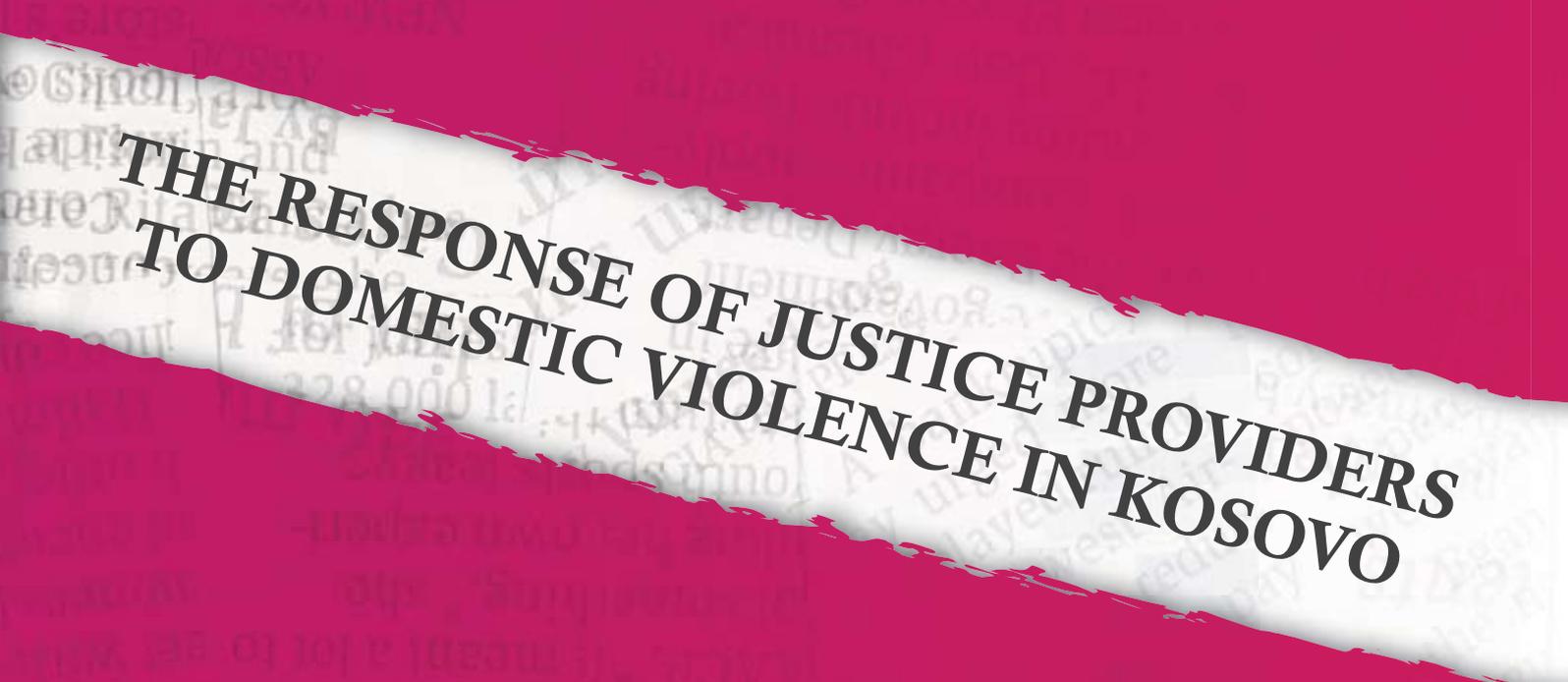




Kosova Women's Network
Serving, Protecting and Promoting the Rights of Women and Girls

more than
**“Words
on PAPER” ?**



**THE RESPONSE OF JUSTICE PROVIDERS
TO DOMESTIC VIOLENCE IN KOSOVO**

October 2009
Prishtina, Kosovo



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Prepared for the Kosova Women's Network
By Ariana Qosaj-Mustafa and Nicole Farnsworth

October 2009
Prishtina, Kosovo

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ACRONYMS

AGE	Agency for Gender Equality
CCK	Criminal Code of Kosovo
CPCK	Criminal Procedure Code of Kosovo
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPWC	Center for Protection of Women and Children
CRC	Convention on the Rights of the Child
CSW	Center for Social Work
DSW	Department of Social Welfare
DVR	UNMIK Regulation on Protection against Domestic Violence 2003/12
DVU	Domestic Violence Unit
EAR	European Agency for Reconstruction
EC	European Commission
ECHR	European Convention on Human Rights
ECLO	European Commission Liaison Office
ECTHR	European Court of Human Rights
EPO	Emergency Protection Order
EULEX	European Union Rule of Law Mission in Kosovo
GDP	Gross Domestic Product
IEPO	Interim Emergency Protection Order
ISF	Interim Security Facility
KCPC	Kosovo Criminal Procedure Code
KJC	Kosovo Judicial Council
KJI	Kosovo Judicial Institute
KP	Kosovo Police
KWN	Kosova Women’s Network
LAO	Legal Aid Officer
LAS	Legal Aid System
LDV	Law on Protection against Domestic Violence
LSMS	Legal Systems Monitoring Section
MLSW	Ministry of Labour and Social Welfare
MMA	Monitor, Mentor, and Advise
NAP-DV	National Strategy and Action Plan against Domestic Violence
NGO	Non-governmental Organization
OPM	Office of the Prime Minister
OSCE	Organization for Security and Cooperation in Europe
PO	Protection Order
SOK	Statistical Office of Kosovo
UN	United Nations
UNDP	United Nations Development Programme
UNICEF	United Nations Children’s Fund
UNIFEM	United Nations Development Fund for Women
UNMIK	United Nations Mission in Kosovo
VA	Victim Advocate
VAAD	Victims’ Advocacy and Assistance Division
WSSI	Women’s Safety and Security Initiative

EXECUTIVE SUMMARY

Ensuring access to justice for victims of domestic violence remains a challenge worldwide. While many citizens feel domestic violence is too “shameful” to report, representatives of public institutions often consider it a private issue best resolved within the family. Yet, domestic violence has a significant price tag for society, contributing to costs associated with prevention, protection, and prosecution, as well as low education levels, unemployment, and even GDP. By addressing domestic violence, the state can send a clear message that it will not tolerate such acts and will ensure security for all its citizens. Further, in accordance with international law, human rights principles, and existing legislation in Kosovo, institutions are obliged to investigate, prosecute, and punish perpetrators of domestic violence while offering effective remedies for victims.

Unfortunately, a deluge of obstacles still prevent victims of domestic violence from accessing justice in Kosovo. Identifying challenges to implementing the existing legislation can inform policy drafting processes and potentially amend current deficiencies. Therefore, to support the Government of Kosovo and other stakeholders in preparing the Law on Protection against Domestic Violence and the National Strategy and Action Plan against Domestic Violence, the Kosova Women’s Network (KWN) interviewed representatives of diverse institutions as well as domestic violence victims from June to September 2009.

In regards to protection against domestic violence, KWN identified numerous issues with the response of civil court judges, including: delays in the issuance of protection orders (POs); limitations in the types of measures issued by judges; poor reasoning of judgments; insufficient follow-up of the implementation of POs; lenient sentencing when POs were broken; and rare imprisonment of perpetrators for violating POs, even in cases of recidivism.

The prosecution of domestic violence criminal offences was equally worrying. Courts often failed to prosecute crimes such as light or grave bodily harm when they occurred in a domestic relationship, or when they did, lenient sentences were issued. Civil court proceedings and the issuance of POs were commonly seen as substitutes for prosecution. Termination of prosecution was frequent, particularly in cases of “reconciliation” among the parties or “withdrawal” of the victim’s accusation. However, in accordance with criminal legislation, crimes of bodily injuries committed in a domestic relationship *must be* prosecuted *ex officio*. Even when trials occurred, perpetrators received extremely low sentences for the crimes committed. Incomplete investigations, insufficient implementation of POs, poor cooperation between police and prosecutors, and a failure to arrest offenders increased victims’ vulnerability to recidivism while allowing perpetrators to go unpunished.

The performance of individuals within institutions offering assistance to domestic violence victims was mixed. Many still lacked knowledge regarding the domestic violence

legal outface, which impacted the quality of legal representation offered to victims. Insufficient budget and a lack of professional staff specializing in domestic violence were further challenges. Non-governmental shelters provided the important service of victim/witness protection, but still struggled to secure adequate funding for victims’ reintegration.

Tradition, social condemnation, fear of repercussions, financial dependence on perpetrators, and concern over losing child custody contributed to victims’ reluctance to seek justice. Poor performance by institutions led nearly a third of the victims interviewed to say they would not use the judicial system again.

The report concludes with recommendations for improving the current domestic violence legal outface and for individual institutions charged with ensuring protection of victims, prosecution of perpetrators, and prevention of future violence.

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INTRODUCTION

INTRODUCTION

Domestic violence is commonly defined as violence that occurs in a private dwelling between spouses. While most acts of domestic violence are committed against women and children, violence in private dwellings can be directed against other cohabitating individuals, such as men and elderly persons.¹ Domestic violence is a behavioral pattern, enforced and tolerated by many societies. Evidence has shown that domestic violence is a *matter of choice* and does not result solely from alcohol or drug abuse; genetics; physical or mental illness; uncontrollable behavior; or a problematic relationship.²

Common behaviors of domestic violence perpetrators include attempting to control their victims, belittling the effects of violence, blaming their victims for violence, and denying their actions. Perpetrators may behave peacefully in the public sphere and in court rooms, but privately continue to exercise violence, often believing that they have a right to use violence. According to the *Albanian Judicial Benchbook on Protection Orders*, “victims commonly consider domestic violence something unique happening to them and blame themselves for the violence, rationalizing the abuse.”³ As one woman commented, “If I don’t listen to my husband or I have bad behavior, it’s normal to beat me.”⁴ Domestic violence can lead to low self-esteem, stress, feelings of fear and denial, isolation from family and friends, insomnia, guilt, incapacity to care for oneself, inability to work, depression, divorce, discontinuation of education, poor physical health, miscarriages, suicide, and even death.⁵

Domestic violence thus has a significant price tag for society, including costs related to healthcare, policing, prosecution, trials, educational levels and thus employment levels, days lost at work (affecting GDP), productivity, and social assistance to victims.⁶ Creating a culture of nonviolence ensures free and safe development for each member of society. Further, in the long-term, nonviolence is less costly for the state, which must invest in prevention, protection, and prosecution of domestic violence acts. By reacting to violence occurring in domestic dwellings, the state can send a clear message that it will not tolerate such acts and will provide for the wellbeing of each of its citizens.

Nevertheless, ensuring access to justice for persons who have experienced domestic violence remains a challenge the world over. In many societies patriarchal traditions give men “the right to control their women” through violence if necessary; women risk social

¹ The Kosova Women’s Network (KWN) has discussed and documented violence against children, the elderly, persons with special needs, sexual minorities, and men. See, Farnsworth, Nicole and Qosaj-Mustafa, Ariana for KWN, *Security Begins at Home: Research to Inform the First National Strategy and Action Plan against Domestic Violence in Kosovo*. Prishtina: Kosova Women’s Network, 2008, available at www.womensnetwork.org.

² See *Albanian Judicial Benchbook on Protection Orders*, section on “Best Practices to Stop Domestic Violence,” OSCE Presence in Albania and USAID, Tirana, 2008, p. 33.

³ Ibid.

⁴ KWN, *Security Begins at Home*, p. 16.

⁵ *Albanian Judicial Benchbook on Protection Orders*, section on “Best Practices to Stop Domestic Violence.” KWN, *Security Begins at Home* and KWN, *Exploratory Research on the Extent of Gender-Based Violence in Kosovo and Its Impact on Women’s Reproductive Health*, Prishtina: KWN, 2008.

⁶ This paragraph is drawn from KWN, *Security Begins at Home*.

alienation by reporting the “embarrassing” fact that they have experienced violence. Many representatives of public institutions refuse to consider “private” acts of domestic violence issues for the public realm. Due to such socialized perceptions, domestic violence often goes unreported. Therefore, for the women (and some men) who take the social risk of stepping forward to report violence, the institutional response must be sympathetic, sensitive, and swift. A failure to react in time and with great care can and has resulted in repeat violence and even death,⁷ as well as hesitancy to report recidivist violence.⁸

In Kosovo, diverse institutions have been charged with the responsibility to protect the rights of persons who have suffered domestic violence. From the moment a case of domestic violence is reported to police, a shelter, a Center for Social Work, or a Victim Advocate, systems and procedures exist to ensure that each person receives assistance with filing a case, a medical examination if necessary, counseling, shelter, and support through judicial proceedings. The justice system in particular has a responsibility to protect victims of domestic violence from perpetrators by offering protection orders (civil cases), as well as automatic (“*ex officio*”) prosecution of persons who committed crimes.⁹

Unfortunately, it is no secret that a deluge of obstacles prevent victims of domestic violence from accessing justice in Kosovo. Much prior research has established that problems exist within the justice system in general and as related to domestic violence specifically.¹⁰ However, no research has examined closely problems with the entire *process* of accessing justice *and* included input from representatives of all institutions involved, *as well as* from women and men who have undergone these processes. Research that involves consultations with a broad cross-section of institutions as well as the beneficiaries targeted by their services is essential for identifying both problems and solutions.

The Kosova Women’s Network (KWN) took on this daunting task from June to September 2009 with financial backing from the United Nations Development Programme (UNDP)

⁷ According to the Kosovo Police, 17 people died in domestic violence related incidents between early 2005 and June 2009.

⁸ KWN interviews, 2009. See Chapter 6.

⁹ KWN prefers terms such as “clients,” “domestic violence survivors,” or “persons who have experienced domestic violence” to the term “victim.” The former terms empower, focusing on persons as subjects capable of taking control over their own lives and futures. Conversely, the term “victim” is disempowering and objectifying. Even so, Kosovar institutions and the current legal framework use the term “victim.” For consistency and to avoid any confusion, this report thus uses the term “victim.”

¹⁰ KWN reports *Security Begins at Home* and *Exploratory Research* have both highlighted weaknesses within the justice system particularly in relation to domestic violence. Both the OSCE (“Report on Cases of Domestic Violence in Kosovo,” July 2007 and “Kosovo First Review of the Civil Justice System,” June 2006) and Ombudsperson Institution (“Ombudsperson Institution in Kosovo Report concerning the Implementation of Section 7 and 9 of UNMIK Regulation 2003/12 on Protection against Domestic Violence, *Ex Officio*” Registration No. 1/06, November 2006 and “Acting Ombudsperson’s Annual Report to the Kosovo Assembly, (2006-2007)”) reports have provided examples of women’s lack of access to justice following domestic violence. The European Commission has expressed concern about access to justice in its annual reports (“European Commission Progress Report on Kosovo,” 2007 and 2008). Following a year-long monitoring exercise, the Balkan Investigative Reporting Network (BIRN) detailed in “Report: Monitoring the Courts” (2009) broader problems within the justice system, including, “unreasonably long delays in opening, and then concluding, cases; failures to meet the standards expected in handling trials, and some instances of suspected corruption by judges and prosecutors” (Terdevci, Fatmire and Tom Fuller, “BIRN Reveals Major Kosovo Court Weaknesses” 4 June 2009). Rubotham, G.N., et al. in “The Kosovo Judicial System: Assessment & Proposed Options 2003-2004” discussed at length the operational functions, deficiencies, and ways forward for the entire judicial system (2004).

Women’s Safety and Security Initiative (WSSI) and with support from the Agency for Gender Equality in the Office of the Prime Minister of Kosovo (AGE). The research aimed to “support the Kosovo government and policymakers towards the preparation and implementation of the National Strategy and Action Plan against Domestic Violence (NAP-DV) and Law on Protection against Domestic Violence (LDV),” both of which were in the process of being drafted.¹¹ The goal of the research was to establish “a comprehensive understanding of the judicial system in Kosovo pertaining to the implementation of legislation on domestic violence.” This report summarizes the research findings and makes recommendations for institutions involved in ensuring access to justice for domestic violence victims.

The Research Method

KWN employed mixed methods due to the inaccurate statistics,¹² inadequate systems in place for data collection,¹³ and insufficient existing research on the topic.¹⁴ The method involved:

- An analysis of the current legal and institutional framework related to domestic violence by a Legal Expert and a lawyer with former experience as a judge, which aimed to identify gaps in the existing domestic violence outface;
- In-depth semi-structured interviews with 96 women and men who suffered domestic violence about their experiences accessing justice. While various demographic groups were represented (e.g., age, ethnicity, geographic area, economic status, ability),¹⁵ the psychological wellbeing and physical security of respondents was the utmost priority in determining who was interviewed.¹⁶ In this direction, three trained counselors from Medica Kosova ensured a sensitive approach to interviewing, which sought to protect respondents’ emotional

¹¹ UNDP, Request for Applications, 2009.

¹² No statistical data is “accurate” *per say* in Kosovo due to the fact that census data has not been gathered since 1981.

¹³ Additional information is available in the chapters that follow.

¹⁴ The challenges faced with securing accurate statistics (described below) led the research team to use mixed methods to collect as much relevant information as possible about access to justice for domestic violence victims. The team used triangulation to test the validity of findings.

¹⁵ Respondents were identified through KWN’s member organizations. The 96 respondents included: 93 percent females and 7 percent males; ages 18-25 (16 percent), 26-35 (34 percent), 36-45 (28 percent), 46-55 (15 percent), 56-65 (2 percent), and over 66 years old (5 percent); rural (52 percent) and urban citizens (48 percent); from Prishtina (16 percent), Gjakova (13 percent), Prizren (8 percent), Ferizaj (5 percent), Dragash (4 percent), Peja (4 percent), Rahovec (4 percent), and more than 20 other municipalities (49 percent); Albanians (84 percent), Roma, Ashkali, or Egyptians (6 percent), Bosnians (2 percent), multiethnic persons (2 percent), Serbs (2 percent), Turks (2 percent), and Gorans (1 percent); the employed (18 percent) and unemployed (82 percent); married (35 percent), separated (24 percent), widowed (21 percent), single (10 percent), divorced (8 percent), and unofficially married (1 percent); and 83 percent with children and 17 percent without (the average number of children among those who had children was 2.56 and, on average, children were 14.63 years old). Data maintained by the Kosovo Police indicates that approximately 79 percent of domestic violence victims are women and 21 percent are men, which is why women are over-represented in the sample; male victims willing to speak about domestic violence were also extremely difficult to locate.

¹⁶ For all interviews, KWN strove to abide by high ethical standards for research with human subjects, including: informing all respondents about the research, their rights to participate or not, and how the information from interviews would be used; protecting respondents from potential harm; ensuring confidentiality; separating identifiers from research findings to ensure confidentiality; and maximizing positive benefits of the research (e.g., speaking with trained counsellors about their personal experiences, receiving information from counsellors about services available to them).

¹⁷ Interviews were informal, in a conversation style, aiming to maximise the comfort of respondents. All respondents were given the contact number of Medica Kosova counsellors so that they could receive follow-up counselling or assistance at a later date, if desired.

wellbeing and avert re-traumatization.¹⁷ Interviews were conducted in private rooms without the presence of family members, enabling respondents to speak more openly about their experiences;

- Semi-structured interviews with representatives of institutions and non-governmental organizations involved in ensuring access to justice: Kosovo Police (KP) officers in Domestic Violence Units, social workers in Centers for Social Work (CSW), Victim Advocates from the Victims’ Advocacy and Assistance Division in the Ministry of Justice (VAAD), prosecutors, lawyers, judges, presidents of courts, Legal Aid Officers, shelters, and women’s organizations.¹⁸ KWN also consulted with other stakeholders via interviews or questionnaires, including EULEX, the Organization for Security and Cooperation in Europe (OSCE), and UNIFEM;
- Collection of relevant existing data on access to justice in relation to domestic violence from KP, VAAD, CSWs, shelters, courts, EULEX, OSCE, and the Ombudsperson Institution; and
- Data from the Kosovo-wide household survey that resulted in *Security Begins at Home* in regards to people’s perceptions on access to justice.

Quantitative information collected during interviews was analyzed using two Excel databases, and qualitative data was coded by three researchers independently and then analyzed for trends. The Team Leader and Legal Expert then compiled a draft report, which was presented at an expert focus group on 22 September 2009, involving all stakeholders, including many respondents. Their recommendations have been included in the final report.

A major challenge faced by the research team was the fact that Kosovar institutions are still in the midst of establishing procedures for gathering detailed statistics. Most institutions collect basic information, but it is not stored in such a way that it can be disaggregated easily and important demographic data is not collected by most institutions. Collecting information from the justice system proved especially challenging. While judicial institutions employ registrars, few employ statisticians. Cases were registered manually by filling in hard copy forms with insufficient information. Registrars could assist with generating statistics only for limited types of information. Gathering data disaggregated according to key demographics like ethnicity, sex, age, socioeconomic status, and location was extremely difficult. Securing quantitative data on the types of trials, charges, rulings, sentencing, length of trials, and repeat offences was virtually impossible.

The absence of an electronic database prevents both municipal and district courts from generating accurate and timely statistics on domestic violence. Registrars in district courts register civil cases based on charges (e.g. “Breach of Marriage”), but cannot provide information as to whether cases were related to domestic violence. As a district court registrar told KWN, only the judge who dealt with the case knows this kind of information. Municipal courts did not maintain electronic records either, so identifying

¹⁸ The 61 interviews, averaging an hour in length, were conducted throughout Kosovo with nine municipal court prosecutors, five district court prosecutors, one public prosecutor in Prishtina, four municipal court civil judges, two district court civil judges, four municipal court criminal judges, two district court criminal judges, five lawyers, six Legal Aid Officers, five Kosovo Police officers, four presidents of the courts, five social workers, five victim advocates, and four shelter directors.

cases of domestic violence would require extensive human resources to peruse through individual case files. For example, since the Municipal Court in Prishtina was already assisting another research team to generate statistics on minorities, they did not have sufficient staff available to identify domestic violence cases at the same time. Installing a networked database in which demographics and cases would be regularly logged would save extensively on human resources, as well as provide essential information in a more timely and accurate manner.

The Kosovo Judicial Council (KJC) received funds from the European Agency for Reconstruction in 2007 to install a Case Management Information System to automate the Kosovo judiciary.¹⁹ The system will network all courts and ensure standardized data collection through shared software.²⁰ KJC hopes that all staff using the system will have completed training and that all software issues will have been resolved by the end of October 2009 when the system should become operational. Clearly there is an urgent need for the judiciary to use this database, which can potentially enable them to generate statistics for domestic violence as well as other issues quickly and accurately.

About This Report

“Kosovo has some of the most beautiful laws in the world... if only they were implemented.” Such sentiments have become commonplace among both women’s rights activists and representatives of institutions, illustrating the difficulties faced with implementing existing legislation.²¹ Identifying the specific challenges to implementing legislation can inform policy drafting processes and thereby potentially amend current deficiencies. Drawing from interviews with more than 60 representatives of institutions, 96 victims of domestic violence, and prior research, the chapters that follow seek to pinpoint issues with the existing legislation and its implementation so problems may be remedied through the new Law on Protection against Domestic Violence, National Strategy and Action Plan against Domestic Violence, and other legislation governing the prosecution of crimes committed in a domestic relationship, operational procedures, and work of institutions charged with ensuring access to justice.

*“We have very good laws on paper, but they are not being implemented.”
 – Albanian woman, age 36-45*

The research focused on how the judicial system has responded to the existing domestic violence legal outface in Kosovo. Princeton University has defined the “judiciary” as “the system of law courts that administer justice and constitute the judicial branch of government.”²² However, this research cast a wider net, examining institutions that

¹⁹ See Kosovo Judicial Council, available at <http://www.kgjk-ks.org/?cid=2,44&tpl=section.php>.

²⁰ KWN telephone interview with Besnik Ramosaj, Statistical Department, Kosovo Judicial Council, September 2009. The hardware has been installed, but delays have occurred with the software.

²¹ KWN interviews with representatives of institutions, July-August 2009.

²² See Princeton University, WordNet, available at wordnetweb.princeton.edu/perl/webwn.

play a direct or indirect role in ensuring access to justice for domestic violence victims: judges, prosecutors, the Kosovo Police, and authorized representatives, such as Victim Advocates, Legal Aid Officers, lawyers, Centers for Social Work, and non-governmental shelters.

The first chapter explains the current legal outface. The chapters that follow assess the performance of institutions responsible for ensuring access to justice for domestic violence victims. The second chapter thus examines the performance of judges in offering protection against recidivist violence via mechanisms such as protection orders. The third chapter discusses the criminal prosecution of acts of domestic violence. The fourth chapter examines the work of the Kosovo Police in investigating domestic violence acts as well as protecting victims from further violence. The fifth chapter assesses the work of various institutions and organizations responsible for safeguarding victims’ rights when accessing justice. The sixth chapter considers citizens’ perceptions of the judicial system, which may impact their decisions to seek justice or remain silent about domestic violence. The final chapter offers recommendations for policy-makers and individual institutions toward enhancing access to justice for domestic violence victims.

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**CHAPTER 1.
THE EXISTING
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OUTFACE IN KOSOVO**

CHAPTER 1. THE EXISTING DOMESTIC VIOLENCE LEGAL OUTFACE IN KOSOVO

Violence against women and children in its various forms should not be suffered in silence and is increasingly becoming part of a public debate.¹ The institutional response to domestic violence does not rely solely on the free-will of states; it is a direct obligation under international law and in accordance with human rights principles to investigate, prosecute, and punish perpetrators of domestic violence whilst offering effective remedies for victims of domestic violence.² Various international and regional conventions have been enacted that impose duties on states to “respect and ensure” the rights of all citizens by adopting legislative and other measures. The obligation to respect rights is not confined only to restriction of governmental actions but requires action to overcome such violations, as well.³

International conventions addressing the human rights of women and children directly apply when dealing with issues of domestic violence as most domestic violence victims are women and children. First, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) together with General Recommendation 19 on Violence Against Women set specific guidelines for state intervention. Second, the UN Convention on the Rights of the Child (CRC) is also relevant when children are affected.⁴ CEDAW General Recommendation 19 establishes principles of state responsibility for acts of state agents and its citizens.⁵ These two conventions are directly applicable in the Kosovo legislation, reiterated through the new Kosovo Constitution, adopted on 15 June 2008.⁶ Second, the European Convention on Human Rights (ECHR), also directly

¹ Pillay, Navanethem. *Violence Against Women: State-Sponsored Violence* in Bringing International Human Rights Law Home-Judicial Colloquium on the Domestic Application of CEDAW and CRC. United Nations, 2000, p. 62.

² General Recommendation 19 of the Committee on the Elimination of Discrimination against Women, adopted in 1992 on the implementation of the UN Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). The Committee recommended that the following measures should be taken by states to provide effective protection of women against violence: “[e]ffective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence” and “[p]rotective measures, including refuges, counseling, rehabilitation action and support services for women who are the victims of violence or who are at risk of violence” (Article 24(t), (i), and (iii)). See also, views of the Committee related to the case *A. T. v. Hungary*, *Communication No. 2/2003*, adopted 26 January 2005, where the Committee decided that due to the lack of effective legal and other measures, Hungary had failed to provide effective protection against domestic violence and thereby violated the rights provided under CEDAW.

³ See Cook, Rebecca, *State Accountability under CEDAW in Human Rights Law*, 237 (1994).

⁴ In General Recommendation 19 on Violence Against Women, the CEDAW Committee requires that states “pursue by all appropriate means and without delay a policy of eliminating violence against women” and also “[e]xercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons” (Article 9). The CEDAW Committee in interpreting CEDAW has stated, “[s]tates may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence, and for providing compensation.” Further, the CRC stresses that all violence against children is prohibited, and requires that states enact “all appropriate legislation ... to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s), or any other person who has the care of the child” (Article 19).

⁵ Navanethem, p. 62.

⁶ Similarly, the Kosovo Constitutional Framework in sections 3(2) (c), (e), (f), and 3(3) enlisted numerous international human rights instruments (i.e. CEDAW, CRC); as directly applicable in Kosovo as promulgated by UNMIK Regulation 2001/9 on the Provisional Institutions of Self-Government in Kosovo, adopted on 15 May 2001, available at <http://www.unmikonline.org> and <http://www.assembly-kosova.org>.

applicable in Kosovo, requests that states undertake adequate measures to combat domestic violence.⁷

Third, standards have been set by other international instruments such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration for Victims of Crime), adopted by the UN General Assembly on 29 November 1985, and the UN Declaration on the Elimination of Violence Against Women (UN Declaration on Violence), adopted by the UN General Assembly in 1993.

The UN Declaration for Victims of Crime sets a number of specific standards to address the prevention of crime and protection of victims.⁸ The measures include judicial representation, information on the judicial process, judicial redress from the acts suffered, psychological and medical support, shelter, and assistance. Even though these are not legally binding documents, they set the basis for intervention and create standards of response for the authorities in cases of domestic violence. Finally, the Parliamentary Assembly of the Council of Europe has addressed domestic violence issues by enacting various recommendations and resolutions while requiring immediate response to domestic violence by state authorities, both legally and institutionally.⁹

The Kosovo Legal Framework on Protection and Prosecution of Domestic Violence

Since violence can occur in different forms depending on the country, context, culture, and inter-familial relationships, each state is responsible for developing appropriate legal and institutional mechanisms to respond to acts of domestic violence within the framework of international human rights law. In order to fulfill this obligation the Kosovo authorities have enacted a number of laws to address the issue of domestic violence. In 2003 UNMIK promulgated the Regulation Amending the Applicable Law related to Sexual Violence, thereby criminalizing acts related to marital rape.¹⁰ Then, in May 2003 UNMIK promulgated the Regulation on Protection against Domestic Violence 2003/12 (DV Regulation), giving courts the main role in granting protection orders as a civil

⁷ Specifically, Article 3 of the Convention states that “no one shall be subject to torture or degrading treatment or punishment.” Read in combination with Article 1, which obliges states to “secure to everyone within their jurisdiction the enjoyment of the rights and freedoms defined in the ECHR,” requests that states, as an affirmative duty, prevent torture or degrading conduct that occurs in a domestic context. Case law of the European Court of Human Rights (ECTHR), Article 3, requires the public authorities to take adequate measures to ensure that individuals are not subject to inhuman or degrading treatment (including domestic violence) by private persons. The legal framework must protect victims in such situations. See case *A. v. the United Kingdom*, of ECTHR, judgment, 23 September 1998, para. 22 and *Z. v. United Kingdom*, ECTHR, judgment, 10 May 2001, para. 73.

⁸ Under this declaration a person may be considered a victim “regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. Further, “victim” means persons “who individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within ... states.”

⁹ Specifically see Recommendation 1582 (2002) on Domestic Violence Against Women, where the Assembly urges member states to recognize that they have an obligation to prevent, investigate, and punish all acts of domestic violence and protect victims of domestic violence, available at <http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta02/EREC1582.htm>.

¹⁰ UNMIK Regulation 2003/01 Amending the Applicable Law on Criminal Offences Involving Sexual Violence.

remedy. Further, the Criminal Code of Kosovo (CCK) and Criminal Procedure Code of Kosovo (CPCK) define a number of criminal offences committed in a domestic relationship that may be considered domestic violence in a criminal procedure.¹¹

Even though the CCK does not criminalize domestic violence acts *per se*, it does offer a number of criminal offences that may be considered domestic violence acts or omissions when committed in a domestic relationship:

- Light and grievous bodily harm (Articles 153 and 154 of the CCK);
- Coercion (Article 160);
- Threat (Article 161);
- Unlawful deprivation of liberty (Article 162);
- Rape including marital rape and sexual assault (Article 193, 195);
- Degrading the sexual integrity of the victim (Article 196);
- Sexual abuse of persons with mental or emotional disorders or disabilities in a domestic relationship (Article 197);
- Unlawful abduction of a child (Article 210);
- Mistreating or abandoning a child (Article 211);
- Violating family obligations (Articles 212, 213);
- Establishing slavery, slavery-like conditions and forced labour (Article 137) and
- Crimes against property when committed in a domestic relationship including crimes of theft, aggravated theft, misappropriation or taking possession of the movable property of the victim, damaging the movable property, including fraud, as well as damages caused to the person's right to property (Articles 252, 253, 257, 258, 260, 261).¹²

In order to offer civil and criminal remedies for domestic violence victims, the Kosovo applicable law involves a broad definition of domestic relationships to address the various forms of intra-familial relationships prevalent in Kosovo.¹³ Accordingly, acts of domestic violence in Kosovo can occur between unmarried intimate partners residing together, an uncle and niece, a father-in-law and daughter-in-law, and/or parents of a common child not residing in a common dwelling, among other relationships.¹⁴ The DV Regulation thus addresses the problem of violence between persons in a domestic relationship who share a common household or are parents of a child. Despite existing perceptions among some citizens,¹⁵ a couple *needs not have an official marriage certificate* to live in a “domestic relationship” and be susceptible to domestic violence.¹⁶

¹¹ Promulgated under UNMIK Regulations 2003/25 and 2003/26 and amended by the Kosovo Assembly laws, i.e. Kosovo Law on the Amendment of the Provisional Criminal Code of Kosovo, Law Nr. 03/L-02, and Kosovo Law on the Amendment of the Provisional Criminal Procedure Code of Kosovo, Law Nr. 03/L-03 (6 November 2008). Other laws also regulate different forms of domestic violence occurring in public or in procedures related to family disputes, such as the Law on Peace and Public Order (Official Gazette of the Socialist Autonomous Province of Kosovo (SAP) No.13/81), Kosovo Assembly Law on Family Nr. 2004/32, etc.

¹² These articles are listed in CCK chapters on criminal offences against life and body; liberties and rights of persons; sexual integrity; marriage and family; property; and international law.

¹³ See the definition of a “domestic relationship” in UNMIK Regulation 2003/12, Article 1.1 and CCK, Article 107(24).

¹⁴ See KWN, *Security Begins at Home*.

¹⁵ KWN interviews with domestic violence victims. See Chapter 6.

¹⁶ See Section 1.1, paragraph b of the DV Regulation and Article 107, paragraph 1 (24) of CCK.

The DV Regulation defines domestic violence acts and omissions as a basis for the issuance of protection orders in an expeditious civil procedure.¹⁷ Some of the acts defined in the DV Regulation juxtapose with the criminal offences listed under the CCK for the purpose of issuing protection orders. Other acts enlisted in the DV Regulation widen the definition of domestic violence to accommodate various occurrences of domestic violence acts and offer protection against such acts. That some acts in the DV Regulation are not in Kosovo criminal legislation has been critiqued as a gap in offering effective legal remedies to victims of domestic violence.¹⁸ The DV Regulation considers the following “acts of domestic violence”:

- Inflicting bodily injury;
- Non-consensual sexual acts or sexual exploitation;
- Causing the other person to fear for his or her physical, emotional or economic well-being;
- Kidnapping;
- Causing property damage;
- Unlawfully limiting the freedom of movement of the other person;
- Forcibly entering the property of the other person;
- Forcibly removing the other person from a common residence;
- Prohibiting the other person from entering or leaving a common residence; or
- Engaging in a pattern of conduct with the intent to degrade the other person.¹⁹

Notably, the DV Regulation requires *ex officio* prosecution on the violation of protection orders and light bodily harm.²⁰ The former Kosovo criminal law required the injured party to file a private claim for prosecution in cases of light bodily harm.²¹ However, this is no longer necessary. The DV Regulation requires *ex officio* prosecution in the crime of light bodily harm by amending the previously applicable law.²² This requirement has not been superseded by the Criminal Procedure Code of Kosovo (CPCCK) (2003/26), which entered into force after the DV Regulation. The new CPCCK removed the section according to which a motion by the injured party was required for the crime of light bodily harm (see CCK, Article 153). The prosecution is thus obliged to prosecute *ex officio* the crime of light bodily harm.

¹⁷ See paragraphs (6.3); (7.3); (8.4); (8.6); (9.4); (10.4); (10.6); (13.4); and (13.6) of UNMIK Regulation 2003/12 on Protection against Domestic Violence, specifying that the Law on Contested Procedure should be followed upon issuance of protection orders and the summoning of parties involved. In addition Section 18.2 states that the “provisions of the Law on Contested Procedure shall be applicable where not specified in this Regulation as a special contested procedure.”

¹⁸ KWN interviews with judges, July-August 2009.

¹⁹ Section 1.2 of UNMIK Regulation 2003/12.

²⁰ Section 16.2 and 16.3 of UNMIK Regulation 2003/12. Notably, the DV Regulation also requires *ex officio* prosecution in cases of property damage. However, the new CPCCK reintroduced that the crime of damage to immovable property should be prosecuted based on a motion by the injured party, superseding the provision offered by the DV Regulation (see Article 260 and 275 of CCK). Also see, OSCE Mission in Kosovo, “Report on Domestic Violence Cases in Kosovo,” 2007, p. 18.

²¹ SAP of Kosovo Criminal Code and Former Republic of Yugoslavia Criminal Procedure Code. See also, OSCE Mission in Kosovo, Section 6, “Rights of Victims: Review of the Criminal Justice System 2000-2001,” available at http://www.osce.org/documents/mik/2001/07/969_en.pdf.

²² Section 16.2 of the DV Regulation.

The DV Regulation addresses the need to protect the rights of domestic violence victims by enabling a civil court judge to issue a variety of protection measures against alleged perpetrators. Measures include: forbidding the perpetrator from approaching the victim within a specified distance; banning the perpetrator from visiting the victim’s workplace; prohibiting stalking; ordering the return of children or temporary custody to the victim; seizure of weapons; ordering the return of the victim to the common household; and/or demanding the perpetrator pay rent for the victim in cases of immediate threat to the victim’s safety and wellbeing.²³ These measures are available through the issuance of three types of protection orders: Interim Emergency Protection Orders (IEPO), Emergency Protection Orders (EPO) and Protection Orders (PO).

²³ Section 2 of UNMIK Regulation 2003/12.

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CHAPTER 2. PROTECTION AGAINST DOMESTIC VIOLENCE: PROTECTION ORDERS AND THE RESPONSE OF JUDGES

CHAPTER 2. PROTECTION AGAINST DOMESTIC VIOLENCE: PROTECTION ORDERS AND THE RESPONSE OF JUDGES

Under the DV Regulation, the primary responsibility in offering protection to victims against domestic violence remains with courts.¹ The court can issue two kinds of protection orders: an Emergency Protection Order (EPO) and a Protection Order (PO).² The differences between the orders are the duration of time for which the orders apply, the timeframe for courts to issue the orders, and the measures that can be issued against the perpetrator. Protection orders complement each other with the EPO issued first in a more expeditious procedure in cases when the victim’s security and wellbeing is considered at risk. If the court issues expeditiously the EPO, this does not stop the court from issuing the PO first if the victim or other authorized persons petition for such an order.

The EPO should be issued within 24 hours and needs to be confirmed within 48 hours of its issuance in a regular court session summoned by a single judge with the presence of the victim and the alleged perpetrator. The PO is issued for a maximum of 12 months and can involve additional measures against the perpetrator (see below).³ The time limit set for the issuance of a PO is 15 days in a regular court session and at maximum can be issued for 12 months. The Law Enforcement Agency, the Kosovo Police,⁴ is obliged to oversee the adequate implementation of the PO, which includes taking action when the PO is violated. The DV Regulation also foresees that police can issue a third type of PO, the Interim Emergency Protection Order (IEPO), for a period of up to 48 hours when judges are unavailable, such as nights and weekends.⁵

The table below illustrates the number of POs issued by courts (460) and police (103) by year and in total. Notably, in record-keeping the Kosovo Police does not seem to differentiate between the different types of POs available.

Protection Orders Granted in Kosovo

Protection Orders Granted By:	2005	2006	2007	2008	2009 (June)	TOTAL
Courts	108	183	59	54	56	460
Kosovo Police	3	1	4	95		103
TOTAL	111	184	63	149	56	563

Source: Kosovo Police, Domestic Violence Sector, Directorate of Major Crimes

¹ Section 5 of the DV Regulation specifies that the court with the jurisdiction to issue protection orders (POs) is the municipal court where the petitioners of POs reside permanently or temporarily. The composition of the court in deciding on POs is a single judge. In cases when claims under the Family Law are ongoing, the courts competent to decide on such cases are also competent to issue POs i.e. district courts.

² The DV Regulation also foresees the issuance of an Interim Emergency Protection Order (IEPO) (see below). The IEPO is extremely important for cases of domestic violence reported during weekends as courts do not have on call judges. The IEPO should be confirmed by a judge the next regular working day of the court (Section 13).

³ See Section 2 of the DV Regulation for the full list of measures.

⁴ Section 1.7 of the DV Regulation defines “Law Enforcement Agency” as “the Civilian Police of the United Nations Interim Administration Mission in Kosovo, also known as the United Nations International Police or UNMIK Police, and the Kosovo Police Service.”

⁵ For more information, see Chapter 4.

In accordance with the DV Regulation, POs have the purpose of protecting the victim from further violence, particularly during the period of time between when an alleged crime is committed and the criminal trial is held. Civil court judges thus have an important role to play in ensuring the safety and wellbeing of domestic violence victims through their rulings in regards to POs. However, a number of issues with the response of judges and PO rulings have been identified, as this chapter illustrates, including: delays in the issuance of POs; lenient sentences for repeat offenders and violators of POs; limited issuance of measures foreseen under the DV Regulation; poor reasoning of judgments ordering POs; and limited attention to ensuring PO enforcement.

Delays in the Issuance of Protection Orders

Various deficiencies have been found with the performance of courts in ensuring efficient and effective protection for victims. Reports have observed continuously the failure of judges to issue POs in the time limit set by the DV Regulation.⁶ Cases have been observed where judges took up to one year to issue POs, while for EPOs they took several days or even months.⁷ KWN interviews with a number of institutions and victims in June and July 2009 confirmed that delays continue.⁸ Two domestic violence victims told KWN that the court issued EPOs after the 24 hours stipulated by law. One respondent had to wait more than 16 days for the court to issue a PO, and Victim Advocates (VAs) told KWN that in some cases courts took up to three months to issue a PO.⁹

In their most recent monitoring of the issuance of POs in civil court cases, the Legal Systems Monitoring Section (LSMS) of the OSCE Mission in Kosovo reiterated the same concern, noting only slight improvements: some POs are now delayed up to nine weeks, rather than three months.¹⁰ Clearly courts are still failing to comply with the DV Regulation, which requires issuance of a PO within 15 days of its petition in order to protect the safety and wellbeing of the victim. Denial of an expeditious procedure and prompt protection places the security of victims at risk. Delays in issuing POs can result in repeat violence or even increased violence.

Judges have attributed delays to the lack of judges, perpetrators avoiding court sessions,¹¹ victims not responding to court invitations, changes of home address, procedural issues, the absence of functioning courts in Mitrovica region,¹² poor investigations by police,

⁶ See KWN, *Security Begins at Home*; OSCE Mission in Kosovo, *Report on Domestic Violence Cases in Kosovo* (2007); and the aforementioned Ombudsperson Institution report..

⁷ Ibid.

⁸ The Legal Systems Monitoring Section (LSMS) of the OSCE Mission in Kosovo continues to monitor civil court cases when POs are requested as part of an ongoing monitoring exercise (the last report on domestic violence in Kosovo was issued in July 2007). LSMS observed in 2009 that civil court judges continue to delay the issuance of POs far beyond the time limit set by the DV Regulation (KWN interview with LSMS staff, September 2009).

⁹ KWN interviews with Victim Advocates, June-August 2009.

¹⁰ KWN interview with LSMS staff, September 2009.

¹¹ Domestic violence victims also noted that perpetrators failed to attend court sessions and/or said that they did not receive a court invitation (KWN interviews, August 2009)

¹² Since the courts for Mitrovica region are located in the North and are not functioning according to Kosovar legislation, Kosovar Albanians in particular lack access to justice. Serb victims of domestic violence are reportedly seeking justice from courts located in Belgrade (KWN interviews with representatives of institutions in Mitrovica region, July-August 2009)

withdrawal of the initial petition, and, related, reconciliation between family members occurring prior to the hearing.¹³ As a lawyer commented, “These cases seem urgent at first, but then they become ‘normal’ cases ... because other institutions try to mediate an agreement between the perpetrator and the victim.” Nevertheless, courts have a duty to ensure an expeditious procedure, lest inaction contribute to future violence. Tellingly, in some cases, victims later renewed their requests due to recidivism.¹⁴

A few courts have overcome delays by appointing one judge to deal with domestic violence cases and the issuance of POs, such as the municipal courts in Peja and Gjilan. The need for specialized training on domestic violence as well as specific judges to work solely with domestic violence cases was constantly raised and sought during interviews.¹⁵

Lenient Sentences for Repeat Offenders and Protection Order Violators

In civil cases, numerous judges noted the problem of recidivism, as the DV Regulation does not foresee what kinds of sanctions should be ruled in repeat cases. Currently, when perpetrators violate the measures issued by the PO, judges seem to be sanctioning lenient sentences.¹⁶ It is unsurprising, then, that cases appeared repeatedly before the court.

The DV Regulation foresees that PO violations should result in fines for the perpetrator in the amount of 200 to 2000 Euros or up to six months imprisonment.¹⁷ Currently, in cases of PO violations, judges are prevalently fining perpetrators in the amount of 200 Euros.¹⁸ KWN identified very few cases of imprisonment following PO violations,¹⁹ and sometimes no action was taken. For example, a woman recalled:

Almost every day he showed up at my working place and threatened me, which was against the protection order ... Sometimes they [police] accompanied me in accordance with the protection order, but police did not take any serious action when the perpetrator did not respect the protection order.²⁰

Violations of POs should be understood with the seriousness of how domestic violence acts affect the victim, both physically and psychologically. If judges continue to provide lenient measures, evidence shows that victims will become increasingly less likely to seek justice and thus will continue to suffer domestic violence in silence.²¹

¹³ KWN interviews with municipal court judges, July-August 2009.

¹⁴ KWN interview, August 2009.

¹⁵ KWN interviews with representatives of all institutions, July-August 2009.

¹⁶ KWN interviews with representatives of institutions, July-August 2009. Further, they stated that police rarely monitored POs or investigated properly PO violations (see Chapter 4).

¹⁷ Section 15, DV Regulation.

¹⁸ KWN interviews with a VA and prosecutor, July and August 2009, respectively.

¹⁹ Only one prosecutor reported the sentencing of imprisonment following PO violations (KWN interview, August 2009).

²⁰ KWN interview with Albanian woman, age 26-35, August 2009.

²¹ See Chapter 6.

Therefore judges should consider handing down harsher sentences to perpetrators who violate POs. In cases of recidivism, the provision of imprisonment should be implemented, corresponding with the gravity of the offence committed and the requirements of the applicable law.²² To this end, representatives of diverse institutions have recommended that fines be increased.²³ “This [current minimum limit of] 200 Euros should be more,” a civil judge commented. “It is not a solution because he knows that if he breaks the protection order, it is possible to be punished again with the same [small amount]. It should be punished by double the sum of money when there is recidivism.”²⁴ Raising the minimum limit would also reduce the extent to which judges’ personal opinions might undermine sentencing for the gravity of the criminal offence committed.²⁵

Limited Issuance of Measures Foreseen under the DV Regulation

The DV Regulation foresees a number of measures that have the potential of establishing a foundation for the victim’s long-term wellbeing, including: prohibiting the perpetrator from entering or remaining in a common residence with the victim; ordering the perpetrator to pay the rent of the victim and her dependants when the safety and wellbeing of the victim does not allow her to return to the common household; ordering payment of alimony for the length of the PO; ordering the return of the children to the victim by granting temporary custody; prohibiting the selling of property by either the victim or the perpetrator while the PO is valid; and ordering the seizure of weapons, among other measures.

A district court judge provided an example of how the appropriate application of these measures followed by proper enforcement of the court ruling can have a positive impact:

[W]e ordered an enforced return of the victim where she lived because her father-in-law removed her from the home by force. Although her father-in-law tried to sell the house to remove the victim from there and even the municipal court denied the right of the victim to return home, we overruled the decision on her behalf and ordered her return and stay in the house. [This] blocked her father-in-law from proceeding with the transaction.²⁶

The victim’s right to remain in the common residence was thus respected for the length of the PO, which potentially provided her with additional time to seek property rights and/or to identify a longer term solution.

However, the measures most often issued by judges are few in comparison to the numerous types of measures offered by the DV Regulation.²⁷ Court judgments tend to conclude

²² Section 15, DV Regulation.

²³ KWN interviews with judges, social workers, and a President of the Court, July-August 2009.

²⁴ KWN interview with civil court judge, August 2009.

²⁵ The issue of personal opinions or tradition interfering with decisions was raised by numerous respondents (See also, Chapter 3).

²⁶ KWN interview with civil court judge, August 2009.

²⁷ See KWN, *Security Begins at Home*. Also, KWN interviews with institutions and PO rulings submitted to KWN by Peja Municipal Court, 2009.

that domestic violence has occurred and to issue a PO that usually contains two kinds of measures: 1) limiting the distance at which the perpetrator can approach the victim, and 2) ordering the return of the victim to the common household. No observation has been made of measures ordering the perpetrator to leave the shared residence. Nor have measures stated that the victim due to her safety and health should not be returned to the common household, but rather that the perpetrator should pay rent in the residence where she will reside while the PO is valid.

The common ordering of the victim’s return to the household, without assessing the safety and wellbeing of the victim, suggests that reconciliation is often seen as the preferable end-result of civil cases involving domestic violence. An example provided by a lawyer is illustrative:

There was a case of domestic violence. The husband beat his wife ... The case went to court, and the Center for Social Work recommended that the father receive parenting rights. There were six months of mediation to encourage the couple to come to an agreement. The husband was angry that his wife reported the violence and decided to file for divorce. He asked me to proceed the case [for divorce], but I didn’t. I lied to him, “The judge is not there.” ... because I believed that their relationship could be improved. After six months mediation and relatives consulting with him, they agreed.²⁸

The lawyer’s lack of consideration for the victim’s wellbeing seems forgotten in an effort to “improve” the relationship. Further, as this case illustrates, civil court proceedings related to child custody, divorce, or a PO request often overshadowed the criminal offence(s) carried out by perpetrators (an issue further discussed in Chapter 3).²⁹ Following criminal acts occurring in a domestic relationship, which demand automatic prosecution, many victims were never informed that POs were an option, let alone what protective measures could be made available to them.³⁰ The failure to consider other measures that could contribute to victims’ wellbeing denies them effective access to justice while leaving them susceptible to repeat violence.

Some civil judges attributed their focus on reconciliation, illustrated by measures ordering the return of the victim to a common household, to the limited sustainable solutions for victims. Numerous judges and prosecutors expressed concern about the few options available to women after reporting violence, women’s economic reliance on the perpetrator, the absence of alternative dwelling spaces for victims, and the consequences that reporting violence had on the preservation of marriage and the family.³¹ Some judges thus issued measures based on what they perceived were in the best interests of the family, thereby overlooking and perhaps unintentionally excusing domestic violence acts. For example, the President of a municipal court stated:

²⁸ KWN interview with lawyer, August 2009.

²⁹ KWN interviews with domestic violence victims and representatives of institutions, July-August 2009.

³⁰ Five victims said that police did not inform them about POs when they reported violence (KWN interviews, August 2009).

³¹ KWN interviews with judges, June-August 2009.

[W]e had a case of physical violence. The perpetrator was ordered pre-detention. The following day, when he came to the judge, he declared that the marriage would end there because his wife reported him. So the police shouldn't have arrested him; they didn't think what would happen to the couple. [N]ow she is divorced. We have to respect that there is a patriarchal society here. The police shouldn't arrest him even though the woman accused him. Both of them should be kept together in the police station and not to arrest the husband or anything similar that could impact their marriage and lead to divorce.³²

Similarly, a civil judge commented:

[T]he goal of the legal intervention should be the protection of the family. The giving of protection orders according to the Regulation has been counterproductive and didn't protect the family. Moreover it has influenced the destruction of families. ... There is a case when the ineffective measures of the Regulation destroyed the family; they got a divorce. The [domestic violence] case was reported to police [by neighbors] and because of tradition the husband decided to get a divorce. There should be a counseling center to report cases and counsel cases not experiencing long-term domestic violence where it is still possible to avoid divorce.³³

*“All the time they tried to minimize
the actions of the perpetrator.”
– Albanian woman, age 26-35*

Numerous respondents from Kosovo institutions expressed a similar preference for counseling to court procedures.³⁴ However, despite judges' best intentions, forced reconciliation and the return of victims to their

prior dwellings have often proven ineffective.³⁵ Three women who “reconciled” with their husbands, interviewed by KWN, reported that they continued to suffer physical as well as psychological violence after the “reconciliation”. Further 15 victims who received reconciliation services from institutions said they disliked being pressured to reconcile. When “solving” these cases, judges should implement the law and consider the best interests of the victim, including first and foremost safeguarding her or his physical and emotional wellbeing. In addition, what is in the “best interests” of the victim should be determined in consultation with the victim and not based solely on the perspective of the court or other institution.

“[These] problems should be eliminated through the law,” a shelter representative commented. “The law should be implemented in order not to have space for prejudicial conclusions during the trial ... not to push victims back into violent conditions.” Despite the seemingly common perception among civil judges, their role is not to mediate cases, but rather to apply the law. Their opinion regarding the best interests of the client or family should be irrelevant to the decision-making process.

³² KWN interview with the President of a municipal court, August 2009.

³³ KWN interview with civil judge, August 2009.

³⁴ KWN interviews with representatives of diverse institutions, July-August 2009.

³⁵ KWN interviews with domestic violence victims and institutions, July-August 2009.

Otherwise, patriarchal perceptions embedded in society run the risk of impacting judicial opinions and the course of proceedings, as the prior cases illustrate.³⁶

For example, the impact of patriarchal tradition on civil court rulings is evident in child custody cases, which are often inter-related with domestic violence cases. Respondents described cases where judges awarded custody unjustly to perpetrators of domestic violence.³⁷ A common reason for granting custody to the (male) perpetrator was the (female) victim’s poor financial situation and/or lack of property.³⁸ In some cases the perpetrator’s economic status took precedence over consideration for the physical and psychological wellbeing of the child. A police officer described such a case: “The perpetrator used violence also against his children, [but] they are living with him because the mother couldn’t take them [with her] to her brother due to the lack of economic conditions there.”³⁹ A shelter representative told of additional cases where women lost child custody because their right to joint property was not recognized in financial assessments related to the custody battle, and/or they could not afford lawyers to fight for property and inheritance rights.⁴⁰ Most domestic violence victims who had children (87 percent), interviewed by KWN, said their children were left with perpetrators when they were taken to shelters. Some described the violence perpetrators then used against the children. In accordance with the Convention on the Rights of the Child, closer attention must be paid to the wellbeing of children living in households where domestic violence has occurred.

*“[The judge] was telling me all the time how difficult it would be for a single parent to raise her children.”
 - Multi-ethnic woman, age 36-45*

The appropriate application of measures foreseen under the DV Regulation allow judges to grant temporary custody of children to the victim (Section 2), which can also ensure protection of the children from potential violence on behalf of the perpetrator. Awarding child custody to perpetrators of domestic violence may place children at grave risk of violence and at the same time dissuade women from reporting domestic violence in the future.⁴¹ A police officer noted that custody rulings made accessing justice difficult for women with children: “They could be afraid that they will not win parenting rights, especially when they are not employed or do not have their own dwelling space for living with children.” A more careful and considerate response that attends to all facts related to child custody battles is required on behalf of judges. In relation to domestic violence specifically, greater attention to the diverse measures foreseen under the DV Regulation could enable judges to offer safer solutions, at least temporarily, for victims and their children.

³⁶ Judges’ struggle to find the best solution for each family can also impact delays and incomplete cases, as one civil judge explained, “The absence of an effective solution that would prevent repeat violence impacts the case, so the file remains open.” Domestic violence victims interviewed by KWN also said that corruption and nepotism among judges impacted both delays in court proceedings and unfair trials in civil and criminal cases.

³⁷ KWN interviews with police, shelter representatives, lawyers, and prosecutors, July-August 2009.

³⁸ Ibid.

³⁹ KWN interview with Kosovo Police officer, August 2009.

⁴⁰ KWN interview, August 2009.

⁴¹ The President of a court and three prosecutors told KWN that victims had withdrawn from cases for fear of losing their children (KWN interviews, July-August 2009).

The aforementioned cases illustrate that lawyers and judges either have limited knowledge of the measures foreseen by the DV Regulation or hesitate to issue these measures. Since judges are limited by the measures petitioned by the victim, lawyers and VAs can play a crucial role in advising victims of measures afforded by the DV Regulation. Full implementation of these measures has the potential to support the long-term socio-economic wellbeing of victims and their children and to ensure appropriate protection of the victims' rights in accordance with international human rights standards. If implemented properly, subsidized governmental housing and institutional support in securing employment for victims coupled with increased fines, enforced alimony, and/or rental payments by perpetrators could address concerns over the economic dependency of women and their lack of sustainable dwelling alternatives. The full issuance of measures foreseen by the PO will support victims only temporarily, but at least it provides them with an opportunity to widen their scope of options and decide more freely about their future.

Poor Reasoning of Judgments Ordering Protection Orders

Another worrying practice in civil court cases studied by KWN is the overall poor reasoning in court judgments when POs are issued.⁴² The OSCE Mission in Kosovo reported previously that court judgments in civil disputes often failed to contain sufficient reasoning, which violates procedural law and can serve as grounds for an appeal.⁴³ It is a direct breach of the right to a fair trial in accordance with Article 6 of ECHR and ECTHR case law.⁴⁴ Reasoned decisions are also required by the Law on Contested Procedure,⁴⁵ which stipulates that the final decision must contain an explanation of the facts and evidence on which the decision was based.

Although sufficient evidence existed with medical reports mentioned in the court judgments, in some cases only the perpetrator, victim, or VA was heard.⁴⁶ Reasoned decisions are particularly important as their absence violates the rights of each party to a fair trial and can also serve as a basis for a higher instance court to overrule judgments. This situation can leave the parties in limbo and deny effective remedies for victims as their case can easily be challenged before a higher instance court. It also affects the right of the perpetrator to a fair trial. Such cases leave room for overruling court judgments, which may affect the victim's safety and wellbeing.⁴⁷ Even though the DV Regulation states that the

⁴² Case judgments on issuance of POs, submitted to KWN by the Municipal Court in Peja.

⁴³ OSCE Mission in Kosovo, Department of Human Rights, Decentralization, and Communities: Legal System Monitoring Section, May 2007 and March 2008 Monthly Report (“Insufficient reasoning of decisions in civil disputes violates domestic law and affects the right to a fair trial”).

⁴⁴ See also, OSCE Mission in Kosovo, *Report on Domestic Violence Cases in Kosovo*, July 2007, p.15.

⁴⁵ See Article 141, Kosovo Assembly Law on Contested Procedure, which entered into force in November 2008, available at <http://www.assembly-kosova.org>.

⁴⁶ The OSCE Mission in Kosovo reported similar cases in Peja and Gjilan municipal courts in 2007.

⁴⁷ The DV Regulation explicitly states that “[t]he court shall issue a protection order...if it determines that: there are grounds to believe that the respondent has committed or threatened to commit an act of domestic violence; and the issuance of the protection order is necessary to protect the safety, health or well being of the protected party” (Section 8 (1) (a) (b)). The DV Regulation states that a PO should contain the right to an appeal, though it should not delay the execution of the PO (Section 8.3).

appeal against a decision on a petition for a PO does not delay the execution of the PO, in practice it has delayed PO execution.⁴⁸ Therefore it is essential to act in accordance with the requirements of the applicable law and observe the provisions of the DV Regulation. The DV Regulation specifically states that the court will issue a PO if “there are sufficient grounds to believe that the respondent has committed or threatened to commit an act of domestic violence” (Section 8.1), thereby requiring that sufficient grounds are well reasoned and clearly detailed.

Limited Attention to Ensuring Protection Order Enforcement

As mentioned, the socioeconomic wellbeing of victims during and after domestic violence has been raised continuously by representatives of diverse institutions working with victims, as well as by victims themselves.⁴⁹ Numerous institutional representatives commented that the DV Regulation does not comply with the Kosovo context, particularly the current economy.⁵⁰ Domestic violence often occurs in families struggling financially,⁵¹ which can impact the implementation of POs. Representatives of institutions described numerous cases like this: “We have a case of house arrest where the perpetrator has been ordered to stay 300 meters away from the victim. In this economic situation where the victim has to stay in the same house with him, sometimes it is impossible to implement [the DV Regulation].”⁵²

In general, judges and police seem reluctant to follow through with the execution procedure in cases involving family disputes (see also Chapter 4). Tellingly, while 563 POs have been given, according to the Kosovo Police, a mere 32 PO violations have been reported since 2003.⁵³ Interviews with domestic violence victims and institutions suggest that these were not the only violations that occurred.⁵⁴ EULEX monitors and a Kosovo Police officer told KWN that insufficient monitoring of POs was largely attributable to courts; they often failed to inform police that POs had been issued, despite this obligation under the DV Regulation. While police should follow such cases, the absence of this essential information makes their task difficult. Representatives of other institutions also said that judges failed to inform them immediately of decisions, which impacted their ability to assist victims.⁵⁵

⁴⁸ Ombudsperson Institution report, 2006.

⁴⁹ KWN interviews, July-August 2009.

⁵⁰ KWN interviews with representatives of diverse institutions, July-August 2009.

⁵¹ The KWN Kosovo-wide survey in 2008 found a correlation between persons who experience violence and low income (*Security Begins at Home*, p. 36). At the same, it should be noted that domestic violence also exists in well-off families and that it is an issue that impacts families of diverse socio-economic statuses, ethnicities, ages, sexes, abilities, etc.

⁵² KWN interview with a prosecutor, August 2009.

⁵³ From the Kosovo Police Domestic Violence Sector, Directorate of Major Crimes, 31 August 2009.

⁵⁴ Numerous respondents commented that institutions were failing to monitor the implementation of POs (KWN interviews, July-August 2009).

⁵⁵ Workshop on Access to Justice for Domestic Violence Victims, Working Group on Safeguarding Victims' Rights and Access to Justice, 22 September 2009, Prishtina.w

The need to establish a special sector to monitor family relationships where POs are active was noted by numerous respondents.⁵⁶ Yet, this problem goes beyond domestic violence cases. The absence of the rule of law in Kosovo is a systemic problem. Delays in the execution of court judgments have been observed by a number of agencies monitoring the judicial system.⁵⁷ Most civil court decisions take years to implement, if they are ever implemented at all. A comprehensive strategy is needed to ensure the enforcement of all civil court rulings. Such a strategy should prioritize domestic violence and family cases considering the delicate issues of the wellbeing of the child as well as the broader significance that these cases have for society in terms of education, economy, and GDP.⁵⁸

Further, courts rarely intervened when POs were violated and alimony was not paid.⁵⁹ Legal Aid Officers reported delays in the review of alimony cases, despite the fact that such reports should be addressed with urgency⁶⁰ (Law on Execution Procedure, chapter 23).⁶¹ In one case, three years had passed since the court ordered the payment of alimony, and the decision had yet to be enforced. “Neither the police nor anyone from the institutions have taken any steps to help the victim to receive alimony,”⁶² a shelter representative commented.

“The perpetrator is employed, and he presented false documents to the court in order not to take responsibility for alimony. The prosecutors accepted these false documents as relevant to the case.”

– Albanian woman, age 26-36

While a failure to pay could sometimes be attributed to the perpetrator’s lack of finances,⁶³ evasion of legal responsibilities was common as well. A shelter representative said that some perpetrators lied about their employment contracts or kept unofficial contracts to avoid paying alimony. Other respondents reported perpetrators continuously switching bank accounts and/or banks failing to provide information as to

whether perpetrators had sufficient funds available to make payments. “They [perpetrators] have enough space by law to transfer their salaries from one [bank] account to another,” a judge commented. However, this illustrates poor knowledge of the law. The Kosovo Law on Execution Procedure requires that the judge’s execution order oblige the bank to send a notification about all changes in the person’s account as assigned by the execution decision.⁶⁴ The notification should include information from the 30 days prior to the delivery of the execution decision and information on each transaction in the person’s account, including the withdrawal of cash or money transfers within the bank

⁵⁶ KWN interviews with lawyers, judges, and prosecutors, July-August 2009.

⁵⁷ See European Commission Progress Report on Kosovo (2007 and 2008) on delays in the execution of civil court cases.

⁵⁸ See the Introduction.

⁵⁹ Ibid.

⁶⁰ KWN interview, July 2009.

⁶¹ Kosovo Assembly Law on Execution Procedure Nr. 03/L-008, adopted 2 June 2008.

⁶² KWN interview with shelter representative, July 2009.

⁶³ KWN interviews with representatives of diverse institutions, July-August 2009.

⁶⁴ Kosovo Assembly Law on Execution Procedure Nr. 03/L-008.

or between banks.⁶⁵ Insufficient investigation into perpetrators’ financial situation on behalf of judges allows perpetrators to avoid their responsibilities.⁶⁶

In conclusion, the main obstacles to protecting victims of domestic violence in accordance with the applicable law, namely the DV Regulation, include: delays in the issuance of POs; limitations in the types of measures issued by judges; poor reasoning of judgments, insufficient follow-up of the implementation of POs by police and judges; lenient sentences when POs are broken; and rare imprisonment of perpetrators for violating POs, even in cases of recidivism. These findings confirm prior observations made by diverse organizations monitoring and reporting on the judicial system in Kosovo: the judicial system rarely offers effective protection to victims of gender-based violence because it fails to observe expeditiously the basic procedural guarantees provided in the applicable law.⁶⁷

⁶⁵ Article 145.1, Law on Execution Procedure.

⁶⁶ KWN interviews with judge, shelter representative, and lawyer, July-August 2009.

⁶⁷ KWN, *Security Begins at Home*. See also, OSCE Mission in Kosovo, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings,” 2007; OSCE Mission in Kosovo “Report on Domestic Violence Cases in Kosovo,” 2007; and the aforementioned Ombudsperson Institution report..

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CHAPTER 3. PROSECUTION OF DOMESTIC VIOLENCE CRIMINAL OFFENCES

CHAPTER 3. PROSECUTION OF DOMESTIC VIOLENCE CRIMINAL OFFENCES

It has been reported previously that victims of gender-based violence and specifically victims of domestic violence in Kosovo face many challenges related to effective prosecution and appropriate punishment of perpetrators in accordance with the applicable law.¹ Prior reports by various agencies have evidenced the justice system’s lenient sentencing of perpetrators as well as its lack of understanding of victims’ vulnerabilities and needs.² Further, when treating victims of sexual violence, trafficking in human beings, and domestic violence, prosecutors have handled cases inappropriately and shown a general lack of sensitivity.³ The ways judicial structures have treated victims has discouraged some victims from coming forward to seek justice.⁴ This chapter discusses some current issues within the judicial system that may be preventing access to justice, particularly in relation to criminal offences.

The Prosecutorial Structure

There are 91 prosecutors in 13 prosecutors’ offices throughout Kosovo.⁵ The Office of the Public Prosecutor for Kosovo is located in Prishtina with additional district prosecutors’ offices in five regions of Kosovo and seven municipal prosecutors’ offices.⁶ Following a substantial reform of criminal justice legislation by the enactment of the Criminal Code of Kosovo (CCK) and Criminal Procedure Code of Kosovo (CPCK) in April 2003, national and international prosecutors worked side by side. In 2007, the OSCE observed that the new function overburdened the prosecutorial structure when it was already overloaded with limited staff and capacity by demanding increased engagement in investigations as well as supervision of police work during the investigation stage of pre-trial criminal proceedings.⁷

Following the declaration of independence by Kosovo in February 2008, the new European Union Rule of Law Mission (EULEX) was deployed in Kosovo, transferring some of the remaining competencies of UNMIK judges and prosecutors to EULEX staff. The new Law on the Jurisdiction, Case Selection, and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No. 03/L-053) was enacted setting the rules of engagement for EULEX judges and prosecutors. The new Law foresees that EULEX judges may

¹ See OSCE Mission in Kosovo, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings,” Ch. 3. Also KWN, *Security Begins at Home*, 2008.

² Ibid.

³ Ibid.

⁴ KWN interviews with victims, August 2009.

⁵ Sadiku, Halide for KIJAC, *Low participation of women in Kosovo justice system*, March 2009, available at: <http://www.kijacnews.net/vnews/display.v/ART/2009/03/19/49c11b3027ee0>, accessed September 2009.

⁶ OSCE Mission in Kosovo, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings.”

⁷ Ibid.

intervene in any new or pending property related civil case, including the execution procedures, in addition to their new main function to monitor, mentor, and advise. Further, EULEX judges *have the authority to request in written form information about the status of any ongoing or closed civil case falling under the jurisdiction or competence of any court in Kosovo*. The structure has been established to enhance the effectiveness of the Kosovo courts to prosecute and rule on the most serious criminal offences by increasing the Kosovo judiciary’s capacity to react to such criminal offences independently, impartially, and effectively.⁸

No mention of gender, however, existed in EULEX’s initial mandate, and domestic violence cases have not been considered a priority.⁹ “Domestic violence as such is not covered by the mandate of EULEX Prosecutors,” the EULEX Prosecutor’s office explained to KWN. “A EULEX Prosecutor would have executive power in a case of domestic violence only if it leads to a murder.”¹⁰ She added that the common problems related to protecting and securing the rights of the victim would “not appear” in such cases. Representatives of the EULEX Justice Component did not report any EULEX involvement in domestic violence cases.¹¹ Overall, the EULEX mission’s focus on ethnic and organized crime seemed to overshadow gender-based crimes. Nevertheless, the primary responsibility in prosecuting and ruling on domestic violence cases remains with Kosovo judges and prosecutors.

Prosecution of the Crime of Light Bodily Harm

In accordance with the DV Regulation and the new criminal codes, the criminal offence of light bodily harm should be prosecuted *ex officio* (automatically).¹² Despite these legal requirements, the LSMS of the OSCE Mission in Kosovo monitored several cases where perpetrators of the domestic violence act of light bodily harm did not face prosecution.¹³ Even after a prompt response by police in investigating and collecting evidence, the prosecution failed to take the investigation further and to prosecute the perpetrator when crimes of light bodily harm were committed in a domestic relationship. For example, in two cases in Peja and Gjilan, reported by the LSMS, police provided the prosecution with domestic violence case files where physical injuries were visible. Even though evidence was available, the public prosecutors could not locate the files in their registries.¹⁴ The

⁸ Article 5.6 of the Kosovo Law on the Jurisdiction, Case Selection and Case Allocation of EULEX Judges and Prosecutors in Kosovo (Law No.03/L-053).

⁹ KWN interview with EULEX representatives, August 2009.

¹⁰ Email correspondence with KWN, 4 September 2009.

¹¹ In 2009, EULEX had established a Working Group to deal with policy issues related to domestic violence and trafficking, but it was still in an initial phase at the time of this research. However, representatives of the EULEX Human Rights and Gender Office had been involved in providing comments on the draft Law on Protection against Domestic Violence. The EULEX police component had also monitored the work of police in a few dozen cases related to domestic violence.

¹² The DV Regulation explicitly states in Section 16(2) that the crime of light bodily harm should be *ex officio* prosecuted and the victim need not request or agree with the criminal charge. Further, under CPCK, Article 153, a motion of the injured party is no longer required.

¹³ OSCE Mission in Kosovo, “Report on Cases of Domestic Violence in Kosovo.”

¹⁴ *Ibid* and KWN, *Security Begins at Home*.

misplacement of files illustrates the apathy among some prosecutors for investigating further cases of light bodily harm in domestic relationships.

Follow-up monitoring of domestic violence cases has shown that problems still exist.¹⁵ KWN also analyzed some civil court judgments by the Peja Municipal Court, which issued POs indicating the crime of light bodily harm evidenced by medical reports. The court judgments also included notification for the public prosecutor. However, no prosecution of the cases seems to have occurred as the issuance of a PO is prevalently seen as a substitute for prosecution.¹⁶ More generally, civil procedures seem to take the place of criminal prosecution quite often. For example, an Albanian woman recalled, “I went to police to report violence and they took photos of my body where you could see the consequences of violence ... The charge was breach of marriage.”¹⁷ Despite the medical evidence of bodily harm, a civil divorce case was considered a sufficient solution and no prosecution occurred.

The failure to prosecute criminal offences seems to derive from a lack of knowledge among some prosecutors regarding the DV Regulation and its requirements.¹⁸ Many representatives of institutions thought domestic violence was only related to the DV Regulation, whether or not criminal acts were involved.¹⁹ For example, a public prosecutor told KWN that the “lack of effective prosecution of domestic violence acts come as a result of ... lack of law.”²⁰ A common view was that domestic violence acts should be included in the CCK, not only in the existing DV Regulation.

Additionally, prosecutors seemed to see a strict division between civil and criminal requirements related to domestic violence acts and the response needed by the prosecution for each. As stated in Chapter 1, the acts defined in the DV Regulation juxtapose with the criminal offences listed under the CCK, such as the crimes of bodily harm, property damage, unlawful abduction of a child, threat, and coercion. This perplexed situation with the legal provisions covering the same acts within both civil and criminal procedures and the lack of a definition of domestic violence *per se* in the CCK has been observed by prosecutors as problematic.²¹ They recommended the inclusion of a separate chapter on domestic violence as an amendment to the CCK.

Nevertheless, the requirements are clear even with the current provisions in the law; the ongoing civil procedure on issuance of POs *should not* be considered a substitute for the initiation of criminal proceedings. The consequences of failing to prosecute crimes can be harsh for families as well as society. A social worker described a case:

¹⁵ KWN interview with LSMS staff, September 2009.

¹⁶ Supra Note at 13.

¹⁷ KWN interview with Albanian woman, age 26-35, August 2009.

¹⁸ During interviews with KWN, a few public prosecutors at the district level seemed unaware of the existence of the DV Regulation and pointed out the need for a law to protect victims.

¹⁹ KWN interviews, July-August 2009.

²⁰ KWN interview with district prosecutor, August 2009.

²¹ KWN interviews with prosecutors, as well as a president of the court and judge, July-August 2009.

[T]he police discovered the case: the mother was not living with her children for almost a month; she was living with her family. She looked very bad the moment after she experienced violence. Since then, the children were living with the perpetrator. We talked with the mother, and she couldn't care for them, so we left them to live with the perpetrator. We foresaw that violence could happen against children, but we thought that because of the protection order he would not use violence against the children. *The court only issued the protection order; they didn't order imprisonment of the perpetrator.* The children were living with their grandmother in the same dwelling space. The police yesterday took him in pre-detention for 48 hours. Then they sent him to the psychiatrist. The children are not registered still and do not have any documents. The perpetrator was a member of the Kosovo Police until he used violence against his wife and since then he has been suspended. Now the children are in a shelter with their mother.²²

In such cases of neglect and abuse, including of children, the issuance of a PO should not be seen as the only measure to protect victims. If clear evidence of criminal offences committed in a domestic relationship between spouses and against children exist, the prosecution should react according to the requirements of the applicable law.

Termination of Prosecution

Previous reports have shown that there is overall reluctance of prosecutors to prosecute criminal acts occurring in a domestic relationship if the victim withdraws from the process due to “reconciliation” between the couple or if the victim is reluctant to continue because of pressure from the family or perpetrator.²³ KWN's interviews with both institutions and domestic violence victims illustrate that this practice continues.²⁴ A statement made by a lawyer was illustrative:

It should be regulated by law that the victim also has her/his right to reject the accusation made against the perpetrator... even in cases when there is *ex officio* [prosecution] because sometimes the victim forgives the perpetrator, the couple agree, and it is not possible for them to stop the judicial process. If the victim forgives him, there is no reason [for him] to be punished anymore. Theirs should be considered an intimate relationship and we should not disturb them anymore if they have agreed.²⁵

Another prosecutor felt that the criminal laws were too strict and should allow for termination of prosecution, such as in cases where violence happens “accidentally.”²⁶

²² KWN interview, August 2009.

²³ See KWN, *Security Begins at Home* and OSCE Mission in Kosovo, “Report on Cases of Domestic Violence in Kosovo.” Further, police officers interviewed by the OSCE LSMS suggested that one of the reasons for the failure to prosecute is that parties reconcile and no charges are brought by the prosecutor due to the withdrawal of the victim.

²⁴ KWN interviews with more than 20 representatives of institutions, July-August 2009.

²⁵ KWN interview with lawyer, August 2009.

²⁶ KWN interview with public prosecutor. The CPCK allows the prosecutor to dismiss a criminal report or terminate investigation only if specific legal conditions occur (see articles 208 and 224).

However, Kosovo criminal legislation (CPCK) *does not give* the prosecutor the option of dismissing a criminal report or terminating the investigation for prosecution of crimes, including light bodily harm, irregardless of victims’ requests. The crime of light bodily harm, if committed in a domestic relationship, is punishable from six months to three years imprisonment and must be prosecuted *ex officio* in accordance with the DV Regulation, which has not been superseded by the new CCK.²⁷ Further, under Article 226, paragraph 5, suspension, termination or refraining from prosecution in less serious criminal offences is not allowed for cases related to domestic violence and sexual violence. In summation, neither victims nor prosecutors have the right to decide to withdraw from prosecution if there are clear indications that crimes such as light or grave bodily harm have occurred.

Even so, numerous prosecutors admitted openly that they do not follow the law. “[T]here is not much we can do if the victim withdraws and asks us not to continue the prosecution,” a prosecutor told KWN. “The victims change their opinion about requesting punishment of the perpetrator” and ask the prosecutor to stop the procedure, another prosecutor commented. In some cases, victims reportedly reconciled with perpetrators and refused to talk. Inadequate evidence, the withholding of evidence such as medical examinations, and denial of prior testimonies made investigations and prosecution difficult, judges, prosecutors, and lawyers said.²⁸ A prosecutor commented, “[A]fter the couple agrees, all relevant institutions are silent; they are not active anymore. [S]ometimes there are difficulties getting testimonies from other family members, and this makes the situation difficult; they have a right not to talk.”

“Very often we are under pressure from the victim to withdraw the accusation, even when it’s ex officio and we can’t stop the process.”
 - Prosecutor

Like in the previously discussed civil cases, reconciliation was often considered preferable to prosecuting the crime, despite the legal requirements. For example, a prosecutor stated:

I had a case when the Emergency Protection Order was broken by the perpetrator. The apartment had only one room, which had to be used by both the perpetrator and the victim. I talked with them, providing psychological services. [It] is not foreseen [in the existing law] for a psychologist to go there before reporting the complaint for recidivism to the court. [S]ometimes it is not really necessary to come here [to the court] because sometimes they agree at the moment when they come talk with us.²⁹

As mentioned, whether the victim and perpetrator agree is irrelevant according to the CCK; violations of POs and bodily harm *must be prosecuted ex officio*. Perhaps the

²⁷ As stated, Article 153 of the CCK removed the wording from the previous criminal legislation that required the motion to be filed by the injured party in cases of light bodily harm.

²⁸ KWN interviews with more than 10 representatives of the judicial system, July-August 2009.

²⁹ KWN interview with prosecutor, August 2009.

confusion evident among some representatives of institutions may be attributed to Article 59 on Breach of Marriage of the Kosovo Family Law, which states that “the institution of marriage shall be preserved” and that “spouses to a marriage which may have broken down are to be encouraged to take all practicable steps, whether by marriage counseling, reconciliation procedures foreseen by this law or otherwise, to save the marriage.” It seems as if the Family Law may be taking precedence over the CCK due to the widely held perception among representatives of institutions that women’s economic dependence on perpetrators makes reconciliation the only viable solution.³⁰ A shelter representative commented:

There are many cases when the judge said to the victim, “Where do you want to go? You are dependent on the perpetrator’s income. What do you do with the children? You do not have dwelling space. Do you want to send the husband in prison?” This [judge’s statement] impacts also other victims because they usually communicate with each other about their experiences in the court. [I]t impacts their decision not to report [violence] to the court.³¹

Institutions thus seem to be encouraging victims to follow civil proceedings and attend the first required reconciliation counseling. Criminal acts are downplayed and often ignored. Extensive evidence of this exists from KWN’s interviews with domestic violence victims. While 54 victims reported having suffered a crime, as defined by the CCK, only seven cases went to criminal trial, while 28 cases went to civil court, primarily for proceedings related to “Breach of Marriage” (19) and POs (13).

In conclusion, the prosecution seems to be withdrawing quickly from further investigation of cases and from prosecuting the offender. However, the criminal laws explicitly demand criminal proceedings, preventing prosecutors from terminating cases based on their discretion and thereby seeking respect for human rights standards. In accordance with the existing legal framework, criminal acts that occur in a domestic relationship should not be tolerated and all acts should be investigated and prosecuted appropriately. Automatic prosecution must and should serve as a “frontline approach”, sending a clear message that domestic violence is not tolerated by the society and that the society should seek to stop it.³²

Low Sentences for Perpetrators of Domestic Violence Offences

Kosovo criminal laws require harsher sentences for crimes that occur in a domestic relationship when compared to similar crimes occurring between persons not in a domestic relationship. In order to show that there should be no tolerance of violence in domestic

³⁰ KWN interviews with representatives of institutions, July-August 2009. See also, Chapter 2.

³¹ KWN interview with shelter representative, August 2009.

³² See “Report on the Domestic Violence and Access to Courts: Response of NGOs to the Periodic Report of the United States to the United Nations Committee on the Elimination of Racial Discrimination,” available at: <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN25.doc>.

relationships, CCK foresees almost double sentences in comparison to sentences foreseen for similar acts committed against persons not in a domestic relationship. For example, Article 153.1 of CCK foresees that the crime of light bodily harm should be sentenced with a fine or imprisonment of up to one year. When the crime is committed in a domestic relationship, imprisonment can rise to three years. For the crime of grave bodily harm, the sentence foreseen is one to ten years and if committed in a domestic relationship the perpetrator may be sentenced from two to fifteen years imprisonment.³³

In 2007 the OSCE reported when monitoring cases related to gender-based violence that there was a general lack of prosecutorial experience or understanding of such crimes and the position of victims in such situations.³⁴ The prosecution commonly misclassified the crimes or failed to file appropriate charges for the crimes committed, leading to lenient sentences for those crimes. Similarly, of the dozens of cases of light bodily harm reported to KWN by judges, prosecutors and VAs, most perpetrators were warned with a condition or fined 200 Euros. A few perpetrators were imprisoned, but usually for three months or less. In only two cases reported to KWN were they imprisoned for five to seven years.³⁵

In domestic violence cases observed by KWN, some prosecutors and judges were reluctant to prosecute or rule judgments in line with the existing CCK. As a result, sentences often fell below the minimum sentences foreseen by the applicable law. There are “institutional prejudices toward cases of domestic violence, especially against women,” a shelter representative stated. “[F]or the first time [ever], this year, there was a case punished with eight years imprisonment. All other cases have been punished with six months or even nothing.”³⁶ Although the law foresees a sentence of up to 15 years imprisonment, in more than a dozen cases of grievous bodily harm reported to KWN by institutions and domestic violence victims, only one perpetrator was sentenced to more than a year imprisonment. Two were warned with conditions, while four others were released after a brief pre-detention by police and not prosecuted further.³⁷ A criminal judge explained her reasoning for light sentencing:

I had a case of a couple that agreed before me in court ... five or six years ago, but they came again recently. The woman suffered physical violence from her husband [and she] pleaded with me not to imprison him. I asked if she wanted to continue living with him, [and] she said, “Yes, I am dependent on the income provided by him and his father... I do not have anywhere else to go. I have four children.” I couldn’t sentence him to house arrest because he has to go to work; they have four children. So I decided to punish him with condition. If he repeats this [violence] again, he will be punished more. Next time, even if she asks not to imprison him, we

³³ Article 153.1 of the Kosovo Criminal Code.

³⁴ See OSCE, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings,” 2007, Ch. 3. Also KWN, *Security Begins at Home*, 2008.

³⁵ KWN interviews with domestic violence victims, August 2009.

³⁶ KWN interview with shelter representative, July 2009.

³⁷ KWN interviews with domestic violence victims and representatives of institutions, July-August 2009.

have to because it will be *ex officio*. We will follow the case... Even if she refuses for him to be arrested, he will be invited to the court session and tried.³⁸

Again, considering that it was already a recidivist case, in accordance with the law, the judge should have handed down a stricter sentence. Yet, during interviews, multiple prosecutors and judges described similar cases where conditions were given in lieu of imprisonment or fines “because the couple agreed to improve their relationship.”³⁹ This approach may be attributed to tendencies to prefer reconciliation for couples, concern over the lack of options for victims, and/or reluctance to understand the gravity of the crime committed due to its “private nature.” Nevertheless, while Article 228 of the CPCK foresees mediation procedures, it provides an independent mediator with such a role, not the public prosecutor or the judge. The aforementioned cases directly violate the rights of the victim to effective legal remedies and justice for crimes perpetrated against them.

In summary, case records from 2005 to 2009 provided to KWN by one criminal court judge illustrate all the aforementioned issues of light sentencing, termination of prosecution, and delays in trials (see the tables below). Nearly half of his 263 cases, including 191 cases of bodily harm and 48 cases of threats, were unfinished. Fifty cases had been ongoing since 2005. Among the 132 cases that were completed, the vast majority of offenders (88) were fined a mere 200 Euros. Others were given conditions (37), court warnings (3), and one was given psychiatric treatment. Only two offenders were imprisoned. Interestingly, the judge openly admitted that parties “stopped” procedures in two cases and victims pardoned perpetrators in four cases. As discussed previously, this is in direct violation of the applicable legislation.

Sample Trials and Rulings from a Criminal Judge in a Municipal Court

Year	Total Cases	Complete	Incomplete (ongoing)	Charges		
				Bodily harm	Threat	Total
2005	72	22	50	61	11	72
2006	73	53	13	60	13	73
2007	47	28	19	32	15	47
2008	47	28	19	38	9	47
2009	24	1	22			
Total	263	132	123	191	48	239

Results of Completed Trials

Year	Fine (€200)	Condition	Imprisonment	Psychiatric treatment	Court Warning	Parties Stopped Procedure	Accuser Pardoned	Re-trial	Total
2005	11	6			2	1	2		22
2006	35	17	2		1	1	1	2	59
2007	21	6		1					28
2008	21	7							28
2009		1					1		2
	88	37	2	1	3	2	4	2	139

Source: Criminal Judge, Municipal Court, 2009

³⁸ KWN interview with judge, August 2009.

³⁹ KWN interviews, July-August 2009.

Overall, as the table below illustrates, the Kosovo justice system seems to be failing to prosecute perpetrators charged with the crime of light bodily harm in cases when the perpetrator and victim are in a domestic relationship. Municipal courts seem to delay these cases as they have transferred an enormous number of criminal cases (2,036) from 2007 to 2008. Further, in 2008 they had an even larger number of unresolved criminal cases related to light bodily harm (2,174). In 2008, municipal courts resolved 621 cases, but 19.6 percent were resolved through methods that are not clearly stated in the database maintained by the Kosovo Judicial Council (KJC). The Kosovo Police has also identified dozens of cases that were “closed without grounds.”⁴⁰ In only eight percent of cases documented by KJC did perpetrators go to prison, and the length of the sentence was not specified.

Kosovo Judicial Council Summary of Outcomes of Criminal Cases in 2008

Article		Crimes against life and body (Article 146–157) / Light bodily harm (perpetrator and victim are in a domestic relationship) - 153 para. 4		
Types of cases				
CRIMINAL CASES TRANSFERRED FROM 2007		2,036		
CRIMINAL CASES INITIATED IN 2008		759		
TOTAL NUMBER OF CASES IN 2008		2,795		
621 cases were resolved, in the following ways:	Judgment	482 cases were resolved with court judgments, including:	Imprisonment	52
			Sentenced with Fines	237
			Conditional sentence	182
			Other Court Rulings	10
		Pardoned	5	
		Refused Judgment	12	
	Resolved through other methods		122	
NUMBER OF UNRESOLVED CASES IN 2008		2,174		

Source: Kosovo Judicial Council

Since the law is explicit in regards to the sentences that should be applied in cases of bodily injuries in domestic relationships, it is essential that courts apply the law correctly. Neither mediation nor termination of cases should be used by courts as methods for resolving criminal cases. Rather, through the correct application of the law, courts have the ability to offer “a way out” and better conditions for women (and men) in violent situations. Proper prosecution and sentencing, when combined with additional measures issued in civil courts, such as alimony, property rights, and payment of rent by the perpetrator (see Chapter 2), will further address some of the concerns expressed by judges in regards to the alternatives available to women after accessing justice.

⁴⁰ Kosovo Police, Statistics Provided to KWN for 2005-2007.

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CHAPTER 4. THE KOSOVO POLICE: INVESTIGATIONS, ARRESTS, MONITORING

CHAPTER 4. THE KOSOVO POLICE: INVESTIGATIONS, ARRESTS, MONITORING

Under the new Law on Police, the actions of the Kosovo Police should be guided by respect for human rights, equal and fair treatment for all, and recognition of the principles of gender equality incorporated in the Constitution.¹ A number of institutional and legal reforms have been undertaken in order to clarify the roles of police in investigations and their response to cases of domestic violence. In 2004, UNMIK and the Kosovo authorities established Domestic Violence Police Units (DVU).² Each station was required to have two trained Domestic Violence officers on-call to respond to all domestic violence cases 24 hours per day. In the police stations where a special DVU was established, reports of cases are usually handled by that Unit. In police stations where a DVU does not exist, the case is referred to the Community Police Unit.³

Following the reform of the criminal justice system and the promulgation of the Criminal Code of Kosovo and the Criminal Procedure Code (CCK and CPCK), judicial police⁴ were mandated to support the public prosecutor in undertaking investigative actions or to lead the investigation under the authorization of the public prosecutor.⁵ However, judicial police units with sufficient professional training to investigate various cases have not been established yet. This has contributed to the often unsuccessful completion of investigations.⁶

Under the DV Regulation, a number of roles and responsibilities have been defined in relation to police response to domestic violence cases.⁷ Accordingly, police must use all reasonable means to protect the victim and prevent further violence.⁸ The roles and responsibilities foreseen include but are not limited to:

- Inform the victim or her/his legal representative on the right to request an Interim Emergency Protection Order in accordance with section 13 of the DV Regulation;
- Inform the victim on legal, psychological, social, and other assistance services available from governmental institutions and NGOs providing victim services;
- Inform the relevant service providers on incidents of domestic violence and facilitate contact between the service provider and the victim, upon the request of the victim;

¹ Article 2 of the Kosovo Assembly Law on Police, Nr. 03/L-035.

² Established under UNMIK Police Operational Bulletin 0073 of 29 January 2004.

³ See Ministry of Labour and Social Welfare and OSCE Mission in Kosovo, “Responding to Incidents of Domestic Violence: Manual for Social Service Officers” (2006). Every police station enters data into the police database, which is networked throughout all regions. The Domestic Violence Sector in the Directorate of Major Crimes established a special database for domestic violence cases in 2005, which perhaps has the most organized system of data collection related to domestic violence in Kosovo. For more information, see KWN, *Security Begins at Home*.

⁴ Article 151 of the CPCK states that judicial police are police officers authorized to carry out investigations and other investigative functions under the supervision of the public prosecutor in addition to their other police functions.

⁵ Article 51 of the CPCK.

⁶ See European Commission Liaison Office, “Progress Report on Kosovo,” 2008, and UNDP Report on “Access to Justice,” 2008.

⁷ See Section 14 of the DV Regulation on “Responsibilities of Law Enforcement Authorities.” Further, under Section 1.7 of the DV Regulation, law enforcement authorities mean the Civilian Police of UNMIK and the Kosovo Police.

⁸ *Ibid.*

- Provide or arrange transport through another agency for the victim for treatment or medical examination and transport the victim and her/his dependants to the shelter;
- Assist the victim to remove essential personal property when the victim chooses to leave the shared household;
- When a PO has been issued, remove the respondent from the temporary or permanent residence;
- Provide the victim with an official contact of an investigating officer within the police;
- The police should complete an incident report whether or not a crime was committed or the perpetrator was arrested and provide the incident report to the victim or her legal representative;
- Where the victim is a person under the age of eighteen (18) years the police shall immediately report the incident to the Center for Social Work where that person resides; and
- Where there are grounds for suspicion that a crime involving domestic violence was committed, the police shall regularly provide the victim with an update on the status of the investigation.⁹

Under Section 13 of the DV Regulation, the on-call or acting Regional Domestic Violence Commanders of the UNMIK Police are mandated to issue an Interim Emergency Protection Order (IEPO) outside the working hours of the court. With the transfer of competencies from the UNMIK Police and in accordance with an internal police memo, the Kosovo Police now issue IEPOs according to the law. IEPOs can be requested by the same persons mandated to request Emergency Protection Orders (EPOs), but should be submitted to the law enforcement authorities (the police). There is no specified deadline for issuing the IEPO. However the measures are meant as an immediate temporary solution outside of the working hours of the court and thus an immediate decision is expected. The order expires at the beginning of the next day that the court is in operation. The CSW and other authorized representatives of the victim should be provided with a copy of the IEPO by the police.

Informing Victims on the Rights Afforded under the Applicable Law

In general, the reaction of police to reports of domestic violence cases has been prompt.¹⁰ Police stated that their ability to protect victims of domestic violence improved significantly with the passage of the DV Regulation. Prior to its existence, police only intervened to calm the situation and allowed people to solve problems internally. The specific procedure foreseen under the DV Regulation has explicitly defined and clarified the roles and responsibilities of the police, giving them more power to react when reports of domestic violence occur.¹¹ Both representatives of institutions and domestic violence victims seemed generally pleased with the performance of police, describing them as “sensitive” and “professional.”¹²

⁹ Ibid.

¹⁰ KWN, *Security Begins at Home*.

¹¹ KWN research with institutions July-August 2009.

¹² KWN interviews, July-August 2009.

When police come in contact with domestic violence victims, they are obliged by the DV Regulation to inform victims about their rights afforded by the Regulation, including the right to request the issuance of POs and information about services available to victims. Of 47 domestic violence victims interviewed by KWN who reported violence to police, 21 said police informed them of their rights, 18 were informed by other institutions, and eight were not informed at all. Five domestic violence victims explicitly said that police failed to inform them about POs. Clearly police are failing to offer information to *all* victims in accordance with the DV Regulation.

*“No one mentioned that I could request a protection order.”
 – Albanian woman, age 26-35*

Another significant problem is hesitancy among citizens to report domestic violence to police (see also Chapter 6). In KWN’s 2008 Kosovo-wide household survey of 1,256 respondents, among the reasons 19 respondents would not use the law to resolve cases of domestic violence was the perception that police would not take action or the law did not function.¹³ In order to overcome negative public perceptions, awareness campaigns and more community outreach efforts should be led by police officers in DVUs. Additionally, the DV Regulation requires police to prepare and disseminate victims’ rights leaflets, which would include necessary information on the existence of the DV Regulation¹⁴ as well as the roles and responsibilities foreseen to be offered by police.

Issuance of Protection Orders and Follow-up on Cases by Police

Some police officers continue to issue EPOs even though the law does not provide them with such competencies.¹⁵ For example, among the cases reviewed by KWN in Peja, more than half of the requests for confirmation and issuance of POs were requested by police after they had already issued EPOs. As stated in the DV Regulation, police may only issue IEPOs. Further training is needed for police to apprehend correctly the provisions of the DV Regulation and to ensure correct application of its procedures.

In addition, the difficulties involved with enforcing POs have been discussed briefly already (see Chapter 2). The law details measures for the execution of civil court judgments, including the role of police in upholding the execution of decisions, especially in cases arising from family disputes. However, evidence suggests that some police and judges are failing to ensure the implementation of POs and other civil court rulings that protect victims of domestic violence. A shelter representative provided an example:

¹³ KWN, *Security Begins at Home*, p. 62.

¹⁴ In 2008, more than half of the respondents to the KWN Kosovo-wide survey knew the DV Regulation existed, while 34.8 percent did not (*Security Begins at Home*, p. 2). In 2008, KWN also emphasized the need for awareness-raising efforts, including on behalf of police.

¹⁵ KWN reported that although Kosovo Police do not have the authority to provide EPOs, they had assigned such orders in 0.2 percent of cases (*Security Begins at Home*, p. 84).

[W]ith the Protection Order issued by the court it was decided that the victim should return home. We went there with the victim, social worker, police, and prosecutor. When we arrived, the victim’s father-in-law and husband threatened us with a gun, saying, “Whoever enters our home will stay here forever! We will kill!” We ... took the victim to her uncle because she didn’t have any close family member. [T]he police left with us, without taking any step against the perpetrators.¹⁶

KWN has observed that police often failed to intervene in cases of PO violations.¹⁷ One police officer attributed shortcomings to the heavy workload of DVU officers. The officer also expressed concern that repeated follow-up visits could anger perpetrators and lead them to take revenge on victims for reporting PO violations. Nevertheless, if violence were to occur, police by law must arrest and imprison the perpetrator. Further, the DV Regulation demands that automatic criminal prosecution ensues immediately after any PO violation whether or not violence is involved.¹⁸

Irregardless of the challenges they may face, police officers have a responsibility to follow the implementation of POs as part of their overall mandate to secure, protect, and *prevent further violence from occurring*.¹⁹ At present, precise procedures for consistently monitoring the implementation of POs do not seem to exist. How specifically police should engage in such monitoring needs to be clarified and defined procedurally.

Arrest, Pre-Detention, and Release of Domestic Violence Suspects

As stated, the DV Regulation provides police with the power to immediately arrest the alleged perpetrator if there are grounds for suspicion that a crime of domestic violence

has been committed. However, from 2005 to 2008, KP arrested suspects in only 30 percent of the reported cases of domestic violence.²⁰ Evidence thus suggests that police often fail to arrest suspected perpetrators of domestic violence, including in cases when the Criminal Code may have been violated.²¹ Further, an astonishing 35 domestic violence victims described to KWN instances in which crimes were reported to police, including bodily harm and sexual violence, but police did not arrest the perpetrator, generally failing to ensure

“There have been two cases where a couple had domestic violence. [T]hey each were released [by police] and told to come back for another interview. They never returned because ‘They have kissed and made up now,’ is what I was told when following up [on] the case.”
– EULEX MMA Investigator

¹⁶ KWN interview, July 2009.

¹⁷ KWN interviews with institutions and victims, July-August 2009.

¹⁸ See Section 16 of the DV Regulation.

¹⁹ Section 14 of the DV Regulation.

²⁰ Statistics provided to KWN by the Domestic Violence Sector, Directorate of Major Crimes, Kosovo Police, 31 August 2009 and fall 2008.

²¹ KWN interviews with representatives of all institutions and survey of EULEX MMA Investigator, 2009.

evidence that could support *ex officio* prosecution by the public prosecutor if informed. For example, a woman recalled:

I experienced violence for a long time. One day I decided that this cannot go on forever, and I filed a police report on domestic violence. The police asked me if I wanted to initiate the case. Since I had four children and ... no support from my extended family, I told them not to initiate the case but to warn my husband. They [police] asked my husband to come to the [station], and he filed a report stating that [the violence] was my fault.²²

In accordance with existing procedures, police must arrest the suspected perpetrator if any evidence exists that domestic violence occurred.²³ However, the tendency to simply inform the prosecutor and release the suspect has been reported.²⁴ While in accordance with police procedures prosecutors should be informed so that they may decide upon further investigation and the handling of the case, this does not absolve police officers from their responsibility to collect evidence and arrest suspected perpetrators.

A number of respondents observed that the failure to implement the law was due in part to traditional gender roles and cultural beliefs.²⁵ Nevertheless, police inaction following a report of domestic violence can place victims at grave risk of further violence, including increased and repeated violence, as a case described by a shelter representative illustrates:

[T]he husband was violent against his wife until she died. After that he was violent against her daughters and his son’s wife, even [using] sexual violence. [H]is son’s wife left the home; she went to her family of origin, and he went there and killed her as well as her sister. The police and no one intervened in time when he was violent against his wife!²⁶

Another domestic violence victim recalled: “The police came after thirty minutes and talked to him [the perpetrator, my husband]. Of course, he denied everything. After a time talking to him, they warned him that this should not happen any more, and they left. However, after two days the violence continued again and now more than before.”²⁷

²² KWN interview with Albanian woman, age 26-35, August 2009.

²³ See Section 14 of the DV Regulation. This is further substantiated by CPCK articles 211 and 212, which state that the police can arrest and detain a person for up to 72 hours if there is a grounded suspicion that he or she committed a criminal offence that is prosecuted *ex officio* and that arrest and detention is necessary to “collect information and items of evidence for the criminal offence in question.” The reasons for detention are defined under Article 281, paragraph 1, subparagraph 2, points (i) and (iii), specifically when there is good reason to fear that the person might destroy evidence of the criminal offence. The arrest shall be authorized by the public prosecutor or if such authorization has not been obtained, police should inform immediately the public prosecutor after the arrest. Further, Article 281 states that in addition to other grounds for detention the detention can be ordered by the court when “the seriousness of the criminal offence ... and other conditions indicate a risk that he or she will repeat the criminal offence, complete an attempted criminal offence or commit a criminal offence which he or she has threatened to commit” (CPCK, Article 281).

²⁴ EULEX MMA Investigator, email correspondence with KWN, September 2009.

²⁵ KWN interviews with representatives of institutions (August 2009) and email correspondence with EULEX MMA Investigator who had observed police interviews (September 2009).

²⁶ KWN interview, July 2009.

²⁷ KWN interview with Albanian woman, age 36-45, August 2009.

Domestic violence victims also reported police imprisoning alleged perpetrators and then releasing the suspects after a few hours or days in pre-detention without further investigation or a criminal trial.²⁸ An Albanian woman, age 26-35, commented, “One day he [my husband] came home after he could not find a job and started to beat me so hard that I called the police ... They took my husband to the police station and kept him in jail for 72 hours [and then released him].” In some instances, police seemed to consider pre-detention sufficient punishment for any crime committed and that no further investigation of the case was necessary. Whether the prosecution was informed and failed to take further the case was unclear. Nevertheless it had consequences on victims’ ability to access justice.

Also concerning was the insufficient protection offered to victims after reporting violence. First, initial conditions for victims at police stations were lacking, endangering the wellbeing of the victim and children. A shelter representative expressed concern:

[T]hey have to stay at the police unit for 12 hours. ... The police do not have a special room for them; they sleep on the floor. They do not even have food to give them. We had cases when they came from the police station to the shelter, [and] we had to take them to the hospital because they were sick after they slept on the floor at the police station.

Respondents emphasized the need for police to provide greater security to victims immediately following reports of domestic violence.²⁹ “[Police] should provide more security for victims when they report cases because they are in danger from the perpetrator,” a prosecutor commented. “Sometimes after the perpetrator stays in pre-detention for 48 hours they are violent the moment they return home. There is a need to monitor their return home.”³⁰ Follow-up on cases is also a requirement of the DV Regulation (Section 14, paragraph g), where it explicitly states that the police should provide “protection, if possible, to the reporter of violence, in accordance with relevant legal obligations regarding protection of witnesses.”

Overall, the need for all officers to respect the law and follow procedures on all domestic violence cases reported was raised continuously during interviews.³¹ In regards to arrests and pre-detention of suspects, this is especially important so as to protect the rights of the victim in accordance with the existing legislation and international standards. If victims are denied prompt and effective access to justice, they may be more hesitant to report cases of domestic violence.

Collection of Evidence in Investigating Cases of Domestic Violence

In accordance with the requirements for criminal procedures, the public prosecutor has the authority to initiate an investigation. Under the authorization and supervision of

²⁸ KWN interviews. A social worker interviewed by KWN also noted this issue (August 2009).

²⁹ KWN interviews with diverse institutions, July-August 2009.

³⁰ KWN interview, August 2009.

³¹ KWN interviews with representatives of all institutions, July-August 2009.

the public prosecutor, the judicial police can undertake an investigation relating to the collection of evidence as well.³² In the absence of specialized judicial police in Kosovo, appointed investigators in different areas undertake further investigations and collect evidence.

When called to the scene of a crime, police are the first responsible for gathering evidence, including photographing the scene and victims, collecting sample evidence, interviewing witnesses, and taking victims for forensic medical examination, as relevant.³³ Also in accordance with the DV Regulation, the police should complete an incident report whether or not a crime was committed and a copy of that report should be provided to the victim or the legal representative of the victim.

During interviews with KWN, half a dozen respondents expressed concern that weak police investigations led to insufficient proof for trials.³⁴ “[W]e do not always have completed cases with all the necessary information or proof,” a President of the court told KWN. “We often have to work on the investigation in order to finish a judicial process.”³⁵ Prosecutors in particular noted that police often failed to collect sufficient proof at the crime scene. “The report came to me after a month,” a prosecutor recalled. “The victim declared that she was beaten by all of her family members. At first she resisted visiting the doctor, and the police didn’t insist. They didn’t even photograph her injuries. When she came to me, I didn’t have any proof of her body injuries.”³⁶ Altogether, 11 domestic violence victims interviewed by KWN said that police failed to investigate their cases. Notably, six domestic violence victims said that police did take photographs of their injuries.

While incomplete files submitted by police hindered work of the prosecution,³⁷ police told KWN that the judges and prosecutors often ignored Kosovo Police reports in domestic violence cases. Poor cooperation between police and the prosecution can make victims reluctant to report domestic violence acts or to trust that the judicial system will provide them with effective remedies. Until measures are undertaken to ensure that the prosecution and police work together on investigations and collect substantial evidence, judges will continue to offer lenient sentences for domestic violence perpetrators (see Chapter 3).

“[W]e had a case when the father was suspected of raping his daughter. The police investigation was very weak. They didn’t interview all family members. The prosecutors didn’t prove that he had raped the daughter. There is a lack of professionalism among them. . . . Now the case is still open, but the information and proof are still missing six months later.”
 - Criminal Judge

³² CPCK, Article 221.

³³ See CPCK.

³⁴ KWN interviews, July- August 2009.

³⁵ KWN interview with President of a municipal court, August 2009.

³⁶ KWN interview, August 2009.

³⁷ OSCE Mission in Kosovo, “Report on Cases of Domestic Violence in Kosovo,” 2007.

Worryingly, nine victims also told KWN that police insulted them or treated them poorly, which often contributed to insufficient evidence for prosecuting cases:

“One day he used so much violence that I was bleeding and I went to the police station. I filed a police report but nothing happened. I called my [NGO] counselor and told [her] what happened at the police station. [S]he asked me if the police took me to the hospital or took photographs of the wounds. I told her that they did not do any of those things. I went again to the police station, and I asked them to send me to the hospital and to take photos of the wounds on my body. They told me that they did not have time to deal with me. I went to the hospital by myself and the doctor told me that I should submit an official request for this [my] case.” – Albanian woman, age 26-35

“They [police] told me that parents should use physical violence to educate their children.” – Albanian woman, age 18-25

“One night my husband came home drunk and beat me very hard. I was bleeding, and I immediately called the police. The police told me over the phone that most probably I made him upset and that is why he beat me. The police did not respond to my request to come to us.” – RAE woman, age 26-35

“After I filed a police report, the police asked me to go back home to the same person who used violence. They told me: ‘One husband can take care of seven wives.’ I made it clear that I would not go back to that house, and they sent me to the Center for Social Work. ... They considered violence as part of living and tried to decrease the importance of my problems. According to them, a husband is more privileged than his wife and a husband may have more than one wife. – Albanian woman, age 26-35

“When I went the first time to police to report domestic violence, they treated me very poorly and told me that husbands should beat their wives because that is their job. ... They did not go directly to the bar to get the perpetrator, but they warned him to hide because they were ‘looking for him.’” – Albanian woman, age 26-35

“The policeman said to me, ‘If my wife would call the police on me, I would kill her.’” – Albanian woman, age 36-45

“From the terrible violence that I experienced I was forced to go to the police. During my declaration, the Kosovo Police workers were not even paying attention to my words or concerns. I was so stressed, and I told them that they were not listening. They answered, ‘It’s better if you go home and take care of your children and not stay here making a declaration for hours.’ I got pissed off, and I left without signing the declaration. – Albanian woman, age 26-35

Clearly, poor treatment on behalf of police could contribute to victims withdrawing their report or deciding not to report future, recidivist violence. Concerns over corruption,

including bribery and nepotism, among police were also expressed by multiple domestic violence victims. One woman explained:

After the brutal beatings that I experienced, even though I was six months pregnant, I decided to call the police. I testified there about the violence that I experienced, and the police promised me that they would send my case to court. Afterward I went to the hospital to see my health condition and my baby’s, since I was bleeding. I stayed there for two days under the intensive care of physicians. Two weeks later I went to the Center for Social Work where I declared my case. ... [Then] I heard that my husband bribed police to not send my case to court.³⁸

Neither discriminatory treatment of victims nor corruption on behalf of police should be tolerated. Systems should be established through which such violations of their responsibilities can be reported, investigated, and punished. Such failures are in direct violation of the provisions of the applicable law and the obligation of the state to investigate and prosecute acts of domestic violence as well as further prevent occurrence of such acts.³⁹ Concerns over confidentiality were also expressed by a judge who noted that police daily reports in media, when related to domestic violence, provided enough description for victims to be easily identified, particularly in small communities. This potentially impacts the outcomes of the case, leads to pressure for reconciliation by the family and society, and may deter others from reporting violence in the future.

“The police give flash reports of daily happenings. Even though they do not mention names of victims or perpetrators in cases of domestic violence, the society knows everything because they tell the neighborhood, initials, etc.” - Judge

Regular monitoring and inspections of the quality of police work could help to identify issues with particular police officers and/or in particular regions so that poor performance could be reprimanded.⁴⁰ Hiring additional professional officers who work solely with domestic violence cases could enhance further their capacities for investigations as well as their sensitivity toward victims, respondents said. A EULEX monitor also emphasized the need for more detailed records of crime scenes, including photographs of the scene, victim, children, and suspect, as well as phone or digital recording.⁴¹ More generally, improved technical conditions, additional cars, a budget line for providing emergency food and medicine, and rooms for interviewing victims in stations where they do not exist were also requested.⁴² In conclusion, enhancing the quality of police response to domestic violence cases can ensure greater protection for victims seeking justice, prevent recidivism, and ensure that perpetrators’ crimes are prosecuted in accordance with the applicable legislation.

³⁸ KWN interview with RAE woman, age 26-35, August 2009.

³⁹ See the Introduction to the International Human Rights Framework related to domestic violence offences and state obligations.

⁴⁰ Domestic violence victims called for regular monitoring of the work of police officers (KWN interviews, August 2009).

⁴¹ Email correspondence with KWN, September 2009.

⁴² KWN interviews with police, as well as prosecutors and shelter representatives, July-August 2009.

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CHAPTER 5. SAFEGUARDING VICTIMS' RIGHTS AND ACCESS TO JUSTICE

CHAPTER 5. SAFEGUARDING VICTIMS’ RIGHTS AND ACCESS TO JUSTICE

In order to ensure that victims’ rights are safeguarded throughout the entire process of accessing justice in accordance with the clear obligations detailed in the UN Declaration for Victims of Crime, the legal framework in Kosovo charges a number of institutions with the responsibility to support victims of crimes, including domestic violence. These include the Victims’ Advocacy and Assistance Division within the Ministry of Justice; the Legal Aid System in Kosovo; Centers for Social Work with their specific responsibility to protect the rights of children; and the non-governmental safe houses, funded partially by the Department of Social Welfare, that provide shelter as well as other forms of support to victims before, during, and after judicial proceedings. This chapter assesses the quality of services provided and identifies areas for improvement.

The table below illustrates the number of domestic violence cases assisted by the aforementioned institutions by year and in total. Since different institutions may have assisted the same clients, these should not be added together.

Number of Domestic Violence Cases Assisted by Responsible Institutions, 2002- 2009

Source	2002	2003	2004	2005	2006	2007	2008	2009	Total
Kosovo Police	1273	1251	1318	1370	1371	1077	1032	470 ¹	9,162
VAAD		314	414	592	703	645	610	397 ²	3,675
Department for Social Welfare - CSWs			223	380	438	170	247	92 ³	1,550
Legal Aid Commissions							36	20 ⁴	56

The Victims’ Advocacy and Assistance Division

The UN Declaration for Victims of Crime sets a number of standards for assistance and protection of victims of crime, among them: a) Access to justice and fair treatment through judicial and administrative mechanisms and laws that need to be strengthened or created; b) Information for victims on their rights when seeking redress; c) Services and the restoration of rights violated, including considering restitution as an available sentencing option in criminal cases; d) Establishment or strengthening and expansion of national funds for compensation of victims in order to allow effective remedies; e) Assistance in the form of necessary material, medical, psychological and social assistance through governmental means; f) And police, justice, health and social services should be easily accessible and responsive to victims’ needs.⁵

¹ Data as of June 2009.

² Data as of 2 September 2009

³ Data as of June 2009.

⁴ Data as of July 2009

⁵ See UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (UN Declaration for Victims of Crime), adopted by the UN General Assembly on 29 November 1985, available at <http://www.un.org/>.

In order to offer effective remedies to victims of crime, the Kosovo authorities during the UNMIK administration developed the concept of “victim advocates.” Their roles and responsibilities are clearly stated in the Criminal Code of Kosovo (CCK) and Criminal Procedure Code of Kosovo (CPCCK). At the time, the definition of a “victim” was absent from previous laws and only the definition of “injured party” was in existence. Therefore the legal reviews of criminal and civil legislation incorporated the definition of the victim advocate into a few laws that addressed the rights of victims of crime. Specifically, CPCCK articles 81 and 82 position Victim Advocates (VAs) as key persons responsible for safeguarding victims’ rights, especially victims of acts committed in a domestic relationship. The VAs function as authorized representatives, and they safeguard the rights of victims by protecting their integrity during the “examination before the authority conducting the proceedings and to file and pursue property claims.” Further, they are mandated to assist the victim by safeguarding her/his rights including, where appropriate, as authorized representatives of the victim. Essentially, VAs should represent the interests of victims and advise victims on their rights.

The VAs’ responsibility for safeguarding victims’ rights began in April 2004. Since then, VAs must be present to advise and represent victims from the initiation of the court proceedings and the preparatory phase until the end of the court procedure and follow-up. The concept is based on a quasi-judicial assistance, as VAs need not necessarily be lawyers, but must be aware of the existing legislation and rights afforded to victims by the applicable law. In practice, however, most VAs deployed within the Ministry of Justice have a background in law.⁶ Under CPCCK, VAs must act as authorized representatives of the victim. The definition of “authorized representative” is a person who acts in the name and interest of the victim starting from the initiation of the criminal proceedings (Article 151). In cases where the victim’s legal representative or the victim does not request an authorized representative it is the duty of the president of the court to appoint one, *ex officio*, at public expense.⁷ This provision ensures the presence of VAs and enables them to fulfill their role of safeguarding victims’ rights.

In addition to the aforementioned criminal laws, the roles and responsibilities of VAs in protecting the rights of domestic violence victims are explicitly defined in the DV Regulation. VAs are enlisted as one of the parties that can petition for a protection order (PO). Together with the municipal Centers for Social Work (CSWs), VAs play a crucial role in defending the rights of domestic violence victims. Specifically, CSWs are to petition for a PO in domestic violence cases when children are affected and to represent the best interests of the child in court proceedings (even without the consent of the child if they feel the child is endangered by parents or other persons with whom the child shares a domestic relationship). VAs should react promptly in all cases of domestic violence, and upon the consent of the victim, they can petition for a PO as well as represent the best interests of the victim in court proceedings.⁸

⁶ OSCE Mission in Kosovo, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings,” chapter on Victim Advocates.

⁷ Article 82, paragraph 5 of the CPCCK.

⁸ Section 6 (2) of the DV Regulation.

Deficiencies have been reported in the performance of VAs when responsible for representing the interests of victims of gender-related violence, including domestic violence cases. VAs were rarely invited or present during court sessions for juvenile cases, or, when present, they played a very passive role.⁹ As one VA told KWN, “When we take part in a trial, we just listen.” Similarly, a shelter representative noted, “[The VA] that is provided to [victims] is very bad. For example, in three judicial sessions where an advocate accompanied the victim, that advocate never said anything to protect the victim; the victim was a case of incest.”¹⁰ As KWN reported previously, some VAs lacked knowledge and sensitivity in understanding victims of gender-related violence.¹¹ Some respondents complained that VAs do not advise victims adequately about their legal rights and that VAs need additional training on issues related to domestic violence.¹² A judge commented that VAs also need to be more cautious in regards to ensuring confidentiality.¹³

However, performance among VAs seems mixed, depending largely on the individual. Shelter representatives working in regions other than the aforementioned described the VAs in their areas as “professional” and “cooperative.” Of the 23 victims of domestic violence interviewed by KWN who had received assistance from a VA, most felt they were treated well. Three noted in particular their VAs’ “support” and “good advice.” Others said their VAs were not very actively involved in their case or that they were not provided with a VA at all. Only two respondents felt they were treated poorly: the VA did not believe that she had experienced violence and “supported the perpetrator,” respectively.

In any case, VAs throughout Kosovo continue to face operational challenges. A shelter representative commented, “We had a case when the Victim Advocate couldn’t accompany the police to take the victim to the court, so the victim missed her court session.” Although the VA explained that the absence resulted from the unavailability of the VA vehicle, the victim still missed the court session. VAs noted that they had insufficient resources for transportation, food, and clothes for assisting victims. They have had to use money from their “own pocket” to cover victims’ basic needs.¹⁴

Legal Representation of Victims: The Legal Aid System in Kosovo

Prior to 2006, when UNMIK Regulation 2006/36 on Legal Aid (Legal Aid Regulation) was promulgated, the legal aid system in Kosovo functioned as a project of the Kosovo

⁹ OSCE Mission in Kosovo, “Assessment Report on the Establishment of Referral Mechanisms for Victims of Trafficking in Human Beings,” 2007.

¹⁰ KWN interview with shelter representative, July 2009.

¹¹ See KWN, *Security Begins at Home*, p. 87-88. A VA told KWN that they had a case of a 13-year-old girl reporting sexual abuse by a man about 60 years old. However, the VA hesitated to react as they were not certain if perhaps the girl had sexual intercourse with her own consent. Clearly the VA lacked knowledge that sexual abuse of persons under the age of 16 is a criminal offence punishable with imprisonment for one to ten years, according to the CCK, Article 198.

¹² Two VAs clearly required further knowledge of the contents of the DV Regulation, and another VA stated that the main obstacle in addressing the rights of victims is the unclear definition of the role of VAs in the applicable law, which clearly illustrates a lack of knowledge regarding the VA mandate (KWN interviews, August 2009).

¹³ KWN interview with a criminal judge, August 2009.

¹⁴ Ibid.

Chamber of Advocates with support from the UNMIK European Agency for Reconstruction. The project commenced in 2001 and was extended on a yearly basis until 2005.¹⁵ Then, in 2006, the Legal Aid Regulation was promulgated, establishing a system of legal aid for both civil and criminal cases. The persons entitled to receive free legal aid are persons who would otherwise be denied effective access to justice because they lack sufficient resources. It particularly targets vulnerable groups by requiring effective delivery of legal aid and ensuring representation of their needs. Vulnerable groups are defined as “the poor, the homeless, the elderly, women, children, persons with a disability and persons from non-Kosovo-Albanian Communities.”¹⁶

The Legal Aid Commission sets the rules and procedures for enactment of the Legal Aid Coordination Office, which serves as a secretariat of the Commission (Article 1.2 of Legal Aid Regulation). The Legal Aid Coordination Office has five regional Legal Aid Bureaus and cooperates with the Kosovo Chamber of Advocates to appoint lawyers who provide free legal aid. The office also ensures free legal representation for cases and ensures fair representation of vulnerable groups as users of legal aid services (Section 7.1). Further, the Legal Aid Regulation requires the provision of information and advice regarding criminal proceedings in which the applicant has standing as a victim as well as in matters deriving from the Family Law where custody and maintenance of children are involved (Section 9).

According to Section 11 of the Legal Aid Regulation, those eligible for primary legal aid include all “qualified” persons who are receiving or are entitled to receive social assistance or who have an equivalent financial position. The Legal Aid Bureau receives and decides upon the eligibility of applications for legal aid. When cases are approved, the applicant is referred to an advocate from a roster established for that purpose.

The Kosovo legal aid system has yet to become fully functional, and non-governmental organizations (NGOs) continue to provide legal aid to low income groups.¹⁷ With bureaus based in each region, the system does not cover fully all of Kosovo. This has been critiqued as a human rights violation by violating the party’s right to counsel under the ECHR because it denies low income residents access to justice, especially in rural areas.¹⁸ Further, the quality of services delivered by lawyers contracted through the Kosovo Chamber of Advocates has been observed as concerning. Lawyers have been criticized for poor representation of the rights of clients, irregular attendance of court sessions, and unnecessary delays of sessions.¹⁹

Gaps in the Legal Aid System in Kosovo

KWN examined the legal representation of victims in both civil and criminal proceedings in order to analyze vulnerable groups’ access to free legal aid and justice in accordance

¹⁵ See OSCE Mission in Kosovo, “Legal Representation in Civil Cases,” June 2007.

¹⁶ Section 3 (u).

¹⁷ Supra Note at 16.

¹⁸ Ibid.

¹⁹ Ibid.

with the applicable law. Of the 17 domestic violence victims interviewed by KWN who received assistance from Legal Aid Officers (LAOs), 14 felt they were treated well. Victims said that LAOs provided useful information, explained their rights, assisted them through the legal process, and represented them well in court. Only one victim reported that a LAO failed to provide information about the trial and ignored her phone calls.

Certain structural concerns and capacity deficiencies were observed during KWN’s interviews with LAOs and lawyers. For example, LAOs stated that one of the main challenges they face in working with domestic violence cases is the performance of the contracted lawyers of the Kosovo Chamber of Advocates.²⁰ Their clients often complained that lawyers were very passive whilst representing victims’ interests in courts and that they failed to represent appropriately the interests of victims. The lawyers stated that due to the low tariffs offered by the contracts of the Legal Aid System, lawyers commonly refuse cases or provide poor representation of such cases before the court.

Generally, KWN observed a low level of understanding and knowledge of the applicable legislation related to domestic violence offences, both by LAOs and lawyers. Some LAOs were unaware of the existence of the DV Regulation and how domestic violence acts are defined. For example, to KWN’s question, is it “natural that physical violence happens sometimes between couples,” a lawyer of the Kosovo Chamber of Advocates answered, “Yes, it is natural that physical violence happens sometimes when a couple argues. In specific cases, why not? [Like] when women misuse their freedom, go out with others, and betray their husbands.”²¹ Other lawyers and LAOs saw a strict patriarchal division between the roles of women and men in society or lacked knowledge about acts of domestic violence, aside from cases involving the more easily detectable physical violence, as the following case illustrates:

[W]e had a case where the husband died and the woman’s brother-in-law removed her from the home. We tried to intermeditate to reach an agreement because there was no physical violence involved. He just removed her from her home and kept her children [not allowing them to go with their mother]. The police couldn’t prove this. We then referred the case to the victim advocates. [W]e tried to make them agree because there was no physical violence. [KWN: Do you think that although no physical violence occurred, the brother-in-law has the right to take her children and property?] It is better for them to live together, if they improve their relationship, as he didn’t say that physical violence occurred. [KWN: Do you think she is eligible to have the right to custody of her children and property?] Yes, by law... Yes.

Only following multiple probes by KWN in regards to the woman’s custodial and property rights did the LAO admit that she had legal rights. He also assumed that domestic violence occurs only if physical violence exists between spouses. In accordance with the DV Regulation domestic violence acts are not only physical and can occur between diverse persons in a domestic relationship sharing a common household.²² Although they

²⁰ KWN interview, August 2009.

²¹ KWN interview with a contracted lawyer of the Kosovo Chamber of Advocates.

²² Section 1 of the DV Regulation.

are defined as such, the LAO did not consider forcing the victim from the home or taking her children acts of domestic violence. Similarly, a lawyer described another case:

The husband beat his wife. She reported the case, and the court issued a Protection Order and also gave her the opportunity to meet [her] children. The house was the property of her father-in-law. She didn't have shelter, so she went back to her father. The parenting right ... was given to her husband because she didn't have any property. Now she is not feeling comfortable at the home of her father either and can't go back to her husband. *I think that every violent act should not be reported to the police [emphasis added].* Sometimes it is better to look for alternative solutions because when perpetrators or husbands are reported and pre-detained, they are angrier and decide to divorce, so victims do not benefit from reporting violence.²³

Clearly patriarchal tradition coupled with insufficient knowledge about domestic violence and how it affects victims can impact the quality of representation victims receive during trials.

The very criteria by which cases in need of legal aid are prioritized can be potentially discriminatory. Priority representation is based on the principle of “first in time, first in right,” a LAO explained, meaning that when both the victim and perpetrator approach the Legal Aid Bureau for legal representation, they will provide assistance to only one of them: the one who sought assistance first. The second case may be discriminated against even if both cases fulfill the basic criteria for support. The LAO did not see a problem with this “selection criteria.” However, such reasoning clearly contradicts the purpose of the Legal Aid Regulation. As mentioned, the Regulation requires that vulnerable groups such as women and the elderly, among others, receive priority legal aid in comparison to other cases fulfilling the eligibility criteria for assistance.²⁴

Another concern reported to KWN by four LAOs was the apparent overlap in the work of the LAOs and VAs. One LAO criticized the choice of VAs to be present at some court sessions or to engage other lawyers from the VA roster to represent victims of crime. Nevertheless, the Legal Aid Regulation is clear about the role of LAOs in relation to the roles and responsibilities of VAs. It requires that upon the promulgation of the Legal Aid Regulation, no provision of the Criminal Procedure Code of Kosovo is to be superseded where the roles of VAs are defined. As stated previously, the duty of VAs is to safeguard victims' rights and act as authorized representatives in cases where applicable. For example, when they observe failures in the legal representation of cases, they should react and request that the best interests of the victim be safeguarded. Additional training targeting VAs, lawyers, and LAOs to clarify each of their responsibilities and roles is needed to make all parties aware of the specificities of their mandate. Further, mutual experience exchange could enhance the sensitivity of lawyers and LAOs, so that they will have more informed and knowledge-based interventions when supporting vulnerable groups like victims of domestic violence.

²³ KWN interview, August 2009.

²⁴ Section 3 and 7 of the Legal Aid Regulation.

In conclusion, the aforementioned cases illustrate some cause for concern regarding the quality of legal representation being offered to domestic violence victims, as well as the extent to which these institutions are sensitive to their best interests. The current legislation related to domestic violence acts as well as international human rights standards should be part of future training offered by the Legal Aid Coordination Office and Victims’ Advocacy and Assistance Division within the Ministry of Justice in cooperation with the Kosovo Chamber of Advocates. Training should include components on how to offer sensitive legal representation to victims and how best to protect their needs and represent their interests.

Safeguarding the Rights of the Child and Aiding Victims: Centers for Social Work

While Centers for Social Work (CSWs) have diverse responsibilities, their work specifically in regards to domestic violence victims accessing justice involves the ability to petition for a Protection Order in domestic violence cases when children are affected.²⁵ CSWs have a legal responsibility to represent the best interests of the child in court proceedings. In civil cases CSWs provide their opinion in regards to child custody. Indirectly, CSWs can also impact access to justice.²⁶ Securing social assistance and/or CSW support in child custody cases can make a world of difference for women seeking to break free from a violent family relationship and/or to secure custody of their children.

Of the 60 domestic violence victims who received assistance from a CSW, 77 percent felt they were treated well by their social worker. They said that social workers listened carefully, advised them of their rights, offered counseling, helped them secure shelter, and supported them to improve their financial situation by helping them complete their documentation for social assistance or for residence in a home for the elderly. A few clients also noted the assistance they received from the CSW in securing child custody.

As part of their reconciliation responsibilities under Article 59 of the Family Law, CSWs encouraged more than a dozen of the domestic violence victims interviewed by KWN to reconcile and reunite with the perpetrator. While some respondents were happy with the counseling they received, half said they were uncomfortable with the pressure applied by CSWs to reconcile. As one woman commented, “They were never in my shoes.”²⁷ Further, CSW attempts to reconcile couples in family disputes affecting children, in accordance with their mandate, reportedly contributed to delays in trials.²⁸

²⁵ Section 6 (2) of the DV Regulation.

²⁶ A number of laws guide social services in offering protection to victims of domestic violence (i.e. the Law on Social and Family Services, Law on Family, and DV Regulation). The 2005/02-L17 Kosovo Assembly Law on Social and Family Services regulates services to persons and families in need, defining persons in need as domestic violence and human trafficking victims. Domestic violence victims therefore are entitled to social protection, including social assistance, counseling, and material assistance in cases where funding is available (Article 1.4 and 2.10). Further, the Family Law of Kosovo enlists CSWs as guardians for children in need of social protection (UNMIK Regulation 2006/07 on the Promulgation of the Kosovo Assembly Family Law 2004/32, Article 6, paragraph 2). For further details on the mandate of CSWs in representing the interests of children, see KWN, *Exploratory Research* (2008), Annex on the Legal Framework.

²⁷ KWN interview with multi-ethnic woman, age 36-45, August 2009.

²⁸ KWN interviews with a civil judge and victims of domestic violence, August 2009.

Thirteen percent of respondents who received assistance from CSWs felt they were not treated well by social workers. They said social workers did not believe what had happened to them and/or did not want to help them. “[I felt] very bad,” a woman said.²⁹ “I told them about my violence experience but they would not trust me ... No one would make up lies about stories like [mine].” Other respondents said the CSW offended them: “One woman there told me that they are tired of us because we are arguing with our husbands and then the CSW has to help us. I did not go there anymore, and they did not help me with anything.”³⁰ Further lack of professionalism was shown in another case where the social worker made the victim tell her personal and potentially re-traumatizing case in a room full of other people.

Poor recommendations made by CSWs in civil court cases can also have a negative impact on victims. A case described by a shelter representative illustrated this point:

There is a case of a woman who is 80 years old. She was married 50 years ago and didn’t have any children, but lived and cared for her husband’s children whom he had with another wife. Her husband died four years ago, [and] they never had a marriage certificate. Now the husband’s son and children removed her from home and want to send her to the elderly persons’ home without giving her any right to the property where she contributed for 50 years. The CSW is supporting [the children], saying that she does not have any document to prove that she was married and contributed there for 50 years. ... The case went to police, but they depend on the CSW report. The case is still ... under investigation. We [at the shelter] feel that the CSW is impacted by tradition and is a relative of the perpetrator. We can find witnesses to testify about her marriage.³¹

Representatives of other public institutions expressed concern that CSWs did not always treat clients “seriously and properly with respect”,³² failed to appear in court for cases involving minors;³³ were slow in responding to and assisting cases;³⁴ did not assess accurately family income in order to inform trials;³⁵ did not ensure that women had child visitation rights in spite of the court’s ruling;³⁶ were inactive in monitoring the situation of clients;³⁷ and showed nepotism.

“The Center for Social Work ignores their responsibilities: they wait to go [pick up victims]; they do not come here in the police station for four hours, etc. They should be more serious in treating these cases, to act faster.” – Kosovo Police officer

²⁹ KWN interview with an Albanian woman, age 36–45, August 2009.

³⁰ KWN interview with Albanian woman, age 36–45, August 2009.

³¹ KWN interview with shelter representative, August 2009.

³² KWN interview with a judge, August 2009.

³³ KWN interview with Victim Advocate, August 2009.

³⁴ KWN interviews with a police officer, prosecutor, and shelter representative, July–August 2009.

³⁵ KWN interview with a shelter representative, August 2009.

³⁶ KWN interview with a shelter representative, July 2009.

³⁷ KWN interviews with Kosovo Police officers and a Victim Advocate, August 2009.

These deficiencies were not entirely the fault of social workers, who faced a host of operational and technical difficulties that impacted their ability to perform their responsibilities well. Numerous respondents noted that CSWs had poor working conditions and an insufficient budget.³⁸

As a result, CSWs faced shortages in vehicles, telephones including emergency cell phones for social workers on call, fuel, internet connections, private rooms for interviewing domestic violence victims, and staff, all of which impacted their ability to offer timely, quality assistance. Respondents emphasized the need for CSWs to have more professional social workers who were specialized in and dealt only with domestic violence cases.

“[W]hen we call the CSW they say, ‘We do not have a car to take the victim to the hospital,’ but it’s necessary that the victim be accompanied by them to any institution. Or when we ask them to send something to us, they say, ‘We can’t because we do not have fax or access to email.’ ” – Shelter Director

Security and Support while Accessing Justice: Shelters and Other Organizations

In accordance with the Law on Social and Family Services (No. 02/1-17), non-governmental organizations (NGOs) can be contracted by the Department of Social Welfare (DSW) to offer Social and Family Services for persons in need, including victims of domestic violence.³⁹ Seven NGO shelters have been licensed for service provision by DSW and are operating in six regions of Kosovo. Since 2005, DSW has financed half of each shelter’s operational costs, while primarily international donors have covered other costs. Shelters continue to struggle to secure sufficient funds to meet victims’ basic needs, and lack funding for long-term monitoring or more advanced reintegration programs.

All shelters provide safe housing, food, clothes, toiletries, basic healthcare, individual/group counseling, marriage counseling, legal advice, skills training, awareness-raising on various topics, and educational opportunities. In the absence of any other form of witness protection program,⁴⁰ the shelters provide crucial services for victims of domestic violence and their children. The shelters have each housed hundreds of women and children (see the table below). Domestic violence victims who stayed at shelters said they were treated very well by shelter staff and that they felt secure and supported emotionally.⁴¹

³⁸ KWN interviews with representatives of diverse institutions, July-August 2009.

³⁹ This section draws from KWN’s prior writing about shelters and other institutions responsible for providing services to domestic violence victims. For more information, see *Security Begins at Home*, p. 88-90 and *Exploratory Research*, p. 60-64.

⁴⁰ The Ministry of Justice finances a governmental Interim Security Facility for “high risk” victims of trafficking. However, victims of domestic violence are not eligible to stay there and should not reside with trafficking victims due to the different specificities of their needs.

⁴¹ KWN interviews with domestic violence victims who stayed at shelters, August 2009. Three clients did note that shelters needed better conditions for children, such as more activities. Representatives of institutions called for better overall living conditions at shelters (KWN interviews, July-August 2009).

Number of DV Victims Sheltered by Safe Houses in Kosovo, 2000-2009 (August)

Shelter	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Centre for Protection of Women and Children (Prishtina and Mitrovica)	15	13	10	27	24	23	26	105	142		385
Women’s Wellness Center (Peja)			3	68	110	91	90	89	106	35	592
Safe House (Gjakova)	28	82	61	55	66	50	54	58	70	45	569
Center for Sheltering Women and Children in Prizren			10	52	60	47	46	30	41	31	317
Hope and Homes for Children (Prishtina) ⁴²			55	189	194	180	220	171	86		1095
Liria (Gjilan)				53	69	87	91	97	101	95	593

In terms of access to justice, shelters’ main role is ensuring the safety and security of domestic violence victims and their children, as relevant, before, during, and after judicial proceedings. Through individual and group counseling, they also offer important psychological support to women as they experience difficult and potentially traumatizing periods in their lives. Shelters have offered legal counseling and even legal representation to clients, though they were more active in offering such services prior to the establishment of the Legal Aid System and installment of VAs. Now shelters coordinate with these institutions in order to ensure that their clients have access to legal representation.

Number of Clients Receiving Legal Services from Shelters / NGOs

Shelter/NGO	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total
Centre for Protection of Women Children	1	4	10	4	1	4	4	13	14	10	65
Women’s Wellness Centre				13	17	53	40	56	89	28	296
Safe House Gjakova	46	69	66	73	69	66	69	60	60	46	624
Center for Sheltering Women and Children						18	13	15	18	20	84
Liria				113	121	130	140	103	175	150	932
Medica Kosova		6	6	10	4	6	5	5	4		46

As mentioned, shelters also coordinate closely with other institutions assisting domestic violence victims like CSWs and the Kosovo Police, which have referral systems and procedures in place for cooperation. However, systems and procedures could benefit from further clarification, including the establishment of Kosovo-wide procedures used by all shelters and institutions. For example, Standard Operating Procedures similar to those established for Victims of Trafficking could define clear procedures for monitoring cases transferred from one shelter to another as well as for cooperation between shelters and other organizations and institutions in Kosovo and abroad.⁴³

Numerous representatives of institutions identified the need for a law on shelters to regulate the sheltering of victims.⁴⁴ Considering that most shelters struggle financially,

⁴² Hope and Homes for Children, which only shelters children, used to have a shelter in Prizren as well, but it was closed in December 2007 due to insufficient funding. The table is all-inclusive.

⁴³ KWN interviews with shelter representatives, August 2009.

⁴⁴ KWN interviews with 19 respondents from all institutions, July-August 2009.

this would need to clarify long-term funding for the shelters. Nevertheless, the full implementation of the existing Law on Family and Social Services⁴⁵ that foresees governmental outsourcing of services provided by shelters should be fully applied.

Some respondents also called for the establishment of governmental shelters, particularly for victims who refused to abide by the rules of the NGO shelters. The need for more open shelters, rather than the primarily closed shelters, so victims could come and go freely and integrate into society, was also identified. Related, numerous respondents emphasized the need for more long-term dwelling solutions for domestic violence victims, which would enable more women to seek justice by offering opportunities for them to live independently.⁴⁶ Dozens of respondents emphasized the need for improved social assistance; vocational training; education; empowerment; counseling for victims, perpetrators, couples, and families; and assistance in securing employment for victims as part of a multi-dimensional reintegration program. Some representatives of institutions recommended establishing shelters for perpetrators, so that the law could be better implemented and victims would not be removed from their homes.⁴⁷

In addition to shelters, other women-led NGOs have offered legal counseling, representation, and support to domestic violence victims accessing justice. The Norma Lawyers Association offered legal aid to an estimated 500 clients dealing with domestic violence cases between 1998 and 2009.⁴⁸ Through its visits to rural areas to provide psychological as well as physical healthcare to women and girls, Medica Kosova has also played an important role in encouraging women to speak out about the violence they experience and to seek justice. While the Medica Kosova lawyer helped 46 women seek justice since 2001, the number of clients seeking legal assistance had decreased over the years as victims lost trust in the judicial system, Medica Kosova representatives said.⁴⁹

In regards to the overall cooperation among institutions and organizations detailed in this chapter, case referrals between social workers, VAs, police, and shelters seems to function better than with courts. Some VAs complained that considering their work directly with victims, they should have better access to judges and prosecutors who seemingly ignored the role of VAs. Further, VAs and social workers complained that police sometimes failed to contact them in their capacity to safeguard victims' rights. One social worker stated:

“[T]he victims are winners of the law, but in the meantime, they are losers; they initiate divorce [procedures] and get it, but after that what? They lack shelter ... employment, [and are] dependent on other relatives. They should be provided with social assistance, education, employment, and free of charge services in order to be real winners.” - Lawyer

⁴⁵ See Kosovo Assembly Law No. 02/L-17 on Social and Family Services promulgated by UNMIK Regulation 2005/46.

⁴⁶ KWN interviews with more than 15 representatives of all institutions, July-August 2009.

⁴⁷ KWN interviews with a Kosovo Police officer, judge, and VA, July-August 2009.

⁴⁸ KWN telephone interview with Norma Lawyers Association representative, August 2009.

⁴⁹ KWN telephone interview with a Medica Kosova representative, August 2009.

[T]here was a case when the mother-in-law pressured her daughter-in-law, and her son was abroad [migrated]. The police went there and took the daughter-in-law ... to her father. We were informed about this case two weeks later, when she came to our office to request economic assistance. [W]e explained that she had the right to contact us through the police. The police reported this case as a divorce case, not as domestic violence. After we informed the daughter-in-law about her rights, she contacted the police again. After that we received the report from them.⁵⁰

Better coordination and referral mechanisms among all agencies involved in assisting and protecting the rights of victims are still needed in order to safeguard the rights of domestic violence victims. Such mechanisms need to define clearly the roles and responsibilities of each party in accordance with the applicable law, as well as stipulate operational procedures for enhanced and coordinated response at both the regional and Kosovo-wide levels. More multi-disciplinary trainings could also enhance communication among all institutions involved.

⁵⁰ KWN interview, August 2009.

more than **'WORDS ON PAPER'?**



CHAPTER 6. CITIZENS' PERCEPTIONS ON ACCESS TO JUSTICE

CHAPTER 6. CITIZENS’ PERCEPTIONS ON ACCESS TO JUSTICE

Domestic violence victims’ ability to access justice depends largely on their decision to report the violence that they are experiencing. Without this crucial first step, they often remain victims, indefinitely suffering in silence. Therefore, it is essential to identify and gain a clearer understanding of reasons why citizens may or may not report violence. Citizens’ perceptions of the judicial system and the accessibility of justice can impact their decision to report violence. This chapter examines their reasoning so that policy-makers and activists can identify ways to reach out with assistance to domestic violence victims in the future.

In general, citizens seem willing to use the law to access justice in cases of domestic violence. In its 2008 Kosovo-wide household survey, KWN found that 80 percent of respondents would use the law if they suffered domestic violence; 15 percent would not, while five percent were unsure.¹ However, when domestic violence actually occurs, in practice victims may be less likely to report it. Nearly half of the domestic violence victims interviewed by KWN in 2009 did not tell anyone the first time they experienced violence. Forty percent experienced violence more than five times before they told a representative of a public institution, and nearly 30 percent had experienced violence 16 or more times before reporting it. Half of the respondents *never* reported the violence to police.

Among the most common reasons victims gave for not reporting violence or for withdrawing from a case were tradition and social condemnation.² They were embarrassed to report domestic violence for fear of neighbors gossiping, because it was a private issue, and/or they were ashamed. Embarrassment was especially prevalent among men, who could not imagine what people would say if they knew a man was being violated by his wife. “I did not want anyone around me to understand that my wife uses violence against me,” one man said.³ The perceived private nature of domestic violence and shame were two of the most common reasons respondents to the KWN Kosovo-wide survey gave as to why they would not report violence. Such perceptions likely prevent many victims from reporting violence.

Another major issue preventing victims from seeking justice was fear of the repercussions.⁴ Surely, they feared, the perpetrator would take revenge on them for reporting and the violence would be even worse. “My brother-in-law used more violence because police came to visit us,” a woman commented. “I can only imagine what he would do if I would initiate a case in court.” Reporting violence would make the situation worse, they felt.

¹ KWN, *Security Begins at Home*, p. 60.

² This was reiterated by more than a dozen representatives of diverse institutions (KWN interviews, July-August 2009).

³ KWN interview with a Turkish man, age 26-35, August 2009.

⁴ Representatives of institutions also noted this issue during interviews (July-August 2009).

Other somewhat inter-related factors influencing victims’ decision to remain silent or to stop procedures were financial dependence on perpetrators, the fact that they had no other place to go, knowledge that their families would not support them, and fear that they might lose their children. Similar concerns were noted by respondents to the Kosovo-wide survey. Numerous representatives of institutions interviewed by KWN in 2009 also emphasized that economic dependence on the perpetrator and a lack of sustainable alternatives prevented victims and women in particular from accessing justice. A Legal Aid Officer summarized the situation that many women victims of domestic violence face:

[T]he economic conditions make it difficult for them [women] as there is a lack of [alternative] dwelling space, and shelters keep them isolated ... There is not any institutional economic assistance for victims. When they know all these obstacles, they can guess the judicial solution [will not improve their situation]. [I]f she gets divorced, she does not have anywhere to go. She does not have the opportunity to cover her costs or to be independent, and due to the poor economic conditions, she often can’t win parenting rights. In these cases they do not insist to initiate any judicial process because they know that they can’t win. ... There is discrimination because of tradition, especially if she is interviewed or judged by a male judge.⁵

Women in Kosovo generally have higher unemployment⁶ and illiteracy rates than men.⁷ In accordance with traditional gender roles, women tend to be the primary caretakers of children and the elderly,⁸ which impacts their low participation in the labor market.⁹ Further, although women and men by law have equal rights to inheriting land and other property, according to customary practices, family property remains with men (i.e. husband, brother, or father-in-law).¹⁰ These factors, especially when combined, can affect the position of women within their families. Their position in the family dually impacts their ability to report domestic violence and the options available to them after they seek justice.

*“Many men get married to another woman in this kind of situation [when women do not give birth to boys]. I do not win anything [by leaving] for the moment.”
- Albanian woman, age 36-45*

⁵ KWN interview, August 2009.

⁶ The unemployment rate for women aged 15-64 is approximately 60 percent and 33 percent among men (Statistical Office of Kosovo, “Women and Men in Kosovo, 2008” available at http://www.ks-gov.net/esk/esk/pdf/english/general/Pub_grate_burrat.pdf, accessed July 2009).

⁷ Around 44.3 percent of rural women have completed only primary education, 32 percent finished secondary school, and only 2.2 percent attended higher education, whilst approximately 50 percent of men completed secondary education. Further, the percentage of men with no education (3.1 percent) is half that of women (6.6 percent). The illiteracy rate is three times higher among women, though it seems to be decreasing. See Statistical Office of Kosovo, “Agricultural Household Survey,” available at <http://www.ks-gov.net/ESK/esk/pdf/english/agriculture/Agricultural%20Household%20Survey.pdf>, accessed July 2009.

⁸ Almost half of Kosovo’s families are comprised of two generations living in the same household, and approximately 49 percent of married women reside with the family of their husband. See UNFPA, “Kosovo Demographic Profile,” available at <http://www.unfpa.org/demographicProfile.htm>.

⁹ KWN, *Security Begins at Home*, p. 72.

¹⁰ KWN, *Security Begins at Home*.

Other reasons domestic violence victims gave for not reporting violence or for stopping judicial procedures included that they: were not officially married (clearly misunderstanding the definition of a domestic relationship and their rights); did not want to report a family member; would prefer to address violence in the traditional way, with male community members mediating; still hoped they could resolve issues themselves; had husbands living outside Kosovo who could not be arrested; did not know how to start court proceedings; knew they would not be able to secure property, inheritance, or wealth if they reported the violence; and felt it would take a long time in the present justice system to resolve the situation.

*“It’s better to be dead than to go from one door to another [seeking justice].”
 - Albanian woman, age 36-45*

Worryingly, after their first attempt at seeking justice, nearly a third of the respondents said they would not use the judicial system again, and 21 percent were unsure. Most explained that they were disappointed in the judicial system, which did not offer them justice the first time. As one woman commented, “There is no justice for domestic violence victims.”¹¹ Other reasons for not seeking justice in the future included: the mentality or gossip they would face from others, particularly when institutions failed to keep information confidential; they had nowhere else to go following a trial; they would manage living with violence; and the prolonged procedures made seeking justice difficult. For example, another woman noted that as the judicial procedures were prolonged, she faced increasing pressure from family members to withdraw from the case.¹²

Domestic violence victims also had numerous complaints about the justice system itself. While some of their concerns arose from hearsay or broader societal perceptions, others were based on prior experience. A third of the victims said that courts were corrupt; it takes money to process cases (quickly); bribery is necessary to win cases; and nepotism is prevalent (“you have to know someone to get it processed in a timely manner or to have a fair trial”). “If one does not have friends or relatives working in the court, they will never initiate the case,” a woman said. “I am convinced because I have been waiting for more than a year to receive a court invitation for my case.”¹³ The second most common reason why victims were hesitant to seek justice was that the procedures would take too long, be delayed, or never be finished. Other reasons included that court fees were too expensive; filing a case would not do any good because no action would be taken; and institutions would not keep information confidential.

*“Whoever has more money has more support.”
 – Albanian woman, age 36-45*

Moving forward, what actions might policy-makers and activists take to encourage disappointed victims to renew attempts at accessing justice or to seek justice for the first time? An important first step is ensuring that citizens are aware of their legal rights as well as the services available to them. Nearly half of the respondents to KWN’s 2008 Kosovo-wide

¹¹ KWN interview with Albanian woman, age 26-35, August 2009.

¹² KWN interview with Albanian woman, age 26-35, August 2009.

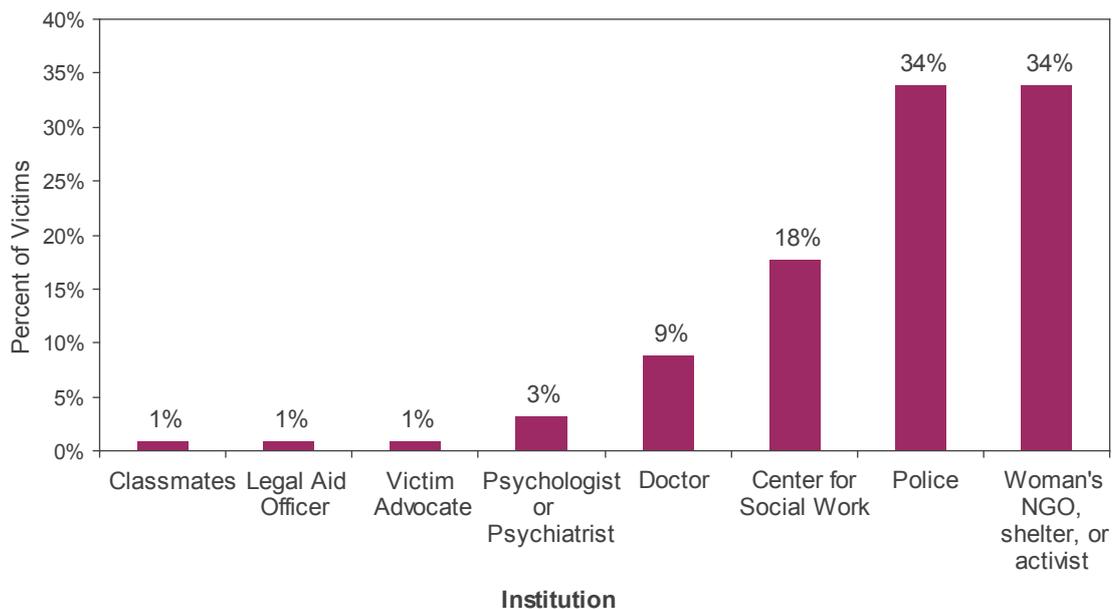
¹³ KWN interview with Albanian woman, age 26-35, August 2009.

survey did not know that the DV Regulation existed, illustrating clearly the need to educate citizens about existing mechanisms designed to protect them, like protection orders.¹⁴ The fact that violence is a crime and should be tolerated neither in the public sphere *nor* in the privacy of the home should also be made clear. The media, outreach efforts in schools, and use of already existing community-based policing initiatives are all potentially effective ways to reach the general public with such information.

Considering still prevalent perceptions that domestic violence is shameful and/or private, evidence shows that domestic violence victims often approach friends, family, or non-governmental organizations (NGOs) first in search of assistance. Among the victims interviewed, 82 percent first told a friend or family member about the violence they were experiencing. Thus, there is a need to inform the general public about their right to report violence against other people; the services available to domestic violence victims; and contact numbers for reporting violence as well as accessing other forms of assistance.

As the graph below illustrates, when domestic violence victims reported violence to a public institution or organization, one-third told a women’s NGO, shelter, or activist.¹⁵ Another third reported it to police. Eighteen percent reported violence to a Center for Social Work, while nine percent told a doctor. Others told psychologists, psychiatrists, Victim Advocates, Legal Aid Officers, or classmates. In order to facilitate reporting of domestic violence, it is important for each of these institutions to have trained professionals available to advise victims of their rights and support them in seeking further assistance, as needed. All civil servants must be informed of their legal obligation to report cases of domestic violence as well as provided with clear procedural guidelines for doing so. Mandatory

Institutions to Which Victims First Reported Domestic Violence



¹⁴ KWN, *Security Begins at Home*, p. 60.

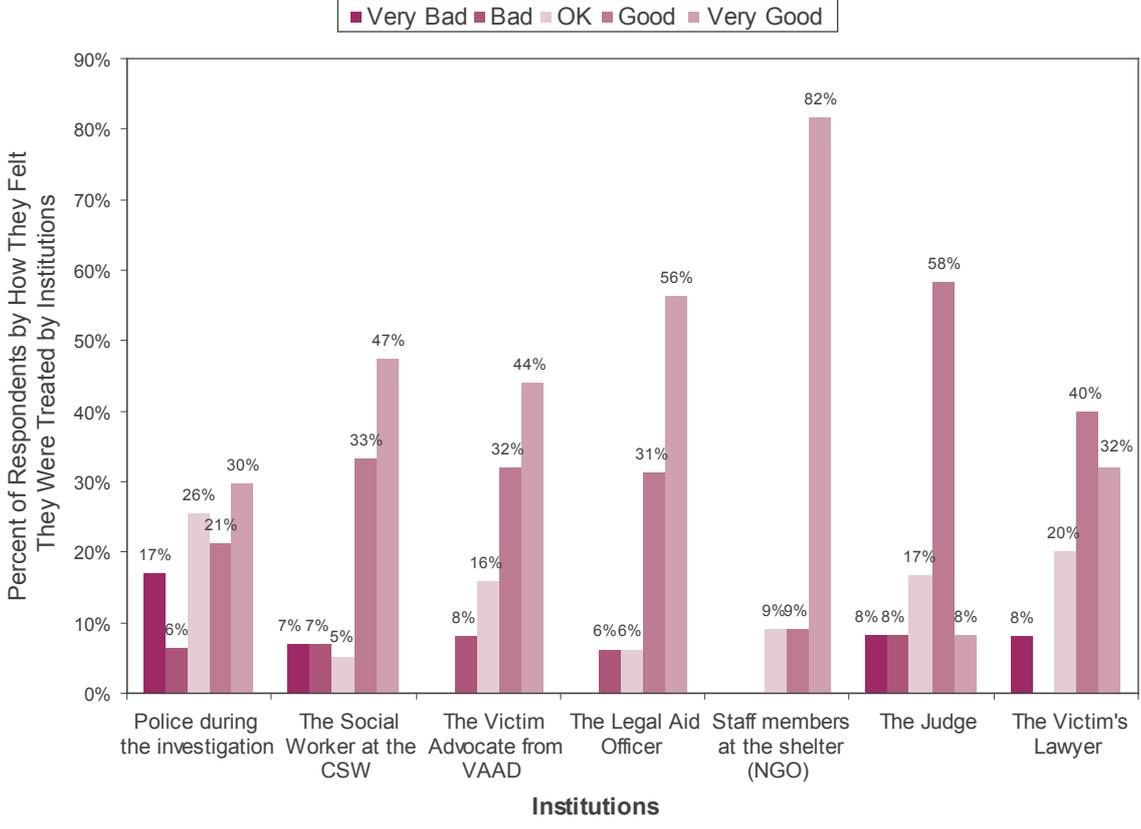
¹⁵ Women’s NGOs may be slightly over-represented in this sample considering that domestic violence victims interviewed were identified through women’s organizations.

training on recognizing signs of domestic violence, DV legislation, and sensitivity to the needs of domestic violence victims, particularly children, is crucial for teachers and health-care practitioners who may be the first points of contact for domestic violence victims.

Overall, the performance of the various institutions in offering protection and access to justice for domestic violence victims was somewhat mixed. As the graph on the next page illustrates, domestic violence victims were most pleased with the performance of the staff of shelters. Most (91 percent of respondents) said they were treated “well” or “very well” by shelter staff and none felt that they were treated poorly. In general, they also felt that they were well cared for by their Legal Aid Officers (87 percent of respondents), social workers (80 percent), Victim Advocates (76 percent), and lawyers (72 percent). Only 66 percent of respondents were happy with the judge and a mere 51 percent with police.

Conversely, 23 percent of respondents felt they were treated “badly” or “very badly” by police (17 percent), judges (16 percent), their social worker (14 percent), their lawyer (8 percent), their Victim Advocate (8 percent), or their Legal Aid Officer (6 percent). Clearly there is room for institutions to enhance their performance. It is essential that all institutions involved in providing assistance to domestic violence victims treat them with respect and understanding, not only to ensure proper access to justice, but also to encourage the reporting of recidivist or new violence in the future.

How Domestic Violence Victims Felt They Were Treated by Institutions



In conclusion, if police and courts were to implement the measures and sentences foreseen by criminal and civil procedures, victims would be offered immediate and mid-term solutions to issues ranging from economic stability to child custody to property. Importantly, they would be protected from recidivist violence. Then, following the initial 12 months of a Protection Order, institutions could contribute to long-term solutions for victims by improving the quality and types of services offered through a multi-dimensional inter-agency response. Increased social assistance, psychological counseling, sustainable dwelling solutions, additional education, vocational training, and direct support in finding employment can provide victims with the support necessary for reintegration into a life free from violence. Conversely, without a governmental response to domestic violence that is sympathetic, sensitive, and swift, victims will continue to have few options after they seek justice and will therefore likely remain silent. By ensuring support before, during, and after the process of accessing justice, institutions can send a clear message that perpetrators will be punished for their actions and, more importantly, regain the trust of domestic violence victims in their quest for justice.

RECOMMENDATIONS

For judges and prosecutors:

- Judges should respond in a timely manner with the issuance of protection orders (POs) as required by law. Delays put victims’ safety and wellbeing at risk, contradicting the purpose of the DV Regulation. The appointment of one judge to issue POs in Gjilan and Peja municipal courts has minimized delays. Similar appointments in other courts would expedite the issuance of POs and enable judges to gain necessary experience. Following a recommendation by the Kosovo Judicial Council (KJC), the President of each Municipal Court should appoint one judge to deal exclusively with cases relating to the issuance of POs. Such a decision should consider that judges would continue responding to other civil cases, but that this could accelerate the specialization of a few judges at the municipal level so they could protect victims efficiently and expeditiously.
- When perpetrators of domestic violence violate the measures issued by the PO, judges currently are sanctioning lenient sentences or no sentence at all. Low sentencing has contributed to cases of recidivism and hesitancy to report violence. PO violations should be understood with the seriousness of how domestic violence acts affect the victim. Therefore judges should issue sanctions in accordance with the requirements of the applicable law, depending on the gravity of the acts committed. In recidivist cases, the provision of imprisonment should be implemented where applicable by law.
- Depending on the particular acts occurring in a domestic violence case, judges should issue measures to accommodate correctly the needs of the victim. Since judges are limited by the measures petitioned by the victim, lawyers and Victim Advocates can play a crucial role in advising victims of the measures afforded by the DV Regulation. Full implementation of these measures can support the long-term socio-economic wellbeing of the victim and ensure appropriate implementation of the law in accordance with international human rights standards.
- The issuance of POs with insufficiently justified court judgments violates basic procedural guarantees provided for in the applicable law and according to international standards. In order to guarantee the perpetrator’s right to a fair trial and to minimize the possibility of overruling the judgment when evidence of domestic violence exists, judges should observe procedural guarantees by providing sufficiently informed and detailed court judgments according to the requirements of the applicable law.
- *Ex officio* prosecution must be undertaken for criminal offences occurring in domestic relationships. In order to show that the society does not tolerate such acts and will protect the family in accordance with international human rights standards, prosecutors must uphold the requirements of the law. Accordingly, they must prosecute cases of light bodily harm and further investigate cases of domestic violence even after POs have been issued if indications exist that criminal offences have occurred. The KJC and Kosovo Prosecutorial Commission should monitor closely failures of the prosecution and judgments ruled in order to take disciplinary action where relevant.

- Some prosecutors seem to be withdrawing quickly from further investigating cases and prosecuting offenders even though the criminal laws are explicit in their requirements. The Kosovo Criminal Procedure Code (Article 226) states that the suspension, termination, or refraining from prosecution in less serious criminal offences is not allowed for cases related to domestic violence and sexual violence. Kosovo criminal laws require harsher sentences for crimes occurring in a domestic relationship than for similar crimes occurring between persons not in a domestic relationship. The laws are explicit in requesting guarantees through criminal proceedings that seek respect for the protection of human rights standards. Prosecutors should accordingly further investigate criminal offences occurring in a domestic relationship and *ex officio* prosecute offenders in accordance with the applicable law. This will give a clear message that domestic violence is not tolerated by the society and the society seeks to end domestic violence.
- In cases of domestic violence, some prosecutors and judges seem reluctant to prosecute or rule judgments, and thus sentences fell below the minimum sentences foreseen in the applicable law. In many cases of the crime of grave bodily injury, the court sentenced the offender to less than one year imprisonment even though the law foresees a sentence of up to fifteen years. Investigation, prosecution, and judgment of perpetrators of domestic violence acts should be in accordance with the gravity of the crimes committed.
- The Kosovo Judicial Institute (KJI), mandated to build the capacity of judges and prosecutors, should continue to offer regular training on domestic violence legislation. The KJC should make training on the applicable law and international human rights standards for protecting domestic violence victims *mandatory* for judges and prosecutors dealing with such cases. Training should include sensitive methods of communicating with and questioning victims, particularly children. Further, public institutions and organizations working on domestic violence issues should support the development of a manual on handling domestic violence cases that explains both civil and criminal legislation as well as obligations under international human rights standards.
- In order for the Kosovo judiciary to generate statistics on domestic violence, among other issues, the new Case Management Information System networked throughout Kosovo must become operational immediately and on schedule. Collection of demographic and other relevant data should be mandated by law so that it will be collected, electronically logged, disaggregated, and made publicly available in an efficient, timely, and accurate manner. The System should include registration of domestic violence cases.

For Victim Advocates:

- Coordination and referral mechanisms of agencies involved in assisting, protecting, and safeguarding the rights of domestic violence victims remain weak. Therefore, under the lead of the Victims’ Advocacy and Assistance Division of the Ministry of Justice (VAAD) and Ministry of Labour and Social Welfare (for minors who are domestic violence victims) policies need to define clearly roles and responsibilities of each party, including operational procedures for an enhanced and coordinated response

at both the regional and Kosovo-wide levels for assisting and protecting victims of domestic violence.

- Victim Advocates (VAs) are mandated to safeguard the rights of victims and accordingly advise victims on the various measures foreseen by the DV Regulation. VAAD should develop a petitioning form for the issuance of POs with all measures enlisted as foreseen by the DV Regulation. The petitioning form should be made available to victims by VAs immediately upon victims’ expressed wish to petition for a PO.
- VAs should fulfill their duties and responsibilities in accordance with the applicable law. Continuous training on the applicable law (i.e., the DV Regulation, Kosovo criminal laws, and other relevant international human rights standards) should be offered by VAAD. Multidisciplinary training of VAs and other agencies involved, including Centers for Social Work, judges, prosecutors, and police, should be ongoing to further improve communication as well as exchange experiences in safeguarding the rights of victims.

For lawyers and Legal Aid Officers:

- Lawyers and Legal Aid Officers (LAOs) lack sufficient understanding and knowledge of the applicable legislation related to domestic violence. Additional training for VAs, lawyers, and LAOs should clarify their roles and responsibilities so they understand the specificities of their mandate. Further, mutual experience exchange could increase the sensitivity of lawyers and LAOs, so that they will have more informed and knowledge-based interventions when supporting vulnerable groups like domestic violence victims.
- The vulnerabilities that victims of domestic violence face as a consequence of domestic violence acts should make them automatically eligible for free legal aid. Further, the legal aid legislation should be implemented based on the category of vulnerable groups and not on a “first in time, first in right” basis, as explained to KWN by some LAOs.
- The applicable law related to domestic violence acts and international human rights standards should specifically be part of future training offered by the Legal Aid Coordination Office and VAAD in cooperation with the Kosovo Chamber of Advocates. Training should include components on offering legal representation sensitive to the needs of victims, protecting victims, and representing the best interest of the victim.
- In cases when lawyers violate the Ethics Code by continually representing victims poorly, conflict of interest, corruption, or poor performance, disciplinary actions should be taken by the Kosovo Chamber of Advocates. Monitoring could help ensure better performance.

For the Kosovo Police:

- Police are obliged by law to inform victims of rights afforded by the DV Regulation, including the right to request the issuance of a PO, options offered by POs, and other services available to victims. Kosovo Police Domestic Violence Units should develop awareness campaigns to inform the public and victims in particular on rights afforded by the law. Additionally, in accordance with the DV Regulation, police should prepare

- and disseminate victims’ rights leaflets that include information on DV legislation as well as the roles and responsibilities of police in accordance with the applicable law. The leaflets should contain simple language and illustrations understandable by all citizens, as well as contact information for agencies able to assist them. Media spots, outreach to schools, and more efforts through existing community policing programs would encourage the reporting of domestic violence and inform citizens of their rights.
- Police have often failed to intervene in cases of PO violations. Under the DV Regulation, police must monitor and follow up on cases as part of their overall mandate to secure, protect, and *prevent further violence* from occurring. Also, police have continued to issue EPOs even though the law does not provide them with such competencies. Further training is needed for police to apprehend correctly the provisions of the DV Regulation and ensure correct application of its procedures. Establishing clear procedures for consistent follow up and monitoring of cases is essential.
 - Shortcomings in the individual performance of and cooperation between police and prosecutors during investigations have contributed to reluctance among victims to report domestic violence acts or to trust that the judicial system will provide them with effective remedies. Domestic violence cases should be prioritized; the prosecution and police should cooperate more effectively on investigations and substantial evidence collection. Police should also improve their investigative techniques, especially in response to domestic violence. The appointment of judicial police, as required by the applicable criminal legislation, should be made effective immediately.
 - The Kosovo Police previously encountered problems applying Section 13 of the DV Regulation, which foresees that UNMIK police issue Interim Emergency POs. While this competency has since been transitioned to the Kosovo Police, the new Law on Protection against Domestic Violence needs to reiterate this specific need and mandate the Kosovo Police with the authority to continue issuing Interim Emergency POs.
 - At times, police response to emergency calls has been slow. In order to guarantee domestic violence victims prompt assistance, the Kosovo Police should establish a confidential, functioning, free of charge, 24-hour hotline for domestic violence victims.

For the EULEX Mission and other international organizations:

- No mention of gender existed in EULEX’s initial mandate, and domestic violence cases have not been considered a priority within the mission. Currently, neither judges nor prosecutors have considered domestic violence cases “serious” enough for monitoring or following. Cases of gender-based violence as human rights violations should be addressed with the same seriousness as inter-ethnic crimes within the EULEX mandate. Further, international judges and prosecutors, preferably with expertise and experience in gender-based violence, should undertake close coaching and monitoring of the judiciary in this regard.
- Organizations monitoring the judicial system in Kosovo such as the OSCE Mission in Kosovo should continue to monitor regularly courts handling cases of domestic violence in order to ensure their compliance with international human rights standards. Regular monitoring reports based on these exercises should be made available to the public.

Improving the Current Legal Outface

- In 2008, KWN detailed areas for improving the existing legal outface in relation to domestic violence in *Security Begins at Home*. In this prior report, KWN observed numerous deficiencies with the applicable law in offering effective protection to domestic violence victims and prosecuting perpetrators of such acts. Both the prior and following recommendations should be considered by the working group in the Office of the Prime Minister tasked with drafting the new Kosovo Law on Protection against Domestic Violence (LDV), as well as in reviews of other legislation related to domestic violence.
- Nearly 38 percent of respondents from institutions directly involved in assisting domestic violence victims were unaware that the Government of Kosovo was drafting the new LDV to replace the UNMIK DV Regulation. Of those who were aware, most learned about the draft LDV via the media. Only a couple had been invited to participate in the process. Respondents, particularly judges, expressed concern that they were not invited to take part in the process. Efforts should be made to ensure that all key stakeholders participate in the process, which may enhance the future implementation of the LDV.
- One of the main issues raised by representatives of institutions was that the act of domestic violence is not defined *per se* in the Criminal Code of Kosovo (CCK). Further, not all domestic violence acts listed in the DV Regulation are defined as criminal acts in the CCK. Police officers stated that it is difficult to apply in practice a regulation that does not punish all acts of domestic violence. Judges and prosecutors requested that Kosovo criminal laws be amended to incorporate and define domestic violence acts *per se* by drafting a separate chapter on domestic violence criminal offences. The working group drafting the new LDV should analyze thoroughly this possibility in close consultation with judges and prosecutors. Amending criminal law to incorporate the definition of a domestic violence crime *per se*, using the definitions of acts in the DV Regulation, should also be considered during the legislative review of Kosovo criminal legislation.
- Judges and prosecutors also stated that they faced difficulties implementing the DV Regulation as the procedure foreseen by the Regulation is new and not detailed enough. The new LDV should ensure that the procedures for petitioning and issuing POs are detailed. For this purpose, an Administrative Instruction (AI) can be drafted to implement fully the LDV. Legislators should adopt the LDV and AI simultaneously so not to leave victims without effective remedies until the AI is adopted.
- The new LDV should retain the numerous measures that can be issued with POs according to the current DV Regulation and allow judges, based on an analysis of each case, to issue more measures. Judges should not be limited to the measures requested by the petition for the issuance of a PO.
- The DV Regulation foresees that the PO can be issued after the alleged perpetrator has been summoned properly in accordance with the applicable law, even if he/she does not appear at the court hearing. In practice, delays occur as judges hesitate to issue a PO when the alleged perpetrator does not appear, even when evidence exists that domestic violence acts occurred. The new LDV should clarify that the court hearing and issuance of a PO can occur in circumstances when the alleged perpetrator has been summoned regularly and does not attend the hearing.

- The new LDV should also refer to execution of decisions in accordance with the Kosovo Law on Execution Procedures and require that the follow-up and execution of POs is observed by the Kosovo Police and courts. It should define clearly the obligatory information that police should provide to prosecutors when POs are violated as a crime prosecuted *ex officio*. The LDV should ensure that the procedures by which police should monitor and follow up on active POs are also well defined.
- Current legal aid legislation in Kosovo does not foresee specifically victims of domestic violence as a category eligible for free legal counseling and representation. Legal aid is currently available only to vulnerable groups that fulfill particular social conditions (e.g., are eligible for social assistance). The vulnerabilities that victims face as a consequence of domestic violence acts should make them automatically eligible for free legal aid.
- The draft LDV foresees that the Ministry of Labour and Social Welfare and Ministry of Health will draft an AI to define how compulsory psychosocial treatment shall be offered to perpetrators of domestic violence as an additional measure. The LDV should foresee how this will work in practice, including the financing of professional psychological counseling for DV perpetrators through out-sourced services in accordance with the Law on Family and Social Services. Otherwise, the drafting of provisions without sufficient resources and funding will cause delays in the appropriate implementation of the laws.
- Numerous institutions have described already insufficient budgets for addressing the needs of victims, particularly their urgent needs for food and medical treatment. All institutions should ensure sufficient budget allocations for institutions to carry out their responsibilities adequately in regards to DV.
- Long-term solutions for victims are limited by economic dependency on perpetrators, high unemployment, low levels of education, poor social assistance, and a lack of property ownership. Nevertheless, full implementation of the provisions offered by the applicable law can provide substantial short-term support to victims after reporting violence, as well as empower victims to consider alternative living arrangements. The new LDV should foresee the establishment of a Victims Assistance Reparation and Compensation Fund to support victims with empowering strategies through which the government can safeguard the rights of victims and offer effective legal and institutional remedies. This should be coupled with clearly defined responsibilities for individual institutions as part of a coordinated, multi-agency reintegration support program.
- The wellbeing of children in households where domestic violence has occurred needs to be considered carefully by the working group drafting the new LDV. The best interests of the child must be prioritized in accordance with the Convention on the Rights of the Child. At the same time, solutions must be found so as not to prejudice long-term custody rights.
- In order to increase the capacity of judges and prosecutors, the new LDV should incorporate mandatory training for judges and prosecutors on legislation relating to domestic violence under the lead of the Kosovo Judicial Institute.

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MORE THAN “WORDS ON PAPER”? THE RESPONSE OF JUSTICE PROVIDERS TO DOMESTIC VIOLENCE IN KOSOVO

“We have very good laws on paper, but they are not being implemented,” a woman who had suffered domestic violence and sought justice told the Kosova Women’s Network. Such sentiments have become commonplace among women’s rights activists and representatives of institutions as well, illustrating the difficulties involved with implementing existing legislation. However, insufficient research has examined why such problems exist, particularly in relation to domestic violence. Identifying specific challenges to implementing legislation can serve to inform policy processes.

Drawing from interviews with more than 60 representatives of institutions, 96 victims of domestic violence, and prior research, this report pinpoints issues with the existing legislation and its implementation. The findings and resulting recommendations aim to inform the new Law on Protection against Domestic Violence, National Strategy and Action Plan against Domestic Violence, and other legislation governing the prosecution of crimes committed in a domestic relationship, operational procedures, and work of institutions charged with ensuring access to justice.

The report assesses the performance of judges in offering protection against domestic violence via mechanisms such as protection orders; the criminal prosecution of acts of domestic violence; Kosovo Police investigations of domestic violence acts as well as actions to protect victims from further violence; the work of various institutions and organizations responsible for safeguarding victims’ rights when accessing justice; and citizens’ perceptions of the judicial system, which may affect their decisions to seek justice or remain silent. The report concludes with recommendations for policymakers and individual institutions toward enhancing access to justice for domestic violence victims.



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