

**GAP ANALYSIS OF BOSNIA AND HERZEGOVINA'S
LEGAL, POLICY AND INSTITUTIONAL FRAMEWORK
IN REGARD TO THE DEFINITION OF SEXUAL VIOLENCE
AND THE DIGITAL DIMENSION OF VIOLENCE AGAINST
WOMEN IN LINE WITH THE COUNCIL OF
EUROPE CONVENTION ON PREVENTING AND
COMBATING VIOLENCE AGAINST WOMEN AND
DOMESTIC VIOLENCE**



Council of Europe project
"Combating digital and sexual violence against
women in Bosnia and Herzegovina II"

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List of Acronyms

AI	Artificial intelligence
CC	Criminal Code
CEDAW	International Convention on Elimination of Discrimination against Women
CPC	Criminal Procedure Code
CSAM	Child Sexual Abuse Material
DV	Domestic violence
EIGE	European Institute for Gender Equality
EU	European Union
GAP	Gender Action Plan
GEL	Gender Equality Law
GBV	Gender-based violence
GREVIO	Group of Experts on Action against Violence against Women and Domestic Violence
IC	The Council of Europe Convention on preventing and combating violence against women and Domestic Violence (Istanbul convention)
LPDV	Law on Protection against Domestic Violence
LPD	Law on Prohibition of Discrimination in Bosnia and Herzegovina
VAW	Violence against Women
UNSRVAW	United Nations Special Rapporteur on Violence against Women

1 EXECUTIVE SUMMARY

Background

Addressing topics pertinent to gender-based violence (GBV) against women in Bosnia and Herzegovina requires understanding its complex political setup and varied economic conditions. Bosnia and Herzegovina is a decentralised state comprised of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska, along with the Brčko District, a self-governing administrative unit. The Federation of Bosnia and Herzegovina consists of 10 cantons, while Republika Srpska is centralised. This asymmetrical political and governance structure, designed to ensure ethnic balance and peace, has implications on the division of competences between state, entities and cantons. Competences at the state level are primarily coordination and the fulfilment of international commitments of Bosnia and Herzegovina, while the entities hold executive power, further divided in the case of Federation of Bosnia and Herzegovina between entity and cantonal levels. Numerous reports identify disparities in the implementation of legislation on gender equality owing to the decentralized political structure.

Bosnia and Herzegovina has developed a robust legislative and institutional framework aimed at the protection from and prosecution of violence against women (VAW), reflecting its formal commitment to address this human rights issue. The framework is informed by relevant international documents and European Union (EU) directives and guidelines as Bosnia and Herzegovina aspires to EU membership. The legislative framework in Bosnia and Herzegovina encompasses a variety of laws at the state level, entity level and in the Brčko District, reflecting the country's complex constitutional structure. Both entities and Brčko District have criminal codes that define and penalise acts of VAW, including domestic violence and sexual violence.

Despite the comprehensive legal and institutional framework in place, challenges remain in the effective protection from and prosecution of VAW in Bosnia and Herzegovina. These include issues related to the effective implementation of laws, coordination between institutions, societal attitudes towards GBV, and the need

for further alignment of the legal framework with international standards, notably the Istanbul Convention. Recent developments, including legal reforms and increased advocacy by civil society organizations, demonstrate a continued effort to strengthen the framework for addressing GBV, reflecting Bosnia and Herzegovina's ongoing commitment to improving the safety and rights of women and girls within its jurisdiction.

Scope and methodology

The study aims to provide a gap analysis of Bosnia and Herzegovina's existing legislative, policy and institutional frameworks in addressing violence against women (VAW) and domestic violence (DV), with a particular focus on sexual violence, including rape, and online and technology-facilitated violence against women. This involves an examination against the backdrop of international legal standards, especially those outlined in the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The primary objective of the study is to identify and address critical legislative and operational gaps that hinder the effective prevention, protection, and prosecution of sexual violence, including rape, as well as violence perpetrated by digital means targeting women and girls in Bosnia and Herzegovina. By aligning with the comprehensive criteria set forth by the Istanbul Convention, this study will offer recommendations that focus on enhancing the normative, policy, and institutional frameworks in Bosnia and Herzegovina, as well as its operational implementation.

The study utilises the Istanbul Convention (IC) as the primary reference for setting international legal standards against which Bosnia and Herzegovina's current framework will be evaluated. The convention provides the first legally binding definition of sexual violence, including rape, that requires the criminalisation of rape based on lack of consent given voluntarily as a result of the person's free will. In relation to online technology facilitated violence against women, although the IC does not make explicit reference to the cyber sphere or the use of information and communications technology (ICT), in 2021, GREVIO published its General Recommendation No 1 on the digital dimension of violence against women, clarifying that the definition of violence covered in Article 3 of the IC extends to violence against women perpetrated online.

The analysis also refers to other Council of Europe standards (binding and non-binding), UN binding and non-binding legal standards including the Convention for the Elimination of All forms of Discrimination against Women

(CEDAW) and related General Recommendations, case law of the European Court of Human Rights, and European Union (EU) Directives and regulations. This broad scope ensures a thorough evaluation of Bosnia and Herzegovina's alignment with global best practices and identifies areas for improvement.

The research methodology encompasses a multi-faceted approach combining desk research and stakeholder consultation. This combination of methods is designed to capture a comprehensive view of the legal, policy, and institutional landscape in Bosnia and Herzegovina concerning violence against women, with a particular focus on the challenges related to the digital dimension of violence against women and the adoption of a consent-based definition of sexual violence and rape.

Main findings in relation to the definition of sexual violence and rape in line with the Istanbul Convention

Based on a comparison between international standards and Bosnia and Herzegovina's current legislation, as well as insights gained from stakeholder consultations, the following gaps and challenges were identified in the legal definition and judicial treatment of sexual violence cases.

Lack of harmonised and comprehensive legal definitions

While Bosnia and Herzegovina has made progress in recognizing and addressing violence against women, its current legal framework does not fully incorporate a consent-based definition of sexual violence. This gap undermines the effectiveness of legal protections against all forms of non-consensual sexual acts, including those committed by current or former partners. The division of competencies between the state, entities, and the Brčko District leads to inconsistencies in the criminalization and treatment of sexual violence across Bosnia and Herzegovina. This fragmentation complicates efforts to adopt a unified consent-based approach to sexual violence, creating a patchwork of protections that may leave gaps in coverage and enforcement. The existing laws and policies in Bosnia and Herzegovina do not fully align with the standards set by the Istanbul Convention, which emphasizes the importance of freely given consent and the criminalization of all forms of non-consensual sexual acts. This discrepancy highlights the need for legislative reforms to ensure compliance with international human rights obligations. Accordingly, should the definition of rape be amended, the definition of consent must be framed to ensure that it provides for consent that is given voluntarily based on a person's free will, assessed in the context of the surrounding

circumstances. Consent given by virtue of psychological, economic or any other form of coercion is not free consent.

Victims of sexual violence, primarily victims of rape, face multiple barriers in seeking justice.

Existing measures for protection and support for sexual violence victims are inadequate. The analysis indicates a lack of specific measures and policies designed to protect victims of sexual violence, including in the digital sphere. This includes shortcomings in informing victims about their rights, available support services, and protective measures, as well as a lack of comprehensive support systems for victims.

Lack of comprehensive administrative data on sexual violence and rape

While data on sexual violence and rape are disaggregated according to the sex of the perpetrator and the victim, data are not disaggregated according to the relationship between the perpetrator and the victim nor based on age, failing, therefore, to provide a full picture of women's experiences.

The limited capacity of law enforcement and judicial institutions to effectively address consent-based sexual violence.

This challenge requires training for professionals to understand and apply a consent-based approach and improving mechanisms for investigating and prosecuting sexual violence cases. These inadequacies affect both reporting and prosecution rates of cases of sexual violence and rape.

Lack of public awareness and education efforts to shift societal attitudes towards recognizing and respecting consent in sexual relations.

This includes challenging deeply ingrained stereotypes and promoting a culture of consent, in judiciary and beyond.

Action-oriented recommendations on the definition of sexual violence and rape in line with the Istanbul Convention

To address the identified gaps and challenges in Bosnia and Herzegovina's legislative and institutional framework regarding the consent-based definition of sexual violence, targeted, action-oriented recommendations are proposed to address identified shortcomings to enhance the protection of women against sexual violence, improve access to justice for survivors, and ensure the effective prosecution of perpetrators.

- Amend the entity-level criminal codes to incorporate comprehensive legal definitions of sexual violence and rape that explicitly include the absence of freely given consent as the basis for such crimes, in line with Article 36 of the Istanbul Convention. Ensure that these amendments are harmonised across all jurisdictions within Bosnia and Herzegovina to eliminate inconsistencies.
- Implement legislative and non-legislative measures to guarantee that all criminal offences involving non-consensual sexual acts extend to incidents against individuals who are or were married to or in an intimate partnership with the perpetrator. It is imperative that legislation explicitly acknowledges offences such as marital rape and/or sexual assault, and that these laws are actively enforced through thorough investigation and prosecution.
- Harmonise domestic legislation with international standards: Undertake a thorough legislative reform process to align Bosnia and Herzegovina's laws and policies with the standards set by the Istanbul Convention and other international human rights instruments focused on combating violence against women and promoting gender equality.
- Establish and enhance specific measures and policies to protect and support victims of sexual violence and rape. This includes setting up specialist support services for victims of sexual violence and rape, including rape crisis centres and/or sexual violence referral centres providing immediate medical care, trauma support, forensic examinations and immediate, short- and long-term psychological assistance by qualified professionals who can provide victim-sensitive examinations, in line with the standards set by the Istanbul Convention. Importantly, access to services should not be contingent on victims lodging a complaint.

- Develop protocols between state authorities and women’s NGOs to facilitate referral pathways for victims of sexual violence and rape, and dedicate adequate financial resources to ensure that women’s NGOs are sufficiently resourced to provide support to victims of sexual violence and rape.
- Enhance institutional capacity, primarily of law enforcement and judicial institutions, to effectively address sexual violence and rape from a consent-based approach, in line with the standards of the Istanbul Convention. This involves addressing the deeply embedded myths about rape and sexual violence which can be prevalent in the criminal justice system and that affect how defence lawyers, the police, prosecutors and judges interpret what is meant by sexual acts committed without a victim’s consent.
- Address barriers faced by victims of sexual violence and rape in accessing justice. This can be achieved by developing and implementing protocols that simplify reporting procedures, ensuring sensitive handling of cases by authorities. Furthermore, laws on the provision of free legal aid should be amended to ensure access for all victims of violence against women and DV, in line with Article 57 of the IC. Victims should also have access to long-term psychological support throughout the criminal justice process.
- Regularly and systematically collect administrative data on sexual violence and rape at all stages of the criminal justice process (from reporting, to investigation, to the opening of criminal proceedings and their outcome), disaggregated by sex and age of both the victim and the perpetrator, and the relationship of the perpetrator to the victim, in the whole territory of Bosnia and Herzegovina.

Main findings in relation to the digital dimension of violence against women

Based on a comparison between international standards and Bosnia and Herzegovina’s current legal and policy framework, as well as insights gained from stakeholder consultations, the following gaps and challenges have been identified in relation to effectively addressing technology-facilitated violence against women:

Lack of harmonisation of the domestic regulatory framework with international standards in relation to digital VAW.

Bosnia and Herzegovina's commitment to international conventions, such as the Council of Europe Convention on Cybercrime, calls for a harmonization of national laws with these standards, particularly in defining and prosecuting cybercrime related to VAW.

Lack of comprehensive legislation

Bosnia and Herzegovina's legal framework is slow in adapting to the rapid technological advancements and the corresponding rise in the digital dimension of VAW. Bosnia and Herzegovina's legal framework, including its Criminal Codes, does not sufficiently address or explicitly define the digital dimension of VAW, with only Republika Srpska and Brčko District incorporating specific offences like the misuse of sexually explicit content. There is no uniform definition or comprehensive approach to all forms of digital dimension of VAW across Bosnia and Herzegovina, resulting in inconsistent protections. The failure to systematically regulate the digital dimension of VAW has translated into a lack of policies, data collection, and victim support for these forms violence.

Insufficient data regarding the prevalence and nature of the digital dimension of VAW

The lack of data on violence against women perpetrated in the digital sphere hinders the development of a comprehensive and effective strategy and legal responses. Existing measures do not fully protect against digital dimension of VAW, contributing to hesitancy among women to engage online and limiting their access to digital benefits.

Lack of capacity among law enforcement professionals

Lack of capacity and expertise among law enforcement professionals hinders the process of obtaining and processing electronic evidence and the effective investigation of technology facilitated VAW.

Action-oriented recommendations in relation the digital dimension of violence against women

To address the identified gaps in Bosnia and Herzegovina's approach to combating the digital dimension of VAW, the following action-oriented recommendations are proposed:

- Fully implement the recommendations provided by GREVIO under General Recommendation No. 1 on the digital dimension of violence against women. Focus on the four pillars of the Istanbul Convention: prevention, protection, prosecution, and co-ordinated policies, to create a holistic approach to combating VAW in the digital dimension.
- To ensure consistent and comprehensive protection against all forms of VAW across Bosnia and Herzegovina, it is recommended to improve the legal and policy framework by ensuring the adequate implementation of existing legislation in contexts of digital manifestations of VAW, and developing policies to address digital dimensions of VAW, strengthen their implementation, and establish effective procedures to prevent, eliminate and respond. Recommendations include seeking inspiration from the measures listed in GREVIO's General Recommendation No.1 on the digital dimension of violence against women.
- Amend existing legislation to to prevent, provide protection from and prosecute the digital dimension of violence against explicitly include digital forms of VAW, against the standards of the Istanbul Convention and other relevant standards, including the Budapest Convention. This includes revising criminal codes to adequately define and penalise online sexual harassment and other technology-facilitated forms of VAW. As such, laws on DV should be harmonized in to include the digital dimension of VAW, in line with the IC by introducing legislative amendments to explicitly criminalise acts such as unauthorised photographing, filming, and sharing of intimate content of family or domestic union members through digital platforms, with or without prior consent.
- Ensure the effective application of existing criminal offences that cover acts of sexual harassment, stalking and psychological violence to technology-facilitated violence and violence perpetrated in the

digital sphere. Establish a new offence for non-consensual intimate image distribution, imposing stricter penalties, particularly in cases involving family or domestic relationships or when perpetrated by officials and explicitly criminalise online sexual harassment.

- Harmonise Bosnia and Herzegovina's Criminal Codes with the Convention on Cybercrime and its Additional Protocol to ensure a unified approach to cybercrime, enhance legal clarity, and effectively address the digital dimension of VAW.
- Strengthening privacy protections in the digital age by amending the Personal Data Protection Law to classify photographs or videos showing intimate body parts as personal data.
- Strengthen the capacity of legal and institutional frameworks to respond to the digital dimension of VAW and improve multisectoral cooperation. This includes training for law enforcement and judicial authorities on the specifics of VAW in its digital dimension, ensuring that they are equipped to investigate and prosecute the digital dimension of violence against women effectively.
- Promote digital literacy and online safety through initiatives aimed at promoting online safety among the public, with a particular focus on women and girls. Educate citizens, especially women and girls, on recognising the digital dimension and on the legal and support mechanisms available to victims.
- Formulate and implement a comprehensive strategy or action plan that includes specific measures to combat digital dimension of VAW. This strategy should align with international standards and include input from various stakeholders, including victims, civil society organisations, and international bodies.
- Organisations responsible for responding to DV and other forms of violence affecting women should be adequately funded to be able to respond to online and technology-facilitated forms of harassment, stalking and psychological violence in their response frameworks and programmes.

- Enhance and expand support services for victims of VAW perpetrated in the digital sphere. This includes providing legal assistance, psychological support, and other necessary services to help victims recover and access to justice.
- The collection of disaggregated data and research is especially important when it comes to these emerging forms of VAW perpetrated in the digital sphere. Disaggregated data on VAW with a digital component should be collected and analysed, including complaints, incidence and conviction rates, as well as data on the civil justice measures imposed, such as restraining orders.
- Surveys, research programmes and studies on the digital dimension of VAW should be undertaken and/or supported in order to, among other things, measure the financial, personal and social impacts of such violence.

2 Aim and scope of the study

The study aims to provide a gap analysis of Bosnia and Herzegovina's existing legislative, policy and institutional frameworks in addressing violence against women (VAW) and domestic violence (DV), with a particular focus on sexual violence, including rape, and online and technology-facilitated violence against women. This involves an examination against the backdrop of international legal standards, especially those outlined in the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). The primary objective of the study is to identify and address critical legislative and operational gaps that hinder the effective prevention, protection, and prosecution of sexual violence, including rape, as well as violence perpetrated by digital means targeting women and girls in Bosnia and Herzegovina. By aligning with the comprehensive criteria set forth by the Istanbul Convention, this study will offer recommendations that focus on enhancing the normative, policy, and institutional frameworks in Bosnia and Herzegovina, as well as its operational implementation.

The scope of the analysis extends to an array of normative documents, including but not limited to the Constitution of Bosnia and Herzegovina, the Gender Equality Law of Bosnia and Herzegovina, the Law on Prohibition of Discrimination in Bosnia and Herzegovina, Criminal Codes, the laws on domestic violence, and other relevant legal instruments that constitute the existing framework for combating VAW and DV in Bosnia and Herzegovina. The review incorporated key strategic policy documents, including the state Gender Action Plan 2023-2027 and specific entity-level strategies such as the Strategy for the Prevention of Domestic Violence in the Republika Srpska 2020-2024 and the Strategy for the Prevention and Combat of Domestic Violence in the Federation of Bosnia and Herzegovina 2022–2027. Additionally, despite the fact that the national-level Framework Strategy for the Implementation of the Istanbul Convention is no longer in force, the analysis noted a proactive step taken by the government. Namely, the Council of Ministers of Bosnia and Herzegovina in 2019, adopted a decision to establish a committee dedicated to the implementation and reporting of the Istanbul Convention. The committee is comprised of representatives from various government agencies and ministries, with responsibilities including assessing the implementation of the Istanbul Convention, analysing

current policies and measures at all levels and providing recommendations for more effective application, collecting data on gender-based homicides, and ensuring that efforts to prevent violence against women and domestic violence are coordinated and effective. The committee is also tasked with preparing reports for the Council of Europe Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), aiming to sustain momentum in policy reform and enforcement.

Furthermore, the study incorporates recommendations and findings from international bodies such as GREVIO, the Committee on the Elimination of Discrimination Against Women (CEDAW Committee), and reports from international and local non-governmental organisations (NGOs), offering a broad perspective on existing gaps and challenges within Bosnia and Herzegovina's current legal, policy, and operational frameworks.

By scrutinising these documents through the analytical lens of the Istanbul Convention and other international standards, the study seeks to develop action-oriented, practical recommendations aimed at enhancing Bosnia and Herzegovina's legislative, policy, and institutional frameworks. This includes recommendations toward the adoption of a consent-based definition of rape and addressing the nuances of violence against women committed in the digital space. The inclusion of the digital dimension of violence against women is crucial, considering the increasing prevalence of violence against women in that sphere and the unique challenges it poses in terms of legal recognition and effective responses. The study's scope, therefore, not only covers the traditional aspects of VAW and DV but also extends to the digital dimension, reflecting the evolving nature of violence against women in the digital age.

The findings of this analysis will offer insights to guide legislators, policymakers, institutional stakeholders, NGOs, and the academic community toward more effective strategies for the prevention, protection, and prosecution of violence against women in Bosnia and Herzegovina and beyond.

3 Analytical framework and methodology

The study utilises the Istanbul Convention (IC) as the primary reference for setting international legal standards against which Bosnia and Herzegovina's current framework will be evaluated. The convention provides the first legally binding definition of sexual violence, including rape, that requires the criminalisation of rape based on lack of consent given voluntarily as a result of the person's free will. In relation to technology facilitated violence against women, although the IC does not make explicit reference to the cyber sphere or the use of information and communications technology (ICT), in 2021, GREVIO published its General Recommendation No 1 on the digital dimension of violence against women, clarifying that the definition of violence covered in Article 3 of the IC extends to violence against women perpetrated online.

The analysis also refers to other Council of Europe standards (binding and non-binding), UN binding and non-binding legal standards including the Convention for the Elimination of All forms of Discrimination against Women (CEDAW) and related General Recommendations, case law of the European Court of Human Rights, and European Union (EU) Directives and regulations. This broad scope ensures a thorough evaluation of Bosnia and Herzegovina's alignment with global best practices and identifies areas for improvement.

The research methodology encompasses a multi-faceted approach combining desk research and stakeholder consultation. This combination of methods is designed to capture a comprehensive view of the legal, policy, and institutional landscape in Bosnia and Herzegovina concerning violence against women, with a particular focus on the challenges related to the digital dimension of violence against women and the adoption of a consent-based definition of sexual violence and rape.

3.1 Research questions

The research questions are designed to explore the gaps and shortcomings in laws, policies, and practices regarding the digital dimension of violence against women and the consent-based definition of sexual violence offences. These questions guide the desk research and stakeholder consultations, focusing on the legal and institutional frameworks' alignment with international standards, the effectiveness of current measures, and the challenges in enforcement and implementation. The following research questions aim to provide a comprehensive understanding of the gaps in knowledge and areas that require further exploration in the context of the digital dimension of violence against women.

The digital dimension of violence against women

1. What are the gaps and shortcomings of laws, policies and practices when it comes to combating the digital dimension of violence against women through the justice system in the Bosnia and Herzegovina?

1.1. What are the best practices of (judicial) protection from VAW in terms of international standards and practices of EU Member States and Council of Europe, including the European Court of Human Rights jurisprudence on the digital dimension of VAW? Is the legal and institutional framework in Bosnia and Herzegovina in line with the good practice in this area?

- Do the legal definitions applied in domestic legislation, policies and case law adequately encompass digital forms of violence against women covered by the analysis? What are the implications for victims' access to their rights?
- Do domestic legislation, policies and measures address violence against women committed via digital means and the specific experiences of women victims of such violence in ensuring their rights under the Istanbul Convention?

1.2. Is there a comprehensive national action plan for preventing and combating violence against women, addressing its digital dimension?

1.3. Is there a national body tasked with driving policies for preventing and combating the digital dimension of violence against women and drawing up a national action plan?

- 1.4. Do the functions of the coordinating body apply to all forms of violence against women, including those committed via digital means?
- 1.5. Is data collected on digital forms of VAW?
2. What are the weaknesses of the systems for protecting survivors of violence against women in the digital space in Bosnia and Herzegovina?
3. Where or among which relevant institutions do the gaps occur?
 - 3.1. What is the institutional and operational framework for multi-agency coordination and cooperation?
 - 3.2. Is there sufficient financial and human resources dedicated to address the digital dimension of violence against women?
 - 3.3. What mechanisms are in place to ensure the participation and support of women NGOs and, in particular, those NGOs providing women's specialist support services for victims?
 - 3.4. Is mandatory and systematic training on violence against women, including its digital dimension, available/provided for front-line professionals, including law enforcement, social workers, prosecutors and the judiciary?
4. What are the main reasons explaining implementation gaps?
5. What is needed to improve legislation and implementation in area of prevention, protection from and combating the digital dimension of violence against women?

Consent-based definition of sexual violence and rape

1. The following research questions aim to provide a comprehensive understanding of the gaps in normative framework that require further exploration for the development of a definition of rape and sexual violence based on the lack of freely given consent: What are the gaps and shortcomings of laws, policies and practices when it comes to combating sexual violence against women through the justice system in Bosnia and Herzegovina?

- 1.1. What are the best practices of (judicial) protection from VAW in terms of international standards and practices of EU Member States and Council of Europe, including the European Court of Human Rights jurisprudence on consent-based definition of rape and sexual violence? Are the legal and institutional framework in Bosnia and Herzegovina in line with the best practices in this area?
- 1.2. How effective are existing legal frameworks in addressing sexual violence against women? Are legal definitions aligned with the Istanbul Convention and particularly with its consent-based definition of sexual violence? What are the implications for victims' access to their rights?
- 1.3. Is there a comprehensive national action plan for preventing and combating violence against women, addressing sexual violence and rape from a consent-based perspective?
2. What are the gaps and challenges in the enforcement of laws related to sexual violence against women?
3. What are the main reasons explaining implementation gaps?
4. What is needed in order to improve legislation and implementation in area of sexual violence and rape, including prevention, support to victims, and prosecution?

3.2 Desk research and analysis

The desk research component of this analysis involves an in-depth review of normative documents, policy frameworks, and international recommendations. This includes examining the Constitution of Bosnia and Herzegovina, various laws pertaining to gender equality, discrimination, domestic violence, provisions of the criminal codes, and specific policies aimed at addressing violence against women and domestic violence. The analysis is further enriched by incorporating findings and recommendations from international human rights bodies such as GREVIO, CEDAW, as well as other international and local reports on gender based violence (GBV) against women.

3.3 Stakeholder consultation and engagement

To ensure the recommendations are grounded in the practical realities of implementing legal and policy measures, the study includes a stakeholders' consultation process. The consultation process will involve engaging with a diverse group of practitioners, including representatives from women's NGOs, law enforcement, the judiciary, and other relevant bodies. The process aims to gather qualitative insights on the effectiveness of existing frameworks and the operational challenges faced by those addressing violence against women.

In summary, this comprehensive methodology framework is designed to yield action-oriented, evidence-based recommendations for enhancing Bosnia and Herzegovina's legal, policy, and institutional responses to violence against women, with a particular emphasis on the evolving challenges of the digital dimension of violence against women and the critical importance of a consent-based definition of sexual violence, including rape.

4 Introduction

Addressing topics pertinent to GBV against women in Bosnia and Herzegovina requires understanding its complex political setup and varied economic conditions. Bosnia and Herzegovina is a decentralised state comprised of two entities: the Federation of Bosnia and Herzegovina and Republika Srpska, along with the Brčko District, a self-governing administrative unit. The Federation of Bosnia and Herzegovina consists of 10 cantons, while Republika Srpska is centralised. This asymmetrical political and governance structure, designed to ensure ethnic balance and peace, has implications on the division of competences between state, entities and cantons. Competences at the state level are primarily coordination and the fulfilment of international commitments of Bosnia and Herzegovina, while the entities hold executive power, further divided in the case of Federation of Bosnia and Herzegovina between entity and cantonal levels. Numerous reports identify disparities in the implementation of legislation on gender equality owing to the decentralized political structure.

The Constitution of Bosnia and Herzegovina integrates key international standards on human rights and gender equality. Applicable international legal documents, relevant for this gap analysis, include the European Convention on Human Rights and Fundamental Freedoms, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); 1995 Beijing Declaration with the Platform for Action and the UN Council Resolution 1325 'Women, Peace and Security'. Bosnia and Herzegovina was amongst the first countries to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence in 2013.

Economically, Bosnia and Herzegovina faces numerous challenges, including high unemployment rates, a complex regulatory environment, and reliance on international aid. The path towards European Union (EU) membership has been a key driver of economic and legislative reform, aiming to align Bosnia and Herzegovina's policies and standards with those of the EU. In March 2024, the European Council decided to open accession negotiations with Bosnia and Herzegovina. This progression demonstrates the country's ongoing efforts and commitments towards aligning with EU standards and fulfilling the necessary criteria for membership,

including comprehensive reforms in relation to democracy, the rule of law, human rights and efficient public administration.

Despite such efforts, laws and public policies in the area of gender equality are not harmonized in Bosnia and Herzegovina, nor are they fully aligned with relevant international standards. The legal framework is gender neutral indicating a lack of recognition of the structural nature of violence against women as a form of gender-based violence. Protection against various forms of violence against women is not uniformly or fully ensured across the country, which places women victims of violence at a disadvantage, and denies them equal access to protection. (Alternative CEDAW Report, 2023, p. 93). There is no national strategic document focused on preventing and combating all forms of GBV. This means that a holistic approach has not been achieved, and the specific vulnerabilities of women facing intersectional discrimination—such as national minorities like Roma women, migrant and asylum-seeking women, women with disabilities, and LGBTI women—remain unaddressed. While entity-level strategies have been adopted, they have a narrow focus and concentrate on preventing and combating DV. While the Istanbul Convention is formally in force in Bosnia and Herzegovina, its effective implementation remains a considerable challenge. One of the primary difficulties involves establishing coordinating and implementation mechanisms that ensure both vertical and horizontal integration of the IC provisions among all relevant authorities. This is crucial as addressing VAW necessitates a collaborative approach across various sectors and levels of government. (Progress Report Beijing +25, 2019, p. 8-10).

Despite the aforementioned challenges, Bosnia and Herzegovina has developed a robust legislative and institutional framework aimed at the protection from and prosecution of violence against women (VAW), reflecting its formal commitment to address this human rights issue. The framework is informed by relevant international documents and the EU's directives and guidelines as Bosnia and Herzegovina aspires to EU membership. The legislative framework in Bosnia and Herzegovina encompasses a variety of laws at the state level, entity level and in the Brčko District, reflecting the country's complex constitutional structure. Both entities and Brčko District have criminal codes that define and penalise acts of VAW, including domestic violence and sexual violence. GREVIO's Baseline Evaluation Report for Bosnia and Herzegovina identifies as crucial the enhancement of the implementation of the Istanbul Convention in relation to all forms of violence against women, beyond domestic violence, which are currently less addressed by policies, programmes and support services, with due regard to their gendered nature.

Laws concerning VAW and GBV use gender-neutral language and lack explicit definitions for VAW and GBV. The Law on Gender Equality of Bosnia and Herzegovina (Official Gazette Bosnia and Herzegovina no. 32/10) was enacted in 2003 and amended in 2010. This law aims to promote and protect gender equality as a fundamental human right. It covers a wide range of areas, including measures to prevent and protect women from GBV. Article 9 of the Gender Equality Law specifies notions of sex and gender, but defines GBV without explicitly mentioning the word sex and/or gender. The definition of GBV, according to the Article 6 of the Gender Equality Law of BiH, encompasses behaviours that cause or may cause physical, psychological, sexual or economic harm or suffering, including threats that restrict individuals or groups from enjoying their human rights and freedoms in both public and private life. Provisions for the protection of survivors of VAW is present across various laws in Bosnia and Herzegovina, but due to the state's complex organisational structure, standards vary between entities and cantons. Protection mechanisms for survivors, necessitating a multidisciplinary approach, are often implemented at lower levels of government, such as the entity level in the RS and cantonal level in Federation of Bosnia and Herzegovina. (Radončić Dž. And Hodžić E., 2019: 35-59). While laws at all government levels offer protection mechanisms, there is a significant lack of harmonisation, leading to disparities in institutional practices.

The Constitution of Bosnia and Herzegovina and entity constitutions ensure freedom from discrimination based on sex, with specific anti-discrimination laws at the state level, as the Law on Prohibition of Discrimination ("Official Gazette of Bosnia and Herzegovina", 59/09 and 66/16) and for the promotion of gender equality. The Gender Equality Law outlines protections against harassment and gender-based violence, detailing the responsibilities of courts and national authorities in protecting victims and sanctioning perpetrators. However, it falls short of defining further reatet or protection mechanisms for VAW victims, which are scattered across various state, entity, and cantonal laws. These include frameworks on protection against domestic violence, criminal codes, laws on witness protection, social and health services, and free legal aid.

Criminal and civil law does not explicitly define VAW or GBV as human rights violations or forms of discrimination. The gender-neutral wording in criminal laws applies to different forms of violence without recognizing or specifically targeting GBV against women. Not all forms of VAW are uniformly criminalized in Bosnia and Herzegovina, which contrasts with international legal standards. Substantive criminal law in Bosnia and Herzegovina covers most forms of VAW as outlined in the Istanbul Convention, although this varies depending on the specific criminal

law.¹ Definitions of offences in criminal law are not consistently aligned with the Convention (e.g. the definition of rape), and their effective application is dependent on the level of awareness, knowledge and skills of law enforcement professionals.

Legal reforms in Republika Srpska in 2017 and in the Brčko District in 2024 have, to a great extent, aligned laws with international standards. These reforms include the criminalization of stalking, female genital mutilation, forced marriage, and forced sterilization. Furthermore, Brčko District has taken the additional step of recognizing psychological violence as a punishable offence. However, the Federation of Bosnia and Herzegovina has yet to adopt similar legal provisions. Although a draft amendment has been prepared² to criminalize psychological violence and other forms of VAW³ in the Criminal Code in the Federation of Bosnia and Herzegovina, it has not yet been enacted.

The Laws on Protection from Domestic Violence (LPDV) of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina and Brčko District, specifically address DV, offering protection measures for survivors, including restraining orders and emergency protection measures. It also introduces risk assessment by the police in DV cases, and establishes coordinated multisectoral cooperation systems. Additionally, family laws in both entities address issues of DV, specifying the rights of family members as well as mechanisms for protection against violence. Despite these advancements, the existing legal framework and public policies in Bosnia and Herzegovina do not sufficiently recognize VAW as a distinct form of GBV, utilizing gender-neutral definitions that minimize the gendered dynamics of VAW and social perceptions of VAW in both private and public spheres.

1 However, it does not explicitly prohibit unacceptable justifications for acts, including those committed in the name of so-called honour.

2 Draft amendments to the Criminal Code of Federation of Bosnia and Herzegovina, available in Bosnian language at https://parlamentfbih.gov.ba/v2/userfiles/file/Materijali%20u%20proceduri_2022/Nacrt-zakona-izm-dop-kriv-zakona-bos.pdf, accessed 28th March 2024.

3 Proposed amended definition of rape: "Whoever, without the consent of another person, engages in sexual intercourse or an equivalent sexual act with that person, or induces another person to engage in sexual intercourse or an equivalent sexual act with a third person without their consent, or to perform on themselves an act equivalent to sexual intercourse without their consent, shall be punished with imprisonment from one to five years. (2) An offender who was under an avoidable mistake regarding the existence of consent referred to in paragraph (1) of this article, shall be punished with imprisonment of up to three years. (3) Whoever forces another person by the use of force or threat of direct attack on their life or body, or the life or body of someone close to them, to engage in sexual intercourse or an equivalent sexual act, to engage in sexual intercourse or an equivalent sexual act with a third person, or to perform on themselves an act equivalent to sexual intercourse or an equivalent sexual act, shall be punished with imprisonment from one to ten years."

The Gender Action Plan (GAP) of Bosnia and Herzegovina for 2023-2027, building on previous efforts, places a significant focus on preventing and combating GBV and DV. The GAP sets forth three strategic objectives to enhance gender equality within governmental institutions: (1) the development, implementation, and monitoring of programmes for promoting gender equality in government institutions, focusing on specific priority areas; (2) the creation and strengthening of systems, mechanisms, and instruments for achieving gender equality; and (3) the establishment and enhancement of co-operation and partnerships. A key aim under the first strategic goal includes preventing and combating GBV, including DV, and human trafficking. The primary objective of the proposed measures is to prevent and combat GBV in both public and private spheres and all forms of human trafficking by establishing an effective prevention and protection system. The GAP's multi-faceted approach, emphasising co-operation and partnership at various levels, signifies a robust commitment to creating a safer, more equitable society for women in Bosnia and Herzegovina.

As stated in the EU Progress Report for Bosnia and Herzegovina (2023, p. 6), the legislative and institutional framework on fundamental rights is largely in place. However, the issue of GBV against women continues to cause concern. Cases of femicide sparked public protests and exposed systemic shortcomings of response to gender-based and domestic violence, including the legislative alignment with the Istanbul Convention (Bosnia and Herzegovina 2023 Progress Report, 2023, p. 12). While there has been improvement in addressing GBV, Bosnia and Herzegovina still needs to make significant investments in developing its multi-sectoral response mechanisms for VAW victims, including victims of sexual violence and violence perpetrated in the digital sphere.

The institutional framework for addressing GBV in Bosnia and Herzegovina involves various state, entity, and local level institutions, as well as non-governmental organizations (NGOs) and international agencies. The Agency for Gender Equality of Bosnia and Herzegovina is a state-level body tasked with ensuring the implementation of gender equality across all governmental policies and measures. The Federation of Bosnia and Herzegovina, as well as Republika Srpska, have a Gender Centre responsible for implementing gender equality policies and for coordinating activities related to the protection from and prevention of GBV. At both the state and entity levels, the ministries of justice and interior are responsible for legal reforms and law enforcement related to VAW. They play a critical role in the prosecution of offenders and the protection of survivors. Coordination Boards for combating VAW and DV exist at various administrative levels to ensure a coordinated response to GBV across different sectors, including health, education,

law enforcement, and social services. The system of support and assistance to VAW victims encompasses a network of safe houses and NGOs across the country providing shelter, psychological support, legal assistance, and advocacy for VAW survivors.

Bosnia and Herzegovina has not established a comprehensive and harmonised data collection system for all forms of GBV, with data segregated by gender, age, ethnicity and other relevant criteria. Different public institutions use varying methodologies and forms to collect data on cases of violence, and this process is carried out inconsistently and incompletely. (Alternative CEDAW Report, 2023, p. 95). Such an approach suggests that the authorities in Bosnia and Herzegovina do not have a comprehensive understanding of the nature and extent of GBV. Limited official data and surveys conducted by domestic and international organizations indicate that VAW is highly prevalent in Bosnia and Herzegovina. The first national survey conducted in 2013 revealed that 47.2% of women experienced some form of violence after the age of 15, primarily by someone they know, including current or former partners. (Gender Equality Agency, Report on the prevalence and characteristic of violence against women in Bosnia and Herzegovina: 15). The majority of these incidents involved psychological violence, followed by physical, sexual, and economic abuse, occurring mainly in intimate relationships. Despite the various forms of violence, 58% of victims did not recognize their experiences as violence, and only 17% sought a way out of such situations. (Gender Equality Agency, Report on the prevalence and characteristic of violence against women in Bosnia and Herzegovina, p. 16). According to a 2019 study by the Organization for Security and Co-operation in Europe (OSCE) (OSCE, Sexual harassment of women in Bosnia and Herzegovina: Analysis Based on Data from the OSCE-led Survey on Violence against Women, 2022) Mission in Bosnia and Herzegovina, nearly one in three women in the country, reported experiencing at least one form of sexual harassment since reaching the age of 15. The data available from the entity ministries of internal affairs show that from 2019 to 2021, in Republika Srpska, there were 14 recorded criminal acts of rape, 11 acts of sexual extortion and 42 acts of sexual harassment. In the same period, 116 acts of lechery/lewd behaviour and 46 acts of rape were recorded in the Federation of Bosnia and Herzegovina and the Brčko District police recorded three acts of rape. (Alternative CEDAW Report, 2023,p. 95-96).

Despite the comprehensive legal and institutional framework in place, as stated in the GREVIO baseline evaluation report, challenges remain in the effective protection from and prosecution of VAW in Bosnia and Herzegovina. These include issues related to the effective implementation of laws, coordination between institutions,

societal attitudes towards GBV, and the need for further alignment of the legal framework with international standards, notably the Istanbul Convention. Recent developments, including legal reforms and increased advocacy by civil society organizations, demonstrate a continued effort to strengthen the framework for addressing GBV, reflecting Bosnia and Herzegovina's ongoing commitment to improving the safety and rights of women and girls within its jurisdiction.

5 Definition of sexual violence and rape in line with the Istanbul Convention: the absence of consent

The discourse on sexual violence within the legal and societal contexts of Bosnia and Herzegovina is poised for a transformative reassessment through the lens of a consent-based definition of rape. This re-evaluation is critical for alignment with international human rights standards, as well as to address the evolving understanding of sexual violence as a pervasive violation of human dignity and bodily autonomy. Efforts to refine and potentially reframe the definition of rape and other forms of sexual violence in the country's legal system necessitates a comprehensive review of existing normative documents, policy frameworks, and recommendations from both international and national bodies. By engaging with a wide array of legal documents, policy frameworks, and international recommendations, this analysis seeks to contribute to the ongoing efforts to strengthen the legal and policy responses to rape and sexual violence in Bosnia and Herzegovina.

The issue of violence against women, particularly sexual violence and harassment, was brought back into focus in early 2021 with the establishment of a solidarity movement for rape and sexual violence victims named "I did not ask for it".⁴ In the previous period a number of cases of GBV, leading up to the murder of women (femicide) garnered public attention and sparked protests across several cities in Bosnia and Herzegovina. These incidents exposed existing systemic shortcomings of the institutional response to GBV (Commission Staff Working Document, Bosnia and Herzegovina 2023 Progress Report, 2023: 43-44). A study completed in April 2023 exploring the capacity for providing support services to victims of sexual violence in selected areas in Bosnia and Herzegovina (Čelebić I. et al 2023: 51), revealed that relevant institutions – police departments, health centres, judicial authorities, centres for free legal aid, social work centres, as well as elementary and secondary schools – generally do not subscribe to stereotypical views of rape.

4 <https://www.nisamtrazila.org/> accessed 25th March 2024.

Moreover, survey participants recognized that sexual violence could affect both sexes, emphasizing an understanding of the traumatic impacts equally for men and women. However, the findings also highlighted significant systemic issues: prevalent gender biases and myths persist within public services tasked with protecting victims, contributing to the stigmatization and discouragement of reporting sexual violence. Additional challenges include inadequate institutional resources for handling such cases, insufficient psychosocial support for victims, prolonged judicial processes, and the repetitive nature of victim testimonies leading to revictimization. The study suggests a disconnect between the reality of addressing sexual violence and the theoretical framework provided by current laws and protocols, which fail to align with the Istanbul Convention's standards and do not adequately prioritize the victim's needs in interventions (Čelebić I. et al, 2023,p. 51).

Despite notable legal and policy advancements in Bosnia and Herzegovina aimed at preventing and combating violence against women, in its Baseline Evaluation Report, GREVIO highlights the need to adopt policies and measures to address all forms of VAW, beyond DV. GREVIO also stressed the need to adopt a legal and policy framework that fully incorporates the concept of freely given consent and the criminalisation of all forms of non-consensual sexual acts. Specifically, in relation to the consent-based definition of sexual violence, GREVIO suggests that Bosnia and Herzegovina *"amend the sexual offences provided under the national, entity-level and Brčko District criminal codes to fully incorporate the notion of lack of freely given consent as required by Article 36 of the Istanbul Convention and to specify the type of non-consensual sexual acts that are criminalised, in line with Article 36, paragraph 1a, b and c, of the convention; adopt the necessary measures to ensure that any offence of sexual violence applies between former or current spouses or partners; ensure proportionate and dissuasive sanctions for all sexual acts without the consent of the victim, irrespective of personal characteristics."*(GREVIO Baseline Evaluation Report on Bosnia and Herzegovina, 2022, para. 223)

5.1 Overview of international standards

Council of Europe

In regards to the consent-based definition of sexual violence, the Istanbul Convention contains the first legally binding definition of sexual violence, including rape. Under Article 36, parties commit to criminalising the intentional conduct of engaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object. This article also clarifies that consent must be given voluntarily as the result of the person's free will assessed in the context of the surrounding circumstances. Parties must ensure that the criminalisation provisions also apply to acts committed against former or current spouses or partners as recognised by internal law. As noted in the Explanatory Report to the convention, this definition establishes the obligation to criminalise and effectively prosecute any non-consensual sexual act, including in the absence of physical resistance by the victim (Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence Istanbul, para. 194).

In its baseline evaluation reports, GREVIO has consistently drawn attention to the issue of under-reporting in cases of sexual violence, including rape. In addition to being one of the most under-reported crimes, GREVIO has also noted in a number of baseline evaluation reports that these cases have high dropout rates at the investigation and prosecution stages, low conviction rates, as well as low sentences. This impedes women's access to justice, and results in low reporting rates and a culture of impunity.

The evaluation procedure of the GREVIO has permitted the identification of four different approaches to the criminalisation of sexual violence, including rape, among the parties to the convention (4th General report on GREVIO's Activities, 2023). This includes a purely forced-based approach, a two-tiered approach, the "no means no" model, and the "yes means yes" or "affirmative consent" one (ibid.). A force-based approach to the criminalisation of sexual violence requires the use of force, coercion or the abuse of vulnerability. In the two-tiered approach, a provision requiring the use of force and a provision requiring the element of lack of consent coexist in parallel. However, the former often carries a harsher prison sentence compared to the latter. The "no means no" approach is based on the premise that sexual intercourse is considered consensual as long as neither party said "no" and requires proof that the sexual act was committed against the will of

a person. The “only yes is yes” approach, on the other hand, focuses on affirmative expression, whether verbal or non-verbal and is seen as an “agreement” communicated between the parties based on free will. This approach specifically means that passivity, silence, lack of protest or lack of resistance cannot be deemed to mean consent.

Definitions where the use of force as the main constituent element of the crime of rape and sexual violence has been criticized by GREVIO for not offer adequate protection to victims, and or failing to take into account the realities of women that experience sexual violence. The requirement of higher thresholds of evidentiary standards of physical resistance and a shifting of the focus onto the victim’s behaviour rather than on the accused’s actions often results in secondary victimisation (ibid., p. 31).

In relation to the two-tiered approach to criminalisation, in its baseline evaluation reports, GREVIO has adopted the view that it is the fact that the act is carried out without the consent of the victim that should determine the punishment, whether this is committed by someone who employs violence or abuses his position of power over the victim, for example. Where the circumstances of the act are particularly violent, abusive and traumatising, however, aggravating circumstances should be applied to ensure a sanction commensurate with the gravity of the act (ibid., p. 32).

In contrast, the approach based on “affirmative consent”, which focuses on consent as an affirmative “agreement between the parties, whether verbal or non-verbal, based on free will, “provide(s) clearer rules to parties at risk of perpetrating or being victims of sexual violence, as well as providing clarity to those charged with investigating and prosecuting such cases”. This model aligns with the requirements of the Istanbul Convention and the overall objective to improve prevention, protection and prosecution.

Other IC provisions relevant to sexual violence and rape include Article 25 that requires parties to “take the necessary legislative or other measures to provide for the setting up of appropriate, easily accessible rape crisis or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims”. Furthermore, Article 16 requires the setting up or support of treatment programmes for perpetrators of sexual violence.

European Court of Human Rights

The European Court of Human Rights first made determinations with respect to rape as a violation of articles 3 (prohibition of torture) and 8 (right to respect for privacy and family life) of the Convention for the Protection of Human Rights and Fundamental Freedoms and addressed the definition of rape in the landmark case *M.C. v. Bulgaria* in 2003 (*M.C. v. Bulgaria*, Application no. 39272/98, 2003). The Court established the positive obligation of States to enact criminal law provisions to effectively investigate and punish rape. The Court conducted a survey of domestic and international approaches to defining rape in criminal law, with the purpose of identifying any evolving trends in relation to legal standards to effectively criminalize rape. It noted a universal trend towards regarding *lack of consent* as the essential element of rape and sexual abuse and explained that any rigid approach to the prosecution of those crimes, such as requiring proof of physical resistance, risked leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual's sexual autonomy. It concluded that *rape must be defined as any sexual penetration without the victim's consent and that "consent must be given voluntarily, as a result of the person's free will, assessed in the context of the surrounding circumstances"*.

United Nations

The CEDAW Committee addresses rape within the framework of violence against women under Article 5 of CEDAW, as further expanded in General Recommendation 19 (CEDAW General Recommendation No. 19: Violence against women, 1992). There is also an association between violence against women and several other protected human rights, such as the right to life, the right to not be subjected to torture, cruel, inhuman and degrading treatment, the rights to dignity, security, equal protection, and the right to the highest attainable standard of health, etc.

Other relevant recommendations include CEDAW's General Recommendation 35 on gender-based violence that delineates State obligations at all levels, including protection, prosecution, reparations and data collection, and training of judiciary and law enforcement. The Committee specifically recommended that States parties ensure that rape is characterised as a crime against the right to personal security and physical, sexual and psychological integrity. In addition, it recommends that the definition of rape, including marital rape, is based on the lack of consent and takes into account coercive circumstances. It also established that any time limitations should give due consideration to circumstances hindering the capacity of the victims to report the crime, and that rape could amount to torture.

CEDAW's General Recommendation 33 on women's access to justice that deals with evidentiary rules, including for rape, and requires that evidentiary rules should not be overly inflexible, restrictive, or influenced by stereotypes (CEDAW General recommendation No. 33 on women's access to justice, 2015). The communication by the CEDAW Committee in *Vertido v. The Philippines* (*Vertido v. The Philippines, Communication no. 18/2008, 2010*) highlights the issue of stereotyping and the need to address rape myths in judicial training. In *Vertido v The Philippines*, the Committee found that the State had improperly relied on sex-based stereotypes and failed to provide an effective remedy to the survivor. The Committee noted that the gender stereotypes and misconceptions employed by the trial court included, in particular, lack of resistance and consent on behalf of the rape victim and the use of force and intimidation by the perpetrator. The Committee recommended that the Philippines review the definition of rape in its legislation so as to place the lack of consent at its centre and enact a definition of sexual assault that either required the existence of "unequivocal and voluntary agreement" and proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting, or required that the act take place in "coercive circumstances" and included a broad range of coercive circumstances.

In the first report of the UN Special Rapporteur on violence against women, its causes and consequences (UNSRVAW) to the Commission on Human Rights, in 1994s, rape was recognised as a manifestation of GBV against women (UN Special Rapporteur on Violence against Women, Preliminary report on violence against women, its causes and consequences, 1994). The former Special Rapporteur saw consent as the legal dividing line between rape and sexual intercourse and presented key concerns regarding the status of the criminalization and prosecution of rape, especially marital rape; and recommended that the definition of rape be based on the lack of consent, with an expanded scope to include all types of penetration (ibid.).

In her report to the Human Rights Council in 2021, the UNSRVAW presented a framework for model legislation on rape, envisaged as a harmonization tool. The Model Rape Law states that, "Rape is an act of sexual nature committed without consent. Definitions of rape should explicitly include lack of consent and place it at its centre, stipulating that rape is any act of sexual penetration of a sexual nature by whatever means committed against a person who has not given consent (Report of the Special Rapporteur on violence against women, its causes and consequences, 2021, p. 6).

5.2 Analysis of Bosnia and Herzegovina's Current Legal Framework

5.2.1 Analysis of legislative framework on criminalization of sexual violence and rape

In conducting a gap analysis on the legal provisions on rape and sexual violence in Bosnia and Herzegovina, it becomes evident that the focus must be broadened beyond the Criminal Codes of both entities and Brčko District. Essential to this analysis is also an examination of the Gender Equality Law, laws concerning protection from DV, witness protection laws, legislation regarding the treatment and protection of minors in criminal proceedings, and regulations for the provision of free legal aid. Civil law also becomes relevant, as victims of sexual violence and rape may seek compensation for damages.

In Bosnia and Herzegovina, the legal framework for addressing sexual harassment and other forms of sexual violence includes the Criminal Codes, entity family laws, the Law on Gender Equality and the Law on the Prohibition of Discrimination. Recent legal advancements in the Republika Srpska and Brčko District criminal codes have introduced new offences such as female genital mutilation, forced sterilization, stalking, sexual harassment, and forced marriage, aligning the legal framework more closely with the Istanbul Convention. Despite these legislative improvements, comprehensive policies to address these forms of violence against women are still lacking.

The classification of sexual violence offences varies in criminal laws. In Republika Srpska and Brčko District, these offences are addressed in two related chapters: *crimes against sexual integrity* (mainly concerning adult victims) and *crimes of sexual abuse and exploitation of children*. In contrast, the Federation of BiH refers to these offences under same chapter named *crimes against sexual freedom and morality*. The definitions and prescribed penalties for these offences differ, leading to varying punitive actions.

Criminal codes in Bosnia and Herzegovina criminalize different violations against an individual's sexual autonomy or integrity, including but not limited to rape (Art. 203 CC FBiH; 165 CC RS; 200 CC Brcko District); sexual intercourse with a vulnerable person (Art. 204 CC FBiH; 167 CC RS; 201 CC Brcko District); sexual exploitation by a person in a position of trust or authority (Art. 205 CC FBiH; 168 CC RS; 202 CC Brcko District); forced sexual intercourse (Art. 206 CC FBiH; 166 CC RS; 203 CC Brcko

District); sexual assault of a minor/child (Art. 207 CC FBiH; 172 CC RS; 204 CC Brčko District); indecent behaviour/lewd acts/lechery (Art. 208 CC FBiH; 171 CC RS; 205 CC Brčko District). The complexity of the political organization and the division of competencies between the state, entities, and the Brčko District has led to inconsistent criminalization of acts involving sexual violence. As such, the criminal codes of RS and Brčko District provide for the additional criminalisation of sexual harassment (Article 170 CC RS, 200 a CC Brčko District) and the abuse of sexually explicit photos and videos (Article 170a CC RS, 186a CC Brčko District).

Rape is defined differently across Bosnia and Herzegovina, with two distinct conceptual approaches. The force-based model, used in entity criminal laws, requires physical force or threats and sexual intercourse as necessary elements of the offence. The consent-based model, currently only in the Brčko District criminal code, focuses on the absence of consent. This discrepancy results in different levels and forms of victim protection. Both entities' criminal codes define the crime of rape in nearly identical terms: as the use of force or the threat of direct attack on the life or body of the victim or a person close to the victim, compelling the victim into sexual intercourse or an equivalent sexual act. However, with the exception of the recently amended definition of rape in the Criminal Code of Brčko District, existing provisions do not adopt a consent-based approach to sexual offences as foreseen by the IC. Not every intentional act listed in Article 36 of the Istanbul Convention is criminalised in the Criminal Codes. Consequently, there is a notable discrepancy between the stipulations of the Istanbul Convention and the current normative frameworks.

Constitutive elements of rape under the definitions contained in entity criminal codes are (1) *coercion* into sexual intercourse or an act equivalent to it through the (2) use of *force* or *threat* that is directed either towards the victim (assault on their life or body) or someone close to the victim (also a threat of assault on the life or body of that person). Coercion involves the use of force or threats that will directly attack the life and body of that person or someone close to them. This is functional coercion because it is a coercion that is purposefully directed. On the one hand, the primary goal of coercion is the perpetration of sexual assault or other sexual act, and on the other hand, the goal of this coercion is to break the resistance or demotivate the victim from resisting at all, thereby also enabling sexual assault or other unwanted sexual act.

Such a restrictive definition significantly narrows the scope of behaviours considered as rape under the Istanbul Convention, indicating a crucial gap in Bosnia and Herzegovina's legal framework regarding the comprehensive criminalisation of

rape and sexual violence, emphasizing the need for reforms to align with international standards. The legislation does not address the concept of consent and, based on the existing language, sexual intercourse without consent would not constitute a crime unless it is proven that the non-consensual act involved violence, the threat of violence, or the victim's "helpless condition". The definition of rape in the criminal codes of both entities, while ensuring protection of sexual integrity for both men and women regardless of marital status, hinges on the use of force or direct threats.

Furthermore, the penalties for rape offences differ: the Federation of BiH prescribes imprisonment from one to ten years, Republika Srpska from three to ten years, and Brčko District from one to eight years, with a separate category for aggravated rape involving force or threats in Brčko District. Aggravated offences, defined under the same articles on rape in criminal codes, include rape committed in a particularly cruel or degrading manner, multiple assaults by several perpetrators, hate-motivated crimes, and those resulting in severe injury, health impairment, pregnancy, or death of the victim. The penalties for these offences are stricter, typically mandating minimum sentences.

Criminal laws also define other sexual offences such as intercourse with an incapacitated/helpless person, including those with mental illness or mental impairment or other condition that renders the person *incapable of resistance*, with penalties ranging from two to ten years in Republika Srpska and Brčko District, and one to eight years in the Federation of BiH. These offences also have aggravated forms with harsher penalties. The Criminal Codes of the Federation of Bosnia and Herzegovina and the Brčko District stipulate that anyone who commits this crime against a person whose incapacity to resist they caused or participated in causing will be punished under the article defining the rape.

All three criminal codes include offences of sexual exploitation by abusing a position of authority, with sanctions of two to five years in Republika Srpska and three months to three years in the Federation of BiH and Brčko District.

Sexual intercourse with a child is criminalized in all three codes, with the Federation of Bosnia and Herzegovina not differentiating based on the child's age, unlike Republika Srpska and Brčko District, which distinguish between offences involving children under 15 and those older. Unlike the Federation of Bosnia and Herzegovina, Republika Srpska and Brčko District require the establishment of a special register for individuals convicted of offences against children's sexual integrity.

In March 2024, the Assembly of the Brčko District adopted amendments to the Criminal Code of Brčko District (Official Gazette of the BD Bosnia and Herzegovina, no. 19/2020), which introduced new criminal offences and amended others in accordance with the Istanbul Convention. Significant changes include the introduction of new criminal offences such as female genital mutilation, forced sterilization, stalking, psychological violence, sexual harassment and forced marriage. Brčko District's Criminal Code is the first in the country to incorporate a consent-based definition of rape. It defines consent as the voluntary agreement to engage in sexual activity, and establishes the absence of consent as a critical element of the crime of rape. This represents a significant shift in the legal landscape towards recognizing the importance of consent and sexual autonomy in sexual violence cases. Initial experiences from professionals in Brčko District's judicial system indicate that, despite the new definition of rape, the criminal and evidentiary processes remain largely unchanged, relying on victim and witness testimony, expert examinations, and biological evidence. However, the new definition is expected to empower and encourage more victims to report offences, addressing the underreporting of sexual violence. To support this, intensive and mandatory training in preventing and combating sexual GBV is necessary, balanced with professionals' workloads to ensure meaningful engagement in these trainings.

Although the criminal codes in Bosnia and Herzegovina have yet to fully incorporate consent-based understandings of sexual violence, there are viewpoints suggesting that, despite the lack of full alignment with international standards, the fundamental objective of penalizing sexual acts committed without consent is achievable through the current legislation. It emphasizes that rape should fundamentally be understood as a violation stemming from the absence of consent, a concept that can be discerned without necessarily relying on traditional markers of coercion such as physical resistance or injuries (Marković I., 2023). However, a review of court practices in Bosnia and Herzegovina reveals a persistent reliance on a traditional interpretation of rape, which requires evidence of force and/or serious threat or the victim's visible resistance. Analyses and reports generated from extensive long-term monitoring of criminal cases involving acts of violence against women reveal a lack of uniformity in judicial practice, with some defence lawyers and judges continuing to demand evidence of force and/or threats by examining the victim's resistance. (Radončić Dž., 2023).

Recent judicial practices and theoretical perspectives regard the question of a victim's resistance as a matter that should be evaluated based on all subjective and objective circumstances of the specific case. Subjective circumstances include factors related to the perpetrator and the victim, such as psychophysical condition,

age, physical strength etc., while objective circumstances refer to, for example, the location of the crime (open or closed space, secluded place, forest), the method of execution, including the use of weapons or tools, the time of the crime, etc. It is likely that in evaluating the evidence against a suspected perpetrator in a case of sexual assault, the presence of violence, the threat of violence, or the “helpless condition” of the victim will play a significant role in ascertaining whether the act was consensual. However, this should be understood as distinct from being an essential characteristic of the offence itself.

This reliance on concepts of force and/or threat not only overlooks the broader spectrum of victim responses to sexual violence but also fails to accommodate cases where physical evidence of resistance is absent. The force-based model’s requirement for active resistance overlooks that many victims may freeze or dissociate during the assault. Those in abusive relationships may comply with sexual demands due to implicit threats of violence. Consequently, many victims, especially the most vulnerable, lack legal protection. Passivity or silence is often misconstrued as consent, and exploited by defence attorneys in GBV cases. The judicial system often places undue emphasis on physical signs of coercion or the victim’s ability to resist, sidelining the critical importance of consent. Such an approach is problematic, especially considering that many incidents of rape occur without witnesses, and the outcomes of such cases heavily depend on the assessment of the credibility of the statements made by the accused and the victim (Marković I., 2023). Therefore, while some opinions suggest that the objectives of punishing non-consensual sexual acts can be met with the existing legal framework, achieving this goal may require not only legislative amendments but also a significant shift in judicial perspectives and practices. Moving towards a consent-based understanding of rape and sexual violence is therefore a critical step in addressing the complexities of these crimes and ensuring justice for victims as well. Furthermore, criminal law ought to conceptually define and classify rape and other forms of sexual violence as crimes against the victim’s physical and psychological integrity and sexual autonomy, instead of framing them as offences against sexual freedom and morality, which is the current approach in the Federation of Bosnia and Herzegovina and the Brčko District.

The intensity of the victim’s resistance has often been debated in court decisions, particularly because of the viewpoint that a serious and persistent resistance from the victim, serving as evidence of forced sexual activity, is a component of the crime of rape. The presence of resistance indicates the use of force, but the absence of resistance does not imply that no force was used. The use of force, in terms of this crime, is not excluded in cases where there were justified reasons for

the victim's lack of resistance. In a verdict by the Supreme Court of Federation of Bosnia and Herzegovina (Judgment of Supreme Court of Federation of Bosnia and Herzegovina, no. 03 0 K 014161 17 Kž 8, 2018, cited by Marković, 2023), it was stated: *"The use of force (...) does not only imply the application of physical, mechanical, or other kinds of force on a specific person but also such actions by the perpetrator that put the person in a psychological state where they are unable to resist. The absence of physical resistance from the victim towards the perpetrator does not negate the conclusion of the victim's non-consent to sexual intercourse."* While this perspective is becoming more evident in our judicial practice, judgments can still be found where the focus is on the victim's resistance as evidence of coercion, rather than on the fact that the sexual act or equivalent action was performed without consent, i.e., against the will of the passive subject. (Marković I., 2023, p. 63, 67).

As noted above, an important provision of the Istanbul Convention is the obligation of states to ensure the application of legislation that criminalizes sexual violence and rape against current or former spouses. Rape crimes must be penalized irrespective of the relationship between the victim and the perpetrator, indicating that the nature of their relationship does not decriminalize the act. Rape as a criminal offence is gender-neutral, meaning both the perpetrator and the victim can be either male or female, regardless of whether they are married or intimate partners. Rape can be committed by anyone, and the relationship between the victim and the perpetrator does not affect the classification of the act as a rape. However, the relationship and differences between perpetrator and victim in terms of age, social status, relationship of dependency, family relationship etc. can be relevant for the categorisation of sexual violence as a specific criminal offence (aggravated rape or sexual intercourse with an incapacitated person, sexual exploitation by abusing a position of authority).

In Bosnia and Herzegovina, marital rape is not recognized explicitly as a criminal offence, nor is it considered an aggravating circumstance. An exception to this is the Criminal code of Brčko District according to which a family relationship between perpetrator and victim of rape is considered an aggravating circumstance. Monitoring of criminal offences, including cases of DV that involve elements of sexual violence, has consistently failed to result in the recognition of marital rape as a distinct criminal offence. (Radončić Dž., 2023, p. 30). Despite evident instances where perpetrators commit acts of sexual violence within the context of marriage, such actions have not led to the formal acknowledgement or legal classification of marital rape as a separate crime under current legislative frameworks (Radončić Dž., 2023, p. 30). This oversight underscores a significant gap in the protection offered to victims of DV, particularly in cases where sexual violence occurs within a

marriage, highlighting the urgent need for legal reforms to address marital rape explicitly.

The current legislation in Bosnia and Herzegovina does not explicitly criminalise instances where the perpetrator causes the victim to engage in non-consensual sexual acts with a third person. This omission points to a notable gap in the legal framework, failing to fully address the complexity and breadth of sexual violence. Such scenarios, where victims are coerced into sexual activities with others, highlight a form of sexual violence that the existing laws do not specifically address, underscoring the need for legislative updates to comprehensively cover all forms of sexual violence, including those involving coercion by the perpetrator for the victim to engage in sexual acts with third parties.

Adequately prosecuting sexual violence and rape requires an appropriate legal framework, which includes a comprehensive and clear consent-based definition of rape and a system of legislative and institutional measures for the protection and support of rape victims. In addition to a robust legal and institutional framework, the sensitivity, awareness, and education of professionals are of immense importance. Both factors are crucial, and although there are examples of good practice, jurisprudence is inconsistent due to the restrictive definition of rape and the varying levels of awareness and expertise among judges and other professionals in the protection chain. This inconsistency makes it necessary to amend the definition of rape and to improve the system of judicial, prosecutorial, and other professional training on the topic of sexual violence against women.

5.2.2 Procedural position of the victim of sexual violence

A review of criminal procedure laws reveals that there are no legal provisions requiring that the victim is informed about the process following a complaint, including of their role, available public authorities and services for assistance and support services (governmental and non-governmental), legal aid and compensation rights, compensation rights, or of available protective measures for their safety or that of their close ones. The duty to inform victims about protective measures upon reporting is implied in the Witness Protection Law for threatened or endangered witnesses, but this applies only if the victim is or is presumed to be a witness, and specifically for those considered endangered.

The effectiveness of victims' rights to such information, particularly in the initial stages of legal proceedings, hinges on the responsiveness of the recipient of the

complaint and the provision of information and written materials about victims' rights by relevant NGOs. While laws require prosecutors to inform the injured party/victim (and the person reporting) about the decision not to investigate the crime and its reasons, offering an eight-day window to appeal to the prosecutor's office, these rules do not permit the victim to independently prosecute the perpetrator. This limits their rights to requesting a review of the decision to not pursue or discontinue an investigation. In addition, the laws lack clear mandates for prosecutors to inform the victim about plea negotiations with the suspect or to consider their views on these discussions. Although plea agreements need not depend on the victim's consent, involving them is crucial for informed prosecutorial negotiation and should consider any restitution efforts by the accused.

Courts generally verify if the victim had the chance to present their property claim before the prosecutor, an essential avenue for expressing the victim's intentions and introducing the claim during the criminal process. However, there is no precise legal obligation for courts to update victims on the progress of proceedings. If the victim is also a witness, they are summoned to the main trial in due course. It is assumed that the presiding judge will advise the injured party/victim who has not filed a property claim, that they can do so until the main trial concludes.

Adult victims of VAW generally do not receive special protection and assistance compared to victims of other crimes in the course of criminal proceedings. Special protection is provided to minors, victims of sexual offences in court proceedings, and victims who are witnesses, specifically witnesses that are threatened or in danger. If a victim does not fall into one of these categories, they are treated the same as other victims of crime. However, it should be noted that evidence relating to prior sexual experience, behaviour, or sexual orientation is not admissible in criminal proceedings.

Women victims of sexual violence can also be witnesses and thus receive special protection under the Witness Protection Law if legal criteria are met. This law considers witnesses endangered if they are severely affected by the crime physically or psychologically, have significant mental disorders, or are exceptionally vulnerable, including children and minors.

The procedural protection of children and minors as victims is regulated by entity laws on the protection and treatment of children and minors in criminal proceedings (Official Gazette of Republika Srpska, no. 13/2010, 61/2013 and 68/2020; Official Gazette of Federation of BiH, no. 7/2014 and 74/2020). Both entity laws prescribe

similar provisions stating that, in criminal cases involving offences against children and minors, procedural actions must be conducted with special care to avoid any potential harm to the child's future life, upbringing, and development. Interviews with child victims are typically conducted with the assistance of an educator, psychologist, or other qualified professional. If a child victim of an offence under Article 185 is interviewed as a witness, the questioning is limited to a maximum of two times and conducted via technical devices to avoid direct contact with the prosecutor or authorized official. Such interviews can also take place at the child's home, a social work centre, or another suitable location. The court will ensure that the child victim of an offence is interviewed in a manner that allows all parties to ask questions without being in the same room as the victim. This can be facilitated through the court and with the help of an educator or psychologist if needed. To protect child and minor victims, the provisions of the Law on Protection of Witnesses under Threat and Vulnerable Witnesses also apply. If a child witness is severely traumatized or suffers from serious psychological issues, confrontation with the suspect or accused is prohibited. Identification of the suspect by a child victim or witness must be conducted in a way that completely prevents the suspect from seeing the child. Criminal proceedings for offences under Article 185 are treated with urgency to ensure swift justice.

In summary, criminal procedure laws are lacking a compulsory clause for informing victims about the subsequent process after filing a report, their role, available assistance, support services, legal aid, the right to compensation from the perpetrator within the criminal procedure, and protective measures for their or their close ones' safety. This points to the need for wider reforms to ensure victims' access to justice, beyond the necessary legal amendments to align with the Istanbul Convention's consent-based definition of sexual violence.

5.2.3 Protection and support system

The framework for delivering both general and specialized support services to sexual violence victims lacks adequate and consistent regulation throughout Bosnia and Herzegovina. There is no multi-agency co-operation under the local/cantonal co-ordination mechanisms extended to victims of all forms of violence against women. Such a multi-agency co-operation mechanism should encompass the participation of civil society and be based on a gendered understanding of VAW and DV and on the empowerment and economic independence of victims. (GREVIO Report, p. 43). Social protection laws at both the entity level and within the Brčko District are not harmonized to recognize victims of gender-based and

sexual violence, including rape, as entitled to social protection benefits. These victims should also be guaranteed health insurance rights, enabling them access to healthcare services.

Regarding psychological counselling, while this should be available at mental health centres, civil society organizations have alerted GREVIO to the limited capacity of these centres and the reliance on psychological support provided by NGOs, which is not always accessible, especially for women in rural areas. As for legal support, victims also to rely on NGOs, which primarily focus on domestic violence and conflict-related sexual violence. (GREVIO Report 2022, p. 51). Victims are thus required to present themselves to multiple services and recount their trauma to different professionals, leading to secondary victimization.

In the area of protection and support for victims, GREVIO's baseline evaluation report points out that a clear pathway and a referral system for victims of sexual violence is currently not provided for while trauma care and long-term psychological counselling is insufficient. It therefore highlights the need to set up rape crisis centres and/or sexual violence referral centres that provide immediate medical care, trauma support, forensic examinations and psychological assistance by qualified professionals with a view to avoiding secondary victimisation. It also states that, in the interim, a clear pathway for victims of sexual violence/rape should be ensured and forensic examinations should be carried out swiftly. GREVIO's findings continue to be valid. Bosnia and Herzegovina does not have established rape crisis centres or sexual assault referral centres that would provide victims with medical and forensic examination services, trauma support, and counselling. Typically, victims undergo standard medical exams at healthcare facilities, or receive this type of support, along with other assistance (legal counsel, psychological support) in safe houses upon admission, which is also available to other users. NGOs do not have the authority or legal foundation to collect forensic evidence (Mujezinović J. *et al*, 2021, p. 50-67).

Recognition of victims of sexual violence and rape in Bosnia and Herzegovina is inconsistent across the country due to differences in the criminalization of forms of sexual violence as mentioned above. Even when recognized as such, their rights to information and legal assistance vary based on location/domicile, type of violence, and the legal nature of the procedure involved. The legal provision of free legal aid is marked by inconsistencies in terms of eligibility conditions, beneficiary categories, and access procedures. In Republika Srpska, the LPDV explicitly requires all relevant institutions - police, courts, prosecutors' offices, social work centres, health and educational institutions - to inform DV victims about their rights

in a clear manner at first contact, including access to free legal aid. However, this provision does not extend to other victims of gender-based violence.

Eligibility criteria for free legal aid dictate that beneficiaries must fulfil legally defined general conditions related to citizenship, residency, and domicile within the jurisdiction of the specific law, be under international protection, and have entitlements based on international conventions ratified by Bosnia and Herzegovina. Although most legislation establishes these general criteria, certain laws indicate that free legal aid is available to financially disadvantaged individuals/citizens. Beyond these statutory conditions, eligibility for free legal aid also depends on specific status or financial circumstances. It is clear that not all individuals are uniformly covered by all statutes, and there lacks a consistent financial threshold for determining eligibility for free legal aid based on financial need. Under the Law on the Exercise of the Right to Free Legal Aid in the Republika Srpska, only victims of domestic violence are entitled to free legal aid. Victims of other forms of violence against women, including sexual violence, are not recognized as a category entitled to free legal aid based on their status. Instead, they qualify only if they meet the criteria related to financial hardship.⁵ In the Federation of Bosnia and Herzegovina, free legal aid is governed by cantonal laws, with one canton (Central Bosnia) still lacking specific legislation. Among the nine cantons that offer free legal aid, eight recognize the right based on one's status as a victim of domestic or VAW, although the specifics vary. For instance, in Canton 10, free legal aid for victims of GBV is limited to legal proceedings related to their victim status. In Bosnian Podrinje Canton, free legal aid is conditional upon the victim being housed in a shelter.

Currently, Bosnia and Herzegovina lacks standardized criteria for the provision, accessibility, and extent of services offered by existing free legal aid providers to victims of GBV. Failure of the relevant authorities to establish adequate and functional system of free legal assistance to victims of GBV has led to civil society organisation taking the leading role in providing legal support for victim of GBV against women. (Alternative CEDAW Report 2023: 99). At the entity level, there is no comprehensive legislation governing the provision of free legal aid to specific demographic groups, including victims of rape and other sexual violence acts. Even where victims of VAW are acknowledged as a beneficiary group, accessibility to services is limited due to the geographic distribution of free legal aid providers, primarily located in larger cities and towns.

5 A person who, due to their financial situation, is unable to exercise their rights before the court or other authorities without detriment to the necessary maintenance of themselves and their family is provided with free legal aid in accordance with this law.

5.3 Stakeholder input and perspectives

The need for establishing an effective system of prevention, protection, and support for victims of sexual violence and rape in Bosnia and Herzegovina was highlighted at a participatory workshop held online at the end of April 2024 with representatives of various institutions in the chain of prevention and protection against VAW. However, a consensus on how to establish such a system was not reached. Discussions reiterated the fact that, generally, very few cases of sexual violence and rape are reported, even fewer cases lead to convictions, and only a fraction of such cases lead to the imposition of psychosocial treatment measures. Some participants expressed the view that the existing definition of rape is adequate, but that the criminal justice system should be improved to handle rape cases based on this definition through enhanced collaboration among police, prosecution, and courts. Questions were raised in relation to whom the existing definition of rape is for - the victims or the judges. According to some workshop participants, the answer to this question could lead to a change in the definition of rape in BiH.

Participants expressed concern that a consent-based definition of rape is not operational and applicable in practice, being too general to adequately respond to situations where, for example, a victim changes their statement, or a where victims delay in reporting. Participants shared concern on the procedural challenges and burden of proof for successful prosecution of rape cases in the event of a paradigmatic change in defining the criminal offence of rape. The focus of the discussion was increasingly on the problems of operationalizing a consent-based definition of rape by the police, prosecution, and courts. Nevertheless, most participants were neither prosecutors nor judges, which suggests the utility of organizing a broader event with more law enforcement professionals, including prosecutors and the judiciary, to gain feedback that is more representative of the criminal judicial system. There appears to be an (un)justified concern and misinterpretation of statistical data on false reporting among the participants. Moreover, the fear of false accusations against perpetrators overshadows the recognized need to revise the definition of rape that would facilitate reporting and encompass numerous instances of sexual violence not currently covered by the existing definition. It was repeatedly stated in the discussion that the system should encourage “real victims”, without leaving too much room for system manipulation and false reporting. The conclusion of the discussion was a consensus on the undeniable importance of the topic, the usefulness of the workshop for exchanging views before proceeding with legislative changes, and the need for further discussions to carefully consider all possible practical implications of changing the definition of rape.

5.4 Gaps and recommendations

5.4.1 Gaps and challenges

Based on a comparison between international standards and Bosnia and Herzegovina's current legislation, as well as insights gained from stakeholder consultations, the following gaps and challenges were identified in the legal definition and judicial treatment of sexual violence cases.

Lack of harmonized and comprehensive legal definitions

While Bosnia and Herzegovina has made progress in recognizing and addressing violence against women, its current legal framework does not fully incorporate a consent-based definition of sexual violence. This gap undermines the effectiveness of legal protections against all forms of non-consensual sexual acts, including those committed by current or former partners. The division of competencies between the state, entities, and the Brčko District leads to inconsistencies in the criminalization and treatment of sexual violence across Bosnia and Herzegovina. This fragmentation complicates efforts to adopt a unified consent-based approach to sexual violence, creating a patchwork of protections that may leave gaps in coverage and enforcement. The existing laws and policies in Bosnia and Herzegovina do not fully align with the standards set by the Istanbul Convention, which emphasizes the importance of freely given consent and the criminalization of all forms of non-consensual sexual acts. This discrepancy highlights the need for legislative reforms to ensure compliance with international human rights obligations. Accordingly, should the definition of rape be amended, the definition of consent must be framed to ensure that it provides for consent that is given voluntarily based on a person's free will, assessed in the context of the surrounding circumstances. Consent given by virtue of psychological, economic or any other form of coercion is not free consent.

Victims of sexual violence, primarily victims of rape, face multiple barriers in seeking justice.

Existing measures for protection and support for sexual violence victims are inadequate. The analysis indicates a lack of specific measures and policies designed to protect victims of sexual violence, including in the digital sphere. This includes shortcomings in informing victims about their rights, available support services,

and protective measures, as well as a lack of comprehensive support systems for victims.

Lack of comprehensive administrative data on sexual violence and rape

While data on sexual violence and rape are disaggregated according to the sex of the perpetrator and the victim, data are not disaggregated according to the relationship between the perpetrator and the victim nor based on age, failing, therefore, to provide a full picture of women's experiences.

The limited capacity of law enforcement and judicial institutions to effectively address consent-based sexual violence

This challenge requires training for professionals to understand and apply a consent-based approach and improving mechanisms for investigating and prosecuting sexual violence cases. These inadequacies affect both reporting and prosecution rates of cases of sexual violence and rape.

Lack of public awareness and education efforts to shift societal attitudes towards recognizing and respecting consent in sexual relations.

This includes challenging deeply ingrained stereotypes and promoting a culture of consent, in judiciary and beyond.

5.4.2 Action-oriented recommendations

To address the identified gaps and challenges in Bosnia and Herzegovina's legislative and institutional framework regarding the consent-based definition of sexual violence, targeted, action-oriented recommendations are proposed to address identified shortcomings to enhance the protection of women against sexual violence, improve access to justice for survivors, and ensure the effective prosecution of perpetrators.

- Amend the entity-level criminal codes to incorporate comprehensive legal definitions of sexual violence and rape that explicitly include the absence of freely given consent as the basis for such crimes, in line with Article 36 of the Istanbul Convention. Ensure that these amendments are harmonised across all jurisdictions within Bosnia and Herzegovina to eliminate inconsistencies.

- Implement legislative and non-legislative measures to guarantee that all criminal offences involving non-consensual sexual acts extend to incidents against individuals who are or were married to or in an intimate partnership with the perpetrator. It is imperative that legislation explicitly acknowledges offences such as marital rape and/or sexual assault, and that these laws are actively enforced through thorough investigation and prosecution.
- Harmonise domestic legislation with international standards: Undertake a thorough legislative reform process to align Bosnia and Herzegovina's laws and policies with the standards set by the Istanbul Convention and other international human rights instruments focused on combating violence against women and promoting gender equality.
- Establish and enhance specific measures and policies to protect and support victims of sexual violence and rape. This includes setting up specialist support services for victims of sexual violence and rape, including rape crisis centres and/or sexual violence referral centres providing immediate medical care, trauma support, forensic examinations and immediate, short- and long-term psychological assistance by qualified professionals who can provide victim-sensitive examinations, in line with the standards set by the Istanbul Convention. Importantly, access to services should not be contingent on victims lodging a complaint.
- Develop protocols between state authorities and women's NGOs to facilitate referral pathways for victims of sexual violence and rape, and dedicate adequate financial resources to ensure that women's NGOs are sufficiently resourced to provide support to victims of sexual violence and rape.
- Enhance institutional capacity, primarily of law enforcement and judicial institutions, to effectively address sexual violence and rape from a consent-based approach, in line with the standards of the Istanbul Convention. This involves addressing the deeply embedded myths about rape and sexual violence which can be prevalent in the criminal justice system and that affect how defence lawyers, the police, prosecutors and judges interpret what is meant by sexual acts committed without a victim's consent.

- Address barriers faced by victims of sexual violence and rape in accessing justice. This can be achieved by developing and implementing protocols that simplify reporting procedures, ensuring sensitive handling of cases by authorities. Furthermore, laws on the provision of free legal aid should be amended to ensure access for all victims of violence against women and DV, in line with Article 57 of the IC. - Victims should also have access to long-term psychological support throughout the criminal justice process.
- Regularly and systematically collect administrative data on sexual violence and rape at all stages of the criminal justice process (from reporting, to investigation, to the opening of criminal proceedings and their outcome), disaggregated by sex and age of both the victim and the perpetrator, and the relationship of the perpetrator to the victim, in the whole territory of Bosnia and Herzegovina.

6 The digital dimension of violence against women

The digital dimension of violence against women should be contextualised within the broader framework of the phenomenon of gender-based violence against women. While the use of technology changes the dynamics, the space, and the circumstances of violence, it should be regarded as a continuity of the different forms of such violence that affects women and girls disproportionately (GREVIO General Recommendation No. 1 on the digital dimension of violence against women, 2021). In fact, online and offline violence are not mutually exclusive, and often overlap (*ibid.*). Unfortunately, online and technology-facilitated VAW is often understood to be less harmful than physical violence and may be taken less seriously and receive less attention (Council of Europe, *The digital dimension of violence against women as addressed by the seven mechanisms of the EDVAW Platform*, 2022). It is therefore important to approach this phenomenon not as an isolated issue but within a comprehensive and holistic approach to violence against women at the theoretical level, as well as at the policy level and operational level.

Digital forms of GBV against women can include any act of violence against women and girls that is committed, assisted or aggravated, in part or in full, using information and communication technologies (ICTs). Such ICTs may include mobile phones and smartphones, the internet, social media platforms or email, geolocation tracking devices, drones and non-internet connected recording devices, and artificial intelligence (AI) (*ibid.*). Some of the most common uses of technology with the intention to cause harm to women can include intimidation, harassment, exploitation, abuse, stalking, threats, non-consensual sharing of nude or sexual images, sexual bullying and blackmail, all which can happen in an online space, or thanks to a technological device that sets the conditions for the abuse.

In Bosnia and Herzegovina, as in many countries, the digital aspect of violence against women has emerged as a significant concern that challenges existing legal and institutional frameworks. Although there has been progress in recognising and addressing violence against women, the digital dimension of VAW presents

unique challenges that not adequately nor comprehensively addressed by current legislation and institutional practices.

The significance of the digital dimension of VAW as a pressing social issue was recognised by GREVIO, which, on the 20th October 2021, under Article 69 of the Istanbul Convention, issued General Recommendation No. 1 on the digital dimension of violence against women (GREVIO General Recommendation No. 1 on the digital dimension of violence against women, 2021). This Recommendation defines the digital dimension of violence against women and suggests actions aligned with the four pillars of the Istanbul Convention: prevention, protection, prosecution, and co-ordinated policies. GREVIO introduced the term “digital dimension of violence against women,” highlighting that such harmful behaviour disproportionately affects women and girls and is a core part of their experience of GBV. The General Recommendation mandates that parties to the Istanbul Convention criminalise and penalise various forms of technology facilitated VAW, including online psychological violence, stalking, and sexual harassment perpetrated in the digital sphere. Proposed measures for combating the digital dimension of VAW include reviewing relevant legislation, initiating efforts to eliminate gender stereotypes and discrimination, promoting digital literacy and online safety, and developing and disseminating information about legal resources and support services available to victims.

The swift advancement of technology and its exploitation for the perpetration of VAW have surpassed the ability of governments and civil society organisations to respond effectively. This delay in response, combined with insufficient support for victims, has expanded the scale and severity of the digital dimension of VAW. This contributes to women’s hesitancy to engage in online environments and endangers their capacity to fully leverage the benefits of digitalisation.

It is important to note that there is a lack of comprehensive data on the prevalence and nature of digital dimension of VAW in Bosnia and Herzegovina. Improved data collection and research are necessary to understand the scope of the issue fully and to inform policy and legal responses. Some research on the prevalence of digital dimensions of VAW in the region shows that, in Bosnia and Herzegovina, over half of the women (51%) report having experienced at least one form of technology-facilitated violence (Babović, *The dark side of digitalization: Technology-facilitated violence against women in Eastern Europe and Central Asia*, 2023). This is a worldwide phenomenon, with Bosnia and Herzegovina being no exception, as it is still in the initial phases of addressing digital dimension of VAW.

6.1 Overview of international standards

The Council of Europe

The Council of Europe has been active in addressing VAW in its digital dimension. A review of its legal instruments indicates that some treaties directly target digital forms of VAW, while others may be indirectly applicable.

Three Council of Europe treaties contain the main legal approaches to the digital dimension of VAW, including the Council of Europe Convention on cybercrime (the Budapest Convention), the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and the Convention for the protection of individuals with regard to the processing of personal data (Convention 108+).

The most important of these is the Istanbul Convention that can be applied to the digital dimension of VAW. Specifically, Article 3a provides a definition of ‘violence against women’ that includes all acts of GBV. Other provisions that can be applied to the digital dimension of VAW are Article 33 on psychological violence, Article 34 on stalking and Article 40 on sexual harassment. Although the convention does not make explicit reference to the digital sphere or the use of ICT in those articles, the Explanatory Report to the convention underlines that, specifically in relation to Article 34 on stalking, the threatening behaviour may consist of following the victim in the virtual world (chat rooms, social networking sites, etc.) or spreading untruthful information online (Council of Europe Convention on preventing and combating violence against women and domestic violence, Explanatory Report, 2011, para. 182-183).

Providing additional guidance into the application of the IC to digital forms of VAW, GREVIO published General Recommendation No 1 on the digital dimension of violence against women (2021). Through its General Recommendation, GREVIO clarified that: (1) the definition of VAW set out in Article 3a covers many forms of VAW perpetrated online; and (2) the related requirements for parties to establish legal and policy frameworks to tackle all forms of VAW should cover these forms of cyber violence. Furthermore, while recognising the conceptual complexity of defining the issue of digital dimension of VAW, comprehensively outlines the different components of the concept – including the continuum of violence, the role of ICT, and girls as a discrete group of victims – and proposes the term ‘violence against women in its digital dimension’ as sufficiently far reaching to cover

all relevant acts.⁶ Furthermore, in view of the evolving nature of technology and opportunities for harmful behaviour, the term will allow types of behaviour and action yet to emerge to come within its remit.

The Council of Europe Convention on Cybercrime (the Budapest Convention) is the first and most relevant regional legally binding treaty focusing on cybercrime and electronic evidence (Wilk (van der), Protecting women and girls from violence in the digital age. The relevance of the Istanbul Convention and the Budapest Convention on Cybercrime in addressing online and technology-facilitated violence against women, 2021). The convention requires parties to criminalise offences perpetrated against or by means of computer data and systems, content-related offences pertaining to the production, distribution or possession of CSAM, as well as infringements of copyright and related rights. While the Budapest Convention does not refer explicitly to GBV or VAW in the context of cybercrime, a number of substantive criminal law provisions addresses directly and indirectly some types of VAW committed in the digital sphere, such as Articles 4 and 5 relating to data and system interference.

The aim of the original Council of Europe Convention for the protection of individuals with regard to the processing of personal data, aims “to secure in the territory of each party for every individual, whatever his nationality or residence, respect for his rights and fundamental freedoms, and in particular his right to privacy, with regard to automatic processing of personal data relating to him”. It guarantees that any individual is covered by its protection, irrespective of their nationality, as long as they are within the jurisdiction of one of the parties who have ratified the convention (Council of Europe, Convention 108 +, Convention for the protection of individuals with regard to the processing of personal data, 2018).

The digital dimension of VAW is also addressed in non-binding recommendations of the Council of Europe. The most relevant is the Recommendation CM/Rec(2019)1 on preventing and combating sexism⁷ that contains the first ever internationally agreed definition of sexism, including online and via new technologies, as follows:

Any act, gesture, visual representation, spoken or written words, practice or behaviour based upon the idea that a person or a group of persons is inferior because of their sex,

6 GREVIO's General Recommendation No. 1 contains a glossary containing a non-exhaustive list of definitions of some of the most commonly used terms in the digital domain as well as the most prevalent forms of digitally perpetrated violence against women.

7 <https://www.coe.int/en/web/gender-matters/recommendation-on-preventing-and-combating-sexism>

which occurs in the public or private sphere, *whether online or offline*, with the purpose or effect of: i. violating the inherent dignity or rights of a person or a group of persons; or ii. resulting in physical, sexual, psychological or socio-economic harm or suffering to a person or a group of persons; or iii. creating an intimidating, hostile, degrading, humiliating or offensive environment; or iv. constituting a barrier to the autonomy and full realisation of human rights by a person or a group of persons; or v. maintaining and reinforcing gender stereotypes.

United Nations

At UN level, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)⁸ has been progressively analysed by the CEDAW Committee, which has addressed technology-facilitated VAW in several general recommendations and concluding observations. In its general recommendation No. 35 (2017)⁹ on gender-based violence against women, the Committee made clear that the Convention was fully applicable to technology-mediated environments, such as the Internet and digital spaces, as settings where contemporary forms of VAW and girls were frequently committed in their redefined form.

Furthermore, the UN Special Rapporteur on Violence against Women (UNSRVAW) was the first human rights mechanism to clearly defined gender-based cyber violence as: *any act of gender-based violence against women that is committed, assisted or aggravated in part or fully by the use of ICT, such as mobile phones and smart-phones, the Internet, social media platforms or email, against a woman because she is a woman, or affects women disproportionately (UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences on online violence against women and girls from a human rights perspective, 2018).*

European Union

There is no harmonised legal definition of technology facilitated VAW at the European Union level. However, there are several EU Directives and regulations applicable to the digital dimension of VAW.

The Directive on combating sexual abuse of children (Directive 2011/93/EU)¹⁰ addresses both the offline and online dimensions of child sexual abuse. It aims to

8 <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>

9 <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>

10 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011L0093>

protect minors from non-consensual intimate image abuse (considered CSAM when the victim is a minor). Article 25 obliges EU Member States to promptly remove child abuse materials within their territory and to endeavour to secure the removal of materials hosted elsewhere, offering the possibility to block access to CSAM. The directive protects children online but does not mention girls as recipients of specific gender-based forms of cyber violence.

The Audiovisual media services directive (Directive 2010/13/EU)¹¹ aims to protect minors from inappropriate content and all users from content ‘containing incitement to violence or hatred directed against a group of persons or a member of such a group defined by reference to sex, race, colour, religion, descent or national or ethnic origin’ (Van der Wilk, 2018). It also contains provisions for reporting and flagging illegal and hateful content. This applies to television programmes, video-on-demand services and video-sharing platforms, including social media essentially devoted to video sharing.

The Directive on preventing and combating trafficking in human beings and protecting its victims (Directive 2011/36/EU)¹² lists provisions for the prevention of human trafficking, the protection of victims and law enforcement actions regarding perpetrators of human trafficking. It is indirectly relevant to cyber violence, given the strong gender dimension and the use of digital networks to commit these crimes.

The recently adopted proposal for a Directive to combat VAW and DV is the first comprehensive legal instrument at EU level to tackle VAW.¹³ The new Directive also provides for measures to prevent all types of VAW, including DV and sets new standards for victims’ protection, support, and access to justice. Importantly, the Directive criminalizes the most widespread forms of VAW perpetrated in the digital sphere, including the non-consensual sharing of intimate images (including “deepfakes”), cyber-stalking, cyber-harassment, misogynous hate speech and “cyber-flashing”.

11 <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32010L0013>

12 <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32011L0036>

13 https://ec.europa.eu/commission/presscorner/detail/en/ip_24_649

Case law of the European Court of Human Rights

Case law of the European Court has clearly recognized technology facilitated violence as a form of VAW and DV, and reaffirmed state's positive obligation to protect women from such violence.

- ***Volodina v Russia* (Application No 40419/19)**

The applicant alleged that the state had failed in its positive obligation to protect her right to respect for private life (Article 8 of the European Convention on Human Rights) from the acts of cyber violence she suffered, including the publication of her intimate photographs without consent, stalking and impersonation, and that it had failed to carry out an effective investigation into these acts. The European Court considered that there was a violation of Article 8 of the Convention and declared the state's obligation to compensate the victim.

- ***K.U. v Finland* (Application No 2872/02)**

The European Court ruled that states have a positive obligation to protect their citizens against cybercrime, including sharing pictures in an advertisement of sexual nature without consent.

- ***Buturugă v Romania* (Application No 56867/15)**

The applicant reported a crime of cyber violence and complained about the state's failure to investigate adequately and/or act on complaints of DV. The European Court considered that there was a violation of Article 3 the Convention on the prohibition of torture, inhuman or degrading treatment or punishment and Article 8 of the Convention on the right to respect for private and family life. The Court also ruled that there had been a failure to adequately investigate and/or act on complaints of DV, which included cyber violence, although this was not explicitly mentioned.

6.2 Analysis of Bosnia and Herzegovina's current legal framework

An examination of national legislation and policies in relation to the digital dimension of VAW reveals that the Bosnia and Herzegovina, its entities, and the Brčko District do not possess an adequate comprehensive normative regulatory framework addressing acts of VAW with a digital dimension. The existing laws, at best, only indirectly address some forms of technology facilitated VAW. Specific provisions at certain governmental levels in Bosnia and Herzegovina, such as the Criminal Code of Republika Srpska and Brčko District, include the crime of *abuse of photographs and video recordings of sexually explicit content*, but such an act is not positioned within a clear and broader framework for combating the digital dimension of VAW. Furthermore, neither Bosnia and Herzegovina, its entities, nor the Brčko District have a specific law on VAW that would encompass its digital dimensions. Provisions on specific acts of VAW are contained in general laws – criminal codes and laws on protection from domestic violence.

The integration of offences involving VAW with a digital dimension into substantive criminal law varies across different levels in Bosnia and Herzegovina. At no level has this integration been satisfactorily or fully accomplished. This is partly due to the fact that certain forms of violence against women committed in the digital sphere have not yet been clearly and precisely conceptually defined. As a result, normative interventions are slower and lack a systematic approach. There is no single definition or typology that collectively addresses all forms of digital dimension of VAW, neither are these behaviours consistently defined nor prohibited across both entities of Bosnia and Herzegovina. Therefore, for the purposes of this report, the VAW typology with a digital dimension from the GREVIO Recommendation will be used. The Recommendation categorizes these acts into three categories: (1) online sexual harassment¹⁴, (2) online and technology-facilitated stalking¹⁵, and (3) the digital dimension of psychological violence.

14 This General Recommendation considers the following behaviour This online or through digital means to come under this definition: 1) non-consensual image or video sharing; 2) non-consensual taking, producing or procuring of intimate images or videos; 3) exploitation, coercion and threats 4) sexualised bullying; and 5) cyberflashing.

15 Stalking practices committed in the digital sphere include threats (of a sexual, economic, physical or psychological nature), damage to reputation, monitoring and gathering of private information on the victim, identity theft, solicitation for sex, impersonating the victim and harassing with accomplices to isolate the victim. It usually involves the tactic of surveilling or spying on the victim, on their various social media or messaging platforms, their e-mails and phone, stealing passwords, cracking, or hacking their devices to access their private spaces, via the installation of spyware or geo-localisation apps, or via stealing their devices. Perpetrators can also take on the identity of the other person or

The Laws on the Prohibition of Discrimination and Gender Equality provides a legal framework to ensure equal rights and opportunities for all individuals, including protection against discrimination. These laws define direct and indirect discrimination as well as specific forms of discrimination, such as harassment, sexual harassment and, according to the Law on Prohibition of Discrimination in Bosnia and Herzegovina and labour laws, mobbing. Relevant to digital dimension of VAW, these laws categorize harassment and sexual harassment as specific forms of discrimination, defining them as unwanted behaviours that undermine a person's dignity and create a hostile environment. Moreover, they establish civil liability for acts of discrimination and mandates the alignment of all regulations with its principles, giving priority to its provisions over conflicting laws. The definitions are technology-wise neutral and do not specify the means by which harassment can be carried out, so cases of online (sexual) harassment are not explicitly addressed. Unlike the Criminal Code of Federation of Bosnia and Herzegovina, the Criminal Codes of Republika Srpska and Brčko District criminalize and impose a prison sentence of up to one year for sexual harassment. Sexual harassment is defined as any unwanted verbal, non-verbal, or physical conduct of a sexual nature that intends to or actually violates someone's dignity, causing fear, hostility, humiliation, or an offensive environment. Notably, the Criminal Code of Republika Srpska takes it a step further: if sexual harassment is carried out using a computer network or other forms of communication, it is considered a more serious offence. In such cases, the offender faces imprisonment ranging from six months to three years.

The laws in Bosnia and Herzegovina addressing DV, including those in the Federation of Bosnia and Herzegovina, Republika Srpska, and Brčko District, categorize DV as actions by a family member causing physical, psychological, sexual pain, suffering, economic harm, or threats leading to fear of such violence. These laws, while prohibiting DV, vary in their definitions and coverage of acts constituting DV. For instance, differences exist in how sexual violence and harassment are defined, the inclusion of different forms of intimate partnerships alongside family members, and the scope of acts considered as DV (Džumhur et al., 2022, p. 12-13). Notably, current legal frameworks do not uniformly nor comprehensively address DV or intimate partner violence perpetrated through ICTs.

The criminal laws in the Republic of Srpska, the Federation of Bosnia and Herzegovina, and the Brčko District include specific sections dedicated to offences against electronic data processing systems. These laws are designed to protect

monitor the victim via technology devices connected through the Internet of Things (IoT), such as smart home appliances.

the integrity and functionality of digital infrastructures. Among the offences, the deliberate damage to computer data and programs stands out, targeting individuals who intentionally harm, destroy, alter, or delete digital information. The laws also address computer forgery, where falsifying or modifying computer data to make it appear authentic is considered a serious crime. Additionally, the laws cover computer fraud, which involves using digital information or programs to commit fraudulent activities. Interfering with the operation of electronic data processing systems and networks is another critical offence, focusing on actions that disrupt or hinder the normal functioning of these systems. Unauthorized access to protected electronic data processing systems and networks is strictly prohibited, aiming to prevent unauthorized individuals from infiltrating secured digital environments. Lastly, computer sabotage is addressed, targeting deliberate attempts to disrupt or damage computer systems, networks, or data. These legal provisions underscore the regions' commitment to combating cybercrime and safeguarding their digital ecosystems. However, the utility of such legal provisions is limited in the context of combating VAW with digital aspect.

Other provisions of the criminal codes could be more useful. The criminal codes include provisions that address acts of VAW committed through ICTs. These codes specify that crimes motivated by hatred are considered aggravating circumstances, unless hatred is already an essential element of the crime (such as murder, grievous bodily harm, rape, property damage, FGM, forced sterilization, etc.). Hate crimes are those driven wholly or partially by the victim's race, nationality, ethnicity, language, religious beliefs, skin colour, *gender*, *sexual orientation*, health status, or *gender identity*. For instance, Article 2, Paragraph 42 of the Brčko District's Criminal Code defines hate as a motive for criminal acts based on actual or perceived differences in ethnic or national origin, language, religious beliefs, race, skin colour, *gender*, *sexual orientation*, political or other beliefs, social origin, social status, age, health status, or other characteristics, or due to association with persons having any of these traits. Importantly, the Criminal Codes of Republika Srpska and Brčko District explicitly address the use of digital platforms for harassment. They state that anyone using computer networks or social media to publicly call for, incite, or encourage violence or hatred against individuals or groups based on characteristics such as national, racial, religious, or ethnic affiliation, skin colour, gender, sexual orientation, disability, gender identity, or origin, will face severe penalties, including fines or imprisonment for up to three years. These provisions highlight the recognition of and response to the growing issue of violence against women perpetrated in the digital sphere.

The criminal codes also recognize the offences of unauthorized tapping and sound recording. Specifically, anyone who, without permission, taps into another person's conversation or records a conversation or statement not intended for them using special devices, or enables an unauthorized person to learn about such a conversation or statement, or who intercepts or records others' messages in a computer system without permission, will be punished with a fine or imprisonment for up to three years in the Federation of BiH and Brčko District, and up to one year in Republika Srpska. Similarly, unauthorized optical recording is an offence. Anyone who photographs, films, or otherwise records another person without their consent in their private premises, or shares such a recording directly with a third party, or allows them to become acquainted with it, will face a fine or imprisonment for up to three years in the Federation of BiH and Brčko District, and up to one year in Republika Srpska. The law considers it a more serious offence if a child or minor is recorded for the creation of pornographic content, or if someone possesses, imports, sells, distributes, or displays such material. Furthermore, the Criminal Code of Republika Srpska criminalizes unauthorized publication and display of others' writings, portraits, and recordings: Anyone who publishes or displays a personal document, portrait, photograph, video recording, film, or phonogram without the consent of the person who created the document or to whom it pertains, or without the consent of the person depicted, recorded, or whose voice is captured, and such publication or display has or could have harmful consequences on that person's private life, will be punished with a fine or imprisonment for up to two years. If the offence is committed against a family member or household member, with the intent to harm their reputation, the perpetrator will be sentenced to six months to three years in prison. If the offence severely damages the health of the person whose document, portrait, or recording was published, the offender will be sentenced to one to five years in prison, and if it results in death, the sentence will be two to ten years. Additionally, all three criminal codes also criminalize the unauthorized use of personal data.

Significant differences exist among the entity criminal legislation regarding VAW and its digital dimension. Notably, Republika Srpska and Brčko District updated its legislation in 2017 and 2024 respectively to introduce offences like female genital mutilation, forced marriage, forced sterilization, stalking, sexual harassment and abuse of sexually explicit content. Stalking is defined as persistently and over an extended period following or spying on another person, attempting to establish unwanted contact directly or through a third party, or otherwise intimidating them, causing them anxiety or fear for their safety or the safety of their family. The penalty for stalking is a fine or imprisonment of up to one year. If the crime is committed against a family member or a child, the perpetrator can be sentenced

to up to three years in prison. In contrast, the Criminal Code of the Federation of BiH does not criminalize stalking in the same manner as in Republika Srpska or Brčko District. However, it does criminalize endangering security. This offence includes threatening someone's life or physical integrity, causing public distress, or compromising the safety of a spouse, domestic partner, the parent of their child, or other close associates through stalking, frequent following, or other forms of harassment. The penalties for endangering security range from imprisonment for up to six months, or a fine, to imprisonment for up to one year if the safety of a close associate is threatened.

Technology facilitated VAW, particularly non-consensual intimate image distribution, known as "revenge pornography"¹⁶ is not criminalized as such under the Criminal Code of Federation of BiH, unlike the Criminal Codes of the Republika Srpska and Brčko District. The Criminal Code of the Brčko District uses the term "Misuse of a Recording of Sexually Pornographic Content," while the identical offence in the Criminal Code of the Republic of Srpska is termed "Misuse of a Photograph and Video Recording of Sexually Explicit Content." Both criminal codes define this form of violence against women as follows: anyone who abuses a relationship of trust to share a recording of sexually explicit content, made with the person's consent for personal use, with a third party without consent, thereby violating their privacy, will be punished with up to three years of imprisonment. Additionally, anyone who uses ICT or other means to create or alter a recording of sexually explicit content, or uses the recording as genuine, thereby violating the person's privacy, will face the same punishment. If these offences result in the recording becoming accessible to a larger number of people, the offender will still face up to three years of imprisonment. Furthermore, the recordings and devices used to commit these offences will be confiscated.

The Draft Law on Amendments to the Criminal Code of Federation of Bosnia and Herzegovina proposes changes directly or indirectly related to VAW, seeking alignment with the Istanbul Convention's provisions, such as criminalizing female genital mutilation, forced sterilization, forced marriage, stalking, psychological violence, and abuse of explicit content recordings. Some proposed criminal amendments include explicit or implicit digital/cyber elements, such as stalking defined as repeated following or establishing unwanted contact, which can be facilitated through information and communication technologies. For the purpose of this analysis, it is observed that some of the proposed criminal amendments contain

16 Revenge pornography involves distributing explicit photos or videos without consent, often by ex-partners or hackers, leading to victim shaming and further harassment.

explicit or implicit digital aspects. For example, stalking is defined as repeated following or monitoring of another person or establishing, directly or indirectly, unwanted contact or intimidation in another way that causes anxiety or fear for their safety or the safety of a family member or someone close to them, which is subject to an enhanced prison sentence of up to one year. Establishing unwanted contact or intimidation can also be achieved through ICT, although these technologies are not separately nor explicitly defined in the draft. As mentioned above, Article 34 of the Istanbul Convention defines stalking as “intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety.” The Explanatory Report further clarifies this definition and acknowledges that stalking committed via the use of ICT is covered by Article 34: The threatening behaviour may consist of repeatedly following another person, engaging in unwanted communication with another person, or letting another person know that he or she is being observed. This includes physically pursuing the victim, appearing at her or his place of work, sports or education facilities, as well as following the victim in the virtual world (chat rooms, social networking sites, etc.). Engaging in unwanted communication entails the pursuit of any active contact with the victim through any available means of communication, including modern communication tools and ICT devices.

Psychological violence is currently criminalized only in the Criminal Code of Brčko District, specifically Article 178a. According to the law, anyone who abuses another person or treats them in a manner that offends human dignity and thereby harms their psychological integrity will be punished with a fine or imprisonment for up to one year. If the offence is committed against a child, the perpetrator will be sentenced to six months to five years in prison. The proposed amendments to the Criminal Code of the Federation of BiH also include psychological violence as an offence, defined the abuse or treatment of another person in a way that insults human dignity and impairs their psychological integrity. However, the use of ICT is not mentioned explicitly. All forms of VAW perpetrated in the digital sphere have a psychological impact and could be categorized as psychological violence exerted online and with the use of technology (GREVIO General Recommendation No. 1 on the digital dimension of violence against women, 2021, p. 20). Moreover, individual acts of violence that are not criminalized may reach the threshold of psychological violence when combined with the mob mentality and repetition facilitated by the internet: a teasing comment may escalate to cyberbullying when made repetitively or by a large number of people. Certain groups of women, including politicians, journalists, and human rights defenders and activists, are particularly exposed to such violent acts (*ibid.*).

Bosnia and Herzegovina ratified The Council of Europe Convention on Cybercrime and its 2006 Additional Protocol on acts of a racist and xenophobic nature committed via computer systems, committed to integrating these standards into national law, focusing on computer-related crimes and enhancing international cooperation in combating such crimes. However, current legislation within Bosnia and Herzegovina, only partially addresses the definitions and scope of cybercrime, with some areas, especially those related to VAW in digital environments, requiring further clarification and alignment with the Convention's standards. Specifically, unauthorized access to social media profiles and the misuse of intimate photos or recordings highlight the need for more detailed legal provisions. The Criminal Codes of the Federation of Bosnia and Herzegovina and the Republika Srpska mention computer-related offences but lack comprehensive definitions critical for prosecuting cybercrime effectively (Džumhur et al., 2022, p. 17-18).

The different forms of information and communication technologies are not defined across all relevant legislation. Criminal procedure laws at all levels of government include definitions for the terms "computer system" and "computer data." Here, "computer system" refers to any device or a group of interconnected devices, at least one of which processes data automatically based on a program. "Computer data" refers to any representation of facts, information, or concepts in a form suitable for processing in a computer system, including any program capable of causing the computer system to perform a specific function.

The 2003 Law on Communications of Bosnia and Herzegovina (Official Gazette of Bosnia and Herzegovina, no. 31/03) oversees the nation's communication sector and delineates the authority of the Regulatory Communications Agency of Bosnia and Herzegovina. This setup, dictated by the Constitution of Bosnia and Herzegovina, facilitates both domestic and international communications and plays a crucial role in cybercrime prevention. In this context, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (the Lanzarote Convention), ratified by Bosnia and Herzegovina, is notably integrated into the legal framework of Republika Srpska. This integration includes establishing a registry for individuals convicted of child sexual abuse and exploitation offences, underscoring the focus on protecting children from violence perpetrated in the digital sphere. Yet, the Federation of Bosnia and Herzegovina and the Brčko District lack similar legislative provisions.

Regarding personal data protection, Bosnia and Herzegovina is governed by the Personal Data Protection Law (Official Gazette of Bosnia and Herzegovina, Nos. 49/2006, 76/2011 and 89/2011), which requires explicit consent for processing

personal data, defining personal data as any information related to an identifiable individual. This Law places a particular emphasis on the responsibility of public authorities in safeguarding personal data, especially in the context of information and communication technologies (ICTs) and social networks, highlighting the public nature of the digital space.

6.3 Stakeholder input and perspectives

At a participatory workshop held online at the end of April 2024 with representatives of various institutions in the chain of prevention and protection against VAW, stakeholders highlighted the frequent cases of technology facilitated GBV in Bosnia and Herzegovina, emphasizing the misuse of private online spaces, social networks and online platforms. It was recognized that victims are subjected to stigmatization and ridicule, resulting in numerous negative consequences. They stressed that, although not all specific acts of VAW with a digital dimension are explicitly criminalized, existing definitions of criminal offences can still be applied to many, though not all, digital aspects of VAW.

The collection and processing of electronic and other evidence in cases of VAW with a digital dimension, and ensuring the use of lawful evidence, was highlighted as a particular challenge due to their unique nature. In that regard, a significant problem identified is the lack of capacity and expertise of professionals in handling electronic evidence, in addition to challenges related to processing relevant electronic devices. Examples include delays in forensic examinations of phone data, which can take several months, leaving the individual without their device. Challenges also arise in preserving data on phones or other electronic devices due to continuous internet use.

There was also criticism among participants of the international conventions' mechanisms for international legal assistance or collection of evidence, which, while not inherently slow, become inefficient when accessing information and data held by public or private entities that often retain such data for only short periods. In this regard, some of the workshop participants pointed out the significant problem of establishing international cooperation. There is a need for police contact points to operationally verify information with their counterparts on other platforms, such as identifying accounts and IP addresses. The Institute of International Legal Assistance is used, but there are particular issues with the disclosure of identities by online platforms and individuals.

The participants stressed that besides the adoption of systematic normative regulation and the criminalization of VAW with a digital dimension, it is crucial to provide specialized education and training to relevant professionals. These would equip the police and prosecutors with the skills to collect and process electronic evidence efficiently and lawfully, without compromising the integrity and credibility of the collected data.

6.4 Gaps and recommendations

6.4.1 Gaps and challenges

Based on a comparison between international standards and Bosnia and Herzegovina's current legal and policy framework, as well as insights gained from stakeholder consultations, the following gaps and challenges have been identified in relation to effectively addressing the digital dimension of violence against women:

Lack of harmonisation of the domestic regulatory framework with international standards in relation to digital VAW.

Bosnia and Herzegovina's commitment to international conventions, such as the Council of Europe Convention on Cybercrime, calls for a harmonization of national laws with these standards, particularly in defining and prosecuting cybercrime related to VAW.

Lack of comprehensive legislation

Bosnia and Herzegovina's legal framework is slow in adapting to the rapid technological advancements and the corresponding rise in the digital dimension of VAW. Bosnia and Herzegovina's legal framework, including its Criminal Codes, does not sufficiently address or explicitly define the digital dimension of VAW, with only Republika Srpska and Brčko District incorporating specific offences like the misuse of sexually explicit content. There is no uniform definition or comprehensive approach to all forms of digital dimension of VAW across Bosnia and Herzegovina, resulting in inconsistent protections. The failure to systematically regulate the digital dimension of VAW has translated into a lack of policies, data collection, and victim support for these forms violence.

Insufficient data regarding the prevalence and nature of the digital dimension of VAW

The lack of data on violence against women perpetrated in the digital sphere hinders the development of a comprehensive and effective strategy and legal responses. Existing measures do not fully protect against digital dimension of VAW, contributing to hesitancy among women to engage online and limiting their access to digital benefits.

Lack of capacity among law enforcement professionals

Lack of capacity and expertise among law enforcement professionals hinders the process of obtaining and processing electronic evidence and the effective investigation of technology facilitated VAW.

6.4.2 Action-oriented recommendations

To address the identified gaps in Bosnia and Herzegovina's approach to combating the digital dimension of VAW, the following action-oriented recommendations are proposed:

Fully implement the recommendations provided by GREVIO under General Recommendation No. 1 on the digital dimension of violence against women. Focus on the four pillars of the Istanbul Convention: prevention, protection, prosecution, and co-ordinated policies, to create a holistic approach to combating VAW in the digital dimension.

To ensure consistent and comprehensive protection against all forms of VAW across Bosnia and Herzegovina, it is recommended to improve the legal and policy framework by ensuring the adequate implementation of existing legislation in contexts of digital manifestations of VAW, and developing policies to address digital dimensions of VAW, strengthen their implementation, and establish effective procedures to prevent, eliminate and respond. Recommendations include seeking inspiration from the measures listed in GREVIO's General Recommendation No.1 on the digital dimension of violence against women.

Amend existing legislation to to prevent, provide protection from and prosecute the digital dimension of violence against explicitly include digital forms of VAW, against the standards of the Istanbul Convention and other relevant standards,

including the Budapest Convention. This includes revising criminal codes to adequately define and penalise online sexual harassment and other technology-facilitated forms of VAW. As such, laws on DV should be harmonized in to include the digital dimension of VAW, in line with the IC by introducing legislative amendments to explicitly criminalise acts such as unauthorised photographing, filming, and sharing of intimate content of family or domestic union members through digital platforms, with or without prior consent.

Ensure the effective application of existing criminal offences that cover acts of sexual harassment, stalking and psychological violence to technology-facilitated violence and violence perpetrated in the digital sphere. Establish a new offence for non-consensual intimate image distribution, imposing stricter penalties, particularly in cases involving family or domestic relationships or when perpetrated by officials and explicitly criminalise online sexual harassment.

Harmonise Bosnia and Herzegovina's Criminal Codes with the Convention on Cybercrime and its Additional Protocol to ensure a unified approach to cybercrime, enhance legal clarity, and effectively address the digital dimension of VAW.

Strengthening privacy protections in the digital age by amending the Personal Data Protection Law to classify photographs or videos showing intimate body parts as personal data.

Strengthen the capacity of legal and institutional frameworks to respond to the digital dimension of VAW and improve multisectoral cooperation. This includes training for law enforcement and judicial authorities on the specifics of VAW in its digital dimension, ensuring that they are equipped to investigate and prosecute the digital dimension of violence against women effectively.

Promote digital literacy and online safety through initiatives aimed at promoting online safety among the public, with a particular focus on women and girls. Educate citizens, especially women and girls, on recognising the digital dimension and on the legal and support mechanisms available to victims.

Formulate and implement a comprehensive strategy or action plan that includes specific measures to combat digital dimension of VAW. This strategy should align with international standards and include input from various stakeholders, including victims, civil society organisations, and international bodies.

Organisations responsible for responding to DV and other forms of violence affecting women should be adequately funded to be able to respond to online and technology-facilitated forms of harassment, stalking and psychological violence in their response frameworks and programmes.

Enhance and expand support services for victims of VAW perpetrated in the digital sphere. This includes providing legal assistance, psychological support, and other necessary services to help victims recover and access to justice.

The collection of disaggregated data and research is especially important when it comes to these emerging forms of VAW perpetrated in the digital sphere. Disaggregated data on VAW with a digital component should be collected and analysed, including complaints, incidence and conviction rates, as well as data on the civil justice measures imposed, such as restraining orders.

Surveys, research programmes and studies on the digital dimension of VAW should be undertaken and/or supported in order to, among other things, measure the financial, personal and social impacts of such violence.

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