



Montenegro's Compliance with the International Covenant on Civil and Political Rights Suggested List of Issues Prior to Review

Submitted by The Advocates for Human Rights

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and

SOS Hotline for Women and Children Victims of Violence-Nikšić

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Founded in 1983, **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. 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 publication. The Advocates has previously published multiple reports on violence against women as human rights issue, provides consultation and commentary on draft laws on domestic violence, and trains lawyers, police, prosecutors, and judges 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.

EXECUTIVE SUMMARY

I. Montenegro fails to uphold its obligations under the International Covenant on Civil and Political Rights

1. Despite advances in recognizing and preserving some basic rights, Montenegro has yet to undertake additional measures to meet its obligations under the International Covenant on Civil and Political Rights (ICCPR).
2. The ICCPR recognizes that certain basic rights are guaranteed regardless of a person's race, color, sex, language, religion, political or other opinion, nation or social origin, birth or other status (Articles 2, 25), and men and women have an equal right to enjoy such rights (Article 3). Domestic violence violates a woman's rights to life and security of person (Article 6), freedom from torture and ill-treatment (Article 7), equality before the courts (Article 14), equal protection before the law (Article 26), and protection of the family (Article 23), among others.
3. 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, while 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, 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 While official data is not available on femicide in Montenegro, CSO Women's Rights Centre estimated that at least 73 murders of women occurred between 2001 and 2017, most in the woman's home. The numbers are likely higher, however, because cases of femicide rarely reach the media.⁴ 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.⁵ Furthermore, very few domestic violence cases are prosecuted. According to a report by the European Women's Lobby, between 2013 and 2017, 10%-14%

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 Balcanicaucaso Transeuropa (28 November 2017), <https://www.balcanicaucaso.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), 10. Available at https://www.womenlobby.org/IMG/pdf/ewl-montenegro_report_web.pdf.

⁵ 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/secretariat/41327?download=true>.

of domestic violence cases were charged as criminal offenses.⁶ When cases did reach the courts, 60% of sentences were “suspended sentences, admonitions, acquittals, and fines.”⁷

4. This joint submission addresses Montenegro’s compliance with the ICCPR. 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 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.⁸ The authors commend the State, many system actors, and the NGOs who work together to protect the victims. Additional efforts 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.

II. Remedies for Human Rights Violations

5. In its 2014 Concluding Observations, the Human Rights Committee (Committee) noted the challenges victims face in obtaining reparation from the State for human rights violations.⁹ While Montenegro has a law on domestic violence that provides remedies to victims, gaps in the law’s language and implementation have persisted since its last report to the Committee.
6. In 2010, Montenegro took an important step in addressing domestic violence by adopting the Law on Domestic Violence Protection (LDVP).¹⁰ 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.¹¹ The law defines domestic violence as “omission or commission by a 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.”¹²
7. 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.¹³ 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*.¹⁴ The petitioners may seek any of the

⁶ 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.

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

⁹ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶6

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

¹¹ LDVP arts. 2, 3 (Montenegro).

¹² LDVP art. 2 (Montenegro).

¹³ LDVP arts. 4(2), 26(2), 28(1) (Montenegro).

¹⁴ LDVP art. 28 (Montenegro).

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.¹⁵ In addition, the misdemeanor court has the authority to impose fines and brief prison terms for domestic violence.¹⁶

8. Since Montenegro's last review, 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.¹⁷ 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.
9. 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."¹⁸ 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."¹⁹ 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 turn their eyes to the side, and their attitude" to draw a conclusion as to the parties' veracity.²⁰ Misdemeanor judges typically use confrontation in domestic violence cases.²¹ When asked whether the practice is common in domestic violence cases, a misdemeanor judge confirmed, "Absolutely."²² Another judge justified the use of confrontation to respect the "human rights

¹⁵ LDVP arts. 20-25 (Montenegro).

¹⁶ LDVP art. 36 (Montenegro).

¹⁷ 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.

¹⁸ CRIMINAL PROCEDURE CODE art. 102(1) (Montenegro)

¹⁹ CRIMINAL PROCEDURE CODE art. 102(2) (Montenegro)

²⁰ 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*)

²¹ *Implementation of Montenegro's Domestic Violence Legislation*, 55.

²² *Implementation of Montenegro's Domestic Violence Legislation*, 56.

of everyone.”²³ Confrontation, however, is contrary to best practice standards, retraumatizes the victim, and is unlikely to result in candid or accurate testimony.²⁴

10. 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.”²⁵ 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.²⁶ 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.²⁷ 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.²⁸

11. Suggested questions relating to remedies for human rights violations:

- Will the State adopt the proposed amendment to the Law on Protection against Domestic Violence to include persons who were, or are still in an emotional or sexual relationship?
- Will the State adopt 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?
- Will the State adopt 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?
- A new provision proposes the duty of the police to identify the primary aggressor after reporting the violence. What steps will the State take to ensure police receive enhanced training to identify the primary aggressor and signs of self-defense?
- What steps will the State take to immediately prohibit the harmful practice of confrontation in domestic violence cases?

III. Non-Discrimination and Equality between Men and Women

12. In its November 2014 Concluding Observations, the Committee noted with concern that women remain underrepresented in much of the public sphere, including the judiciary.²⁹ This section highlights concerns with the attitudes of judges in cases of domestic violence and the use of mediation.

²³ Press Release, Women’s Rights Center Za Zenska Prava, International Day of Combatting Violence Against Women (Nov. 25, 2019). <https://bit.ly/2TdK6pc>

²⁴ Press Release, Women’s Rights Center Za Zenska Prava, International Day of Combatting Violence Against Women (Nov. 25, 2019). <https://bit.ly/2TdK6pc>

²⁵ LDVP art. 25(1) (Montenegro)

²⁶ LDVP art. 26(3) (Montenegro)

²⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, 66.

²⁸ *Implementation of Montenegro’s Domestic Violence Legislation*, 67, 68.

²⁹ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶10

13. 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.³⁰ 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.³¹ Additionally, some judges stated they “express more sympathy for violent perpetrators than for victims,” 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.”³²
14. 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. Family law judges in Montenegro often refer parties to the Center for Mediation, in direct opposition to the Family Law’s ban³³ and the Istanbul Convention’s prohibition on use of mediation and reconciliation in cases of domestic violence.³⁴ While the Law on Mediation states this practice is voluntary, and the Family Law does not mandate mediation in situations of domestic violence, stakeholders report that “judges always say it is obligatory.”³⁵ Indeed, the head of the Center for Mediation was recorded as stating “mediation is an obligatory part of the marital dispute.”³⁶
15. Furthermore, mediators seeking compensation face a conflict of interest in cases where they should find mediation inappropriate, such as cases involving domestic violence.³⁷ Under the Law on Mediation, a mediator is entitled to remuneration and compensation.³⁸ The Center for Mediation reports that mediators are entitled to 25 Euros for each *successful* mediation, regardless of its duration.³⁹ 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.⁴⁰ 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.⁴¹ The rules also encourage mediators to pressure the parties to continue mediation even after a party has

³⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 86.

³¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 86.

³² *Implementation of Montenegro’s Domestic Violence Legislation*, 7, 42-43.

³³ FAMILY LAW, Art. 326 (Montenegro)

³⁴ Istanbul Convention, 2014, § 48.

³⁵ *Implementation of Montenegro’s Domestic Violence Legislation*, 107.

³⁶ *Implementation of Montenegro’s Domestic Violence Legislation*, 107.

³⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

³⁸ Law on Mediation, Art. 10

³⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁴⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁴¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

disclosed domestic violence.⁴² One NGO surmised that mediators probably do so because they want their fees.⁴³

16. Suggested Questions related to non-discrimination and equality between men and women:

- What steps will the State undertake 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, Montenegrin laws and the protocol relating to domestic violence, sensitivity to victims, risk assessment, and promoting victim safety?
- What steps will the State take to immediately cease the use of mediation and reconciliation in cases involving domestic violence?
- What steps will the State take to ensure effective screening and identification of domestic violence cases to exclude them from mediation?
- Will the State remove the requirement that mediation be successful for mediators to receive compensation, and if so, on what timeline?

IV. Violence against Women

17. In its November 2014 Concluding Observations, the Committee reiterated its concern about continuing reports of the lack of investigation and prosecutions as well as lenient sentences imposed on perpetrators. The Committee also expressed concern over the lack of shelters for victims, recommending that Montenegro ensure availability of enough shelters with adequate resources.⁴⁴

18. 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.”⁴⁵ 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.”⁴⁶

19. 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

⁴² *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁴³ *Implementation of Montenegro’s Domestic Violence Legislation*, 110.

⁴⁴ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶11

⁴⁵ Protocol on the treatment, Prevention and Protection of Violence against Women and Family Violence (Sept. 2018), 8.

⁴⁶ *Implementation of Montenegro’s Domestic Violence Legislation*, 26.

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.⁴⁷

20. 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.⁴⁸ 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.⁴⁹
21. 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 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.⁵⁰
22. 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.”⁵¹ 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.⁵² Suspended sentences place the perpetrator on probation, during which they may still have access to the victims.⁵³ Findings from our 2017 report reveal that many perpetrators nevertheless reoffend during the probation period.⁵⁴
23. Under a new 2018 licensing requirement, fewer shelters and beds are now available in Montenegro. Previously, NGOs operated three shelters in Montenegro.⁵⁵ These shelters provide more than just housing, and often they provide other crucial support services and hotlines for victims of domestic violence.⁵⁶ In 2018, the government adopted a formal procedure under the Law on Social and Child Protection for obtaining a license to operate a shelter.⁵⁷ In the first half of 2019, two of the three existing shelters received licenses from the

⁴⁷ *Implementation of Montenegro’s Domestic Violence Legislation*, 26.

⁴⁸ *Implementation of Montenegro’s Domestic Violence Legislation*, 26-27.

⁴⁹ *Implementation of Montenegro’s Domestic Violence Legislation*, 27-28.

⁵⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 28.

⁵¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 75.

⁵² *Implementation of Montenegro’s Domestic Violence Legislation*, 75.

⁵³ *Implementation of Montenegro’s Domestic Violence Legislation*, 76.

⁵⁴ *Implementation of Montenegro’s Domestic Violence Legislation*, 76.

⁵⁵ *Implementation of Montenegro’s Domestic Violence Legislation*, 118.

⁵⁶ *Implementation of Montenegro’s Domestic Violence Legislation*, 118.

⁴⁵ Email from SOS Hotline for Women and Children Victims of Violence-Nikšić to The Advocates (Jan. 9, 2020) (on file with authors).

Ministry of Labor and Social Welfare.⁵⁸ 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).⁵⁹

24. Shelters in Montenegro also face shortages in funding and resources. In 2019, however, the State has demonstrated willingness to financially support 50% percent of a shelter client's expenses during her stay. This may 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.⁶⁰ It is critical, however, that the government commits to providing this funding for the long-term and works to increase such funding and the availability of shelter beds.

25. Suggested questions relating to violence against women:

- Will the State require 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 will the State take 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 will the State take 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 will the State take 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?

V. Administration of Justice

26. In its 2014 Concluding Observations, the Committee highlighted the independence of the judiciary.⁶¹ 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.

27. 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

⁴⁶ Email from SOS Hotline for Women and Children Victims of Violence-Nikšić to The Advocates (Jan. 9, 2020) (on file with authors).

⁴⁷ Email from SOS Hotline for Women and Children Victims of Violence-Nikšić to The Advocates (Jan. 9, 2020) (on file with authors).

⁶⁰ *Implementation of Montenegro's Domestic Violence Legislation*, 118.

⁶¹ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶11

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.⁶² These remedies, however, are only available at the conclusion of criminal proceedings and only upon conviction.⁶³ Thus, victims remain without adequate protection during the criminal proceedings and in the event of an acquittal.

28. Furthermore, the Montenegro misdemeanor and criminal justice systems create a difficult dilemma whereby 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 LPDV. 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.⁶⁴
29. 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.⁶⁵ 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.⁶⁶
30. Security of victims at the courthouse is also of concern. Stakeholders expressed concern that there are no factors mandating police presence, with smaller courtrooms and often no physical buffers between the parties.⁶⁷ 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.⁶⁸
- 31. Suggested questions relating to the administration of justice:**
- Will the State amend criminal laws to provide for measures of protection to protect victim safety during criminal proceedings?

⁶² *Implementation of Montenegro's Domestic Violence Legislation*, 93.

⁶³ *Implementation of Montenegro's Domestic Violence Legislation*, 93.

⁶⁴ *Implementation of Montenegro's Domestic Violence Legislation*, footnote 987.

⁶⁵ *Implementation of Montenegro's Domestic Violence Legislation*, 53.

⁶⁶ *Implementation of Montenegro's Domestic Violence Legislation*, 54.

⁶⁷ *Implementation of Montenegro's Domestic Violence Legislation*, 50.

⁶⁸ *Implementation of Montenegro's Domestic Violence Legislation*, 50.

- What steps will the State take 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 will the State make 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?

VI. Free Legal Aid

32. In its 2014 Concluding Observations, the Committee noted concerns about the quality of legal assistance provided and its accessibility by vulnerable groups of the population.⁶⁹
33. Misdemeanor judges do not consistently inform victims of their right to free legal aid.⁷⁰ Police officers also often fail to notify victims of their right to legal aid even though they can provide them with the application form.⁷¹
34. 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.⁷²
35. **Suggested questions relating to legal aid:**
- Will the State amend the law on legal aid to allow and compensate NGOs to provide free legal aid for victims of violence against women and if so, on what timeline?
 - How will the State ensure victims are fully aware of the availability of and access to legal aid?

VII. Rights of Minorities, Birth Registration, Refugees and Internally Displaced Persons and Early Marriage

36. In its 2014 Concluding Observations, the Committee noted the ongoing discrimination Roma and Egyptians face regarding access to housing, health care, employment, and participation in the conduct of public affairs.⁷³
37. Stakeholders noted that Roma and Egyptian women often face insufficient responses from authorities due to discriminatory societal views.⁷⁴ Roma and Egyptian women seeking

⁶⁹ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶16

⁷⁰ *Implementation of Montenegro’s Domestic Violence Legislation*, 45.

⁷¹ *Implementation of Montenegro’s Domestic Violence Legislation*, 23.

⁷² 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.

⁷³ International Covenant on Civil and Political Rights, *Concluding observations on the initial report of Montenegro*, (Nov. 21, 2014), U.N. Doc. CEDAW/C/MNE/CO/2, ¶17

⁷⁴ 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.

assistance also often encounter skepticism and denial of services due to their poor socio-economic background.⁷⁵ Such bias may lead officials to draw unwarranted assumptions that these women are seeking material advantages versus actual protection.⁷⁶

38. Suggested questions relating to the protection of minorities:

- 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?

⁷⁵ 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.

⁷⁶ 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.