BOSNIA AND HERZEGOVINA
THE BIH MINISTRY OF FOREIGN AFFAIRS

Sarajevo

SUBJECT: UNODC - Resolution of the Commission on Crime Prevention and Criminal Justice titled “Undertaking measures against perpetrators of murders of women and girls”, requested information provided

Reference: Your memorandum no: 07/1-32-05-4-31750-1/13 dated 17/09/2013

In the referenced memo that you forwarded to us, regarding the Resolution of the Commission on Crime Prevention and Criminal Justice titled “Undertaking measures against perpetrators of murders of women and girls”, the UNODC requested from member states provision of first-hand and other relevant information on investigation and prosecution of perpetrators of murders of women and children, in accordance with the positive legislation.

In order to compose a unified response, we requested relevant information from the State Investigation and Protection Agency, the Ministry of Interior of the Republic of Srpska, the Ministry of Interior of the Federation of Bosnia and Herzegovina and the Brčko District Police.

The Ministry of Interior of the Federation of Bosnia and Herzegovina sent its response in a form of an overview of information obtained from cantonal ministries of interior, the content of which we provide below:

On the territory under local jurisdiction of the Cantonal Ministry of Interior of the Una-Sana Canton, in the last ten years, 11 acts of murder took place, resulting in the death of 12 women. In eight cases reports were filed on these acts and their perpetrators for the criminal act of “Murder” as defined in the Criminal Code of the Federation of BiH, and in one case for the criminal act of “Domestic Violence” as defined in the Article 222 (6) of the Criminal Code of the Federation of BiH, while two cases are run against unknown perpetrators. For the aforementioned criminal acts, 8 male and 2 female individuals were reported. During the investigation of the perpetrators of these criminal acts, police officers used investigative methodology, all operational and tactical measures and activities, and the latest technology, cooperating and consulting throughout with the relevant Prosecutor’s Office.

In the territory under the local jurisdiction of the Cantonal Ministry of Interior of the Tuzla Canton, there have been 34 acts of murder of female individuals. Regarding investigation and prosecution activities against the murderers of these women, we would like to emphasize that they were conducted pursuant to the Criminal Code of the Federation of BiH. It is important to point that in the majority of cases the
motives for murders of women were family relations, fights, jealousy, the families’ social circumstances, etc. With regard to practical recommendations and conducting the measures against perpetrators of murders of women and female children, it is important to distinguish if they occurred in the war or the post-war period, whether there was constant violence in the family, whether disabled persons were involved, etc.

With regard to the aforementioned, the available information and the legal elements that might be used for more efficient prevention, investigation and prosecution, and considering the fact that the majority of cases of murder of women and female children is the result of domestic violence, we state the following: The most important framework for protection of children from violence is defined in the criminal legislation of Bosnia and Herzegovina, including the Criminal Code of the Federation of BiH. The F BiH Criminal Code forbids violence against children, including sexual abuse and exploitation, physical punishments and other humiliating punishments everywhere where violence occurs, and especially in family surrounding.

In the Federation of Bosnia and Herzegovina, the Family Law treats the matter of protection from domestic violence and bans violent behavior of a spouse or any other family member (Article 4). In order to protect rights of children and to work in the best interest of children, the Law also defines the right of deprivation from parental and custodial rights over children who were exposed to a form of violence. The rights of children are defined in the Articles 124-127. The rights of children are there explicitly stated, and especially the rights of children to protection from all sorts of violence, abuse and negligence in the family. Thus, the Law defines what is considered to be abuse of rights, and it includes: physical and psychological violence against children, sexual abuse and conducing children to socially unacceptable behavior.

The criminal acts against life and bodily security, as defined in the Articles 166-176 of the Criminal Code of Federation of BiH, can also be results of domestic violence. Ruthless and violent behavior can occur within a family and can result in murder. In addition to the violent person, whose abuse of the victim can eventually lead to murder, it can also happen that a victim become highly unstable, not by his/her own fault, and can then commit an act of murder. With regard to the sanctions of criminal acts relating to domestic violence, we notice that sanctions differ depending on how grave the criminal act was.

Criminal act of “Domestic violence” as defined in the Article 222 of the Criminal Code of the Federation of BiH has 6 qualifying forms and, most frequently, the first two forms of this criminal act appear before the courts in the Federation of BiH:

(1) those who commit a violent act, whose ruthless behavior jeopardizes peace, bodily integrity or psychological health of their family members, will be fined or sentenced to up to 1 year in prison.

(2) those who commit criminal act defined in the paragraph (1) against a family member from their joint household, will be fined or sentenced to up to 3 years in prison.

Bearing in mind the punishment provided for these two forms of criminal offense, it is possible to issue an indictment, and the experience of the courts in the Federation of Bosnia and Herzegovina show that the perpetrators of such offenses are generally imposed conditional sentences. It is rarely the case to have imposed fines due to the difficult financial situation of offenders. This raises the legitimate question of achieved purpose gained by such criminal policy and whether it is possible to achieve adequate redress for victims. In the proceedings to follow these cases, a special attention should be paid to the following issues at all stages of the procedure, starting from the police, social welfare centres, prosecution, courts: the victim’s testimony regarding the abuse - physical, emotional, verbal, visible injuries; photographs that were previously made by the police, reports of medical expert on the severity of the violation; tangible items - weapons, torn clothes, broken items collected as evidence; psychiatric findings relating to the victim and psychiatric report on the accused.
Police has an important role in the protection, prevention and timely reporting of a crime or offense. The police is often the first in contact with both the perpetrator and the victim. From the behavior of the police depends on whether the case would be properly prepared for potential prosecution of the perpetrator. Evidence must be collected carefully; the police is coming to the scene and every detail is important (traces, photographs, testimonies, contacting the centers for social work, and contact with the victim aimed at providing her/him with the medical assistance).

The police should necessarily have their special departments to deal only with domestic violence and this positive experience is already present in the Sarajevo Canton. Members of the police in both entities have participated in specialized trainings on this issue. Thanks to these workshops, their sensitivity to the problem of domestic violence is increased, as is the case with efficient approach in providing assistance to women and children victims of violence. The workshops have helped in identifying a number of present prejudices and stereotypes about domestic violence among police officers, and in developing a better cooperation with NGOs. The Sarajevo Canton Ministry of Interior has established a special department that deals with investigations related to domestic violence and has qualified personnel to deal with the offenders and victims. The police often pointed out the problems faced in their work with the domestic violence cases and the problems faced in both entities are almost identical.

When solving a case of domestic violence, police officers who go to a scene need to take into account the following factors: to determine the position and condition of the victim, of the suspect and of the children; to determine whether a weapon was involved and whether it is still present on this site and to subtract it if any; to provide appropriate level of assistance to injured persons; to separate the suspect from the victim and witnesses; to take separate statements of the suspect, of the victim, and of the witnesses; to record any evidence of child abuse; to assess the condition of the victim in terms of collecting evidence directly perceived on the victim (traces of strangulation and other injury, pregnancy of the victim); to record mental state of the victim/children; to state the victim’s condition at the time of arriving at the crime scene; to record a mess if found in the house; to record the state of the suspect, including the use of alcohol or drugs; to record spontaneous statements of the involved tenants; to take photographs of the scene as found, as well as of injuries of the person in question; to transport the victim to a healthcare facility; to inform a Centre for Social Work; to record whether the suspect or victims are minor.

In the area under organizational coverage of the Ministry of Interior of the Zenica - Doboj Canton, the last ten years were marked with a total of 18 offenses in which the object of the attack were women or girls. In all the cases, the police officers acted in cooperation with the Cantonal Prosecutor, by taking all necessary steps and actions on documenting and finding the perpetrators of the crimes, which was followed by filing the reports to the Cantonal Prosecutor’s Office on the matter of criminal offense of “Murder” stemming from the F BiH Criminal Code. It should be noted that the major motives for the execution of these crimes were unsettled relations within the family or matters of pecuniary nature. Investigation of these crimes is regulated by the F BiH Criminal Procedure Code, while the qualification of the offense and the sanctions are regulated by the Criminal Code of F BiH: crimes against life and bodily security are regulated in Chapter XVI, where no distinction is made with respect to the object of attack resulting in sanctions that are identical and conditioned exclusively by the qualifying elements. In terms of procedure or qualification of a crime resulting in death of a person, it is also important to note the crime of “Rape” under Article 203 (3) and “Sexual Intercourse with a Child” under Article 207 (5) of the F BiH Criminal Code, as well as “Domestic Violence” under Article 222 (5) and (6) of the F BiH Criminal Code regulating imprisoned of the person if the offense referred to in this Article caused the death of a family member or “death of a previously abused member”. So far, no criminal offenses under Articles 203 (3) and 207 (5) of the F BiH Criminal Code were registered, while the crime of “Domestic Violence” was reported but in practice was predominantly qualified in accordance with consequence to happen. This is probably due to ambiguities in the wording of a crime perpetrator as a person “who murders a previously abused member”. Namely, two conditions must be met to have a crime registered as Domestic Violence (Article 222 (5) and (6) of the F BiH Criminal Code):
(1) to concern the murder of a family member – it is clearly regulated who is considered a family member, and

(2) with respect to the second condition, it is problematic on how to understand the phrase “previously abused.”

It seems that the meaning of this provision concerns the murder conducted during the ill-treatment or simultaneously with the abuse, or immediately after an earlier abuse conducted at the same place and in the same situation. Murder committed after an earlier assault, when there is time distance between the abuse and murder, would not suit the purposes of this inculcating action. The problem may also occur when the offender had earlier abused the victim, and then subsequently committed the murder without harassment which, as such, would no longer indicate concurrence of crimes of “Murder” and “Domestic Violence”. However, it is yet clear given that we are talking about a serious crime of murder, so the above question of concurrence of crimes could not be set.

Based on the aforementioned, there is a need to regulate the legislative on protection not only of girls but of children in general (taking into account their physical and mental development) within a separate Article of the Criminal Code. An account should also be taken with respect of protection of pregnant women, which could be regulated under the same Article. Criminal offense of “Domestic Violence” should be covered in accordance with the principle Article where the prevention segment would necessarily include the other institutions, primarily Centres for Social Work, and the perpetration of such crime would mean tightened sanctions. It is also needed to have an expert opinion and clarification of the term “previously abused”, which would be followed by adequate qualification of the crime for the purpose of the sanctions themselves.

The area of Sarajevo Canton has not registered an increase in the number of committed crimes of “Murder” of female victims. Applicable criminal law of the state and Federal level of Bosnia and Herzegovina, which is followed by police officers during the investigation initiated by the orders of the competent Prosecutor's Office, prescribe no special procedures for processing criminal suspects and collecting evidence related to the gender of the victim or the suspected person.

Pursuant to its statutory responsibilities, the BiH Ministry of Security will timely provide you with all the additionally acquired information relevant for the issue. The Ministry avails itself for undertaking activities that can contribute to increased level of security in Bosnia and Herzegovina and the entire region.