounds for seizure of firearms and/or cancellation of a firearms licence. On the positive side, national SALW regulations stipulate that a person who applies for a firearm licence must not have been prosecuted or sentenced for a criminal offence, including domestic violence and violent behaviour. In addition to this, laws in Montenegro, Croatia and FYR Macedonia demand that applicants do not have gravely disturbed family relations. A medical test of mental health, proof of a justified reason to acquire a firearm and a certificate stating that the applicant has the technical knowledge for proper use and storage of a firearm are not prescribed as requirements to obtain a licence in all countries. Background checks do not always include consultation with family members, ex-partners and neighbours about the potentially violent behaviour of the applicant, or about alcohol or narcotics abuse. The practice shows that background checks are not always carried out properly, and that they lack clear instructions and procedures.

The most significant challenge that undermines the fight to end domestic violence is the gap between legislation and governmental commitments. The most alarming example is Bosnia and Herzegovina, where the issue of armed domestic violence is still completely ignored by all relevant institutions, although specific legislation on protection against domestic violence has been adopted.

In criminal proceedings, the use of a firearm to threaten and violate the physical integrity of a family member or any other person involved in an intimate relationship is considered as an aggravating circumstance. Even so, criminal sanctions are usually low. In the majority of countries, courts may seize the firearm and cancel the licence of the perpetrator. However, if a case ends in acquittal, or withdrawal due to lack of evidence, a seized firearm will be returned to the owner. The national research indicates that criminal proceedings in domestic violence cases are not prompt or safe enough; protection measures are rarely ordered or are not effective and criminal sanctions are usually low, all of which discourages victims from accessing justice and seeking protection.

Governments rarely make efforts to create or support the conditions to implement protection measures that require investment and resources, such as shelters and obligatory treatment of perpetrators with addiction

problems. Police officers, judges, prosecutors and other officials are not always aware of victims' protection needs from violent perpetrators. Officials do not usually check whether a perpetrator has an illegally owned firearm. Victims are not always and/or properly informed of their rights to demand protection measures.

In countries in which domestic violence is regulated both as a criminal offence and as a misdemeanour, public prosecutors have difficulties in qualifying acts of domestic violence, i.e. in determining when domestic violence should stop being classified as a minor offence and becomes a criminal act. The practice is for prosecutors more often to qualify it as a minor offence, thus prescribing lighter sanctions.

These gaps are mainly caused by an absence of comprehensive and systematic efforts by governments to undertake general preventive measures with regard to armed domestic violence. As a result, there is a long list of gaps in all of the research countries. These include a lack of trained and gender-sensitive professionals; a lack of dedicated police units; a lack of female police officers; a lack of effective police protocols to address armed domestic violence; a lack of coordination between relevant actors and institutions and a lack of supplemental legal acts for the proceedings of the relevant institutions.

States tend to neglect and/or suppress the recording of acts of domestic violence if committed by police and military officers, whose profession entitles them to be in possession of firearms. There are no available data about acts of domestic violence within their families. Thus, the level of incidence of domestic violence in their homes remains unknown, and out of the range of protection and prevention policy.

Gaps are also evident in the SALW control regime. The medical test for obtaining a firearm licence does not always include an examination of mental health or a psychological test. The period of validity for a firearm licence is usually too long (five years or more). There are no accurate and unified databases in any of the countries that include data from courts and police as well as health care institutions and centres for social work. The national action plans for the advancement of women and gender equality and for combatting domestic violence, where these exist, do not address the issue of firearms control. The issue has not been on the agenda of any gender equality mechanism in any of the research countries.

Governments should make more efforts to fill these gaps and develop effective policies and measures that would end all forms of violence, including violence within the home. Linking these policies with SALW control regimes would help to better understand the causes of violence, and to define the best strategies for violence reduction.

## 7 Recommendations for Governments

While many of the governments in the region have made progress in recent years in terms of improving the legal framework regulating both firearms possession and domestic violence, there is still much that needs to be done. The following are general recommendations that can be considered by the countries in the region, depending on their level of progress. Chapter 9 contains a summary of country-specific conclusions and recommendations to governments.

### National strategies and general policies

- Recognize that domestic violence is a specific form of gender-based violence that prevents women from enjoying their basic human rights and freedoms; that it is a matter of public concern that requires intervention by public authorities.
- Use international standards in the field (UN, CoE, EU and OSCE) and global best practices as milestones for drafting, adopting and implementing comprehensive legislation, intersectional policy, and court and police practices. There should be no legal exception or privilege that permits any kind of violence or threats of violence within the family and intimate relationships.
- Develop and adopt comprehensive and effective action plans and strategies to prevent domestic violence, including armed violence, and protect victims at national and local levels. Ensure systematic monitoring and reviewing of adopted plans and strategies. Ensure systematic reporting procedures and periodic review of plans and strategies.
- Include the use of firearms in cases of domestic violence as one of the priorities in the national strategies and action plans for combatting domestic violence. Link strategies and action plans in this field with those in the field of SALW control.
- Review national strategies and action plans on SALW from a gender perspective. Introduce gender specific actions as a cross-cutting issue within national strategies on SALW.
- Include measures aimed at preventing armed domestic violence in national strategies and action plans on SALW.
- Ensure that the issue of SALW control from a gender perspective is on the agenda of gender equality mechanisms at national and local level.
- Ensure specific budget lines for the implementation of national strategies and action plans on SALW and on domestic violence.
- Establish a governmental institution responsible for coordinating and monitoring the implementation of policies and measures for combatting domestic violence.
- Define state actors responsible for implementing national strategies and action plans on SALW and on domestic violence at national and local level. Take measures to strengthen their cooperation and coordination. Define clear reporting procedures.
- Support NGOs in their international, national and local activities in this field. Ensure systematic cooperation, and establish an adequate financial framework for this support.

### Legal framework

- Ensure a holistic and intersectional approach to linking different legal frameworks and proceedings in the field of combatting domestic violence and SALW control regimes (Criminal Law, remedies and procedures, and Civil Law, remedies and procedures).
- Harmonize definitions of domestic violence given in different laws (Criminal, Family Law, specific Law on Domestic Violence) and the national strategies and action plans in this field. Adopt a comprehensive definition of domestic violence, including violence that occurs within intimate and ex-partner relationships.

- Review the effectiveness of existing protection measures and police and court procedures. Make necessary changes in order to assure victims of domestic violence safe and prompt access to justice.
- Ensure that victims of domestic violence can apply for protection orders to stop the abuse, including preventing the abuser from entering the mutual home, the victim's residence or place of employment, and demanding the seizure of firearms from the abuser and the cancellation of a firearm licence.
- Develop and adopt by-laws and supplemental legal acts or manuals for the manner of evaluation, submission, issuance and monitoring of measures for prohibition of possession of a firearm or any other weapon and for their seizure and confiscation.
- Prescribe obligatory seizure of firearms as an emergency measure ordered by courts to protect victims in cases of armed violence.
- Prescribe the temporary measure to prohibit the possession of or seize a firearm or any other weapon as criteria for refusing a firearm licence request and as a basis for non-extension and confiscation of the licence.
- Prescribe stricter conditions for obtaining a firearms licence. An applicant for a licence should first undergo a competency test, including an obligatory test of mental health and psychological condition, and addiction to alcohol and/or narcotics. A competency certificate should not be issued to a person who is inclined to violence, or has been convicted of an offence or misdemeanour involving physical or sexual abuse. A licence should not be issued to a person against whom a protection order has been issued. Introduce extensive background checks of circumstances that may indicate domestic violence when approving the licence request. Background checks should be obligatory and should include investigation into any history or possibility of disturbed family relations. Current and previous spouses should be notified of an individual's intention to acquire a firearm licence. Ensure that a firearm licence is refused when necessary for the personal safety of a family member, or if the refusal is demanded by a family member who is or has been a victim of violence.
- Introduce a one-month 'waiting' period to obtain a firearm after obtaining the licence.
- Ensure that reports of domestic violence and other offences automatically trigger a review of a firearm owner's licence.
- Include enquires about the presence of firearms as standard practice in all domestic violence incidents and immediate application of measures to remove them where a risk is perceived. Offenders should be flagged and serious consideration should be given to revoking permits and obtaining prohibition orders where there is a threat to safety.

### **Protection of victims of domestic violence**

- Ensure that domestic violence is prosecuted and punished as a criminal offence.
- Facilitate victims' access to justice, civil remedies and rehabilitation programmes, including health care. Protect the rights of children and minors. Ensure that in all stages in the proceedings victims can receive medical and psychological care, and protection from the offender. Provide free legal aid to victims. Provide restraining orders against offenders.
- Ensure that the court may impose any additional conditions (such as state of mind or mental condition, inclination to violence, and use of or dependence on alcohol or drugs) it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order to seize any arm or dangerous weapon in the possession or under the control of the perpetrator.
- Adopt protocols for police conduct in cases of domestic violence that call for obligatory checks for the presence of arms and information for the victim of the possibility to request a temporary measure to prohibit the possession of or seize a firearm or any other weapon, as well as the right to press criminal charges.
- Ensure budgetary allocations for shelters, counselling, legal aid, rehabilitation programmes, health care and other services for protecting victims of domestic violence.



- Ensure that public officials, especially law enforcement personnel, the judiciary, health-care providers and social workers, are fully familiar with applicable legal provisions, and are sensitized and can adequately respond to all forms of domestic violence. Ensure that it is obligatory for all service providers to report armed domestic violence.
- Include emergency protection measures in the Law on Criminal Procedure and the Law on Protection against Domestic Violence, including forbidding stalking or harassment of the victim, exclusion of the perpetrator from the family home and the confiscation of weapons.
- Ensure systematic inter-agency cooperation, special police units and trained professionals to ensure effective and rapid intervention and 24-hour protection for victims.
- Develop intervention strategies and protocols at the local level.

### **Preventive measures**

- Implement awareness-raising measures, including zero-tolerance campaigns, to attract public attention to the seriousness of this issue and make gun use and domestic violence socially and morally unacceptable.
- Provide education on gender equality and non-violent behaviour at a very early stage; include it in educational programmes and train teachers.
- Ensure institutional support programmes for offenders, such as rehabilitation, to prevent further cases of armed violence once they return to the family.
- Introduce comprehensive education and systematic training for police and all participants in the justice systems. There is a need to improve understanding of the risks associated with firearms. All parties must understand the frequency with which firearms are part of the cycle of domestic violence.
- Introduce stress management programmes for certain professions and persons that have participated in any way in the war and conflicts during the 1990s, as this stress may be manifested as violence.
- Encourage and provide training for citizens' associations on the meaning and influence of the use of arms in domestic violence; ensure their active involvement in preventive activities at local level in general.
- Ensure proper media treatment of armed domestic violence.

### **Statistics, data collection and monitoring**

- Secure funding and institutional support for the compilation of data, surveys and research on the extent, causes and effects of SALW use in domestic violence, and on the effectiveness of policies and measures to prevent and deal with armed domestic violence.
- Evaluate the costs of domestic violence, support research, develop indicators for evaluation, and collect data in a systematic and uniform way.
- Conduct research into the prevalence of domestic violence among police and military officers and other state officials who are licensed to carry firearms by profession. Take appropriate measures to sanction abusers and develop preventive programmes for this specific target group.
- Develop and fund monitoring mechanisms for the implementation of laws and policies on armed domestic violence.
- Keep a unified system of statistics, records and data on cases of armed domestic violence; the use of firearms in domestic violence; victims and abusers at all levels and at all relevant state institutions (police, courts, prosecutors' offices, centres for social care, health care institutions, shelters, etc.). In collecting data cooperate with NGOs who work with victims of domestic violence.
- Introduce mandatory record keeping of cases of armed domestic violence by introducing parameters that will establish the degree of use of arms, the causes of violence, its consequences, expenditures related to violence, etc., by all relevant institutions (the Ministry of Interior, the Ministry of Labour and Social Policy, the Ministry of Health and the judiciary).

## **8 New activities and strategies: options for engagement of civil society**

Throughout the region, NGOs, particularly women's groups, have played a central role in advocating for the elimination of domestic violence and protection of victims. Positive shifts in introducing legislation aimed at combatting domestic violence are the results of the long-term efforts of women's movements. They have contributed to the public visibility of this problem, and have played a significant role in protecting and supporting victims, collecting and monitoring data and raising public awareness. In addition, they have an important role in the education and training of policemen, judges, prosecutors, social workers, and other state officials to respond adequately to cases of domestic violence.

However, women's groups and NGOs have to date not paid enough attention to the use of firearms in cases of domestic violence, or to issues of SALW control. The evident link between these two issues opens options for the further engagement of NGOs.

### **National strategies and general policies**

- Include the issue of armed domestic violence when involved in drafting and reviewing national strategies and national action plans on combatting domestic violence; include specific measures aimed at tightening SALW acquisition and possession requirements, and decreasing the availability of SALW.
- Advocate and lobby for governments to include the issue of eliminating domestic violence in national strategies and action plans on combatting violence and in national SALW control regimes.

### **Legal framework**

- Include the issue of armed domestic violence when drafting and proposing initiatives and changes in the current legal framework concerning the connection between domestic violence and the use of firearms.
- Use ratified international documents in this field as a lobbying tool.
- Lobby for stricter SALW control as representatives of civil society and women's groups in the gender equality mechanisms.
- Use media to advocate for stricter requirements for SALW acquisition and possession.

### **Protection of victims of domestic violence**

- Include the issue of armed domestic violence in relevant trainings for state officials.
- Develop programmes to support victims of armed domestic violence.
- Deliver services in partnership with the state protection system in order to coordinate services and meet the needs of victims.

### **Preventive measures**

- Conduct awareness-raising campaigns on armed domestic violence to attract public attention to the seriousness of this issue, the easy availability of firearms and the need for stricter SALW control.
- Disseminate information on laws concerning domestic violence and arms control to the public.
- Cooperate and form partnerships with NGOs who specifically deal with issues of SALW control to conduct joint campaigns and activities.
- Increase influence on the media to recognise the need to link domestic violence regulation with the SALW control regime.

### **Statistics, data collection and monitoring**

- Include the issue of firearms as a risk factor in domestic violence in research and surveys.

- Collect and disseminate comprehensive independent data on domestic violence, detailing the nature and degree of violence, rates of prosecution and conviction, and the nature of the applied punishment, in a timely and transparent manner.
- When providing services for victims, such as shelters, help lines and counselling, include recording and collecting data on cases of domestic violence in which firearms are used by the abuser to threaten, pressurize and harm victims; include data on the response of police, health care workers, social workers, etc.

## **9 Summary of main conclusions and recommendations to Governments from the national studies<sup>62</sup>**

### **Albania**

#### **1. National strategies and general policies**

##### *Conclusion:*

A draft National Strategy and Action Plan for Gender Equality and the Eradication of Domestic Violence (2007 – 2010) has been prepared, which stipulates that any weapons belonging to the perpetrator found during police checks must be seized, or perpetrators ordered to surrender any weapons. However, the wider issue of firearms control is not addressed.

##### *Recommendation:*

Approve and implement the National Strategy for Gender Equality and the Eradication of Domestic Violence. Strengthen linkages to arms control within the strategy and guarantee a specific budget for implementation.

#### **2. Legal framework**

##### *Conclusion:*

The legal framework with regard to domestic violence has improved in recent years, with a specific Law on Domestic Violence being introduced in 2006. Albania is party to all major international conventions and human rights instruments, however there is scope for further improvements in terms of compliance with CEDAW and other international human rights documents with respect to domestic violence. Level of knowledge of these instruments and their application by judges, prosecutors and lawyers is currently limited. Legislation provides for the cancellation of a firearm licence if it is used to commit a criminal offence, however conviction for domestic violence is not automatically a basis for refusing a licence request as it is not recognised as an offence under the Criminal Code.

##### *Recommendation:*

Bring legislation in to line with CEDAW and other international recommendations and obligations and provide for related training and sensitisation of relevant professionals and service providers. Recognise domestic violence as an offence in the Criminal Code and ensure that conviction is an obstacle to obtaining a firearm licence.

#### **3. Protection of victims of domestic violence**

##### *Conclusion:*

The Albanian government supports one shelter for domestic violence victims, while all other services are provided by NGOs that are supported by international donors. The Law on Domestic Violence provides for protection orders for victims, which can be ordered by police, including seizure of firearms. It is police practice to order this protective measure during the criminal proceeding.

##### *Recommendation:*

Support NGOs that provide shelter services to victims and increase government responsibility for other protective measures, such as counselling, legal aid and rehabilitation programmes, as envisaged in the Law on Domestic Violence and the draft National Strategy.

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<sup>62</sup> This chapter provides a summary of the main conclusions and recommendations to Governments that were drawn from the national research that was conducted in each country. General recommendations on options for further engagement of civil society found in chapter 8 are applicable to all countries.

## **4. Preventive measures**

### *Conclusions:*

Measures to prevent domestic violence have so far been very limited. There is almost no educational curricula addressing the issue; public trust in the judicial system is low due to consistent failure to punish perpetrators, or lenient sentences; professionals in the health care system are not obliged to ask patients about the cause of their injuries and awareness-raising on the issue is practically non-existent.

### *Recommendations:*

Expand school programmes aimed at combatting domestic violence. Introduce protocols for health service staff to record and report causes of violence, including specific categories for domestic violence and firearms injuries. Raise public awareness of the problems of domestic violence and firearms abuse, and make information on victims' rights extensively available.

## **5. Statistics, data collection and monitoring**

### *Conclusions:*

There are no nation-wide data available on domestic violence or armed domestic violence. NGOs record data but these are not comparable or compiled at the national level. However a National Survey on Domestic Violence is planned, which will evaluate the efficiency of government policies and provide baseline data. The survey will include an analysis of the relationship between the presence of firearms in the home and the prevalence of violence against women and children.

### *Recommendations:*

Establish a harmonised national and local system of data collection, which will centralise data collected by police, courts, prosecutors and health care institutions. Ensure that the results of the National Survey on Domestic Violence are used to inform development of appropriate policies and legislation to combat domestic violence and armed domestic violence.

## **Bosnia and Herzegovina**

### **1. National strategies and general policies**

#### *Conclusion:*

Bosnia and Herzegovina does not have a national strategy on domestic violence, nor entity level strategies. Only Sarajevo Canton has a specific action plan in this regard. The National Strategy on SALW Control does not address issues of armed domestic violence.

#### *Recommendation:*

Develop and adopt a national strategy and action plan for combatting domestic violence and armed domestic violence, and complimentary entity level action plans. Introduce gender as a cross-cutting issue within the National Strategy on SALW Control.

### **2. Legal framework**

#### *Conclusion:*

Although there have been positive regulatory changes in the field of domestic violence over the last few years, the dualistic nature of Bosnia and Herzegovina's legislation limits the usefulness of international instruments on human rights and implementation of the legislation is still inadequate. Legislation regulating the acquisition of a firearm and

licence is currently full of loopholes, making it far too easy to obtain a firearm, including for perpetrators of domestic violence, without demonstrating 'good reason'.

*Recommendation:*

Harmonise laws and by-laws related to the enforcement and implementation of the Law on Protection from Family Violence (FBiH and RS) and Criminal Law (State, RS, FBiH and Brčko District). Adopt a harmonised state level law on the acquisition, carrying and possession of weapons by private individuals and ensure that illegal possession of a firearm is classified as a criminal act throughout the state.

### **3. Protection of victims of domestic violence**

*Conclusion:*

Protection measures are provided for under the 2005 protection from domestic violence laws, however in practice these are rarely implemented due to the limited resources and knowledge of service providers. Women's NGOs provide the majority of protection services for victims, but are severely under-resourced to deal with the problem. Protective measures related to seizing firearms or cancelling firearms licences do not exist.

*Recommendation:*

Provide greater financial support for institutions providing services to victims of domestic violence. Establish additional shelters in cooperation with NGOs based on needs assessments. Ensure that there is a proper infrastructure in place for the implementation of provisions of the Law on Protection from Family Violence. Ensure that protection measures related to confiscation of firearms are introduced and implemented.

### **4. Preventive measures**

*Conclusions:*

Only Sarajevo Canton has a specific action plan in place to combat domestic violence, but this does not mention the issue of armed domestic violence. The Gender Equality Law provides for the introduction of gender-sensitive curricula in education systems and the assurance of gender equality in representations in the media, however the issue of violence against women is not addressed.

*Recommendations:*

Introduce action plans to combat domestic violence throughout the state. Promote public awareness of domestic violence, including armed domestic violence. Introduce preventive measures such as rehabilitation programmes and counselling for offenders, and marriage counselling services. Include the problem of violence against women in curricula in schools and other educational institutions as envisaged in the Gender Equality Law.

### **5. Statistics, data collection and monitoring**

*Conclusions:*

Bosnia and Herzegovina's statistics agency does not collect statistics on violence against women or the use of firearms in domestic violence (or other crimes). Record-keeping on firearms licences is not centralised, therefore there is no record of how many licences have been issued throughout the state.

*Recommendations:*

Introduce coordinated and systematic record-keeping on domestic violence, including the use of firearms, by all relevant institutions. Create a centralised database system to manage the issuing of firearms licences at the state level.



## **Croatia**

### **1. National strategies and general policies**

#### *Conclusion:*

It is estimated that every third woman in Croatia has experienced domestic violence. The government has acknowledged this widespread problem and has developed a National Strategy for Protection against Violence in the Family (2005 – 2007), which lays out several short and long-term measures for prevention of violence and protection of victims. However, the strategy does not refer to the use of firearms in domestic violence and does not provide any budget allocations for implementation of the strategy, severely restricting its effectiveness. A National Strategy on SALW has been developed by the National Commission on SALW and is being circulated among the ministries for feedback.

#### *Recommendation:*

Extend the timeframe of the National Strategy for Protection against Violence in the Family and ensure budget allocations for its implementation. Ensure that linkages are made between the national strategies on violence in the family and on SALW control in order to combat the issue of armed domestic violence from both perspectives.

### **2. Legal framework**

#### *Conclusion:*

While legislation is in place to combat domestic violence, there is currently a large gap between legislation and practice and a lack of coordination between stakeholders. The issue of armed domestic violence is not recognised or legislated for, and as such must be prosecuted as two separate offences by courts. A new Law on Weapons came into force in September 2007 that introduces positive changes in terms of stricter criteria to obtain a firearm licence.

#### *Recommendation:*

Improve the implementation of existing legislation by providing training on applicable legal provisions for public officials involved in combatting domestic violence, and sensitisation on all forms of violence against women, including the use of firearms.

### **3. Protection of victims of domestic violence**

#### *Conclusion:*

The majority of protection services in Croatia are provided by NGOs, which are approximately 30 percent funded by national and local government. There are Rules on Procedure in Domestic Violence cases, which introduce clear rules for police and service providers dealing with cases. Temporary protection measures, including the confiscation of a weapon, are provided for in law but rarely issued by the courts.

#### *Recommendation:*

Take greater responsibility for funding the protection system for victims of domestic violence. Provide training and sensitisation to combat the persistent patriarchal mentality within the law enforcement and judicial agencies that contributes to the inadequate implementation of protection measures.

### **4. Preventive measures**

#### *Conclusions:*

The National Strategy outlines several preventive measures against domestic violence, but does not include armed domestic violence. Some support is provided by government for NGO awareness-raising activities on domestic violence, but this support is inadequate and sporadic.

*Recommendations:*

Implement and improve preventive measures contained in the National Strategy, and include preventive measures focussing on armed domestic violence. Support education and awareness-raising activities on domestic violence and armed domestic violence.

## **5. Statistics, data collection and monitoring**

*Conclusions:*

The Croatian police information system offers an unusual level of detail on armed violence, allowing for analysis by various parameters such as gender, age and ethnicity of perpetrator and victim, type of weapon used, location of crime, etc. However, there is a lack of reliable information on domestic violence, including armed domestic violence and many institutions do not currently publicise available information on domestic violence.

*Recommendations:*

Introduce domestic violence and type of firearm or weapon used, where relevant, as parameters in the police information system. Make data on all forms of violence publicly available.

## **The former Yugoslav Republic of Macedonia**

### **1. National strategies and general policies**

*Conclusion:*

The Macedonian government has recognised the problems of domestic violence and SALW proliferation and misuse and has developed national strategies in both areas to ensure a systematic and sustainable approach.

*Recommendation:*

Synchronise and coordinate the activities and measures planned in the two strategies, thereby prioritising the issue of armed domestic violence in the National Strategy against Domestic Violence and introducing gender-specific actions as cross-cutting within the National Strategy on SALW.

### **2. Legal framework**

*Conclusion:*

Efforts have been made to modify national legislation related to domestic violence, which was recognised as a criminal act in 2004, and weapons possession and acquisition legislation, and bring them in to line with international standards. Further reforms are needed, as recognised in the respective national strategies, as well as improvements in implementation and enforcement.

*Recommendation:*

Develop and adopt supplementary legal acts or manuals on standards for the evaluation, submission, issuing and monitoring of measures to prohibit the possession and/or seizure of a firearm or other weapon. Adopt police protocols for domestic violence cases, including mandatory checks for firearms. Strengthen the legislation around obtaining a firearm licence by introducing more thorough background checks related to any history of domestic violence.

### **3. Protection of victims of domestic violence**

*Conclusion:*

Efforts are being made to improve the protection system for victims of domestic violence, with government support currently provided for six shelters and a national SOS hotline. Temporary protection orders provide for various protection needs of domestic violence victims, however these are currently not used appropriately or adequately as a measure to protect victims as they are seen rather as punitive measures for perpetrators and thus rarely requested by centres for social work. Temporary protection orders to seize a firearm are very rarely requested or granted.

*Recommendation:*

Ensure that the relevant professional structures correctly interpret and implement temporary protection orders, including the confiscation or prohibition of possession of a firearm.

### **4. Preventive measures**

*Conclusions:*

A National Strategy against Domestic Violence will come into force in 2008, which outlines key preventive measures. Awareness campaigns on domestic violence have been conducted, largely by civil society but with increasing support from the government.

*Recommendations:*

Include the issue of armed domestic violence and arms control in strategies and awareness campaigns addressing the issue of domestic violence.

### **5. Statistics, data collection and monitoring**

*Conclusions:*

There is a lack of data from which to evaluate the impact of firearms on domestic violence cases. Reporting and recording mechanisms across the various relevant institutions are currently uncoordinated and inadequate.

*Recommendations:*

Conduct qualitative surveys on the prevalence of firearms use in domestic violence. Introduce mandatory record keeping across relevant institutions (MoI, MLSP, MoH, judiciary) on domestic violence, including use of weapons, causes of violence, consequences and expenditures. Introduce mandatory recording of the causes of injuries in the health service.

## Montenegro

### 1. National strategies and general policies

#### *Conclusion:*

A National Strategy for Violence Prevention was adopted in 2003, but in practice few activities have been implemented due to lack of resources and commitment from stakeholders. The draft Gender Equality Action Plan contains a section on violence prevention but implementation is dependent on adoption of the Gender Equality Law, which is still pending. There are no links between these strategies and the National SALW Control Strategy.

#### *Recommendation:*

Implement priorities identified in the National Strategy for Violence Prevention (2003 – 2006), with an emphasis on activities related to the prevention of family violence. Adopt the Gender Equality Law and begin implementation of the Gender Equality Action Plan, ensuring the allocation of adequate resources and integrating measures aimed at combatting armed domestic violence.

### 2. Legal framework

#### *Conclusion:*

Family violence is a crime, prosecuted *ex officio*. The draft Family Violence Prevention Law should be adopted during 2007, but does not include reference to confiscation of weapons. Legislation still falls short of meeting all recommendations of the CEDAW Commission. Attempts to accelerate the process of prosecuting perpetrators of domestic violence by including family violence as a misdemeanour act have led to even more lenient penalties being prescribed for perpetrators.

#### *Recommendation:*

Adopt legal mechanisms that bring Montenegrin legislation on domestic violence in to line with international standards and ratified conventions.

### 3. Protection of victims of domestic violence

#### *Conclusion:*

There are specific measures in place to protect victims of sexual violence during court procedures. Protection measures for victims of family violence are provided for under the Law on Criminal Procedure, however these are not applied in practice. Seizure of a weapon is not prescribed as a protection measure but as a safety measure only after a sentence has been passed. The state does not provide any protection services for victims such as shelters, SOS lines, legal aid, etc. and no protocols are in place concerning the conduct of authorities dealing with domestic violence cases.

#### *Recommendation:*

Implement protection measures as envisaged in the new Law on Prevention of Family Violence and include the seizure of a firearm as a mandatory protection measure. Take responsibility for providing services for victims of domestic violence, including free legal aid, court protection, shelters, SOS lines and health care. Develop protocols for all relevant authorities on how to deal with cases of domestic violence and armed domestic violence.

#### **4. Preventive measures**

##### *Conclusions:*

Very little has been done by the state in the way of implementing preventive measures on domestic violence or reducing the impact of firearms on family violence. There is no budget allocated to this issue. NGOs have made some efforts to educate government officials and the media, raise public awareness and monitor legislation. No activities have been carried out related to arms control issues.

##### *Recommendations:*

Take greater responsibility for preventing domestic violence and armed domestic violence, including training service providers and professionals to deal appropriately with domestic violence and highlighting the issue of firearms use. Allocate adequate financial resources to implement preventive activities, including awareness campaigns focussing on family violence and the use of small arms.

#### **5. Statistics, data collection and monitoring**

##### *Conclusions:*

There are no official statistics in Montenegro on violence against women or family violence. NGOs record data on family violence but this is not centralised or harmonised.

##### *Recommendations:*

Establish data collection methods for family violence that include details of threats or injuries by weapons and their type.

### **Serbia**

#### **1. National strategies and general policies**

##### *Conclusion:*

Serbia does not have a national strategy on domestic violence and the 2005 Initial Framework National Strategy against Violence does not include violence against women, although this is recognised in the National Plan of Action for the Advancement of Women. The Autonomous Province of Vojvodina has started drafting a Provincial Strategy against Domestic Violence and has made many positive advances in this area. The State Union National Strategy for SALW Control, drafted in 2004, has not been ratified by Serbia.

##### *Recommendation:*

Draft and adopt a National Strategy against Domestic Violence and include the issue of violence against women in the National Strategy against Violence. Ratify the National Strategy for SALW Control and ensure that it contains reference to reducing armed domestic violence.

#### **2. Legal framework**

##### *Conclusion:*

There is no specific law against domestic violence in Serbia but it is criminalised under the Criminal Code. The 2005 amended Criminal Code reduced penalties for domestic violence. Domestic violence is not included as a criteria for refusing a firearm licence in the Law on Arms and Ammunition, however in practice weapons generally are seized by police in cases in which possession could lead to a criminal offence or misdemeanour or if necessary for public safety. There is currently no mandatory medical test for obtaining a firearm licence,

however amendments have been proposed to include obligatory psychological testing as a result of a recent mass firearm killing in eastern Serbia.

*Recommendation:*

Adopt a law on protection against domestic violence that consolidates relevant elements from the Criminal Code and Family Law. Increase the minimum and maximum penalties for criminal offences of domestic violence within the Criminal Code. Amend the Law on Arms and Ammunition to stipulate stricter conditions for the acquisition and possession of firearms, including mandatory medical and psychological tests. Include domestic violence in the list of offences that constitute refusal of a firearms licence application.

### **3. Protection of victims of domestic violence**

*Conclusion:*

General protection measures within the Family Law are applicable to domestic violence cases, but are rarely implemented. Civil society has developed protocols for the police, social workers and health services but these have not yet been accepted by the authorities. Vojvodina Province has opened and financially supports a shelter for victims; elsewhere shelters are funded by international donors.

*Recommendation:*

Guarantee rapid and effective protection measures for victims of domestic violence, including seizure of a firearm. Vojvodina Province adopt protocols for professionals and service providers and introduce state level protocols and reporting forms for police, social services and health care workers. Ensure financial support for SOS lines for victims, shelters, counselling programmes and legal advice.

### **4. Preventive measures**

*Conclusions:*

There have been no state-led awareness campaigns or educational curricula on domestic violence or firearms abuse. Provincial Secretariats in Vojvodina have established funds for the education of social workers and volunteers on domestic violence and have supported the largely NGO-led campaign '16 Days of Activism against Violence Against Women' in 2005 and 2006. Procedures for obtaining a firearm licence are currently under review, which will make it more difficult to obtain a firearm.

*Recommendations:*

Introduce awareness campaigns and curricula in schools and universities addressing the issue of domestic violence and making explicit the link with firearms possession. Introduce stricter criteria for obtaining a firearm, as envisaged in the planned amendments.

### **5. Statistics, data collection and monitoring**

*Conclusions:*

The Republic of Serbia Statistics Office collects, analyses and disseminates data and has recently started to develop gender-disaggregated databases. However there is no state institution that collects comprehensive data on armed violence, including armed domestic violence. The Ministry of Interior collects data on domestic violence, the number of seized firearms and the number of deaths from armed violence. Health and social services and police records on domestic violence are uncoordinated and incomplete. NGOs working with domestic violence victims generally do not record data related to firearms use.



*Recommendations:*

Establish a formal system for data collection among state institutions dealing with domestic violence and ensure the collection of gender-disaggregated data on the prevalence of firearms in domestic violence cases. Introduce reporting forms for police and medical staff dealing with domestic violence victims.

## **Un Administered Territory of Kosovo<sup>63</sup>**

### **1. National strategies and general policies**

*Conclusion:*

Kosovo does not have strategies for either domestic violence or SALW control.

*Recommendation:*

Adopt and implement strategies for protection against domestic violence and for SALW control. Ensure that the strategies are linked and that both address armed domestic violence and provide for governmental activities for prevention and protection.

### **2. Legal framework**

*Conclusion:*

Domestic violence is addressed by a specific UNMIK Regulation, as well as legal provisions in several other pieces of legislation. UNMIK Regulation No. 2001/7 stipulates that a Weapons Authorisation Card (WAC) will not be issued to anybody with a 'record or history of violent behaviour', which includes domestic violence. However, the current legislative framework is deficient and does not provide for effective measures to combat domestic violence.

*Recommendation:*

Adopt comprehensive legislation that contains measures to eliminate armed domestic violence, sanction perpetrators and protect victims. Adopt the special law on protection against domestic violence, which should contain measures to protect victims from armed violence, including prompt access to justice, severe sanctions for perpetrators, and obligatory seizure of firearms from perpetrators.

### **3. Protection of victims of domestic violence**

*Conclusion:*

Protection orders can be filed for by the victim or the courts. The Criminal Code prescribes general protection measures that can be applied to victims of armed domestic violence, including refusal of a WAC to anyone with a history of violent behaviour and seizure of a weapon from a person who is using it in a threatening, intimidating or otherwise unauthorised manner.

*Recommendation:*

Monitor the implementation of protection orders and analyse their efficiency. Introduce legal changes if these are needed to raise effectiveness of protection orders. Inform victims about the possibility to demand protection orders. Increase the gender sensitivity of judges and prosecutors, encouraging them to issue protection orders more often, particularly in cases of armed domestic violence where there is a threat of the use of firearms. Create possibilities for the establishment of new shelter houses.

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<sup>63</sup> Due to administrative difficulties and delays, research carried out in Kosovo was not as extensive as that conducted in the countries of the region, therefore conclusions are less detailed.

#### **4. Preventive measures**

##### *Conclusions:*

Information on any awareness raising or educational activities being carried out in Kosovo was not provided by the national research. However the Kosovo Police Service provides mandatory training for all officers on dealing with domestic violence. There is currently a province-wide awareness campaign on the dangers of small arms misuse.

##### *Recommendations:*

Create and adopt an Action Plan for Combatting Violence against Women. Establish funds for its implementation including special budget lines for actions that combat violence against women in existing government institutions. Establish financial support for NGOs dealing with victims of domestic violence. Involve civil society in all national mechanisms that deal with violence against women and SALW control.

#### **5. Statistics, data collection and monitoring**

##### *Conclusions:*

Information on armed domestic violence is not available in Kosovo, however data produced by law enforcement institutions is fairly detailed by regional standards.<sup>64</sup>

##### *Recommendations:*

Establish an inter-ministerial working group to deal with the issue of domestic violence and acquisition and possession of SALW. Develop proper data collection mechanisms that would engage all relevant stakeholders and institutions.

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<sup>64</sup> SEESAC, *Strategic overview of armed violence data collection and analysis mechanisms (South Eastern Europe)*, Belgrade, 2006, p.79.

## Annex A – Review of Global Best Practices

Since the late 1990s, a number of states have considered the improvement of national firearm regulations to be an essential aspect of preventing gun violence in the home. Several countries have reformed their domestic gun laws, focussing on improving control over the acquisition of firearms, safe storage of weapons and disarming abusive partners.

The 27 EU governments have agreed minimum standards on firearm possession through the EU Firearms Directive. Among other measures, States agree that for certain categories of firearms authorization for possession is required, and that applicants must have 'good cause', be over 18, and be 'not likely to be a danger to themselves, to public order or to public safety'.<sup>65</sup>

A number of countries have amended their national regulations since 2001, including Brazil, Cambodia, Belarus and the UK. Regarding the prevention of armed violence in the home, South Africa, Canada and Australia provide examples of the good practices that may be drawn from by the countries of the Western Balkans.

### South Africa

South Africa's femicide rate is the highest in the world. In the latest studies it was found that one in every five wife-killers legally possessed firearms.<sup>66</sup> This statistic highlights the need for better gun control and improved legislation and policies aimed at eliminating armed violence against women. The prevalence of this type of violence has resulted in national public debates and interventions by both the government and NGOs.

In December 2002, Gun Free South Africa and Technikon SA conducted a study on the role of the criminal justice system in excluding unfit persons from owning firearms.<sup>67</sup> One of their conclusions was that not all designated firearm officials regularly checked the Domestic Violence Register for previous records of domestic abuse, and some did not do so at all. Other problems that often result in legal guns not being taken away from potentially unfit owners are that domestic violence incidents are often recorded months or years before the register is consulted and may have happened in the vicinity of a different police station or area. The study also found that courts do not always send through information on protection orders in a timely manner.

Legislative reforms undertaken to address the problem in South Africa included passing a new Domestic Violence Act and Firearms Control Act. The main aim of the Domestic Violence Act (no. 116 of 1998)<sup>68</sup> was to afford women protection from domestic violence by creating obligations for law enforcement bodies to protect victims to the greatest extent possible. The Act is applicable to a range of familial and domestic relationships and covers both heterosexual and same sex relationships. Under this Act, a victim of domestic violence may apply for a protection order to stop the abuse and to stop the abuser from entering the mutual home, the victim's residence, or the victim's place of employment.

One of the key innovations of the Act is related to protection orders that include the seizure of arms and dangerous weapons from a perpetrator. According to Article 7(2a), the court may impose any additional conditions it deems reasonably necessary to protect and provide for the safety, health or wellbeing of the complainant, including an order to seize any arm or dangerous weapon in the possession or under the control of the perpetrator.

According to Article 9, the court must order the police to seize any arms in the possession or under the control of a perpetrator, if:

- (a) *The respondent has threatened or expressed the intention to kill or injure himself or herself, or any person in a domestic relationship, whether or not by means of such arm or dangerous weapon; or*

<sup>65</sup> 'IANSA position paper: National regulation of small arms', <http://www.iansa.org/un/review2006/National-regulation-of-small-arms.pdf>, accessed on 29 July 2007.

<sup>66</sup> Ellis, Estelle, 'Dying at the hands of their lovers', 28 June 2004, <http://www.capeargus.co.za/index.php?fSectionId=49&fArticleId=2130110>, accessed on 20 July 2007.

<sup>67</sup> *Ibid.*

<sup>68</sup> Republic of South Africa, 'Domestic Violence Act', *Government Gazette*, Vol. 402, No. 116, Cape Town, 02 December 1998.

- (b) *Possession of such arm or dangerous weapon is not in the best interests of the respondent or any other person in a domestic relationship, as a result of the respondent's*
  - (i) *State of mind or mental condition;*
  - (ii) *Inclination to violence; or*
  - (iii) *Use of or dependence on intoxicating liquor or drugs.*

This provision gives the victim of domestic violence immediate and effective protection from the violent perpetrator who has a gun, whether legally or not legally possessed. In this way, the victim is protected from the beginning of the proceeding against the perpetrator. This is an important protective measure, as victims of domestic violence are particularly vulnerable during the criminal proceeding. The court orders this measure on the basis of its own opinion, without an application from the complainant being necessary. It orders the seizure of a weapon to the police directly, so that immediate steps may be taken to protect the victim of domestic violence from gun use by the perpetrator.

Any dangerous weapon seized must be retained in police custody for such period as the court may determine. It shall be returned to the respondent or, if the respondent is not the owner of the dangerous weapon, to the owner thereof, only by order of the court (Art. 9.3a and 9.3b). The court may order that the weapon be forfeited to the State if it is in the interest of the safety of any person concerned (Art. 9.3iii).

The second key innovation of the Domestic Violence Act is its attempt to introduce statutory monitoring and oversight of police enforcement of the law. Legislators have placed particular obligations upon the police in an effort to challenge their long history of neglect of domestic violence.<sup>69</sup>

The Law introduces an obligation for the police to assist the complainant and inform them of their rights (Art. 2). According to this provision, the police must act to assist and protect a victim at the scene of an incident of domestic violence or as soon thereafter as is reasonably possible, or when the incident of domestic violence is reported. The police are required to explain to complainants that they are there to provide whatever assistance the circumstances require, which may include helping the complainant to find suitable shelter or obtain medical treatment. The police should inform the complainant of their rights to apply for a protection order and press criminal charges. A police officer may, without warrant, arrest any respondent at the scene of an incident of domestic violence who the officer reasonably suspects of having committed an offence involving elements of violence (Art. 3). The police are obliged to arrest the abuser if they do not obey the protection order.

Failure to comply with these duties from the Domestic Violence Act constitutes misconduct. The National Commissioner of the South African Police Service is required to submit six-monthly reports to Parliament, and to the Independent Complaints Directorate, the civilian oversight body.

The creation of the Domestic Violence Act was followed by amendments to the Firearms Law. The new Firearms Control Act (2000)<sup>70</sup> introduces a two-step licensing system. A person who wants to apply for a licence first has to undergo a competency test. A competency certificate may not be issued to a person who is inclined to violence, or has been convicted, whether in or outside South Africa, of an offence involving physical or sexual abuse that occurred within a domestic relationship as defined in the Domestic Violence Act (Art. 9.2h(ii)). The Registrar may declare a person unfit to possess a firearm if a protection order has been issued against such a person under the terms of the Domestic Violence Act (Art. 102.1a). The court may also declare a person unfit if they have been convicted or sentenced of any offence involving physical or sexual abuse occurring in a domestic relationship (Art. 103.1(i) and (l)).

The Law contains provisions relating to declarations of unfitness that allow the police to remove guns from violent homes and stop the perpetrator from obtaining further firearm licences for five years. A competency certificate lapses five years after the date of issue (Art. 10.2), so that any one who wants to prolong the licence to possess a firearm has to undergo the competency test again.

<sup>69</sup> Vetten, Lisa, 'Addressing domestic violence in South Africa: Reflections on strategy and practice', Expert Group Meeting: Violence against women: Good practices in combatting and eliminating violence against women, Vienna: United Nations Division for the Advancement of Women, 17 – 20 May 2005, p. 5.

<sup>70</sup> Republic of South Africa, 'Firearms Control Act', *The Official Gazette*, 2000.

These legal changes have been supported by strengthening policies against domestic violence. The National Crime Prevention Strategy establishes crimes of violence against women and children as a national priority, a status such crimes have continued to enjoy in subsequent national policing strategy documents.<sup>71</sup>

## Canada

In Canada, on average 40 per cent of women killed by their husbands are shot; most (80 per cent) of these with legally owned rifles and shotguns,<sup>72</sup> indicating an urgent need to reform gun control legislation. In 1995, Canada passed the Firearms Act, which includes, among other provisions:

- a) Registration of all firearms by 2003 and a national information system;
- b) Strict licence screening for all gun owners who possess firearms (renewable every five years) by 2001 and continuous eligibility checks;
- c) Controls on the sale of ammunition;
- d) Stricter penalties for firearms misuse.

The Firearms Act introduces measures for licensing of gun owners and registration of firearms. Coupled with appropriate training and implementation, these measures are essential to removing firearms from situations where women are at risk. Under the new law,<sup>73</sup> a licence is required to possess guns, and reports of domestic violence and other offences will automatically trigger a review of a gun owner's licence. This is an improvement on the previous situation, when a Firearms Acquisition Certificate was needed only to acquire guns and not to possess them and two thirds of gun owners did not have a valid permit.<sup>74</sup> Licensing of gun owners is essential to keeping guns out of the hands of potentially abusive spouses or individuals with a history of violence. The new Law requires extensive background checks on every person who applies for a licence.

According to the Law, current and previous spouses (in the past two years) will be notified of an individual's intention to acquire a firearm licence. Spousal consent is not required for acquisition, however if a spouse has concerns, it will trigger a secondary review of the application. Along with the spousal notification on the form, a toll-free line (1-800-731-4000) was created for spouses of applicants or others who may have concerns about their safety.<sup>75</sup>

The legal reform has been strongly supported by the Canadian civil sector, who demanded the development of a comprehensive National Prevention Strategy with respect to controlling firearms and combatting domestic violence. The Canadian Coalition for Gun Control has made a series of recommendations regarding the implementation of the existing law and changes to the regulations associated with the new law.<sup>76</sup> These include:

- a) A 'when in doubt say no' approach to issuing licences for firearms;
- b) Routine notification of current and former spouses of applications for firearms acquisition certificates and permit;
- c) Thorough community checks to be conducted by police if a former spouse cannot be located. (The privacy and safety of those participating in the investigation must be assured);

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<sup>71</sup> Vetten, Lisa, 'Addressing domestic violence in South Africa: Reflections on strategy and practice', Expert Group Meeting: Violence against women: Good practices in combatting and eliminating violence against women, Vienna: United Nations Division for the Advancement of Women, 17 – 20 May 2005, p. 2.

<sup>72</sup> Source: *Guns and Domestic Violence*, <http://www.guncontrol.ca/Content/DomesticViolence.html>, accessed on 12 August 2007.

<sup>73</sup> As of October 2001, across Canada, more than 4,000 firearms licences have been refused or revoked since the new law came into effect on 01 December 1998. That is 32 times more revocations from potentially dangerous individuals compared to the last five years of the old law. In addition, 90,400 potentially dangerous gun sales have been sent for further investigation (*Guns and Domestic Violence*).

<sup>74</sup> Source: *Guns and Domestic Violence*, <http://www.guncontrol.ca/Content/DomesticViolence.html>, accessed on 12 August 2007.

<sup>75</sup> Between December 1998 and October 2001, the line has received over 26,000 calls (Canadian Firearms Centre, *Making a Difference: The Firearms Act*, available at: <http://www.cfc-ccaf.gc.ca/en/legal/act/default.asp>).

<sup>76</sup> Source: *Guns and Domestic Violence*, <http://www.guncontrol.ca/Content/DomesticViolence.html>, accessed on 12 August 2007.

- d) Recognition that most victims of domestic violence are assaulted 30 times before a formal complaint is filed. Despite that fact, studies show that the problem is often known;
- e) Extension of the investigation beyond local databases. This is critical to ensure that checks are comprehensive. Applicants are obliged to provide information on previous residences from the past five years and police must follow up with those jurisdictions;
- f) Standard practices regarding all domestic violence occurrences must include inquiries about the presence of firearms and immediate application of measures to remove them where a risk is perceived. Offenders should be flagged and serious consideration given to revoking permits and obtaining prohibition orders where there is a threat to the safety of any individual;
- g) Comprehensive education for police and all participants in the justice systems is still urgently needed regarding domestic violence. There is a need to improve understanding of the risks associated with firearms. All parties must understand the frequency with which firearms are part of the cycle of domestic violence, especially in rural areas. They must know and apply all measures at their disposal to reduce these risks;
- h) More research and better tracking of performance is essential to ensuring accountability.

## Australia

Gun control has long been a concern of those working to reduce domestic violence in Australia.<sup>77</sup> The difference between a fatal and a non-fatal episode of domestic violence may be entirely due to the presence of a dangerous weapon such as a gun.<sup>78</sup> The firearms law reforms in the 1990s<sup>79</sup> have introduced measures aimed at tackling the use of guns in domestic violence.<sup>80</sup>

According to the new legislation, gun ownership requires a licence, which can be obtained by meeting a series of criteria including a minimum age of 18, a clean criminal record, being a 'fit and proper person', undergoing safety training and proving 'genuine reason'. 'Genuine reason' must be proved separately for each gun, effectively imposing a limit on the number of guns that any one person can own.

When deciding whether to grant or renew a licence, police can take into account all relevant circumstances. Domestic violence is a possible ground for licence refusal or cancellation. The related legal provisions are very similar in all Australian States. In New South Wales, the refusal of a licence request or the cancellation of a licence is mandatory if a person has been subject to a restraining order in the past ten years, in the Australian Capital Territory, in the past eight years. In Victoria, a licence may be revoked by intervention order, and a history of domestic violence is taken into account in new applications. In New South Wales, the police are obliged to seize guns in cases of domestic violence. In Victoria and Queensland, the police have the power to seize firearms on the grounds of a family violence restraining order, if the gun may be used in domestic violence.

Other measures include<sup>81</sup>:

- a) Persons convicted of assault are banned from having a gun licence for at least five years;
- b) People subject to domestic violence restraining orders are banned from having a gun licence for five years;

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<sup>77</sup> *The impact of guns on women's lives*, Amnesty International, IANSA and Oxfam International, Oxford, 2005. p. 17.

<sup>78</sup> 'Firearms Western Australia', Western Australia Police Web site, <http://police.wa.gov.au/Services/pdf/schoolprojects.pdf>, accessed on 25 July 2007.

<sup>79</sup> The Firearms Act 1996 (New South Wales), Firearms Act 1996 (Victoria), Firearms Act 1977 (South Australia) (as amended in 1996). In 1996 and 1997 all the states and territories of Australia amended their gun laws to comply with the National Firearms Agreement adopted in May 1996.

<sup>80</sup> Australian Government, 'Reform - The Australian firearms buyback scheme', Attorney-General's Department Web site, [http://www.familyrelationships.gov.au/www/agd/agd.nsf/Page/Firearmsregulation\\_Reform-theaustralianfirearmsbuybackscheme](http://www.familyrelationships.gov.au/www/agd/agd.nsf/Page/Firearmsregulation_Reform-theaustralianfirearmsbuybackscheme), accessed on 02 August 2007.

<sup>81</sup> *The impact of guns on women's lives*, Amnesty International, IANSA and Oxfam International, Oxford, 2005. p. 17.



- c) People with domestic violence restraining orders against them are subject to compulsory seizure of all their guns;
- d) All guns must be registered at the time of sale and when the licence is renewed;
- e) A 28-day waiting period to buy a gun.

Evaluations of the Australian reforms found that the laws had produced dramatic reductions in firearm-related deaths.<sup>82</sup>

Besides Australia, the 15 other States of the Pacific Islands Forum agreed on a Model Weapons Bill in 2003, containing a wide range of similar provisions regulating firearms possession.<sup>83</sup> Accordingly, individuals subject to domestic violence restraining orders are banned from having a firearm licence for five years. People with domestic violence restraining orders against them are subject to compulsory seizure of all their firearms. All firearms must be registered at time of sale and when the licence is renewed. There is a 28-day 'cooling off' period to buy a firearm. Firearms cannot be bought and sold privately, but only through licensed dealers or the police. There are strict requirements on how firearms must be stored.

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<sup>82</sup> Chapman, S. et al., 'Australia's 1996 gun law reforms: faster falls in firearm deaths, firearm suicides, and a decade without mass shootings', 06 November 2006, <http://injuryprevention.bmj.com/cgi/content/full/12/6/365>, accessed on 1 August 2007.

<sup>83</sup> 'IANSA position paper: National regulation of small arms', p. 2, <http://www.iansa.org/un/review2006/National-regulation-of-small-arms.pdf>, accessed on 29 July 2007.

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## Annex D – Sample Questionnaire/ Interview Guide<sup>84</sup>

### Questions for representatives of the police

#### Leading questions:

- To what extent is the possession and carrying of firearms linked with the prevalence of domestic violence?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease domestic violence?

#### Quantitative questions:

	2007	2006	2005
Number of assaults on women in general			
What proportion occurred in the victim's home/ perpetrator's home/ outside the home?			
What is the relationship between the perpetrator and victim/ survivor in reported assaults?			
Number of reported cases of domestic violence including domestic sexual assault			
Number of reported cases of domestic violence in which a firearm was used to threaten victim but not fired			
Number of cases in which firearm was used to: <ul style="list-style-type: none"> <li>■ Hit the victim</li> <li>■ Fire a shot</li> <li>■ Shoot a pet or possession</li> <li>■ Shoot at the victim</li> </ul>			
Number of cases of firearms injury during domestic violence			
Number of reported cases of lethal domestic violence with firearms			
Number of cases in which perpetrator did not have a licence for firearm possession			

#### Sub-questions:

1. Do police undergo any training on responding to domestic violence or other sexual assaults?
2. Do guidelines for police exist concerning the use of firearms in domestic violence?

<sup>84</sup> These questionnaires/ interview guides were prepared during the methodology workshop to guide the national research in each country. National Researchers translated and adapted the questionnaires as appropriate to the situation in each country. Quantitative information was sought from as many different sources as possible and not limited to the questions listed on the questionnaires.

3. Do police routinely check for the presence of a firearm when called to a domestic violence incident? If so, what do they do if a firearm is found?
4. Do police know if a firearm is present before they go to the scene of the incident?
5. Do police ask if there is a firearm in the house/ possession of the perpetrator? Do they do this as an obligation or requirement or independently, because they think it is relevant or important?
6. How do police officials react when a perpetrator uses a firearm in violent behaviour towards a wife, intimate partner, ex-wife, ex-partner, or other members of the family or household?
7. Are police required to take the gun away if called to a domestic violence incident or is this at their discretion?
8. Can police seek an order to remove the gun or store it elsewhere (not in the home)?
9. Do police respond differently if a firearm is used inside the home or outside the home?
10. Do police officials check for possession of a firearm licence? What happens if the gun is licensed or registered?
11. What is the response if a perpetrator does not have a firearm license? What if a perpetrator does have a firearm license?
12. Can police remove the firearm or cancel the licence or make a note in their records to stop the perpetrator from buying/ owning another gun?
13. Do police officials report the abuse of arms as a misdemeanour act or criminal offence?
14. Will the perpetrator be charged for illegal possession of a firearm if charged for an offence related to domestic violence? If they are not charged for domestic violence, would the fact that they have a gun be recorded?
15. What is the application process to obtain a licence to buy a gun? If someone applies, what measures are taken to find out about their history of domestic violence?
16. Are applicants required to get approval from their partner (current or past) or their doctor to obtain a firearm licence?
17. Are there any delaying factors? Is there a waiting period for the first gun and/ or subsequent guns?
18. What records are available for the police to check to know whether applicants already have a gun?
19. What happens if someone moves address?
20. Who can report concern to the police about someone having a firearm?
21. Who can report domestic violence?
22. Are police allowed to take service weapons home? Is there a high incidence of domestic violence in police homes? Are weapons involved? Are there psychological support programmes for police officers?
23. What is the best way to link domestic violence legislation and arms control legislation in order to protect families from armed violence?
24. Is there any good practice? What are the failure and success factors?

## Questions for judges and prosecutors

### Leading questions:

- To what extent is the possession and carrying of firearms linked with the prevalence of domestic violence?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease domestic violence?

### Sub-questions:

1. Is the use of a firearm taken as aggravating circumstances in criminal proceedings in cases of domestic violence? If yes, what is the average response in the case of:
  - Injury;
  - Fatality?
2. What is the average sentence for domestic violence with a firearm?
3. Is there a difference in sentencing if the victim is or was in an intimate or family relationship with the perpetrator (such as wife, ex-wife, intimate partner, daughter, sister, mother, etc.)?
4. Is there a practice to order a protective measure to deprive a firearm from offenders during the criminal procedure?
5. What is the best way to link domestic violence legislation and arms control legislation in order to protect families from armed violence?
6. Is there any good practice? What are the failure and success factors?

## Questions for representatives of women's NGOs

### Leading questions:

- To what extent is the possession and carrying of firearms linked with the prevalence of domestic violence?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease domestic violence?

### Quantitative questions:

	2007 (IF ANY DATA)	2006	2005
Number of women requesting help/ shelter/reporting cases of domestic violence			
Number of cases in which perpetrator has used a firearm to threaten the victim			
Number of cases in which victims injured by firearms			
Number of cases in which victims died from injuries caused by firearm			

### Sub-questions:

1. What are the experiences of victims who were threatened/ injured/ attacked by a perpetrator that used a firearm? How have police officials reacted when victims report the case or request protection?
2. Do victims usually have effective protection from violent perpetrators who have threatened/ injured them with a firearm? If yes, by whom and how?
3. Does informing the public and advocating on combatting domestic violence help to change legislation:
  - On arms possession and acquisition legislation;
  - On protection of women from domestic violence?
4. How can data collection and monitoring be improved?
5. Has your organization ever initiated or participated in any campaigns addressing the arms control regime? What would be possible entry points for such a campaign?
6. Why are governments not more responsible and responsive to the problem of domestic violence, including armed domestic violence?
7. How can governments take more responsibility for the problem?
8. How do women's NGOs evaluate the efficiency of implementation mechanisms in this field? What are the strengths/ weaknesses?
9. Are there proposals by NGOs for improving the efficiency of implementation mechanisms? If yes, what?
10. What should be done to improve current legislation and practice in order to decrease the use of firearms in domestic violence?

## Questions for social workers/centres for social work

### Leading questions:

- To what extent is the possession and carrying of firearms linked with the prevalence of domestic violence?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease domestic violence?

### Quantitative questions:

	2007 (IF ANY DATA)	2006	2005
Number of women requesting help/shelter/reporting cases of domestic violence			
Number of cases in which perpetrator has used a firearm to threaten the victim			
Number of cases in which victims injured by firearms			
Number of cases in which victims died from injuries caused by firearm			

### Sub-questions:

1. What are the experiences of victims who were abused/injured/attacked by firearms? How have police officials reacted when victims report the case or request protection?
2. Do victims usually have effective protection from violent perpetrators who have threatened/injured them with a firearm? If yes, by whom and how?
3. Are there any protocols concerning recording, responding to and reporting domestic violence cases?
4. Does informing the public and advocating on combatting domestic violence help to change legislation:
  - On arms possession and acquisition legislation;
  - On protection of women from domestic violence?
5. What should be done to improve current legislation and practice in order to decrease the use of firearms in domestic violence?



## Questions for representatives of health care institutions

### Leading questions:

- To what extent is the possession and carrying of firearms linked with the prevalence of domestic violence?
- What are the best ways to link weapons acquisition and possession regulation and domestic violence legislation in order to decrease domestic violence?

### Quantitative questions:

	2007 (IF ANY)	2006	2005
Number of reported cases of injuries by firearms			
Number of victims suffering injuries by firearms as a consequence of domestic violence			

### Sub-questions:

1. What are the reporting mechanisms within the public health system? What are the strengths/weaknesses? How can the reporting system improved?
2. What are the experiences of victims who were abused/injured/ attacked by firearms?
3. Do health workers report firearm injuries to the police? Are they obliged to do so by law? What is the procedure? What reporting forms are used for cases of domestic violence? Is the procedure effective?
4. What should be done to improve reporting and data collection?



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