EUROPEAN CENTRE FOR MINORITY ISSUES KOSOVO

UNITED NATIONS TRUST FUND TO END VIOLENCE AGAINST WOMEN

INSTITUTIONAL AND LEGAL FRAMEWORK FOR THE PROTECTION OF MINORITY WOMEN FROM GBV

Working Towards a Stable Multi-Ethnic Kosovo



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I. INTRODUCTION

The tumultuous journey towards European Union integration and accession for Kosovo (under UN SCR 1244/1999) as a new-born country testifies to be a serious challenge. Growing up into a mature country, influencing the increase of international recognition and fulfilling all the required standards require a lot of commitment to fundamental and far-reaching reforms in many areas. Among the long and wide list of others, it has been reported that 'gender-based violence and women's limited access to property ownership significantly hamper their full enjoyment of rights'.[1] Of particular concern is that minority women face double vulnerability in this area, primarily because of their ethnic and gender belonging. The following policy brief presents a concise description and analysis of current institutional and legal framework for the protection of minority women and girls in Kosovo (under UN SCR 1244/1999) from gender based violence (hereinafter 'GBV'), identifies its gaps and shortcomings and provides clear recommendations to the government of Kosovo (under UN SCR 1244/1999), courts, police, civil society and all other relevant stakeholders.

II. THE CONTEXT OF THE PROBLEM AND CHALLENGES FACED BY MINORITY WOMEN AND GIRLS

The context of the problem and challenges faced by minority women and girls

Women belonging to minority communities in Kosovo (under UN SCR 1244/1999) – particularly Roma, Ashkali, Egyptian and Serb minorities – face a de facto double discrimination, as women and as members of minorities and are vulnerable to GBV. Among the most striking problems are domestic violence (hereinafter 'DV') and early and forced marriages. Targeted women have limited knowledge of and access to adequate prevention and treatment services in Kosovo (under UN SCR 1244/1999). The state has a legal and institutional framework aimed at fostering gender equality and preventing GBV; however, its implementation remains inadequate, particularly in minority areas, as minority women face additional linguistic, social and political obstacles to accessing existing services.

[1] European Commission, *Kosovo 2015 Report*, p. 20. Available at http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_kosovo.pdf

How the law defines GBV?

According to the Kosovo (under UN SCR 1244/1999)
Law on Gender Equality, 'violence on the grounds of gender includes all acts of violence that result in, or are likely to result in, physical, sexual, psychological, social or economic harm or suffering on the grounds of gender, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life'.[2] The Convention on the elimination of all forms of discrimination against women (hereinafter 'CEDAW') defines gender-based violence as 'violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty'.[3] On the other hand, DV is defined as 'one or more intentional acts or omissions (among others, use of physical force or psychological pressure, non-consensual sexual acts, property damage or destruction, forcibly removing from a common residence) when committed by a person against another person with whom he or she is or has been in a domestic relationship'.[4] What's more, forced and child marriages are considered to entrap women and young girls in relationships that deprive them of their basic human rights and are therefore prohibited by numerous international legal instruments.[5]

III. INSTITUTIONAL MECHANISMS FOR PROTECTION AGAINST GBV AND DV

Every *police* station has a unit responsible for gender-based violence.[6] The police is responsible to respond to any report for acts or threats to commit acts of GBV/DV, arrest the alleged perpetrator where there are grounds for suspicion that a crime involving GBV/DV was committed and use reasonable means to protect the victim and prevent further violence.[7]

[2] *Law on Gender Equality*, article 3.1.18, available at http://www.kuvendikosoves.org/common/docs/ligjet/05-L-020%20a.pdf
[3] The CEDAW, General Recommendation No. 19. Available at http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm
[4] Law on Protection against Domestic Violence (LPDV), article 2.1.2. Available at http://www.kuvendikosoves.org/common/docs/ligjet/2010-182-eng.pdf
[5] The advocates for human rights. *Forced and Child Marriage*. Available at http://www.stopvaw.org/forced_and_child_marriage
[6] *Kosovo 2015 Report*, p. 24.
[7] LPDV, article 24.

Gender equality officers are civil servants, available in all municipalities, who work towards achieving gender equality and mainstreaming gender issues into municipal policies, legislation and practices.[8] *Centers for Social Work* (CSWs) are overseen by the Ministry of Labor and Social Welfare (hereinafter 'MLSW') and have a mandate to, among others, manage domestic violence cases.[9]

Non-governmental *shelters* are contracted by the MLSW to offer protective services to women and children who have suffered GBV/DV. Six shelters, located throughout Kosovo (under UN SCR 1244/1999), work as a Shelter Coalition in joint procedures, coordination, and advocacy. In addition to housing, they provide psychological and legal counseling.[10]

Municipal courts are competent to issue protection measures such as various types of protection orders for the potential or actual GBV/DV victims, to be executed by the Kosovo (under UN SCR 1244/1999) police.[11]

In addition to the above, *victim protection and assistance office* has been established to assist, among others, victims of GBV/DV, through the following means: *help-line* which is a free of charge public telephone number for confidential reporting of crimes of various types of abuse; *victim advocate,* who is an authorized representative empowered to inform the injured party of his or her rights, represent the interests of the victim with the state prosecutor and the court; and when necessary, to refer the victims to other service providers.[12]

IV. LEGAL FRAMEWORK FOR THE PROTECTION FROM GBV AND DV

The Constitution of Kosovo as the supreme legal act, guarantees the protection of human rights and fundamental freedoms by state authorities and laws.[13] The law on protection from domestic violence

[8] OSCE Mission in Kosovo, *OSCE Mission in Kosovo supports municipal gender equality officers*, available at http://www.osce.org/kosovo/47900
[9] Färnsveden, Ulf, Ariana Qosaj-Mustafa, Nicole Farnsworth. *Country Gender Profile: An Analysis of Gender Differences at all Levels in Kosovo.* Sweden Framework for Gender Equality, 2014, p. 7. Available at http://www.swedenabroad.com/ImageVaultFiles/id_20757/cf_347/Orgut_Kosovo_Gender_Profile_FINAL_2014-05-08.PDF
[10] ECMI Kosovo. *Baseline Study: Empowering Minority Communities in Kosovo against Gender-Based Violence*. United Nations Trust Fund to End Violence against Women. August 2014, 26, available at https://ecmikosova.org/publication/baseline-study-empowering-minority-communities-in-kosovo-against-gender-based-violence/
[11] LPDV, article 3.
[12] Kosovo Prosecutorial Council. *Regulation on the mandate, structure and the functioning of the victim protection and assistance office*, article 2, available at http://www.psh-ks.net/repository/docs/REGULATION_FOR_THE__MANDATE,_STRUCTURE_AND_FUNCTION_OF_THE_VPAO.pdf
[13] *Constitution of the Republic of Kosovo*, Chapter II, available at

(hereinafter 'LPDV') is a special law that aims to prevent the occurrence of GBV/DV through appropriate legal measures, to treat perpetrators of domestic violence and mitigate consequences.[14] Other separate laws for respective matters (material laws) such as Criminal Code, Family Law, Law on Inheritance, Law on Social and Family Services, Law on Health, etc. regulate certain aspects of the rights of the parties involved in a GBV/DV cases.[15]

According to the LPDV, protection measures to be applied as against the perpetrator are: psycho-social treatment, prohibition of approaching the domestic violence victim, prohibition of harassment to persons exposed to violence, removal from apartment, house or other living premises, medical treatment from alcohol dependency and dependency from psychotropic substances and confiscation of item by means of which the act of violence was committed.[16] Protection measures to be applied as against the victim of violence are: accompanying victim of violence, property protection measures, issuance of the relevant protection order and prosecution of GBV/DV actions that constitute criminal acts punishable by the Criminal Code and prosecuted by the Criminal Procedure Code.[17]

V. GAPS AND SHORTCOMINGS IN THE ADOPTED LEGAL FRAMEWORK AND THE CURRENT INSTITUTIONAL MECHANISMS AVAILABLE

Kosovo's legal framework pertaining to GBV/DV is fairly comprehensive, however, some challenges to implementation remain, particularly in the area of prevention of GBV/DV, access to justice, rehabilitation and reintegration of victims of GBV/DV. The work done in the area of awareness-raising among men and boys towards transforming gender roles is not satisfactory.[18]

In minority areas (Fushë Kosovë/Kosovo Polje; Ferizaj/Uroševac; Graçanicë/Gračanica and Mitrovicë/Mitrovica North), minority women face linguistic, social and political obstacles to accessing existing GBV/DV prevention and treatment services. At times, the relevant officers are not gender-

http://www.assembly-kosova.org/common/docs/Constitution1%20of%20the%20Republic%20of%20Kosovo.pdf
[14] LPDV, article 1.
[15] Agency of Gender Equality, Office of the Prime Minister. *Commentary on the Law No. 03/L-182 on Protection against Domestic Violence* (hereinafter 'Commentary on the LPDV'). Prishtinë, 2014, p. 26.
[16] LPDV, article 4, 5, 6, 7, 9, 10.
[17] LPDV, article 8, 11, 17, 26; Commentary on the LPDV, p. 27.
[18] *Country Gender Profile*, p. 2.

sensitive and trained enough to provide the adequate assistance to GBV/DV victims as required by the law.

The police – the process of interviewing GBV/DV victims does not comply with interviewing and identification of domestic violence cases techniques. Often, officers responsible for investigation do not select the right place for the interview, do not exercise enough care to ask victim sensitive questions and to ensure that the interview is done in private.

Centers for Social Work - the decentralization process has created difficulties in delivery of services for all communities. Survivors of GBV/DV are not treated as a specific group for purpose of social assistance and approval of budgets for emergency and reintegration needs.[19]

Shelters or safe houses - continue to have a wide variety of constraints, including the challenges in sustainability and human resources. GBV/DV victims usually stay for a specific period of time and are then obliged to return to the common residence with the perpetrator. Shelters and safe houses are not equipped with the required financial and human means to empower GBV/DV victims accommodated therein, so that they develop subsistence skills and knowledge required to survive when they leave the shelter / safe house. In addition, shelter services are not available for serb minority women in their municipalities (attempts to establish shelters in Graçanicë / Gračanica, and Mitrovicë / Mitrovica North are ongoing). These women often feel unsafe to be accommodated in shelters available in Prishtinë/Priština or Mitrovicë / Mitrovica South, managed by albanian staff members.

Courts – at times, the relevant courts do not act as promptly as required with the aim to prevent the occurrence of violence. In the case of *Gezim and Makfire Kastrati Against Municipal Court of Prishtina and Kosovo Judicial Council*, the Constitutional Court found a violation of the right of the life on behalf of Diana Kastrati. She had applied for an order of protection from the Municipal Court of Prishtina. The court failed to respond to her request as required by law, the result of which Diana was murdered by her husband.[20] Another black spot on the current fragile rule of law situation in Kosovo is the brutal death of Zejnepe

[19] *Study on Dimensions of Domestic Violence – Gender-based Violence in Kosovo Municipalities: Dragash/ Dragaš, Gjakovë/Djakovica and Gjilan/Gnjilane*. UNICEF: 2013

[20] Constitutional Court of Kosovo Judgment in Case No. KI 41/12: *Gezim and Makfire Kastrati against Municipal Court in Prishtina and Kosovo Judicial Council*, Ref.No.:AGJ361/13, Pristina, 26 February 2013, available at http://www.gjk-ks.org/repository/docs/gjkk_ki_41_12_ang.pdf

Bytyçi-Berisha, being a vocal call to the nation to take urgent action in reassessing the effectiveness of GBV/DV preventive and protection measures provided.[21]

Generally, the issuance of protection orders is hampered by lack of police investigation and enforcement, influence of perpetrators on judges and prosecutors, etc. The result of such negligence or delay by the courts may be fatal, where no reparation of the initial situation can be achieved. What's more, the court in Mitrovicë/Mitrovica North functions on the laws of the Republic of Serbia and does not accept cases of domestic violence at all. Survivors of violence of Serb ethnicity hesitate to take cases to the court in Mitrovicë / Mitrovica South.[22]

Victim protection and assistance office – most of potential and actual victims of GBV/DV are not aware of the existence of this mechanism.

VI. RECOMMENDATIONS

ECMI Kosovo makes the following recommendations to the government of Kosovo (under UN SCR 1244/1999) and all relevant stakeholders determined to work towards creating a safe and growing-friendly environment for all minority women and girls in Kosovo:

(1) A stronger political will and allocation of the adequate amount of budget is necessary to ensure **full and effective implementation of the existing legal framework**, especially when dealing with double vulnerable minority GBV/DV victims.

(2) Detailed techniques of interviewing and identification of domestic violence cases shall be developed by the Ministry of Internal Affairs, to facilitate the work of police officers within gender-based violence unit. The relevant **police officers** should be trained **to apply prejudice-free approach during the interview and ensure confidentiality of the information collected.**

[21] BIRN Kosovo, *OSBE e Zhgënjyer me Reagimin e Institucioneve Ndaj Rastit të Zejnepe Bytyqit*, available at http://live.kallxo.com/sq/MTL/OSBE-e-Zhgenjyer-me-Reagimin-e-Institucioneve-Ndaj-Rastit-te-Zejnepe-Bytyqit-9599; KOHA, *Viktima e burrit*, available at http://koha.net/?id=27&l=81943; Anadolu Agency, *Kosovë: Gratë në Kosovë thonë "Mjaftë më!"*, available at http://aa.com.tr/sq/jeta/kosov%C3%AB-grat%C3%AB-n%C3%AB-kosov%C3%AB-thon%C3%AB-mjaft%C3%AB-m%C3%AB-/481320

[22] ECMI Kosovo baseline study, p. 27.

(3) The Ministry of Labour and Social Welfare shall ensure higher amount of budget for emergency and reintegration needs of GBV/DV victims, in order **to treat them as a specific group for the purpose of social and/or other form of assistance** to be provided by the Centers for Social Work.

(4) **The establishment of shelters or safe houses in Graçanicë / Gračanica and Mitrovicë / Mitrovica North** should be considered an **urgent necessity** for Serb minority women that are GBV/DV victims. The currently available shelters or safe houses should **be equipped with the required financial and human means to empower GBV/DV victims accommodated therein by providing skills trainings to them**, with the aim of developing their subsistence skills and knowledge required to survive when they leave the shelter / safe house.

(5) The **courts should take a victim-oriented approach when evaluating whether the relevant protection order shall be issued or not.** Prevention is always more important than treatment. In addition, the courts should impose the highest available punishments for perpetrators of GBV/DV, as allowed by the law.

(6) Awareness should be raised **to inform the potential GBV/DV victims of the existence of victim protection and assistance office** as an important and effective source of help.

(7) More investment is needed in **awareness raising activities and empowerment through education of Roma, Ashkali and Egyptian women and young girls, to prevent early and forced marriages**, which are prevalent in their communities.

(8) Innovative steps should be taken in combatting GBV/DV by **developing and implementing strategies of working with men and boys towards transforming gender roles.**

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