



**Montenegro's Compliance with The Convention on the Elimination of All Forms of
Discrimination against Women
Suggested List of Issues Relating to Domestic Violence**

Submitted by The Advocates for Human Rights

a non-governmental organization in special consultative status with ECOSOC since 1996

**84th Session of the Committee on the Elimination of All Forms of Discrimination against
Women Pre-Sessional Working Group
4 July 2022 – 8 July 2022**

Submitted 6 June 2022

The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications. The Advocates is committed to ensuring human rights protection for women around the world. The Advocates has published more than 25 reports on violence against women as a human rights issue, provided consultation and commentary of draft laws on domestic violence, and trained lawyers, police, prosecutors, judges, and other law enforcement personnel to effectively implement new and existing laws on domestic violence.

SOS Hotline for Women and Children Victims of Violence- Nikšić was founded in 1998 by a group of activists, who dream about a society in which equality and social justice are core values. SOS Hotline is recognized as one of the leading NGOs in Montenegro in the fight for women's rights. SOS Hotline seeks to be a powerful instrument for women in economic, social and political empowerment. SOS Hotline's vision is a world where all women and all children live in peace and dignity. Its mission is to help the positive development and application of capacity and potential of women and children in the family and society, through the promotion and protection of women's and children's rights in order to create a dedicated, responsible, and open community.

Montenegro fails to uphold its obligations under The Convention on the Elimination of All Forms of Discrimination against Women

1. Despite advances in complying with the Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”), Montenegro fails to address issues in gender-based violence against women, including domestic violence.
2. Domestic violence remains a serious issue in Montenegro. According to a 2018 survey, about one in five, or 19%, of women in Montenegro has experienced violence by a partner or non-partner after age 15.¹ A survey conducted by the Organization for Security and Co-operation in Europe (OSCE) on violence against women found that, in 2018, 26% of women in Montenegro reported physical or sexual violence by a current partner, and 32% reported physical or sexual violence by an ex-partner. 12% of women reported economic violence and 35% reported controlling behavior amounting to psychological violence.² In 2015, non-governmental entities estimated that Montenegro had the highest percentage of femicide at the hands of an intimate partner among countries in the EU; 64% of femicides were committed by an intimate partner.³ CSO Women’s Rights Centre estimated that at least 73 murders of women occurred between 2001 and 2017, most in the woman’s home.⁴ The numbers are likely higher, however, because cases of femicide rarely reach the media.⁵ Reporting rates of domestic violence are also low; according to the OSCE survey, just 4% of women in Montenegro reported intimate partner violence by a current partner, and 12% reported violence by a previous partner.⁶
3. Furthermore, very few domestic violence cases are prosecuted as criminal cases. According to a report by the European Women’s Lobby, between 2013 and 2017, only 10%-14% of domestic violence cases were charged as criminal offenses.⁷ When cases did reach the courts, judges did not issue significant sanctions; 60% of sentences were “suspended sentences, admonitions, acquittals, and fines.”⁸
4. This joint submission addresses Montenegro’s compliance with CEDAW. The government of Montenegro has taken critical steps toward protecting victims and holding offenders accountable, including adopting the Law on Domestic Violence Protection (LDVP). In

¹ Press Release, Women’s Rights Center Za Zenska Prava, International Day of Combatting Violence Against Women (Nov. 25, 2019), <https://bit.ly/2TdK6pc>.

² The Organization for Security and Co-operation in Europe, *OSCE-led Survey on Violence Against Women: Well-being and Safety of Women*. (Albania, OSCE: March 2019), 35. Available at <https://www.osce.org/secretariat/41327?download=true>.

³ Burba, Alberto, Bona, Marzia, *Femicide: The Numbers in Europe*, Osservatorio Balcaniecaucaso Transeuropa (28 November 2017), <https://www.balcaniecaucaso.org/eng/Areas/Europe/Femicide-the-numbers-in-Europe-184329>.

⁴ European Women’s Lobby, *Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in Montenegro* (European Union: November 2018), 7. Available at https://www.womenlobby.org/IMG/pdf/ewl-montenegro_report_web.pdf.

⁵ Ibid.

⁶ The Organization for Security and Co-operation in Europe, *OSCE-led Survey on Violence Against Women: Well-being and Safety of Women*. (Albania, OSCE: March 2019), 96. Available at https://www.osce.org/files/f/documents/9/2/413237_0.pdf.

⁷ European Women’s Lobby, *Mapping of Policies and Legislation on Violence Against Women and the Istanbul Convention in Montenegro* (European Union: November 2018), 10. Available at https://www.womenlobby.org/IMG/pdf/ewl-montenegro_report_web.pdf.

⁸ Ibid.

2018, the government adopted a new Protocol on the Treatment, Prevention and Protection of Violence against Women and Domestic Violence, which is binding on all signatories – an improvement over the previous protocol, which was only directive.⁹ The authors commend the State, many system actors, and the non-governmental organizations (NGOs) who work together to protect the victims. Additional efforts and legislative changes are needed, however, for Montenegro to fulfill its obligation to address domestic violence. This report sets forth remaining challenges and includes suggested questions for Montenegro’s List of Issues.

I. Non-governmental Organizations (Concluding Observations Paragraph 14)

5. In its Concluding Observations, the Committee on the Elimination of Discrimination against Women (“Committee”) expressed concern at the “recent adoption of restrictive legislation on the financing of NGOS, which hampers their establishment and activities.”¹⁰ In response, in its State Party report, Montenegro provided information on the implementation of the 2018 Strategy for Improving Enabling Environment for the Activities of NGOs and on funds for NGOs with gender-equality projects.¹¹
6. Montenegrin NGOs that provide specialized services to victims of violence, including NGOs providing assistance and support to women victims of violence and domestic violence, face licensing requirements that seriously endanger their sustainability and survival. Since 2018, to comply with the amended Law on Social and Child Protection, NGOs must license their services through an extensive process with the Ministry of Labor and Social Welfare. To obtain a license to operate their services, the state requires organizations to meet high standards in human resources, procedures, and infrastructure.¹² The licensing process often forces NGOs to hire professionals with specific personal licenses, which poses a significant expense for the organization. Licensing requirements are not accompanied by the obligation of the state to provide financial support for licensed services, so licensed NGOs must invest additional funding to meet spatial and technical standards at serious risk of ensuring their survival. If NGOs continue to provide services without proper licenses, they may face fines from the Department for Inspection Affairs for Social and Child Protection.¹³
7. The amendments to the Law on Social and Child Protection require NGOs to license each individual service, which greatly burdens NGOs' capacities in funding and human resources.¹⁴ For example, the law required SOS Nikšić to license three services separately: National SOS Line for Victims of Domestic Violence, the SOS Shelter for Women and Children with

⁹ Email from SOS Hotline for Women and Children Victims of Violence-Nikšić to The Advocates (Jan. 9, 2020) (on file with authors).

¹⁰ Committee on the Elimination of Discrimination against Women, *Concluding observations on the second periodic report of Montenegro*, (July 24, 2017), U.N. Doc. CEDAW/C/MNE/CO/2, ¶14.

¹¹ Committee on the Elimination of Discrimination against Women, *Third periodic report submitted by Montenegro under article 18 of the Convention, due in 2021*, (December 29, 2021), U.N. Doc CEDAW/C/MNE/3, ¶42-45.

¹² SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 37.

¹³ *Ibid*, 77.

¹⁴ *Ibid*, 77.

Experience of Violence, and the psychological counseling service for women and children residing in the SOS Shelter.¹⁵

8. As part of issuing licenses to NGOs, the State also adds conditions to providing services to users, which has decreased the availability of SOS Nikšić's services for women experiencing violence. Since September 2019 when the state undertook to partially finance the accommodation of women and children in shelters and safe houses, the percentage of victims referred by institutions has dropped significantly. Namely, before September 2019, the percent of women sent to the shelter by the police and social work centers was more than 75%, in 2020 it was less than 30%, and now that percentage is around 40%.¹⁶ This is a matter of great concern, especially considering the COVID pandemic, in which violence against women and domestic violence has escalated and requests for assistance have increased from 30 to 40%.¹⁷
9. The Law on Social and Child Protection also undermines the spirit of decentralization of the social and child protection system by stipulating that NGOs cannot, as licensed providers, conduct an assessment in the field for which they specialize. This is of particular concern in the context that the Centers for Social Work, which are responsible for issuing decisions on shelter accommodation for women and child victims who call the SOS Hotline or are referred by police, have repeatedly refused to issue decisions on cases in 2020 and 2021. In one six-month period, the Center for Social Work refused to issue a decision in 4 out of 5 cases of women placed in the SOS shelter.¹⁸ In addition, the rejection decisions were made without specific explanations and only a brief reference to the law and regulations. SOS Hotline Nikšić was forced to conduct appeals before the Ministry of Labor and Social Welfare. The Ministry ultimately decided in favor of SOS Nikšić, but the process forced the organization to repeat the procedure several times and exhausted the resources and staff of the organization.¹⁹
10. Additionally, inconsistencies in the interpretation of the Law on Social and Child Protection often lead to more restrictions on NGOs compared to public institutions. The interpretation of the licensing requirements differ between the Ministry of Labor and Social Welfare and the Department for Inspection Affairs for Social and Child Protection, and between individuals within these institutions. Even though SOS Nikšić meets high international standards for its shelter program (Women Against Violence Europe standards), the shelter service only received a temporary license for 3 years. A public institution of a similar type that does not meet basic standards received a long-term license.²⁰ Inspections by the Department for the Inspection of Social and Child Protection also unfairly burden NGOs. During 2020 and 2021, the Nikšić

¹⁵ Email communication with SOS Nikšić, (May 23 2022), on file with authors.

¹⁶ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 35.

¹⁷ Email communication with SOS Nikšić, (May 16 2022), on file with authors.

¹⁸ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 36.

¹⁹ Email communication from SOS Nikšić to The Advocates for Human Rights, (May 23 2022), on file with authors.

²⁰ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 35-36.

SOS hotline was exposed to a number of inspections that lasted several days, necessitated extreme detail, and exhausted the staff of the organization. The department also enacted repeated checks of the same documentation, and on several occasions, a new inspection was started without the previous one being completed.²¹

Suggested questions relating to Non-governmental Organizations:

- What steps is Montenegro taking to provide financial support to organizations which provide specialized services to victims of violence in the licensing process under the amendments to the Law on Social and Child Protection?
- What measures is the State taking to ensure consistency and predictability in interpretation of the Law on Social and Child Protection between the Ministry of Labor and Social Welfare, the Department for Inspection Affairs for Social and Child Protection, and between individuals within these institutions? Furthermore, what steps is the State taking to prevent interpretations of the Law on Social and Child Protection which compound barriers for NGOs?
- What steps is the State taking to align with the recommendation of the Istanbul Convention and the GREVIO Committee that specialized support services for victims of violence should be provided primarily by NGOs with expertise and experience in this field, who view domestic violence as gender-based violence, and operate independently of the State aside from financial support?

II. Child and/or Forced Marriage (Concluding Observations paragraph 20) and Roma, Ashkali and Egyptian women (Concluding Observations paragraph 42)

11. In its Concluding Observations, the Committee expressed concern at insufficient efforts to address child marriage.²² The Committee also noted the situation of Roma, Ashkali, and Egyptian women and girls, stemming from intersecting forms of discrimination and poverty.²³
12. In its State Party report, Montenegro described efforts to combat child marriage through amendments to the criminal code, educational trainings and campaigns, and other advances but noted that there are no shelters designated to house and reintegrate victims of child marriage.²⁴ The government is also adopting a new Strategy for Social Inclusion of Roma and Egyptians in Montenegro²⁵ and contributed to housing and infrastructure for families formerly in refugee camps.²⁶

²¹ Email communication with SOS Nikšić, (May 23 2022), on file with authors.

²² Committee on the Elimination of Discrimination against Women, *Concluding observations on the second periodic report of Montenegro*, (July 24, 2017), U.N. Doc. CEDAW/C/MNE/CO/2, ¶20.

²³ *Ibid*, ¶42.

²⁴ *Ibid*, ¶55-66.

²⁵ Committee on the Elimination of Discrimination against Women, *Third periodic report submitted by Montenegro under article 18 of the Convention, due in 2021*, (December 29, 2021), U.N. Doc CEDAW/C/MNE/3, ¶171.

²⁶ *Ibid*, ¶174.

13. Stakeholders noted that Roma and Egyptian women often face insufficient responses from authorities due to discriminatory societal views.²⁷ Women from the Roma and Egyptian communities continue to face numerous barriers such as inadequate processing of cases, inability of victims to give statements in the language they speak, and a lack of response from police. These institutional failures were particularly visible during the COVID 19 pandemic.²⁸ Roma and Egyptian women seeking assistance also often encounter skepticism and denial of services due to their low-income socio-economic background.²⁹ Such bias may lead officials to draw unwarranted assumptions that these women are seeking material advantages versus actual protection.³⁰
14. The Center for Roma Initiatives, the main NGO dedicated to addressing child marriage in Montenegro, has identified and prosecuted more than 101 cases of child illegal and arranged marriage in Montenegro since 2011. Unfortunately, due to lack of evidence in pre-trial proceedings, more than 85 cases were dismissed. During 2019 and 2020, out of the 15 cases identified, 6 victims in 2020 received the status of victims of human trafficking, 4 persons for arranged marriage, and 2 persons for begging.³¹
15. There is no licensed shelter in Montenegro that deals exclusively with victims of child and arranged marriage. Victims of child marriage face societal stigma, lack of prosecution for perpetrators, and a lack of reintegration programs. Girls return to perpetrators, resulting in a large number of extramarital unions and an increase in underage pregnancies within the Roma and Egyptian communities. Children without parental care are accommodated in the Bijela Children's Home, but the environment is not adequate for the care of victims of the target group. While the NGO Institute for Social and Educational Policy (ISOP) has a shelter for victims of trafficking in Danilovgrad, it accommodates both adults and children from different social contexts, and the exploitation process can continue. The mentioned services do not take into account the socio-cultural context and the needs of the victims.³²

²⁷ Women's Rights Centre, Women's Safe House, SOS Hotline for Women and Children Victims of Violence Nikšić, SOS Hotline for Women and Children Victims of Violence Podgorica, *NGO Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Montenegro*, by Maja Raičević (Podgorica, June 2017), 49.

²⁸ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), pg. 11.

²⁹ Women's Rights Centre, Women's Safe House, SOS Hotline for Women and Children Victims of Violence Nikšić, SOS Hotline for Women and Children Victims of Violence Podgorica *NGO Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Montenegro*, by Maja Raičević (Podgorica, June 2017), 66.

³⁰ *Ibid*, 66.

³¹ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 116.

³² *Ibid*, 37.

Suggested questions relating to Child Marriage and Roma, Ashkali, and Egyptian women:

- What steps is the State taking to eliminate stereotypes and harmful misperceptions by systems actors and service providers toward Roma and Egyptian women seeking help?
- What efforts is the State taking to propose legislation to erase legal obscurity around the legality of child marriage and raise the upper age limit for marriage to at least 18 years of age?
- What efforts is the State taking to establish a Shelter for Victims of Forced Marriages that can provide adequate care for victims of child marriage and to strengthen the capacity of Roma women's organizations to establish services?

III. Gender-Based Violence Against Women (Concluding Observations paragraph 22)

16. In its Concluding Observations, the Committee welcomed the 2014 amendments to the Law on Domestic Violence Protection (LDVP), the establishment of free legal aid offices, and other advances.³³ The Advocates and SOS Hotline Nikšić welcome those advances and note that issues persist in LDVP, gender-based discrimination against women, violence against women, issues with administration of justice, and oversights in free legal aid.
17. In its State Party report, Montenegro included advances in efforts to combat gender-based violence against women. Changes to the criminal offense of rape expands the definition to include cases with a lack of consent.³⁴ The State Party has also increased penalties for domestic violence.³⁵ Non-governmental organizations, including SOS Hotline, have also engaged in police trainings to implement a Protocol on the Prevention and Treatment of Cases of Domestic Violence.³⁶ The State Party report acknowledged that shelter numbers fall short of the 1 shelter per 10,000 people and needs 28 additional spaces. The government also reported that “a large number” of NGOs possess licenses to provide psychosocial support.³⁷

Law on Domestic Violence Protection

18. While Montenegro’s law on domestic violence provides remedies to victims, gaps in the law’s language and implementation have persisted since its last report to the Committee.
19. In 2010, Montenegro took an important step in addressing domestic violence by adopting the LDVP.³⁸ The LDVP defines domestic violence as violence between family members. This includes spouses and former spouses, consensual partners and former consensual partners, people who have a child in common, as well as between individuals, children, and other relatives in the family.³⁹ The law defines domestic violence as “omission or commission by a

³³ Committee on the Elimination of Discrimination against Women, *Concluding observations on the second periodic report of Montenegro*, (July 24, 2017), U.N. Doc. CEDAW/C/MNE/CO/2, ¶22.

³⁴ Committee on the Elimination of Discrimination against Women, *Third periodic report submitted by Montenegro under article 18 of the Convention, due in 2021*, (December 29, 2021), U.N. Doc CEDAW/C/MNE/3, ¶69.

³⁵ *Ibid*, ¶70.

³⁶ *Ibid*, ¶73.

³⁷ *Ibid*, ¶75.

³⁸ Law on Domestic Violence Protection, No. 46/10, (2010) (hereinafter LDVP).

³⁹ LDVP arts. 2, 3 (Montenegro).

family member in violating physical, psychological, sexual or economic integrity, mental health and peace of other family member, irrespective of where the incident of violence has occurred.”⁴⁰

20. The LDVP provides victims with specific remedies aimed at protecting their safety. Under the LDVP, a police officer may issue an on-the-spot eviction order, valid for a maximum of three days.⁴¹ A victim, victim’s representative, Centers for Social Welfare, police officer, or prosecutor may petition a misdemeanor court for any of five OFP remedies, and the misdemeanor judge may issue any of these *ex officio*.⁴² The petitioners may seek any of the following remedies: (1) removal from residence (eviction); (2) restraining order; (3) order prohibiting harassment and stalking; (4) mandatory drug or alcohol addiction treatment; and (5) mandatory psycho-social therapy.⁴³ In addition, the misdemeanor court has the authority to impose fines and brief prison terms for domestic violence.⁴⁴
21. The government has made some progress in the protection of women from violence. The Criminal Code of Montenegro was amended twice, criminalizing female genital mutilation, forced sterilization, and persecution.⁴⁵ The government amended Article 204 on rape to remove requirements of coercion, use of force, or threat of direct attack on life or body, to bring it in compliance with the Istanbul Convention. The new definition of rape is based on a lack of consent and punished by a prison term of one to eight years. A new Protocol on the Treatment, Prevention and Protection of Violence against Women and Domestic Violence entered into force in January 2019. This new protocol is binding on all signatories, unlike the previous protocol. Finally, a number of amendments have been proposed for the LDVP relating to: the scope of relationships and family members that the LDVP covers, increasing the duration of protection measures and eviction, and mandating police determination of the primary aggressor. While the amendments were prepared and submitted with the assistance of non-governmental organizations (NGOs), they have yet to be adopted.
22. Problems with effective implementation of the law remain, including by the judiciary. Misdemeanor courts continue to utilize the harmful practice of confrontation in domestic violence cases. The Criminal Procedure Code provides for the use of confrontation between the accused person and a witness “if their statements regarding relevant facts do not correspond.”⁴⁶ Under this procedure, “[t]he confronted persons shall be placed one towards the other and shall be requested to repeat to each other their statements regarding each disputable circumstance and to argue whether their statements are true.”⁴⁷ According to judges, the victim and accused stand between one-half and two meters apart and look each other in the eye as they recount their testimony. As they testify, the judge relies on “their posture, whether they

⁴⁰ LDVP art. 2 (Montenegro).

⁴¹ LDVP arts. 4(2), 26(2), 28(1) (Montenegro).

⁴² LDVP art. 28 (Montenegro).

⁴³ LDVP arts. 20-25 (Montenegro).

⁴⁴ LDVP art. 36 (Montenegro).

⁴⁵ CRIMINAL CODE arts. 151(a), 151(b), 168(a) (Montenegro). The crime of persecution is defined as when a person: 1) unauthorizedly monitors or takes other actions in order to physically approach that person; 2) endeavors to establish contact with that person contrary to his will directly, through a third party or by other means of communication; 3) misuses that person's personal data for the purpose of ordering goods or services; 4) threatens to attack the life, body or freedom of that person or his close person; 5) takes other similar actions against that person.

⁴⁶ CRIMINAL PROCEDURE CODE art. 102(1) (Montenegro)

⁴⁷ CRIMINAL PROCEDURE CODE art. 102(2) (Montenegro)

turn their eyes to the side, and their attitude” to draw a conclusion as to the parties’ veracity.⁴⁸ Misdemeanor judges typically use confrontation in domestic violence cases.⁴⁹ When asked whether the practice is common in domestic violence cases, a misdemeanor judge confirmed, “Absolutely.”⁵⁰ Another judge justified the use of confrontation to respect the “human rights of everyone.”⁵¹ Confrontation, however, is contrary to best practice standards, retraumatizes the victim, and is unlikely to result in candid or accurate testimony.⁵²

23. Psychosocial treatment for the offender, a remedy available under the LDVP, is not always available nor does it always meet best practice standards. The LDVP states “[m]andatory psycho-social therapy may be issued to [the] abuser to eliminate the cause of violent behavior and reform [the] abuser; and to diminish or eliminate risk of reoffending.”⁵³ The therapy may last no longer than six months, although the misdemeanor court may prolong the orders for up to two years if reasons for imposing it still exist.⁵⁴ While stakeholders found there are a small number of psycho-social treatment programs available, these programs are limited and do not meet the best practice stands for effective treatment.⁵⁵ The programs currently in place lack protocols in prioritizing and protecting victims, there is no system-wide structure, systems actors lack training on appropriate treatment, and there is no protocol to monitor and report compliance with the treatments.⁵⁶

Non-discrimination between women and men

24. Stakeholders expressed concern about harmful attitudes held by judges in domestic violence cases. In 2017, The Advocates for Human Rights, SOS Hotline for Women and Children Victims of Violence-Nikšić, and Women’s Rights Center published a report on the government’s implementation of domestic violence laws. The report, based on desk research and 60 interviews with systems actors and NGOs, makes recommendations to all sectors. In our 2017 report, we reported system actors’ displays of insensitivity and intimidation towards victims.⁵⁷ In one example, judges expressed the opinion that certain low-level instances of domestic violence should not be chargeable if the victim was said to have verbally “provoked” the perpetrator.⁵⁸ Additionally, some judges stated they “express more sympathy for violent perpetrators than for victims,” and were reluctant to evict offenders as they have nowhere to go. One misdemeanor judge was quoted as stating “the biggest cause of these [domestic violence] offenses is weakening of the family as an institution.”⁵⁹

⁴⁸ The Advocates for Human Rights, SOS Hotline for Women and Children Victims of Violence-Nikšić, and Women’s Rights Center, *Implementation of Montenegro’s Domestic Violence Legislation* (Minneapolis, MN, July 2017), 55. (hereinafter, *Implementation of Montenegro’s Domestic Violence Legislation*)

⁴⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, 55.

⁵⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 56.

⁵¹ Press Release, Women’s Rights Center Za Zenska Prava, International Day of Combatting Violence Against Women (Nov. 25, 2019), <https://bit.ly/2TdK6pc>.

⁵² *Ibid.*

⁵³ LDVP art. 25(1) (Montenegro)

⁵⁴ LDVP art. 26(3) (Montenegro)

⁵⁵ *Implementation of Montenegro’s Domestic Violence Legislation*, 66.

⁵⁶ *Implementation of Montenegro’s Domestic Violence Legislation*, 67, 68.

⁵⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, 86.

⁵⁸ *Implementation of Montenegro’s Domestic Violence Legislation*, 86.

⁵⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, 7, 42-43.

25. Contrary to international standards, mediation is often used in domestic violence cases. Mediation is inappropriate in domestic violence cases, as it presumes that the parties have equal bargaining power and an equal voice in decision-making. Standard mediation assumes that both parties have equal power in the relationship, whereas in reality, the abuser holds tremendous power over the victim; this imbalance of power between the parties cannot be remedied despite the skills of the mediator. Amendments to the Family Law from 2016 exclude the application of the procedure of mediation in divorce disputes on the lawsuit of one of the spouses in cases when there are circumstances that indicate the existence of any form of domestic violence. However, in 2020, the article was amended in such a way that the court will not refer parties to mediation in cases where, due to suspicion of domestic violence, mediation would not be expedient.⁶⁰ It is unclear what conditions are considered expedient, and the practice of mediation persists. Family law judges in Montenegro often refer parties to the Center for Mediation in direct opposition to the Istanbul Convention's prohibition on use of mediation and reconciliation in cases of domestic violence.⁶¹ While the Law on Mediation states this practice is voluntary, and the Family Law does not mandate mediation in situations of domestic violence,⁶² stakeholders report that "judges always say it is obligatory."⁶³ Indeed, the head of the Center for Mediation was recorded as stating "mediation is an obligatory part of the marital dispute."⁶⁴ Another concern is that, in divorce proceedings, the Family Law provides that couples must participate in a reconciliation hearing as part of the mediation process,⁶⁵ which in practice judges may extend to domestic violence cases.
26. Furthermore, mediators seeking compensation face a conflict of interest in cases where they should find mediation inappropriate, such as cases involving domestic violence.⁶⁶ Under the Law on Mediation, a mediator is entitled to remuneration and compensation.⁶⁷ The Center for Mediation reports that mediators are entitled to 25 Euros for each *successful* mediation, regardless of its duration.⁶⁸ Mediation is deemed successful if other institutions do not have to resolve any conflicts between parties, thus creating an incentive for mediators to address a broad range of issues and bring closure to any disputes.⁶⁹ The compensation rules therefore discourage mediators from determining mediation to be inappropriate in domestic violence cases, because that decision would deny the mediator potential compensation.⁷⁰ The rules also encourage mediators to pressure the parties to

⁶⁰ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women's Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 131.

⁶¹ Istanbul Convention, 2014, § 48.

⁶² See FAMILY LAW, Art. 326 (Montenegro).

⁶³ *Implementation of Montenegro's Domestic Violence Legislation*, 107.

⁶⁴ *Implementation of Montenegro's Domestic Violence Legislation*, 107.

⁶⁵ FAMILY LAW, Art. 328 (Montenegro).

⁶⁶ *Implementation of Montenegro's Domestic Violence Legislation*, 110.

⁶⁷ Law on Mediation, Art. 10

⁶⁸ *Implementation of Montenegro's Domestic Violence Legislation*, 110.

⁶⁹ *Implementation of Montenegro's Domestic Violence Legislation*, 110.

⁷⁰ *Implementation of Montenegro's Domestic Violence Legislation*, 110.

continue mediation even after a party has disclosed domestic violence.⁷¹ One NGO surmised that mediators probably do so because they want their fees.⁷²

Violence Against Women

27. In our 2017 report, The Advocates found that police investigations are generally poor and impede collection of relevant information. Police are required “[t]o send urgently and without delay” at least two police officers to the scene, “preferably a male-female couple of officers.”⁷³ Police officers report that due to shortages of female police officers, they are rarely able to dispatch female patrol officers to the scene. Yet this requirement instead becomes an excuse for not documenting evidence properly. An officer stated, “because mostly men are employed in our sector, we avoid taking photos of specific parts of the body.”⁷⁴
28. Officers do not always follow the best practice of separating the parties before questioning them. One NGO worker reported that police sometimes separate the parties, but more typically offer an excuse, such as “we can’t afford it.” For example, a woman overheard the police response to her neighbor screaming and a child crying. When the officer arrived, he went to the apartment and rang the doorbell. The interviewee described: “Of course, both of them opened the door, and the police said they had a report of domestic violence. Of course, both of them denied it. Then they closed the door, and the police left. The chief of police called me to say that everything was okay. I asked whether they separated the victim or entered the apartment. They did not. They just stayed at the front door.” NGOs reported this practice is not isolated, and another interviewee revealed a nearly identical experience.⁷⁵
29. Police also do not consistently investigate whether the offender has a history of domestic violence. Inspectors in some jurisdictions reportedly inquire about histories, but other police officers have waited to inquire about it unless and until the prosecutor charges the offense as a crime. More often, duty officers focus on the individual act of domestic violence and discourage women from describing the full context and history of the violence.⁷⁶ In addition, police rarely take photographs to document domestic violence. One NGO head could not recall a single domestic violence case in which a police officer took photographs. She reported that although the NGO itself had photographs of victims’ injuries, those photographs could not be used as evidence in court.⁷⁷
30. Police typically refer victims to and rely on medical reports to document physical injuries. As a result, medical documentation often becomes vital to offender accountability, and without it, prosecutors will not charge a case as a crime. One officer observed, “the key element and the strongest facts are her injuries on the body.” If the victim has serious

⁷¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁷² *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁷³ Protocol on the treatment, Prevention and Protection of Violence against Women and Family Violence (Sept. 2018), 8.

⁷⁴ *Implementation of Montenegro’s Domestic Violence Legislation*, 26.

⁷⁵ *Implementation of Montenegro’s Domestic Violence Legislation*, 26.

⁷⁶ *Implementation of Montenegro’s Domestic Violence Legislation*, 26-27.

⁷⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, 27-28.

injuries, the patrol officer may offer to transport the victim to the health center. In other cases, however, the police simply refer the victim to an emergency center.⁷⁸

31. Judges impose lenient sentences on perpetrators that fail to protect victims. Judges reported that “they most frequently impose suspended sentences, even though they perceive that prison is the most effective sanction.”⁷⁹ Many judges cited the need to preserve the families, the opportunity to rehabilitate the offender, the importance of reconciliation, the need for the perpetrator to support the family, and a lack of prior convictions as the justification for suspending sentences.⁸⁰ Suspended sentences place the perpetrator on probation, during which they may still have access to the victims.⁸¹ Findings from our 2017 report reveal that many perpetrators nevertheless reoffend during the probation period.⁸²
32. Under a new 2018 licensing requirement, fewer shelters and beds are now available in Montenegro. Previously, NGOs operated three shelters in Montenegro.⁸³ These shelters provide more than just housing, and often they provide other crucial support services and hotlines for victims of domestic violence.⁸⁴ In 2018, the government adopted a formal procedure under the Law on Social and Child Protection for obtaining a license to operate a shelter.⁸⁵ In the first half of 2019, two of the three existing shelters received licenses from the Ministry of Labor and Social Welfare.⁸⁶ The ministry has licensed a total of 29 beds, which falls short of the Istanbul Convention’s requirement of 62 beds (1 bed per 10,000 citizens).⁸⁷
33. Shelters in Montenegro also face shortages in funding and resources. In 2019, however, the State began financially supporting 50% percent of a shelter client’s expenses during her stay. This initiative could help offset the scarce resources that these independent shelters face, as many of the shelters have been forced to rely on foreign and foundation funding to provide these important services to victims.⁸⁸ We are alarmed, however, that since this support began in 2019, the percentage of victims referred to shelters by police and social work centers has decreased from over 75% to 40%, as discussed above in paragraph 8.⁸⁹ It is critical that the government allocates enough funding to cover 50% of shelter expenses, commits to referring victims based on their need for shelter regardless of the expense, provides this funding long-term, and works to increase such funding and the availability of shelter beds.

⁷⁸ *Implementation of Montenegro’s Domestic Violence Legislation*, 28.

⁷⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, 75.

⁸⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 75.

⁸¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 76.

⁸² *Implementation of Montenegro’s Domestic Violence Legislation*, 76.

⁸³ *Implementation of Montenegro’s Domestic Violence Legislation*, 118.

⁸⁴ *Implementation of Montenegro’s Domestic Violence Legislation*, 118.

⁸⁵ Email communication from SOS Hotline for Women and Children Victims of Violence-Nikšić to The Advocates (Jan. 9, 2020) (on file with authors).

⁸⁶ *Ibid.*

⁸⁷ *Ibid.*

⁸⁸ *Implementation of Montenegro’s Domestic Violence Legislation*, 118.

⁸⁹ SOS telephone for women and children victims of violence Podgorica, SOS telephone for women and children victims of violence Nikšić, Women’s Safe House, Center for Roma Initiatives, *NGO GREVIO Shadow Report: Monitoring the Implementation of the Istanbul Convention (Council of Europe Convention on Preventing and Combating Domestic Violence) in Montenegro*, (Podgorica, July 2021), 35.

Administration of Justice

1. This submission presents concerns related to the administration of justice in domestic violence cases given the lack of adequate protection for victims in criminal proceedings, as well as loopholes in the current legal framework that diminish offender accountability.
2. Montenegro lacks adequate measures to keep victims safe through the duration of the criminal proceedings. Under the Criminal Procedure Code, there are no measures aimed at specifically protecting victim safety during the criminal proceedings. Instead, there are two post-conviction remedies that may be granted. Under Articles 77a and 77b, courts may issue restraining and eviction orders at the conclusion of certain criminal proceedings after conviction.⁹⁰ These remedies, however, are only available at the conclusion of criminal proceedings and only upon conviction.⁹¹ Thus, victims remain without adequate protection during the criminal proceedings and in the event of an acquittal.
3. While Montenegro allows a victim to pursue misdemeanor protection measures, the State cannot simultaneously pursue criminal level charges for an act of violence. The Montenegro misdemeanor and criminal justice systems thus create a difficult dilemma: a victim can pursue misdemeanor protection measures, or the State can pursue criminal level charges for an act of violence, but not both. This challenge in protecting victims and holding abusers accountable arose from the 2009 European Court of Human Rights decision in *Maresti v. Croatia*, which has dramatically limited courts from effectively protecting victims and holding offenders accountable for their crimes. The *Maresti* case renders misdemeanor and criminal prosecutions mutually exclusive, requiring a victim to choose between long-term, misdemeanor protective measures and the appropriate criminal charges against her abuser. Even if an offender perpetrates serious injuries, compelling the victim to seek protection through an eviction or restraining order, the maximum sentence that offender could face is 60 days' imprisonment or a fine. Conversely, if the State chooses to prosecute the case and seek criminal-level punishment, the victim is then precluded from obtaining long-term protective measures for herself under the LDVP. In other words, the victim must wait for another act of violence to occur before she can seek protective measures under the LDPV. As described above, Montenegro's Criminal Code provides long-term security measures of eviction and a restraining order that can protect the victim, but only after the trial's conclusion and upon a conviction.⁹²
4. The length of misdemeanor proceedings is protracted. It can take months for a court to issue a decision unless it grants a shortened proceeding. In effect, an order for protection may not be granted for several months, with the victims left unprotected.⁹³ In one case in which shortened proceedings were granted, the case took three months to complete, during which the victim reported five more instances of domestic violence.⁹⁴
5. Security of victims at the courthouse is also of concern. Stakeholders expressed concern that there are no factors mandating police presence, despite smaller courtrooms and often no

⁹⁰ *Implementation of Montenegro's Domestic Violence Legislation*, 93.

⁹¹ *Implementation of Montenegro's Domestic Violence Legislation*, 93.

⁹² *Implementation of Montenegro's Domestic Violence Legislation*, footnote 987.

⁹³ *Implementation of Montenegro's Domestic Violence Legislation*, 53.

⁹⁴ *Implementation of Montenegro's Domestic Violence Legislation*, 54.

physical buffers between the parties.⁹⁵ Victims face threats to their safety as they wait outside the courtrooms. For instance, victims and offenders are left unmonitored together in the hallway if the offender has not been detained.⁹⁶

Free Legal Aid

6. Misdemeanor judges do not consistently inform victims of their right to free legal aid.⁹⁷ Police officers also often fail to notify victims of their right to legal aid even though they can provide them with the application form.⁹⁸
7. Currently, the Law on Free Legal Aid does not recognize NGOs as providers of pro bono legal assistance, which implies that NGOs dedicated to assisting victims of domestic violence must finance legal aid to the victims from their own budgets.⁹⁹

Suggested questions relating to gender-based violence against women:

Domestic violence law

- What is the State's progress in adopting the proposed amendment to the Law on Domestic Violence Prevention to include persons who were, or are still in, an emotional or sexual relationship?
- What is the State's progress in adopting the proposed amendment to include persons who are not cohabitating spouses and do not live in a shared household, regardless of the existence of common children; informal life partners and ex-relatives by the second degree?
- What is the State's progress in adopting the proposed amendment to the Law on Protection against Domestic Violence to increase the maximum length of protective measures and length of time abusers may be evicted?
- What steps will the State take to ensure police receive enhanced training to identify the primary aggressor and signs of self-defense?
- What steps is the State taking to immediately prohibit the harmful practice of confrontation in domestic violence cases?

Non-discrimination between women and men

- What steps is the State undertaking to ensure that judges complete regular training on domestic violence, in consultation with or led by NGOs serving victims, for all court personnel and judges with responsibility for domestic violence cases, that is based on best practices and include the dynamics of domestic violence,

⁹⁵ *Implementation of Montenegro's Domestic Violence Legislation*, 50.

⁹⁶ *Implementation of Montenegro's Domestic Violence Legislation*, 50.

⁹⁷ *Implementation of Montenegro's Domestic Violence Legislation*, 45.

⁹⁸ *Implementation of Montenegro's Domestic Violence Legislation*, 23.

⁹⁹ Women's Rights Centre, Women's Safe House, SOS Hotline for Women and Children Victims of Violence Nikšić, SOS Hotline for Women and Children Victims of Violence Podgorica, *NGO Report on the Implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence in Montenegro*, by Maja Raičević (Podgorica, June 2017), 59.

Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, and promoting victim safety?

- What steps is the State taking to absolutely prohibit, without exception, and immediately cease the use of the mediation and reconciliation procedures in divorce proceedings when there are circumstances that indicate the existence of any form of domestic violence?
- What steps is the State taking to ensure effective screening and identification of domestic violence cases to exclude them from mediation?
- What steps is the State taking to remove the requirement that mediation be successful for mediators to receive compensation, and if so, on what timeline?

Violence Against Women

- What measures is the State taking to require and implement regular training on domestic violence, in consultation with or led by NGOs serving victims, for all systems actors with responsibility for domestic violence cases?
- What steps is the State taking to create and implement policies that require front line officers to investigate for the full history of domestic violence beyond the immediate incident, separate the parties during questioning, and investigate the level of risk to victims in each case of domestic violence using standardized risk assessment tools?
- What steps is the State taking to reduce the use of suspended sentences in domestic violence cases that place victims in danger of further harm and ensure that judges prioritize the issuance of prison sentences and orders for protection remedies that promote victim safety?
- What steps the State taking to commit to providing ongoing and sufficient funding to NGO-led shelters and counseling centers that provide services to women and children victims of domestic violence?

Administration of Justice

- What steps is the State taking to amend criminal laws to provide for measures of protection to protect victim safety during criminal proceedings?
- What steps is the State taking to ensure separate waiting areas and consistent and adequate security, including court escorts and security personnel, for victims upon arrival, within, and upon departure from the courthouse?
- What commitment is State making to ensure misdemeanor judges expedite all orders for protection proceedings and issue decisions in a timely manner? How will the state encourage and educate the misdemeanor judiciary on use of the “shortened procedure” as allowed by law in all domestic violence cases?

Free Legal Aid

- What steps is the State taking to recognize NGOs as providers of pro-bono legal assistance for victims of violence against women and if so, on what timeline?

- What actions is the State taking to ensure victims are fully aware of the availability of and access to legal aid?