

ADMINISTRATIVE DATA COLLECTION ON VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE IN BOSNIA AND HERZEGOVINA, IN LINE WITH ISTANBUL CONVENTION STANDARDS



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Executive summary

Within the Council of Europe project *“Raising BiH Institutional Capacity to Prevent and Combat Violence against Women and Domestic Violence”*, research was undertaken on existing data collection practices in Bosnia and Herzegovina, with the aim of supporting Bosnia and Herzegovina to enhance the existing system of collecting administrative data on violence against women and domestic violence in order to meet standards prescribed by Article 11 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The study consists of desk research and a fact-finding mission conducted in April 2019 in both Entities of Bosnia and Herzegovina and primarily focuses on the legal frameworks and practices of administrative data collection in regard to domestic violence and violence against women against women.

The present project contributes to the aims of the 2018-2021 Council of Europe Action Plan for Bosnia and Herzegovina¹ as well as the overall 2018-2023 Gender Equality Strategy of the Council of Europe.²

Analysis of the current situation regarding data collection

Article 11 stipulates the obligation of the state parties to collect disaggregated statistical data at regular intervals on all forms of violence defined by the Istanbul Convention. Purposeful, regular and systematic data collection is important for development of strategies to prevent and combat violence against women and domestic violence. This calls for robust cross-nationally comparative data on both victims and perpetrators, and specifies that administrative data may include statistics compiled by health care services and social welfare services, law enforcement agencies and NGOs, as well as judicial data. These bodies may need to set up data systems that go beyond the internal recording needs of the agencies.

While in both Entities and on the national level in BiH official bodies are tasked with data collection, there are some difficulties with co-ordination and gaps in coverage, as well as with data analysis.

Coordination

Bosnia and Herzegovina does not currently have a comprehensive and coordinated system of data collection, but functions with a number of official bodies with different tasks and methods which collect a great deal of data, most of which concerns domestic violence only.

¹ <https://rm.coe.int/bih-action-plan-2018-2021-en/16808b7563>

² <https://rm.coe.int/prems-093618-gbr-gender-equality-strategy-2023-web-a5/16808b47e1>

Data collection with regard to all forms of gender based violence against women named in the Istanbul Convention is limited, and coordination is lacking.

In the Republika Srpska, all reported crimes recognised in the Criminal Code are registered electronically in a database of the Ministry of the Interior. In the Federation of Bosnia and Herzegovina, the police register the reports of criminal acts with their respective cantonal Ministry of the Interior. The Federal Administration of the Police compiles the aggregated data on crimes and publishes it once a month.

The Courts and Prosecutor's Offices are joined throughout the country in the Court Management System that is managed by the High Judicial and Prosecutorial Council (HJPC). Data is recorded on cases appearing before the prosecutors and courts. The databases for police reports, for the prosecutor's office, and for the courts are each separate and there are no connections between them. Also, information on the relationship between victim and perpetrator is not collected.

The National Agency for Statistics is responsible for compiling statistics on crimes reported to the prosecutor as well as those dealt with in the courts. The Statistics Bureaus of the Entities compile data from the court's databases on the basis of the SK forms that record sex of victim and of perpetrator, and include data on the injured person / victim of the criminal offense and "kinship of a perpetrator and a victim". According to the expert for crime statistics in the BiH agency, a more detailed breakdown of the crime statistics is possible.

None of this data is published in the disaggregated manner prescribed by the Istanbul Convention.

Coverage

Data collection as a strategic goal for implementing the Istanbul Convention is primarily focused solely on Domestic Violence. There is as of yet no coordinated system for collecting and reporting data on violence against women outside of intimate partner relationships, and databases on police-recorded incidents of domestic violence are not harmonised across the two Entities.

In the Federation of Bosnia and Herzegovina, in the context of its obligation as a coordinator for development and monitoring of the Strategy for prevention and combating domestic violence (2013 – 2017)³, the Gender Centre maintains a database specifically for domestic violence cases, and it is used directly by police and Social Welfare Centres; it is also accessible to the NGO-run shelters. Each organisation can enter data and see only the data from their

³ The Official Gazette of the Federation of BiH No. 22/03, The implementation of the Strategy has been extended until the end of 2020 by the Action Plan for the Implementation of the Strategy for prevention and combatting domestic violence 2018-2020, Official Gazette F BiH 201/18

own sector. The Gender Centre reports to the Government of the Federation of BiH annually about the implementation of the Strategy.

In Republika Srpska, responsibility for collecting data on domestic violence rests with the Ministry of the family, youth and sport. Since 2013/14 all relevant agencies (Police, social welfare centres, health care centres, and schools) and institutions are obligated to deliver data on domestic violence cases twice yearly. The Ministry of the family then issues a semi-annual report on "Information based on the institutions which provide protection in accordance with the Rule Book on content of the evidence and reports on violence in family".⁴ In this report, forms of violence within the domestic violence cases are differentiated as: endangering serenity, psychological violence, physical violence, sexual violence, economic violence, or a combination of these types.

Data analysis

While it can be seen from the reports and the rule books that reporting forms require not only the minimum five categories of information but a great deal more besides, the reporting consists for the most part of descriptive tables for each variable, and much of the information called for in the reporting template is not used in the reports. More coordination among the bodies involved in reporting and data collection could pave the way towards agreement on defining a basic data set that is collected by all institutions and permits analyses describing connections that are relevant for policy and practice. Through data analysis, by a systematic linkage of variables, collected data can become much more useful for policy and practice than it is at present. In both Entities a central database for domestic violence incidents is already in place. It might be worth considering extending this database to cover violent offences of an interpersonal nature, as that would make it possible to disaggregate the data as called for by Article 11 of the Convention. The usefulness of the database would be substantially augmented if cases were then updated in accordance with changes in the charges during the investigation and court procedures, as is done in Denmark, for example, as well as recording protection orders and court outcomes.

Recommendations

Recommendations provided at the conclusion of the report focus on comprehensive and disaggregated statistics on all forms of violence against women as foreseen in the Istanbul Convention; tracking the pathway of reported incidents of domestic violence into and through the judiciary; gaps in coverage; common categories for types of violence; penalisation of all non-consensual sexual acts; and femicide.

⁴ Available at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>

1. Introduction

Globally violence against women and girls represents a serious violation of fundamental human rights and is a widespread social problem. Bosnia and Herzegovina (BiH) is not an exception. In its attempt to combat gender based and domestic violence, BiH was the sixth country to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) in November 2013. Some blatant forms of violence against women and girls, especially in relation to sexual autonomy outside the private sphere (marriage), were already criminalised, although insufficiently and imprecisely, in laws adopted throughout the existence of the former Socialist Federal Republic of Yugoslavia⁵, and as such were included in the criminal legislation of Bosnia and Herzegovina. Domestic violence has been institutionally tackled in legislation since 2003 through adoption of the Gender Equality Law of BiH and in the criminal codes of the entities, and subsequently in 2005 through specific laws providing protection for the victims of domestic violence. In the context of BiH, the Istanbul Convention has provided a timely mechanism for guidance in the endeavour to combat violence against women and girls, not only by precisely and sufficiently defining the forms of violence and requiring that they be criminalised, but also by calling for an effective and “comprehensive framework, policies and measures for the protection of and assistance to all victims of violence against women and domestic violence”, thereby contributing to “the elimination of all forms of discrimination against women and promote substantive equality between women and men, including by empowering women”.⁶

At present, the BiH national legislative framework regulates establishment of the corresponding mechanisms to address gender equality and women’s rights, defining *inter alia* the responsibilities of the relevant institutions, namely the Agency for Gender Equality of BiH, the Gender Centre of the Federation of Bosnia and Herzegovina (FBiH) and the Gender Centre of the Republika Srpska (RS) in the process of combating and preventing gender based and domestic violence. However, there are a number of tasks ahead of BiH in order to secure the full implementation of the Istanbul Convention. Some of these refer to adjustments in legal frameworks, creation of conditions of its *de facto* implementation and enhancement of the support systems across the country.

In consultations with the national stakeholders, in the first place the Agency for Gender Equality of BiH, the need to strengthen the capacity of the Agency and other relevant BiH

⁵ See for example Grubić-Radaković, Lidija *Seksualna delikvencija u suvremenom krivičnom pravu* (Sexual delinquency in contemporary criminal law), available at http://www.vsrh.hr/CustomPages/Static/HRV/Files/GrubicRL_SeksualnaDelinkvencija.pdf

⁶ Chapter 1, Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008482e>

institutions, with the aim of supporting the establishment of a functional system of data collection and analysis of gender-based violence and femicide cases in line with the standards of the Istanbul Convention, was identified as one of the priorities. In that regard within the project “Raising BiH Institutional Capacity to prevent and Combat Violence against Women and Domestic Violence” an assessment of capacities of relevant national stakeholders to collect data in line with the provisions of the Article 11 of the Istanbul convention was conducted in April 2019. Article 11 stipulates the obligation of the state parties to collect disaggregated statistical data on all forms of violence defined by the Istanbul Convention.⁷ The data has to be collected in regular intervals and should be accompanied by field research on all forms of violence.⁸ The collection of administrative and survey data should be coordinated by a national body of the state Party.⁹

Purposeful, regular and systematic data collection is important for the development of effective policies to prevent and combat violence against women and domestic violence. The measurement framework and data collection tools crucial for development of effective national administrative and survey data collection mechanisms are elaborated in detail in the publication *Ensuring data collection and research on violence against women and domestic violence: Article 11 of the Istanbul Convention*¹⁰, which is translated into the local language under the current project. The Istanbul Convention prescribes the forms of the violence¹¹ on which specific data is to be collected; whereby kinds of data needed are suggested by the Explanatory Report of the Istanbul Convention.¹² Thus, the data collection as prescribed by the Article 11 of the Istanbul Convention is not only important for evidence-based policy development and the improvement of assistance measures that are at victims’ disposal, data is also needed for the state Party’s reporting obligation¹³ towards the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) established under the Istanbul Convention.¹⁴

⁷ The definitions of The Istanbul Convention and domestic legislation will be elaborated in more details in upcoming chapters.

⁸ Article 11 (a) and (b) of the Istanbul Convention.

⁹ Article 10 of the Istanbul Convention.

¹⁰ WALBY, Sylvia. *Ensuring data collection and research on violence against women and domestic violence: Article 11 of the Istanbul Convention*. Strasbourg, Council of Europe: 2016, available at <https://edoc.coe.int/en/violence-against-women/7138-ensuring-data-collection-and-research-on-violence-against-women-and-domestic-violence-article-11-of-the-istanbul-convention.html>

¹¹ Articles 3 and 33-40 of the Istanbul Convention.

¹² As it will be elaborated further in this assessment report the categories of information to be collected include: type of the violence as defined by the Convention; sex of the victim; relationship of the victim and the perpetrator; age of the victim; geographical location. For more see paragraph 76 of the Explanatory Report of the Istanbul Convention, available at <https://rm.coe.int/16800d383a>

¹³ BiH will receive the GREVIO questions in September 2019 and has to provide respective answers by February 2020. The GREVIO visit to BiH is announced for October 2020, and this an additional reason as to why this assessment is important for all stakeholders working on prevention and combatting of violence against women and domestic violence (GREVIO Provisional timetable for the first (baseline) evaluation procedure: 2016-2023 <https://www.coe.int/en/web/istanbul-convention/timetable>. Website accessed 20.06.19.

¹⁴ For more see Article 66 of the Istanbul Convention.

The main aim of the CoE project in BiH and the conducted assessment is to assist BiH institutions and other relevant actors¹⁵ in their efforts to establish a functional system of data collection and analysis of gender-based violence, domestic violence and femicide cases. The intention of this assessment report is to offer recommendations as how the existing BiH system of collecting administrative data can be enhanced in order to meet all standards prescribed by the Article 11 of the Convention. Promising practices that have been identified in other member states can provide some suggestions, as will be discussed below.

Within the Council of Europe project "*Raising BiH Institutional Capacity to Prevent and Combat Violence against Women and Domestic Violence*", the consultants undertook to produce a report on existing data collection practices in Bosnia and Herzegovina as regards preventing and combating violence against women and domestic violence. Particular attention was given to administrative data as the foundation for supporting the establishment of a functional system of data collection and analysis of gender-based violence and femicide cases. The present study consists of desk research and a fact-finding mission in both Entities of Bosnia and Herzegovina and primarily focuses on the legal frameworks and practices of administrative data collection in regard to domestic violence and violence against women.

1.1 Administrative data

Administrative data is data collected in the course of the regular work of any agency, in this case, when responding to gender-based violence. In the CoE collection of papers on implementing Art 11, Sylvia Walby writes: "Administrative data is routinely collected by the agencies with which the victims of violence come into contact as they seek justice, medical care, counselling, housing or other support"¹⁶ and proposes that a minimum set of uniform categories should be used in the records of all these organisations. An effective and efficient system of collecting administrative data is fundamental to all further efforts to assess service needs, evaluate the functioning of agencies, or develop policy. To this end it is desirable to agree among the agencies that could be responding to the same problem on concepts, definitions, and units of measurement. The 2008 Council of Europe study on collecting administrative data therefore suggested that agencies could design a basic data sheet that comprises questions of sex and age of victim and perpetrator, type of violence and relationship of the perpetrator to the victim, and according to the function of the agency, outcomes.¹⁷

¹⁵ Number of International organisations such as OSCE and UN Women, and national civil society organisations are also working on the issues regarding the full implementation of Istanbul Convention in BiH.

¹⁶ WALBY, Sylvia (2016) Ensuring data collection and research on violence against women and domestic violence: Article 11 of the Istanbul Convention. Strasbourg, Council of Europe, p. 12.

¹⁷ RUUSKANEN, Elina; AROMAA, Kauko (2008) *Administrative data collection on domestic violence in Council of Europe member states*. Directorate General of Human Rights and Legal Affairs, pp. 23-24. Available at [https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC\(2008\)Study_en.pdf](https://www.coe.int/t/dg2/equality/domesticviolencecampaign/Source/EG-VAW-DC(2008)Study_en.pdf)

Walby also recommends including geographical location and specifies data collection should enable each agency to report regularly the number of victims, number of events, and number of perpetrators on a regular basis. She argues, “the data collected needs to be relevant and coordinated. This is best achieved when the categories in which data is collected are the same as the categories used by the agencies which are working to protect victims and prevent the violence. The categories used in the measurement framework within which data is collected should correspond to the categories in the conceptual framework within which interventions by public agencies are developed.”¹⁸ To implement this approach, the legal frameworks for crime reporting and for protection of victims can be compared to the categories that have proven fruitful in periodic prevalence studies of Violence against Women that have been carried out systematically every five years in BiH since ratification of the Istanbul Convention, although by different agencies – 2013 Agency on Gender Equality of BiH, 2018 OSCE Prevalence study and the future 2021 study by Agency for Statistics as a part of the EUROSTAT Survey on GBV 2020-2022, for which funding from IPA2017 has been granted.¹⁹

Administrative data should be clearly distinguished from survey data collected through the questionnaires that may be sent to agencies, professionals or individuals, for example to gather in-depth information either for research or for policy questions. The present study has not explored potential approaches to field research and evaluation, because the first step towards any more systematic policy approach is to have a foundation of administrative data. Questionnaires must be framed and employed according to the highest standards of data protection and respect for the privacy rights of individuals; they will thus not include personal data and are usually shared in the aggregated form.

The explanatory report to Art 11 of the Istanbul Convention interprets the duty to collect disaggregated relevant statistical data to mean robust cross-nationally comparative data on both victims and perpetrators, and specifies that administrative data may include statistics compiled by health care services and social welfare services, law enforcement agencies and NGOs, as well as judicial data. Implicitly recognising that these institutions differ in what data they collect, §76 in the explanatory report concludes that “public authorities such as the judiciary, the police and social welfare services will need to set up data systems that go beyond the internal recording needs of the agencies”.²⁰

¹⁸ Walby, p.9

¹⁹ European Union Agency for Fundamental Rights, Towards a European survey on gender-based violence. 2019.

<https://fra.europa.eu/en/news/2019/towards-european-survey-gender-based-violence>

²⁰ Explanatory report to the Istanbul Convention, comments on Article 11, paragraph 76.

2. Legal definitions

2.1 Definitions in the Istanbul Convention

The Convention defines “violence against women”, “gender-based violence against women” and “domestic violence”. Under this Convention “violence against women” means all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.²¹ “Gender-based violence against women” is defined as violence that is directed against a woman because she is a woman or that affects women disproportionately.²²

Domestic violence is understood in the Istanbul Convention to mean all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.²³

Specifically, eight forms of violence are spelled out, of which seven should be criminalised if they are intentional conduct²⁴:

1. psychological violence;
2. stalking;
3. physical violence, including lethal violence;
4. sexual violence, including rape;
5. forced marriage;
6. female genital mutilation;
7. forced abortion and forced sterilisation;

One further form, sexual harassment, should draw either criminal or other legal sanction: since in a number of countries such behaviour in a work-related context is prohibited in labour law, making employers responsible for protection and sanctions.²⁵

In order to develop, implement and monitor policies and practical strategies against these eight forms of violence, either when women are targeted disproportionately or because they are women, and when the violence occurs in the relationship context of a family or domestic unit, states have an obligation to collect administrative data on a regular basis. The statistics should be collected from all statutory agencies that gain knowledge of gender-based violence or domestic violence in the course of their regular work.

²¹ Article 3 (a) of the Istanbul Convention.

²² Article 3 (d) of the Istanbul Convention.

²³ Article 3 (b) of the Istanbul Convention.

²⁴ For more see Istanbul Convention Articles 33-39.

²⁵ Article 40 of the Istanbul Convention.

2.2 Legal definitions of gender-based violence and domestic violence in Bosnia and Herzegovina

Violence against women and domestic violence are mainly regulated at the entity levels.

Violence against women in Gender Equality Law

The 2010 Law on Gender Equality of BiH that is applicable for the whole state of BiH (2010)²⁶ defines and prohibits gender-based harassment as a form of discrimination:

Article 5

(1) Harassment shall be considered as any unwanted behaviour based on gender that aims to harm the dignity of a person, group of persons and create intimidating, hostile, degrading, humiliating or insulting environment or achieves such effect.

(2) Sexual harassment shall be considered every unwanted form of verbal, non-verbal or physical behaviour of sexual nature that aims to harm the dignity of a person or group of persons, or has such effect, especially when this behaviour creates intimidating, hostile, degrading, humiliating or offensive environment.²⁷

A more general definition of gender-based violence in line with the Istanbul Convention is found in **Article 6**:

(1) Violence on grounds of gender shall be prohibited.

(2) Violence on grounds of gender shall be considered every action that causes or may cause physical, mental, sexual or economic damage or suffering, as well as threat to such action which prevents this person or group of persons to enjoy their human rights and freedoms in public and private sphere of life.

Article 29 provides that "A person who, on grounds of sex, commits violence, harassment or sexual harassment that endanger serenity, mental health or body integrity shall be punished with a fine or imprisonment for a term of six months up to five years.

Since police record offences, intervene to provide protection, and report crimes to the prosecutor based on the Criminal Code of their respective Entity, acts that violate the prohibition in Gender Equality Law will not enter the police database. In some cases the

²⁶ Law on Gender Equality of BiH – Consolidated version, Official Gazette of BiH No. 32/10

²⁷ It is notable that Labour laws in both entities prohibit direct and indirect discrimination *inter alia* based on sex (Article 8 of the Labour Law of Federation of BiH²⁷ and Article 19 of the Labour Law of Republika Srpska²⁷). Both laws explicitly prohibit sexual harassment and gender-based violence, using the definitions in the Istanbul Convention. The responsibility for sanctions falls on the employer, and as yet there is no methodology for collecting data on cases of sexual harassment and redress by employers.

prosecutor may consider violations of the Gender Equality Law as an additional aggravating circumstance to an offence against one of the entity level criminal codes. Such cases can be recorded within Prosecutor Office's and Court's databases. Also, if the violation of the Gender Equality Law appears as a matter of the civil proceedings this information is recorded within the CMS, and might thus be included in data collection.

Violence against women in Criminal Law

As stated above, the Istanbul Convention requires criminalisation of identified forms of violence, and data collection should report on these forms of violence. This is, to some extent, done within the Criminal Codes of the Federation of BiH²⁸ and of Republika Srpska.²⁹ Both Codes criminalise homicide and physical violence (degrees of bodily injury or bodily harm), and there are provisions foreseeing a higher penalty when physical violence is committed against a family member (RS) or an intimate partner (FBiH).³⁰ There is no criminal penalty for psychological violence except as domestic violence, and none for all non-consensual sexual acts, as called for by the Convention. This points to a significant gap in the definitions and categories for collecting administrative data, since widespread and harmful forms of violence against women are not identified in the legal system and are thus likely to be missing in datasets. Psychological violence was the most widespread form of intimate partner violence reported in the OSCE Survey, with 60% of women who have been in a relationship experiencing this from a partner.³¹ Furthermore, 45% of women in the same survey had been exposed to non-consensual acts of a sexual nature that they experienced as offensive or intimidating, and the perpetrators were most often someone the woman did not know at all or who was a friend or acquaintance.³²

Both criminal codes contain provisions against illegal abortion, penalised both when it is done with consent of the woman and when it is done without consent (Article 171 of the Criminal Code of FBiH and Article 130 of the Criminal Code of RS). Until recently, the other forms of violence covered by the Istanbul Convention were not explicitly dealt with in either criminal code, and thus the statistical reports available to the consultants did not present any data on these forms. In the future attention should be paid to collection of such data.

²⁸ Criminal Code of the Federation of BiH, Official Gazette of FBiH Nos. 36/03, 21/04 - cor., 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17

²⁹ Criminal Code of Republika Srpska, Official Gazette of RS 64/17

³⁰ FBiH defines family member by (current or former) marriage or cohabitation (Article 2 (23) CC), while RS gives a very broad definition in Article 190 (Domestic violence) including unwed partners and former partners and their relatives as well.

³¹ OSCE-led Survey on violence against women: A cross-regional survey on the Well-being and Safety of Women, Main Report, released online May 7, 2019. <http://www.osce.org/projects/survey-on-the-well-being-and-safety-of-women>

³² OSCE led Survey on the Well-being and Safety of Women, May 2019.

A significant change occurred when the Criminal Code of RS was overhauled and extended in 2017; it now includes specific offences of forced sterilisation (Article 134), Female genital mutilation (Article 133), coercion (Article 141), stalking (Article 144), sexual harassment (Article 170), and forced marriage (Article 183), all defined in close correspondence to the definitions in the Convention (see Annex). While the reporting forms the police deliver to the Ministry of the Interior in RS have been updated to include these offences, adequate statistical data were not yet available at the time of this assessment.

The provisions concerning sexual offences are of particular interest for this analysis, since prevalence studies regularly find that large numbers of women experience unwanted, offensive or threatening acts of a sexual nature outside of domestic violence.³³

In both Entities the Criminal Code recognises rape (in both entities “to compel another person to have sexual intercourse with him by force or threat of immediate physical attack upon that person or upon someone close to that person”) and sexual intercourse by abuse of position (in RS: “Who by abuse of position induces into sexual intercourse or any other equivalent sexual act a person who is in a subordinate or dependent position in relation to the perpetrator”, while in FBiH abuse of position is specified to mean “a person who is in a dependent position in relation to him, due to that person’s financial, family, social, health or other circumstances”). The Criminal Code of FBiH additionally criminalises forced sexual intercourse, and the Republika Srpska Sexual extortion; both define threats as a “means of coercing someone into having sexual intercourse”.

All of these offences describe different ways of coercing a person to have sexual intercourse or an equivalent sexual act; the paragraphs differ in their definition of the means used. Thus, while the means used are no longer limited to physical force, the sexual acts against a woman’s will continue to be criminalised only if intercourse or its equivalent takes place.

Despite the overhaul in 2017 The Criminal Code of Republika Srpska still defines rape narrowly. While sexual harassment is now defined (in Article 170) as it is in the Convention (“any verbal, non-verbal or physical unwanted behaviour of sexual nature that aims to violate the dignity of a person in the sphere of sexual life, which provokes fear or creates enmity, or a humiliating or offensive environment”), it is penalised only in the context of a relationship of power (“Whoever is sexually harassing another person who is in subordinate or dependent relationship to him/her, or who is particularly vulnerable because of age, illness, dependency, pregnancy, serious bodily or mental disability, shall be punished by imprisonment for a term not exceeding two years”).

³³ See for example Violence against women: an EU-wide survey. Main results (Vienna: European Union Agency for Fundamental Rights, 2015), <http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

Neither Criminal Code criminalises sexual assault or sexual violence more broadly than with regard to the actual perpetration of sexual intercourse or an equivalent act, and in both Codes the crime is defined by the use of force, threats or abuse of a position of dependency. Offensive, intimidating acts of a sexual nature by strangers, acquaintances, relatives, co-workers or clients at the workplace, for example, which are widespread and often have a severe impact on the well-being of the victimised woman as prevalence studies have repeatedly documented, do not seem to be considered acts of gender-based violence that can be criminalised, so that violence against women is only partially included in the data collected. While it is possible that the articles criminalising “Lewd Acts” (with a definition in FBiH that suggests a failed attempt at rape, and no definition in the RS law) might be brought to bear on such incidents, no indications of how that is applied were available.

While in the Criminal Code of Republika Srpska there is now explicit recognition of a number of forms of violence specifically named in the Convention, no plans for similar changes in the Federation of BiH are known. It will be difficult to ensure a comprehensive and effective system of administrative data collection that is aligned with the Istanbul Convention if within Bosnia and Herzegovina a number of forms of violence identified in the Convention are crimes in one entity and not in the other, and a significant part of the area of sexual violence is not criminalised in either entity. Data collection and analysis will thus need interim measures or categories to present an adequate picture. The definition of violence against women in the Law on Gender Equality thus has not been transferred to either criminal code.

2.3 Definitions of domestic violence as a crime in the Federation of BiH and the Republika Srpska

In both the Federation of BiH and Republika Srpska, the Criminal Codes specifically criminalise Domestic Violence, and the definition of the crime does include both physical and psychological elements.³⁴ The difference in the criminalisation of the Domestic Violence is in the fact that the Criminal Code of RS also criminalises violation of the protective measures and emergency protective measures imposed by the court on perpetrator of the domestic violence, and it also specifically includes as an aggravating circumstance when the offence is committed in the presence of a child.³⁵

The definitions of Domestic Violence as a distinct criminal offence are similar: in the Criminal Code of FBiH, it is domestic violence when someone “by use of violence, threatening behaviour or mental cruelty violates the peace, life, physical or mental health of any member

³⁴ Article 222 of the Criminal Code of FBiH and Article 190 of Criminal Code of RS

³⁵ Article 190 paragraph 5 of the Criminal Code of RS

of his family"; higher penalties are foreseen if the offence is committed against a member of the household, and if a weapon is used. Penalties rise further if the offence results in grievous bodily harm to, or impairment of health of any member of his family, or if any of the above offences is committed against a child or juvenile, and again if the harm results in a death.

In the Criminal Code of RS, it is domestic violence if someone "by violence, threat of attack on life and body, insolent or arrogant behaviour violates peace, bodily integrity or mental health of a member of his family or family household, and with that causes violation of physical or psychological integrity of that person". Here, too, there is a higher penalty if a weapon is used, and the penalty rises if the offence resulted in grievous bodily injury or impaired health or if the above criminal offence has been committed against a child or in presence of a child. Violation of protection measures is criminalised in the same Article.

2.4 Definitions in the Laws on Protection against Domestic Violence

Each Entity adopted a Law on Protection against Domestic Violence in 2005, and a revised version that clearly aimed to take account of the Convention in 2012 / 2013.

In the Federation of BiH, the **concept of domestic violence** is defined in Article 7: "For the purpose of this law, there will be considered to be domestic violence if there are grounds for suspicion that actions involving a member of the family are causing physical, psychological or sexual pain or suffering and / or economic harm as well as threats to the fear of physical, psychological or sexual violence and / or economic damage to another family member.

The law further specifies a comprehensive list of acts or the threat of such acts that can constitute domestic violence. These include any use of physical force, attacks or injury, causing mental pain or suffering, and verbal attacks, as well as sexual harassment, stalking, destruction of property, deprivation of liberty, and using violence or fear to undermine the right to economic or other independence. Physical and psychological violence and neglect towards children or towards older or disabled persons are also included.

In the Republika Srpska, the **Law on Protection from Domestic Violence 2012** defines domestic violence in **Article 6**: "In terms of this Law, domestic violence shall represent any act of violence of a member of family or family unit, which endangers tranquillity, mental, physical, sexual or economic integrity of another member of family or family unit." The list of acts that follows specifies, in contrast to the above, such that do not otherwise constitute a crime, stating that "any act of violence which does not contain elements of a criminal offence is a minor offence, and especially the following actions." These include threats and numerous forms of psychological violence and indirect ways of causing physical harm, such as exhaustion through labour or sleep deprivation, treating children in a degrading manner, withholding funds necessary to existence, denial of the right to economic or personal

independence, verbal attacks, limiting freedom of communication with family members or third persons, damaging or destroying property, and causing fear, humiliation, and feeling of inferiority. These actions were, until now, not crimes if occurring within the family unit; whether or not they entered into the relevant database might depend on how the police or the prosecutor dealt with the individual case, for example if a need for protection measures was recognised.

These provisions in RS for treating acts of domestic violence as a minor offence were in force until May of 2019. The effect has been that most incidents of domestic violence are recorded by the police as minor offences, which must have an impact on data collection, since minor offences can be dismissed with a fine or a reprimand.³⁶

2.5. Jurisdictions in RS and FBiH regarding violence against women and domestic violence with a focus on data collection

Division of powers and responsibilities in Bosnia and Herzegovina is impacted by the structure of the country, which consists of District Brčko and two entities, the FBiH which includes 10 Cantons, and the RS which is more centralised. The Federation of Bosnia and Herzegovina and the Republika Srpska both have their own Criminal code, Criminal procedure code, legislative authority and judiciary. Article III of the Constitution of Bosnia and Herzegovina prescribes that all governmental functions and powers that are not expressly assigned in the Constitution to the institutions of Bosnia and Herzegovina shall be those of the Entities, the Federation of Bosnia and Herzegovina and Republika Srpska, and a District Brčko. Thus, the legal frameworks relevant to achieving gender equality and addressing violence against women and domestic violence are regulated by the entities and in FBiH administered by the cantons, however, the commitment of the state of BiH to the Council of Europe and to the Istanbul Convention finds its expression in some overarching laws and institutions, and in this area the laws tend to be harmonised, with certain significant differences, and issued in parallel.

In the legal system of the State of Bosnia and Herzegovina, the investigation of crimes is led by the Prosecutor; thus, when a crime is suspected, the police must deliver the information and the evidence to the prosecutor. Police do have the power to deal with minor offences, either by referring them directly to the court of minor offences for adjudication, or directly in cases that only call for a reprimand or a small fine.³⁷

³⁶ This provision was deleted from the law as of 25 April 2019, but the revised version had not yet been published at the time of writing this report, and thus it is not yet in force.

³⁷ The following overview of the court system aims only to give a picture of where domestic violence cases are dealt with, and in consequence, where administrative data could be documented.

In FBiH the Law on the Prosecutor's Office of FBiH established the FBiH Prosecutor's Office; there are also 10 cantonal laws establishing prosecutor's offices, and in each canton there are both municipal and cantonal courts, with their competencies determined in the Law on Courts in Federation of BiH. Each court has both a criminal department and a department that deals with minor offences. The municipal court has first instance jurisdiction for criminal offences that draw a penalty of up to 10 years in prison, as well as first instance jurisdiction for civil proceedings, and first instance jurisdiction for all misdemeanour cases. The Cantonal court has first instance jurisdiction for criminal offences for which more than 10 years of imprisonment is prescribed and second instance jurisdiction to decide on appeals from decisions of Municipal courts or from rulings on misdemeanours.

In RS the Law on the prosecutors' offices established six District prosecutors' offices and the Prosecutor's Office of RS, and the Law on Courts in RS determines their competencies and number. Basic courts are established on the territory of one or more municipalities; there are 28 of them in Republika Srpska. Like the municipal courts in FBiH, the basic court has first instance jurisdiction for criminal offences that draw a penalty of up to 10 years in prison, as well as first instance jurisdiction for civil proceedings, and first instance jurisdiction for all misdemeanour cases. District Courts are established for the territory of two and more basic courts; and there are seven in Republika Srpska. District courts have first instance jurisdiction for criminal offences for which more than 10 years of imprisonment is prescribed and second instance jurisdiction to decide on appeals from decisions of district courts.

While the prosecution services and courts are regulated by separate laws in the two Entities, their structures are quite similar. In this area, then, the obstacles to a harmonised collection of data do not seem to lie in differences between the Entities, but rather in a somewhat fragmented justice system that hinders coordination among actors at the local level. As will be seen, however, the criminal justice system in Republika Srpska is somewhat more centralised and seems more accessible to a coordinated approach than that in the Federation of Bosnia and Herzegovina.

3. Obligation to collect data in the domestic legal framework arising out of the Istanbul Convention

Article 11 of the Istanbul Convention requires that Parties collect disaggregated relevant statistical data at regular intervals on cases of all forms of violence covered by the scope of the Convention. Relevant are the forms of gender-based violence that are disproportionately committed against women, for which there is a specific obligation to ensure that all such acts are penalised, whether by inclusion in more general provisions or by specific criminal offences. The Convention refers to the need for a comprehensive framework and for coordination of data collection as a duty of official bodies.

In this assessment report the focus will be on administrative data, while survey data may be dealt with in a separate assessment. Administrative data collection in Bosnia and Herzegovina runs along two tracks that have not yet been brought together to form a coordinated system: (1) Crime reporting and (2) data collection on domestic violence.

(1) The National Agency for Statistics of BiH is responsible for compiling statistics on all crimes. In cooperation with the Statistic Bureaus of Entities data is collected from the judiciary on criminal offences that the police report to the prosecutor, for which someone is charged, and on court proceedings and convictions. BiH also reports to EUROSTAT with crime statistics, and the statistics agencies act as the focal point for gathering data for the EUROSTAT questionnaire. The questionnaire is filled out by the police at all levels in BiH, by the BiH Ministry of Justice, the High Judicial and Prosecutorial Council of BiH, the Border Police, and any other competent institutions; each fills out the part requested by the questionnaire. Data from the police are reported from both entities to the national statistics bureau but are not disaggregated in line with the Istanbul Convention and do not permit estimates of gender-based incidents.

The statistical forms/questionnaires used for this purpose are the forms established in each Republican Institute for Statistics within the former Yugoslavia. All countries in the region, Montenegro, North Macedonia, Albania, Serbia, BiH etc. have the same statistical forms/questionnaires and their state Statistical Agencies collect data and publish crime statistics on this basis. The forms still have the same names (SK-1, SK-2, SK-3 and SK-4). Only in Republika Srpska were these forms established after 2011 because they were only starting to establish crime statistics, while the Bureau of the Federation of BiH continued to work with the same patterns that the then Bureau of Statistics of the then Republic of Bosnia and Herzegovina had so far worked with. The SK-1 Forms record sex of victim and of perpetrator,

and include data on the injured person / victim of the criminal offense and “kinship of a perpetrator and a victim (father, mother, child, wife, etc.)”. Thus, information is on file that would permit statistics according to criminal offences disaggregated by sex and age of victim and of perpetrator and relationship between them, as prescribed by the Istanbul Convention at a minimum, but such differentiated data is not being reported to the public. The Statistics Agency publishes the data according to chapter of the criminal code rather than individual criminal offenses, due to the large scope of data.³⁸ Data on each criminal offense could be obtained separately on request, but according to the information from the fact-finding mission, no Gender Centre has ever made such a request.

(2) Data collection on domestic violence has its foundation in the two Entity Laws on Protection against Domestic Violence, both of which establish a reporting duty. For example in FBiH: “Health and social workers, teachers, educators, medical, educational and other institutions and bodies, as well as non-governmental organisations who, in the performance of their duties, become aware of the acts of the domestic violence referred to in Article 7, Paragraph 2 of this Law, shall report immediately such acts of domestic violence to the competent police administration. The report referred to in paragraph 1 of this Article shall also be submitted by family members, as well as by any citizen who becomes aware of the acts of domestic violence, to the competent police administration.” In each Entity, recording data and reporting by police to the relevant ministry is primarily regulated in Rule Books that specify procedures as well as by cooperation agreements.

The primary responsibility for data collection on domestic violence is regulated differently in the two entities. In Republika Srpska the Ministry of the Interior has set up a police reporting database for all crimes, and domestic violence offences are centrally registered there. The Ministry of Family, Youth and Sports is in charge of reporting on cases of Domestic violence and they have developed the questionnaires (that are also part of specific bylaws, i.e. Rule Book) on the minimum data required by the Istanbul Convention. These are sent on semi-annual basis to the relevant institutions (courts, police stations, social welfare centres, schools and health institutions) and additionally to NGOs running shelters and SOS Hotline. The Gender Centre does not collect data directly, but draws on the biannual reports from the ministries for their reports.

In the Federation of BiH cases of domestic violence are registered in a database that was developed and is administered by the Gender Centre; its core focus is joining police reports and social welfare centres’ reports. Further information is collected from the judiciary and from the NGOs which run shelters and the SOS Hotline. The database has a modular approach: Each sector has its own administrator; for police it is the ministry of each canton. Data collection and access are restricted to parts relevant to the sector. For example social

³⁸ The Statistics Bureau of FBiH and the Statistics Bureau of RS follow the same procedure in publication.

workers have access only for protective measures. Only police officers who are working on a case have access to that case. The database is largely in line with Article 11, but does not collect information on the type of violence. It does allow the Gender Centre to report not only on cases but on protection orders, and judicial outcomes.

Consequences of the two-track system

All forms of violence against women occur both within the domestic unit and outside of it. A two-track system doubtless makes multi-sectoral cooperation in developing methods of data collection easier, as not so many variables have to be dealt with at the same time. It was already challenging to develop a reporting template in FBiH that police and social workers both found workable for domestic violence; including the health sector has proved more difficult. A database exclusively for the use of police in RS was set up to include all crimes, but has remained nonetheless distinct from the data collection system on domestic violence. This is a difficulty that seems to arise when a dedicated law against domestic violence stands alongside a criminal code for dealing with violence in general. As noted below, this dilemma can be resolved when, as in Spain, all criminal cases without exception are referred to a specialised domestic violence court if at any point during proceedings an element of domestic violence is discovered. This is not a system that can be easily adopted elsewhere, however. The immediate effect of a two-track system is that it is hard to grasp the full extent of violence against women or statistically depict areas of overlap.

In order to establish a comprehensive and functional system of administrative data collection, unified and simplified categories for key elements such as type of violence, age and relationship could be useful. It is generally helpful to group these from the outset (for example, standard age intervals, or categories of relationship such as married/cohabiting, former partner, other family member, known person, unknown person), so that the data can be usefully compiled. The most difficult issue might be “type of violence”, since agencies outside the criminal justice system are not likely to refer to the criminal code, and at present, the criminal codes of FBiH and RS are not harmonised. The UNODC Statistical Commission worked for some years to find a classification of crimes that can be used as common benchmarks. “The ICCS³⁹ avoids the difficulties of variations in legal definitions by adopting a framework based on behaviour rather than legal category” on four levels.⁴⁰ In combination with the basic categories of sex and relationship, the ICCS categories might make a basic template possible that could be easily used by agencies across the legal, social and health and education sectors. Alternatively, the types of violence that are now listed in some of the more elaborated reporting forms for domestic violence could perhaps be reduced and aligned with

³⁹ “International Classification of Crimes for Statistical Purposes” (ICCS), available at <https://www.unodc.org/unodc/en/data-and-analysis/statistics/iccs.html>

⁴⁰ Walby 2016, p. 31-32

those defined in Istanbul Convention, with the addition of offences that have newly entered the criminal codes.

Missing in the present system of data collection until now were data on the most frequent criminal offences that are not subsumed under domestic violence, to wit, sexual assault, rape and femicide, as well as the less frequent offences. Since the revision of the RS Criminal Code that now expressly defines most (if not all) forms of violence from the Istanbul Convention as specific offences, these are now included in the RS police database, but sexual assault (or offences against sexual integrity in general) is still not included.

The challenge for data collection across the country will be either to undertake a parallel revision of the FBiH Criminal Code to that in RS, or to define how the violent acts in question are criminalised under more general headings, should this be the case. As an example of the latter approach: The Criminal Code of RS has established Article 144 on “Stalking”; this behaviour can be found in the Criminal Code of FBiH in Article 183 “Threatening Security”. Neither the description nor the penalty is exactly the same in the two codes, but for statistical purposes reported offences could be considered comparable

4. Current situation regarding the data collection in BiH

During a two-day fact-finding mission meetings were held with the following stakeholders, who were sent an introduction to the project and key questions in advance.

- Gender Centre of the Republika Srpska
- Ministry of family, youth and sports of Republika Srpska
- Ministry of Interior of Republika Srpska
- Gender Centre, Federation of Bosnia and Herzegovina
- Ministry of Interior, Federation of BiH, Sarajevo
- High Judicial and Prosecutorial Council of the State of Bosnia and Herzegovina
- Organisation for Security and Co-operation in Europe, Mission to Bosnia and Herzegovina
- Agency for Gender Equality, State of Bosnia and Herzegovina
- Agency for Statistics of the State of Bosnia and Herzegovina

The representatives of the institutions visited explained their data collection methods and made reporting templates and statistical reports available. Repeatedly, however, it was asserted that a reporting duty exists only for domestic violence, and thus methods of data collection would only be relevant in that area. One integrated statistical report on domestic violence was available for each Entity, in both cases covering both police reported data and

data from social work centres, courts (on protection measures as well as on cases closed), safe houses and SOS helplines, and in RS also from institutions of health care and education. These reports all gave information on age and sex of victim and perpetrator and the relationship between them, and the report from Republika Srpska gave information on the types of violence involved⁴¹; there was also information in children affected. Thus, reporting is at present only partly in line with the Istanbul Convention.

Reports on gender-based violence outside of the domestic unit were not available; one report on police reported crimes did not break the data down to specific criminal offences but only used broad categories such as “offences against life and body”. In the course of further inquiry, this study found that a large number of forms, templates, rule books and questionnaires are in use for collecting data, especially, but not only, for cases of domestic violence. Some of these forms are quite long, and it is not always clear what purpose is served by asking for so many details.⁴² There also seem to be multiple questionnaires in use, for example, when courts are asked to fill out a questionnaire from the Statistics Agency and also a questionnaire from the Statistics Agency after each case is closed. Initiatives have been undertaken to agree on unified reporting forms among the three statistical agencies, the High Judicial and prosecutorial Council of BiH and other relevant institutions, but no agreement could be reached.

4.1. Analysis of the current situation regarding data collection

As described above, in both entities of BiH there are separate pathways for collecting data on crimes of violence as defined in the Criminal Code, and domestic violence, and as of yet no systematic methodology for a harmonised system of recording data on the forms of violence specifically named in the Istanbul Convention. Thus, one and the same incident can be classified as domestic violence or as an act of criminal violence under the criminal code, and crime reporting is not sufficiently disaggregated to identify cases of violence against women as such.

When reporting requirements of either national or international bodies include questions on prosecution of specific crimes related to violence against women, both Gender Centres send questionnaires to the prosecutor’s offices or courts in their entities requesting these data. From the questionnaires received from the Gender Centre of the Federation of BiH the data collected is only partially in line with the Istanbul Convention (gender disaggregated information on both perpetrator and victim for both adults and minors, and information on the number of received reports, cases brought forward for prosecution and results of the

⁴¹ Types of violence: engendering serenity, psychological, physical, sexual, economic, or combination.

⁴² For example, asking the victim for the names of her parents, her education level and the source of her income.

court proceedings – including dismissals, verdicts, sentences and measures imposed); for example there is no information on relationship between perpetrator and victim⁴³.

The Ministries of Interior of both entities publish reports on criminality for each entity separately. The Ministry of Interior of the Federation of BiH publishes the compiled reports on criminality in all the cantons on monthly basis⁴⁴, while the Ministry of the Interior of Republika Srpska publishes the reports on criminality in Republika Srpska either on annual or semi-annual basis.⁴⁵ However, in similar way as the Statistics Institutions' reports on crime collected from judiciary, none of the police reports present disaggregated data in accordance with the Istanbul Convention⁴⁶ requirements.

Apart from domestic violence cases and the EUROSTAT questionnaire, it seems that there is no compilation or comparison of information from both police and judiciary.

Thus, while in both Entities and on the national level in BiH official bodies are tasked with data collection, there are difficulties with co-ordination and gaps in coverage, as well as with data analysis.

Coordination

Under the authority of the Ministry of Human Rights and Refugees, a comprehensive "Framework strategy for the implementation of the convention on preventing and combating violence against women and domestic violence in Bosnia and Herzegovina for the period 2015 – 2018" was published⁴⁷, explicitly joining up the strategic planning of the Republika Srpska and that of the Federation of Bosnia and Herzegovina, stating: "The implementation of the Convention on Preventing and Combating Violence against Women and Domestic Violence shall be aligned with the strategic documents of Republika Srpska and FBiH in regards to domestic violence. The intention of this Strategy is to serve as a platform for the creation and implementation of the Entities' strategies to ensure harmonisation between them and the state level institutions."⁴⁸ It was defined as Strategic Goal 4.1 "To define a single methodology for collection of administrative data on violence against women and domestic violence"⁴⁹ and proposed as a measure of success that methodology and indicators for the collection of administrative data, forms for statistical processing and procedures for data

⁴³ From email communication/clarifications with the Gender Centre of the Federation of BiH on 31 May 2019.

⁴⁴ Federal Administration of the Police <http://www.fup.gov.ba/?cat=20>

⁴⁵ Republika Srpska Ministry of the Interior http://www.mup.vladars.net/index.php?viest=informisanje_javnosti&vrsta=statistike

⁴⁶ The Federal Administration of the Police reports on the chapter of the criminal code, while the Ministry of Interior of Republika Srpska publishes numbers of each crime but without any further elaboration.

⁴⁷ Framework Strategy for the implementation of the convention on preventing and combating violence against women and domestic violence in Bosnia and Herzegovina for the period 2015 - 2018 https://arsbih.gov.ba/wp-content/uploads/2015/10/CAHVIO_Strategy.pdf

⁴⁸ Ministry of Human Rights of Bosnia and Herzegovina, Framework strategy for the implementation of the convention on preventing and combating violence against women and domestic violence in Bosnia and Herzegovina for the period 2015 – 2018, pp 9. Available at https://arsbih.gov.ba/wp-content/uploads/2015/10/CAHVIO_Strategy.pdf

⁴⁹ Ibid, pp 51.

exchange would be defined. However, at present, separate strategies in the two Entities are the actual basis for implementation of the Convention. The Gender Action Plan for 2018 – 2022, adopted by the Council of Ministers of Bosnia and Herzegovina states: "The RS government did not give its consent to the implementation of the Framework Strategy, arguing that, according to the constitutional division of competencies in BiH, violence against women and domestic violence is within the competences of the Entities, but it takes all necessary measures for the direct application of the Istanbul Convention in the RS."⁵⁰

Thus, Bosnia and Herzegovina does not have a comprehensive and coordinated system of data collection, but a number of official bodies with different tasks and methods collecting quite a lot of data, most of which concerns domestic violence only. Data collection with regard to gender-based violence more generally, as named on the Convention, is limited.

In the Republika Srpska, all reported crimes recognised in the Criminal Code are registered electronically in the database of the Ministry of the Interior, to which all police stations have access. The information from this database is provided in statistical form to outside users such as EUROSTAT, UNDOC, Ministry of Family, Youth and Sport, OSCE, Gender Centre of Republika Srpska, and the Statistics Office of the Entity. The resolution of cases can be followed from the registration of the report to its outcome in court, if there are court proceedings. Violence against women could in principle be identified by disaggregating the crime reporting data, but up to now these have not been published in disaggregated manner.

In the Federation of Bosnia and Herzegovina, the police register the reports of criminal acts with their respective cantonal Ministry of the Interior. These cantonal ministries do not share a common database for the police but put together and deliver data on the cases that the police have delivered to the prosecutor after assessing that further action is called for. The Federal Administration of the Police also compiles the data on crimes and publishes it once a month. However, data is not published in disaggregated manner. The Federal Statistic Bureau is officially authorised for collection, evidence, processing, analysis and publications of the data and information on the territory of the Federation of BiH, but not all cantons do in fact report.

The Courts and Prosecutor's Offices are joined throughout the country in the Court Management System that is managed by the High Judicial and Prosecutorial Council (HJPC). This system consists of two databases one for courts (CMS) and one for the Prosecutor's Offices (TCMS). The data recorded is on the individual cases appearing before the Prosecutor's Offices and Courts. The information contained is relevant for the prosecution. Until this year the registration of the gender of the parties in the proceedings was optional, but since this year is compulsory and thus there is a need to raise awareness among responsible officials on

⁵⁰ Official Gazette of Bosnia and Herzegovina No. 89/18

data collection and gender desegregated data collection. However, the databases do not enable connection between police reports submitted to the prosecutor's office, and there is no connection between prosecutor's office and the court database. Therefore, reclassifications of the crimes during the course of investigation or in court, where evidence and testimony may lead to applying a different paragraph or higher or lower degree of severity than was initially recognised, cannot be followed. Also, information on the relationship between victim and perpetrator is not collected⁵¹. The reports of the courts, prosecutor offices and HJPC do not contain disaggregated data. However, the courts and prosecutor's offices are also required to fill in the detailed questionnaires on completed cases to the entity statistic bureaus, as well as questionnaires about prosecuted cases of both domestic violence and crimes of violence against women sent to them by the Gender centres, and in case of Domestic Violence in Republika Srpska by the Ministry of the Family, Youth and Sports of RS.

The National Agency for Statistics is responsible for compiling statistics on crimes, however, this is not done directly from police reports. The Statistics Bureaus of the Entities collect data from the prosecutor's offices and courts with a reporting questionnaire that is to be filled out when each case is closed⁵², and the aggregated data set is sent to the national Bureau for compilation and publication of the annual report⁵³. In their annual statistical report, there is a section on crime. Although these reports do show numbers of perpetrators and of victims by gender, they are not broken down according to criminal offences, but only to groups of offences, such as "offences against life and body" or "against property". More detailed data, such as the relationship between victim and perpetrator, is not presented.

Within their jurisdiction stemming from the Gender Equality Law of BiH (Article 27) the Gender Centres are *inter alia* required to regularly and periodically monitor the situation with regards violence against women and domestic violence. This monitoring includes data collection, which they collect from the other institutions in respective entities which collect relevant administrative data. Article 22 of the Law on Gender Equality stipulates:

- (1) All statistical data and records collected, recorded and processed in state bodies at all levels, public services and institutions, state and private corporations and other entities must be gender disaggregated.
- (2) Statistical data and information collected, recorded and processed pursuant to para. 1 of this Article must be an integral part of statistical records and accessible to the public.

⁵¹ As per 24 April 2019 fact finding meeting with the High Judicial and Prosecutorial Council.

⁵² These reporting forms are not strictly administrative data collected in the course of routine work, but additional requirements. As such, they are not always filled out as intended.

⁵³ Bosnia and Herzegovina Agency for Statistics, Demography and Social Statistics, http://www.bhas.ba/index.php?option=com_publicacija&id=1&lang=en&Itemid=

Furthermore, the Law on Gender Equality prescribes that regular reports are to be published by the Gender Centres, with the state Agency for Gender Equality of BiH responsible for coordinating the methodology. Since all forms of violence against women are prohibited by the Gender Equality law, the Gender Centres should be requesting and reporting disaggregated data on violent crimes. From meetings in the fact-finding mission it seems that for most agencies the existence of a system of reporting and collecting data on Domestic Violence removed any sense of urgency concerning the need for disaggregated data on crimes, since domestic violence would be identified by use of the specific legal frameworks and reporting agreements.

Both Centres report annually to the respective entity governments on the state of gender equality in the given entity. These reports contain the collected information on violence against women. The current situation seems to be that differentiated data on violence against women outside of the domestic unit are either not requested from or not delivered by the institutions that have (or could extract) such data, at least not in a regular or legally prescribed manner.

Some useful approaches to coordination exist and could be further developed. The Gender Centre of Republika Srpska has already been cooperating with the Statistics Bureau of Republika Srpska⁵⁴ on the annual reporting on situation on gender equality in Republika Srpska "Women and Men in Republika Srpska"⁵⁵ This report already contains some gender disaggregated information collected from the prosecutor's offices and courts in Republika Srpska as regards some violence against women crimes and offences in relation to the number of reported persons who committed crimes/offences to the prosecutor's offices, the number of persons who were indicted for the crimes/offences and the number of persons who were convicted. This cooperation potentially could be extended in order to produce more comprehensive reports in line with Istanbul Convention.

Coverage

It was evident from meetings with stakeholders that data collection as a strategic goal for implementing the Istanbul Convention was primarily, often totally focused on Domestic Violence only. This is complex, since Domestic Violence is legally regulated on three levels: in the Law on Gender Equality for the state of BiH, in the Criminal Codes of the two Entities, and in specific Laws on Protection against Domestic Violence, again in each Entity. All of these laws have been revised at least once within the past 15 years, some quite recently, which must lead to some discontinuity in data collection. There is as yet no coordinated system for collecting and reporting data on gender-based violence outside of intimate partner

⁵⁴ From the email communication/clarifications with the Gender Centre of Republika Srpska on 31 May 2019.

⁵⁵ See for example report for 2017

http://www2.rzs.rs.ba/static/uploads/bilteni/zene_i_muskarci/Zene_i_muskarci_br_9_web.pdf

relationships, and even databases on police-recorded incidents of domestic violence are not harmonised across the two Entities.

In the Federation of Bosnia and Herzegovina, in the context of its obligation as a coordinator for development and monitoring of the Strategy for prevention and combating domestic violence (2013 – 2017)⁵⁶, the Gender Centre maintains a database specifically for domestic violence cases, and it is used directly by police and Social Welfare Centres; it is also accessible to the NGO-run shelters. Each organisation can enter data and see only the data from their own sector. The Rule Books⁵⁷ provide a fairly extensive form for police to use when reporting an incident of domestic violence; they include not only the minimum data according to the Convention but socio-demographic and other personal information. In the annual report of the Gender Centre data is provided from the cantonal ministries of internal affairs on criminal charges of domestic violence and from the municipal courts on outcomes, as well as figures for the number of the victims of domestic violence who were placed in safe houses and numbers of calls to the SOS Hotline 1625. The Gender Centre reports to the Government of the Federation of BiH annually about the implementation of the Strategy. The Centre also made five-year report on the Implementation of the Strategy (2013 – 2017)⁵⁸ as the basis for the new strategic document (2018-2020).

In Republika Srpska, responsibility for collecting data on domestic violence rests with the Ministry of the family, youth and sport.⁵⁹ Since 2013/14 all relevant agencies and institutions are obligated to sign a cooperation protocol with the relevant ministry to ensure delivery of data on domestic violence cases twice yearly. There is a Rule Book for data collection⁶⁰ which prescribes the forms to be used. Police, social welfare centres, health care centres, and schools record cases accordingly, and the Ministry of the family then issues a semi-annual report on “Information based on the institutions which provide protection in accordance with the Rule Book on content of the evidence and reports on violence in family”.⁶¹ In this report, forms of violence within the domestic violence cases are differentiated as

- endangering serenity,

⁵⁶ The Official Gazette of the Federation of BiH No. 22/03, The implementation of the Strategy has been extended until the end of 2020 by the Action Plan for the Implementation of the Strategy for prevention and combatting domestic violence 2018-2020, Official Gazette F BiH 201/18

⁵⁷ The Rule Book on the method of implementation of the protective measures imposed on perpetrators of domestic violence which are under jurisdiction of the police, Official Gazette of the FBiH 49/01 and 95/18 and the Rule Book on content of the content and the method of evidence on imposed protective measures, persons protected by the protective measures and violent persons to whom the protective measures are imposed, Official Gazette of FBiH 95/13

⁵⁸ Report on Implementation of Strategy for prevention and combating domestic violence (2013 – 2017), Official Gazette of F BiH 29/18

⁵⁹ Law on protection from the domestic violence, Official Gazette of RS 102/12, 108/13 and 82/15 and Strategy on the protection from domestic violence of Republika Srpska (2014 – 2019) available via the web page of the Government of Republika Srpska.

⁶⁰ Rule Book on Content of Evidence and reports on domestic violence, Official Gazette 71/13

⁶¹ Available at <http://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpos/oPorodica/Pages/Splash.aspx#collapsible0>

- psychological violence,
- physical violence,
- sexual violence,
- economic violence, or
- a combination of these types.

They also issue an annual report “Information on implementation of the general protocol on action in cases of Domestic Violence”,⁶²

These categories of types of offence within domestic violence are in line with the Istanbul Convention, but to meet the Conventions obligations as a Party, BiH would also need to differentiate these types of violence in the crime statistics. The forms in the Rule Books for crime statistics to be collected from prosecutors and courts do not foresee anything other than reference to the article of the criminal code.

Data analysis

While it can be seen from the reports and the Rule Books that reporting forms require not only the minimum five categories of information but a great deal more besides, the reporting consists for the most part of descriptive tables for each variable, and much of the information called for in the reporting template is not used in the reports. Also, when the summarised tables are grouped in specific categories, as is the case with the Domestic Violence forms reporting in Republika Srpska, they only make sense for that level of grouping, but further analysis is impossible. For example, it is possible to see how many women and men from which age group were victims of domestic violence, and it is possible to see how many women and men were victims of each separate type of domestic violence. But it is impossible to combine these two groupings: so, it is not possible to see for example how many women of certain age group were victims of psychological violence.

Through data analysis, by a systematic linkage of variables, collected data can become much more useful for policy and practice than it is at present, because patterns over a large number of cases can be identified. It could be asked, for example, what types of violence are more likely to lead to certain types of protection orders, or to what extent women who are protected by court orders nonetheless need to be placed in a safe house. Existing publications do not allow connections of this kind to be seen.

⁶² The annual Information on Implementation of General protocol on Action in Cases of Domestic Violence are available via the web page of the Government of Republika Srpska.

5. Promising practices and their potential relevance for BiH

In the Council of Europe studies addressing the need for administrative data, some promising practices have been identified; in developing data collection practices for BiH these experiences could be considered, and possibly comparable approaches designed. The 2008 study, while focusing on domestic violence only, underlines the importance of involving all relevant authorities, agencies, institutions and NGOs in the process of developing a realistic data collection form, and describes how this was done in Finland. When the coordinating body arrives at conclusions concerning sufficiently uniform definitions and categories of information, implementation can be supported if the recommendations include suggestions on how the actual, practical change in recording data could be made in the data system.⁶³

Relevance for BiH : The gaps in coordination and coverage of data collection noted above, especially concerning gender-based violence beyond the domestic unit, could be addressed in a comparable procedure. The responsible authorities for data collection in both Entities have been training professionals to record data, and their experience, particularly with the value of multi-professional seminars, could be a fruitful approach in designing data collection to cover gender-based violence more broadly.

In the papers on implementing Article 11 of the Convention, the national registers in Spain and Denmark are described as promising practices in administrative data collection. In Spain the register is located in the Ministry of Justice. "The register holds data about two forms of violent crime: gender-based violence and domestic violence. It includes information about the victim (including sex, age and relationship with the accused), the accused, the punishable offence, location and interim measures (e.g. protection order) and final judgments. The National Statistics Institute (INE) collects two types of data: protection orders and the final judgments it receives from the Ministry of Justice."⁶⁴ Practical procedures have been developed to cross-check the files of these two institutions and record information about the offence according to the Criminal Code. The data collection is doubtless facilitated by the Organic Law on Gender Violence, which ensures that criminal violence of a man against a woman will be taken first to the specialised domestic violence courts.

Denmark has taken the approach of collecting statistics on crimes of an interpersonal nature such as violence, rape, and robbery, in a series of registers that are linked by the ID numbers

⁶³ RUUSKANEN, Elina; AROMAA, Kauko (2008) *Administrative data collection on domestic violence in Council of Europe member states*. Directorate General of Human Rights and Legal Affairs, pp. 20-22.

⁶⁴ WALBY, Sylvia (2016) *Ensuring data collection and research on violence against women and domestic violence: Article 11 of the Istanbul Convention*. Strasbourg, Council of Europe, p. 15.

of victim and perpetrator. The register of crimes originates with police statistics and also contains information on court verdicts; it is updated in accordance with changes in the charges during the investigation and court procedures.⁶⁵ There is also a register of hospital health care, including outpatient information, and cases can be identified as relevant if the patient gives as “reason for admission” the category violence/ intentional injury. Denmark also has systematic data on the use of shelters, which are publicly funded, and again data is registered by the woman’s personal ID number.⁶⁶ Transfer of the data collection described for Denmark to other countries is limited; it rests on a general conviction that social services should be provided by the state, and data from the health system on violence is, on the other hand, categorised only when the woman decides to give that information, and there are no data on the perpetrator or the relationship.

Relevance for BiH :

In both Entities a central database for domestic violence incidents is already in place. It might be worth considering extending this database to cover violent offences of an interpersonal nature, as that would make it possible to disaggregate the data as called for by Article 11 of the Convention. The usefulness of the database would be substantially augmented if cases were then updated in accordance with changes in the charges during the investigation and court procedures, as well as recording protection orders and court outcomes. The current practice of asking prosecutors and courts to fill out a questionnaire when the case is closed does not seem ideal, since it is likely to be perceived as additional work of uncertain importance, and not as part of the administrative data inherent in the work that these institutions do.

Generally, it must be said that promising practices cannot be “transplanted” to countries with different legal, political and cultural backgrounds. The examples also show that it is difficult, and can be counterproductive, to ask agencies and professionals to require information from victims of gender-based violence that it is not relevant to the core tasks of that agency. Practices that have proven useful in the framework of different contexts have often inspired changes as a result of interchange of experiences in Europe, but only after redesigning them to fit the context. Thus, looking at examples that worked well elsewhere does not mean that those should be implemented in BiH, but serve rather to show that the carefully designed data collection relevant for the context and its purposeful use can be effective in the effort to overcome gender-based violence and domestic violence.

⁶⁵ Ibid, p. 15

⁶⁶ This part of the Danish system could be objected to by NGO run shelters that promise confidentiality.

6. Conclusion / Recommendations

In the short term,

- 1) At present Bosnia and Herzegovina does not provide comprehensive and disaggregated statistics on the main forms of violence against women, as set out in the Istanbul Convention. In principle, however, the reporting forms now in use often contain the necessary minimum information. A first step towards meeting this obligation would be to ask the National Statistics Agency for a more detailed breakdown, disaggregated by gender and relationship, of the statistics on the most relevant violent crimes. This would offer a first approximation of data on violence against women. A sustainable approach to a comprehensive and harmonised system of data collection could begin through a discussion among stakeholders as to which agencies and which procedures could be best suited to designing and implementing such a system. The Gender Centres of the entities might request disaggregated data on relevant crimes according to their Criminal Code both from the statistics bureau of their entity and from the BiH Statistics Agency, or it might be better approached through cooperation between the BiH Agency for Gender Equality in cooperation with the BiH Agency for Statistics, with the aim of developing comparison mechanisms for reducing the gaps and errors in compiling the data. Alternatively, it might be preferable to ask the Court Management System to build an overview of disaggregated statistics, and to design a method for connecting the data from prosecutors and courts with the data from police reporting, both for violent crimes and for domestic violence.
- 2) Data collection on Domestic Violence could be improved by tracking the pathway of reported incidents of domestic violence into and through the judiciary when measures for victim safety have been initiated. The duty of the police to request protection measures should ensure that each incident of domestic violence that is identified as posing a danger is registered with the court within 12 hours. Statistics from the Gender Centre of FBiH show a steady rise in the annual number of protection orders applied for and also for those issued since 2006.⁶⁷ Also, the form for reporting on requested protection measures include information on the types of violence that have occurred. The data from the Republika Srpska do not show a similar trend, but the elimination of the provision that domestic violence incidents be treated as a minor offence may lead to an increase in protection orders. Better links between police reported incidents and judicial handling of cases could be achieved by a practice of

⁶⁷ They also show that the vast majority of convictions in municipal court end with a suspended sentence.

routinely “flagging” domestic violence reports, as is done in England and Wales.⁶⁸ This would allow, by way of a simple checklist, to record later whether a criminal charge, a criminal conviction, or a judgement in the court of minor offences ensued.

In the longer term

- 3) A strategy is needed to overcome the gaps in coverage that were identified in this study, or that may emerge in further debates. Now that agencies and NGOs from a range of sectors along with the safe houses and the SOS hotline are participating in data collection, consultations on improving the set of categories to be used could draw on their experience with supporting victims. That could enable an agreement on definitions that would enable naming and counting experiences of being violated that do not, at present, have a clearly defined place in criminal law, in particular the full range of offences against sexual integrity. As well as suggesting units of measurement to differentiate minor from more serious forms for each main type of violence, such consultations with experienced practitioners in specialised support services could allow data collection on acts of violence against women that are currently not criminalised.
- 4) The state of Bosnia and Herzegovina, as well as the Federation and the Republika Srpska have at present a two-track system of data collection. While there has been significant progress in developing police reporting and education of the police, in developing cooperation agreements, and in setting up databases for reporting incidents or cases, data collection on domestic violence is largely unconnected to data on gender based violence against women. It might be helpful if in both “segments” of the data collection system, that on gender-based violence and that concerning domestic violence, common categories for types of violence could be agreed. At present, these categories are mostly derived from the definitions in the criminal codes, but if compared to each other and to the categories used in prevalence research, a framework could be designed where, for example, psychological violence within the domestic sphere and psychological violence elsewhere (for example at the workplace) could be tabulated and the dimension of the problem made visible.
- 5) Given the differences between the Criminal Codes in the two entities that have recently become sharper, and the gaps in capturing all forms of gender-based violence, the Entities should clarify, either by revising their Criminal Codes or through bylaws, Rule Books or other means, that all forms of gender-based violence covered by the Istanbul Convention are prohibited and will be punished by law. In particular, all

⁶⁸ “Flagging” means assigning the report a marker that will identify it through the further police and judicial process, thus permitting data on all incidents identified as “domestic abuse related”. See <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/domesticabuseinenglandandwales/yearendingmarch2018>

non-consensual sexual acts need to be unambiguously prohibited and penalised. A consistent and clear underpinning in Criminal Law is a prerequisite to collecting data that are in any way indicative or can be combined for the entire country.

- 6) Although femicide is not specifically included in the forms of violence listed in the Convention, physical violence is understood to include it. Work on this issue is just beginning, with a high-level working group discussing how cases can best be identified. This requires reaching agreement on a practicable definition of femicide/gender-based killings of women and girls. Cases of homicide connected to intimate-partner violence may be taken as an indicator of femicide, but killings in connection with rape should also be counted.

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