

Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators

December, 2018

Civil Society for
**HUMAN
RIGHTS**



Policy Report

Accessing Justice for Victims of Gender Based Violence in Kosovo: Ending Impunity for Perpetrators

Authors: Ariana Qosaj-Mustafa and Donjeta Morina

Researched by: Ariana Qosaj-Mustafa, Donjeta Morina, Blend Zyrapi

Research Supported by: Patricia Marie Angus, Njomza Arifi, Rreze Hoxha, Adelina Collaku

© Kosovar Institute for Policy Research and Development, October, 2018.

The opinions expressed in this document do not necessarily reflect those of KIPRED, GLPS and Artpolis donors, their staff, associates or Board (s). All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any mean without permission. Contact the administrative office of the Kosovo Institute for Policy Research and Development for such requests.

Kosovar Institute for Policy Research and Development
Major Mehmet Bushi, No. 1
Prishtina 10 000, Kosovo
Website: www.kipred.org
E-mail: info@kipred.org
Tel/fax.: +381 38 542 778

Group for Legal and Political Studies
Rexhep Luci str. 16/1
Prishtina 10 000, Kosovo
Website: www.legalpoliticalstudies.org
E-mail: office@legalpoliticalstudies.org
Tel/fax.: +381 38 234 456

Artpolis – Art and Community Centre
Str. Zenel Salihu Z4 -S3 00022
10 000 Prishtina, Kosova
Website: www.artpolis-ks.com
Tel/fax.: +381 38 221 512

"This publication has been produced with the assistance of the European Union. The contents of this publication are the sole responsibility of KIPRED and can in no way be taken to reflect the views of the European Union."



Contents

Acronyms	4
I. Executive Summary	5
II. Introduction	7
a) Aim and Methodological Approach	10
III. International and National Legal Framework on Gender Based Violence	11
IV. Domestic Violence as a Form of Gender Based Violence	14
a) Current Reporting of Domestic Violence	14
b) Shortcomings within the existing legislation	15
c) Protecting Victims of Domestic Violence	17
d) Prosecuting and Sentencing Domestic Violence Cases.	21
e) Mediation and reconciliation in Domestic Violence Cases	30
f) Domestic Violence Shelters	32
V. Sexual Violence as a Form of Gender Based Violence	35
a) Shortcomings in the Existing Legislation	37
b) Reporting cases related to Sexual Violence	39
c) Prosecuting and Sentencing Sexual Violence	41
VI. Violence Against LGBT Persons	45
a) Problems with existing laws	46
b) Problems with the implementation of existing laws	49
c) The Judicial Institutional Response.	50
VIII. Conclusions and Recommendations	52
IX. Bibliography	
556	

Acronyms

CEDAW	Convention for the Elimination of all Forms of Violence Against Women
CSO	Civil Society Organization
CSW	Centres for Social Work
DVIU	Domestic Violence Investigation Units
EPO	Emergency Protection Order
EU	European Union
EULEX	European Rule of Law Mission in Kosovo
GBV	Gender Based Violence
KWN	Kosovo Women's Network
LGBT	Lesbian, Gay, Bisexual, Transgender
LGE	Law on Gender Equality
LPDV	Law on Protection from Domestic Violence
MLSW	Ministry of Labour and Social Welfare
PO	Protection Order
RCC	Rape Crisis Centre
SOP	Standard Operating Procedures
SVRC	Sexual Violence Referral Centre
TEPO	Temporary Emergency Protection Order

I. **Executive Summary**

Gender-based violence remains widespread both in Kosovo and worldwide. While its incidence rates remain alarmingly high, impacting one in every three women globally, adequate response remains limited in Kosovo. This policy report intends to narrow the existing knowledge gap by providing a concrete analysis of the existing laws and policies and their practical implementation. Concretely, the research focuses on access for victims of domestic violence, sexual assault, sexual harassment and harassment on the basis of sexual identity (LGBT) within the existing criminal justice processes, including analysis of the institutional support and proper legal recourse.

Only under the Kosovo Law on Gender Equality is gender-based violence recognized as a form of discrimination (Article 4.2 of the law). However, Kosovo still lacks a definition of gender-based violence within its criminal and civil proceedings. Despite the legal framework, which covers a few acts of gender-based violence, the lack of a comprehensive and holistic definition of gender-based violence in line with the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence requirements, affects the effective prosecution and sentencing of gender-based violence in Kosovo. And, even though definitions of rape, murder, acts against domestic partners and a few other gender-based violence crimes exist in the legislation, the investigation and prosecution of such crimes continue to be characterized by low sentencing rates.

The continuous impunity for perpetrators by the criminal justice system has made the effective delivery of rights guaranteed through laws inequitable for victims of gender-based violence. Currently, a definition of gender-based violence in line with the definition offered in the Istanbul Convention is missing in Kosovo's legislation. The Istanbul Convention is not a part of Kosovo's Constitution yet, but there have been calls to amend the Constitution in order to include the Istanbul Convention within the scope of Article 22 of the constitution.

Providing effective and timely access to justice for victims of gender-based violence is an important step towards the EU integration of Kosovo. International human rights case law pertaining to gender-based violence, albeit obligatory for Kosovo, is rarely used by the Kosovo judiciary. Thus, a continuous challenge remains the almost inexistent usage of international human rights case law by Kosovo's judiciary.

In comparison to the actual number of incidents, domestic violence in Kosovo remains underreported. Various factors continue to lead to inadequate response towards domestic violence cases. The issuance of protection orders for victims seeking protection has improved in the past years; however, police officers fail to conduct regular and valid risk assessments during and after the issuance of protection orders. The lack of up-to date risk assessment for systemic abuses in domestic violence cases have led to tragic consequences as in the case of the murder of ValbonaMarku-Nrecaj and her 9-year-old daughter in August 2018.

The judicial response towards acts of domestic violence remains poor. The rate of dismissed cases of domestic violence remains high as during the year 2017 there were over half of all criminal charges dismissed related to domestic violence cases (51.5%) by Kosovo courts. Further, during the first six months of 2018, there were total 15.1% cases were dismissed. For the monitored period for 2015-2018, only 40.4% of cases received guilty verdicts. This slow response by the criminal justice system to domestic violence cases has led to the overall occurrence of impunity for perpetrators of domestic violence. Furthermore, victim-blaming and reconciling the victim with the perpetrator remained common among all institutions monitored, often justified with the aim of “saving” the traditional family.

The current Criminal Code continues to lack a specific definition of marital rape and sexual harassment, often leading to inadequate prosecution and sentencing of such crimes. There are currently no Standard Operating Procedures on crimes related to sexual violence, often leading to the uncoordinated response of institutions involved. In cases where victims do not want to report rape immediately, there are no means for them to store the forensic evidence as Kosovo lacks specialized support systems for rape victims such as Rape Crisis Centres and Sexual Referral Centres. Further, victim-blaming attitudes are common across judicial institutions. In some cases, judges have scrutinized how the victim was dressed, or justified rape on the premise that the victims were out late at night. Since sexual harassment is not specifically defined in the Criminal Code, the situation has led to various criminal justice institutions not maintaining data on sexual harassment cases. Since the Criminal Code is currently being amended, there are initiatives led by civil society and activists to include specific definitions of sexual harassment and domestic violence within the new Criminal Code. On the 6th of November 2018, the working group of the Assembly of Kosovo Committee on Legislation reviewed the draft Criminal Code and has been working on processing the recommendations by civil society on including specifically the definition of domestic violence and sexual harassment within the current draft.

The overall weak response by the criminal justice system, lack of awareness of victims on timely reporting of rape crimes and low trust in the justice system has led to low reporting of cases of rape in Kosovo. Accordingly, during the monitored period 2015-2018 there were only 15 cases of reported rape crimes in Kosovo.

Moreover, there exist legal gaps that inhibit LGBT persons from enjoying their rights guaranteed under special laws such as the Law on Protection from Discrimination and general provisions foreseen under the Law on Civil Status. By defining “gender” differently, the disparities between “main laws” and “special laws” guaranteeing protection of LGBT identity in Kosovo have caused difficulties for transgender men and women in terms of aligning identification documents to their gender identity.

Currently there is only one case within the Kosovo courts of reported violence against LGBT persons. This lack of cases makes monitoring the response of judicial system towards LGBT persons difficult. In fact, the only case with a final judgement acknowledged the sexual orientation of the victims as an aggravating circumstance, nor as a hate crime motive. Existing institutional databases compiled by the Kosovo Police and the Victim Advocates do not track hate-crimes against LGBT persons.

II. Introduction

The frequency of gender-based violence against women in Kosovo can be characterized as a pandemic. It is estimated that, globally, one in every three women have experienced either physical and/or sexual partner violence, and that one in every ten women have either experienced forced intercourse or other sexual acts at some point in their lives.¹ Gender-based violence against women specifically is defined as violence that affects women disproportionately, or violence that is directed against a woman merely because of the fact that she is a woman.² The types of violence that are included in this definition are: sexual violence and rape, “honour” crimes, genital mutilation, domestic violence, sexual harassment and forced marriage.³ Generally, these different forms of gender-based violence are considered as the means by which women are

¹ UN Women, “Facts and Figures: Ending Violence against Women A pandemic in diverse forms”, Website Accessed on 22.7.2018 at: <http://www.unwomen.org/en/what-we-do/ending-violence-against-women/facts-and-figures>

²Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 3-D, 2011, at: <https://rm.coe.int/168046031c>

³ Ibid. Preamble

subordinated socially, politically, and economically.⁴ Nevertheless, it is important to keep in mind that the term is not exclusively applied to women alone. Although less likely, the term ‘gender-based violence’ also encompasses violence used against men. For example, sexual violence inflicted against men during conflicts, sexual violence in prison, or violence committed against boys to urge them to “act like men.”⁵ Similarly, the term could also indicate violence against transgender persons because of their gender identity.⁶

The prevalence of gender-based violence remains alarmingly high in Kosovo. In the past decade, there has been an increase in the reported number of murder cases that have resulted from domestic and gender-related violence.⁷ In 2015, 68% of women reported to have experienced some form of domestic violence in their lifetime.⁸ In 2017, there were 1,299 cases of domestic violence reported to the police.⁹ Rape, sexual assault and other forms of gender-based violence continues to be prevalent, yet underreported. Moreover, it is estimated that 64% of women have been sexually harassed in their lifetime.¹⁰

Existing institutional data is insufficient to monitor the prevalence of gender-based violence in Kosovo because there is no existing institutional mechanism to track cases investigated, prosecuted and adjudicated by courts (including the tracking of sentencing practices within courts). There is also no disaggregated data on gender based violence crimes that can be used to identify how many murders in Kosovo have been as a result of a domestic relationship. Other reports demonstrate that gender-based violence remains widespread and insufficiently addressed by justice institutions.

⁴Committee on the Elimination of Discrimination Against Women, General Recommendation No.35 on gender-based violence against women, updating general recommendation No. 19, Article 10 2017, at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

⁵Kosovo Women's Network, From Words to Action: Monitoring the Institutional Response to Gender-Based Violence in Kosovo, 2017, at: www.womensnetwork.org/documents/20180312142859762.pdf

⁶Lombardi et al. Gender Violence: Transgender Experiences with Violence and Discrimination, Volume 42, Issue 1, 2002, at: https://www.tandfonline.com/doi/abs/10.1300/J082v42n01_05

⁷ Only some of the reported names in the media include: ZejnepeBytyqi, Donjeta Pajaziti, ValbonaMarku-Nrecaj and her daughter KlaraNrecaj, Diana Kastrati, Antigona Morina, MiradijeHetemi, DafinaZhubi, IgballeLlalloshi, SevdijeBerisha. See for example <https://www.koha.net/arberi/74567/rasti-i-vdekjes-se-antigona-morines-tri-dite-pas-marteses-skishte-shkuar-fare-ne-apel/>; <https://www.koha.net/kronike/119602/aktakuze-per-vrasesin-e-bashkeshortes-dhe-vajzes-ne-gjakove/> etc.

⁸Kosovo Women's Network, No more Excuses: An Analysis of Attitudes, Incidence, and Institutional Response to Domestic Violence in Kosovo, 2015, at: <https://www.womensnetwork.org/documents/20151124105025622.pdf>

⁹ Civil Society for Human Rights Website, Tracking Mechanism, Website Accessed in August 2018, at: <http://www.cshr-ks.org/en/kosovo-police/?v=2017&id=1>

¹⁰Kosovo Women's Network, Sexual Harassment in Kosovo, 2016, at: <https://www.womensnetwork.org/documents/20160223185243349.pdf>

For example, the Kosovo EU Country Report of 2018 highlights the weak coordination among justice institutions regarding gender-based violence.¹¹ Amongst other findings, the country report identifies the need for further specialized trainings in relation to gender-based violence crimes, including sexual harassment.¹² Therefore, the EU recommends that institutions in Kosovo ought to appropriately define sexual harassment and domestic violence in accordance with the Criminal Code.¹³ Institutional willingness to implement relevant strategies related to domestic violence and related laws remains of utmost importance.¹⁴ Thus, the state's response to providing access to, and delivering justice for, victims of gender-based violence remains of utmost importance to Kosovo's future EU integration processes.¹⁵

Kosovo's justice system continues to face systemic challenges, thereby making gender-based violence victims more vulnerable to ineffective justice delivery. Many of these challenges result from the fact that Kosovo is still in the nascent stages of developing a functional judicial system¹⁶ For more than a decade now, courts in Kosovo have been facing a high backlog of cases, which has delayed justice for the victims and other parties involved.¹⁷ Moreover, high-level corruption remains widespread and leads to the overall inefficiency of the justice system.¹⁸ Even though progress has been made in the fight against corruption during the past years, there is still a need for comprehensive anti-corruption measures.¹⁹ Kosovo, along with other countries in the Balkan region have been identified as "state captured,"²⁰ including the lack of independent and efficient court systems.²¹ Further, the judiciary remains prone to political influence and inefficiency, further impacting the quality of the justice system.²²

¹¹European Commission, Commission Staff Working Document, Kosovo* 2018 Report, 2018, at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

¹² Ibid. Page 16

¹³Supra Note 11, pg. 25.

¹⁴Supra Note 11.

¹⁵ Kosovo National Programme for Implementation of the Stabilization and Association Agreement (2017-2021) with the EU, page 246.

¹⁶Supra Note 11.

¹⁷ Ibid.

¹⁸U.S State Department, Kosovo 2016 Human Rights Report, 2016, at: <https://www.state.gov/documents/organization/265648.pdf>

¹⁹European Commission "Communication on EU Enlargement Policy, 2018, page 16, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417_strategy_paper_en.pdf

²⁰ The Communication refers to elements of state capture as links with organised crime and corruption at all levels of government and administration, as well as a strong entanglement of public and private interests. See page 3 of the European Commission "Communication on EU Enlargement Policy, 2018, page 16, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417_strategy_paper_en.pdf

²¹ Ibid

²² Ibid.

The situation is further exacerbated due to the lack of trust Kosovo's citizens have in the judicial system. A representative survey conducted in 2016 concluded that only 5% of Kosovars are satisfied with the police, prosecution, courts, EULEX and Government at large.²³ Further, in 2016 a representative study with 1097 respondents throughout Kosovo has shown that more than a third of all respondents perceive that Kosovo Courts (34.28%) or the prosecution (31.09%) mostly demand or accept bribes.²⁴ Differently, the trust in the Kosovo Police service itself is higher.²⁵ The existing deterioration of the rule of law system may allow for the pervasiveness of gender based violence against women to rise, followed by a culture of impunity where perpetrators face no societal or legal repercussions.²⁶ Therefore, this policy report aims to analyse the link between laws and the practical delivery of justice for victims of gender-based violence in Kosovo due to the specificities of the crimes of gender-based violence and the gender sensitivity of the crimes. It does so by using the requirements of recent international human rights standards on the effective and timely delivery of justice to victims of gender-based violence as defined in the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (hereinafter referred to as the Istanbul Convention).

a) Aim and Methodological Approach

The report scrutinises the existing laws and policies for victims of gender-based violence in Kosovo, as well as their effective and timely delivery in practice. Considering there is little existing research on the access victims of gender-based violence have to justice, the report is a result of joint efforts by KIPRED, the Group for Legal and Political Studies and Artpolis within the EU funded project "Protecting and Promoting Human Rights through an Active Civil Society".

²³Group for Legal and Political Studies, "Kosovar Citizen's Satisfaction with the Rule of Law: An Empirical Study, 2016, at: www.legalpoliticalstudies.org/wp-content/uploads/2017/02/Kosovar-Citizens-Satisfaction-with-the-Rule-of-Law-Institutions-An-Empirical-Study.pdf

²⁴Differently, 57.97% of respondents perceived that EULEX officials never or mostly never accept or demand bribes. Ibid.

²⁵ A recent study by the Kosovo Center for Security studies shows that 61% of Kosovo citizens trust the Kosovo Police. For more see Kosovo Centre for Security Studies, Kosovo Security Barometer: Seventh Edition, 2018, at: www.qkss.org/repository/docs/KOSOVO_SECURITY_BAROMETER_7_ENGLISH_FINAL_891249.pdf

²⁶Committee on the Elimination of Discrimination Against Women, General Recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, 2017, at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_C_GC_35_8267_E.pdf

The research has identified several challenges faced by victims of gender-based violence, pertaining to existing legislation and its implementation. The gender-based violence cases analysed under the scope of the report focus on cases of Domestic Violence, Sexual Assault and Rape, Sexual Harassment and crimes against the LGBT community. While the international definition of gender-based violence is wider, the report focuses its analysis on the definitions above due to their persistence. Moreover, in accordance with recent international human rights standards, the report proposes concrete policy options and recommendations in order to improve access to justice for gender-based violence victims. By measuring local standards against the standards set by the Istanbul Convention, the report analyses existing legislation on gender-based violence and their level of implementation. The methodology used includes several methods of qualitative analysis. The research employs desk-research, gathered by reviewing and analysing international, regional and national reports available in the area. It also includes a legal analysis of the international human rights standards in Kosovo and its applicable laws. By analysing shortcomings within law enforcement, prosecutorial services and the judiciary, the report provides four case examples in order to illustrate the current deficiencies faced by victims of gender based violence and also of the LGBTI community in accessing justice. A number of interviews were also conducted with various institutions,²⁷ including the Ministry of Justice, the Kosovo Prosecutorial Council, the Kosovo Judicial Council, Victim Advocate's, Kosovo Police, shelter providers and women activists, among other key stakeholders. The reporting period within this report covers events, data, and institutional changes up until the 15th of November 2018.

III. International and National Legal Framework on Gender Based Violence

Gender Based Violence is a violation of human rights. In 1992, the Convention for the Elimination of all Forms of Violence against Women (CEDAW), specifically, Recommendation 19, recognized gender-based violence as a form of discrimination that inhibits women's equality.²⁸ CEDAW further emphasizes that states are responsible for the prevention of gender-based violence, as well as the investigation and punishment of these acts.²⁹ According to

²⁷ Full list of interviews available, upon request.

²⁸Committee for the Elimination of all forms of Discrimination Against Women, General Recommendation 19, 2011, at: <https://d2t1lspzrjtf2.cloudfront.net/wp-content/uploads/ARTICLES-19.pdf>

²⁹ Ibid. Article 9

CEDAW, states are responsible for the errors and acts of gender-based violence within their territory, especially if they include omissions by its judicial, legislative or executive branches.³⁰ Most importantly, the Convention highlights that all states must have an effective and accessible legal system that addresses all forms of gender-based violence.³¹ CEDAW is firmly enshrined in the Constitution of the Republic of Kosovo through Article 22 and its provisions supersede national legislation.³²

The Istanbul Convention is the most recent international instrument developed that addresses gender-based violence in a holistic approach.³³ The overall goal of the Convention is to have comprehensive, national approaches on combating all forms of gender-based violence, provisions for preventive measures in place and protection and support for victims. It also emphasizes the importance of ending impunity for perpetrators as a global phenomenon, which requires the prompt and effective prosecution of perpetrators.³⁴ The Convention triples as a criminal law treaty, human rights treaty and instrument for enhancing gender equality.³⁵ It effectively criminalizes all forms of gender-based violence, including different forms of violence, whether that be psychological and physical, rape and sexual violence, stalking, female genital-mutilation, forced sterilization and abortion, or forced marriage.³⁶ While the Istanbul Convention is not a part of Kosovo's Constitution yet, there have been calls to amend the Constitution in order to include the Istanbul Convention within the scope of Article 22. Specifically, the Ombudsperson Institution has recommended constitutional amendments in making the Istanbul Convention directly applicable in Kosovo's legislation.³⁷

Domestically, the Constitution of the Republic of Kosovo guarantees gender equality as a fundamental value.³⁸ Only under the Law on Gender Equality is gender-based violence

³⁰ Supra Note 28. Article 22

³¹ Ibid.

³² Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008, at: www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf

³³ Supra Note 2.

³⁴ Ibid. Article 49

³⁵ Krol et al for Council of Europe, Mapping support services for victims of violence against women in Kosovo, page 12, 2017

³⁶ Supra Note 2, Chapter V

³⁷ Ombudsperson Institution, Annual Report 2016, page 54, at: www.ombudspersonkosovo.org/repository/docs/Raporti_Vjetor_2016_ANG_no16_me_kopertine_per_web_3_38158.pdf

³⁸ Supra Note 32. Article 7.2

recognized as a form of discrimination.³⁹ However, Kosovo still lacks a definition of gender-based violence within its criminal and civil proceedings. The Kosovo Law on Protection from Domestic Violence provides the definition of domestic violence in civil proceedings by setting the grounds for issuance of protection measures through protection orders.⁴⁰ This approach has effectively rendered that civil proceedings foreseen under the Law on Protection against Domestic Violence are used more often rather than criminal proceedings. This has the effect of leaving victims fragile and making perpetrators of acts of domestic violence immune from prosecution. Issuing protection orders and using civil proceedings only in courts, has been perceived as a substitute for the prosecution of perpetrators.⁴¹

Other forms of domestic violence and some forms of gender based violence are criminalized within the Kosovo Criminal Code, including rape, sexual assault and abuse.⁴² Despite “harassment” being included in the Criminal Code, there is no specific definition of sexual harassment. However, there is an initiative to add both definitions of domestic violence and sexual harassment in the new Criminal Code currently being developed.⁴³ Currently, a complete definition that is consistent with the definition offered in the Istanbul Convention is still lacking.

Despite the legal framework that covers some acts of gender-based violence, the lack of a comprehensive and holistic definition of gender-based violence as offered in the Istanbul Convention also affects the effective prosecution and sentencing of gender-based violence in Kosovo. Even though acts of rape, murder, domestic violence and other gender-based violence exist in the legislation, the investigation and prosecution of gender-related crimes continues to be characterized by low sentencing rates. The following section analyses the most persistent forms

³⁹Assembly of the Republic of Kosovo, Law No. 05/L-020 on Gender Equality, 2015, at: www.assembly-kosova.org/common/docs/ligjet/05-L-020%20a.pdf Article 4.2

⁴⁰The definition of Domestic Violence in the Law is quite broad and includes acts of domestic violence as acts and/or omissions committed against a person within a domestic relationship.(Article 2.1.2) These acts include physical and psychological violence and threats thereof, inflicting fear, physical assault, insult and offences, derogatory behaviour, marital rape and sexual ill-treatment, limiting freedom of movement, property damage and threat thereof, forced entering or removing from residence and kidnapping.(Article 2.1.1) The law foresees the release of Protection Orders, in order to prevent domestic violence acts. Three types of PO’s are outlined in the law: Protection Orders (PO), Emergency Protection Orders (EPO), and Temporary Emergency Protection Orders (TEPO).

⁴¹Ministry of Justice of the Republic of Kosovo, Evaluation Report of the Kosovo Program Against Domestic Violence and Action Plan 2011-2014, at: https://abgj.rks-gov.net/Portals/0/Ambasada_Raporti%20anglisht.pdf

⁴²Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 04/L-082, Chapter XX “Criminal Offences Against Sexual Integrity”, 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

⁴³Office of the Prime Minister of Kosovo, "Legislative Program 2018", 2018, at: www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITTIN_2018_.pdf

of gender based violence in Kosovo, their incidence rates and reporting prevalence, the subsequent challenges related to existing laws and policies, as well as the institutional response.

IV. Domestic Violence as a Form of Gender Based Violence.

a) Current Reporting of Domestic Violence

In 2017, there were a total of 1,299 cases of domestic violence reported to the Kosovo Police,⁴⁴ making domestic violence the most prevalent form of gender-based violence reported in Kosovo. Out of the total number, 76.21% of cases reported are by women and girls with the remaining cases reported by men. This renders women as the most affected victims of domestic violence. Out of this number, a total of 129 cases reported are by individuals above the age of 65, which demonstrates that the elderly are also at risk from domestic violence (See Table 1). Nevertheless, existing surveys conclude that the actual incidence is much higher, and that many cases remain unreported. Actual incidence is as high as 68% for women⁴⁵ but goes unreported due to the continued perception that domestic violence is a private matter, the fear of stigmatization and embarrassment and the overall low trust in rule of law institutions.⁴⁶

⁴⁴ Civil Society for Human Rights Website, “Tracking Mechanism”, Last Updated August 2018, at: <http://www.cshr-ks.org/en/>

⁴⁵ Supra Note 8.

⁴⁶ Ibid, page 55

Table 1. Domestic Violence Cases Reported to Kosovo Police (Data provided by Kosovo Police, August 2018)				
Year	2015	2016	2017	January-June 2018
Reported by Women	862	992	990	515
Reported by Men	202	255	309	123
Over the age of 65	N/A	N/A	129	59
Albanian	879	1051	1045	523
Serbian	88	90	87	40
Roma	26	20	40	12
Ashkali	26	34	36	16
Egyptian	11	6	31	7
Gorani	14	12	8	3
Turkish	7	12	4	11
Bosnian	10	16	35	18
Other	3	6	13	8

The section below includes detailed case studies, including an analysis of the existing institutional response in cases of domestic violence specifically.

b) Shortcomings within the existing legislation

Kosovo's Criminal Code does not define domestic violence as a criminal offence. Nevertheless, some acts of domestic violence are criminalized under the Criminal Code, even in the absence of a specific definition.⁴⁷ Multiple interviewees, including prosecutors, have stated that the lack of a comprehensive definition of domestic violence makes it more difficult for institutions to react promptly and prosecute these acts.⁴⁸ According to the Istanbul Convention, states are required to criminalize all acts of gender-based violence, including physical violence, stalking, psychological violence, and sexual violence, which includes rape and sexual harassment.⁴⁹ Throughout the text, the convention specifically recognizes the gendered nature of violence against women as

⁴⁷According to the Criminal Code, crimes such as rape, sexual assault, light and severe bodily injury are persecuted ex officio when occurred in a domestic relationship

⁴⁸ KIPRED Interviews with Kosovo Prosecutors, August and September 2018

⁴⁹ Supra Note 2, Articles 33 to 41

“directed against a woman because she is a woman.”⁵⁰ It differs from other types of violence as the victim’s gender is a primary motive for the acts of violence occurring and is a result of unequal power relations perpetuated by perceived differences between women and men, often leading to the women’s subordinate status in the private and public life. Such violence is also rooted in social and cultural structures, as well as norms and values of societies, and is further exacerbated by cultural denial and/or silence.⁵¹ A specific approach of recognising the term of gender-based violence against women specifically, as provided for by the Istanbul Convention, lacks in the current legal approach in Kosovo.

The existing legislation is gender neutral in its approach. For example, both the Kosovo Law on Gender Equality and the Law on Protection from Domestic Violence, fail to acknowledge that domestic violence and gender-based violence disproportionately affect women. On the other hand, a gendered understanding of violence against women is a specific requirement of the Istanbul Convention.⁵² Kosovo’s gender-neutral approach has contributed to the creation of further gender-blind laws. For example, the Kosovo Law on Protection against Domestic Violence has been criticized for placing too much emphasis on perpetrators and their rehabilitation needs,⁵³ as opposed to support services for victims or potential victims. The stance within the current law suggests that alcoholism and drug abuse are main causes of domestic violence, failing to acknowledge the gendered nature of violence against women.⁵⁴

Further, although Article 53 of the Kosovo Constitution states that fundamental freedoms and human rights are to be interpreted in accordance with the European Court of Human Rights, this practice rarely exists.⁵⁵ Moreover, according to article 22, CEDAW supersedes national legislation. So far, Kosovo’s courts have rarely used the European Convention on Human Rights (ECHR) case law in their judicial practice. It was only in the murder of Diana Kastrati, that the Kosovo Constitutional Court quoted the violation of the Kosovo State to protect her life, in line with Article 2 of the ECHR.⁵⁶ The Kosovo Constitutional Court provided for jurisprudence in

⁵⁰Council of Europe, Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, page 43, 2011, at: <https://rm.coe.int/16800d383a>

⁵¹ Ibid. Page 8.

⁵² Ibid. Preamble.

⁵³ Supra Note 35. Page 12

⁵⁴ See Government of the Republic of Kosovo, Administrative Instruction No. 12/2012 for determining the place and way of psychosocial treatment of perpetrators of domestic violence, 2012, at: gbvaor.net/wp-content/uploads/2013/02/AI-imple-Law-against-DV-psychosocial-treatment-of-perpetrator-Eng-Alb_Serb.pdf and Government of the Republic of Kosovo, Administrative Instruction Nr. 02/2013 On Treatment Methods for Perpetrators of Domestic Violence Imposed by Mandatory Measure of Treatment from Alcoholism and Addiction to Psychotropic Substances, 2012

⁵⁵ Supra Note 32, Article 53.

⁵⁶Article 2 of the ECHR defines the right to life as a basic human right and states that everyone’s life should be protected by law.

using ECHR case law in the quoted decision “Gëzim and MakfireKastrati against Municipal Court in Prishtina/Priština and the Kosovo Judicial Council.”⁵⁷As a result, the Kosovo Judicial Council adopted a decision to encourage Kosovo’s courts to issue protection orders for domestic violence victims in a timely manner.

In sum, Kosovo’s legislation continues to have several significant shortcomings in relation to its ability to respond in an effective and timely manner to acts of domestic violence. First, the lack of a comprehensive definition in Kosovo’s Criminal Code concerning what constitutes an act of domestic violence remains an important factor in responding to domestic violence cases. Second, the existing legislation continues to be gender-neutral by not acknowledging the gendered nature of domestic violence and other forms of violence against women. This has contributed to inadequate legislation that does not target the specific needs of women and girls in particular. Lastly, a continuous challenge is the nearly inexistent use of international human rights case law by Kosovo’s judiciary.

c) Protecting Victims of Domestic Violence

Victims of domestic violence in Kosovo have several protection mechanisms at their disposal. The Law on Protection from Domestic Violence defines three types of Protection Orders, including Protection Orders, Emergency Protection Orders issued by Courts and the Temporary Emergency Protection Order issued by the Kosovo Police outside of regular court working hours.⁵⁸ The Standard Operating Procedures for protection from domestic violence (SOP’s) specifies the legal roles and responsibilities of each institution in protecting domestic violence victims such as the Kosovo Police, Prosecution, Victim’s Advocates, Social Work Centres and Shelters. Nevertheless, research shows that these institutions frequently fail to implement both the provisions of the Law on Protection from Domestic Violence and of the SOP’s.

In the past, failures to issue protection orders by courts have led to tragic deaths. Most notably, the case of Diana Kastrati is frequently cited as a blatant failure of the court to issue protection orders in a timely manner. Kastrati was shot to death by her former partner in the Prishtina/Priština city centre in May 2011. Three weeks before the tragic incident, Ms. Kastrati requested and failed to obtain an Emergency Protection Order from the Municipal Court of

⁵⁷Constitutional Court of the Republic of Kosovo, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf

⁵⁸Assembly of the Republic of Kosovo, Law No03/L-182 on Protection against Domestic Violence, 2010, at: www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf

Prishtina/Priština.⁵⁹ The Courts failure to implement Article 16 of the Law on Protection from Domestic Violence and issue the emergency protection order within 24 hours, as required by the law, led to her tragic death. Diana was shot in public by her former husband, without a protection order issued by the court in the time of her shooting. In response to this malfeasance, a court case against the Municipal Court of Prishtina/Priština and the Kosovo Judicial Council was submitted to the Kosovo Constitutional Court. Ultimately, it found the state responsible and in violation of the victim's right to life due to the inability of the court to issue the protection order in a timely manner.⁶⁰

This decision by the Constitutional Court also triggered a response from the Kosovo Judicial Council. They drafted a decision that required judges to issue protection orders in a timely manner.⁶¹ Although this has led to an improvement in the timely issuance of protection orders by courts,⁶² several issues remain in the implementation of other provisions of the Law on Protection against Domestic Violence and of the SOP's.

A prompt and adequate police response is one of the prerequisites of timely response related to protecting victims of domestic violence. According to the SOP's and the responsibilities foreseen under the Law on Protection against Domestic violence, the Kosovo Police should protect victims and investigate cases reported.⁶³ Further, they also have to guide the victim throughout the process and respond to threats and acts of domestic violence (including the execution and any violation of the protection orders).⁶⁴ According to the SOP's, police should, "make use of proportionate measures to protect the victims of domestic violence, detaining the suspected perpetrator with the purpose of preventing further violence". Police are also responsible for conducting the initial identification interview of the victim that is also recorded in the Basic Data Form that are part of the SOP's.⁶⁵ These interviews need to be conducted in rooms that provide comfort and security for the victim, in order for the police to build a trusting relationship with

⁵⁹ Supra Note 56.

⁶⁰The legal battle for Diana family continues to this day as they are yet to receive compensation by the state of Kosovo. In an interview with KIPRED the Ombudsperson declared that the in lack of proper state compensation, the Constitutional Courts verdict can be seen as merely declarative. While the judge who failed to issue the EPO for Diana Kastrati was briefly suspended, he was decreed as member of the Kosovo Judicial Council in 2014.

⁶¹ Decision Nr. 22/2012 of the Kosovo Judicial Council

⁶² KIPRED Interview with multiple stakeholders, including Prosecutors, Police, and Women's Rights CSO's

⁶³Agency for Gender Equality, "Standard Operation Procedures for Protection from Domestic Violence in Kosovo, 2013, at: <https://abgj.rks-gov.net/Portals/0/Procedurat%20Standarte%20të%20Veprimit%20për%20Mbrojtje%20nga%20Dhuna%20në%20Familje.pdf>

⁶⁴ Ibid.

⁶⁵ Ibid. Page 28

the victim and be able to promptly and effectively provide assistance.⁶⁶ Yet, in one case researched by KIPRED, the police's first contact with the victim was inadequate.⁶⁷

Case Study: Interviewing Domestic Violence Victims. In this specific case, the State Prosecutor had paid an unrelated visit to the Domestic Violence Investigation Unit at the Gjilan/Gnjilane Police Station. During the visit, he noticed that the Unit were interviewing the victim and the perpetrator near each other. While the victim and perpetrator were sitting in different rooms, the door between them was partly open. This meant that the perpetrator could hear the statement provided by the victim and the victim could also hear the perpetrator. As such, the interview procedure was a direct neglect of the official procedures outlined by the SOP's. Accordingly, the prosecution in Gjilan/Gnjilane prompted investigations against the Police.⁶⁸ Other similar cases of inappropriate victim interviewing were reported, including, not holding interviews in appropriate premises such as the homes of victims.⁶⁹

Further, according to the Law on Protection against Domestic Violence, the Kosovo Police is the law enforcement agency responsible for issuing Temporary Emergency Protection Orders when the urgent need arises to protect victims outside of regular court working hours. The Police should also conduct a Risk Assessment for each case in order to evaluate the appropriate security needs of the victims. During 2017, only a limited number of cases were recorded of issuance of TEPO's by the Kosovo Police.⁷⁰ For example, during the period 2015 – 2018, only 6 Temporary Emergency Protection Orders were issued throughout Kosovo,⁷¹ showing a low tendency in knowledge and use of the TEPO's even though often reports of domestic violence are reported during night time and outside of regular working hours of courts in Kosovo. Moreover, current police procedures in line with the existing SOP's do not provide for regular, up-to-date and valid risk assessments of domestic violence cases, which may lead to tragic incidents like the case outlined below.

Case Study: Risk Assessment by Kosovo Police: ValbonaMarku-Nrecaj and her daughter were murdered by her husband/father in August 2018. Valbona had reported her husband's violence and threats multiple times before the incident, including a few hours before her death.⁷² On the 12th of May 2018, Valbona reported her husband's violence and he was ordered detention

⁶⁶ Ibid.

⁶⁷ KIPRED interview with senior prosecutor in Gjilan/Gnjilane and the Kosovo Ombudsperson Institution.

⁶⁸ KIPRED interview with senior prosecutor in Gjilan/Gnjilane.

⁶⁹ KIPRED Interview with the Ombudsperson of the Republic of Kosovo, August 2018

⁷⁰ Prizren Interview with Prosecutors, August 2018

⁷¹ Data submitted to KIPRED by the Kosovo Police, November 2018.

⁷² KIPRED Interview with Victim Advocate and Center for Social Work in Gjakova/Đakovica August 2018.

for one month only—after which he was set free—allegedly due to health problems.⁷³ The prosecution was aware that the suspect was in possession of a firearm. When Valbona reported several threats she had received from her spouse by phone, including 5 hours before her death, the police assessed that the threats posed no risk for victim.⁷⁴ In not responding to the report of acts of threats to commit domestic violence and not using reasonable means to protect the victim in order to prevent further violence, the police violated Article 24 of the Law on Protection against Domestic Violence.⁷⁵

Further, the Police failed to conduct a valid and up-to-date Risk Assessment in order to provide suitable protection and services for Valbona.⁷⁶ Even though the initial risk assessment is completed when interviewing the victim and the initial Basic Data Form is filled out, the current SOP's do not call for a valid, continuous and in-depth risk assessment. A checklist provided for the police on the risk assessment consists of 5-6 checks that do not fulfil the conditions of a valid risk assessment.⁷⁷ Had the police updated the risk assessment from the initial Basic Data Form and responded immediately to the threats against her life by advising the issuance of a TEPO, both Valbona and her daughter's death could have potentially been avoided.

Further, the Police did not issue a prompt Temporary Emergency Protection Order for Valbona, in accordance to Article 22 of the Law on Protection against Domestic Violence.⁷⁸ The police stated that their responsibility ended with the fact that Valbona did not request a protection order. Moreover, the Police was made aware that the perpetrator owned firearms,⁷⁹ but neither the police nor the prosecution sought the confiscation of the weapon from the perpetrator. TEPO's can be requested by multiple parties, including by the victim, any person authorized by the victim, a victim's advocate, someone who shares a domestic relationship with the victim, representative of the Centre for Social Work, or any person with direct knowledge of an act or more acts of domestic violence against the victim.⁸⁰ Other institutions were involved in Valbona's case, including the Center for Social Work and the Victim's Advocates.⁸¹ All these institutions were aware of the long-standing systematic violence being committed against Valbona. According to Article 22 of the Law on Protection against Domestic Violence, Social Work Centres can request TEPO's, on behalf of the victim directly when children are put at risk.

⁷³ KIPRED Interview with stake-holders, internal source.

⁷⁴ KIPRED contact with family members of Valbona, Gjakova August 2018.

⁷⁵ Supra Note 58. Articles 24.1 and 24.3

⁷⁶ Supra Note 63. page 29

⁷⁷ Ibid. Page 83

⁷⁸ Supra Note 58

⁷⁹ KIPRED contact with family members of Valbona, Gjakova August 2018.

⁸⁰ Supra Note 58. Article 12 and 13.

⁸¹ KIPRED Interview with Victim Advocates and Center for Social Work in Gjakova/Đakovica, August 2018

Centres for Social Work can request Protection Orders and Emergency Protection Orders in cases when violence also affects children.⁸²

The poor reaction, lack of coordination, as well as weak implementation of the roles and responsibilities foreseen under the Standard Operating Procedures for Protection from Domestic Violence in Kosovo by the Kosovo Police, Centre's for Social Work and other parties involved, including by the prosecutorial services, have potentially exacerbated the conditions for the death of Valbona and of her nine-year old daughter.

The case example above demonstrates the inadequate response by the police and other actors towards cases of domestic violence. Although there's been an improvement in the timely release of protection orders, the inadequate implementation of the SOP's, as well as the poor definition of risk assessment within the existing SOP's, show the need for further improvements. Finally, the initial identification interviews conducted by the police are not always in accordance with standards set by the SOP's and the Istanbul Convention. The police fail to conduct regular and valid risk assessments during and after the issuance of Protection Orders.

d) Prosecuting and Sentencing Domestic Violence Cases

Ending impunity for perpetrators of domestic violence acts is internationally acknowledged as a safeguard for domestic violence victims to come forward and report crimes of domestic violence. In order for the victims to gain trust in the judicial system and seek assistance, the judicial system must investigate and prosecute domestic violence acts in a timely and effective manner. The Istanbul Convention in particular requires states to establish effective and timely investigations and prosecutions of cases by law enforcement. This entails establishing relevant facts, interviewing different available witnesses, and using state-of-the-art criminal investigations in order for cases of domestic violence to go through a comprehensive analysis.

During 2017, there were a total of 1,277 cases of domestic violence reported to the Kosovo Police. Globally, it is estimated that one in every three women have experienced either physical and/or sexual partner violence, and one in every ten women have experienced forced intercourse or other sexual acts at some point in their lives.⁸³ Unfortunately, reported instances of domestic violence in Kosovo remain low compared to actual incidences of reported violent acts against

⁸² Supra Note 63. Page 43

⁸³World Health Organization, Global and Regional Estimates of Violence Against Women: Prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013, at: www.who.int/reproductivehealth/publications/violence/9789241564625/en/

women. As stated, in 2015, 68% of women interviewed were reported to have some form of domestic abuse committed against them in their homes.⁸⁴

Since there is no unique database collecting and tracking the investigation, prosecution and court sentencing for domestic violence cases in Kosovo, it is difficult to measure the exact number of cases processed within the same year. According to Police data from the past 15 years of domestic violence reporting's, there are on average, between 1,000 and 1,200 cases reported annually.

Requests for pre-detention in domestic violence cases seem to be alarmingly low. Out of 2,959 criminal charges in 2016, the prosecution only made 84 requests for pre-detention (2.8%). In 2017, pre-detention was requested in only 115 cases (11.3%), and in the first half of 2018, pre-detention was requested only in 69 cases (5.5%).

The effects of releasing the perpetrator, which often follows with pressure against the victim in their home families, have also led victims often to withdraw their statements and pursue further prosecution of the acts of domestic violence.⁸⁵ Moreover, the overall reliance of prosecutors on victim's statements, as well as the victim's later withdrawal from prosecution contributes to the high number of cases dismissed in courts annually. The number of criminal charges related to domestic violence cases that are either dismissed, or receive rejection judgements, continues to be alarmingly high. In 2017, over half of all criminal charges related to domestic violence cases were dismissed (51.6%). Rejection judgements, on the other hand, may come as a result of the state prosecutor withdrawing the judgement.⁸⁶ There were 94 Rejection Judgements during 2016, 62 in 2017 and 20 in the first half of 2018. (See Table 2)

⁸⁴Supra Note 8

⁸⁵ KIPRED multiple interviews with stakeholders, August-September 2018.

⁸⁶ Other reasons include the accused was previously convicted or acquitted of the same act under a final judgment or proceedings against him or her were terminated in a final form by a ruling; or 1.3. the period of statutory limitation has expired, an amnesty or pardon covers the act, or there are other circumstances which bar prosecution (See Criminal Procedure Code Article 363)

Table 2. Criminal Offenses related to Domestic Violence			
Year	2016	2017	2018
Overall number of criminal charges	2959	1009	1241
Pre-Detention Requests	84	115	69
Dismissal of Criminal Charges	838	521	188
Direct Indictments	1716	1220	419
Initiated Investigations	683	231	157
Indictments after Investigation	591	378	189
Dismissal of Procedure after expired statute of limitations	2	0	2
Proposal to impose compulsory treatment measures.	23	24	13
Rejection Judgement	94	62	20

The two main causes reported for the high numbers of dismissed cases and rejection judgements include: 1) The inability of prosecutors to create a strong case and collect sufficient evidence; and 2) norms concerning finishing as many cases as possible within one month, which leads prosecutors to finishing domestic violence cases quickly and not prioritizing them for further in depth investigation and evidence collection.

The first issue reported on the inability to create strong cases and collect sufficient evidence is a widespread problem across Basic Prosecutions in Kosovo. Prosecutors have a tendency to build the case around the victim's testimony and over-rely on victim's statements.⁸⁷ When one takes into account the low number of detentions ordered against perpetrators, their quick release home, as well as the nature of domestic violence crimes and the cycle of abuse, it is clear that over-relying on the victim's statement is not an effective investigative method. The cycle of abuse inherent in domestic violence crimes frequently leads to reconciliation between the victim and the perpetrator, promises by the perpetrator that they will change and not repeat the violent behaviour and often statements by perpetrators for repentance.⁸⁸ In many cases, once the victim recalls their testimony and reconciles with the perpetrator, the prosecution is left with a weak case. Kosovo service providers, such as non-governmental shelters assisting victims of domestic

⁸⁷ KIPRED Interviews with Prosecutors, August and September 2018

⁸⁸Berry, D.B, Domestic Violence Sourcebook, Lowell House, ISBN: 1-56565-212-6, 1995, at: <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=167047>

violence, stated that this often is a tactic deliberately used by prosecutors so that cases result without further investigation and evidence collection. Their often claimed aim in prosecuting domestic violence cases is to “save” the traditional family, even if this would mean “saving” a dysfunctional and violence affected family.⁸⁹

As stated, the current approach of the prosecutors is not in line with the requirements of the Istanbul Convention. The convention specifically requires states to establish effective and timely investigation and prosecution of cases by law enforcement and prosecution by collecting relevant facts, interviewing different available witnesses, as well as using state-of-the-art forensic examination methods in order for cases of domestic violence to be prepared before the court.

By focusing on the victim’s testimony, prosecutors frequently fail to collect all necessary case evidence. Important evidence such as testimonies by other family members, the victim’s actions and statements when they were first in contact with the police, physical and medical evidence collected once reporting the crimes to the police or evidence collected at the scene of the crime by the police are not prioritized by prosecutors.⁹⁰ For instance, the Kosovo Women’s Network monitored a case where the prosecutor failed to interview the victim’s family members. The interviews would have offered ample evidence of a pattern of regular and long-term abuse. Failures such as these to conduct full investigations are amongst main reasons for the low sentencing of perpetrators of domestic violence in Kosovo.⁹¹

Secondly, the reported high number of rejection judgements and dismissed charges is also linked to the lack of prioritization of domestic violence cases. Professionals, including prosecutors, continue to see domestic violence as a private matter and are thereby not willing to take these crimes seriously.⁹² In 2018, the Prosecutorial Council created quotas that need to be fulfilled by prosecutors on monthly and annual basis.⁹³ According to these quotas, prosecutors of the general departments in basic prosecutions need to finish at least 23 indictments monthly (253 annually); prosecutors in the department for serious crimes need to finish 6 indictments monthly

⁸⁹ KIPRED interviews with shelter provider Safe House Gjakova, August 2108. Also stated by local prosecutor in a working group for amending the Kosovo Criminal Code related to domestic violence, 12th October Prevalle-Prizren, with participation of KIPRED and Kosovo Women’s Network members.

⁹⁰ KIPRED Interview with Prosecutor, September 2018

⁹¹Supra Note 5

⁹²Kipred interview with Prosecutors, August and September 2018

⁹³Kosovo Prosecutorial Council, Administrative Instruction Nr. 01/2018 on setting orientation norms for state prosecutors, Prishtina, 2018

(66 annually).⁹⁴ As stated by some prosecutors, these quotas have contributed to a lower quality level of indictments⁹⁵

Further, prosecutors have highlighted that the lack of a definition of Domestic Violence within the Criminal Code impedes their efforts to effectively prosecute these cases.⁹⁶ Only recently, after increased reporting of media and activism by civil society to respond to cases of domestic violence,⁹⁷ the Kosovo prosecutorial services have taken several steps towards improving their response to domestic violence cases.

In May 2017, the Kosovo Prosecutorial Council appointed prosecutors in every basic prosecution to prioritize dealing with domestic violence cases.⁹⁸ The appointments were cited on the basis of the requirements of the National Strategy and Action plan for Protection from Domestic Violence 2016-2020. At this point, almost all basic prosecutorial offices in the municipalities of Kosovo have appointed prosecutors to prioritise and act as coordinators in dealing with gender-based violence cases.⁹⁹ However, many problems remain despite these appointments. For one, although appointed prosecutors have received trainings, notably by the U.S Embassy, they are still in further need of capacity building.¹⁰⁰ Second, many of the appointed prosecutors also deal with other cases, which may prevent them from focusing their energy and time on cases regarding domestic violence.¹⁰¹ Third not all cases go to the appointed prosecutors, leaving some domestic violence cases to go to untrained prosecutors.¹⁰² Lastly, although the prosecutorial services have appointed prosecutors to handle and prioritise domestic violence cases, the judiciary has not appointed judges to handle specific domestic violence cases in criminal proceedings. This could lead to domestic violence cases being treated by untrained judges that do not understand the dynamics of domestic violence cases.¹⁰³

⁹⁴ Ibid.

⁹⁵ KIPRED Interview with Prosecutor, September 2018

⁹⁶ KIPRED Interviews with Prosecutors, September 2018

⁹⁷ A number of protests occurred following the murder of Valbona Nrecaj and 9 years old daughter by their husband/father. Sets of protests were organized by civil society members and activists in Gjakova, Pristina, Prizren, etc. during the month of August 2018 requesting institutional responsibility for the omitted case handling of domestic violence. See for example articles in Bota Sot and Koha Ditore at <https://www.botasot.info/aktuale-lajme/934233/per-vrasjen-e-valbones-me-te-bijen-kerkohet-doreheqje-te-personave-pergjegjes/> and <https://www.koha.net/arberi/110018/detaje-te-ktv-se-nga-krimi-i-paralajmeruar-ne-brekoc-te-gjakoves-i-pandaluar-nga-policia/>

⁹⁸ Kosovo Prosecutorial Council, Standard Operating Procedures for Increasing Efficacy in treating cases of Domestic Violence, May 2017

⁹⁹ KWN Interview with State Prosecutor, September 2018.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² *Supra* Note 8 and KIRPED Interview with State Prosecutor, September 2018

¹⁰³ Ibid.

Case Study: Failure to Categorize Domestic Violence Cases Adequately. In 2011, after three days after getting married, Antigona Morina died from heavy bleeding. Despite having started to bleed on her wedding night, Antigona's husband continued to have violent intercourse with her¹⁰⁴ and failed to take her to see a medical professional. Instead, she was sent to the local Sheik whom performed Islamic rituals and offered traditional therapies. After Antigona's death, the prosecution filed criminal charges against her husband in accordance with Article 251 of the Criminal Code, on "Violating Family Obligations".¹⁰⁵ He was found not guilty by the Basic Court of Gjakova/Đakovica (Rahovec/Orahovac branch). However, the appeal filed by the prosecution went missing and never reached the Court of Appeals.¹⁰⁶ Allegedly, the judge in charge (who is now retired) purposely hid the appeal.¹⁰⁷ Due to pressure by media, women's activists, and CSO's, the Prosecution resent the appeal in early 2018. The Kosovo Women's Network employed an attorney to represent Antigona's family during the appeals process.¹⁰⁸

As illustrated by this case study, prosecutors frequently fail to categorize certain crimes as domestic violence in their indictments. In Antigona's case, the crime was qualified by the prosecution based on Article 251 of the Criminal Code on "Violating Family Obligations". According to this article, if someone does not take care of a family member who is incapable of taking care for themselves, they should be punished by imprisonment between three months and three years.¹⁰⁹ In fact, Antigona's death should have been classified differently, both according to Article 181 of the Criminal Code as "Negligent Murder"¹¹⁰ and according to Article 189 as "Grievous Bodily Injury".¹¹¹ According to Article 181 of the Criminal Code, "whoever by negligence deprives another person of his or her life shall be punished by imprisonment of six (6) months to five (5) years". Further, According to Article 189 of the Criminal Code, "2. Whoever inflicts bodily harm or impairs the health of another person that results in: 2.1. Endangering the life of the person; 2.2. Permanently destroying or weakening a vital part of the body of the other person; 2.3. Permanently destroying the capacity of the other person for any kind of work; 2.4. Permanently disfiguring the other person; or 2.5. Permanently and seriously impairing the health of the other person, shall be punished by imprisonment of one (1) to ten

¹⁰⁴ According to the Medical Forensic report shared with the Kosovo Women's Network, the cause of death was the bleeding that came as a result of violent anal sex.

¹⁰⁵ Banjska, Iliriana, for Kosovo 2.0, "How many calls does it take?", 2018, Website Accessed on 20.10.2018, at: kosovotwopointzero.com/en/how-many-calls-does-it-take/

¹⁰⁶ Ibid.

¹⁰⁷ KIPRED Interview with Prosecutor, September 2018.

¹⁰⁸ Interview with the Kosovo Women's Network, July 2018.

¹⁰⁹ Supra Note 42, Article 251

¹¹⁰ Supra Note 42. Article 181. Also confirmed in close consultation with current lawyer of Antigona Morina's family in the appeal procedure, Mrs. Fehmije Bytyqi.

¹¹¹ Ibid. Article 189.2.

(10) years.” In Antigona’s case, the failure to correctly qualify the criminal offence and the injuries caused to her body (which was also acknowledged by the Medical Forensic Report), led to the improper handling of the case by the courts. Under the requirements of Istanbul Convention, states ought to act in accordance with the gravity of the acts committed against women.¹¹²

Diminishing acts of violence against women, or wrongly qualifying acts of domestic violence, are tactics often used by the judicial system in order to enact minimal sentencing for domestic violence cases (including fines, bail and probation).¹¹³

According to data monitored by KIPRED, the number of cases receiving only punitive orders through courts judgements is high. Punitive Orders are when the prosecutor requests the following measures: “*A fine, prohibition on driving a motor-vehicle, an order to publish a judgment, the confiscation of an object, a judicial admonition or the confiscation of the material benefit acquired by the commission of a criminal offence.*”¹¹⁴ Prosecutors request the issuance of punitive orders to courts by requesting that the court impose certain punishments on the accused without holding the main trial.¹¹⁵ Hence, punitive orders often lead to courts issuing fines and cases without holding main trials, thereby not fully investigating the domestic violence cases reported. The ongoing tendency of prosecutorial services to assign investigating domestic violence acts as low priority, coupled with the common sense of impunity among perpetrators will continue to perpetrate a culture of impunity which accepts violence against women and girls as a norm.¹¹⁶

Punitive orders, mainly issued in the form of fines, are often issued in domestic violence verdicts. Such orders were issued in 300 cases in 2015, 397 cases in 2016, and 44 cases in 2017.¹¹⁷ During the first six months of 2018, there were 28 cases of punitive orders issued. (See Table 3) According to one senior official of the prosecutorial system in Kosovo, no cases of domestic violence should receive punitive orders issued by judgements.¹¹⁸ According to the Istanbul Convention, impunity for perpetrators leads to an increased social acceptance of domestic

¹¹²Speech by Elda Moreno, Head of Gender Equality and Human Dignity Council of Europe, in the London School of Economics related to the Istanbul Convention, 2013. Available at <http://www.lse.ac.uk/humanRights/documents/2013/20130307Moreno.pdf>

¹¹³ Supra Note 2

¹¹⁴ Ibid.

¹¹⁵ Criminal Procedural Code of the Republic of Kosovo, Article 493

¹¹⁶ Supra Note 50

¹¹⁷ Data obtained by the Kosovo Prosecutorial Council

¹¹⁸ KIPRED Interview with Prosecutor, September 2018.

violence.¹¹⁹ This impunity of perpetrators is further illustrated by existing judicial data. In the period from 2015 to 2018, only 40.4% of cases sentenced received guilty verdicts.

Additionally, the judicial response remains weak in its response. Annually, there are several cases that are not adjudicated because the statute of limitation expires. According to data submitted to KIPRED by the Kosovo Prosecutorial Council, in 2015, 18 cases were not adjudicated because of the statute of limitations. Moreover, in 2016, 28 cases were not adjudicated and in 2017, 15 were not (See table 3). The slow judicial response further exacerbates the existing impunity of perpetrators.

Further, the Istanbul Convention requires states to set up preventive and treatment perpetrator programmes.¹²⁰ In line with the Convention, the Law on Protection against Domestic Violence foresees psycho-social treatment¹²¹ and treatment from dependency on psychotropic substances and alcohol.¹²² These programmes are further regulated by two Administrative Instructions, one on psychosocial treatment,¹²³ and the other on treatment for alcoholism and other substances.¹²⁴ These two instructions have been criticized for indirectly suggesting that psychosocial behaviour and addiction are root-causes of domestic violence.¹²⁵ Nevertheless, KIPRED's findings have shown that that these instructions are rarely, if ever, implemented.¹²⁶ Only 17 measures for mandatory treatment were ordered in 2016, 11 in 2017 and 8 in the first half of 2018. (See table 3).

¹¹⁹ Supra Note 2

¹²⁰ Supra Note 2. Article 16

¹²¹ Supra Note 58. Article 4

¹²² Ibid. Article 9

¹²³ Government of the Republic of Kosovo, Administrative Instruction No 12/2012 for determining the place and way of psychosocial treatment of perpetrators of domestic violence, 2012, at: gbvaor.net/wp-content/uploads/2013/02/AI-imple-Law-against-DV-psychosocial-treatment-of-perpetrator-Eng-Alb_Serb.pdf

¹²⁴ Ministry of Health, Administrative Instruction Nor 02/2013 on the method of treatment to perpetrators of domestic violence against which there is imposed the measure for mandatory medical treatment from alcoholism and addiction to psychotropic substances, 2013, at: <https://msh.rks-gov.net/wp-content/uploads/2013/11/Udhezim%20Administrativ%2002-2013.pdf>

¹²⁵ Supra Note 8

¹²⁶ Interview with Gjakova/Djakovica Center for Social Work shows that since the coming into force of these instructions, no perpetrator has been referred to them for treatment.

Table 3. Criminal Cases related to Domestic Violence sentenced by Courts				
Year	2015	2016	2017	2018
Overall Nr of Criminal Charges at the Beginning of the Reporting Period	2667	2959	1009	1241
Punitive Order issued by Judgement	300	394	44	28
Ended because of expired statutory limitation.	18	28	15	0
With Release Judgement	11	12	2	0
Guilty Verdict	901	1055	776	455
Measures for Obligatory Treatment	23	17	11	8

The judicial system recently recorded one case in which it handled an act of domestic violence appropriately and promptly. On July 2018, a domestic violence perpetrator was sentenced with 3 years of imprisonment by the Basic Court of Prishtina/Priština. The case listed a number of lenient and aggravating circumstances during the sentencing reasoning.

The aggravating circumstances considered in the judgment were exemplary and appropriate in cases of a systemic case of domestic abuse. Aggravating circumstances in the judgment included: the perpetrator's lack of remorse, as exemplified by his laughter during the victim's testimony; the long term physical and psychological violence; the emotional condition of the victim who was repeatedly unsure of herself and her statements; the fact that the violence was witnessed by their 4-year-old son.

However, the court of appeals decreased the sentence from three years to eighteen months. This decision was partially based on the complaint of the victim herself, who said that the initial sentence was against her true intentions and the context of the case. She added that she did not consider herself a damaged party in criminal proceedings, only she requested protection measures in line with the law on Protection against Domestic Violence and wanted to warn the perpetrator against the domestic abuse she had been suffering over the years. She highlighted that keeping the perpetrator in prison for 3 years would lead to the disintegration of the family and that she and her son were awaiting the return of their husband and father as the husband is the main breadwinner of the family.

The court of appeals, however, failed to understand that the victim may have submitted the complaint due to the pressure she may have received by her social surrounding, as well as her emotional state as a victim of domestic violence. Moreover, the State Prosecutor did not even attend the appeals procedure and the victim was not represented during the appeals procedure by a legal representative.

This case illustrates the inadequate response of the prosecution and courts to understand the abusive cycle of violence and the social pressure placed on the victim, which often leads to withdrawal and complaint. The sentencing reduced by the court of appeals also did not take into account the requirements of the Kosovo Sentencing Guidelines, adopted by the Supreme Court of Kosovo, requesting that factors of continuous violence, violence committed in front of family members, psychological effects on the victim and the family should be considered as aggravating circumstances as such.¹²⁷

In sum, the existing data has continued to demonstrate the high rate of dismissed cases by the prosecutorial services. In 2017, over half of all cases were dismissed. Many cases received rejection judgements. Two contributing factors are the inability of prosecutors to understand the dynamics of domestic violence, as well as the prosecutor's over-reliance on the victim's statement. The cases analysed have also shown how the minimal sentencing of perpetrators continues to reinforce a culture of impunity amongst perpetrators of domestic violence.

e) Mediation and reconciliation in Domestic Violence Cases

The Istanbul Convention prohibits alternative dispute resolution, including reconciliation and mediation in cases of domestic violence.¹²⁸ In particular, the Convention prohibits mandatory alternative dispute resolutions processes such as mediation or reconciliation because it recognizes the inability of the victim to participate in such a process as an equal. Due to the dynamics of domestic violence and the power relations at play, victims will not be able to be at an equal footing with the perpetrator in the dispute resolution processes.¹²⁹

Reconciliation attempts remain widespread across institutions and to some extent, the services providers, including shelters for providing assistance and protection to domestic violence victims. As one interviewee said, "Reconciliation is used to take the problem away from

¹²⁷ See Kosovo Supreme Court Guidelines, 2018. Available at www.gjyqesori-rks.org/GetDocument/8426

¹²⁸ Supra Note 2, Istanbul Convention, Article 48

¹²⁹ Supra Note 50.

oneself”.¹³⁰ Another interviewee stated that “the institutional judicial structure is entirely set up to reconcile the victim with the perpetrator”.¹³¹ Reconciliation attempts are evident at the court level as well. For instance, a case was detailed where a judge continuously postponed the session with the justification that the court was providing additional time for the couple to reconcile.¹³² The postponement continued until the husband left the country together with the children.¹³³ Other reconciliation attempts continue to also be reported within the police as well. Cases have been reported where the police have told the victim that they should strive to “save” the family and put the family first.¹³⁴

Further, under the Kosovo Law on Mediation adopted in August 2018, explicitly prohibits mediation in cases of domestic violence.¹³⁵ Until June 2016, many of the prosecutors used alternative measures to reconcile cases of domestic violence. Accordingly, only in June 2016, the State Prosecutor’s Office released a guiding note prohibiting the use of alternative measures such as reconciliation in domestic violence cases.¹³⁶ Under this guideline, the Prosecutor’s Office highlights that they have noticed that in cases of violation of protection orders that should be ex officio prosecuted and also in domestic violence cases, prosecutors frequently send the case to a certified reconciliatory body. Further, the guideline contains an explanation as to why reconciliation should not be used, using the cyclical patterns of domestic violence perpetrators as justification.¹³⁷ Nevertheless, while the guide prohibits the use of reconciliation as an alternative measure, it has not halted individual prosecutors from mediating between parties. Indeed, one of the chief prosecutors of the Basic Prosecutions in Kosovo stated that the Guide had stopped official mediation, but individual prosecutors continue to mediate between parties.¹³⁸

Interviewees have increasingly highlighted that Centres for Social Work frequently engage in reconciliation attempts. In one case reported in 2018, the Shelter in the Municipality of Gjakova/Đakovica was sheltering a woman who had escaped a violent environment in which she was repeatedly abused by her husband. During a meeting attended by a shelter representative, of the CSW Worker with the victim and the abuser, the abuser continued to threaten the victim in the presence of the officials. The abuser repeatedly stated to the victims

¹³⁰ KIPRED Interview with Service Provider, August 2018

¹³¹ KIPRED Interview with Service Provider, September 2018.

¹³²Supra Note 8.

¹³³ Ibid.

¹³⁴ KIPRED Interviews with Chief Prosecutor of Basic Prosecution and the Ombudsperson Institution, September 2018.

¹³⁵ Assembly of the Republic of Kosovo, Law No. 06/L-009 on Mediation, 2018, at: <https://md.rks-gov.net/desk/inc/media/078A2A69-F572-4826-AC20-61937AADD2FA.pdf>

¹³⁶ Office of the State Chief Prosecutor, Guideline 360/16, June 2016.

¹³⁷ Ibid.

¹³⁸ KIPRED Interview with Prosecutor, September 2018.

that “...if we get back together and you repeat your behaviour I will beat you again”. Even in that situation, the social worker repeatedly insisted that the victim and abuser should make up and “shake hands”. Reconciliation attempts continue to be made without an understanding of the true nature of domestic abuse and the dynamics of such cases. As stated by one high-level representative to the research team, he “understands why reconciliation attempts occur” and that they are “based on good intentions.”¹³⁹

Considering the dynamics of domestic violence, institutions should entirely refrain from reconciliation attempts. Domestic violence is a cyclical pattern characterized by a combination of calmer periods and abusive behaviour. Specifically, there are three distinct phases in the cycle of abuse.¹⁴⁰ The first phase is positive and characterized by close relations and a charming and gentle attitude by the abuser. This leads to the second phase, where tensions through jealousy and paranoia develop, and culminate in violence.¹⁴¹ After the violence, a honeymoon phase develops where the abuser goes back to being charming and caring for the victim.¹⁴² If social workers, the police, prosecutorial services and other institutions promote and engage in reconciliation attempts, they push the victim directly back into the cycle of abuse and may potentially risk the victim’s life.

f) Domestic Violence Shelters

A total of nine Domestic Violence Shelters provide a safe place of temporary residence for victims of domestic violence in Kosovo.¹⁴³ If compared to the standards set by the Istanbul Convention, the number of shelters continues to be low throughout Kosovo. According to the Istanbul Convention, shelters should be provided in sufficient numbers and they should be easily accessible by victims.¹⁴⁴ Further, the Istanbul Convention’s Explanatory Report recommends that one shelter should be available per 10,000 inhabitants.¹⁴⁵ Also, the convention states that shelters should consider the effects of domestic violence and the process of recovery in order to avoid the re-victimisation of victims.¹⁴⁶

Shelters in Kosovo are licensed and provide their services by partial financial support of the Ministry of Labour and Social Welfare. Shelters provide temporary accommodation and

¹³⁹ Interview with National Coordinator, August 2018.

¹⁴⁰ Fisher and Lab, "Encyclopaedia of Victimology and Crime Prevention, Volume 1, 2010, page 257.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ Supra Note 35. Page 28

¹⁴⁴ Supra Note 2.

¹⁴⁵ Supra Note 50. Page 135

¹⁴⁶ Ibid. Page 22

protection for victims as well as assistance in reintegration and rehabilitation processes.¹⁴⁷ Victims can be referred to shelters by different institutions, including police, but also be approached directly by victims.¹⁴⁸ Shelters can house women up to 6 months, but have reportedly housed women for longer periods.¹⁴⁹ They currently receive financing by the Ministry of Labour and Social Welfare (MLSW). The call is published according to the criteria set in the Regulation on Criteria, Standards and Procedures on Public Funding of NGO's.¹⁵⁰

The existing shelters face numerous challenges as well, most notably the lack of sustainable financing.¹⁵¹ In the past, funding was equal to 50% of the overall costs of the shelters in order to assist and protect victims of domestic violence. Today, this funding stands at approximately 30%.¹⁵² Most of the shelters continue to be donor dependent, or are occasionally supported by municipalities. Further, some of the shelters continue to pay high prices for electricity and water bills, as they are considered businesses by electricity and water companies.¹⁵³

Even though some shelters do not pay for rent because municipalities have provided them with land, or donors have built their houses, (as is the case for the Gjakova/Đakovica, Gjilan/Gnjilane and Prishtina shelters), existing municipal state structures, including at local levels, have been reported to affect the smooth running of the shelters in few instances.

For example, the Safe House in Gjakova/Đakovica has reported to have started the production of bread and pastries in its centre to create economic activity for the women sheltered, as well as ensure a self-sustainable means for the shelter. The shelter engages women victims of domestic violence in producing the bread and pastries and in selling the products in different places including nearby schools. The profits are used to ensure that there are sufficient funds to continue housing the women and to ensure further the economic independence of the victims sheltered as needs arises. However, this innovative step has been met with backlash. Recently this year, the shelter was visited by the Kosovo Police and the municipal Inspectorate who demanded that they should stop producing bread and pastries because it is prohibited by the Ministry of Trade and Industry for NGO's to engage in trade. This prohibition was not legally well interpreted, as it was not in line with the Law No. 03/L-134 on Freedom of Association in

¹⁴⁷ Ibid.

¹⁴⁸ Supra Note 8, Page 76

¹⁴⁹ KIPRED Interviews with Shelter representatives, August 2018

¹⁵⁰ Ministry of Finance, Regulation Mf - Nr - 04/2017 on Criteria, Standards and procedures on public funding of NGO's, 2017, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=14831>

¹⁵¹ Multiple KIPRED Interviews with Women's Rights Activists and Shelter Representatives in Kosovo, July and August 2018.

¹⁵² KIPRED Interview with Shelter Representatives, August 2018.

¹⁵³ Ibid.

Non-Governmental Organizations.¹⁵⁴ According to Article 16 of this law, NGO's can engage in economic activities, as long as the income is used to accomplish the NGO's purposes."¹⁵⁵ This measure had the effect of halting the production of pastries for the shelter, and as a result, the economic programme of support to the victims. It is part of shelters work to instil in the victims a sense of control over their lives, which in many cases, includes working towards financial security (in particular economic independence from the perpetrator).

In sum, despite continuous pressure from citizens and CSO's, domestic violence continues to not be seen as a high priority on the political agenda in Kosovo.¹⁵⁶ For example, the existing Security Strategy of the Republic of Kosovo adopted in 2011,¹⁵⁷ does not refer to domestic violence as an issue or security threat even though there has been a recent increase in Kosovo on the reported number of incidents and murders due to domestic violence. Additionally, police data has shown that in the last decade, domestic violence reporting remains amongst the highest of the reported crimes in Kosovo, with an average of 1,000 cases reported on annual basis. However, these statistics are neither discussed nor taken into account when drafting the Kosovo Security Strategy..¹⁵⁸ As of 2015, Kosovo's institutions have not been guided by a specific Action Plan or Strategy on Women, Peace and Security.¹⁵⁹ The current strategy calling for an end to, and prompt response for, cases of domestic violence foresees that by 2020, all of Kosovo's institutions should be accountable and strict in implementing laws, calling for "zero tolerance" against domestic violence.

Due to the urgency of the cases and incidents reported annually on domestic violence, it is necessary that domestic violence is treated with urgency and addressed as a security threat to the health and safety of its citizens. Further, responsible institutions, including the National Coordinator against Domestic Violence, should call for the immediate implementation of the 'Zero Tolerance' policy by all institutions responsible in line with the strategic objectives of the Kosovo Strategy and Action Plan against Domestic Violence.

¹⁵⁴Assembly of the Republic of Kosovo, Law No 03/L-134 on Freedom of Association in non-governmental organizations, 2009, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2629>

¹⁵⁵ Ibid. Article 16.2

¹⁵⁶ Panel Conclusions, "Conference: Justice for Murdered Women as a Result of Domestic Violence in Kosovo, May 2018

¹⁵⁷Government of the Republic of Kosovo, Kosovo Security Strategy, 2011, at: www.kryeministri-ks.net/repository/docs/STRATEGJIA_E_SIGURISE_E_REPUBLIKES_SE_KOSOVES.pdf

¹⁵⁸KIPRED, Security Sector in Kosovo from a Gender Perspective, 2016, at: www.kipred.org/repository/docs/SECURITY_SECTOR_IN_KOSOVO_FROM_GENDER_PERSPECTIVE_4_32844.pdf

¹⁵⁹ The Kosovo Action Plan on the Implementation of the UNSCR 1325 on Women, Peace and Security ended in 2015. The Kosovo Agency for Gender Equality is currently drafting the new Kosovo Programme and Action Plan on Gender Equality aiming to cover also issues related to women, peace and security.

Furthermore, acknowledging the independence of the courts, the Istanbul Convention advises states to provide for clear messages in ending violence within homes by issuing appropriate guides to courts in implementing appropriate sentencing against domestic violence perpetrators. The Convention in particular calls for states to undertake measures that consider aggravating circumstances in appropriately determining the sentences with the offences committed. Especially in cases of repeated violence, systemic abuse of family members, violence against vulnerable persons (including children), and use of weapons, the severe physical and psychological harm to the victim are circumstances that courts should take into account. Amongst these aggravating circumstances are also recidivist behaviours of perpetrator.¹⁶⁰

In conclusion, the inability of the state to prioritize acts of domestic violence has led to an institutional culture that ignores domestic violence cases and develops a sense of impunity for perpetrators of domestic violence, which has the effect of lessening the trust of victims and their access to the criminal justice system.

V. Sexual Violence as a Form of Gender Based Violence

Under the Istanbul Convention, other forms of gender-based violence that affect women disproportionately include rape, sexual assault, sexual harassment and other forms of sexual violence.¹⁶¹ In Kosovo, substantial attention has been paid to victims of conflict-related sexual violence in the recent years.¹⁶² This chapter focuses only on victims of sexual violence, including rape, as crimes not related to the conflict. Data obtained by the Kosovo police notes that there have been only 3 cases of rape reported in 2017, 7 in 2016 and 5 in 2015. (See table 4)

¹⁶⁰Supra Note 50. Article 46

¹⁶¹ Supra Note 2.

¹⁶² As of 2017, 17 years after the end of the war, a Commission and Pension Programme for those victims and survivors have been set up.

Table 4. Cases of Degradation of Sexual Integrity reported to the Police			
Year	2015	2016	2017
Rape	5	7	3
Sexual Assault	17	12	7
Degradation Of The Sexual Integrity	2	0	1
Sexual Abuse Of Persons With Mental Or Emotional Disabilities	1	3	0
Sexual Abuse Of Persons Under The Age Of Sixteen (16) Years	36	35	26
Sexual Abuse By Misusing The Position, Authority Or Profession	1	0	0

Sexual violence remains heavily underreported.¹⁶³ Several factors continue to contribute to this underreporting, including fear from stigmatisation (as rape is a taboo topic in Kosovo), victim-blaming by society, as well as financial reconciliation between families, with or without the knowledge of the responsible institutions.¹⁶⁴

Sexual harassment is also considered a form of gender-based violence by the Istanbul Convention. In the Convention, Sexual Harassment is defined as “any form of unwanted verbal, non-verbal or physical conduct of a sexual nature with the purpose or effect of violating the dignity of a person, in particular when creating an intimidating, hostile, degrading, humiliating or offensive environment.”¹⁶⁵ Sexual harassment remains widespread in Kosovo, with approximately 64% of women reporting to have experienced some form of sexual harassment in their lifetimes.¹⁶⁶ Victim-blaming attitudes continue to be widespread in Kosovo, as illustrated by the fact that 74% of people believe that sexual harassment is a woman's fault because of the way she dresses or acts.¹⁶⁷

¹⁶³ This is a result of multiple KIPRED interviews, including women’s rights activists, Victim’s Advocate’s, and Police representatives during July, August, and September 2018.

¹⁶⁴ KIPRED Interviews with Women’s Rights Activists, Lawyers, and Forensic Experts, July, August, and September 2018. See also Supra Note 8 and Supra Note 10

¹⁶⁵ Supra Note 2. Article 30

¹⁶⁶ Supra Note 10

¹⁶⁷ Ibid.

a) Shortcomings in the Existing Legislation

Chapter XX of the Criminal Code of the Republic of Kosovo covers “criminal offenses against sexual integrity”.¹⁶⁸ The Code specifically defines rape, sexual assault, banning of purchasing sexual services from a victim of trafficking, degrading the sexual integrity of persons, etc.¹⁶⁹ Further, the criminal code acknowledges to some extent the specific gendered nature of such crimes, even though it defines vulnerable victims in a wider sense as persons that are children, pregnant women, domestic partners, persons with diminished capacity and persons with physical or mental disability (enlisting this as an aggravating circumstance in a number of crimes related to sexual integrity).¹⁷⁰ Further, the Code does not provide a specific definition of marital rape. According to the Istanbul Convention, sexual violence and rape between domestic partners is also a form of exerting power and control of the abusive partner over the victim. These forms of violence will occur during and after break-ups. Therefore, the criminalisation and prosecution of such acts when committed against current or former partners or spouses should be recognised by the law.¹⁷¹ Even though Kosovo’s Criminal Code refers to domestic partners as an aggravating circumstance in cases of rape, it criminalises only the conduct against family members between the ages of 16 and 18 years old. It remains silent in the issue of domestic partners above 18 years of age.¹⁷²

Sexual harassment is not specifically defined in the Criminal Code. Article 186 includes provisions of “Harassment”, but it does not provide for a specific definition of sexual harassment. This has led to various judicial institutions not maintaining data on sexual

¹⁶⁸ Supra Note 42. Chapter XX

¹⁶⁹ Other acts defined are: Sexual abuse of mentally or emotionally disabled persons, sexual abuse of minors, inducing of sexual acts, offering pornographic materials to minors, abuse of children in pornography, sexual abuse of position of authority, inducing sexual acts by false promise of marriage, facilitating or compelling prostitution, providing premises for prostitution, and incest See Kosovo Criminal Code, Chapter XX, Articles 230 – 243.

¹⁷⁰ See for example Article 230, paragraph 4.7 and 4.8 of the Kosovo Criminal Code.

¹⁷¹ Supra Note 42. Page 33

¹⁷² For rape in a domestic relationship see Article 230, paragraph 4.8. Domestic relationship is defined under Article 120, paragraph 23 of the Kosovo Criminal Code as “The relationship between two (2) persons: 23.1. who are engaged or married to each other or are co-habiting with each other without marriage; 23.2. who share a primary household in common and who are related by blood, marriage, or adoption or are in a guardian relationship, including parents, 57 grandparents, children, grandchildren, siblings, aunts, uncles, nieces, nephews, cousins; or 23.3. who are the parents of a common child.” Available at <http://www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf>.

harassment cases.¹⁷³ Since the Criminal Code is currently being amended, there are initiatives led by civil society and activists to include sexual harassment in the new Criminal Code.¹⁷⁴

According to the existing international standards for assisting victims of sexual violence including victims of rape, the Istanbul Convention requires state parties to effectively conduct the investigation and prosecution of all cases.¹⁷⁵ This includes the collection of all facts, the interviewing of all relevant witnesses, and the completion of forensic exams.¹⁷⁶

Accordingly, the use of well-coordinated institutional response is considered standards in addressing the sensitive nature of sexual assault cases (in particular, rape cases). Even though Kosovo has Standard Operating Procedures to assist victims of domestic violence and trafficking persons, Kosovo does not currently have inter-institutional Standard Operating Procedures (SOP's) to address cases of rape and sexual assault. Coordinating actions between institutions is of utmost importance in order to properly handle rape and assault cases.¹⁷⁷ The police should be able to refer victims to specialist services that would support the victim and conduct the timely collection of forensic evidence and support the victim to access judicial services.¹⁷⁸

The Standard Operating Procedures for rape crimes and sexual assault would define, in detail, the roles and responsibilities of each authority involved in investigating responding and prosecuting the crimes of rape and sexual assaults. In general, KIPRED has observed that the lack of specific operating procedures for the Department of Forensic Medicine, Kosovo Police and prosecutorial services frequently leads to a lack of coordination and knowledge on how to promptly and effectively respond to cases of rape and sexual assault. Members of Kosovo's Police and of prosecutorial services have not received sufficient trainings related to investigation and the prosecution of rape cases, often bringing victims too late to forensic doctors for medical evidence collection.¹⁷⁹ This often leads to the loss of valuable medical evidence to prove the case in courts.¹⁸⁰

Further, the legislation of Kosovo does not foresee the creation of Rape Crisis Centres (RCC) or Sexual Referral Centres (SVRC).¹⁸¹ The minimum standards in Europe are to have one SVRC per

¹⁷³ KIPRED correspondence with Prosecutors Office and Kosovo Police, July and August 2018

¹⁷⁴Office of the Prime Minister of Kosovo, "Legislative Program 2018", 2018, at: www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITIN_2018_.pdf

¹⁷⁵Supra Note 2. Page 43

¹⁷⁶ Ibid.

¹⁷⁷Supra Note 2. Page 21

¹⁷⁸ Ibid.

¹⁷⁹KIPRED Interview with the Department of Forensic Medicine, July 2018

¹⁸⁰ KIPRED Interview with Women's CSO and the Department of Forensic Medicine, July and August 2018.

¹⁸¹ Supra Note 35. Page 32

400,000 women and one RCC per 200,000 women.¹⁸² Rape Crisis Centres and Sexual Referral Centres serve different, but interrelated purposes. Rape Crisis Centres offer long term support towards victims by engaging in advocacy and awareness raising to prevent sexual violence. Rape Crisis Centres can also provide help-lines and counselling and work directly with survivors who may choose to not report the crime to the police.¹⁸³ Sexual Referral Centres, on the other hand, work to improve the forensic response towards sexual violence cases, including rape and assault. They work with survivors who have recently been attacked, provide short-term counselling in certain cases by offering crisis intervention, medical examination and care, as well as follow up tests. In some Sexual Referral Centres, they also store evidence in case the victim decides to report the crime at a later point. The lack of these Centres in Kosovo has led to many problems related to the institutional response regarding sexual violence victims, including an inadequate response by judicial institutions.¹⁸⁴

It has been acknowledged that these services are best provided by women's organizations that have knowledge and experience in gender-based violence.¹⁸⁵

In sum, Kosovo's legislation has many shortcomings when it comes to sexual violence. First and foremost, the Criminal Code lacks a specific definition of both marital rape and sexual harassment, which can lead to the inadequate prosecution and sentencing of such crimes. Further, there are no SOP's on crimes related to sexual violence, which directly leads to uncoordinated approaches by relevant institutions. Lastly, Kosovo lacks specialized institutions, such as Rape Crisis Centres and Sexual Referral Centres.

c) Reporting cases related to Sexual Violence

It is crucial that rape and sexual assault victims receive immediate support services as well as counselling. A proper, immediate response can avoid re-traumatization and ensure that all forensic evidence is preserved to ensure a proper investigative process. Considering the lack of Rape Crisis Centres in Kosovo, the first point of contact for victims of rape and assault who wish to report the crime is the Kosovo Police. The police continue to lack the proper training to handle such cases, particularly when it comes to being sensitive, avoiding re-traumatization, and storing and using forensic evidence.¹⁸⁶ There are instances where Police officers have engaged in

¹⁸² Ibid.

¹⁸³ Supra Note 35

¹⁸⁴ Ibid.

¹⁸⁵ Ibid. Page 24

¹⁸⁶ KIPRED Interviews with Institute for Forensic Medicine and Prosecutors, August and September 2018

victim-blaming, asking the victim why they were out alone at a certain hour.¹⁸⁷ A case monitored by KWN in 2016 further illustrates this victim blaming approach. The victim was asked whether she was a virgin and whether she had any pleasure or an orgasm during the rape.¹⁸⁸ The victim also had to repeat her story on multiple occasions during the same day, even though legally, rape victims should not be asked to repeat the story multiple times in order to avoid re-traumatisation.¹⁸⁹

Moreover, it has been noted to KIPRED during its monitoring, by representatives of the Forensic Medicine Department, that Police and individual prosecutors lack training and capacities to respond effectively and promptly to reported cases of sexual assault and rape. This has been observed in multiple cases according to the Department, where victims were brought with delays to the Department after all forensic and biological data and traces were gone.¹⁹⁰

For example, the police followed and arrested a group of men repeatedly reported to have raped a woman. Investigative techniques were also used to follow the case through covert operations. However, it was only after six days that the Kosovo Police sent her for an examination to the Forensic Department of the Kosovo Clinical Centre. Additionally, the State Prosecutor brought the victim to the Department for Forensic Medicine after 21 days, asking if the victim was indeed raped. As stated, “Did all five men rape her, did they beat her? How am I supposed to provide this information after that many days passed?!”

There are also cases where the victim decides not to report the crime immediately after the incident due to the trauma. In these cases, the victim might shower and forensic evidence crucial to investigating and prosecuting the crime will be lost. In these cases, if eye witnesses are absent, then the effective and prompt investigation of the crime is made almost impossible.¹⁹¹ If Rape Crisis Centre’s existed in Kosovo, victims would have a gender-sensitive facility with trained professionals available. In a few Centres’s, victims undergo forensic examination and have it stored for when they want to report the crime. Evidence shows that forensic samples should be taken and stored so that the victim can decide at a later point whether they want to report the crime or not.¹⁹²

¹⁸⁷KIPRED Interview with representative from Kosovo Women’s Network, July 2018.

¹⁸⁸ Supra Note 5.

¹⁸⁹Ibid.

¹⁹⁰ KIPRED Interview with Department of Forensic Medicine, August 2018

¹⁹¹ KIPRED Interview with Prosecutor, August 2018

¹⁹² Supra Note 35. Page 26

Currently, only one institution performs medical examinations on victims of sexual violence including rape and assault, namely the Department for Forensic Medicine.¹⁹³ These examinations are conducted only if there is an official request for investigation by prosecutorial services and cannot be accessed directly by victims.¹⁹⁴ Moreover, the collection of forensic evidence is very much time dependent. Currently, only the Department for Forensic Medicine in Prishtina/Priština can conduct such examinations, and transporting victims from other regions to Prishtina/Priština may lead to the loss of valuable evidence.¹⁹⁵ Only one of the doctors currently employed in the Department for Forensic Medicine is a woman.¹⁹⁶ The examination room in the Department is improvised and is located in a corridor.¹⁹⁷ Psychological counselling is not provided during and after examinations.¹⁹⁸ Nonetheless, forensic examinations themselves are in alignment with international standards.

Overall, victims are faced with several difficulties when it comes to reporting sexual violence crimes such as rape and assault. There are no gender-sensitive services for victims of violence where they could seek counselling and undergo forensic examinations. The police frequently engage in inadequate responses and victim blaming attitudes towards the victim. The victims are faced immediately post-crime with the tough decision of whether they want to report the violence or not. In cases where they do not want to report the violence immediately, there are no means of storing the forensic evidence for a later point in time. Essentially, access to justice for victims of sexual violence in Kosovo fails at the first step.

d) Prosecuting and Sentencing Sexual Violence

Kosovo's prosecutorial and judicial system does not offer specialised prosecutors or judges dealing with criminal offenses related to sexual violence.¹⁹⁹ Data sent from institutions are incomplete and difficult to comprehend due to different tracking mechanisms used across judicial institutions. For instance, it is currently not possible to track the number of rape and sexual assault cases reported to the police, investigated by the prosecution and indicted by the courts. While the Kosovo Police and the Judicial Council keeps data on rape and other offenses separately, the Prosecutorial Council reports all data together in the "Crimes against Sexual

¹⁹³ KIPRED Interview with State Prosecutor and Department of Forensic Medicine, August and September 2018.

¹⁹⁴ *Supra* Note 35. Page 33

¹⁹⁵ *Ibid.*

¹⁹⁶ Farnsworth et al. Kosovo Gender Analysis, 2018, at: www.womensnetwork.org/documents/20181003125154894.pdf

¹⁹⁷ KIPRED Monitoring of the Premises, August 2018

¹⁹⁸ *Ibid.*

¹⁹⁹ KIPRED Interview with Prosecutors, August and September 2018

Integrity” section.²⁰⁰This makes it difficult to follow rape and assault cases separately (See Table 5). Nevertheless, prosecutorial data shows that in 2016, only 19% of all crimes against sexual integrity went to pre-detention (31 cases out of 160 overall number of charges at the beginning of the year). In 2017, only 23% of cases led to pre-detention out of 109 overall charges (26 out of 109). During the first six months of 2018, there were 190 cases criminal charges and only 5% of cases led to pre-detention. Further, prosecutorial data does not offer a gender breakdown of the victims nor of the perpetrator. Due to the lack of a specific definition of “Sexual Harassment” in the Criminal Code, all cases in judicial services are tracked only as “Harassment” cases, making it difficult to discern between sexual harassment and other harassment cases.

Table 5. Criminal Charges Against Sexual Integrity				
Year	2015	2016	2017	2018
Overall number of Criminal Charges at beginning of reporting period.	141	160	109	190
Number of unsolved investigations at the beginning of the reporting period				
Request for Detention	32	31	26	11
Dismissal of Criminal Charges	12	28	22	21
Direct Indictment	10	8	18	0
Decision for Initiation of Investigation	118	159	140	52
Indictment after investigative procedure	90	137	100	48
Termination of procedure due to statutory limitation	0	0	1	0
Proposal to impose compulsory treatment measures.	1	0	0	0

The number of dismissed cases is also very high. In 2016, there were 17.5% of cases dismissed out of 160 cases charged. In 2017, there were 20% cases dismissed out of 109 cases criminally charged, and in the first six months of 2018, there were 11% of cases dismissed out of 190 criminally charged. Prosecutors stated to KIPRED that it is difficult to prove a case in court due to the lack of forensic evidence, as well as the fact that courts regularly do not issue verdicts based only on the statement of the victim.²⁰¹

²⁰⁰ KIPRED Correspondence with Prosecutorial Council, September 2018.

²⁰¹ KIPRED Interview with Prosecutors, August 2018.

Another factor for the poor collection of forensic evidence related to rape and sexual assault cases is the late reporting by the victims of the crime itself. .²⁰²

For example, the prosecution in Prizren reported investigating a case related to the rape of a 5-year-old child in which the only solid evidence was the statement of the five-year-old victim himself. Even though the victim used language and references not known by a five-year-old, the Court released the alleged perpetrator because of a lack of sufficient evidence provided by the prosecution.

Overall, there is a widespread lack of awareness on behalf of victims on how to report sexual violence in order to preserve the forensic evidence.²⁰³ Nevertheless, investigations into rape and sexual assault cases should be prioritized by prosecutors, in order to avoid the loss of forensic evidence. This lack of prioritization is one of the factors contributing to the timely investigation and collection of forensic evidence.²⁰⁴ Further, the process of evidence collection frequently focuses on the victim's statement and the forensic evidence only.²⁰⁵ Other corroborating evidence such as analysis of the crime scene, use of prior witness statements and other evidence should also be prioritized.

In the judicial system, cases of rape and sexual assault continue to be poorly handled as well. In 2017, there were nine cases of sexual assault convicted with fines and in the first half of 2018, there were 8 cases of sexual assaults fined (See Table 6). In 2017, five cases of sexual assault were conditionally sentenced. Other factors are at play for the ineffective handling of sexual assault crimes by Kosovo's judiciary. In several cases, judges show victim blaming attitudes towards the victim. These biased observations against the victims are used as mitigating circumstances for the perpetrator to receive lower punishment, such as fines and conditioned sentencing.²⁰⁶ The blame is placed by the court on the victim as victims are seen as a "provocateur" for the perpetrator.²⁰⁷ As one interviewee stated, "courts need to have strong reasons for mitigating circumstances and other than victim-blaming they're very difficult to find in rape cases."²⁰⁸

²⁰² Interviews with several representatives of prosecutorial service, August and September 2018.

²⁰³ KIPRED Interviews with Prosecutors and Women's CSO's, July and August 2018

²⁰⁴ KIPRED interviews with Prosecutors, August and September, 2018

²⁰⁵ Supra Note 8 and KIPRED Interview with Prosecutor, September 2018.

²⁰⁶ KIPRED Interview with Prosecutor, September 2018

²⁰⁷ Ibid.

²⁰⁸ Supra Note 196

Table 6. Cases of Sexual Assault Sentenced by Courts						
Criminal Charges of Sexual Assault				Cases of Rape in Courts		
Year	2016	2017	2018	2016	2017	2018
Overall cases	28	33	18	19	30	4
Detention Imprisonment	6	6	2	8	9	2
Punishments with Fines	4	9	8	0	2	0
Conditional punishments	5	5	3	3	5	0
Other punishments	1	0	0	1	0	0
With Release Judgement	1	3	1	2	4	2
With refused judgement	3	4	1	1	4	0
Statutory limitation	0	4	2	2	1	0
Solved differently	8	2	1	2	5	0

These interview statements on institutional victim-blaming were confirmed by a court decision that has come to the attention of the research team.

Case Study: Court Decision on Rape Case. A court decision on a rape case involved the accusation by prosecutorial services in 2017 of two persons reported by the victim and suspected to have raped a 19-year-old woman in a motel room.²⁰⁹ Both accused men were acquitted and the court found that there was insufficient evidence to prove that the rape actually occurred. The Court decision exhibits many aspects of victim blaming, portraying the actions and decisions of the victim as a reason for the rape. Among others, the decision states that, “the victim, as a 19-year-old woman agreed to travel by car with the male driver, without providing a clear destination to the driver, and while knowing that the driver was married.” The decision further states that, “the victim easily agreed to go to a place with the accused that were as young as she was. Being in a closed space with young people, directly means that the victim agreed to engage in sexual adventures”. The court decision highlights that, “by not refusing to be in that space with the accused, the victim silently agreed to have sexual relations with them.”

²⁰⁹ Court Decision by the Basic Court of Gjilan/Gnjilane, Decision #PKR. Nr200/2014 Decided in July 2017.

One other interviewee stated that even though cases should be prosecuted *ex officio*, in some cases prosecutors and judges are influenced by the stance of the victim who decides not to go through with the process. Further, the definition of consent by the victim is wrongly interpreted by officials. Many prosecutors, judges and police are unaware that the lack of consent equates to rape. In fact, they still believe that the victim needs to resist (scream, call for help, resist physically etc) in order for a sexual act to be qualified as a criminal offense.²¹⁰ This was confirmed during one interview with a police officer, who stated in an interview with KIPRED that, “if the intercourse wasn’t forceful, it isn’t rape.”²¹¹

This section has demonstrated the slow and inadequate response of institutions towards victims of sexual violence. Victims of sexual violence face several difficulties in the justice system, including victim-blaming attitudes and overall re-victimisation throughout the process. The number of dismissed cases of sexual violence and those that have received fines as a punishment remains alarmingly high. Similarly, the rate of cases receiving conditional punishments remains high.

VI. Violence against LGBT Persons

On October 11, 2017, Kosovo marked a milestone for the respect of the freedom of expression of the LGBT community when it held its first successful Pride Parade in the city centre of Pristina. Yet, many of those who attended that actually identify as LGBTI had their faces securely covered with bandanas in order to conceal their identities.²¹² Fear from homophobic backlash and violence from family, friends, even strangers;²¹³ and pressure from socio-cultural norms lead LGBTI individuals to hide their sexual orientation or gender identity. Research has shown that more than half of its surveyed respondents are afraid to discuss their sexual orientation with their families.²¹⁴ The LGBT individuals are not only afraid of threats of physical violence from society but often also fear abuse from their own families. With that said, 13% of LGBT respondents in the 2013 YIHR’s research responded to have experienced verbal

²¹⁰KIPRED Interview with Prosecutor, September 2018

²¹¹ KIPRED Interview with Police Officer, July 2018.

²¹²Halili, Dafina for Kosovo 2.0, "Balkan Unity in the Pride Parade", 2017, at: kosovotwopointzero.com/en/balkan-unity-pride-parade/

²¹³Youth Initiative for Human Rights and Center for Social Group Development, "Freedom and Protection for Lesbians, Gays, Bisexuals, and Transgender in Kosovo, 2013, at: ks.yihr.org/public/fck_files/ksfile/LGBT%20report/Freedom%20and%20Protection%20for%20LGBT%20in%20Kosovo.pdf

²¹⁴Ibid.

abuse and have been ostracized by their families.²¹⁵ There is no in-depth research on access to justice for LGBT victims of crime in Kosovo.²¹⁶

a) Problems with existing laws

Discrimination based on an individual's sexual orientation is prohibited by the Constitution of the Republic of Kosovo.²¹⁷ With the exception of Kosovo, only nine out of 193 United Nations member countries and only three other European countries have constitutional prohibitions of discrimination based on sexual orientation.²¹⁸ More specifically, the Kosovo Law on Protection from Discrimination prohibits discrimination predicated upon sexual orientation and gender identity.²¹⁹ Further, discrimination based on gender identity is also prohibited by the Law on Gender Equality.²²⁰

While the legal framework appears progressive at first, at a second glance, it has significant shortcomings. A major problem is a lack of alignment between other laws and the law on protection from discrimination and gender equality. For instance, while the Constitution states that "based on free will, everyone enjoys the right to marry and the right to have a family as provided by law,"²²¹ the Kosovo Family Law defines marriage as a "legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family."²²²

Another big discrepancy lies in the Law No 04/L-003 on Civil Status.²²³ Article 32 of this law defines "Gender" as a basic birth fact that is to be verified by medical reports.²²⁴ Further, Article 11 of the Law on Civil Status states that gender is a "component deriving from natural

²¹⁵The overall research conducted in 2013 included 308 participants including 88 LGBT persons, 17 Judges, 8 Prosecutors, 17 Lawyers, 30 Police Officers, 59 Human Rights Officers at the central and local level, and 89 Medical Professionals. The percentage cited above is derived from the 88 LGBT persons interviewed.

²¹⁶ Preliminary KIPRED Interview with lead LGBTI organization in Kosovo, May 2018.

²¹⁷ Supra Note 32, Article 24.2

²¹⁸Carroll and Mendos, "State Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection, and Recognition", 2017, at:

https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf

²¹⁹Assembly of the Republic of Kosovo, Law No. 05/L-021 on Protection from Discrimination, Article 1, 2015, at: <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf>

²²⁰ Ibid. Article 2.2

²²¹ Supra Note 32. Article 37.1

²²²Assembly of the Republic of Kosovo, Law Nr. 2004/32 Family Law of Kosovo, 2004, at: https://www.kuvendikosoves.org/common/docs/ligjet/2004_32_en.pdf

²²³ The Law on Civil Status has no provisions that treat gender related elements rather than gender at birth.

²²⁴Assembly of the Republic of Kosovo, Law No. 04/L-003 on Civil Status, 2011, at: www.kuvendikosoves.org/common/docs/ligjet/Law%20on%20civil%20status.pdf

events.”²²⁵ On the contrary, the law on Gender Equality refers to gender identity as a characteristic that is not related to a person’s designated sex at birth and comes whether by way of medical intervention or not.²²⁶ The discrepancy between these two laws has caused confusion in cases where transgender persons have wanted to change their gender marker in official documents. It may be interpreted as conditioning the change of the gender marker with medical interventions, contrary to what the Law on Gender Equality and the Law on Protection from Discrimination state. As can be seen in the case study provided below, this legal discrepancy has been a key issue that has prevented the first transgender person in Kosovo to realize his human rights to gender identity.

Case Study: Right to Gender Identity.²²⁷

In April 2018, Blert Morina, a transgender man, submitted the request for changing his name and gender marker in the Office for Civil Status of the Municipality of Gjakova/Đakovica. The request was denied by the Commission with the justification that Blert’s current name “Blerta”, “does not stop him from successfully integrating in society”. The request for changing the gender marker was also refused without any justification offered.²²⁸ In May 2018, Blert and his legal representative submitted an official complaint on the decision at the Office for Civil Status within the Agency for Civil Registration. The complaint stated that the decision by the Office for Civil Status at the Municipality was unlawful and discriminatory. According to the complaint, the decision was unlawful because it did not provide adequate information on why Blert’s request was being refused, and it was discriminatory because it breached the Law on Gender Equality and the Law on Protection from Discrimination and its clauses related to gender identity. This complaint was also rejected by the Agency for Civil Registration. The refusal on the name change was based on the justification that “you have failed to provide photos and archival documentation that prove that his current name stops him from adequately integrating in society”. This part of the decision was criticized because the Agency for Civil Registration did not request follow up documentation. As for changing the gender marker, the refusal was based

²²⁵ See Article 11 of the Law. It should be noted that the English version of the law correctly uses the term “sex”. However, the Albanian version uses the term “gender”, and that is the version used by most officials.

²²⁶ Supra Note 39. Article 3.1.9

²²⁷ Case compiled by interviews with Blert Morina, Rina Kika, the Ombudsperson of Kosovo, August and September 2018

²²⁸ According to Article 10 of the Kosovo Law on Civil Status, characteristics of some civil status components, including birth, sex, personal name, the relations of paternity, maternity and citizenship are recognized respectively and may be removed, abolished or changed, in cases expressly provided under this law or any other specific law. Also birth certificate data may be changed under Article 38, directly by the official of civil status registry in line with other laws in force. Even though a possibility is offered by the law, the requirements foreseen have not been recognized in the case elaborated above.

by referring to the Law on Civil Status which says that gender is a natural fact that needs to be proven by medical reports.

As stated by Blert and his legal representative supported also by the Amicus Curiae of the Kosovo Ombudsperson, this decision completely overlooked the Law on Gender Equality and the Law on Protection from Discrimination, as well as the judicial practice of the European Court of Human Rights. On the 24th of July 2018 Blert and his lawyer sued the Agency for Civil Registration on “Administrative Conflict” at the Basic Prosecution in Prishtina/Priština. Further, they also submitted a request to the Constitutional Court to analyse the Constitutionality of the decision of the Agency. Despite a general rule that other legal measures need to be exhausted before submitting a request to the Constitutional Court, Blert and his legal representative hope for a speedy acceptance by the Court due to the specific nature of this case. As stated the Kosovo Ombudsperson agrees with this opinion and has submitted a legal opinion as Amicus Curiae to the Constitutional Court to accept this case.²²⁹ The outcome of this case could be a ground-breaking decision for future transgender persons interested in changing their name and gender marker in Kosovo.

In relation to criminal procedures, crimes committed against a person because of their sexual orientation are considered a crime with aggravated punishment.²³⁰ If destruction or damage to property does occur against a person or group because of their sexual orientation, it is also considered an aggravating circumstance.²³¹ Nevertheless, crimes against LGBT persons are not considered hate-crimes per se, as they are not specifically included in Article 147 of the Criminal Code on “Inciting national, racial, religious or ethnic hatred discord or intolerance.”²³²

In conclusion, several legislative problems exist within the legal framework of Kosovo pertaining to the rights of LGBT persons. While the Constitution of the Republic of Kosovo guarantees marriage equality, the Law on Family strictly defines it as a union between a man and a woman. Moreover, the discrepancy between the Law on Civil Status and the Law on Gender Equality and on Protection from Discrimination creates legal and institutional difficulties for transgender men and women in Kosovo.

²²⁹ Ombudsperson of the Republic of Kosovo, Legal Opinion as Amicus Curiae, Nr. 252/2018, September 2018.

²³⁰ Supra Note 42. Article 74

²³¹ Ibid. Article 333

²³² Ibid. Article 147

b) Problems with the implementation of existing laws

The implementation of the legal instruments discussed above remains ineffective among the different relevant institutions, including administrative, judicial entities and law enforcement bodies. There has been only one court verdict in Kosovo that has referenced a person's sexual orientation.²³³

Two staff members from the Centre for Social Group Development, an organization that defends the rights of LGBTI+ persons in Kosovo, were publically attacked in 2016. They were engaging in activities related to their organizations work when two people physically and verbally assaulted them. In their attack, the perpetrator used offensive words specifically targeting the LGBT community. The victims were followed by the perpetrators into a bar, where the insults and threats continued. The case was reported to the police and went to court. The judgement of this case considered the motive of the crime insufficiently and failed to establish that the criminal offences occurred because of the sexual orientation of the victims.²³⁴ The judgement could have been ground-breaking, but it unfortunately failed to argue whether Article 147 of the Criminal code also protects LGBT persons under "other such groups."²³⁵ Additionally, the judgement was that it did not take the sexual orientation of the victims as an aggravated circumstance when deciding upon the punishments of the perpetrators.²³⁶ Indeed, the Ombudsperson Institution has concluded that Courts fail to utilize Article 74 of the Criminal Code in cases concerning crimes against the LGBT community.²³⁷

Another problem remains related to data collection by different institutions on crimes against LGBT persons. There is currently no system within the Kosovo Police that directly classifies crimes reported and committed because of one person's sexual orientation. Frequently, these cases are entered in systems as "injury," "assault" etc. This may be one of the reasons why actual incidence of crimes against LGBT persons is much higher than data provided by the Police

²³³KIPRED Interviews with representatives of LGBTI+ rights organizations in Kosovo, August and September 2018.

²³⁴Centre for Social Group Development, Case Study: The treatment of LGBTI cases by Kosovo's Justice System, 2016, at: csgd-ks.org/wp-content/uploads/2017/01/Report_Treatment-of-LGBTI-cases-ENG.pdf Interview with representatives of LGBT organization in Kosovo, August 2018 and CSGD analysis of verdict

²³⁵ Ibid.

²³⁶Supra Note 229

²³⁷Ombudsperson Institution, "Ombudsperson's Legal Opinion on the Capacity of Friend of the Court (Amicus Curiae), Concerning the situation of homophobia and transphobia, 2016, at: www.ombudspersonkosovo.org/repository/docs/ANG--28.4.17_Homofobia_Amicus_Curiae_per_Gjykatën_Themelore_190780.pdf

appears.²³⁸ The Kosovo Police provides for monthly reports on crimes against LGBT persons because of their sexuality.²³⁹ Nevertheless, there is an initial form that police fill out after every incident. This form has multiple boxes under “Incident Motivation” including family based motivation, politically based motivation, personal benefit, ethnic reasons, etc.²⁴⁰ There is however no specific box on identifying hate-crime incidents, particularly those that were based on a person’s sexual orientation.

The same problem is apparent within the institution of Kosovo Victim Advocates. One cannot tell by current victim advocates reports how many victims of crimes motivated by someone’s sexual orientation and gender identity have occurred.²⁴¹ Therefore, crimes against LGBT persons remain underreported. The main reason is the lack of trust in institutions and the long procedures that are not encouraging for the LGBT community.²⁴²

In all, due to the lack of cases of violence towards LGBT persons that have gone through the judicial system, it remains difficult to assess the proper implementation of laws. The one case that did receive a judgement failed to argue whether Article 147 of the Criminal code also protects LGBT persons under “other such groups.” Further, the case did not take the motives for the crime (the sexual orientation of the victims) as an aggravating circumstance. Institutional databases, including databases of the Police and the Victim’s Advocate’s have inadequate tracking mechanisms for hate-crimes against LGBT persons.

c) **The Judicial Response**

Justice institutions continue to have an inappropriate and often discriminative approach towards LGBT victims of crime.²⁴³ Sporadic trainings for police, prosecution and judges have been held, but these trainings have neither been regular nor institutionalized.²⁴⁴ Although the police in Prishtina/Priština have undergone many trainings and workshops (and as a result, have a comparatively better understanding of how to handle these cases) other municipalities have had virtually no training.²⁴⁵ The Police reportedly have Standard Operating Procedures when dealing with crimes motivated by someone’s sexual orientation or gender identity.²⁴⁶ These procedures, however, are internal and have not been shared with KIPRED. Organizations working to defend

²³⁸KIPRED Interviews with representatives of LGBTI+ Organizations, August 2018.

²³⁹KIPRED Interview with Police Officer, August 2018

²⁴⁰ Ibid.

²⁴¹KIPRED Interview with Victim’s Advocate, July 2018.

²⁴² KIPRED Interview with Lawyer and LGBTI+, July and August 2018

²⁴³KIPRED Interview with CSO representative, August 2018

²⁴⁴ KIPRED Interviews with Judge and LGBTI+ rights Organization, August 2018

²⁴⁵ Ibid.

²⁴⁶ KIPRED Interview with Police Captain, August 2018

the rights of the LGBT community have confirmed that these SOP's have been drafted in 2007 and require revision. The revision is of utmost importance particularly considering the fact that Laws on Gender Equality and Protection from Discrimination were redrafted in 2015 and the SOP's should be aligned to them.

There is widespread lack of trust in institutions among the LGBT community. The reasons for this mistrust derive from several factors, including insufficient confidentiality kept by institutional representatives. As stated by one CSO representative: "One of our members was outed by a police officer in the middle of the street. The officer told his colleague out loud that he had seen this member at one of the LGBT organized parties. Of course our member then lacked the motivation and trust to report this case to the police; they only reported it to our organization."²⁴⁷

Since there is a very limited number of cases that have been brought forward to the judiciary, assessing the institutional response remains very difficult. The few examples that do exist suggest that the institutional response remains limited. See the case study below.

Case Study: Threats towards the LGBT Community. Kosovo held its first Gay Pride Parade in 2017. The Police response was adequate throughout the parade and no violent events occurred during the parade itself. However, after the parade ended one of the organizers received over 100 threats through social media (Instagram and Facebook). After reporting every threat to the Kosovo Police, the police told him that he should "select the most dangerous threats" and submit them to the Police. They further told him that the threats "can be used as evidence if something should happen." They further asked him if he feels in danger and if he is afraid, and after his negative response the police did not follow up on any of the threats.²⁴⁸

According to the Criminal Code of the Republic of Kosovo, such threats for bodily harm are punished by fine or imprisonment of up to 6 months.²⁴⁹ Threats against a person's life are punished by fine or imprisonment to up to one year.²⁵⁰ As evident from the case described above, Kosovo Police failed to follow up on investigating duly on the threats against a member of the LGBT community.

In the interviews completed by KIPRED, several institutional respondents reinforced the homophobic and prejudicial stance of the community. Specifically, they claimed that the LGBT

²⁴⁷Ibid.

²⁴⁸Ibid

²⁴⁹Supra Note. 42. Article 185

²⁵⁰ Ibid.

community in Kosovo is overly “emotional and weak.” As stated by one representative of the police, trained in working with the LGBT community: “You have to be careful when working with the community, they are very sensitive and emotional and they get hurt very fast. They can be very difficult to work with in every aspect. They often act like everyone has something against them and complain and react about everything”.²⁵¹ Another interviewee who had also worked with LGBT persons shared this opinion: “The problem is that the LGBT community is very emotional and sensitive and often makes an elephant out of a fly”.²⁵²

In sum, the institutional response towards crimes against LGBT persons remains inadequate. The Kosovo Police in Prishtina/Priština have undergone several trainings and workshops, but police members in other municipalities need further capacity building. This research demonstrates that the Police often have not handled crimes against the LGBT community with the necessary confidentiality and seriousness it warrants. The existing SOP’s on crimes towards the LGBT community were drafted 11 years ago, and should be reviewed and revised. Due to the low number of cases (one) that were prosecuted and sentenced, it is difficult to assess the institutional judicial response towards these cases.

VIII. Conclusions and Recommendations

In conclusion, different forms of gender-based violence remain widespread and ineffectively addressed by law enforcement, prosecutors and courts. The institutional response remains far from the standards set by the Istanbul Convention and international human rights standards. The generally weak judicial system, case overload, corruption and the low trust of citizens towards judicial institutions continue to exacerbate the weak access to justice for victims of gender-based violence. Impunity for perpetrators of violence against women, followed by the systematic approach of the institutions involved to reconcile victims with the perpetrators, are reflective of the lack of gender-sensitive understanding of the nature of violence against women in Kosovo and the LGBT community. Victims and survivors of different forms of gender-based violence continue to face challenges in protection and prosecution from the crimes of gender-based violence. This suggests the need for further effective legislation and policies in line with the recent requirements outlined by the Istanbul Convention, as well as a more accountable prosecution and judicial response.

²⁵¹KIPRED Interview with Police Officer, August 2018

²⁵² KIPRED Interview with Judge, August 2018

By focusing on domestic violence, rape, sexual assault, sexual harassment and violence towards LGBT persons, this report identified some of the challenges faced by gender-based violence victims in practice. In order to tackle some of the identified challenges and problems analysed in the report, the following actions are recommended:

General Recommendations on Gender-Based Violence:

- The Kosovo Assembly should urgently amend the Constitution of the Republic of Kosovo to include the Istanbul Convention in Article 22 related to the direct applicability of international agreements and instruments within the Kosovo legal framework;
- Kosovo legislation, including future amendments of the Law on Gender Equality and the Law on Protection from Domestic Violence, need to acknowledge the gendered nature of gender-based violence in line with the requirements of the Istanbul Convention. This would specifically address the fact that women are more prone to suffer from acts of gender-based violence;
- Kosovo Police, Prosecutors and Judges need to be provided with specialised trainings related to the gender-nature of violent acts against women including domestic violence;
- The Ministry of Justice should draft Standard Operating Procedures to address various forms of gender-based violence focusing on the crimes of rape and sexual assault. Experience so far has shown an improvement of the institutional response related to domestic violence cases after the drafting of the SOP's and the initiative could improve the existing weak response to other forms of gender-based violence in Kosovo;
- The Kosovo Judicial Council should annually review court decisions related to cases of gender-based violence and assess if the decisions are in line with the requirements of the Kosovo Sentencing Guidelines;
- The KJC, KPC and Academy of Justice should work closely to develop a training programme in line with the requirements of the Kosovo Sentencing Guidelines and offer regular training to prosecutors and judges on the implementation of the newly adopted Sentencing Guidelines;

Recommendations on investigating, prosecuting and sentencing Domestic Violence Acts

- Courts should consider using ECHR case law, CEDAW and the recent international human rights standards of the Istanbul Convention, in order to speed up the effective

and timely delivery of sentences related to domestic violence cases. This is already a standard set out by Articles 22 and 59 of the Kosovo Constitution;

- The existing SOP's on protection from domestic violence should be amended to include regular risk assessments by the police during and after the issuance of Protection Orders, including up to date assessment based on in-depth analysis security risk of each victims of domestic violence. The existing risk assessment forms used remain insufficient and may continue to fail any potential victim of domestic violence from tragic consequences as in the case of murder of ValbonaMarku-Nrecaj and her 9 year old daughter.
- The Kosovo Academy for Public Safety should provide further trainings for Police Officers on Domestic Violence. Training topics should focus on conducting valid and up-to date risk assessments; the collection of evidence related to Domestic Violence cases and questioning of victims; the real security effects of reconciliation measures for the victims of domestic violence and interview techniques for avoiding victim blaming;
- The Kosovo Prosecutorial Council should provide specialised trainings for the recently appointed prosecutors to deal with domestic violence cases. Basic Prosecution Offices throughout Kosovo should ensure that cases related to domestic violence, specifically cases of systemic abuse from domestic violence acts, should not be handled by untrained prosecutors;
- The Kosovo Prosecutorial Council should organize additional trainings for specialized prosecutors on the collection of evidence related to Domestic Violence cases. The trainings should be supported by donors in bringing specialised trainers/experts in evidence collection. This would end the existing tendency of the prosecutorial services in over-relying on the victim's statement;
- The Kosovo Assembly should include a proper definition of domestic violence to include also acts of emotional, psychological and economic abuse currently lacking in the Kosovo Criminal Code. Also the proposed marital rape definition should be voted within the new Criminal Code of Kosovo;
- The Kosovo Judicial Council should appoint specialized judges to work on domestic violence cases in order to ensure appropriate understating of the dynamics of domestic violence acts as well as provide adequate sentences accordingly. Ending the existing impunity of perpetrators of domestic violence is an urgent need in order for Kosovo to provide a clear zero tolerance on domestic violence acts.

Recommendations on Sexual Violence

- The Kosovo Assembly should urgently vote on the new amended Criminal Code which has included the definition of Sexual Harassment;
- The Ministry of Justice in close cooperation with the Kosovo Agency for Gender Equality and CSO's to draft new SOP's on rape and sexual assault;
- The Ministry of Justice should closely cooperate with women's organizations to establish rape referral centres;
- Kosovo Police should be trained on treating victims of sexual violence, interview techniques on avoiding victim blaming and other prejudicial attitudes;
- Kosovo Police, Kosovo Prosecutorial Council and Kosovo Judicial Council should maintain joint databases and tracking mechanisms on sexual violence cases, including sexual harassment, rape and sexual assault.
- Prosecutors across all Basic Prosecution Offices should be trained on evidence collection and proper handling and prosecution of sexual violence crimes.
- The KJC, KPC and Academy of Justice should work closely to develop a training programme in line with the requirements of the Kosovo Sentencing Guidelines in order to address the needs for appropriate sentencing for cases of sexual violence and gender based violence.

Recommendations on Crimes against LGBT persons

- The Ministry of Internal Affairs should amend Article 32 of Law No. 04/L-003 on Civil Status to reflect the Law on Gender Equality, the Law on Protection from Discrimination and ECHR practice.
- The Kosovo Assembly should vote on amending the Criminal Code and include crimes against LGBT persons in Article 147 within definitions of hate crimes.
- Regular trainings on handling LGBT cases should be institutionalized across all Kosovo municipalities and these trainings should also focus on the importance of protecting the confidentiality for LGBT community;
- The Kosovo Police should take cases of violence against LGBTI with appropriate level of seriousness and accordingly react promptly to any report of threats to the security of members of the LGBT community;
- A joint database needs to be developed to monitor the investigation, prosecution and sentencing of crimes against the LGBT community including up-to date monitoring by Kosovo Victim's Advocates, Kosovo Police, Prosecutorial Services and Courts

IX. Bibliography

Agency for Gender Equality, "Standard Operation Procedures for Protection from Domestic Violence in Kosovo, 2013, at: <https://abgj.rks-gov.net/Portals/0/Procedurat%20Standarte%20të%20Veprimit%20për%20Mbrojtje%20nga%20Dhuna%20në%20Familje.pdf>

Assembly of the Republic of Kosovo, Constitution of the Republic of Kosovo, 2008, at: www.kryeministri-ks.net/repository/docs/Constitution1Kosovo.pdf

Assembly of the Republic of Kosovo, Criminal Code of the Republic of Kosovo No. 04/L-082, Chapter XX "Criminal Offences Against Sexual Integrity", 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

Assembly of the Republic of Kosovo, Law No03/L-182 on Protection against Domestic Violence, 2010, at: www.assembly-kosova.org/common/docs/ligjet/2010-182-eng.pdf

Assembly of the Republic of Kosovo, Law No. 05/L-021 on Protection from Discrimination, Article 1, 2015, at: <https://www.kuvendikosoves.org/common/docs/ligjet/05-L-021%20a.pdf>

Banjska, Iliriana, for Kosovo 2.0, "How many calls does it take?", 2018, at: kosovotwopointzero.com/en/how-many-calls-does-it-take/

Berry, D.B, Domestic Violence Sourcebook, Lowell House, ISBN: 1-56565-212-6, 1995, at: <http://www.ncjrs.gov/App/Publications/abstract.aspx?ID=167047>

Civil Society for Human Rights Website, Tracking Mechanism, Website Accessed in August 2018, at: <http://www.cshr-ks.org/en/kosovo-police/?v=2017&id=1>

Center for Social Group Development, Case Study: The treatment of LGBTI cases by Kosovo's Justice System, 2016, at: csgd-ks.org/wp-content/uploads/2017/01/Report_Treatment-of-LGBTI-cases-ENG.pdf Interview with representatives of LGBT organization in Kosovo, August 2018 and CSGD analysis of verdict

Committee on the Elimination of Discrimination Against Women, General Recommendation No.35 on gender-based violence against women, updating general recommendation No. 19, Article 10 2017, at: https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/1_Global/CEDAW_GC_35_8267_E.pdf

Constitutional Court of the Republic of Kosovo, Judgement in Case No. KI 41/12, "Gezim and MakfireKastrati against Municipal Court in Prishtina and Kosovo Judicial Council 2013, at: gjk-ks.org/wp-content/uploads/vendimet/gjkk_ki_41_12_ang.pdf

Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence, Article 3-D, 2011, at: <https://rm.coe.int/168046031c>

Council of Europe, Explanatory Report to the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, 2011, at: <https://rm.coe.int/16800d383a>

Council of Europe, European Convention on Human Rights, 1950, at: https://www.echr.coe.int/Documents/Convention_ENG.pdf

European Commission, Commission Staff Working Document, Kosovo* 2018 Report, 2018, at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

European Commission, Commission Staff Working Document, Kosovo* 2018 Report, page 21, 2018, at: <https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417-kosovo-report.pdf>

European Commission. "Communication on EU Enlargement Policy, 2018, page 16, at: https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20180417_strategy_paper_en.pdf

Fisher and Lab, "Encyclopedia of Victimology and Crime Prevention, Volume 1, 2010, page 257.

Government of the Republic of Kosovo, Administrative Instruction No. 12/2012 for determining the place and way of psychosocial treatment of perpetrators of domestic violence, 2012, at: gbvaor.net/wp-content/uploads/2013/02/AI-imple-Law-against-DV-psychosocial-treatment-of-perpetrator-Eng-Alb_Serb.pdf

Government of the Republic of Kosovo, Administrative Instruction Nr. 02/2013 On Treatment Methods for Perpetrators of Domestic Violence Imposed by Mandatory Measure of Treatment from Alcoholism and Addiction to Psychotropic Substances, 2012

Group for Legal and Political Studies, "Kosovar Citizen's Satisfaction with the Rule of Law: An Empirical Study, 2016, at: www.legalpoliticalstudies.org/wp-content/uploads/2017/02/Kosovar-Citizens-Satisfaction-with-the-Rule-of-Law-Institutions-An-Empirical-Study.pdf

Kosovo National Programme for Implementation of the Stabilization and Association Agreement (2017-2021) with the EU, page 246.

Kosovo Women's Network, From Words to Action: Monitoring the Institutional Response to Gender-Based Violence in Kosovo, 2017, at: www.womensnetwork.org/documents/20180312142859762.pdf

Kosovo Women's Network, No more Excuses: An Analysis of Attitudes, Incidence, and Institutional Response to Domestic Violence in Kosovo, 2015, at: <https://www.womensnetwork.org/documents/20151124105025622.pdf>

Kosovo Women's Network, No More Excuses: An Analysis of Attitudes, Incidence, and Institutional Response to Domestic Violence in Kosovo, 2015, at: <https://www.womensnetwork.org/documents/20151124105025622.pdf>

Kosovo Women's Network, Sexual Harassment in Kosovo, 2016, at: <https://www.womensnetwork.org/documents/20160223185243349.pdf>

Krol et al for Council of Europe, Mapping support services for victims of violence against women in Kosovo, page 12, 2017

Lombardi et al. Gender Violence: Transgender Experiences with Violence and Discrimination, Volume 42, Issue 1, 2002, at: https://www.tandfonline.com/doi/abs/10.1300/J082v42n01_05

Ministry of Justice of the Republic of Kosovo, Evaluation Report of the Kosovo Program Against Domestic Violence and Action Plan 2011-2014, at: https://abgj.rks-gov.net/Portals/0/Ambasada_Raporti%20anglisht.pdf

Office of the Prime Minister of Kosovo, "Legislative Program 2018", 2018, at: www.kryeministri-ks.net/repository/docs/PROGRAMI_LEGJISLATIV_PER_VITIN_2018,.pdf

Ombudsperson Institution, Annual Report 2016, at: www.ombudspersonkosovo.org/repository/docs/Raporti_Vjetor_2016_ANG_no16_me_ko_pertine_per_web_338158.pdf

U.S State Department, Kosovo 2016 Human Rights Report, 2016, at: <https://www.state.gov/documents/organization/265648.pdf>

UN Women, "Facts and Figures: Ending Violence against Women A pandemic in diverse forms", Website Accessed on 22.7.2018 at: <http://www.unwomen.org/en/what-we-do/ending-violence-againstwomen/facts-and-figures>

World Health Organization, Global and Regional Estimates of Violence Against Women: Prevalence and health effects of intimate partner violence and non-partner sexual violence, 2013, at: www.who.int/reproductivehealth/publications/violence/9789241564625/en/

Elda Moreno, Head of Gender Equality and Human Dignity Council of Europe, in the London School of Economics related to the Istanbul Convention, 2013. Available at <http://www.lse.ac.uk/humanRights/documents/2013/20130307Moreno.pdf>

Assembly of the Republic of Kosovo, Code No. 04/L-082 Criminal Code of the Republic of Kosovo, 2012, at: www.assembly-kosova.org/common/docs/ligjet/Criminal%20Code.pdf

Assembly of the Republic of Kosoco, Criminal Procedure Code, No 04/L123, 2012, at: <https://www.kuvendikosoves.org/common/docs/ligjet/Criminal%20Procedure%20Code.pdf>

Ministry of Finance, Regulation Mf - Nr - 04/2017 on Criteria, Standards and procedures on public funding of NGO's, 2017, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=14831>

Assembly of the Republic of Kosovo, Law No 03/L-134 on Freedom of Association in non-governmental organizations, 2009, at: <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=2629>

KIPRED, Security Sector in Kosovo from a Gender Perspective, 2016, at: www.kipred.org/repository/docs/SECURITY_SECTOR_IN_KOSOVO_FROM_GENDER_PERSPECTIVE_432844.pdf

Ministry of Justice, National Strategy of the Republic of Kosovo on Protection from Domestic Violence and Action Plan, 2016-2020, 2015, at: <https://abgj.rks-gov.net/Portals/0/Strategjia%20Kombëtare%20e%20RK%20për%20mbrojtje%20nga%20dhuna%20ne%20familje%202016-2020.pdf>

Halili, Dafina for Kosovo 2.0, "Balkan Unity in the Pride Parade", 2017, at: kosovotwopointzero.com/en/balkan-unity-pride-parade/

Carroll and Mendos, "State Sponsored Homophobia: A World Survey of Sexual Orientation Laws: Criminalisation, Protection, and Recognition", 2017, at: https://ilga.org/downloads/2017/ILGA_State_Sponsored_Homophobia_2017_WEB.pdf

Youth Initiative for Human Rights and Center for Social Group Development, "Freedom and Protection for Lesbians, Gays, Bisexuals, and Transgender in Kosovo, 2013, at: ks.yihr.org/public/fck_files/ksfile/LGBT%20report/Freedom%20and%20Protection%20fo%20LGBT%20in%20Kosovo

Ombudsperson of the Republic of Kosovo, Legal Opinion as Amicus Curiae, Nr. 252/2018, September 2018.

Ombudsperson Institution, "Ombudsperson's Legal Opinion on the Capacity of Friend of the Court (Amicus Curiae), Concerning the situation of homophobia and transphobia, 2016, at:

Civil Society for
**HUMAN
RIGHTS**



European
Union
Kosovo