

MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN **KOSOVO**

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MAPPING OF POLICIES AND LEGISLATION ON VIOLENCE AGAINST WOMEN AND THE ISTANBUL CONVENTION IN KOSOVO

INTRODUCTION

After a decade of political crisis, war crimes and widespread human rights violations in the Nineties, Kosovo became, in 1999, a territory governed by the United Nations (UN). The UN Security Council Resolution 1244 (1999)¹ provided a framework for the resolution of the Kosovo conflict and for facilitating a political process to determine the future political status of Kosovo. Internationally facilitated negotiations between Belgrade and Prishtinë/Priština, took place in 2006 and 2007, which consequently failed and resulted with the declaration of independence by the Assembly of Kosovo in February 2008. Today, ten years later, Kosovo is recognised by more than 100 UN member states, but without membership in the UN and the Council of Europe (CoE).

Therefore, Kosovo did **not ratify the CoE Convention** on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention, IC). Nevertheless, Kosovo has symbolically committed itself to its implementation. As stated in the **Strategy on Protection from Domestic Violence** (DV Strategy) for the period 2016 until 2020: “actions were suggested that lead towards further harmonisation of legislation with (...) the Istanbul Convention.”² **An overall central-level action plan** encompassing all relevant measures to prevent and combat all forms of violence against women (VAW) covered by the scope of the IC does not exist. Kosovo does **not apply an integrated approach** to VAW and limits it mostly to domestic violence (DV).

¹ All references to Kosovo in this document should be understood in full compliance with the United Nations Security Resolution 1244. The official text of the resolution is available at <http://www.un.org/Docs/scres/1999/sc99.htm>

² DV Strategy on Protection from Domestic Violence and Action Plan 2016-2020, available at: <https://abgj.rks-gov.net/Portals/0/Strategjia%20Komb%C3%ABtare%20e%20RK%20p%C3%ABr%20mbrojtje%20nga%20dhuna%20ne%20familje%202016-2020.pdf>

Positively, several **international human rights frameworks** have been **integrated into the Kosovo Constitution**. Article 22³ guarantees, among others, the direct application and the priority over provisions of laws and other acts of the Convention on the Elimination of all Forms of Discrimination against Women (**CEDAW**). Even though Kosovo is not in the position to regularly report on the implementation of CEDAW and to receive specific recommendations, provisions from the Convention are binding. Unfortunately, Kosovo courts have rarely used these constitutional provisions.

The Law on Protection against Domestic Violence (LPDV)⁴ and the DV Strategy do not contain a specific **definition of VAW**. As part of the DV Strategy (Annex 3), an overview of definitions of all forms of VAW from the IC is provided without further referring to them or providing activities to be implemented in order to fight all forms of VAW (and not just DV). It is also worth mentioning that the LPDV does not refer a single time to the nouns “woman” and “women” or the adjective “female”, thereby, maintaining a gender-neutral approach to the legal text. The DV Strategy recognises that DV against women is a violation of human rights and a manifestation of historically unequal power relations between women and men. The **Law on Gender Equality**⁵ defines gender-based violence (GBV) as a “form of discrimination that seriously inhibits women’s and men’s ability to enjoy rights and freedoms on a basis of equality” (Article 4), but it appears to neglect the fact that GBV is a phenomenon that overwhelmingly affects women.

The DV Strategy for 2016-2020 **contains a detailed budget**. The overall implementation of all activities from the Strategies’ Action Plan was budgeted with 10.536.000 EUR. Taking into account that the current Kosovo budget for 2018 is 2.082.000.000 EUR⁶, it can be concluded that DV activities



DV activities make up 0,001% of the overall annual Kosovo budget.

Kosovo annual budget	2.082.000.000 €
DV Strategy budget	10.536.000 €

make up 0,001% of the overall annual Kosovo budget. Unfortunately, as Adelina Berisha from the Kosovo Women’s Network pointed out, public funding in 2017 and 2018 is not allocated as foreseen in the DV Strategy budget.

A **monitoring and coordination role** was given to the **Coordinator** against DV (DV Coordinator), Naim Qelaj, one of the Deputy Ministers of Justice. Because of early general elections in 2017, the post was unfilled from May 2017 until April 2018. The fact that the DV Coordinator position is a political appointment on deputy minister level obviously brings political support to the topic, but also instability as coordination work on the implementation of the DV Strategy is dependent on the stability of the government and is not seen as a technical process. This function involves the coordination of the work of the **Inter-Ministerial Coordination Group on Domestic Violence**. The Coordination Group met only once in 2017 and no progress report for 2017 on the implementation of the DV Strategy was produced. On a positive note, all five interviewed CSO representatives assess the interest and expertise of the new DV Coordinator as positive, but concrete activities are still to be implemented.

³ Kosovo Constitution, available at http://gjk-ks.org/wp-content/uploads/2017/11/gjkk_kushtetuta_e_republikes_se_kosoves_me_amendamentet_I-XXV_ang.pdf

⁴ Law No.03/L-182 on Protection against Domestic Violence, 10 August 2010, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2691>

⁵ Law 05/L-020 on Gender Equality, 26 June 2015, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=10923>

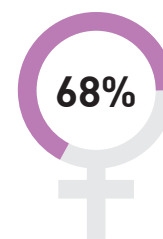
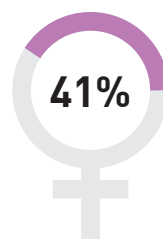
⁶ Estimation based on Law No. 06/L-020 on the Budget of the Republic of Kosovo for Year 2018, available at <https://mf.rks-gov.net/desk/inc/media/ED82668F-DF99-42A3-A3ED-DE85125C56BC.pdf>

INTIMATE PARTNER VIOLENCE

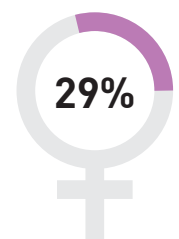
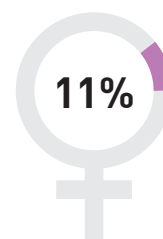
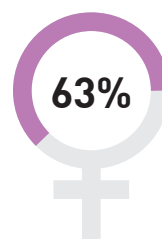
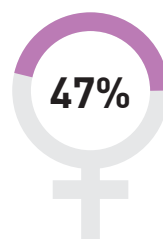
PREVALENCE AND OFFICIAL STATISTICS ●

Representative surveys on the prevalence of DV and intimate partner violence (IPV) in Kosovo have not been conducted by public institutions. The **Kosovo Women's Network (KWN)**, the central women's rights civil society platform, conducted **two major studies**⁷ in 2008 and 2015. They found that 41% of women said they suffered some form of DV during 2014. Further, 68% women said that they had experienced DV during their lifetime. Divided by the type of violence, women reported the following rates during lifetime: 47% for physical, 63% for psychological, 11% for sexual and 29% for economic violence. No statistically significant relationship between experiencing violence and geographic location (rural/urban or region), educational level, receiving social assistance, household income, or women's individual income was found. Women suffered DV from current and former partners, as well as from their parents. Women living with disabilities, from ethnic minorities and lesbian, bisexual and transgender (LBT) women were recognised as groups at risk. Specific data on male VAW in intimate relationships is unfortunately not available in this research. One more research⁸ should be mentioned to illustrate IPV in Kosovo. Based on the **International Men and Gender Equality Survey (IMAGES)** methodology, the research found that 12% of men have at least once slapped, hit with a fist or thrown something that could hurt their female partner. In addition, 4% of men have admitted to committing even more extreme forms of violence such as kicked, ragged, or beaten a partner, while 5% admitted to having threatened to use or indeed used a gun, knife or another weapon

against their female partner. 41% of men in the survey partially or fully agreed that there are times when women deserve to be beaten and 28% believe that women should tolerate violence in order to keep the family together. Such opinions perpetuate the continuum of male VAW.



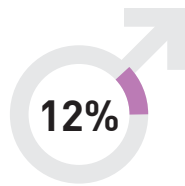
Divided by the type of violence, women reported the following rates during lifetime:



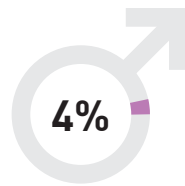
⁷ Farnsworth/Qosaj Mustafa (2008): *Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo*, Kosovo Women's Network, available at <http://www.womensnetwork.org/documents/20130120165404373.pdf> and Farnsworth et.al. (2015): *No More Excuses: An Analysis of Attitudes, Incidence, and Institutional Responses to Domestic Violence in Kosovo*, Kosovo Women's Network, available at <https://www.womensnetwork.org/documents/20151124105025622.pdf>
⁸ Limani (2018): *A Men's Perspective to Gender Equality in Kosovo*. OSCE Mission in Kosovo/UNFPA Kosovo, available at <https://www.osce.org/mission-in-kosovo/382507>



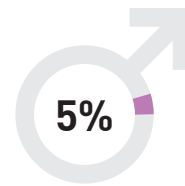
The research found that 12% men have at least once slapped, hit with a fist or thrown something that could hurt their female partner.



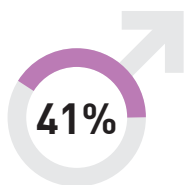
In addition, 4% of men have admitted to committing even more extreme forms of violence such as kicked, ragged, or beaten a partner.



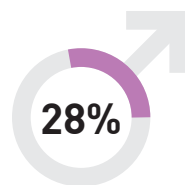
5% admitted to having threatened to use or indeed used a gun, knife or another weapon against their female partner.



41% of men in the survey partially or fully agreed that there are times when women deserve to be beaten.

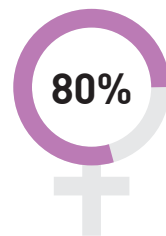


28% believe that women should tolerate violence in order to keep the family together.



Police, prosecutors, judges, social workers and women's shelters continue to apply **separate data collection and case management**. Not all stakeholders can provide gender-segregated data, as in the case of the Judicial Council that administers data from the courts (contrary to Art. 11 of IC). No data on perpetrators is available. Even though planned for 2017, a common database for all stakeholders is not yet established. As a result, there is no systematic approach to IPV cases, limiting the opportunity to follow up and hold accountable those institutional stakeholders that fail to implement their responsibilities. **Police data** indicates that in the last ten years, the number of reported DV cases has ranged between 944 (in 2010) and 1225 (in 2016). On average 80% of cases are reported by women. From 2015-2017 there have been 49 cases of death, including femicide cases⁹. Widespread views on IPV as a private matter, combined with social stigma, fear of retaliation, lack of trust in competent authorities, and

economic dependence on the perpetrator, all contribute to underreporting¹⁰. Adelina Berisha from the Kosovo Women's Network pointed out: "Our society deals only with physical violence as it is visible. All other forms of violence continue to be underestimated and not reported".



On average 80% of cases are reported by women.

The number of reported DV cases	
2010	944
2016	1225

⁹ See data from the advocacy letter at <http://www.womensnetwork.org/?message=true&FaqlD=1&n=659>

¹⁰ See Krol (2017): *Mapping services for victims of violence against women in Kosovo*, Council of Europe, available at <https://www.coe.int/en/web/pristina/reinforcing-the-fight-against-violence-against-women-and-domestic-violence-in-kosovo->

LEGISLATIVE FRAMEWORK ● Since 2010, IPV is primarily regulated through the LPDV, a civil law, ensuring the protection of victims, but not meant to prosecute and penalise criminally.

TYPES OF VIOLENCE	Physical, sexual, psychological and economic acts of violence against another person with whom the person is in a domestic relationship (in line with Art. 29a and 33, IC).
ACTS OF VIOLENCE COVERED	Use of physical force or psychological pressure, inflicting or threatening to inflict physical pain or psychological suffering on another family member; causing the feeling of fear or threat of dignity; physical assault; insult, offence, calling by offensive names, and other forms of violent intimidation; repetitive behaviours with the aim to denigrate the person; non-consensual sexual acts; unlawful limiting of the freedom of movement of the other person; damaging the property or threatening to damage the property of another family member; causing the other person to fear for his or her physical, emotional or economic wellbeing; forcibly entering or removing from a common residence the other family member; and kidnapping.
PROTECTION ORDERS	Protection order (PO), emergency protection order (EPO), and temporary emergency protection order (TEPO). POs and EPO's may be issued by the basic court, while the police has the power to issue TEPOs outside of the court's working hours/regular sessions (in line with Art. 52 and 53, IC).
VIOLATION OF PROTECTION ORDERS	Criminal offence. Sentence (in line with Art. 53, IC): fine (200-2000 EUR) or imprisonment (up to six months).
PROTECTION ORDER AND EMERGENCY PROTECTION ORDER	Measures of protection include, among others, prohibition of approaching or harassing the victim, temporary child custody for the victim, removal of the perpetrator from a common residence, and psychosocial and substance abuse treatment for perpetrators. A PO is to be issued within eight days if an EPO has been issued or within fifteen days from the date on which the court received the request. A PO is a longer-term order issued for a period of up to twelve months with a one-time possibility of extension. It may be renewed once.
TEMPORARY EMERGENCY PROTECTION ORDER	Limited to the following four types of measures: prohibit the perpetrator from approaching the victim, prohibit the harassment of the victim, removal of the perpetrator from the common residence of the perpetrator, and confiscation of the items with which violence has been committed or threatened to be committed. The TEPO expires at the beginning of the next day when the court resumes its regular working hours.

Table 1 – Key elements of the Law on Protection against Domestic Violence

The **Criminal Code**¹¹ (CC) does not offer a definition of DV per se, though a number of criminal offences committed within a domestic relationship may be considered for prosecution of DV acts. However, not all DV acts defined by the LPDV are included in the CC. For example, psychological violence is not covered by the CC, although it

is required by IC Art. 33.¹² In order to harmonize these two laws, amendments to the Criminal Code were meant, in line with the DV Strategy, to be adopted in 2017¹³. The amendments, that include a definition of domestic violence, have passed the first hearing in the Parliament and are expected to be adopted by January 2019.

CRIMINAL OFFENCES COMMITTED IN A DOMESTIC RELATIONSHIP	Light bodily injury; grievous bodily injury; harassment; assault; kidnapping; coercion; unlawful deprivation of liberty; rape, including marital rape and sexual assault; degradation of sexual integrity; sexual abuse of persons with mental or emotional disorders or disabilities in a domestic relationship; mistreating or abandoning a child; and acts of violating family obligations, including avoiding child support; holding of a person in slavery, slavery-like conditions, and forced labour.
OTHER CRIMINAL OFFENCES COVERED	Failure to report child abuse and domestic violence.
SENTENCES	Fines or imprisonment, up to 15 years; for some offences (Light bodily injury; grievous bodily injury; kidnapping, coercion, unlawful deprivation of liberty, holding of a person in slavery, slavery-like conditions, and forced labour), if the criminal offence is committed in a domestic relationship, then the sentence is increased. Additionally, for some offences (rape, sexual assault, degradation of sexual integrity, sexual abuse, sexual abuse of persons with mental or emotional disorders or disabilities), if the criminal offence is committed in a domestic relationship to an 16 to 18 year old, then the sentence is increased; not all aggravating circumstances from IC Art. 46 are covered by the CC provisions.

Table 2 – Key elements related to domestic violence in the Criminal Code

As presented in table 1, the LPDV covers **three types of protection orders**¹⁴. According to statistics from the Victim's Assistance and Advocacy Office (VAAO) there have been 407 PO, 51 EPO and one request for TEPO in 2017. In twelve cases, the request has not been approved and ten violations of protection orders were documented¹⁵. DV survivors mainly request the protective measure prohibiting the per-

petrators from approaching the victim. Even if advised to use other measures, women generally request this measure. CSOs complain that too often there are no consequences for breaking protection orders. Ardita Ramizi Bala from the shelter in Peja/Peć comments: "*Husbands sometimes come in front of the shelter and jail. We do report it to the police, but nothing really changes*".

¹¹ Code 04/L-082 Criminal Code of Kosovo, 13 July 2012, amended/supplemented 9 November 2012 and 15 May 2014, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2834>

¹² Psychological violence can in principle be covered under the different provisions and qualify as crime as long as it fulfils the constituent elements of those crimes – such as harassment or threat for example.

¹³ See media statement of the Security and Gender Group: <https://peacekeeping.un.org/en/security-and-gender-group-raises-concerns-current-amendments-to-criminal-code-appropriate-definition>

¹⁴ OSCE Mission in Kosovo (2012): *Adjudication of petitions for protection orders in domestic violence cases in Kosovo*, available at <https://www.osce.org/kosovo/88713?download=true>

¹⁵ Data quoted from on Berisha/Farnsworth/Hoti: *From Words to Action?*, see also OSCE Mission in Kosovo: *Adjudication of petitions for protection orders*.

CASE 1

LATE REACTION OF A JUDGE

The judge postponed the court session for two to three days, justifying the decision with the statement that the court will provide more time for couple reconciliation. Just two days after the postponement, the husband took the children and left Kosovo in order to prevent his wife from obtaining custody of the children¹⁶.

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Standard Operating Procedures (SOP) were adopted by the DV Coordinator in 2013. The SOPs detail the legal and institutional roles and responsibilities of individual institutions, courts and prosecution offices, rights and services victims are entitled to, and include instruments and checklists for improving coordination, risk assessment and risk management in DV cases. The KWN study from 2015¹⁷ concluded that police, victim advocates (VA), and shelters seem to be the most informed about SOPs. Nevertheless, cases of continued failures of institutional responses were documented and ended even with death (i.a. Zejnepe Bytyçi-Berisha femicide case)¹⁸. Challenges were found with prosecutors, courts, education institutions, centres for social welfare, employment offices, municipal institutions, and health institutions. A special challenge is the parallel existence of Kosovo and Serbia run institutions in the field of education, health and social welfare. An update of the SOP is foreseen for 2018 within the DV Strategy.

CASE 2

NO SENTENCE IN DEATH CASE

A. M. died in 2012 due to constant bleeding, three days after her marriage. Her husband, in addition to not providing medical assistance, has worsened her condition by continuing sexual intercourse with her. Only after significant public pressure, six years later, a court decision was made. The main accused, the husband, was found innocent by the court. The case is now in appellate court.¹⁹

The Security and Gender Group references that, according to the data for 2000-2017, there were 18,444 cases of DV reported. Of these, **only 11.1% of perpetrators were sentenced with imprisonment**, while the majority of perpetrators were issued a suspended sentence or a fine²⁰. CSOs criticise continued use of the lowest sentence and that judges come up with negative examples from private life. In 2018, the KWN concludes in its report *"some improvements in judges' treatment of DV cases with priority (were found). The appointment of some judges to specialise in GBV cases is a positive development.*

¹⁶ Berisha/Farnsworth/Hoti: *From Words to Action?*

¹⁷ Farnsworth et.al.: *No More Excuses.*

¹⁸ See OSCE Mission in Kosovo (2015): *React report: Responses to cases of domestic violence in light of the death of Ms Zejnepe Bytyçi-Berisha*, available at <https://www.osce.org/kosovo/203051>

¹⁹ See reporting at: <http://www.womensnetwork.org/index.php?message=true&FaqlD=1&n=643>

²⁰ See press statement: <https://peacekeeping.un.org/en/security-and-gender-group-raises-concerns-current-amendments-to-criminal-code-appropriate-definition>

*(...) However, monitoring suggests that some judges still encourage family reconciliation and blame victims for crimes perpetrated against them. Some judges' attempts to reconcile cases may create an enabling environment for recidivism, placing victims at risk of further violence."*²¹

Overall, the evaluation²² of the implementation of the first DV Strategy (2011-2014), conducted in 2015, concluded the following short-comings in the implementation: a) weak implementation of existing laws and policies, including the use and follow-up on protection measures; b) lack of specialised/standardised services for DV survivors and non-existence of a pro-active approach when dealing with such cases; and c) financial un-sustainability and understaffing of services, including shelters, empowerment programmes for survivors and rehabilitation programmes for perpetrators. When asked if things changed with the new DV Strategy, all interviewed CSOs confirmed that the identified challenges still continue to exist even in 2018. Adelina Berisha from the Kosovo Women's Network commented: *"Kosovo is good in drafting the best public policy documents. In practise, some minor things got better, but real progress can not be seen."*

"(...) Some judges' attempts to reconcile cases may create an enabling environment for recidivism, placing victims at risk of further violence."

DIVORCE CASES ● No official data or topic specific CSO report exists when it comes to divorce cases. Legally, mediation during divorce is not prohibited in cases of IPV (not in line with Art. 48, IC). Reconciliation has been monitored as a significant problem: "Insufficient confidentiality, victim-blaming and attempts at family reconciliation remain prevalent. Moreover, most institutions continue to "reconcile" families, even when crimes have been committed, though such cases should be prosecuted ex officio and counselling is not within most institutions' roles and responsibilities".²³ CSOs documented cases where custody over children was given to the perpetrator because the mother was in an unstable economic situation. Legally, protection orders, if needed, can be used to protect the women and children from the perpetrator of violence during divorce.

SERVICES ● **Women's shelters** were set-up in the early 2000s in order to support survivors of VAW. In fact, no government-run shelters focusing on women survivors of DV exist in Kosovo since the current legislation allows the government and municipalities to outsource social services to CSOs²⁴. Out of the eight licensed shelters in Kosovo, seven focus on women survivors and their children (up to 12 years) and one provides services to girls and boys aged three to 18 (including boys over 12 years old who cannot stay in the other women's shelters). Altogether ca. 140 people can be accommodated at the shelters in parallel²⁵, which is less than required according to the IC standards. At least five shelters self-declare as accessible for women with disabilities and there are no specialised shelters for LBT women. Currently, Kosovo Serb women either go to existing shelters or to shelters located in South Serbia. As reported by women's CSOs, an initiative to licence a Kosovo Serb run shelter in Novo Brdo/Novobërdë municipality has been on-go-

²¹ Berisha/Farnsworth/Hoti: *From Words to Action?*

²² The evaluation report is available at https://abgj.rks-gov.net/Portals/0/Ambasada_Raporti%20anglisht.pdf

²³ Berisha/Farnsworth/Hoti: *From Words to Action?*

²⁴ Law No.02 /L-17 on Social and Family Service, 01 May 2007, amended/supplemented 05 April 2012, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2447>

²⁵ Estimation based on survey data in Krol: *Mapping services for victims.*

ing for the past two years. All interviewed women's CSOs representatives agreed that the current legal framework for shelter funding is unclear and not sufficient. Ardita Ramizi Bala from a women's shelter in Pejë/Peć shared their experience: "We receive funding for a few months, and then there is a break, then again for a few months. We need mid-term solutions and funding commitment for at least 24 months". While shelters often have struggled financially²⁶, receiving up to 50% of needed funds from the government, in 2017 the situation became extremely unstable. Following delays in the Government transferring funds, on 25 December 2017 all shelters for women survivors of DV closed or reduced the number of sheltered survivors. Women and children were turned out, onto the streets, and some were forced to return to live with the perpetrators, placing them at great risk of recidivism. Only after they received the emergency government funding allocated in late February 2018, still covering only parts of the overall monthly costs, all shelters were able to reopen their doors. Funding from the municipal level cannot be underestimated but is as well not legally regulated. Since then, no systematic solution²⁷ to this issue has been found.

Women's CSO representatives have a positive impression on the work of the VAs, but pointed out that they lack a feminist approach.

The **victim advocates** (VA) play a central role. Located within the Office of the State Prosecutor, the VAAO is an independent entity in charge of ensuring the rights and access to justice and services for all victims of crime including victims of IPV and sexual violence (in line with Art.57, IC). The vast majority of victims supported by VAs are women survivors of DV. Concretely, in 2017, out of 1044 victims, 881 were women, and 832 were victims of DV, while others were victims of other types of crime²⁸. VAs have a key role in protecting the rights of survivors of IPV during criminal proceedings and are responsible, in particular, for initiating procedures for protection measures, participating in all court sessions, and monitoring court proceedings. Women's CSO representatives have a positive impression on the work of the VAs, but pointed out that they lack a feminist approach. "In some cases, they tend to negotiate with the judge, which is not always led with the interest of the survivor of violence", said Ardita Ramizi Bala from the women's shelter in Pejë/Peć. A Kosovo Serb CSO reported that they did not work with VAs. Additionally, the VAAO runs also a Kosovo-wide, 24 hour **free help line** (in line with Art. 24, IC). Extending the access of the help line to the northern Kosovo Serb majority municipalities, hiring more Serbian native speakers and also staff for the minority languages (Turkish, Romani, and Bosnian) remains a challenge. Under the Law on Free Legal Aid²⁹, women survivors are also entitled to free legal aid if they cannot afford legal representation. Currently there are five government funded Legal Aid Offices. A significant number of CSOs, including some shelters, are offering free legal aid and/or counselling.



²⁶ Advocacy towards the government is continuously on-going: <http://www.womensnetwork.org/?FaqlD=1&n=450>

²⁷ According to the Kosovo Shelter Coalition, which brings together 7 out of 8 shelters, 1.200.000 EUR are needed annually to fully fund the existing shelters and their programmes. Quoted from Farnsworth (2012): *At What Cost? Budgeting for the Implementation of the Legal Framework against Domestic Violence*. Kosovo Women's Network, available at <http://www.womensnetwork.org/documents/20130405120224756.pdf>

²⁸ Data quoted from Berisha/Farnsworth/Hoti: *From Words to Action?*

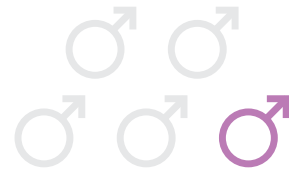
²⁹ Law no.04/L-017 on Free Legal Aid, 22 February 2012, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2803>

SEXUAL VIOLENCE

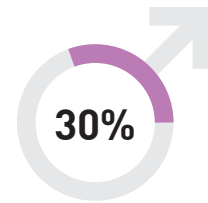
PREVALENCE AND OFFICIAL STATISTICS ●

Institutions in Kosovo have not conducted research with representative samples on sexual violence. According to the KWN 2015 study, 11% of women have survived sexual violence during their lifetime. Perceptions and attitudes are changing, but slowly. In 2008, 67.1% of Kosovars (women and men) agreed that “sexual intercourse can never be violence if it happens between two adults who are married,” whereas 24.6% agreed with this statement in 2015. The OSCE/UNFPA IMAGES report showed that every fifth man thinks that in some rape cases women actually “wanted it to happen”. 30% of men would agree that it cannot be a rape case when the woman doesn’t physically fight back. About 20% of men and 23% of women think that in any rape case one would have to question whether the victim is promiscuous or has a bad reputation.

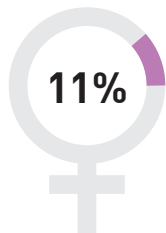
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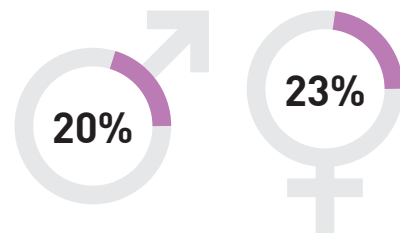
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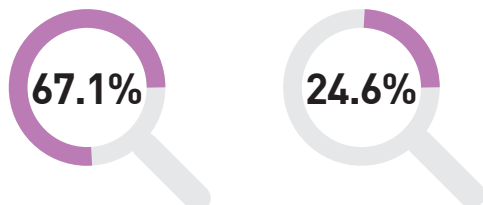
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Perceptions and attitudes are changing, but slowly.

Beyond perception data, the survey results also show that one in 20 men admitted to having committed non-consensual sexual relations with a woman at least once in their life. A third KWN research shows that an estimated 64% of women have experienced some form of sexual harassment in their lifetime. The fact that 74% of Kosovars believe that women bring sexual harassment on themselves by dressing or acting provocatively, or that 41% think that young women like to be harassed, highly contributes to creating a victim-blaming and enabling environment for this type of violence.³⁰

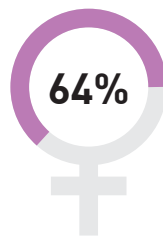
The police, VAAO and the Judicial Council keep their own data, of which some is sex-disaggregated and, as in the case of IPV, available in the majority of cases only on request.

LEGISLATIVE FRAMEWORK ● Under the CC and in line with the IC (Art. 36), **forced abortion, stalking, rape and forced marriage** constitute specific offences. The CC also describes a series of non-consensual acts that fall under sexual assault. Higher penalties are foreseen in cases where “the perpetrator shares a domestic relationship with the person and such person is between the ages of 16 and 18 years”, but not in cases where the victim is an adult woman. In cases of rape, the lack of consent is sufficient and no use of force is required to constitute the act of rape, which is in line with the IC Art. 36. **Marital rape** against spouses is however not explicitly mentioned in the Criminal Code but can be prosecuted. Forced sterilisation is defined as an offence, but only in the context of crimes against humanity. Although female genital mutilation is not defined in the CC, it can in principle be covered under its different provisions (incl. bodily injury) and qualify as a crime as long as it fulfils the constituent elements of these offences (not fully in line with Art. 38, IC). In the case of an offense committed against a person under the age

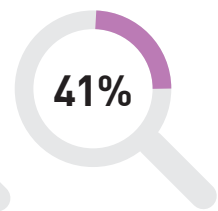
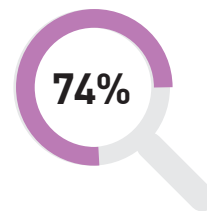


1 in 20 men admitted to having committed non-consensual sexual relations with a woman at least once in their life.

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of eighteen, the statute of limitation commences on the day the victim reaches the age of eighteen years, which provides opportunity for women to pursue justice for sexual violence they survived as children. **Sexual harassment** is defined and prohibited under Kosovo's anti-discrimination and equality legislation (not fully in line with Art. 40, IC). At the moment, there is no specific definition of sexual harassment in the CC, so it is unclear how many of the harassment cases reported between 2015 and 2017 were determined to be of a sexual nature. However, women comprised at least 71% of survivors of harassment cases reported to the police during this period. The police recorded several cases of crime involving GBV, such as degradation of sexual integrity (5) and rape (97) during the same period. Women comprised 100% of persons suffering degradation of sexual integrity and 90% of rape survivors.

³⁰ Qosaj-Mustafa et.al. (2016): *Sexual Harassment in Kosovo*. Kosovo Women's Network, available at <https://www.womensnetwork.org/documents/20160223185243349.pdf>

CASE 3

FAILED TO PROSECUTE MULTIPLE REPORTING

"I was sexually harassed by a publicist. This time I had proof, and I went to the police. Again, the first contact was good, but afterwards I did not receive any concrete information about the process. I called them to learn if they ever met the perpetrator. They said the procedure is going well, investigations are on-going, and nothing more since. I am very disappointed, since I do not feel safe anymore to report anything."³¹

Monitored cases confirmed how cultural norms related to virginity and social control over women's bodies affect some police officers' responses to sexual violence cases.

The latest KWN study³² on institutional responses to GBV showed that police and judges still lack knowledge pertaining to sexual violence. Police do not always take reports of sexual violence seriously or investigate them appropriately, which potentially contributes to under-documentation of such cases and their inadequate address. Even though in violation with IC Art. 54, **victim blaming and multiple questioning** by different police officers and inappropriate documentation of the **sexual history** of the victim has been observed, as reported by CSOs. Adelina Berisha from the Kosovo Women's Network shared their experience: "*Police officers, only men, would be going in and out the room where the victim was. We could hear that they were asking her the same questions, again and again*". Monitored cases confirmed how cultural norms related to virginity and social control over women's bodies affect some police officers' responses to sexual violence cases. As a result, and according to data of the Judicial Council, from 2015 to 2017 only 10 rape cases ended with imprisonment, 4 with a fine and 7 with conditional sentencing³³.

SERVICES ● IC Art.25 requires states to set-up easily accessible rape crisis centres (RCCs) or sexual violence referral centres (SVRCs) for victims in sufficient numbers to provide for medical and forensic examination, trauma support and

counselling for victims. Despite the fact that some of the CSOs and institutions offer services to survivors of sexual violence, none of the providers fulfil the requirements of an RCC or SVRC. The above-mentioned VAAO offers its **legal services** and a **help line** to survivors of sexual violence including representation at court. During 2017, 11 survivors of rape received support from the victim's advocates. It is also important to note that CSOs with a strong experience working on conflict related sexual violence (CRSV) are available for services for today's survivors of sexual violence.

To conclude, the current situation of not offering a systematic support to sexual violence survivors is the result of socio-cultural conditions in Kosovo, but also of a lack of holistic approach to GBV.



³¹ Berisha/Farnsworth/Hoti: *From Words to Action?*

³² Berisha/Farnsworth/Hoti: *From Words to Action?*

³³ All data from KWN 2018 report: *From Words to Action?*

CONFLICT RELATED SEXUAL VIOLENCE

In recent years, Kosovo has taken significant steps towards the provision of reparations for survivors of CRSV during the armed conflict of 1998-1999. After adopting an Action Plan for the implementation of the UN Security Council Resolution 1325 and setting the provision of redress to survivors of CRSV as a policy priority, the work on this sensitive topic was officially started. A Council on the Survivors of Sexual Violence during the Conflict in Kosovo, with a strong women's CSO presence, in charge of ensuring a coordinated response and chaired by the Kosovo President Atifete Jahjaga, was created in March 2014. Based on women's CSO advocacy³⁴ and with public pressure building up, in the same month the Assembly of Kosovo approved, on a second reading, an amendment to the Law on rights of civilian victims³⁵. The amendment recognizes women (and men) survivors of CRSV as civilian victims of the 1998-1999 conflict and provides them with a monthly pension. A Government Commission for the **Verification and Recognition of Sexual Violence Victim Status** was established and is mandated to provide reparations to survivors, after it has verified their status.



The Ministry of Labour and Social Welfare has authorized four CSOs, specialized in working with survivors, to support the application process. Only in February 2018³⁶, the process of verification was started, keeping the number of applications around 560³⁷ of which 120 have received a positive response. Half of the 120 have started to receive the 230 EUR monthly compensation pension.

Organisations such as Amnesty International have criticised this, pointing out that “despite the widespread and systematic nature of conflict-related sexual violence in Kosovo, **perpetrators have not been brought to justice** and survivors fear that the crimes committed against them will remain unpunished.”³⁸ Nevenka Rikalo from the CSO Ruka ruci commented: “*It will be interesting to observe if any women from the Kosovo Serb, Kosovo Roma and other non-majority communities will apply for the verification status, especially taking into account that the whole process until now was centred on the sexual crimes committed against Kosovo Albanian women.*”

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³⁴ One of the more well known examples of the advocacy is the international initiative Women's Court which helped to raise awareness on the issue. Read more at <https://www.zenskisud.org/o-zenskom-sudu.html>

³⁵ Law no.04/L-172 on amending and supplementing the Law no.03/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosovo Liberation Army, Civilian Victims and their Families, 23 April 2014, available at <https://gzk.rks-gov.net/ActDetail.aspx?ActID=9436>

³⁶ UN WOMEN Europe and Central Asia: *First applications in for long-awaited compensation for conflict-related sexual violence survivors in Kosovo*, 20 February 2018, available at <http://eca.unwomen.org/en/news/stories/2018/02/first-applications-in-for-compensation-for-conflict-related-sexual-violence-survivors-in-kosovo>

³⁷ Kosovo 2.0: Newfound support for wartime sexual violence survivors, 20 June 2018, available at <http://kosovotwopointzero.com/en/mbeshetjje-e-re-per-te-mbijeturit-e-dhunes-seksuale-gjate-luftes/>

³⁸ Amnesty International (2017): “Wounds that burned our soul”: *Compensation for Kosovo's War Time Rape Survivors, But Still No Justice*, available at <https://www.amnesty.org/en/documents/eur70/7558/2017/en/>

VIOLENCE AGAINST MIGRANT AND REFUGEE WOMEN



The Western Balkans were heavily challenged with a large number of refugees on their territory, but Kosovo never became a main transit territory for refugees and migrants travelling to EU.

As thousands of refugees and migrants came into Europe in 2015, one of the most common ways to come to the European Union (EU) was through the so-called “Balkan route”. The Western Balkans were heavily challenged with a large number of refugees on their territory, but Kosovo never became a main transit territory for refugees and migrants travelling to EU.

The legal text of the **laws on asylum and foreigners**³⁹, which have been developed under the support of the EU, apply EU standards but stay predominantly gender-neutral, not recognising all facets of GBV. According to the existing legislation, autonomous residence can be granted to a migrant woman in case of divorce, but the fact that she potentially experienced violence from the former partner is not taken into account. Physical or psychological violence, including sexual violence, is recognised as an act of persecution when granting refugee status and is taken into account when deciding on expulsion or return. Legislation also provides an access to services to refugee women (and men). The government has a system for providing protection to refugees but **lacks effective mechanisms and practices** for identifying persons in need of international protection as well as the place of origin of undocumented individuals.⁴⁰

³⁹ Law N. 04/L-219 on Foreigners, 05 September 2013, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=8876> and Law No. 06/L-026 on Asylum, 15 May 2018, available at <https://gzk.rks-gov.net/ActDocumentDetail.aspx?ActID=16389>

⁴⁰ Data taken from US State Department (2017): *Kosovo 2017 Human Rights Report*, available at <https://www.state.gov/documents/organization/277425.pdf>

WOMEN'S CSOS

Despite the framework of an international administration until 2008 and the strong influence of international partners in Kosovo contributing to a progressive legal framework, it was CSOs that began breaking down the social taboo of IPV, sexual violence and GBV⁴¹. Today, CSOs are **integral part of policy making** and its implementation. For example, the development of the First DV Strategy 2011-2014 and the Second DV Strategy 2016-2020 would not have been possible without the key role of the Kosovo Women's Network. Also, the process of the development of the new Kosovo Programme on Gender Equality, the central-level policy for gender equality, is strongly influenced by women's CSOs⁴². Women CSOs lead also the process for the institutionalisation of reparations for CRSV survivors. **Regular consultations** with civil society take place. Nevenka Rikalo from the CSO Ruka ruci pointed out: "*The Kosovo Women's Network makes sure that we are part of the consultation process.*"

As mentioned throughout this report, CSOs perform all kind of roles and programmes of ending VAW are not imaginable without the strong presence of women's CSOs. Some organisations **provide services for women** with disabilities, or women who survived rape or other crimes, including psychosocial counselling, training, employment empowerment and legal services. Other CSO services include daily centres for victims, including for survivors of CRSV. Women's CSOs have a general role in supporting the implementation of the DV Strategy. As already mentioned in the report, their role has been recognised in the Law on Social and Family Services.

There are **no legal and institutional limitations** to their work. Nevertheless, the Kosovo Government is not creating an enabling environment for women's CSOs. The significant majority of women's CSOs are still funded by international partners and donors. A study from 2013⁴³, covering 90 women's organizations in Kosovo, suggests a clear decrease in overall funding between 2001 and 2013, with a brief increase in 2011. Average annual income decreased from 54.197 in 2005 to 37.032 EUR in 2012. Substantial differences exist among women's organisations with a few stronger, primarily Prishtina-based organizations receiving the bulk of the resources. Most women's organisations encounter difficulties securing sufficient resources for the issues, target groups, and strategies they prioritise. Only approximately 39% of donor funding "earmarked" for gender equality or women's rights in Kosovo went to women's organisations. Pockets of substantial support exist for strong, primarily Prishtina-based organisations." Nevenka Rikalo from the CSO Ruka ruci commented that "*Kosovo is investing more money into infrastructure and highways, than into people and social services*", keeping CSO work unregulated and unfunded.

The significant majority of women's CSOs are still funded by international partners and donors.

⁴¹ See report Kosovar Gender Studies Center (year unknown): *Kosovar Civil Society Report to the United Nations On Violence against Women in Kosovo*, available at <http://www.un.org/womenwatch/daw/vaw/ngocontribute/Kosovar%20Gender%20Studies%20Center.pdf>

⁴² See media statement <http://www.womensnetwork.org/?FaqlD=1&n=620>

⁴³ Farnsworth/Gashi (2013): *Where is the Money for Women's Rights? A Kosovo Case Study*. Kosova Women's Network (KWN) and Alter Habitus Institute for Studies in Society and Culture, available at <http://www.womensnetwork.org/documents/20140109133636572.pdf>

RECOMMENDATIONS



TO THE ASSEMBLY OF KOSOVO AND GOVERNMENT

- Amend the Constitution to include the Istanbul Convention into the list of international human rights frameworks that directly apply and have priority in application;
- Amend the Criminal Code so that it is fully aligned with the provisions from the Istanbul Convention and, specifically, appropriately defines domestic violence as a criminal offence and covers all other forms of gender-based violence against women, incl. marital rape, forced sterilisation, psychological violence and female genital mutilation;
- Amend the Family Law to explicitly prohibit mediation and reconciliation in cases of intimate partner violence against women;

- Amend the laws on asylum and foreigners to recognise all forms of gender-based violence when granting asylum and applying the principle of non-refoulement.

TO THE GOVERNMENT

- Apply and promote a change in policy making and implementation when it comes to the understanding of violence against women, making clear that violence against women is understood as a human rights violation and that it is based on historically unequal power relations between women and men;
- Increase the cooperation with women's CSOs, providing them with an enabling environment and treating them as partners in policy development and not as only service providers;
- Change approach to gender-based violence against women survivors by significantly increasing support to rehabilitation and reintegration programmes, giving women an opportunity to live a free and independent life;
- Immediately develop, adopt and start implementing a Kosovo-wide effective, comprehensive and co-ordinated strategy and action plan encompassing all relevant measures to prevent and combat all forms of violence against women covered by the scope of the Istanbul Convention, including domestic violence;
- Strengthen the human and financial resources, technical expertise and legal framework of the Office of the Coordinator against Domestic Violence so that it can implement its functions and responsibilities even in times when the post of the Coordinator is vacant;

- Set-up easily accessible rape crisis centres or sexual violence referral centres for victims in sufficient numbers to provide for medical and forensic examination, trauma support and counselling for victims in line with Istanbul Convention provisions.
- Provide all potential support to the on-going initiative of establishment of a shelter for Kosovo Serb and other non-majority communities women run by Kosovo Serb women.

MINISTRY OF JUSTICE/OFFICE OF THE DV COORDINATOR

- In coordination with the respected institution, develop a data management system and database for treated cases of gender-based violence against women, incl. all forms of sexual violence and domestic violence. Data should be sex segregated and include relationship of perpetrator to the victim;
- Conduct annual thematic research on specific topics and vulnerable groups in order to better understand causes and consequences of gender-based violence against and plan services and programmes accordingly.

MINISTRY OF LABOUR AND SOCIAL WELFARE

- Immediately and based on the consultation with women's CSOs adopt clear and concrete legal provision on the founding, licensing and financings of domestic violence shelters, enabling 100% funding over the whole year and putting the interest of the survivors of violence in the heart of further discussion;
- Establish a regular and transparent external performance management monitoring and evaluation system of existing domestic violence shelters, ensuring autonomy and independence of shelters, quality of services for survivors and that public funds are spent in a transparent and accountable way;

KOSOVO POLICE, JUDICIAL COUNCIL AND PROSECUTORIAL COUNCIL

- Reform existing basic training, advanced training and professional development courses on domestic violence and other forms of gender-based violence, by putting the interest of the victim in the centre of the training processes, abolishing existing gender stereotypes including victim-blaming, multiple questioning and making sure that police officers, prosecutors and judges stick to their role and responsibilities and do not perform attempt of family reconciliation.

VICTIM'S ASSISTANCE AND ADVOCACY OFFICE

- Integrate a feminist approach into victims' advocates daily work and expend access to services, by making sure the help line is accessible through all land-line and mobile phone operators and that services to non-majority communities are provided in their native language.



EUROPEAN WOMEN'S
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